



Anti-money laundering and counter-terrorist financing measures

Cayman Islands

Mutual Evaluation Report

March 2019



MUTUAL EVALUATION REPORT OF THE CAYMAN ISLANDS

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EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in the Cayman Islands as at the date of the on-site visit December 4 to 15, 2017. It analyses the level of compliance with the FATF 40 Recommendations, the level of effectiveness of the Cayman Islands' AML/CFT system and provides recommendations on how the system could be strengthened.

Key Findings

- i. The Cayman Islands has a high level of commitment to ensuring their AML/CFT framework is robust and capable of safeguarding the integrity of the jurisdiction's financial sector. The jurisdiction's AML/CFT regime is complemented by a well-developed legal and institutional framework. As a major international financial centre, the Cayman Islands is confronted with inherent ML/TF risks, threats and associated vulnerabilities emanating from domestic and foreign criminal activities (e.g. tax evasion, fraud, drug trafficking).
- ii. In 2015, the Cayman Islands concluded its first ML/TF National Risk Assessment (NRA) which provides a fair level of understanding of its domestic ML/TF risks within the jurisdiction. However, the NRA did not include an assessment of legal persons or arrangements, nor did it conduct sufficient analysis of the risks present in parts of the financial sector not subject to supervision (e.g. lawyers and excluded persons under the Securities Investment Business Law (SIBL)). Further, the assessment did not fully address the international components of risk faced by the jurisdiction as a significant international financial centre or provide evidence that sufficient analysis was conducted with respect to the jurisdiction's TF risks. This has resulted in major deficiencies that have inhibited the jurisdiction's ability to analyse and understand its risks.
- iii. Only a high-level summary of results has been shared with the private sector and it does not contain sufficient information to enable relevant stakeholders to develop a comprehensive understanding of the ML/TF risks they face in operating within the Cayman Islands. However, private sector participants that were involved in the NRA were given a more comprehensive insight of the risks identified in the NRA.
- iv. There is an established structure for cooperation and coordination in the Cayman Islands which works well. The establishment of the Inter Agency Coordination Committee (IACC) is a positive development, and further aids the work of the Anti-Money Laundering Steering Group (AMLSG). However, membership is not reflective of all the competent authorities involved in the jurisdiction's AML/CFT regime, and requires integration and cooperation among law enforcement organisations and the Financial Reporting Authority (FRA) at the operational level.

- v. The jurisdiction has a structure that ensures that both the predicate and financial aspects of the crime are, to a significant extent, investigated and prosecuted in parallel by trained and experienced personnel. While the jurisdiction is focussed on taking the financial benefit out of crime, the investigations and prosecution of ML in the Cayman Islands are primarily domestic minor predicate offences which, given the shortcomings associated with the NRA exercise, may not be fully commensurate with its risk profile.
- vi. At both the investigative and prosecutorial level there is a focus on the identification of assets that should be subject to seizure. But given the focus on investigation and prosecution of domestic based minor predicate offences, confiscations results are quite modest and may not be commensurate with the ML risks of the jurisdiction. There could also be greater use of civil forfeiture.
- vii. The Royal Cayman Islands Police Service (RCIPS) and the Office of the Director of Public Prosecutions (ODPP) have dedicated resources to combat financial crime including ML/TF. However, large and complex financial investigations and prosecutions have not been identified, or pursued, and there is limited focus on stand-alone ML cases and foreign generated predicate offences. Deficiencies noted in IO 6 highlight that there remains fundamental challenges in how the jurisdiction identifies instances of ML/TF for investigation. Ultimately, this contributes to jurisdiction's reactive approach to investigating financial crime based on the commission of, in most instances, relatively minor domestic predicate offences.
- viii. The Cayman Islands has not provided the FRA with the tools to assist investigative authorities in the identification of cases. While the FRA is able to triage the SARs they receive, they have not been able to sufficiently analyse and disclose these reports in a timely manner. They also do not have access to the widest possible level of relevant information nor does the jurisdiction collect relevant information from its reporting entities (e.g. wire transfers) that would allow for the proactive identification of cases for investigation. The result is that there is a low level of usage of FRA's disclosures to supplement investigations and they have been used to a negligible extent to initiate investigations.
- ix. The ODPP is willing and possesses the ability to support international partners. While informal cooperation is provided in a timely manner, the execution of formalised cooperation requests was not undertaken in a timely manner although this has been improved.
- x. While the Cayman Islands has trained and experienced investigators in the Financial Crimes Unit (FCU) to pursue TF, training to improve awareness and understanding of TF among the competent authorities and the judiciary is required. There has been to a limited extent, TF investigations and no TF prosecutions in the jurisdiction. As a result of deficiencies in IO 1, the understanding of TF within the jurisdiction among private sector actors and competent authorities requires further

development. Nonetheless, this and challenges identified in IO6 have a consequential impact on the identification of potential TF. The Non-Profit Organisation (NPO) sector requires oversight and, in an effort, to improve this sector's understanding of their TF risks, the authorities have been interacting and engaging through outreach.

- xi. Basic information on legal persons is available on the General Registry's website in real time. However basic information is not similarly available for legal arrangements or exempted companies. The jurisdiction has recently strengthened its AML/CFT legislative regime to promote transparency of beneficial ownership information through its centralised beneficial ownership platform which allows immediate access to the information by the FRA, and timely access by other relevant competent authorities. Further, there are challenges in the verification and ongoing maintenance of the ultimate beneficial ownership information for example in the case of partnerships where the information required does not include the beneficial owner.
- xii. As a British Overseas Territory, the Cayman Islands is dependent on the UK when implementing targeted financial sanctions (TFS), first through EU Council Regulations which are then extended to the Cayman Islands by the UK by way of Overseas Orders in Council. The Policing in Crime Act enacted by the UK in 2017 allows for the automatic and immediate extension of the UNSCRs through the permissive extent clause which allows the jurisdiction to meet these international obligations. The Cayman Islands has enacted the Terrorism Law which implements the UNSCRs without delay. The jurisdiction may benefit from further training and outreach to relevant stakeholders in the areas of TF and PF so as to effectively implement the requirements of TFS measures.
- xiii. The AML/CFT supervisory/regulatory regime for Financial Institutions (FIs) and Trust and Corporate Service Providers (TCSPs) is established and understood by relevant stakeholders. Customer due diligence (CDD) measures and controls are well entrenched in the financial sector. FIs particularly the larger and established banks as well as the TCSPs have an understanding of their ML threats, appear to be more vigorous in their mitigating efforts, but lack understanding of their TF threats. Nonetheless, a portion of the securities sector is subject to limited supervision and not subject to monitoring for AML/CFT compliance or risk assessment (e.g. 55% of excluded persons under SIBL). This is a potential source of ML/TF risks, particularly with respect to the excluded persons that perform the higher ML/TF risk activities of portfolio management and broker/dealing. Due to limited assessment and compliance information on the persons conducting these activities, the extent to which the AML/CFT regime is understood by these persons has not been determined.
- xiv. While a supervisory authority has been identified for dealers in precious metals and precious stones (DPMS) and real estate agents, as well as a self-regulatory body

(SRB) for accountants, lawyers remain unsupervised for AML/CFT purposes. Further, a risk-based supervisory regime for DPMS, real estate agents and accountants has not yet been fully implemented.

Risks and General Situation

2. The jurisdiction's high-level commitment to AML/CFT is underscored by its recognition of the need for a robust regime. The Cayman Islands is host to an innovative and advanced financial sector which plays an important role in the international marketplace.
3. According to the Bank of International Settlements, in the second quarter of 2014, the banking sector of the Cayman Islands was the sixth largest in the world, with a cross-border asset position at US\$1.365trillion and fifth by cross-border liabilities of US\$1.347trillion.
4. The Cayman Islands should have conducted a more thorough assessment of its inherent ML/TF vulnerabilities due to the significant size of the financial sector. The Cayman Islands has, to a fair extent, identified, assessed and understood aspects of its ML/TF risks. While corruption, fraud, evasion of taxes and narcotics trafficking were identified as foreign ML threats, there was too much focus on the domestic risk and not enough on the international risks. The threats associated with terrorism and proliferation were stated as low, however the Cayman Islands should more thoroughly assess whether financing threats associated with these activities. Recognising the role of the financial sector as well as the interconnectedness to the global market, more analysis of the jurisdiction's vulnerabilities to potential for complex ML/TF/PF schemes is required. Ultimately, significant efforts are required by the jurisdiction to ensure that it is capable of mitigating these vulnerabilities.
5. The jurisdiction did not conduct a sufficiently comprehensive assessment and analysis of its risk environment within the context of its role as a significant financial centre both regionally and globally. Given the complexity and variety of financial products available in the jurisdiction, there are considerable areas of potential ML/TF risks.
6. The role this significant international financial centre plays in the global economy necessitates that there is a suitable framework in place to mitigate the use of the Cayman Islands as a potential means to launder funds. Aspects of the Cayman Islands' financial sector, such as the SEZ and the gaps in the supervision of a smaller portion of excluded persons that perform higher risk activities, magnify these risks and represent deficiencies in the jurisdiction's capacity to optimally counter ML/TF.
7. The Cayman Islands' financial and non-financial sectors are well established and private sector participants are well aware of and experienced in applying robust risk mitigating measures. FIs and TCSPs in particular are often part of or closely associated with global groups, and have applied robust AML/CFT group wide compliance rules for many years. Almost all FIs and DNFBPs interviewed by the assessors displayed a solid understanding of risks and are skilled in applying relevant control measures in a manner that they mitigate such risks to the extent possible but this does not take the place of the need for them to better understand the risks and vulnerabilities present regionally. Furthermore, the Cayman Islands has a solid and highly

professional institutional framework in place with regards to AML/CFT, with CIMA, the FRA and the ODPP leading the country's efforts.

Overall Level of Effectiveness and Technical Compliance

8. The Cayman Islands underwent its Third Round Mutual Evaluation in 2007. Since then, the AML/CFT/CPF framework has undergone considerable overhaul and reform, which has augmented and strengthened the AML/CFT/CPF regime.
9. The main technical compliance strengths are in the areas of preventative measures and supervision for FIs and TCSPs, international co-operation, criminalisation of ML and TF. The significant changes made to the POCL, AMLRs, Companies Law and other pieces of legislation prior to and during the onsite may, over time, improve the overall effectiveness of the AML/CFT regime. However, at the time of this assessment, assessors were unable to determine the effectiveness and impact of these legislative changes on the AML/CFT framework.
10. Nevertheless, there are some important deficiencies, that remain within the technical compliance framework. Shortcomings in the area of simplified measures, reliance on third parties, higher risk countries *inter alia*, represent deficiencies that have the potential to weaken the jurisdiction's AML/CFT regime from meeting the expectations of the Fourth-Round process if left unaddressed.
11. Some deficiencies identified in technical compliance are considered serious, and lack of adequate implementation in some cases were considered major shortcomings in effectiveness.

Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)

12. The Cayman Islands approach to their NRA was inclusive of competent authorities and the private sector which convened to assess the jurisdiction's AML/CFT risks based on data and information provided by CIMA, FRA, FCU, ODPP and private sector agencies covering a span of 3 ½ years (2012-2015). Domestically, the NRA identified theft, corruption and drug trafficking as the main generators of domestic proceeds of crime. The NRA concluded that foreign generated proceeds of crime pose a more significant threat to the financial and non-financial sectors than domestically generated proceeds of crime. Foreign threats identified were fraud, evasion of foreign taxes by non-residents and drug trafficking. The Cayman Islands assessed its TF threat as low. The process resulted in the creation of an AML/CFT strategy which outlined six strategic themes and resulted in efforts to address the gaps identified.
13. The NRA provides a fair understanding of the jurisdiction's domestic ML risks but the process was not complete and meant that the assessors were not fully able to determine whether or not the findings accurately reflected the jurisdiction's risk profile. It did not sufficiently analyse risks present in the sectors outside of the formal supervision regime and the risks and vulnerabilities that are inherently present within the Cayman Islands given its role within the international financial sector (including ML/TF). The process did not include an appropriate risk assessment of legal persons (a significant number of which are non-resident) or legal

arrangements, and the analysis of TF required further examination. While the NRA factored in the vulnerabilities of an unsupervised segment of the securities sector, the lack of information on this segment impeded any analysis of the materiality of this segment to the jurisdiction and the level of ML/TF risks posed. In addition, in the absence of other analytical products communicating results, the awareness of the jurisdiction's risks among the private sector is limited.

14. There are coordination bodies present within the Cayman Islands. The Anti Money Laundering Steering Group (AMLSG) and the Inter Agency Coordination Committee (IACC) are the overarching domestic coordination and cooperation bodies within the Cayman Islands which support the AML/CFT regime. The capacity of the jurisdiction to review, amend and create new significant pieces of legislation prior to and during the onsite is a demonstration that a coordination body is in place and functional to an extent. However, while there has been cooperation and coordination outside of the NRA, the intermediate coordination body (IACC) was constituted just prior to the onsite. As such it has not exercised core components of its mandate, such as policy implementation and greater interagency cooperation. Further, based on the risks identified as part of the NRA, the membership of both these coordinating bodies should be re-evaluated since key agencies are not represented on these bodies. The RCIPS uses the Joint Intelligence Unit (JIU), to some extent, for operational cooperation and coordination among some partners there is no single body consisting of all members which would enable effective operational cooperation.
15. The Cayman Islands published a summary of the findings of its NRA, which, in the absence of other information or ML/TF risk assessments by the jurisdiction's competent authorities, did not provide sufficient additional context to be of appropriate utility to the private sector. It would benefit the jurisdiction if the national authorities communicate comprehensive results of the risks identified in the NRA report to the private sector to foster improved application of appropriate mitigation measures.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 – IOs 6-8; R.3, R.4, R.29-32)

16. The Cayman Islands has an objective to remove the financial benefit from crime. The competent authorities within the Cayman Islands recognise the value of financial intelligence and has a dedicated unit of well-trained officers focused on pursuing the financial elements of crime. However, the ability to identify cases for investigation, one of the core pillars underpinning this framework that supports the jurisdiction's policy objectives, contains within it a fundamental flaw. Ultimately, this shortcoming impedes the ability of the Cayman Islands to identify cases that will generate on a regular basis complex, stand alone or third-party ML investigations against both natural and legal persons on a regular basis .
17. The FRA utilises the resources at its disposal, including accessing the international FIU network, to generate a disclosure that will assist other competent authorities. However, at present the disclosures by the FRA are used to initiate ML/TF investigations to a limited extent

and are primarily used to supplement investigations of a limited set of predicate offences. The jurisdiction has not provided the FRA with the tools necessary to achieve its mandate/purpose given the challenges of limited access to relevant information, insufficient information technology, etc. which may directly contribute to the challenges faced in identification of cases for investigation. Further, the information gathered by the jurisdiction and the resourcing of the FRA does not allow for sufficient strategic analysis that would enable the financial sector to be apprised of trends, typologies and general risks that inform them of the risk their operations face by virtue of operating in Cayman Islands.

18. The jurisdiction systematically pursues parallel financial investigations with predicate offences as a matter of course. The authorities responsible are resourced and trained to investigate financial crimes, however they need to move from a reactive to a proactive approach and examine cases of a more complex nature such as stand-alone ML cases against natural and legal persons. Similar to investigative counterparts, the ODPP will pursue prosecutions of the financial component of crime and has dedicated staff to achieve this objective.
19. Though the Cayman Islands pursues the confiscation of all relevant assets as a policy objective, the jurisdiction could do more in the domain of civil asset forfeiture as acknowledged by the ODPP. The sanctions to date have been largely concurrent rather than consecutive and are neither proportionate nor dissuasive since the offences pursued have been tied to self-laundering and not on standalone ML. There are characteristics of a framework enabling the prosecution of both the predicate, the financial component as well as an ability to confiscate, manage, repatriate and asset share. However, the results have been largely modest to date which is reflective of the types of criminal activity pursued.

Terrorist Financing and Financing Proliferation (Chapter 4 – IOs 9-11; R.5-8)

20. The framework to address TF and PF is comprehensive and adequately augments the AML regime. Though the NRA assessed the risk of TF as low, the Cayman Islands did not conduct a sufficiently thorough analysis to substantiate this finding that would render a conclusion as to whether this truly reflects the jurisdiction's risk profile. Given the Cayman Islands' status as a major international financial centre, the jurisdiction is vulnerable to potential misuse for TF. The jurisdiction has been able to identify limited instances of TF using intelligence not generated by the FRA. However, the shortcomings of IO 6 are in some ways magnified when it comes to addressing TF. While there is a strong familiarity with ML within the jurisdiction, this is much less the case when it comes to TF. As such, the lack of ongoing guidance by competent authorities to the private sector on the TF risks inhibits the possibility of its identification.
21. The RCIPS has adequate investigators trained and experienced in TF which provides the jurisdiction with a capacity to investigate TF. There has been a few TF investigations by the authorities, and in those instances, the RCIPS has been able to engage and cooperate with foreign counterparts. Nonetheless, there have been no cases of freezing terrorist property or

deprivation of assets and instrumentalities related to TF activities or cases identified where this should have taken place. Further, there have been no instances where a TF investigation has resulted in a prosecution or conviction that would allow for a conclusion to be drawn with respect to capacity and sanctions.

22. The Cayman Islands, both based on UK legislation as well as its own, has established a legislative means of ensuring that TFS pursuant to UNSCR 1267/1373 can be implemented without delay. However, the communication of these sanctions to the private sector is not timely.
23. While larger and more sophisticated FIs monitor their customers, the degree to which monitoring takes place to identify persons subject to sanction varies. Most FIs and DNFBPs, particularly TCSPs and lawyers make extensive and frequent use of third-party software tools to identify persons designated under UNSCRs, but given the irregular degree to which screening is conducted within the jurisdiction, there is a heavy focus on identifying assets subject to sanction at the time when a transaction is being attempted. This may prevent capital flight but will not allow for early identification of assets that should be frozen. Further, the understanding of the process to be applied if assets subject to sanctions were identified varied. The jurisdiction recognises the importance of TFS and established the position of Sanctions Coordinator to reinforce its commitment to implementing sanctions. Nonetheless, there is still further need for communicating, guiding and engaging the sector. Additionally, the degree to which the private sector is monitored for ensuring that TFS have been effectively implemented is an area which requires further development.
24. The NPO sector was recently brought under supervision of the Registrar General and the process for registration was ongoing at the time of the onsite visit. The NPO Supervisor has undertaken several outreach programmes to sensitise NPOs, as well as donors to the vulnerabilities of the sector. A risk-based supervisory approach targeted to NPOs that are most vulnerable to TF is yet to be implemented. The NPO sector requires additional guidance as NPOs do not have a clear understanding of their vulnerability to TF and minimal guidance has been provided for the sector.
25. There is very little monitoring, training, guidance or awareness among most FIs and DNFBPs on PF obligations.

Preventive Measures (Chapter 5 – I04; R.9-23)

26. The Cayman Islands outlines its AML/CFT obligations for FIs and DNFBPs in the AMLRs, where some deficiencies in satisfying the Recommendations exist. The AMLRs are supported by the GNs issued by CIMA. Although they do not meet the criteria to be considered enforceable means, FIs and DNFBPs seek to comply with the GNs. FIs and TCSPs have a fair understanding of their ML/TF risks from gathering relevant information from a number of sources, however there is a need for some entities to formalise policies and procedures for institutional risk assessments. These FIs and TCSPs are also mostly aware of their reporting

obligations, given CIMA's willingness to communicate to the industry on developments in the AML/CFT regulatory framework. However, the level of awareness of obligations or level of implementation of obligations among excluded persons under SIBL, that are not supervised by CIMA could not be determined. FIs and TCSPs have, to a fair extent, robust procedures in place for the establishment of business relationships, which includes conducting CDD (including on the beneficial ownership of legal persons), assessing the risk associated with each client and applying measures commensurate to risks identified. Lawyers, accountants and real estate agents have a rudimentary understanding of their ML/TF risks. In the case of DPMS, this understanding is to a lesser extent since they have only recently been sensitised of AML/CFT obligations.

27. FIs and TCSPs have relevant internal procedures for the identification and detection of suspicious activities. The majority of SARs filed in the Cayman Islands emanate from retail banks located in the Cayman Islands. However, there is a significant level of under-reporting to the FRA from Cayman licensed banks that are not located in the Cayman Islands as well as excluded persons under SIBL. Lawyers, accountants and real estate agents maintain policies and procedures to mitigate ML/TF risks associated with their business activities. Additional guidance should be provided on SAR reporting to FIs and DNFBPs.
28. FIs and TCSPs have relevant internal procedures for identifying persons and entities subject to TFS and can communicate their processes for freezing assets. There however is insufficient knowledge amongst these entities on the reporting obligations with respect to frozen assets. This may be addressed over time following the publication of the TFS Guidance Notes issued by the FRA during the onsite in December 2017.

Supervision (Chapter 6 – IO3; R.26-28, R. 34-35)

29. CIMA's AML/CFT supervisory remit extends to FIs and TCSPs but does not fully include excluded persons which are not licensed under SIBL, yet are subject to registration requirements. Based on the limited inherent AML/CFT risks associated with the activities conducted by 55% of excluded persons not subject to comprehensive supervision (e.g. fund management, investment advice, investment arrangement), a comprehensive supervisory regime may not be warranted for all excluded persons. CIMA has a strong regime in place to prevent criminals and associates from being directors, managers, shareholders and beneficial owners of FIs and TCSPs. Although this regime does not fully extend to all excluded persons, the directors of excluded persons are required to be licensed or registered with CIMA and are subject to fit and proper assessments. CIMA has a risk-based approach to supervision based on overall prudential risks, with the inclusion of ML/TF risks. The authority has been refining its risk assessment methodology to identify and rate ML/TF risks separately from its prudential risk to influence supervisory actions on an ML/TF risk basis. Onsite inspections conducted by CIMA have been largely based on the overall risk rating of FIs and TCSPs instead of ML/TF risks. CIMA has however taken steps to conduct focused ML/TF onsite inspections to increase its ML/TF supervision on its licensees. Deficiencies in CIMA's resources has affected its ability to aptly apply supervisory actions on FIs and TCSPs, however, steps are being taken to

address the resourcing issues. CIMA has a range of remedial actions and sanctions at its disposal, although remedial actions appear to be preferable to the authority. An administrative penalty regime was recently implemented and this may increase CIMA's use of its enforcement powers. While CIMA's enforcement ability does not fully extend to excluded persons under SIBL, it has the power to remove the licensing or registration of a director, or request that an external audit be conducted on these entities and has used this power. An analysis of the impact of CIMA's supervisory actions on FIs and DNFBPs has not yet been undertaken.

30. In March 2017, the Department of Commerce and Investment (DCI) was re-appointed as the supervisory authority for the DPMS and real estate agents (excluding the TCSPs). Outreach and sensitisation of the AML/CFT obligations and risks is in the nascent stage. In December 2017, during the onsite, the Cayman Islands Institute of Professional Accountants (CIIPA) was appointed as the supervisory authority for the accountants. However, a supervisory authority has not yet been appointed for the AML/CFT oversight of attorneys.

Transparency of Legal Persons and Arrangements (Chapter 7 – 105; R. 24-25)

Legal Persons

31. The Cayman Islands' framework to prevent the misuse of legal persons is undergirded by comprehensive laws, regulations and other AML/CFT measures which are in the process of receiving considerable enhancement.
32. Basic ownership information on legal persons is publicly available. Basic information on the forms, types and features as well as incorporation procedures for legal persons is available online. The recent establishment of a centralised beneficial ownership register lends to a more enhanced and efficient framework for transparency of beneficial ownership information in the jurisdiction. Beneficial ownership information on legal persons is accessible to the FRA directly and available to relevant competent authorities upon request.
33. The Cayman Islands has not conducted a specific ML/TF risk assessment of legal persons or arrangements to enable an understanding of the risks associated with these corporate vehicles. However, the extent to which legal persons and legal arrangements can be exploited for ML/TF purposes is generally fairly understood among FIs and TCSPs.
34. All companies are required to maintain an updated register of members which captures details of when they became and ceased to be members. Ordinary and non-resident companies are required to maintain a register of members in the Cayman Islands. Exempted companies are required to engage the services of a TCSP to assist with maintaining their register. Limited Liability Companies (LLCs) are required to maintain a register of members at its registered office in the Cayman Islands and all changes must be updated within 21 days. Penalties are also applicable for failure to maintain a register of beneficial ownership for LLCs.
35. Reliance is mainly placed on TCSPs to maintain beneficial ownership information and there is extensive use of professional intermediaries to collect beneficial ownership information. Recent legislation that establishes a centralised beneficial ownership platform has provided a strong basis for promoting transparency of legal persons and arrangements. An assessment of

the effectiveness of this system was not possible given its recent introduction. Although most entities have been able to identify the beneficial owner of legal persons, the process can benefit from improvements contemplated by the recently established beneficial ownership register.

36. The Foundation Companies Law 2017 although passed in late March 2017, was not in force at the time of the onsite.
37. Since 2016, the Companies Law was amended to prohibit the use of bearer shares. Moreover, the law does not recognise the concept of nominee director and all directors owe the same director duties as any other director and these cannot be abdicated by the director.
38. The Cayman Islands facilitates requests for international assistance in respect of legal persons through relevant competent authorities.
39. The authorities have applied sanctions for failure to meet AML/CFT obligations. In 2016, sanctions were imposed on legal persons that failed to update their registers within a given time frame. As a result, several companies were struck off the register.

Legal Arrangements

40. The Trust Law governs trusts in the Cayman Islands and allows for the creation of different types of trusts which are not currently required to register with the General Registry but are subject to AML/CFT regime through the engagement of a licensed service provider. Measures to prevent trusts from being used for ML/TF purposes are present in the Cayman Islands. To provide services to a trust in the Cayman Islands, the service provider must be licensed and is thus subject to regulatory oversight by CIMA.
41. The authorities are unaware of the number of trusts within the Cayman Islands. An ordinary trust is subject to the common law requirement which is to have knowledge of all documentation which pertains to the formation and management of the trust. A discretionary trust is the most common ordinary trust vehicle used in the Cayman Islands. With this trust structure, the trustee is given an absolute discretion as to how to manage and invest the trust estate and make distributions to the beneficiaries. An exempted trust is registered with the Registrar and must submit certain information to the Registrar such as accounts, minutes and other information upon request. Ultimately, the Registrar has the power to request information pertaining to the ownership of the trust.
42. Customer Due Diligence obligations apply to a trustee(s) of a STAR trust, including the obligation to retain documentary records at their premises of the terms of the trust, the identity of the trustee(s) and enforcers, the identity of all settlors, a description of the property settled in the trust, an annual account of the trust property, and a record of all distributions of trust property.
43. As TCSPs generally provide trust services, the law imposes AML/CFT obligations on these providers to ensure the identity of settlors and verify the accuracy of information. Trustees are required to obtain and hold adequate, accurate, and current information on the identity of the settlor, the trustee and the protector. The new beneficial ownership register does not contemplate the recording of legal arrangements. A growing threat is evident where TCSPs

provide services for complex structures that are subject to other jurisdictions' legislative regime. However, as part of their efforts to maintain international AML/CFT standards, TCSPs apply those obligations meeting the higher standard should a conflict in obligations arise.

International Cooperation (Chapter 8 – 102; R. 36-40)

44. The Cayman Islands has made extensive use of international instruments and arrangements to facilitate requests for international legal assistance to assist the international community in the efforts towards ML/TF. The authorities have employed a network of bilateral (Mutual Legal Assistance Treaties) and multilateral arrangements for providing assistance. The main legislative authority that allows the authorities to provide international legal assistance is the Criminal Justice (International Co-operation) Law. According to feedback from some countries assisted, the authorities have provided constructive and timely assistance when requested. Information provided range from financial intelligence, beneficial ownership; banking; restraints and to external forfeiture orders, albeit to a lesser extent. More timely processing of these requests have benefited from the implementation of a case management system by the ODPP. Extradition assistance has been timely and executed in accordance with agreed arrangements. Commendably, the time and manner in which international requests are facilitated have been given much attention through the enhancement of existing policies and protocols.
45. The authorities have sought international legal assistance in investigating and prosecuting domestic ML and predicate offences with a transnational element to a limited extent. Given that the Cayman Islands is an international financial centre, the limited requests for international assistance is not consistent with the country's risk profile and its assessment of foreign generated proceeds of crime as a significant threat. Commendably, the time and manner in which international requests are facilitated have been given much attention through the enhancement of existing policies and protocols.

Priority Actions

The authorities should:

- i. Update its ML/TF risk assessment to include:
 - a. a more thorough analysis and assessment of the specific types of legal persons and arrangements that can be misused for ML/TF. It should also conduct further analysis of how these are vulnerable and can be exploited;
 - b. analysis of substantive information relative to TF risks;
 - c. sufficient consideration to risks present in parts of the financial sector that is subject to limited supervision e.g. excluded persons under SIBL and in particular those that perform higher ML/TF risk activities of broker/dealing and portfolio management; and

- d. an analysis of the international components of risks faced by the jurisdiction as a significant international centre.
- ii. Formally communicate appropriate information on the results of the NRA to FIs, DNFBPs and other relevant stakeholders. This will enable a comprehensive understanding of risks and vulnerabilities identified by the jurisdiction and allow for the implementation of appropriate risk-based mitigation measures.
- iii. Review and prioritise the objectives of the national AML/CFT Strategy, taking into account the ML/TF risks identified in the NRA and develop an action plan that identifies priority actions including (but not limited to) the risk-based allocation of resources. This action plan should also include short and long-term objectives and the timelines for implementation.
- iv. Implement mechanisms to ensure that excluded persons under SIBL have appropriate AML/CFT policies, procedures and internal controls and that risk-mitigation measures are being applied.
- v. Enable CIMA to attain and allocate sufficient resources to adequately perform its AML/CFT supervisory functions, particularly given its supervisory responsibility over FIs that pose the most ML/TF risks for the jurisdiction.
- vi. Provide outreach to banks physically located outside of the Cayman Islands and excluded persons under SIBL, creating awareness among these entities of the requirements to file SARs with the FRA. Feedback should also be provided to FIs and DNFBPs on the quality of SARs filed.
- vii. DCI should continue its outreach to the DNFBPs under its purview to sensitise them of their AML/CFT obligations. Further, the registration of such DNFBPs should be completed expeditiously to enable the conduct of a sub-sector ML/TF risk assessments to facilitate the conduct of risk-based supervision.
- viii. The jurisdiction should implement measures that allow the RCIPS to move from a reactive predicate-based model of investigation to proactive investigations of more complex cases involving natural and legal persons by (a) collecting more relevant information and providing the FRA with access to such information to better inform its disclosures, and (b) providing FRA with technical infrastructure to facilitate more timely submission, analysis of SARs and disclosures. This should consequently result in the ODPP pursuing prosecutions of these more complex cases.
- ix. Establish mechanisms to facilitate greater integration amongst operational partners, so that the FRA is aligned with the priorities of their investigative counterparts and is able to conduct appropriate operational and strategic analysis. As well, grant the FRA operational independence and unfettered ability to exchange information spontaneously and upon request.

- x. Address the outstanding technical deficiencies that are particularly severe, especially as they relate to preventative measures but also as they relate to the powers and responsibilities of competent authorities.
- xi. Re-examine membership of coordination bodies such as the AMLSG, IACC and JIU. Greater efforts should be taken to ensure that all competent authorities (e.g. ACC, Registrar of NPOs, FRA, etc.) are members of the relevant bodies to ensure better policy and operational coordination.
- xii. More closely integrate Customs into the AML/CFT regime. The jurisdiction should improve its ability to investigate and prosecute ML/TF based offences at the border, specifically improving upon the Customs' ability to identify illegal movement of cash and BNIs.
- xiii. Pursue civil asset forfeiture in cases where criminal forfeiture is not successful. Civil forfeiture in the absence of a conviction demonstrates the jurisdiction's commitment to taking the benefit out of the crime and pursuing the proceeds, instrumentalities and property of equivalent value.
- xiv. The FRA should conduct strategic analysis.
- xv. The NPO Registrar should continue its outreach to the NPOs by, encouraging the registration of NPOs by the deadline, allowing for the risk assessment of all NPOs with a view to focusing supervisory efforts on NPOs identified as being most vulnerable to TF risks. The Registrar should also develop and implement processes and procedures for its risk-based supervisory approach.
- xvi. Strengthen the criminal sanctions regime to better reflect more proportionate and dissuasive measures.
- xvii. Improve awareness within the jurisdiction of TFS obligations and ensure the designated supervisory authority monitors FIs and DNFBPs implementation and compliance of TF/PF TFS .

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings

IO.1 Risk, policy and coordination	IO.2 International cooperation	IO.3 Supervision	IO.4 Preventive measures	IO.5 Legal persons and arrangements	IO.6 Financial intelligence
Mod.	Mod.	Low.	Low	Mod.	Low
IO.7 ML investigation & prosecution	IO.8 Confiscation	IO.9 TF investigation & prosecution	IO.10 TF preventive measures & financial sanctions	IO.11 PF financial sanctions	
Low	Mod.	Low	Mod.	Mod.	

Technical Compliance Ratings

AML/CFT Policies and coordination

R.1	R.2
PC	PC

Money laundering and confiscation

R.3	R.4
C	LC

Terrorist financing and financing of proliferation

R.5	R.6	R.7	R.8
C	LC	LC	LC

Preventive measures

R.9	R.10	R.11	R.12	R.13	R.14
C	LC	C	C	C	LC
R.15	R.16	R.17	R.18	R.19	R.20
LC	LC	LC	C	PC	C
R.21	R.22	R.23			
LC	PC	PC			

Transparency and beneficial ownership of legal persons and arrangements

R.24	R.25
PC	PC

Powers and responsibilities of competent authorities and other institutional measures

R.26	R.27	R.28	R.29	R.30	R.31
PC	C	PC	PC	LC	LC
R.32	R.33	R.34	R.35		
PC	C	PC	PC		

International cooperation

R.36	R.37	R.38	R.39	R.40
LC	C	LC	C	LC

MUTUAL EVALUATION REPORT

Preface

1. This report summarises the AML/CFT measures in place as at the date of the onsite visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system as well as recommends how the system could be strengthened.
2. This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country from December 4 to 15, 2017.
3. The evaluation was conducted by an assessment team consisting of: Mrs. Joanne Hamid, Mission Leader (CFATF Secretariat); Mr. Carlos Acosta, Co-Mission Leader (CFATF Secretariat), Ms. Tiffany Moss, Legal Expert (The Bahamas); Ms. Allene Gumbs, Financial Expert (The British Virgin Islands); Ms. Cheryl George, Financial Expert (Antigua and Barbuda), Mr. Vickram Lall, Financial Expert (Guyana) and Mr. Matthew Shannon, Law Enforcement Expert (Canada); with the support from the CFATF Secretariat's Mutual Evaluation Team. The report was reviewed by the FATF Secretariat and Mrs. Vyana Sharma (Trinidad and Tobago). The participation of Ms. Berdie Dixon-Daley (Jamaica) was limited to the review of the scoping note.
4. The Cayman Islands previously underwent a CFATF Mutual Evaluation in 2007, conducted according to the 2004 FATF Methodology. The 2007 evaluation and follow up reports up to November 2014 have been published and are available at <http://www.cfatf-gafic.org>. For the sake of brevity, on those topics where there has not been any material change in the situation of the Cayman Islands or in the requirements of the FATF Recommendations, this evaluation does not repeat the analysis conducted in the previous evaluation but includes a cross-reference to the detailed analysis in the previous report as relevant.
5. The 2007 Mutual Evaluation concluded that the Cayman Islands was compliant with 14 Recommendations; largely compliant with 24; partially compliant with 10; and non-compliant with 1. Cayman Islands was rated compliant or largely compliant with 15 of the 16 Core and Key Recommendations. Cayman Islands exited the regular follow-up process in November 2010 and moved to Biennial updates on the basis that the outstanding issues were minor.

CHAPTER 1. ML/TF RISKS AND CONTEXT

6. The Cayman Islands is situated in the Caribbean Sea, located approximately 480 miles southwest of Miami, Florida, 150 miles south of Cuba and 180 miles west of Jamaica. It consists of 3 islands Grand Cayman, Cayman Brac, and Little Cayman, which covers 101 square miles of land.
7. As of June 2017, the Cayman Islands had a population of 63,115, of which 55.6% are local Caymanians. Foreign residents predominantly emanate from Jamaica, the Philippines, the United Kingdom, Canada and the United States of America. The local currency is the Cayman Islands dollar, with KYD1.00 equivalent to US\$1.20. The nominal gross domestic product (GDP) of the Islands in 2016 was KYD2.932 billion with per capita GDP of KYD\$47,864. The main economic drivers of the Cayman Islands economy are tourism and financial services.
8. The Cayman Islands is one of 14 British Overseas Territories (BOTs) since its British dependency status in 1655. It is an autonomous BOT under the British Nationality Act, 1981 as amended by the British Overseas Territories Act 2002. However, the Cayman Islands to a large extent is self-governing pursuant to the Cayman Islands (Constitution) Orders 1972 and 1984 (S.I.1972 No. 1101) and (S.I. 1984 No. 126), which gives executive and legislative power to a Governor, Executive Council and a Legislative Assembly.
9. The British Government appoints the Governor who has overall responsibility for the administration of the Cayman Islands. The three branches of government are the executive, legislative and judicial. The Head of State for the Cayman Islands is Her Majesty, Queen Elizabeth II, who is represented by the Governor. The Cayman Islands' Legislative Assembly consists of 18 elected members and 2 non-voting ex-officio members, namely the Deputy Governor and the Attorney General (AG). The executive branch consists of the Governor and his Deputy, the Premier, seven other Ministers and the AG. The judicial system in the Cayman Islands is based on English common law and colonial and local statutes. Jurisprudence has been developed through the application of English Common Law and local statutes which have augmented, changed and updated the common law in many instances. English statutes have also been extended to the Cayman Islands by means of Orders in Council. Justice is administered locally at three levels; the Summary Court, the Grand Court and the Court of Appeal. The final court is the Judicial Committee of the Privy Council in the United Kingdom.

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks

10. The Cayman Islands' primary domestic ML/TF threats are theft, corruption and drug-trafficking. Between 2012 and 2014, 15 cases of ML offences were prosecuted relating to approximately US\$3.5 million of laundered proceeds, the majority of which related to theft. During the same period, 67 corruption offences with potential proceeds of crime implications were reported, albeit only 4 cases were prosecuted and 3 convictions secured.
11. Fraud, evasion of tax (overseas) and drug trafficking were identified as Cayman Islands' external threats. Fraud committed abroad posed a threat to the Cayman Islands, in that those who have

engaged in such activities have sought to launder their proceeds by way of utilising the jurisdiction's financial system. As an international financial centre that predominantly serves a non-resident clientele, there have been instances of foreign persons who have sought to evade taxes in their countries and utilised the Cayman Islands' financial system to launder the proceeds of such crime. Further, as a major financial centre within the Western Hemisphere, it is recognised that drug traffickers also utilised the Cayman Islands' financial system to launder the proceeds of crime. Additionally, due to its geographical location and construct, the Cayman Islands is vulnerable to being used to facilitate maritime shipments of marijuana and cocaine arriving into or transshipping through, the Cayman Islands.

Country's risk assessment & Scoping of Higher Risk Issues

12. The Government of the Cayman Islands' contracted the World Bank in 2014 to provide technical assistance for the preparation of its first NRA and to draft an action plan to address the outcomes of the NRA. The World Bank Risk Assessment Tool enables countries to identify the main drivers of ML/TF risks through a methodical process and based on the understanding of the causal relations among ML/TF factors and variables relating to the regulatory, institutional and economic environment. The NRA was conducted over a period of approximately 18 months, beginning August 2014 and completed in December 2015.
13. The NRA involved relevant public-sector agencies, as well as private sector industry associations. It was comprised of 8 NRA working groups, designed to identify national threats and vulnerabilities, as well as sectoral vulnerabilities. The exercise also included a working group to review the Cayman Islands' regulatory framework against the FATF standards and to recommend changes to relevant laws, regulations and guidance. The working groups which comprised of experts from among competent authorities and the private sector collected data and information to inform the NRA. Sources of information included sector specific surveys as well as supervisory, SAR, investigative, prosecutorial and mutual legal assistance data which covered a span of 3 ½ years (2012 – 2015).
14. The NRA considered relevant data and information to adequately form conclusions about ML risks. However, no evidence was provided on the process to demonstrate that comprehensive data was collected and analysed to inform an adequate assessment of the jurisdiction's TF risks. Further shortcomings in the NRA include but are not limited to, the absence of an assessment of ML/TF risk assessment of legal persons or arrangements, despite the large amounts of these entities (in particular exempted companies and exempted limited partnerships) incorporated in the Cayman Islands.

Scoping of Higher Risk Issues

15. In deciding what issues to prioritise during the onsite visit, the assessment team reviewed material provided by the Cayman Islands authorities on its national ML/TF risks, and information from reliable third-party sources (e.g. reports by international organisations, news articles). The items below were listed in the scoping note, which was submitted to the Cayman Islands authorities prior to the onsite visit in December 2017.

Threats

16. The NRA concluded that foreign generated proceeds of crime posed a more significant threat to the Cayman Islands' financial and non-financial sectors, than domestically generated proceeds of crime.¹

Foreign Threats

- i. ***Fraud:*** During the period 2012 to 2014, three (3) of the six (6) MLAT requests for assistance from the USA related to fraud. Concomitantly, of the twenty-four (24) MLA requests for assistance from other countries, twelve (12) related to allegations of ML, the majority of which were related to different types of fraud including wire, securities, investor and mail².
- ii. ***Evasion of foreign taxes by non-residents and drug trafficking:*** The Cayman Islands was identified as being a potentially attractive avenue through which to launder proceeds emanating from these types of crime^{3,4}.
- iii. ***Terrorism financing***⁵- The jurisdiction assessed its threat of TF as low. However, given the size of the Cayman Islands' international financial sector and the significant volume of funds passing through this sector, there is an inherent vulnerability to TF. Further, charitable entities, legitimate businesses and financial structures can also be exploited as mechanisms for TF. The appropriateness of the factors considered by the Cayman Islands to determine the level of its TF risk was considered along with the effectiveness of the measures implemented by the offshore sector to mitigate TF risks.

Domestic Threats

- iv. The NRA identified ***theft, corruption and drug trafficking*** as the predominant generators of domestic proceeds of crime⁶. During the period 2012 to 2014, there were fifteen (15) ML prosecutions, the majority of which related to theft mainly involving breach of trust and robbery. Concomitantly, there were four (4) prosecutions and three (3) convictions related to corruption and there were relatively few charges laid for possession with the intent to supply drugs.⁷

Vulnerabilities

¹ Cayman Islands Authorities. Immediate Outcome 1 – Risk, Policy and Coordination.

² Cayman Islands Authorities, Results of the 2015 Cayman Islands National Risk Assessment Relating to Money Laundering, Terrorism Financing and Proliferation Financing.

³ Cayman Islands Authorities, Results of the 2015 Cayman Islands National Risk Assessment Relating to Money Laundering, Terrorism Financing and Proliferation Financing.

⁴ Department of State – 2017 International Narcotics Control Strategy Report (INCSR) Vol II: Countries / Jurisdictions of Primary Concern – Cayman Islands. Accessed September 11, 2017. <https://www.state.gov/j/inl/rls/nrcrpt/2017/>

⁵ CaymanNewsService. Tag: New Legislation Intended to Prevent Terrorist Financing, Accessed October 12, 2017. <https://www.caymancompass.com/2017/08/15/new-legislation-intended-to-prevent-terrorist-financing/>.

⁶ Cayman Islands Authorities, Results of the 2015 Cayman Islands National Risk Assessment Relating to Money Laundering, Terrorism Financing and Proliferation Financing.

⁷ Cayman Islands Authorities, Results of the 2015 Cayman Islands National Risk Assessment Relating to Money Laundering, Terrorism Financing and Proliferation Financing.

- i. Misuse of Legal persons and legal arrangements:* Different types of legal persons and legal arrangements operating in the financial sector have been misused for the investment of funds laundered from drug trafficking, tax evasion, corruption and theft⁸. The extent to which FIs and DNFBPs have identified and assessed ML/TF risks associated with legal persons and legal arrangements as well as the extent to which FIs and DNFBPs have implemented an appropriate and adequate risk-based approach to AML/CFT risk mitigation⁹ was assessed. Assessors placed emphasis on the extent to which DNFBPs employ risk-based customer due diligence measures at the company formation stage and the adequacy of measures implemented to prevent criminals, their associates and beneficial owners from seeking to misuse legal persons and legal arrangements.
- ii. International Financial Sector and DNFBPs:* Attention was placed on the risk classification of customers by international FIs and DNFBPs and the implementation of appropriate CDD measures especially for doing business with high risk customers including those who reside in high risk jurisdictions and PEPs. Further, focus was given to how well ML/TF risks are mitigated by TCSPs and whether as appropriate, beneficial owners of their clients are identified and whether beneficial ownership information can be accessed or obtained by relevant competent authorities.
- iii. Supervision of the Securities, Banking and Insurance Sectors:* A significant vulnerability for the securities sector is that the main activity of the funds takes place outside of the Cayman Islands. Additionally, the Securities Investment Business Law (SIBL) excludes certain persons from obtaining a licence who operate in the market but are not subject to onsite examinations to verify that AML/CFT requirements are being implemented. In the case of the banks, the majority have no ‘mind and management’ present in the Cayman Islands and are very connected with the global economy. Further, the case of the insurers is similar and international insurers with no physical presence in the Cayman Islands engage the services of insurance management companies. There are concerns about the basis, justification and extent for placing reliance on overseas regulators. Attention was given to the implementation of risk-based AML/CFT consolidated supervision, the cooperation and sharing of information among supervisors for ML/TF purposes and access to books/records for the conduct of onsite examinations by the CIMA. Further, in the case of the persons excluded from the requirements of SIBL, an assessment was made as to the effectiveness of the ML/TF risk mitigation measures implemented given the absence of licensing and comprehensive supervision by CIMA.
- iv. Commodities and Derivatives Park*¹⁰: The Special Economic Zone Authority (SEZA) is responsible for the licensing/regulation of entities operating in the Special Economic Zone (SEZ).

⁸ CaymanNewsService. Tag: Money Laundering, Accessed September 8, 2017

<http://www.caymannewsservice.com/tag/money-laundering>

⁹ Cayman Islands Authorities, Results of the 2015 Cayman Islands National Risk Assessment Relating to Money Laundering, Terrorism Financing and Proliferation Financing. The Cayman Islands has identified the lack of a fully implemented risk-based approach to AML/CFT risk mitigation as a national vulnerability.

¹⁰ Cayman Enterprise City. Cayman Commodities & Derivatives Park. Accessed September 11, 2017. <http://www.caymanenterprisecity.com>. Services offered by such entities include financial services

Attention was placed on understanding the procedures for granting a license and the measures implemented to mitigate the associated ML/TF risks especially for entities operating in the Commodities and Derivatives Park.

Low risks

- i. ***Terrorist acts:*** Acts of terrorism committed by individuals or terrorist groups have not been identified as a major vulnerability.

Materiality

- 17. The Cayman Islands' economy is mainly based on tourism and financial services. As a percentage of total GDP, the financial services sector accounts for approximately 40% and employs 3,424 persons which represents 8.4% of the workforce. The financial sector is dominated by banking, securities and investments and to some extent the insurance industries. The banking sector is ranked as the 6th largest banking sector in the world and the 5th largest by cross border liabilities. The majority of banking activities are conducted by subsidiaries and branches of international banks which provide activities such as treasury activities, wealth management and private banking services. The securities and investment sector represents a significant portion of the financial sector with 2,975 participants. The Cayman Islands is also the largest jurisdictional domicile for offshore hedge funds and the second largest domicile for captive insurance entities.

Structural Elements

- 18. Most of the key structural elements required for an effective AML/CFT system are present. The Cayman Islands has a stable political environment, that has demonstrated a high level of commitment to address AML/CFT issues. Further, the jurisdiction's regulated institutions operate with accountability, integrity and transparency; however, this has not been verified with respect to unregulated institutions. The rule of law and an independent judiciary are well established.

Background and other Contextual Factors

- 19. The AML/CFT regime for FIs and TCSPs are understood and implemented by industry participants. Further, the AML/CFT regime extends to entities in the securities and investment sector, a portion of which is subject to limited supervision and are not monitored on an ongoing basis for AML/CFT compliance. These excluded persons provide a range of services including broker/dealing, investment advice, investment arrangement and investment management. The provision of broker/dealing and portfolio management activities to high net-worth individuals, inclusive of PEPs with a high volume of cross-border transactions without appropriate supervision to ensure the application of commensurate AML/CFT mitigating measures, poses

activities other than those conducted by monetary institutions, directly or indirectly related to commodities, derivatives, futures and options, fund management and trading for own account, investment management and physical electronic market places for buying, selling of stocks, stock options, bonds or commodity contracts.

added risks to the jurisdiction. The majority of excluded persons act as fund managers, which pose limited AML/CFT risks and similarly, the provision of investment advice and investment arrangement poses limited inherent AML/CFT risk to the jurisdiction. As such, only limited supervision may be warranted in these instances. Prior to 2017, except for TCSPs, the DNFBPs' sector was not subject to AML/CFT supervision. In March 2017, the Department of Commerce and Investment (DCI) was designated as the supervisory authority for DPMS and real estate agents. While CIIPA was designated as the supervisory authority for accountants in December 2017, none has yet been named for lawyers. Accordingly, there are no established and implemented risk-based AML/CFT supervisory regimes for these DNFBPs.

Overview of AML/CFT strategy

20. On 22nd May 2017, the Cayman Islands' authorities published "*The Cayman Islands Anti-Money Laundering and Counter Terrorist Financing Strategy 2017 – 2021*" (the Strategy). It was formulated based on the findings of the NRA, and is intended to be a road map for strengthening the existing AML/CFT framework over a four-year period. The Strategy consists of objectives with attendant actions to be undertaken, grouped under 6 overarching strategic themes namely: (i) enhancing the jurisdiction's AML/CFT legal and regulatory framework; (ii) implementing a comprehensive risk-based supervisory framework; (iii) strengthening of sanctions, intelligence and enforcement; (iv) enhancing domestic cooperation and coordination; (v) ensuring an efficient and effective system for international cooperation; and (vi) raising AML/CFT awareness amongst all stakeholders including the general public. However, the strategic themes, objectives and actions are not prioritised commensurate with the ML/TF risks of the jurisdiction.

Overview of the legal & institutional framework

21. The Cayman Islands has criminalised ML in accordance with the United Nations Vienna (1988) and Palermo (2000) Conventions. Laws that are relevant to the AML/CFT framework include:
 - Misuse of Drugs Law (2014 Revision) (MDL)
 - Anti-Corruption Law (2014 Revision) (ACL)
 - Proceeds of Crime Law (2017 Revision) (POCL)
 - The Terrorism Law (2017 Revision) (TL)
 - Proliferation Financing (Prohibition) Law (2016 Revision) (PFL)
 - Anti-Money Laundering Regulations, 2017 (AMLRs).
 - Anti-Money Laundering (Designated Non-Financial Business and Professions)(Amendment) (Non-Financial Business and Professions) (Amendment) (No. 2) Regulations, 2017
 - Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands – December 2017 – Pursuant to section 34 of the Monetary Authority Law (2016 Revision)

22. The Cayman Islands is empowered to seek and provide mutual legal assistance with overseas counterparts through the following:
- Criminal Justice (International) Cooperation Law (2015 Revision) (CJIL)
 - Mutual Legal Assistance Treaty
 - Mutual Legal Assistance (United States of America) Law (2015 Revision)
23. The United Kingdom Government has also passed several Overseas Territories Orders for sanctions or restrictive measures against countries, regimes or individuals deemed to be in violation of international law. These Orders have the force of law in the Cayman Islands once passed by UK Parliament, and are usually based on similar UN or EU sanctions.
24. The Cayman Islands' institutional framework for AML/CFT encompasses the following institutions:
- **Anti-Money Laundering Steering Group (AMLSG):** The AMLSG is a statutory body chaired by the Attorney General and has oversight of the AML/CFT policy of the Cayman Islands' Government. Membership of the AMLSG comprises the Chief Officer in the Ministry responsible for Financial Services, the Commissioner of Police, the Collector of Customs, the Managing Director of CIMA, and the Solicitor General.
 - **Inter-Agency Coordination Committee (IACC):** The IACC is responsible for implementation of AML/CFT policies established by the AMLSG, facilitating the coordination and cooperation among supervisors, enforcement authorities and other competent authorities, as well as assessing ML/TF/PF risks of the Cayman Islands.
 - **Cayman Islands Monetary Authority (CIMA):** CIMA is the single integrated supervisor for financial services in the Cayman Islands. It is a prudential supervisor which also has responsibility for AML/CFT supervision which extends only to compliance with the AMLRs. Financial institutions that fall under CIMA's remit are banks, securities and investments, insurance institutions, credit unions, building societies and money services business. Additionally, CIMA supervises Trust and Company Services Providers (TCSPs).
 - **Department of Commerce and Investment (DCI):** In March 2017, the DCI was designated as the supervisory authority for the DPMS and real estate agents to monitor compliance with the AMLRs.
 - **Cayman Islands Institute of Professional Accountants (CIIPA):** In December 2017, CIIPA, a self-regulatory organisation, was designated as the supervisory authority responsible for the oversight and monitoring of accountants with regard to their compliance with the requirements of the AMLRs.
 - **Financial Reporting Authority (FRA):** The FRA is the financial intelligence unit of the Cayman Islands and is responsible for receiving SARs, conducting analysis to substantiate suspicion, making onward disclosures to the police for ML/TF investigations, and onward disclosures to counterpart FIUs in other jurisdictions.

- **Financial Crimes Unit (FCU):** The FCU is a unit within the Royal Cayman Islands Police Service (RCIPS) that is responsible for investigating financial crimes within the Cayman Islands, along with tracing, freezing and recovering the proceeds of crime.
- **Joint Intelligence Unit (JIU):** The JIU consists of officers from the RCIPS, Customs and Immigration and other public authorities. Its primary function is to gather and disseminate intelligence to both domestic and international law enforcement agencies to facilitate criminal investigations.
- **Anti-Corruption Commission (ACC):** The ACC has broad-reaching powers to investigate reports of corruption, liaise with overseas anti-corruption authorities, and obtain court orders to freeze the assets of those suspected of committing corruption offences.
- **Office of the Director of Public Prosecution (ODPP):** The ODPP is responsible for all criminal proceedings brought within the Cayman Islands and is the Government's principal legal adviser on criminal matters.
- **General Registry:** The Registrar has AML/ CFT responsibilities for the NPO Sector. Under the NPOL, the Registrar has the authority to conduct risk based supervision through the collection and analysis of information provided by the NPO sector.
- **Tax Information Authority (TIA):** The TIA is the Cayman Islands' competent authority for international cooperation in the exchange of information established under the Tax Information Authority Law. This competent authority exercises its functions through the Department of International Tax Cooperation (DITC).
- **Cayman Islands Customs Department (Customs):** The Customs Department has the responsibility to ensure that the Cayman Islands' borders are secure against threats to its safety, security and economic prosperity, and that they are open to the movement of legitimate people and goods.

Overview of the financial sector and DNFBPs

25. The Cayman Islands offers a range of products and services which make it attractive for non-residents to establish FIs in the jurisdiction without having a physical presence in the Cayman Islands. Additionally, as an international financial centre, the majority of products and services offered are targeted towards non-resident customers, including high net-worth and institutional clients, resulting in the establishment of business relationships on a non-face-to-face basis. These factors contribute to markedly higher inherent ML/TF risks which requires the implementation of appropriate and adequate AML/CFT mitigating measures by FIs and DNFBPs.
26. The financial sector of the Cayman Islands consists of the banking, securities, insurance, MSBs and local credit unions. Key features of the Cayman Islands' financial sector are detailed below.

Banking Sector

27. Banking institutions consists of Category A and Category B banks. Category A banks may provide services to domestic and international markets, whilst Category B banks may only provide services to clients outside of the Cayman Islands. As of March 2017, CIMA regulated 11 Category A Banks (all physically present in the Cayman Islands) and 147 Category B banks. The majority of Category B banks (109 banks) do not maintain a physical presence in the Cayman Islands but instead span many geographic regions across the globe, including North America, Europe, South America, Asia, Australia, Central America, the Caribbean and the Middle East. Notwithstanding their physical overseas location, these banks are not shell banks as defined by the FATF as they are subsidiaries, affiliates or branches of regulated international FIs conducting business in international markets, that must be subject to appropriate consolidated supervision. Cumulative asset sizes of banking institutions between the years 2014 and 2016 are detailed in Table 1.1 below as follows:

Table 1.1: Size of Banking Assets (US Dollars)

Year	Class A Bank Assets	Class B Bank Assets
2014	\$23.170 billion	\$1.428 trillion
2015	\$18.688 billion	\$1.015 trillion
2016	\$23.776 billion	\$1.153 trillion

Securities and Investment Sector

28. All entities performing activities in the securities and investment sector are subject to the requirements of the AMLRs. Some entities, classified as excluded persons, are exempt from licensing and consequently not subject to comprehensive AML/CFT supervision, although they are required to register and are subject to limited monitoring. Approximately 45% of these entities are otherwise licensed and subject to CIMA's comprehensive supervisory regime as an FI or TCSP.

Regulated Sector

29. The securities and investments sector of the Cayman Islands consists of regulated players such as mutual funds, fund administrators and persons dealing, arranging deals, managing and advising on securities. The number of regulated securities and investment business entities licensed as of March 2017 are detailed in Table 2 below:

Table 1.2: Number of Regulated Persons in Securities and Investment Business Sector

Type of Entity	Number of Entities
Mutual Funds	10,463
Mutual Fund Administrators	103

30. Mutual funds are investment vehicles which do not perform any investment activities. Investment activities of funds are performed by its functionaries (i.e. administrators, managers, custodians, etc.), which must conduct its activities in accordance with Cayman Islands laws, including those applicable for AML/CFT.

Exempted Sector

31. The unregulated securities and investments sector includes unregulated funds, as well as 55% of excluded persons.

Exempted Investment Funds

32. Funds are exempt from regulation where they are structured as closed-ended funds (i.e. the investor cannot redeem at will), or where a fund has less than 15 investors, the majority of whom have the power to appoint or remove the director, general partner or trustee. Since they are not subject to licensing or registration, the Cayman Islands authorities do not maintain statistics on these entities and their prevalence within the jurisdiction. Nevertheless, the authorities suspect that there are a large number of such funds in operation. FIs are required to report to CIMA on unregulated funds. Where Mutual Fund functionaries are licensed by CIMA, they are required to perform the activities in accordance with AML/CFT legislation, the extent of which would be assessed during CIMA's onsite inspections. Where exempted funds are using functionaries outside of the Cayman Islands, there is no assurance that activities are being performed in accordance with relevant AML/CFT laws.

Excluded Persons

33. The Cayman Islands has exempted other categories of persons from the licensing and supervisory process. These include persons that are carrying on business for (i) another entity within its group, (ii) sophisticated persons or high net worth persons, or (iii) an entity regulated by a recognised overseas regulatory authority. These entities are however subject to registration with CIMA as excluded persons, must file annual declarations, appoint MLROs and notify CIMA of their appointments and their directors are subject to fit and proper testing. Relevant excluded persons account for the largest number of securities entities in the jurisdiction. In practice, approximately 45% of excluded persons registered are licensed by CIMA in another capacity or operated by a CIMA licensed entity, or form part of a group subject to regulation by CIMA. Excluded persons are in all cases required to comply with the requirements of the AMLRs. The extent to which those 55% of excluded persons that do not otherwise come under CIMA's supervision, as outlined above, comply with their AML/CFT obligations is however unknown. These excluded persons perform a range of activities including broker/dealing, portfolio management, investment advice, investment arrangement and fund management. The nature of activities related to fund managers (which account for the majority of excluded persons), investment advice and investment arrangement pose limited AML/CFT risks to the jurisdiction. However, there are inherently higher ML/TF risks for the portion of excluded persons that perform broker/dealing and portfolio management activities, which may entail high

value cross-border transactions. Information on the size of trading and investment assets for persons performing these higher risk activities has not been determined.

Special Economic Zone (SEZ)- Commodities and Derivatives Park

34. The SEZ offers global business participants the opportunity to establish themselves, branches or subsidiaries in the Cayman Islands and operate with a physical presence in the Cayman Islands, with streamlined processes for establishing business operations in a quick and cost-effective manner. Business activities may only fall within sectors of 5 specific parks, namely, Commodities and Derivatives Park, Science and Technology Park, Media Park, Internet Park and Maritime and Aviation Park.
35. The Commodities and Derivatives Park allows persons to set up businesses to trade in commodities, derivatives, futures and options, fund and investment markets, and the establishment of electronic platforms for the buying and selling of stocks, options, bonds and commodities contracts. Persons may only register in the Commodities and Derivatives Park where its activities do not require licensing by CIMA. Consequently, where securities activities fall within those outlined in the previous paragraphs relating to excluded persons, these are registered with CIMA as excluded persons.
36. At the time of the onsite the Commodities and Derivatives Park did not account for a significant portion of securities and investment business being conducted. As at March 2017, there were 49 entities licensed in the Commodities and Derivatives Park, of which 19 were conducting business that required registration with CIMA as an excluded person.

Insurance Sector

37. The Cayman Islands' insurance market has two distinctive sectors – domestic and international.

Domestic Insurance Sector

38. The domestic insurance sector consists of insurance companies licensed to offer their products and services to the residents, businesses and other organisations in the Cayman Islands, either directly or through insurance brokers and insurance agents. The majority of the products offered in the domestic insurance sector are general insurance products such as motor and property insurance. In 2015, only 4 of 23 active domestic insurers offered long-term insurance products. There were 29 licensed Class A (domestic) Insurance Companies as of March 2017, which held assets of approximately KYD350 million in 2016.

International Insurance Sector

39. Cayman Islands is the second largest domicile for captive insurance entities, the majority of which are established to insure the risks of their shareholders or business associates. The majority of the Cayman Islands' insurance sector comprise the international sector, where companies performing insurance and/or reinsurance business to clientele/policyholders not resident in the Cayman Islands. In the international insurance sector, there are Class B (Captive) insurance, Class C (Special Purpose) Insurance and Class D (Re) insurance licences, which accounted for 675, 25 and 3 licensees respectively, as of March 2017.

40. Other captive insurers are established as commercial reinsurers that sell their products and services to individuals and organisations unrelated to the insurer. Overall, only 6% of international insurers offer long-term insurance business.
41. All insurance licensees not physically located in the Cayman Islands must appoint an investment manager to *inter alia* satisfy the requirement to obtain a licence. Insurance Managers are domiciled and physically located in the Cayman Islands and are responsible for managing the business of international insurance licensees in accordance with Cayman Islands laws, including the AMLRs. As of March 2017, there were 29 insurance managers licensed by CIMA.

Money Services Businesses (MSBs)

42. MSBs in the Cayman Islands are limited in comparison to other parts of the financial sector. As at March 2017, there were 5 MSBs operating in the Cayman Islands. The majority of MSBs' activities in the Cayman Islands are outflows with approximately KYD199 million remitted from the jurisdiction in 2016, compared to KYD6.5 million received in inflows. Jamaica, Honduras and the Philippines are the top destinations for outflows, with Jamaica accounting for over 60% of remittances. The majority of inflows to the Cayman Islands originate from the USA, Jamaica and the UK.

Credit Unions/Building Societies

43. Credit Unions and Building Societies only account for a minute portion of the Cayman Islands' financial sector. As at March 2017, there were 2 credit unions and 1 building society operating in the Cayman Islands.

Designated Non-Financial Businesses and Professions

44. DNFBPs within the Cayman Islands are subject to the requirements of the AMLRs. As at March 2017 the DNFBPs comprised of 206 trust companies which includes 61 restricted trusts and 28 nominee trusts, 119 private trust companies, 37 registered controlled subsidiaries of trust companies and 136 corporate service providers. The other sectors include, 75 real estate agents, 26 DPMS, 745 lawyers and 836 accountants.

Overview of preventive measures

45. In accordance with section 145(1) of the POCL, the Cabinet may upon the recommendation of CIMA and the FRA make regulations prescribing measures to be taken to prevent the use of the financial system for the purposes of criminal conduct. The AMLRs were made pursuant to the POCL and are applicable to persons carrying out financial business, as well as DNFBPs. These entities are also subject to the requirements of the Terrorism Law (TL).
46. To assist FIs and TCSPs in complying with the requirements of the AMLRs, CIMA published the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands, December 2017 (the GNs). However, the GNs do not meet the criteria of enforceable means as sanctions are not applicable for a failure to comply with the requirements of the GNs. Although, the GNs may be considered in determining whether to take

enforcement action for a breach of the AMLRs, it is not evident that a breach of the GNs constitutes a breach of the AMLRs.

Overview of legal persons and arrangements

47. The types of legal persons that can be incorporated in the Cayman Islands include ordinary resident company; non-resident company; exempted company; segregated portfolio company and limited liability company pursuant to the CL and the LLL respectively. As at 27th July 2017, there were approximately 121,000 companies, partnerships and exempted trusts registered in the Cayman Islands. The most frequently established company formed is the exempt company. The Table below shows the number of legal persons and arrangements within the Cayman Islands.

Table 1.3 Number and Types of Legal Persons and Arrangements December 2014 to July 2017

LEGAL PERSONS & ARRANGEMENTS ON THE REGISTER	DECEMBER 31			JULY 31
	2014	2015	2016	2017
Resident Companies	7,037	6,186	6,399	6,141
Non-Resident Companies	6,213	5,462	4,566	4,094
Exempted Companies	82,413	83,045	80,658	82,328
Foreign Companies	3,796	4,145	4,433	4,494
Limited Liability Companies			203	549
Limited Partnerships	41	40	40	40
Foreign Partnerships	32	105	180	228
Exempted Limited Partnerships	15,455	17,896	19,937	21,423
Exempted Trusts	1,803	1,789	1,755	1,753

48. All companies must be registered and the majority of legal persons in the Cayman Islands are administered by TCSPs. Limited liability companies are required to maintain a register of members at its registered office in the Cayman Islands and all changes must be updated within 21 days. Exempted companies are now required to engage TCSPs whose obligation is to maintain and provide upon request by competent authorities, information on beneficial ownership. The Registrar maintains information on directors.
49. There are 5 types of partnerships that may be created in the jurisdiction, these include general partnerships; limited partnerships; foreign partnerships; exempted limited partnerships and

limited liability partnerships¹¹. General Partnerships are not subject to any regulatory oversight but must obtain a trade and business licence to carry on business in the Cayman Islands.

50. Trusts in the Cayman Islands are governed by the Trust Law which allows for the creation of different types of trusts. There are 5 types of trusts within the Cayman Islands, these include ordinary; STAR (special trust alternative regime); exempted, unit trusts and private trust companies. Ordinary trusts have trustees which are subject to the common law and required to have knowledge of all documentation which pertains to the formation and management of the trust; Special Alternative Regime Trusts ('STAR' Trusts) which are non-charitable purpose trusts that can be created for any objects, whether persons, purposes or both, provided they are lawful and not contrary to public policy. A discretionary trust is the most common ordinary trust vehicle used in the Cayman Islands. Ordinary, STAR and unit trusts are supervised by CIMA's Fiduciary Division and there are a number of trust structures that would be supervised by CIMA's Banking Division. The *Foundation Companies Law, 2017* which was enacted to allow for the creation of foundation companies was passed in late March 2017, but was not in force at the time of the onsite. Private Trust Companies (PTCs), can also be created in the jurisdiction, to act as trustees thereby allowing a settlor to retain some control over the affairs of a trust. The jurisdiction allows the formation of two types of PTCs, namely registered and restricted licence. There were 123 PTCs registered with CIMA as at December 2016.
51. The *Trust Law* was amended in 2017, to provide, *inter alia*, certain powers and for the appointment and discharge of trustees. Prior to the amendment, a trustee who was absent from the Cayman Islands for more than 12 months may be discharged and replaced. The Amendment Law removes this provision.
52. Nominee shareholders are permitted under Cayman law and may include natural persons, exempted companies or non-resident persons. Where a person acts as a nominee for profit or gain (even for a nominal sum), however, he/she is required to be licensed under the Companies Management Law and therefore is subject to Cayman Islands' AML/CFT obligations, including the obligation to identify the beneficial owner and the ultimate nominator(s). The majority of nominee shareholders act for profit or gain and thus is regulated and subject to AML/CFT requirements.
53. Authorities use a range of different mechanisms to exchange beneficial ownership information, such as MOUs with competent authorities. The Cayman Islands will also provide international assistance in respect of requests for production of beneficial ownership information through the

¹¹ Limited Liability Partnerships are not considered legal arrangements in the Cayman Islands. However, they are included in the number of partnerships (5). A Limited Liability Partnership is a newly formed corporate vehicle within the Cayman Islands which combines certain elements of a company as a Limited Liability Partnership has separate legal identity from its partners and will provide its partners with limited liability. However, a Limited Liability Partnership is not a body corporate and retains the nature of a partnership.

Criminal Justice (International Cooperation) Law CJ(IC)L. The authorities provide assistance to overseas counterparts for information on legal persons and arrangements.

Overview of supervisory arrangements

54. CIMA is the sole financial services regulator in the Cayman Islands which employs an integrated approach to supervision. It is responsible for both safety and soundness supervision as well as the conduct of business regulation. CIMA's supervisory functions extend to monitoring for AML/CFT purposes. Its functions include the issuance of licenses and the regulation of FIs such as banks, securities and investment entities, insurance entities, money services businesses, credit unions and building societies, the regulation of TCSPs and the registration of excluded persons under SIBL. The latter are subject only to limited supervision and monitoring by CIMA, or any other supervisory authority, except that in 45% of the cases excluded persons are still supervised by CIMA via being licensed in another capacity or because they are operated by a CIMA licensed entity or form part of a group subject to regulation by CIMA. The activities conducted by a large portion of the remaining excluded persons which are not subject to comprehensive supervision have limited inherent ML/TF risks, and from a risk-based perspective does not warrant a comprehensive supervisory regime. Furthermore, registered excluded persons must file annual declarations with CIMA, appoint MLROs and notify CIMA of these appointments and their directors are subject to licensing or registration. CIMA also has the power to conduct/request inspections of excluded persons at any time.
55. As of March 2017, the DCI was appointed as the AML/CFT supervisor of real estate agents and DPMS. In December 2017, CIIPA was appointed as the AML/CFT supervisory authority for accountants and lawyers are not currently supervised for AML/CFT purposes.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

- i. The Cayman Islands undertook a National Risk Assessment (NRA) that involved relevant competent authorities and private sector participants. The NRA process resulted in a fair understanding of the Cayman Islands' domestic ML risk and a limited understanding of its TF risk and vulnerability. Authorities were able to identify important gaps and deficiencies. However, there were important components of the private sector that were not sufficiently assessed (e.g., special economic zone, SIBL excluded persons) or not assessed at all (e.g. legal persons and arrangements). Additionally, the Cayman Islands did not fully examine the international components of risk faced by the jurisdiction as a significant international financial centre. This represents a gap in the jurisdiction's understanding of its risks and consequently impacts the establishment and implementation of appropriate mitigation measures.
- ii. Larger and more sophisticated FIs utilise a group wide approach to the awareness and management of risk, smaller or less sophisticated operations appear more reliant on competent authorities. The Cayman Islands published a high-level summary online but the document lacked sufficient detail to provide the private sector with sufficient information and context and was not supplemented by other guidance documents. As a result, the private sector's awareness of risk is not sufficient, especially in the domain of TF and complex cases of ML.
- iii. The Cayman Islands has developed and implemented a diverse range of legislation, operational and structural risk-based measures. These were implemented in parallel to completion of the NRA process and adoption of the National AML/CFT Strategy which contains broad strategic themes to be addressed by the relevant competent authority between 2017 and 2021. Actions were not prioritised, some of which have already been completed and others in the process of implementation.
- iv. The results of the NRA do not appear to have resulted in a sufficiently consequential change in approach to high risk scenarios or the employment of appropriate mitigation measures to those areas noted as high risk since simplified measures are still being applied to areas identified in the NRA as potentially high-risk and not subject to supervision.
- v. The AMLSG and IACC are the two primary coordinating committees for policy development but the membership of these committees is not representative of all competent authorities which has a negative impact on appropriate policy development. The IACC also has a mandate to address operational issues but this has not yet been achieved. While the RCIPS has the Joint Intelligence Unit to enable some level of cooperation, it does not involve all competent authorities and it is not meant to act as a coordination body. Consequently, the issues associated with membership of these bodies and the lack of a body implementing operational coordination has important implications for policy development and operations (e.g. the ability of the FRA to support the operational priorities of its partners).

Recommended Actions

- i. The Cayman Islands should update and further deepen the analysis on:
 - vulnerabilities and risks present in parts of the financial sector subject to limited or no supervision or subject to limited supervision (e.g. the Commodities and Derivatives Part of the SEZ and excluded persons under SIBL);
 - specific types of legal persons or arrangements that can be created in the Cayman Islands;
 - international components of risks faced by the jurisdiction as a significant international centre; and
 - TF risks and vulnerabilities.
- ii. The Cayman Islands should initiate a comprehensive analysis and assessment of those sectors subject to limited supervision (e.g., SIBL excluded Persons) as well as legal persons and arrangements including those associated with securities and investments as well as wealth management, that can be misused for ML/TF and potentially exploited by individuals situated outside the jurisdiction.
- iii. The Cayman Islands should provide detailed and effective communication of the risks and vulnerabilities existing in the jurisdiction, such as those identified in the NRA, to the private sector and the wider public to foster the best understanding of the jurisdiction's ML/TF risks. Greater outreach and guidance to the private sector will ensure that they remain aware of the evolving risk environment and allow FIs and DNFBPs to respond appropriately.
- iv. Cayman Islands should better use the results of the ML/TF risk assessment to justify exemptions and support the application of enhanced measures for higher risk scenarios or simplified measures for lower risk scenarios.
- v. The membership of AMLSG and the IACC should be strengthened, by including the ACC, given the risk of corruption to the jurisdiction. Further, an appropriate operational coordination mechanism should be established with appropriate membership to identify and support policy development as well as facilitate operational coordination.
- vi. Based on the revised and more detailed assessment of the financial sector as in Recommended Action (i), the Cayman Islands should review and prioritise the objectives of the national AML/CFT Strategy, on the basis of identified ML/TF risks in the NRA and develop a prioritised action plan that includes (but not limited to) the risk-based allocation of resources.

The relevant Immediate Outcome considered and assessed in this chapter is IO1. The recommendations relevant for the assessment of effectiveness under this section are R1 and 2.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/TF risks

56. The country employed the World Bank Risk Assessment tool to conduct its NRA during the period August 2014 to December 2015, using data for the period 2012 to 2015 from surveys and other information kept by competent authorities. Participants in the NRA included representatives from the competent authorities such as CIMA, DCI, FRA, FCU, Customs, ODPP, DITC and the SGO as well as representatives from the private sector and industry associations.
57. Eight (8) working groups were established which included a parallel working group created to examine the jurisdiction's technical compliance and effectiveness. Its remit was to review the jurisdiction's regulatory framework to determine its compliance with the FATF's Standards and make recommendations for changes to the relevant laws and guidance. The focus of the seven other working groups were national threats, national vulnerabilities and vulnerabilities associated with the banking, securities, insurance, other FIs and DNFBP sectors. Data utilised in the assessment was derived from the expertise of competent authorities and the private sector, interviews as well as sector specific surveys. Information was also sourced from the competent authorities which included supervisory, SARs, investigative, prosecutorial and mutual legal assistance data from CIMA, FRA, FCU and the ODPP respectively.
58. The Cayman Islands identified fraud, tax evasion and drug trafficking as its foreign ML threats and theft, bribery, corruption and drugs as its domestic ML threats. The assessment of vulnerabilities was as follows:

Table 2.1 Assessment of Vulnerabilities

Financial Sector			DNFBP Sector		
Area	Vulnerability Score	Vulnerability Level	Area	Vulnerability Score	Vulnerability Level
Insurance	0.54	Medium	Lawyers	0.56	Medium
Banking	0.61	Medium High	Accountants	0.28	Medium Low
Other Financial Institutions (e.g. remittance)	0.57	Medium	DPMS	0.41	Medium
Securities	0.73	Medium High	Real Estate	0.41	Medium
			TCSPs	0.57	Medium

59. The ML/TF risks are generally understood within these sectors although there are some deficiencies that have been identified throughout the MER. However, there were overarching concerns with the NRA which include:
- basing analysis of areas on known risk (e.g. conviction rates), instead of examining vulnerabilities that present risk;
 - insufficient identification, analysis and understanding of the Cayman Islands' vulnerabilities within an international context.
 - insufficient information on the business activities, size and materiality of excluded persons; and
 - absence of specific analysis on the misuse of different types of legal persons or arrangements.
60. The Cayman Islands demonstrates a fair level of understanding of its domestic ML risks. Notwithstanding the vulnerability of the Cayman Islands to the threats of fraud (of a foreign origin), tax evasion by foreigners and drug trafficking of foreign origin, the NRA did not adequately consider the impact of such threats. Additionally, there was insufficient analysis of the interconnectedness of the Cayman Islands' financial sector to the global economy, as the collection and assessment of information on the origin and destination of financial flows was not undertaken, except with respect to MSB remittances. Further, there is no reporting requirement relating to wire transfers facilitating the cross-border movement of funds. This impedes the jurisdiction's understanding of how these elements contribute to overall ML/TF risk.
61. The Cayman Islands has identified exempt companies as posing the greatest ML/TF risk. While these companies comprise the vast amount of companies formed within the jurisdiction, a comprehensive assessment of the ML/TF risks associated with these companies has not been conducted.
62. The NRA did not include an indepth analysis of the securities sector given the business activities, size and materiality of excluded persons operating within this sector. Moreover, these factors are not fully known, and as such, a thorough understanding of ML/TF risks posed by this sector was not contemplated by the NRA. Indicators of the size however, available through the BIS and IMF have however been taken into account.
63. The Cayman Islands determined that terrorism and TF risks were both low but acknowledged that the high level of cross-border activities and the geographic range of the banking and securities sectors present a TF vulnerability. The NRA however did not contain a sufficiently substantive analysis of how this vulnerability could be exploited. The classification of TF risk was based on the low threat of terrorism within the jurisdiction, as well as the absence of submission of SARs based on the suspicion of TF and the absence of international requests for MLA in relation to TF. The complexity and volume of transactions warrants a more thorough analysis with complex means of TF taken into consideration and analysis of cross-border activities such as the origination, destination or value of funds being transmitted within these sectors. Accordingly, the Cayman Islands has not gathered and analysed sufficient information

to substantiate a finding of low TF risks which impacts the jurisdiction's ability to implement appropriate mitigation measures.

64. The Cayman Islands demonstrates a fair level of awareness of its identified ML vulnerabilities, and the proposed mitigating measures to address those vulnerabilities were largely appropriate. Nonetheless, it is not clear in all instances how the decision was arrived at, or how vulnerabilities within the financial sector could be exploited. Some areas of potential concern were not fully evaluated, such as the excluded persons. Overall, there was a conclusion that there was a detailed understanding of the jurisdiction's ML/TF risks, but the risk assessment process can be further improved through the collection and analysis of additional data.
65. There was a heavy focus on domestic threats which were identified by the jurisdiction based on limited information obtained from intelligence analysis, investigations and prosecutions and the analysis seemed to revolve around confirming what were already known risks. Given the degree to which the private sector was incorporated within the formulation of the NRA, the areas which were subject to thorough analysis by the jurisdiction established largely credible findings of ML/TF vulnerability and risk. However, conclusions were derived for certain risks e.g. TF were done so from insufficient data and analysis and did not demonstrate that the jurisdiction understands all of its ML/TF risks and appropriately implemented mitigation measures.
66. While the NRA provided an initial assessment of the Cayman Islands' ML/TF risks, an updated assessment has not yet been conducted. There is a concern that risk-based measures informed by the NRA may be dated since the information used was from 2015. However, competent authorities have taken steps to update information on risks within the financial sectoral risk assessments and DCI has commenced gathering information with respect to real estate agents and DPMS, to inform on these sectors' risks.

National policies to address identified ML/TF risks

67. After the preliminary results of the NRA were presented to the Cayman Islands Cabinet of Ministers in March 2016, the government allocated budgetary and human resources to strengthen the jurisdiction's AML/CFT regime. In May 2017, a National AML/CFT Strategy for the period 2017 to 2021, based on the results of the NRA, was published and identified strategic objectives under 7 specific strategic themes, along with defined actions to be taken to strengthen the overall AML/CFT regime. The strategic themes related to; (i) enhancing the jurisdiction's AML/CFT legal and regulatory framework, (ii) implementing a comprehensive risk-based supervisory framework, (iii) strengthening of sanctions, (iv) intelligence and enforcement, (v) enhancing domestic co-operation and co-ordination, (vi) ensuring an efficient and effective system for international co-operation and (vii) raising AML/CFT awareness amongst all stakeholders and the general public. These themes constituted the general priorities of the jurisdiction in enhancing its AML/CFT regime and address the deficiencies identified in the NRA.
68. Authorities have commenced actions towards achieving objectives based on all the strategic themes. The time period for implementation of the Strategy is between 4 to 5 years.

69. At the time of the onsite, the jurisdiction, had initiated a significant number of legislative and regulatory changes as part of these objectives. Some of these actions included establishing supervisors for DPMS, accountants, real estate and NPOs although not fully implemented by the onsite. Additionally, resources were allocated to strengthen the FRA and the FCU. Further, the coordinated fight against TF and PF was bolstered through the appointment of a sanctions coordinator at the FRA.
70. The NRA considered the overseas operations of the banking institutions of the Cayman Islands and the lack of supervision over a great portion of the securities sector institutions as a significant vulnerability. Due to the complexity of transactions facilitated through TCSPs and lawyers, they were also identified as a notable AML/CFT vulnerability for DNFBPs in the jurisdiction as well as emerging risks (e.g. the use of hedge funds for investing in re-insurance products, property developers and other high risk areas that were identified in the NRA). Despite this, there is no evidence that these findings resulted in a policy or activity that would mitigate the concerns associated with these risks.

Exemptions enhanced and simplified measures

71. The broader application of exemptions and simplified measures in the domain of supervision, as further clarified in IO 3 and 4, have not been substantiated with analysis that support a finding of low risk. A notable example of this are excluded persons under SIBL. While these individuals are subject to AML/CFT measures, they ostensibly provide services to high net worth individuals and are subject to only limited AML/CFT supervision. This appears inconsistent with the jurisdiction's recognition that the greatest ML risk for excluded persons exist within their client profile and that the opportunity exists for the source of funds and other areas of ML concern to not be adequately addressed.
72. An additional simplified measure is the exemption applied to the AMLSG list of countries identified as having comparable regimes. This is utilised by FIs and DNFBPs in applying lower scrutiny and limited verification procedures to entities conducting regulated financial services business located in those jurisdictions. The list of comparable jurisdictions was originally developed in 2000 and was updated over the years. The CIMA Regulatory Handbook indicates that the decision to include a country in the list is based on an assessment of the country's AML/CFT legal framework, the effectiveness of the AML/CFT regime, and equivalency of the country with Cayman Islands on the basis of membership in international bodies such as the FATF, CFATF, OGBS or Egmont Group. Since inception of the new round of FATF assessments under the 2012 standards, countries' effectiveness ratings for each of the 11 Immediate Outcomes are taken into account as well. As not all countries have yet undergone the assessment process under the new FATF Methodology, the review is ongoing.

Objectives and activities of competent authorities

73. The AMLSG is responsible for the management and oversight of the AML/CFT regime. The Anti-Money Laundering Unit was established in March 2014 to coordinate AML/CFT efforts,
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operationalise the NRA and support the AMLSG. The strategic themes on which the jurisdiction will focus have not been prioritised for implementation. The jurisdiction appears to be leveraging this strategy to make future policy decisions as evidenced by the influx of AML/CFT legislative changes that were done prior to and during the onsite visit. While the authorities are committed to implementing the Strategy, sufficient demonstration of results (e.g., enforcement, confiscation, etc.) is yet to be realised.

74. CIMA has taken steps to focus on ML/TF risks within its regulated sectors by commencing with ML/TF focused risks assessments and onsite inspections. Three additional persons have also been deployed to the onsite inspection unit and another 47 persons will be hired to further increase staff in supervision. Notwithstanding these steps, CIMA has not prioritised addressing the deficiencies relating to the limited supervision of excluded persons, which has been identified as one of the greatest vulnerabilities of the NRA.
75. The General Registrar has been appointed as the supervisor of NPOs and additional staff has been employed to perform the supervisory function. The Registrar is in the process of developing a risk-based oversight framework, as NPOs are in the process of being registered.
76. The DCI is in the process of developing supervisory frameworks which would be the first steps in addressing the deficiencies identified in the real estate and DPMS sectors. Given the nascent stage of this framework, a determination of its effectiveness is not possible. DCI has also increased its human resources to include 2 senior compliance persons to assist with the outreach, sensitisation and registration of the real estate agents and DPMS. Property developers are not subject to any oversight which represents a vulnerability. As noted in the NRA, this presents ML/TF concerns given the significant amount of real estate sold directly by property developers without the involvement of real estate agents. Activities have not been initiated to address this vulnerability. The accountants were brought under the supervisory remit of CIIPA during the on-site visit hence the effectiveness of its supervisor remit could not be assessed.
77. Additional resources were provided to the FRA to bolster the jurisdiction's fight against TF and PF. Further, the FRA has initiated meetings with the financial sector to provide feedback on the reporting and quality of SARs and has convened meetings with retail banks located in the Cayman Islands. The choice of entities with which to have these meetings was not prioritised on the basis of the ML/TF risks posed by the entities or the sectors. For instance, it was noted that no consideration was given to the FRA engaging with excluded persons under SIBL or banking institutions not located in the Cayman Islands to encourage the filing of quality SARs.
78. The Air Operations Unit and Joint Marine Unit are in place to address transnational drug-trafficking which are intended to work with other units¹² that should be developed as a result of the NRA.

¹² The Cayman Islands has since initiated plans to develop a Border Protection Service and Coastguard, with an aim of countering organised crime, including the smuggling of drugs, which has been identified as national threats at both the domestic and international levels.

79. The focus of the RCIPS reflects the domestic threats identified by the NRA. In the months preceding the onsite, the proactive ML task force was established to take a more proactive approach to ML/TF cases and identify more complex cases for investigation. While the risks identified were not based on the existence of complex ML/TF cases, they highlight a challenge surrounding the reactive model of the RCIPS to financial crime. Nevertheless, the formation of this task force is a positive initiative by the jurisdiction despite the fact that complex cases with international components did not benefit from thorough analysis within the NRA. In the interim, the efforts of the ODPP to remove the financial benefit from crime and support the international community through the provision of MLA are largely in line with its profile.

National coordination and cooperation

80. The competent authorities in the Cayman Islands coordinate and cooperate in the development and implementation of policies and activities to combat ML/TF both on a policy and operational level.
81. The AMLSG is the AML/CFT policy-making body and consists of: the Attorney General (Chairman), Chief Officer responsible for Financial Services, Chief Officer responsible for Commerce, the Commissioner of Police, the Collector of Customs, the Managing Director of CIMA, the Solicitor General, the ODPP and the director of DCI. Meetings are held on a quarterly basis and more frequently when there are urgent matters to be addressed. Discussions are focused on the implementation of relevant AML/CFT policies and procedures. The meetings of the AMLSG can however benefit from greater attendance and participation by all its members on a regular basis. Within recent times, the focus has been on preparations for the jurisdiction's Fourth Round CFATF Mutual Evaluation and the passage of AML/CFT legislation.
82. In 2016, after the disbandment of an NRA Working Group, the Inter-Agency Coordination Committee (IACC) was established as the need for an ongoing coordinating body for operational issues was recognised. The objectives of this intermediate coordinating body include policy implementation, fostering inter-agency cooperation and coordination at an operational level and coordinating national ML/TF risks assessments. This Committee is chaired by the AMLU, and includes representatives from CIMA, DCI, Ministry of Financial Services, Commerce and Environment, FRA, FCU, ODPP, Customs and the General Registrar appointed in 2017.
83. The coordination of policy and activities related to PF falls within the mandate of both the AMLSG and IACC as appropriate. However, all relevant stakeholders are not members of both the AMLSG and IACC notably the ACC. The absence of appropriate participants in these bodies limits the ability of the jurisdiction to effectively cooperate, coordinate and share information as well as develop policy in priority areas.
84. The establishment of the IACC is an important initiative for domestic coordination. At the time of the onsite the IACC had only convened 3 times with irregular attendance of competent authorities which hindered the jurisdiction's capacity to have an appropriate intermediate policy

and coordination body capable of supporting the AMLSG. Further, there is no coordinating body with an appropriate focus on operational matters and this impacts the ability of the Cayman Islands to appropriately identify policy and operational gaps that need to be addressed.

85. The jurisdiction has used the NRA process to identify shortcomings within the framework as well as resource deficiencies. As noted above, the strategic themes identified have been used to develop and implement laws as well as allocate resources to CIMA, RCIPS (specifically the FCU) and the FRA.

Private sector's awareness of risks

86. The jurisdiction took an inclusive approach in conducting its NRA as private and public-sector officials participated in working groups to identify and assess the Cayman Islands' ML/TF risks. During a 3 day workshop in October 2015, the NRA and its results, inclusive of its key findings and risk-based action plan were discussed by the NRA working groups, which included members from the competent authorities, private entities as well as association members. Subsequently, in May 2017, the Cayman Islands published the "*Results of the 2015 Cayman Islands National Risk Assessment Relating to Money Laundering, Terrorism Financing and Proliferation Financing*" which provided limited and summarised information on the results of the NRA. This summary document does not adequately convey the extent of ML/TF risks identified by the NRA that would allow the wider private sector to apply appropriate risk mitigating measures.
87. In 2017, CIMA conducted AML/CFT sectoral studies on each of the segments of the financial sector under its regulatory purview. These studies were used to provide sector specific guidance. In addition, a thematic review of the insurance sector has been completed and was published on CIMA's website. Further, the FRA publishes typologies within its annual reports which provides some limited enhancement to private sector's awareness of the risks specific to their operations within the Cayman Islands. Notwithstanding, enhancement of communication to participants on the jurisdiction's risks is necessary to enable the private sector to adapt their mitigation measures based on ML/TF risks identified by the jurisdiction.
88. At the time of the on-site visit, the appropriate and sufficiently comprehensive results of the NRA had not been shared with the private sector. The majority of FIs, DNFBPs and NPOs interviewed during the onsite visit confirmed that they were aware of the NRA, had read the summary document and confirmed that the ML/TF risks identified aligned with their knowledge of the risks in the jurisdiction. Some private sector institutions interviewed further indicated that the NRA did not provide any new understanding of the potential risk and vulnerabilities, as these risks had already been identified through their own internal processes.
89. Private sector engagement on ML/TF risks is limited. Competent authorities publish limited material and analysis of risks that could be used by the private sector to enhance its awareness of the risks specific to their operations within the Cayman Islands. The spillover effect is that large FIs and DNFBPs are not able to appropriately tailor their ML/TF mitigation measures

specifically to products and operations within the jurisdiction and smaller, or less resourced regulated entities have minimal overall awareness of risks and/or ability to develop indicators.

Overall Conclusions on Immediate Outcome 1

90. The Cayman Islands recently completed a national risk assessment to identify, assess and understand its ML/TF risks. The assessment, while comprehensive in certain areas, lacked an indepth analysis of certain areas, legal persons and arrangements and the global connectedness of the jurisdiction's financial centre. Due to insufficient analysis the jurisdiction is not able to fully identify its risks as an international finance centre. Further, limited data was available to inform the jurisdiction's view of TF risks. The Cayman Islands has undertaken strategic objectives to address deficiencies identified in NRA. However, the implementation of these objectives has not been on a prioritised ML/TF risk basis. With regards to the securities sector, the results of ML/TF risk assessment were not used to justify simplified measures. Although the Cayman Islands has established mechanisms for cooperation and coordination for policy formulation and operations, there are important oversights in membership and frequency of meetings. There is also an appropriate operational coordination body absent within the Cayman Islands. While the comprehensive NRA report was shared with relevant competent authorities, only a summary of the results of the NRA was published, and distributed to the wider private sector and the general public. Consequently, some deficiencies were identified in the level of the private sector's awareness of the relevant results of the ML/TF risk assessment. Given the characteristics and materiality of the financial sector within the Cayman Islands, the lack of information on particular significant sectors represents major deficiencies in the identification, assessment and understanding of the ML/TF/PF risks faced by the jurisdiction. **The rating for Immediate Outcome 1 is a Moderate level of effectiveness.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

- i. Competent authorities within the Cayman Islands, recognise the value of financial intelligence and are willing to integrate it into the investigative process. To a negligible extent, financial intelligence has contributed to initiating ML investigations. Nevertheless, financial intelligence is primarily used to support investigations of predicate offences and trace assets rather than initiate investigations.
- ii. The disclosures disseminated by the FRA do not sufficiently generate ML investigations in a proactive manner. The FRA works within the current framework, and uses the information to which it has access to ensure their disclosure is informed to the extent possible with analysis. Nonetheless, it does not detract from the fundamental problem that FRA disclosures largely do not generate investigations. This may be because the FRA does not have direct access to the widest possible degree of information, for that reason greater access to relevant information and other information which is currently not disclosed to the FRA (e.g. wire transfers) may improve their capacity to generate disclosures that result in greater ability to identify ML and TF on a proactive basis. Greater access to information may also assist in formulating more strategic analysis for the benefit and awareness of the private sector.
- iii. While there is cooperation and sharing of information between competent authorities and investigative bodies, financial intelligence is not routinely requested from the FRA. This inhibits the ability of the FRA to effectively supporting the operational priorities of law enforcement authorities. It has ultimately created a structure that works in a siloed and inefficient manner with respect to the generation of financial intelligence.
- iv. The manual submission of SARs impedes the timely submission to the FRA, which was confirmed during discussions with the private sector. The FRA also faces challenges in performing its analyses and manually disseminating their disclosures in a timely manner. Technical infrastructure limitations within the FRA, inhibit timely access and disclosure of intelligence which have a fundamental impact on the value of the financial intelligence generated to disclosure recipients.
- v. Competent authorities do not provide sufficient guidance and feedback to reporting entities on detecting, reporting and improving the quality of STRs.
- vi. Competent authorities do not provide sufficient guidance to the financial sector on how to identify TF red flags and suspicious transactions. Although there is a great degree of awareness of ML indicators, there is still need for additional guidance. There is a need to improve the sectors' overall awareness of the specific ML/TF risks faced by their Cayman Islands' operations.

Immediate Outcome 7

- i. The AML/CFT regime exhibits characteristics of a well-functioning system that integrates the investigations of financial crimes in parallel with the predicate offences. There is cooperation between investigators and prosecutors with their joint efforts aligned and committed to achieving the jurisdiction's objective of ensuring that the financial benefits of crime are removed.
- ii. There are human resources within the RCIPS and ODPP dedicated to focus on financial crime. Owing to fact that many of these resources have spent significant time working in the UK, these resources are trained and experienced in the investigations and prosecutions of ML.
- iii. Despite this established capacity and parallel efforts, the Cayman Islands has largely taken a reactive approach to investigating ML. Since many ML investigations and prosecutions are tied to the commission of a predicate offence, the focus of the Cayman Islands has been on self-laundering where the results have been relatively modest. This challenge in identification means that prosecutions of standalone ML offences, as well as cases with more complex elements have not been pursued.
- iv. The jurisdiction has largely not pursued a diverse range of ML cases for investigations against both natural and legal persons.
- v. The reactive approach, which is partly influenced by deficiencies noted within IO 6, means that there is a difficulty in the identification of potential ML cases for investigations unless it is otherwise tied to an investigation of a predicate crime. Although there is one instance of third-party ML investigation as the result of a disclosure by the FRA, this has not been prosecuted and is therefore not been a consistent occurrence.
- vi. In recognition of this reactive approach to investigation, the jurisdiction established the Pro-Active Money Laundering Task Force within the RCIPS. However, its effectiveness could not be assessed as it was constituted just prior to the onsite. Nonetheless, its ability to achieve success will be dependent upon the capacity of the Cayman Islands to better identify ML cases otherwise and not only through the investigation of a predicate offence.
- vii. The shortcomings identified within IO 1 have a cascading effect on IO.7 and do not allow for a conclusion to be drawn as to whether or not investigations and prosecutions are truly consistent with the Cayman Islands' risk profile.
- viii. Where self-laundering charges were pursued in conjunction with the predicate, it was rare that the penalty assigned by the judiciary was done on a consecutive basis. Further, given the limitation on the varying kinds of cases that have been pursued, the proportionality and dissuasiveness of sanctions cannot be fully assessed. Accordingly, the sanctions achieved within the jurisdiction associated with ML have not been proportionate nor dissuasive.

Immediate Outcome 8

- i. There are some characteristics of a functioning system which results in the confiscation of proceeds of crime, instrumentalities and property of equivalent value. The ODPP's policy

and the RCIPS strategy is reflective of a strong commitment among relevant competent authorities to recover the benefits of crime. However, the results of these objectives are relatively modest and are not entirely consistent with the country's ML/TF risk profile. Additionally, where criminal prosecutions have not been successful or possible, other measures, such as civil recovery is pursued, albeit to a limited extent.

- ii. The Cayman Islands pursues confiscation as a policy objective and employs various tools to identify assets that can, and should be subject to confiscation. Due to the absence of TF prosecutions and convictions, there have been no assets relating to TF have been recovered. However, if they had, the framework is in place to do so.
- iii. The modest confiscation results are not reflective of the risk ML/TF risk of the country due to the focus of the jurisdiction on cases with primarily domestic elements with approximately 70% of confiscations having occurred during 2017.
- iv. Competent authorities have demonstrated that there are instances where assets recovered are repatriated to foreign jurisdictions and, where appropriate, assets are shared. Competent authorities to a limited extent, have sought to freeze assets held abroad based on the commission of a domestic predicate. However, given the focus of the jurisdiction has been on self-laundering associated with relatively minor domestic criminal acts, this is not done with frequency.
- v. At the time of the onsite, the jurisdiction had not confiscated any undeclared or falsely declared cross border movements of currency and BNIs. Further efforts by Customs to identify undeclared or falsely declared cash and BNIs are required. Consequently, the lack of seizures means that sanctions have not been applied and therefore could be assessed.

Recommended Actions

Immediate Outcome 6:

- i. The Cayman Islands should implement appropriate technological enhancements and ensure that the FRA, RCIPS, ACC and Customs seek to access financial intelligence on a more regular basis. These upgrades should allow for the electronic submission of reporting (e.g., SARs, CBCRs, etc.), analysis and dissemination of reports in a timely manner.
- ii. As a major international financial centre, the jurisdiction should re-examine the information collected. There should be an assessment undertaken to identify information that will assist in the development of financial intelligence and should consider that this and other information currently required by law, such as wire transfers are disclosed to the FRA. Moreover, the FRA should also be permitted with greater systematic access to the widest possible available set of information (e.g. cross border currency reports, etc). This information should be used to help inform their disclosures and analytical products to domestic and international partners.
- iii. The FRA should be permitted to use this access to information to develop more fulsome disclosures to law enforcement authorities in hopes of generating greater proactive investigations into ML/TF. This information should also be used to improve the

jurisdiction's overall awareness and understanding of the risk environment and to facilitate strategic analysis as well as the greater use of financial intelligence by competent authorities to support the operational priorities.

- iv. Greater strategic analysis capability within the FRA, informed by access to more information, should be developed. Further, competent authorities should provide greater feedback to the FRA to assist their work so as to improve the usage of financial intelligence to identify cases and trace assets.
- v. The Cayman Islands should ensure that the FRA is appropriately staffed to conduct greater strategic analysis as well as capable of disseminating disclosures in accordance with the service standards set by the FRA and to better support timely identification of ML cases for investigation. Investigative authorities should also be appropriately staffed to action this intelligence.
- vi. There should be greater operational integration, coordination and cooperation among law enforcement authorities and the FRA.
- vii. The FRA should provide feedback to reporting entities on the quality of SARs. Further, the FRA and competent authorities should provide greater guidance and feedback to FIs and DNFBPs so that they sufficiently understand how to identify suspicious transactions which may involve potential complex ML/TF cases.
- viii. The shortcomings noted in R 29 should be addressed, notably regarding the operational independence of the FRA.

Immediate Outcome 7

- i. The Cayman Islands should improve its ability to identify ML/TF rather than relying on the commission of a predicate offence. This includes addressing deficiencies in information collection noted in IO 6 and ensuring that information collected and analysed by the FRA is used on a more regular basis.
- ii. Refine the Pro-Active Money Laundering strategy to identify how the RCIPS can move from a more reactive to proactive model of investigating ML based offences and appropriately equip the RCIPS.
- iii. The jurisdiction should pursue a greater variety of ML cases including stand-alone and third-party ML against both natural and legal persons.
- iv. The authorities should utilise international engagement to pursue cases against individuals, regardless of citizenship, who use the Cayman Islands to move funds derived from illicit purposes.
- v. The Cayman Islands should determine how to move a greater proportion of investigations to prosecutions and ensure they are properly equipped to handle more complex cases. In some instances, this may be aided by engaging the ODPP at an earlier stage in the investigative process.

- vi. The Cayman Islands should achieve more prosecutions based on the commission of ML, not only associated with self-laundering and the commission of a predicate offence but also in standalone and third-party ML cases. Sanctions applied against natural and legal persons should be proportionate and dissuasive.

Immediate Outcome 8

- i. The Cayman Islands should continue to build upon its commitment to remove the benefit from crime and seek to achieve better results as it pursues cases beyond self-laundering. Where that is not successful or possible the authorities should consider using other measures such as civil remedies to a greater extent including the pursuit of property of equivalent value and instrumentalities. Existing guidance should be reinforced with training and, as appropriate, resources.
- ii. The Cayman Islands should, to a greater extent, pursue criminal assets abroad. In doing so, they should ensure that competent authorities are properly equipped (with training and resources) to pursue these assets.
- iii. Based on a more thorough understanding of the jurisdiction's ML/TF profile, ensure that authorities are in fact pursuing confiscation consistent with the country's inherent ML/TF risk profile.
- iv. The Cayman Islands should invest in tools, resources and training to enhance the ability of Customs to identify individuals seeking to move cash and BNIs into and out of the Cayman Islands without properly declaring them to the authorities.
- v. As more complex cases are pursued in a proactive manner further to the Recommended Actions of IO 7, the jurisdiction should ensure that competent authorities, including the Receiver General, are appropriately resourced and trained to manage associated assets.

The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R29 to 32.

Immediate Outcome 6 (Financial intelligence ML/TF)

Use of financial intelligence and other information

- 91. Overall, financial intelligence generated by the FRA is used to a negligible extent by competent authorities while other information generated by the FCU is commonly used as part of their investigations. The jurisdiction has adopted an all crimes approach towards suspicious transactions reporting where information relating to ML, and predicate offences, is reported to the FRA. It is on the basis of suspicion of criminal conduct that a Suspicious Activity Report (SAR) to the FRA for analysis and where necessary financial intelligence is disseminated by the FRA. Within the Cayman Islands the ACC focusses entirely on the investigation of corruption while the FCU of the RCIPS will investigate ML and the financial components of

other predicate crimes. These law enforcement authorities are willing to use financial intelligence to advance their work, but largely do not utilise the disclosures from the FRA. Whilst CIMA uses the FRA's disclosures to inform their supervisory functions Customs does not use it for enforcement.

92. The FRA utilises the databases listed below to access relevant information to generate financial intelligence and support their analysis of SARs so as to assist competent authorities in investigations and to develop evidence and to trace criminal proceeds related to ML and associated predicate offences. While direct access to appropriate information is an issue, the FRA has direct access to:
 - a. FRA SAR database;
 - b. CORIS, (the companies register);
 - c. Immigration database;
 - d. The Department of Vehicles & Drivers Licensing (DVDL) database;
 - e. Lands & Survey database; and
 - f. Judicial Enhancement Management System (JEMS), which is the computerised data system used by the Cayman Islands Judicial Administration department.
93. Where the FRA has identified questions regarding a SAR, it is able to return to the entity from which the SAR was received for clarification or to request further information from the entity that filed the SAR or any person deemed to have relevant information. This requested information must be provided to the FRA within seventy-two hours, as mandated by section 4(2)(c) of the POCL. From these requests, the FRA is able to gather additional KYC information on clients as well as details on transactions and as demonstrated in Table 3.1 below, the Cayman Islands employs this tool with frequency.

Table 3.1 Summary of Section 4(2)(c) Directions

Year	TOTAL		
	Number Issued	Responses Received	Extensions Granted
2013	73	73	19
2014	54	54	3
2015	61	61	5
2016	55	55	5
Totals	243	243	32

94. Where appropriate, the FRA will engage the international network of FIUs to obtain additional information. While, the FRA will formulate its analysis and provide a disclosure to other competent authorities, the limited availability of information impacts their value to generate ML/TF investigations based on intelligence as discussed in further detail in IOs 7 and 9. The FRA is largely only able to identify patterns when an individual is the subject of multiple SARs.

95. The ACC to a limited extent has utilised disclosures received from the FRA to trace assets which could be subject to freezing at the point of charging an individual for an offence and for confiscation following a conviction. The FCU has an established triage system that allows it to assess whether a disclosure from the FRA is actionable and should be tied to an investigation, whether the disclosure requires further development, or whether an investigation should not be pursued. Disclosures prepared by the FRA are used to a negligible extent by law enforcement authorities to initiate or supplement an investigation.
96. The FCU and ACC are both recipients of financial intelligence, in the form of disclosures from the FRA and are responsible for the investigations of ML and the associated predicate offences. The FCU like the ACC use the financial intelligence to trace criminal proceeds as well as to identify assets that could become subject to confiscation. Customs has not used disclosures either to initiate investigations or to supplement investigations of a predicate offence. Disclosures to law enforcement authorities are being used to initiate investigations but to a negligible extent and only marginally to supplement ongoing investigations. In both instances, disclosures are being used for specific and limited predicate offences.
97. As demonstrated in Table 3.2 below, a disclosure to the RCIPS initiated an investigation approximately 5.7% of the time and was used as part of an ongoing investigation 22.3% of the time only for predominantly two types of predicate offences (fraud and corruption). Disclosures have not been used to initiate any investigations into any of the jurisdiction's other identified threats such as drug offences.

Table 3.2 – Disclosures used by the RCIPS

	2013	2014	2015	2016	Total
Disclosures used to supplement an RCIPS investigation into fraud	13	28	18	25	84
Disclosures used to supplement a RCIPS ongoing investigation into corruption	0	14	5	7	26
Disclosures used to initiate an investigation into fraud by RCIPS	5	5	4	14	28
Disclosures used to initiate an investigation into corruption by RCIPS	0	0	0	0	0
Total disclosures to RCIPS	133	112	146	94	485

98. The FCU utilises a letter of request (authorised under section 3 of the CIDL) as an expedited tool to access high level account and asset information (such as bank account statements) without the need for a warrant. This information is used to build the case files and is considered an effective tool to support investigations, develop evidence and trace and identify assets and criminal proceeds. The information gathered as part of the letter of request will allow the RCIPS and ACC to determine whether or not to advance an investigation or to seek a warrant. It should be noted that the letter of request can be repetitive of the FRA's efforts and compounds the time used by competent authorities from the time of suspicion by a reporting entity to the initiation of the formal investigation.
99. The mechanism in section 3 of the CIDL allows the RCIPS and ACC, depending on the complexity of the case, to access the information within a 48-hour period and generally no longer than one week. The jurisdiction was unable to provide statistics to show the frequency at which this type of information is accessed. This was further supported by reporting entities which confirmed during the onsite that they have received requests for this type of information and provided the information requested within the specified timelines. Although this mechanism is a relatively efficient to access information from the reporting entities to support investigations and to develop evidence and trace criminal proceeds, it appears largely employed by the FCU based on the investigation of associated predicate offences rather than based on a disclosure from the FRA. (See IO 7).
100. Since the FCU has direct access to the same databases as the FRA, as well as access to additional databases such as Patriarch (intelligence and criminal record database), Customs (Trips), and INTERPOL (I 24), it utilises the financial intelligence from the FRA's disclosures in instances where it is relevant to inform its investigations. However, while the financial intelligence contained in the disclosures appears to initiate ML cases only to a limited extent, the RCIPS has articulated the value of the financial intelligence in complimenting investigations of ML and predicate offences as well as the tracing of assets.
101. The FRA makes disclosures to CIMA to assist in their supervisory role, where regulatory concerns or issues are identified. These disclosures inform CIMA's efforts to ensure that the financial sector is discharging their obligations under the AMLRs including, having the appropriate controls in place to identify suspicious transactions, to employ the risk-based approach for monitoring transactions and to inform the onsite examinations.
102. The Customs and Immigration department has not traditionally played a role within the jurisdiction's AML/CFT regime. Consequently, to date, it has not undertaken criminal or ML or associated predicate offences investigations as a result of financial intelligence generated by the FRA. This appears to explain why only a limited number of disclosures were made to the Customs and Immigration department by the FRA and why no request for financial intelligence from the FRA has been made since 2013. While the Customs and Immigration department relies on the RCIPS to conduct criminal and ML investigations, they nevertheless are mandated to

investigate predicate offences that have a nexus with the border. In these circumstances, they do not appear to use financial intelligence, either generated by their own means, from the FRA or any other competent authority to supplement their work. Further, while there are some staff and infrastructure in place to identify areas of ML (e.g. cash couriers) these were operational only to a limited extent at the time of the onsite. (See IO.8).

103. Although some members of the FCU have training and expertise which can assist in the identification of TF assets, similar levels of experience among the staff of the FRA and Customs is not present. Further, there have not been many SAR submissions associated with TF. However, as discussed in IO 9, while there have been investigations into TF none have resulted in a conviction. Those investigations were not based on a disclosure by the FRA.
104. The framework that would allow for generating and using of the FRA's financial intelligence for the initiation of investigations by law enforcement authorities into ML/TF has shortcomings. The FRA will provide its intelligence to other competent authorities to support their oversight efforts but this is used to a limited extent. While Customs does not use financial intelligence, the use of financial information generated by the FCU and ACC as part of their investigative and asset identification processes is common practice. However, it has been concluded that overall certain competent authorities have a greater appreciation for the value of financial intelligence and are more likely to use it to assist them in their work than others.

STRs received and requested by competent authorities

105. The FRA and reporting entities are of the view that the process of reporting and disclosing SARs is improving, as evidenced by the growing number of submissions made to the FRA. However, there needs to be a significant improvement and the relatively low volume of requests made by competent authorities to the FRA, as well as by the growing disparity in SARs analysed (when compared to what is submitted) is of concern. This is further discussed in Table 3.6.
 106. As shown in Table 3.5, the average time for disseminating disclosures while improving is not within the timeframe stipulated by the FRA's service standards, with such delays reducing the value of the products for competent authorities. Further, during the onsite, it was confirmed that the competent authorities have engaged, to a limited extent, with reporting entities on the provision of feedback regarding the identification of risks unique to the jurisdiction. It was further confirmed that broader engagement by competent authorities with respect to guidance including the quality of STRs filed and identification of STRs are also done to a limited extent. The possible causal factors include insufficient staff, inadequate engagement or a reduction in quality of SARs being reported.
 107. Table 3.3 shows that the number of SARs submitted to the FRA has been growing. General suspicious activity constitutes over 50% of yearly submissions. However, with respect to specific offences, SARs are primarily submitted for suspicion of fraud and corruption. This is
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largely consistent with the findings of the NRA. Although the jurisdiction collects cross border currency and BNI reports, it is not systematically disclosed to (or easily accessible) by the FRA.

Table 3.3-SARs submitted to the FRA

2013	2014	2015	2016	2017*	Total
485	488	667	603	794	3037

*As of December 2017

108. Given the jurisdiction's status as a major international financial centre, it is not uncommon to have foreign FIs place assets within the jurisdiction to benefit from more favorable tax management terms while maintaining a smaller more streamlined management presence within the jurisdiction. The assessors were concerned as to which FIU will be notified where a suspicious transaction is identified. The statistics in Table 3.6 confirmed that FIs, especially retail banks physically located in the Cayman Islands represent the largest source of SAR submissions. It was not apparent whether Cayman Islands' licensed banks not physically located in the Cayman Islands file SARs with the FRA as required. However, in some instances these FIs file SARs in the jurisdiction in which they are physically located.
109. Where an offence is not already under investigation by the ACC or the RCIPS, the jurisdiction is to a large extent, reliant on the capability of the reporting entities to identify suspicious activity. The FRA validates that suspicion, and where appropriate conducts further analysis for disclosure to the relevant competent authority. However, when Table 3.4 and Table 3.3 are compared, it is noted that disclosures to the competent authorities constitute less than half of the SARs received. The growing disparity between SARs submitted and analysed as discussed below in Table 3.6 may be due to factors such as insufficient staffing and may also be partly due to a decline in the quality of information being submitted. Should the private sector be aware of the risks and kept informed by competent authorities, it is possible that the FRA would be receiving more relevant SAR submissions for analysis and subsequent disclosure.
110. The more sophisticated FIs (e.g. large scale mutual funds, resident multinational FIs) use in-house knowledge and experience when training staff. They do not rely on authorities to understand regional and national ML/TF risks, but instead apply a global corporate wide perspective on sources of risk to identify suspicious transactions. In the case of the less sophisticated regulated entities (e.g. smaller DNFBPs, TCSPs, smaller banks) which have a smaller global or primarily domestic presence, the engagement, guidance and feedback is critical to their ability to appropriately identify suspicious transactions. Based on interviews, during the onsite with these entities, it appears that such regulated entities were submitting suspicious activity reports to a limited extent, and that they have traditionally had limited interaction with competent authorities.
111. The FRA does not have all the information at its disposal to facilitate the discharge of its functions since it does not receive or have access to all relevant information (e.g. tax and wire

transfers, systematic access to cross border cash reports, etc.). Consequently, its generation of financial intelligence is reliant upon reporting entities effectively identifying suspicious transactions. However, deficiencies discussed above in IO 1 have a cascading effect in that the financial sector is not attuned to the Cayman Islands' risk. Therefore, not all FIs and DNFBPs are well positioned to identify suspicious transactions within the risk and context of the Cayman Islands. Nevertheless, they are in a position to identify suspicious transactions within the risk and context of the multinational operations of the corporations to which they belong. The far reaching effect of this gap is that not all relevant suspicious transactions are being identified.

112. Table 3.4 below, shows that the request for disclosures from the FRA by competent authorities is not common practice. The data suggests that competent authorities are likely to proactively request relevant information from the FRA to a very limited extent. Although the possibility exists that some of this interaction is informal and is therefore not recorded, the jurisdiction should be making more use of the disclosures to support their investigations and, in the case of CIMA, their onsite inspections. Nonetheless, the reason why there were so few requests for information from the FRA could not be determined. As it relates to law enforcement authorities, there is little information to differentiate between what is accessible to the ACC and FCU with the FRA. With respect to other competent authorities, namely CIMA and ODPP, requests for disclosures should be a more common occurrence. The volume of requests by Customs was difficult to ascertain given the absence of data available on CBCRs. The limited number of requests here may also be as a result of Customs' low involvement in the AML/CFT regime.

Table 3.4– Disclosures to Competent Authorities

	2013		2014		2015		2016		Total	
	Dis.**	Req.	Dis.	Req.	Dis.	Req.	Dis.	Req.	Dis.	Req.
RCIPS*	133	4	112	0	146	3	94	2	485	9
CUST	4	0	1	0	0	0	6	0	11	0
IMM	23	0	10	0	20	0	14	0	67	0
ODPP	N/A	0	N/A	0	N/A	1	N/A	1	N/A	2
CIMA	53	0	77	0	42	2	24	1	196	3

*This figure includes the ACC which until 2016 was directly in the RCIPS chain of command

** A disclosure to a competent authority can include information from multiple SARs.

113. Reporting entities indicated that the relatively low levels of engagement by competent authorities has not enabled them to improve their processes to identify and submit relevant information. While the FRA will acknowledge receipt of a SAR and, where applicable, indicate whether a SAR has been forwarded to investigative authorities, this does not constitute guidance and will not contribute to the submission of quality SARs. A further cascading effect of the shortcomings identified in IO 1 was reinforced during the onsite, where reporting entities indicated that competent authorities did not provide information to support an understanding of trends and typologies. While the FRA's annual report provides some limited strategic analysis,

it is not timely enough to be of significant value. Guidance prepared by CIMA is of a high level and primarily related to policies and procedures and nothing has been shared by law enforcement. Ultimately, the absence of guidance inhibits the appropriate identification of suspicious transactions and have an impact on the appropriate information being received by the FRA. Efforts to support reporting entities capacity to appropriately identify suspicious activity is an area that could benefit from further work.

Operational needs supported by FIU analysis and dissemination

114. As noted previously, the FRA does not have direct access to the widest possible set of relevant information in the jurisdiction, such as tax and law enforcement information, and their access to cross border movement of cash and BNI reports is not consistent or efficient. However, it may be accessed indirectly through written request, in an effort to inform and provide additional context to the SAR that has been received and to formulate a disclosure to law enforcement authorities as required. This ultimately places some limitations on their ability and acts as an impediment to the FRA providing support to their partners in a timely manner. Nevertheless, when a SAR is received, the FRA will take the information provided and conduct open source research as well as searches against the databases to which it has direct access.
115. To inform its analyses, where the FRA has identified questions regarding a SAR, the FRA can return to the entity from which the SAR was received, for clarification or to request further information within 72 hours. Reporting entities confirmed that generally they will provide material within the 72-hour timeframe and this was confirmed by the FRA. While an extension may be permitted, based upon the complexity of the request, it is not a regular occurrence. From the request for additional information, the FRA is able to obtain additional KYC information on clients as well as details on transactions. The FRA will also seek information, where appropriate, from international counterparts.
116. Despite the foregoing, the ability of the FRA to proactively identify cases, that can initiate an investigation into ML/TF, and associated predicate offences, remains a fundamental issue. As a result, the jurisdiction has faced a serious challenge in shifting from a reactive to proactive approach to investigating ML/TF as discussed in IOs 7 and 9. This challenge is further accentuated by the manual process associated with the analyses of SARs, the limited information collected by the jurisdiction and made available to the FRA, as well as information should be proactively collected (e.g. wire transfers) given their risk and context. Consequently, the regime places an over reliance on the ability of reporting entities to detect and report all instances of suspicion.
117. The role of the Cayman Islands as a major financial centre and the significant flow of funds through the jurisdiction has resulted in a high level appreciation of the importance of financial intelligence in both the domestic and international context. Yet, the financial intelligence generated by the FRA is largely not used to initiate investigations since the identification and

use of financial information required for use in investigations is gathered as part of another investigative process (e.g. into a predicate offence).

118. The FRA has established a prioritisation schedule for SARs to determine how long it should take from the time a SAR is received from a reporting entity to the time a resulting disclosure is disseminated to competent authorities. According to the prioritisation schedule, priority 1 cases, viewed as the most urgent, are required to be finalised within thirty-five days or less, while priority 2 cases are required to be finalised within sixty days or less and priority 3 & 4 cases must be finalised within ninety days or less. Nevertheless, the FRA has encountered challenges in meeting the requirements of its prioritisation schedule (see table 3.5). Based on the onsite interviews, reporting entities indicated that from the time the suspicious transaction is identified to the time it is submitted to the FRA ranges from between two to ten days after its discovery.

Table 3.5-FRA Dissemination timelines

Year	Priority	Service Standard	FRA Processing Time for SARs				Total SARs Processed	Average Processing Time
			1-30	31-60	60-90	>91		
2015	1	1-30	64	25	6	60	155	157
2015	2	31-60	45	41	25	171	282	219
2015	3	60-90	5	1	1	5	12	133
2015	4	>91	5	3	1	10	19	145
2016	1	1-30	62	57	24	50	193	77
2016	2	31-60	6	9	26	39	80	139
2016	3	60-90	2	2	7	15	26	168
2016	4	>91	2	20	12	34	68	132
2017	1	1-30	31	38	15	14	98	55
2017	2	31-60	0	1	2	10	13	152
2017	3	60-90	1	0	1	3	5	154
2017	4	>91	0	1	0	0	1	42

119. The assessors are concerned about FRA's ability to disclose information in a timely manner. This conclusion was reinforced based on discussions with reporting entities which indicated that the manual process of filing SARs is inefficient, viewed as an impediment for record keeping, and was negatively impacting timely submission of SARs to the FRA.
120. Although the FRA indicated that the process for reporting and disclosing SARs is improving the information provided does not substantiate this. The growing disparity in SARs analysed (when compared to what is submitted) highlights the continuous challenges being experienced

by the FRA regarding its ability to support its partners. The manual process associated with the analysis of SARs appears to not only impact the ability of the FRA to proactively identify instances of potential ML based on suspicious patterns or trends but also the FRA's ability to analyse and disclose financial intelligence in a timely manner. Table 3.6 below outlines the source of SARs received by the FRA and also demonstrates that the FRA is increasingly analysing a lower proportion of what they receive. This could be a combination of several factors such as insufficient staff to keep pace with the number of submissions and the inadequate infrastructure in place within the FRA to review submissions.

Table 3.6 - Statistics of SARs Submitted and Analysed by the FRA

	2013		2014		2015		2016		2017*	
	Received	Analysed	Received	Analysed	Received	Analysed	Received	Analysed	Received	Analysed
Category A**	141	141	170	160	280	237	185	127	168	33
Category B**	25	25	16	14	43	3	47	10	43	5
Banks - Others	1	1	6	6	1	1	2	2	-	-
Total Banks	167	167	192	180	324	261	234	139	211	38
Securities	48	48	28	27	7	4	7	5	2	0
Excluded Persons	-	-	2	2	6	2	8	2	6	0
Others	4	4	4	4	5	-	5	3	8	0
Securities Businesses	52	52	34	33	18	6	20	10	16	0
Insurance Businesses	3	3	15	15	13	8	10	3	17	2
Mutual Funds	29	29	31	30	40	26	46	7	37	2
Money Remitters	52	52	20	20	61	56	45	18	63	2
Overseas FIUs	68	68	64	62	67	64	77	69	78	38
Others	-	-	-	-	-	-	-	-	6	0
Total Financial Institutions	371	371	356	340	523	421	432	256	428	82
TCSP	74	74	83	79	78	40	124	54	85	7
Real Estate Agents	3	3	5	5	7	7	6	4	3	2
DPMS	1	1	0	0	4	3	4	3	2	2
Lawyers	20	20	32	30	43	27	26	9	36	8

Accountants and Auditors	1	1	7	6	2	2	-	-	3	1
Others	7	7	2	2	2	2	4	3	6	2
Total DNFBPs	106	106	129	122	136	81	164	73	135	22
Others	8	8	3	2	8	8	7	5	14	10
Total Others	8	8	3	2	8	8	7	5	14	10
*These represent statistics as of October 2017										
** Submissions by Category A and B banks as defined in IO 3										

121. As a result of the NRA process, additional staff was assigned to the FRA. The impact of this additional capacity in narrowing this gap is unknown. Nevertheless, it is probable that there will be an ongoing need for more staff and improved infrastructure to address this issue. While the FRA has begun to formalise the feedback process with some of its partners, these factors, as well as the absence of sufficient guidance by competent authorities represent fundamental shortcomings in the FRA's financial intelligence generation process which ultimately inhibit the ability of the FRA to adequately support the priorities of its partners. This issue will be exacerbated if left unaddressed and SAR submissions continue to increase.
122. The FRA's lack of direct access to all the information collected by the jurisdiction (e.g. criminal databases, tax information, etc.) coupled with the fact that the jurisdiction does not collect relevant information (e.g. wire transfers), places a severe limitation on the FRA's analytical ability to provide additional context and to initiate or to support the ongoing investigations of its law enforcement partners. Given the information at the FRA's disposal, there are no concerns about the quality or thoroughness of disclosures. Based on a sample reviewed during the onsite, disclosures were of good quality and contained the relevant information linked to the databases that were accessible to FRA staff. Nevertheless, the FRA faces significant challenges in having its disclosures used to initiate and support investigations.
123. Given that the FCU has access to the same and more information than the FRA, the valuable additional context that the FRA appears to provide to domestic law enforcement authorities is possible because of its access to information from the Egmont network. Ultimately, inadequate infrastructure, the lack of access to relevant information (e.g. wire transfers records), the inability to proactively identify patterns or cases, undertake data mining activities, identify trends and typologies, and the timelines for conducting analyses all contribute to the challenges faced by the FRA in providing support to the operational priorities of law enforcement. The statistics noted in Table 3.2 and Table 3.5 reflect that financial intelligence emanating from the FRA is used to a negligible extent by competent authorities such as the RCIPS and ACC to initiate and support investigations and reinforces the fundamental challenges faced by the jurisdiction discussed further in IO 7 and IO 9. However, as demonstrated in the below case example financial intelligence has been used in investigations.

OPERATION CASPIA

A Suspicious Activity Report (SAR) was disseminated to the FCU in June 2017 relating to bank customer A that disclosed that the pattern of activity noted on personal accounts exceeded their account profile. The amount and frequency of cash credits exceeded account expectations and there were also significant and unexpected third-party credits originating from an overseas jurisdiction. As they were not in keeping with personal account expectation, suspicion was raised over the accounts' use. The subject of the disclosure was a foreign national residing in the Cayman Islands and the funds forming the suspicion originated from the subject's home country. Intelligence development revealed that the subject held very senior positions with several Cayman registered companies, some of which were associated with the Cayman Islands Offshore Special Economic Zone Commodities and Derivatives Park. Research also revealed a previous disclosure had been made by another Cayman financial institution.

The intelligence case was further developed by liaison with the RCIPS Joint Intelligence Unit (JIU) and other Cayman law enforcement partners that enabled the identification of other individuals who were linked to the subject's companies. Travel tracking revealed unusually high travel patterns for some of these individuals to and from a single North American location and a decision was taken to request that the initial SAR intelligence be shared by the Financial Reporting Agency with the overseas jurisdiction's FIU via the Egmont gateway.

Intelligence received as a result of sharing the SAR revealed that A was linked to an ongoing multi-million money laundering investigation and prosecution in his home country and this information provided sufficient grounds for the FCU task force to initiate a pro-active money laundering investigation. The FCU investigator obtained evidence showing that multi-million-dollar transfers to and from financial accounts linked to A's Cayman companies were linked to companies and individuals implicated in the overseas investigation.

An FCU investigator and manager travelled to the overseas jurisdiction to meet with the prosecutor and investigators to agree joint working protocols and agree evidence exchange through Mutual Legal Assistance (MLA) Requests.

124. Disclosures from the FRA are used to support CIMA's operations and are incorporated into the scoping note for their AML/CFT onsite examinations of licensees to help in ensuring that the appropriate training, policies and procedures are in place. As demonstrated in Table 3.4, between 2013-2017, CIMA received 196 disclosures but made only three requests. Having received eleven disclosures and only made one request to the FRA for information between 2013-2016. Customs received disclosures to a negligible extent and has made no requests for

disclosures. The FRA is not a direct partner of the ODPP because its products do not meet evidentiary standards.

125. The exchange of feedback with the FRA has not been consistent or formalised. As of August 2017, the FRA implemented a system to track disclosures to domestic competent authorities and foreign counterparts and to record the feedback it receives. The requirement for the FCU to submit feedback was implemented during the onsite (on December 11, 2017), as such it was not possible to assess how this will assist the FRA. As of July 2017, feedback mechanisms were also put in place with regard to disclosures made to overseas FIUs. Feedback received from overseas FIUs has been positive.
126. It remains a possibility that the capacity for the FRA to better support other competent authorities' priorities may be enhanced through some of the reforms that could not be assessed, such as the formalisation of feedback between RCIPS and FRA. But further integration within operational coordination bodies, such as the JIU as was discussed in IO1, is required. Nevertheless, under the current framework, the FRA is not well situated to support the efforts of law enforcement authorities to move from a reactive to proactive model of investigation of ML/TF. The technical infrastructure and the information that is accessible do not equip the FRA to sufficiently identify cases that warrant further investigation by law enforcement.

Cooperation and exchange of information/financial intelligence

127. The use of informal relationships and communication within the Cayman Islands is commonplace. In a jurisdiction of the size of Cayman Islands, informal cooperation is sometimes more effective than formal channels. A formal MMOU has been signed among the competent authorities, apart from the FRA and ACC. However, an MOU between the FRA and ACC was signed just prior to the onsite and therefore it is difficult to assess the effectiveness of cooperation and exchange of information, including financial intelligence, among the competent authorities through this process.
128. The FRA has a formalised MOUs with the RCIPS, ACC and CIMA to facilitate cooperation. An MOU between the ACC and RCIPS is in place, and used, so that the ACC may access operational support from the RCIPS as required. The FRA also demonstrated that it provides support to the RCIPS proactively or upon request, by accessing the Egmont global network, to support ongoing investigations where appropriate. This support is authorised by section 4(2) and 138 of the POCL.
129. As the regime to address DNFBPs (excluding TCSPs) and NPOs is still developing, the assessment of the effectiveness of cooperation and exchange of information including financial intelligence among the FRA, Registrar and DCI was not possible. Although amendments to the POCL enable the FRA to disclose information to the Registrar (NPOs) and the DCI (DNFBPs), implementation of measures to facilitate this exchange are yet to be undertaken.

130. As discussed in IO1, one means of operational cooperation is supposed to be the IACC. However, the IACC has not yet met this mandated objective. An alternate source of operational cooperation is through the JIU. However, this is not the primary objective of this unit which is also underlined by the fact that core AML/CFT regime members are missing from this group's membership (e.g. the FRA).
131. From an information technology infrastructure perspective, timely cooperation and exchange of information is a challenge. This does not only impact the flow of information from reporting entities to the FRA but also between the FRA and other competent authorities. The process for submission of SARs and any subsequent disclosures is done either by hand or fax. While the FRA and FCU have direct access to the databases noted previously, exchange of information is done via hand and the actual documents are stored in locked cabinet rooms. The protection of the confidentiality of the information is reinforced by criminal penalties under the POCL and MAL. The exchange with international partners for the FRA is done through the Egmont Secure Web and for the RCIPS through a secure gateway to INTERPOL.

Overall Conclusion on Immediate Outcome 6

132. While competent authorities have recognised the value of financial intelligence, there remain fundamental shortcomings that prevent timely disclosures by the FRA. The limited use of disclosures by competent authorities demonstrate that seeking financial intelligence from the FRA needs to improve. This appears to be inhibited by the fact that the jurisdiction is not collecting enough information from reporting entities that would support the identification of ML/TF and predicate offences; especially those of a complex nature and with international links. This may be further exacerbated by the fact that the FRA does not have direct access to the information that the jurisdiction collects to formulate thorough analysis to support the operational needs of other competent authorities. Reporting entities do not have the requisite information needed to identify complex TF networks and unlike the FCU, the FRA does not have personnel with experience or specialised training to identify TF. Further the jurisdiction does not have the infrastructure that would enable the identification of links between SARs or support the development of trends and typologies. Although a regime that fosters cooperation has been established to a large extent, it is still too early to assess its effectiveness apart from the identified shortcoming in the jurisdiction's ability to support international partners. These shortcomings are exacerbated in the risk and context of the jurisdiction as the world's sixth leading global financial services sector. **The rating for Immediate Outcome 6 is a Low level of effectiveness.**

Immediate Outcome 7 (ML investigation and prosecution)

ML identification and investigation

133. The Cayman Islands has strengthened its legislative and operational framework for ML investigations and prosecutions. The identification and investigations of ML and some

associated predicate offences largely falls under the remit of the FCU within the RCIPS. The remit of the Drugs and Serious Crime Task Force (D&SCTF) is organised crime and the investigation of other serious crime is the remit of the Criminal Investigation Department (CID). Although there is a need for further advancements, this system has established a foundation of cooperation among certain competent authorities that allows for the pursuit of parallel financial investigations of associated predicate offences associated with ML.

134. The FCU is the designated authority responsible for the identification and investigation of ML in the Cayman Islands. ML cases are identified through an investigation of associated predicate offences, as a result of a SAR analysis or following a request for assistance from a foreign country. At the time of the onsite, the FCU's focus was on the identification and investigation of financial crime including ML based on the commission of a predicate offence. This process of identification of possible ML cases is reactive rather than proactive approach and as such prevents the pursuit of more complex stand-alone and third-party investigations.
135. The ACC focuses on the investigation of offences relative to corruption. There is an MOU in place which allows the ACC to draw upon operational support of the RCIPS where appropriate. The ACC faces a similar challenge to that of the FCU in pursuing more complex stand-alone and third-party investigations since its investigations are pursued on a complaints basis. This process has resulted in a higher ratio of cases than staff to conduct these investigations. As an independent body, the ACC operates outside the formal coordination mechanisms.
136. Both the RCIPS and ACC benefit from the recruitment of officers from the United Kingdom. The FCU and ACC maintain a complement of 15 and 6 investigators respectively, many of whom have extensive expertise in pursuing the financial component of criminal investigations (both ML predicates and ML offences). The majority of those officers within the FCU and ACC are trained and experienced financial investigators, with the remainder in the process of obtaining their accreditation. Accordingly, both organisations recognise the investigative value of financial intelligence and the role it can play in the identification and tracing of criminal proceeds as well as supporting the jurisdiction's objective to remove the financial benefit from crime.
137. The FCU examines intelligence generated by the Joint Intelligence Unit (JIU) and the FRA to identify potential ML cases. It is the JIU's intelligence that is predominantly used to proactively identify ML offences that should be investigated in parallel to the predicate offences, as well as opportunities to seize/confiscate the proceeds of crime. Nevertheless, this has not resulted in the competent authorities' ability to move beyond the focus on the commission of the domestic predicate offence, but instead seeks to ensure that the financial benefits are removed from the commission of relatively minor criminal acts.
138. Since 2016, the RCIPS implemented a process whereby all predicate offences being investigated are referred to the FCU for the conduct of a parallel financial investigation of the

purely financial component of the crime. Further, the RCIPS established the JIU, has a dedicated liaison officer to the D&SCTF and a Financial Intelligence Officer within the FCU, whose role is to ensure that a systematic approach is taken towards the identification of parallel financial investigations. The liaison officer within the Task Force ensures that drug trafficking and other acquisitive crime are referred for a parallel financial investigation at an early stage. In addition, financial intelligence officers review criminal intelligence on a daily basis to identify potential ML cases.

139. The FCU works with CID and D&SCTF to ensure that there is a parallel financial investigation into the predicate where appropriate. To ensure progression and cohesion, investigators from both departments will work in tandem. While both of these mechanisms are important to conduct parallel financial investigations, it does not facilitate the identification and investigation of more complex ML cases not associated with predicate offences. This shortcoming represents an important strategic deficiency.
140. The RCIPS has the expertise and resources to identify and investigate these ML predicates but there are a number of shortcomings. First among them is at the predicate level, this integrated model does not include the ACC. Consequently, the ACC's operations which falls outside the efficient and coordinated flow of information within the law enforcement community is impeded. Secondly, the FRA is not a direct participant within the JIU. This therefore limits the FRA's ability to garner feedback and improve situational awareness of immediate operational trends that can inform its internal review and analysis of SARs and ultimately reduces coordination. Lastly, and perhaps most importantly, is the over reliance on law enforcement authorities to await a report on the commission of a predicate offence to identify and pursue potential ML investigations. As noted in IO 6, the jurisdiction continues to face challenges in the domain of proactive identification of financial crime including ML and have had a shortcoming in replicating this degree of coordination where complex cases are involved.
141. The JIU has a structure to support an intelligence led process involved in the proactive identification of cases. However, this structure has a notable weakness which is the identification of ML largely does not occur based on intelligence related solely to ML but instead to the commission of a predicate offence under investigation by another unit within the RCIPS. This method of investigation into financial crime prevents the proactive identification of stand-alone ML cases which is reinforced in Table 3.9, which shows that the jurisdiction has not pursued investigations of standalone cases or prosecutions of standalone or third party ML cases. Nevertheless, the intelligence driven aspects of financial criminal investigations are not done with regularity, but within the specific set of circumstances stated previously.
142. The FIs interviewed during the onsite noted that where suspicious transactions in the Cayman Islands are identified, local authorities will be notified. However, the jurisdiction highlighted

that the large number and offshore nature of many institutions licenced in the Cayman Islands, in particularly those with no physical presence, pose a challenge for law enforcement authorities to investigate serious and complex ML cases. They cited the lack of an effective mechanism to identify targets' accounts could result in serious delays or obstacles. Also, competent authorities noted that the FCU does not have the necessary IT tools available to permit the generation and use of financial intelligence, thereby resulting in the lack of ability to identify more complex ML cases and appropriately use financial intelligence.

143. However, despite the foregoing shortcomings there are some limited instances, such as the case below, as well as Operation Caspia mentioned previously which demonstrates that the Cayman Islands pursues investigations of offences with international components and is capable of engaging in formalised cooperative investigations with international counterparts.

**CASE EXAMPLE:
PARALLEL ML INVESTIGATION RESULTING FROM AN OVERSEAS
REQUEST**

The City of London Police made direct contact with the FCU as they were investigating a substantial investment fraud and had evidence that US\$49 million had been transferred to an investment bank in the Cayman Islands. Outside of a judicial process the FCU requested a meeting with the directors of the bank, to make them aware of the investigation taking place in London. As a result of this meeting, the bank took the decision to administratively freeze the related accounts thereby protecting the balance of the funds remaining. The FCU worked jointly with the investigation team in London which subsequently visited the Cayman Islands to interview witnesses and obtain financial evidence under the authority of two mutual legal assistance requests. As a direct result the FCU opened a parallel ML investigation to establish if one of the directors of the bank had a criminal liability with regard to his management of the accounts. The US\$49 million remain frozen while enquiries are ongoing.

144. The Pro-Active ML Task Force, staffed with five experienced financial investigators, focuses on the pro-active identification of ML cases. The aim of the task force is to also increase the capacity of the FCU to tackle multi-jurisdictional cases where the proceeds of foreign predicate offences are transferred to the Cayman Islands. Given that this unit was established in February 2017, an assessment of the unit's effectiveness was not possible. However, the Pro-Active ML Task Force will only serve as a partial remedy since it does not address the challenges faced by the FRA to support the identification of ML cases for investigation.
145. The ability to pursue these investigations of ML activity associated with a limited set of predicate offences does not outweigh the jurisdiction's challenges in the proactive identification of significant complex cases for investigations. As noted above, the FRA's disclosures play a limited role in the initiation of investigations by the RCIPS. The fundamental deficiencies identified in IO 6 regarding the collection of relevant information

from reporting entities, and the lack of appropriate infrastructure for a jurisdiction with significant financial sector could be a causal factor behind the Cayman Islands' inability to identify complex ML cases. Further, the FCU's investigations, though done through parallel financial investigations are overly reliant on the commission of the predicate offence. The constitution of the Pro-Active ML Task Force, though a positive contribution to investigative capacity, needs to be complemented by a greater ability of the FRA to appropriately identify cases with both domestic and international components. These two elements are required for there to be improvement and ensure the Cayman Islands can appropriately pursue more diverse ML investigations and prosecutions. A demonstration of the contribution of SARs to ML investigations is show below in Table 3.7.

Table 3.7: Investigations initiated by SARs

Year	Disseminated	Investigations initiated by no of SARs	Ongoing by no of cases	Ongoing by no of SARs
2013	133	5	6	13
2014	112	5	12	28
2015	146	4	11	18
2016	94	14	7	25
2017	53	6	2	8 (six months data)

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

146. The NRA identified theft, bribery and corruption and drugs as the greatest source of domestic concern and also identified fraud, foreign tax evasion, and drug trafficking in other jurisdictions as significant threats (see IO 1). Competent authorities have focused their efforts largely in the pursuit of ML investigations and prosecutions of cases that reflect the domestic threat environment (e.g., theft, drugs, etc.) and have pursued cases tied to an international vulnerability to a much lesser extent.
147. An overarching policy of the jurisdiction is to ensure that the financial benefit of the crime is removed. Consequently, as noted above, the RCIPS is structured in such a manner so as to ensure that cases under investigation are also examined for the identification of potential financial crime investigations as well as the assets associated with these offences that should be frozen. This is reinforced by the ODPP which will review case files submitted by the FCU and ACC for prosecution to ensure that the financial component has been fully considered. Similar to the RCIPS, the ODPP has structured itself in such a manner so as to ensure that there are prosecutors whose focus is solely on financial crimes. Consequently, in addition to ensuring that the financial components of crime are considered, the ODPP will review the case file to ensure that all relevant assets have been identified as well.

148. This structure and degree of cooperation among the ACC and FCU with the ODPP is effective. However, the assessors were unable to determine if this structure could operate as effectively should the jurisdiction advance into the other potential risks that were not fully analysed within IO 1 or expected to be advanced by the Pro-Active ML Task Force. Customs largely defers cases to the FCU for the investigation of ML that may be derived from offences with a nexus to the border. However, Customs' capacity needs to be developed to identify and investigate predicate offences under its remit.
149. The addition of experienced and trained staff to the FCU suggests that there may be an investigative capacity to pursue the more complex cases should they be identified. The ACC, though having experienced staff and having pursued cases with foreign elements, does not appear to have the capacity to meet its current case load and fully pursue investigations consistent with the jurisdiction's risk profile. While the staff of the ODPP are trained, experienced, and have achieved convictions based on cases from the FCU, having not pursued more complex prosecutions meant that their capacity could not be fully assessed.
150. The deficiencies noted IO 1 demonstrate that the totality of the risk within the Cayman Islands is unknown and therefore, it is not possible to assess that the operational activities of investigative and prosecutorial authorities are appropriately reflective of the risk profile. The risk and context of the Cayman Islands as a major international financial centre with significant cross border financial flows raises the possibility that the jurisdiction could potentially be used to facilitate complex ML schemes. The establishment of the Pro Active ML Task Force within the FCU is a tacit recognition of this and the need to invest further in the identification, investigation and prosecution of standalone and complex cases of ML. Nonetheless, investigations and prosecutions pursued by the jurisdiction is consistent with those risks and threats that were identified through their NRA process.

Types of ML cases pursued

151. To a significant extent, prosecutions and convictions of ML are focused on cases related to domestic predicate offences, and, to a far lesser extent, to those related to foreign predicate offences. As previously noted, the jurisdiction has established a strong cooperative relationship between investigators and prosecutors at the operational level, which has been encouraged by the jurisdiction's leadership. However, this process has not resulted in the pursuit of any stand-alone ML offences. The jurisdiction provided the following case example of an instance where a case was pursued based on the commission of a foreign predicate offence, that involved third-party ML.

**CASE EXAMPLE:
INVESTIGATION OF THIRD-PARTY ML WITH PREDICATE OFFENCE IN
ANOTHER JURISDICTION**

As the result of a disclosure being disseminated to the FCU, a pro-active ML investigation was opened into an individual allegedly using two corporate identities to facilitate the laundering of the proceeds of theft/fraud from another jurisdiction.

The total amount under investigation is currently US\$1.25million. In liaison with other law enforcement agencies, the victim, a legal entity in another jurisdiction was contacted, as they were previously unaware of this alleged crime. This investigation is ongoing.

152. The cooperative structure that exists between the ODPP and the different law enforcement authorities ensures that prosecutors are involved in the investigative process at the early stages to improve the likelihood of a successful prosecution. This is an important strategy, but it is one that could be improved. Table 3.8 below shows the number of ML investigations and prosecutions for the period 2013-2017. The statistics demonstrate that there was a steady increase in the number of ML investigations over the period 2013-2016, albeit, a decline in the number of prosecutions between 2013-2015. During that period, there was a notable gap in the proportion of investigations that resulted in a prosecution. Competent authorities indicated that this is not due to a lack of willingness or desire to pursue cases, but due to the fact that the RCIPS has not generated the evidence that would lead the ODPP to conclude that there is a prospect for successful prosecution. While it is understood that some cases in the table below may cross years, the disproportionate number of investigations to prosecutions is of concern when considering that the ML investigations undertaken are largely not complex in nature. In 2015, four SARs initiated new ML investigations which increased in 2016 to fourteen. The upward trend has continued into 2017 with six new ML investigations in the first half of the year. However, the full significance of the contribution made by SARs reporting to ML and other financial crime investigations is better reflected by the fact that in 2015, twenty-two SARs either initiated or contributed to ongoing investigations with thirty-nine in 2016, and fourteen in the first half of 2017. It should be noted that where a prosecution is pursued a conviction is largely achieved. Building upon this cooperation between the investigators and prosecutors should ensure that a greater portion of cases transition from the investigation to prosecution phase.
153. In instances where the ODPP determined it will not pursue a prosecution, it will provide a rationale to the FCU as to why that decision was made in the event that investigators still wish to continue the investigation.

Table 3.8: ML investigations, prosecutions cases with convictions by both persons and cases

Year	Investigations	Prosecution Cases (concluded in respective year)	Convictions Number of cases	Convictions Number of persons
2013	6	6	4	4
2014	10	2	1	1
2015	18	5	3	6
2016	23	12	9	12
2017 (Jun)	11	5	0	0 (6 months data)

154. The absence of investigations, and consequently prosecutions, of more complex cases is of concern. This, to a significant extent, may be attributable to how the jurisdiction identifies its cases. There is no evidence to suggest that competent authorities are unwilling to pursue ML prosecutions against legal persons, third party or on a stand-alone ML offence. Given that a case of this nature has not been pursued, the assessors were unable to determine whether the capacity to prosecute exists. Nevertheless the ability to investigate all these types of ML offences should be present with the implementation of the Pro-Active ML Task Force.
155. The Cayman Islands' focus on relatively minor criminal acts have resulted in convictions solely within the confines of self-laundering as shown in Table 3.9 below. This subsequently yields sanctions that are not proportionate or dissuasive.

TABLE 3.9 : CONVICTIONS BY CASE TYPE							
	Total	Self-Laundering	Third Party	Stand-alone (Autonomous ML)	Proceeds of Crime Committed Abroad	Fiscal Predicate Offences	Non-Fiscal Predicate Offences
2013	6	6	0	0	0	0	6
2014	1	1	0	0	0	0	1
2015	6	6	0	0	0	0	6
2016	14*	12	0	0	0	0	12
2017 (Jun)	0	0	0	0	0	0	0

*Cases may involve more than one individual hence the difference in total and number of self-laundering convictions.

156. There is no indication that aspects of the prosecutorial process impedes or hinders successful prosecution. The staff within the ODPP have acquired expertise in the prosecution of financial crime, through years of experience, or from working in larger and more complex jurisdictions

or both. Similarly, the officers within the RCIPS and ACC have acquired significant expertise through the same means which would infer there is no direct investigative challenge should one be underway. The strongest hinderance within the investigative process would be the identification of cases.

Effectiveness, proportionality and dissuasiveness of sanctions

157. ML offences have a maximum sentence of 14 years imprisonment on conviction and also allows for the confiscation of assets associated with the criminal activity. However, in most of the ML cases that were prosecuted along with a predicate offence, the judiciary has favored concurrent sentencing. The jurisprudence established in the case of R v. Bouchard by the Court of Appeal upheld the ability to impose consecutive sentencing, but to do so it must be based on the ability to demonstrate that the ML and the predicate were separate and distinct acts. Further, the sentencing must be considered within the totality of the crime rather than assigning a punishment based on each offence. The R v. Bouchard case described below sets a precedent for concurrent sentencing to be considered. In this case, the Court of Appeal reduced the sentence to 2 years under the principle of totality, thus reducing the total sentence from 12 years to 10 years.
158. Further, in the R v Bouchard case, the Court imposed a sentence of imprisonment of 2 and 8 years for a ML and related predicate offences respectively. The sentencing for the ML offence in this case is not sufficiently proportionate given the amount of funds involved (US\$2million). The consecutive sentencing can be considered as dissuasive only in the context of totality and in applying this principle, the courts use their discretion to reduce the sentence. There was no fine or other penalty imposed in this case.

R V BOUCHARD [IND. NO 5 OF 2014]

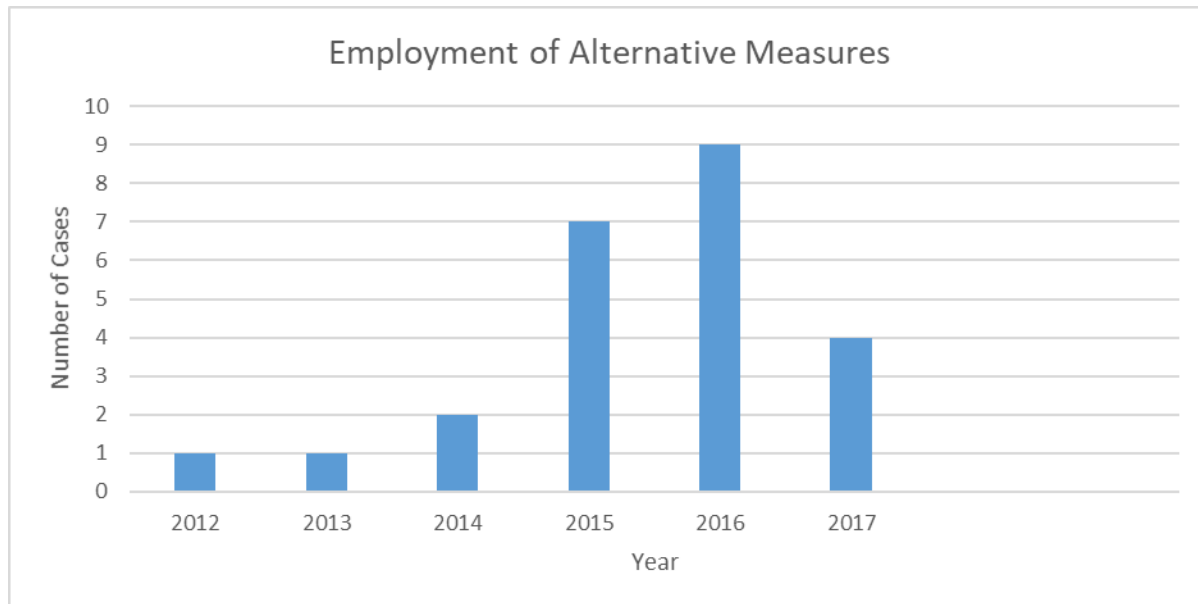
The defendant was a 50-year-old woman who took advantage of a wealthy elderly and vulnerable man. Bouchard stole in excess of US\$2 million dollars over an 18-month period from the victim. She manipulated him into giving her large amounts of his wealth and unfettered access to his wealth. With that access she spent large sums on jewellery and transferred US\$1.4 million to her account in Canada. Her criminality was detected due to the diligence of the victim's Wealth Manager at Butterfields Bank. However, once she realised that a formal complaint to the police was imminent she transferred approximately US\$900,000 to Canada. She further attempted to transfer an additional US\$200,000 to Canada but the bank refused to complete the transaction. The successful transfer and the attempts to transfer stolen money to Canada was justification for the consecutive sentencing associated with the predicate offence and ML charge. This was later endorsed and approved by the Court of Appeal.

159. In this case, the principle of totality was applied rather than assigning a punishment based on each offence. Therefore with 15 counts of theft, 1 count of forgery and 1 count of obtaining property by deception, the punishment imposed was 10 years imprisonment. It should be noted that while this case is cited as the jurisprudence supporting the ability to impose consecutive sentencing that may yield proportionate and dissuasive results, it is the sole case since 2013, where the Court in the Cayman Islands imposed a consecutive sentence.
160. Notably, there was regularly a ML based charge (e.g. transferring, possession or use of criminal property) in conjunction with a charge for the commission of a predicate offence (e.g. theft). However, despite these ML based charges, the majority of sanctions applied by the Judiciary were largely concurrent, e.g. *R v Aspinall*. In this case the defendant faced two counts of converting criminal property in conjunction with 2 counts of theft and forgery. The punishment assigned for the ML charges was 3 years each to be served concurrently with the sentencing for theft and forgery. Despite the fact that the possible sentence upon conviction for this ML based offence is 14 years, because a distinct criminality could not be established, jurisprudence dictated that the sentence be served concurrently.
161. In examining the cases that are pursued by the jurisdiction, which as noted above are entirely based around self-laundering, the sanctions applied by the courts to date for self-laundering have neither been proportionate nor dissuasive. This would suggest that the jurisdiction faces an ongoing challenge in its capacity to prove the acts as distinct in the eyes of the judiciary. Given that charges associated with more complex acts of ML have not been pursued by the competent authorities, it is unclear whether this issue would be an impediment to the jurisdiction achieving proportionate and dissuasive sanctions for more serious predicate offences.
162. The proportionality, dissuasiveness and effectiveness of the sanctions cannot be assessed since legal persons have not been prosecuted for ML offences in the Cayman Islands. The absence of an assessment of the specific types of legal persons that can be misused for ML/TF, as noted in IO 1, can play a role in the lack of prosecutions of legal persons.

Extent to Which Criminal Justice Measures are Applied Where Conviction is Not Applicable

163. The Cayman Islands will identify assets that could be subject to seizure as part of their parallel financial investigation into the predicate crime and its financial components. When it is not possible to prove a ML offence to the criminal standard a cash seizure can be considered, as a civil forfeiture hearing requires the lower civil standard of proof. The below table demonstrates that the jurisdiction will employ those alternative measures, but as confirmed during the onsite, they can and should be employed with more frequency. This is reinforced by the rather modest results noted in table 3.11 below.

Table 3.11 Employment of Alternate Measures



Overall Conclusion on Immediate Outcome 7

164. Though the deficiencies in the identification of cases are as a result of the broader deficiencies noted within IO 6, they are also relevant to this IO. The component parts of the investigatory and prosecutorial system function coherently and the Cayman Islands has established a strong cooperative relationship between investigators and prosecutors with a foundational and well-functioning framework in place. The regular pursuit of parallel investigations as well as the efforts of the ODPP to secure convictions in a systematic way on both the predicate and the ML offence, even if it is to address small scale criminal activity, is consistent with the risks they identified and the stated policy objectives. However, despite having a trained cadre of officers and the framework to investigate ML offences, the results are of concern. The jurisdiction's focus largely on the commission of associated predicate offences to identify and investigate potential ML cases exposes a fundamental shortcoming and is not necessarily commensurate with the country's risk profile. Given the risk and context of this jurisdiction as a major international financial centre, not enough effort is expended on the identification of complex, stand-alone and third-party ML cases of a larger scale that emanate from both natural and legal persons. As a result, the system's ability to operate in an integrated manner is untested. Competent authorities have given more priority to identifying, investigating and prosecuting ML crimes originating from domestic offences and less priority on those with a foreign element which potentially pose a greater threat. Further, as a result of jurisprudence, the sanctions applied thus far to natural persons are not considered as proportionate and dissuasive. There is no conviction of legal persons for ML and therefore sanctions have not been applied to legal persons, so that effectiveness, proportionality and dissuasiveness cannot be determined. Despite there being the framework, there are fundamental deficiencies with

respect to this immediate outcome. **The overall rating for Immediate Outcome 7 is a Low level of effectiveness.**

Immediate Outcome 8 (Confiscation)

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

165. Competent authorities pursue the confiscation of proceeds of crime, instrumentalities and property of equivalent value as a policy objective to a fair extent. They have not demonstrated any inability, or unwillingness to remove the benefits from crime at a domestic level or to support foreign counterparts in their efforts. Domestically, the results achieved to date, while modest, reflect the cases identified and pursued by law enforcement. This would also explain why their significant efforts have not been to pursue assets held abroad based on the commission of a domestic predicate offence. Nevertheless, competent authorities are able to restrain assets based upon the request of an international partner. Further, through the provision of case examples, the jurisdiction was able to demonstrate a capacity to address urgent requests in a timely manner in circumstances that involved varying degrees of complexity. However, it is difficult to assess whether the framework could withstand an increased volume of requests to and from foreign counterparts.
166. The FCU, as part of its role when investigating the financial component of crime, identifies assets that can be subject to confiscation. The ACC pursues the same objective, however, given the size of the ACC they utilise the MOU with the RCIPS to refer confiscation investigations to the FCU for assistance. For an infraction at the border (e.g. drug smuggling) Customs has demonstrated that it will pursue the seizure of instrumentalities used to facilitate that criminal activity. Ultimately, the ODPP makes the determination whether or not to pursue the confiscation of proceeds, instrumentalities and property of equivalent value. Authorities pursue the confiscation of proceeds of crime, instrumentalities and property of equivalent value as a policy objective to a fair extent.
167. Policy objectives for confiscation of criminal proceeds, instrumentalities and property of equivalent value are prevalent. Since 2015, the ODPP sought to determine whether investigators properly considered assets that can potentially be confiscated. The ODPP requires Crown Counsel to consider the recovery of the proceeds of crime relative to every matter on which a charge is sought. Additionally, the ODPP has issued a policy directive in May 2017, instructing that the recovery of the proceeds of crime must be considered as a fundamental aspect of its work of the ODPP and must be considered from the onset until the outcome in all relevant matters throughout the life span of related matters. In accordance with the ODPP's policy, Crown Counsel must consider whether any proceeds of crime have been identified or whether any further investigations should be conducted. The policy also

instructs that consideration be given to civil recovery orders. This directive applies to not only the criminal proceeds, but also the instrumentalities and property of equivalent value. In those instances where a parallel financial investigation had not been identified, the prosecutor would be able to refer the case back to the RCIPS for further examination by the FCU.

168. The RCIPS developed a strategy for pursuing assets was formalised by the Pro-Active ML Strategy which was released April 2017. It indicates that, “*asset recovery through cash seizures, civil recovery and confiscation will be considered at an early stage in every investigation.*” The ODPP’s policy directive reinforces the RCIPS’ strategy which demonstrate increased efforts by competent authorities to deprive criminals of the profit from their crime. This directive applies to not only the criminal proceeds themselves but also the instrumentalities and property of equivalent value.
169. During the onsite competent authorities articulated a strong commitment to both the criminal and civil means of asset forfeiture, to deprive criminals of any pecuniary advantage. Further, competent authorities acknowledged the need to employ the use of civil asset forfeiture measures more frequently in cases where criminal asset forfeiture was not successful.
170. Confiscation including cash seizures can take place by means of civil recovery and a criminal conviction is not necessary. The following case provides an example of civil cash forfeiture and civil recovery that involved cash and instrumentalities:

CASE EXAMPLE: CIVIL CASH FORFEITURE AND CIVIL RECOVERY

In May 2015, the D&SCTF referred a request for a financial investigation to the FCU after a minor arrest for a small quantity of cannabis on a fishing boat. The vessel owner had an extensive history of criminal conduct including drugs trafficking and firearms offences, with no known lawful income. He was also found in possession of US\$12,000 at the time of arrest. The vessel, valued at approximately US\$30,000, is now the subject of civil recovery proceedings on the basis that the boat represents the proceeds of crime. The US\$12,000 is being dealt with separately and is the subject of cash forfeiture proceedings. This matter has been listed for hearing in Court later 2018. An example of using alternative measures to pursue the proceeds of crime when there is insufficient evidence for a prosecution.

171. Confiscations of proceeds from foreign and domestic predicate crimes, and proceeds located abroad have occurred. As previously articulated, the authorities have demonstrated their willingness to support the international community in the restraint of assets located within their jurisdiction and have processed requests from Europe, Asia and North America.

172. Table 3.10 represents the total sums restrained, confiscated or compensated from 2013 to December 2017. The table supports the fact that the competent authorities are pursuing instrumentalities, more specifically, vehicles and a yacht. It should be noted that the figures below include actions taken on behalf of foreign jurisdictions as well as the result of domestic investigations. The assets that were restrained and confiscated/forfeited associated with an offence committed within the Cayman Islands were almost entirely associated with domestic focused drugs, theft and fraud. As a consequence the notable disparity is accounted for where large funds were restrained on behalf of a foreign jurisdiction that chose to no longer pursue the case (e.g., the case citation in 2015). While the jurisdiction has achieved some success, the overall results reflect the criminal investigations pursued discussed in more detail in IO7.

Table 3.10 TOTAL SUMS RESTRAINED AND CONFISCATED

YEAR	RESTRAINED FUNDS	OTHER PROPERTY RESTRAINED VALUE UNKNOWN	TOTAL FORFEITED
2013	-		KYD 242,826.10 (approximately US\$295, 843)
	US\$811,781		
2014	KYD 2,087 (approximately US\$2,543)	Property x 2	
	US\$8,184,757.74	Bank accounts	US\$4,267.74
2015	US\$5,000,000	Property	-
	-	Bank accounts	-
	-	Vehicle	-
2016	KYD 78,740.52 (approximately US\$95,932)	Property	KYD 23,634 (approximately US\$28, 794)
	US\$500,000	Vehicle	US\$602,077.20
		Bank accounts	

2017	KYD 245,695 (approximately US\$299,338)	Bank accounts	US\$2,267,000
	US\$102,018	Vehicle x 2	
		Business assets	
		Yacht (valued at US\$100 million)	
Total	US\$14,996,369.74 (approximate)	N/A	US\$3,197,981.94 (approximate)

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

173. Competent authorities have pursued, to a negligible extent, assets held abroad based on the commission of a domestic ML offence abroad. However, they are largely able to render assistance to requests for restrain, confiscation and repatriation of funds as well as share asset where appropriate and other assets held within their jurisdiction. It was difficult to assess whether competent authorities have the capacity to provide the same degree of assistance or access funds abroad should the jurisdiction pursue more complex cases associated with stand-alone ML.
174. Despite the limited number of cases involving confiscation of proceeds from foreign and domestic predicates and proceeds located abroad, the ODPP, FCU and ACC are collectively able to confiscate (including repatriating, sharing and restitution) the proceeds of crime, and property of an equivalent value, involving domestic and foreign predicate offences. However, the technical deficiency identified in R 38 would imply that there is no authority to address instrumentalities outside the *Misuse of Drugs Law*.
175. Customs will pursue the confiscation of the instrumentalities of crime involving domestic and foreign predicate offences through both criminal and civil forfeiture means. The Customs authorities will also pursue the confiscation of the instrumentalities of crime involving domestic and foreign predicate offences through civil forfeiture means. However, the confiscations by Customs do not involve assets that have been moved to other countries. However, it involves assets or instrumentalities that have originated in a foreign jurisdiction where there was an attempt to import them along with the instrumentalities used to import items subject to confiscation (e.g. boats used to import drugs).

**CASE EXAMPLE
CUSTOMS FORFEITURE**

The Cayman Islands was advised through an international Intelligence Unit, that a fishing vessel B was involved in transshipment of illegal drugs. Vessel B arrived in the Cayman Islands jurisdiction two days later and was instantly searched and a deep historical background check conducted on all crew members. A quantity of marijuana, large consignments of seafood, undeclared alcohol were recovered, seized and all crew convicted in Court. The vessel was forfeited to the Cayman Islands Government.

176. When it is not possible to prove a ML offence to the criminal standard, or a prosecution has not been successful, the Cayman Islands is able to use section 114 of the POCL against cash only. This authority is usually employed in drug cases. Where a criminal conviction cannot be attained this has proven to be a good tool to remove the pecuniary advantage and has become an effective alternative confiscation measure. The table below outlines the confiscation of cash in the jurisdiction by law enforcement for criminal activity associated with drug trafficking.

Table 3.11: Cash seizures by case and cash value

Year	Cases	USD	Euros	Sterling	KYD
2012	1	0	0	0	2,295
2013	1	50	0	0	11,960
2014	2	105,458	1,695	945	11,386
2015	7	15,044	0	0	21,768.45
2016	9	12,017	0	0	20,435.35
2017	4	14,023	0	0	57,925
Total	24	146,592	1,695	945	125,769.7

*The total funds confiscated is KYD 266,783 (Approximately US\$325,341.25)

177. Since the focus has been primarily on domestic offences, the freezing and repatriation of funds located in other jurisdictions have largely not been pursued. However, the case below is an example where the ACC initiated an investigation into corruption and were able to freeze assets domestically and abroad.

**CASE EXAMPLE:
ASSETS ABROAD FROZEN FOR A DOMESTIC PREDICATE**

Allegations of potential corruption were referred to the Cayman Islands Anti-Corruption Commission in 2012. The allegations arose from the award of a high-value public contract to a corporate entity. Assets of both defendants were and continue to be restrained both domestically and in the United States of America.

In respect of this investigation, three defendants were charged with a series of offences including ML. One defendant was convicted by a jury on all offences excluding ML. The trial judge directed the jury to acquit another defendant of ML at the close of the prosecution's case. This was on the basis that the trial judge concluded that a jury properly directed could not be sure that the defendant knew that the funds she was handling were the proceeds of crime.

The third defendant is in the United States awaiting sentence in respect of an unrelated matter. It is anticipated that once he has served his sentence in the United States the Cayman Islands will seek his extradition.

At the outset of this investigation a Restraint Order was obtained in respect of property held locally. The property held in the Cayman Islands in respect of the defendant convicted will be subject to a confiscation order including the value of the assets in the USA.

178. Competent authorities have not successfully sought or identified, significant assets moved abroad that would be subject to repatriation to the Cayman Islands. While there have been some challenges around the timely provision of international support. (See IO 2), the ability to share assets and repatriate funds based on the commission of a foreign predicate is demonstrated in the case example below.
179. During the onsite discussions, the competent authorities indicated that they had on more than one occasion, engaged in confiscation, management and asset sharing of criminal assets as well as repatriation of funds located within the jurisdiction associated with the commission of a foreign predicate. Below is a case example of this.

CASE EXAMPLE: ASSET SHARING

Following the charges laid against AB in the UK, the FCU was asked to assist in the identification and ownership of two properties believed to be associated with the individual. A confiscation order was received and applied against property held in 2013, when it was believed the accused was attempting to sell these properties under market value to an associate.

By letter dated 27 March 2015, the ODPP received a Supplementary ILOR. The supplementary request required assistance with the following:

- i. Registration of the Confiscation Order in the Cayman Islands;
- ii. Obtain a formal valuation for the two properties;
- iii. A statement from the General Residential Manager of the property;
- iv. Full contact details for the company; and
- v. Enforce the Confiscation Order.

The Official Receiver General undertook to manage the properties and was eventually instructed to sell them. They were eventually sold for a total of US\$1,430,000. At the time of the onsite an agreement for asset sharing was being formalised.

180. Competent authorities have executed asset sharing agreements with the USA, the UK, Canada and India and can be also be made with other countries on a case by case basis. Further, where there are victims associated with the predicate offences, the jurisdiction will not seek asset sharing but will instead repatriate the totality of the funds.
181. While the absence of agreements with international partners was of concern, it has not proven to be an impediment. During the onsite, examples were provided to demonstrate the ability of the competent authorities to freeze assets on behalf of two jurisdictions in the absence of an asset sharing agreement.

Confiscation of falsely or undeclared cross-border transaction of currency/BNi

182. As at the date of the onsite mission, competent authorities had not confiscated any cross-border currency or BNIs based on a false or no declaration. Human error in foreign exchange calculation was cited as the cause of undeclared currency.
183. Seizures of currency/BNIs associated with other offences (e.g., drug smuggling) is not significant. However, despite not having any success in identifying currency or BNIs, there is limited technical infrastructure and training to enable the authorities to identify individuals

who could be attempting to enter the country with currency or BNIs above the KYD15,000 (approximately US\$18,300) threshold.¹³

184. Existing resources have not facilitated the identification of currency or BNIs which represents a vulnerability. While Customs noted that there was not inherently a large amount of cash crossing the border, in light of these gaps as well as the deficiencies noted in R 32, the degree to which cash is crossing the border cannot be fully determined. Customs indicated that some of these gaps would be addressed following the onsite, however, their capacity to be employed effectively and determine what results it would yield could not be assessed. Further, as identified in IO 6, there is no systematic exchange of cross border currency reports with the FRA which inhibits the possibility of appropriate analysis. Though not applied, sanctions would appear to proportionate and dissuasive to some extent (see R 32).

Consistency of confiscation results with ML/TF risks and national AML/CTF policies and priorities.

185. While foreign generated proceeds of crime pose a more significant threat, most of the confiscation results were derived from domestically generated proceeds of crime. The jurisdiction's confiscation efforts focus primarily on the predicate offences of theft, corruption and drugs which are the primary domestic risks identified in the NRA. Given the deficiencies noted in IO1, these efforts may not be entirely consistent with the risk and context of the jurisdiction. Further, given the noted shortcomings in IOs 1, 6 and 7, the jurisdiction faces a challenge in having a complete understanding of funds present within the jurisdiction associated with a foreign predicate which are subject to confiscation. It is possible that these results achieved are overly modest and not truly reflective of the jurisdiction's risk environment.
186. The confiscation results of 2015 are consistent with the national AML/CFT policies and priorities. However, there has been no confiscation of property of equivalent value as most confiscation involved cash. Further, despite the shortcomings, competent authorities' general willingness to pursue assets associated with criminal activity remain consistent with the stated policy objectives and desired outcomes of the NRA.
187. As the Cayman Islands received only 7 requests for restraint between 2012 and 2017, there are very few international cases that resulted in confiscation. However, where appropriate they have been achieved and have been pursued in cooperation with international partners and resulted in restraint and eventually confiscation with asset sharing.

¹³ The Customs Department has hi-scan machines at points of entry/exit and at courier facilities. Also, the officers have obtained the requisite training and certification to operate the equipment. The Customs Department also augmented its efforts with the recent deployment of one currency sniffing k-9. The use of these search mechanisms as well as behavioural profiling techniques are attributed to an increase in overall searches.

Overall Conclusion Immediate Outcome 8

188. There is a commitment at a policy and political level to criminal asset forfeiture and a recognition that there is room to strengthen civil asset forfeiture. The RCIPS and ODPP are committed and dedicate resources to ensuring that assets and instrumentalities are identified and confiscated. A prominent feature of the authorities' confiscation efforts are domestically generated proceeds of crime which may be indicative as to why achievements to date have been quite modest with it largely focused on the achievements of 2017. These efforts are primarily linked to the commission of predicate crimes linked to major domestic threats (theft, corruption and drug trafficking) as identified in the NRA. Foreign generated proceeds have been confiscated but to a lesser extent and efforts as they relate to foreign predicate offences have been modest and only some competent authorities have demonstrated the ability to freeze assets abroad based on the commission of a domestic predicate to a limited extent. Deficiencies associated with the FRA's capacity to effectively and proactively identify assets subject to seizure, which was noted in IO 6, could be inhibiting the jurisdiction's capacity to appropriately identify assets that should be subject to confiscation. There has been no confiscation of cross border currency or BNIs. Overall, the results achieved by the Cayman Islands are reflective of national priorities and risks identified, they are quite modest and reflective of the reactive approach to investigating ML based on the commission of minor predicates as noted in IO 7. Given the deficiencies noted in IO 1, and the status of the jurisdiction as a significant international financial centre which involves funds into the trillions of dollars it is possible that the present confiscation results which are focused on relatively minor domestic crimes do not reflect the true risk and context of the jurisdiction. **The rating for Immediate Outcome 8 is a Moderate level of effectiveness.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

- i. There have been limited instances of domestically generated intelligence which has resulted in TF investigations by the FCU. Based on intelligence from the JIU, the FCU investigated 2 instances of TF with both domestic and international elements also demonstrating their capacity to coordinate with foreign counterparts. However, there have been no prosecutions to date.
- ii. The deficiencies noted in IO 6 are an impediment to the jurisdiction's ability to effectively identify TF. Further, as noted in IO 1, the assessment of TF vulnerabilities and risks within the jurisdiction could have benefited from a more thorough assessment. At present, based on what was provided, it is not possible to conclude whether or not the actions of the Cayman Islands are commensurate with their risk profile.
- iii. Officers within the FCU have been trained and have gained experience in the investigation of TF based on time spent conducting similar investigations in the United Kingdom. The staff of the FRA would benefit from further development and capacity in this domain.
- iv. The RCIPS developed a Counter Financing of Terrorism Strategy, but similar to the assessment of TF in the NRA, it requires further development.
- v. The deficiencies noted in IOs 4 and 6 impede the ability of the jurisdiction to effectively identify potential TF. The FIs and DNFBPs have filed a small amount of SARs relating to TF. This is in part due to the fact that the private sector has not been sufficiently engaged by competent authorities to inform them of risk indicators to ensure they are equipped to identify relevant transactions associated with TF.
- vi. In instances where the Cayman Islands had information relating to TF, it was shared with the foreign counterparts of the FRA and RCIPS. While the ODPP staff were trained to a limited extent, they are able to draw upon support from the UK should the circumstance arise. The judiciary also has no experience adjudicating TF matters but may draw upon the UK as required. The judiciary has not received any training on TF and they are of the view that specialised training is not required as any experienced judge will be able hear these cases.

Immediate Outcome 10

- i. The Cayman Islands has mechanisms in place to implement TFS without delay. However, the absence of an effective communication mechanism, impedes the ability of FIs and DNFBPs to implement freezing actions required in implementing TFS, without delay.
- ii. In February 2017, the FRA appointed a Sanctions Coordinator dedicated to TFS. The role of this coordinator is to enhance domestic understanding of TFS, and also establish a framework to develop and support third-party requests under UNSCR 1373.
- iii. There is a wide appreciation for the importance of sanctions amongst the private sector but the frequency of sanctions screening varied and could be enhanced. The understanding of what steps should be taken in the event targeted persons are identified is limited.
- iv. CIMA has integrated system checks on TFS in their onsite inspection process and ensure that the appropriate policy, procedures and controls are in place to identify and apply sanctions. Enhanced monitoring of the implementation of TFS is however required.
- v. The Cayman Islands commenced the implementation of a supervisory regime for NPOs, with initial risk assessment of NPOs upon registration. The effectiveness of NPO supervision by the Registrar General could not be assessed since it was in its nascent stage.

Immediate Outcome 11

- i. The Cayman Islands has mechanisms in place to implement TFS without delay. However, the absence of an effective communication mechanism, impedes the ability of FIs and DNFBPs to implement freezing actions required in implementing TFS, without delay.
- ii. There is a wide appreciation for the importance of sanctions amongst the private sector but the frequency of sanctions screening varied and could be enhanced. The understanding how of what steps should be taken in the event targeted assets are identified is limited. .
- iii. CIMA has integrated system checks on TFS in their onsite inspection process and ensure that the appropriate policy, procedures and controls are in place to identify and apply sanctions. Enhanced monitoring of the implementation of TFS is however required.

Recommended Actions

Immediate Outcome 9

- i. There needs to be more thorough analysis of TF risks and vulnerabilities present within the jurisdiction's financial sector. The current assessment does not allow the jurisdiction to fully appreciate the inherent TF risks and vulnerabilities present.
- ii. Subsequent to the conduct of this, more detailed analysis of TF, enhanced outreach and guidance to the FIs and DNFBPs on TF indicators should be undertaken.
- iii. Competent authorities should receive more training on the identification of TF with consideration being given to additional resources for the FRA to improve the analysis and identification of TF. Also, the ODPP and Judiciary should receive specialised training on the prosecution and adjudication of TF matters.
- iv. The RCIPS should enhance and refine the Combatting of the Financing of Terrorism Strategy to ensure that there are clear mechanisms in place to facilitate the proactive identification of TF in the financial sector.

Immediate Outcome 10

- i. The Cayman Islands should implement timely communication mechanisms for TFS relating to TF to facilitate the freezing of assets without delay by FIs and DNFBPs.
- ii. CIMA should enhance its supervisory approach to the implementation of sanctions relating to TF as well as testing the promptness of the mechanism implemented by FIs and DNFBPs to update the lists used once designations take effect.
- iii. All reporting entities should be required to conduct ongoing regular customer monitoring as appropriate to proactively identify assets subject to sanction.
- iv. Staff training within FIs and DNFBPs should be increased to ensure proper and efficient identification of persons and assets subject to TFS, as well as the processes to be followed where such persons and assets are identified.
- v. The jurisdiction should build upon the TFS Industry Guidance issued in December 2017, and conduct more outreach so that FIs and other persons or entities, including DNFBPs, that may be holding targeted funds or assets are aware of their obligations in taking actions under freezing mechanism when assets subject to TFS are identified.
- vi. The NPO Registrar should continue its outreach to the NPO sector encouraging the registration of NPOs and complete the risk assessment for this sector. The

Registrar should also develop and implement processes and procedures for its risk-based supervisory approach.

Immediate Outcome 11

- i. The Cayman Islands should implement timely communication mechanisms for TFS relating to PF to facilitate the freezing of assets without delay by FIs and DNFBPs.
- ii. CIMA should enhance its supervisory procedures to include testing the promptness of the mechanism implemented by FIs and DNFBPs to update the lists used once designations take effect.
- iii. The Cayman Islands should provide outreach and guidance to FIs and DNFBPs on how to identify PF as well as reinforce the process where assets are identified.
- iv. All reporting entities should conduct ongoing regular customer monitoring as appropriate to proactively identify assets subject to sanction. Increasing staff training within FIs and DNFBPs to ensure proper and efficient identification of persons and assets subject to TFS, as well as the processes to be followed where such persons and assets are identified.
- v. Cayman Islands should review its co-operation and co-ordination mechanisms to ensure that the authorities can identify potential breaches or violations of TFS related to PF.

The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

Immediate Outcome 9 (TF investigation and prosecution)

Prosecution/conviction of types of TF activity consistent with the country's risk-profile

189. At the time of the on-site visit, the Cayman Islands had no TF prosecutions, no international requests for legal assistance received and the Judiciary did not adjudicate any TF cases. In these circumstances, it is not possible to assess whether there is an effective framework in place. There has not been significant training of members of the ODPP and no training of the Judiciary. In the case of the latter, the jurisdiction is of the view that training is not necessary as they view principles of adjudicating TF as no different than ML or other predicate offences. Further, should the need arise the Cayman Islands may draw upon other members of the Judiciary outside the jurisdiction should an instance of TF arise.
190. Although the NRA concluded that the TF is risk low, some of the measures implemented to combat TF as a result of the NRA have not been entirely consistent with the country's risk profile. While the NRA acknowledged a medium high vulnerability within both the banking

and securities sector, it further acknowledged that those 2, 275 SIBL excluded persons (as of 2015) who deal with high net worth individuals are not subject to ongoing supervision. It however, did not identify any TF threats or vulnerabilities within these sectors. This together with the issues identified with the TF risk assessment noted in IO 1, suggest that the analysis upon which the conclusion was founded is incomplete. As a consequence, the assessors were unable to determine whether the jurisdiction's absence of prosecutions and convictions are in fact consistent with the TF risk profile.

TF identification and investigation

191. The FCU is the designated authority for the investigation of TF. Similar to ML, the jurisdiction faces a fundamental challenge in the identification of potential TF. At the time of the on-site visit, the Cayman Islands had conducted some limited investigations into TF. The fact that they were identified through an intelligence led process indicates that there are means to identify cases for investigation. However, the deficiencies noted previously, most importantly IO 6 (specifically as it relates to the identification of cases) highlight a fundamental impediment to the jurisdiction's ability to identify cases and to accurately assess whether or not prosecution and conviction is in line with the country's risk profile.
192. During the period 2013 to 2016, nine SARs related to TF were submitted to the FRA. Two of these SARs were submitted in 2013, one in 2014 and six in 2016. Four requests were received from overseas FIUs requesting TF information, however the FRA had no information on the requested subjects. Two were SARs relating to the case example cited below. One was related to a trust company domiciled in another jurisdiction and affiliated with a local law firm. An advisory was received from a FIU based in another jurisdiction where the entity operated about an individual allegedly linked to terrorism and possibly TF. There was an identified connection within Cayman and after analysis, the FRA disseminated information to the FIU in the jurisdiction that issued the notice as well as the subject's jurisdiction of residence/citizenship. The other two SARs were related to civil litigation linked to a previous major terrorist attack.
193. The challenges related to identification of TF are the result of deficiencies along several steps in the process. FIs and DNFBPs, while being able to identify suspicious transactions, do not have sufficient awareness of the difference between the suspicious indicators or signs of TF vs ML or general suspicion. Interviews with the reporting entities revealed that they are not sufficiently engaged by competent authorities on how to identify TF. Accordingly, it was observed that the FRA and RCIPS, need to enhance their level of engagement and the guidance they provide to the financial sector on indicators, trends etc. so that reporting entities are equipped to identify transactions that may potentially be linked with TF. Also, the level of training to FRA staff further impedes the jurisdiction's ability to identify TF.
194. The FCU's Pro Active ML Task Force, mentioned in IO 7, is also responsible of addressing TF. The officers within this unit have been trained and acquired experience at investigating TF whilst working in the UK. While the establishment of the Pro-Active ML Task Force may

assist in increasing the identification of financial crimes to an extent, it will not address the fundamental challenges the jurisdiction faces in proactively identifying TF. The challenge resides principally with the ability of the FRA to identify, review, analyse and disseminate disclosures in a timely manner. Though the establishment of the Pro-Active ML Task Force may assist efforts to address more complex ML/TF cases, it alone will not be sufficient. This, in tandem with the challenges faced by the FRA discussed above and detailed in IO 6 also represent an impediment to the timely identification of TF cases. While there are examples, such as the one below, of an intelligence led TF investigation, it is the exception rather than the norm.

195. The following case example is a demonstration of the capacity of the jurisdiction to work collaboratively at the domestic and international levels as well as pursue an intelligence led TF investigation.

CASE EXAMPLE: ABILITY TO IDENTIFY AND INVESTIGATE TF

A Cayman Islands resident from a high-risk jurisdiction was identified by the JIU as being potentially involved in TF and after intelligence development work the case was referred to the FCU for investigation and reported to senior management for oversight. Working closely with the FRA, financial intelligence was identified both from SAR reporting after FCU initiated enquiries and additional research conducted by the FRA and FCU, indicating that this individual was transferring funds on a regular basis from his account to the high-risk jurisdiction, in excess of his lawful income. After further enquiries, this suspect was arrested and interviewed for ML rather than TF, based on the evidence obtained and remains on bail while enquiries continue. The focus of enquiries then progressed from TF to ML, potentially related to human trafficking, as the intelligence picture developed, based on the results of intelligence requests to the UK, USA and the high-risk jurisdiction involved (*including an Egmont Request*).

196. The jurisdiction has responded to requests by foreign partners to provide information to support TF investigations. For instance, the Cayman Islands responded to intelligence and based on the joint efforts of the JIU and INTERPOL, a terrorist suspect who was subject to an INTERPOL Red Notice for terrorist offences allegedly committed in Turkey was arrested onboard a ship while in the Cayman Islands and detained pending an extradition hearing which took place in April 2017. The extradition was refused by the judiciary due to time that had passed since the offence had transpired and the identification of the alleged individual was made.

197. Similar to ML, there are challenges in the ability to identify TF and a reactive approach to the investigation of TF within the Cayman Islands. The jurisdiction has undertaken some TF investigations however they were not identified by the FRA, but through other means, namely the JIU. The reasons could include lack of awareness within the private sector of what constitutes TF, a need for more training in the identification of TF within the FRA, the lengthy timeframe between submission, analysis and disclosure of information to RCIPS or perhaps other issues.
198. Below is an example where the Cayman Islands was able to conduct a TF investigation as well as track assets in cooperation with a foreign jurisdiction.

CASE EXAMPLE: TF

The JIU received intelligence from a Cayman Island resident about concerns that individual A holds extremist views and is at risk of being radicalised through online content. The JIU developed an intelligence package and the FCU conducted a parallel financial investigation which identified an unexplained pattern of travel and of concern, travel to another jurisdiction that has a history of terrorist activity. This was immediately reported via the law enforcement liaison for that country both to warn them of an identified threat, and to ask for enquiries to be conducted regarding A's activities. The financial enquiries have focused on trying to establish if A has transferred funds to this or another jurisdiction. This country subsequently shared intelligence that they had separate reporting regarding the activities of A. Working with the other country, the JIU and FCU continue to conduct intelligence monitoring/sharing activities to mitigate this potential threat and to establish if this individual is in receipt of outside funding.

199. The situation has not arisen where a financier has been identified. Apart from the jurisdiction's shortcomings regarding the capacity to identify TF, the framework and experience at the investigative level appears to be in place which would enable the jurisdiction to identify a terrorist financier. Similar to ML, the jurisdiction has also not pursued cases against legal persons as no cases have been identified.

TF investigation integrated with and supportive of national strategies

200. The ML/TF Strategy 2017-2021, recognises the impact of terrorism to the international community and the need to accord TF a high priority, but there are no strategies to address TF specifically. The concerns presented by the jurisdiction's challenges in the identification of potential TF are exacerbated by the role of the Cayman Islands as a significant international financial centre. However, there is recognition to some extent of the need to enhance the ability to identify financial crimes with additional resources being assigned to the FRA and FCU to improve the capacity to identify SARs associated with ML/TF.

201. The absence of a fulsome national TF strategy has not precluded the RCIPS from preparing a *Combating the Financing of Terrorism Strategy* prior to the onsite that describes the role the FCU will play in addressing TF. It reinforces the view that the threat of TF is low, based upon the fact there have been no attacks, or evidence of attack planning. However, the absence of attacks or planning of attacks should be viewed as only a minor component of the evaluation of the TF threat and vulnerabilities.
202. Nonetheless, the strategy acknowledges that terrorist organisations can leverage the sizeable Cayman Islands financial structure and highlights the need for engagement with the regulated sector. The strategy was not fully implemented as at the time of the onsite since it was not apparent that the regulated sector had benefitted from engagement. As a jurisdiction with more than 100,000 companies (including 158 banks, 838 insurers and over 10,500 mutual funds) as of March 2017, the absence of a more fulsome national strategy substantiated by thorough analysis is of significant concern and impedes the ability of the Cayman Islands to properly mitigate potential vulnerabilities.

Effectiveness, proportionality and dissuasiveness of sanctions

203. At the time of the onsite there had been no prosecutions or any convictions for a TF offence so the proportionality and dissuasiveness of sanctions cannot be assessed.

Alternative measures used where TF conviction is not possible (e.g. disruption)

204. Where a conviction is not possible, the RCIPS has the ability to employ disruption measures as well as pursue asset forfeiture. One such measure, though not yet required, is the use of civil proceedings to pursue forfeiture of cash meant to support TF. The measures employed for seizures associated with TF would be the same for ML, which shows that it could be done but have not been employed, such that their effectiveness cannot be assessed. Moreover, given that the NRA has identified TF risks as low, and the absence of identification and prosecution of TF, the absence of alternative measures is commensurate with the identified low TF risks.

Overall Conclusion on Immediate Outcome 9

205. The jurisdiction has elements of a functioning framework. While the FRA, Judiciary and ODPP could benefit from further training, there is an investigative capacity within the RCIPS which has a sufficient cadre of investigators trained and experienced in TF and a desire to ensure strong cooperation among the competent authorities. However, the number of excluded persons within the financial sector not subject to ongoing supervision represents a significant TF risk. This risk should be thoroughly analysed so that the attendant TF risk can be understood. Even still, supervision within the financial sector is overly focused on ML because that is the area perceived as greatest risk. However, the result of this focus has been a financial sector that does not sufficiently understand the jurisdiction's TF vulnerabilities and indicators. This is due largely to the absence of guidance by competent authorities. While the jurisdiction

has been able to proactively identify cases for investigation through investigation, the shortcomings of IOs 1 and IO 6 have further limited the capacity of the jurisdiction to fully understand the potential TF vulnerabilities and risks. This inhibits the identification of cases through financial intelligence and the ability of competent authorities to prepare the appropriate guidance as well as identify any relevant mitigation measures. This is of particular concern they face in the context of the Cayman Islands being among the largest banking sectors in the world and the fifth largest banking sector by cross-border liabilities. A CTF strategy was developed as the RCIPS acknowledges the importance implementing CFT measures and has specially trained officers. Nonetheless, within the risk and context of the jurisdiction, noted deficiencies are considered to have significant materiality and represent fundamental flaws. **The rating for Immediate Outcome 9 is a Low level of effectiveness.**

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

UNSCR1267

206. As a major international financial centre, the ability and capacity to meet the obligations of 1267 without delay are critical to ensuring assets are frozen in accordance with international obligations. As a British Overseas Territory (BOT), the Cayman Islands is not a member of the United Nations in its own right. However, the jurisdiction has implemented the relevant UNSCRs to give effect to 1267.
207. As articulated under Recommendation 6.4, the Cayman Islands has two mechanisms for implementing UNSCRs 1267/1989 and 1988, without delay. As for the first mechanism, as a BOT, UNSCRs are implemented in the UK first by way of EU Council Regulations which are then extended to the Cayman Islands by the UK through an Overseas Orders in Council (OOIC). The UK enacted the *Policing in Crime Act in 2017* to allow automatic and immediate extension of interim UNSCRs to BOTs by way of a permissive extent clause for a period of either (i) until the EU has adopted the relevant UNSCRs; or (ii) a period of 30 days, whichever occurs first. This process allows the implementation of 1267 without delay while the EU process of adopting the UNSCRs and extension to the UK takes place which is usually 5 days. Once the EU Regulations are adopted, the UK updates its sanctions list, which automatically extends to the Cayman Islands via the Overseas Orders in Council, which already give effect to existing UNSCRs 1267/1989 and 1988. The current OOICs that give effect to UNSCR 1267 and EU Regulations 881/2002 and 753/2011, are the Afghanistan (United Nations Measures) (Overseas Territories) Order 2012 and the Isil (Da'esh) and Al-Qaida (Sanctions) (Overseas Territories) Order 2016 respectively.
208. As for the second mechanism, the jurisdiction has enacted the TL and its subsequent amendments (2017) to enable the implementation of UNSCRs without delay. A designation

by the UN is immediately recognised within the Cayman Islands. Actions to freeze, without delay, funds or economic resources owned, held or controlled by a designated person can be taken. In practice, the legislative framework for implementation of TFS without delay is present both through the PCA as well as domestically through the T(A)L.

209. The Cayman Islands has not proposed any designation or delisting under 1267/1988 and 1989 to the UN. As a BOT, any proposal under any one of these regimes must be routed through the Foreign Commonwealth Office to conduct its own policy and legal assessment before taking it forward to the UN.

UNSCR 1373

210. UNSCR 1373 is given effect through Schedule 4A of the TL. The process for designations under UNSCR 1373 is reliant upon the same process as for UNSCR 1267. While the Governor is responsible for designations under UNSCR 1373, operationally the FRA will be responsible for coordination of the designation process and communication should be sent to the FRA.
211. Additionally, the Cayman Islands is also capable of making designations pursuant to 1373, although no requests for designation have been made. In instances where a target is identified for possible designation domestically, competent authorities would be able to seek a temporary freeze of assets (for 30 days) while the case and evidence for designation is developed for approval by the Governor, in consultation with the Secretary of State in the UK.

Communication of TFS under UNSCRs 1267 and 1373

212. Although the jurisdiction has its own mechanism in place to implement UNSCR 1267/1988 and 1989 apart from the UK, the essential component of communicating changes in listings cannot be achieved without delay as the jurisdiction's framework is reliant upon the UK framework for communication on changes to from the Office of Financial Sanctions Implementation (OFSI). Upon notification of a listing decision by the UN Committee, the OFSI aims to update the consolidated list of financial targets within 24 hours. The FRA receives from OFSI, (within 24 hours of effect of the UNSCRs), an email including a Financial Sanctions Notice whenever there is an update to the consolidated list of financial targets. The FRA will publish on the FRA's website, the Financial Sanction Notice and the updated consolidated list of financial targets within one (1) business day from receipt of email notification issued by OFSI and simultaneously notify the relevant competent authorities. There are no mechanisms for communicating changes in designation listings to FIs and DNFBPs who play a critical role and who are required to take necessary action in accordance with the TFS. FIs and DNFBPs are urged to monitor the OFSI's website for updates to the sanctions list, and CIMA publishes the sanctions lists on its website, which is only updated twice per year. With delays in communicating changes in UNSCRs 1267 listings, this may impede the jurisdiction's ability to implement these TFS without delay.

213. FIs and TCSPs have policies and procedures for TFS for TF, relying on third party automatic software to conduct client screening which entails scrubbing their customers against TFS lists generated by the UN, EU, OFAC, etc. The frequency for the screening of customers varied among customers. Larger and more sophisticated FIs and TCSPs have automated mechanisms to update and screen their client database nightly, which would allow for the implementation of TFS without delay. However, other entities that screen customers on a weekly, monthly or quarterly basis or upon an attempted transaction would not be able to meet the threshold of without delay, where targets are identified.
214. Notwithstanding the impediments that delay the implementation of TFS without delay by reporting entities, the TFS measures implemented, in part mitigate the risk of capital flight. The policy and procedures of the reporting entities require the screening of all customers against sanctions lists when processing a transaction. There is a further recognition that the Cayman Islands, as an international financial centre, has strong links with several international jurisdictions. It is for this reason that it is standard practice for those processing transactions to screen against several sets of sanctions lists (e.g., the UN, OFAC, EU etc.). Consequently, regardless of whether or not they are in force and effect in the Cayman Islands, if there is a match against another jurisdiction's 1373 list, for example the US, the transaction will not be completed ensuring that there is not an issue of capital flight. The private sector has documented hits, as evidenced by the statistics on false positives provided to assessors. For example, between 2015-2017, a total of 429 false positives were identified during screening processes. The numbers also confirm that the private sector understands their obligation to report matches to the authorities for appropriate follow up. It can be deduced that if targeted assets were to be identified, FIs/DNFBPs would take appropriate action, as immediately identified and freeze such assets and prior notice, and report the case to the FRA instantaneously.

Targeted approach, outreach and oversight of at-risk non-profit organisations

215. The Registrar General (RG) is the competent authority for the regulation of NPOs and has the appropriate regulations and enforcement powers in place to safeguard NPOs from abuse. At the time of the onsite visit, NPOs had been recently brought under supervision through the enactment of the NPOL in August of 2017. NPOs were allowed until 31 July 2018 to register with the NPO Registrar. At the time of the onsite visit only 19 NPOs had been registered. While outreach sessions have been undertaken, the understanding by the sector of risks is at an early stage.
216. During the year 2017, the NPO Registrar conducted outreach to inform NPOs of the impending laws and also to raise awareness of the vulnerability of these organisations being abused by terrorists and terrorist organisations. NPOs interviewed during the onsite visit confirmed that the outreach seminars conducted were very useful as it raised the level of understanding by the sector of TF risk and how this risk can be mitigated.

217. The jurisdiction had conducted an initial assessment of the NPO sector using available data and determined that NPOs were at low risk for being abused for TF purposes. There was little evidence to indicate that there is anything other than a low risk that Cayman Islands' residents have been radicalised or have joined foreign conflicts. The low risk is reinforced by the fact that the NPO sector collects and distributes funds, locally to a significant extent, and those funds remitted overseas go to parent organisations.
218. At the time of the onsite, the country was in the process of conducting another review of the sector, via questionnaires. A response rate of 33% was achieved (49 of the 150 questionnaires were returned). The Registrar noted that based on the responses, the majority of NPOs received donations from persons on the Cayman Islands and the majority of funds disbursed were also local. The Registrar noted that while there were some NPOs that send monetary donations overseas, in this instance it is largely not a high risk activity because the funds are being sent abroad to well established parent organisations or educational institution (e.g. churches, international NPOs, universities, etc.). Some NPOs have policies and procedures within their network in relation to the overseas transmission of funds, which require that the local NPO branch only transmit funds to the NPO headquarters, in accordance with their own policies and procedures with regard to the identification of recipients of donations. During an interview with a large internationally active NPO, the assessors were informed that there are policies and procedures in place for receiving monetary donations.
219. As it relates to applying a risk-based approach, the Registrar noted that the NPOL created an automatic risk matrix, requiring NPOs with a net income of KYD250,000 (approx. US\$304,874) to have its financial statements prepared by a licensed auditor in accordance with international reporting standards. NPOs are also being assessed at the point of registration and will be further assessed on an ongoing basis. Risk assessments are based on whether: funds are being remitted overseas; the means by which funds are being remitted; the jurisdiction to which funds are being remitted; and the products or services with which the NPOs have an involvement. Any NPO deemed to be of a higher risk for TF will be subject to enhanced due diligence, enhanced reviews and where necessary, a review of the organisation's bank account (via the *Confidential Disclosure Law*, the NPO Registrar can request information on a bank's clients).
220. Notwithstanding the above, the NPO registration and risk rating remained ongoing, at the time of the onsite, on account of the transition period of the NPOL. No NPOs had been identified as having a high TF vulnerability during the initial risk assessment or through the ongoing registration process. The extent to which the Cayman Islands can apply proportionate measures in the NPO sector is limited as the initial risk assessment had not been completed. Consequently, the implementation of a risk-based approach had not yet been fully implemented. Given that neither remedial actions or sanctions had been applied, the appropriateness cannot be effectively assessed, but as noted in Recommendation 8 the framework is in place.

Deprivation of TF assets and instrumentalities

221. While there are legislative measures in place to freeze the funds and assets of persons in the Cayman Islands, no designated persons or entities have been identified in the jurisdiction as holding funds or other assets. FIs and DNFBPs screen their clients against relevant sanctions lists, though as noted above it is not necessarily done on a regular basis. This screening has identified a number of false positives, but once the FI or DNFBP determined it was not an accurate match, the transaction was processed.
222. Due to the level of integration, the Cayman Islands financial sector has within the global financial market, the members of the financial sector interviewed during the onsite had an appreciation for the importance of the implementation of TFS. While it was standard to screen transactions against the sanctions lists in place by the UN, UK and US, there was no consistent standard when it came to screening customers that may be the subject of TFS and have assets with FIs or TCSPs. If a transaction were not actually attempted it appears that well over a month could elapse before assets subject to sanctions could be identified.
223. While the FRA has the delegated responsibility for monitoring the TFS regime, it coordinates with supervisory authorities on how to ensure compliance. The FRA has set out in its TFS Procedure Manual how it will coordinate with the supervisory authorities to ensure compliance with TFS, which will include carrying out an annual frozen funds reconciliation exercise. CIMA and DCI are responsible for monitoring compliance with the AMLRs. This, however, does not extend to the requirements of the TL relating to freezing and reporting assets of persons and entities that are subject to TFS for TF. CIMA however reviews FIs and TCSPs during onsite inspections to ensure that they have systems in place to conduct scans against relevant sanctions lists. Nonetheless, there was no assessment of how quickly or whether scanning systems (where electronic systems are utilised) or manual lists are updated once designations are implemented in the Cayman Islands, lending to gaps in the monitoring of the implementation of TFS. Given that onsite examinations are generally not undertaken for excluded persons, a review of systems relevant to these persons are not undertaken. FIs and DNFBPs are also aware of the requirements to freeze assets owned by person or entities that are subject to TFS. However, the majority of FIs and TCSPs interviewed during the onsite were not aware of the required follow-up action to be taken on the reporting of these assets apart from the filing a SAR. The FRA has since issued industry guidance with respect to TFS and has given industry presentations on the subject, which would enhance awareness of the obligations.

Consistency of measures with overall TF risk profile

224. As discussed above, the Cayman Islands has implemented measures to strengthen its CFT Regime, this includes creating mechanisms for implementing TFS relating to TF without delay, creating a supervisory regime with respect to NPOs, and conducting some assessment of the regimes in place to freeze assets of persons subject to TFS. However, given that the

Cayman Islands did not analyse sufficient data to inform on its TF risks, assessors could not determine whether these measures were consistent with the Cayman Islands' TF risk profile or adequately address the risk profile of the jurisdiction.

Overall Conclusions on Immediate Outcome 10

225. The Cayman Islands has a framework for implementing TFS relating to TF without delay. However, inefficiencies in communicating on changes in TFS and the inconsistency of the screening measures among FIs and TCSPs, significantly impact the freezing of assets within a matter of hours after UNSCRs are effected. While some assessment of the implementation of appropriate TFS controls is done by CIMA with respect to FIs and TCSPs improvement is required to adequately monitor the implementation of TFS. In addition, CIMA's current assessment does not include approximately 55% of registered excluded persons. A targeted approach to outreach and oversight of NPOs that pose higher risks of vulnerabilities for TF has not been realised as the Registrar has not identified any NPOs that pose a higher risk for TF vulnerabilities and the registration process is still in progress. The Cayman Islands has formed the view that its TF risks are low but has not conducted an adequate assessment of data to derive such a conclusion, as such, a determination as to whether the measures put in place are consistent with the jurisdiction's TF risk profile could not be made. **The rating for Immediate Outcome 10 is a Moderate level of effectiveness.**

Immediate Outcome 11 (PF financial sanctions)

Implementation of targeted financial sanctions related to proliferation financing without delay

226. As articulated under Recommendation 7.1, and identical to the process for implementing UNSCR 1267 in relation to TF, the Cayman Islands has two mechanisms for implementing United Nations Security Council Resolutions (UNSCRs) adopted under the Chapter VII of the Charter of the United Nations, relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. As for the first mechanism, as a BOT, UNSCRs are implemented in the UK first by way of EU Council Regulations which are then extended to the Cayman Islands by the UK way of Overseas Orders in Council (OOIC). The UK enacted the *Policing in Crime Act in 2017*, to allow automatic and immediate extension of interim UNSCRs to BOTs by way of a permissive extent clause for a period of either (i) until the EU has adopted the relevant UNSCRs; or (ii) a period of 30 days, whichever occurs first. This process allows the implementation of UNSCRs relating to combating PF without delay while the EU process of adopting the UNSCRs and extension to the UK takes place which is usually 5 days. Once the EU Regulations are adopted, the UK updates its sanctions list, which automatically extends to the Cayman Islands via the Overseas Orders in Council, which already give effect to existing UNSCRs. The relevant OOICs relating to PF are: The Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012, as amended, which gives effect to sanctions in respect of DPRK set out in UNSCR 1718

(2006) and its successor resolutions. The Iran (Sanctions) (Overseas Territories) Order 2016 which gives effect to sanctions in respect of Iran and sets out in UNSCR 2231 (2015) and the Joint Comprehensive Plan of Action (JCPOA) annexed to that resolution.

227. As for the second mechanism, the jurisdiction has enacted the Proliferation Financing (Prohibition) Law (PFPL) to enable the implementation of UNSCRs without delay. A designation by the UN is immediately recognised within the Cayman Islands. Actions to freeze, without delay, funds or economic resources owned, held or controlled by a designated person can be taken. In practice the legislative framework for implementation of TFS without delay is present both through the PCA as well as domestically through the PFPL.

Communication of TFS relating to Combating the Financing of Proliferation

228. Although the jurisdiction has its own mechanism in place to implement UNSCR for combatting the proliferation of financing from the UK, the essential component of communicating changes in listings cannot be achieved without delay as the jurisdiction's framework is reliant upon the UK framework for communication on changes to from the OFSI. Upon notification of a listing decision by the UN Committee, the OFSI aims to update the consolidated list of financial targets within 24 hours. The FRA receives from OFSI, (within 24 hours of effect of the UNSCRs), an email including a Financial Sanctions Notice whenever there is an update to the consolidated list of financial targets. The SC will publish on the FRA's website, the Financial Sanction Notice and the updated consolidated list of financial targets within one (1) business day from receipt of email notification issued by OFSI and simultaneously notify the relevant competent authorities. There are no mechanisms for communicating changes in designation listings to FIs and DNFBPs who play a critical role and who are required to take necessary action in accordance with the TFS. FIs and DNFBPs are urged to monitor the OFSI's website for updates to the sanctions list, and CIMA publishes the sanctions lists on its website, which is only updated twice per year. With delays in communicating changes in UNSCRs 1718 or 2231 listings, this may impede the jurisdiction's ability to implement these TFS without delay.

229. FIs and TCSPs have policies and procedures for TFS for PF, relying on third party automatic software to conduct client screening which entails scrubbing their customers against TFS lists generated by the UN, EU, OFAC, etc. However, the frequency for the screening of customers varied among customers. Larger and more sophisticated FIs and TCSPs have automated mechanisms to update and screen their client database nightly, which would allow for the implementation of TFS without delay. However, other entities that screen customers on a weekly, monthly or quarterly basis or upon an attempted transaction would not be able to meet the threshold of without delay, where targets are identified.

230. Notwithstanding the impediments that delay the implementation of TFS without delay by reporting entities, the TFS measures implemented, partly mitigate the risk of capital flight.

The policy and procedures of the reporting entities require the screening of all customers against sanctions lists when processing a transaction. There is a further recognition that the Cayman Islands, as an international financial centre, has strong links with several international jurisdictions. It is for this reason that it is standard practice for those processing transactions to screen against several sets of sanctions lists (e.g. the UN, OFAC, EU etc.). Consequently, regardless of whether or not they are in force and effect in the Cayman Islands if there is a match against another jurisdiction's list, for example the US, the transaction will not be completed ensuring that there is not an issue of capital flight. The private sector has documented hits, as evidenced by the statistics on false positives provided to assessors. It also confirmed that the private sector understands their obligation to report matches to the authorities for appropriate follow up. It can be deduced that if targeted assets were to be identified, FIs/DNFBPs would take appropriate action, as immediately identified and freeze such assets and prior notice, and report the case to the FRA instantaneously.

Identification of assets and funds held by designated persons/entities and prohibitions

231. The Cayman Islands has not identified any funds or other assets belonging to a designated person or entity. The identification of false positives indicates that FIs and DNFBPs screen UN sanctions lists when processing transactions. While the jurisdiction could not delineate which sanctions these were associated with (TF or PF) it is a sign screening is conducted by FIs and DNFBPs.
232. FIs and TCSPs screen all relevant parties of a business relationship (customer and account name, addresses associated with the customer account, each signatory, each director/officer of the board and each beneficial owner) at the onboarding of new customers against the list of designated persons. When processing a transaction FIs screen both the sender's as well as the beneficiary's details against sanctions list. Most FIs and TCSPs rely on commercial databases and automated screening procedures for these purposes.
233. Nonetheless, there is a disparity in the degree of frequency that the financial sector identified assets and funds subject to sanction within the jurisdiction. While screening of all business relationships is done on an ongoing basis some firms apply screening processes on a weekly basis, others do so only on a quarterly or semi-annual basis and still others do not do it all and will only conduct a review when a transaction has been initiated. It was observed that more sophisticated operations would conduct daily screening, though smaller and/or less sophisticated operations were more varied (yearly or only based on transactions). FIs, law firms and TCSPs that belong to an international group or network have screening against the lists and further examination of potential matches done by specialised units on a group-wide basis. Regulated entities usually assign a sufficient number of staff to sanctions screening (including those related to proliferation) and working on potential matches that need enhanced review.

FIs and DNFBPs' understanding of and compliance with obligations

234. Although FIs and DNFBPs do not fully understand their obligations, they have a good level of awareness of the importance arising from the relevant UN sanctions regime relating to the proliferation of weapons of mass destruction. Most FIs rely heavily on online sources to screen their clients against sanctions lists (e.g., OFAC) and the outsourcing of screening using third party automatic software to screen their client databases and transactions against the most recent PF related sanctions lists. They regularly run their client databases against these commercial databases to identify individuals or entities subject to relevant sanctions. They also consult websites maintained by the UK government or by CIMA which provide hyperlinks to the Cayman Islands Gazette. No positive match has ever been reported. False positives were identified which further illustrates the point that FIs and DNFBPs do in fact screen their client databases against the sanctions lists. In those instances where false positives were identified, the FRA and/or FCU were notified to reconcile whether or not the individual was subject to sanction. Once it was determined that it was not an accurate match the transaction was processed.
235. To a large extent, the financial sector understands the importance of TFS with regard to proliferation. The desire to ensure compliance is largely attributable to the linkages that the sector has with the global markets and overall risk appetite of the larger members of the Cayman Islands financial sector. While they understand the obligation to freeze assets, only some were aware of the reporting requirements with respect to frozen assets. The lack of any PF related asset freezing measures is due to the fact that no such cases existed so far.
236. Though some smaller and/or the less sophisticated operators indicated an understanding of their obligations, the sometimes-varied levels of frequency applied to identification as discussed above are of concern. While it is not in contravention of obligations, it does show a varied understanding in the importance of identifying assets in a timely manner. Also, the focus on the identification of assets subject to sanction at the time of a transaction can place a heavy reliance on the FIs as opposed to it being a sector wide effort. This may be reflective of the fact that competent authorities have not engaged the sector sufficiently to ensure they understand proliferation risks and are able to identify PF.

Competent authorities ensuring and monitoring compliance

237. While the FRA has the delegated responsibility for monitoring the TFS regime, it coordinates with supervisory authorities on how to ensure compliance. The FRA has set out in its TFS Procedure Manual how it will coordinate with the supervisory authorities to ensure compliance with TFS, which will include carrying out an annual frozen funds reconciliation exercise. CIMA and DCI are responsible for monitoring compliance with the AMLRs. This however does not extend to the requirements of the PFPL relating to freezing and reporting assets of persons and entities that are subject to TFS for PF. CIMA however reviews FIs and TCSPs during onsite inspections to ensure that they have systems in place to conduct scans

against relevant sanctions lists, there were no reviews of how quickly or whether scanning systems (where electronic systems are utilised) or manual lists are updated once designations are implemented in the Cayman Islands, leading to gaps in the monitoring of the implementation of TFS. Given that onsite examinations are generally not undertaken for excluded persons, a review of systems relevant to these persons are not undertaken. FIs and DNFBPs are also aware of the requirements to freeze assets owned by person or entities that are subject to TFS. However, the majority of FIs and TCSPs interviewed during the onsite were not aware of the required follow-up action to be taken on the reporting of these assets apart from the filing a SAR. The FRA has since issued industry guidance (December 2017) with respect to TFS and has given industry presentations on the subject, which would enhance awareness of the obligations.

Overall Conclusions on Immediate Outcome 11

238. The Cayman Islands' has a framework for implementing TFS relating to PF without delay. However, inefficiencies in communicating on changes in TFS and the inconsistency of the screening measures amongst FIs and TCSPs, significantly impact the freezing of assets within a matter of hours after UNSCRs are effected. While some assessment of the implementation of appropriate TFS controls is done by CIMA with respect to FIs and TCSPs, improvement is required to adequately monitor the implementation of TFS. In addition, CIMA's current assessment does not include approximately 55% of registered excluded persons. The low level of engagement by competent authorities has resulted in a lack of understanding among financial sector participants as to the process of how to identify assets and what to do when assets are identified. **The rating for Immediate Outcome 11 is a Moderate level of effectiveness.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

- i. FIs, TCSPs and other DNFBPs, understand their ML/TF risks and AML/CFT obligations, although the understanding of ML/TF risks by smaller entities could be improved. The DPMS demonstrate an understanding but to a lesser extent as they have only recently been sensitised on their obligations in relation to AML/CFT. Formal institutional risk assessments are not yet fully in place in some institutions.
- ii. Excluded persons account for the majority of FIs within the Cayman Islands' securities sector and are subject to AML/CFT requirements. Approximately 55% of these entities are not subject to ongoing AML/CFT supervision, consequently there is limited insight into their level of effectiveness in implementing ML/TF preventative measures.
- iii. Most FIs, TCSPs and other DNFBPs have established adequate risk-based policies and procedures to mitigate their ML/TF risks. They have appropriate CDD measures in place to identify and verify the identity of their customers (including beneficial owners) upon the establishment of business relationships. Improvements are needed in some institutions with respect to ongoing CDD and monitoring, particularly in some banks and TCSPs where ongoing monitoring measures are not consistently applied.
- iv. FIs and TCSPs have measures in place for the screening of their customers against TFS lists on an ongoing basis. Smaller FIs do not always undertake screening in a timely manner.
- v. There is low SARs reporting from banks not physically located in the Cayman Islands, as well as excluded persons registered under SIBL.
- vi. The real estate agents that are not CIREBA members and DPMS are now in the process of assessing their ML/TF risks and as such the development of risk mitigating measures is at the beginning stages. Since DPMS have only recently been brought under the AML/CFT supervision regime of the DCI, they are not yet fully aware of their obligations of applying risk mitigation measures.

Recommended Actions

- i. All FIs and TCSPs should ensure that their institutional ML/TF risk assessments are adequately documented and updated on a periodic basis. AML/CFT policies and procedures should be updated in accordance with required periodic institutional risk assessments.
- ii. Excluded persons, not otherwise licensed by CIMA, should implement appropriate AML/CFT policies, procedures and internal controls including risk-mitigation measures.
- iii. The FRA should conduct more outreach activities to banks physically located outside of the Cayman Islands and excluded persons under SIBL, creating awareness among these entities

of the requirements to file SARs with the FRA. Specific feedback should also be provided to FIs and TCSPs on the quality and usefulness of SARs filed.

- iv. FIs and TCSPs should implement adequate ongoing monitoring systems which can specifically identify trends that are synonymous with the misuse of legal persons and arrangements. This implementation should be verified by CIMA, as part of its supervisory framework.
- v. Lawyers, in particular, those that do not have any affiliation with licensed TCSPs, should be supervised for AML/CFT compliance.
- vi. The DCI should complete the registration of the real estate and DPMS sectors, continue its outreach to sensitise them of their AML/CFT obligations and supervise the implementation of systems and controls to mitigate their ML/TF risks. In this regard, the DCI in conjunction with the FRA should issue sector specific AML/CFT guidelines (including red flags and SARs reporting guidance).

The relevant Immediate Outcome considered and assessed in this chapter is IO4. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

Immediate Outcome 4 (Preventive Measures)

239. The Cayman Islands is the world's sixth (6) leading global financial services centre. The majority of financial services are targeted towards non-residents, particularly high-net worth individuals and institutions, from a wide variety of jurisdictions, not all with robust AML/CFT measures. The financial services sector accounts for approximately 40% of total GDP and employs 3,424 persons or 8.4% of the workforce. Banking, securities and investments and to some extent insurance industries dominate the financial landscape. Chapter 1 contains an overview of the financial sector. As an international financial centre, the Cayman Islands offers a wide variety of financial services and DNFBP services which include banking, securities investments, insurance, money services and trust and company services. These sectors are exposed to ML/TF risks which are detailed below:

Table 5.1 ML/TF Risk by Sector

Sector	ML/TF Risks
Banking	<ul style="list-style-type: none"> ▪ Size of sector ▪ Facilitation of cross-border activities across varying jurisdictions ▪ Wide geographic coverage of Cayman banks ▪ Customer profiles (High Net-worth individuals, PEPs, legal persons) ▪ Third party transactions (i.e. entities conducting transactions on behalf of customers, e.g. lawyers, TCSPs)

Securities Investment Business Sector	<ul style="list-style-type: none"> ▪ The diverse geographic exposure of customers ▪ Cross-border nature of activities ▪ Customer profiles (High net-worth individuals, PEPs) ▪ Use of functionaries in other jurisdictions
Insurance	<ul style="list-style-type: none"> ▪ Cross-border activities ▪ International insurance products
MSBs	<ul style="list-style-type: none"> ▪ Cross-border activities ▪ High cash intensity
TCSPs	<ul style="list-style-type: none"> ▪ Number of legal persons registered ▪ Customer profiles (high net-worth individuals and PEPs) ▪ Cross-border transfer of high value funds and assets ▪ Wide geographic range of underlying customers
Lawyers	<ul style="list-style-type: none"> ▪ Provision of services to private equity funds which are unsupervised ▪ High net-worth individuals and PEPs ▪ Cross border transfer and management of high value funds and assets (real estate)
Accountants	<ul style="list-style-type: none"> ▪ Not previously supervised for AML/CFT
Real Estate	<ul style="list-style-type: none"> ▪ Non CIREBA agents (approx. 25% of real estate agents) were not subject to any oversight prior to the appointment of DCI in 2017 ▪ Customer profiles (high net-worth individuals and PEPs) ▪ Wide geographic range of clients
Property Developers	<ul style="list-style-type: none"> ▪ Non CIREBA realtors are not subject to any oversight ▪ High net-worth individuals ▪ Wide geographic range of clients ▪ Cross-border activities
DPMS	<ul style="list-style-type: none"> ▪ Precious metals and stones can be utilised as a method to convert illicit cash into a legitimate, not easily traceable product ▪ Inconsistent conduct of proper due diligence ▪ Wide geographic customer base ▪ Number of players in the market not fully assessed
Leasing and Factoring	<ul style="list-style-type: none"> ▪ Sector not subject to any supervisory oversight
Pawn Brokers	<ul style="list-style-type: none"> ▪ High cash intensity ▪ Use of illicit funds to purchase/repurchase items
Money Lenders	<ul style="list-style-type: none"> ▪ High cash intensity ▪ Number of players in the market not fully known

Finance Companies	<ul style="list-style-type: none"> ▪ Cash intensive ▪ Sector not subject to any supervisory oversight
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240. In the assessment of the effectiveness of the preventative measures implemented in the Cayman Islands, the measures present in the banking and securities sectors (including amongst excluded persons), as well as the TCSPs were given more weight as they were identified as posing the most significant ML/TF risks.
241. FIs and TCSPs are required to be licensed by CIMA, save for the excluded persons who are required to register with CIMA. The lack of ongoing supervision for the AML/CFT compliance of excluded persons poses an additional risk, which can result in the facilitation of large volumes of high-valued cross-border transactions (currently not quantified by the jurisdiction). Approximately 45% of excluded persons are either (i) licensed by CIMA to carry on other types of financial business activities requiring a licence or (ii) affiliated with a group that is licensed by CIMA and perform securities activities for existing customers within the group. One example of an excluded persons captured in the AML/CFT framework would be an entity holding a Class B banking licence, which is also an excluded person, or an excluded person is a subsidiary of a licensed bank and performing securities transactions for customers of the bank. Consequently, for such entities or segments of excluded persons, relevant CDD requirements are in place with respect to their customers, thereby reducing, although not absolving, the ML/TF risks among excluded persons. In addition, given that 55% of the excluded persons are not subject to a comprehensive AML/CFT supervisory regime, there is limited insight on the extent of business activities conducted by these entities and the implementation of preventive measures by these persons. Further, the sample of excluded persons interviewed during the onsite was not sufficient for assessors to form definitive conclusions on the effectiveness of the measures implemented by excluded persons as one of the three excluded persons interviewed had not commenced business at the time of the onsite, and the other persons conducted small scale, limited operations , with one excluded person's business structure being operated through another regulated CSP.
242. DNFBPs (excluding TCSPs) are required to obtain a trade and business licence from the DCI.

Understanding of ML/TF risks and AML/CTF obligations

243. Larger FIs and TCSPs generally have a good understanding of their institutional ML/TF risks. The majority of FIs interviewed such as banks, securities firms, fund administrators and insurers, as well as TCSPs were members of international financial groups and were able to discuss specific risk factors that determined their institutional ML/TF risks. These institutions used a wide range of sources to conduct ML/TF risks assessments, including their knowledge of business operations, global developments within sectors, group information and international jurisdictional assessments, whilst referring to the summary of the results of the NRA as a reference point for comparison. The majority of banks, securities firms, fund administrators, insurers and TCSPs that are part of a group conducted and documented periodic

institutional risk assessments as part of a group requirement. One MF administrator that was interviewed, indicated it did not have a formal documented risk assessment and a TCSP never formally documented a risk assessment, although the group to which it belongs meets every year to discuss the risks posed to the entity and group. The lack of a formalised and documented processes were attributed to the fact that the requirement came into force when the AMLRs were enacted in October 2017. Notwithstanding, these institutions had sound knowledge of their ML/TF risks and were in the process of implementing formalised processes in this regard. For smaller FIs, the NRA results were used to help inform their institutional risk assessments. These institutions had only a fair understanding of their ML/TF risks and did not exhibit the same level of understanding as institutions that were members of an international financial group.

244. The excluded persons interviewed were also aware of their ML/TF risks to a fair extent and were able to describe the risks associated with their business activities, types of products and services offered, geographic exposure and affiliates. These persons generally engaged in risk averse activities such as managing MF with known functionaries licensed in the Cayman Islands (44% of the 55% of excluded persons not otherwise subject to ongoing monitoring by CIMA perform these activities) or arranging for investments to be managed between known parties. However, in the absence of comprehensive information on the composition of excluded persons that do not otherwise fall under the purview of CIMA, assessors were unable to conclusively determine the extent to which these excluded persons understand their ML/ TF risks.
245. The MSBs in the Cayman Islands are affiliated with international franchises and have a fair understanding of their ML/TF risks as a high cash intensive business with cross-border activities. Some MSBs have commissioned, on an ongoing basis, independent third-party risk assessments to gain a better understanding of the risks posed by their business activities and have used these assessments to form the basis of their internal institutional risk assessment framework as required by their franchiser.
246. Although not as extensive as other FIs and TCSPs, it was evident from the onsite visit that the credit unions also have a fair understanding of their ML/TF risks posed by the nature of their business, its client base, and the services offered, although this could be strengthened. Formalised processes for assessing their institutional ML/TF risks on an ongoing basis were not evident among these institutions, since the AMLRs came into force and effect in October 2017.
247. There is a good level of understanding of AML/CFT obligations among FIs and TCSPs. Interviewees from these sectors demonstrated sound understanding of the importance of their AML/CFT obligations with respect to the implementation of CDD and ECDD measures, staff training, client risk assessments and SAR and how these measures mitigated risks relative to the institutions themselves, and the jurisdiction holistically. FIs and TCSPs were attuned to and well aware of the requirements of the newly implemented AMLRs and were in the process of updating their policies and procedures to reflect these requirements. Additionally, FIs and TCSPs were generally concerned with preventing the Cayman Islands from being exploited for ML/TF purposes and had no aversions to applying required standards, in preserving the

jurisdiction's reputation. While FIs and TCSPs screen clients against TFS lists, the majority of entities interviewed were not aware of the requirement to report to the Governor (delegated to the FRA) the identification of persons and assets of such persons that are subject of TFS. Of all the FIs and TCSPs interviewed, only one bank indicated that a SAR would be filed.

248. Understanding of AML/CFT obligations is more established amongst FIs and TCSPs that are part of financial groups since group AML/CFT policies have been implemented in a manner to prevent conflict with the requirements of the Cayman Islands laws. In some instances, policies and procedures were developed specifically in consideration of local Cayman requirements, whilst encapsulating the overarching policies and procedures of the group. In other instances, group policies and procedures applied the standards of the jurisdiction with the most stringent AML/CFT requirements. For example, where operations are conducted in multiple jurisdictions with varying thresholds for applying diligence measures for beneficial ownership (mostly 25% vs 10%), the group would apply the standard with the 10% threshold, as required in the Cayman Islands).
249. CIMA's engagement with industry associations, as well as their publication of industry circulars create awareness of changes in the regulatory requirements and enable FIs and TCSPs to understand their AML/CFT obligations. As previously noted, during the time of the onsite visit, a number of FIs and TCSPs were in the process of updating their policies and procedures to include the new requirements or were awaiting the issuance of the new GNs, (although they do not fully satisfy the FATF's criteria for enforceable means) to complete the update process. These GNs were issued during the time of the onsite visit. Notwithstanding, FIs and TCSPs considered the provisions of the previous GNs of 2015 in implementing their AML/CFT requirements, contributing to the effectiveness of the Cayman Islands' combat of ML/TF. Solidifying the GNs as enforceable means would further enhance the jurisdiction's effectiveness accordingly.
250. The excluded persons interviewed were able to demonstrate characteristics of a fair understanding of their AML/CFT obligations although they did not themselves maintain AML/CFT policies and procedures and the understanding of their obligations was not necessarily specific to Cayman Islands law. Notwithstanding, in the absence of comprehensive information on the composition of excluded persons' activities, operations and structure, the extent to which excluded persons, not otherwise monitored by CIMA, understood their AML/CFT obligations could not be demonstrated.
251. Real Estate agents who are members of The Cayman Islands Real Estate Brokers Association (CIREBA) account for 75% of the jurisdiction's real estate sector and have a relatively good understanding of AML/CFT obligations and to a lesser extent of ML/TF risks. Supervised CIREBA members account for the vast majority of international clients with higher risk profiles, whereby non-CIREBA members mainly cater to the local clientele. The majority of the real estate agents have implemented policies and procedures which include procedures for high risk areas such as when conducting business with PEPs, individuals from particular jurisdictions and high net worth individuals. Prior to the DCI being named as the supervisory authority for the real estate sector, CIREBA performed a regulatory and supervisory role, which included onsite

examinations and training for its members. This contributed to the conveyance of AML/CFT obligations and implementation of the AML/CFT framework within a prevalent portion of the real estate sector.

252. The lawyers and accountants appear to have a fair understanding of their AML/CFT obligations and the ML/TF risks. In the case of the former, it is attributable to the fact that they also own and operate subsidiaries which carry on business as TCSPs, and conduct relevant financial business via these TCSPs. It is notable however that a significant portion of the business conducted by lawyers is the provision of services to private equity funds which are not supervised by CIMA. In addition, although lawyers are required to comply with the AMLRs, the POCL and the TL, they are not supervised for AML/CFT. Membership in the Compliance Association and in some instances participation by lawyers and accountants in Working Groups for the NRA has contributed to an improved understanding of their ML/TF risks and AML/CFT obligations.
253. The DPMS appear to have varied levels of understanding of their ML/TF risks. The DCI has embarked on an outreach and sensitisation programme. As such, the DPMS interviewed indicated that they are more aware of their risks and routinely assess the risks posed as a result of the nature of their business. The interviewees indicated that they considered the risks posed relatively low due mainly to the client base, the product offering and the standard mitigating measures they maintain.

Application of risk mitigating measures

254. FIs and TCSPs apply a risk-based approach in implementing mitigating measures which includes sound procedures and practices in the assignment of risk ratings to each customer at the time of onboarding and to a lesser extent on an ongoing basis. Assessors noted that FIs and TCSPs generally considered relevant factors in determining customer risk categories, and applied commensurate CCD measures and levels of scrutiny at the time of onboarding, although there are noted inconsistencies in the application of these measures as detailed below. FIs and TCSPs were able to aptly communicate the factors that attributed to high risk customers, and describe their established enhanced procedures and how they mitigate against risks. The risk-based approach implemented by FIs and TCSPs are equally applied with respect to legal persons and arrangements, which includes an assessment of beneficial owners and relevant affiliates. This practice of risk categorisation at the time of onboarding, leads to the appropriate application of measures to manage the level of risks posed by their clients.
255. FIs such as banks, securities firms, insurance companies, fund administrators and TCSPs that are members of financial groups have implemented sophisticated systems to aid in applying commensurate risk mitigating measures. These electronic systems allow FIs and TCSPs to identify inconsistencies with the parameters of a customer profile, flag unusual or high-risk jurisdictions involved in a transaction and conduct ongoing surveillance on its clients, especially where the activities of the FIs and TCSPs are voluminous and involve a significant

number of clients and counterparts. Additionally, some FIs and TCSPs (and in particular fund administrators) which are members of financial groups have established offices in different jurisdictions which have responsibility for conducting specific activities on behalf of the group entities. Within the fund administration sector, these are referred to as Centres of Excellence, where one office in a jurisdiction is responsible for obtaining due diligence information, conducting ongoing client surveillance, identifying anomalies and assigning risk ratings for all group clients. The efficient deployment of resources with the use of this practice strengthens fund administrators' ongoing monitoring measures, attributing to a sound implementation of risk mitigating measures.

256. However, assessors noted some inconsistencies with respect to the application of simplified measures for functionaries regulated in jurisdictions with an AML/CFT regulatory regime "equivalent to that of the Cayman Islands". Although some consideration is given to these jurisdictions as having lower risk, it was not evident that FIs were undertaking an assessment of the functionaries' AML/CFT compliance levels in all cases. This may potentially facilitate ML/TF through Caymanian FIs, by the funds' use of functionaries that fail to comply with AML/CFT requirements in their respective jurisdictions.
257. Fund administrators and fund managers implement thorough due diligence practices on the fund's functionaries (i.e. its promoter, directors, investment manager, investment advisor, administrator and custodian), including their directors and beneficial owners, and consider the risks associated with the jurisdiction of incorporation, prior to the establishment of the business relationships. This practice is implemented across licensed fund administrators and managers, thus reducing the vulnerability of the mutual fund sector for misuse for ML/TF activity. Fund administrators, having the responsibility for accepting investors in both regulated and unregulated funds, address ML/TF risks posed by customers by conducting CDD on each proposed investor in the fund. Appropriate risk mitigating measures are implemented by fund administrators with respect to individual fund investors, with practices such as requiring director approval before accepting high risk investors into a fund. There were however inconsistencies in the application of risk mitigating measures for institutional fund investors such as custodians, other funds, etc. For example, one administrator indicated that it would drill down to the each commercially identifiable beneficial owner that holds 10% or more ownership in the entity. Another administrator indicated that it would conduct due diligence on the institutional investor itself but would not obtain information from the custodian on the clients (i.e. the beneficiaries) for which it is acting on behalf. The administrator explained there would be agreements in place that would ideally include a requirement to provide the information when requested; however, it did not appear that this feature is always included in such agreements. The inconsistency in obligations contained within these agreements negatively impacts the administrator's ability to obtain information and beneficial ownership in instances where it may be required by a relevant competent authority.
258. FIs such as MSBs and credit unions/building societies effectively use resources at their disposal to apply measures which are appropriate to relevant risks. The MSBs have shared information technology platforms including networks within their groups, which allow for screening of

their customers. The systems also feature parameters that identify where a customer has sought to remit funds at more than one branch within a group.

259. During interviews, excluded persons that had commenced business demonstrated the application of appropriate risk mitigation measures, conducting risk assessments not only on its customers, as well as counterparties involved in the fulfilment of their business activities. As an additional risk mitigating measure, another excluded person restricted high risk individuals from investing in the funds it manages and applied a more risk averse business structure. Although it is evident that some risk mitigation measures are being applied with respect to some excluded persons interviewed, a conclusive determination on the general effectiveness across this segment could not be determined, based on the limitations as previously described.
260. The DNFBPs (other than TCSPs) have generally not commenced assessing their ML/TF risks and the development of risk mitigating measures are at the beginning stages. Nonetheless, they have demonstrated a fair level of understanding of risk-based mitigating measures. There appears to be a better understanding of CDD measures among lawyers and accountants. DPMS have only recently been brought under the AML/CFT supervision regime of the DCI and thus are not fully aware of the process and their obligations of applying risk mitigating measures.

Application of enhanced or specific CDD and record keeping requirements

Establishing a Relationship

261. FIs across all sectors and TCSPs implement adequate CDD measures implemented at the onboarding of customers. In the case of corporate clients, attention is given to identifying the beneficial owners by drilling down to the ultimate beneficial owners/controllers of the client (holding 10% or more interest), gaining an understanding of the nature of the entities' business activities and the reason for establishing the business relationship. These steps are key to the jurisdiction's commitment to preventing the misuse of legal persons and arrangements, as the activities and nature of transactions would become key in identifying where business activities become suspicious. There is sound implementation of a risk-based approach to CDD by FIs and TCSPs with additional information and documentation gathered where corporate entities are rated medium or high risk and less required where a client is categorised as low risk. The majority of FIs interviewed relayed that they do not regularly receive trust clients; however, in the event of a trust client, the settlor, trustees and beneficiaries must be and are identified in practice.
262. The excluded persons interviewed also implemented adequate CDD measures during the establishment of business relationships. However, the extent to which this is applied across all excluded persons is undetermined for the reasons previously discussed.
263. With respect to Cayman Islands' limited partnerships, some FIs and TCSPs only collect CDD information on the general partner. This is inconsistent with the requirements of the AMLRs,

which require due diligence on beneficial owners that hold interests of 10% or more. However, CIMA's GNs only require identification evidence for at least two partners/controllers, the general partner and/or authorised signatories. It appears that some FIs and TCSPs implement the processes and procedures contained in the GNs, as opposed to the requirements of the AMLRs, which may leave room for potential misuse of this type of legal person.

264. The majority of the FIs, TCSPs and other DNFBPs except for DPMS conduct client screening through open source searches. In addition, FIs, TCSPs and other DNFBPs except for DPMS refuse or terminate client relationships if the CDD process cannot be completed (including the collection of beneficial ownership information), and then consider filing an iSAR and do in fact apply these measures.
265. The assessment of the DNFBPs' (except for TCSPs and real-estate agents that are members of CIREBA) compliance with CDD and beneficial ownership requirements are yet to be fully undertaken by the authorities. Thus, the authorities are not fully aware whether CDD and record keeping are being adequately implemented by these DNFBPs (except for TCSPs) as the supervision of the sector is in a nascent stage. Based on the interviews conducted with the other DNFBPs it is evident that CDD and transaction records are maintained. It should be noted that several lawyers firms own or are affiliated with other members of a business group which perform services that are captured under regulated relevant business and are supervised as TCSPs.

Ongoing CDD

266. Generally, FIs and TCSPs adopt varying methods of ongoing CDD which differ in terms of trigger events, frequency of reviews and database programmes utilised. Regardless of the methods employed, the implementation of ongoing CDD is not consistently implemented across all licensees as demonstrated by CIMA's on-site findings which identified deficiencies in conducting ongoing monitoring as the most significant AML/CFT deficiency, particularly in the banking sector. Inadequacies in the ongoing monitoring systems within the banking industry (the biggest sector in terms of asset size) could potentially lead to the facilitation of unusual or suspicious transactions without detection or a misclassification of customer risks profile. However, it has been noted that during the period 2014 to 2016, the banking sector improved its level of compliance with this measure. In 2016, 7 out of 27 banks (26%) inspected had weaknesses in ongoing monitoring. This is significantly lower when compared with 2014 and 2015 where 50% and 56% respectively of banks inspected had shortcomings in this area .
267. Ongoing monitoring has also been identified as a deficiency with TCSPs, although not their most significant AML/CFT weakness. Between the period 2014 to 2016, on average approximately 28% of the TCSPs inspected were cited for ongoing monitoring breaches. An external auditor for FIs and TCSPs identified the weaknesses relating to ongoing monitoring and indicated that FIs and TCSPs are generally aware of the requirements for ongoing monitoring, but fail to understand how to implement such measures. This potentially results in an increased exposure to ML/TF risks, particularly given the tendency of criminals to gravitate towards international financial centres for the misuse of legal persons. The table below provides

statistics on FIs' failure to maintain adequate systems for ongoing monitoring, as identified by CIMA for the period 2014 to 2016.

Table 5.2 Onsite Inspection Results on Inadequate Ongoing Monitoring Systems

Year	Banks	Securities	TCSPs	Insurance	MSBs	Credit Unions/Building Societies
2014	14	0	11	0	3	3
2015	13	0	7	0	1	2
2016	7	3	8	1	0	0

268. All fund administrators interviewed had well implemented CDD controls which identify and verify the person to which redemptions or withdrawals are paid and there are no transfers to third party accounts. These measures aid the jurisdiction in preventing the misuse of fund structures through the remittance of payment of unidentified and unknown third parties.
269. Conversely, with respect to excluded persons which were of concern to CIMA, the results of an external audit conducted on two excluded persons indicated that those entities transmitted funds to a third party without conducting any due diligence on the third party, scrutiny of the transactions or consideration of the relationship between the client and the third party. Where there is a lack of CDD controls within entities conducting these types of activities with limited AML/CFT supervision, the Cayman Islands could become exposed to the facilitation of potential ML/TF activities. Assessors could not conclude that these deficiencies were generally prevalent amongst excluded persons.
270. While not as sophisticated as larger FIs, the smaller FIs such as MSBs and credit unions, conduct ongoing monitoring and appropriate CDD measures which are well implemented. MSBs have appropriate platform systems in place which allow them to risk-rate their customers at each instance a transaction is initiated. Additionally, MSBs scan their customer against third party automatic software upon initiation of transactions and at the time of any pay-out, allowing the MSB the capability to suspend any transaction where a scan reveals adverse information on a customer.
271. Credit unions generally review their members upon application for new products or services (for example, a loan application), or when variations in a customers' activity occurs. Members are also screened manually and screening is also triggered when different TFS and political lists are updated, or when any adverse information concerning its members is identified in the media. Credit unions however indicated their intention to subscribe to an electronic platform database to add more efficiency and accuracy in the screening of their members.

Record Keeping

272. FIs and TCSPs generally maintain records for a period of 5 years after the completion of a transaction or the termination of a business relationship. From a review of the results of the

CIMA inspections conducted between 2014 and 2016, record keeping is not a major deficiency for FIs and TCSPs, who are mostly compliant with record-keeping requirements. Table 5.3 below details record keeping breaches found on onsite inspections between 2014 and 2016. Of the 307 inspections conducted within the relevant period, only 9% of entities were cited for record keeping deficiencies. Notwithstanding, given the deficiencies previously discussed with respect to ongoing CDD, the adequacy of the records that are being maintained causes a consequential concern.

Table 5.3 Onsite Inspection Results on Record Keeping Deficiencies

Year	Banking	Securities	TCSPs	Insurance	MSBs	Credit Unions/ Building Societies
2014	4	0	2	0	1	0
2015	2	0	3	2	1	0
2016	2	⁴	1	6	0	0

273. The real estate agents interviewed have implemented adequate identification and record keeping measures. The DPMS interviewed have also to a lesser extent implemented identification and record keeping measures and, in some instances, , requiring identification for transactions over particular amounts for example sales over KYD1,000, which is a more stringent approach to the requirements of the FATF Recommendations.

ECDD

274. All FIs, TCSPs and real estate agents interviewed had well established and appropriately applicable measures in place when conducting business with high risk customers. These measures generally include (i) requiring senior management’s approval for establishing a high risk relationship, (ii) using a wider range of sources (as opposed to when conducting CDD) in verifying the customer’s identity and generally seek further information to verify the source of that customer’s source of funds and source of wealth, (iii) annual review of high risk customers and (iv) higher levels of scrutiny where transactions are being conducted with or facilitated through FIs and TCSPs. In addition, some FIs and TCSPs impose conditions on the client engagement with respect to high risk customers, which may limit the type of business being engaged or the value of assets that the clients may transact. The ECDD procedures implemented by FIs, TCSPs and real estate agents are commensurate to the level of risk identified.
275. The excluded persons interviewed had ECDD procedures in place, although not documented in formalised policies and procedures. In the absence of comprehensive information on the composition of excluded persons sector and given the materiality of these entities, not otherwise subject to ongoing AML/CFT supervision, the effective implementation of ECDD with respect to all relevant excluded persons could not be demonstrated.

Application of EDD measures

PEPs

276. All FIs and TCSPs adequately apply enhanced customer due diligence measures when dealing with PEPs. These institutions utilise third party automatic software as well as general internet searches to determine whether these individuals are PEPs. With respect to local PEPs, these institutions maintain local PEP lists which are kept up to date by keeping abreast of local changes in government by reviewing information from the Gazette and local media sources.
277. FIs and TCSPs have a good understanding of the ML/TF risks posed by PEPs and classify both domestic and foreign PEPs, as high-risk clients, in accordance with the requirements of the AMLRs. The methods for implementing EDD vary by institutions (e.g. some entities make sub-categories of high risk PEPs to influence efficiency in deployment of resources). However, the methods employed are commensurate to the ML/TF risks associated with PEPs.
278. MSBs also use electronic databases to identify PEPs, and also maintain lists of local PEPs in the jurisdictions from which they operate. These lists are updated with any changes in Government. Credit unions do not have sophisticated technologies in place for the detection of PEPs. However, the credit unions' client bases are strictly local clients, and they maintain a list of local PEPs for screening their clients. This measure is sufficient based on the nature of the entities' clients.
279. Excluded persons interviewed had a good understanding of the ML/TF risks posed by PEPs and had measures in place similar to FIs and TCSPs. However, as noted previously, a conclusive determination with respect to this portion of the securities sector could not be made.
280. For domestic PEPs, the DNFBPs (except for TCSPs) rely on their knowledge of the relatively small community of the Cayman Islands, which makes it easy for them to determine new domestic PEPs. This method of identifying domestic PEPs in this manner has inherent weaknesses which are mitigated to some extent by the small size and familiarity of the Cayman Islands community.

Correspondent Banking

281. Banks in the Cayman Islands do not offer correspondent banking services.

New Technologies

282. Assessment of ML/TF risks associated with new technologies being implemented or utilised by FIs and TCSPs are included as part of their institutional risk assessments and mostly occur in FIs and TCSPs that are part of a group. The FIs and TCSPs interviewed however, tended to avoid introducing new products and services, for instance one FI interviewed by the assessors relayed that it had no intention of venturing into bitcoin or electronic currency. Notwithstanding, FIs and TCSPs adequately take into consideration any products or services to be offered in their institutional risk assessments, as such, when venturing into new business

products/services the institutions will consider the risks posed. Excluded persons interviewed were also cautious and rarely seek to engage in new technologies.

283. Lawyers, accountants and real estate agents maintain policies and procedures relating to assessing the risks associated with the implementation of new technologies within their organisations. Those interviewed indicated a propensity to be risk-averse hence the introduction of new products and technologies is uncommon.

Wire Transfer Rules

284. Banks are aware of and adequately implement the requirements with respect to wire transfers. These institutions have adequate policies and procedures implemented for transmission and pay-out of wire transfers and reject transfers where adequate information (on the originator and the beneficiary) has not been provided and these procedures are applied even in the absence of some specific requirements in the AMLRs. Banks aptly assess the destination of the wire transfer in determining whether the transaction is deemed high risk and implement appropriate CDD measures prior to pay-out of wire transfers. This prevents the transfer of funds to persons subject to TFS for TF or PF, and CDD measures appropriately require enhanced measures where a person has been subject to criminal proceedings or has been criminally charged.
285. For banks that are part of an international financial group, where funds will only be transferred to Cayman accounts from brokerage accounts of other members of the financial group which reduces the ML/TF risks posed to the Caymanian banking institution. In such cases, the other members of the financial group would conduct open source searches of the customer prior to the transfer of funds to the customer's account in the Cayman Islands, and as such would detect where adverse information on that customer exists. The Caymanian banking institutions would however become aware of the detected information and reject the transfer and consider filing a SAR in the Cayman Islands.
286. MSBs are subject to and apply the same wire transfer rules as banking institutions and have procedures in place that are consistently implemented to screen its customers at the initiation of a transaction and at the point of pay-out. MSBs also suspend any remittance upon the discovery of adverse information or where identification could not be established.

Targeted Financial Sanctions relating to TF

287. Internal policies and procedures for TFS relating to TF are fairly well implemented by FIs and TCSPs as evidenced by their ability to describe their processes for screening customers and for scrubbing its customers against TFS lists, such as OFAC lists and UN sanctions lists via third party automatic software. Notwithstanding, implementation of TFS requirements needs improvement. Although scrubbing is a general practice, the timeframe in which it is conducted varied by FIs e.g. nightly, weekly, monthly or quarterly. These variations are based on the size and type of client base, the type of business activities and the level of technological resources available. Although these factors are taken into consideration, the implementation of screening on a quarterly basis is a deficiency with respect to the timely freezing of assets of a sanctioned person, as described in IO 10. It is noted however that checks are conducted on both the originator and beneficiary prior to the execution of wire transmissions on both the originator

and the beneficiary. CIMA in its recent inspections have confirmed that these checks are being undertaken. These screenings were conducted by interviewed excluded persons on a less frequent basis, typically on an annual basis. While assessors could not confirm this as a general practice amongst excluded persons, where transactions are being effected in an unregulated environment, the potential exists for the facilitation of business for sanctioned persons who had not been identified in timely manner.

288. Funds or assets of persons that are the subject to TFS have never been identified in the Cayman Islands. Nevertheless, FIs and TCSPs were able to communicate to assessors relevant internal procedures to reject transactions, freeze assets and initiate an investigation in the event that a designated person has been identified. The majority of FIs and TCSPs (with the exception of one banking representative) indicated that these assets would be reported to the FRA as a SAR; and had limited knowledge that a separate report of any customers identified to be the subject of TFS and any assets frozen must be submitted to the Governor, (subsequently delegated to the FRA). The jurisdiction has initiated steps to create awareness of this requirement through the guidance issued by FRA on the implementation of TFS with respect to terrorism, TF, proliferation, and PF within the Cayman Islands, which includes guidance on filing reports.
289. The real estate agents and lawyers interviewed had similar measures in place for addressing TFS relating to TF as those for the FIs and TCSPs. The DPMS interviewed expressed a limited level of awareness of screening for TFS and do so mainly through Google checks or local knowledge for any adverse information on a client. The DCI should continue their outreach and sensitisation within this sector to facilitate a comprehensive understanding of their obligations relating to TFS.

Higher Risk Countries identified by the FATF

290. Most FIs and TCSPs relayed that they placed higher scrutiny on countries outside of the AMLSG List of Countries and Territories deemed to have equivalent legislation (“the AMLSG List”). The list of comparable jurisdictions was originally developed in 2000, previously known as Schedule 3 countries and was updated over the years. The decision to include a country in the list is based on an assessment of the country’s AML/CFT legal framework, the effectiveness of the AML/CFT regime, and equivalency of the country with Cayman Islands on the basis of membership in international bodies such as the FATF, CFATF, OGBS or Egmont Group. In addition, FIs and TCSPs which are members of international financial groups indicated that they additionally use other lists to identify higher risk countries such as the FATF lists, the International Narcotics Control Strategy assessment of countries and the Basel AML Index and a number of FIs and TCSPs would refuse to accept business originating out of higher risk jurisdictions. Others implement procedures for enhanced scrutiny and procedures are engaged when dealing with transactions or customers originating or resident in such high-risk areas. Excluded persons interviewed, as a matter of practice, were also averse to accepting business originating from jurisdictions they determined as posing higher risks due based on their own research and assessment.

291. The lawyers, accountants, real estate agents and to a lesser extent the DPMS interviewed indicated that similar to the FIs and TCSPs, they place a higher scrutiny on clients from higher risk countries. These entities appeared to be aware of the AMLSG List of Countries and Territories deemed to have equivalent legislation and the FATF lists and they maintain policies and procedures relating to assessing the risks associated with onboarding clients or conducting business with clients who reside in such countries. For the DPMS the extent of their application of specific measures for higher-risk countries is the retention of adequate documentation from clients when conducting transactions.

Reporting obligations and tipping off

292. FIs and TCSPs interviewed are well aware of their requirements to file suspicious activity reports, the internal process for which is included as part of the AML/CFT staff training. Additionally, FIs and TCSPs also incorporate processes and procedures within their AML/CFT policies and procedures and have systems in place for monitoring and detecting suspicious activities and for filing of internal SARs (iSARs) and filing SARs with the FRA. These measures are not well implemented by excluded persons who do not always have their own policies and procedures in place despite their awareness of the requirements. The table below provides statistics of reporting by FIs and DNFBPs for the years 2013 to 2017.

Table 5.4 SAR Reporting by FIs and DNFBPs

FIs BY TYPE	2013	2014	2015	2016	2017
Banks	167	192	261	232	211
Securities Business	48	32	4	12	8
Excluded Persons	0	2	2	8	5
Insurance Business	3	15	8	10	17
Mutual Fund Administrators	29	31	26	44	37
MSBs	52	20	56	45	63
Credit Unions/ Building Societies	0	0	0	0	5
Sub-Total	299	292	357	351	346
DNFBPs BY TYPE					
TCSPs	74	83	78	124	84
Real Estate Agents	3	5	7	6	3
DPMS	1	0	4	4	2
Lawyers	20	32	43	26	36

Accountants	1	7	2	0	3
Other DNFBPs	7	2	2	4	6
Sub-Total	106	129	136	164	134
TOTAL	405	421	493	515	480

293. An area of concern was the lack of feedback from the FRA on the quality of the reports filed. Additionally, the FRA has not conducted any analysis on the quality of SARs from different segments of the financial sector. The reporting of quality STRs is critical to the Cayman Islands' effectiveness in combatting ML/TF/ PF given the global nature of the jurisdiction's activities. In the absence of quality SARs, especially in the banking, securities and fiduciary sectors, pursuit of investigations with respect to many transactions may be hindered.
294. In an effort to ensure the highest quality of SAR reporting, the FRA has convened face-to-face meetings with the financial sector to discuss the quality of SARs filed. The basis by which meetings are held is dependent on the number of SARs filed (with meetings having only being held with the 5 retail banks located in the Cayman Islands) and not based on any priority of the ML/TF risks posed to the jurisdiction.
295. As noted in Table 5.4, the greatest number of SARs emanate from the banking industry, and primarily from Category A retail banks located in the Cayman Islands, with Category B bank filings being comparatively lower (see Table 3.6 in Chapter 3). Although Category B banks file SARs, the extent to which these emanate from Category B banks physically located outside of the Cayman Islands was not evident. It additionally is not apparent whether these entities were aware of their obligations to file SARs with the FRA (even if filed in their country of location). It is noted that a prominent function of the Class B banks located outside of the Cayman Islands is to manage the liquidity of its group's assets. Notwithstanding, these entities also conduct business with high net-worth clients such as financial and non-financial corporations, non-governmental public sector entities, non-group banking entities and other banks, which may expose them to high levels of ML/TF risks. Consequently, SAR reporting is crucial in identifying and preventing criminal activities, and obtaining direct information on the activities that occur in these jurisdictions, which can help identify criminal trends and inform on the ML/TF risks of particular jurisdictions.
296. The excluded persons interviewed were well aware of their obligation to file SARs, although none had ever filed a SAR at the time of the onsite. The statistics show that SARs are being filed by excluded persons, although in limited quantities. Based on the information provided, coupled with the limited monitoring of these entities, assessors could not determine that excluded persons were generally aware of their reporting obligations and the extent to which suspicious activities were being identified internally. Where CIMA imposed the requirements for two excluded persons to conduct external AML/CFT audits, these entities were cited for not filing SARs within a period considered as soon as practicable. It appears that there is a significant

level of under reporting from excluded persons when compared to the filings made by the licensed securities businesses, which are significantly smaller in number and possibly facilitate smaller value transactions, file more SARs than excluded persons.

297. From discussions with FIs and TCSPs, MLROs have sufficient independence to file SARs, without the permission or review of the Board of Directors or head office (where applicable). Assessors were however notified of one instance where the independence of the MLRO is weakened, because the MLRO usually discussed the activity with the directors in determining whether a SAR should be filed.
298. All FIs and TCSPs (including excluded persons) have a good understanding of the legal requirements and ramifications of tipping off. The topic of tipping off is part of all the training programmes of the FIs and TCSPs interviewed, with some FIs even identifying real-life examples where tipping-off could arise unintentionally, thus raising employees' awareness of the matter. From the FIs interviewed, there were no instances of tipping-off within their organisations.
299. As noted in Table 5.4 above, the number of SARs reported by the real estate and DPMS sectors have been consistently low. The FRA indicated that there are deficiencies with the quality of the SARs filed by the real estate and DPMS sectors and further guidance is being provided on the broad area of suspicious activity identification, preparation and filing of SARs. All DNFBPs have a generally fair to good understanding of the requirements and the implications of tipping off and from the interviews conducted, there were no instances of tipping off.

Internal controls and legal/regulatory requirements impeding implementation

300. The adequacy with which FIs and TCSPs apply internal controls to ensure compliance with the requirements of their AML/CFT requirements is impacted by (i) having relevant policies and procedures in place, (ii) auditing the institution to ensure that policies and procedures are being implemented, and (iii) undertaking training on how to implement policies and procedures.
301. Although licensed FIs and TCSPs have written AML/CFT policies and procedures in place. Table 5.5 below depicts the number of CIMA citations with respect to deficiencies relating to failure to keep adequate or up to date policies and procedures. While the level of compliance for banks in these areas have improved over the years, the assessors remain concerned about the TCSPs sector's level of compliance.

Table 5.5: Onsite Inspection Results on Inadequate/Outdated AML/CFT Policies and Procedures

Year	Banks	Securities	TCSPs	Insurance	MSBs	Building Societies /Credit Unions
2014	11	-	18	-	1	1
2015	10	3	12	0	0	1
2016	3	2	14	2	0	0

302. The conduct of internal audits to test the compliance with AML/CFT policies and procedures were inherent in the FIs and TCSPs interviewed, with these audits being conducted once or twice per year. CIMA onsite inspection results indicated however that the failure to conduct internal audits were an issue for TCSPs, who were cited for 13 failures in 2014, 11 in 2015 and 8 in 2016. These failures were less prominent in the banking, insurance and securities sectors and did not arise in the MSBs, credit unions and building societies inspected during those years.
303. There are no legal or regulatory requirements in the Cayman Islands (e.g. financial secrecy) which would inhibit the implementation of internal controls and procedures. In cases where FIs or DNFBPs are part of a larger group, group policies are applied and if the Cayman Islands law has higher standards when compared to a jurisdiction where the group operates, the higher standards would be applied.
304. As detailed above, the excluded persons interviewed did not maintain AML/CFT policies and procedures themselves, but instead relied on persons performing their business activities to have policies and procedures in place. Notwithstanding, the ultimate responsibility for compliance with the requirements of the laws lies with these excluded persons, and as such relevant policies and procedures should be maintained accordingly.
305. All FIs and TCSPs interviewed subjected their staff to AML/CFT training annually, with the majority of FIs requiring new staff to be trained within 30 days of employment. An external auditor occasionally appointed to conduct AML/CFT audits of FIs and TCSPs however noted that there are instances of inadequate provision of AML/CFT training, particularly for TCSPs as detailed in Table 5.6 below. Where there is insufficient training with respect to TCSPs, the risks of misuse of legal persons and arrangements are greatly increased. However, these failings are not widespread and only relate to 22% of the TCSPs inspected during the 2014 to 2016 period. As such any consequential potential for misuse of legal persons and arrangements due to deficiencies in training would be limited in this sector. Assessors could not determine whether adequate training is being provided among the portion of excluded persons not otherwise subject to comprehensive supervision, given that monitoring is not undertaken to ensure their compliance and that the only statistics relating to excluded persons' failure to provide training to staff related to 2 entities that were subject to an external audit due to concerns raised.

Table 5.6: Onsite Inspection Results on Inadequate AML/CFT Training

Year	Banks	Securities	TCSPs	Insurance	MSBs	Building Societies /Credit Unions
2014	4	0	7	0	1	0
2015	2	4	5	0	1	2
2016	1	0	7	2	0	0

Overall Conclusions on Immediate Outcome 4

306. FIs and TCSPs in the Cayman Islands generally display a fair understanding of their ML/TF risks and apply risk mitigation measures, consistent with ML/TF risks identified. However, deficiencies in the application of ongoing CDD measures, the conduct of internal audits and the conduct of appropriate training impact their abilities to aptly mitigate these risks. Risk assessments in some of these institutions need to be formalised and included in policies and procedures. SAR reporting mostly emanates from local retail banks. In contrast, Cayman Islands banks operating in other jurisdictions, as well as excluded persons report SARs only on a limited basis. Given that excluded persons may provide services to high net worth individuals, the risk that 55% of these entities may be engaging in high level cross-border transactions with limited or no regard to the AML/CFT requirements, poses a great risk to the jurisdiction. Similar to the FIs and TCSPs, the DNFBPs – mainly the TCSPs, lawyers, accountants and real estate agents demonstrate an understanding of their ML/TF risks. The DPMS has demonstrated an understanding but to a lesser extent as they have only recently been sensitised on their obligations in relation to AML/CFT. All DNFBPs maintain policies and procedures which establishes measures to mitigate the risks associated with their business activities relating to ML, however for sectors such as the DPMS, additional guidance could be provided relating to SAR reporting. Smaller FIs and DNFBPs do not screen their customers against sanction lists in a timely manner. **The rating for Immediate Outcome 4 is a Low level of effectiveness.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

- i. CIMA has a good understanding of the ML risks for the sectors under its regulatory purview while its understanding of TF risks would benefit from an analysis of cross-border transactions in the banking and securities sectors.
- ii. There are adequate due diligence procedures relating to the licensing and registration of FIs, TCSPs, real estate agents and DPMS. Due diligence is conducted at the application stage and on an ongoing basis on directors, persons with beneficial interest at or above the threshold of 10%, management and other senior officials.
- iii. CIMA maintains information on the shareholders and beneficial owners of a portion of excluded persons that are otherwise licensed by CIMA or affiliated with another entity licensed by CIMA. The shareholding and beneficial ownership of approximately 55% of excluded persons is not maintained by CIMA, thus creating potential avenues for criminals and their associates to enter the financial sector.
- iv. Approximately 45% of excluded persons are subject to CIMA's full supervision where they are either (i) otherwise licensed by CIMA to perform other activities or (ii) are group affiliates of CIMA licensed entities. The remaining excluded persons are subject to limited supervision for compliance with AML/CFT obligations in the Cayman Islands, the majority of which perform low risk activities such as fund management. Other low risk activities that are undertaken by these persons include investment advice and investment arrangement. A small portion of excluded persons perform higher risk activities such as portfolio management and broker/dealing. Sufficient information has not been collected and assessed to implement an appropriate supervisory regime for these persons performing such higher risk activities.
- v. CIMA continues to address its human resource constraints and is in the process of enhancing its staff complement, with a view to strengthening its recently enhanced risk-based approach to AML/CFT supervision.
- vi. CIMA has recently taken steps to enhance its risk-based approach to AML/CFT supervision. While the implementation of this approach is nascent, 18% of the inspections conducted in 2017 were AML/CFT specific and in line with CIMA's refined AML/CFT supervisory methodology.
- vii. CIMA was recently granted the powers to levy administrative penalties for breaches of the AMLRs, and the framework for the use of such penalties have been implemented.
- viii. DCI, recently appointed AML/CFT supervisor for real estate agents and DPMS, is in the process of gathering critical information on these sectors through a comprehensive registration process, which will inform their AML/CFT supervisory framework, which has

not yet been fully implemented. CIREBA previously undertook AML/CFT inspections for approximately 75% of the real estate sector.

- ix. Attorneys who are not TCSPs are not subject to AML/CFT monitoring. They provide legal services including in the case of large international firms, investment funds (hedge and private equity), banking and finance, insurance, wealth structuring and management including cross border transactions, capital markets, TCSP, restructuring and insolvency, dispute resolution and litigation relating to those services.
- x. Significant amount of real estate is sold directly by property developers without the involvement of real estate agents and are not subject to any oversight by a supervisory authority.
- xi. Assessments of the DNFBPs (except for TCSPs) compliance with CDD and beneficial ownership requirements are yet to be undertaken by the authorities.

Recommended Actions

- i. CIMA should gather more comprehensive information on excluded persons (including size of client assets, business activities, client base, geographic exposure, etc.) and conduct more detailed analysis of information to gain a better understanding of the ML/TF risks posed by this segment of the securities sector and implement appropriate risk mitigation measures.
- ii. CIMA should attain and deploy additional resources to enhance its AML/CFT supervisory functions, considering the number of FIs and TCSPs under its remit, as well as the level of ML/TF risks posed by these entities.
- iii. The DCI should complete the registration process for the real estate agents and the DPMS and continue its outreach activities to ensure that these sectors are adequately aware of their AML/CFT obligations including those related to filing of SARs and TFS.
- iv. CIMA should implement more comprehensive mechanisms to conduct fit and proper assessments of shareholders and beneficial owners of the 55% of excluded persons that are not otherwise subject to CIMA's full supervisory regime.
- v. The jurisdiction should appoint an AML/CFT supervisory authority for lawyers and real estate developers given the risks identified in the NRA, as noted under Chapter 2.
- vi. CIMA should consider levying administrative penalties and imposing other forms of enforcement actions at its disposal, where remedial actions have not been taken within specified time periods.
- vii. CIMA should periodically review the extent to which its supervisory actions have a positive impact on the level of AML/CFT compliance among FIs and TCSPs.
- viii. The DCI should complete a risk assessment of the real estate and DPMS sectors and the DCI should ensure that real estate agents and DPMS maintain an up-to-date and accurate

assessment of the ML/TF risks. A risk-based supervisory regime should be implemented. Outreach, registration and other information gathering processes should be conducted on an ongoing basis.

The relevant Immediate Outcome considered and assessed in this chapter is IO3. The recommendations relevant for the assessment of effectiveness under this section are R26-28 & R.34 & 35.

Immediate Outcome 3 (Supervision)

307. CIMA as the sole financial services regulator in the Cayman Islands has the responsibility for monitoring AML/CFT compliance of 1,267 FIs such as banks, securities and investment entities, insurance entities, money services businesses, credit unions and building societies, as well as TCSPs. Another 2,581 Excluded Persons only require registration, as opposed to licensing, and are subject to limited supervision by CIMA. This limited supervision includes submitting the directors of these persons to licensing and registration and subject to fit and proper assessments, the receiving and reviewing of annual returns which provide basic information on business activities (used in CIMA's risk analysis), confirmation of the MLRO and a declaration of compliance with the requirements of the AMLRs. Although excluded persons are not generally subject to CIMA's full supervisory gamut, 1,161 (45%) of these excluded persons are otherwise (i) licensed by CIMA to perform other licensable activities, or (ii) form part of a group of companies licensed by CIMA. The assessment of the supervisory functions performed in relation to the remaining 1,420 (55%) excluded persons, were assessed based on the nature of their business activities. The activities conducted, as disclosed under their annual declarations, include investment advice, investment arrangement and investment management (which may include broker/dealers). The risks in the securities sector do not emanate from these types of activities. The majority of risks posed emanate from the activities of investment management and broker/dealing, as investment advice and arrangement activities do not involve any handling of funds for any investment purposes. These entities would not inherently be considered high risk and thus needing significant supervision by CIMA. In addition, 625 of the registered excluded persons solely provide investment management services to one mutual fund that is already licensed and supervised by CIMA. Given the nature of fund management, the core ML/TF risks lie with the fund administrator as opposed to the fund manager.
308. In March 2017, the DCI was appointed the AML/CFT supervisor of real estate agents and DPMS and at the time of the onsite the risk-based framework for the effective supervision of these sectors was not yet fully developed. Prior to the appointment of DCI as supervisor for the real estate sector, CIREBA supervised its members (75% of the real estate sector) for compliance with AML/CFT obligations, which included the conduct of onsite inspections. In December 2017, CIIPA was appointed as the supervisory authority for the AML/CFT supervision of firms of accountants that engage in or assist other persons in the planning or

execution of relevant financial business, or otherwise act for or on behalf of such persons in relevant financial business. While the AMLR (DNFBPs) Regs. provide for a supervisory authority for attorneys and other independent professionals, a body is yet to be appointed to establish and implement a risk-based AML/CFT supervisory framework.

309. A breakdown of the FI and DNFBP sectors, along with their AML/CFT supervisors in the Cayman Islands is detailed in the table below.

Table 6.1: Types of FIs and DNFBPs and relevant AML/CFT Supervisor

Financial Institutions / DNFBPs	No.	AML/CFT Supervisor
Banks		
Category A Banks	11	CIMA
Category B Banks	147	
TCSPs	206	CIMA
MSBs	5	CIMA
Insurance Licensees		
Class A Insurers	29	
Class B Insurers	675	
Class C Insurers	25	CIMA
Class D Insurers	3	
Insurance Managers	29	
Securities Licensees		
Mutual Funds	10,463	CIMA
Mutual Fund Administrators	103	CIMA
SIBL Licensees	34	CIMA
Excluded Persons	2,581	CIMA (Limited)
Building Societies	1	CIMA
Credit Unions	2	CIMA
Accountants	836	CIIPA
Lawyers	745	None
Real Estate Agents	75	DCI
Dealers in Precious Metals	26	DCI

310. Gambling activities and casinos, whether land-based or internet based are not permitted to operate within the Cayman Islands. Gambling on cruise vessels is allowed if the vessel is registered in the Cayman Islands but only under specific conditions.

Licensing, registration and controls preventing criminals and associates from entering the market

CIMA licensees

311. CIMA has sound controls in place to prevent criminals and their associates from entering the market as owners or holders of a significant management function of licensed FIs and TCSPs, via the application of a fit and proper test on persons performing a controlled function. These persons include the directors, shareholders, beneficial owners (holding 10% or more interest), managers and officers of all applicants seeking licensing, as well as licensed FIs and TCSPs. This also extends to the directors of mutual funds, who require licensing or registration with CIMA pursuant to the DRLL. The fit and proper test is applied at the initial stage of licensing and on an ongoing basis.
312. CIMA's fitness and propriety assessment entails an examination of an applicant's honesty, integrity and reputation, professional competence and financial soundness. Information relevant to this assessment is collected via CIMA's Personal Questionnaire, which also requires persons to submit references on their character, financial probity and soundness, and a police or other affidavit indicating that the person has not been convicted of a serious crime or any offence involving dishonesty, records of relevant qualifications, curriculum vitae, job description, and photo identification. This is supplemented by CIMA's criminal background checks via third party automatic software, as well as other open source searches conducted on said persons. As part of its assessment, CIMA contacts other overseas regulatory authorities where an applicant is regulated or associated with a regulated entity in another jurisdiction, to ascertain whether there are any regulatory concerns with respect to the applicant. CIMA additionally assesses the source of funds of shareholders and beneficial owners, which entail a review of the person's net worth statement (for individuals) or a review of financial statements (for corporate entities).
313. If at the licensing stage CIMA determines that a person intended to perform a controlled function does not satisfy its fit and proper criteria, it may refuse the licensing application but more commonly requests that the licence application is withdrawn. Between 2014 and 2016, CIMA refused and requested withdrawal of 24 licence applications; 1 refusal and 5 withdrawals were due to fit and proper failures and concerns.
314. In preventing criminals and their associates from entering the market on an ongoing basis, licensees must seek CIMA's approval prior to effecting any changes in persons performing controlled functions thus allowing CIMA the opportunity to undertake its fit and proper assessment of these persons. MSBs are not subject to this requirement when effecting changes in shareholdings or beneficial ownership, but must notify CIMA of any such changes; after which CIMA will conduct a fit and proper test and any concerns with respect to the shareholding or ownership would be relayed to the MSBs for resolution. With respect to credit unions and building societies, there are no requirements to seek CIMA's approval for effecting

changes in directorship or management – however, given the nature of these FIs, their limited number and limited ML/TF risks posed, assessors are satisfied that the CIMA’s overall monitoring through onsite inspections and desk based reviews would prevent criminals from acting in management functions within these institutions.

315. Although certain excluded persons are exempt from licensing, they must be registered with CIMA and their directors also licensed or registered. The licensing and registration of directors is contingent on the satisfaction of CIMA’s fit and proper test, thus preventing criminals from acting in such capacities. Additionally, in their annual declaration to CIMA, excluded persons must disclose their senior management, as well as MLRO, which allows for CIMA to conduct relevant due diligence checks on these persons. Notwithstanding the measures in place with respect to persons performing management functions, the shareholders and beneficial owners of excluded persons, are not disclosed or assessed by CIMA, potentially creating an avenue for criminals and their associates to enter the market as owners or holders of significant or controlling interests. This created an issue of concern, given the significant number of excluded persons within the Cayman Islands’ securities and investment business market and the potential for movement of significant value of assets with little or no consideration for AML/CFT requirements. CIMA however indicated that of the 2,581 registered excluded persons, approximately 45% (1,161 persons) of these persons either (i) hold a licence with CIMA for another form of regulated activity or (ii) is a member of a group that is licensed by CIMA; and as such the shareholders and beneficial owners of these entities were subject to CIMA’s fit and proper assessment. Giving consideration to these factors, assessors view that the means by which criminals and their associates could act with respect to excluded persons is reduced, albeit the concern still remains for 55% of excluded persons.
316. CIMA reviews information and notifications received from other regulators or international bodies, examines applications and filings to detect unlicensed service providers (such as fund directors or managers), and reviews information or advertisements in the media to identify breaches of licensing or registration requirements. In 2016, CIMA identified six (6) entities (4 providing trust and company services and 2 providing fund administration services) conducting business without the relevant licenses and notified these persons of the breaches. Five (5) of the entities subsequently sought licensing and one (1) entity performing fund administration services opted not to be licensed and was required to cease business. CIMA also periodically issues notices/advisories, to the public, in relation to unregulated/unlicensed business. For instance, in 2015 and 2016 CIMA issued notices in relation to MSBs, reminding the public that the business of currency exchange requires a licence in accordance with the MSL. Upon the issuance of that notice, CIMA observed an increase in the number of currency exchange business enquiries, as well as MSB licence applications.
317. All commercial entities including Real Estate and DPMS are required to obtain a Trade and Business License under the Trade and Business Licensing (Amendment) Law, 2014 issued by the DCI. As the supervisory authority for the Real Estate and DPMS, DCI controls market

entry. The process to obtain such licence includes comprehensive due diligence on directors and those with beneficial interest at or above the 10% or those deemed necessary by the DCI. The due diligence process includes criminal background checks, professional suitability based on experience and qualifications, any professional sanctions by licensing bodies and adverse media (natural person & legal persons). The DCI also screens all names through third party automatic software and international sanctions lists. Where an application does not satisfy the criteria, they are either deferred or refused. The due diligence process is ongoing, upon renewal of the license annually the licensees are required to submit forms indicating any change in directorship, shareholders or senior management. Based on the information provided and the interviews conducted, the market entry process implemented by the DCI is considered adequate. Although the DCI has refused licenses to entities in the real estate sector, there are no known instances where they have refused to license a DNFBP due to fit and proper failures. There are presently 75 realtors and 26 DPMS operating in the Cayman Islands. Although all of these hold a trade and business licence they are yet to be registered as DNFBPs. The process to have these entities registered as a DNFBP commenced in 2017 and is yet to be completed.

318. Attorneys in the Cayman Islands are required to obtain a professional license and are subject to general fit and proper requirements before they can practice in the Cayman Islands. They are licensed under the Legal Practitioners Law and law firms with six or more lawyers are required to obtain an operational licence from the Grand Court which is subject to annual renewal. Public attorneys are supervised by the Attorney General's Chambers which also has national oversight of AML/CFT. Two professional associations exist within the Cayman Islands for attorneys – The Cayman Islands Law Society (CILS) and the Caymanian Bar Association (CBA). Membership in the CILS is open to all attorneys, while membership in the CBA is exclusively for Caymanians. Membership is not compulsory and neither association regulates the sector. To obtain and maintain membership in these associations the attorneys are required to adopt the Code of Conduct for the Cayman Islands which imposes an obligation on each attorney to adhere to particular laws including the MDL, POCL, the TL and any supervisory or regulatory guidance issued by CIMA. There are licensed TCSPs which are affiliated with or subsidiaries of law firms.
319. Accountants are required to obtain a professional licence, issued by CIIPA, and subject to general fit and proper requirements before they can practice in the Cayman Islands. In addition, there is a requirement for a fit and proper assessment to be conducted upon renewal of their licence. The fit and proper criteria include qualifications, good character, the expectation to act and perform in a professional manner and with integrity. There is also a mandatory requirement for accountants to maintain membership in the International Federation of Accountants (IFAC) or other recognised institute.

Supervisors' understanding and identification of ML/TF risks

320. CIMA has a fair understanding of the jurisdiction's ML/TF risks. Being integrally involved in the conduct of the Cayman Islands' NRA, CIMA identified and assessed the risks of the

financial sectors based on the inherent risk and vulnerabilities of each sector and other data received from licensees as well as their knowledge from their role as a supervisory authority. In addition, during the last quarter of 2017, CIMA conducted ML/TF sectoral risk assessments analysing the business lines present in each sector, the products and services being offered, the geographic regions to which licensees of the sectors were exposed, the clientele of licensees and ML/TF risk mitigating measures in place within licensees of each sector. As a result of the thematic study and risk assessment conducted, CIMA assigned risk ratings for each sector as follows:

Table 6.2: CIMA's Sector Risk Ratings

Sector	Rating
Banking	Medium High
MSBs	High
Credit Unions and Building Societies	Medium Low
TCSPs	Medium High
Insurance	Medium Low
Mutual Fund Administrators	Medium High
Securities	Medium High

321. Prior to the implementation of its refined risk methodology which assigns institutions an individual ML/TF risk score, CIMA assessed and rated its licensees using an Enterprise Risk Management (ERM) matrix which evaluates the overall risk of a licensee based on corporate governance, financial, market and earnings, credit, liquidity, reputational, legal and regulatory risks, as well as ML/TF risks. The matrix is catered to the type of entity and may allow for some variation by Division, for example, the Fiduciary Services Division (FSD) indicated that due to the nature of TCSPs, the main focus of the FSD's risk assessment would relate to ML/TF risk elements. Although the ERM risk rating includes an assessment of licensees' ML/TF risks, the overall scoring may not be sufficiently representative of entities' ML/TF risk, as ratings of prudential and other factors may outweigh the significance of a licensee's ML/TF risks within the scores. CIMA has however refined its risk methodology allowing the ML/TF risk scores to be separately identified from the general risk score of a licensee and specifically influence AML/CFT supervision. This refined methodology was first applied in 2017, although it had not been fully implemented at the time of the onsite. Additionally, in 2016, CIMA introduced an annual AML/CFT questionnaire which seeks to consider the adequacy and implementation of licensees' AML compliance policies and procedures. This will be used to better inform CIMA of licensees' ML/TF risks and calculate ML/TF risk scores.
322. CIMA employs relevant methodologies to gain an understanding of the ML/TF risks generally, although the new approach was yet to be fully implemented at the time of the onsite visit. As CIMA continues to implement its refined risk assessment methodology, it will become more efficient in identifying the licensees that pose the most ML/TF risk. However, as noted with respect to the NRA, assessors consider that CIMA's understanding of TF risks present in the

sectors would benefit from a more in depth analysis of data specifically relevant in the context of TF (e.g. information on sources, destination and value of cross-border transactions in relation to banks). This presents a deficiency in CIMA's understanding of its ML/TF risks, which further impacts its ability to implement a risk-based supervisory approach that adequately mitigates the risk posed by the products and services offered by its licensees.

323. CIMA's risk-based supervisory framework does not extend to excluded persons that are not otherwise licensed or affiliated with a CIMA licensed group. CIMA receives basic information from excluded persons on the types of activities, number of clients and geographic operations. CIMA understands that ML/TF risks posed by excluded persons conducting fund management, investment advice and investment arranging are relatively limited given the nature of the activities conducted. CIMA also maintains information on the assets under management by excluded persons that manage mutual funds registered or licensed in the Cayman Islands. This information relates to 44% of the 55% of excluded persons that are not subject to CIMA's full supervisory regime, which also enhances the understanding of inherent risk associated with these fund managers. CIMA's understanding of the remaining excluded persons performing broker dealing and portfolio management requires further improvement to gain an adequate understanding of the ML/TF risks posed by these persons.
324. The DCI is in the process of conducting outreach to relevant sectors in an effort to gain a better understanding of the sectors and the threats and vulnerabilities encountered. DCI disseminated questionnaires to the sectors and had received an approximate return rate of 40%; at the time of the onsite. It is unclear whether this return rate encompasses sufficient feedback to adequately assess, identify and understand the ML/TF risks posed. It is anticipated however upon the completion of the outreach to the sectors that the DCI will have a more comprehensive understanding of the ML/TF risks and be able to identify regulatory gaps and to develop mitigating measures in line with the risk-based approach. In December 2017, accountants became subject to AML/CFT supervision by CIIPA.
325. There is no AML/CFT supervision of lawyers which provide legal services including in the case of large international firms investment funds (hedge and private equity), banking and finance, insurance, wealth structuring and management including cross border transactions, capital markets, TCSP, restructuring and insolvency, dispute resolution and litigation relating to those services. However, the majority of activities undertaken by lawyers is strictly advisory. Lawyers are not themselves allowed to perform the activities of incorporating a company to engage in the relevant financial services activities. As such, these activities are performed via TCSPs, who are subject to CIMA's licensing and supervision. The majority of lawyers that conduct relevant financial services business do so via related TCSPs. The client profile of attorneys will be (i) local resident Caymanians (ii) undertakings or entities registered in CI with the Registrar of Companies / Partnerships / Registrar of Trusts (iii) corporate entities regulated in the US, UK or EU or entities affiliated to such regulated entities. It is common for such services not to be provided on a face to face basis given the prevalence of the use of emails and

calls to conduct business and many directors / managers of clients are not resident in the Cayman Islands.

326. Further, in the case of property developers who are not real estate agents, although they are required to implement AML/CFT measures there is no AML/CFT supervisory authority responsible for their licensing and oversight. This is considered a notable vulnerability since a significant amount of real estate is sold directly by property developers without the involvement of real estate agents. It is uncertain whether this risk is adequately mitigated by requirement for property developers to either engage the services of a real estate agent or obtain a license to sell property. Nonetheless, these entities are not subject to AML/CFT oversight, there is no in depth understanding of the risks posed by these persons and consequently this is considered a gap in the jurisdiction's AML/CFT framework.

Risk-based supervision of compliance with AML/CTF requirements

CIMA

327. CIMA's risk-based supervision is in the process of being refined to include ML/TF risks separate from prudential risks. ML/TF risk assessments have been conducted to determine the priority of supervisory activities. Prior to the adoption of the refined methodology, ML/TF and other risks were given equal consideration in determining supervisory actions for FIs, however, supervisory engagement with TCSPs has been mainly driven by ML/TF considerations, given the nature and scope of these entities' activities. As a result ML/TF risks identified were potentially understated and deployment of resources not sufficiently allocated based on ML/TF risk considerations. However, with the introduction of CIMA's refined ML/TF risk-based supervisory methodology in 2017, ML/TF risks have received specific attention and dedication.

Onsite Inspections

328. CIMA has implemented a risk-based approach to its supervisory activities as detailed within its Regulatory Handbook, which is determined by institutional risk levels. Risk ratings as determined by the ERM matrix provide the basis for CIMA's supervisory actions; mainly the scope and frequency of onsite inspections. Whilst the ERM provides an overall score of 9 segments of a licensee's operations, CIMA has refined its methodology to allow ML/TF risks to be identified and rated separately from overall risk ratings. At the time of the onsite, this methodology was recently implemented and was in the process of being fully applied across all regulatory divisions. With the use of the methodology, CIMA was however able to conduct 21 AML/CFT specific onsite inspections in 2017. CIMA indicated that it evaluates the risk that each licensee poses to its strategic objectives, considering both the impact and probability of the ML/TF threat, by determining the impact of the licensee's threat to CIMA's regulatory objectives and the probability that the licensee will pose such a threat. A supervisory plan is developed for each licensee, which consists of a combination of on-site and off-site supervisory measures. Based on the assessment made, licensees that require additional reviews by CIMA

are identified and a final risk rating is applied with a subsequent scheduling of onsite inspections.

329. Prior to the recent implementation of measures to focus its supervisory measures based on licensees' ML/TF risks, the basis of CIMA's onsite inspection schedule were undertaken as detailed in the Table below:

Table 6.3: CIMA's Onsite Inspection Schedule

TIME FRAME FOR INSPECTION	FACTORS DETERMINING CYCLE
1 to 2 years (Or annual prudential meeting)	High risk licensees (ERM) Systemically important retail banks
3 to 4 years	Medium risk licensees (ERM)
5 or more years	Low risk licensees (ERM)
First year of operation	New licensees

330. CIMA conducts a range of onsite inspections, including full-scope onsite inspections, limited scope onsite inspections and follow-up onsite inspections (to identify whether recommended actions have been implemented), all of which include AML/CFT. Prior to 2017, AML/CFT focused inspections were driven by a licensee's AML/CFT risk profile, concerns regarding a licensee's AML/CFT framework or infrequent and/or adverse results of the licensee's AML/CFT audits. Between 2014 to 2016, only 1 AML/CFT limited scope inspection was conducted and 7 onsite inspections on banking licensees on an ad hoc basis based on AML/CFT concerns. During 2017 CIMA conducted AML/CFT focused onsite inspections of 8 banking entities, 6 insurance entities, 3 TCSPs and 4 securities and investment entities, which constitutes 18% of onsite inspections conducted during the year. This is indicative of CIMA's commitment to placing specific attention to the AML/CFT profiles of its licensees.
331. The onsite inspections conducted by CIMA adequately scopes AML/CFT issues. Onsite inspections can range between 5 to 20 days, dependent on the scope. Onsite inspections commence with a preliminary desk-based review of the licensee including a review of its policies and procedures and internal controls to assess their adequacy in meeting regulatory requirements. Once a desk-based review is completed, CIMA creates a query sheet to identify matters that need to be clarified or further assessed at the onsite visit which involve a review of client files, a review of monitoring systems, interviews/discussions with staff, and a review of the adequacy of staff training ensuring adequate documentation is recorded on file in accordance with the stipulated compliance procedures, interviews with senior management to understand the risks and controls, and testing of files, selected randomly, and controls, including walkthroughs during the testing phase. Testing consists of (i) new customers (individual and corporate), (ii) select accounts flagged in a previous review to test for subsequent compliance, (iii) PEP accounts, (iv) accounts for which SARs were made and (v) other high-risk accounts. CIMA also reviews training logs to confirm whether AML/CFT training is being conducted and the adequacy of such training. An assessment of AML/CFT

internal audits, ongoing measures, and frequency of policies and procedures reviews also undertaken during these inspections. CIMA's onsite inspection also consists of verifying if sanctions procedures are implemented to identify persons subject to sanctions requirements and the frequency of such screening. At the conclusion of each onsite visit, CIMA engages in a close out meeting providing high level findings to the licensee. Subsequently, a report is issued which identifies deficiencies and specifies recommendations. FIs interviewed indicated that CIMA inspection reports were generally issued within 1 to 2 months of completion of the inspection.

332. The table below details the number of inspections conducted per year between 2014 and 2016.

Table 6.4: Inspections Conducted by CIMA from 2014 to 2016

ENTITY TYPE	2014	2015	2016	2017	*2017	TOTAL BY TYPE
Banks (Including Building Societies, Credit Unions)	28	23	27	40	8	118
Insurance	0	20	18	22	6	60
Investment Services	15	18	21	17	1	71
Money Services Business	0	1	1	0	0	2
Securities	8	5	4	11	3	28
TCSPs	32	27	26	27	3	112
Combined Sector Licensees	0	26	7	0	0	33
Total by Year	83	120	104	117	21	424

**AML/CFT specific inspections conducted via CIMA's refined methodology*

333. Notwithstanding the physical location of Cayman licensed entities in other jurisdictions, they are required to adhere to the regulatory requirements of Cayman law. CIMA consequently monitors these licensees' compliance with Cayman AML/CFT requirements through the conduct of overseas onsite inspections. Given the relationship of these types of entities, particularly Class B banks, with other international financial institutions, they are generally subject to consolidated supervision. As noted in Chapter 1, these banks do not meet the criteria to be considered shell banks, as they are affiliated or subsidiaries of branches subject to adequate consolidated supervision in line with CIMA's Regulatory Policy on Consolidated Supervision. Overseas onsite inspections may be conducted as a joint inspection with a home regulator, or as a CIMA onsite inspection with the home regulator in attendance at opening and closing meetings. This fosters information sharing on licensees between financial supervisors. During the period from 2014 to 2016, CIMA conducted 46 overseas inspections (40 of which were Class B banks) and 4 joint inspections with other overseas regulators. During 2017, in addition to 23 overseas inspections conducted on Class B banks, 6 remote inspections were conducted for banks domiciled in Thailand and Hong Kong. Remote inspections involve licensees submitting documentation to CIMA for review and interviews being conducted via conference calls. Insurance companies not physically present in the Cayman Islands are

required to have an Insurance Manager in the Cayman Islands that maintains the books and records of these overseas licensees. In such an instance, CIMA will conduct an inspection of the international insurer via an inspection of the records held by the Insurance Manager. Where an insurer physically located in the Cayman Islands is a member of a group in another jurisdiction, CIMA may conduct an overseas inspection on the parent company of the licensee. Two of such overseas insurance inspections were conducted in 2017 and 1 joint inspection was conducted on a parent licensee in 2015. Only one overseas inspection for the securities sector was conducted between 2014 and 2017, as these entities are not generally subject to consolidated supervision.

334. Excluded persons registered under the SIBL are generally not subject to CIMA's full supervision and are not monitored for their compliance with AML/CFT requirements on an ongoing basis. However, assessors consider that the risks from limited supervision may be somewhat mitigated, given that 45% of excluded persons are otherwise licensed by CIMA to perform other regulated activities or members of a group that is licensed by CIMA and are consequently monitored for AML/CFT purposes. Further, 55% of the remaining excluded persons perform a range of activities including broker/dealing, portfolio management, investment advice, investment arrangement and fund management. In the conduct of its sector specific assessment, CIMA noted that the majority of excluded persons conduct activities related to fund managers, investment advice and investment arrangement which pose limited ML/TF risks. As such, from a risk-based perspective, a comprehensive supervisory framework may not be warranted for such activities. However, there are inherently higher ML/TF risks for the portion of excluded persons that perform broker/dealing and portfolio management activities, which may entail high value cross-border transactions. Information on the size of trading and investment assets for persons performing these higher risk activities have not been collected and analysed for CIMA to fully understand the risks posed by these persons and then to apply appropriate AML/CFT risk-based supervision to this portion of excluded persons. Additionally, given that directors of excluded persons are required to be licensed or registered with CIMA, it has some, albeit limited remit over excluded persons. In one instance, triggered by a client complaint, CIMA conducted an onsite review of an excluded person. In addition, CIMA has the ability to request an excluded person to conduct an AML/CFT audit where issues have been identified, which has been requested and undertaken in 2 instances. CIMA also ensures that excluded persons appoint MLROs.

Offsite Reviews

335. Licensees that receive higher risk ratings are placed on a report called a watch list for bi-weekly monitoring. Where monitoring does not result in improvements, these licensees are further placed on critical entities report for closer monitoring and review by heads of regulatory division and within the critical entities meeting chaired by CIMA's deputy managing director of supervision. Generally, entities remain on the critical entities list for a year, being removed only after identified risks/deficiencies are remediated and confirmed via an AML/CFT audit or

a focussed review. Between 2014 and 2016, a total of 38 licensees were placed on these lists, 17 (8 banks, 5 MSBs, 1 TCSP and 3 insurers) of which were related to ML/TF issues.

DCI

336. The DCI is in the process of adopting a risk-based approach to the supervision of Real Estate Brokers and DPMS. However, given that this regime is nascent, ML/TF risk assessments of these sectors are yet to be fully implemented to support the application of a risk-based approach. DCI has conducted two onsite inspections of one real estate entity and the other a DPMS. The inspection of the real estate entity was based on the size, type of business, and the entity having implemented AML/CFT policies and procedures as well as having sufficient knowledge of AML/CFT matters. Given that DCI has not yet conducted risk assessments of all the entities under its purview, supervision cannot yet be applied on a risk sensitive basis.
337. DCI is engaging in outreach in an effort to conduct a comprehensive data collection exercise of Real Estate and DPMS to facilitate its development of a more extensive understanding of ML/TF risks and identify regulatory gaps so as to develop appropriate mitigating measures consistent with a risk-based approach. A risk matrix for the sectors and a questionnaire for the information gathering phase are integral in developing a risk profile of the sectors. The questionnaire seeks to collect information which includes business turnover, how much cash business is conducted, the name of the MLRO, whether there is a compliance regime, what records are requested from customers, whether reporting obligations are in place and evidence of policies and procedures. Based on the responses regarding how many of the requirements are in place, a rating of low, medium or high risk will be ascribed. The ratings will then determine the frequency of on-site visits. In the initial stage, a low risk business may be selected for an on-site visit to ensure the information provided is correct. The response rate to this initiative however has only been approximately 40% which may not provide sufficient information to inform the risk-based approach.
338. Except for TCSPs, the AML/CFT supervision/monitoring of other DNFBPs has not been fully implemented. In the case of lawyers a supervisory authority has not yet been designated and property developers are not required to comply with the AMLRs.

Resourcing

339. The Cayman Islands acknowledged that CIMA's AML/CFT supervisory functions (particularly the regularity of onsite inspections and the frequency and detail of offsite reviews) were being constrained by inadequate staffing and a lack of more specialised staff with the requisite knowledge and training on how to deal with ML in all its forms. Consequently, between 2014 and 2017, CIMA increased its supervisory staff complement from 172 to 208 persons. During the relevant period, CIMA also established a separate division for securities supervision and a separate onsite inspection unit. In June 2017, CIMA had a total of 22 staff in the banking division, 38 staff in the securities division, 18 staff in the insurance division and 12 staff in the fiduciary division. Additionally, 6 onsite inspectors in the onsite inspection unit

served as support staff for the various divisions, in conducting onsite inspections. There are some concerns with respect to CIMA's ability to devote sufficient supervisory resources to those entities which pose higher ML/TF risk, in light of its refined AML/CFT supervisory framework. In recognition of insufficient resourcing, CIMA in 2017 continued to increase its staffing and employed 3 new AML/CFT analysts within the Onsite Inspection Unit, that have relevant AML/CFT experience and expertise. This contributes resources to aid in the identification of ML/TF risks and indicates a dedication to focusing on AML/CFT compliance.

340. Additionally, CIMA at times commissions the conduct of an external audit on its behalf, where sufficient resources do not exist, thus ensuring that onsite supervisory reviews of licensees are being undertaken. This has been CIMA's practice over the years, and continued through 2017, where CIMA commissioned the conduct of 10 AML/CFT specific audits on 8 insurance licensees and 2 banking entities. Assessors were further advised during the time of the onsite that CIMA had increased its budget for 2018, with intentions of increasing its staffing. Of the 47 new positions due for creation in 2018, 14 will be assigned to the Securities Division, the sector given the highest risk rating in the NRA.
341. DCI has increased its resources by five persons as a result of its new role as the supervisory authority for real estate agents and DPMS. Two persons were allocated as senior compliance and enforcement professionals to assist with the outreach, sensitisation and registration of the DNFBPs and enforcement of the AML/CFT laws. CIIPA was designated as the supervisory authority for the accountants during the on-site visit. The jurisdiction did not provide any information on the resources allocated by CIIPA for AML/CFT supervision.

Remedial actions and effective, proportionate, and dissuasive sanctions

342. CIMA's identification of AML/CFT breaches generally occur during the conduct of an onsite inspection. Once breaches have been identified, CIMA notifies and encourages licensees to take remedial actions, as opposed to applying immediate sanctions. This involves requiring the development of an action plan or the implementation of recommended action within a pre-determined timeframe. This is consistent with CIMA's Ladder of Compliance within its Enforcement Manual, which allows CIMA to bring the matter to the licensee's attention and request remedial action within a prescribed manner, in 3 stages. Once a Stage 3 communication is issued, CIMA may subsequently take enforcement actions. CIMA has, to a limited extent, implemented enforcement actions for AML/CFT breaches.
343. Between 2014 and 2016, CIMA took enforcement actions against 5 licensees, due to AML/CFT breaches. Actions were as follows:
 - Requiring 2 fiduciary licensees to cease carrying on certain activities
 - Issuance of a directive to 2 entities (an investment fund and a bank)
 - Imposition of conditions on a fund administrator.

344. CIMA also removed a senior officer of an excluded person registered under SIBL due to AML/CFT breaches within the same period. CIMA uses its power to require licensees to conduct an external AML/CFT audit usually as a follow up to an onsite inspection where the findings of the inspections or prudential meetings indicate deficiencies or departures from best practices. Between 2014 and 2016, CIMA required 5 licensees (3 banks, 1 mutual fund administrator, 1 MSB) to undertake external AML/CFT audits and 10 licensees (7 insurers, 1 insurance manager, 1 bank and 1 MSB) were required to undertake an external AML/CFT audit in 2017. CIMA has appropriate follow-up mechanisms with respect to findings of AML/CFT audits, requiring completion of corrective actions in high risk areas within one month and low risk areas in 6 months, confirmed via monthly updates. This is followed by confirmation of an internal or third party audit of corrective actions and submission of a report to CIMA. Where the findings from the AML report are grievous, the regulatory division may meet with the Compliance Officer and Board directors and conduct a follow-up inspection or compliance with the compliance division to take urgent enforcement action. Additionally, in 2015, CIMA required external AML/CFT audits to be conducted on entities registered as excluded persons under SIBL. In those 2 circumstances, CIMA recommended that follow up audits be conducted within 6 to 9 months; these entities were however put into official liquidation and eventually wound up.
345. CIMA consistently encourages remedial actions across all licensees for all ranges of AML/CFT breaches identified during onsite inspections which in the majority of cases prompts licensees to implement corrective actions in a timely manner. However, these actions are not always effective. Based on the information provided, there were some instances (although not a prevalent number of instances), particularly within the banking and fiduciary services sectors where actions were addressed subsequent to the timeframe allotted or remained ongoing for a significant period of time. For example, an onsite inspection conducted in 2014 required a TCSP to update its AML manual within 3 months of the inspection. The information provided to assessors disclose that this matter remains ongoing. Another example with respect to banks indicate that an onsite inspection was conducted in April 2014, with requirements to be imposed within one year. The data provided by CIMA show that the measures were completed in September 2016.
346. Although a wide range of measures are available, the encouragement of remedial action appears to be the preferred plan of action, as five enforcement actions were taken against licensees for AML/CFT breaches during the relevant assessment period. There is a gap between breaches that could allow for remedial actions and those that warrant severe actions that does not seem to be addressed by CIMA. This may be addressed through CIMA's administrative penalties regime, which prescribes penalties for minor, serious and very serious breaches. The effectiveness of this mechanism could not be assessed since it had only been recently implemented at the time of the onsite and the power had not yet been used.
347. The DCI and CIIPA are yet to apply any remedial actions for AML/CFT breaches.

Impact of supervisory actions on compliance

348. Where CIMA identifies significant breaches during an onsite inspection, it requires licensees to implement remedial measures, performs follow-up inspections and engages in ongoing discussion to monitor whether the deficiencies have been addressed. Additionally, where CIMA requires licensees to remedy its breaches within a required timeframe, progress against remedial plans must be submitted. CIMA may also require an external AML/CFT audit to confirm that recommendations are implemented.
349. There are instances where licensees' deficiencies are not being remediated in a timely manner, creating ongoing deficiencies in mitigating ML/TF risks. This is an indication that CIMA's approach to monitoring the implementation of remedial actions to address AML/CFT deficiencies may be inadequate and that sufficient resources are not being devoted to such monitoring in all instances. Additionally, where remedial actions remain outstanding after the required timeframe, CIMA should consider taking enforcement actions in line with the latter steps of its Ladder of Compliance. As a follow-up to onsite inspections, CIMA in 2017 commenced with the issuance of industry advisories via its Supervisory Circular, which detail the AML/CFT deficiencies identified in the onsite inspections. At the time of the onsite, CIMA issued one such industry advisory with respect to TCSPs. CIMA envisions that these advisories will guide licensees in identifying where they are deficient and foster better compliance with the relevant laws. Although it can be perceived that these measures impact compliance, assessors were not provided information that demonstrates the extent of this impact.
350. The DNFBP sectors, particularly the real estate and the DPMS have recently been brought under the purview of the DCI. A significant amount of real estate within the Cayman Islands are sold directly by property development companies and where they are non-CIREBA members, are not subject to any supervisory oversight. This presents a vulnerability where illicit funds can be laundered. In addition, CIIPA has recently been authorised to supervise the accountants for AML/CFT, hence the effectiveness of the impact of the supervisory actions for both the DCI and CIIPA cannot be adequately demonstrated or assessed.

Promoting a clear understanding of AML/CTF obligations and ML/TF risks

351. CIMA's engagement with industry associations, as well as their publication of industry circulars create awareness of changes in the regulatory requirements and enable FIs and TCSPs to understand their AML/CFT obligations. CIMA meets with industry associations on a quarterly basis to discuss regulatory developments, as well as any deficiencies or trends in compliance, including AML/CFT matters. Prior to the implementation of any legislation, CIMA consults with members of industry associations, as well as other relevant stakeholders. This was also done prior to the enactment of the AMLRs and the revisions to the GNs in 2017. Additionally, where regulatory developments have occurred, requiring the changes in AML/CFT obligations, CIMA issues Supervisory Circulars detailing its expectations of licensees.

352. CIMA has, with respect to licensees' AML/CFT obligations, implemented Guidance Notes with sector specific guidance based on the peculiarities of the various sectors. However, given that the AMLRs impose new requirements, the newly revised GNs were only issued during the course of the onsite visit. Notwithstanding, the FIs and TCSPs interviewed were fully aware that revised GNs were in the process of being finalised for issuance. CIMA also publishes quarterly newsletters and Supervisory Circulars to sensitise the FIs and the TCSPs of common regulatory and thematic issues identified as a result of their on-site and off-site supervisory findings and provide valuable regulatory updates as necessary.
353. As it relates to ML/TF risks, FIs and TCSPs were generally aware of the results of the NRA through the summary of results published by the IACC and their involvement in the NRA process. Licensees' awareness of ML/TF risks were based on their own knowledge of the environment, independent research, training courses and/or information shared amongst group institutions and not based on any promotion of an understanding by CIMA. However, private sector participants that were involved in the NRA were given firsthand information on the jurisdiction's ML/TF risks in the workshop that followed the completion of the NRA. CIMA in some instances provides information on ML/TF risks within its circulars, although only in limited instances. In its circular of September 2017, CIMA described the risks prevalent in the insurance sectors.
354. The DCI seeks to promote a clear understanding of the AML/CFT obligations by outreach to the sector by various methods which include one on one visits to the licensee and sensitisation workshops. However, the effect of these activities have yet to be realised. CIIPA was designated as the AML/CFT supervisory authority for accountants during the on-site visit, hence the assessors are not aware of the resources allocated to CIIPA to promote a clear understanding of AML/CFT obligations and risks for its members. Consequently, the effectiveness of any outreach to the accountants could not be assessed.

Overall Conclusions on Immediate Outcome 3

355. CIMA is the sole designated competent authority responsible for licensing, regulating and supervising all categories of FIs as well as TCSPs. Approximately 55% of excluded persons are only subject to limited AML/CFT supervision by CIMA, which creates a major vulnerability in the jurisdiction's supervisory framework since these persons conduct high value cross-border transactions. Criminals are appropriately prevented from taking positions of management, control and ownership of FIs and TCSPs and directorship of excluded persons, through CIMA's licensing and registration processes, although this does not apply to the beneficial ownership of approximately 55% of registered excluded persons. CIMA has a good understanding of its ML risks, however, its understanding of TF risks would benefit from a more thorough analysis of cross-border transactions. CIMA has conducted sectorial analysis of FIs and TCSPs' ML/TF risks separate from prudential factors, to influence the appropriate level of AML/CFT risk-based supervision that should be imposed on its licensees. Assessment of excluded persons not otherwise subject to CIMA's full supervisory remit that perform higher risk activities such as portfolio management and broker/dealing requires comprehensive development. CIMA has

increased its supervisory staff, although further enhancements are needed to appropriately implement its risk-based supervisory framework. CIMA has recently implemented a refined AML/CFT risk-based supervisory approach which requires the commitment of significant resources. CIMA's use of remedial actions for AML/CFT deficiencies has produced favourable results, though there are some instances where the use of remedial action may be warranted to influence compliance. CIMA promotes a clear understanding of AML/CFT obligations, but only promotes an understanding of ML/TF risks to a limited extent. The DCI was recently appointed AML/CFT supervisor of real estate agents and DPMS, however, they are yet to complete the registration process as DNFBPs to adequately identify the entities operating within the sectors and an assessment of the risk of these sectors as well as develop an effective AML/CFT risk-based supervision regime. The DCI is however aware of the entities operating within both sectors as they are required to obtain a licence under the TBL 2014 to operate. Attorneys, many of which are members of large, multi-jurisdictional groups that have great reach in bringing business to the Cayman Islands, are involved in the provision of legal services (including nominee services) to high net worth foreign nationals and are currently not supervised for AML/CFT purposes, producing an extensive gap in the AML/CFT supervisory framework of the jurisdiction. As identified in the NRA, real estate developers, who are currently involved in the development of high value tangible assets for high net worth individuals, most of whom are foreign nationals, are not being supervised. **The rating for Immediate Outcome 3 is a Low level of effectiveness.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Finding

- i. The Cayman Islands has taken three significant steps to improve the overall transparency of basic and beneficial ownership of legal persons which include:
 - a. Abolishing the use of bearer shares in 2016, so that all such shares have been converted to registered shares.
 - b. Establishing a centralised BO platform in 2017, to enable timely access to accurate, adequate and current information by competent authorities.
 - c. Requiring companies to maintain a BO register at their registered office so that this information can be uploaded to the centralised BO platform.
- ii. The jurisdiction has not undertaken a national risk assessment of legal persons to identify, assess and understand the ML/TF risks and vulnerabilities associated with these corporate vehicles within its sectoral assessment of the TCSPs. However, there is a general understanding that certain legal persons formed in the jurisdiction may present higher ML/TF vulnerabilities. This assessment does not encompass an analysis of the extent to which legal persons created in the jurisdiction can be or are being misused for ML/TF.
- iii. Information is publicly available on the process for recording and obtaining basic information on legal persons. However, there is no information publicly available on the process for obtaining beneficial ownership information on legal persons. Further, there is no process for obtaining basic and beneficial ownership information on legal arrangements within the jurisdiction.
- iv. The authorities have provided a large number of cases which demonstrate that adequate and accurate beneficial ownership information has in practice been provided to foreign counterparts. This is evidenced by the positive feedback provided in a number of instances by requesting authorities.
- v. Considerable reliance is placed on licensed TCSPs to collect, verify and maintain beneficial ownership information on legal persons and arrangements. The accuracy of this information is dependent on the veracity of TCSPs' CDD measures, where deficiencies were identified by CIMA in some instances.
- vi. The General Registry maintains basic information on some types of legal persons, registered trusts and partnerships. The information can be accessed by other competent authorities. The public may also access all basic information except for the basic regulating powers. Shareholder information on the members and directors is not publicly available although this information must be made available to competent authorities.
- vii. The Cayman Islands does not have a registration requirement for trusts and as such, the total number of structures or assets under management is unknown. Additionally, trusts, for

example, ordinary and exempted trusts are not obliged to use a Cayman licensed TCSPs and are not subject to any disclosure requirements.

- viii. Basic information, in particular, on the members and directors of exempted companies and LLCs is not publicly available and is only made available to competent authorities or in exceptional circumstances.
- ix. There are no specific requirements to promote transparency through the collection and maintenance of up to date beneficial ownership information for trusts and foundations.

Recommended Actions

- i. The Cayman Islands should conduct a more comprehensive risk assessment to identify, assess and understand the ML/TF risks and vulnerabilities associated with specific types of legal persons established in the jurisdiction which may be misused for ML/TF purposes. The risk assessment should include domestic and international threats and vulnerabilities and should consider a) the relevant legal and regulatory contextual issues unique to the Cayman Islands; b) how nominee shareholders can be misused for ML/TF purposes; and c) all the different forms and structures of legal persons and determine measures that will achieve appropriate levels of transparency based on the level of ML/TF risk.
- ii. The authorities should implement ML/TF risk-based measures commensurate with the risks identified for legal persons.
- iii. Implement measures to ensure that all basic information including information on the directors of exempted companies and LLCs respectively is publicly available.
- iv. Implement measures to allow for the basic regulating powers on legal persons to be publicly available.
- v. Ensure that appropriate transparency measures are in place, which includes disclosure requirements to prevent misuse of trusts that are administered by foreign trustees or non-professional trustees in the jurisdiction given that a significant number of trusts (for example, ordinary and exempted) are not obliged to use a Cayman regulated and supervised TCSP.
- vi. The authorities should impose adequate and effective sanctions against TCSPs and companies, for their failure to maintain-up-to-date beneficial ownership information.

The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant for the assessment of effectiveness under this section are R24 & 25.¹⁴

¹⁴ The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

356. As discussed in R. 24.1 and R 25.1, the relevant laws which govern the creation of the different types of legal persons and legal arrangements are available on the general registry website. In addition, information on the creation and types of most legal persons and arrangements within the Cayman Islands is publicly accessible on the Government's General Registry website (www.ciregistry.gov.ky). As noted in the analysis of criterion 24.1, the website, contains information on four (4) types of companies that can be incorporated in the Cayman Islands. These include ordinary resident companies; non-resident companies; exempted companies and foreign companies. Information is also available on the creation of LLCs. The website also provides relevant information on the incorporation and registration procedures for these companies. Companies located within the Special Economic Zone are exempted companies and are licenced by the Special Economic Zone Authority. See Table 1.3 of Chapter 1 for the amount and types of companies formed in the jurisdiction.
357. The Partnership law allows for the formation of three (3) types of partnerships in the jurisdiction, namely general, limited, and exempted partnerships, as detailed in criterion 24.1. The website while detailing partnerships, only refers to the formation of exempted partnerships and limited partnerships and does not contain any information on general, although the General Registry is required to maintain information on these legal persons. General Partnerships require licensing under the DCI to carry on business in the Cayman Islands. The website also details information on the formation of ordinary, STAR and exempted trusts in the Cayman Islands.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

358. The Cayman Islands has not conducted a national assessment of the ML/TF vulnerabilities associated with the extent to which legal persons within the Cayman Islands are or can be misused for ML/TF. However, considerations for the identification of vulnerabilities of legal persons were considered in the context of CIMA's sectoral assessment of TCSPs. The jurisdiction has not undertaken an assessment of legal persons to sufficiently and comprehensively identify, assess and understand how legal persons with certain characteristics may present higher ML/TF vulnerabilities. Nonetheless, there is a general understanding that certain legal persons formed in the jurisdiction may present higher ML/TF vulnerabilities since some of these companies are involved in sophisticated, high net worth, complex transactions that have a wide geographic span and may be vulnerable to ML/TF.

Mitigating measures to prevent the misuse of legal persons and arrangements

Legal Persons

359. The Cayman Islands has implemented mitigating measures to prevent the misuse of legal persons and arrangements to a fair extent. The authorities have implemented measures to ensure that basic information (although not all types of basic information) on most legal persons formed in the jurisdiction is publicly available through the General Registry. This is a preliminary step to mitigating risks associated with legal persons as it allows the public to be able to scrutinize this information. Registered offices services may only be provided by a licensed company service provider.
360. The jurisdiction has brought exempted companies, the most prevalent types of companies under the new BO regime which is a significant step towards further preventing these companies from being misused for ML/TF purposes. Exempted companies continue to be required to maintain their registered office with a CIMA Licensed TCSP, while non-resident companies are now captured under that regime. This requirement aids the overall mitigating efforts since these companies are required to comply with AML/CFT obligations and are supervised by CIMA. Given that the BO register is in its infancy stages, assessors were not able to assess the effectiveness of this mechanism. This recent introduction of the requirement for maintaining BO registers, will over time, significantly strengthen the cadre of transparency and mitigating measures of legal persons in the jurisdiction. As a result, BO information should be rapidly available to competent authorities.
361. As of the time of the onsite visit, approximately 99,000 or 82% of all registered companies had their offices registered with a licensed Cayman TCSP which supports the conclusion that most companies are subject to AML/CFT obligations. The remaining companies have actual office addresses and comprise mostly active Cayman Islands businesses.
362. TCSPs' obligations are supplemented by due diligence processes as most Cayman Islands companies also have an ongoing business relationship with a local FI or DNFBP. This provides a further connection between the CDD obligations set out in the AML/CFT legislation and the corporate sector. FIs and DNFBPs are obliged to obtain and verify BO information and to keep this information adequate, accurate and accessible.
363. In 2016, the jurisdiction abolished the use of bearer shares to increase the transparency of persons owning and controlling companies, thereby mitigating the associated ML/TF risks. Existing companies that had issued bearer shares at the time were obliged to convert those shares into registered shares on the companies' register of members by 13th July 2016, failing which the bearer shares were rendered null and void. The jurisdiction reports that 12 companies have converted their bearer shares. However, the jurisdiction is not aware of the

total number of bearer shares that exists. Consequently, there is still some degree of vulnerability to misuse by these bearer shareholders for ML/TF.

364. As formation agents, TCSPs play a critical role as gate keepers for the Cayman Islands' financial sector. As part of its supervisory framework, CIMA conducts onsite inspections of TCSPs, which includes a review of TCSPs client files, account records and transaction records to confirm whether TCSPs are maintaining adequate and updated information on their customers and beneficial owners. Where CIMA identifies deficiencies in ongoing CDD and monitoring, CIMA encourages remedial actions, which is successful to a large extent. While this encourages TCSPs to obtain accurate and up-to-date information after the completion of an inspection, the imposition of enforcement actions would better influence compliance among these entities, on an ongoing basis.
365. CIMA has identified deficiencies in the ongoing monitoring of customers by FIs and TCSPs as a major deficiency (see discussion in IO4). While this creates a vulnerability for the jurisdiction since the unavailability of up to date information may impede the ability to identify assets that may be linked to ML/TF in a timely manner. Notably, the deficiencies only relate to 28% of CIMA's inspections conducted, only 6% of which related to BO information.
366. There is no concept of a nominee director under Cayman law, and as such, all directors owe duties and are held equally liable for breach of those duties. The jurisdiction permits nominee shareholders which may include natural persons, exempted companies or non-resident persons. The vast majority of nominee shareholders in the Cayman Islands are CSP and are subject to AML/CFT obligations as they are required to be licensed under the Companies Management Law. Nominee shareholders are obliged to apply the full range of CDD obligations under the AML/CFT framework, which includes identifying and verifying the beneficial owner and the ultimate nominator(s) and to keep adequate and updated records.

Legal arrangements

367. The jurisdiction does not apply the same efforts to achieve transparency and prevent legal arrangements from being misused for ML/TF as in the case of legal persons. Trustees of an ordinary trust are subject to the common law requirement which is to have knowledge of all documentation which pertains to the formation and management of the trust. The majority of ordinary trusts are managed by licensed trust service providers, which are obliged under the AML/CFT legislation to apply the full range of CDD and record keeping obligations as outlined above, although some trusts are managed by foreign trustees. Since trusts are not required to be registered, it is not always possible to identify which TCSP manages a specific trust and therefore holds the relevant BO information. These instruments may pose a high ML/TF risks to the jurisdiction given the significant amount of assets under management (US\$419 billion as at July 2017).

368. The measures in place for STAR trusts supports efforts to promote transparency of these structures. At least one trustee of a STAR trust must be a body corporate with an office in the Cayman Islands and subject to licensing and AML/CFT obligations, or a Private Trust Companies (PTC). CDD obligations apply to trustee(s) of a STAR trust, including the obligation to retain documentary records at their premises of the terms of the trust, the identity of the trustee(s) and enforcers, the identity of all settlors, a description of the property settled in the trust, an annual account of the trust property, and a record of all distributions of trust property. There are 1,800 exempted trusts within the Cayman Islands (as at the end of 2017) with 100 being established every year. Exempted trusts are also not obliged to use a Cayman licensed trustee subject to AML/CFT obligations or oversight. This poses a concern as to vulnerability to ML/TF given the vast number of exempted trusts that exist in the jurisdiction.
369. As at July 7, 2017, unit trusts had US\$4 trillion in assets under management. These types of trusts are typically used to structure hedge funds and are registered as an exempted trust on the basis that its beneficiaries do not reside or are not domiciled in the Cayman Islands. However, the concept of these trusts is not specified under Cayman law. Although Cayman trusts are not required to be registered and registration is voluntary, the trustee of unit trusts will predominantly be a corporate trustee licensed under the BTC or as a mutual fund administrator under the Mutual Funds Law. Trustees of unit trusts are therefore regulated, supervised by CIMA and required to comply with AML/CFT obligations.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

Basic information

370. Competent authorities have direct access to the General Registry's database (CORIS), and they are able to obtain basic information instantaneously. Apart from this, basic information can be accessed online on the General Registry's website through a user's account. Users can create an account which allows real time access to the information upon payment of a small fee. The General Registry's online services, CIGnet allows users to create an account after creating a username and password. Anyone who wishes to create an account may do so. Additionally, the General Registry allows the public to conduct general searches of its database. However, information on the directors of exempted companies is not accessible through the website. As noted under 24.3, exempted companies are not required to maintain a register of its directors at the General Registry. As such, this basic information is not publicly available or available to competent authorities via CORIS. Notwithstanding, CORIS indicates the registered address for all legal persons, including exempted companies. This in turn allows competent authorities to access information on company directors from TCSPs (which provide registered office services for 82% of legal persons), although not as timely as if there was an option to gather directorship information on exempted companies from CORIS. The absence of the requirement for these exempted companies to maintain a register of directors at the

General Registry impedes the timely access to all basic information, as afforded with other types of legal persons.

371. Where there are changes in Registers of Directors and Officers, companies (save for exempted companies) must notify the Registry within 60 days of the change. Assessors do not consider that the 60 day notification period, allows for the timely maintenance of current information where changes have occurred. This may lead to instances of providing outdated information, where information is being sourced to pursue an investigation. All other particulars contained in the Registry must be updated within 21 days. There has been a low level of non-compliance with respect to this requirement which suggests that companies comply. Where notification of changes are filed, the Registry's database is updated within 1 to 2 days, or within 4 hours, where the company has requested expedited service. Ordinary and non-resident companies are required to file a list of members annually with the Registrar which is included on the Annual Return Form. In practice, these companies file changes in membership/shareholdings because banks require the register to bear the Registrar's official stamp. Moreover, the register of these companies is public.
372. Although exempted companies are not required, to file all basic information for public availability, TCSPs that provide registered office service are licensed, supervised, have the obligation to maintain this information and the name of the relevant TCSPs is in the register and publicly available.
373. In respect of partnerships, basic information filed by exempted and limited partnerships are available to competent authorities. There are 15,455 of these partnerships formed within the Cayman Islands as at July 2017. Basic information on these partnerships can be obtained from the declaration required to be filed with the Registrar by these partnerships (completed by all general partners). As detailed above, competent authorities have direct access to the General Registry's database CORIS, and are able to obtain available information on these partnerships instantaneously. This information is also available to the general public. In addition, a limited partnership conducting business in the Cayman Islands is required to be licensed by DCI and are subject to their licensing and ongoing requirements. However, the measures in place do not ensure that the information remains current on an ongoing basis.

Beneficial ownership

374. The Cayman Islands understands the importance of allowing competent authorities to have access to accurate beneficial ownership information of legal persons. Competent authorities (such as CIMA, the RCIPS and the FRA) rely on TCSPs, as the gate keepers to maintain and provide access to adequate, accurate and current BO information. Exempted companies are customers of TCSPs which are required to collect CDD information which includes obtaining and verifying BO information. As discussed in IO 4, when forming legal persons, TCSPs employ appropriate policies and procedures when collecting BO information on legal persons

when onboarding clients. However, there are some deficiencies identified in the ongoing monitoring of customers, although CIMA identifies such deficiencies relating to beneficial ownership in only 6% of its findings. Consequently, where updated information on beneficial ownership is not maintained, the ability to identify assets that may be owned by criminals and associates in a timely manner may be impeded. However, while the new centralised BO platform can be searched by local law enforcement agencies and competent authorities providing a secondary access to BO information assessment of the extent to which this can occur effectively was not possible at the time of the onsite.

375. The ODPP and the FRA have cooperated to a large extent with the international community in providing BO information for furtherance of investigations. The table below sets out the number of requests received by the ODPP for beneficial ownership information and indicates the outcome of each case and the number of days it took the ODPP to obtain and provide the relevant information to the requesting state:

Table 7.1 Requests for BO information granted by ODPP

Ref No.	Outcome
445/13 -Bank	Granted (20 days)
455/13 - Company	Refused – Entities not registered in Cayman
457/14 - Company	Granted 58 days)
459/14 - Company	Granted 58 days for initial application, refused, further information requested by Court. Request made to requesting state, Adjourned pending receipt of further information. 478 days to provide further information.
469/14 – Bank and company	Granted 61 days from receipt of further information
471/14 - Bank and company	Granted 34 days
476/15 - Bank and company	Granted (22 days)
477/15 – Bank	Granted (18 days)
479/15 - Bank and company	Withdrawn
484/15 – Bank	Granted (34 days)
498/15 – Company	Granted (16 days)
499/15 – Bank	-
500/15 - Bank and company	Refused – No record of company or accounts
501/15 – Company	Granted (36 days)
504/16 – Bank	Granted (14 days)
505/16 – Company	Granted (22 days)
508/16 - Company	Granted (19 days)

511/16 - Bank and company	Refused –No record of company or account in Cayman
513/16 – Bank	Granted (57 days)
525/16 – Bank	Granted (6 days)
529/16 - Bank and company	Granted (23 days)
US 261/15 – Bank	Granted (71 days)
US 262/15 - Bank and company	Granted (71 days)

376. The vast majority of requests for beneficial ownership information for ML/TF purposes are the subjects of international requests. As noted in I02, statistics indicate that the ODPP has facilitated requests for beneficial ownership information in 27 instances during the period 2013-2017. The requests pertained to banking and company documents, 18 of these requests were facilitated. As noted in I0 2, assistance was not granted without delay between 2013-2015. However, during 2016-2017, there was significant improvement in the time frame for granting such requests. Table 7.1 demonstrates that the jurisdiction granted 18 BO requests between 2015 to 2017. Notably, the average response time in granting these requests was thirty (30) days. The following case studies further demonstrates the Cayman Islands willingness to grant access to BO information to foreign counterparts. The case studies demonstrate that feedback in all instances were positive. The requesting states were able to use the information provided which implies that BO information obtained in these instances were accurate and adequate. However, the efforts of the jurisdiction in ensuring that information provided (in the first instance) is accurate, adequate and up-to-date is important and should not only be confirmed after information have already been provided to the requesting state. While reliance on feedback is a good way to ensure that BO information provided was useful and aided investigations, in some cases it can be reactive and not proactive. In the circumstances, reliance on feedback is only one means of ensuring that information provided is accurate, adequate and up-to-date.

CASE STUDY 1

In 2015, an urgent request for banking records in respect of 11 companies incorporated in the Cayman Islands was submitted by the FCU. The urgency of the request was based upon the fact that the material was required for an ongoing investigation (large scale international fraud) Officers from the Requesting State were to attend the Cayman Islands to expedite the matter. Within a week the Production Order was applied for and granted. Most of the documents were produced by the bank to the ODPP within two (2) days and it was immediately transmitted electronically to the Requesting State. This mechanism aided in timely production of information to the requesting state. The jurisdiction indicated that

feedback was received from the requesting state who found the information valuable. This demonstrates the ODPP's ability to access to timely, adequate and accurate beneficial ownership information.

CASE STUDY 2

A request was received on 10th February 2015, for banking documents and company documents in relation to an investigation involving corruption, misconduct in a public office and 'kick back' payments involving multiple jurisdictions. The request was initially refused as no link to the Cayman Islands was established. However, a supplementary request was sent indicating that the investigation had subsequently advanced. Further drafts were sent and reviewed by email to ensure that the matter was dealt with as expediently as possible. The Cayman Islands indicated what further information was required in order to fulfil the legislative requirements and a completed supplementary request was submitted in January 2016. In February the application was made to the Court and the Orders were granted. The bank documents (in relation to ten accounts) and the company documents including beneficial ownership information and accompanying witness statements were sent in March 2016. Feedback was received thanking the Cayman Islands for the material provided and indicating it had been 'of great assistance' to the case team as they continued with their investigations.

CASE STUDY3

A request for records from CI bank accounts (the Request) was received to determine whether such accounts were used by a suspect for acts of fraud, ML (including the receipt/deposit or transfer of illegal payments, bribes and kickbacks) and if so, the exact nature, source and disposition of the funds. The alleged acts of fraud and ML arose in connection with high profile positions. The offences under investigation were fraud and ML. No request was made for asset restraint. The Request and subsequent Supplemental Request (together, the Requests) sought (i) official corporate records and all documents providing information of beneficial ownership to FIs and the CFU; and (ii) business records from several local banks. The FIs identified within the Requests provided a significant volume of records. Due to the quantity of documents to be reviewed and retrieved, one entity provided responsive records on a rolling basis. The suspect and others were later charged in the US with various counts of racketeering, wire fraud, ML and conspiracy to commit those offences. The Request was granted 3 months after receipt (17th March 2015) and the first set of documents were provided to the Department of Justice (DoJ) 5 months after receipt of the Request. Provision of records responsive to a Supplemental Request was done on a rolling basis and completed within six months. When all records had been provided to the DoJ, the Chambers on behalf of the CMLAA continued to liaise with the DoJ and counsel for one of

the FIs to deal with certain technical issues arising in relation to the access and storage of files. This involved conference calls with the institution and its IT team, DoJ, Chambers to resolve the outstanding issues. The U.S. prosecutor stated that the materials provided the Cayman Islands were very helpful, particularly with regards to one defendant, who pleaded guilty. Proceedings are ongoing against another defendant.

377. In a number of instances, BO information has also been provided through international requests from foreign supervisors (mainly securities and stock exchange supervisors) to CIMA. The FRA has also provided assistance to further investigative efforts by its counterparts.

FRA

378. Beneficial ownership information is also obtained and shared by the FRA on the basis of direct communication channels with foreign counterparts. Between 2013 and 2016, the FRA obtained and exchanged beneficial ownership information with foreign counterparts in 132 cases. In 40 of these cases the information was obtained and provided in response to a foreign request for information (RFI) from an FIU; in the remaining 92 cases the information was shared in a Spontaneous Disclosure (SD).
379. For the period 1 July 2017 to 31 December 2017 the FRA issued a total of 46 Directions pursuant to section 4(2)(c) of POCL, 8 of which related to beneficial ownership information, an additional 5 requested copies of shareholder/director registers, 7 sought clarification on certain issues and 4 involved requests for updated information. Of the 46 Directions, 29 were issued to FIs and DNFBPs. As noted in R. 29, the FRA requires prior approval from the AG which can impact the timeliness of providing information. However, the cases examples below demonstrate that the prior approval of the AG has not in these instances resulted in any delay in providing information. The following are some case examples:

CASE EXAMPLE 1

RFI from a foreign FIU regarding a Cayman company that maintained an account with an investment company (IC) in the requesting jurisdiction. Whilst undertaking further due diligence, concerns arose regarding the veracity of some of the KYC documentation. In addition, funds held at the IC were requested to be wired to a Cayman financial service provider. With the requesting FIU's consent, beneficial ownership was obtained from the registered office (the Cayman TCSP) of the Cayman company, as well as bank account opening information and statements from the Cayman financial service provider that the funds were requested to be wired to. Details of the FRA's database searches and the information obtained from the registered office and the Cayman financial service provider were provided to the foreign FIU. **Response time: 43 days.**

CASE EXAMPLE 2

RFI from a foreign FIU regarding a Cayman company that had solicited investments from nationals of their country who, despite repeated requests have been unable to have their investments returned to them. With the foreign FIU's consent, beneficial ownership was obtained from the registered office of the Cayman company. Details of the FRA's database searches and the information obtained from the registered office (the licensed TCSP) were provided to the foreign FIU. **Response time: 49 days.**

380. In a domestic context, the following are examples of cases that resulted in the obtaining of BO information and the sharing of this information by FRA:

CASE EXAMPLE 3

A SAR was filed on 3rd July 2013 by a Class A Bank regarding various individuals and companies as a result of receiving requests for information from local law enforcement agencies. In analysing the SAR and other information subsequently obtained from the Bank, including account statements, a connection between a Cayman Islands company and a company domiciled in a foreign jurisdiction was identified. The FRA was also aware that the foreign company was of interest to the RCIPS. A request for information was sent to the foreign FIU, including beneficial ownership, directors and officers of the Cayman company, changes in its registration and shareholdings and details of any other businesses registered to the beneficial owners or officers. The foreign FIU responded with all available information, and with their consent, the information was disclosed by the FRA to the RCIPS. One of the individuals named in the SAR was subsequently convicted on various corruption charges.

CASE EXAMPLE 4

To assist with their investigation into a major national fraud (purportedly several hundred million US\$, a foreign FIU sought information from the FRA on their main subject and a Cayman Islands company purportedly linked to the fraud. Having received a number of SARs the FRA exercised its power to obtain additional information and was able to provide a comprehensive response to the requesting FIU including but not limited to: (i) information regarding the beneficial ownership and directors of several Cayman Islands companies and trusts with a link to the main subject; (ii) transactional flows through a Cayman Islands bank; (iii) ownership of a Cayman Islands registered luxury super yacht; and (iv) an investment

by the defrauded national fund into a Cayman Islands mutual fund. A number of these SARs were also disclosed to the RCIPS.

FCU

381. The FCU is the single point of contact for law enforcement enquiries from the UK on beneficial ownership requests. The Cayman Islands has entered into an agreement with the UK Government that came into effect on the 3rd July 2017, to provide the details of natural persons who own 25% or more of a Cayman Islands registered company and to provide that information, within twenty-four (24) hours. Additionally, the FCU have acted as the single point of contact to conduct requests for beneficial ownership details from overseas law enforcement agencies. Since June 2017, few requests have been received by FCU, all of which were dealt with within three days, save for one, where a legal issue had to be resolved. The FCU has online access to General Registry and, upon confirming that an entity is registered in CI and managed by a licensed company service provider. The FCU provide the BO information obtained to the requesting authority, which then has sufficient information to make an MLA request for evidence, if required.

CIMA

382. CIMA also processes requests for BO information on legal persons and does so as “non-routine requests”. Responding to such requests takes about 2 months’ time on an average:

Table 7.2 Number of requests in relation to Beneficial Ownership Information (Non-routine)

Year	2013	2014	2015	2016
Incoming Requests				
No. of request received from foreign ORAs	12	12	20	8
No. of request Granted (Completed)	12	11	19	8
No. of requests Pending	0	1	1	0
Outgoing Requests				
No. of requests sent to foreign ORAs	3	4	0	2
No. of requests Granted (Completed)	2	4	0	2

No. of requests Pending	1	0	0	0
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CASE EXAMPLE WHERE CIMA SUCCESSFULLY OBTAINED AND EXCHANGED BENEFICIAL OWNERSHIP INFORMATION

The United States Securities and Exchange Commission (the SEC) was investigating potential violations of the antifraud provision of the US federal securities laws by certain individuals who may have been involved with possible market manipulation of the stock of a U.S. public company purporting to be in the business of wholesale coffee distribution. According to the SEC the stock had been subject to an aggressive promotional campaign, resulting in a considerable spike in the price and trading volume of the company's stock. The SEC sought the Authority's assistance in obtaining information concerning accounts maintained by an entity, holding a Securities-Excluded Person registration (the SIBL-EP), through which the relevant trades in the securities were executed. Among the information being requested was the details of the beneficial ownership of the accounts in which the trades were executed. Directions were issued to the SIBL-EP, and the responsive documents were provided to the SEC.

Tax Information Authority

383. Over the period 1 April 2013 – 30 June 2017 222, the Cayman Islands Tax Information Authority has received 207 requests for information from 25 treaty partners. Of those 207 valid requests, the TIA answered 70% of requests within 90 days, 86% of requests within 180 days and 96% within 1 year. In the remaining cases, the response time took longer than one year due to the complexity of the requests and during that time the Cayman Islands continued to keep its treaty partner updated. The TIA has provided BO information in all 19 cases in which it was requested and routinely provides beneficial ownership information, accounting information and banking information in response to EOI requests from all treaty partners, whether or not this information is specifically requested.
384. As indicated above, the Cayman Islands has enhanced its framework with the introduction of the new centralised BO platform which is maintained at the General Registry. As discussed in R. 24, the jurisdiction's new BO regime is two-fold as it: (1) requires all companies to maintain a BO Register at their registered office; and (2) requires TCSPs to upload the information to the new centralised BO platform. Essentially, the onus is placed on companies to provide BO information to their registered TCSP to enable the TCSP to maintain this information electronically and make it available to the General Registry for the centralised BO platform.
385. TCSPs are required to verify BO information on its customers (accuracy), maintain the information in the required format and input the information via encrypted format at the

platform interface at the General Registry's Office. The population of the platform was in its infancy stages at the time of the onsite visit, and TCSPs were required to input information to the platform every 30 days, and to be fully compliant by June 2018. There is no indication as to whether the platform has a trigger point for updating after this 30 day period expires. Companies BO registers are required to be updated within 30 days of any change and TCSPs will be required to file changes to the BO registers on the centralised BO Platform on a monthly basis going forward. The BO platform was established specifically to provide UK with timely access to BO information, upon request, and for this purpose the General Registry and the FCU will act as the dedicated point of contact. Notwithstanding, where other specified competent authorities require BO information, it may formally request the information from the General Registrar. Given that the platform was in its nascent stages during the time of the onsite, it could not be considered for the assessment of effectiveness in providing adequate, accurate and current information or how it would impact the timeliness of obtaining beneficial ownership. The Registrar and DCI have recently implemented oversight and monitoring of companies maintaining BO registers.

386. The information filed at the Registry by partnerships does not identify the BO. Information on the BO will only be identified in instances where the general partner is an individual. Although it is a requirement for the exempted limited partnership to maintain a register of limited partners, there is no requirement to maintain that information in the Cayman Islands. However, the address of record must be maintained at the exempted limited partnership's registered office in the Cayman Islands and is open to public inspection. The layers involved in obtaining such information impedes competent authorities' ability to access this information in a timely manner.
387. General partnerships are required to obtain a trade and business license to carry on business in the Cayman Islands. This would require undergoing the DCI application process for licensing, and requires the names and addresses of partners. Names of partners have to be provided annually when licenses are renewed. Competent authorities will be able to access information at the DCI via the established MMOU. However, the measures in place do not ensure that the information remains current on an ongoing basis, as partners can be changed prior to renewal of a licence and will not be known until the point of renewal.
388. Information with respect to foreign partnerships was not provided to the assessors to make a determination on the effectiveness of timely access to adequate, accurate and current basic and BO information of these persons. In addition to the above, where different types of partnerships are clients of TCSPs and other FIs, information is sufficiently maintained on general partners and partners. As noted in IO4 however, there are some instances where information is not maintained on all partners of limited partnerships that may own 10% or more of the partnership. The deficiencies highlighted with respect to the ongoing monitoring measures of FIs and TCSPs also apply.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

389. Trusts are not required to register with the General Registry. However, as is the case with legal persons, where a trust is administered by a licensed TCSP, the TCSP is required to maintain basic and BO information on the trust that has been established pursuant to the Trust Law. In this regard, competent authorities rely on TCSPs to access adequate, accurate and current information.
390. Exempted trusts are required to submit information setting out the trustees' powers with the General Registrar, who has the power to oblige trustees to furnish accounts, minutes and information relating to the trusts upon request. This information is not publicly available at the General Registry and the extent to which the information is available to competent authorities on a timely basis has not been determined by assessors. Beneficial ownership information with respect to exempted trusts are not available in the Cayman Islands, save for instances where a licensed TCSPs acts in a trustee capacity. In July 2017, there were 1,753 exempted trusts within the jurisdiction which are mainly unit trusts. Some basic information on these trusts, as indicated above are maintained by the General Registry and can be timely accessed by relevant competent authorities. However, since there is no requirement for these trusts to engage a regulated Cayman TCSP, timely access to adequate, accurate beneficial ownership information may be a challenge. Ordinary trusts (as with exempted trusts) are also not obliged to use a Cayman licensed TCSPs subject to AML/CFT obligations or oversight and are not subject to any disclosure obligations. This limits competent authorities' ability to identify those trusts that may be involved in ML/TF activities or obtain BO information on these structures. This further limits competent authorities ability to obtain timely, adequate and accurate basic or BO information on these types of trusts, especially considering the amount of these structures (5,520) which are far more prevalent than other trusts in the jurisdiction lack of certainty and adequacy of information on these structures may also undermine AML/CFT measures.
391. There are limited instances where the authorities were requested to provide BO information in respect of these types of trusts. Assessors are not able to assess the effectiveness of access to adequate, accurate information. However, the following case study demonstrates how the jurisdiction dealt with a request for information in respect of a trust:

CASE STUDY

In 2016, ODPP had received one request from country A for original trust documents in relation to a Cayman Island trust. The request pertained to an investigation into allegations of fraud / forgery in relation to a Trust purportedly signed by JF in June 2002 with AB Cayman Trust Company Limited as the purported trustees and a religious organisation as the sole and exclusive beneficiary of 100% of all assets valued at USD3 million. In December 2011 JF died and when probate followed his family learned about the trust and questioned it as they knew that JF was a different religion. Following analysis from a handwriting expert the Court of Appeals in country A ruled it necessary to obtain the original trust documents from the Cayman Islands. The request was for the production and delivery of the original Trust document legalised copies of all documents submitted at the time of the execution of the trust in June 2002 and all documents submitted or prepared before that date which relate to JF. The request was officially received by Cayman Islands on 23 June 2016. In response to the request Cayman Islands requested additional information from Country A that was received in July 2017. In August, a production order was granted by the Court and served on the bank on the same day. The bank subsequently requested additional time to comply with the production order but eventually handed over all updated trust documentation which was sent to country A in execution of the request.

392. While the case is not related to ML/ TF it illustrates that the Cayman Islands is willing and able to obtain trust related information including beneficial ownership information on trusts if and as required and can do so in a timely manner.
393. CDD measures for STAR trusts obliges the retention of documents (at their premises) pertaining to the terms of the trust, the identity of the trustee(s) and directors, the identity of all settlors, a description of the property settled in the trust, an annual account of the trust property, and a record of all distributions of trust property. There are no expressed obligations to provide information on the beneficiaries of these types of trusts. Since TCSPs of STAR trusts are required to comply with AML/CFT obligations which include the collection and maintenance of BO information, TCSPs would be obliged to provide timely access to competent authorities for BO information.
394. As noted under 25.1, Private Trust Companies (PTCs) in the Cayman Islands are not licensed by CIMA but are subject to regulatory oversight by the CIMA. A PTC is required to maintain an up-to-date copy of the trust deed or other document at its registered office which contains specific information relating to the terms of the trust (name and address of the: trustee; any contributor of the trust; any beneficiary; and any document which varies the terms of the trust). Trustees are required to obtain and hold adequate, accurate, and current information on the identity of the settlor, the trustee, the protector, beneficiaries and any other natural person

exercising ultimate effective control over the trust. A PTC is also required to complete an annual declaration which confirms that there have been no changes since the last updated information filed.

395. FIs providing services to trust structures are required to be licensed by CIMA and as such are required to have adequate information on the trust structure on file. CIMA is obliged to check such information during its onsite-inspections. The deficiencies noted in respect of ongoing monitoring, although not widespread, can nevertheless impede the ability to access adequate, accurate and up-to-date BO information. FIs can disclose information on a trust to competent authorities. While RCIPS can compel the production of documents pertaining to a trust, there is no indication as to the time it takes for RCIPS to access information.
396. As noted above on legal persons, there is no indication that beneficial ownership information on legal arrangements is being accessed by the RCIPS in furtherance of their investigative efforts.

Effectiveness, proportionality and dissuasiveness of sanctions

397. Recommendation 24.13 notes that criminal sanctions can be imposed on FIs and TCSPs for non-compliance of AML/CFT obligations, however there were none imposed at the time of the onsite. Sanctions for non-compliance for unpaid fees, missing annual returns or not appointing a registered office have been imposed by the Registrar. In 2016, the Registrar struck off 7,000 companies from the registry for non-compliance but it is not clear whether all of these companies were in fact active at the time of striking off. Fines were not imposed for failure to comply with requirements in respect of basic and BO information. Given that there is no information to suggest that sanctions have been imposed for breaches of AML/CFT obligations, the effectiveness, proportionality and dissuasiveness of sanctions could not be determined.
398. CIMA has power under the Private Trust Company (Amendment) Regulations, 2013 to cancel the registration of any PTC which files false, misleading or inaccurate information on the settlors, trustees and beneficiaries. However, CIMA has not imposed any cancellations of PTC registrations or imposed fines for regulatory violations. There is no evidence to determine whether CIMA has encouraged remedial action or imposed sanctions for failure to comply with specific to BO obligations.

Overall Conclusions on Immediate Outcome 5

399. The Cayman Islands has implemented measures to promote the transparency of legal persons to a fair extent. However, in the absence of a comprehensive risk assessment on legal persons, the jurisdiction is unable to implement appropriate ML/TF risk mitigation. Although the jurisdiction has not conducted a risk assessment of legal persons, FIs and DNFBPs have a general understanding of the risks involved with these corporate vehicles and are able to apply

measures to prevent the misuse of legal persons and arrangements for ML/TF purposes. There are mechanisms that identify and describe the basic forms and features of legal persons and arrangements through the General Registry's website, albeit, some types of legal persons and arrangements that can be created in the jurisdiction are not included. Basic information on legal persons is publicly available to a large extent, except for information on directors of exempted companies and members of LLCs, which can nevertheless be obtained by competent authorities upon request or instantaneously through the Registrar's database or from the registered TCSP. This nevertheless impacts the ability of competent authorities to access the information in a timely manner. Basic information is not always kept up-to-date. The new BO register will accord enhanced transparency of legal persons and will overtime become a prominent and important feature of the jurisdiction's transparency framework. However, the system does not prompt when a deadline has passed (example, 30 days) for update to BO information required by TCSPs. The jurisdiction has provided statistics and case studies, that demonstrates its ability and willingness to provide BO information when requested by foreign counterparts. These statistics further demonstrates that BO information has been in some instances, provided in a timely manner. The jurisdiction's measures for legal arrangements can benefit from some improvement. The total number of these structures and assets under management are unknown. Further, trusts are not required to engage a regulated Cayman TCSP. The jurisdiction facilitates requests for international assistance for BO information through relevant competent authorities to a fair extent, although there has not been much requests of this nature. **The rating for Immediate Outcome 5 is a Moderate level of effectiveness.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

- i. As a member of the international community, the Cayman Islands recognise the importance of providing international assistance for the purpose of fighting crime. As such, the jurisdiction employ various means to render international cooperation and provides the widest range of assistance through both formal as well as informal means with a view to adopting the most efficient method in the circumstance. There have been some delays in providing international assistance in the past. However, the jurisdiction has made significant strides in expediting requests to ensure timely and constructive assistance both through the Mutual Legal Assistance (MLA) and Criminal Justice (CJICL) processes.
- ii. Extradition requests are handled constructively and within a timely manner.
- iii. Although the NRA has identified foreign proceeds of crime as posing a significant threat, the Cayman Islands has made a limited number of requests for international cooperation from its counterparts to assist with investigation and prosecution of domestic ML/TF cases with an international nexus.
- iv. The FRA can only respond to requests for information where it has the consent of the AG. Although there have not been any significant drawbacks in obtaining this consent, the inability for the FRA to independently respond may impede the timeliness and the effectiveness of the jurisdiction's international cooperation framework.

Recommended Actions

- i. The POCL should be amended to give FRA the authority to respond to international requests for assistance, independent of consent from the AG.
- ii. The Cayman Islands should take more proactive measures to request timely assistance from other jurisdictions to enable proper and systematic investigation and prosecution of domestic ML, associated predicate and TF cases with a transnational element.
- iii. The FRA should implement measures (whether by an increase in human and/or technological resources) to respond to its Priority 1 requests, with the timelines established by its internal policies.

The relevant Immediate Outcome considered and assessed in this chapter is IO2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

Providing constructive and timely MLA and extradition

MLA

400. Actions are well developed for international cooperation within the Cayman Islands. The authorities have employed various mechanisms to provide and receive international legal assistance through a number of instruments, including treaties and agreements with foreign counterparts. International cooperation is an important tool for the Cayman Islands, particularly given the inherent and assessed risks of foreign generated proceeds of crime. As a member of the international community, the jurisdiction is actively engaged in international cooperation and has provided assistance to foreign jurisdictions in investigations mainly relating to ML, fraud, drug trafficking and corruption which is consistent with Cayman Islands' high risk profile as it relates to foreign proceeds of crime. Additionally, as noted in IO 5, the ODPP has a website, which provides the contact details in relation to requests for international legal assistance and also a link to the jurisdiction's International Cooperation Handbook. There is no information that indicates the Cayman Islands has not met its objective to support the international community through the provision of international cooperation.
401. Under the CJICL, the ODPP is the Central Authority responsible for providing and receiving international requests for legal assistance in respect of investigation and prosecution of crime, criminal asset tracing, restraint, confiscation and civil recovery. Pursuant to the CJICL, the ODPP can provide international legal assistance in respect of any conduct in a designated country which would constitute a criminal offence had the conduct occurred in the Cayman Islands. The Cayman Islands cooperated considerably under the principles of reciprocity and dual criminality.
402. The Chief Justice is the Central Authority for providing and receiving MLA requests under the Mutual Legal Assistance (United States of America) Law MLA(US)) which is mainly relied upon for cooperation between the two countries for all matters except those relating to tax. Some of these matters include taking testimony or statements, providing documents, records and articles of evidence, serving documents, locating persons, transferring persons in custody for testimony, executing requests for searches and seizures, immobilising criminally obtained assets, assistance in proceedings related to forfeiture, restitution and collection of fines and any other steps deemed appropriate by both Central Authorities. Once an MLA request is reviewed by the Chief Justice, the matter is referred to the ODPP for processing. The manner in which these requests are dealt is further explained below.
403. All requests for international legal assistance and extraditions are coordinated by a team of 5 Crown Counsels at the ODPP and 2 Crown Counsels at the Solicitor General's Chambers. In addition to ensuring that Crown Counsel are dedicated to processing international legal assistance requests, the ODPP has provided its Crown Counsel with a variety of training which

lends for enhancing knowledge and understanding in dealing with these matters. For example, between 2014-2017, training has been provided in financial crime and international cooperation for a number of Crown Counsel. A wide range of relevant topics were covered including restraints, confiscation, civil recovery, international legal framework for AML, the multiple avenues of international cooperation, obtaining information, MLAs, and the role of central authorities. More focus has been given to training during 2016 and 2017 than in previous years. Moreover, it is evident that training has been a contributing factor in the consistent decrease and subsequent improvement in time taken to complete requests for assistance during 2016 and 2017.

404. The Cayman Islands render international assistance in matters ranging from requests for company documents, bank documents, beneficial ownership information and shipping registry documents to requests for restraint and the taking of evidence. Table 8.1 sets out the related offences for which international requests that have been received between 2013 and 2017, with requests relating to ML and fraud being the most prevalent.

Table 8.1 International Requests by Type of Offence

Money Laundering	40		Perjury	1
Fraud	40		Obtain property by deception	2
Corruption	14		Drugs	5
Bribery	8		Bankruptcy	1
Theft	2		Forgery	2
Blackmail	1		Illicit gains	1
Forgery	2		Misuse of public office	2
Conspiracy	1		Possession of firearm	1
Defraud another	1			
Smuggling	1			
Tax evasion	4			
OTHER OFFENCES				12
Fraudulent bankruptcy				1
Embezzlement				2
Criminal proceedings arising out of non-payment of child support				1
Failure to submit sworn statement				1
Defrauding another				1
Failure to return foreign currency from abroad				1
Actions against the independence or territorial integrity of the Cuban state				1
Exchange of currency				1
Cultivation of Ganja				1

Concealment of assets	1
Impersonating a public official	1

405. Table 8.2 provides a breakdown of the time taken by ODPP to respond to MLA requests between 2013 and June 2017.

Table 8.2 Average Time to International Requests

YEAR	TOTAL NO. OF REQUESTS	NO. OF DAYS TAKEN TO RESPOND
2013	5	573
2014	10	363
2015	26	284
2016	27	110
2017	7	55

406. In table 8.2, during the period 2013 to 2014, the processing of international requests for assistance did not occur in a timely manner. Authorities attributed average response time in 2013 of 573 days, to the substantial length of time it took for the requesting state to respond to requests for additional information. In one of these matters the initial refusal was sent within 30 days, however further information was requested on several occasions and there was a long delay in the response of the Requesting State, the number of days provided relates to the production of the documents, not the initial refusal. In addition, the ODPP indicated that in some instances, timely facilitation of international requests for assistance can pose a challenge where the requesting state insists that information be provided via diplomatic channels and the requesting state is not amenable to information being provided otherwise. In the circumstances, the ODPP is not allowed to deal with these requests by the most efficient and appropriate means. For example, where information can be sent directly to foreign counterparts in the interest of time and for the purpose of expediting the request, some requesting states do not embrace this avenue and insist that requests be sent via diplomatic channels which can contribute to delays.
407. The Cayman Islands has subsequently implemented measures to facilitate timely execution of requests, as evidenced by the significant improvement in the overall response time during 2016 and 2017. Notably, there were more requests during this time, yet there was a consistent decrease in the time it took to process these matters. The efforts to decrease the overall response time can be attributed to several important endeavours. For example, the assignment of the international Crown Counsel, whose duties are solely that of processing these requests lends to more timely responses. In addition, the ODPP's case management system outlines the internal procedures in which international requests should be executed, with relevant timelines. Another important endeavour is the established Protocol for Processing International Requests which has been used to improve processing international requests. Additionally, the ODPP has

established a set of Guidelines¹⁵ for seeking assistance from the Cayman Islands in criminal and civil matters. These Guidelines are intended to address questions and concerns of a requesting state and assist them in providing as much information as possible to enable the jurisdiction to provide its assistance in a timely manner.

408. The processing of matters evidence that prioritisation of requests is done on a case-by-case basis. In one instance, the ODPP was able to facilitate an urgent request within 24 hours. The authorities provided details of an extremely urgent request, received in 2015, that involved the production of banking documents. The urgency of the request was based upon the fact that the material was required for an ongoing investigation into allegations of large scale international fraud, linked investigation stage restraint proceedings and potential confiscation proceedings. Officers from the requesting state travelled to the Cayman Islands to expedite the matter. Within a week the production order was applied for and granted. A Bank provided several volumes of records relating to the entities concerned, within days. Material was provided to the ODPP within 2 working days, and it was immediately transmitted electronically to the requesting state. To further improve the response time, the ODPP developed a system of expediting requests via electronic mail with the hard copy to follow. This flexibility allows requests to be dealt with by the most efficient means in the circumstances. In complex cases, Crown Counsels make themselves available for consultations with their counterparts by way of tele-conferences.
409. Requests for restraint of criminal assets have been prioritised and executed within a timely manner. During the period 2014 to 2016, the ODPP received a total of seven requests for restraints from various jurisdictions. While two out of the seven requests resulted in the recovery of assets, the remaining five requests could not be facilitated because there was either an insufficient link with the Cayman Islands, insufficient details provided for the ODPP to proceed or assets could not be identified within the jurisdiction.
410. Once a request for assistance is received, it is then assigned to the Crown Counsel. An acknowledgement of receipt and information as to the officer to whom the matter is assigned is sent to the requesting state. According to the ODPP's Protocol, the time frame for acknowledgement of receipt of an international request is 14 days. The Crown Counsel will review the information and assess whether it meets the requirements of the legislation. Where it does not, a letter is sent to the requesting state seeking further and better particulars in order to proceed with internal processing and subsequent submission to the court for further consideration.
411. The following case provides an example of a prioritised execution of an urgent request for restraint by the ODPP:

¹⁵ Available online at www.gov.ky.

URGENT REQUEST FOR RESTRAINT

The ODPP facilitated an extremely urgent request for restraint of a vessel in relation to an international investigation into money laundering and the offences of theft and corruption committed by a politically exposed person. Within forty-eight hours of receipt of the request, a detailed list of further information needed from the Requesting State had been sent and received, documents and affidavits prepared for court and the Order granted. A Production Order was also obtained in relation to documents pertaining to the vessel. The Requesting State indicated they were extremely grateful for the expeditious manner in which the Cayman Islands had dealt with their request. The restraint remains in place and the suspect has been the subject of proceedings in three different jurisdictions.

412. Although there was little feedback during the period 2013 to 2015, the ODPP informed that feedback has been routinely requested since the beginning of 2016. The authorities have provided a number of case examples which demonstrate that the jurisdiction provides constructive assistance to the international community. The feedback received by the ODPP during 2016 to 2017 has demonstrated the jurisdiction's ability and subsequent efforts to provide international legal assistance in a constructive and timely manner.
413. In 2016, there were twenty-seven requests, out of which, there were fourteen requests for feedback, which related to matters had been completed and assistance granted. A total of eight responses were received, there were no negative responses, in one instance, the requesting state indicated that the assistance provided enabled the development of an important line of investigation. In the remaining instances feedback was in the form of acknowledging receipt and expressing gratitude for timely assistance. The following case summaries provide an example of positive feedback in 2016 which demonstrates the constructive international legal assistance was provided by the jurisdiction.

POSITIVE FEEDBACK - OWNERSHIP REQUEST

This request was received in February 2016. The offences under investigation are abuse of office, money laundering and conspiracy to abuse of office with related offences of bribery, forgery and false statements. It is suspected that the two suspects have carried on and benefitted from these offences. The two suspects held senior positions on a Board of a company. They were under investigation for embezzling the funds of the company and laundering them. It is alleged that, amongst other criminal activities, they granted loans from the company to other companies, beneficially owned by themselves, which were never repaid. The result of the activity was that the main company was deprived of liquid assets necessary for carrying out its activity. The estimated prejudice was over 150 million Euro. It was alleged that a fraudulent contract was concluded with a company registered in the Cayman Islands. This agreement was allegedly concluded for the purpose of creating a disguise concerning the

financial position of the company. It was suspected that the suspects were the beneficial owners of the Cayman company. The Request was made in order to establish the beneficial ownership of the company and to provide evidence regarding the fraudulent contract. Within eight weeks the matter was reviewed and a detailed response was sent to the Requesting State listing exactly what additional information would be required in order to complete the request. Four weeks later a response was received containing the additional information. Within two weeks documents were prepared and submitted at court. The order for the Production of Documents was granted and the documents were served on the Requesting State within five months of receipt of the original request. Feedback was requested and this was received expressing the gratitude of the Requesting State and indicating that the documents were ‘very useful’ to their investigation.

POSITIVE FEEDBACK - EXPEDITING THE PROCESSING OF REQUESTS

A request was received for banking documents and company documents in relation to an investigation involving corruption, misconduct in a public office and ‘kick back’ payments involving multiple jurisdictions. The request was initially refused as no link to the Cayman Islands was established. However, a supplementary request was sent indicating that the investigation had subsequently advanced. Further drafts were sent and reviewed by email to ensure that the matter was dealt with as expediently as possible. The Cayman Islands indicated what further information was required in order to fulfil the legislative requirements and a completed supplementary request was submitted in January 2016. In February the application was made to the Court and the Orders were granted. The bank documents (in relation to ten accounts) and the company documents with accompanying witness statements were sent in March 2016. Feedback was received thanking the Cayman Islands for the material provided and indicating it had been ‘of great assistance’ to the case team as they continued with their investigations.

POSITIVE FEEDBACK - POLITICALLY EXPOSED PERSON

A request for shipping registry documents was received in April 2016. This request related to corruption and ML offences committed by a Politically Exposed Person. There was insufficient information in the original request to meet the legislative requirements of the Cayman Islands and therefore a detailed response was sent outlining the further information requested. A supplementary response was received and within six weeks an application was made to the court and the Orders were granted and served. A large amount of documents and an exhibiting statement were sent to the Requesting State within three months of the supplementary information being received. Feedback was requested and the Cayman Islands were informed that the information provided was very important to the investigation and assisted in establishing and confirming the facts of the criminal offence. The matter was at a pre-trial stage in early 2017 and the Cayman Islands was informed that they would be updated as to the outcome of the matter.

POSITIVE FEEDBACK -BANKING EVIDENCE OF KICKBACK PAYMENTS

A request was received for banking documents in relation to a bribery and corruption investigation. Bribes were allegedly paid to government officials in relation to large state projects. It was alleged that 'kick backs' were paid in order to secure the award of contracts. Banking documents were requested in order to provide evidence in relation to a particular suspect and to counter the account given by him. Within two months of receipt of the Request court documents had been prepared and filed, the application had been made and granted, the order was served and the documents were produced and sent to the Requesting State. This was a large volume of banking documents including a cash account transaction report from the opening of the account to the date of request, the custody account statement at the close of each month since the opening of the account, information and supporting documentation with respect to fund transfers, incoming and outgoing and information on other financial products held by the suspect. Feedback was received thanking the Cayman Islands for their assistance and noting that the information was of substantial use for furthering the investigation and had allowed the Requesting State to confirm and complete financial information that prior to that they had had on an intelligence basis only, it had also enabled the development of an important line of investigation.

414. The following case summary shows how the jurisdiction has employed the MLA Treaty with the United States of America to enable the sharing of assets confiscated as a result of a request by the USA. Although the assets have not been shared at the time of the onsite, assessors are satisfied that the jurisdiction does cooperate to enable a sharing of assets and the sharing agreement is highly likely to be enforced.

UNITED STATES MLAT REQUEST

On or around 6 September 2010 the RCIPS commenced a ML investigation into the defendant. On the 28 September 2010, an ex parte application was made and granted for a Restraint Order. On the 19 July 2011, the Central Authority received a request for assistance from the United States for forfeiture of the assets that were the subject of the Restraint Order. The Central Authority was notified in December 2015, that the United States had entered into a settlement agreement with the defendant. By letter dated 15 February 2016, the Central Authority sought additional information from the United States as to the basis of the settlement. By letter dated 1 December 2016 the US Justice Department advised the Central Authority that the basis of the settlement which would result in the return of 85% of the restrained funds to the defendant was due to further investigations by the Requesting State. In light of the explanation provided, the Central Authority consented to the settlement. The total sum restrained was US\$1,974,000 of which 15% will be forfeited to the Cayman Islands Government and will be subject to asset sharing, the remaining funds

will be returned to the defendant. The Court has thus far received US\$1,025,761.61. A further US\$930,820.30 is expected.

415. The registration of external forfeiture orders can also be provided by the Cayman Islands. The jurisdiction has provided information which evidences its ability assist foreign counterparts with obtaining assets that are subject to forfeiture or confiscation. In 2016, the ODPP completed a request for registration of an external confiscation order which initially received in 2012. The matter pertained to arrest of defendants for conspiracy to defraud and ML offences. The defendant pleaded guilty and was sentenced to 4 years and 8 months imprisonment. Confiscation proceedings under the Proceeds of Crime Act 2002 (UK) were postponed with a hearing date to be fixed within 3 years of his conviction. By letter dated 27 March 2015 the ODPP received a Supplementary ILOR in which we were notified that on the 25 February 2013 a Confiscation Order had been made against the defendant in the sum of £1,280,000. The ODPP were further informed that the UK had reached the enforcement stage of the proceedings. The Cayman Islands provided information to the UK. The external confiscation order was registered upon the request of the UK. An order was prepared and granted appointing the Official Receiver to realise the value of the properties. The Cayman Islands remains in close contact with the United Kingdom pending the realisation of these properties.

Extraditions

416. The Cayman Islands has provided assistance in respect of a small number of extradition requests. Extradition requests are handled through the ODPP's case management system in the same manner as other international requests as outlined above. Statistics indicate that between 2013 and 2016 the Cayman Islands received three requests for extradition two of which involved ML/TF offences of corruption and terrorism respectively. The corruption request took one year due to various legal points taken by the requested person, including an asylum claim. The request involving terrorism was brought before the court within 4 months. The ODPP indicated that requests for extradition are given priority and are acted upon with immediacy, since the subject of the extradition may be a flight risk. The following case example of an extradition request in respect of terrorism along with Table 8.3 shows the jurisdiction's ability to handle extradition requests within a reasonably timely manner. The Table shows a total of three extradition requests over a 3 year period. Notably, the request of 2015 took one year to complete, which is timely in the circumstances although the matter was the subject of an appeal to the Grand Court.

CASE SUMMARY – EXTRADITION REQUEST TERRORISM

The Cayman Islands facilitated an extradition request in respect of alleged terrorism offences, involving a German national, for whom an arrest warrant was issued in Turkey. The authorities received information that he was entering the jurisdiction aboard a cruise ship from Turkey .

On the 8th December 2016, the Court issued a provisional warrant for his arrest. He was arrested on board the ship pursuant to the provisional warrant and appeared before the Court on 9th December 2016. On the 21st January 2017, the certificate of His Excellency the Acting Governor and request were transmitted to the Court. An initial hearing date of 20th to 22nd February 2017 was adjourned to await receipt of Defence Experts' Report and service of said Report on all parties. The extradition hearing took place on 4th and 5th April 2017.

417. Table 8.3 Incoming extradition requests for the period 2014-2016 which took a maximum of one (1) year to complete.

DATE OF REQUEST	OFFENCE	DATE OF DECISION	OUTCOME	REASON	LENGTH OF TIME (MONTHS)
8-6-14	Causing Death by Reckless Driving	Certificate of committal and Waiver 29th July 2014.	Granted	Initially contested then waiver	3
29-10-15	Corruption	Certificate of Committal 29th December 2015.	Granted	Appealed to Grand Court by Writ of Habeas Corpus	12
2-12-6	Terrorism	Discharged April 2017	Refused	Excessive delay by Requesting State.	4

418. As noted in R.39.1, the ODPP's Protocol states that extradition files must be dealt with expeditiously and the statistics presented in the limited cases demonstrate that is no unreasonable or unduly restrictive conditions are placed on the execution of requests. The fact

that there is no need for a formal extradition hearing and persons can consent to an extradition request is a positive enhancement to the system and allows for these matters to be completed within a timely manner as illustrated in the statistics.

419. There have been no cases where the Cayman Islands has been unable to extradite its own nationals. However, the principal of dual criminality will apply. If extradition were refused on another basis, prosecution would be considered in the same manner as for all other cases.

Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements

420. The Cayman Islands has not sought legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements on a regular basis. Given the nature of the jurisdiction as a major international financial centre coupled with the identified ML/TF risks of drug trafficking, fraud, the limited number of requests sought suggests that the country is not taking proactive measures to enable proper and systematic investigation and prosecution of domestic ML, associated predicate and TF cases with a transnational element. This was determined due to the limited number of ML prosecutions. As noted in the assessment of IO 7, the jurisdiction's reliance on the commission of a predicate offence to identify a ML case for investigation impedes its ability to act proactively to identify financial crimes that may have a transnational element. Moreover, the jurisdiction has prosecuted small scale domestic cases.
421. Two outgoing requests were made in relation to fraud investigations in 2013, both of which were granted. There were no requests for assistance with TF. A request for telecommunications data held in Canada was made in 2014. However, this request was withdrawn as criminal proceedings were discontinued. In 2015, three requests were made for the production of documents for ownership of property, bank accounts and beneficial ownership information in relation to a fraud matter, two of which were granted. The third request involved a request to Panama for legal assistance which was not granted on the basis that there was no treaty between the Cayman Islands and Panama. There were no requests for international legal assistance made by the Cayman Islands in 2016. The Cayman Islands seeks legal assistance requests to pursue domestic ML, associated predicate and TF cases with transnational elements but only to a limited extent. Between 2013 and 2016, the Cayman Islands had made only seven requests for assistance with overseas authorities on predicate offences.
422. Similarly, the informal communications between Police Units in the Cayman Islands and other jurisdictions do not result in the Cayman Islands seeking mutual legal assistance from other countries for the investigation and prosecution of ML/TF or predicate offences.

Seeking other forms of international cooperation for AML/CTF purposes

423. Competent authorities in the Cayman Islands seek information through international cooperation for financial intelligence, supervisory and law enforcement purposes.

FRA

424. Given the global nature of financial services, the FRA is aware of the need to cooperate with Overseas Financial Intelligence Units (OFIUs) in providing and seeking international assistance in discharging its function. The FRA is a net-provider of information (i.e. the number of requests for assistance received and the number of spontaneous disclosures made far exceeds the number of requests for assistance made and the number of spontaneous disclosures received).
425. The FRA seeks information from OFIUs as it deems necessary to assist in assessing any SAR it receives. Considerations for making a request include, but are not limited to, a subject or connected party residing or being domiciled in the foreign jurisdiction, transactions to or from the foreign jurisdiction and a relevant investigation being performed in the foreign jurisdiction. All requests for information are logged and electronic reminders for follow-up are made within analysts' Microsoft Outlook Tasks.
426. Table 8.4 summarises the number of requests made by the FRA, spontaneous disclosures received by the FRA and the average time to receive a response from OFIUs is as follows:

Table 8.4 Number of Requests Made / Spontaneous Disclosures received (2013-2016)

	2013			2014			2015			2016			Total		
	ML/TF	Other	Total	ML/TF	Other	Total	ML/TF	Other	Total	ML/TF	Other	Total	ML/TF	Other	Total
Made	4	11	15	4	15	19	4	15	19	4	11	15	16	52	68
Pending	0	0	0	0	0	0	0	1	1	1	1	2	1	2	3
Denied¹⁶	0	6	6	1	6	7	0	5	5	0	1	1	1	18	19
Approved	4	5	9	3	9	12	4	9	13	3	9	12	14	32	46
Spontaneous	1	5	6	0	3	3	1	8	9	2	9	11	4	25	29
Avg. Time	41	33	37	49	76	69	56	34	41	40	32	34	48	45	46

427. The majority of requests sought to confirm if the requested overseas FIU had any information regarding the named subject(s) being involved in criminal activity or being a party to criminal proceeds, or if the FIU was in receipt of any SARs regarding the subject(s). Although the FRA made 68 requests for information over the period, only 16 were in relation to ML/TF. Other information sought related to beneficial ownership/corporate information (3), bank account information (2), verification of citizenship, passport or other personal details (4), and TF connections (2).

¹⁶ Includes requests where no response was received.

Providing and exchanging financial intelligence in a constructive and timely manner

428. The Authorities appear to provide and exchange financial intelligence in a constructive manner.

FRA

429. The FRA provides information to OFIUs to assist them in discharging their functions. Given that the approval of the AG is required before the FRA can disclose any information it has received, the providing information in a timely manner may be a challenge. Information provided reveals that 57% of requests were responded to in less than 50 days over the four-year period. Table 8.5 shows the number of requests received and spontaneous disclosures made from 2013-2016.

Table 8.5- Number of Requests Received / Spontaneous Disclosures Made (2013-2016)

	2013			2014			2015			2016			Total		
	ML/TF	Other	Total	ML/TF	Other	Total	ML/TF	Other	Total	ML/TF	Other	Total	ML/TF	Other	Total
Received	14	48	62	23	38	61	10	48	58	18	48	66	65	182	247
Pending	0	0	0	3	1	4	1	2	3	5	13	18	9	16	25
Denied¹⁷	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Approved	14	48	62	20	37	57	9	46	55	13	35	48	56	166	222
Spontaneous	1	44	45	20	31	51	2	40	42	10	19	29	33	134	167
Avg. Time	76	124	113	101	134	122	51	119	108	66	70	69	79	113	104

FCU

430. The FCU exchanges law enforcement information with other police agencies, mainly occurring through informal processes which results in the timely execution of requests. Between 2013 and 2016, the FCU made 79 informal requests for law enforcement information. The informal means allows the FRA flexibility to dispose of matters in the circumstances.

RCIPS

431. The RCIPS has close working relationships with the Police forces in other jurisdictions especially in Jamaica. This provides a network for rendering assistance to or conducting joint investigations with the Police in Jamaica on the movement of drugs and guns between the two countries. Although there are MLA arrangements between these authorities, the exchanges

¹⁷ Includes requests where no response was received.

seldom results in countries seeking legal assistance to prosecute for ML/TF or predicate offences instead being able to cooperate on a more informal basis.

CIMA

432. CIMA engages in international cooperation to seek information for regulatory purposes, the basis for which are contained in law, MMOUs (such as IOSCO) or established MOUs (CIMA has 49 MOUs with other overseas regulatory authorities). CIMA requests information when seeking to establish the fitness and propriety of directors, shareholders and beneficial owners of an applicant for licensing domiciled outside of the Cayman Islands. Information is also requested when conducting an investigation into licensee and its affiliates, as well as on an ongoing basis where an entity is subject to consolidated supervision. Between 2013 and 2016, CIMA made 396 requests for information.

ACC

433. The ACC is able to disclose to any overseas anti-corruption authority any information relating to conduct which constitutes a corruption offence or would constitute a corruption offence if it had occurred in the Cayman Islands. The ACC received two overseas requests between January and June 2017, one of which, the information was received and the other pending. During this same period, the ACC received two requests from overseas relating to corruption and ML. In 2016 there were two requests from foreign LEAs, which related to corruption / bribery, both were granted, the average number of days to process was 5 days. There were two outgoing requests sent in 2016, both of which were approved and the information was received by ACC with an average response time of 5 days. There were also 2 spontaneous disclosures. In 2015 two requests were received from foreign LEAs, both of which were granted and information was sent to them. The average time to process was five days. Two outgoing requests were sent both of which were approved and the information was received. The average time taken was five days. All of the incoming and outgoing requests for 2015, 2016 and 2017 related to the USA.
434. Between 2012 and 2014 three requests for international assistance were received by the ACC, from the USA (2) and BVI. (these were all granted). During the same period 14 requests were sent out, to Jamaica, USA, BVI and St Lucia. (these were all responded to). During the same period 4 SARs were received from three different countries.

Customs

435. Customs cooperates and shares intelligence with international law enforcement counterparts to a fair extent. Customs has not sought international assistance between 2013-2015 as demonstrated in the following table.

Table 8.6 Requests made to and from Customs by Overseas Agencies

Request made to Customs from overseas Agencies	<u>2013</u>	<u>2014</u>	<u>2015</u>
No. of incoming requests from foreign LEAs	0	4	11
Incoming requests pending	0	0	0
No of outgoing requests sent to foreign LEAs	0	7	23
Outgoing requests pending	0	0	0
Name of countries that sent the most incoming requests		JAM	Jamaica, UK, France, USA, St. Lucia
Name of countries that received the most outgoing requests		JAM, USA	USA, Jamaica, France, UK

Providing other forms international cooperation for AML/CTF purposes

FRA

436. The number of incoming requests for information to the FRA exceeds the requests made by the FRA. The FRA can only respond to requests for information where it has the consent of the AG, in relation to information received pursuant to the POCL. This may create some delays in providing a timely response to requests.
437. A real time case management system is in place to monitor all pending SARs, as well as requests from OFIUs. The Director of the FRA prioritises requests, assigning ratings of Priority 1 to 4, with Priority 1 requiring responses within 35 days, Priority 2 requiring responses in 60 days and Priorities 3 and 4 requiring responses within 90 days or less. The FRA indicated that timeframes are generally respected but indicated during the onsite review that targets are not being met with respect to Priority 1 cases, which have an average response time of 55 days. From an overall analysis of its statistics, the FRA determined that 57% of requests were responded to within 50 days.

438. The table below summarises the number of requests made by year relating to specifically to ML/TF matters and the average response times.

Table 8.7 FRA's Average Response Time to International Requests

Year	No. of Requests Received	Requests Pending	Average Response Time
2013	14	1	76
2014	23	3	101
2015	10	1	51
2016	18	5	66
Total	65	9	79

FCU

439. The FCU is responsible for sharing financial information with international LEAs. The FCU has developed an informal mechanism in dealing with requests. This method enables the effective spontaneous sharing of information that can serve either for an intelligence or evidential purpose. The FCU has seen an increase in requests processed between 2013-2016 through informal mechanism (police to police). However, the authorities did not provide information to demonstrate the effectiveness of these informal practices. Notably, there have been instances where the FCU, as well as other units within the RCIPS, have formed joint investigative teams with their international counterparts to conduct joint investigations into financial crime and predicate offences.

JIU

440. The JIU has responsibility for liaison with overseas law enforcement authorities and acts as the single point of contact for the sharing of intelligence via INTERPOL. All information sharing via INTERPOL has to be dealt with by the single point of contact in the JIU. The intelligence is shared on a separate secure IT system with management review at both ends before disseminating the information to operational officers. The JIU has, in practice liaised with designated officers informally. This informal communication lends for flexibility in meeting timely processing of information requested. The JIU shares intelligence with several overseas partners, however the assessors were unable to assess the JIU's ability to provide timely and constructive assistance from its use of INTERPOL for ML/TF purposes.

CIMA

441. CIMA's processing of requests to overseas counterparts is relatively good. CIMA's Legal Division (and the Compliance Division, where necessary) work closely with the supervisory divisions in processing requests for assistance with a view to achieving timely execution of requests. CIMA has implemented an internal Dealing with Requests for Assistance from an

ORA procedure. CIMA's procedures are comprehensive and serves as an important guideline for timely execution of requests from ORAs, although in some instances, requests were not facilitated in a timely manner. Additionally, CIMA relies on its Regulatory Handbook (February 2017) for useful guidance on processing timely requests. Within 24 hours of receiving a request, the supervisory or other division/department (receiving the request), it (the request) is then forwarded to CIMA's Legal Division for attention with specific reference to relevant details. Upon receipt of a request it is reviewed to determine its compliance with the CIMA's requirements (intended for the regulatory purposes), the Legal Division, after acknowledging receipt, within 24 hours, reply to the ORA with the information requested or where further action is required by the MAL or additional information is necessary. CIMA requires the ORA to provide the undertaking or additional information before any information is provided.

442. Where the processing of a request requires further details, CIMA works with the requesting ORA and provides the requested information. Routine requests for information related to good standing and fit and proper assessments are executed within 14 days. Non- routine requests such as those relating to investigations into fraud, insider trading and beneficial ownership information can take up to two (2) months.
443. CIMA has signed over 60 MOUs with other overseas regulatory authorities (ORAs) to facilitate information exchange and other assistance for regulatory purposes. CIMA has MOUs with 14 of the 39 banking supervisors in the jurisdictions where they do not have physical presence in the Cayman Islands. In the absence of MOUs, CIMA is not impeded from providing assistance to banking supervisors, as section 50 of MAL grants CIMA the power to share information with these authorities. Between 2013 and 2017, CIMA received and granted 11 requests for assistance from overseas banking supervisors with whom they do not have MOUs.
444. In instances where CIMA receives a request and there is no MOU with a requesting ORA, once satisfied with the use of the requested information and legal restrictions on disclosures, CIMA would usually request certain undertakings by the ORA before providing the information.
445. Table 8.8 below details the number of requests received by CIMA, the number of pending requests and the number of requests where information was sent during the period 2013 to 2016.

Table 8.8 Requests for Assistance from CIMA

No. of Requests	2013	2014	2015	2016
Received	163	144	190	170
Pending	1	1	2	12
Denied/Withdrawn	0	2	1	1
Responses Sent	162	141	187	156

446. The timeliness of CIMA's response to overseas regulatory authorities, varied depending on the regulatory division processing the request and is detailed in Table 8.9 below. Notwithstanding this, the majority of responses were within 30 days. However, the response times were not in keeping with CIMA's internal service standard of responding to requests within 72 hours of receipt.

Table 8.9 CIMA's Response Time to Requests

Division	Assessment of Timelines
Banking	Majority of responses provided within 15 to 30 days of receipt
Fiduciary Services	Majority of responses provided within 6 to 14 days of receipt
Insurance Supervisory	Majority of responses provided within 15 to 30 days of receipt
Investment & Supervisory	Majority of responses provided within 6 to 14 days of receipt
Compliance	Average response time of 63 days of receipt

447. As can be seen in Table 8.8 above, the Compliance Division's average response time for responding to requests far exceeds the timelines with respect to other Divisions. This is due to the non-routine nature of the requests that are processed by the Division, which emanate from overseas regulators that are investigating in relation to securities violations such as fraud, insider trading, etc. This could require the Division to take varying steps depending on the circumstance, which may include, seeking clarity from the overseas regulatory authority on the specific types of information required and issuing directions to licensees to obtain information that is not routinely maintained by CIMA, or any other person CIMA believe may hold the relevant information. In addition, the following circumstances impact CIMA's ability to respond to these non-routine requests:
- the voluminous nature of the information being requested requires CIMA to grant an extension to licensees or other persons to submit information, or allow the information to be submitted on a rolling basis;
 - an Overseas Regulatory Authority may request for sworn testimony from a person, whereby CIMA has to arrange a deposition; and
 - a licensee or other person may fail to respond to CIMA's direction, after which CIMA can apply to the court for an order requiring the person to comply with the direction.
448. Approximately 24% of the requests received by CIMA during the relevant period were non-routine requests. Table 8.10 below provides a breakdown of the number and types of non-routine requests received by CIMA and processed by the Compliance Division:

Table 8.10: Non-routine Requests Received by CIMA

Year	Categories of Offences					Total
	Corruption and Bribery	Fraud	Insider Trading /Market Manipulation	Tax Crimes (Related to direct and indirect taxes)	Other Offences	
2013	1	11	17	0	14	43
2014	3	9	20	0	6	38
2015	0	13	17	1	13	44
2016	0	11	14	0	17	42
Total	4	44	68	1	50	162

International exchange of basic and beneficial ownership information of legal persons and arrangements

DITC

449. The majority of Cayman Islands' requests for basic and beneficial ownership are made for tax purposes to DITC, via established tax information exchange agreements. During the period 2013 to 2017, the DITC received 222 requests from its treaty partners, 70% of which were responded to within 90 days, 85% within 120 days and 96% within 1 year. Although responses to the majority of requests have been provided, assessors note that the majority of responses exceeded the 90 day response times, that are standard within these agreements. The Cayman Islands has attributed this delay to requests relating to the number of notices that must be produced, the request for information on several companies within individual requests, the volume of information required and the varying sources from which to attain this information.

ODPP

450. The ODPP has played a very important role in providing assistance for beneficial ownership information. The ODPP has cooperated to a large extent with the international community in providing BO information. As detailed in I0.5, during the period 2013 to 2017, the ODPP received and provided beneficial ownership information in 27 instances, 10 requests were for beneficial ownership information from banks; 8 were from companies and 9 were from banks and companies combined. Table 7.1 illustrates that the assistance provided by the ODPP was granted within a minimum period of 6 days to a maximum of 71 days between 2015 and 2016. Feedback in respect of BO requests provided by the ODPP was positive which illustrates that BO information provided during this period has been constructive. Requests for BO information have been dealt with by the ODPP within a timely manner and requesting states

have for the most part, expressed their gratitude for useful information that furthered their investigations. Between 2013 and 2016 there were 27 MLA requests of which 18 requests were granted, 3 were refused due to failure of the entity or records of entity in the Cayman Islands, and 1 was withdrawn. The remaining five matters were ongoing at the time of the onsite.

FCU

451. The FCU is the single point of contact for law enforcement enquiries from the UK on beneficial ownership requests. The Cayman Islands has entered into an agreement with the UK Government that came into effect on the 3rd July 2017, to provide the details of natural persons who own 25% or more of a Cayman Islands registered company and to provide that information, within 24 hours. All requests received were dealt with within three days except for one where there was a legal issue to be resolved.

CIMA

452. CIMA has responded to requests for beneficial ownership information from ORAs in a fair and consistent manner. CIMA received 52 requests for beneficial ownership information between 2013 to 2016, of which 50 responses were provided. CIMA identified the remaining 2 requests as pending but had not elaborated as to the reason for their pending status. Over the same period CIMA also made 9 requests for beneficial ownership information, 8 of which were granted. The table below demonstrates the number of (non-routine) requests received by CIMA in response to ORAs between 2013-2016:

Table 8.11 International Requests for Beneficial Ownership Information

Year	2013	2014	2015	2016
Incoming Requests				
No. of request received from foreign ORAs	12	12	20	8
No. of request Granted (Completed)	12	11	19	8
No. of requests Pending	0	1	1	0

FRA

453. The FRA provided responses to requests for beneficial ownership information. There were 6 responses in 2013, 8 responses in 2014, 13 responses in 2015 and 13 responses in 2016. Additionally, the FRA also provided 92 spontaneous disclosures which included beneficial ownership information. The FRA has detailed a number of instances where responses to requests for beneficial ownership information could not be provided. The main reasons were: (i) the entities for which beneficial ownership information was being requested were not registered in or associated with the Cayman Islands; (ii) the requesting FIU did not provide sufficient information to obtain beneficial ownership information; and (iii) the requesting FIU did not provide consent for the FRA to approach the registered office to obtain beneficial ownership information. The statistics are indicative of the FRA's ability to provide.

Overall Conclusions on Immediate Outcome 2

454. The mechanisms for facilitating international requests exhibit some characteristics of an effective system. The ODPP and CIMA have played a significant role in providing international assistance. Although the systems can benefit from improvements, the efforts of both competent authorities in providing constructive assistance to the international community are commendable. The Cayman Islands provides constructive responses to requests for MLA through the ODPP, although in some instances, the time in which these requests were facilitated has not been timely. The ODPP's case management system is an important tool for enhancing the jurisdiction's handling of international requests and the Office has made significant strides in meeting its international obligations. Requests for extraditions are given adequate attention and as such, are handled constructively and within a timely manner. Competent authorities (such as CIMA, the RCIPS and the FRA) rely on TCSPs to provide access to BO information to assist international counterparts. Given the jurisdiction's significance in the global financial marketplace, this poses a concern and does not align with the risks identified in the jurisdiction's NRA. Competent authorities also respond to requests for international assistance. The FCU responds to requests through informal channels, which is considered to aid timely execution of requests. However, there is no clear indication how this contributes to the jurisdiction's needs to pursue more ML cases with a transnational element. CIMA seeks and provides constructive assistance to overseas regulators when seeking to establish the fitness and propriety of applicants and responds to such requests from overseas regulators. Beneficial ownership information is shared via international cooperation requests. **The rating for Immediate Outcome 2 is a Moderate level of effectiveness.**

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerological order. It does not include descriptive text on the country situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.
2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2007. This report is available from cfatf@cfatf.org.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

3. This recommendation was issued in February 2012 and is being evaluated for the first time during this mutual evaluation. Recommendation 1 requires countries to identify, assess, and understand the ML and TF risks for the country. R. 1 requires countries to take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively.
4. *Criterion 1.1* The Cayman Islands conducted its first Money Laundering Terrorist Financing (ML/TF) National Risk Assessment (NRA) in 2015. The Cayman Islands Government, through the Attorney General's Chambers, in collaboration with the Ministry for Financial Services and CIMA, engaged the World Bank to provide technical assistance in the use of the World Bank's self-assessment tool to conduct the exercise. The NRA was coordinated by the Anti-Money Laundering Unit (AMLU) within the Attorney General's Chambers and entailed a thorough process that involved competent authorities and the private sector including representatives from most of the DNFBP sector as well as large and small FIs. The exercise involved the establishment of eight working groups, seven of which had specific focus on national ML/TF threats and vulnerabilities, banking, securities, insurance, other FIs and DNFBP vulnerabilities respectively. One parallel working group focused on reviewing the country's AML/CFT legislative and regulatory framework and recommending changes to the relevant laws, regulations and guidance. The ML/TF risks identified by the NRA were informed by several factors including information received from sector specific surveys, supervisory data, SAR data, investigative, prosecutorial and mutual legal assistance data as well as interviews with industry experts. However, assessors were not of the view that sufficient data was analysed to form a basis with respect to TF risks and misuse of legal persons. Additionally, while the NRA considered a category of persons termed as 'excluded persons', a comprehensive analysis of these persons and lawyers was not undertaken due to a lack of information on them.
5. *Criterion 1.2* Sections 5(3A) and 5(3B) (c) of the POCL require the Anti-Money Laundering Steering Group (AMLSG) to appoint committee to assess the ML/TF/PF risks of the Cayman Islands. The committee appointed and designated with the responsibility for assessing the ML/TF/PF risks is the Inter-Agency Coordination Committee (IACC) which consists of many of the same members of the AMLSG with some additions, such as the FRA. (See Chapter 2 for composition of IACC). As noted in criterion 1.1, the NRA was coordinated by the AMLU and the relevant working groups, which

comprised of senior members of the relevant government agencies, competent authorities and private sector industry participants.

6. *Criterion 1.3* In the published document entitled Results of the 2015 Cayman Islands National Risk Assessment Relating to Money Laundering, Terrorism Financing and Proliferation Financing (“the NRA Results”), the Cayman Islands conveyed its intention to re-assess its national risks every four years. Additionally, under section 5(3B) (c) of the POCL, the IACC has the responsibility for conducting future ML/TF assessments of the Cayman Islands and keeping risk assessments up to date.

7. *Criterion 1.4* Competent authorities are aware of the results of the NRA due to their participation in the AMLSG and the IACC, as well as their involvement in the NRA working groups. Competent authorities were also presented with copies of the comprehensive and detailed NRA Report. Private sector involvement in NRA working groups also aided in their awareness of the results of the NRA. Subsequent to the completion of the NRA, participants of the working groups attended a workshop where the results of the NRA were shared. This communication mechanism informed private sector of the results and included persons from industry associations and supervisory authorities. However, the mechanisms did not extend to all relevant private sector participants such as excluded persons that are not subject to supervision by CIMA, or real estate agents that are not members of the CIREBA. Further, on 25th April 2017, the Cayman Islands also publicly published and circulated a summary of the NRA Results which did not contain sufficiently appropriate information has been published in the summary, to allow a self-regulatory body, FI or DNFBP to make informed decisions and adequately mitigate ML/TF risks.

8. *Criterion 1.5* Following a presentation to the Cabinet of Ministers of the preliminary results of the NRA, the Cayman Islands Government allocated resources to strengthen the jurisdiction’s AML/CFT regime. This included enhancing the jurisdiction’s AML/CFT legal and regulatory framework, enacting new or amending existing legislation, increased allocations of resources for the Financial Crimes Unit (FCU) of the Royal Cayman Islands Police Service (RCIPS) and the Financial Reporting Authority (FRA). In addition, resources were allocated for the implementation of a regulatory framework for NPO and DNFBP supervision. The Cayman Islands Anti-Money Laundering and Counter Terrorist Financing Strategy for 2017-2021, does not prioritise implementation commensurate with the levels of ML/TF risks identified in the NRA.

9. *Criterion 1.6* The POCL mandates all FIs and DNFBPs conducting relevant financial business to comply with the requirements set out in the AMLRs. However, Regulation 22(d)(iii) exempts FIs and DNFBPs from applying verification procedures for customers acting in the course of business or is a majority owned subsidiary of a business that is subject to regulation by an overseas regulator in a country on the “List of Countries and Territories deemed to have equivalent legislation” developed by the AMLSG. There is no indication that these customers mentioned above are (a) proven low ML/TF risk or (b) the financial activity that occurs through these persons are carried out on a limited or occasional basis.

10. *Criterion 1.7* (a) Regulation 27 of the AMLRs require FIs and DNFBPs to take enhanced due diligence measures when the applicant for business poses a higher ML risk. (b) Regulation 8(2)(e) requires that measures be put in place to manage and mitigate those risks.

11. *Criterion 1.8* Regulation 21(2) of the AMLRs permits FIs and DNFBPs to apply simplified CDD in cases of low level of risks provided that this is consistent with the findings of the national risk assessment or those of the supervisory authority.

12. *Criterion 1.9* Pursuant to section 6 (1)(b)(ii) of the MAL, FIs and TCSPs are subject to regulatory oversight by the CIMA which has the responsibility for monitoring AML/CFT compliance with the AMLRs. Pursuant to section 4(9) of the POCL, the Cabinet of Ministers designated the DCI as the public-sector body responsible for monitoring DPMS and real estate agents for compliance with the AMLRs. Additionally, under regulation 55B of the Anti-Money Laundering (Designated Non-Financial Business and Professions) (Amendment)(No.2) Regulations, 2017, the Cayman Islands Institute of Professional Accountants (CIIPA) was designated as the supervisory authority for accountants. Monitoring of these FIs and DNFBPs ensures that obligations under Recommendation 1 are being implemented. A public sector or self-regulatory body has yet to be assigned to monitor attorneys for AML/CFT compliance; however, one aspect of relevant financial business being conducted by lawyers occurs through their licensed TCSPs subject to monitoring by CIMA. Schedule 4 of the SIBL excludes certain entities, performing relevant financial services business from licensing ongoing and also only subject to limited AML/CFT monitoring (see Chapter 1). These persons account for the largest number of securities and business entities in the jurisdiction, however, 45% of these entities are otherwise monitored for AML/CFT purposes.

13. *Criterion 1.10* Regulations 8(1)(d) and 8(2)(a to d) of the AMLRs require reporting entities to (a) document their risk assessments, (b) consider all the relevant risk factors before determining what is the level of overall risk and the appropriate level and type of mitigation to be applied, (c) keep these assessments up to date, and (d) have appropriate mechanisms to provide risk assessment information to competent authorities and SRBs.

14. *Criterion 1.11* (a) Regulation 8(2)(e) of the AMLRs, requires FIs and DNFBPs to have policies, controls and procedures in place, approved by senior management, to enable them to manage and mitigate risks that have been identified by the country or relevant financial business. (b) Regulation 8(2)(g) of the AMLRs requires FIs and DNFBPs to monitor the implementation of the controls referred to in (e) and enhance controls where necessary. (c) Regulation 8(2)(h) of the AMLRs requires the performance of enhanced due diligence where higher risks are identified.

15. *Criterion 1.12* Under regulation 21(1) of the AMLRs, FIs and DNFBPs may only apply simplified due diligence measures where lower risks have been identified. Regulation 21(3) of the AMLRs restricts simplified customer due diligence measures from being undertaken where FIs and DNFBPs suspect or have reasonable grounds for knowing or suspecting that a customer is engaged in ML or TF. However, all FIs and DNFBPs are not monitored (see criterion 1.9).

Weighting and Conclusion

16. The Cayman Islands has conducted its first national risk assessment in 2015 to identify, assess and understand its ML/TF risks. Mechanisms are in place to coordinate the assessment of ML/TF risks, keep them up to date and disseminate the results. Relevant legislative obligations are imposed on FIs and DNFBPs to combat and mitigate ML/TF risks. There is no designated supervisor for attorneys and excluded persons are only subject to limited monitoring, which does not ensure that they are

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implementing their obligations under Recommendation 1. Further, the jurisdiction has not justified the rationale of legislative exemptions based on the basis of proven low ML/TF risks or low occurrence. **Recommendation 1 is rated Partially Compliant.**

Recommendation 2 - National Cooperation and Coordination

17. This Recommendation (previously R.31), was rated ‘C’ in the 3rd MER. Recommendation 2 has new requirements that countries have national policies which are informed by risks, and the element of cooperation, exchange of information and domestic cooperation with regard to financing of proliferation is introduced.

18. *Criterion 2.1* The Cayman Islands published on the 22 May 2017 its Anti-Money Laundering and Counter Terrorist Financing Strategy for 2017-2021 (AML/CFT Strategy) which aims at ensuring the alignment between this strategy and the risks identified by the NRA but from it some policies have been developed (e.g. with regards to confiscation). For monitoring purposes, it includes a framework with a vision, mission, as well as strategic themes and objectives to address deficiencies identified in the NRA. The objectives outlined in the Strategy document were recently completed (2017) and provides a roadmap for the strengthening of the AML/CFT policies within the jurisdiction over a specified timeframe.

19. *Criterion 2.2* The AMLSG, is the authority responsible for national AML/CFT policies under section 5(1) of the POCL) and its members include the Attorney General, who serves as the Chair, Customs, Solicitor General, Director of Public Prosecutions, the Chief Officer in the Ministry responsible for Financial Services, the Commissioner of Police, and the managing director of CIMA.

20. *Criterion 2.3* Policy coordination is driven by the AMLSG. Pursuant to Section 5(3B) (b) of the POCL, the IACC facilitates the coordination and cooperation among statutory authorities, departments of Government and agencies tasked with regulation for AML/CFT/PF (see Chapter 1). The organisations represented at the IACC for the most part are the same as the AMLSG. However, the Anti-Corruption Commission which is a critical authority, charged with the responsibility of investigating domestic corruption identified as a major threat in the country, is not a member of the IACC. This is not unusual given the “arm’s length” approach that such commissions have to take in dealing with persons in public office. However, the ACC works closely with the ODPP and CIMA. Additionally, at the operational level, the Joint Intelligence Unit (JIU), comprised of the enforcement agencies (police, customs, immigration), serves as a gateway for the sharing of information at an operational level. However, absent from this body is the Office of the Director of Public Prosecutions, ACC and the country’s FIU - the Financial Reporting Authority (FRA). There is a bilateral arrangement between CIMA and the FRA and an MMOU among members of the IACC. Further there are bilateral MOUs between the FRA and the FCU as well as the ACC. A further bilateral MOU is in place between the ACC and RCIPS for the provision of operational support to the ACC.

21. *Criterion 2.4* The Sanctions Coordinator located within the FRA is the central person responsible for the coordination of actions with respect to PF. Further, Section 5(3B) (b) of the POCL includes the operational coordination of the IACC with respect to PF. The policy oversight of the AMLSG extends to PF.

Weighting and Conclusion

22. Although, the Cayman Islands has not developed any national policies that were informed by the NRA Results, the country has a national strategy to address risks identified. The AML/CFT Strategy sets out a general policy direction for the Cayman Islands but there do not appear to be policies based on the risks. This may be in part due to the recent conclusion of the NRA and development of a strategy. Several operational agencies have MOUs in place to facilitate domestic co-operation and co-ordination. Some core AML/CFT agencies – such as the ACC and FRA- are not represented in the coordination and cooperation structures in place (i.e. AMLSG, IACC and JIU). The absence of these participants from the coordination body will further inhibit the jurisdiction from appropriate coordination at the operational and policy development level. **Recommendation 2 is rated Partially Compliant.**

Recommendation 3 - Money laundering offence

23. R. 3 (formerly R.1 and 2) were previously rated ‘LC’ and ‘C’ respectively. The 3rd MER notes that the deficiency with Recommendation 3 is that ML offence of concealing, disguising, converting or transferring of property is not defined in accordance with the Vienna Convention. Recommended actions for correcting this deficiency was noted in the 3rd Follow-Up Report. It was recommended that the requirement of *intent to avoid prosecution or to avoid the making or enforcement of a confiscation order* be removed from the ML offence of concealing, disguising, converting or transferring property. The 3rd Follow-Up report further notes that the requirement for intent to avoid prosecution or to avoid the making of a confiscation order has been removed.

24. *Criterion 3.1* ML has been criminalised on the basis of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the Palermo Convention through sections 133 to 135 of the POCL. The offences under POCL include conversion, transfer, concealing, disguising, acquisition, facilitation, possession and use of criminal property consistent with the physical and material elements of both Conventions.

25. *Criterion 3.2* Section 144 of POCL defines ML in relation to criminal property, which is obtained from criminal conduct which is (a) an offence in the Cayman Islands or (b) conduct, which would constitute an offence if it occurred in the Cayman Islands. Further, direct tax offences have now been criminalised under the Penal Code (Amendment) Law, 2017. Pursuant to section 247A a person commits an offence who, with intent to defraud the Government, (a) willfully makes, (b) willfully omits information, or (c) willfully obstructs, hinders, intimidates or resists a person who collects money for the government’s general revenue. The language of section 247A is broad enough to include direct and indirect taxes. Considering the foregoing, any offence can be a predicate offence for ML and as such, the POCL includes a sufficient range of predicate offences in all 21 categories of designated offences.

26. *Criterion 3.3* The Cayman Islands does not use a threshold approach but rather applies an all crimes regime, that involves criminal conduct, with criminal property being the person’s benefit from the criminal conduct. As noted above criminal conduct is extended to a wide range of offences in the Cayman Islands.

27. *Criterion 3.4* The ML offence extends to any type of property. There is no minimum or maximum value of property. Section 2(2) of the POCL defines property, wherever it is situated, to include money

and all other property, real or personal, including things in action and other intangible or incorporeal property, and when used in relation to terrorism means, in addition, property likely to be used for the purposes of terrorism, proceeds from the commission of acts of terrorism or which has been used or is reasonably suspected to have been used, directly or indirectly, in the commission of an act of terrorism. Under section 144(3) of POCL, criminal property represents property from which there is benefit from criminal conduct or property, which represents such benefit (in whole or in part, directly or indirectly), where the alleged offender knows or suspects that it constitutes or represents such a benefit, and it includes terrorist property.

28. *Criterion 3.5* Pursuant to section 144 of the POCL, ML is directly linked to activities involving criminal property which represents the benefit from criminal conduct and it is immaterial who carried out the criminal conduct, who benefited from it and whether the conduct occurred before or after the commencement of this Law. Additionally, the Cayman Islands indicated that case law is well developed to confirm that a conviction for a predicate offence is not necessary to establish that property is the proceeds of crime. The Court of Appeal held in *R v Anwoir and others*[2008] 2Cr. App.R. 36, CA (at paragraph 21): “*We consider that in the present case the Crown are correct in their submission that there are two ways in which the Crown can prove the property derives from crime, (a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime*”. The ML offence does not require a conviction for the predicate offence. Consequently, it would not be necessary for a person to be convicted of the predicate offence.

29. *Criterion 3.6* Predicate offences for ML which covers criminal conduct which occurred outside of the Cayman Islands are covered under section 144(2) of the POCL. There is however, a requirement for dual criminality. The ML provisions set out in the POCL apply with respect to criminal property that was generated either through the commission of criminal conduct in the Cayman Islands or abroad provided dual criminality is met with regards to the predicate conduct. Section 133(3) of the POCL permits the Attorney General to extend the scope of the provision even to conduct, which does not meet the dual criminality requirement.

30. *Criterion 3.7* Pursuant to Section 144(4) of the POCL, it is immaterial who carried out the criminal conduct and who benefitted from it. Therefore, the ML offence applies to those persons who commit the predicate offence. The Cayman Islands have also cited the case *R v Bouchard*, Cayman Islands Court of Appeal, Appeal No 9 of 2016. In the case of *Bouchard*, Appeal No 9 of 2016 the defendant was convicted of the predicate offence of theft and related offences and of the laundering the proceeds of that crime and indeed received a consecutive sentence for the ML offence.

31. *Criterion 3.8* Case law and legislation allow the mental element of the offence of ML to be inferred from the objective factual circumstances. The ML offence applies to property which the defendant knew or suspected was or represented benefit from criminal conduct. Pursuant to sections 133-135 of the POCL, the ML offences apply to property where the required *mens rea* for the defendant ‘knows or suspects’ that the property was derived from criminal conduct. Therefore, for the purposes of ML criminal property is also defined by the state of mind of the accused. The Cayman Islands has submitted case law evidencing how the courts dealt with matters drawing inferences from factual objective circumstances in proving intent and knowledge. The prosecution may prove that the property derives

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from criminal conduct either by evidence showing that it derived from a specific crime or by evidence from which the jury is entitled to infer that the property can be derived from crime ('an irresistible inference') – *R v Anwoir and others* [2008] 2 Cr.App.R. 36.

32. *Criterion 3.9* Section 141(1) of the POCL makes provision for the ML penalties. A fine of KYD5,000 or imprisonment for two (2) years or both fine and imprisonment may be imposed on summary conviction of an ML offence or on conviction on indictment, to imprisonment for a term of fourteen (14) years or to a fine or both. The law does not specify the amount of fine that may be imposed upon conviction on indictment. However, the authorities have noted that the prosecution can apply to have higher penalties imposed and there is no maximum. No information has been provided to determine the maximum fine actually imposed by the prosecution. The only exception is that a fine must not be excessive. The amount of the fine is proportionate to some predicate offences, for example, fraud, forgery, etc. The imposition of a fine of KYD5,000 alone is not dissuasive, but when applied along with the prescribed two years imprisonment can be considered as dissuasive. Therefore, the penalties, applicable to natural persons convicted for ML, are proportionate and dissuasive sanctions.

33. *Criterion 3.10* Criminal liability for ML extends to persons as defined under section 3(1) of the Interpretation Law. Under section 3(1), 'person' include any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons. Further, Section 142 of the POCL holds directors, managers, secretaries or other similar officers of the body corporate liable for ML offence committed with the consent or connivance of one of these persons. The body corporate will also be held liable. Section 142 applies to all entities in the regulated sector registered in the Cayman Islands and to entities that are not in the regulated sector (whether or not the nominated officer is based in the Cayman Islands). Additionally, parallel civil liability or sanctions may also be imposed on legal persons. Pursuant to section 5 of the MAL, 2016 (amended), CIMA has power to impose administrative fines on a person (legal person) for ML offences. A civil liability or sanction does not prejudice the imposition of criminal liability or sanctions against a natural person.

34. *Criterion 3.11* The ancillary offences to ML; attempts, conspires, incites, aiding, abets, counsels and procures are covered by section 144(10) of the POCL. Section 134(1) of the POCL covers facilitating an offence. Facilitating would also fall under 'aiding and abetting' the offence. Under s18 of the Penal Code (2017 Revision), which applies to all criminal offence, a person who aids or abets or counsels or procures any person to commit an offence is deemed to have committed the offence.

Weighting and Conclusion

35. ML has been criminalised in keeping with the Palermo Convention and the ML offence extends to all types of property regardless of value. **Recommendation 3 is rated Compliant.**

Recommendation 4 - Confiscation and provisional measures

36. The Cayman Islands was rated 'LC' (formerly R.3) in its 3rd MER. That Report identified one (1) deficiency whereby there were no provisions for asset tracing. R. 4 now requires countries to also have mechanisms for managing and disposing (when necessary) of property that was frozen, seized or confiscated.

37. **Criterion 4.1 (a)** The Cayman Islands has broad legal measures, which allows the jurisdiction to make confiscation orders in order to recover a defendant's benefit from criminal conduct. Section 15 of POCL provides that where the court or summary court decides that a defendant has benefitted from a criminal conduct it is empowered to decide on a recoverable amount and then make a confiscation order requiring that defendant to pay the amount. At section 69 (4) of the POCL, benefit includes any property the defendant obtained as a result of or in connection of his criminal conduct which includes substitute assets and any pecuniary advantage. In addition, if authorities are able to establish a criminal lifestyle (the interpretation of a criminal lifestyle is found in section 68 of the POCL), property acquired in the 6 years prior to the date the offence was committed would be subject to seizure. Further, under section 70 of the POCL, property held by a third party may also be subject to confiscation if it is deemed to be a tainted gift. As a result, property laundered, and the proceeds of property laundered including income or other benefits derived from such proceeds can be confiscated as well as property of corresponding value regardless of whose possession they are in.

38. **(b)** The definition of property within the POCL includes money and all other property, real or personal, including things in action and other intangible or incorporeal property. As such, where a person obtains a pecuniary advantage as a result of, or in connection with criminal conduct, section 69 (5) of the POCL provides measures whereby that person is to be taken to obtain a sum of money equal to the value of the pecuniary advantage. Instrumentalities are captured at section 192 (2) of the CPC where any court may order the seizure of any material, instrument or things believed to be provided for or prepared with a view of committing any offence. Further, the MDL contains forfeiture provisions surrounding the forfeiture of seized cash used in relation to drug trafficking. Where a person is convicted of an offence under the MDL, and the court on, or before, the date which the individual is convicted may determine that any monies having been acquired due to or as a result of the offences as well as property (e.g. vessels) used for or in connection with or intended for use in connection with the offence may be forfeited. However, this is only based on property acquired by an individual, or shared with a third party, on the day when the offence was committed or later unless it can be proved it was acquired as part of a criminal lifestyle in which property acquired 6 years prior to conviction may be seized.

39. **(c)** Confiscation of terrorist property is included in the POCL and the TL (see provisions sections 18(1), s 19(1) and s (28)). This includes proceeds of terrorism property is the proceeds of, or used in, or intended or allocated for use in the financing of acts of terrorism, terrorists or terrorist organisations. The TL enables authorities to pursue forfeiture of cash where it is intended to be used for terrorism or represents property obtained through terrorism whether it is wholly or partly, and directly or indirectly, received by any person as payment or other reward in connection with the commission of the offence. This capacity to seize property continues to be applicable in instances where ownership is transferred. The TL also allows for property to be forfeited that may at present be under the control of a third party but, at the time of the offence, was in the possession or under the control of the convicted individual.

40. **(d)** The Cayman Islands has a benefit-based system under the POCL where property corresponding to a value of benefit obtained from crime is restrained and confiscated. While the POCL outlines that property directly linked to a criminal enterprise is subject to confiscation, section 69 indicates that this includes property of corresponding value. Should that property of a corresponding value be in the hands

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of a third party, it would then fall under the tainted gift provision within the POCL and be subject to confiscation.

41. **Criterion 4.2** (a) The ODPP, Customs and RCIPS can trace, evaluate and identify property that is subject to confiscation through authorities contained within sections 149 and 156-177 of the POCL. They include: production orders (from law enforcement) and disclosure orders (from prosecutors) requiring production of information or material; search and seizure warrants can be obtained in order to seize information and material or to facilitate investigations; customer information orders; and account monitoring orders. Under section 160 of the POCL, the ODPP can apply for a disclosure order against a person who is subject to a confiscation investigation. Such a disclosure order empowers the ODPP to seek the person named in the order to answer questions; provide information or produce documents. Customer information orders can be obtained pursuant to section 166 of the POCL. Such an order can be used for a FI, covered in the order, to provide to an appropriate officer with customer information relating to a person who is subject to a confiscation investigation. Provisions specific to terrorism can be found at sections 28, 30 and Schedule 2 to 4 of the TL which address account monitoring orders, restraint and forfeiture. Customs has similar powers to identify, trace and evaluate property subject to confiscation under section 2 of POCL which includes customs officers in the definition of constable. There is no information to indicate that the ACC is able to identify, trace and evaluate property subject to confiscation.

42. (b) The court may grant a restraint order pursuant to section 44 of the POCL. A restraint order can be obtained where there is an ongoing criminal investigation against an offender that has benefitted from his criminal conduct or where proceedings are ongoing and there is reasonable cause to believe that the defendant has benefited from his criminal conduct. Such a restraint order prohibits any specified person from dealing with any realisable property held by him whether or not the property is described in the order. Realisable property has the meaning of any property either held by the defendant or any property held by a person to whom the defendant has directly or indirectly made a gift. Further, section 4(2)(b) POCL permits the FRA to apply to the court for an order requiring a person to refrain from dealing with his account for twenty-one days if there is reasonable cause to believe that there is criminal conduct. Section 9 of the Customs Law authorises the freezing and seizing of assets. Further, regarding the taking of steps or voiding actions that prejudice the Cayman Islands ability to seize, freeze or recover property, section 6 (4) of POCL provides for an application for a restraint order to be made ex parte, without notice, to a Judge in Chambers.

43. (c) Additionally, where the court makes a restraint order the court may, upon the application of the ODPP, make such other order as it believes is appropriate for the purpose of ensuring that the restraint order is effective. Section 82(3) of POCL is sufficient to address the prejudice component of the criteria, are found in section. 45(5) of POCL.

44. (d) Police powers can be used in relation to confidential information as section 3(1)(c) of the Confidential Information Disclosure Law 2016 (CIDL). Legislative authorities which enable competent authorities to take any appropriate investigative measures include: Production Orders (section 159 POCL 2017); Disclosure orders requiring production of information or material. (section 160-165 of POCL 2017); Search and seizure warrants in order to seize information and material or to facilitate investigations (s156); Customer information orders (sections 166 to 170); Account monitoring orders

(sections 173 to 178) and requesting evidence from overseas (section 179). Under the Information and Communications Technology Authority (Interception of Telecommunication Messages) Regulations 2011 and 2016 Amendment Regulations, the Governor may issue a warrant authorising the police to intercept a message to gather intelligence. Section 55 of the TL also contains the power to intercept communications. The TL contains powers to search premises, seize items and obtain account monitoring orders.

45. **Criterion 4.3** Section 46(1)(c) of POCL provides measures to protect the rights of bona fide third parties, by mandating notification to any person affected by the order. Under section 46 (2) an application for the discharge or variation of a restraint order may be made by any person affected by it. Pursuant to section 52(8) of POCL, when appointing a management or enforcement receiver, the Court must give persons holding interests in the property a reasonable opportunity to make representations to the court. Under section 121 of POCL, the rights of bona fide third parties are protected in relation to cash seizures as the person may apply to the summary court for the cash to be released. The owners of property subject to confiscation are listed in section 28(7) of the TL, however, the court must give a third party (e.g. a person other than the individual convicted) an opportunity to be heard in the instance where that individual claims to be the owner of the property to be forfeited. Section 6(2) of the TL allows a restraint order to be discharged or varied by the court on behalf of a person affected by it.

46. **Criterion 4.4** Section 52 (1) of the POCL authorises, the court, upon the application of the ODPP, to transfer to the control of the Official Receiver any realisable property to which a restraint order applies. The Receiver will take possession of property; and is authorised to manage or otherwise deal with the property (including selling the property or any part of it or interest in it). Similar to the POCL, Schedule 2 of the TL authorises the court to appoint a receiver to take possession of the forfeited property, as well as manage and dispose of it as deemed necessary.

Weighting and Conclusion

47. The competent authorities of the Cayman Islands may trace, identify and evaluate assets subject to confiscation to a large extent and the Cayman Islands meets most of the requirements for R.4. The inability of the ACC to identify, trace and evaluate property subject to confiscation was seen as a relatively minor deficiency given the risk and context of the jurisdiction. **Recommendation 4 is rated Largely Compliant.**

Recommendation 5 - Terrorist financing offence

48. Recommendation 5 (formerly SR II) was rated 'LC'. The deficiencies noted in the 3rd Round MER were that there were no statistics available to determine the effectiveness of the CFT regime.

49. **Criterion 5.1** The Cayman Islands has criminalised TF under sections 19 to 22 of the TL (2015 Revision) as amended by the Terrorism (Amendment) Law 2016. The TF offence included in Parts II and III of the TL and the Terrorism (Amendment) Law, 2016 is consistent with Article 2 of the Terrorist Financing Convention. The definition of funds in section 37, and property under section 2, of the TL, including the Terrorism (Amendment) Law, 2016 are consistent with the TF Convention. The following UN Conventions / Protocols relating to TF have been extended to the Cayman Islands: The 1963

Convention on Offences and Certain Other Acts Committed on Board Aircraft , the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, the 1979 International Convention against the Taking of Hostages and the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection.

50. *Criterion 5.2* Section 7 of the Terrorism (Amendment) Law amends section 19(1) of the TL and makes it an offence for a person by any means, directly or indirectly, knowingly to provide or collect property (or attempt to do so) with the intention or knowledge that the property will be used in whole or in part (a) to carry out an act of terrorism, (b) by a terrorist to facilitate activities related to terrorism or membership in a terrorist organisation or (c) by a terrorist organisation. There is no requirement for a link to a specific terrorist act. Section 19(2) of the TL provides that even if the act of terrorism does not occur or is not attempted, the provisions under section 19(1) applies. Under section 2 of the TL as amended, property includes money and all other property, real or personal, including things in action and other intangible property, moveable or immoveable property and legal documents or instruments in any form evidencing title to or interest in property.

51. *Criterion 5.2bis* The specific acts of travel are covered by section 16 of the TL. Under section 16(2) a person commits an offence if, for the purpose of committing, planning or participating in an act of terrorism that person (a) being legally and ordinarily resident in the Islands, travels or attempts to travel to a country or territory other than the Islands or (b) being a tourist or transit passenger in the Islands, travels or attempts to travel from the Islands. Section 16(2)(c) makes it an offence if a person knowingly provides (by any means, directly or indirectly), property within the Cayman Islands with the intention that the property should be used or knowing that the property to finance travel of seeking to travel to another country that is not the country of his residence or nationality. A person commits an offence under section 16(2)(d) if, that person organises, facilitates or recruits another person for travel to another country other than that person's country of residence or nationality for the purpose of committing, planning or participating in an act of terrorism. Further under section 16(1)(d) a person who participates as an accomplice in the commission of an act of terrorism commits an offence. Section 2 defines terrorism as an act for the described purpose whether that act is committed in or outside the Islands section 19 of the TL makes it an offence where a person directly or indirectly knowingly provides property with the intention that the property should be used or knowing that the property will be used in whole or part by a terrorist to facilitate terrorists acts. The offence is committed even if the terrorist act does not occur and regardless of the country or territory. Under section 20 a person commits an offence if that person possesses terrorist property and intends that it should be used or has reasonable cause to suspect that it may be used for the purposes of the financing of acts of terrorism, terrorists or terrorist organisation. Pursuant to section 21 a person commits an offence if he becomes concerned in an arrangement as a result of which terrorist property is made available or is to be made available to another and he knows or has reasonable cause to suspect that it will or may be used for the purposes of the financing of acts of terrorism, terrorists or terrorist organisations. It should also be noted that under section 17(1) a person who has any information which may be of assistance in preventing the commission by another person of an act of terrorism, shall as soon as reasonably possible after receiving such information, disclose the information at a police station to a constable not below the rank of

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Inspector. (Offence punishable with 10 years imprisonment). Training and receiving training in the making or use of firearms, explosives or chemical, biological or nuclear weapons are offences under section 4 of the TL.

52. *Criterion 5.3* The TL makes provisions for terrorist property whether from a legitimate or illegitimate source. Terrorist property is defined under section 18(1) (as amended) of the TL as the proceeds of, or used in, or intended or allocated for use in, the financing of acts of terrorism, terrorists or terrorist organisations. Section 19(2)(c) of the TL provides that the terrorist financing offence, as defined at section 19(1) is committed regardless of whether the property concerned is from legitimate or illegitimate sources. Pursuant to section 20, the offence is committed if a person is in possession of terrorist property and intends it is used or has reasonable cause to suspect it may be used for the purposes of the financing of terrorism. There is no requirement that the funds come from an illegitimate source. Under section 21, the offence is committed when the arrangement is entered into in relation to terrorist property, there is no requirement that it comes from illegitimate sources.

53. *Criterion 5.4* The TF offence does not require that the funds were actually used to carry out or attempt a terrorist act, as section 19 (2)(a) of the TL states that the offence is committed even if the act of terrorism does not occur or is not attempted. The TF offence does not require that the funds were linked to a specific terrorist act as section 19(2)(b)(ii) of the TL states that the offence is committed even if the property is not linked to a specific act of terrorism. Under section 20 of the TL, intention or reasonable suspicion that the terrorist property may be used for the purposes of financing acts of terrorism are sufficient to complete the offence without the actual act being carried out. Under section 21 of the TL, the offence is committed when an arrangement is entered into whereby terrorist property is to be made available to another. There is no requirement that the funds were actually used to carry out an act of terrorism.

54. *Criterion 5.5* There are no legislative provisions which speaks to the intent and knowledge required to prove the offence to be inferred from objective factual circumstances. However, the Cayman Islands has submitted that the intent and knowledge may be inferred from objective factual circumstances under English Common Law. The prosecution may prove that the property derives from criminal conduct either by evidence showing that it derived from a specific crime or by evidence from which the jury is entitled to infer that the property can be derived from crime ('an irresistible inference') – *R v Anwoir and others* [2008] 2 Cr.App.R. 36.

55. *Criterion 5.6* Sanctions are prescribed under section 27 of the TL, where a person who commits an offence under the TL is liable on conviction on indictment to a fine and to imprisonment for fourteen years. Section 85 of the CPC allows the prosecution to elect to have any terrorism matter tried before a Grand Court where the penalties available are higher. According to the PC, section 28(a), there is no maximum amount of fine.

56. *Criterion 5.7* Criminal liability and sanctions apply to legal persons as under section 3 (1) of the Interpretation Law (1995 Revision) person includes any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons). As such, criminal liability and sanctions apply to legal persons. As the amount of fine under the TL is unspecified there is no maximum amount of fine which can be imposed (section 4(6)).

57. *Criterion 5.8* (a) Section 19(1) of the TL includes the *attempt* to commit the TF offence and makes it an offence to *attempt* to provide or collect property for terrorism. Section 381 (1) of the PC also

makes it an offence to attempt to commit any TF offence. Under section 18 of the Penal Code (2017 Revision), every person who does or makes the omission which constitutes the offence; omits; enables; aids; abets; counsels or procures the commission of an offence. Attempting to commit an offence is an offence under section 318 of the Penal Code. Therefore, participating as an accomplice in an attempted TF offence is an offence. Also, under section 59(3) of the Criminal Procedure Code (2017 Revision) any allegation of an offence shall be taken as including an allegation of attempting to commit that offence. The offence is completed once the organising or directing is completed. There is no requirement that the TF offence be completed. Therefore, once the directions have been given the offence is proven.

58. *Criterion 5.9* The ML offence under the POCL includes all offences as predicate offences to ML (sections 133 and 144 POCL). Under section 22 of the TL, a ML offence is committed where a person enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property by concealment, by removal from the jurisdiction or by transfer to nominees. Accordingly, TF is a predicate offence to ML.

59. *Criterion 5.10* Under section 19(2)(d) of the TL (as amended) the offence under section 19(1) is committed regardless of the country or territory in which the act of terrorism is intended to or does occur. Under section 13 of the TL, a person who does anything outside the Islands and his action would have constituted the commission of an offence under sections 19 to 22 if it had been done in the Cayman Islands commits the offence. The ML offence under section 22 of the TL applies where terrorist property is removed from a jurisdiction (section 31 (2) of the TL).

Weighting and Conclusion

60. The Cayman Islands has adequately criminalised TF according to the Terrorist Financing Convention. **Recommendation 5 is rated Compliant.**

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

61. R. 6 (formerly SR. III) was rated 'LC' in the 3rd MER The deficiencies pertained to the lack of restraints or confiscations under the CFT legislation and no legislative provisions for independent domestic listing and de-listing. No actions were taken by the Cayman Islands during the follow-up period to address the noted deficiencies.

62. *Criterion 6.1* (a) Financial sanctions imposed by the UN are implemented by the EU and subsequently in the UK by way of EU Regulations with direct legal affect. Sanctions are then implemented in the Cayman Islands by way of Overseas Council Orders. As such, designations for both the 1267/1988 and 1989 Committees to consider are proposed by the Foreign Commonwealth Office (FCO) of the UK. Schedule 4A, paragraph 2A(1)(a) of the TL (2017) empowers the Governor to propose designations for the FCO to consider for submission to the UN. Although the Governor is not listed as a competent authority within the Cayman Islands, the statutory powers rest with the Governor to make such proposals for designations. (b) Mechanisms for identifying targets for designation are

contained in Paragraph 2.1 of the FRA's Procedures Manual on Implementation of Targeted Financial Sanctions with respect to terrorism, TF, proliferation, and PF within the Cayman Islands (TFS Procedures Manual). The TFS Procedures Manual indicates that where information is received by the FRA, or its strategic or operational intelligence reveal credible information about a suspected terrorist person/entity, the FRA will perform an initial analysis to determine if the matter should be referred for further investigation by the FCU. A Designation Impact Assessment (DIA) form will be completed as soon as practicable once the person or entity satisfies the designation criteria. The DIA records the reason and the substantiating evidence along with information about the potential designee to allow for sufficient identification and clear reasons for the designation. Upon completion of the DIA, the SC will immediately request a meeting with the IACC to review the merit of the proposal. Thus, if the IACC is in agreement, the recommendation making the case for a listing proposal along with the DIA will be submitted to the Attorney General within 1 business day for his consideration. If in agreement with the recommendation, the Attorney General (AG) will convene a meeting with the AMLSG as soon as practicable to consider the proposed designation. If the AMLSG is in agreement, the proposed designation will be submitted to the Governor for approval. Once in agreement, the Governor will contact the FCO sanctions team and submit the completed DIA Form. After a policy and legal assessment, the FCO will decide whether to take the designation forward at the UN level. If the FCO is in agreement, it will compile the formal listing request form that will ultimately be submitted to the UN Sanctions Committee, including details of the individual, the statement of case, and, if available, biometric data including photographs. The FCO will then provide the listing forms and supporting documentation to the UK Mission and update the Governor's office on the outcomes. The FRA's TF/PF Manual seeks to further indicates that as the discussions at the meeting between the SC and the IACC to review the merit of the proposal will include whether the reasons for listing satisfy the designation criteria of either the UN or TL regimes.

63. (c) Schedule 4A, paragraph 3(2) (a) and (b) of the TL (2017) allows the Governor to apply the evidentiary standard of reasonable belief when deciding on whether or not to make a proposal for designation. Given that the Governor can make a proposal for a designation upon reasonable belief, that the person is or has been involved in terrorist activity; that the person is owned or controlled directly or indirectly by a person involved in terrorist activity; or that the person is acting on behalf of or at the direction of a person involved in terrorist activity, there is no condition for the existence of criminal proceedings. (d) The Cayman Islands uses the standard listing forms adopted by the relevant committee (i.e. 1267/1989 or 1267/1988) for listing. However, there is no law or other enforceable means which makes the use of the UN standard listing forms a requirement or which stipulates the manner in which the forms are to be used. (e) The Governor in exercising powers under the TL, will provide all the relevant information when making a proposal to the FCO for consideration to submit to the UN. As specified in paragraph 48 of the TFS Procedure Manual, when considering a designation, a Designation Impact Assessment (DIA) Form will be completed, which records the reason and the relevant substantiating evidence. The form will also include information about the potential designee to allow for sufficient identification, including information such as full name, any known aliases, date of birth, place of birth, country of residence, all known nationalities, immigration status, passport number and/or other official identification number (including date and place of issue, and address of the designee where available), and clear reasons for designation that meet the reasonable suspicion test to determine

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whether a proposal meets the UN listing criteria for each respective regime. The information required for the DIA form includes information that would allow sufficient identification of the proposed designee as required by INTERPOL to issue a Special Notice. While the DIA form requires sufficient identification information, there is no indication that the form requires details of any connection between the proposed designee and any currently designated person or entity.

64. *Criterion 6.2* (a) Pursuant to Schedule 4A, paragraph 3(2) of the TL, the Governor makes final designations for UNSCR 1373 after consultation with the UK Secretary of State. This power can be exercised where he considers it appropriate to make a final designation upon request of another country (Schedule 4A para. 3A(1)(a)). Any request from a third country will follow the same process as a target identified for final designation. As noted in Criteria 6.1(a), while the Governor has the statutory powers to propose such designations, the Governor is not listed as a competent authority within the jurisdiction.

65. (b) The same procedures identified above at criterion 6.1 in respect of 1267 will be used for requests for designations under 1373. The procedures outlined at 6.1, differ only to the extent that the SC will complete a Statement of Case (SOC) as soon as practicable. The time frame will depend on three factors: (1) quality of the initial information received; (2) the time taken for the FRA to perform its analysis; and (3) the time taken for the FCU to complete its investigation. If both parts of the statutory test are met, the AMLSG will also consider relevant factors. If the AMLSG agrees to the proposed designation along with the SOC and minutes of the meeting will be submitted to the Governor for his approval. If in agreement, the Governor will consult with the UK Secretary of State before exercising his discretion for final designation. Additionally, section 3A (1) of the Terrorism (Amendment) Law, 2017 allows the Governor to make a final designation upon receipt of a request from another country or territory to give effect to a designation made by the requesting country as it relates to 1373. The TFS Procedures Manual articulates that the request from another country should contain sufficient information to allow the FRA to determine if there are reasonable grounds or reasonable basis to believe that the person/entity meets the designation criteria as set out in UNSCR 1373. The requesting third country is also required to give a commitment to provide updated information for each annual case review. Other supporting information to assist with the implementation of the freezing request from a third country includes details of any known or suspected assets owned or controlled by the designated person or entity in the requested jurisdiction, and a copy of the requesting jurisdiction's original freezing order and/or designation decision. The requesting country should also indicate the list of other countries that have been requested to take, or are known to have already implemented, domestic freezing measures against the same target in relation to the request. The SC will review the request promptly and respond to the requesting country for any further information deemed necessary to assess whether the designation criteria have been met. The time frame to complete the assessment will depend on the quality of the initial information received, and the time taken for the FRA to perform its analysis. The designation approval process will be the same as detailed in paragraphs 64 to 67. Should the Governor, in consultation with the UK Secretary of State, exercise his discretion to designate, the designation will be made for one year but will be reviewed, and may be renewed before the expiry of this period, in accordance with the TL. (c) The requesting process is similar to the designation process detailed above under Identification and Designation of persons and entities (targets) under UNSCR 1373. The FCO will provide updates to the Governor on the progress and outcomes. As noted above in

criterion 6.1, there is a reasonableness test that is applied in respect of the considerations for designations.

66. **(d)** The evidentiary standard for making an application is reasonable belief by the Governor and designations are not conditional on the existence of a criminal proceeding. **(e)** Section 3A (2) of the TL(Amendment) Law allows for the Governor to request that another country or territory to give effect to a designation made by the Cayman Islands. The Governor would approach the FCO Sanctions team in the first instance if it is considered appropriate to make a request to another country. The FCO leads on requesting another country to implement similar sanctions. Where the Governor considers it appropriate for financial sanctions initiated on an individual to be pursued in multilateral form such as within the EU or UN, the FCO Sanctions team will request that the Governor to complete a DIA; this will record the reasons for proposing financial sanctions against the person as well as the evidence to support the designation. The FCO will assess the DIA information from both a legal and policy standpoint, before deciding whether to pursue the proposed measures.

67. *Criterion 6.3* (a) Paragraph 3B, Schedule 4A of the T(A)L allows for the Governor to collect or solicit information to identify persons who meet the criteria for a final designation. **(b)** Pursuant to Schedule 4A, paragraphs. 4(2) and (3), the Governor can operate *ex parte* on a person where the Governor believes that the designated person is an individual under the age of eighteen (18); or the Governor considers that the disclosure of the designation should be restricted in the interest of national security, for reasons connected with the prevention or detection of serious crime; or in the interest of justice.

68. *Criterion 6.4* The Cayman Islands framework for the implementation of TFS is two tiered. It involves the EU and UK frameworks as well as the jurisdiction's domestic regime. This is referred to as the "double barrel approach". Firstly, as a British Overseas Territory (BOT), the Cayman Islands is subject to the EU and UK frameworks for implementation of the 1267/1989 and 1988. Once a UNSCR is issued by the UN, it is adopted and implemented by way of EU Regulations (usually 5 days later), and the United Nations and European Union Financial Sanctions (Linking) Regulations 2017 (Regulations), to ensure that UN financial sanctions are implemented in the UK without delay for a temporary period of 30 days, even in the absence of implementation at the EU level.

69. The Regulations take immediate effect in the UK, for an interim period of either (i) until the EU has adopted the UNSCRs or (ii) a period of 30 days, whichever is first. The 30 day period allows sufficient time for the process of implementing the EU Regulations. The Policing and Crime Act (Financial Sanctions) (Overseas Territories) Order 2017, are made pursuant to the PCA contains a permissive extent clause which allows the automatic extension of interim resolutions to BOTs. The PCA, through the permissive extent clause allows implementation to occur without delay for a temporary period. Once the EU implementation occurs, the permanent implementation takes effect as at the date of issuance and subsequently, the interim designation falls away. This process did not meet the requirement of without delay prior to the enactment of the PCA (2017). Although temporary, assessors are satisfied that the PCA meets the requirement of "without delay" since the interim measure (30 days) does not expire before the permanent implementation (5 days). Secondly, the jurisdiction has taken steps to ensure that implementation can occur without delay through its Terrorism (Amendment) Law, 2017 (T(A)L) which defines a designated person in Schedule (4A section 2). By definition, designations under UNSCR 1267 are automatically adopted and as such a designation by the UN is

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recognised immediately. Section 11(c) of the T(A)L, provides that a person shall freeze, without delay, funds or economic resources owned, held or controlled by a designated person if the first-mentioned person knows, or has reasonable cause to suspect, that the designated person is dealing with such funds or economic resources. The T(A)L allows implementation of TFS without delay thereby sufficiently augmenting the PCA.

70. Further, the requisite framework for implementation of UNSCR 1267 without delay is a prominent feature of the jurisdiction's TFS regime through both the OOICs (PCA's Regulations) and the T(A)L.

71. *Criterion 6.5* As noted in criteria 6.1 and 6.2, the Governor is responsible for proposing to the FCO. The TL allows the Governor to delegate this responsibility to the FRA. The Sanctions Coordinator of the FRA is responsible for implementing TFS. The FRA is charged with monitoring compliance with CFT/PF measures pursuant to the TL. The Sanctions Coordinator of the FRA is responsible for coordinating the implementation of TFS and also coordinates with other competent authorities to monitor their supervision and enforcement of TFS for their respective constituents. (a) Section 12. (1) of the TL (2017), mandates that a person shall freeze, without delay, funds or economic resources owned, held or controlled by a designated person if the first-mentioned person knows, or has reasonable cause to suspect, that the designated person is dealing with such funds or economic resources. These measures do not contemplate prior notice. For freezing pursuant to UNSCR 1267, the Overseas Territories Orders noted above apply to all natural and legal persons and requires that funds are frozen and that neither funds or economic resources be made available to persons designated under Arts. 3 and 5 of the Isil (Da'esh) Al-Qaida (Sanctions) (Overseas Territories) Order, 2016 (2016 Order) and Arts. 1(6), (7) and 14 of the Afghanistan (United Nations Measures) (Overseas Territories) Order, 2012 (2012 Order). With regard to freezing under UNSCR 1373, as noted above this is provided for in Schedule 4A, paragraph 12(1) of the TL. There are legislative measures for freezing to take place without delay and as such, these measures do not contemplate prior notice. (b) The obligations imposed by section 12 to freeze without delay extends to assets held or controlled by a designated person. According to section 12(2) "freeze" means to prohibit the transfer, conversion disposition, movement or use of any funds or economic resources that are owned or controlled by a designated person. (c) Section 13 (1), prohibits a person from making funds or financial services available, directly or indirectly, to a designated person if the first-mentioned person knows, or has reasonable cause to suspect, that he is making the funds or financial services so available. Section 14. prohibits a person from making funds or financial services available to any person for the benefit of a designated person if the first-mentioned person knows, or has reasonable cause to suspect, that he is making the funds or financial services so available. These requirements are wide and includes funds or other assets of persons and entities acting on behalf of or at the direction of a designated persons or entities. These requirements are not contingent upon the existence of prior notice.

72. (c) The T(A)L addresses the prohibition of persons from making funds or economic resources available. With regard to UNSCR 1373, Schedule 4A, paragraphs. 12-16 address the issue of the prohibition of persons from making funds and economic resources available. (d) With regard to UNSCR 1267 designations, all overseas territories orders are published in the Cayman Islands Gazette pursuant to Art. 14 of the 2016 Order and Art.3 of the 2012 Order. The Governor has to publish the list of designated persons in the Gazette. CIMA also has a list of sanctions, that are in force, available on its website. The list is updated once any designation, amendment or de-listing goes into effect in the

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UK. The Office of Financial Sanctions Implementation (OFSI) updates the consolidated list of financial targets within 24 hours unless an EU listing occurs on a Saturday/Sunday. With regard to UNSCR 1373, Schedule 4A, paragraphs. 4-10 give the Governor the power to make final and interim designations, which have to be published.

73. (e) In relation to reporting that assets have been frozen, [to the Governor-General), paragraph 20(4) of Schedule 4A of the T(A)L states “the relevant institution shall also state the nature and amount or quantity of any funds or economic resources held by it for the customer at the time when it first had the knowledge or suspicion [that a person is a designated person]”. Paragraph 20 of the Terrorism Law (2017 Revision) was amended by provision (r) of the Terrorism Amendment Law, 2017. The amendment requires all FIs and DNFBPs to (a) report any action taken in accordance with the prohibitions of the Schedule (such prohibitions reflecting those of the relevant UNSCRs), and (b) to report any transaction attempted by a designated person to deal with funds, economic resources or other assets (f) Art.5(6) of the 2016 Order and Art. 29 of the 2012 Order absolves person involved in the freezing of funds or economic resources from liability once the freezing was not as a result of negligence. Additionally, section 12(5)&(6) of Schedule 4A of the T(A)L also makes provision for person acting in good faith.

74. *Criterion 6.6 (a)* The Cayman Islands has a process for the submission of de-listing requests. There are two routes which can be used by the designated person. One route involves the FCO mechanism to submit delisting requests to the 1267 and 1988 Sanctions Committee for persons who no longer meet the designation criteria. This mechanism involves the designated person making an application to the FCO (the OFSI, in its published sanctions guidance, sets out how applicants can make use of this mechanism) to be delisted and officials will then seek a ministerial decision on the proposal to be made to the Sanctions Committee. The UK also promotes the use of the Office of the Ombudsperson and Focal Point delisting mechanisms in its discussions with affected individuals/entities. In the Cayman Islands, a designated person can submit a delisting request to the SC, which will then be assessed by the IACC and the AMLSG (as discussed above in the designation procedure). Once approved, a recommendation will be made to the Governor for submission to the FCO Sanctions Team, who will make an assessment, and if appropriate will take the delisting request forward to the relevant Sanctions Committee. (b) Pursuant to Schedule 4A, paragraphs 6 and 10 of the TL, the Governor may at any time revoke or vary either a final or interim Order. The Governor also has to take reasonable steps to bring the variation or revocation of the Order to the attention of the persons who were informed of the designation. It should also be noted that pursuant to Schedule 4A, paragraph 5, a final designation expires at the end of the period of one year from when it was made unless it is renewed. The process is very similar to the designation period in that if the designation does not continue to meet the criteria test, the IACC will consider the matter and make a recommendation to the AMLSG. Where the AMLSG is in agreement then the recommendation will be made to the Governor for a final decision in consultation with the Secretary of State. The same process is applicable to delisting requests, including those from a third country.

75. (c) Paragraph 27 of Schedule 4A of the TL provides for a designated person to make an appeal to the Grand Court against any designation made by the Governor. (d) The FCO has a mechanism that allows delisting requests to be submitted to the 1988 Sanctions Committee on behalf of affected British nationals/residents and promotes the use of the focal point mechanism for delisting. The authorities

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have also noted that the letters written upon by the Council of the European Union upon designation of an individual or entity also include an explanation of how the designated individual/entity can submit a delisting petition to the UN Focal Point Mechanism to challenge the listing in the EU's General Court. The Procedures Manual also details delisting procedures in paragraph 116. Accordingly, a designated person/entity, or a third party with an interest in the designation, who no longer meets the criteria for designation pursuant to UNSCRs 1267/1989, 1988, 1373, 1718 and 2231 can submit a written delisting request with the relevant supporting information to the Governor. (e) As noted, the UK promotes the use of the Ombudsperson mechanism for designated individuals/entities to petition for delisting. Additionally, as noted previously, the letters written by the Council of the European Union and notifications to designated persons also explains how a delisting petition to the Office of the Ombudsperson for the 1267 Committee can be made or a challenge to the listing in the EU's General Court. (f) The T(A) L makes provision for unfreezing relating to false positives (c) sub-paragraph 2 A 4(e)). Additionally, the TFS Procedures Manual details these procedures. With regard to false positives, Schedule 4A 2A (4) (e) the T(A) L makes provision regarding the unfreezing of the funds or other assets of a person or entity with same or similar name as a designated person or entity. It has been noted that neither the OT Orders nor the TL provisions would apply and that the funds or other assets that were frozen would be unfrozen as soon as practicable and the person lifting the freeze would also notify the Governor as soon as is practicable.

76. (g) Pursuant to Schedule 4A, paragraph 6(2)(b) and 10(2)(b) of the TL, the Governor is required to take reasonable steps to bring any variation or revocation to the attention of the persons informed by the designation. The variations or revocations would be published on the FRA's website and a simultaneously sent to CIMA, DCI, the General Registry and other members of the IACC. CIMA also publishes a comprehensive list of EU and UN sanctions in force in the Cayman Islands the de-listing is communicated through publication in a daily newspaper as noted above there is no specific notification to FIs or DNFBPs. Additionally, when the EU implements a UN delisting, the UK Treasury reflects this change in its consolidated list of financial sanctions targets, which is published on HM Government's Gov.uk website. The Treasury also publishes a formal notice of deletions on the website and sends an e-mail to its 16,500 subscribers which includes the FRA. The FRA will then try to publish the updated consolidated list and notice on the FRA's website within one business day and simultaneously notify CIMA, DCI, the General Registry and other members of the IACC. The FRA also coordinates outreach to the financial sector, DNFBPs, NPOs etc. to ensure that all relevant sectors are provided with an understanding of their obligations regarding the sanctions.

77. *Criterion 6.7* The Governor has broad powers to issue a license granting access to funds for the purposes of UNSCR 1451 under paragraph 18 of Schedule 4A of the TL. The prohibitions in paragraphs 12 to 16 of the TL do not apply to anything done under the authority of a licence granted by the Governor. The Governor will take account of the considerations set out in UNSCR 1452 in granting any licence, which set out some criteria for demarcating basic and extraordinary expenses.

Weighting and Conclusion

78. The legislative foundation for proposing and designating persons or entities for designation is prominent with minor deficiencies. The Cayman Islands has designated the responsibility for implementation of TFS to the Governor, who although not being listed as a competent authority, has the statutory power to propose designations to the 1267/1989 and 1988 Committees. This same power can be exercised in respect of 1373 through the T(A)L. Mechanisms for identifying targets for designation based on the UNSCRs which includes 1267 and 1373 are articulated in the FRA's TFS Procedures Manual. The use of the UN standard listing forms is not required in law which can imply that there is no obligation to follow the UN standard procedures. Moreover, while the DIA form requires sufficient identification information, there is no indication that the form requires details of any connection between the proposed designee and any currently designated person or entity. The jurisdiction has two mechanisms that allow for implementation of TFS relating to TF without delay. Although the PCA allows the implementation by the UK to be extended to the Cayman Islands temporarily, the requirement of "without delay" is nonetheless achieved. Moreover, the temporary designation is replaced by a permanent designation subsequent to the EU/UK's protocol. Further, the TL allows for implementation of TFS relating to TF without delay and allows action to be taken to give effect to relevant UNSCRs. **Recommendation 6 is rated Largely Compliant.**

Recommendation 7 – Targeted financial sanctions related to proliferation

79. Recommendation 7 is entirely new, so there is no previous rating or country information to include. It requires countries to implement all current as well as any future successor UNSCRs applying targeted financial sanctions relating to the financing of proliferation of weapons of mass destruction.

80. *Criterion 7.1* The framework for the implementation of TFS for PF is similar to the framework for TFS relating to TF as detailed in R. 6.4. which involves the EU and UK frameworks as well as the jurisdiction's domestic regime. TFS relating to PF are also implemented in the same manner as TFS for TF for an interim either (i) until the EU has adopted the UNSCRs or (ii) a period of 30 days, whichever is first. The 30 day period allows sufficient time for the process of implementing the EU Regulations. The PCA through its permissive extent clause, allows the automatic extension of interim resolutions. Although temporary in nature, the requirement of without delay is satisfied for the purposes of this criterion. Secondly, the jurisdiction has taken steps to ensure that implementation can occur without delay through its Proliferation Financing Law 2017 (PFPL). Like the T(A)L, the PFPL defines a designated person (i.e., a person, including any subsidiary or other entity owned or controlled by that person, to whom Security Council anti-PF measures relate). The OOICs can be implemented without delay pursuant to the PCA, Linking Regulations and PCA Overseas Territories Orders. The requisite framework for implementation of UNSCRs applying TFS relating to PF without delay is present within the jurisdiction's regime.

81. *Criterion 7.2* Pursuant to section 3 of the PFPL, the FRA is the competent authority with responsibility for giving directions where actions are to be taken in respect of TFS relating to PF. Under section 2D of the PFPL, the FRA is empowered to impose penalties for failure to comply with the

requirements under the PFPL. Further, pursuant to section 8, (1) of the PFPL, the FRA may require enhanced ongoing monitoring of any business relationship with a listed person. Also, by way of section 29, the FRA shall take appropriate measures to monitor persons operating in the financial sector for the purpose of securing compliance with the PFPL. (a) Section 2B (1)(b)(i) and (ii) of the PFPL imposes an immediate freezing obligation on a person that has in their possession (or custody or control) or dealing with any funds or economic that are wholly or jointly owned or controlled, directly or indirectly, by a designated person; or derived or generated from funds or economic resources owned or controlled, directly or indirectly, by a designated person. In accordance with section 4 of the PFPL, the FRA may give directions to a particular person operating in the financial sector; any description or class of persons operating in the financial sector; or all persons operating in the financial sector. Section 2B (1)(b)(i) of the PFPL Amendment Law or the PFPL in general does contain provisions relating to prior notice of freezing to designated persons and entities. Therefore, it is implicit that immediate freezing action does not require giving prior notice. See discussion in Immediate Outcome 11 on implementation of the UNSCRs.

82. **(b)** Pursuant to Section 2B of the Amendment Law, the freezing obligation extends to: (i) all funds or other assets that are owned or controlled by a designated person or entity; (ii) funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; (iii) funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by a designated person or entity; and (iv) funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities. The OT Orders contain similar provisions

83. **(c)** Funds or other assets are prevented from being made available to nationals of Cayman Islands or by any persons, natural or legal, or entities within the Cayman Islands. The relevant UNSCRs which meets this requirement are detailed in Immediate Outcome 11.

84. **(d)** By way of section 2A of the PFPL, the FRA is mandated, as soon as reasonably practical, to publish the UN list of designated persons in such media as it considers appropriate. The FRA is also mandated to provide the list to the relevant competent authorities with the responsibility for monitoring compliance with AML/CFT measures for FIs and DNFBPs. There is however, no indication as to the immediacy of publication given the requirement of reasonably practicable as the PFPL does not mandate that communication take place immediately after taking action to list a designated person. Additionally, there is no provision or other measures for the FRA to directly communicate designations to FIs and DNFBPs although CIMA's website contains a list of sanctions currently in force (in whole or part) in the Cayman Islands. As noted in R 6, FIs and DNFBPs are expected to check the relevant websites themselves. As it relates to the OT Orders, the Governor is mandated to publish a list of designated persons in the Gazette and keep the list up to date. This requirement is contained in the respective OTs. There is no indication as to whether the publication takes place immediately after the implementation of the OT Orders. The FRA has published an Industry Guidance on TFS relating to PF which seeks to provide information on taking action in respect of a designated person. This guidance provides, *inter alia*, information on responsibilities of relevant institutions as well as information on compliance and enforcement.

85. **(e)** Section 2(C) of the PFPL requires that a person who has taken action to freeze assets shall, as soon as reasonably practicable, disclose to the FRA, details of any frozen funds or economic resources

or actions taken in compliance with the prohibition requirements of the relevant Security Council measures, including attempted transactions. The relevant OT Orders would contain similar requirements.

86. (f) Section 34 of the PFPL exempts the FRA or any director or employee of the FRA from damages for anything done or omitted in the discharge or purported discharge of their respective functions under PFPL unless it is shown that the act or omission was in bad faith. The respective Overseas Orders make provisions for protection of rights of third parties.

87. *Criterion 7.3* Section 4(2) (ea) of the POCL provides for the FRA to monitor compliance with TF/PF regulations. Section 29 of the PFPL requires the FRA to monitor compliance with PF obligations and CIMA and DCI have supervisory responsibilities. Sections 2 D (1) and 2E (4) and (5) of the PFPL makes provisions for civil and criminal sanctions for failing to freeze and failing to report.

88. *Criterion 7.4* (a) The Cayman Islands relies on the UK for delisting purposes. Section 2F of the PFPL makes provisions for delisting and allows the FRA to submit to the UK, requests for de-listing of designated persons if the FRA is satisfied that subsection (3) applies and if the designated persons are individuals, they reside in the Islands or if the designated persons are not individuals, they are incorporated or otherwise established in the Islands. By way of section 2F(2), the FRA may submit a request for de-listing either at its own initiative or on application by a designated person. In relation to the OT Orders, the UK in its guide to financial sanctions has highlighted the procedure for submitting de-listing requests to the UNSC. Designated persons or entities can petition the UN Focal Point for de-listing directly, or via their country of residence or citizenship. This guidance also provides details on how to contact the EU to request de-listing and highlights the UK legal challenge routes. In the Cayman Islands, a designated person can submit a delisting request to the Sanctions Coordinator (SC) of the FRA along with a statement of case setting out the reasons to be delisted (e.g. death), the name of the designated person or entity and the assets to be unfrozen. Section 2F (1) of the Amendment Law provides for delisting requests by the FRA to the United Kingdom in specified circumstances on behalf of natural persons resident in the Cayman Islands, or legal persons incorporated or established in the Cayman Islands, in so far as a listing by the Security Council gives effect to a particular decision of the Security Council, the listing is revoked when Article 25 of the Charter of the United Nations ceases to require the UK to carry out that decision. Section 2F (2) of the Amendment Law provides for the FRA to submit a delisting request either at its own instigation or on application by a designated person.

89. (b) Paragraph 5.4.1 of the TFS Industry guidance indicates that where the FRA concludes that the person or entity concerned is not the intended designated person or entity, after examination of the matter that, taking all relevant facts and circumstances into account, they should inform the person/entity of the finding and/or the FI. The institution should take steps to unfreeze the funds or economic resources immediately and also inform the FRA, the action taken as soon as practicable. (c) As indicated in the orders (Article 11 of The Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012 (S.I.2012/3066) and Article 7 of The Iran (Sanctions) (overseas Territories) Order 2016 (S.I. 2016/371), the Governor may, with the consent of the Secretary of State, grant a licence authorising an activity that would otherwise be prohibited. The UK operates a robust licencing regime for the financial sanctions regimes. The OFSI takes account of the considerations set out in UNSCRs 1718 and 1737 in granting any licence. OFSI approach to licencing for the Iran nuclear-proliferation regime is determined by EU Council regulation 267/2012, namely grounds for basic needs, CAYMAN ISLANDS MUTUAL EVALUATION REPORT

prior contracts and extraordinary expenses, amongst others; and for the DPRK regime, approach is determined by EU regulation 329/2007, namely grounds for basic needs and extraordinary expenses, amongst others). Licencing Procedures are detailed in the Procedural Manual. The licensing provisions in the OT Orders provide for the exemption conditions set out in UNSCRs 1718 and 1737. Section 4.2 of the TFS Industry Guidance details publicly known procedures regarding licensing. The authorities did not provide any information as to whether these procedures are publicly known.

90. (d) The Cayman Islands has established mechanisms for communicating de-listings and unfreezings to relevant sectors. De-listing and unfreezing processes are carried out within one business day of the updated consolidated list implemented by the EU. The authorities have not provided a legal basis for these mechanisms. When the EU implements a UN delisting, the Treasury reflects this change in its consolidated list of financial sanctions targets, which is published on HM Government's Gov.uk website. The Treasury publishes a formal notice of the deletion on the Gov.uk website and sends an email to the 16,500 subscribers (FRA is subscriber) on its financial sanctions email service. The FRA will seek to publish within 1 business day the updated consolidated list and notice on the FRA's website and simultaneously notify CIMA, DCI, the General Registry and other members of the IACC. The FRA will also co-ordinate outreach to the financial sector, DNFBPs, NPOs etc. to ensure all relevant sectors are provided with an understanding of their obligations regarding sanctions. Mechanism for communicating listing would include delisting, as a new list of names would be circulated (Section 2a of the Amendment Law).

91. *Criterion 7.5* The Cayman Islands adopts the approach of the UK when in dealing with (a) addition to accounts pursuant to UNSCRs 1718 or 2231 or (b) that prevent a designated person from taking payment due under a contract that existed prior to the listing. Credits to a frozen account provisions exist in Overseas Council Orders - see article 5 of Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012 (S.I.2012/3066), and The Iran (Sanctions) (overseas Territories) Order 2016 (S.I. 2016/371). Provision in Overseas Council Orders for licence to be granted that allow for these considerations see article 7 (3) (f) The Iran (Sanctions) (overseas Territories) Order 2016 (S.I. 2016/371) and article 11(3)(n) Democratic People's Republic of Korea (Sanctions) (Overseas Territories) Order 2012 (S.I.2012/3066) as amended. The sections provided show addition to frozen accounts exist and the licensing provisions which take account of UNSCR 1718 and 1737 namely article 11 of (S.I. 2016/371). As previously stated the UK operates a robust licencing regime for the financial sanctions regimes. The OFSI takes account of the considerations set out in UNSCRs 1718 and 1737 in granting any licence. For example, the OFSI approach to licencing for the Iran nuclear-proliferation regime is determined by EU Council regulation 267/2012, which includes licensing persons and entities to make payments due under contract entered into prior to the listing. When the OFSI issues such licences, it ensures that the contract is not related to any of the prohibited items in the UNSCR and the payment is not directly or indirectly received by a designated person/entity. Given the Governor may, with the consent of the Secretary of State, grant a licence authorising an activity that would otherwise be prohibited (stated in overseas orders licensing provisions), Cayman will adopt the same approach as of that of the UK.

Weighting and Conclusion

92. The Cayman Islands has two mechanisms for the implementation of TFS relating to PF. These mechanisms are similar to those of the implementation of TFS relating to TF as noted in R. 6. Both mechanisms provide the framework for implementation of TFS relating to PF without delay. While the FRA is mandated to publish a list of designated persons in the media as soon as reasonably practicable, there is no indication as to whether this can be done immediately after a designation. As noted in R. 6, there are no mechanisms for direct communication of designations to FIs and DNFBPs who are required to take action to freeze. Once implemented, PF measures apply to Cayman Islands residents and nationals wherever they are located. Additionally, delisting and communicating of designations are subject to the UK's protocol. The FRA has responsibility for implementation and monitoring compliance of TFS relating to PF **Recommendation 7 is rated Largely Compliant.**

Recommendation 8 – Non-profit organisations

93. This recommendation (formerly SR. VIII) was rated 'PC' in the 3rd MER given the lack of a supervisory programme in place to identify non-compliance and violations of NPOs, outreach to NPOs to protect the sector from TF abuse, systems or procedures in place to access information on NPOs, and a formal designation of points of contacts or procedures in place to respond to inquiries relating to terrorism related activities of NPOs. The NPO Law (NPOL) was passed in March 2017 and comes into force on 1 August 2017.

94. *Criterion 8.1 (a)* The Registrar General of the Cayman Islands, appointed supervisor of NPOs under section 3 (1) of the NPOL, identified 252 companies registered under section 80 of the Companies Law as falling within the FATF definition of NPOs. However, unincorporated organisations meeting this definition were not identified during this process. The NPOL now requires NPOs to be registered with the Registrar, which would allow for the identification of both incorporated and unincorporated organisations. Registration began in 2017 and organisations are allowed until 31st July 2018 to register. The Registrar conducted a risk assessment of the NPO sector. Although the availability of information with respect to these organisations was limited, the Registrar gathered data from relevant sources such as CIMA, the FCU, the JIU, Customs Department, the DCI, the FRA, the ODPP, the ACC, the General Registry and the Ministry of Education, Youth, Sports, Agriculture and Lands. In addition, face to face meetings were held with and risk assessment surveys were completed by relevant section 80 companies. After the collation and analysis of the data received, the Registrar was able identify the features and types of NPOs that are likely to be at risk for TF abuse, due to their activities or characteristics, categorising the activities and characteristics into different risk levels of High, Medium/High, Medium, Low/Medium and Low.

95. *(b)* In its assessment of the NPO sector, the Cayman Islands identified the nature of threats posed by terrorist entities to NPOs. These were documented as "Potential Terrorist Financing Vulnerabilities posed to NPOs" within the published NPO sector risk assessment document.

96. *(c)* The Cayman Islands reviewed the laws and regulations relating to the NPO sector during the NRA process in 2015 and also through an extensive industry consultation period over a 10-year period. This culminated in the passage of new legislation, the NPOL, in March 2017, which came into force on the 1st August 2017 together with the Non-Profit Organisations Regulations. Additionally, the

Registrar assesses the risks of NPOs at the time of registration and undertook an assessment of the NPO sector (subsequent to the initial assessment), to identify risks in the sector that may require additional measures.

97. **(d)** The Registrar General will review NPO annual returns filed pursuant to the NPOL, which requires information on NPOs' compliance with the NPOL and the mitigating measures implemented. Notwithstanding, the information contained in these filings is insufficient to make a determination of the potential vulnerabilities of the NPO sector. Although the NPO Registrar embarked on a review of the sector during 2017, there is no indication that the sector will be periodically assessed in the future.

98. *Criterion 8.2* (a) All NPOs are required to register with the General Registry Department as an NPO. The NPOL allows for public access to basic information of registered NPOs (i.e. NPO name, NPO address and contact information, NPOs purposes and activities, identity of the person who owns/controls/directs the NPO, and the NPO's date of registration. NPOs must also submit information on the persons who own, control, and direct the activities of the NPO, as well as information regarding senior officers of the NPO. This information is required to be updated within 30 days of any change. Additionally, all NPOs are required to file annual returns which include unaudited financial information and where higher risk NPOs are concerned, they are also required to submit financial statements which have been reviewed by a qualified or licensed accountant. This requirement ensures an extra layer of oversight. The imposition of these requirements within the NPOL promote accountability, integrity and public confidence in the management of NPOs.

99. **(b)** Through the IACC, a sensitisation programme has been conducted in the NPO sector addressing: the NPOL, The TL and requirements of NPOs under the law, Vulnerabilities of NPOs to TF, what is TF, Red flags of TF, what is expected of the NPO in keeping with the regulatory process to prevent TF, Best practice on internal control for NPOs, Customer Due Diligence protocols for NPOs. The delivery methods entailed face to face training seminars, radio and television sensitisation sessions and website updates. Individuals and business entities (which are part of the donor community) were also in attendance at these outreach meetings. Additionally, between July and September 2017, the Registrar conducted 20 outreach sessions, along with three in-house sessions with NPOs on TF risk and vulnerabilities of NPOs to TF.

100. **(c)** Pursuant to section 4(1)(g) of the NPOL, the Registrar is responsible for guiding NPOs with regards to best practices, however, the authorities have not indicated how developing and refining best practices will be undertaken.

101. **(d)** NPOs in the Cayman Islands are required to file and maintain information on its banking arrangements with the Registrar at the time of registration which ensures that NPOs have an established financial relationship with a regulated bank. Although failure to provide information demonstrating that there is a banking relationship exist may result in the rejection of an NPO's application, this is not an encouragement to transact business through regulated channels.

102. *Criterion 8.3* The NPOL has mechanisms in place for the monitoring of NPOs, such as the registration of NPOs, declarations on assets, income and distribution of profits, the maintenance of a Register of NPOs, the filing of annual returns, the requirement to notify the Registrar of any changes in the circumstances of NPOs and sanctions for non-compliance. Additionally, section 13(1) of the NPOL requires NPOs that fall into a higher category of risk to have its audited financial statements reviewed by a qualified or a licensed accountant, in accordance with internationally accepted standards.

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These actions evidence the country's steps to promote effective supervision and monitoring which in turn leads to the application of a risk-based approach. However, there are no mechanisms in place detailing the Registrar's application of risk-based measures to NPOs at risk of TF abuse.

103. *Criterion 8.4 (a)* The NPOL allows the Registrar to effectively monitor NPOs' compliance with the requirements of this recommendation. NPOs are all subject to onsite inspections and must file annual returns. Higher risk NPOs are also required to file annual audited financial statements. However, a framework detailing the Registrar's risk-based approach to monitoring had yet to be developed due to the infancy of the regime.

104. *(b)* Under section 8 of the NPOL, the Registrar has the powers to cancel or suspend the registration of an NPO following an investigation if it is proven that the NPO- (a) engaged in or is engaging in wrongdoing; (b) failed, without reasonable cause, to maintain proper financial statements reflecting all monies received and expended; (c) failed, without reasonable cause, to submit annual returns; or (d) failed, without reasonable cause, to pay any prescribed fees required for registration. In addition, under Part 6 of NPOL, the Registrar also has administrative penalties at its disposal for certain breaches of the NPOL, which can extend up to KYD3,000 and a further KYD100 for every day that the breach remains outstanding. Further, section 10 of NPOL also states that an NPO's failure to comply with a request for information during an inquiry by the Attorney General is an offence and the NPO is liable on summary conviction, to a fine of KYD3,000 or to imprisonment for a term of one year or to both. Additionally, section 10 also provides the Attorney General with powers to refer matters to the ODPP who may pursue criminal sanctions and apply to the court to confiscate the assets of the NPO. Lastly, Section 11 of the NPOL sets out offences for person(s) providing false or misleading information or withholding information requested by the Attorney General. A person who commits an offence under this section is liable, on summary conviction, to a fine of KYD3,000 or to imprisonment for a term of one year or both.

105. *Criterion 8.5 (a)* The basic information regarding NPOs in the Cayman Islands is publicly available via section 5(3) of the NPOL. Additionally, section 3 of the CIDL allows the Registrar to disclose information to local law enforcement agencies or competent authorities. The MLAT and other processes set out under the CJICL also allow the Registrar to disclose information to international law enforcement agencies or competent authorities through the MLAT and other processes as set out under the CJICL.

106. *(b)* Under section 10(2) of the NPOL, the Attorney General may carry out an inquiry on an NPO for the purpose of investigating any NPO that is suspected of having committed an offence under the TL, the POCL or any other law in which contravention may constitute wrongdoing on the part of the NPO. Under section 10(3) of the NPOL, the Attorney General may appoint an officer or any other person to conduct an inquiry, which can encompass persons that have investigative expertise to undertake the investigation which would determine whether an NPO is associated with terrorist activity. The Cayman Islands has confirmed their access to qualified persons trained to conduct financial investigations and experience in investigating suspected TF matters.

107. *(c)* Section 10(4) of the NPOL requires NPOs to furnish information and answer all requests of an investigator appointed by the Attorney General to conduct an inquiry. This captures information pertaining to information on the administration and management of NPOs including financial and programmatic information. Such information can be shared with any competent authority when

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conducting an investigation. In addition, the FCU and FRA have access to the General Registry system to view management structures as well as other relevant information of an NPO.

108. (d) The country has indicated that the Registrar and the Attorney General have the ability to share information prior to, during, or after an investigation with any competent authority deemed appropriate via section 3 of the CIDL. The CIDL however only allows the disclosure of information to some authorities under specific circumstances. Additionally, where the Attorney General institutes an inquiry for the purpose of investigating an NPO that is suspected of an offence under the TL or the POCL, the Attorney General, once satisfied of wrongdoing upon the conclusion of the inquiry may refer the matter to the ODPP under section 10(10) of the NPOL. None of the sharing mechanisms addresses the timeliness of sharing.

109. *Criterion 8.6* The ODPP is the point of contact for matters of international cooperation via mutual legal assistance requests as mentioned in the CJICL.

Weighting and Conclusion

110. The Cayman Islands identified, with the exception of unincorporated entities, a subset of organisations that fell within the FATF definition of NPOs, and, analysed data from relevant sources to determine the characteristics and activities of NPOs that pose the greatest risk for TF abuse and the nature of threats posed by terrorist organisations. Steps are being taken to develop a risk-based supervision and monitoring framework and the NPOL prescribes an array of methods for the supervision and monitoring of NPOs. The Cayman Islands engages the NPO sector in a number of educational and outreach programmes, however encouragement in using regulated channels and collaboration in creating best practices is absent. The NPOL allows the Attorney General to utilise investigative expertise and capability to examine NPOs and have full access to information on NPOs. There are mechanisms in place for the sharing of information, both nationally and internationally, which have limitations in some instances. **Recommendation 8 is rated Largely Compliant.**

Recommendation 9 – Financial institution secrecy laws

111. This Recommendation, formerly R. 4 was rated ‘C’ in the 3rd Mutual Evaluation Report (MER) Since the last MER, one significant revision to the FATF Recommendations was the expansion of the list of predicate offences to include serious tax crimes. Despite the absence of a taxation regime within the jurisdiction, the definition of “criminal conduct” articulated in Section (2) (3) of the Money Laundering Regulations (2015) captures acts which contravene the law in other jurisdictions where the act occurred.

112. *Criterion 9.1* Section 3 of the CIDL removes the criminal sanction for breach of confidence (a)pursuant to requests by local tax, law enforcement and financial regulatory authorities (including the RCIPS, the Grand Court, the CIMA, the FRA, the ODPP and the ACC;(b) in compliance with an order or request of a Cayman Islands authority pursuant to its international obligations, such as the Mutual Legal Assistance Treaty with the USA or the Criminal Justice (International Cooperation) Law (CJICL); (c) in the normal course of business or with the consent, express or implied, of a principal;

and (d) in accordance with, or pursuant to, a right or duty created by any other law or regulation of the Cayman Islands,, and establishes several gateways or safe harbours through or within which, confidential information may be disclosed without prior consent of the person to whom the information relates. Section 138 of POCL while allowing the FRA to share information with local law enforcement agencies, CIMA, DITC and any other person or entity designated by the AMLSG, they are not permitted to further disclose the information without the consent of the Attorney General who may impose conditions as he may see fit on any further disclosures. In practice, this has not been an impediment. In addition, relevant competent authorities have entered into an MMOU to facilitate the sharing of information.

113. Section 3(1)(j) of CIDL allows for the sharing of such information in accordance with, or pursuant to a right or duty created by any other Law or Regulation and applies to all criminal offences including those related to tax as the Tax Information Authority Law, 2017 (TIAL) provides for international cooperation in tax matters. Sections 18 to 20 of the TIAL facilitates the automatic exchange of information otherwise provided to the authority for tax purposes and the protection of persons disclosing confidential information. R 40 sets out the mechanisms which allow competent authorities to exchange information with their international counterparts using informal mechanisms.

114. There are no legal obstacles that would inhibit the implementation of the FATF Recommendations including Recommendations 13, 16 and 17 identified in the regime for correspondent banking, wire transfers and reliance on third parties and the AMLRs allow for the sharing of such information.

Weighting and Conclusion

115. The provisions for disclosure of information (without the offence of breach of confidence) under Section 3 of the CIDL as well as the definition of criminal conduct in Section (2) (3) of the AMLRs suggests that there are no evident inhibitions to the implementation of the FATF Recommendations as a result of financial secrecy or duty of confidence¹⁸ **Recommendation 9 is rated Compliant.**

Recommendation 10 – Customer due diligence

116. This recommendation (formerly R. 5) was rated ‘PC’ in the 3rd MER given that although stated within the GNs, there were no legislative requirements; for conducting CDD for wire transfers and where there are doubts about the veracity or adequacy of previously obtained CDD, to determine the natural person who owns or controls the customer, to verify that a person purporting to act on behalf of a customer is authorised and identify and verify their identity, to conduct ongoing CDD. There were also no requirements to ensure that CDD data and information collected were kept up-to-date and relevant through regular reviews or requirements for simplified measures to be unacceptable in specific higher risk scenarios. These deficiencies were addressed during the third-round follow-up process through amendments to the Money Laundering Regulations, save for the deficiency relating to the requirement to conduct ongoing due diligence which was only implemented in the GNs. The changes

¹⁸ Within the Cayman Islands, the terminology “duty of confidence” is used to refer to the obligation placed on the receiver of confidential information not to disclose such information.

for R. 10 are mainly related to greater specificity on measures to identify the beneficial ownership of customers that are legal persons or arrangements establishing a notion of “reasonable measures” and establishing a “step-by-step approach” to identify beneficial ownerships of legal persons. There are also new CDD measures to beneficiaries of life insurance policies.

117. *Criterion 10.1* Regulation 10 of the AMLRs prohibits FIs from keeping anonymous accounts or accounts in fictitious names.

118. *Criterion 10.2* Regulation 11 of the AMLRs fully satisfies the requirements of the sub-criteria (a), (c), (d) and (e), by requiring FIs to undertake CDD measures when, (a) establishing a business relationship, (c), when carrying out a one-off transaction that is a wire transfer, (d) when there is a suspicion of ML/TF; and (e) where there is doubt about the veracity of adequacy of previously obtained customer identification data. With respect to sub criterion (b) regulation 11(b) of the AMLRs provides for the carrying out of transactions in excess of KYD 15,000. However, given the fluctuations in currency rates this at times exceeds the minimum \$15,000 USD/EUR as required under the Recommendations.

119. *Criterion 10.3* Regulation 12(1)(a) of the AMLRs requires FIs to identify the customer and verify the identity of the customer using reliable and independent source documentation, whether the customer is in an established business relationship or one-off transaction, and whether the person is natural, a legal person or a legal arrangement.

120. *Criterion 10.4* Regulation 12(1)(b) of the AMLRs requires FIs to verify that a person purporting to act on behalf of a customer is properly authorised and to identify and verify the identity of that person.

121. *Criterion 10.5* Regulation 12(1)(c) of the AMLRs requires FIs to identify a beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using the relevant information or data obtained from reliable sources, so that the FI would be satisfied that it knows the identity of the beneficial owner.

122. *Criterion 10.6* This requirement is met by Regulation 12(1)(d) of the AMLRs, which requires FIs to understand and obtain information on the purpose and intended nature of a business relationship.

123. *Criterion 10.7* (a) Regulation 12(1)(f)(i) of the AMLRs requires FIs to scrutinise transaction throughout the course of the business relationship to ensure the transactions being conducted are consistent with FIs’ knowledge of the customer, its business and risk profile, including source of funds where necessary. (b) Regulation 12(1)(f)(ii) further requires FIs to ensure that documents, data or information collected under the CDD process is kept current and relevant by reviewing existing records at appropriate times, taking into account whether and when the customer due diligence measures have been previously undertaken, particularly for high risk customers.

124. *Criterion 10.8* Regulation 12(2)(a) of the AMLRs requires FIs to understand the ownership and control structure of legal persons and arrangements. The regulation however does not address understanding the nature of the customer’s business.

125. *Criterion 10.9* The requirements for identifying and verifying legal persons and arrangements imposed by this criterion (a) to (c) are satisfied via regulation 12(2)(b) of the AMLRs, which requires FIs to identify and verify their identify by means information on (i) name, legal form and proof of existence; (ii) the constitutional documents that regulate and bind the legal person or arrangement, as

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well as satisfactory evidence of the identity of the director, manager, general partner, president, chief executive officer or such other person who is in an equivalent senior management position in the legal person or arrangement; (iii) the address of the registered office and, if different, a principal place of business.

126. *Criterion 10.10* Under regulation 12(3)(a) to (c) of the AMLRs, for customers that are legal persons, FIs are required in line with the criterion to (a) identify and verify the identity of any natural person who is the beneficial owner, (b) identify the natural person that is exercising control of the legal persons or arrangement through other means, where there is doubt under paragraph (a) as to whether the person with the controlling ownership interest is the beneficial owner or where no person exerts control through ownership interest, and (c) where no natural person is identified under (a) or (b), identify the natural person who is a senior managing official.

127. *Criterion 10.11* Regulation 12(4)(a) and (b) of the AMLRs satisfy the requirements of the criterion requiring FIs to identify and take reasonable measures to verify the identity of beneficial owners by means of: (a) for trusts, the identity of the settlor, the trustee(s), the protectors (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate control over the trust (including through a chain of control or ownership); and (b) for other types of legal arrangements, the identity of persons in equivalent or similar positions.

128. *Criterion 10.12* Under regulation 13 of the AMLRs, FIs are required to conduct the following CDD measures on the beneficiaries of life insurance and other investment related policies as soon as the beneficiary is identified or designated; (a) for a beneficiary that is identified as a specifically named natural legal person or legal arrangement – taking the name of the person; and (b) for a beneficiary that is designated by characteristics of by class or by other means, obtaining sufficient information concerning the beneficiary to satisfy the person carrying out relevant financial business that it will be able to establish the identity of the beneficiary at the time of payout. (c) While regulation 13 requires the specified CDD measures to be conducted by the time of payout, there is no requirement to verify the identity of these persons.

129. *Criterion 10.13* Regulation 14 of the AMLRs requires FIs to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced customer due diligence measures are applicable. In relation to insurance business, regulation 29 requires FIs to perform ECDD with respect to legal persons and arrangements that are beneficiaries and present a higher risk, including reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary at the time of pay out, where applicable.

130. *Criterion 10.14* Regulation 15(1) of the AMLRs requires FIs to verify the identity of a customer and beneficial owner before or during the course of establishing a business relationship or conducting a one-off transaction. Regulation 15(2) further permits FIs to complete customer verification after the establishment of a business relationship where (a) this occurs as soon as reasonably practicable; (b) this is essential not to interrupt the normal conduct of business; and (c) the ML/TF risks are effectively managed, as allowed by the criterion.

131. *Criterion 10.15* Regulation 16 of the AMLRs requires FIs to adopt risk management procedures concerning conditions under which a business relationship may be utilised prior to verification.

132. *Criterion 10.16* The AMLRs do not require FIs to apply CDD requirements to existing customers at appropriate times based on materiality and risk, also taking into consideration whether and when CDD measures were previously undertaken and the adequacy of the information obtained.

133. *Criterion 10.17* Regulation 17 of the AMLRs require FIs to perform enhanced due diligence measures where ML/TF risks are higher.

134. *Criterion 10.18* Regulation 21 of the AMLRs, stipulates that FIs are only allowed to apply simplified due diligence measures where lower risks have been identified and are consistent with the findings of the country, via an NRA or the findings of CIMA. Further, regulation 21(3) restricts FIs from applying simplified measures where it knows, suspects or has reasonable grounds to know or suspect ML/TF.

135. *Criterion 10.19* Regulation 18 of the AMLRs satisfies the requirement of the criterion. Where an FI is unable to comply with relevant CDD measures, the FI must (a) not open the account, commence business relations or perform the transaction; or terminate the business relationship; and (b) consider making a suspicious activity report in relation to the customer.

136. *Criterion 10.20* Regulation 19 of the AMLRs restricts FIs from completing the CDD process where the FI (a) forms a suspicion of ML/TF; and (b) the FI believes that satisfying CDD or ongoing CDD will tip-off the customer or applicant for business. In such a case, FIs are required to file a suspicious activity report.

Weighting and Conclusion

137. The Cayman Islands has legislation in place prohibiting anonymous accounts and accounts with fictitious names. Relevant requirements relating to identification and verification of customers, persons acting on behalf of other persons, legal persons and arrangements and their beneficial owners are in place. Requirements are also in place to conduct risk assessments, CDD and ECDD and the AMLRs places limits on the circumstances under which simplified CDD measures may be applied. There are no requirements for the verification of the identity of beneficiaries of life insurance policies and understanding the nature of a legal person or arrangement's business. In addition, due to fluctuations in the value of currencies, there are some shortcomings in applying the threshold for conducting CDD on occasional transactions. The AMLRs do not require FIs to apply CCD requirements to existing customers on the basis of materiality and risk. **Recommendation 10 is rated Largely Compliant.**

Recommendation 11 – Record-keeping

138. This Recommendation (formerly R. 10) was rated 'LC' in the 3rd MER since records of account files and business correspondence were not required to be kept for the same period as identification data. Additionally, the retention period for identification records for accounts dormant for longer than five years started from the date of the last transaction rather the termination of the account. These deficiencies were dealt with by amendments to the MLR. The only change in this Recommendation is an additional requirement for records of any analysis undertaken of the account.

139. *Criterion 11.1* Regulation 31(1) of the AMLRs requires records containing details relating to all transactions which includes both domestic and international transactions carried out in the course of relevant financial business. Regulation 31(3)(c) stipulates that the records be maintained for a prescribed period of at least five (5) years. Further, regulation 31(5) stipulates the prescribed period to be the date of the ending of the business relationship and regulation 31(3)(c) of the AMLRs also requires that these records be kept at least five years after the completion of the activities relating to a particular transaction.

140. *Criterion 11.2* Regulation 31 (1)(a) of the AMLR requires a record of the evidence of a person's identity that indicates the nature of the evidence and comprises a copy of the evidence; or such information as would enable a copy of it to be obtained or provides sufficient information to enable the details of a person's identity to be re-obtained. Additionally, regulation 31(1)(b) of the AMLRs requires a record of relevant account files, business correspondence and results of any analysis to be kept for at least five years following the termination of the business relationship or after the date of the one-off transaction. Sub-regulations 31(5)(a) of the AMLR specifies the retention period for identification records to be at least five years from the date of the termination of the business relationship. Further, in the case of one off transactions, regulation 31(5)(b) stipulates the five-year period commences on the date of completion of all activities taking place in the course of the one-off transaction. The AMLRs define one-off transactions as any transaction other than a transaction carried out in the course of a business relationship formed by a person carrying out relevant financial business. Also, the AMLRs define business relationships as relationships which require frequent, regular or habitual transactions where the total amount of any payment(s) is capable of being ascertained. On that basis, under the AMLRs, the jurisdiction's definition of "one-off transaction" includes occasional transactions.

141. *Criterion 11.3* Sub-regulation 31(1)(c) of the AMLR specifies that details relating to all transactions be recorded and that the records be sufficient to permit reconstruction of individual transactions to provide if necessary evidence for prosecution.

142. *Criterion 11.4* Regulation 31(2) of the AMLRs requires a person carrying out relevant financial business to ensure that all CDD information and transaction records are available without delay upon request by competent authorities.

Weighting and Conclusion

143. The AMLRs cover all the record keeping requirements. **Recommendation 11 is rated Compliant.**

Recommendation 12 – Politically exposed persons

144. The Cayman Islands was rated 'LC' for R.12 (formerly R.6) in its 3rd MER. The lone deficiency identified at the time was that the Guidance note did not require Financial Service Providers (FSPs) to obtain senior management approval to continue business relationships when a customer or beneficial owner was found to be or subsequently became a PEP. R.12 incorporates the requirement of implementing measures to determine whether a client falls into the two new categories of PEPs: domestic PEPs (though these were already mentioned in additional elements) or PEPs of international

organisations. Financial institutions are required to apply additional CDD on a risk-sensitive basis. The 2003 UN Convention against corruption has not been extended to the Cayman Islands. The Anti-Corruption Law was issued with an intent to give effect to the provisions of the said Convention.

145. *Criterion 12.1* Regulation 30(1) of the AMLRs requires FIs and DNFBPs to put in place risk management systems for identifying PEPs, requiring senior management's approval prior to establishing or continuing an existing relationship with a PEP, take reasonable measures to determine the source of wealth and funds of a person involved in a business relationship and a beneficial owner identified as a PEP and ensure that risk management procedures contain as a component, monitoring of the relationship with a PEP. Enhanced ongoing monitoring of relationships with PEPs is required since regulation 27 (e) of the AMLRs mandates the conduct of EDD where a customer or applicant for business is a PEP and Regulation 12(1)(f)(i) stipulates ongoing due diligence including scrutinising transactions undertaken throughout the course of the business relationship to ensure that transactions being conducted are consistent with the person's knowledge of the customer, the customer's business and risk profile. The definition of PEP accords with that of the Recommendations.

146. *Criterion 12.2* The requirements, as contained in Regulation 30(1) of the AMLRs, makes no distinction between a foreign and domestic PEP or persons who have been entrusted with a prominent function by an international organisation. (a) Regulation 30 (1) of the AMLRs requires FIs to take reasonable steps to identify the customer or beneficial owner as a PEP. (b) Regulation 30 (1) (b) further requires FIs to adopt risk management measures as detailed in criterion 12.1 (b) to (d).

147. *Criterion 12.3* Regulation 30(1) of the AMLRs applies to all types of PEPs as well as to family members and close associates.

148. *Criterion 12.4* Regulation 30(2) of the AMLRs satisfies the criteria since it requires FIs and DNFBPs to determine before the payout of policy proceeds (a) to determine whether the beneficiary or beneficial owners of the beneficiary of life insurance policies are PEPs, that senior management is informed before payout of the policy proceeds and to conduct enhanced scrutiny on the whole business relationship with the policy holder and if necessary to consider making a SAR.

Weighting and Conclusion

149. The requirements of the criteria are contained in the AMLRs. **Recommendation 12 is rated Compliant.**

Recommendation 13 – Correspondent banking

150. The Recommendation (formerly R. 7) was rated 'NC' in the 3rd MER because of a lack of any specific requirement with regards to correspondent banking. This was addressed through the implementing of correspondent banking measures within the GNs during the third-round follow-up process. The Recommendation now incorporates requirements on FIs in relation to shell banks (formerly R. 18).

151. *Criterion 13.1* The requirements of this criterion are detailed under regulation 52 (a) to (d) of the AMLRs by requiring FIs to perform the following in addition to CDD measures: (a) collect information

to understand the nature of a respondent institution's business and determine the reputation of the institution and the quality of supervision, including whether it has been subject to ML/TF investigation or regulatory action; (b) assess the respondent institution's AML/CFT controls; (c) obtain approval from senior management before establishing new correspondent relationships and (d) clearly understand and document the respective responsibilities of each institution.

152. *Criterion 13.2* (a) Section 53 of the AMLRs require, with respect to payable through accounts that FIs be satisfied that the respondent bank (a) has performed CDD on the customers that have direct access to the correspondent bank and (b) is able to provide relevant CDD information to the correspondent bank upon request.

153. *Criterion 13.3* Regulation 51 of the AMLRs, prohibits FIs from entering into or continuing correspondent or similar relationships with shell banks and satisfy themselves that the respondent institution does not permit their accounts to be used by shell banks.

Weighting and Conclusion

154. The requirements of the criteria have been set out in the AMLRs. **Recommendation 13 is rated Compliant.**

Recommendation 14 – Money or value transfer services

155. This Recommendation formerly SR. VI was rated 'LC' in the 3rd MER since the regulatory regime for remittance companies was due to come into effect by 2008. MVTS are licensed and supervised by CIMA. The new element in this Recommendation is the requirement to actively identify and sanction unlicensed or unregistered MVTS providers.

156. *Criterion 14.1* Section 4(1) of the Money Services Law (MSL) requires a Money Service Business (MSB) to obtain a license from CIMA. Persons desirous of carrying on MSB may make an application to CIMA for a licence pursuant to section 5.

157. *Criterion 14.2* Pursuant to Section 4(2) of the MSL, a person is guilty of an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year and, in the case of a continuing offence, to a fine of one thousand dollars for each day during which the offence continues. CIMA reminds the public that carrying on money services business requires a licence, via notices issued on its website in August 2017, May 2016 and August 2015. Further, CIMA works with other competent authorities such as RCIPS and the public in identifying the unauthorised MSBs.

158. *Criterion 14.3* A MVTS is considered to be engaging in relevant financial business and is included in the list of activities in Schedule 6 of the POCL. As such, MVTS are subject to the AML/CTF requirements and fall under the regulatory purview of CIMA, who is responsible for monitoring compliance with the AMLRs.

159. *Criterion 14.4* The definition of money service business in Section 2 of the MSL *inter alia* includes the business of operating as an agent or franchise holder of the principal business and requires a licence from CIMA to operate. In accordance with section 8 of CIMA's Regulatory Policy for Licensing and

Approving Money Services Business, MVTS providers are required to submit an application for licensing on behalf of their agents.

160. *Criterion 14.5* Section 7.5.1 of the of CIMA's Regulatory Policy for Licensing and Approving Money Services Business sets out that it is the responsibility of each MSB provider to have systems and training in place to prevent ML and TF through its agents. The Policy further requires MSB providers to ensure that the owner(s), director(s), and persons responsible for conducting the remittance transactions of the agents have obtained AML/CFT training. CIMA requires proof to its satisfaction, from the MVTS provider, that the owner(s) and director(s) of its agent, as well as the persons responsible for conducting the remittance transactions, have obtained such training, which includes training on AML policies and procedures, as part of the agent's application for licensing. However, there are no requirements for the MVTS providers to monitor agents' compliance with AML/CFT programmes.

Weighting and Conclusion

161. Persons performing money services business (agents and franchise holders) are required to be licensed by CIMA. Persons conducting money services business without a licence are subject to appropriate sanctions and CIMA has measures in place to identify persons carrying on business without a licence. All licensees are required to have adequate AML/CFT programmes in place and principal MVTS providers have a responsibility to ensure systems and training are in place at the agents accordingly. There is however no requirement for principal MVTS to monitor agents' compliance with AML/CFT programmes. CIMA has the responsibility for monitoring licensees' AML/CFT compliance with the AMLRs, which does not fully compass the requirements of the TL. **Recommendation 14 is rated Largely Compliant.**

Recommendation 15 – New technologies

162. This Recommendation (formerly R. 8) was rated 'LC' in the 3rd MER. The deficiency noted was that there was no requirement for financial institutions to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions. The deficiencies were addressed by the GN, which require financial service providers to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions. R.15 focuses on preventing risks associated with all new or developing technologies and new products and business practices and sets out a new obligation for countries to identify and assess the risks.

163. *Criterion 15.1* Regulation 8(2)(f) of the AMLRs requires a person carrying out relevant financial business to take steps appropriate to the nature and size of the business to identify, assess and understand its ML/TF risks which may arise in relation to the development of new products and new business practices, including new delivery mechanisms and the use of new or developing technologies for both new and pre-existing products. The country did not provide any measures which require the country to identify and assess the risks associated with new or developing technologies, new products or business practices.

164. *Criterion 15.2* Regulation 9(a) and (b) of the AMLRs requires a person carrying out relevant financial business to (a) undertake an assessment of risk prior and (b) take appropriate measures to manage and mitigate risks, in respect of new products and business practices, new delivery mechanisms and new or developing technologies.

Weighting and Conclusion

165. There are requirements for persons carrying out relevant financial businesses to keep policies and procedures to prevent ML and TF in technological development, to identify and assess ML/TF risks in new products, new business practices, new delivery mechanisms and new or developing technologies in new and pre-existing products. FIs are required to undertake risk assessments prior the launch of products or practices or taking measures for risk management. There is however no similar requirement nor is there any documented evidence that the Cayman Islands have comprehensively assessed the ML/TF risks associated with new or developing technologies, products, delivery mechanisms or business practices. **Recommendation 15 is rated Largely Compliant.**

Recommendation 16 – Wire transfers

166. This Recommendation (formerly SR.VII) was rated ‘PC’ in the 3rd MER due to the lack of requirements covering domestic and inbound cross-border wire transfers and for beneficiary financial institutions to consider restricting or even terminating their business relationships that fail to meet SRVII standards. These deficiencies were addressed in through amendment of the MLRs, which became enforceable on 1 January 2008. The Recommendation includes new requirements for transfers below the threshold and for ordering, intermediary and beneficiary FIs and links to R. 6 and R. 20.

167. *Criterion 16.1 (a)* Regulation 36(1) of the AMLRs requires FIs to ensure that all wire transfers are accompanied by complete information which is defined under regulation 36(2) and meets the criteria of originator information. *(b)* Regulation 36(4) of the AMLRs requires FIs to collect beneficiary information as required under the sub-criterion.

168. *Criterion 16.2* Under Regulation 38(1) of the AMLRs, in the case of batch file transfers from a single payer where the payment service provider of the payees is situated outside the Cayman Islands, originator information is not required to accompany the individual transfers bundled together, if the batch file contains that information and the individual transfers carry the account number of the payer or a unique identifier. Regulation 38(2) of the AMLRs further states that the batch file shall contain the name, account number or unique identifier number of the beneficiary that is traceable in the payee’s country.

169. *Criterion 16.3* The jurisdiction does not apply *de minimis* limits.

170. *Criterion 16.4* A *de minimis* threshold is not applied for wire transfers.

171. *Criterion 16.5* Regulation 37 of the AMLRs, states that for domestic wire transfers, FIs only need to provide the originator’s account number or unique identification number. There is no requirement for the accompaniment of the originator’s address, national identity number, customer identification number or date and place of birth with such transfers. Full originator would however be made available

to the beneficiary FI or appropriate authorities by other means in the form of a request from the beneficiary FI, for which the FI must supply full originator information within three working days of such a request. There are mechanisms in place for originator and other information can be made available to appropriate authorities through the means detailed in 16.6 below.

172. *Criterion 16.6* The analysis in criteria 16.5 is relevant. Regulation 48 requires FIs to fully and without delay respond to enquiries from the FRA concerning information about the payer accompanying transfers of funds and corresponding records. Under section 18 (3) (a) of the MSL and section 17 (3) (a) of the BTCL, CIMA has powers to access any records from its FIs. Section 149 (1) of the POCL allows the RCIPS to make an application for a production order on any person that may be in possession of relevant information.

173. *Criterion 16.7* Regulation 36(6) of the AMLRs requires the originating FI to maintain records of complete information on the originator and the beneficiary which accompanies wire transfers for a period of 5 years.

174. *Criterion 16.8* Under regulation 40(1) of the AMLRs FIs are prohibited from executing wire transfers where the payment service provider is unable to collect and maintain information as required under regulations 36, 37 and 38 (1).

175. *Criterion 16.9* Regulation 43 of the AMLRs, requires intermediary FIs to keep all originator and beneficiary information that accompany wire transfers.

176. *Criterion 16.10* Regulation 47(2) and (3) of the AMLRs, allow FIs to use a payment system with technical limitations which prevent information on the originator information from accompanying the transfer, where the intermediary FI can provide the beneficiary institution with information on the originator. These records must be maintained for five years. The AMLRs do not allow for the transfer of funds where there are technical limitations preventing the accompaniment of beneficiary information.

177. *Criterion 16.11* This requirement is covered under regulation 44 of the AMLRs, which requires intermediary FIs to take reasonable measures consistent with straight through processing to identify cross border transactions that lack required originator or beneficiary information.

178. *Criterion 16.12* Regulation 44 of the AMLRs requires FIs to adopt risk-based policies and procedures for determining when to execute, reject or suspend wire transfers where originator or beneficiary information is incomplete and apply resulting procedures.

179. *Criterion 16.13* Regulation 40(2) of the AMLRs requires beneficiary FIs to have effective systems in place to detect missing originator or beneficiary information.

180. *Criterion 16.14* Beneficiary FIs are required to verify the identity of the payee under regulation 40(4) of the AMLRs. The Cayman Islands does not apply a *de minimis* threshold for cross-border wire transfers and as such applies to all transfers.

181. *Criterion 16.15* Regulation 40(5) of the AMLRs requires beneficiary FIs to have risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer lacking required beneficiary information and the appropriate follow-up action. However, this does not extend to originator information as required by the criterion. Nonetheless, section 40 (6) of the AMLRs does require a beneficiary FI to adopt measures to rectify non-compliance with the AMLRs where an originator FI regularly fails to supply required originator information before rejecting a wire transfer, restricting the business relationship with the originator FI or terminating the business relationship of CAYMAN ISLANDS MUTUAL EVALUATION REPORT

the originator FI. Whilst this provision can be included in risk-based policies for executing, rejecting or suspending a wire transfer, it narrows the scope of risk-based policies as required under the criterion.

182. *Criterion 16.16* Regulation 45 of the AMLRs requires money services licensees to comply with the requirements under PART X (Identification and Record Keeping Requirements Relating to Wire Transfers) in the countries in which they operate, directly or through their agents. However, the country has not fully satisfied the requirements of criterion 16.15.

183. *Criterion 16.17* Regulation 46 (a) and (b) of the AMLRs require MVTS that control both the ordering and beneficiary side of a wire transfer to (a) consider all information from both the ordering and beneficiary sides to determine whether a suspicious activity report should be filed; and (b) file a suspicious activity report in the country from or to which the suspicious wire transfer originated or was destined.

184. *Criterion 16.18* Under section 12(1) of Schedule 4A of the TL, persons are required to freeze, without delay, funds or resources owned, held or controlled by a designated person if the person knows or has reasonable cause to suspect, that the designated person is dealing with such funds or economic resources. Designated persons include persons designated by the UNSC. Freezing includes prohibiting transfers, conversions, movement or use of funds and economic resources. The term “deal with” is defined to include in relation to funds use, alter, move, allow access to or transfer. These measures would require FIs to take freezing actions with regard to wire transfers to comply with prohibitions against conducting transactions with designated persons. The term person extends to entities by virtue of section 3(1) of the Interpretation Law (1995) Revision.

Weighting and Conclusion

185. The requirements for wire transfers are detailed in the AMLRs and the authority for law enforcement agencies and CIMA to compel production of information is detailed in various laws. The country however does not fully require beneficiary FIs to have risk-based policies and procedures for determining how to handle a wire transfer where originator information is absent. **Recommendation 16 is rated Largely Compliant.**

Recommendation 17 – Reliance on third parties

186. This Recommendation (formerly R. 9) was rated ‘PC’ during the 3rd MER on the basis that there was no requirement for FIs to immediately obtain all the necessary CDD information. Additionally, there was no requirement for the regulation and supervision of foreign eligible introducers or for them to have CDD measures in place in accordance with Recs. 5 and 10. These deficiencies were addressed via amendments to the MLR and the GNs. The new requirements of the Recommendation include a clear delineation of ultimate responsibility remaining with the FI and a more flexible approach to intra-group reliance.

187. *Criterion 17.1* Under regulation 25(1) of the AMLRs, FIs can rely on third party FIs and DNFBPs to perform elements of CDD, where a business relationship is formed, or a one-off transaction is carried out with or for that third party pursuant to an introduction. Regulation 3(3) of the AMLRs, FIs have the

ultimate responsibility for CDD measures when relying on third-parties is not included. (a) Where this occurs, the third-party must provide to the FI or DNFBP, written assurance, in accordance with regulation 24(2)(b)(i)-(ii) of the AMLRs which confirms that it has identified and verified the identity of the customer, and the beneficial owner, where applicable, on whose behalf the eligible introducer acts and under procedures maintained by the applicant for business; the nature and intended purpose of the business relationship. However, there is no requirement for the FI to obtain the information concerning elements (a) to (c) of the CDD measures of Recommendation 10. (b) Section 25(1) and 24(2)(b)(iv) of the AMLRs further requires FIs and DNFBPs to obtain written assurance from eligible introducers that it will make available on request and without delay, copies of any identification or verification data or information or other relevant documentation. This written assurance serves as a form of obligatory arrangement, from which FIs would satisfy themselves that copies of identification or verification data or information will be made available as detailed in the terms of the arrangement. (c) Under section 25(1) of the AMLRs, FIs and DNFBPs may only rely on third parties subject to the requirements of the AMLRs or meet the category of person described under regulation 22(d) which require third parties to be subject to or subsidiaries of third-parties that are subject to supervision by an overseas regulatory authority in jurisdictions on the list published by the AMLSG as part of its functions pursuant to section 5(2)(a) of the POCL.

188. *Criterion 17.2* AMLSG developed a list of countries from where third-parties can be relied upon. The country has deemed the list as the List of Countries and Territories deemed to have equivalent legislation. The criteria for determining the addition and removal of persons from the lists is detailed within CIMA's Regulatory Handbook and requires considerations of the jurisdiction's ML/TF risks, which includes assessments by international standard setting bodies such as FATF.

189. *Criterion 17.3* The Cayman Islands does not have any specific regulation relevant to introduction by third-parties within the same financial group, as such FIs that rely on third party introductions from other institutions within their group are treated the same as other non-group third party introductions.

Weighting and Conclusion

190. The country allows FIs to rely on third-party FIs and DNFBPs to perform elements of CDD. Where relied on, FIs must obtain written assurance that the third-party has conducted relevant CDD and that relating documentation can be made available without delay upon the FI's request. However, FIs are not required to obtain information immediately upon introductions. FIs are allowed to rely on regulated third-parties in jurisdictions published by the AMLSG. **Recommendation 17 is rated Largely Compliant.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

191. Recommendation 18 is a combination of (formerly R. 15 and 22). Former R. 15 was rated 'PC' in the 3rd MER since there was no requirement for financial institutions to put in place screening procedures to ensure high standards when hiring employees, AML/CFT Compliance Officers are only

required to be suitably senior, qualified and experienced rather than specifically at managerial level, the requirement for internal audit is general with no guidance as to specifics identified in the FATF criteria and Regulation only allows for reasonable access to information by a person responsible for considering submission of a SAR rather than unimpeded access. R. 22 was rated 'LC' due to the recent issuance of requirements which did not allow for sufficient time to allow or test for effective implementation. Recommendation 18 now includes an additional requirement of an independent audit function for internal controls and financial group AML/CFT programmes.

192. *Criterion 18.1* Persons who carry out relevant financial business are required to *inter alia* maintain appropriate procedures which consider ML/TF risks and the size of that business. (a) Regulation 3(1) of the AMLRs requires FIs and DNFBPs to designate a person at the managerial level as the AML Compliance Officer. (b) Regulation 5(a)(iii) of the AMLRs satisfies the requirements to have procedures to screen employees to ensure high standards when hiring. (c). Regulation 5(d) satisfies the criterion to provide employees from time to time with training in the recognition and treatment of transactions carried out by or on behalf of any person who is or appears to be engaged in ML.(d) Regulation 5(a)(ix) requires procedures of internal control, including an appropriate effective risk-based independent audit function and communication as may be appropriate for ongoing monitoring of business relationships for forestalling and preventing ML/TF.

193. *Criterion 18.2* Regulation 6 of the AMLRs (b), (c) and (d) requires a financial group or other person carrying out relevant financial business through a similar financial group arrangement to implement group wide ML/TF programmes which apply to all branches and majority owned subsidiaries. These programmes require (i) policies and procedures for sharing information required for the purpose of customer due diligence and ML/TF risk management; (ii) the provision at group level compliance, audit and AML/CFT functions of customer, account and transaction information from branches and subsidiary when necessary for AML/CFT purposes; and (iii) adequate safeguards on the confidentiality and use of information exchanged.

194. *Criterion 18.3* Regulation 7 (1) of the AMLRs requires a person carrying out relevant financial business to ensure that foreign branches and majority owned subsidiaries to apply AML/CFT measures consistent with those required by the Cayman Islands where the minimum AML/CFT requirements of the country in which the foreign branches and subsidiaries are located, are less strict than those of the Cayman Islands, to the extent that laws and regulations of that country permit. Further, Regulation 7 (2) requires that where the country in which the foreign branches and subsidiaries are located does not permit the proper implementation of AML/CFT measures consistent with those required by the Cayman Islands, financial groups shall (a) apply appropriate additional measures to manage ML/TF risks and (b) inform the relevant supervisory authority of the improper implementation of AML/CFT measures.

Weighting and Conclusion

195. The requisite law requires FIs to implement adequate internal controls relating to AML/CFT compliance management, independent audit function for systems and screening and training for employees coupled with the requirement for financial group to implement group wide ML/TF

programmes which apply to all branches and majority owned subsidiaries. **Recommendation 18 is rated Compliant.**

Recommendation 19 – Higher-risk countries

196. This Recommendation (formerly R 21) was rated ‘LC’ in the 3rd Round MER because there was no provision for the authorities to apply appropriate counter measures against countries which do not or insufficiently apply the FATF Recommendations. The 3rd Follow-up report for Cayman Island, stated that Section 201(3) of the POCL, 2008 empowers the Governor in Cabinet to designate a jurisdiction as one which has serious deficiencies in its compliance with recognised international AML/CFT standards and to therefore require that no dealings be conducted with that jurisdiction or that enhanced due diligence be applied. R. 19 requires the application of EDD where there is a risk to transactions and business relationships from countries so identified by the FATF. Countries are required to inform FIs of possible AML/CFT weaknesses in other countries. R. 19 requires the application of enhanced due diligence (EDD) measures for transactions and business relationships from countries and to be able to apply countermeasures when this is called for by the FATF. Countries are required to inform financial institutions of possible AML/CFT weaknesses in other countries.

197. *Criterion 19.1* The Authorities have cited regulation 5(a)(vii) of the AMLRs which requires persons carrying out relevant financial business to maintain procedures which observe the list of countries, published by any competent authority, which are non-compliant or do not sufficiently comply with the FATF Recommendations. Regulation 27 of the AMLRs also states that FIs must perform enhanced due diligence where a customer is from a foreign country that has been identified by credible sources as having serious deficiencies in its AML/CFT regime. However, the regulations do not address the requirement for FIs to apply enhanced due diligence when this is called for by FATF.

198. *Criterion 19.2* There is no existing legal basis which requires the application of countermeasures within the framework of (a) and (b) of this criterion.

199. *Criterion 19.3* Regulation 5(a)(vii) of the AMLRs requires FIs to observe the list of countries published by any competent authority which lists countries that are non-compliant or do not sufficiently comply with FATF recommendations.

Weighting and Conclusion

200. The AMLRs address the requirement for persons carrying out relevant financial business to maintain procedures which observe the list of countries, published by any competent authority which are non-compliant or do not sufficiently comply with the FATF Standards. In addition, it also addresses FIs and DNFBPs performing enhanced due diligence when conducting business with higher risk countries. However, the regulations do not sufficiently address the requirement to apply EDD when called for by FATF. Cayman Islands does not have legislation or measures which addresses the requirements for countermeasures. **Recommendation 19 is rated Partially Compliant.**

Recommendation 20 – Reporting of suspicious transaction

201. This Recommendation (formerly R.13 and SR.IV) was rated in the 3rd. MER as ‘LC’. The deficiency identified related to the lack of guidance with regard to the treatment of attempted transactions or consequences of non-reporting. For SR IV, the factor underlying the rating was the lack of clear guidance in GNs with regard to treatment of attempted suspicious transactions or consequences of non-reporting. For the 3rd Follow-up report, these deficiencies were addressed in paragraph 5.35 of the GNs which requires financial services providers to report attempted transactions that give rise to knowledge or suspicion of ML or TF to the FRA. The requirements under the Revised Standards are unchanged.

202. *Criterion 20.1* Section 136(1) of POCL creates an offence for failing to make a required disclosure to either a nominated officer or the FRA as soon as practicable, where a person knows or suspects or has reasonable grounds for knowing or suspecting that another person is engaged in criminal conduct.

203. *Criterion 20.2* Regulation 34(a)(ii) of the AMLRs covers attempted and aborted transactions as part of the internal reporting procedures where there is a suspicion of ML/TF and the general requirement in s.136(1) of the POCL ensures this applies also to predicate offences.

Weighting and Conclusion

204. The POCL and AMLRs comply with the requirements of the criteria. **Recommendation 20 is rated Compliant.**

Recommendation 21 – Tipping-off and confidentiality

205. Cayman Islands was rated ‘LC’ for R.21 (formerly R.14) in its 3rd MER. The lone deficiency being the lack of a provision to prohibit disclosing information in relation to the filing of SARs for drug related ML. No significant changes were made to this Recommendation for the Fourth Round.

206. *Criterion 21.1* Good faith submission to the FIU are protected from penalty. Section 9(1) of the POCL provides that persons making a report to the FRA will not be considered to be in breach of any restriction upon the disclosure of information by any enactment or otherwise and the fact of such disclosure shall not give rise to any criminal or civil liability. In addition, Section 140 of the POCL states that no person may be subject to any legal, administrative or employment related sanction, regardless of any breach of a legal or employment-related obligation, for releasing information relating to an offence relating to ML and related criminal conduct. Accordingly, these sections satisfy the criteria.

207. *Criterion 21.2* Section 139 of POCL creates the offence of ‘tipping off’ whereby a person commits an offence if they make a disclosure. However, the offence of tipping off should apply regardless of whether or not the disclosure has resulted in an investigation.

Weighting and Conclusion

208. Financial Institutions and their employees who disclose information to FRA in good faith are protected from civil and criminal sanctions. The Cayman Islands has also enacted “whistleblowing” measures with its POCL whereby no sanctions inclusive of administrative, civil and criminal relating to a person releasing information relating to ML and criminal conduct. Furthermore, the legislation creates an offence for persons who disclose information in an unauthorised manner. However, the offence of tipping off should apply regardless of whether or not the disclosure has resulted in an investigation. **Recommendation 21 is rated Largely Compliant.**

Recommendation 22 – DNFBPs: Customer due diligence

209. Recommendation 22 (formerly R. 12) was rated ‘PC’ in the 3rd MER. A number of deficiencies were identified – the deficiencies for all financial institutions were also applicable to DNFBPs. The deficiencies were largely addressed as follows: -The GNs (paragraph 1.4) state that it is expected that all institutions conducting relevant financial business pay due regard to the GNs. Paragraph 2.16 of the GNs outlines the definition of relevant financial business as detailed in Regulation 4 (1) of the MLRs to incorporate dealers in precious metals and precious stones, when engaging in a cash transaction of fifteen thousand dollars or more, as stated in the Second Schedule of the MLRs. The requirements for DNFBPs remained unchanged in the revised Standards.

210. *Criterion 22.1* Schedule 6 of the POCL identifies the relevant business activities of FIs and DNFBPs that are subject to AML/CFT as contained in the AMLRs. However, not all the categories of DNFBPs as identified in the Recommendations are covered by the POCL and this represents a gap in the regime. (a) Casinos are prohibited in the Cayman Islands. (b) The activities conducted by real estate agents, i.e. the sale, purchase or mortgage of land or interests in land on behalf of clients, are considered to be activities falling within the list of activities included in the definition of relevant financial business as set out in Schedule 6 of the POCL and are required to comply with the AMLRs. However, the definition of this type of activity does not extend to property. Also, property developers who directly sell a significant amount of real estate are not under the remit of the AMLRs. The deficiencies identified in Recommendation 10 also apply. (c) Dealers in precious metals and stones when they engage in any cash transaction of fifteen thousand dollars or more are also considered to be conducting relevant financial services business as set out in Schedule 6 of the POCL and are therefore required to comply with the AML/CFT requirements prescribed in POCL and the AMLRs. However, US dollar and Euro equivalent of the KYD 15,000 is higher and is a relatively less stringent standard than that required by the Recommendations.

211. (d) Schedule 6 of POCL *inter alia* includes a category of activity entitled financial, legal and accounting services relating to (i) the sale, purchase or mortgage of land or interests on land on behalf of clients or customers, (ii) management of client money, securities or other assets; (iii) management of bank, savings or securities accounts and (iv) the creation, operation or management of legal persons or arrangements and buying and selling of business entities. While the language is broad enough to include lawyers, other independent legal professionals and accountants, it does not include the activity of

organisation of contributions for the creation, operation or management of companies as required by this sub criteria. In relation to notaries in the Cayman Islands, the scope of activities conducted by a notary as indicated by section 9 and Schedule 5 of the Notaries Public Law 2014, is very narrow, and does not include activities described in the Methodology and are considered to be very low risk. In addition, there are no other independent legal professionals. However, no documentation or measures which support this statement were provided. (e) The definition of relevant financial business as contained in section 2 and Schedule 6 of POCL includes the business of company management as defined in the Company Management Law 2003. Persons in the Cayman Islands conducting business as a TCSPs are regulated by the CIMA and are subject to the requirements of the AMLRs.

212. *Criterion 22.2* The types of DNFBPs as described in the previous paragraph are required to comply with the record keeping requirements contained in Regulations 31 and 32 of the AMLRs. The requirements of Recommendation 11 are satisfied.

213. *Criterion 22.3* The types of DNFBPs as described in the previous paragraph are required to comply with the PEP requirements contained in Regulation 30 of the AMLRs. The requirements of Recommendation 12 are satisfied.

214. *Criterion 22.4* The types of DNFBPs as described in the previous paragraph are required to comply with the new technologies requirements contained in Regulations 8 and 9 of the AMLRs. However, there are no requirements for the country to identify and assess the ML/TF risks as required by this criterion.

215. *Criterion 22.5* The types of DNFBPs as described in the previous paragraph are required to comply with the reliance on third parties requirements contained in Regulations 24 and 25 of the AMLRs. The country allows DNFBPs to rely on third-party FIs and DNFBPs to perform elements of CDD. Where relied on, they must obtain written assurance that the third-party has conducted relevant CDD and that relating documentation can be made available without delay upon request. DNFBPs are allowed to rely on regulated third-parties in jurisdictions published by the AMLSG. The jurisdiction has deemed the list as the List of Countries and Territories deemed to have equivalent legislation. The criteria for determining the addition and removal of countries from the list is detailed within CIMA's Regulatory Handbook and requires considerations of the jurisdiction's ML/TF risks, which includes assessments by international standard setting bodies such as FATF. In addition, under regulation 3(3) of the AMLRs the DNFBPs have the ultimate responsibility for CDD measures when relying on third-parties. The additional deficiencies noted in the analysis of Recommendation 17 are also relevant.

Weighting and Conclusion

216. AML/CFT requirements prescribed in POCL and the AMLRs extend to DNFBPs. However, not all categories of DNFBPs are covered under the POCL. Also, the US dollar and Euro equivalent of the KYD 15,000 is a relatively less stringent standard than that required by the Recommendations. There are measures which require TCSPs to perform the CDD and to conduct the necessary due diligence to establish identity and background of the client. However, there are some deficiencies which have been similarly identified for the FIs relating to reliance on Third Parties. **Recommendation 22 is rated Partially Compliant.**

Recommendation 23 – DNFBPs: Other measures

217. Recommendation 23 (formerly R. 16) was rated ‘PC’ in the 3rd MER. The deficiencies identified were: No clear guidance in GNs with regard to the treatment of attempted suspicious transactions or consequences of non-reporting. There was no requirement for financial institutions to put in place screening procedures to ensure high standards when hiring employees. AML/CFT compliance officers were only required to be suitably senior, qualified and experienced rather than specifically management. The requirement for internal audit was general with no guidance as to specifics identified in the FATF Recommendations. Regulation only allowed for reasonable access to information by a person responsible for considering submission of a SAR rather than unimpeded access. There were no provisions for the authorities to apply appropriate counter-measures against countries which do not or insufficiently apply the FATF Recommendations.

218. *Criterion 23.1 (a)* The requirement to submit a SAR under section 136 of POCL applies to all professions and businesses including DNFBPs categorised as financial, legal and accounting services. Any person who receives information in the course of a business in the regulated sector or other trade, profession, business or employment, that gives rise to suspicion of criminal conduct has a duty to make a report. As indicated in R22.1 the category of business does not include the activity of organisation of contributions for the creation, operation or management of companies in the definition of financial, legal and accounting services. *(b)*. DPMS when they engage in a cash transaction with a customer equal to or above KYD 15,000 are required to comply with section 136 of POCL. As indicated in 22.1(c), the, US dollar and Euro equivalent of the KYD 15,000 is higher and is a less stringent standard than that required by the Recommendations. *(c)*. Trust and company service providers when, on behalf or for a client, they engage in a transaction in relation to the activities described in criterion 22.1(e), are also required to comply with section 136 of POCL.

219. *Criterion 23.2* The definition of relevant financial business includes the categories of DNFBPs as indicated in 23.1. The authorities have indicated that they do not have persons conducting the category of business of independent legal and accounting services. In addition, in the case of notaries they do not conduct activities as described in the Methodology and are considered to be very low risk. The requirements identified in Rec. 18 apply to the sector and have been met.

220. *Criterion 23.3* The deficiencies noted in the analysis of Recommendation 19 are also relevant.

221. *Criterion 23.4* The analysis noted in the Recommendation 21 is also relevant.

Weighting and Conclusion

222. AML/CFT requirements prescribed in POCL apply to DNFBPs so there are measures for suspicious transaction reporting, internal controls of foreign branches and subsidiaries, higher risk countries, tipping off and confidentiality requirements. Accordingly, the deficiencies noted in the analysis of Recommendations 20,18,19 and 21 are also relevant. Also, as indicated in Recommendation 22, there are gaps in the ambit of DNFBPs and a category of business in the case of financial, legal and accounting services. Additionally, there is a higher threshold which applies to DPMS when they engage

in a cash transaction with a customer equal to or above KYD 15,000 which does not concur with the US/Euro 15,000 limit in the Methodology. **Recommendation 23 is rated Partially Compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

223. Recommendation 24 (formerly R. 33) was rated ‘C’ in the 3rd MER. It was noted that a Registry of Companies exist within the General Registry which registers and maintains records related to Cayman Islands business entities. Recommendation 24 now requires additional measures that countries have a framework which identify different types, forms and basic features of legal persons in the country; the processes for the creation of legal persons and for obtaining and recording basic beneficial ownership information; an assessment of ML/TF risks. Basic information on the incorporation of a company should be kept, accurate, updated on a timely basis and made available to the public. Recommendation 24 also requires measures for liability and proportionate and dissuasive sanctions for breach of these requirements by natural or legal persons. Countries are further required to provide international cooperation on BO information and also to monitor the quality of assistance received in response to requests for basic BO information.

224. *Criterion 24.1* The types of legal persons (and their sub-categories where relevant) that can be created within the jurisdiction and the laws under which they can be created are detailed in the table below:

Types of Legal Persons	Laws for Creation
<i>Resident Companies</i> <ul style="list-style-type: none"> • Ordinary Companies • Limited Liability Companies • Foundation Companies <i>Non-Resident Companies</i> <ul style="list-style-type: none"> • Ordinary Companies • Exempted Companies • Segregated Portfolio Companies • Foreign Companies • Limited Liability Companies • Foundation Companies • Limited Duration Companies 	<i>Companies Law (CL)</i>
<i>Limited Liability Companies</i>	<i>Limited Liabilities Companies Law (LLCL)</i>
<i>Foundation Companies</i>	<i>Foundation Companies Law</i>

225. The CL, LLCL and FCL outline the different types, forms and basic features of the legal persons that can be created under this legislation as well as the registration requirements of these companies. A description of the various types, form and basic features of these companies can be found on the General Registry’s website (www.ciregistry.gov.ky). The website (accessible to anyone that registers for an

account with a minimum fee) outlines the process for incorporation, recording and obtaining basic information on these legal persons, including the name, type, date of registration, address of registered office and status. NPOs (discussed in detail under R. 8) can also be created within the jurisdiction. These organisations are not considered companies and as such are not formed by way of incorporation. NPOs can be registered pursuant to the NPO Law by a trust, company or group of persons. This information can be accessed by anyone who registers for an account at a minimum fee. A list of NPOs and their contact information can also be found on the website.

226. Additionally, the jurisdiction permits the formation of three (3) types of partnerships, (general, limited, foreign and exempted partnerships). General partnerships, limited partnerships and foreign partnerships can be created pursuant to the Partnership Law. A limited partnership or limited liability partnership established in a recognised jurisdiction outside the Cayman Islands (a foreign limited partnership) may apply to the Registrar of Exempted Limited Partnerships to be registered under section 42 of the Exempted Limited Partnership Law (ELPL). Exempted limited partnerships are created pursuant to the ELPL. A fifth and new type of partnership, the limited liability partnership is being introduced in the jurisdiction (pursuant to the Limited Partnership Law) but had not been fully in place at the time of the onsite. The types of partnerships currently formed in the jurisdiction are exempted limited partnerships, foreign partnerships and limited partnerships. The specific features of partnerships are discussed in detail under I05. The respective laws which makes provisions for the incorporation of legal persons are also available online. At the time of the onsite, there were no legislative measures in force that deal with the incorporation and registration of foundations. The website does not identify and describe the process for obtaining and recording beneficial ownership information for legal persons.

227. *Criterion 24.2* The authorities have not assessed the ML/TF risks associated with any of the legal persons created in the country.

228. *Criterion 24.3* Section 26(3) of the CL requires all companies incorporated under this law to be kept on the register of companies kept at the General Registry. Section 26(1)) of the CL requires *inter alia*, companies to file with the Registrar, a memorandum and articles of association. The particulars required to be annexed to the memorandum and articles include the name of the company, address of registered office, amount of capital of the company, the number of shares (and how they are divided) names and addresses of the subscribers to and the date of execution of the memorandum. Section 55 of the CL mandates that every company shall keep at its registered office, a register containing the names and addresses of its directors, including alternate directors, and officers. A copy of this register must be sent to the Registrar within sixty (60) days of the first appointment of any director or officer of the company. There is no requirement for this information to be publicly available. Of all the companies that can be created in the Cayman Islands, the law does not require exempted and limited liability companies to file a list of directors which can be made available for public access. The General Registry maintains information on directors of exempted companies and limited liability companies which is only available to competent authorities or in exceptional circumstances. The absence of a requirement for these companies is considered a major gap given the vast number of these companies formed in the jurisdiction.

229. Limited liability companies are required to register with the Registrar under section 4 of the LLC Law). The LLC is required to file a registration statement (signed by or on behalf of any person forming the LLC) in accordance with section 5(1), containing the name of the LLC (dual foreign name and, if

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applicable); the address in the of the registered office (in the jurisdiction); the term, if any, for which an LLC is formed; and a declaration that the LLC shall not undertake business with the public in the Cayman Islands (except where necessary for carrying out the business of the LLC). There is no requirement to provide a list of directors. The Registrar is mandated to maintain a Register of LLCs recording the name of each LLC registered under the LLC Law, the date of the registration, any change of name of an LLC and the date of the change. There is no indication that other documents such as proof of incorporation, list of directors (if any) is required to be filed along with the registration statement.

230. With respect to exempted limited partnerships, the general partner, is required to file ownership information on all general partners of the exempted limited partnership with the Registrar of Limited Partnerships. Section 9 of the ELPL requires exempted limited partnerships to file with the Registrar, a statement signed, by or on behalf of a general partner which should contain the name (or dual foreign name and translated name of the exempted limited partnership); the general nature of the business; (c) the address in the jurisdiction of the registered office; the terms of the partnership, (if any), a statement if it is of unlimited duration and commencement; and the full name and address of the general partner(s). Exempted limited partnerships are required to have a registered office within the jurisdiction. The Registrar is obliged to maintain a record of all information filed in relation to the exempted limited partnership, which shall be kept open for public inspection (during all usual business hours). These types partnerships may not carry on business with the public in the Cayman Islands, other than as necessary for the carrying on of business outside of the Cayman Islands. As at July 2017, there were 21,423 exempted partnerships formed in the jurisdiction.

231. A limited partnership established in a recognised jurisdiction outside of the Cayman Islands (a foreign limited partnership) may apply to the Registrar of exempted limited partnerships to be registered under section 42 of the ELPL of the Cayman Islands to act as a general partner of a Cayman Islands registered exempted limited partnership. Limited partnerships are governed by the Partnership Law (2002 Revision) and as such, must register with the Registrar of Limited Partnerships and are required to file with the Registrar, information on the ownership of the limited partners. These partnerships are established by two or more persons or entities for the transaction of any mercantile, mechanical, land holding and development, agricultural or manufacturing business or any business for the development of tourism. As at July 2017, there were a total of 40 limited partnerships in the jurisdiction. It is not clear whether limited partnerships are a type of partnership or a category of partnerships.

232. A General partnership must provide the name of the partners and the address from which the business will be carried out upon application for a licence. The licensee is also required to provide the partners' names on an annual basis when the licence is renewed. A general partnership may only carry on business in the Cayman Islands if it has a trade and business licence. There are no general partnerships formed in the jurisdiction at the time of the onsite.

233. *Criterion 24.4* Companies are required to produce duplicate copies of documents filed with the Registrar relative to incorporation, one of which is to be maintained by the Registrar and the other by the Company. A list of directors is also required to be maintained at the company's registered office. For example, there is no requirement for the memorandum and articles to be maintained. Section 40 of the CL mandates that companies keep a register of its shareholders or members. The register shall also contain a statement of shares (in the case of a company having a capital divided into shares), held by

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each member, distinguishing each share by its number and of the amount paid, or agreed to be considered as paid, on the shares of each member. There is no requirement for companies to maintain information in respect of the nature of associated voting rights. An exempted company may maintain registers of its members in the country or territory where its branch is located(s. 40A(1)). The branch register of an exempted company is considered to be a part of the exempted companies register. (section 40A(2) of the CL).

234. Pursuant to section 7 of the LLC Law, an LLC must maintain a registered office within the jurisdiction. The LLC Law requires an LLC to maintain a register of its members at its registered office or at any other place within or outside of the jurisdiction. The register of members must contain the name and address of each person who is a member of LLC, the date on which such person became a member and the date on which such person ceased to be a member.

235. The register of members of an LLC is not publicly accessible. Section 5 of the LLC Law allows the register of members and the record of the address to be open to inspection only by such persons expressly provided for in an LLC agreement; and as those permitted by the manager of the LLC. The LLC makes provision for the register to be made available to the Tax Authority.

236. *Criterion 24.5* Section 40 of the CL requires all companies to update the register of members within twenty-one days (21) of any change in the particulars. As noted in criterion 24.3, the Registrar of Companies must also be informed of any change to the register of directors (and officers) within sixty (60) days of the change. Under Section 31 of the CL there is a requirement to inform the Registrar of Companies of any changes to the directors. Companies are required to notify the Registrar of any change in directors or officers including a change of the name of such directors or officers within sixty (60) days of such change, in accordance with section 55(b) of the CL. Where a company changes the address of its registered office, the company shall notify the Registrar by filing the resolution of the directors authorising the change together. As it relates to LLCs, the Register must be updated within twenty-one (21) days of any change in the information on the register. In instances where the register of members is kept at a place other than the LLC's registered office, the LLC must maintain a record of the address where the register is maintained which must be updated within twenty-one (21) days of the date of any change in information. While there are mechanisms to update information with respect to both companies and LLCs, the time frames are not considered to be timely.

237. *Criterion 24.6* The CL requires companies (exemptions discussed below) incorporated in the jurisdiction are required to maintain beneficial ownership registers at their registered office and record this information into the beneficial ownership register maintained by the Registrar to enable competent authorities to access such information. The definition of BO Register under the CL is a "registry of adequate, accurate and current beneficial ownership information...". The CL however exempts several companies from this requirement including companies: listed on the Cayman Islands Stock exchange or another approved stock exchange; registered or holding a licence under a regulatory law; managed, arranged, administered, operated or promoted by an approved person as a special purpose vehicle, private equity fund, collective investment scheme or investment fund; that is a general partner of a vehicle, fund or scheme referred to in paragraph; managed, arranged, administered, operated or promoted by an approved person; or (e) exempted by the Regulations. These exempted companies are nonetheless required to file details outlining the basis for their exemption with the respective corporate service provider.

238. (a) Companies mandated to engage a corporate service provider to assist them in establishing and maintaining their beneficial ownership register include exempted companies; ordinary non-resident companies; and companies registered as special economic zone companies. Ordinary resident companies are required to engage either a corporate services provider or the Registrar to assist them in establishing and maintaining beneficial ownership registers. Relevant information required to be contained and maintained within the BO register are set out under section 254 of the CAL. (a) Section 255 of the CAL requires companies to keep their beneficial ownership registers up-to-date when they become aware of a change in information. This should be done by the company giving the relevant notice as soon as reasonably practicable after it learns of the change. Additionally, Regulation 3(2) of the Beneficial Ownership (Companies) Regulations (2017) (BO Regs) contains requirements to promote the updating of relevant beneficial ownership information. (b) Companies are also required by section 247 of the CAL to take reasonable steps to identify the beneficial owner of the company and allows companies to rely on the response of a person to a written notice sent in good faith by the company. The company may not rely on such information if it reasonably believes that the information is false.

239. (c) Regulation 12 of the AMLRs requires all persons carrying on relevant financial business with a company that is an applicant for business (AFB) to obtain and verify information on the identity of the beneficial owner of that company. Regulation 7(7) of the AMLRs requires the satisfactory evidence for a legal person (or a legal arrangement) stated such as (a) the person acting on behalf of, or with the authority of, the applicant for business, together with evidence of such authority; and (b) the natural person who ultimately owns or controls the applicant for business. Regulation 12(1)(f)(ii) of the AMLRs require that customer due diligence documentation information is kept up-to-date which would include beneficial ownership information. There are no mechanisms to ensure that beneficial ownership information is obtained through information held by the company as required in 24.3 above and available information on companies listed on a stock exchange where disclosure requirements ensure adequate transparency of beneficial ownership.

240. *Criterion 24.7* Beneficial ownership information is required to be accurate and up-to-date in accordance with regulation 3(2)(a) of the BO Regulations (2017) which require a company to provide in writing to a corporate services provider or to the Registrar, (as applicable) , the additional matters where any additional matter noted in a company's beneficial ownership register ceases to be true, the company shall, within one month of becoming aware of that fact - (a) update its beneficial ownership register to reflect any new information received regarding the additional matter, once that information is confirmed; or (b) note in its beneficial ownership register - (i) that the additional matter has ceased to be true.; and (ii) the date on which the additional matter noted in a company's beneficial ownership register ceases to be true, the company shall, within one month of becoming aware of that fact - (a) update its beneficial ownership register to reflect any new information received regarding the additional matter, once that information is confirmed; or (b) note in its beneficial ownership register - (i) that the additional matter has ceased to be true. Assessors are satisfied that these measures ensure that beneficial ownership information is accurate and up-to-date as possible.

241. *Criterion 24.8* For the purposes of sub-criterion (b) sections 252 to 261 of the Companies (Amendment) Law (2017) mandates that all companies maintain a register of beneficial owners at their registered office. Exempted, ordinary non-resident companies and special economic zone companies, CAYMAN ISLANDS MUTUAL EVALUATION REPORT

are required to engage corporate service providers to assist them in establishing their beneficial ownership registers. Ordinary resident companies have the option to either engage a corporate service provider (DNFBP) or the Registrar to assist them in establishing their beneficial ownership registers. This requirement enables companies to instruct corporate service providers in the jurisdiction or the Registrar (as applicable) to provide the information contained in the company's beneficial ownership register to be registered in the platform in order that the information be available to competent authorities. The corporate services providers are thereby accountable to the competent authority for providing basic information and available beneficial ownership information. The jurisdiction has satisfied sub-criterion (b) and as such, (a) and (c) are not discussed given that criteria 24.8 requires either of the measures to be taken by the authorities.

242. *Criterion 24.9* All persons, authorities and entities, companies, or those involved in the dissolution of a company are required to maintain information and records for at least five (5) years after the dissolution. This requirement also applies to exempted companies and LLCs in accordance with sections 59(3) of the CL and 63(5) of the LLC Law respectively). This requirement is also contained under Regulation 31 of the AMLRs for all persons conducting relevant financial business. This requirement is equally applicable to persons involved in the dissolution (administrators, liquidators) of a company through the CL (sections 122(2), 126(2), 127(1), 129(3) and 132(2)) and LLC Law (Part 8).

243. *Criterion 24.10* Competent authorities have direct access to basic information through the General Registry's database, CORIS. As it relates to beneficial ownership information, the jurisdiction's new beneficial ownership platform enables the relevant competent authorities to access beneficial information directly. Pursuant to section 262 (1) of the Companies (Amendment) Law (2017), the competent authority shall conduct a search of the beneficial ownership platform when requested to do so by a senior official of the FRA and CIMA as designated by the Minister (with responsibility for the FRA, CIMA, Tax Authority or anybody assigned responsibility for monitoring compliance with AMLRs). Also, the FCU and other units within the RCIPS may access the register as authorised by section 262(3) of the Companies (Amendment) Law that allows the competent authority to conduct a search of the register if requested to do so by FCU and RCIPS. Competent authorities have the power to request relevant information from TCSPs.

244. *Criterion 24.11* (a) The Cayman Islands has abolished the use of bearer shares and as of 13 May 2016, the CL prohibits the use of bearer shares. Also, the Companies Management (Amendment) Law, 2016 was enacted in October to remove references to the management of bearer shares. (b) The amendment requires that any issued bearer shares be converted to registered shares by 13 July 2016 and mandated that any bearer shares not converted as required are null and void. (Met) Since the Cayman Islands has abolished the use of bearer shares, (c) (d) and (e) are not applicable.

245. *Criterion 24.12* (a) In compliance with the CML, any Cayman Islands company which carries on the business of company management and acts or provides a nominee shareholder for a company and/or a director of another company, must be licensed by CIMA unless it is otherwise licensed to carry on trust business under the BTCL or mutual fund administration under the MFL. All licensed company managers, trustees and mutual fund administrators are subject to the AML/CFT regime (which includes the POCL, MLRs and the GNs) and therefore must obtain information on beneficial owners.

246. *Criterion 24.13* Where a company, knowingly and willfully contravenes the requirements to maintain a beneficial ownership register, the company is liable to a fine of KYD25,000 on summary

conviction for each such contravention and to a fine of KYD500 per day if the offence continues, up to a maximum of (KYD25,000 (section 274 of the CAL). As noted in 24.4, CIMA has powers to impose sanctions for breaches of AML obligations by individuals from KYD5,000 to KYD100,000 and corporate bodies from KYD5,000 to KYD1,000,000. While the imposition of a continuing fine of KYD500 per day may encourage companies act promptly to remedy breaches or to avoid committing breaches altogether, the maximum of KYD25,000 may not serve as a deterrent for a breach as significant as obligation to maintain beneficial ownership information (particularly in the case of larger companies who can afford to pay such fine). As such, a fine of KYD25,000 for breaches is not proportionate to other fines referenced above, neither is it fully dissuasive. Under the CL, the Registrar of Companies also has the ability to penalise FIs for failure to provide the requisite information within the prescribed periods of time (sections. 274 to 278 of the CL).

247. *Criterion 24.14* The Cayman Islands is able to rapidly provide international cooperation in relation to basic and beneficial ownership information as set out in Recommendations 37 and 40. (a) The ODPP is allowed to access relevant basic information through the General Registry for the purpose of facilitating an international request for assistance. CIMA can provide assistance to overseas regulatory authorities for basic information upon request. Given that basic information is available online and in real time, information to facilitate a request in response to and international request for basic information can be facilitated in a timely manner.

248. (b) As noted in criterion 24.4, a company that has capital divided into shares is required to file with the Registrar, a statement of the shares held by each member and other relevant information regarding the shares. The ODPP's and CIMA's ability to obtain basic information from the General Registry includes the ability to obtain information on shareholders to enable an exchange to relevant counterparts.

249. (c) Section 3 of the CJICL allows the ODPP to apply to the courts for the production of documents or evidence (including financial records) from FIs or other natural or legal persons. CIMA can provide international cooperation in respect of legal persons through its counterparts. Section 34(9) of the MAL empowers CIMA to request information from any person within a specified time, information to respond to a request by an overseas regulatory authority.

250. Section 11 of the MAL allows CIMA to make an application to a Court to compel a person to provide requested information where such information is not provided by the person within three days. Section 50 (3) further authorises the CIMA to disclose information to enable an overseas regulatory authority to exercise regulatory functions. The FRA is capable of disclosures spontaneously and upon requests subject to the approval of the Attorney-General.

251. Additionally, the Cayman Islands new BO platform enables the relevant competent authorities to access beneficial ownership information directly to be able to assist a foreign counterpart. Section 4(2)(c) of the POCL states that the FRA may, in its discretion, in writing, require the provision, within a period not exceeding 72 hours, by any person of information (excluding information that need not be disclosed under Part V) for the purpose of (i) clarifying or amplifying information disclosed to the FRA under POCL; or (ii) responding to a request by an overseas intelligence unit; and, in exercising its discretion, the FRA shall consider whether there is reasonable cause to believe that the information or the request, as the case may be, relates to proceeds or suspected proceeds of criminal conduct.

252. *Criterion 24.15* The FRA, ODPP and CIMA monitor information received from other countries in the context of international cooperation which includes the quality of information received from other countries to date. Information was not provided to indicate how other competent authorities monitor information received from other countries.

Weighting and Conclusion

253. The Cayman Islands has a comprehensive framework that identifies and describes the basic forms and features of legal persons that can be incorporated and registered in the country. This information is available directly to competent authorities and to the public through the General Registry's database (CORIS) and online portal respectively. Although the website does not contain information on basic forms and features of all legal persons and arrangements that can be created within the jurisdiction, this information is publicly accessible physically at the General Registry. Information on exempted companies and LLCs is only available to competent authorities or in exceptional circumstances. While information on the process for obtaining and recording basic information is publicly available, the process for obtaining beneficial information is not similarly available. The introduction of the new BO platform and the requirements of the regime is a significant step that seeks to promote transparency of beneficial ownership information and ensuring that beneficial ownership information is accurate and up-to-date. Another important enhancement to the transparency framework within the jurisdiction is the abolishing of bearer shares and the subsequent requirement for existing bearers to be registered. The Law provides mechanisms to ensure that basic information is kept current and accurate and up to date as companies, are required to notify the Registrar of changes within specified times. The FRA and ODPP are able to monitor information received from other countries through international cooperation. However, there is no information to indicate how other competent authorities are able to monitor information received from foreign counterparts. The authorities have not conducted an assessment of the risks associated with the different entity types legal persons created in the Cayman Islands.

Recommendation 24 is rated Partially Compliant.

Recommendation 25 - Transparency and beneficial ownership of legal arrangements

254. This Recommendation (formerly R. 34) was rated 'C' in the 3rd MER. R. 25 now requires that trustees provide information to the FIs or DNFBPs regarding its establishment as a trustee. Countries should ensure that information similar to that specified in respect of trusts should be recorded and kept accurate and current, and that such information is accessible in a timely manner by competent authorities. Trustees are also required to guarantee that such information can be accessed in a timely manner by competent authorities.

255. *Criterion 25.1 (a)* Trusts in the Cayman Islands are governed by the Trust Law (2017 Revision) which allows for the creation of different types of trusts which are not required to be registered. The most common types of trusts formed in the Cayman Islands are the ordinary trust; and the exempted trust (Unit trust and STAR trusts). Trustees of an ordinary trust are subject to the common law

requirement which includes having knowledge of all documentation which pertains to the formation and management of the trust. Trusts are generally administered by professional corporate trustees regulated by the CIMA, but are also often administered by trustees in other jurisdictions. Although trusts are not required to be registered, for exempted trusts, section 74 of the Trust Law allows the Registrar of Trusts, to register a trust (voluntary) where the Registrar is satisfied that the beneficiaries under the trust do not reside in the Cayman Islands. Pursuant to section 76 (1) of the Trust Law, trustees making application for the registration of any trust are required to file all and any documents containing or recording the trusts, powers and provisions. Section 76 does not include a requirement to maintain adequate, accurate and current information on the identity of the settlor, protector, beneficiaries and any other natural person exercising ultimate effective control over the trust. PTCs in the Cayman Islands are not licensed by CIMA but are subject to regulatory oversight by CIMA. In accordance with Regulation 3(2) of the PTC Regs., a PTC is required to maintain an up-to-date copy of the trust deed or other document at its registered office which contains specific information relating to the terms of the trust, name and address of the: trustee; any contributor of the trust; any beneficiary; and any document which varies the terms of the trust. There is no specific requirement for information relating to the settlor of the trust. Also, while the PTC Regs. require this information to be kept up-to-date, there is no requirements for the information to be adequate, and accurate.

256. (b) FIs providing services to trust structures are required to be licenced by CIMA in accordance with the BTCL. As a regulated trustee, CIMA would require the trustee to have adequate information on file which would include details of those providing services to the trust structure. Such information would be checked during an on-site inspection by CIMA.

257. (c) Regulation 3(2) of PTC Regs. and Regulation 31 (Part VIII – Record-keeping Procedures) of the AMLRs are applicable to all those conducting relevant financial business. Trustees are required to maintain records for a minimum of five years following the termination of the relationship or end of life of the trust structure.

258. *Criterion 25.2* Regulation 3(2) of the PTC Regs. requires a PTC to complete an annual declaration in accordance with Regulation 4(2) of the PTC Regs. which confirms that there has been no changes since the last updated information filed. The annual declaration allows the information in respect to the trust to be accurate and current given the requirement to confirm whether there has been any changes to the trust structure. Regulation 12(1)(f) of the AMLRs, requires all persons conducting relevant financial business to conduct ongoing due diligence which would include ensuring that documents, data and information collected is kept current and relevant in accordance with (ii) of that Regulation. Ongoing due diligence is conducted based on the risk profile of the customer and the filing of an annual declaration do not satisfy the requirement for up to date as possible and updated on a timely basis as required by the criteria.

259. *Criterion 25.3* There is no law which obliges trustees to disclose their status to FIs and DNFBPs forming a business relationship or conducting a transaction.

260. *Criterion 25.4* Trustees within the Cayman Islands are not prevented by law or enforceable means from providing competent authorities with any information relating to a trust. Similarly, there are also no laws or enforceable means which would prevent FIs or other DNFBPs from disclosing information to any competent authority as it relates to a trust which includes information on beneficial ownership

and assets held or managed in respect of the trust. As noted in R. 9.1, the CIDL enables the access and sharing of information both domestically and internationally.

261. *Criterion 25.5* The RCIPS has powers under various sections of the POCL which include powers to: (1) compel the production of documents from any person, including TCSPs, banks, trustees etc.; or to (2) search for and seize records if required.

262. *Criterion 25.6 (a)* There is no mandatory requirement for trusts to be registered with the Registrar. As such, basic information is not registered, but can be obtained by competent authorities from trustees and FIs and DNFBPs through statutory powers for the purpose of assisting overseas counterparts. The FRA has powers under section 138 of POCL to disclose any information to an overseas FIU where it has cause to suspect that a criminal conduct has been committed; this includes information held by trustees, FIs and DNFBPs. However, the exercise of this power is subject to approval by the Attorney General. The noted deficiency in R. 40. (and R 29) are also applicable here. The need for the FRA to obtain the Attorney-General's approval prior to disclosing information can impede the FRA's ability to respond rapidly to overseas FIUs. As noted in R. 40.1, CIMA can provide assistance to overseas regulatory authorities for basic information upon request. Sections 6, 34 and 50 of the MAL empowers CIMA to provide to its counterparts. This can also be done by bilateral arrangements (MOU's). The ODPP has powers pursuant to the CJICL (s. 5) to obtain a court order to compel the production of information in respect of a trust structure. There is no indication that the Customs and DCI has similar powers. *(b)* Information on trusts structures can be exchanged by competent authorities. Both CIMA and law enforcement authorities can obtain any information (which includes information on the trust) from the FRA. Pursuant to section 138 (a)-(c) of POCL, the FRA does not require the consent of the Attorney-General in order to disclose any information received under POCL to any law enforcement agency within the jurisdiction; CIMA; and such other institution and persons designated (in writing) by the AMLSG where the FRA suspects that a criminal conduct has been committed. This enables the FRA to disclose relevant information rapidly. It is not clear whether Customs and the DCI can exchange information similarly. Additionally, the deficiency noted in 25.1 is relevant here. The PTC Regs. do not contain specific requirements for information on the settlor of the trust. Consequently, there may be challenges by competent authorities in facilitating access to this information by foreign competent authorities. *(c)* Beneficial ownership information on trust structures is not recorded in the BO register. However, competent authorities can use their statutory powers to obtain beneficial ownership information on trusts for assisting counterparts in the same manner that allows them to obtain basic information as outlined above.

263. *Criterion 25.7* Section 24 of the BTCL provides that a person who contravenes any provision or requirement of the BTCL for which no offence is specifically created commits an offence and is liable on summary conviction to a fine of ten thousand dollars (KYD10,000) and to imprisonment for one year. CIMA is empowered under section 56(4) of the AMLRs to take administrative enforcement action for a breach of the provisions detailed in criterion 25.1. CIMA is also able to levy administrative fines for breaches of the AMLRs pursuant to section 42A of the MAL (Amendment), 2016 (MA(A)L). Additionally, a breach of the AMLRs attracts criminal sanctions under Regulation 56(1) of the AMLRs. These sanctions are proportionate and dissuasive as detailed under recommendation 35

264. *Criterion 25.8* CIMA has powers under section 34(8) and 34(9) of the MAL to require or direct the production of information or documents relating to trusts or other legal arrangements, with CIMA solely entitled to set timelines for compliance. Pursuant to section 34(17) of the MAL, failure to comply with CIMA's requirement or a direction is an offence, and results in a fine on summary conviction of KYD10,000 or on indictment of KYD100,000. If the offence is continuing after conviction, the fine is KYD10,000 per day for every day the offence continues. Section 18 of the BTCL provides the Authority with wide ranging powers to take civil and criminal sanctions against a licensee, for example section 18(1)9(b) allows the Authority to take action against a licensee that is carrying on business in a manner detrimental to the public interest, the interest of its depositors or of the beneficiaries of any trust, or other creditors. Such possible action may include the revocation of the license, imposition of conditions on the licensee's operations, appointment of an adviser to the licensee, appointment of a person to assume control of the licensee, or other actions deemed necessary by CIMA. can be considered proportionate and dissuasive. The imposition of a fine of KYD10,000 for the initial failure and KYD10, 000 for each additional day the offence continues can act as a deterrent. There are no sanctions for failing to grant other competent authorities' access to information referred to in criterion 25.1.

Weighting and Conclusion

265. The Cayman Islands have most of the elements of a comprehensive framework for the transparency of legal arrangements within the jurisdiction. Trusts are generally administered by professional corporate trustees regulated by the CIMA. PTCs are required to obtain and hold adequate, accurate, and current information on the identity of the settlor, the trustee, the protector, beneficiaries and any other natural person exercising ultimate effective control over the trust. While trustees are obliged to obtain up-to-date information, there are no clear processes for verification of information on trust structures. Trusts are subject to due diligence measures through the conduct of financial business. The requirement to obtain identification and verification information are not contained in specific legislation but extends to legal arrangements and relevant parties related to a trust structure through, the AMLRs. The jurisdiction requires a clear understanding of ownership and control structure which includes the settlor, trustee, protector, the beneficiaries and any other natural person exercising control over the trust. CIMA requires the trustee to have adequate information on file and trustees are also required to maintain records for a minimum of five years. A number of competent authorities including the FRA, ODPP and CIMA, have powers to facilitate access to basic information and exchange of information on trust structures by foreign counterparts. However, there is no indication that other competent authorities, namely Customs and DCI has similar powers. **Recommendation 25 is rated Partially Compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

266. This recommendation (formerly R.23) was rated 'LC' in the 3rd MER due to the quantitatively limited human resources of CIMA. CIMA increased its staff between 2007 and 2010 and automated

and streamlined some of its business processes. There has been no substantial change in the Recommendation except for the inclusion of the prohibition of shell banks.

267. *Criterion 26.1* Section 6(1)(b)(ii) of the MAL names CIMA as the supervisor responsible for monitoring FIs' compliance with the AMLRs.

268. *Criterion 26.2* Licensing requirements for FIs and TCSPs in the Cayman Islands are detailed in the table below:

Business Type	Licensing/Registration Requirement
Banking Business	Sections 5 and 6 of the Banks and Trust Companies Law (BTCL) require and establish licensing requirements for carrying on banking business.
Securities Business	Sections 5 and 6 of the Securities Investment Business Law (SIBL) require and establish licensing requirements for carrying on for securities investment business
Insurance Business	Sections 3(1) and 4(1) of the Insurance Law (IL) require and establish licensing requirements for insurance business
Trust Business	Sections 5 and 6 of the Banks and Trust Companies Law (BTCL) require and establish licensing requirements for carrying on trust business.
Money or Value Transfer Services	Sections 4(1) and 5(1) of the Money Services Law (MSL) require and establish licensing requirements for carrying on money or value transfer services.
Corporate Service Providers	Section 5 of the Companies Management Law (CML) require and establish licensing requirements for carrying on trust business.
Credit Unions	Sections 4 and 6 of the Cooperatives Societies Law (CSL) require and establish licensing requirements for conducting business as a credit union.
Building Societies	Under section 3(1) of the Building Societies Law (BSL), persons desirous of establishing a building society may be granted a certificate of incorporation by the Registrar of Companies where its rules have been certified in accordance with the BSL. Under section 29(1) of the BSL, the Registrar of Companies must keep a register of all societies incorporated under the BSL.

269. Notwithstanding licensing requirements for carrying on securities investment business, there are a number of persons exempted from licensing under SIBL. It is not uncommon for jurisdictions to exclude certain categories of persons conducting securities business from licensing and supervision as a FI, e.g. governments and persons conducting business on their own behalf. However, Schedule 4 of SIBL has exempted other categories of persons from the licensing and supervisory process. These include persons that are carrying on business for (i) another entity within its group, (ii) sophisticated persons or high net worth persons, or (iii) an entity regulated by a recognised overseas regulatory authority. These categories of persons, while exempt from licensing, are required to register with CIMA, in accordance with section 5(4) of SIBL. Registered excluded persons account for the largest number of securities and investment business entities in the jurisdiction.

270. In addition, section 6(5) of the BTCL allows licensees with a Class B banking licence to conduct business outside the Cayman Islands. However, under section 6(6) of the BTCL, these banking entities are restricted from conducting business in the Cayman Islands unless it has appropriate staff and facilities in the Cayman Islands, or it is a branch or subsidiary of a regulated bank in another jurisdiction. Where a bank is a subsidiary, branch or affiliate of a regulated bank in another jurisdiction, section 3.1 of the Regulatory Policy: Consolidated Supervision requires CIMA to conduct an assessment to verify that the licensee will be subject to consolidated supervision in accordance with international standards by the home regulator. These provisions prevent the establishment of shell banks, as defined by the FATF, in the Cayman Islands.

271. *Criterion 26.3* Regulatory laws (i.e. MFL, SIBL, BTCL, IL, MSL and CML) require directors, shareholders, persons performing a controlled function and beneficial owners of FIs to be fit and proper and state that the assessment of the fitness and propriety of the beneficial owners of a significant or controlling interest or holders of a management function is a core element of the licensing process for all FIs supervised by CIMA. Fitness and propriety includes competence, honesty, integrity and financial soundness. Paragraphs 1.2 and 1.3 of the Regulatory Policy: Fitness and Propriety and paragraph 2.2 of the Regulatory Procedures: Assessing Fitness and Propriety, state that the fit and proper assessment is both an initial and on-going test as long as the person continues to perform a controlled function which is defined as directors, senior officers, managers, officers, shareholders, and licensed professional directors. CIMA also has in place, the Regulatory Policy: Criteria for Approving Changes in Ownership and Control which requires persons obtaining ownership or control of FIs licensed under SIBL, BTCL, IL and CML to submit documentation for an assessment of their fitness and propriety. FIs are required to seek prior approval for changes in ownership before effecting such changes. The MSL does not require MSBs to seek CIMA's prior approval for effecting changes in ownership, but must notify CIMA of any changes in the information supplied within its application for licensing, including shareholders and beneficial owners. CIMA has a range of actions it can apply where relevant persons are not deemed fit and proper. These fit and proper assessments and the range of actions that can be applied, prevent criminals and their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in an FI.

272. Although excluded persons under Schedule 4 SIBL are not subject to licensing by CIMA, directors of excluded persons must be licensed or registered and are subject to fit and proper assessments pursuant to the DRLL. The shareholders, beneficial owners and persons otherwise performing management functions of excluded persons are however not subject to any fit and proper assessments. There is no legislation in place to prevent criminals from holding these positions within credit unions and building societies. There is no requirement for approval of directors or officers at licensing or for subsequent changes in these positions.

273. *Criterion 26.4 (a)* CIMA regulates and supervises activities which fall under the relevant principles of the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS) and the International Organisation of Securities Commissions (IOSCO). Additionally, CIMA also licenses TCSPs based on requirements of the Group of International Financial Centre Supervisors (GIFCS). However, excluded persons are core principal institutions that are not regulated in line with core principles for AML/CFT. Page 27 of CIMA's Regulatory Handbook indicates that CIMA has adopted a risk-based approach to supervision which includes licensing,

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monitoring (onsite and offsite) and enforcement. Further, under section 4.1 of CIMA's Regulatory Policy: Consolidated Supervision, where CIMA acts as a home regulator, it supervises the licensee on a consolidated basis in accordance with international standards. Where acting as the host regulator, section 3.1 of the Regulatory Policy: Consolidated Supervision requires that CIMA to verify that the licensee is verified on a consolidated basis in accordance with international standards by its home regulator. CIMA's RBA seeks to profile licensees' risks so that supervision can be targeted to areas and institutions where overall risks are higher, based on risk factors of financial soundness, environment, business plan, controls, organisation and management, which also includes AML/CFT compliance. By virtue of section 6(1)(b)(ii) of MAL, CIMA's supervision includes monitoring of AML/CFT requirements outlined in the AMLRs, and assessment of the risk factors includes an AML/CFT element. **(b)** MSBs fall under the supervisory remit of CIMA in accordance with subsection 6(1)(b)(ii) of the MAL. Since MSBs carry on relevant financial business as defined in POCL, they are required to comply with the AMLRs. CIMA monitors their compliance with the AMLRs. Additionally, credit unions and building societies are also subject to the requirements of the AMLRs and are also monitored for compliance with the requirements of the AMLRs.

274. *Criterion 26.5* CIMA conducts (i) off-site supervision which is continuous and involves the analysis of quarterly prudential returns and annual audited statements, supplemented with prudential meetings and (ii) on-site supervision which involves limited scope and full-scope inspections in the Cayman Islands and overseas. **(a)** The frequency of onsite inspections of licensees is based on risk assessments (which includes an AML/CFT component) and the results of previous onsite inspections, which involves an assessment of policies, internal controls and procedures, as well as overall risk assessments (which include AML/CFT as an element of risk) performed during the first quarter of each year. A review of financial groups to which licensees are a member are also considered where consolidated supervision occurs. The ML/TF risks are however not the main determinant of licensees' risk assessments. **(b)** The frequency or intensity of onsite and offsite inspections are not determined on the basis of ML/TF risks present in the country but on the overall risk of individual licensees. Additionally, there does not appear to be any focus placed on the sectors identified as having the most vulnerabilities in the NRA. CIMA's regulatory policy does not regard the ML/TF risks in the country as a basis for the intensity of on-site and off-site supervision. **(c)** The diversity and number of FIs and the degree of discretion allowed to them under the RBA is not considered in determining the frequency and intensity of an onsite.

275. *Criterion 26.6* CIMA's Regulatory Handbook indicates that CIMA applies a risk-based approach to supervision. The approach involves the conduct of institutional risk assessments covering specific risk factors in the following broad risk groups: financial soundness, environment, business plan, controls, organisation and management, which includes AML/CFT aspects. Risk assessments are conducted periodically and when there are major changes and developments.

Weighting and Conclusion

276. CIMA has the responsibility to monitor supervision and compliance of FIs with AML/CFT requirements. FIs are legislatively required to be licensed / registered, however a significant portion of the Cayman Islands' securities and investment business sector are exempt from licensing. FIs are

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generally subject to extensive fit and proper requirements for shareholders, directors and senior management and beneficial owners of FIs, save for directors and senior management of credit unions and building societies and shareholders and beneficial owners of excluded persons. Further, the frequency of AML/CFT supervision is not based mainly on the ML/TF risks of institutions and groups, the ML/TF risks present in the country or the characteristics of FIs and groups. **Recommendation 26 is rated Partially Compliant.**

Recommendation 27 – Powers of supervisors

277. This Recommendation formerly R. 29 was rated ‘LC’ in the 3rd MER since the GNs did not fully incorporate specific terrorism financing thereby limiting CIMA’s range of enforcement powers.

278. *Criterion 27.1* Section 6(1)(b)(ii) of the MAL gives CIMA the power to supervise and monitor FIs for compliance with the AML/CFT requirements of the AMLRs.

279. *Criterion 27.2* CIMA is empowered under individual statutes to conduct inspections of relevant FIs. Section 17 of the BTCL, section 16 of the CML, section 40 of the CSL, section 22 of the IL, section 18 of the MSL, section 29 of the MFL, section 16 of the SIBL and section 33 of the BSL.

280. *Criterion 27.3* Section 34(8) of MAL gives CIMA the power to request any specific information or documentation to carry out its AML/CFT regulatory functions. As a consequence of failure to comply with a requirement of section 34(8) CIMA may apply under section 34(10) for a Court Order to compel the person to comply with CIMA’s requirement.

281. *Criterion 27.4* Section 48 (1) of MAL allows CIMA to issue its Regulatory Handbook to establish and maintain policies and procedures in performing its regulatory functions. It describes a wide range of sanctions that can be taken against FIs (including TCSPs) for failure to comply with regulatory and other laws and is supplemented by CIMA’s Enforcement Manual which provides additional details. These include powers to: suspend a licence, revoke a licence, require substitution of directors, operators, senior officers, general partners, promoters, insurance managers or shareholders of licensees, appointing a person to assume control of the affairs of a licensee, appointing a person to advise the licensee on the proper conduct of its affairs, applying to the Grand Court for an order directing a licensee to wind-up or dissolve and prosecute offences. CIMA’s Enforcement Manual also allows CIMA to issue notices and allow FIs to remediate their breaches in 3 stages in accordance with a Ladder of Compliance. Sections 17 of the SIBL and 24(1) of the IL give CIMA powers to take enforcement action for breaches of the AMLRs. Additionally, under section 56(4) of the AMLRs, CIMA may determine whether to exercise its enforcement powers for breaches of the AMLRs, where the AMLRs and the GNs can be taken into account.

282. Section 42A (1) of MAL and the Monetary Authority (Administrative Fines) Regulations, 2017 empowers CIMA to impose an administrative fine on a person who breaches a provision prescribed of this Law, a regulatory law or the money laundering regulations. The fines for individuals are KYD5,000, KYD50,000 and KYD100,000 and those for corporate bodies are KYD5,000, KYD100,000 and KYD1,000,000 for the respective breaches.

Weighting and Conclusion

283. CIMA has powers of inspection, the ability to compel production of information and to impose fines on FIs in relation to failures to meet the requirements of the AMLRs. Under its Enforcement Manual, CIMA has the ability to take a wide range of enforcement action, including revocation of licences for breaches of the AMLRs. **Recommendation 27 is rated Compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

284. Recommendation 28 (formerly R.24) was rated ‘LC’ in the 3rd MER due to the absence of monitoring system(s) to ensure that real estate agents, or lawyers when dealing with real estate transactions comply with AML/CFT measures. This was addressed through enactment of the Proceeds of Crime Law, 2008 (POCL, 2008). The new FATF Standard requires systems for monitoring and ensuring compliance with AML/CFT requirements to be performed by a supervisor or SRB which should also take necessary measures to prevent criminals or their associates from being professionally accredited and have effective, proportionate and dissuasive sanctions.

285. *Criterion 28.1* The Gaming Law 2016 (GL) prohibits gambling activities and casinos are not permitted to operate in Cayman Islands Further, Section 4(i) of the GL makes unlawful gaming an offence. However, gambling on cruise vessels is allowed if the vessel is registered in the Cayman Islands under specific conditions. The conditions are that the vessel must be under a contract of carriage from a major cruise carrier which carries more than 12 people, be located in international waters and on an international voyage between Cayman and another port of call. Gambling is not permitted on any vessel while it is in port in the Cayman Islands or in Cayman’s territorial waters. The Cayman Islands’ strict anti-gambling legislation disallows cruise ships from opening their on-board casinos while in port and continues to ban all forms of gambling within the Cayman Islands, including on local commercial and recreational vessels. Consequently Casinos (land based, ship based and internet) are not permitted.

286. *Criterion 28.2 (Mostly Met)* Section 6(1)(b)(ii) of the Monetary Authority Law (2016 Revision) (MAL) as well as section 4(9) of the POCL designates CIMA as the competent authority responsible for monitoring and ensuring compliance of TCSPs with the AMLRs which includes ML and TF. The DCI has been designated as the regulatory body for real estate and DPMS and is therefore responsible for monitoring and ensuring compliance with all AML/CTF requirements. The AMLR (DNFBPs) Regulations designates CIIPA as the regulatory body for firms of accountants that engage in or assist other persons, in the planning or execution of relevant financial business, or otherwise act for or on behalf of such persons in relevant financial business. Although the attorneys have been brought under the AML/CFT framework, Cabinet is yet to designate a public body or self-regulatory body. In addition, not all categories of DNFBPs are subject to AML/CFT requirements, and consequently not subject to monitoring and supervision.

287. *Criterion 28.3* The activities carried out by the DNFBPs fall under Schedule 6 of the POCL and the AMLRs (DNFBPs). However, not all categories of DNFBPs as identified by the Recommendations are covered under the POCL and are therefore not subject to AML/CFT requirements. TCSPs, Real estate Agents, DPMS and accountants are subject to monitoring for compliance with AML requirements by CIMA, DCI and CIIPA respectively. As noted above, Attorneys are not subject to monitoring for compliance with AML/CFT requirements. The authorities have indicated that the scope

of the activities performed by a notary is quite narrow, does not include activities described in the Methodology thus they are considered to be very low risk. The authorities have indicated that there are no other independent legal professionals. The AMLRs (DNFBPs) (Amendment) 2 Regulations 2017 which was enacted in December 2017 empowers the relevant competent authority to provide guidance and conduct onsite and offsite examinations of the entities under their purview. These processes are in the embryonic stages.

288. *Criterion 28.4 (a)* Section 6(1)(b)(ii) of the MAL enables CIMA to monitor compliance by TCSPs. Regulation 55D of the AMLR (DNFBPs) Regulations empowers the DCI and CIIPA to monitor, take necessary measures to ensure compliance and to promote compliance with this Regulation by Real Estate agents and brokers, DPMS and accountants. A further deficiency is that a supervisory authority with powers to perform its function including that of monitoring AML/CFT compliance has not been identified for attorneys. *(b)* For TCSPs, Section 3 of BTC (Amendment) Law, 2017 empowers CIMA to take the necessary measures should an individual, directly or indirectly, holding or acquiring control or ownership of more than 25% of the shares or voting rights in a licensee or the right to appoint or remove a majority of the board of directors of a licensee that is not a fit and proper person to have such control or ownership. This power also extends to managers. Regulations 55 G and H of the AMLR (DNFBPs) Regulations allows the DCI and CIIPA to undertake measures to ensure fit and proper procedures are in place to prevent criminals and their associates from owning, being a significant shareholder or managing a real estate agent or broker, DPMS or accountant. Attorneys in the Cayman Islands are required to obtain a professional license and are subject to general fit and proper requirements before they can practice in the Cayman Islands *(c)* Sections 5, 9, 16, 18 and 19 of the CML enables CIMA to monitor compliance of TCSP licensees and issue sanctions. Regulation 55 of the AMLR (DNFBPs) Regulations enables the DCI and CIIPA to take a range of enforcement actions which include striking a company off the Register of Companies, canceling registration and administering fines. The limitation as noted in paragraph 249 on the discussion about CIMA which applies to TCSPs, DCI and CIIPA would also restrict the ability to apply sanctions in those circumstances. There are no similar measures for Attorneys.

289. *Criterion 28.5 (a)* The analysis contained in Recommendation 26.5 also apply to TCSPs. The assessors were not provided with any measures for determining the frequency and intensity of AML/CFT supervision for real estate agents and brokers, DPMS, accountants. Given that there is no supervisory regime for attorneys, accordingly there are no measures for determining the frequency and intensity of AML/CFT supervision for this category of DNFBP. *(b)* The jurisdiction has not fully assessed the adequacy of the AML/CFT internal controls, policies and procedures of all categories of DNFBPs.

Weighting and Conclusion

290. Gaming and gambling are prohibited activities within the jurisdiction and consequently there are no casino operations. All the categories of DNFBPs as outlined by the Recommendations are not covered under the POCL and subject to the AML/CFT requirements. Supervisory authorities, identified for the categories of DNFBPs covered under the POCL except for attorneys, have powers to monitor compliance with AML, apply fit and proper measures and have powers to sanction. Supervision of

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DNFBPs is not performed on a risk sensitive basis. **Recommendation 28 is rated Partially Compliant.**

Recommendation 29 - Financial intelligence units

291. The Cayman Islands was rated 'LC' for R.29 (formerly R.26) in its 3rd MER. The lone deficiency was related to the FRA not developing any comprehensive typologies and/or trends for the annual report. Changes to the FATF Standards now require several additional measures to be in place. Issues that arise, based on the new measures, are whether the FIU: (i) conducts operational and strategic analyses; (ii) has access to the widest possible range of information (iii) has the ability to disseminate information spontaneously; (iv) protects the information by: (a) rules for security and confidentiality; (b) levels of staff security clearance; and (c) limiting access to the FIU's facilities; (v) has the operational independence and autonomy: (a) to freely carry out its functions; (b) to independently engage in the exchange of information; (c) has distinct and core functions from its overarching ministry; (d) is able to individually and routinely deploy its resources as it freely determines (vi) has applied for Egmont membership.

292. *Criterion 29.1* Section 3 of POCL establishes the FRA. Its responsibilities are the receipt, analysis and dissemination of information relevant to ML associated predicate offences and TF which are outlined in sections 4(1) and 4(2) of the POCL.

293. *Criterion 29.2* The POCL establishes a threshold of criminal conduct, proceeds of criminal conduct, suspected proceeds of criminal conduct, ML, suspected ML, or TF as the threshold for reporting to the FRA and when the FRA can make requests to reporting entities. Section 4(1)(b) of the POCL allows the FRA to collect information regarding ML/TF and includes all individuals and entities who perform relevant financial business covered by Rs 20 and 23. (b) While the jurisdiction receives cross border currency reports, the FRA does not act as the central agency for the receipt of them.

294. *Criterion 29.3 (a)* Section 4 (2) (c) of the POCL allows the FRA to request any information to clarify or amplify information disclosed or in responding to a request from a foreign FIU. The request from the FRA must be satisfied within a period not exceeding 72 hours but does not apply to information which is legally privileged. (b) The FRA has direct access to various local databases such as Land Registry, Company Registry, Immigration, Vehicle Licensing and Judicial Enforcement Management System. Further, it has access to other forms of information (e.g. tax information, criminal databases ,etc.) upon request.

295. *Criterion 29.4 (a)* Section 4(1) of the POCL provides the explicit legal requirement for the FRA to perform analysis based on information received from reporting entities in a manner consistent with the Methodology (e.g. to identify specific targets, to follow the trail of particular activities and transactions and to determine links those targets and possible proceeds of crime, ML predicate offences and TF). Some of this analysis is published in its Annual Report.(b) Further, Section 4(1A) of POCL requires the FRA to perform operational and to a limited extent strategic analysis as required by this criterion.

296. *Criterion 29.5* Section 138 (1) (a) of the POCL permits the FRA to make spontaneous disclosures to domestic law enforcement authorities, CIMA and tax authorities spontaneously or upon request. However, other competent authorities would require the designation of the AMLSG. These disclosures

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by the FRA are based upon the suspicion of criminal conduct. However there is no provision authorising the disclosure of other forms of financial intelligence (e.g. operational and strategic analysis).

297. Regarding the use of dedicated and secure channels for disseminating its disclosures, local disclosures are either hand delivered, with the recipient signing for receipt of the disclosure, or faxed to the intended recipient once they have been contacted by telephone to advise that a disclosure is being sent.

298. *Criterion 29.6* (a) Section 10 of the POCL imposes a legal obligation on the staff of the FRA to maintain the confidentiality of the information held by the FRA, only allowing for authorised disclosures to be made. This is further clarified in chapters of the operations manual which address security and confidentiality of information, including procedures for handling, storage, dissemination, and protection of, and access to, information. (b) At the time an employee of the FRA is hired they undergo security vetting and are required to sign a confidentiality agreement annually. This vetting includes a record check with the RCIPS to confirm that a potential new employee is/has been the subject of a criminal investigation. Guidance ensures that staff understand their responsibilities in handling and disseminating sensitive and confidential information. (c) Access to the FRA premises and computer systems are secured, access to sensitive information is not sufficiently protected with all files stored in a central file room, that is accessible by all staff but there is no indication that there is any form of monitoring of documents accessed by employees. This is reflective of the jurisdiction's manual process

299. *Criterion 29.7* (a) Section 138(1) of the POCL authorises the FRA to disclose to information to domestic competent authorities at its discretion and free of interference. (b) In the domestic domain, the FRA is able to enter into agreements with other bodies as it deems fit. However, though international agreements may be negotiated by the FRA they require the consent of the AMLSG, as per section 4(2)(e) of the POCL. Further, as detailed in POCL disclosures to foreign FIUs require the consent of the Honourable Attorney General. (c) The FRA falls under the Portfolio of Legal Affairs. While it has a large degree of autonomy and distinct core functions, this is limited by the role the Attorney General plays within the regime and the consent of the AMLSG required to negotiate international agreements. Whilst the FRA is located in the main government building, it has private and secure entrances. (d) The FRA's budget is agreed upon by the executive of the FRA and negotiated with, and approved by, Parliament. Once approved, the Director of the FRA has control over its use. The measures which allow the FRA to freely deploy operational resources free from influence are enshrined in s 4(6) of the POCL.

300. *Criterion 29.8* The FRA has been a member of Egmont since 2000.

Weighting and Conclusion

301. The framework supporting the FRA contains significant shortcomings. Though, the FRA is able to disclose SAR information to domestic authorities, spontaneously and upon request, disclosures to foreign FIUs cannot be made without the approval of the Attorney General. That is unless it relates to the provision of information contained on the databases to which it has direct access (e.g., immigration, CORIS, etc.) While relevant information can be collected upon request, the limited direct access to local databases and the narrow scope of information reported to the FRA is of serious concern (e.g. no systematic access cross border currency reports, law enforcement records, information required by R

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16,etc). Although the jurisdiction collects cross border currency reports, the FRA is not the central agency for receipt. Given the risk and in the context of the jurisdiction as a major financial centre these shortcomings represent significant deficiencies. **Recommendation 29 is rated Partially Compliant.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

302. Recommendation 30 (formerly R. 27) was rated “C” in the 3rd MER. Recommendation 30 now requires that there should be a Law Enforcement Authority (LEA) responsible for ML/TF investigations in a national context. Countries should designate a competent authority to identify, trace and initiate actions to freeze and seize property subject to confiscation.

303. *Criterion 30.1* The FCU of the RCIPS is the unit that has primary responsibility for the investigation of fraud and ML offences (including those linked with drug trafficking) and TF offences. A separate entity, the ACC was established to deal with corruption and has support available from the RCIPS and the operational staff of the ACC have full law enforcement powers. The ACC and the RCIPS have a MOU which enables the two entities to offer assistance when required. Other serious predicate offences that are not financial crimes are dealt with by either the Drugs and Serious Crime Task Force (D&SCTF) or the Criminal Investigation Department (CID) of the RCIPS.

304. *Criterion 30.2* In instances where there is serious criminality, offences are investigated by CID/D&SCTF. However, a dedicated financial investigator from the FCU is attached to the investigation to support; and pursue a parallel financial investigation. This approach to ML, TF and associated predicates is the working practice. The ACC investigates ML offences resulting from corruption offences and is able to seek assistance from the FCU as required. Section 144 of POCL, captures offences that occur outside the jurisdiction, so long as it is considered an offence had it occurred in the Cayman Islands and ensures they can be pursued domestically.

305. *Criterion 30.3* The Cayman Islands has designated authorities capable of restraint and detention of assets, namely RCIPS (sections 157, 173, 45 & 82, POCL and Schedule 2 & 3 TL), Cayman Customs (section 110 of POCL and section 26 of MDL), FRA (section 4 of POCL) and the ACC (section 4 of the ACL). Alternatively, authorities may, on application to the court, require account information within seven days (section 166), monitor accounts (section 173) and to restrain assets as part of a confiscation or civil recovery investigation. A customs or police officer may detain cash that they suspect to be the proceeds of criminal conduct and police may also detain cash suspected to be terrorist property. Where a crime has been, or alleged to have been, committed, it appears only the police may fulfil the trace, freeze and seize property that is, or may become subject to confiscation, or is suspected of being proceeds of crime in a timely manner. The most commonly employed tool at the outset of an investigation is section 3(1) of CIDL to make a written request for account and other beneficial ownership information from which other assets are identified by investigators. However, the law does not stipulate service standards and by when information which may cause a timeliness issue. Alternatively, authorities may, on application to the court, require account information within seven days, monitor accounts and to restrain assets as part of a confiscation or civil recovery investigation. The jurisdiction stated that in urgent cases court orders can be applied for within 24 hours, in an ex

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parte hearing. The FRA is capable of the trace function as part of its analysis, or on behalf of an overseas FIU, but may only institute a temporary freezing of accounts (for 21 days).

306. *Criterion 30.4* There are no non-law enforcement based entities that have the authority to pursue financial investigations.

307. *Criterion 30.5* The ACC is responsible for conducting investigations into corruption related offences in accordance with the ACL and authorises the ACC to conduct parallel financial investigations where there is a nexus relating to corruption. The ACC may also draw upon the FCU for support if necessary. Section 4 (2) (b) of the ACL makes provision for the ACC to restrain any person from dealing with any person bank account or other property for a period not exceeding twenty-one days where the proceeds or suspected proceeds have a nexus to corruption. Section 35 (1) of the ACL makes provision for the Court to apply to the provisions of the POCL and to make any Order in accordance with the said legislation in any trial or proceedings in relation to corruption proceeds (Section 35 (1) of the ACL). The ACC may also employ section 3(1) of the CIDL to gather information (e.g. beneficial ownership) and trace assets. Like the FCU, the POCL gives them the option of seeking an application to the Grand Court for a production order (section 149), a customer information order (section 166) and an account monitoring order (section 173). In addition to these powers to trace assets, under section 30 of the ACL an investigator of the ACC, with the assistance of the ODPP, may apply to the grand Court for an order to make material available within a specified period of time.

Weighting and Conclusion

308. There is a framework within the jurisdiction to properly investigate ML/TF and designated offences. Further, the framework appears also designed to actively encourage the conduct of parallel financial investigations. Competent authorities may largely freeze of assets as well as actively and expeditiously identify and trace assets, however, with Customs it is only applicable with drugs trafficking cases as opposed to all predicates. Nevertheless, the jurisdiction appears to have implemented tools aimed at addressing the expeditious freezing through temporary measures to prevent flight while more permanent solutions are pursued through the court system. **Recommendation 30 is rated Largely Compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

309. Recommendation 31 (formerly R. 28) was rated ‘C’ in the 3rd MER. R. 31 expands the powers of LEAs and investigative authorities. Competent authorities should have mechanisms in place to identify whether natural or legal persons hold or control accounts and be able to require information from FIU when conducting relevant investigations.

310. *Criterion 31.1 (a)* Both the FCU and ACC can request information as stipulated in section 3 of the CIDL. In the cases of ML offences or other criminal conduct, section 149 and 150 of the POCL govern the production order process; a process for account monitoring orders (section 173) is applied to FIs. Sections 21 and 22 as well as Schedule 4 of the TL outline the requirements for production of documentation and section 30 governs the account monitoring process for FIs in the case of terrorism

and TF. However, Customs does not appear to have the same authority with regards to the investigations of predicate offences under their purview of responsibility.

311. **(b)** Measures permitting searches at properties are found in several different legislations within the Cayman Islands. Section 25 of the Criminal Procedure Code authorises a Police Officer to obtain a search warrant to search any building, ship, vehicle, box, receptacle or place. Section 45 (1) of the Police Law authorises a Police Officer to obtain a search warrant to enter any premises on the grounds that he suspects an arrestable offence has been committed. Section 156 (1) of the POCL makes provision for a Judge to issue a search and seizure warrant to a Constable, authorising the appropriate individual to enter and search the premises specified in the application for the warrant. Whilst there are provisions for conducting search on persons within varying legislations, the conditions attached to those provisions are restrictive. Section 41 (1) and 75 of the Police Law authorises a Police Officer to conduct a search on a person. This must be done on the basis of searching for stolen or prohibited articles and that the arrested person presents a danger to themselves or others respectively. In instances of ML investigations, section 156 of the POCL outlines the process for search of a person. As it relates to terrorism, sections 45 and 46 of the TL govern the search of a premises (with a warrant) and person and premises where the individual is suspected of being a of terrorist or TF. There are further powers for searches under section 75 of the Police Act.

312. **(c)** Under section 146 (j) of the Police Law and associated regulations, the RCIPS has the ability to take a witness statement as it relates to any suspected criminal act including terrorism/TF. **(d)** The general search warrants mentioned previously that are available to Police Officers in the Cayman Islands also make provision for law enforcement to seize items found within the premises searched. Furthermore, section 156 (1) of the POCL makes provision for a Judge to grant a search and seizure warrant that would allow a Police Officer to enter and search the premises specified in the application for the warrant. The provision further allows the Police Officer to seize and retain any material therein, which would be of substantial value to the investigation. In instances of investigations into ML and predicate offences, section 156 of the POCL outlines the process for seizure. As it relates to terrorism, Part 2 of the TL governs the seizure of cash believed to be associated with terrorism. There are further powers for seizure under section 75 of the Police Act.

313. *Criterion 31.2* The RCIPS has a range of options to investigate ML/TF and the predicate crimes that give rise to them. The ACC works closely with the RCIPS for further investigative options as agreed in an MOU and therefore benefits from the same capabilities. **(a)** Covert policing is governed by management policy within the RCIPS, which draws heavily upon practice and common law from the UK. The process is governed by stringent departmental policy and operating procedures that align with the UK's Regulation of Investigatory Powers Act. **(b)** Communication interception is regulated by The Information and Communications Technology Authority (Interception of Telecommunication messages) Regulations, 2011. However, it is not evident that these Regulations can be used to conduct intercept pertaining to ML and associate predicate offences. Interception of communication can be obtained in relation to TF, Section 55 (1) of the TL authorised a Police Officer of a specified rank, and above, with the consent of the Attorney General to apply to the Governor in writing for an interception of communication order. **(c)** Under section 75 of the Police Law and section 26 of the Criminal Procedure Code, the RCIPS has the capacity and legal authority to seize and examine data storage devices to forensically examine data storage devices and to retrieve evidential material from them. **(d)** CAYMAN ISLANDS MUTUAL EVALUATION REPORT

Similar to above, while the capacity to deploy both technical and human surveillance assets is not contained in law, it was found in stringent departmental policy that aligns with the UK's Regulation of Investigatory Powers Act.

314. *Criterion 31.3 (a)* The jurisdiction can identify the beneficial owner of an account through a request by the FRA to require reporting entities to 1) clarify information provided in a SAR or 2) respond to an Egmont Request from an overseas FIU within a period of 72 hours. This can include both account and beneficial ownership information. The RCIPS may use the letters of request under CIDL, customer information orders (section 166(1) of POCL) or production order to get account information in a timely manner (achieved within 48 hours depending on complexity). *(b)* Notifying the account holder, or any other disclosure that may compromise the investigation of a SAR, would amount to a 'tipping off' offence and would contravene section 139 of POCL. Additional protection against tipping off is found in section 147 of POCL and addresses acts that may prejudice an investigation. Production orders, customer information orders, monitoring orders and search and seizure warrants can all be obtained ex parte thus preventing prior notification to the owner of the assets under investigation. Further section 166 of POCL allows for the provision of customer information to authorities without notification to the individual

315. *Criterion 31.4* The FRA is authorised under section 138 of the POCL to disclose information to law enforcement to initiate, or support, an investigation into criminal conduct (e.g., ML, TF, Terrorism and other designated offences) and the RCIPS appears to make use of this provision. There is also an MOU in place to facilitate requests for SAR information from the FRA for ACC and RCIPS. However, there is a deficiency in that there does not appear to be a formal mechanism in place for Customs authorities to request from the FRA information associated with investigations into predicate offences.

Weighting and Conclusion

316. The Cayman Islands satisfy the requirements of this recommendation to a large extent. There are minor deficiencies that exist in 31.2 and also the absence of a formal mechanism that would enable Customs authorities to request information from the FRA. **Recommendation 31 is rated Largely Compliant.**

Recommendation 32 – Cash Couriers

317. During the 3rd MER, R. 32 (formerly SR. IX) was rated 'PC'. The deficiencies identified during the assessment were; inability to assess effectiveness due to the recent enactment of recent legislation and inadequate human and financial resources at Customs Department creates doubt for the effective implementation of legislation. The new requirements for the 4th Round are in criteria 32.2 and 32.10 and are related to the declaration of currency or BNIs and the existence of safeguards without restrictions of trade and movements of capitals.

318. *Criterion 32.1* Provisions required to address the inbound and outbound movement of cash and BNIs are covered by sections 14(1), 16, and 17 with respect to imports; as well as 32, 32A, and 33 for exports within the Customs Law. The Cayman Islands requires the declaration of KYD15,000 or more

in cash and BNIs (all forms of cheque, money orders and promissory notes), given the equivalent currency value of KYD to the US Dollar and Euro, the limit is above what is recommended by the Methodology (see Customs (Money Declaration and Disclosure) Regulations, 2007, Regulations 3 and 4 make provisions for the declaration system to be applicable for all physical cross-border transportation, whether by travelers, through the mail and cargo. The Cayman Islands does not permit the mailing of cash nevertheless all incoming/outgoing mail electronically screened. However, it should be noted that the regulations also indicate that this declaration requirement is not applicable to transporters doing cash shipments by third parties, nor does it apply to any other legal person or category of legal persons exempted by Order made by the Governor in Cabinet, on the recommendation of the Financial Secretary.

319. *Criterion 32.2* Upon entry into the Cayman Islands regulation 3 of the Customs (Declaration and Disclosure) Regulations 2007 requires persons transporting money to the value KYD15,000.00 (approximately US\$18,300/EUR 15,750) and its foreign equivalent, or more, into the Cayman Islands to declare such amount in writing to an officer at the time of entry on the prescribed form. The Cayman authorities maintain a written and oral declaration system for individuals arriving by commercial and private air carrier. This requirement is only applicable to travelers carrying on their person the amount required for declaration or its foreign equivalent. For those entering the country by private sea vessel, there is only a written declaration method available, and for those entering via cruise vessels, as a general rule, are not obligated to complete a Declaration/Disclosure form. For those exporting currency, Regulation 4 of the Customs (Money Declaration and Disclosure) Regulation 2007 requires the method of reporting be done orally upon the inquiry of a customs officer from which a traveler may be requested to complete a declaration of exported currency but such a declaration is not a statutory requirement.

320. *Criterion 32.3* The Cayman Islands has a disclosure system that requires a person leaving the jurisdiction to make that disclosure verbally or written, but only when requested to do by an Officer. Regulations 4 and 5 of the Customs (Money Declarations and Disclosures) Regulations, 2007, requires travelers to give truthful answers and provide the authorities with information upon request or in advance of departure.

321. *Criterion 32.4* As stipulated in section 5 of the Customs (Money Declarations and Disclosures) Regulations, authorities can seek further information from the carrier in instances of false declarations. Section 9(a)(iii) of the Customs Law (2017 Revision) which requires a person to furnish orally or in such form as such Officer may require any information relating to any goods and to produce and to allow the Officer to inspect and take extract from and make copies of any invoice, bill of lading or other book or document relating to such goods or movements thereof and (iv) require evidence to his satisfaction in support of any information required by or under the law to be produce in relation to the goods imported and exported.

322. *Criterion 32.5* Sanctions for false declaration are contained in sections 59 to 63 of the Customs Law 2017. Further, Regulation 3(3) of the Customs (Money Declaration and Disclosure) Regulation 2007 creates sanctions for false declaration of cash including BNIs. Sanctions in the Regulation are on summary conviction to (a) fine of six thousand dollars(KYD) and imprisonment of six months; and (b) forfeiture of up to twenty five percent of the actual amount transported. There is no other sanctioning mechanism available for false declaration (e.g. administrative options). The sanctions contained in the Regulation are to some extent proportionate or dissuasive.

323. *Criterion 32.6* Cross-border information obtained through the declaration system is available to the FRA. Regulation 7 of the Customs (Money Declaration and Disclosure) Regulations 2007 addresses the criterion, as it makes provision for an Officer who forms suspicion that that a person who is transporting money that is related to ML and TF, whether or not it meets the threshold prescribed in Regulation 3 (KYD15,000.00 or approximately US\$18,300/EUR 15,750) to report the matter to the Reporting Authority (FRA).

324. *Criterion 32.7* The JIU is a unit within the RCIPS, which includes representatives from Customs, Police, Immigration, and Prison. The stated intent is to facilitate closer cooperation among members within a controlled and legal environment.

325. *Criterion 32.8* The Customs (Money Declaration and Disclosure) Regulations section 5 (1), (2) and (3) as well as the Customs Law (section 61) permit the forfeiture of items because of a false declaration, or, where there is a link to other criminal activity. Regulation 5 (2) of the Customs (Money Declaration and Disclosure) Regulations 2007 makes provision for a Customs Officer who formed a reasonable suspicion of ML and TF (whether or not the amount of money is such that it had to be declare under Regulation 3 or where the person has made a false declaration or disclosure) to proceed in accordance with section 26 of the MDL or Schedule 3 of the TL. Section 26 of the Drug Law (2014 Revision) authorises a Customs Officer or a Constable to seize and detain cash being imported or exported from the Islands that has a nexus to drug trafficking for an initial period of twenty-four hours. Furthermore, Section 2 (1) and 3(1) of Schedule 3 of the TL makes provision for an authorised officer to seize cash for an initial period of twenty- four hours, if he suspects that it is terrorist cash. Moreover, a Customs Officer or Police Officer can seize cash in accordance with Section 114 of the POCL for an initial period of twenty- four hours and thereafter to a period of three months on the authorisation of a summary court.

326. *Criterion 32.9* Section 6 of the Customs (Money Declaration and Disclosure) Regulations governs the retention of information in conformance with the methodology. Regulation 7 of the Customs (Money Declaration and Disclosure) Regulations, 2007 makes provision for an officer to make disclosure to the Reporting Authority under the POCL where he suspects that the monies being transported have a nexus to ML or TF. The FRA is the designated reporting authority under the POCL and in keeping with its mandate is required to keep records for a minimum of five years in accordance with Section 4 (d). Furthermore, the FRA in accordance with section 4 (e) of the POCL can enter into agreement with or arrangement with foreign FIUs with the consent of the steering group to discharge it functions. The FRA is also a member of the Egmont Group; therefore, nothing precludes the FRA from co-operating with foreign FIUs, be it on a spontaneous basis or upon request. Section 8 (4)(a) of the Customs (Money Declaration and Disclosure) Regulations authorises the disclosure of information to a foreign customs authority where there is a memorandum of understanding in place. However, it is a concern that this disclosure may only be used to enforce laws related to the transportation of money.

327. *Criterion 32.10* There are no limits placed on cash and BNIs allowed to enter the country, so long as it is done in conformance with the law. There are safeguards regarding unauthorised disclosure of information obtained through the reporting (summary conviction to a fine of five thousand dollars and to imprisonment for one year, or both and the indictable offence is subject to a fine of fifteen thousand dollars and to imprisonment for three years, or both) with customs officers being subject to the CIDL.

328. *Criterion 32.11* Measures under section 61 of the Customs Law, are consistent with Recommendation 4 in that they enable forfeiture of assets. Cross border transportation of cash and BNIs that has a nexus to drug trafficking and terrorism can be seized in accordance with section 26 of the MDL and the Schedule 3 of the TL respectively. Both laws have civil provisions for the forfeiture of cash or BNIs in its entirety or any part that represents criminal conduct. Section 27 of the MDL authorises a Magistrate to make a forfeiture order if the Magistrate is satisfied that the cash directly or indirectly represents the proceeds of drug trafficking or was intended for drug trafficking. Furthermore, section 6 (2)Schedule 3 of the TL makes provision for the Court to forfeit the cash or any part if he suspects that it is terrorist cash. In addition, section 118 (2) of the POCL makes provision for the Court to forfeit cash or any part of it, if it suspects that it is recoverable property, or it was intended by any person for unlawful conduct. Persons can also be charged criminally for the various ML offences listed under section 133 of the POCL. The penalties for these offences found in section 141 of POCL include; KYD5,000.00 (approximately US\$6,100) or imprisonment of two years or both (summary conviction) and fourteen years or to a fine or both (indictment). The fine amount for an indictment was not specified in POCL because there is no limitation on what could be assigned. As a result of a criminal conviction, the ODPP can apply for confiscation proceedings (section 15 of the POCL). These sanctions are considered to be proportionate and dissuasive.

Weighting and Conclusion

329. The Cayman Islands has both system of declaration and disclosure that applies to passengers, cargo and mail. In instances where cash and BNIs are being physically transported into the Cayman Islands the equivalent of KYD15,000.00 (approximately US\$18,300/EUR 15,750) must be declared and the relevant form completed. However, there is no mandatory reporting requirement for travelers leaving the jurisdiction to report, instead travelers leaving the jurisdiction are required to make the necessary oral disclosure upon request while there is no corresponding requirement to answer questions truthfully nor to provide authorities with the information they request. Furthermore, there is no mechanism for the authorities to obtain or request information from the carrier with regards to the origin or intended purpose of the cash or BNIs. There are proportionate and dissuasive sanctions that can be applied to persons who may have made a false declaration. The Cayman Islands has provision to restraint cash that is linked to ML, associate predicate offences and TF. **Recommendation 32 is rated Partially Compliant.**

Recommendation 33 – Statistics

330. This Recommendation (formerly R. 32) was rated ‘LC’ in the 3rd MER due to the failure of HM Customs to maintain statistics on the cross-border transportation of currency and bearer monetary instruments. The Cayman Islands authorities also did not maintain detailed statistics on the number of requests for assistance made by law enforcement authorities and supervisors. The deficiencies were addressed during the 3rd round follow-up process.

331. Criterion 33.1 Sub-criterion (a) The FRA maintains statistics of SARs received and disseminated. These statistics are also published annually in accordance with section 4(2)(f) of the POCL. (b) The FCU maintains statistics on the total number of ML/TF cases investigated and the number of persons charged. Further, the FCU also maintains statistics of cases initiated by the ODPP as the competent authority responsible for initiating restraint (section 44 of POCL) and confiscation (Part III of POCL) proceedings. The ODPP keeps statistics on the number of prosecutions and convictions for ML/TF. (c) Statistics regarding property frozen, seized and confiscated are maintained by the ODPP. (d) Comprehensive data on MLA are kept by the ODPP. Supervisors, the FRA and the FCU keep comprehensive statistics on other forms of cooperation, particularly the exchange of information.

Weighting and Conclusion

332. The jurisdiction maintains statistics associated with the elements identified in 33.1 (a) to (d) of the Methodology. **Recommendation 33 is rated Compliant.**

Recommendation 34 – Guidance and feedback

333. This Recommendation (formerly R. 25) was rated ‘LC’ in the 3rd MER since the GNs did not fully cover terrorism finance or include dealers in precious metals and precious stones. The GNs were extended to address these deficiencies.

334. *Criterion 34.1* Pursuant to section 34(1)(b) of the MAL, CIMA may issue or amend statement of guidance concerning the requirements of the AMLRs. In 2017, CIMA revised its 2015 GNs to align with the newly enacted requirements of the AMLRs. It provides FIs and DNFBPs with assistance on how to prevent and detect ML/TF and comply with the requirements of the AMLRs in the conduct of their business activities. Additionally, CIMA provides feedback, as part of its onsite examination, prepares a report for licensee which makes recommendations on how best to implement their AML/CFT obligations and rectify any deficiencies noted in implementation of the AML/CFT laws. In addition to issuing supervisory circulars/advisories and other outreach activities, CIMA also engages with industry associations on a quarterly basis to appraise them of the ML/TF risks and trends as well as their AML/CFT obligations.

335. Section 12 of POCL authorises the FRA to issue guidelines to assist reporting entities in detecting and reporting suspicious transactions. However, at the time of the onsite assessment no such guidelines were issued. The FRA’s published annual reports which incorporated scenarios that would trigger filing of a Suspicious Report (Typologies). The FRA has also published industry guidance on TFS for both TF and PF, including how to report assets frozen. The FRA provides feedback on the process and quality of information provided in disclosures to some extent and also has engaged in outreach sessions on how to implement reporting obligations and expectations. Feedback from the FRA on the quality of SARs filed has been limited to larger retail banks and the engagement undertaken by the FRA is neither consistent nor widespread. Further, engagement with the NPOs, real estate agents and DPMS by the Registrar and the DCI respectively is in its early stages and has been done to a limited extent.

Weighting and Conclusion

336. The Cayman Islands undertakes engagement to some extent; however it is not consistent or widespread. CIMA issues guidance to assist FIs and DNFBPs in complying with AML/CFT requirements of the AMLRs as well as provides feedback to FIs through recommendations made at the conclusion of AML/CFT onsite examinations as how to enhance compliance with AML/CFT obligations. The FRA has undertaken some form of engagement and guidance with reporting entities and incorporates typologies within its published annual reports. However, feedback on the quality of SARs filed has been limited to larger retail banks. Further, engagement with the NPO and DNFBP sector is in early stages and has been done to a limited extent. **Recommendation 34 is rated Partially Compliant.**

Recommendation 35 – Sanctions

337. This Recommendation (formerly R. 17) was rated ‘C’ in the 3rd MER. There are no changes in the current Standard (from previous R.17).

338. *Criterion 35.1* With respect to Recommendation 6 the penalty for failing to freeze under paragraph 21 (1) of Schedule 4A of the TL, on indictment, an unenumerated fine and/or a prison sentence of seven years. Based on a summary conviction the penalty is KYD4, 000 (approximately US\$4,900) and/or twelve months in prison. While the prison sentences may be viewed as dissuasive, the financial penalties upon summary conviction are not.

339. Regarding Recommendation 8, the Registrar has a range of sanctions at its disposal as detailed in the analysis of criterion 8.4 (b) which are considered to be persuasive, proportionate and dissuasive.

340. With regards to Recommendation 9, the CIDL allows for the disclosure of confidential information so as not to inhibit implementation of the Recommendations. Sanctions for any breaches are covered under the MAL, POCL and the AMLRs. For Recommendations 10 to 23 section 145(2) of the POCL provides for criminal penalties (i) on conviction on indictment, consisting of a fine and imprisonment for two years; or (ii) on summary conviction, consisting of a fine of KYD500,000 (approximately US\$609,800) and also provides administrative penalties for up to KYD250,000 (approximately US\$304,900). Regulation 56 of the AMLRs also provide for criminal penalties identical to those under section 145(2) of POCL. Under Recommendation 21, where a person commits the offence of tipping off, he is liable under section 141 of the POCL on summary conviction to a fine of KYD5,000 (approximately US\$6,100) or imprisonment for a term of 2 years, or both and on conviction on indictment, for a term of 5 years or a fine. On the basis of a summary conviction, the term of imprisonment and the fine of KYD5,000 are proportionate and dissuasive for the offence of tipping off. However, on the basis of an indictable offence the fines are not specified as there is no limitation on what may be assigned.

341. Under section 56(4) of the AMLRs, CIMA can take enforcement action against licensees for breaches of the AMLRs, where the GNs can be considered. Section 17 of the SIBL and section 24(1) of IL, also authorise CIMA to take enforcement action against a licensee that fails to comply with the requirements of the AMLRs. The range of sanctions as detailed in criterion 27.4 are proportionate and dissuasive.

342. In addition, under Section 42A of the MAL (Amendment), 2016 (MA(A)L), CIMA has the power to impose administrative fines on a person who breaches the AMLRs. The breaches must also be prescribed as either minor, serious or very serious. For minor breaches a fine of KYD5,000 is prescribed, with CIMA having the authority to impose or continuing fines of KYD5,000 in certain circumstances. Where a breach is considered serious, a fine of KYD50,000 is applied for an individual and KYD100,000 for an entity. With respect to a very serious crime, a fine of KYD100,000 is prescribed for an individual and KYD1,000,000 for an entity. These fines are proportionate, persuasive and dissuasive. Under regulation 55R of the AMLRs, the relevant supervisory authority may impose an administrative fine on DNFBPs (namely DPMS, real estate agents and brokers, accountants and lawyers) for breaches of the AMLRs. The administrative fines are not to exceed KYD100,000 for a natural person or KYD250,000 for a legal person and are considered dissuasive. The AMLRs outlines the factors that should be considered in determining the proportionate fine amount that should be levied. Criterion 22.1 is relevant, where persons meeting the definition of DNFBPs are not subject to the requirements of the AMLRs.

343. In analysing the proportionality amongst sanctions, it is noted that the fines under summary conviction for failure to freeze assets are significantly lower than those imposed for other breaches. Considering that the FIs and TCSPs engage in high net-worth transactions and the risks associated with not freezing large scale assets subject to TFS without delay, the sanctions under Recommendation 6 are not proportionate.

344. *Criterion 35.2* Sanctions for breaches of the TL relate to persons (which includes both individuals and bodies corporate). The sanctions imposed via MA(A)L and the administrative fines under the AMLRs are applicable to both individuals and bodies corporate for FIs and TCSPs, as well as the administrative fines under the AMLRs. The sanctions in relation to failure to submit a SAR and tipping off contained under the POCL apply to natural and legal persons under section 139 and 142 of the POCL respectively. In addition, administrative fines imposed for breaches under section 55 of the AMLRs (DNFBPs) (Amendment) (No. 2) Regulations, 2017 are applicable whether the DNFBP is a natural or legal person and applies to their directors and senior management. The deficiency identified in criterion 22.1 is also relevant.

Weighting and Conclusion

345. The jurisdiction has a range of sanctions available in the criminal, civil and administrative domains which are proportionate, dissuasive and persuasive, except for those that apply to summary conviction sanctions under Recommendation 6. Sanctions can be applied to both legal and natural persons. Sanctions do not apply to all persons that have been identified as DNFBPs by the FATF. **Recommendation 35 is rated Partially Compliant.**

Recommendation 36 – International instruments

346. Recommendation 36 (formerly R. 35 and SR. I) were both rated ‘LC’ in the 3rd MER. The deficiency noted for R. 35 was that MLA is not available for facilitating the voluntary appearance of persons not in lawful custody for the purpose of providing information or testimony to the requesting

country. The deficiency noted for SR I was that due extensions of conventions were required. In particular, the TF Convention and the UNCAC have not been extended to the Cayman Islands. The recommended action was that the CJICL should be amended to include facilitating the voluntary appearance of persons not in lawful custody for the purpose of providing information or testimony to the requesting country as a listed purpose for MLA. It was also recommended that Cayman Islands consider an express enactment creating an asset forfeiture fund, with appropriate obligations and applications; rather than the current, but non-binding method in practice. R. 36 incorporates an explicit requirement for countries to become party and implement the United Nations Convention against Corruption.

347. *Criterion 36.1* As a British Overseas Territory, the Cayman Islands does not have the power to sign or ratify international conventions on its own behalf and as such, these formalities must be extended to the country by the U.K. The Vienna Convention and Palermo Convention were extended to the Cayman Islands by the United Kingdom in 1995 and 2012 respectively. The TF Convention and the UNCAC have not yet been extended to the Cayman Islands. However, the authorities have implemented the provisions of these instruments within respective laws, namely the TL, POCL and the Anti-Corruption Law among other laws.

348. *Criterion 36.2* The 3rd FUR notes that the Vienna Convention was implemented through several laws including MDL, PCCL and CJICL. The provisions of the Vienna Convention are contained in the schedule to the CJICL. It was noted in the 1st and 2nd Biennial Reports, that TF Convention, although requiring extension of the UK's ratification, continue to be implemented in various pieces of legislation, namely the POCA and TL. The Palermo Convention, TF Convention and the Merida Convention are implemented in domestic legislation as mentioned above at 36.1.

Weighting and Conclusion

349. The Cayman Islands has implemented the Vienna Convention and the Palermo Convention through extension by the UK to enable the provisions to be reflected in various pieces of domestic legislation. However, the TF Convention and the UNCAC have not yet been extended to the Cayman Islands but have been reflected in domestic legislation. **Recommendation 36 is rated Largely Compliant.**

Recommendation 37 - Mutual legal assistance

350. Recommendation 37 (formerly R. 36) was rated 'LC' in the 3rd MER. The noted deficiency was that MLA is not available for facilitating the voluntary appearance of persons not in lawful custody for the purpose of providing information or testimony to the requesting country. Countries are now required to provide non-coercive assistance regardless of dual criminality provisions. The FATF Standard clarifies that the requesting country should make best efforts to provide complete factual and legal information, including any request for urgency.

351. *Criterion 37.1* There is adequate legal basis for providing the widest possible range of mutual legal assistance in relation to money laundering, associated predicate offences and TF. The omnibus legislation that provides for mutual legal assistance in criminal matters is the CJICL. Under the CJICL a wide range of assistance is available, including at the investigative stages, to all countries that are parties to the Vienna Convention, as listed in Schedule 1 to the Law; and for all offences under Cayman Islands law and conduct which would constitute an offence had it occurred in the Cayman Islands (section 2(2) CJICL 2015). Mutual legal assistance between the Cayman Islands and the United States of America continues to be effected primarily via pre-existing, equivalent provisions under the MLA (United States of America) Law (2015 Revision) and treaty. There are also provisions under sections 32, 34 and 35 of the TL (2015 Revision) in relation to mutual legal assistance pertaining to certain criminal matters under this law.

352. *Criterion 37.2* The Cayman Islands has mechanisms for the transmission and execution of international requests for legal assistance through the ODPP and the Chief Justice. The Central Authority under section 4 the CJICL is the ODPP. The Central Authority under section 4 of the MLA (United States of America) Law (MLA(US)L is the Chief Justice who shall exercise their functions under the Treaty and the CJICL acting alone and in an administrative capacity, or another Judge of the Grand Court designated by the Chief Justice to act on their behalf. The ODPP maintains an international database which logs all requests and actions taken on them and provides a case management system. The ODPP's Protocol for Processing International Requests for Assistance (reissued 3 May 2017) states the policy and time frames for dealing with such matters. There are clear mechanisms for providing timely international legal assistance through the ODPP, for executing MLAs, extraditions and other international requests for assistance.

353. *Criterion 37.3* MLA can only be denied on certain circumstances outlined in section 8 of the CJICL (a) if the request is not made in conformity with section 5. Under section 8(2), where the Authority refuses to comply with a request on any of the grounds specified in subsection (1) it shall so inform the requesting Party in writing and state the grounds for the refusal. Under the MLA(US)L the Central Authority may deny assistance where the provisions of the Treaty are not confirmed with, where the request relates to a political offence or to an offence under military law, which would not be an offence under ordinary criminal law or the request does not establish that there are reasonable grounds for believing that the criminal offence has been committed and that the information sought relates to the offence and is located within the territory Further, assistance shall be denied where the AG has issued a certificate stating that the execution of the request would be contrary to the public interest. However, before denying assistance the Central Authority shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to conditions (Article 3).

354. *Criterion 37.4 (a)* The CJICL does not expressly allow the Cayman Islands to provide international legal assistance in respect of tax matters. Therefore, section 8 of the CJICL does not list fiscal matters as an instance where the authorities may not provide international assistance. Notwithstanding this, authorities are able to provide assistance in fiscal matters on the basis of dual criminality given the criminalisation of tax offences under the Penal Code Amendment Law (2017). *(b)* A request for MLA cannot be refused on the ground of secrecy or confidentiality. Sections 15 and 16 of the CJICL provide protection to those who provide confidential information, any disclosure or testimony shall not be in breach of the Confidentiality Law and neither shall any confidential information given by any person

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on the directions of the court. The MLA (USA) Law also contains confidentiality provisions which state that there will be no breach of the Confidential Relationships (Preservation) Law (2015 Revision) or any other law whereby disclosure is made under section 10 of the MLA (US)L.

355. *Criterion 37.5* Under section 18 of the CJICL, where a request and a court order issued pursuant to the request specify that the request be kept confidential, no person notified of the request or required to take action as a result of it shall disclose the fact of the request or any particulars required, or documents produced except to their attorney-at-law or such other persons as the Authority may authorise. (The section also applies to attorneys who are so notified).

356. *Criterion 37.6* Where coercive action is not involved there is no requirement for dual criminality as no court order is needed and the ODPP facilitates the arrangements necessary for the request. Where a court order is required and the provisions of the CJICL apply.

357. *Criterion 37.7* Under Section 3(2) of the CJICL it is the conduct, which occurred in the other country which is to be considered. It is therefore the conduct which is reviewed as to whether such conduct would constitute an offence in the Cayman Islands if committed here, therefore dual criminality is not reliant on the offence being of the same category of offence or under the same terminology, provided that it is criminalised in the requesting state and in the Cayman Islands. Under the MLA (USA) Law criminal offence includes, with some exceptions, any conduct punishable by more than 1 year's imprisonment under the laws of both the Requesting and Requested parties. It is therefore the conduct not the name of the offence which is relevant.

358. *Criterion 37.8 (a)* The CJICL contains parallel provisions to those required under Recommendation 31 relating to powers and investigative techniques. Section 3 makes provision for the production, search and seizure of information, documents or evidence (including financial records) from financial institutions or other natural or legal persons and the taking of witness statements. Further, the MLA (USA) Law (2015 Revision) provides for search and seizure, location of persons, transfer of persons in custody, forfeiture of proceeds of crime, taking testimony and producing evidence. As well as the purposes of assistance listed under Article 1, paragraph 2, assistance also includes any other steps deemed appropriate by both Central authorities. *(b)* A broad range of other powers and techniques exist under section 3 of the CJICL which also provides for assistance in identifying or tracing proceeds, property, instruments or such other things for the purposes of evidence, immobilising criminally obtained assets, assisting in proceedings related to forfeiture and restitution.

Weighting and Conclusion

359. The Cayman Islands has a well-developed and comprehensive framework for providing mutual legal assistance. **Recommendation 37 is rated Compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

360. Recommendation 38 was rated “C” in the 3rd MER. R. 38 now has new requirements regarding providing assistance to requests for non-conviction-based confiscation and measures for managing and disposing of property confiscated.

361. *Criterion 38.1* (a) The CJICL is applicable for MLA relating to freezing and confiscation. Section 3 is generally applicable to investigative measures and covers any offence under the laws of the Cayman Islands and conduct which would constitute an offence if it had occurred in the Cayman Islands, and by extension all related MLA requests are concerned. Arrangements for coordinating seizure and confiscation actions with other countries can be done where the Cayman Islands' authorities are aware of the need. (b) The CJICL also provides for requests for identifying or tracing proceeds, property, instruments or such other things for the purposes of evidence; immobilising criminally obtained assets; assisting in proceedings related to forfeiture and restitution. Provisions for the enforcement of confiscation orders on behalf of a foreign state and pursuant to POCL apply equally, by virtue of section 24, of the CJICL. (c) Benefit includes the laundered property, the proceeds or property the value of which corresponds to that of such proceeds. (d) Section 192(2) of the CPC addresses the capacity to seize instrumentalities used or intended for use in any criminal offence (ML, TF and predicates inclusive). However, the words "provided for or prepared with a view of committing any offence", does not appear to address instrumentalities actually used in the commission of ML, TF and predicates inclusive. (e) Section 69 of POCL is intended to address the freezing, seizing or confiscation of property of a corresponding value.

362. *Criterion 38.2* Under section 77 of the POCL, the ODPP may recover through civil proceedings, cash and/or property which is obtained by or intended to be used to facilitate unlawful conduct. These civil proceedings are carried on in the summary court and are "in rem" and do not require a conviction to enable the ODPP to forfeit cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct. Under section 15(7) nothing in the POCL shall prejudice the operation of any provision in the CPC allowing proceedings to take place in the absence of the defendant. Schedule 5 of the POCL allows this to be extended to efforts taken on behalf of foreign states.

363. *Criterion 38.3* Under Section 8 of Schedule 5 'external confiscation orders' of POCL, the Grand Court may on the application of the ODPP appoint a receiver in respect of realizable property and empower the receiver to take possession of the property or realise any realisable property in such manner as the court may direct. Under Section 6 of Schedule 5, 'external confiscation orders', where the Grand Court has made a restraint order, it may appoint a receiver to take possession of any realisable property and manage or otherwise deal with any property in respect of which he is appointed according to the court's directions.

364. *Criterion 38.4* Section 19 of the CJICL allows the Central Authority to arrange with a requesting party for the sharing of confiscated or forfeited assets between the Government of the Cayman Islands and the requesting party. There are asset sharing agreements in place between the Cayman Islands and the US, the UK, Canada and India. However, asset sharing agreements can be made in any matter on a case by case basis.

Weighting and Conclusion

365. The Cayman Islands can provide assistance to other countries on request. There are cooperative legal, civil and administrative mechanisms for search, seizure and confiscation actions including provisions for managing, and when necessary sharing of property frozen, seized or confiscated with

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other States, as well as for non-criminal matters. However, there is nothing to indicate that instrumentalities used in the commission of ML, TF or predicate offences nor property of corresponding value may be frozen, seized or confiscated unless it is related to a drug offence. **Recommendation 38 is rated Largely Compliant.**

Recommendation 39 – Extradition

366. This Recommendation was rated ‘C’ in the 3rd MER. The revised FATF Standards require an adequate legal framework for extradition with no unreasonable or unduly restrictive conditions when assessing and rendering extradition requests. There should be a clear and efficient process to facilitate the execution of extradition requests, and the progress should be monitored by a case management system.

367. *Criterion 39.1* (a) Extradition is governed by the Extradition Act, 2003 (Overseas Territories) Order 2016 (EA OTO) to which the Cayman Islands is subject. Schedule 2 of EA OTO makes provision for a list of extradition territories which includes over 140 countries. Section 137 of the Order sets out the provision as to whether a person’s conduct constitutes an extradition offence. The conduct that constitutes an extraditable offence in relation to the extradition territory is outlined in the Order. The penalties for ML under the POCL range from 2 years imprisonment on summary convictions or on indictment five to fourteen years. Section 33 (1) and (2) of the TL makes provision for extradition where the UK becomes a party to Counter-Terrorism conventions and there is an extradition arrangement between the countries. Section 33 (2) makes provision for Cabinet to take a certain course of action where the UK becomes a party to the convention and there is no extradition arrangement between the Islands. Therefore, both ML and TF are extraditable offences. (b) The case management system is the international database which is used to log cases, prompt on deadlines etc. The ODPP’s Protocol of 3-5-17 states that extradition files must be dealt with expeditiously. (c) There are no unreasonable or unduly restrictive conditions are placed on the execution of requests. These mechanisms are aimed at facilitating an extradition request in the most timely manner. The bars to extradition are listed under section 79 which include double jeopardy, extraneous considerations (extradition for the purpose of prosecution or punishment on the grounds of race, religion, nationality, gender, sexual orientation or political opinions), the passage of time, where this would make the extradition unjust or oppressive, hostage taking considerations and forum.

368. *Criterion 39.2* There is no legal obstacle to the Cayman Islands extraditing its own nationals. The bars to extradition are outlined in Section 11 and 79 of the EA OTO and include the rule against double jeopardy, extraneous circumstances, passage of time, the person’s age and hostage taking considerations but does not include nationality.

369. *Criterion 39.3* The EA OTO, makes dual criminality a prerequisite for extradition to another jurisdiction, although assessed on the substance of the facts rather than on the category or denomination of the offence. Section 137(2) and 138 (2) states that for a conduct to be constituted as an extradition offence in the extradition territory, certain conditions must be satisfied. These conditions are specified within the Order including the conduct would constitute an offence under the law of the Territory (Cayman Islands) punishable with imprisonment or another form of detention for a term of twelve

months or a greater punishment if occurred in the territory. Competent Authorities indicated that it is the conduct that is taken into consideration and not the name or category of offence which determines whether dual criminality applies.

370. *Criterion 39.4* Section 127 of the EA OTO sets out the mechanism to simplify extradition proceedings and therefore does not require formal extradition hearings. A person arrested under a provisional warrant can consent to their extradition to the extradition territory. The consent must be given in writing and is irrevocable.

Weighting and Conclusion

371. The Cayman Island has a sound and robust extradition legislative framework. **Recommendation 39 is rated Compliant.**

Recommendation 40 – Other forms of international cooperation

372. This Recommendation was rated ‘C’ in the 3rd MER.

373. *Criterion 40.1* The RCIPS may exchange with INTERPOL to facilitate spontaneous and by request obligations. The Police (Information and Assistance to International Law Enforcement Agencies) Regulations, 2017, (Police Regulations 2017) also authorise exchanges of information, but there is nothing indicating that it can be done in a timely way. The RCIPS also has working relationships premised on ‘agreements in principle’ with the Major Organised Crime and Anti-Corruption Agency (MOCA) in Jamaica. The FRA is capable of responding to requests for information from international partners. However as noted in R 29, this exchange of SARs cannot be achieved spontaneously or rapidly as it requires the approval of the Attorney General before an exchange can be done. This limitation does not apply to provision of information on databases to which they have direct access (e.g. immigration records, land registry, vehicle licensing, CORIS, etc.) Customs does not require agreements to exchange information to fulfill the criterion and is able to exchange customs information with partners spontaneously and upon request. The ACC may exchange with foreign counterparts under sections 4 and 5 of the ACL spontaneously and upon request.

374. The provisions of MAL provide the framework that allows CIMA to rapidly provide the widest range of international cooperation relating to ML, associated predicate offences and TF.

375. The DCI may exchange information under Reg. 55Q of The Anti-Money Laundering (Designated Non-Financial Business and Professions) (Amendment) No. 2 2017 Regulations.

376. *Criterion 40.2 (a)* Section 138 of POCL provides a basis for the FRA and ODPP respectively to provide cooperation. Beyond INTERPOL, the RCIPS finds a legal foundation for responding to requests (spontaneously or otherwise) outside the formal MLA process through the Police Regulations 2017. Customs information may be exchanged directly with customs counterparts and exchanged with non-customs counterparts through the Police Regulations 2017 facilitated by the Customs engagement in the JIU. The ACC uses sections 4 and 5 of the ACL to facilitate cooperation. Sections 6 (1) (c), 34(9) and 50(3) of the MAL provides the legal basis for the provision of cooperation by CIMA, both to request information needed to respond to a regulatory request from an overseas regulatory authority

and to disclose information to an overseas regulatory authority. Further, section 51 (1) of the MAL also empowers CIMA to enter Memoranda of Understanding (MOUs) with overseas authorities.

377. **(b)** The FRA has an efficient means to obtain information within (as noted with R 29 within 72-hours), but this does not translate into efficient disclosure to international partners (see R29 for further details). The mechanisms in place for the ACC and Customs permit efficient cooperation. The provisions of section 50 of MAL authorise CIMA to cooperate efficiently.

378. **(c)** The FRA communicates with foreign FIUs using the Egmont Secure Web. The RCIPS communicates with international police forces through INTERPOL via the I-24/7 secure link on an encrypted VPN via encrypted email. Secure means for communication and means for Customs are not present. CIMA has a secure FTP portal site used to share information with local competent authorities as well as other overseas supervisors. CIMA also sends information using encrypted thumb drives where necessary.

379. **(d)** For requests from FIUs, the FRA assigns a priority rating to each request based on the likely timeframe for being able to provide a reply documented in their Operations Manual. An Inspector within the FCU will receive all foreign requests for information and triage requests based on their stated urgency. Customs, ACC and RCIPS did not provide information to assess their compliance with the criteria. Section 34 (9) of the MAL allows CIMA to request of any person and within a stated time and section 11 of the MAL further empowers the CIMA to apply to a Court for a person to be compelled to provide requested information within three days. CIMA has specific procedures that prioritise requests for information from overseas supervisors, which stated that CIMA should to respond to overseas requests for assistance within 72 hours as indicated in D1 of the Appendices 1 of the Regulatory Handbook. These mechanisms enable CIMA to share information rapidly.

380. **(e)** The ACC, FRA, Customs and RCIPS have measures in place to protect information received. Section 50(1)(e) of MAL requires employees of CIMA to keep information shared by or with an overseas regulatory authority confidential. Further, employees and directors of CIMA are required to sign on starting, leaving and on an annual basis, a confidentiality statement reaffirming their understanding of section 50. In relation to DCI information is safeguarded through regulation 55P of AMLR (DNFBPs) Regulations, which prevents the disclosure of protected information. Section 20A of the TIAL requires that all information received and provided in relation to requests by the DITC, be kept confidential.

381. *Criterion 40.3* A formal agreement is not required for the FRA to cooperate with foreign counterparts, but nonetheless, the FRA has entered 19 MOUs. Section 3 of the Police Regulations 2017 empowers the RCIPS to provide broad support outside of formalised agreements. Formalised agreements are not required by the ACC, DCI and Customs to cooperate. CIMA has numerous bilateral agreements with other financial supervisors. The DITC has entered into numerous TIEAs with other tax authorities.

382. *Criterion 40.4* The FRA provides feedback on the use and usefulness of information obtained. Upon request, the Customs and RCIPS are also capable of providing feedback to overseas counterparts from which they had received assistance. However, information regarding the issue of timeliness of the feedback was not provided. The ACC is also authorised to provide assistance where appropriate, but has not done so. CIMA would provide feedback upon request to competent authorities from whom the jurisdiction has received assistance, on the use and usefulness of the information obtained.

383. *Criterion 40.5* (a) With an amendment to the Penal Code (s 247(a)) there is no obligation to refuse to exchange information in purely fiscal matters, due to dual criminality provisions within the POCL. (b) Section 138 of POCL does obliges the FRA to exchange information/provide assistance to support overseas counterparts. There are no laws in the Cayman Islands that require FIs or DNFBPs to maintain secrecy or confidentiality. (c) There are no prohibitions in cases where there is an inquiry, investigation or proceeding underway in the Cayman Islands; unless such assistance would impede that inquiry, investigation or proceeding. (d) Grounds for the refusal to provide assistance will not be based on the nature or status of the requesting counterpart authority. Section 50 (3) of the MAL provides for the disclosure of information by the CIMA to enable an overseas regulatory authority to perform its regulatory functions. Section 50 (8) of the MAL 2016 outlines the conditions which should be satisfied in order for the CIMA to give an overseas regulatory authority assistance, disclosure, information, documents or access to such. The involvement of fiscal matters in the request, investigations in progress or the nature of the requesting counterpart are not listed as matters to be considered before acceding to such requests.

384. *Criterion 40.6* The FRA has safeguards and controls in place to ensure that information exchanged is used only for the purpose for, and by the authorities, for which the information was sought or provided (section 138(2) of the POCL). The POCL permits the onward disclosure of information received by the FRA, from foreign competent authorities, to domestic partners with the consent of the requested authority sought prior to the disclosure of the information to competent authorities within the Cayman Islands. For Customs, section 8 of *Customs (Money Declarations and Disclosures) 2007* outlines the penalty structure an officer faces for unauthorised disclosure of information which can include a fine and/or prison time. In relation to CIMA, section 50(8) of the MAL sets out provisions for the protection of information exchanged with overseas regulatory authorities.

385. CIMA gives an undertaking of reasons for which exchanged information can be used under the various MOUs to which CIMA is a signatory, and which CIMA has agreed to be bound. This is underpinned by section 50(8) of the MAL. With respect to the entity that can use the information, section 50(1)(e) of the MAL requires CIMA to keep information shared by or with an overseas regulatory authority confidential. Section 50(2)(c) of the MAL further permits CIMA to share information with overseas regulatory authorities and empowers CIMA to allow onward disclosures by that overseas regulator. The structure within the RCIPS means that all financial intelligence is handled through the FCU. Requests for information are reviewed by a senior officer to ensure the disclosure is proportionate to meet the stated objective. Confidentiality is covered by section 20A of the TIAL and in all of the international exchange instruments to which the Cayman Islands are party. Section 21 of TIAL ensures that the information is used for the purpose intended. In relation to DCI information is safeguarded through regulation 55P of AMLR(DNFBP) Regulations.

386. *Criterion 40.7* The FRA maintains appropriate confidentiality with respect to requests for co-operation and information exchanged through section 138 of the POCL. Section 50 (1) (e) of the MAL establishes a similar confidentiality obligation and subsequent punishment for violation should an employee of CIMA disclose any information shared by or with an overseas regulatory authority or any communication related thereto. Pursuant to section 50(8) of the MAL, CIMA may not give information or documents to an overseas regulatory authority unless CIMA is satisfied that the overseas regulatory authority is subject to adequate legal restrictions on further disclosures, or has given an undertaking to

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not disclose the information without CIMA's prior consent. In addition, the stipulations of the CIDL clearly delineates that any disclosure of information outside of the conditions set out in Section 3 of CIDL shall constitute a breach of duty of confidence. The information exchanged with overseas police partners is treated with a higher standard and security than that received from domestic sources. The ACC maintains strong controls and gives it equal treatment to information received from domestic sources. With respect to tax matters, the TIAL and the Scheduled Agreements so provide for appropriate confidentiality; and compliance is monitored by external peer review by the Global Forum. Customs controls access to its database through encryption with personnel having designated access through password protection. In relation to the DCI, information is safeguarded through regulation 55P of AMLR(DNFBP) Regulations.

387. *Criterion 40.8* Under sections 50(3)(a) and 34(9) of MAL, CIMA may conduct inquiries and exchange information with foreign regulators in the same manner that information can be sought and exchanged domestically. For FIU requests, under section 138(1) (c) of the POCL, inquiries emanating from outside the jurisdiction cannot be treated as though they were done by a domestic partner as it requires the approval of the AG before it can be shared. Should the AG deem it in the national interest, the information available domestically may not be available to international partners. The Police Regulations 2017 and ACL ensure that information can be exchanged by RCIPS and the ACC with foreign counterparts in a manner similar to if it was being done for domestic exchange. This is also the case for Customs either through the Police Regulations 2017 or the Customs Law. The DCI has powers to request information from any of its supervised entities under reg. 55K of AMLR (DNFBP) Regulations and to conduct onsite visits where it may collect information under reg. 55M. DCI is allowed to share this information with foreign competent authorities. The DITC is allowed under the TIAL can conduct inquiries on behalf of foreign counterparts and provide information received in the same way as if that inquiry were being carried out domestically under the TIAL. Further, in accordance with the TIEAs, "if the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall use all relevant information gathering measures to provide the applicant with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

388. *Criterion 40.9* Sections 4 and 138 (1) (c) of the POCL enable the FRA to cooperate with other FIUs under section 138(2) of the POCL to address ML, associated predicate offences and TF, however as noted earlier facilitating the exchange requires the approval of the AG.

389. *Criterion 40.10* The FRA has instituted a framework to regularise the collection and provision of feedback with foreign jurisdictions regarding the information they provided.

390. *Criterion 40.11 (a)* The FRA has the power to exchange the information that is accessible or obtainable directly or indirectly under Recommendation 29. However, the deficiencies highlighted under R. 29 in terms of what that information is has an impact here. The FRA has the capacity to, at their discretion, revert to entities to respond to the request of an overseas institution as it relates to the proceeds or suspected proceeds of criminal conduct. It also may do database searches to which it has direct access (e.g. land, immigration, CORIS, etc.) and share that information without AG approval. However, the exchange of a SAR and its contents are subject to the approval of the Attorney General. **(b)** While it does not appear as though reciprocity is mandatory, the FRA does not have the power to

exchange other information which they may obtain at the domestic level without the approval of the Attorney General.

391. *Criterion 40.12* Section 6 (1) (c) of the MAL gives CIMA the legal basis to cooperate with their foreign counterparts and authority to conduct co-operative functions, namely, to provide assistance to overseas regulatory authorities in accordance with the MAL. In addition, Section 34 (9) of the MAL enables CIMA to exercise its powers, including its powers to access information, on behalf of an overseas regulatory authority. CIMA is further empowered under Section 50 (3) of the MAL to disclose information to enable an overseas regulatory authority to perform its regulatory functions and it is also authorised, in its co-operative functions, to enter Memoranda of Understanding with overseas regulatory agencies for the purposes of cross-border supervision.

392. *Criterion 40.13* CIMA can share information which is domestically available to them with its international counterparts. In particular, section 34 (9) of the MAL articulates that where CIMA is satisfied that assistance should be provided in response to a request by an overseas regulatory authority, it may in writing execute the same action afforded to it under Section 34 (8) with respect to gathering information for the purpose of exercising its regulatory functions domestically. Section 35 (1) further empowers the CIMA to seek the assistance of an authorised competent authority and the Commissioner of Police in obtaining information to satisfy a request from an overseas authority.

393. *Criterion 40.14* Section 50 (3) (a) of the MAL permits CIMA to disclose information necessary to enable the overseas regulatory authority to exercise regulatory functions. Further, section 34(9) of MAL, gives CIMA the ability to request from a person information, documentation or assistance relating to an overseas request. These provisions enable CIMA to access (a) regulatory information, (b) prudential information and (c) AML/CFT information. CIMA has also entered into multilateral agreements under IOSCO and IAIS.

394. *Criterion 40.15* Section 34(9) of MAL, facilitates CIMA to conduct enquiries on behalf of foreign counterparts. Additionally, under section 50(3)(e) of MAL, CIMA may permit a foreign regulator to carry out an on-site inspection or visit in a manner agreed in writing by CIMA and the overseas regulatory authority on any entity in the Cayman Islands that is subject to its supervision or regulation. Under section 52 of MAL, licensees that are subsidiaries or branches of an overseas entity, are permitted to share information with the overseas regulatory authority of their parent companies. In addition, CIMA has entered into 14 MOUs with other competent authorities for consolidated supervision.

395. *Criterion 40.16* Prior authorisation of the requested financial supervisor is outlined in CIMA's MOUs. An example of this is found in paragraph 7.4 of the MMOU between the Group of International Financial Centre Supervisors (GIFICS), 2017 as well as the MMOUs of other international standard setting bodies. Equivalent provisions are also included in bilateral MOUs to which CIMA is a party.

396. *Criterion 40.17* The jurisdiction has indicated that the FCU is able to exchange domestically available information with foreign counterparts, both for intelligence and investigative purposes as it relates to beneficial ownership, through the *Police Regulations 2017*. Further, given the jurisdiction's status it is able to engage with the UK and indirectly engage with INTERPOL. Customs is able to exchange information through mechanisms such as the JIU and associated Police Regulations 2017, and the ACC is able to do so through sections 4 and 5 of the ACL.

397. *Criterion 40.18* As described above, RCIPS may use their powers and investigative techniques to conduct inquiries and obtain information on behalf of foreign counterparts through INTERPOL, and

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the Police Regulations 2017, consequently formal agreements are not necessary to support international counterparts. Customs is able to exchange information through mechanisms such as the JIU and associated Police and associated Police Regulations 2017, and the ACC is able to do so through sections 4 and 5 of the ACL.

398. *Criterion 40.19* LEAs in practice are able to form joint investigative teams to conduct cooperative investigations, with foreign LEAs authorised by the Police Regulations 2017.

399. *Criterion 40.20* Section 138(2) of the POCL allows the FRA, to share information directly with domestic non-counterparts and its foreign counterparts. Section 13(1) of the POCL compels the FRA to cooperate with competent authorities, as well as competent authorities to cooperate with the FRA with respect to investigations and prosecutions. Under the Police Regulations, 2017 and based on operational practice, the RCIPS shares information with non-counterparts. Customs will exchange information with non-counterparts through domestic agencies. For instance, with overseas LEA, information will be provided to the JIU from which it will be shared via the Police Regulations, 2017. For overseas FIU, the FRA will facilitate the exchange. The ACC is permitted to do exchanges with other corruption commissions as well as LEAs. CIMA has also entered into an information sharing agreement with the United States Securities and Exchange and the Department of Justice, whereby the SEC may request information from CIMA on behalf of the DOJ for specific purposes. Additionally, pursuant to section 50(3) of the MAL, CIMA is able to disclose information to the Director of Public Prosecutions or a law enforcement agency in the Islands for the purpose of criminal proceedings. Further, CIMA is generally able to disclose information under section 50(3) for the purpose of assisting CIMA to exercise any functions conferred on them by the MAL, by any other law – including (but not limited to) the POCL and the TL and any regulations under the MAL or any other law. The DCI is not prohibited from exchanging information with non-counterparts and can fully cooperate under Regulation 55 of the AMLR(DNFBP) Regulations, as detailed above. No information was provided for the DITC.

Weighting and Conclusion

400. The FRA is able to cooperate with counterparts however this cooperation requires the approval of the Attorney General who could refuse to fulfill a request in part or in its entirety. There is an indication that the jurisdiction is able to fulfill components of this Recommendation. Aspects of the legal framework however do not appear to support the competent authorities' capacity to provide timely assistance to foreign counterparts or assure them access to equivalent information as domestic authorities, such as where the AG's approval is required for disclosures to overseas FIUs. CIMA is permitted to co-operate with foreign counterparts by virtue of law and established MOUs. CIMA has mechanisms in place for providing feedback on assistance received from foreign regulators. Mechanisms are in place as required to facilitate international cooperation for the ACC, Customs, the RCIPS, DCI and DITC, however some deficiencies exist. **Recommendation 40 is rated Largely Compliant.**

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> • Exceptions to the FATF recommendations are not justified as they have not been proven as low risk. • Legal persons largely fell outside the scope of consideration. This impacts their ability to fully assess and understand their risk. • There are no supervisors appointed for lawyers to ensure the implementation of their obligations. • The allocations of resources and implementation of measures are being applied on an adhoc basis, and not on a risk basis.
2. National cooperation and coordination	PC	<ul style="list-style-type: none"> • The membership of the coordination bodies is incomplete which inhibits full coordination and policy development in high risk areas.
3. Money laundering offence	C	
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> • Deficiencies with regards to ACC's ability to identify, trace, confiscate and evaluate property subject to confiscation.
5. Terrorist financing offence	C	
6. Targeted financial sanctions related to terrorism & TF	LC	<ul style="list-style-type: none"> • No mechanism for communicating designations to FIs and DNFBPs • There is no requirement for FIs or DNFBPs to report on assets that have been frozen. • The Governor who is responsible for implementation of TFS in the Cayman Islands was not listed as a Competent Authority. • The current DIA form does not require the details of any connection between proposed designee and currently designated persons.
7. Targeted financial sanctions related to proliferation	LC	<ul style="list-style-type: none"> • There is no indication as to whether FRA can publish a list of designated persons immediately after a designation is made. • There are no mechanisms for direct communication of designations to FIs and DNFBPs who are required to take action to freeze.
8. Non-profit organisations	LC	<ul style="list-style-type: none"> • Adequate mechanisms for the coordination, cooperation and information sharing among all authorities that may hold information on NPOs. • NPOs are not encouraged to conduct transactions via regulated financial channels.
9. Financial institution secrecy laws	C	
10. Customer due diligence	LC	<ul style="list-style-type: none"> • There is no requirement for FIs to understand the nature of a customer's business where the entity is a legal person.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> • FIs are not required to verify the identity of the beneficiary of a life insurance or other investment related policies by the time of pay out. • Due to a misapplication of the requirements, the Cayman Islands applies a less stringent requirement than allowed by the Recommendations with respect to the threshold for occasional transactions. • FIs are not required to apply CDD requirements to existing customers at appropriate times based on materiality and risk.
11. Record keeping	C	
12. Politically exposed persons	C	
13. Correspondent banking	C	
14. Money or value transfer services	LC	<ul style="list-style-type: none"> • MSBs are not required to monitor their agents' compliance with their AML/CFT programmes and monitor them for compliance with these programmes. • CIMA's responsibility for monitoring MSBs compliance with the AMLRs does not fully extend to the requirements of the TL.
15. New technologies	LC	<ul style="list-style-type: none"> • There is no requirement for the Cayman Islands to identify and assess ML/TF risks that arise in relation to the development of new products and new business practices, including new delivery mechanisms and the use of new or developing technologies for both new and pre-existing products.
16. Wire transfers	LC	<ul style="list-style-type: none"> • There is no requirement for beneficiary FIs to have risk-based policies and procedures for determining how to handle a wire transfer where originator information is absent.
17. Reliance on third parties	LC	<ul style="list-style-type: none"> • FIs are not required to obtain information immediately from third party FIs and DNFBPs upon introduction to the FI.
18. Internal controls and foreign branches and subsidiaries	C	
19. Higher-risk countries	PC	<ul style="list-style-type: none"> • No specific obligation for FIs to apply enhanced due diligence proportionate to the risks from countries which is called for by the FATF. • No provisions for applying countermeasures when called for by the FATF and independently of any call by the FATF.
20. Reporting of suspicious transaction	C	
21. Tipping-off and confidentiality	LC	<ul style="list-style-type: none"> • The tipping off offence should apply whether or not the disclosure has resulted in an investigation.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> US dollar and Euro equivalent of the KYD 15,000 is a less stringent standard than that required by the Recommendations. There are some deficiencies which have been similarly identified for the FIs relating to reliance on Third Parties.
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> The deficiencies noted in Recommendations 19 and 21 are also relevant for the DNFBPs. There are gaps in the scope of DNFBPs in relation to notaries and a category of business in the case of financial, legal and accounting services. The threshold which applies to DPMS when they engage in a cash transaction with a customer equal to or above KYD 15,000 which does not concur with the US/Euro 15,000 limit in the Methodology.
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> Information on the process for obtaining beneficial ownership information is not publicly available. Information on exempted companies and LLCs is only available to competent authorities or in exceptional circumstances. There is no information to indicate how competent authorities other than the ODPP and the FRA are able to monitor information received from foreign counterparts. There are no specific requirements for NPOs, Limited Liabilities Partnerships or foundations to obtain and hold up-to-date beneficial ownership information. There is no requirement for the register to contain information in respect of the nature of associated voting rights in respect of companies. The authorities have not conducted a specific assessment of the ML/TF risks associated with legal persons created in the Cayman Islands.
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> The requirement to obtain identification and verification information are not contained in specific legislation but extends to legal arrangements and relevant parties related to a trust structure through the AMLRs. Customs and DCI do not have powers to facilitate access to basic information and exchange information on trust structures by foreign counterparts.
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> CIMA's regulation and supervision does not extend to all entities performing securities and investment business activities, namely excluded persons. Fit and proper requirements do not apply to directors and senior management of credit unions and building societies and shareholders and beneficial owners of excluded persons. The frequency of onsite inspections is not based on ML/TF risk, but the overall prudential risk of licensees.
27. Powers of supervisors	C	

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> No supervisory authority has been identified for attorneys who are not TCSPs. Supervision of DNFBPs are not performed on a risk sensitive basis.
29. Financial intelligence units	PC	<ul style="list-style-type: none"> The absence of complete operational independence of the FRA for disclosures. FRA's limited access to appropriate information.
30. Responsibilities of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> Impediments prevent all competent authorities to actively and expeditiously identify and trace assets.
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> The inability to compel a witness statement without a warrant. The absence of a formal mechanism for Customs to request information from the FRA.
32. Cash couriers	PC	<ul style="list-style-type: none"> No mandatory reporting of currency and BNIs about to be exported A threshold above that recommended by the FATF. There is has no provision to restrain cash or BNIs on the sole basis of a false declaration. No mechanism to ascertain the source of funds for importation of bulk cash. There are no measures to ensure that information is adequately safeguarded and used in the appropriate manner
33. Statistics	C	
34. Guidance and feedback	PC	<ul style="list-style-type: none"> Engagement with NPOs and DNFBPs (not included TCSPs) in early stages. Limited feedback on the quality of SARs.
35. Sanctions	PC	<ul style="list-style-type: none"> Sanctions do not apply to all persons categorised as DNFBPs by the Standards.
36. International instruments	LC	<ul style="list-style-type: none"> The Terrorist Financing Convention and the UN Convention against Corruption have not yet been extended to the Cayman Islands, but have been reflected in domestic legislation.
37. Mutual legal assistance	C	
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> Instrumentalities used in the commission of ML, TF and predicate offences are not covered by the CPC.
39. Extradition	C	
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> There are minor shortcomings in the framework and the ability of the FRA and LEAs to provide formal support to international partners in a timely manner.

GLOSSARY OF ACRONYMS

ACC	Anti-Corruption Commission
AMLRs	Anti-Money Laundering Regulations, 2017
AMLR (DNFBPs) Regulations	Anti-Money Laundering (Designated Non-Financial Business and Professions) (Amendment) Regulations, 2017
AMLSG	Anti Money Laundering Steering Group
AMLU	Anti Money Laundering Unit
BNI	Bearer Negotiable Instrument
BOT	British Overseas Territory
BTCL	Banks and Trust Companies Law
BSL	Buildings Societies Law
NRA	National Risk Assessment
CA	Competent Authority
CDD	Customer Due Diligence
CIDL	Confidential Information Disclosure Law
CIIPA	The Cayman Islands Institute of Professional Accountants
CIMA	Cayman Islands Monetary Authority
CJ	Chief Justice
CJICL	Criminal Justice (International Cooperation) Law
CL	Companies Law
CML	Company Management Law
CPC	Criminal Procedure Code
CSL	Cooperatives Societies Law
DCI	Department of Commerce and Investment
DITC	Department of International Tax Cooperation

DNFBPs	Designated Non-Financial Business or Profession
DPMS	Dealers in Precious Metals and Precious Stones
ELPL	Exempted Limited Partnership Law
EOI	Exchange of Information
EU	European Union
FCO	Foreign Commonwealth Office
FCU	Financial Crimes Unit
FIs	Financial Institutions
FRA	Financial Reporting Authority
FUR	CFATF's Follow Up Report
GL	Gaming Law 2016
GNs	Guidance Notes on the Prevention and Detection of ML/TF in the Cayman Islands issued by CIMA
IACC	Inter-Agency Coordination Committee
IL	Insurance Law
ILOR	International Letter of Request
JIU	Joint Intelligence Unit
LLC	Limited Liability Company
LLCL	Limited Liability Companies Law
MAL	Monetary Authority Law
MFL	Mutual Fund Law
MDL	Misuse of Drugs Law
ML	Money Laundering
MLCO	Money Laundering Compliance Officer
MA(A) L	Monetary Authority (Amendment) Law (2016)

MMOU	Multilateral Memorandum of Understanding
MSL	Money Services Law
MLA(US)L	Mutual Legal Assistance (United States of America) Law
NPOs	Non-Profit Organisations
NPOL	Non-Profit Organisation Law
NPO(RA)R	Non-Profit Organisations (Registration Application) Regulations, 2017
ODPP	The Office of the Director of Public Prosecutions
OT	Overseas Territories
PC	Penal Code
PF	Proliferation Financing
PCA	Police and Crime Act
POCL	Proceeds of Crime Law
PTCs	Private Trust Companies
PTC Regs.	Private Trust Companies Regulations
RCIPS	Royal Cayman Islands Police Service
SC	Sanctions Coordinator
SEZ	Special Economic Zone
SIBL	Securities Investment Business Law
SRB	Self-Regulatory Body
TBL	Trade and Business Licence Law
T(A)L	Terrorism(Amendment) Law, 2017
TF	Terrorism Financing
TFS	Targeted Financial Sanctions
TIAL	Tax Information Authority Law

TIEA	Tax Information Exchange Agreement
TL	Terrorism Law



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Anti-money laundering and counter-terrorist financing measures – Cayman Islands

Fourth Round Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Cayman Islands as at the date of the on-site visit on-site visit December 4 to 15, 2017. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Cayman Islands' AML/CTF system and provides recommendations on how the system could be strengthened.