Anti-Money Laundering and Counter-Terrorist Financing Measures

Cayman Islands

2nd Enhanced Follow-up Report & Technical Compliance Re-Rating

February 2021

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CAYMAN ISLANDS: 2nd ENHANCED FOLLOW-UP REPORT

1. INTRODUCTION

1. The Fourth Round Mutual Evaluation Report (MER) of Cayman Islands was adopted on November 23, 2018 during the XLVIII Caribbean Financial Action Task Force (CFATF) Plenary held in Bridgetown, Barbados, and published on March 18, 2019. Based on the results of the MER, Cayman Islands was placed under the enhanced follow-up process[1] since it had 8 or more NC/PC ratings for technical compliance and a low or moderate level of effectiveness for 7 or more of the 11 effectiveness outcomes.

2. The first Follow Up Report (FUR) of Cayman Islands was presented in November 2019 plenary held in St. Johns, Antigua and Barbuda. This is Cayman Islands' 2nd Follow-up Report (FUR). It analyses Cayman Islands' progress in addressing the technical compliance deficiencies identified in its MER, which were re-rated following a request from the country. This report also analyses Cayman Islands' progress in implementing new requirements relating to FATF Recommendations which have changed since the country's assessment, i.e., R. 2, 15, 18 and 21. This report does not address the progress that Cayman Islands may have made to improve its effectiveness.

2. FINDINGS OF THE MER MARCH 2019

3. The MER rated Cayman Islands as **Compliant** on 12 Recommendations (3, 5, 9, 11, 12, 13, 18, 20, 27, 33, 37, and 39); **Largely Compliant** on 15 Recommendations (4, 6, 7, 8, 10, 14, 15, 16, 17, 21, 30, 31, 36, 38 and 40); and **Partially Compliant** on 13 Recommendations (1, 2, 19, 22, 23, 24, 25, 26, 28, 29, 32, 34, and 35). The MER's ratings for technical compliance were given as follows:

Table 1. Technical compliance ratings, March 2019

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
PC	PC	C	LC	C	LC	LC	LC	C	LC
R 11	**R 12**	**R 13**	**R 14**	**R 15**	**R 16**	**R 17**	**R 18**	**R 19**	**R 20**
C	C	C	LC	LC	LC	LC	C	PC	C
R 21	**R 22**	**R 23**	**R 24**	**R 25**	**R 26**	**R 27**	**R 28**	**R 29**	**R 30**
LC	PC	PC	PC	PC	PC	C	PC	PC	LC
R 31	**R 32**	**R 33**	**R 34**	**R 35**	**R 36**	**R 37**	**R 38**	**R 39**	**R 40**
LC	PC	C	PC	PC	LC	C	LC	C	LC

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).
Source: Cayman Islands' Mutual Evaluation Report, March 2019, https://www.cfatf-gafic.org/home-test/english-documents/4th-round-meval-reports/11255-fourth-round-mutual-evaluation-report-for-cayman-islands

[1] Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up is based on the CFATF's policy that deals with members with significant deficiencies (for technical compliance and/or effectiveness) in their AML/CFT systems and involves a more intensive process of follow-up.

4. The following experts assessed Cayman Islands' request for technical compliance re-rating with support from the CFATF Secretariat's Mutual Evaluation Team:

- Sherrece L Saunders, Deputy Manager, Bank Supervision Department, Central Bank of The Bahamas
- Khalila W. Astwood, Principal Crown Counsel (International), Turks and Caicos Islands.

5. Section 3 of this report summarises Cayman Islands' progress in improving technical compliance. Section 4 sets out the conclusion and a table showing which Recommendations have been re-rated.

3. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

6. This section summarises Cayman Islands' progress to improve its technical compliance by:

a) Addressing certain technical compliance deficiencies identified in the MER, and
b) Implementing new requirements where the FATF Recommendations have changed since Cayman Islands' assessment (R. 2, 15, 18 and 21).

3.1 Progress to address technical compliance deficiencies identified in the MER.

7. Cayman Islands has made progress to address the technical compliance deficiencies identified in the MER and requested a re-rating (including the revised Recommendations) in relation to the following 16 Recommendations:

- R. 1, 2, 19, 22, 23, 24, 25, 26, 28, 29, 32, 34, and 35, which were rated PC (13 Recommendations);
- R. 15 and 21, which were rated LC but were revised by FATF subsequent to Cayman Islands' MER; and
- R. 18 which was rated C but was revised by FATF subsequent to Cayman Islands' MER.

8. As a result of this progress, Cayman Islands has been re-rated on 16 Recommendations viz., Recommendations 1, 2, 15, 18, 21, 22, 23, 24, 25, 26, 28, 29, 32, 34, and 35. Each of these Recommendations is discussed in the subsequent paragraphs.

3.1.1 Recommendation 1 (originally rated PC)

9. In its 4th Round MER, Cayman Islands was rated PC with R.1. The technical deficiencies related primarily to: (1) sufficient data not analysed for assessing TF risks and misuse of legal persons; (2) the NRA did not cover a comprehensive analysis of excluded persons and lawyers; (3) legal persons largely fell outside the scope of consideration, which impacted their ability to fully assess and understand their risk; (4) results of the NRA were not communicated to excluded persons and real estate agents; (5) the summary of NRA did not provide sufficient information; (6) the allocations of resources and implementation of measures are being applied on an ad hoc basis, and not on a risk basis; (7) exceptions to the FATF recommendations were not justified as they had not been proven as low risk; and (8) there were no supervisors appointed for lawyers to ensure the implementation of their obligations.

10. As to the risk arising from legal persons, Cayman Islands has conducted a money laundering risk assessment during 2019-2020, which included an analysis of the types of corporate entities totalling 110,451 at September 2019: Exempt Companies (84%), Ordinary Resident Companies (6%), foreign companies (5%), non-resident companies (3%), limited liability companies (LLCs) (2%) and foundations; and Exempt and Limited Partnerships and Trusts. However, the ML/TF risks associated with

foreign companies (those created in other countries but registered in Cayman Islands) were not considered. The number of foreign companies in Cayman Islands is relatively small (about 5 percent of all legal entities) and over 1000 foreign companies operate as entities that are regulated by CIMA. Foreign companies are required to register with the Registrar of Companies before operating in Cayman Islands (as well as being subject to various other requirements under the Companies' Law). As of 10th November 2020, there were 5495 Foreign Companies registered in Cayman Islands, originating from 117 jurisdictions inclusive of the Caribbean and Latin America, the USA, United Kingdom, France, Germany, Israel, and Switzerland. More than 50% of foreign companies are incorporated in the USA. Delaware and 30 other jurisdictions represent 94.7 percent of all foreign companies registered in Cayman Islands. Approximately 50% of foreign companies are insurance entities, a sector that was deemed 'medium-low risk' in CIMA's 2019 insurance sectoral risk assessment. Approximately 200 of these foreign entities are regulated funds, subject to the AML/CFT framework of Cayman Islands. While the TF Risk Assessment (see item #13 below) covered the activities of foreign legal entities, the ML risks associated with foreign companies were not considered in the risk assessment of legal persons.

11. The ML/TF risks posed by such entities form a part of the ML/TF risk of Cayman Islands. Therefore, the exclusion of the foreign companies from the legal persons and arrangements' risk assessment leaves a gap in Cayman Islands' identification and assessment of the ML risk for the country.

12. The Key Results of the Report were sent to supervisors on 7th May 2020, who sent them to their regulated entities. A presentation on the results of the risk assessment was also posted on the free eLearning platform.

13. The risks associated with FT were analysed in Cayman Islands' Terrorist Financing National Risk Assessment 2020. A number of data sources were used. There were also sector specific and thematic risk assessments (March 2020) such as those undertaken by CIMA on Banks, MSBs, TSPs, CSPs, Insurance providers, Mutual Fund Administrators, Securities Licensees and SIBL Excluded Persons (EPs), the National Risk Assessment of Money Laundering and Terrorist Financing (ML/TF) in the Special Economic Zone (February 2020) and the Terrorist Financing Risk Assessment for the NPO Sector in Cayman Islands (2019). There was also an assessment of the risks as an International Financial Centre (February 2020). Cayman Islands has conducted outreach with FIs, DNFBPs and SRBs to share information on the results of the NRA including excluded persons.

14. In accordance with the Anti-Money Laundering and Counter Terrorist Financing Strategy 2019-2022, which states that risk assessments would be conducted "*at regular intervals at the national level every five years, and sectoral levels annually*", the second National Risk Assessment is to commence in 2020 following the targeted risk assessments.

15. In relation to the allocation of resources on a risk sensitive basis, Cayman Islands Anti-Money Laundering and Counter Terrorist Financing Strategy, 2019-2022 is the guiding document which outlines the jurisdiction's strategic priorities in implementing money laundering, terrorist financing, and proliferation financing risk mitigation measures. An additional $7 million was appropriated to enhance AML/CFT/CFP measures based on the prioritisation of identified higher risk items. Some priority measures including the strengthening of supervision have been undertaken. The Annex VI to the Strategy which gave an update as of March 2020 indicates that a number of risk assessments have also been completed, disseminated to relevant staff of competent authorities and outreach has commenced. On a risk-based approach priority measures have been implemented to prevent and mitigate ML/TF. Annex VI also lists a number of actions consequent to the additional risk assessments carried out after the Strategy was finalised in September 2019. Some of the actions which were scheduled to be completed by August 2020, have already been implemented such as the allocation of staff in the Anti-Money Laundering Division in line with sectoral risks, the supervision of SIBL Registered Persons ("SIBL-

RPs") by CIMA, increase in the staffing and upgrade of technology of FRA, the inclusion of the investigation of legal persons in CIBFI's operating manual, the development of various manuals and policy documents by several competent authorities and increase in outreach using Cayman Finance eLearning Platform where the first three courses went live on 6 February 2020.

16. As regards exceptions to the FATF Recommendations, Regulation 21 of the Anti-Money Laundering Regulations has been amended to remove the referenced "List of Equivalent Jurisdictions" to which exceptions from the FATF Recommendations were allowed. No other exemptions from the application of the obligations in the POCL or AMLRs exist.

17. In respect of the supervision of lawyers, Cayman Islands Legal Practitioners Association (CILPA) has been established as a self-regulatory body under the Legal Associations (Miscellaneous Amendments) Law, 2018 which came into force on the 21st day of February 2019. It was subsequently assigned by Order of Cabinet as a supervisory authority for lawyers for AML/CFT purposes by virtue of sec. 4(9) of the Proceeds of Crime Law (2019 Revision) (POCL) on February 19, 2019. Consequently, Part XIIA of the AMLRs, dealing with DNFBPs, now also apply to CILPA.

18. Law firms that carry out TCSP activities are supervised by CIMA. In addition, CILPA supervises lawyers for activities that fall under items 14 (a) through 14(d)of Schedule 6 to the Proceeds of Crime Law (2020 Revision) that deals with activities falling within the definition of Relevant Financial Business. The SIBL has been amended to bring certain categories of the formerly Excluded Persons under the category of Registered Persons, which are now subject to full AML/CFT supervision by CIMA.

19. In sum, Cayman Islands has addressed most of the deficiencies pointed out in the MER related to R.1. It has conducted the ML risk assessment of legal entities and arrangements as well as other sectoral and thematic risk assessments, including a TF risk assessment. While the TF risk assessment considered foreign companies, the risk assessment of legal persons and arrangements excluded foreign companies. The total number of foreign companies is relatively small (about 5%) and approximately 1000 are entities regulated by CIMA. This limits Cayman Islands' identification and assessment of its ML risk but given the relative number of foreign companies and the assessments which have been conducted, this is considered a minor deficiency in the context of Recommendation 1 overall. Cayman Islands has started allocating resources on a risk-based approach. In 2019, additional financial allocations were made to address prioritised actions including needed human and IT resources. The amendments to the AMLRs have removed the List of Equivalent Jurisdictions that allowed for exceptions to the FATF Recommendations. CILPA has been designated as the supervisory body for attorneys to ensure compliance with AML/CFT obligations. Cayman Islands is re-rated as **Largely Compliant** with Recommendation 1.

3.1.2 Recommendation 19 (originally rated PC)

20. Cayman Islands was rated PC with R.19. The technical deficiency identified were: (1) no specific obligation for FIs to apply enhanced due diligence proportionate to the risks from countries which is called for by the FATF and (2) no provisions for applying countermeasures when called for by the FATF and independently of any call by the FATF.

21. In the action taken to address the deficiencies, Cayman Islands has amended Sec. 10 of The Anti-Money Laundering (Amendment)(No.2) Regulations 2019 by inserting Reg.27(g) requiring FIs to apply enhanced due diligence, proportionate to the risks, when this is requested by FATF.

22. Further, Sec. 6 of the Proceeds of Crime (Amendment) Law, 2019 repeals and substitutes Sec.201(3) of the POCL which requires application of countermeasures proportionate to the risk posed by that

jurisdiction. The counter measures can be applied at the recommendation of the FATF or the Anti-Money Laundering Steering Group of Cayman Islands (s. 201(3B)).

23. Cayman Islands is re-rated as **Compliant** with R.19.

3.1.3 Recommendation 22 (originally rated PC)

24. In its 4th MER, Cayman Islands was rated PC with R.22. The deficiencies noted were that: (1) Not all categories of DNFBPs, including organization of contribution for the creation, operation or management of companies, are covered under the POCL; (2) the activities conducted by real estate agents do not extend to property and the property developers were not under the remit of the AMLRs; (3) US dollar and Euro equivalent of the KYD 15,000 is a less stringent standard than that required by the Recommendations; (4) there was no requirement for the country to identify and assess the ML/TF risks as required by criterion 22.4 and (5) that there are some deficiencies which have been similarly identified for the FIs relating to reliance on Third Parties.

25. In the action taken to address the deficiency related to the monetary ceiling, Cayman Islands has amended Schedule 6 of the Proceeds of Crime Law (2020) to include therein the "organization of contributions for the creation, operation or management of companies" (paragraph 14(ba) and property developers (paragraph 14A); and to lower the monetary threshold in paragraph 17 which states that: "Dealing in precious metals or precious stones, when engaging in a cash transaction that is equivalent to fifteen thousand United States dollars or more." This addresses the deficiency identified in the MER. Cayman Islands' National AML/CFT Strategy 2019-2022 now provides for identifying and assessing the risks associated with development of new products and new business practices, including new delivery mechanisms, and the use of new and developing technologies for both new and pre-existing products.

26. The MER had also identified two key deficiencies in relation to Reliance on Third Parties (R.17): (1) there was no provision for obtaining immediately the necessary information concerning elements (a)-(c) of the CDD measures set out in R.10 and (2) there was no provision to the effect that the ultimate responsibility for CDD measures should remain with the FI relying on the third party. Cayman Islands has addressed these deficiencies by amending the AMLR 2019, regulation 25 (1). Further, regulation 25(3) has also been amended to provide that "the ultimate responsibility for compliance with the customer due diligence requirements is that of the person carrying out relevant financial business who relies on an introduction".

27. In sum, Cayman Islands has removed the deficiencies in R.22 identified in the MER. Cayman Islands is therefore re-rated as **Compliant** with R.22.

3.1.4 Recommendation 23 (originally rated PC)

28. In its 4th MER, Cayman Islands was rated PC with R. 23. The reasons for the PC rating were: (1) the activity of organisation of contributions for the creation, operation or management of companies was not subject the SAR filing requirement of s. 136 of POCL; (2) the deficiencies noted for FIs in Recommendations 19 and 21 applied equally to DNFBPs; (3) there were gaps in the scope of DNFBPs in relation to notaries and a category of business in the case of financial, legal and accounting services; and (4) the threshold applied to DPMS when they engage in a cash transaction with a customer was equal to or above KYD 15,000 does not concur with the USD/Euro 15,000 limit in the Methodology.

29. Cayman Islands has addressed the identified deficiencies by bringing the activity of organisation of contributions for the creation, operation or management of companies under Schedule 6 of the POCL

and thus extending the AML/CFT regime, including SAR filing requirement, to this activity. In relation to R.19 the MER pointed out that the regulations do not sufficiently address the requirement to apply EDD when called for by FATF; and that legislation or measures which address the requirements for countermeasures were absent. To address this, Cayman Islands has amended the AMLR Regulation 27 to apply EDD in relation to business relationships and transactions with persons, including financial institutions, from countries for which this is requested by the FATF. Further, Section 201(3) of the POCL allows Cabinet to designate a jurisdiction as one to which countermeasures should apply where this is recommended by the AMLSG or the FATF (Section 201 (3B).

30. The deficiency in relation to R.21 was that the offence of tipping off should apply regardless of whether the disclosure has resulted in an investigation. Section 139(1) (b) of the amended POCL now makes it an offence if a person makes a disclosure which is likely to prejudice any investigation which might be conducted following the disclosure (whether or not the investigation is conducted), thus addressing the identified deficiency.

31. To cover the gap in the scope of DNFBPs, Cayman Islands has amended Schedule 6 of the Proceeds of Crime Law (2020 Revisions) by inserting paragraph 14 A which states *"Financial, estate agency (including real estate agency or real estate brokering), legal and accounting services provided in the course of business relating to —*
(a) the sale, purchase or mortgage of land or interests in land on behalf of clients or customers.
(b) management of client money, securities or other assets;
(ba) organization of contributions for the creation, operation or management of companies;
(c) management of bank, savings or securities accounts; and
(d) the creation, operation or management of legal persons or arrangements, and buying and selling of business entities."

32. In respect of notaries, the MER had noted (page 224) that *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.*

33. Cayman Islands has thus removed the deficiency in respect of application of R.19 and R. 21, in addition to the deficiency related to monetary ceiling that applies to DPMS when they engage in a cash transaction with a customer. Recommendation 23 is therefore re-rated as **Compliant**.

3.1.5 Recommendation 24 (originally rated PC)

34. Cayman Islands was rated PC with R.24. The grounds for PC rating were as follows: (1) Information on the process for obtaining beneficial ownership information is not publicly available; (2) the authorities have not conducted a specific assessment of the ML/TF risks associated with legal persons created in Cayman Islands; (3) information on exempted companies and LLCs is only available to competent authorities or in exceptional circumstances; (4) there is no requirement for the register to contain information in respect of the nature of associated voting rights in respect of companies; (5) the time frame for updating information relating to companies and LLCs was not timely; (6) absence of one of the mechanisms prescribed in R. 24 to obtain BO information; (7) the fine of KYD 25,000 for breaches was not proportionate; and (8) 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.

35. In relation to the first deficiency, information on the legislative process for obtaining beneficial ownership information is now publicly available on the website of the Registrar of Companies. Also available there is the *Summary Guide for Companies, Limited Liability Companies and Limited Liability Partnerships – Providing Beneficial Ownership Information to the Centralised Platform*. This provides

guidance on the legislative framework regarding recording and updating beneficial ownership information on the Centralised Platform in respect of companies including foundation, exempt, ordinary, special economic zone, segregated portfolio and limited liability companies, and limited liability partnerships. Additionally, the guidance lists the competent authorities that may obtain beneficial ownership information pursuant to Section 262 of the Companies Law (2020 Revision). Regulation 7C of the Beneficial Ownership (Companies) Regulations requires the BO information to be updated monthly or if there has been no change for a notice confirming this to be sent to the competent authority. Similar provision can be found in section 83 of the Limited Liability Companies Law. In respect of LLPs, the Limited Liability Partnership Law that creates LLPs is not yet operational and no LLPs are allowed in the jurisdiction. The amendments to the Limited Liability Partnership Law which includes a new Part 8 dealing with BO registers had not yet commenced at the time of the assessment. Section 245 of the Companies Law allows for exemption from the BO Registers provision in respect of entities listed on a stock exchange or registered or licensed under another regulatory law, where the information is available to CIMA on request. Paragraph 2 of the Guide reflects this by providing that companies subject to alternative regulatory oversight are exempt from the requirement to maintain a beneficial ownership register and fall outside the scope of the guide.

36. In respect of the second identified deficiency i.e., risk assessment of the legal persons, the authorities completed a risk assessment for legal persons and arrangements in March 2020, which is limited to the risks of ML. The risk assessment included information provided by the private sector. The risks associated with FT were analysed in Cayman Islands National Terrorism Financing Risk Assessment 2020. Taken together, these assessments have identified the risks of ML and TF for all types of legal persons created in Cayman Islands.

37. In respect of the third identified deficiency, the new section 34A of the Limited Liability Companies Law and section 55A of the Companies Law respectively now address the deficiency by requiring the LLCs and exempted companies to provide the list of managers and directors, which will be maintained by the Registrar of Companies and be publicly available for inspection. Section 9(4) of the Limited Liability Partnership Law also requires the register of partners including managing partners, kept under section 9(3), to be publicly available for inspection. Access to basic information on companies is no longer available via CORIS as was the case during the MER but is now publicly available[2] through the Registrar of Companies website (www.ciregistry.gov.ky). Once registered, a user, who can be any member of the public, is able to search the Registry and view the results on payment of the prescribed fee. The basic information is provided in the form of a Detailed Search Certificate. A list of directors can also be viewed separately through the Director Details Report but cannot be downloaded.

38. Concerning the fourth identified deficiency, Section 40(1)(iv) of the Companies Law now requires the register to state whether any share recorded carries any voting rights. This would also apply to foundation companies pursuant to section 3(2) and paragraph 1, Part 2 of Schedule 1 of the Foundation Companies Law, which provides that the Companies Law, including section 40(1)(iv), applies to foundation companies.

39. Section 61 of the Limited Liability Companies Law requires a register of members to be kept but does not require that the voting rights of the members be recorded in the register. Pursuant to section 19 of the Limited Liability Companies Law the voting rights (the LLC interest) of members is provided for in the LLC Agreement. However, there is no explicit requirement for the keeping of the LLC Agreement.

[2] Additionally, section 26 was further amended to include a requirement for the Registrar to make the Companies Register available for inspection by the public. However, as this amendment only came into force on October 1, 2020 (Companies (Amendment) (No. 2) Law, 2020 (Commencement) (No. 2) Order, 2020).

40. To address the fifth identified deficiency, Cayman Islands has reduced the time for updating information for Companies from 60 days to within 30 days. All other basic information must be updated within 15or 30 days save that with respect to the register of members section 40 of the Companies Law does not specify a time for updating information. Section 46 provides a mechanism for improper entry or omissions of entry in the register by way of a court application for rectification. However, this may not result in the information being updated on a timely basis. In respect of the sixth deficiency mentioned above, the FATF standards require a jurisdiction to have only one or more (and not all three) mechanisms for obtaining the beneficial ownership information. Cayman Islands has two of the three mechanisms in place. Cayman Islands has also amended the Companies Law to make the fine more dissuasive by increasing it KYD100,000 on second or subsequent offence and striking off the register on third offence, which addresses the seventh deficiency mentioned above. In respect of the eighth deficiency, in addition to FRA, the ODPP and CIMA, the RCIPS, CBC and ACC all have policies which document how they monitor and assess the quality of information received from other countries. The DCI's policy along with its case management system allows for information received to be reviewed by a manager to determine whether the quality of the information is sufficient for it to act on. This process ensures that it can monitor information received from foreign counterparts.

41. In relation to the sixth deficiency Cayman Islands utilises the mechanisms under 24.6 (a), (b) and (c)(i) and (ii) as explained in the MER. The country has not opted to utilise the mechanisms under 24.6(c)(iii) and (iv). Cayman Islands has adopted a system under Part XVIIA of the Companies Law which requires, under section 252, that companies maintain Beneficial Ownership Registers. Section 254 sets out the particulars which must be contained in the register and section 255 provides for the duty to keep the registers up to date which must be done within one month of any change. On the other hand, while Part XVIIA does not apply to some legal entities (which are specified in section 245) including companies listed on a stock exchange, these entities are required to have a registered office (under section 50) which is provided by a TCSP. TCSPs pursuant to Regulation 12 of the AMLRs are required to identify the beneficial owners of the legal entity and under regulation 12(5), that information must be accurate, up to date and updated on a timely basis. The Registrar can request information from a TCSP under section 279A of the Companies Law, 2020 (as inserted by the Companies (Amendment) Law, 2020. The TCSP must provide the information within the time period specified or face a fine. Together the provisions under Part XVIIA of the Companies Law and Regulation 12 of the AMLRs ensure that BO information is captured for all companies.

42. Regarding the seventh deficiency to make more dissuasive the sanction for non-compliance with the obligation to establish or maintain beneficial ownership register, section 274 of the Companies Law was amended to make the fine for a first-time offence as KYD25,000, and KYD100,000 for second or subsequent offence. Additionally, for any third offence the Court may strike the company off the register. While the escalating sanctions may be dissuasive, the fine for a first-time offence is not sufficiently dissuasive.

43. In respect of the eight deficiency the FRA, the ODPP and CIMA, the RCIPS, CBC, and ACC and DCI all have policies which document how they monitor and assess the quality of information received from other countries. The RCIPS utilises its CRIMSON database and Management Information Spreadsheet (MIS data) for recording information in relation to outgoing requests. This allows it to take a follow-up if no response is received within a month of the request. Feedback is given to the requested country within 14 days of receipt on information received pursuant to a request and the CRIMSON database is updated to reflect this. The CBC Intelligence Unit records intelligence information which it receives on its secure data storage system. The intelligence received is evaluated for its validity and reliability. Feedback is then provided on the quality of the information. The ACC requests and receives information relating to corruption offences. It also utilises a secure data system to store, assess, review, and

evaluate all information which it receives. The DCI's policy along with its case management system allows for information received to be reviewed by a manager to determine whether the quality of the information is sufficient for it to act on. This process ensures that it can monitor information received from foreign counterparts. Cayman Islands Bureau of Financial Investigations of the RCIPS is responsible for the investigation of tax crimes. Its protocol states that if there is not a response to an outgoing request received within 7 days, both a reminder and an alternative way to receive the information is to be utilised. Also, CIBFI will provide feedback to the requested party on the usefulness of the information provided within 14 days of the response.

44. In sum, Cayman Islands has taken action to address the 8 deficiencies identified in the MER; Section 61 of the Limited Liability Companies Law requires a register of members to be kept but there is no explicit requirement for the voting rights to be recorded; currently there are no LLPs in Cayman Islands as the law is not yet operational. Based on the above, the rating for R. 24 is **Largely Compliant.**

3.1.6 Recommendation 25 (Originally rated as PC)

45. Cayman Islands was rated PC on Recommendation 25 for the reasons that: (1) the trustees are not required 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; (2) there is no requirement for trustee to maintain information relating to the settlor of the trust and for the information to be adequate, and accurate; (3) on-going due diligence 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; (4) there is no law which obliges trustees to disclose their status to FIs and DNFBPs forming a business relationship or conducting a transaction; (5) the requirement to obtain identification and verification information was not contained in specific legislation but extended to legal arrangements and relevant parties related to a trust structure through the AMLRs; (6) the Customs and DCI did not have powers to facilitate access to basic information and exchange information on trust structures by foreign counterparts; and (7) there are no sanctions for failing to grant other competent authorities' access to information referred to in criterion 25.1.

46. To address the deficiencies, Section 6A of the amended Trusts Law (2019) now requires a trustee to maintain and keep up to date and accurate records of the identity and particulars of the settlor, contributor, beneficiary, protector, enforcer of the trust, service provider (including any investment adviser, manager, accountant or tax adviser) and any person exercising ultimate effective control of the trust. Under Regulation 2 of the Trusts (Transparency) Regulations, 2019 a trustee is required to keep and maintain current, accurate and adequate record of the name and address of the trustee, settlor, any contributor to the trust, any named beneficiary or class of beneficiaries, protector and enforcer of the trust. Amendments to regulation 3(2) of the Private Trust Companies Regulations now extend the requirement for private trust companies to keep adequate, accurate and up-to-date information, at the registered office, to include the name and address of the settlor, protector and any enforcer of the trust, in addition to the trustee, beneficiaries and any contributor to the trust. The requirement for keeping accurate and up to date information under the amended Regulation 12 in the AMLR also covers a trustee. Despite this, ongoing due diligence aimed at updating private trusts information is still only conducted on a risk sensitive basis and no information was provided on the frequency of a review of the CDD information or any timeframe in which notification of any changes must be given; in addition, the country has not addressed the deficiency related to filing annual declarations to update private trust companies' information as identified in the MER.

47. The Trust law requires a trustee to disclose his status to the FI or the DNFBP with which he forms a business relationship. Section 6A(3) of the Trusts Law sets out that the trustee must take reasonable steps to inform the person conducting a relevant financial business (FIs and DNFBPs) of his/her status

before or at the time a relationship is formed or a transaction is entered into. There are no steps prescribed in legislation, but the country indicates that in practice these may differ depending on the circumstances of each case and the type of FI and DNFBP and type of transaction the trustee undertakes and may include verbal communications with the relevant financial business indicating that it is acting as a trustee as well as the indication in all account documentation that the signatory is acting as the trustee of a particular trust and name the trust. Section 6A(3) of the Trusts Law does not provide for reasonable excuses for a trustee not to disclose its status. For trustees not regulated by the Banks and Trust Companies Law, there is no specific sanctions applicable for the failure to comply with section 6A of the Trusts Law. Section 74B of the amended Trust law provides that competent authorities may request information from a trustee or a person exercising ultimate effective control of a trust. The sanction for failing to provide competent authorities with timely access to information regarding the trust is a fine of KYD50,000 and KYD10,000 for each day that the failure to provide information continues up to a maximum of KYD50,000. These sanctions are proportionate and dissuasive. The Trusts Law (and amendments thereto) as well as the regulations apply to all trusts and trustees of trusts governed (constituted or created) by Cayman Islands Law pursuant to section 110 of the Trust Law.

48. The CBC and DCI are among competent authorities with the responsibility of monitoring compliance with money laundering regulations. As such, they are among the competent authorities which under section 74B of the Trusts Law may request a person to provide information in relation to a trust.

49. Regulation 55Q of the Anti-Money Laundering Regulations allows disclosures to be made in discharging any function or exercising any power under the Law, which gives the DCI the ability to exchange information with a foreign counterpart including information on trust structures, obtained pursuant to the Trusts Law. Pursuant to Regulation 9(3) of the Customs and Border Control (Money Declaration and Disclosure) Regulations 2019, the CBC, where necessary, may disclose information in its possession to an overseas customs authority. The combined effect of these provisions is that the CBC and DCI now have the powers to obtain access to basic information and exchange information on trust structures with foreign counterparts.

50. To sum up, Cayman Islands has addressed most the deficiencies identified in the MER, but still needs to set out a mechanism to satisfy the requirement of keeping private trusts information as up to date as possible and update it on a timely basis as required in criterion 25.2 and ensure that trustees breaching the requirement of disclosing their status to financial institutions and DNFBPs are subject to sanctions as required in criterion 25.7. Recommendation 25 is re-rated as **Largely Compliant**.

3.1.7 Recommendation 26 (originally rated PC)

51. In its 4th MER, Cayman Islands was rated PC with R. 26. The technical deficiencies were: (1) CIMA's regulation and supervision does not extend to all entities performing securities and investment business activities, namely excluded persons; (2) 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; and (3) the frequency of onsite inspections is not based on ML/TF risk, but the overall prudential risk of licensees.

52. To address the deficiency pertaining to excluded persons, Sec. 5 of the Securities Investment Business (Amendment) Law, 2019 has transferred some of the categories of Excluded Persons in the former Schedule 4 to a new Schedule 2A titled Non-registrable persons and keeping the other categories under the amended Schedule 4 which is now titled "Persons required to be registered under section 5 (4)" in place of the earlier title of "Excluded Persons". It is noted that SIBL Registered Persons and Licensees

are both subject to the AML/CFT framework of Cayman Islands. Under the Securities Investment Business Law, the registration and licensing supervisory streams differ solely in relation to prudential requirements.

53. Schedule 2A includes the following categories:

(a) A person participating in a joint enterprise (and where that person is a company any other company which is part of the same group of companies as that person) with the person carrying on the securities investment business where the activities constituting such securities investment business are to be carried on for the purposes of or in connection with that joint enterprise.

(b) The following persons —

(i) the Exchange;

(ii) the Authority; or

(iii) the Government of the Islands or any public authority created by the Government.

(c) A person carrying on securities investment business only in the course of acting in any of the following capacities: (i) director; (ii) partner; (iii) manager of a limited liability company; (iv) liquidator (including a provisional liquidator); (v) trustee in bankruptcy; (vi) receiver of an estate or company; (vii) executor or administrator of an estate; or (viii) a trustee acting together with co-trustees in their capacity as such, or acting for a beneficiary under the trust,

provided that in each case that person is not separately remunerated for any of the activities which constitute the carrying on of such securities investment business otherwise than as part of any remuneration such person receives for acting in that capacity and either —

(A) does not hold themselves out as carrying on securities investment business other than as a necessary or incidental part of performing functions in that capacity, or

(B) is acting on behalf of a company, partnership or trust that is otherwise licensed or exempted from licensing under this Law.

(d) The Conduct of securities investment business by a single-family office.

54. For category (a) the activity is conducted "between members of one specific group", there are "no third parties or customer funds involved", and the activity is not conducted on behalf of a customer. For category (b) the activities include the Government, Cayman Island Stock Exchange, and any public authority created by the Government. While the Stock Exchange is a public authority, it is subject to regulation and supervision by the Stock Exchange Authority. The function of the stock exchange is to operate a platform that allows market participants to trade. The CSX itself does not carry out securities trading activities or any other activities listed in the definition of Financial Institution. Only broker members have access to the trading facilities of the stock exchange. Broker members must be licensed by CIMA, which licensing also includes AML/CFT supervision. A person included in category (c) does not provide services to customers and carries on securities investment business as a necessary or incidental part of his functions or for a company, partnership or trust that is not required to hold a license according to the SIBL. Single Family Offices (Category (d)) [3]are listed as Relevant Financial Business in Schedule 6 of the Proceeds of Crime Law (since June 17, 2019). As such, Single Family Offices must comply with all of the AML/CFT requirements in the Anti-Money Laundering Regulations and all the powers granted to supervisors (including CIMA) in relation to the Anti-Money Laundering Regulations can be exercised in the AML/CFT supervision of single-family offices.

[3] Singe family offices were subsequently removed from the "non-registrable list" by an amendment Order, was gazetted on 20 August 2020. This information was not subject to assessment in this opportunity as it was provided outside the period to receive information to be considered in this re-rating process.

55. According to the provisions of Schedule 2A of the SIBL, non-registrable persons do not provide securities products and services as a business and, by the same token, do not carry out financial activities or operations for or on behalf of customers; hence, they do not fall within the scope of the FATF standards.

56. Per the Cooperative Societies (Amendment Law, 2019, Sec. 4A has been added, and Sec 5 and 7 amended to address the fit and proper requirements for directors and senior officers of credit unions. Sec. 38(A) addresses ongoing approvals. Per the Building Societies (Amendment) Law, 2109, Section 3, 4 and 13A have been amended to address the fit and proper requirements for directors and senior officers of Building Societies, which includes ongoing approvals. Section 15A addresses fit and proper requirements and approval by CIMA prior to issuance or transfer of shares in a building society representing 10% or more of the total voting rights. Sec. 5 (4A) of the SIBL as amended requires that shareholders, directors, and senior officers are fit and proper persons at registration. Section 5(4C) of SIBL requires all entities to notify CIMA within 21 days of any material change in the information filed by the registered person in its application or annual declaration.

57. There is requirement for capturing the "Beneficial owners" information and other details in the application for registration under the Securities Investment Business Registration and Deregistration Regulations, 2019 (Regulations).

58. In relation to the risk- based supervision of ML/TF risks CIMA created a specific AML/CFT Division and prepared a Strategy and Transition Plan (2019-2021), which will take a risk-based approach in determining the frequency and intensity of on-site and off-site AML/CFT supervision. CIMA has invested in a risk assessment software tool (STRIX) which is designed to producing risk ratings. CIMA's supervisory attention matrix outlines the frequency with which supervisory activities (including onsite inspections) will take place, based on the risk rating methodology. CIMA has noted that ML/TF risk factors were considered in planning the 2020 AML/CFT on-site inspections (175 in 2019 compared to 53 in 2018). CIMA's Strategy Document stipulates that it will also take into account the ML/TF risks identified by the country through national risk assessments and sectoral risk assessments. The Risk Assessment tool which is now in place within CIMA has been designed to conduct institutional ML/TF risk assessments producing risk ratings, as well as to highlight inherent risk categories with higher ML/TF risks in the sector and highlight institutions with higher ML/TF risks within the sector for close monitoring.

59. The Annex VI: Action Plan Updates, Consequential Risk Assessments Actions, March 2020 document indicates that National Risk Assessments were prepared for focused areas during 2019 and 2020, and sectoral risk assessments were conducted. Deliverables were also provided for the use of these assessments in prioritizing onsite inspections. CIMA's supervisory attention matrix outlines the frequency with which CIMA's supervisory activities (including onsite inspections) will take place, based on the risk rating methodology.

60. In conclusion, Cayman Islands has addressed the deficiencies in the MER. Cayman Islands is re-rated as **Compliant** with R.26.

3.1.8 Recommendation 28 (originally rated PC)

61. Cayman Islands was rated PC for Recommendation 28 as (1) not all categories of DNFBPs were covered under the AML/CFT regime; (2) no supervisory authority had been identified for attorneys who are not TCSPs; (3) there were concerns about the enforceability of the guidance notes issued by the competent authorities; (4) the supervision of DNFBPs was not being performed on a risk sensitive

basis; and (5) the jurisdiction had not fully assessed the adequacy of the AML/CFT internal controls, policies and procedures of all categories of DNFBPs.

62. Cayman Islands has amended Schedule 6 of the POCL to include the identified categories of DNFBPs under the AML/CFT regime; established the CILPA as a self- regulatory body for lawyers under the amended Legal Associations (Miscellaneous Amendments) Law, 2018, which was assigned by the Cabinet in February 2019 the responsibility of monitoring compliance with money laundering regulations[4] under section 4 (9) of the POCL; and has established a regime of issuing guidance and conducting supervision of the DNFBPs.

63. The AML/CFT Inspection Manual of DCI (supervisor of real estate agents, property developers and brokers and dealers in precious metals and stones) outlines factors such as NRA Results, structural factors (size, ownership structure) inherent risk (transactions, delivery channels, geographic locations etc) that are taken into account when assessing institutions to be supervised on a risk-based approach.

64. The Supervision and Enforcement Strategy (August 2019) of CARA (supervisor of firms of attorneys at law) has a risk-based approach and the risk methodology for supervision includes factors such as: services offered, geographical locations, transactions (cash and virtual currency, unfamiliar, complex transaction) delivery channels and clients (PEPs) when assessing institutions risk profiles.

65. The supervision handbook (August 2019) of CIIPA – which supervises firms of accountants- requires a risk-based supervision. The risk factors the CIIPA takes into account when they are assessing risk profiles for their supervised institutions are results from the NRA, annual reports, guidelines and risk assessments issued by overseas professional accountancy institutes, adverse media and sector guidance and alerts etc. While the Guidance Notes issued by Supervisory Authorities are not by themselves enforceable, Regulation 56(2) the AMLRs provides that, in determining whether a person has complied with any of the requirements of these Regulations a court - (a) shall take into account any relevant supervisory or regulatory guidance which applies to that person; and (b) may take into account any relevant guidance issued by a body in the islands that regulates … that person. Similarly, Reg 56(4) provides that in determining whether to exercise any of its enforcement powers for breach of these regulations, the Supervisory Authority shall take into account - (a) these Regulations; and (b) any applicable supervisory or regulatory guidance.

66. All the above bodies have risk-categorised their regulated entities into High, Medium, and Low, which forms the basis for onsite inspections. The DNFBP supervisors viz., CIMA, DCI, CIIPA and CARA have their supervisory manuals that provide for assessing the adequacy of AML/CFT internal controls, policies and procedures of their regulated entities.

67. TCSPs are supervised by CIMA under the Companies Management Law and the Bank and Trust Companies Law.

68. To sum up, Cayman Islands has addressed the identified deficiencies in the MER. Recommendation 28 is re-rated as **Compliant.**

[4] The Anti-Money Laundering Regulations cover both anti money laundering and counter terrorist financing (as well as Targeted Financial Sanctions). The definition of "money laundering" in section 2 of these Regulations includes a reference to the terrorist financing provisions of the Terrorism Law.

3.1.9 Recommendation 29 (originally rated PC)

69. Cayman Islands was rated PC on Recommendation 29 due mainly to (1) the FRA's limited access to appropriate information, (2) limitations on its disclosures of information, (3) inadequate protection of sensitive information, and (4) the absence of complete operational independence of the FRA for disclosures.

70. To address these deficiencies, Section 4(2) (aa) of the POCL has been amended to make the FRA eligible to receive such information as may be prescribed to be filed by national legislation, such as cash transaction reports, threshold-based declarations or disclosures and wire transfers reports. MOUs with the CBC, RCIPS and DCI, allow for the sharing of information with the FRA. A Financial Crime Intelligence Pool has been established through which the ACC, CBC and FCIU share agreed information with the FRA. The FRA is now able to access databases to obtain director and share capital information and information on property sale value. Sections 26A of the Companies Law and 4A of the Limited Liability Companies Law provide for the FRA to have access to information from the Registrar of Companies upon written request. In respect of LLPs, the similar provision in section 44A of the Limited Liability Partnership Law has not yet commenced, however, the provisions of section 4(2)(c) of POCL would also enable the FRA to obtain information regarding LLPs from the Registrar of Companies and/or FSPs holding the relevant information. By virtue of sections 262 of the Companies Law and 88 of the Limited Liability Companies Law FRA is also able to get access to BO information. Section 4(2)(ca) of the POCL authorises the FRA to disseminate, spontaneously or upon request, information and the results of its analysis to relevant competent authorities, any public body to whom the Cabinet has assigned the responsibility of monitoring compliance with money laundering regulations and LEAs. Section 138(1)(b) allows disclosures to the same parties as well as the Department of International Tax Cooperation where there is suspicion of criminal conduct. In addition, there is the flexibility for the AMLSG to designate any other institutions or persons in the Islands to receive disclosures from the FRA. External access to the FRA's premises and IT system is secure. Since Cayman Islands onsite, access to the Central filing room has not changed. However, the FRA is moving away from physical files to keeping electronic files on its secure network which is fire wall protected. The system allows for monitoring by the capture of information on who creates, accesses or modifies a file. While the FRA is able to monitor access to information, there is still a deficiency as there is no limitation or restrictions on which persons, internally in the FRA can access information.[5].

71. The FRA powers, functions and duties are provided for in section 4 of POCL and include the power to analyse, request and/or forward or disseminate specific information, receive reports, and enter any agreement or arrangement with overseas FIUs. These powers are exercised at its discretion without any influence or interference from any person or body. As noted in the MER section 138(1) of the POCL, FRA may make a disclosure to any competent authority (including CIMA and law enforcement authorities), the tax authority and any other person designated by the Steering Group. Legislative changes have strengthened the operational independence of the FRA. By amendment to section 138 of the Proceeds of Crime Law the FRA no longer requires the Attorney General's consent for disclosures to overseas FIUs. The restriction imposed by Section 4(2)(e) of the Proceeds of Crime Law, which required the FRA to take consent of AMLSG to enter into agreements with overseas FIUs, has also been removed by the new section 4(2A), which now only requires that AMLSG be informed by the FRA that an agreement has been entered into with an overseas FIU.

[5] In November 2020, the authorities informed that a new system was put in place to track who creates, accesses or modifies a file, as well restricting user access by password protecting any files or relevant documents as deemed necessary. This information was not subject to assessment in this opportunity as it was provided outside the period to receive information to be considered in this re-rating process.

72. In light of above, Cayman Islands is re-rated as **Largely Compliant** with R.29.

3.1.10 Recommendation 32 (originally rated PC)

73. Cayman Islands was rated PC with R. 32. The technical deficiencies identified were: (1) a threshold above that recommended by the FATF for declarations; (2) declaration system was not applicable to transporters doing cash shipments by third parties and persons exempted (3) no mandatory reporting of currency and BNIs about to be exported; (4) no requirement for cruise ship passengers entering the country to make declarations or disclosures or a declaration to be made for exporters of cash (5) no provision to restrain cash or BNIs on the sole basis of a false declaration; (6) no administrative fines and the sanctions for making false declarations are to some extent proportionate or dissuasive (7) limitations on the information that may be disclosed to foreign counterparts (8) no mechanism to ascertain the source of funds for importation of bulk cash; and (9) no measures to ensure that information is adequately safeguarded and used in the appropriate manner.

74. To address deficiencies, Regulations 3(1) and 4 of the Customs and Border Control (Money Declarations and Disclosures) Regulations, 2019, have revised the threshold now to KYD10,000 (approximately USD $12,1950[6]), which is within the limit required by the standards. The 2019 Regulations no longer contain the exemption of transporters doing cash shipments by third parties, nor any other legal person or category of legal persons exempted by Order made by the Governor in Cabinet. The declaration and disclosure system utilised by Cayman Islands now covers all physical cross-border transportation of currency or BNIs.

75. Cayman Islands utilises a declaration system for imports and a disclosure system for exports of money pursuant to Regulations 3 and 4 of the Customs (Money Declarations and Disclosures) Regulations 2019, respectively. The transport or export of cash or BNIs (KYD10,000.00 or more equivalent) out of the country is required to be disclosed upon the verbal or written inquiry by an officer (Regulation 4 of the Customs and Border Control (Money Declaration and Disclosures, 2019). It is a criminal offence for a person to make a false declaration or to supply false particulars (Regulation 3 (3) of the Customs and Border Control (Money Declaration and Disclosures, 2019). Regulation 3 of the Customs and Border Control (Money Declarations and Disclosures) Regulations, 2019 relating to the obligation to make a declaration when transporting cash or BNIs of KYD10,000 or more into Cayman Islands applies to all persons. There is no exemption in the law for persons entering by cruise ships. For outbound cash or BNIs Cayman Islands utilises a disclosure system. The transport or export of cash or BNIs (KYD10,000.00 or more equivalent) out of the country is required to be disclosed upon the verbal or written inquiry by an officer (Regulation 4 of the Customs and Border Control (Money Declaration and Disclosures, 2019). Regulation 3(3) makes it an offence for a person to supply false information.

76. Regulation 6(2) of the Customs and Border Control (Money Declarations and Disclosures) Regulations provides for the power to restrain cash or BNIs on the sole basis of a false declaration or disclosure having been made by a person, which includes corporate bodies, in order to ascertain whether evidence of money laundering or terrorist financing may be found. The definition of false declaration includes failing to make a declaration and the definition of false disclosure includes failing to make a disclosure in response to an inquiry by an officer. The criminal and administrative sanctions for making false declarations or disclosures have been increased. Under Regulation 3(3) of the Customs (Money Declarations and Disclosures) Regulations 2019 a person committing the offence of making a false declaration if convicted is liable to a fine of ten thousand dollars or to imprisonment for one year, or to both; and to forfeiture of the money up to the value of the amount actually transported. This also applies to

[6]An exchange rate of 1 KYD = 1.21951 USD was used

false disclosures under Regulation 4. Alternatively, Regulation 5 provides that in respect of offences under regulations 3 and 4 (making false declarations or false disclosures) an administrative penalty may be imposed under section 71A of the Customs and Border Control Law of a fine of up to the value of the difference between the amount declared and the total amount being carried. However, section 71A(3) of the Customs and Border Control Law makes it clear that the imposition of an administrative penalty does not affect any liability to forfeiture under the Law. These criminal and administrative penalties are sufficiently proportionate and dissuasive. Information on declarations or disclosures which exceed the threshold, false declarations or disclosures and declarations or disclosures where there is a suspicion of ML/TF must according to Regulation 7 of the Customs and Border Control (Money Declarations and Disclosures) Regulations, 2019 be kept for at least five years. By Regulation 9(3) of the Customs and Border Control (Money Declaration and Disclosure) Regulations, 2019, information in the possession of the Customs and Border Control Service may be disclosed to foreign counterparts subject to a Memorandum of Understanding being in place (achieved in Cayman Islands through the multilateral MOU via the World Customs Organization). Information may be shared with foreign countries directly and indirectly and pursuant to mutual legal assistance requests.

77. While the Customs (Money Declarations and Disclosures) Regulations 2019 do not specifically provide a mechanism to ascertain source of funds being imported, under Regulation 6(1) an officer may, on the basis of suspicion or randomly, question any person entering or leaving Cayman Islands with a view to ensure compliance with those Regulations. Additionally, section 9(a)(iii) of the Customs and Border Control Law, 2018, allows an officer to require a traveller to provide any information in relation to the movement of goods, which is defined in section 2 to include "every moveable thing capable of being owned". The definition of goods is wide enough to include cash and BNIs.

78. The confidentiality and safeguarding of information are ensured by Regulation 9 of the Customs and Border Control (Money Declaration and Disclosure) Regulations, 2019 which makes it unlawful to divulge or disclose information obtained except as specified therein. Regulation 9 also outlines the circumstances in which divulgement can be made.

79. Cayman Islands utilises a declaration system for imports and a disclosure system for exports of money pursuant to Regulations 3 and 4 of the Customs (Money Declarations and Disclosures) Regulations 2019, respectively. The declaration and disclosure systems utilised by Cayman Islands now covers all physical cross-border transportation of currency or BNIs, without exemption. Pursuant to Regulations 3(1) and 4 of these Regulations, the threshold is now KYD10,000, which is within the limit required by the FATF standards. For outbound cash or BNIs, under the disclosure system travellers are not required to make an upfront oral or written declaration but must give a truthful answer upon request. The Regulations provide for proportionate and dissuasive criminal sanctions under Regulation 3(3) for making a false declaration by way of a fine of $10,000 or imprisonment and forfeiture of the money. This also applies to false disclosures under Regulation 4. In lieu of the criminal sanctions administrative penalties may be imposed under section 71A of the Customs and Border Control Law, but this does not affect any liability to forfeiture. There is no specific mechanism to ascertain source of funds being imported, but Regulation 6(1) empowers an officer to, on the basis of suspicion or randomly, question any person entering or leaving Cayman Islands with a view to ensure compliance with those Regulations. Regulation 6 also provides for the power to restrain cash or BNIs on the sole basis of a false declaration having been made in order to ascertain whether evidence of money laundering or terrorist financing may be found. Additionally, section 9(a)(iii) of the Customs and Border Control Law, 2018, allows an officer to require a traveller to provide any information in relation to the movement of goods, which is defined in section 2 to include "every moveable thing capable of being owned". This definition of goods is wide enough to include cash and BNIs. The confidentiality and safeguarding of information are ensured by Regulation 9 which makes it unlawful to divulge or disclose information obtained except

as specified therein. Information on declarations or disclosures must be kept for 5 years and this information may be shared with foreign counterparts.

80. On the basis of the action taken, Cayman Islands is re-rated as **Compliant** with R.32.

3.1.11 Recommendation 34 (originally rated PC)

81. Cayman Islands was rated PC with R.34. The technical deficiencies identified were (1) engagement with NPOs and DNFBPs (not included TCSPs) was in early stages, and (2) limited feedback on the quality of SARs.

82. Engagement with DNFBP sector has increased. Guidance has now been issued for dealers in precious metals and stones, property developers and real estate agents by DCI; for the accountancy sector by Cayman Islands Institute of Professional Accountants (CIIPA), for the legal profession sector by Cayman Attorneys Regulation Authority (CARA), for the NPO sector by the Registrar of Non-Profit Organisations as well as by FRA. These documents cover a range of matters relating to key findings from the sectoral and thematic risk assessments[7], AML/CFT obligations including risk assessments, counter proliferation financing, targeted financial sanctions, preparing and submitting high quality SARs, CDD, detecting suspicious activity and making suspicious activity reports, record keeping and training.

83. There has been an increased outreach and engagement on the national risk assessments and other sectoral assessments, AML/CFT obligations[8], for example the DCI commenced one-on-one information sessions for compliance officers in May 2019 and conducted 5 outreach sessions in May and August 2019 and January 2020. Cayman Islands Legal Practitioners Association (CILPA) has conducted eight outreach sessions, appeared on radio shows and in print media. CIIPA has held 13 one-on-one sessions with accounting services provider (ASP) firms and in February 2020 started engaging with firms that have not yet been inspected to review their risk assessments and explain expectations relating to the implementation of the sectorial risk assessments conducted in 2019/2020. Since January 2018, the Registrar of NPOs has conducted in excess of 81 outreach sessions for NPOs comprised of individual sessions, seminars, workshops, radio and television interviews and press releases.

84. Chapter 11 of the FRA Standard Operating Procedures details how guidance and feedback on SARs will be provided to reporting entities, including a feedback form in Appendix 8. In keeping with this, the FRA issued guidelines in February 2020 on how to submit quality SARs. At the end of January 2020, the FRA also formally implemented a feedback form which will be given to reporting entities on the quality and usefulness of SARs.

85. The FRA has increased its outreach and awareness in respect of SAR filing with financial institutions, DNFBPs, competent authorities and government departments, having conducted sixteen (16) outreach events between February 2018 – February 2020. It also engaged in 18 meetings between February 2019 – March 2020 with individual MLROs to discuss SARs filed by them.

86. In sum, there has been increased outreach and engagement on AML/CFT obligations, and Guidance has now been issued by the respective DNFBP supervisors covering a range of matters relating to AML/CFT obligations. Additionally, FRA has implemented a feedback form on the quality and use-

[7] In June 2020 CIMA also issued a circular on the Key Findings from the Legal Persons and Arrangements Risk Assessment and its Thematic Review.

[8] The AMLU has recently hosted two webinars, on 5th June 2020 on Risk Assessments and on 3rd July 2020 on ML and Typologies.

fulness of SARs and issued guidelines on how to submit quality SARs. The FRA has had more widespread outreach and awareness in respect of SAR filing with financial institutions, DNFBPs, competent authorities and government departments. It also engaged in meetings with individual MLROs to discuss SARs filed by them. On this basis, Cayman Islands is re-rated as **Compliant** with R.34.

3.1.12 Recommendation 35 (originally rated PC)

87. Cayman Islands was rated PC with R.35 primarily on the ground that (1) sanctions do not apply to all persons categorised as DNFBPs by the Standards. The MER also mentioned that (2) the sanctions that apply to summary convictions under R.6 were not proportionate, dissuasive, and persuasive.

88. Schedule 6 of the POCL was amended to expand the list of Relevant Financial Business that are subject to AML/CFT regime; and now includes property developers, property investors, DPMS when engaging in a cash transaction that is equivalent to fifteen thousand United States dollars or more; and Financial estate agency (including real estate agency or real estate brokering), legal and accounting services provided in the course of business relating to organization of contributions for the creation, operation or management of companies. The activities of TCSPs are primarily covered under the Companies Management Law.

89. In relation to the point that the sanctions that apply to summary convictions under R.6 were not proportionate, dissuasive and persuasive, Cayman Islands stated that section 85 of the CPC allows the prosecution to elect to have the matter heard before the Grand Court where penalties are higher and this provision may be utilised where the prosecution seeks higher sanctions than those available on summary conviction, to ensure that they are proportionate, dissuasive and persuasive.

90. To sum up, Cayman Islands has amended Schedule 6 of the POCL to cover all the categories of DNFBPs. Cayman Islands has noted that the prosecution may seek to have criminal matters heard before the Grand Court rather than tried summarily in order to enlarge the range of sanctions and to ensure that they are proportionate, dissuasive, and persuasive. Cayman Islands is rated as **Compliant** for R. 35**.**

3.2 Progress on Recommendations which have changed since Cayman Islands' Mutual Evaluation Report

91. Since the adoption of Cayman Islands' MER, the FATF has amended Recommendations 2, 15, 18 and 21. This section considers Cayman Islands' compliance with the new requirements and how the country has addressed or is addressing the deficiencies included in the MER.

3.2.1 Recommendation 2 (originally rated PC)

92. Cayman Islands was rated PC for Recommendation 2. The technical deficiency indicated was that the membership of the coordination bodies was incomplete which inhibited full coordination and policy development in high-risk areas.

93. The Methodology was amended in October 2018 in order to reflect the February 2018 amendments to the FATF Standards (R.2) which clarify the need for compatibility of AML/CFT requirements and data protection and privacy rules and build on the conclusions of RTMG's report on inter-agency CT/CFT information sharing.

94. Cayman Islands made changes to its coordination bodies in 2019. Amendment to POCL makes the Chairman of the Anti-Corruption Commission (ACC) a member of the Anti-Money Laundering Steering Group (AMLSG)-a policy level body- and allows for a representative of the ACC on the Inter-Agency Coordination Committee (IACC)- an operational level body. Three (3) coordination bodies have been established by the AMLSG: The Financial Crime Focus Group (FCFG), Proliferation Inter-Agency Group (PIAG) and Supervisory Forum.

95. The FCFG has to ensure that all law enforcement agencies are working effectively together to combat financial crime in Cayman Islands, to develop multi-agency policy and guidance for the detection and investigation of financial crime, and to make recommendations for continual improvement. Its members comprise the DPP, the Detective Chief Inspector of the FCIU of the RCIPS, the Director of FRA, a Deputy Director of the CBC and a senior investigator of the ACC. Per its Terms of Reference, the FCFG is a subcommittee of the IACC and reports to the AMLSG on a monthly basis, and to the Ministerial Subcommittee responsible for the National Action Plan, as required.

96. The core function of the Proliferation Inter-Agency Group (PIAG) is to help FIs and DNFBPs understand and mitigate PF risks. PIAG also seeks to ensure that all its members are sensitized on the threat of PF and the measures that can be implemented to mitigate the associated risks. Its members comprise the Sanctions Coordinator, officials from CIMA, the ODPP, the CBC, the FRA, Registrar of Companies, Ministry of Financial Services FCU, AMLU, Shipping Registry, DCI, and Ministry of Finance and Economic Development. Per its Terms of Reference, the PIAG reports to the IACC on a quarterly basis, or as needed, in relation to new PF technologies/matters.

97. The Supervisory Forum ensures that there is appropriate coordination and cooperation among supervisory authorities and that the self-regulatory bodies (CIIPA and CILPA) are a part of the jurisdiction's cooperation and coordination framework. Its members comprise CIMA, DCI (supervisory authority for real estate agents, property developers, and dealers in precious metals and stones), the Registrar of Companies (supervisory authority for NPOs), CIIPA (supervisory authority for accountants engaged in relevant financial business), and CILPA (the supervisory authority for lawyers engaged in relevant financial business). Per its Terms of Reference, the Supervisory Forum reports into the IACC.

98. The requirement of compatibility of AML/CFT requirements and data protection and privacy rules has been addressed by amendment to section 5 of the POCL which requires competent authorities to collaborate, both at the policy and operational levels, in a manner that ensures the compatibility of AML/CFT requirements for combating money laundering and terrorist financing with the law protecting personal data and privacy and related matters in Cayman Islands. The IACC must also ensure the compatibility of requirements for combating money laundering and terrorist financing with the law protecting personal data and privacy and related matters in the Islands.

99. To sum up, Cayman Islands has addressed the deficiency noted in the MER as well as the requirement of the amended criterion 2.5 of the FATF Recommendation 2. Cayman Islands is re-rated as **Compliant** with Recommendation 2.

3.2.2 Recommendation 15 (originally rated LC)

100. Cayman Islands was rated as LC on Recommendation 15 in the MER. The deficiency noticed was that there is no requirement for 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. Recommendation 15 was amended in October 2019 leading to consequential amendments in criteria 15.3 to 15.11. To address the deficiency noted in the MER and the new requirements of criteria 15.3-15.11, Cayman

Islands has passed a new VASP Law which not commenced at the time of the submission of information for re-rating. In addition, Sec. 7 of the Proceeds of Crime (Amendment) Law, 2019, amends Schedule 6 of the POCL to include VASP as a "Relevant Financial Business", which is subject to the AMLRs. The non-commencement of the new VASP Law has resulted in many of the criteria including c.15.4, 15.5, 15.6 and 15.9 not being met.

101. In respect of c. 15.1, Cayman Islands has updated its AML/CFT Strategy document 2017-21; the updated AML/CFT Strategy 2019-2022 indicates that the country will conduct national risk assessments every five years *[the last assessment was completed in December 2015]* and sectoral risk assessments annually, which will include risks associated with new or developing technologies, new products or business practices.

102. In respect of c. 15.3 (a), Cayman Islands has begun work on its ML/TF risk assessment of virtual assets activities and the activities /operations of VASPs. Consideration was made of VASPs related risks in the jurisdiction's Terrorist Financing National Risk Assessment (February 2020) and its Proliferation Financing Threat Assessment (May 2020), but the full assessment related to ML Risk was not completed at the beginning of the re-rating process. This Assessment was completed in September 2020.

103. To address c. 15.3 (b), as stated in paragraph 97, Cayman Islands' AML/CFT Strategy 2019-2022 indicates that the national risk assessments will include assessing risks associated with new or developing technologies, new products or business practices. While the framework exists, Cayman Islands had, at the time of its re-rating request, not yet completed the full assessment of the VASP sector to commence risk-based supervision of this sector.

104. AMLR Reg. 8(1) and 8(2) require relevant financial business to take the necessary steps to identify, assess, manage, and mitigate their ML and TF risks as required by criteria 1.10 and 1.11. This addresses c. 15.3 (c).

105. The VASPs are currently not subject to adequate regulation and supervision, primarily due to fact that the VASP Law, which appoints CIMA as the supervisory authority for VASPs., had not commenced at the time of the re-rating. The Law came into effect on 31st October 2020. However, Sec. 7 of the Proceeds of Crime (Amendment) Law, 2019, amends Schedule 6 of the POCL to include a VASP as a "Relevant Financial Business", which is subject to the AMLRs. A number of CIMA licensees are engaged in virtual assets services, and CIMA has been monitoring these activities for compliance with AML/CFT. CIMA has also issued statements on the AML/CFT obligations of licensees who are providing virtual asset services.

106. Per Sec 6(1) (b) (ii) of the Monetary Authority Law, one of CIMA's regulatory functions includes monitoring compliance with the Anti-Money Laundering Regulations. In addition, under the Anti-Money Laundering Regulations, regulation 2 defines Supervisory Authority to mean "the Monetary Authority or other body that may be assigned the responsibility of monitoring compliance with money laundering regulations made under the Law in relation to persons carrying out "relevant financial business".

107. CIMA has issued Guidance Notes on VASPs in February 2020, pursuant to Sec 34 of the Monetary Authority Law, which included Money Laundering, Terrorism Financing, and Proliferation Financing Risks, AML/CFT Internal Controls, CDD, ongoing monitoring, record keeping, implementation of targeted financial sanctions and reporting suspicious activities. The Guidance Notes also provide some indicators of unusual or suspicious activities related to virtual assets.

108. The FRA has also provided guidance on detecting and reporting suspicious transactions as noted in its Guidance on Preparing and Submitting High Quality SARs (February 2020). In addition, in January 2020 the FRA implemented a feedback form to provide feedback to filers on the quality and usefulness of SARs. Indicators of Money Laundering or Terrorism Financial (Virtual Asset Providers) and Indicators of Possible Proliferation Financing have been included within the Guidance. This has resulted in c. 15.7 being mostly met.

109. As regards c.15.8 (a), Reg. 56(1) of the AMLRs indicates that a person who contravenes the AMLRs commits an offence and is liable on summary conviction to a fine of $500,000 or on conviction on indictment to an unlimited fine and to imprisonment for two years.

110. Monetary penalties as detailed in Sec. 42A of the Monetary Authority Law (2020 Revision) and the Monetary Authority (Administrative Fines) Regulations (2019 Revision) can also be applied, with a range of administrative penalties up to $100,000 for individuals and $1,000,000 for a body corporate.

111. Sec. 136 and 137 of the POCL (2020) Revision provide for criminal penalties for failure to report suspicious activity. The related penalties are: Summary Conviction: $5,000 fine or two years' imprisonment or both; and Conviction or Indictment: five-year imprisonment or fine or both. Sec. 142 provides that both the individual and body corporate may be prosecuted for the offences under the referenced sections of the POCL.

112. The authority provided to the CIMA under the VASP Law was not in effect at the time of the re-rating process. However, the authority provided to CIMA to apply penalties under Sec. 42 of the Monetary Authority Law, and the penalties that apply under the AMLR and POCL appear to be proportionate and dissuasive. The requirements of c.15.8 (a) are mostly met.

113. As regards c.15.8 (b), the provisions under the VASP Law were not in effect at the time of the re-rating process. However, there are sanctions that apply under the AMLR and POCL. Thus, c. 15.8 (b) is mostly met.

114. The Anti-Money Laundering (Amendment) (No.2) Regulations, 2020 amend Reg. 11 requiring that CDD is performed by a VASP for all one-off transactions. This provision complies with the requirement of c.15.9 (a). However, due to non-commencement of the VASP Law and Reg. 8 of The Anti-Money Laundering (Amendment) (No.2) Regulations, 2020 at the beginning of the re-rating process, the requirements of c. 15.9 (b) (i), c. 15.9 (b) (ii), and c. 15.9 (b) (iv) are not met.

115. As regards c. 15.9 (b) (iii), since the VASPs have been defined as a relevant financial business under Schedule 6 to the POCL, they are subject to the same obligations as other relevant financial business under the POCL and AMLR. They are also subject to Sec. 12(1) of Schedule 4A of the Terrorism Law, in relation to taking freezing action and prohibiting transactions with designated persons and entities; Sections 13 and 14 of Schedule 4A of the Terrorism Law, which prohibit all transactions with designated persons by prohibiting the making of funds, *financial services or any other related services* available to a designated person or for the benefit of a designated person; and sections 20 – 23 that address the relevant information requirements.

116. However, Reg. 8 of The Anti-Money Laundering (Amendment)(No.2) Regulations, 2020 that addresses the requirements for the monitoring of availability of information is not yet in effect. Thus c.15.9 (b) (iii) is partly met.111. As regards c. 15.10, a "relevant financial business" under Schedule 6 of the POCL a VASP is required by the AMLRs (2020 Revision) Reg. 5 to implement monitoring obligations for TFS. Sec. 12 of Schedule 4A of Terrorism Law (2018) addresses prohibitions in relation to designated persons and in particular freezing of funds and economic resources. Sec. 20 imposes

reporting obligations related to TFS. For PF, Sec. 2B and 2C of the Proliferation Financing (Prohibition) Law address the requirements to freeze and report to the FRA, respectively. The above apply to VASPs.

117. CIMA has instituted an electronic email system to advise all regulated entities of Financial Sanctions. In addition, the Financial Reporting Authority instituted an automatic email system to advise anyone who signed up for updates to Financial Sanctions. VASPs are included in the notifications to the extent that they are already existing regulated entities and/or have signed up for updates. The FRA has issued a Policy regarding the receipt, processing, circulation and publishing of Financial Sanctions Notices as well as issued a Financial Sanctions Guidance, and a compliance reporting form to be used by persons for reporting. Thus c.15.10 is partly met.

118. Sec. 34(9) and 50(3) of the MAL (2020 Revision) allows for the exchange of information with foreign counterparts/ overseas regulatory authority.

119. To address the requirement of criterion 15.11 and the deficiencies noted with respect to Criterion 38.1(d) and Rec. 40, Cayman Islands has implemented the following:
- Instrumentalities used in the commission of ML, TF and predicate offences are now covered by the Criminal Procedures Code (CPC), per Criminal Procedures Code (Amendment) Law, 2020.).
- The ability of the FRA and LEAs to provide formal support to international partners in a timely manner has been improved by removal of the requirement for the Attorney General's consent for such disclosures (per the Proceeds of Crime (Amendment) Law, 2018 which amends Sec 138 of the POCL.

120. The requirement of this criterion is met.

121. To sum up, while Cayman Islands has made provision for requiring the country to identify and assess the risks associated with new or developing technologies, new products, or business practices, brought VASPs into the AML/CFT framework by including VASP as a Relevant Financial Business under Schedule 6 of the POCL, and has begun assessing the ML/TF risks in this area, it did not evidence a comprehensive picture of the size or materiality of the sector and the full- fledged regulation of the sector had not commenced as the VASP Law had not yet commenced. [The Law was brought into force on 31 October 2020.] Accordingly, Cayman Islands is re-rated as **Partially Compliant** with R.15.

3.2.3 Recommendation 18 (originally rated C)

122. Cayman Islands was rated Compliant with R.18. This Recommendation was revised in February 2018 to clarify the requirements on sharing of information related to unusual or suspicious transactions within financial groups.

123. To address the new requirement of the revised R. 18, AMLRs, Reg. 6 has been amended. The new Reg. 6(1) (b) and (c); 6(2); and 6(3) require a financial group or other persons 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 managements and (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, including information and, if applicable, analysis of transactions or activities which appear unusual. Additionally, branches and subsidiaries shall also receive such information from these group level functions when relevant and appropriate to risk management.

124. To meet the requirements of Criterion 18.2 (c), new regulation 6(1)(d) AMLRs requires adequate safeguards on the confidentiality and use of information exchanged, including to prevent tipping-off.

125. Cayman Islands now meets the requirements on sharing of information related to unusual or suspicious transactions within financial groups and the requirement of adequate safeguards on the confidentiality and use of information exchanged, including to prevent tipping-off. Cayman Islands is therefore re-rated as **Compliant** with R.18.

3.2.4 Recommendation 21 (originally rated LC)

126. Cayman Islands was rated LC in its 4th Round MER. The deficiency noted was that the offence of tipping off should apply regardless of whether or not the disclosure has resulted in an investigation. In November 2017, R.21 was amended to clarify that tipping off provisions are not intended to inhibit information sharing under R.18.

127. To address the revised requirement of R.21, Sec. 139(2)(a) was repealed and replaced to provide that the provisions of R. 21 do not inhibit information sharing under R.18 (as prescribed under Sec. 145 of the POCL and related R.6 of the AMLR).

128. Cayman Islands therefore is re-rated as **Compliant** with R.21.

3.3 Brief overview of progress on other Recommendations rated NC/PC

129. Cayman Islands has no other Recommendation rated as NC/PC.

4. CONCLUSION

130. Overall, Cayman Islands has made good progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on 16 Recommendations.

131. Cayman Islands has fully addressed the deficiencies in 11 Recommendations (Recs. 2, 18, 19, 21, 22, 23, 26, 28, 32, 34 and 35), which are re-rated as **Compliant (C).**

132. Cayman Islands has addressed most of the identified technical compliance deficiencies in 4 Recommendations (Recs. 1, 24, 25 and 29) such that only minor shortcomings remain, and these Recommendations are re-rated as **Largely Compliant (LC).**

133. Cayman Islands has been downgraded on Rec. 15 from LC to **PC** for failing to meet the requirements of revised Rec. 15, primarily due to non-commencement of the new VASP Law.

134. In light of Cayman Islands' progress since its March 2019 MER, its technical compliance with the FATF Recommendations has been re-rated as follows, with re-rated recommendations shown in red:

Table 2. Technical compliance with re-ratings, December 2020

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
LC	***C***	C	LC	C	LC	LC	LC	C	LC
R 11	**R 12**	**R 13**	**R 14**	**R 15**	**R 16**	**R 17**	**R 18**	**R 19**	**R 20**
C	C	C	LC	***PC***	LC	LC	***C***	***C***	C
R 21	**R 22**	**R 23**	**R 24**	**R 25**	**R 26**	**R 27**	**R 28**	**R 29**	**R 30**
C	***C***	***C***	***LC***	***LC***	***C***	C	***C***	***LC***	LC
R 31	**R 32**	**R 33**	**R 34**	**R 35**	**R 36**	**R 37**	**R 38**	**R 39**	**R 40**
LC	***C***	**C**	***C***	***C***	LC	**C**	LC	C	LC

135. Cayman Islands will remain in enhanced follow-up on the basis that it had a low or moderate level of effectiveness for 7 or more of the 11 effectiveness outcomes (CFATF Procedures, para. 83(a)). According to the enhanced follow-up process, Cayman Islands will continue to report back to the CFATF on progress to strengthen its implementation of AML/CFT measures.

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Anti-Money Laundering and Counter-Terrorist Financing Measures in Cayman Islands

2nd Enhanced Follow-up Report & Technical Compliance Re-Rating

This report analyses Cayman Islands' progress in addressing the technical compliance deficiencies identified in the CFATF assessment of their measures to combat money laundering and terrorist financing of March 2019.

The report also looks at whether Cayman Islands has implemented new measures to meet the requirements of FATF Recommendations that changed since 2019.

Follow-Up Report