MUTUAL EVALUATION/DETAILED ASSESSMENT REPORT
ANTI-MONEY LAUNDERING AND COMBATING THE
FINANCING OF TERRORISM

CAYMAN ISLANDS

MINISTERIAL REPORT

NOVEMBER 23, 2007

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PREFACE - information and methodology used for the evaluation of Cayman Islands

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Cayman Islands [1] was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004[2]. The evaluation was based on the laws, regulations and other materials supplied by Cayman Islands, and information obtained by the evaluation team during its on-site visit to Cayman Islands from June 4th to June 15th, 2007, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Cayman Island government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of members of the CFATF Secretariat and CFATF and FATF experts in criminal law, law enforcement and regulatory issues: Mr. Roger Hernandez of the CFATF Secretariat; Mrs Maurene Simms of the Bank of Jamaica, Jamaica, financial expert; Mr. Garvin Gaskin of the Attorney General Chambers, The Bahamas, legal expert; Inspector William Malone of the Royal Canadian Mounted Police, Canada, law enforcement expert; and Mr. Michael Vallely of the Financial Crimes Enforcement Network, USA, financial expert. . The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Cayman Islands as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out the Cayman Islands' levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

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[1] All references to country apply equally to territories or jurisdictions.

[2] As updated in June 2006.

Executive Summary

1. Background Information

1. This report provides a summary of the anti-money laundering (AML) and combating the financing of terrorism (CFT) measures in place in the Cayman Islands at June 2007 (the date of the on-site visit in connection with the 3rd-round mutual evaluation) and immediately thereafter. The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Cayman Islands' level of compliance with the Financial Action Task Force (FATF) 40 + 9 Recommendations (see attached table on the Ratings of Compliance with the FATF Recommendations). The Cayman Islands government recognizes the importance of an effective AML/CFT regime and continues to actively update its AML/CFT framework.

2. The Cayman Islands is an overseas territory of the United Kingdom, and has been a stable parliamentary democracy since 1831. The current system of government consists of three branches: executive, legislative and judicial. The Cayman Islands is an open, free-market economy with tourism and financial/business services as the main economic sectors. International assets (predominantly institutional) booked through banks in the Cayman Islands in June 2005 made it the fifth largest international banking center in the world. The major sources of illegal proceeds domestically are fraud and drug trafficking; such proceeds are invariably spent rather than laundered. The major foreign predicate crime source of illegal proceeds is serious fraud. Money launderers mostly target banks and terrorist financing is a minor generator of SARs.

3. The Cayman Islands' legal framework for combating money laundering and terrorist financing is comprehensive and implements all the relevant provisions of the UN Conventions, save in one minor respect, not impacting effectiveness. All designated categories of offences enumerated in the FATF 40 Recommendations are predicate offences under Cayman law. The criminalisation of terrorist financing is in accordance with FATF requirements. There have been five (5) domestic money laundering prosecutions since 2003 and no terrorist financing investigations or prosecutions. The confiscation regime meets most standards and is effective as over $120 million in property has been either restrained or confiscated since 2003. There are no specific provisions for asset –tracing but these are to be incorporated in proposed revision of legislation.

4. The Cayman Islands' financial intelligence unit, the Financial Reporting Authority (FRA) is effective and is a focal point of the AML/CFT regime and was admitted to the Egmont Group in 2001. The law enforcement and prosecutorial authorities are adequately empowered and competent to investigate and prosecute money laundering and terrorist financing offences. Requirements for a combined declaratory and disclosure system for the cross-border movement of cash and negotiable monetary instruments have been recently introduced.

5. The preventive system deals with customer identification and other AML/CFT obligations and applies to a range of financial institutions and all of the designated non-financial businesses and professions (DNFBPs) as defined by the FATF, with the two exceptions noted in paragraph 19 below. While there are measures in place to deal with CDD requirements, a number

have not been enacted legislatively as required by the FATF standards. There is no requirement to verify that a person acting on behalf of a legal person or arrangement is so authorised and identify and verify the identity of that person. While there are certain triggers for updating in the GN, financial institutions are not required to ensure on a routine basis that CDD documentation and data are kept up-to-date. Additionally, there are no specific provisions dealing with correspondent banking. Record-keeping, monitoring and reporting requirements are comprehensive. Legislative requirements for wire transfers enacted in June 2007 are compliant with SR VII but not enforceable until 1 January 2008.

6. Suspicious activity reports (SARs) have decreased by an annual average of 7% over the last three years. This may be due to enhanced risk management/compliance controls in industry since the introduction of the statutory requirements for systems, procedures and training in the MLR in 2000. There is a strong compliance culture in the Cayman Islands. Most SARs are submitted by banks and 10% by lawyers. There is one supervisory authority, responsible for all financial institutions as defined by FATF. Supervision is comprehensive but some constraints are posed by inadequate quantity of human resources.

2. Legal System and Related Institutional Measures

7. Money laundering has been criminalized in the Cayman Islands in the *Misuse of Drugs Law* (MDL) and the *Proceeds of Criminal Conduct Law* (PCCL) in accordance with the Vienna and the Palermo Conventions, save in one minor technical respect in relation to the former, which does not impact effectiveness . The Cayman Islands largely applies the threshold approach with regard to predicate offences to money laundering and incorporates all designated categories of offences mainly in the *Penal Code*. Extraterritorial and appropriate ancillary offences are covered in domestic legislation and criminal liability extends to legal persons. There have been 5 ML prosecutions in the Cayman Islands since 2003.

8. Terrorist financing is criminalized under the *Terrorism (United Nations Measures) (Overseas Territories) Order, 2001* (TUNMOTO) and the *Terrorism Law* (TL). TUNMOTO was made pursuant to UNSCR 1373 and extended by the UK to all its overseas territories. The TL is domestic legislation criminalizing terrorism and terrorist financing, in accordance with the UN Convention on the Suppression of the Financing of Terrorism. Terrorist financing offences are indictable and therefore predicate offences for money laundering. There have been no terrorist financing investigations or prosecutions to date in the Cayman Islands. The authorities indicate that this is due to absence of cause.

9. The system for the confiscation, freezing and seizure of the proceeds of crime is comprehensive and meets most of the standards. While the police may obtain production orders for the purposes of investigation and confidential information there are no specific asset-tracing provisions. These will be provided for in a proposed revision/consolidation of the PCCL and the MDL. The regime for the freezing of funds used for terrorist financing complements the ML system in its compliance with FATF requirements. While lists promulgated by the UN Sanctions Committee and other competent authorities are legally recognized, there is no provision under Cayman Islands law for listings of terrorists/terrorist organizations to be promulgated domestically, on an independent basis, except as may be potentially accommodated under the general regulation-making power of the TL. While there have been no restraints or confiscation in relation to terrorism financing, the ML confiscation system has been very effective.

10. The FRA, the Cayman Islands' financial intelligence unit, is a statutory agency within the Portfolio of Legal Affairs and subject to the oversight of the Anti-Money Laundering Steering Group (AMLSG). The structure accords sufficient operational autonomy and allows the FRA to carry out its statutory mandate effectively. The FRA is an administrative/civilian entity responsible for receiving, analyzing and disseminating SARs. The FRA has adequate powers to obtain information and direct access to a number of government and public databases. The FRA's relationship with reporting entities is excellent. While the FRA issues an annual report, it has not to date developed any sort of comprehensive typologies and /or trend analysis for the report.

11. The Cayman Islands has designated authorities to investigate and prosecute ML and TF offences and has equipped them with the necessary powers. The Financial Crime Unit (FCU) of the Royal Cayman Islands Police (RCIP) has the remit for criminal investigations of all offences related to financial crime including money laundering and the financing of terrorism. The Legal Department of the Portfolio of Legal Affairs has the responsibility for the prosecution of these and all other criminal offences. The work of the FCU is complemented by the Joint Intelligence Unit (JIU) which consists of officers from the RCIP, Customs and Immigration. The primary function of the JIU is to gather and disseminate intelligence to both domestic and international law enforcement agencies to facilitate criminal investigations. The various agencies appear to be adequately structured, funded and resourced to effectively carry out their functions.

12. As of August 10, 2007, Cayman Islands enacted the *Customs (Money Declarations and Disclosures) Regulations, 2007.* These regulations establish the legal framework for a mandatory declaratory system for the cross-border movement of cash that is inbound and a disclosure system for money that is outbound and imposes requirements for compliance with the obligations of SR IX. The system is to be implemented by the Customs Service of the Cayman Islands. As these measures were implemented within the two month period after the on-site visit, the effectiveness of the system cannot be assessed. The Custom Service plays a vital role in collecting revenue for the government treasury and works in a cooperative manner with local competent authorities and international counterparts. At the time of the on-site visit it was apparent that the Customs Service was operating with insufficient financial and human resources.

3. Preventive Measures – Financial Institutions

13. The application of the AML/CFT measures to the financial system and the DNFBPs in the Cayman Islands is not based on risk assessment in the manner contemplated in the revised FATF 40 Recommendations; and simplified CDD measures are only permitted in circumstances defined in the MLR and the GN. The preventive system and other AML/CFT requirements apply to a range of financial institutions and most of the DNFBPs as defined by the FATF. While there are measures in place to deal with most CDD requirements, a number have been implemented through guidance rather than enacted legislatively as required by the FATF standards. There is no requirement to verify that a person acting on behalf of a legal person or arrangement is so authorised and identify and verify the identity of that person. Financial institutions are not required to ensure routinely that CDD documentation and data are kept up-to-date and there is no express requirement for simplified CDD measures to be unacceptable in higher risk scenarios.

14. There are no specific provisions dealing with correspondent banking, albeit that the activity is limited. Provisions are in place with regard to the risks associated with non-face to face business and misuse of technological developments. Although financial institutions may rely on third parties to introduce business, requirements for immediate information on elements of

the CDD process and the regulation and supervision of the introducer are not as extensive as required by the FATF standards.

15. There are no impediments to competent authorities' access to information in the course of their duties. Recordkeeping requirements meet most of the standards but legislative requirements for wire transfers which fully comply with SR VII enacted in June 2007 (without a *de minimis* limit) do not become enforceable until 1 January 2008. There are obligations to monitor complex, unusual large transactions or unusual patterns of transactions, and a requirement to keep the findings of enquiries of these transactions available for competent authorities and auditors, but the five- year retention period required by Recommendation 21 is not specified.

16. The SAR reporting obligation is sound and has no *de minimis* limits. While there is no explicit requirement regarding reporting attempted suspicious transactions, attempted offences are inherently provided for by virtue of the relevant definition under the *Interpretation Law*. There is no clear guidance in the Guidance Notes (GN) with regard to the treatment of attempted suspicious transactions or the consequences of non-reporting. While there are provisions against "tipping off", they do not cover the filing of SARs for drug- related ML, only applications for production orders or search warrants. This will be dealt with in the proposed revision/consolidation of the PCCL and the MDL.

17. Requirements for internal controls, compliance and audit meet most of the standards. The requirements for audit and the appointment of the AML/CFT compliance officer are not specific enough for the FATF requirements. There is no requirement for financial institutions to put in place screening procedures to ensure high standards when hiring employees. Obligations for ensuring that overseas branches, subsidiaries, agencies and representatives offices observe AML standards equivalent to Cayman Islands were recently issued. The establishment of shell banks in the Cayman Islands was prohibited from 2001 with the introduction of legislated requirements for physical presence. However, financial institutions are not prohibited from having relationships with such banks or with respondent banks that do.

18. The Cayman Islands Monetary Authority (CIMA) is the sole regulator of the financial sector in the Cayman Islands responsible for all financial institutions operating under the regulatory laws including money service businesses. CIMA is also responsible for ongoing supervision of compliance with AML/CFT obligations. CIMA's supervisory regime is comprehensive and incorporates on-site and off-site functions utilizing a risk-based supervisory approach and techniques. The various regulatory laws provide for licensing, on–site inspections, fit and proper criteria and access to information in accordance with FATF standards. Although staff is competent, experienced and well-trained, some constraints are posed by their number. CIMA's powers of enforcement and sanction are broad but limited in relation to the GN since specific requirements for terrorism financing are not fully incorporated in the GN. The GN do not incorporate guidance for dealers in precious metals and precious stones.

4. Preventive Measures – Designated Non-Financial Businesses and Professions

19. The range of DNFBPs covered by the AML/CFT framework in the Cayman Islands includes most of the FATF categories. The types of DNFBPs not covered are casinos which are prohibited and at the time of the onsite visit, dealers in precious metals and precious stones. On August 10, 2007, dealers in precious metals and precious stones were brought under the AML/CFT regime but were granted a transitional grace period from criminal sanctions until January 1, 2008. The covered DNFBPs are subject to the same requirements as financial

institutions to identify customers, keep records, monitor transactions and report suspicious transactions to the FRA. Deficiencies already noted with regard to these requirements for financial institutions are also applicable to the DNFBPs.

20. While CIMA's AML/CFT supervisory programme under the regulatory laws is extensive, covering most of the DNFBPs, it does not include real estate agents, brokers and real estate activities of lawyers. The real estate sector's interests are represented primarily by the Cayman Islands Real Estate Brokers Association (CIREBA). CIREBA functions as an informal self-regulatory organization (SRO) in relation to AML/CFT matters. It has retained a consultant to conduct AML/CFT audit of members and develop a model AML compliance manual. The Cayman Islands has extended the suspicious reporting obligation to all persons, businesses and professions operating in the jurisdiction, not just financial institutions and DNFBP's. The FRA has advised retailers of high value goods about their reporting obligations.

5. Legal Persons and Arrangements & Non-Profit Organisations

21. While the Cayman Islands has a system of central registration for companies, the information maintained does not include beneficial ownership data except in respect of ordinary (i.e. domestic) companies. Beneficial ownership is maintained by company service providers, who account for 92 % of company registration. All financial service providers are required to maintain beneficial ownership information on their customers. Provision of corporate services is a regulated activity which is governed by the MLR and therefore subject to CDD, record-keeping and other requirements. Specific guidance is also provided for corporate service providers in the GN regarding the required due diligence on companies. CIMA, law enforcement and judicial authorities all have power to readily access beneficial ownership information from financial service providers when necessary.

22. There is no central filing requirement for trusts and no register of all trusts in the Cayman Islands, except in relation to exempted trusts. Provision of trust services is a regulated activity which is governed by the MLR and therefore subject to CDD, record-keeping and other requirements. Specific guidance is also provided for trust service providers in the GN regarding the required due diligence on settlors, settled assets, and beneficiaries. Information on trusts maintained by licensed trust service providers can be readily accessed by the investigative and examination powers of the regulatory and law enforcement authorities under the relevant statutes.

23. The Cayman Islands has a system for licensing and registering NPOs. This system while allowing for initial due diligence at the time of licensing does not have an agency responsible for ongoing monitoring. No competent authority has undertaken any formal outreach efforts to the NPO sector regarding AML/CFT requirements or best practices. Competent authorities are presently developing outreach measures for the sector and considering the designation of appropriate points of contact and procedures to respond to any international requests for information regarding NPOs that may be suspected of terrorist financing or other forms of terrorist support.

6. National and international Co-operation

24. There is a high degree of co-operation among competent authorities in the Cayman Islands in operational matters related to AML/CFT. This co-operation also extends to policy

issues which are subject to the oversight of the AMLSG. The AMLSG promotes effective collaboration between regulators and law enforcement agencies, monitors interaction and co-operation with overseas FIUs and review and discusses proposed AML/CFT amendments. The Cayman Islands has substantially implemented the Vienna, Palermo and the Terrorist Financing Conventions and the provisions of S/RES 1267(1999) and S/RES/1373 (2001). While the Vienna Convention has been extended to the Cayman Islands by the UK, the Palermo and the Terrorist Financing Conventions have not.

25. A wide range of mutual legal assistance is available including at investigative stages in criminal matters. While dual criminality is a condition, technical differences in categorizing and denominating an offence do not pose an impediment. Pure fiscal matters are dealt with under the *Tax Information Authority Law*. Arrangements for coordinating seizure and confiscation actions with other countries can be put in place. While there is no formal asset forfeiture fund, seized funds are paid into general revenue and then segregated internally to be applied to AML and anti-narcotics purposes. The provisions for mutual assistance do not include facilitating the voluntary appearance of persons not in lawful custody for the purpose of providing information or testimony to the requesting country

26. Money laundering, terrorist financing and terrorism offences are extraditable offences. The Cayman Islands is able to extradite its own nationals to other states. While dual criminality is required for extradition, technical differences in offence taxonomy do not pose an impediment. There have been only two extradition requests, in 2005, which were granted.

27. In general law enforcement, the FIU and supervisors can engage in a wide range of international cooperation. Cayman Island authorities attempt to render assistance to foreign authorities as expeditiously as possible. As a matter of practice, foreign agencies must disclose the nature and purpose of their inquiries. The Cayman Islands appears to have adequate safeguards and controls to ensure that information received by competent authorities is used only in an authorised manner.

7. Resources and Statistics

28. On the whole, competent authorities appear to be adequately resourced and structured to effectively perform their functions. However, staff levels at CIMA appear to pose some constraints. HM Customs also appears to have insufficient human resources to effectively carry out all its functions.

29. The extent of statistics maintained by the various authorities is appropriate and relevant to their functions. However, HM Customs does not yet maintain statistics on the cross border transportation of currency and bearer monetary instruments, due to recent implementation of SR IX. Additionally, detailed statistics on the number of requests for assistance made by domestic law enforcement authorities and supervisors are not maintained.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on the Cayman Islands and its economy

1. The Cayman Islands consists of three islands, Grand Cayman, Cayman Brac, and Little Cayman, with a combined area of about 100 square miles and a population of 51,992 (2006 estimate), 61 percent of whom are Caymanian. The Islands are situated about 480 miles south of Miami, 180 miles northwest of Jamaica, and 150 miles south of Cuba. Discovered by Christopher Columbus in 1503, The Cayman Islands is an overseas territory of the United Kingdom, since the 1670 Treaty of Madrid

2. The Cayman Islands is an open, free-market economy. In terms of key economic indicators (2006), estimated per capita GDP was $39,137; real GDP growth, 4.6%; unemployment, 2.6% and inflation, 0.8%. The Cayman Islands issues its own currency, the Cayman Islands dollar, which has a fixed exchange rate of CI$1.00: US$1.20. There are no direct taxes, which has been the status quo since first settlement of the Islands. The main areas of economic activity are tourism and financial/business services, which latter sector contributes an estimated 30% to GDP and employs 21% of the labour force. The larger proportion of financial service activity relates to institutional business. The fiscal surplus for 2006 is estimated at 3.17 % of GDP, and the Moody's sovereign rating for the Cayman Islands is Aa3.

3. The Cayman Islands is a common law jurisdiction and has been a stable parliamentary democracy since 1831. The framework of the current system of government is established by Constitution Orders of 1972 and 1993. There is an executive branch (the Cabinet), a legislative branch (the Legislative Assembly), and a judicial branch. The Cabinet is presided over by a UK-appointed governor, and has eight members. Three are appointed by the governor—the chief secretary, attorney general, and the financial secretary. Five Cabinet members are elected ministers, voted into office by the 15 elected members of the Assembly, which latter are elected in quadrennial general elections.

4. The judicial branch has three tiers—the Summary Court consisting of six divisions, presided over by a magistrate or justices of the peace, the Grand Court, and the Court of Appeal. The Grand Court is a superior court of record and administers the common law, the law of equity of England, locally enacted laws and applied laws. The Court of Appeal consists of a president and not less than two judges of appeal, with right of appeal to Judicial Committee of Her Majesty's Privy Council.

5. Facilities for electronic or paperless trials are available and have enhanced the efficiency of the court system. Case management is computerised and there are plans to implement e-filing of documents to initiate new cases or advance existing ones. A new Summary Court complex is also being designed to deal with increased case load.

6. The checks and balances inherent in the tripartite system of government promote transparency and good governance, with the additional features of the role of the governor on behalf of the UK to support 'peace, order and good governance', an independent audit office, the statutory office of complaints commissioner, and express government support for free speech and

free press, set to be augmented by a new Freedom of Information Law.[3]

7. Official corruption in its various forms is an offence under the Penal Code, and the law is actively enforced[4]. Members of the Legislative Assembly are required to publicly record commercial affiliations on a formal register of interests. Civil servants are bound by a statutory code of conduct that requires inter alia honesty, integrity and professionalism, absence of which is grounds for disciplinary action or dismissal.

8. The legal profession is regulated under the Legal Practitioners Law and disciplinary action is by the Grand Court. Under proposed revisions to the Law, disciplinary powers over the legal profession would be exercisable by a practitioners' tribunal. The accounting and audit profession is regulated under the Public Accountants Law, which gives the local professional society disciplinary powers over the profession.

9. In terms of the overall AML/CFT compliance culture prevailing in the Cayman Islands, it was evident to the assessors that the country in general and the financial service providers in particular all have a keen sense of awareness of AML/CFT issues. Additionally the financial service providers displayed a healthy compliance culture based on an appreciation of the reputation risk of AML/CFT for the jurisdiction. The strong compliance culture was also demonstrated by the financial service providers' proactive co-operation with the authorities in implementing AML/CFT measures.

1.2 General Situation of Money Laundering and Financing of Terrorism

10. The main types of crime in the Cayman Islands are drug-related, theft and burglary. Figures on the number of reported crimes for the period 2003 to 2006 are provided in the following table:

Table 1: Reported Crimes during the period 2003 - 2006

Offence	2003	2004	2005	2006
Drugs	381	281	290	357
Theft	463	386	485	418
Burglary	621	561	895	729
Total of reported crimes	3,194	2,549	2,842	3,319

Source : Royal Cayman Islands Police Annual Report

11. While a formal assessment of specific threats and vulnerabilities has not been undertaken to date, vigilance is maintained by both the public and private sectors in relation to all potential forms of abuse of the Cayman Islands for money laundering or terrorist financing. Threats/vulnerabilities that can be ruled out in relation to the Cayman Islands are casinos

[3] The Law was passed post mission on 3 September 2007

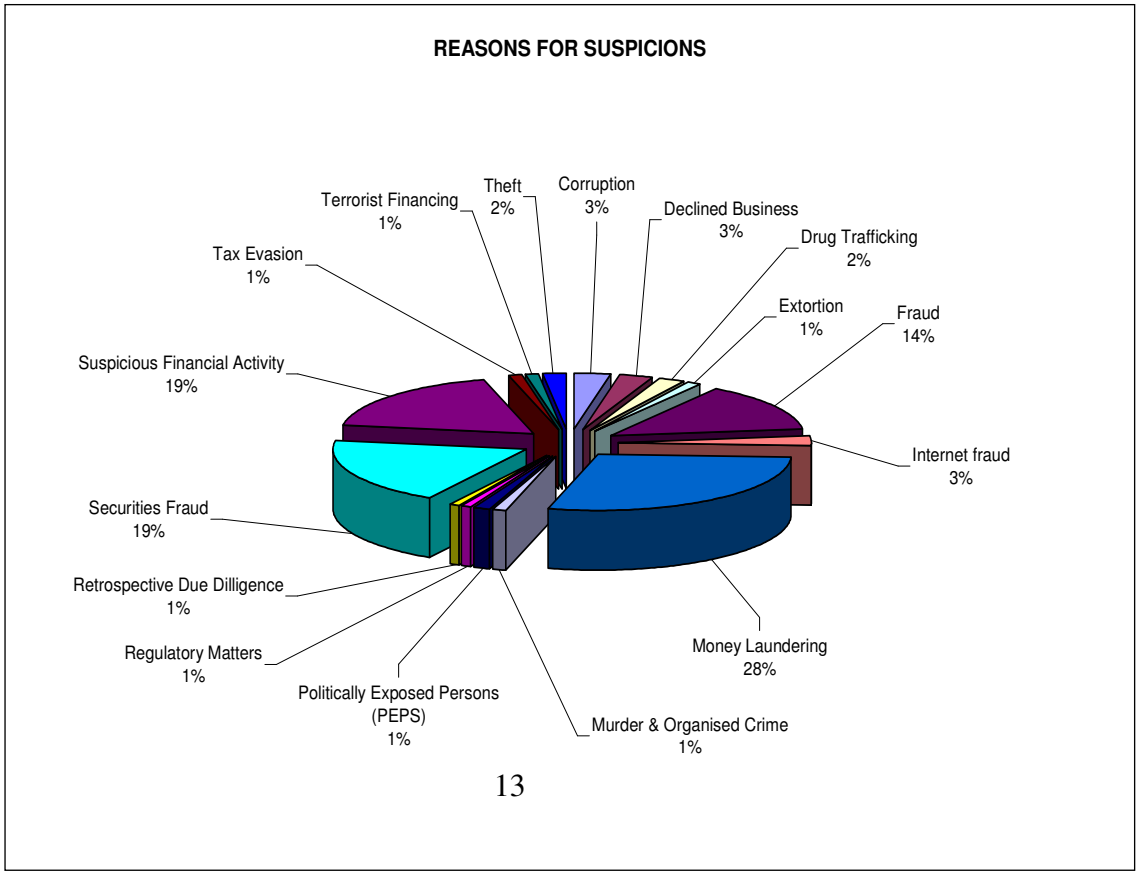
[4] A consultation draft of an Anti-corruption Bill, 2007 was tabled post mission on 31 August 2007. The bill gives effect to the 2003 UN Convention against Corruption and the 1997 OECD Convention Combating the Bribery of Foreign Public Officials in International Business Transactions

(gambling is illegal), shell banks (not permitted under the licensing laws) and correspondent banking (Cayman institutions do not typically provide these services).

12. An analysis of suspicious activity reports (SARs), domestic crime statistics and international cooperation matters indicates the following, in relation to the general ML/FT situation-

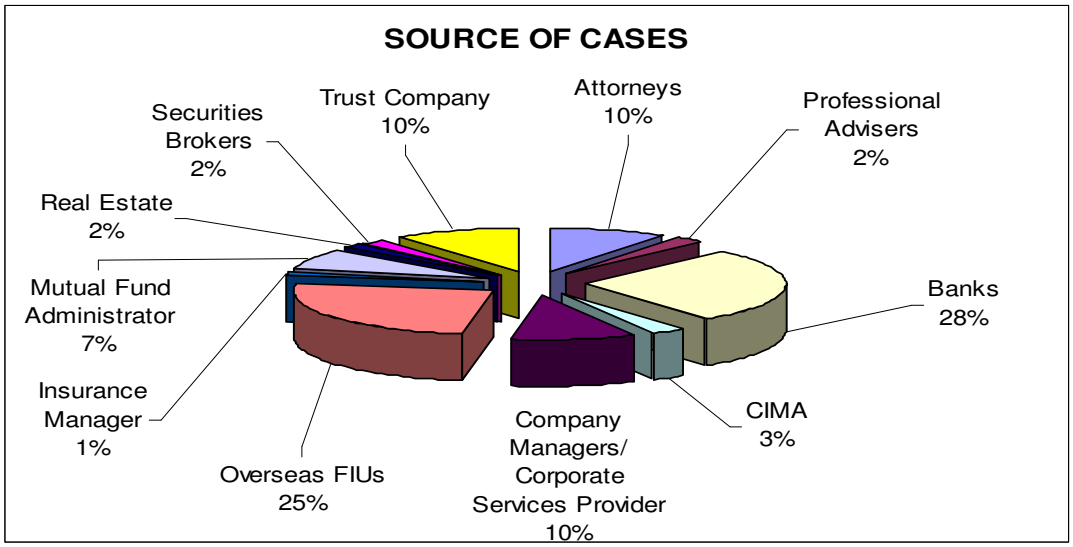
- The major domestic predicate crime sources of illegal proceeds are fraud and drug trafficking. It is typical for the proceeds to be spent as opposed to laundered.
- The major foreign predicate crime source of illegal proceeds is serious fraud. In two recent major cases that also involved money laundering prosecutions and convictions in the Cayman Islands, the total proceeds involved was approximately US$87.5m.
- The main ML vulnerability continues to be associated with the layering stage
- SAR filings have decreased by an annual average of 7% over the past three years. While keeping the situation under review, the authorities are of the view that since there has been no degradation in the compliance culture in the industry or in the statutory compliance framework, and the quality of intelligence derived from SARs is good it is reasonable to attribute the decline to enhanced risk management/compliance controls in the industry in the wake of the introduction of the Money Laundering Regulations (MLR) in 2000 and the perceived relative difficulty of penetrating the Cayman Islands' financial system.
- The latest statistics (FRA annual report 2005/6) on SAR filings by reasons for suspicion bear out the prevalence of fraud as the primary predicate offence, as shown in the chart below
- The chart also indicates that terrorist financing is not a significant generator of SARs, which is consistent with the general absence of terrorism-related crime encountered by domestic law enforcement authorities; and that suspected money laundering surfaced in 28% of the filings, or in 61 cases.

Chart 1; Breakdown of SARs by Reason for Suspicion



- Also the distribution of the source of filings from the latest SAR statistics, suggests that money launderers mostly target banks.

Chart 2: Source of SARs Filings



Note: Charts 1 and 2 are taken from the FRA 2005/2006 Annual Report

1.3 Overview of the Financial Sector and DNFBP

Banking sector (FI 1-6, 13)

13. All banking activity is subject to licensing by the Cayman Islands Monetary Authority(CIMA) under the *Banks & Trust Companies Law*.(BTCL) Licences are available in two categories: the Category 'A' licence allows holders to operate in both the international and domestic markets, and the Category 'B' licence permits international banking business and limited domestic activity.

14. Of the 282 bank licensees, from 54 countries, 18 are category 'A' and 264 category 'B'; 260 are branches or subsidiaries of internationally active banks, with the remaining 22 representing banks for which CIMA is the home supervisor. The Cayman Islands banking sector hosts over 40 of the world's top 50 banks as ranked by total assets.

15. International assets booked through banks in the Cayman Islands at the end of June 2006 stood at US$1,413 billion as compared to US$1,265 billion in June 2005 and liabilities rose to US$1,373 billion, up from US$1,250 billion in June 2005 the latter making the Cayman Islands the fifth largest international banking centre in the world. Over 90% of the liabilities are referable to institutional business.

Money services (FI 4)

16. Licensing was introduced for money services business in 2000, and there are 7 licensees. "Money services business" is defined in the *Money Services Law* (MSL) as the business of providing (as a principal business) any or all of the following services: money transmission;

cheque cashing; currency exchange; the issuance or, sale or redemption of money orders or travellers checks; or, such other services as the Governor in Council may specify by notice published in the Gazette. The definition also includes the business of operating as an agent or franchise holder of a money transmission business. Overseas remittances through these providers as at June 2006 were some US$210 million.

Securities sector (FI 7-9,11, DNFBP 12(d))

17. Activity in this sector is governed by two laws, the *Mutual Funds Law* (MFL) which covers investment funds (categories: licensed, administered and registered) and fund administrators (categories: full and restricted), and the *Securities Investment Business Law* (SIBL), which covers brokers, investment advisors, investment managers, investment arrangers and market-makers. The four vehicles commonly used for operating mutual funds are the exempted company, the segregated portfolio company, the unit trust and the exempted limited partnership. Mutual Funds with less than 15 investors, the majority of whom are capable of appointing or removing the operator of the fund, are unregulated

18. There are just over 8,600 funds regulated under the MFL, 89% of which are registered funds. A registered fund must have either a minimum subscription of US$100,000 or the equity interests must be listed on a stock exchange approved by CIMA. The size of the funds sector reflects the Cayman Islands' position as a leading domicile for hedge funds. There are 91 full and 56 restricted fund administrators licensed under the Law, including 12 of the top 15 ranked globally by assets under management. . The MFL defines mutual fund administration as the management, including control of all or substantially all the assets of a mutual fund, or the administration of a mutual fund, or the provision of the principal office of the mutual fund in the Cayman Islands, or the provision of the operator (which is either the director, trustee or general partner) to a fund.

19. There are over 1300 registrants under SIBL (persons dealing with sophisticated/high-net-worth clients as specified under the Law are not required to be licensed, but must register with the Authority) and 21 full licensees, in multiple categories.

Insurance sector (FI 12)

20. Insurance business is licensable under the *Insurance Law* (IL) and insurance companies operate within the Cayman Islands as class 'A' insurers (writing domestic business) or class 'B' insurers (writing non-domestic business only and commonly known as captive insurance companies which are self-insurance vehicles). The total number of captive insurance companies is 745, with total assets of US$ 3 trillion and there are 25 insurance managers (required for captive licensees). The first open market reinsurer to be licensed in the Cayman Islands began operations during 2005. In addition to managers, other service provider categories licensable under the Law are class 'A' agents (89 current licensees), and brokers (29 current licensees).

21. There are 26 class 'A' licensees with a combined net earned premium as at the end of 2006 of approximately $155.5 million and a combined net income of approximately $66.3 million.

22. The majority the captive business originates from North America. The Cayman Islands holds the number one position worldwide for healthcare captives; this sector continues to be the primary class of business, while the second largest is workers' compensation coverage. Over the

past two years the jurisdiction has seen an increasing interest in special purpose vehicles (SPVs), used to gain access to capital markets. These SPVs are typically structured as catastrophe bonds, where reinsurance obligations are collateralized via a bond issue, or as sidecars, where specialist investors invest in an insurance vehicle designed to provide short-term catastrophe cover to the portfolio of an established reinsurance company without the exposure to the whole business.

Trust and company service providers (FI 9-11; DNFBP 12(d),(e))

23. The provision of trust and company services is regulated activity, and as such requires licensing under the BTCL and the *Companies Management Law* (CML) respectively. This has been the case since 1966 for trust services and since 1984 for company services, which further to an amendment to the Law in 2000 includes company formation services. Licence categories in the trust sector are 'restricted', 'unrestricted' and 'nominee'; and in the company services sector, 'company manager'(CM) and 'corporate services provider'(CSP).

24. There are 79 licensees under the CML (72 CM and 7 CSP) and 156 licensees under the BTCL holding pure trust licences i.e. trust licences not combined with a banking licence. Of the 156 trust licences, 85 are restricted, 51 unrestricted and 20 nominee (wholly owned subsidiary of a licensee whose sole permitted purpose is to act as nominee for the parent).

Real estate agents (DNFBP 12(b))

25. There are approximately 50 real estate agencies/brokers in the Cayman Islands, 28 of which are members of the industry association, Cayman Islands Real Estate Brokers Association (CIREBA). Real estate may be held directly or via legal entity; however, under the land title registration system, real estate cannot be registered to a foreign entity.

Dealers in precious metals/stones (DNFBP 12(c))

26. There are few, if any stand-alone dealers in raw metals or stones. There are two main jewelers who operate between them most of the retail outlets, and a dozen or so independent stores. Customs statistics indicate that precious metals and stones, primarily in the form of articles of jewelry were imported to the value of $24.8m in 2006.

Legal professionals

27. The practice of law in the Cayman Islands is governed by the *Legal Practitioners Law*, and persons practising in the Islands must have a practising certificate issued by the Grand Court. There are 404 lawyers on the rolls, distributed among about 44 law firms. It is interesting to note that, the legal profession in the Cayman Islands accounted for 10% of the total number of SARs reported to the Financial Reporting Authority (FRA).

Accountants

28. All of the 'Big Four' firms have practices in the Cayman Islands, each with office size of over 100 persons. The practice of public accountancy/audit is governed by the *Public Accountants Law*. There are 27 firms approved by CIMA for the purposes of conducting audits of regulated entities. It should be noted that auditors have particular 'whistle-blowing' obligations to CIMA and according to CIMA policy all regulated funds must have local audit sign-off.

Non-Profit Oraganisation (NPO) sector

29. The NPO sector comprises approximately 250 organisations. Formal status is conferred by registration and licensing under s. 80 of the *Companies Law (*CL). The licence is issued by the Governor in Cabinet and as of July 2002 all licences are subject to conditions designed to comply with SR VIII.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

Companies

30. There are approximately 85,000 companies registered in the Cayman Islands, the majority of which are exempted companies i.e. companies whose principal business is outside the Islands. Typical international business uses for an exempted company include securitisation and structured finance transactions, investment funds, captive insurance.

31. The following types of company may be incorporated under the Companies Law:

- companies limited by shares
- companies limited by guarantee
- unlimited companies

32. Companies may also be classified as ordinary companies, non-resident companies and exempted companies. All Cayman Islands companies are required to have a registered office in the Islands. Company formation requires the filing of memorandum and articles of association, the address of the local registered office, and the register of directors.

33. All companies are required to maintain a register of members and directors (s 40 and 55 of the CL). The register of members is required to be kept at the registered office or, in the case of an exempted company, it may be kept outside the Cayman Islands; and in the case of an ordinary company, must be filed with the Registrar. All companies are required to file the register of directors (including updates thereto) with the Registrar. Corporate directors are permitted.

34. Section 59 of the Law requires all companies to keep proper books of account with respect to:

- all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- all sales and purchases of goods by the company; and
- the assets and liabilities of the company.

35. Proper books of account are not deemed to be kept unless they are ‘sufficient to give a true and fair view of the state of the company's affairs and to explain its transactions’. There is no requirement under the CL for a company to file audited financial statements (due to the absence of direct taxation, such information is not required by the authorities). However, entities

regulated by CIMA are required to have their accounts audited by an approved auditor on an annual basis and to file these with CIMA.

36. Bearer shares may only be issued by exempted companies and such shares are required to be immobilised, that is they can only be bought or sold or otherwise transacted in circumstances in which an authorised or recognised custodian has the physical custody of the shares and knows the beneficial owner of such shares both before and after any such transaction. Where bearer shares are issued the entry in the register of members must record the date of issue of the bearer share, the number of the share (if there is one) and the name of the custodian (s.40 and Part XV of the Law).

37. The enforcement powers available under the CL in respect of companies are inspection, "winding up" or dissolution of business and the "striking off" from the register. The Court may appoint inspectors to examine the affairs of the company on the application of a specified proportion of members. Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, or where an exempted company does not file its annual return or pay its annual fee, he may strike the company off the register of companies. The CL contains powers for members and creditors to apply for winding up.

38. The Registrar also has powers under the CL to apply penalties for failure to make the required ongoing filings with the Registry (e.g. annual returns; register of directors; increases in share capital); failure to maintain a registered office; failure to pay the required annual registration fees.

39. The provision of directors, nominee shareholders, registered office, company formation services or asset management services are all regulated activities under the CML and constitute "relevant financial business" for the purposes of the MLR. Persons engaged in such businesses are therefore subject to the CDD, record-keeping and other requirements under the Regulations.

Trusts

40. The Cayman Islands has a *Trusts Law*. Trusts are a recognised and employed business concept. The provision of trust services is a regulated activity and constitutes 'relevant financial business' for the purposes of the MLR; and persons engaged in such business are therefore subject to the CDD, record-keeping and other requirements under the MLR.

41. While trusts continue to be used for private wealth management, they figure in commercial structures. Examples of these are: the unit trust form of investment fund and the issuance vehicle in structured financial transactions.

42. Private trusts are not subject to a registration requirement. However, a trust may opt to register as an exempted trust under s.74 of the TL, and thereby be eligible to obtain formal confirmation with regard to the non-imposition of taxes. The trustee of an exempted trust must submit the trust deed on application for registration. As at the end of 2006, there were 2,227 exempted trusts.

43. The *Trusts Law* also provides for STAR trusts, which may be charitable or otherwise and set up for either persons or purposes or both. STAR is an abbreviation of the original governing legislation known as the *Special Trusts (Alternative Regime) Law, 1997* which has been consolidated into the *Trusts Law*. At least one of the trustees of a STAR Trust must be a locally licensed trust company, who is expressly required to keep a documentary record of –

- the terms of the trust;
- the identity of the trustee and the enforcers;
- all settlements of the property upon the special trust and the identity of the settlers;
- the property subject to the special trust at the end of each of its accounting years; and
- all distributions or applications of the trust property.

44. By virtue of the MFL, a mutual fund that is a unit trust (unless the equity interests are held by less than 15 investors the majority of whom are capable of appointing or removing the operator) is subject to regulation under that Law, which would include the requirement to submit to CIMA audited annual financial statements.

Partnerships

45. There are two types of partnership provided for under Cayman Islands law, general partnerships and limited partnerships. A variant of the limited partnership may also register as an exempted limited partnership, and such partnership may only conduct business primarily outside of the Islands. The governing laws of partnerships are the *Partnerships Law* and the *Exempted Limited Partnerships Law.*

46. There is no requirement for registration in the case of general partnerships but such partnership may only carry on business in the Cayman Islands if it obtains a trade and business licence. A limited partnership is formed by filing a declaration with the Registrar and the gazetting thereof. The declaration must contain the name and address of each partner and, with respect to limited partners, the amount of capital contributed by each.

47. The general partner (analogous to a company director) of an exempted limited partnership must file with Registrar a declaration that includes the name of the partnership, the address in the islands of its registered office, a description of the general nature of its business and the names and addresses of the general partner. General Partners may be corporations, and typically are. Information about the limited partners (analogous to company shareholders) is not required to be filed.

48. The general partner of a limited partnership is required to know the identity of all of the other partners in order to register the partnership and to comply with the obligation under s. 51 of the Partnership Law to notify the Registrar of changes in membership of the partnership**.** The general partner of an exempted limited partnership must keep a register at the registered office of the partnership containing-

- the name and address of each limited partner;
- the amount and dates of contributions of each limited partner; and
- the amount and date of any payment representing a return of any part of a partner's contribution

49. The register of limited partnership interests of an exempted limited partnership is open to public inspection. Regulated mutual funds that are structured as partnerships carry on a "relevant financial business" and must therefore comply with the MLR. In relation to information on partners required to be held by general partnerships, common law requirements apply in relation to information normally maintained regardless of the MLR.

50. As of the end of 2006, there were 6,554 limited and exempted limited partnerships. The latter structure is popular for hedge funds.

1.5 Overview of strategy to prevent money laundering and terrorist financing

51. Beginning with the 1984 Narcotics Agreement with the United States, and progressing, most recently, to the *Terrorism Law of 2003*(TL), the Cayman Islands has maintained a strong public policy commitment to ensuring that it can do its part effectively to combat cross-border financial crime. This commitment has led to the jurisdiction being ahead of international standards on certain matters, *viz* the coverage of 'gatekeepers'; immobilization of bearer shares; scope of the suspicious activity reporting obligation; and the undertaking of retrospective due diligence on all existing clients in the wake of the introduction of the MLR in 2000.

a. AML/CFT Strategies and Priorities

52. The Cayman Islands' AML/CFT strategy is informed by three goals: 1) maintenance of an effective domestic AML/CFT framework and controls, 2) maintenance of effective international cooperation measures to help combat ML/FT abuse of the international financial system and 3) constructive engagement on AML/CFT issues.

Maintenance of an effective domestic AML/CFT framework and controls

53. This is achieved primarily through a three-tiered hierarchy of requirements, comprised in the Proceeds of Criminal Conduct Law (PCCL), the MLR, and the Guidance Notes (GN). On the public sector side, this is buttressed by i) statutory fit and proper criteria and AML/CFT compliance monitoring applied by CIMA to the regulated sector; ii) a statutory FIU, the FRA; iii) a specialist financial crime unit within the Royal Cayman Islands Police (RCIP). ; and iv) a statutory body with responsibility for AML/CFT policy, the Anti-Money Laundering Steering Group.

Maintenance of effective international cooperation measures to help combat ML/FT abuse of the international financial system

54. This is achieved primarily through the operation of the *Criminal Justice (International Cooperation) Law* (CJICL), which provides for a wide range of mutual legal assistance to be given, including property restraint and confiscation, under the auspices of the Attorney General as central authority. The FRA also plays a key role, in its cooperation with international counterparts. This second goal has received particular attention, given the level of cross-border financial services activity generated by the Cayman Islands' financial sector.

Constructive engagement on AML/CFT issues

55. This goal has a domestic and an international component. The former is achieved primarily through such mechanisms as private sector participation on the Guidance Notes Committee; FRA outreach and development of local typology/trend information; private sector and multi-agency consultation on AML/CFT legislation; and an active private sector Compliance Association. The international component is achieved primarily through CFATF and Egmont Group membership, as well as membership in regulatory groups such as the Offshore Group of Banking Supervisors (OGBS) and the Offshore Group of Insurance Supervisors (OGIS); and mutual evaluations and assessments are considered valuable external 'health checks' on the overall state of AML/CFT compliance.

56. Key objectives under the goals are i) compliance with international standards, ii) ensuring effective institutional arrangements, legislative measures and enforcement mechanisms, iii) refinement of AML/CFT performance indicators/effectiveness measures and iii) promoting a strong compliance culture.

57. Current priorities under the goals and objectives include the following:

1) Complete implementation of agreed recommendations from the IMF assessment (see item d) below)
2) Enhancement of processes for maintaining statistical measures of effectiveness
3) Consolidation of the AML regimes under the PCCL and the Misuse of Drugs Law (MDL)
4) Integration of dealers in precious stones/metals into the DNFBP category
5) Implementation of formal oversight mechanism for realtors and dealers in precious stones/metals
6) Implementation of outreach to NPOs to sensitize the sector to CFT issues and remind them of their obligations
7) Implementation of the new legislation introduced to comply with SR VII and SR IX
8) Regular development and dissemination of trend and typology information
9) Development by the Anti-Money Laundering Steering Group (AMLSG) of a regular and formal national AML/CFT strategy document.

b. The institutional framework for combating money laundering and terrorist financing

Ministries and Agencies

58. ***The Portfolio of Legal Affairs*** The Portfolio of Legal Affairs is headed by the Attorney General. The main functions of the Portfolio of Legal Affairs are to ensure that criminal offences are prosecuted in a consistent and timely manner, that legislation is promulgated in a timely and effective manner and to provide professional quality legal services and advice to Government and its affiliate bodies. The ambit of the Portfolio of Legal Affairs includes the Legal Department (the prosecutorial authority) and the FRA. The Attorney General is the Central Authority for mutual legal assistance under the CJICL and the PCCL. Requests for mutual legal assistance are handled by the Legal Department on behalf of the Central Authority. The Attorney General chairs the AMLSG and oversees the drafting and revision of AML/CFT legislation.

59. ***Portfolio of Finance & Economics*** The Financial Secretary heads the Portfolio of Finance & Economics. Its main functions are to implement and maintain sound budgetary policies, supervise and control the financial affairs of the Cayman Islands and foster the development of the financial services sector. The ambit of the Portfolio of Finance and Economic Affairs includes CIMA (the financial services supervisory authority) and Customs. The Portfolio of Economic Affairs interfaces with the financial services industry regularly and the Financial Secretary is the deputy chair of the AMLSG.

60. ***AMLSG*** The AMLSG is appointed pursuant to section 24 of the PCCL to coordinate the development and overall implementation of the Cayman Islands' AML/CFT policies among the various agencies with AML/CFT responsibilities. The Group comprises of the Attorney General, the Financial Secretary, the Solicitor General, the Commissioner of Police, the Collector

of Customs, the Managing Director of the CIMA and the Director of the FRA. The AMLSG also oversees the FRA.

Supervisory authorities and committees

61. ***CIMA*** CIMA was established as a statutory body under the Monetary Authority Law (MAL) in 1997 as the successor to the Financial Services Supervision Department. Its principal functions are monetary, regulatory and co-operative. Monetary functions include the issue and redemption of Cayman Islands currency and management of currency reserves. Regulatory functions comprise regulation and supervision of financial service providers in the Cayman Islands, monitoring of compliance with the money laundering regulations, issuance of a regulatory handbook on policies and procedures, and issuance of rules, statements of principle and statements of guidance. Co-operative functions consist of providing assistance to overseas regulatory authorities.

62. ***The Guidance Notes Committee (GNC)*** The GNC is responsible for the review and updating of the *Guidance Notes on the Prevention and Detection of Money Laundering in the Cayman Islands* (GN). It is chaired by CIMA and comprised of representatives from government and industry associations and CIMA. While the GNC is only mandated to make amendments to the GN, it can recommend amendments to the AML/CFT laws.

Criminal Justice and Law enforcement bodies

63. ***The Legal Department*** The Legal Department is managed by the Solicitor General. It is responsible for criminal prosecutions, civil litigation and judicial reviews on behalf of the Attorney General. The Legal Department also assists the Central Authority (the Chief Justice) under the Mutual Legal Assistance Treaty with the United States and handles extradition matters on behalf of the Attorney General.

64. ***Royal Cayman Islands Police (RCIP)*** The RCIP is responsible for the safeguarding and maintenance of public order. This includes the enforcement and investigation of all predicate offences for ML. The Financial Crime Unit (FCU) within the RCIP is responsible for the criminal investigation of all offences related to financial crimes, including money laundering and the financing of terrorism. The RCIP is a member of the AMLSG and the Joint Intelligence Unit.

65. ***The FRA*** The FRA is the Cayman Islands FIU. It was established in 1989 as an arm of law enforcement and initially received, analysed, disseminated suspicious activity reports (SARs) and conducted investigations into ML offences. Since October 2003, the FIU has been transformed to an administrative/civilian entity known as the FRA which no longer carries out investigations. The FRA is a statutory body within the Portfolio of Legal Affairs and is subject to the oversight of the AMLSG. The FRA has been a member of the Egmont Group since 2001 and is known within the group as CAYFIN.

66. ***Her Majesty's Customs Service of the Cayman Islands*** The main responsibilities of the Customs Service are the collection of import duties, the prevention of smuggling and the implementation of prohibition and restrictions upon the importation and exportation of goods. The Service is under the direction of the Portfolio of Finance & Economics and has three specialist units: a Narcotics Enforcement Team (C-NET), a Fraud Division (C-FED), and a Fraud Prevention and Inspections Unit (C-PIU). C-NET is the team most usually involved in AML matters. The Customs Service is a member of the AMLSG and the Joint Intelligence Unit and is the implementation agency for the requirements introduced to comply with SR IX.

67. ***The Joint Intelligence Unit (JIU)*** The JIU consists of officers from the RCIP, Customs and Immigration. Its primary function is to gather and disseminate intelligence to both domestic and international law enforcement agencies to facilitate criminal investigations.

c. Approach concerning risk

68. There are two avenues to a risk-based approach, one that is applicable at a jurisdictional level and involving macro determinations of AML/CFT vulnerabilities of categories or sub-categories of financial activity and the second applies at an institutional/service provider level which involves the micro determinations of what AML/CFT requirements to apply and in what manner.

69. At the jurisdictional level, the sectors subject to AML/CFT requirements are set in the MLR (except for the scope of the reporting obligation, which is set in the PCCL itself). The Regulations are made by Cabinet, and any changes would usually be on the recommendation either of the Attorney General or the Financial Secretary. The only sub-sector of financial activity excluded on a risk basis is property and casualty insurance. The authorities have advised that this exclusion was inherited from UK statutes, on the basis that these activities are of low risk.

70. As at the end of the onsite visit to the Cayman Islands on June 15, 2007, the AML/CFT regime incorporated all FATF DNFBPs except for casinos which are illegal in the Cayman Islands as well as dealers in precious metals and stones. As a result of the *Money Laundering (Amendment) (No 2) Regulation 2007* enacted on August 7, 2007, dealers in precious metals or precious stones are now included in the definition of relevant financial business and are now under the AML/CFT regime. However, it should be noted that the above mentioned regulations also provide that no person will be prosecuted under the amendment for an offence committed prior to January 1, 2008. This effectively removes the threat of sanctions from dealers in precious stones or precious metals until 2008. The delay of "bringing into force" of these new provisions means that there is currently a gap in the law for a four-month period i.e. August 7, 2007 to January 1, 2008.

71. At the institutional/service provider level, those covered by the AML/CFT requirements are only permitted to adopt **simplified** CDD measures where certain statutory parameters are met, but they do have a degree of latitude to judge whether or not to apply **enhanced** CDD measures. CIMA employs a risk-based approach to its on-site inspection regime. As a general proposition, the Cayman authorities are mindful that the application of criminal penalties for non-compliance with AML/CFT requirements creates a preference for certainty which in turn will generate a natural limit to the risk-based space.

d. Progress since the last mutual evaluation

72. The Cayman Islands was evaluated by the CFATF in 2002. The main deficiencies identified in the Mutual Evaluation Report dated September 2002 were: absence of a specific seized assets fund, need for further legislative initiatives to complement competent administrative measures in the area of international co-operation, the need for local enabling legislation for extradition, need to standardize onsite AML reviews, need for CIMA to verify compliance of professional bodies, need to harmonise legislation governing CIMA licensees, and the need of the Drug Task Force for more resources.

73. The Cayman Islands was assessed by the International Monetary Fund IMF) in September/October 2003. While the assessment was generally favorable the following deficiencies were noted: no tipping off offence for SAR filings for drug trafficking ML, no regulations or directives about applying home jurisdiction minimum standards to any branch or subsidiary in a foreign jurisdiction, provisions for wire transfers were only in guidance, no specific provision relating to post account opening non-transaction records such as business correspondence, financial service providers not advised to designate an AML/CFT compliance officer at the management level, no requirements regarding the screening of all employees, CIMA does not have the power to impose meaningful administrative fines for failure to fulfill AML/CFT obligations.

74. In the wake of the CFATF and IMF assessments, the CJICL was enacted (in 2003), broadening the ability to provide mutual legal assistance, and a number of enhancements were made to the GN, including in the areas of the application of home AML/CFT rules to domestic branches and subsidiaries located abroad, sector-specific guidance for securities business and enhanced guidance for the insurance sector, renewal of CDD measures where doubts arise, and documentation of certain types of transaction consistent with what is now R11. The MLR were also amended to make it clear (as it is in the GN) that ultimate responsibility for CDD measures resides with the Cayman financial services provider and to expressly require an appropriate internal audit function in respect of AML/CFT measures. The gap in the tipping off offence and, to the extent that the Cayman authorities agree therewith, the other findings of the IMF assessment, will be addressed in the consolidation of the PCCL with the MDL that is underway.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis

75. The two laws that criminalise money laundering are the MDL, which deals with drug-trafficking proceeds, and the PCCL, which deals with the proceeds of all other serious crimes.

Recommendation 1

76. Money laundering has been criminalized in accordance with Article 3(1)(b)&(c) of the Vienna Convention and Article 6(1) of the Palermo Convention as follows:

- Drug- trafficking ML is criminalized under sections 47 and 48 of the MDL which provide offences for facilitating the retention or control of drug- trafficking proceeds of another and concealing, disguising, converting or transferring the proceeds of drug trafficking. The *mens rea* for the offences is knowledge or belief or reasonable grounds for belief.

- ML for all other serious crimes is criminalized by sections 32–34 of the PCCL, and covers i) facilitating the retention or control of proceeds of criminal conduct by or on behalf of another; ii) entering into arrangements such that proceeds of criminal conduct of another are used to secure funds or acquire property for him; iii) acquisition, use or possession of property knowing the property to be another's proceeds of criminal conduct; iv) concealing, disguising, converting or transferring property to avoid prosecution or the making or enforcement of a confiscation order, in respect of oneself or another. The *mens rea* for i) and ii) is knowledge or suspicion; for iii) knowledge, and for iv) knowledge or having reasonable grounds for suspicion.

77. It is noted that the inclusion of intent to avoid prosecution or the making or enforcement of a confiscation order to the offence of concealing of property as stated above is additional to the requirements of article 3(1)(b)(ii) of the Vienna Convention. The authorities in Cayman Islands advised that this additional burden of proof did not detract from effective prosecution of ML offences.

78. The ML offences under the MDL and the PCCL cover property which in whole or in part directly or indirectly represent proceeds of drug trafficking or criminal conduct respectively. –see MDL, ss 47(2), 48(1), 48(2), 48(3) PCCL, ss 32(2), 33(1), 34(1), and 34(2).

79. It is not necessary for a person to be convicted of the predicate offence to prove that property is the proceeds of such offence. This has been established by judicial interpretation of s. 33 of the PCCL in the context of money laundering cases. Where there is a conviction, s. 35 of the *Evidence Law* abolishes the common law rule and allows proof of the fact of a conviction by any court in the Cayman Islands or in any designated country to be admissible as evidence of the commission of the predicate offence.

80. The Cayman Islands largely applies the threshold approach with regard to predicate offences to money laundering. The threshold is all indictable offences in addition to which all drug trafficking offences are predicates. The PCCL applies to all indictable offences, other than drug-trafficking offences:- see ss. 32(10) and 6(7)(c); and the MDL applies to all drug-trafficking offences:- see s.2(1). All designated categories of offence enumerated in the FATF 40 Recommendations are predicate offences under Cayman law as indicated in the table below.

Table 2: Categories of predicate offence in Cayman Islands law

Categories of Offence - FATF Methodology	Cayman Islands Predicate Offences
Participation in organized criminal group and racketeering	*Penal Code (2006 Revision)*, sections 229 to 233
Terrorism, including terrorist financing	TL PART II – section 3, PART III – sections 18 to 29 and PART V – section 31; PCCL – sections 4, 32 to 34 *Terrorism (United Nations Measures) (Overseas Territories) Order, 2001* sections 3 and 4
Trafficking in human beings and migrant smuggling	*Immigration Law* – section 73 *Penal Code (2006 Revision)* – section 322 (a) and (f)
Sexual exploitation including sexual exploitation of children.	*Penal Code (2006 Revision)* – sections 127 to 139
Illicit trafficking in narcotic drugs and psychotropic substances	MDL – sections 3 and 4
Illicit arms trafficking	*Penal Code (2006 Revision)* – section 78 *Firearms Law (2006 Revision)* – sections 3, 8 and 9
Illicit trafficking in stolen or other goods	*Penal Code (2006 Revision)* – section 260 *Customs Law (2003 Revision)* – sections 51 to 53
Corruption and bribery	*Penal Code (2006 Revision)* sections 90 to 96
Fraud	*Penal Code (2006 Revision)* – Part IX sections 234 to 262 and Part XI offences – section 280 et seq.
Counterfeiting currency	*Penal Code (2006 Revision)* sections 301, 303 to 313

Categories of Offences - FATF Methodology	Cayman Islands Predicate Offences
Counterfeiting & piracy of products	*Penal Code (2006 Revision)* section 303 and 317 *Merchandise Marks Law (1997 Revision)* section 3 et seq
Environmental crime	*Marine Conservation Law (2003 Revision) & Regulations* *Public Health Law (2002 Revision)* – section 7 et seq
Murder, grievous bodily injury	*Penal Code (2006 Revision)* – sections 181, 203 and 204
Kidnapping, illegal restraint and hostage taking	*Penal Code (2006 Revision)* – sections 218 to 222
Robbery or theft	*Penal Code (2006 Revision)* – sections 235, 241 and 242
Smuggling	*Customs Law (2003 Revision)* sections 51 to 54
Extortion	*Penal Code (2006 Revision)* sections 91 and 259
Forgery	*Penal Code (2006 Revision)* – sections 280 to 317
Piracy	*Penal Code (2006 Revision)* – section 67
Insider Trading & Market Manipulation	SIBL – sections 24 to 33

81. Pursuant to section 32(10) of the PCCL, extraterritorial acts may serve as predicate offences for ML, as the definition of criminal conduct includes conduct that would constitute an offence had it occurred in the Cayman Islands. Under the MDL, drug trafficking and drug trafficking ML similarly extend to extraterritorial acts: - see s. 2(1).

82. Under both the PCCL and MDL, the ML offence applies both to those who have committed ML only and to those who have committed both ML and the predicate offence. The offence of ML would not automatically apply to persons who have committed the predicate offence, on the basis of the requirements of fundamental principles of domestic criminal law , that the *actus reus* and *mens rea* for ML would have to be satisfied for the ML offence to be made out.

83. All appropriate ancillary offences, including conspiracy to commit, attempt, aiding and abetting, facilitating, and counselling the commission are permitted by domestic law – see ss. 312- 318 of the *Penal Code*; and s.49 of the Interpretation Law.

84. The PCCL and MDL provide that the conduct is determinable as criminal conduct by reference to Cayman Islands law:- see s. 32(10) of the PCCL - definition of criminal conduct and s. 2(1) of the MDL-definition of 'drug trafficking' and 'drug trafficking offence'. Thus, this allows for conduct that occurred in another country, which is not an offence in that other country, but which would have constituted a predicate offence in the Caymans Islands, to also constitute a money laundering offence.

Recommendation 2

85. Under ss. 32 to 34 of the PCCL and ss. 47 and 48 of the MDL, the offence of ML applies to persons that knowingly (as well as in other mental states) engage in ML activity. The intentional element of an offence may be inferred from the objective factual circumstances. This is addressed at common law and has been applied in money laundering cases prosecuted before the Cayman courts.

86. Criminal liability for ML extends to legal persons: see - s.3 of the Interpretation Law, which provides that "person" includes corporations, clubs, societies, associations or other bodies of one or more persons. Criminal liability of legal persons for ML does not preclude the possibility of parallel criminal, civil or administrative proceedings. This will be explicitly provided for in the revision/consolidation of the PCCL and the MDL, in the form of comprehensive civil forfeiture provisions.

87. Under ss 32(9); 33(13) and 34(4) of the PCCL and ss 47(1) and 48(6) of the MDL the penalty for offences at the summary level is a fine of $5,000 or 2 years of imprisonment and on indictment, an unlimited fine and up to 14 years of imprisonment.

Recommendation 32

88. As at the date of the onsite visit there were 31 ongoing investigations. During the period 2003 to May 2007, 9 investigations had been closed due to no offence being disclosed, 7 had been referred for overseas investigation and suspects had absconded in 6 cases.

89. Since 2003 there have been 5 prosecutions, 2 occurring in 2006. The predicate offences were fraud, drugs and conspiracy to defraud. There have been 3 convictions, 1 in 2005 and 2 in 2006 and 2 acquittals during the period 2003 to 2005. Sentences for the 3 convictions were 1 year imprisonment to be served consecutive to sentences on predicate offences resulting in a total sentence of 5 years, 3 years imprisonment and forfeiture of $143,000 and a fine of US $1 million and forfeiture of $500,000.

90. Cayman Islands authorities frequently provide assistance to foreign authorities for ML investigations and prosecutions, and direct feedback is not always provided by the latter in relation to prosecutions and convictions.

2.1.2 Recommendations and Comments

91. The Cayman Islands is to be commended for their due compliance with the relevant requirements herein. Pursuant to section 24 of the PCCL , a body called the AMLSG has been appointed to , *inter alia,* generally oversee and strategize national AML policy, and to promote effective collaboration between regulators and law enforcement agencies. The group is duly active and is made up of the Attorney- General, Financial Secretary, Commissioner of Police, Collector of Customs, Managing Director of the Monetary Authority, Solicitor General, and the Director of the FRA (on standing invitation). The appointment of this body is particularly commendable, as it brings a deliberate and prudent focus to AML/CFT issues. A revision/consolidation of the ML laws is proposed for enactment during 2007. All of the relevant stakeholders are presently being consulted thereon. This consolidation will create a 'one stop

shop' and is duly welcomed.

92. There is a minor technical difference between the words of both section 48 of the MDL and section 34 of the PCCL and the words of Article 3(1)(b)(ii) of the Vienna Convention. The latter does not include an additional requirement – as the said Cayman Islands laws do – of concealing proceeds of criminal conduct, with intent to avoid prosecution or to avoid the making or enforcement of a confiscation order. While this additional requirement does not deter effective prosecution of ML offences it is 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. .

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating[5]
R.1	**LC**	• ML offence of concealing, disguising, converting or transferring of property is not defined in accordance with the Vienna Convention
R.2	**C**	• This recommendation is fully observed

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

93. The two principal enactments in relation to the criminalisation of terrorist financing are the *Terrorism (United Nations Measures) (Overseas Territories) Order, 2001* (TUNMOTO) and the TL.

94. TUNMOTO is a United Kingdom (UK) Order in Council, made pursuant to UNSCR 1373 and extended by the UK to all of its overseas territories. The TL is domestic legislation criminalising terrorism and terrorist financing, in accordance with the UN Convention on the Suppression of the Financing of Terrorism (CSFT).

95. TUNMOTO: Article 3 (Collection of funds)**:** criminalizes the act of soliciting, receiving or providing funds with knowledge or intent that they will or may be used for the purposes of terrorism. Article 4 (Making funds available)**:** further extends criminal liability to making any funds or financial services available directly or indirectly for the benefit of persons committing, attempting to commit, facilitating or participating in an act of terrorism. Article 2 defines 'funds' consistent with the definition in CSTF.

96. TL: Section 19 makes it an offence to solicit, receive or provide property intending that it be used, or having reasonable cause to suspect that it may be used, for the purposes of terrorism. Section 20 makes it an offence for a person to use property for the purposes of terrorism or to possess property intending that it be used, or having reasonable cause to suspect that it may be used, for the purposes of terrorism. Section 21 makes it an offence for a person to enter into or become concerned with an arrangement as a result of which property is made available to another, knowing or having reasonable cause to suspect that it will or may be used for the purposes of terrorism. Section 22 makes it an offence to enter into or become concerned with an

5 These factors are only required to be set out when the rating is less than Compliant.

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. Section 18 defines 'terrorist property' as property which is 'likely to be used' for the purposes of terrorism and proceeds from the commission of acts of terrorism. Section 2 defines property as including money and all other property, real or personal, including things in action and other intangible property.

97. The above offences capture intended use and the definition in s. 18 covers property 'likely to be used', therefore not requiring funds to be actually used to carry out or to attempt a terrorist act or to be linked to a specific terrorist act, to be considered a terrorist financing offence. See also s. 11(2) of Part 5 of Schedule 3 to the TL, which captures property obtained by or in return for terrorist acts or acts carried out for the purposes of terrorism. The rule on inchoate offences (attempts, conspiracy to commit, aiding and abetting, and facilitating may be charged as principal offences) , as already noted in section 2.1, also applies. .

98. TF offences are indictable pursuant to s. 27 of the TL and therefore are predicate offences for money laundering under the PCCL, by virtue of s. 6(7)(c) of the PCCL

99. Sections 16 and 31(1) of the TF allow for terrorist financing offences to apply regardless of whether the person alleged to have committed the offence is in the same country or in a different country from the one in which the terrorist(s)/terrorist organization(s) is located or the terrorist act(s) occurred/will occur.

100. The law allows for the intentional element of the offence of TF to be inferred from the objective factual circumstances. As already noted s 3 of the Interpretation Law provides for criminal liability to be extended to legal persons. While criminal liability for FT extends to legal persons, the possibility of parallel criminal, civil or administrative liability also applies. The specific criminal penalties for TF (see s.27 of the TL) are 2 years of imprisonment and a fine of $4,000 on summary conviction, and 14 years of imprisonment and an unlimited fine on conviction on indictment.

Recommendation 32

101. There have been no terrorist financing investigations or prosecutions to date. Therefore, there are no statistics.

2.2.2 Recommendations and Comments

102. The effectiveness of the implemented framework cannot be duly determined, as there are no statistics.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**LC**	• No statistics available to determine the effectiveness of the CFT regime.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

103. The two principal laws dealing with confiscation, freezing and seizing of proceeds of

crime are the MDL (for drug-related proceeds) and the PCCL (for the proceeds of all other serious crimes). The PCCL may also be used in relation to TF offences, in addition to the relevant provisions under the TL.

104. Section 6 of the PCCL provides for the Grand Court to make a confiscation order where a person has been found guilty of any offence to which the PCCL applies (i.e. all indictable offences, other than drug trafficking offences). The corresponding provision in the MDL is s.31. The confiscation reach includes not just proceeds, but the value of the benefit or pecuniary advantage derived:-see s.6(2), (3) and (4) of the PCCL; and s. 31(3) of the MDL. Benefit is defined in the PCCL as the value of property obtained as a result of or in connection with the commission of an offence. Under the MDL benefit is the receipt of any payment or other reward in connection with drug trafficking.

105. Sections 28 and 29 of the TL also provide for confiscation/forfeiture relating to FT offences. Section 28 covers 'any property' which was owned or in the control of the convicted person and which he knew or had reasonable cause to suspect would or might be used for terrorism. Property is defined in s 2 of the TL to include money and all other property, real or personal, including things in action and other intangible property. Section.29 of the TL deals with cash, as defined in s.1(2) and (3) of Part 1 of Schedule 3 to the TL. Cash includes coins, notes, postal orders, cheques of any kind, bankers' drafts, bearer bonds and bearer shares.

106. Section 192(2) of the *Criminal Procedure Code* ('CPC') allows for the seizure of any instruments, materials or things which there is reason to believe are provided or prepared or being prepared with a view to the commission of any offence. .

107. The provisions cited above relating to confiscation only require the court to be satisfied that the offender has benefited from the offence as defined by s. 6(3) of the PCCL and s. 31(3) of the MDL. Proceeds that a defendant has gifted or secreted to others may be confiscated: - see s 3(10)(11)(12) of the PCCL.

108. On application by a prosecutor, the courts can order the restraint of property under s. 39 of the MDL and s. 11 of the PCCL. These orders prohibit dealing with any realizable property held by any person and enable the provisional freezing or seizure of money or property liable to confiscation. For restraint orders under the PCCL, proceedings not already instituted, must be instituted within 21 days of the granting of the order or such longer period as the court may grant (s.10 (2) of the PCCL) , and for drug offences, within a reasonable time (s. 38(3) of the MDL).

109. The FRA also has powers under s. 23(2)(b)& (3) of the PCCL to apply to the Grand Court for an order requiring any person to refrain from dealing with a person's bank account for a period not exceeding 21 days, where the FRA has reasonable cause to believe that the account relates to proceeds or suspected proceeds of criminal conduct, ML or suspected ML, terrorism or FT.

110. Further, under s.26 of the MDL, a constable or customs officer may seize and detain cash imported or exported, if he has reasonable grounds for suspecting that it directly or indirectly represents proceeds of drug trafficking or is intended for use in drug trafficking.

111. An application referred to above may be made *ex parte* and without notice: – see s. 11(5)(b) of the PCCL; and s. 39(3)(b) of the MDL.

112. The police may obtain production orders pursuant to s. 39 of the PCCL and s. 44 of the MDL for the purposes of investigation into an offence. The police may also obtain confidential information, pursuant to the *Confidential Relationships (Preservation) Law* (CRPL) - see s. 3(2)(b)(ii) and (iii) of the CRPL. There are no specific asset-tracing provisions, however these

will be provided for in a proposed future revision/consolidation of the PCCL and the MDL. Section 30 of the TL provides for account monitoring orders for the purposes of terrorist investigations and the tracing of terrorist property.

113. Section 11(5)(c) of the PCCL provides for notice to be given to persons affected by a restraint order and allows such persons to apply to the court for the order to be varied or discharged (s. 11(7)). Under s. 13(8) of the PCCL, the court before realising any property subject to confiscation, is to give reasonable opportunity to persons holding an interest in such property to make representations to the court. Section 15(4) of the PCCL also provides that the powers of the court relating to restraint, charging orders, realization of property and application of proceeds of realization are to be exercised with a view to allowing any person, other than the defendant or recipient of gifts from the defendant, to retain or recover the value of any property held by him. These provisions ensure that innocent persons or bona fide third parties may have their interests in the subject property considered. It is also notable that s. 7(3) of the PCCL permits the court to strike a balance by taking into account, when considering whether to make a confiscation order, whether a victim of an offence, to which the proceedings relate, has instituted, or intends to institute civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence.

114. Section 39(3)(c) of the MDL provides for notice to persons affected by a restraint order and in the case of a confiscation order, for a reasonable opportunity for a person holding an interest in the subject property to make representations regarding it, before it is realized [s. 40(7)] .

115. Section 15(6) of the PCCL provides that in exercising its powers of restraining and realizing property pursuant to a confiscation order, the Court shall take no account of any obligations of the defendant (unless such obligation is payment of an amount due in respect of a fine or other order of the court) or of the recipient of any gifted property, which conflicts with the obligation to satisfy the confiscation order. Section 35(5) and (6) of the MDL similarly limit the obligations that can be satisfied from property subject to a confiscation order.

116. There is no specific provision in Cayman Islands law authorizing the freezing or confiscation of assets of organizations purely on the basis that such organisations are found to be primarily criminal in nature. This is not a prevalent construct in the Cayman Islands. However, confiscation provisions in relation to proceeds of criminal conduct are applicable to legal persons, whether inherently criminal in nature or not. The proposed revision/consolidation of the PCCL and the MDL will include express provisions for the confiscation of the property of organizations that are found to be primarily criminal in nature.

117. Civil forfeiture can be effected under s. 192 of the CPC, and has been quite frequently used to do so. Section 192 states "*Any court may order the seizure of any property which there is reason to believe has been obtained by or is the proceeds or part of the proceeds of any offence, or into which the proceeds of any offence have been converted, and may direct that the same shall be kept or sold and that the same, or the proceeds thereof if sold, shall be held as such court directs until some person establishes a right thereto to the satisfaction of such court. If no person establishes such a right within twelve months from the date of such seizure, the property or the proceeds thereof, shall vest in the Financial Secretary for the use of the Islands and shall be disposed of accordingly*". In addition, civil forfeiture can be effected under section 27 of the MDL where cash is seized under section 26 of the MDL as described in paragraph 110.

Recommendation 32

118. The following are statistics on the number and the total dollar amounts of property restrained or seized, and confiscated relating to ML during 2003- 2007:

Table 3: Restraints 2003 - 2007

Year	Number	Value
2003	14	$65 million
2004	2	$31 million
2005	2	$415,000
2006	8	$21.3 million
2007	2	unavailable

Table 4: Confiscations 2003 - 2006

Year	Number	Value
2003	1	$3,248,104
2004	0	0
2005	1	$143,000
2006	4	$1,519,499

2.3.2 Recommendations and Comments

119. It is recommended that the proposed revision/consolidation of the MDL and the PCCL which will include specific asset-tracing and comprehensive civil forfeiture provisions be enacted. .

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	**LC**	• There are no provisions for asset-tracing.

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and Analysis

120. TUNMOTO and the *Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002* (ATUNMOTO) were promulgated by the UK and extended to its overseas territories to give effect to UNSCR 1373 and 1267 respectively. In addition, the TL establishes a regime for freezing/restraint and confiscation/forfeiture of terrorist funds in the context of domestic proceedings as well as external (i.e. foreign) restraint or forfeiture orders. By virtue of the fact that TF offences are predicate offences under the PCCL (see section 2.2 above), the restraint provisions under that law (as described in sections 2.3 above and 6.3 below) can also be used.

121. Article 8 of ATUNMOTO provides for the freezing of funds where there are reasonable grounds to suspect that the person by or on behalf of whom any funds are held is or may be a listed person (as defined in Article 2(1) thereof to be Usama bin Laden or any person designated by the Sanctions Committee). While prior notice is not contemplated, once a freezing order has been issued it is required to be sent to the owner of the frozen funds (Article 8(5)). 'Funds' is defined in Article 2(1) to include financial assets, economic benefits and economic resources of any kind, interest, dividends or other income on or value accruing from or generated by assets...

122. Article 5 of TUNMOTO provides for the freezing of funds where there are reasonable grounds to suspect that the person by or on behalf of whom any funds are held is or may be a person who commits, attempts to commit, facilitates or participates in a terrorist act, a person controlled directly or indirectly by such person, or a person acting on behalf, or at the direction of such person. The provisions as to notice of the freezing order and the definition of 'funds' are the same as under ATUNMOTO.

123. Where such terrorist property (defined in s.2 of the TL as including money and all other property, real or personal, including things in action and other intangible property) relates to proceedings or charges instituted in the Cayman Islands for terrorist financing offences under the TL (see section 2.2 above) it may be restrained pursuant to s.5 of Part 1 of Schedule 2 to the TL. Section 5(4)(b) of that Schedule allows for a restraint order to be obtained *ex parte*; however, the order itself shall provide for notice of it to be given to any persons affected by it (s. 6(1) of Part 1 to Schedule 2). Section 28 (7) of the TL provides for an owner of, or a person with an interest in property subject to forfeiture, an opportunity to be heard by the court, before an order is made. Section 7 of Part 3 of Schedule 3 of the TL provides for an appeal by third parties *et al* against forfeiture of cash

124. Further, s. 29 of TL and Part 2 of Schedule 3 of the TL empower an authorised officer to seize any cash, if he has reasonable grounds for suspecting that it is terrorist cash. While the authorized officer continues to have reasonable grounds for his suspicion, cash seized may be detained initially for a period of 48 hours, which may be extended for up to 2 years, by order made by a summary court.

125. The order may be made if:

a) there are reasonable grounds for suspecting the cash is intended to be used for the purposes of terrorism and that either –

i. its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the Cayman Islands or elsewhere) proceedings against a person for an offence with which the cash is connected; or

ii. proceedings against any person for an offence with which the cash is connected have been started and have not been concluded;

b) there are reasonable grounds for suspecting that the cash is property earmarked as

terrorist property and that either –

i. its continued detention is justified while its derivation is further investigated, or consideration is given to bringing proceedings (in the Cayman Islands or elsewhere) against a person for an offence with which the cash is connected; or

ii. proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

126. Any such order shall provide for notice to be given to persons affected by it (s. 3(4) of Part 2 of Schedule 3), and an innocent victim may apply to summary court for release to him of any seized cash (s.9 of Part 4 of Schedule 3).

127. As noted above terrorist funds can be frozen on the basis of reasonable grounds for suspicion. Such grounds would include actions initiated under the freezing mechanisms of other jurisdictions. In addition, the TL has express provisions in Part 2 of Schedule 2 that enable the registration and enforcement of external restraint (and forfeiture) orders. Section 30 of the TL provides for account-monitoring orders for the purposes of terrorist investigations and the tracing of terrorist property.

128. Freezing actions extend to funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organizations, and to funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organizations.

129. The freezing orders provide clear guidance to financial institutions and other persons and entities concerning their obligations in taking action under freezing mechanisms. However, the need for additional guidance is being considered.

130. While action can be taken in relation to lists promulgated by the UN Sanctions Committee and other competent authorities, there is no legislative provision under Cayman Islands law for such listings to be promulgated domestically, on an independent basis, except as may be potentially accommodated under the general regulation-making power in s.60 of the TL.

131. Procedures for discharging freezing orders are set out in the respective governing legislation. Under Article 5(7) to (8) of TUNMOTO any person by, for or on behalf of whom funds are held which have been ordered frozen may apply to the Supreme Court for the discharge of the freezing order. Article 8(7) and (8) of ATUNMOTO provides for procedures similar to those noted in TUNMOTO. Section 6 of Part 1 of Schedule 2 to the TL allows for a restraint order granted under s. 5 of the said Part 1 to be discharged or varied by the court on the application of a person affected by it or if the proceedings in respect of the relevant offence are not instituted within such time as the court considers reasonable.

132. Where a restraint order has been obtained pursuant to s. 11 of the PCCL, s. 11(2) enables such an order to make such provision, as the court may think, fit for the living expenses and legal expenses of the defendant. A restraint order, pursuant to s.5 of Part 1 of Schedule 2 to the TL, may, by virtue of s. 5(3) of the said Part 1, specify conditions and exceptions re living and legal expenses.

133. By use of the provisions under TUNMOTO or the TL described above (or indeed under the PCCL), *ex parte* freezing and seizing can occur whether or not persons have been formally designated under UNSCR 1267 or 1373. The position is the same regarding confiscation, as described in section 2.3.

134. With regard to the protection of the rights of bona fide third parties Part 3 of Schedule 2 to the TL provides for the protection of creditors against forfeiture and s. 9 (3) of Part 1 of

Schedule 2 provides for compensation to third party interest. In addition, as already noted section 6 of Part 1 of Schedule 2 to the TL allows for the variation or discharge of a restraint order. Section 6(3) and (4) of Part 3 of Schedule 3 to the TL provides for the protection of innocent joint owners of property; Part 4 of the same Schedule provides for third party claims on detained cash and s.16 of Part 5 of the same Schedule provides for the protection of third party acquisition of earmarked terrorist property in good faith.

135. Failure to comply with a restraint/freezing order issued by a court pursuant to the TL is punishable by a fine and imprisonment, as to do so would be a contempt of court. Failure to comply with a freezing order under TUNMOTO or ATUNMOTO is an offence under these statutory instruments (Articles 5(9) and 8(9), respectively). Penalty for failure to comply with a freezing order under TUNMOTO as stipulated in Article 11(1) is imprisonment for a term not exceeding seven years or to a fine or to both on conviction on indictment and on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five thousand (5,000) sterling or its equivalent or to both. Article 19(1) of ATUNMOTO provides for the same penalties.

Recommendation 32

136. There have been no TF investigations, restraints, prosecutions, or confiscations. In the circumstances, there are no statistics thereon.

2.4.2 Recommendations and Comments

137. There is a need for the development of a publicly known listing and delisting process for independent domestic designations, whether by way of s. 60 of the TL or otherwise .

138. There is need for legislative provisions for independent domestic listing and delisting.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**LC**	• There have been no restraints or confiscations under the CFT legislation, therefore the effectiveness cannot be duly determined. • There are no legislative provisions for independent domestic listing and delisting.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and Analysis

139. The Cayman Islands established its FIU in 1989. In the period from 1989 to 1996 the FIU received SARs solely in relation to money laundering associated with drug trafficking activities. However, since 1996 (the year of enactment of the PCCL) the basis for SARs expanded to include all serious criminal offences. In October 2003, the PCCL was amended and significant changes in the organizational make-up and structure of the FIU ensued. Prior to this amendment,

the FIU was an arm of law enforcement that received, analyzed and disseminated SARs and it also conducted investigations into ML offences and assisted in subsequent prosecutions. Following the amendment of the legislation, the FIU was completely transformed into an administrative / civilian entity with specific powers which now exclude the investigative and prosecutorial mandate of its predecessor. All investigations are now under the auspices of the FCU of the RCIP. In the process, the FIU was renamed from the "Financial Reporting Unit" to the "Financial Reporting Authority" (referred to within the Egmont Group as CAYFIN). The FRA (via its predecessor, the FRU) became a member of the Egmont Group in 2001.

140. The statutory authority for the establishment of the FIU as the FRA, as well as its structure, is found in section 22 (2) of the PCCL. Section 23 (1) of the PCCL state the functions and duties of the FRA: "The *Reporting Authority shall be responsible for receiving (and as permitted, requesting), analyzing and disseminating disclosures of financial information- (a) concerning proceeds of criminal conduct or suspected proceeds of criminal conduct, or (b) required by any law in order to counter money laundering*." The reporting of suspicious activity related to the financing of terrorism is also covered in section 23 (2)(a)(i) and (ii) of the PCCL.

141. The general procedure for receiving and dissemination of SARs is as follows. A reporting entity forwards a SAR via fax to the FRA. The FRA acknowledges receipt of the SARs from the reporting entity (in writing) within a four (4) day period. These documents are scanned into the FRA database and the Administrative Manager assigns it a file number. Within a twenty-four (24) hour period the information is submitted to the FRA Director for review at which time a decision is made concerning additional action to be taken. The SAR is then assigned to an analyst for further follow-up analysis and review, i.e. to gather additional intelligence from police databases, to determine if there are other SARs that may be related, property and vehicle registry searches, etc. Following the complete analysis of a SAR, a determination is made as to whether or not this information should be forwarded on to law enforcement, a foreign FIU or a financial regulatory body like CIMA for further action and/or investigation. If a SAR of an urgent nature is received by the FRA, the complete analytical process and subsequent dissemination to law enforcement may take as little as two hours.

142. Despite the paper intensiveness of this system, it does appear to be working very well. During the onsite visit with the FRA, they did state that they are currently working towards a more automated process, i.e. the e-filing of SARs which will streamline the reporting process and improve overall efficiency. A timeline for implementation was not indicated by the FRA at the time of the on-site visit.

Guidelines on the manner and form of reporting

143. The enabling legislative provision which allows the FRA to issue guidelines setting out the forms and procedures for making a SAR are outlined in section 31(1) of the PCCL . However, the specific content and format of a SAR is found separately in the GN that are issued by CIMA pursuant to section 34(1)(c) of the MAL**.**

144. As part of the CIMA-led GNC, the FRA is able to directly participate in the development of the GN which assist reporting entities in identifying and reporting suspicious transactions related to money laundering and terrorist financing. In sections 5.28 and 5.29 of the GN it advises Money Laundering Reporting Officers (MLROs) to use the standardized SAR form (developed by the FRA) for routine reports in Appendix J of the GN. However, there are allowances for urgent matters to be reported in the initial instance by telephone or email. These reports are then to be followed-up with hard copies "*as soon as is reasonably practicable*." It should also be noted

that, reporting entities are not obliged to use the SAR format outlined in Appendix J of the GNs when submitting reports. However, FSPs do use the SAR format as a matter of common business practice when filing SARs with the FRA.

145. The FRA does appear to have a very good rapport and working relationship with the various banking institutions in the country. In meetings with the MLROs of the financial institutions they confirmed that the lines of communication and the level of cooperation between the FRA and their respective institutions are very good. These sentiment were also echoed by representatives of several DNFBPs, namely, the Cayman Islands Real Estate Brokers Association, the Cayman Islands Law Society and the Cayman Islands Society of Professional Accountants. It was also noted that it is a common and consistent practice for the FRA to provide written feedback to reporting entities when they file SARs.

146. The onsite visit revealed a "culture of compliance" amongst all regulated and unregulated financial intermediaries, including Designated Non-Financial Business Professions (DNFBPs). During the onsite visit the DNFPs stated that they do abide by the overall AML/CFT legal and regulatory framework in their day-to-day business practices. This includes the reporting of suspicious activity (SARs) to the FRA when necessary (see Table 5 below).

Table 5: Breakdown of entities reporting SARs

Reporting Entities	2006	2007(Jan – May)
Banks & Trusts	99	43
Mutual Fund Administrators	18	2
Corporate Service Providers	23	10
Attorneys	20	7
Auditors	4	0
Securities	8	0
Realtors	1	0
Insurance	1	1
Money Services	0	6
Other	2	0

147. The FRA has also made some strides in engaging and informing non-financial businesses and professions other than DNFBPs regarding AML/CFT matters. One recent initiative was the publication of a document entitiled, "A Pamphlet for Retailers of High Value Goods … Taking the profit out of crime." This pamplet outlines the role of the FRA, defines money laundering, explains the obligations of retailers of high value goods, when and what to report, identifying examples of what may constitute suspicious activity, as well as providing some insight regarding what happens when a merchant files a SAR.

Access to information

148. In the performance of its functions, the FRA does have access to a wide range of financial, administrative and law enforcement information. A senior member of the law enforcement JIU is assigned as a liaison officer to the FRA. This officer has full access to all police information systems and databases and he assists in the analysis of SARs by vetting the reports against the information and intelligence holdings of the RCIP. The FRA also has the ability to perform real-time searches and has access to a wide array of databases, which includes

but is not limited to; open source, the Customs and Police databases, the Immigration and Companies Registry databases, the vehicle and land registration records, the records from other government departments, as well as World Check and World Compliance which are commercially databases. The FRA may also liaise with CIMA when necessary to obtain any additional regulatory information that they may need in order to conduct the proper analysis of specific SARs.

149. In the view of the assessment team, the FIU does not appear to have any impediments vis-à-vis their ability to access any information that it may need to perform its functions and meet its mandate. If a SAR is filed, there is no requirement for the FIU to obtain a judicial authorization to acquire any additional information from the reporting institution.

150. The FRA has the authority pursuant to section 23(2)(c) of the PCCL to require any person to provide information for the purpose of clarifying or enhancing information which has been disclosed in a SAR. If the requisite information is not provided, an offence is committed under the Law (s. 23(4) PCCL). The evaluation team did confirm through interviews with the various reporting entities that the FRA has occasionally returned to the originator of the SAR to request additional information when necessary. The acquisition of additional information by the FRA from reporting entities does not appear to be an issue within the Cayman Islands AML/CFT reporting framework.

Dissemination of information

151. Additionally, the FRA is required under subsections 32(8)(a) and 33(9)(a) of the PCCL to disseminate financial information and intelligence to domestic law enforcement authorities (the FCU of the RCIP) where there is *prima-facie* evidence of criminal conduct or where the FRA has cause to suspect criminal conduct. Furthermore, it may also disclose information received relating to criminal conduct to foreign financial intelligence units, CIMA, or other institutions or persons as designated in writing by the AMLSG. (This is outlined in sections 32(8)(b) and 33(9)(b) PCCL).

Table 6: Onward Disclosures: FRA to the FCU of the RCIP

Year	Number of Disclosures
2003	2
2004	39
2005	46
2006	20
2007	2
Total	109

Table 7: FCU Disposition of Disclosures

Progress Report	Number of Disclosures
No further action taken	52
Ongoing investigation	31
Closed as no offence disclosed	9
Referred for overseas investigation	7
Suspect absconded	6
Dealt with by court	4*

*** One case pending.**

152. It should also be noted that the FRA does have a Memorandum of Understanding (MOU) with CIMA which recognizes the need for mutual cooperation and information exchange between the two agencies in the carrying out of their respective functions and duties. This document was signed on December 1st, 2004

Table 8: Onward disclosures: FRA to CIMA, foreign FIUs, foreign law enforcement, and requests for information from foreign FIUs, 2006 and 2007 (Jan – May)

Entity	2006	2007(Jan – May)
Foreign FIU/Law Enforcement	28	7
CIMA	7	7
Foreign FIU (requests)	37	9

Independence and autonomy

153. The FRA is a statutory body under the PCCL with a specified composition and designated powers, functions and duties. It is an agency within the Portfolio of Legal Affairs and is also subject to oversight by the AMLSG Appointed by the Governor in Cabinet. The AMLSG consists of the Attorney General (chairman), the Financial Secretary (deputy chairman), the Commissioner of Police, the Collector of Customs, the Managing Director of CIMA and the Solicitor General (section 24(1) PCCL). The Director of the FRA may also participate in the AMLSG meetings at the discretion of the AMLSG chairman. However, the common practice of the AMLSG has been to invite the Director of the FRA to all AMLSG meetings. Section 24(3) of the PCCL states that *"The Director shall normally be present at meetings of the Steering Group, but at the discretion of the Steering Group; and the Director shall not take part in the proceedings unless specifically invited by the chairman so to do."* The AG confirmed that the Director of the FRA is invited to all the meetings and he is encouraged to actively participate in group discussions.

154. Based on interviews with members of the FRA it appears that the day-to-day operations are under the management and control of the FRA Director as set out in section 23(7) of the PCCL. The structure does accord sufficient operational independence and autonomy which enables the FRA to carry out its statutory mandate. However, the sharing of information with foreign FIUs does require the sign-off of the Attorney General (section 33(7) and 33(9)(c) PCCL). The FRA advised that the normal turnaround time for sign-off is normally 24 hours, and in urgent cases has been performed in two hours. The signing of Memoranda of Understanding with foreign FIUs requires the consent of the AMLSG (section 23(2)(e) PCCL). While not a pre-requisite for cooperation, the FRA currently has nine MOUs with counterparts in the following countries: Australia, Canada, Chile, Guatemala, Indonesia, Mauritius, Nigeria, Thailand and the USA.

Storage and protection of information

155. The FRA's intelligence system and database is maintained as a standalone system that is housed on a dedicated server physically located within the FRA premises. There are two components of this database which were described as; (1) a "subjects" database and (2) an "administrative" database. IT personnel assigned to the FRA stated that these data sets are

regularly backed-up at a secure offsite facility on a weekly and monthly basis. The experience of Hurricane Ivan in 2004 provided an additional reason for the Cayman Islands Government and by extension the FRA, to ensure that all its information holdings are properly safeguarded and secure for the purposes of disaster recovery. The systems as they currently exist certainly provide an appropriate level protection against any threat that they may face.

156. Access to the FRA database is restricted specifically to authorized personnel working within the unit. Section 23(2)(d)(i) of the PCCL prescribes that the FRA maintain records *"… for a minimum of five years of all information received or disseminated by the Authority;"*. However, in practice the FRA has decided to surpass the five (5) year records retention requirement by holding its records inventory beyond the minimum prescribed period. The FRA stated that their current information storage capacity will allow them to retain records well beyond this timeframe and well into the foreseeable future.

157. The FRA does have the ability to share information for both law enforcement and regulatory purposes. However, there are confidentiality obligations on FRA employees in section 29(1) of the PCCL which makes it an offence for the FRA to disclose information *except* as permitted by the PCCL or any other law or by judicial order of the Grand Court.

Reports

158. The FRA issues an annual report which includes the 5-year trend in SARs by financial year, source, reasons for suspicion and nationalities of subjects. To date, these reports have been a compilation of statistics from both the former FRU and the current FRA. These statistics also include the disposition of SARs received during the calendar year, as well as the onward disclosures to overseas counterparts, CIMA and the RCIP. At the time of the on-site visit, the FRA stated that they have not yet developed any sort of comprehensive typologies and/or trend analysis, as contemplated by section 31(1)(a) of the PCCL. However, the FRA has done some industry outreach on this subject (see paragraph 383 below) and did acknowledge the importance of such analytical products and stated that they are currently working towards publishing a document of this nature which can be shared with the public and reporting entities, as well as regulatory and law enforcement partners.

159. According to the FRA Annual Report for 2005/2006, *"… the unit received 221 new cases. 80 were analyzed and required no further immediate action. Another 46 cases were onward disclosed with 24 going to local law enforcement, 19 going to overseas FIUs or law enforcement and 3 to the Cayman Islands Monetary Authority (CIMA). A further 44 cases were replies to Request for Information from overseas FIUs as of the end of the year there were 51 cases in progress."* Based on this information and the interview with FRA personnel by the evaluation team, the FIU is active in the sharing of information and intelligence with foreign FIUs that are members of the Egmont Group. In the 2005/2006 period the FRA shared information with 27 different countries. Any communication with foreign FIUs by the FRA is conducted via the Egmont secure website. By FRA estimates, between forty and sixty percent of SARs received result in useful intelligence.

FIU structure, resources, integrity standards and training (R.30)

160. The make-up of the FRA is legislated pursuant to section 22(2)(a-d) of the PCCL. At the time of the on-site the FRA had a staff of six (6) which consisted of a Director, a legal advisor, a senior accountant, two analysts and an administrator. In the fiscal year 2006/2007 the FRA had a

budget of CI$737,748.

161. Based on the current SAR statistics, the number of staff, the budget and the overall level of resources appears to be adequate to effectively discharge the duties of the FRA. During the onsite interview, the FRA Director stated that his unit has not experienced any situation whereby they could not meet their mandate with the current levels of financial, human and/or technical resources that they have received from the Cayman Islands government. The structure of the unit itself does not inhibit the unit's ability to effectively carry out its work and meet its mandate.

162. As government employees the members of the FRA are subject to the professional standards set out in section 5 of the *Public Servants Management Law* (PSML). Furthermore, as noted above, section 29 of the PCCL also stipulates that all FRA staff is bound by the rules of confidentiality concerning the information that they have under their control.

163. The level of education, knowledge and experience of FRA personnel is quite extensive and directly related to their respective job responsibilities. The FRA Director has over 30 years of law enforcement experience and he is also a qualified attorney. The legal adviser is a retired Chief Justice and judge of the Grand Court. The senior accountant is a professional with over 25 years' audit experience. The senior analyst has a law degree and regulatory experience with CIMA and the junior analyst has a degree in finance and is also a former administrative officer with the Economics & Statistics Office.

164. The two members of the FRA analytical staff have obtained designations as Certified Anti-Money Laundering Specialists from the Association of Certified Anti Money-Laundering Specialists (ACAMS). This designation requires each individual to pursue continuing professional educational over a period of three (3) years in order to maintain the professional designation.

165. In addition to the above noted, the employees of the FRA have also received training on various topics, including; financial products, anti-money laundering techniques and typologies provided by international organizations and agencies, such as; ACAMS, FATF / GAFISUD, the Cayman Islands Compliance Association (CICA), the Anti-Money Laundering Alert Conferences, the Securities and Exchange Commission (SEC), the Egmont Group, as well as the CFATF.

Statistics (R.32)

166. Since the formation of the FRA in 2003, it has maintained comprehensive statistics on the number of SARs filed; their origin (institutional and country specific), as well as the onward disclosure to law enforcement and regulatory agencies. This information is publicly available in their 2005/2006 Annual Report.

167. In May 2006, the FRA initiated a tracking process for SARS disclosed to the RCIP. The RCIP have acknowledged that the SARs received from the FRA have provided useful intelligence and investigative leads. Based on interviews with the FRA and the FCU, there appears to be a very strong working relationship between the two agencies.

2.5.2 Recommendations and Comments

168. In the opinion of the assessment team, the FRA appears to be performing its functions in an appropriate and effective manner. It has a cadre of personnel that have a great deal of experience and who are well trained. Despite the enhanced level of training, the FRA should take measures to establish a more formalized AML/CFT training program for its employees to ensure

that they remain abreast of current trends and typologies. This could be accomplished through the development of partnerships with foreign FIUs, law enforcement, CIMA and representatives from the financial sector.

169. The FRA or CIMA should mandate that all SARs which are filed by reporting entities follow the prescribed format which is outlined in Appendix J of the GN. At the time of the onsite the SAR reporting format was simply a "suggested" format. This would reduce the probability of key information being left out of the SARs and therefore enhance the ability of the FRA analysts in identifying transactions of a criminal nature.

170. The current practice concerning the onward disclosure of SAR information appears to be occurring in a timely manner. In the opinion of the assessment team, consideration should be given to the removal of the requirement that the Director of the FRA seek permission from the AG prior to the dissemination of information to a foreign FIU. This would significant mitigate the risk of any unnecessary delay in exchanging SAR information.

171. The FRA should also focus on the development of analytical products/reports in collaboration with its partners (e.g. law enforcement and CIMA) to identify new ML/FT trends and/or typologies. They should also continue to provide feedback to both financial and non-financial reporting entities concerning the submission of SARs and they should actively seek out opportunities to participate in training seminars and media programs to educate both professionals and the public on AML/CFT matters.

172. The FRA should also develop a website which would be readily accessible to the general public. The content of this website should include: the mandate and responsibilities of the FRA, all relevant AML/CFT laws and regulations, the GN, legal obligations to file SARs, contact information for general inquiries, links to other AML/CFT resources, (e.g. CFATF, FATF, IMF, Egmont Group), as well as any other information that would be considered useful to educate and inform the general public and AML/CFT investigative partners.

173. An enhanced outreach program should also be considered by the FRA in order to educate businesses and the general public on various typologies, trends and other matters related to AML/CFT.

174. In the 2005/2006 FRA Annual Report statistics show that the total number of SARs from 2002 to 2006 has dropped from 443 in 2002 to 221 in 2005/6 (approx. 50% decrease). At the time of the onsite visit the FRA stated that this decrease may be due to one of the following reasons: firstly, that in the wake of the introduction of the MLR in 2000 and the retrospective due diligence requirement, there was a reporting spike. Secondly, that defensive reporting may have been occurring in response to the establishment in 2000 of a direct offence for failure to disclose knowledge or suspicion of money laundering. Cayman Islands authorities should continue to monitor this closely to ensure that the level of vigilance of the reporting entities is not waning and that complacency is not setting in.

175. Consideration should also be given to legislative amendments under the PCCL which would allow the FRA to directly impose administrative sanctions or penalties on those entities who fail to comply with reporting obligations, in addition to the criminal penalty. Currently, CIMA may impose regulatory sanctions against entities that it regulates for failure to have the reporting systems and procedures required by the MLR in place. An FRA sanction would streamline the process and reduce the workload of CIMA.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	• FRA has not developed any comprehensive typologies and/or trends for the annual report.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27 & 28)

2.6.1 Description and Analysis

176. The RCIP is the police force of jurisdiction in the Cayman Islands. They are responsible for all policing-related duties which include traffic enforcement, drug interdiction, crimes against persons and property, money laundering and terrorist financing investigations, as well as other criminal matters. The total complement of RCIP personnel currently exceeds four hundred (400), three hundred and seventy-one (371) of which are sworn police officers. The balance of the RCIP establishment consists of civilian operational support and administrative staff. Housed within the RCIP is the FCU. The FCU has the remit for criminal investigations of all offences related to financial crimes, including money laundering and the financing of terrorism. The Legal Department of the Portfolio of Legal Affairs has the responsibility for the prosecution of these and all other criminal offences.

177. Under Cayman Islands law there is no explicit legislative authority which states that law enforcement authorities have the ability to either postpone or waive the arrest of suspected persons, or to delay the seizure of money to further an investigation. However, police officers do possess a general discretionary enforcement power which allows them to postpone/waive arrest and/or the seizure of monies if the circumstances of the investigation dictate that it is appropriate to do so, i.e. to establish the identities of additional members involved in criminal enterprise. At the time of the onsite there were no statistics available to illustrate the number of investigations where this sort of investigative discretion had been exercised.

Additional elements

178. The RCIP provided information which stated that there are no specific laws in the Cayman Islands in respect to investigative techniques, such as intrusive surveillance, probes, undercover operations, use of informants, controlled deliveries, etc. These techniques are notwithstanding available to them; however, they are not arbitrarily used. There are checks and balances that are put in place by the RCIP which stipulate that the authority to deploy any of these techniques requires the permission of the Commissioner of Police or in some instances the permission of an officer of the rank of Superintendent. Based on current RCIP internal guidelines, there are no offences to which these special investigative techniques cannot be applied.

179. In addition to the above noted and, subject to the written authority of the Governor or a Justice of the Grand Court, law enforcement authorities are also able to employ other investigative techniques as they may be required. These techniques include search warrants, production orders, letters of request, account monitoring, as well as the interception of private communications. The legislative authorities for using these various techniques are noted below:

- **Section 3(2)(b)(ii) CRPL (1995 revision)** .
    - **Letter of Request**. Typically used in the context of domestic investigations; enables information to be obtained directly by the RCIP from all available sources including banks, law firms, accountants, money transfer companies, etc.

- **Section 44 MDL (2000 revision)**
    - **Production order**. RCIP may for the purpose of an investigation into drug trafficking apply to the court for production orders in relation to particular material or material of a particular description.

- **Section 45 MDL (2000 revision)**
    - **Search warrant.** RCIP may for the purpose of an investigation into drug trafficking apply to the court for a search warrant

- **Section 39 PCCL (2006 revision).**
    - **Production order**. RCIP may for the purpose of an investigation into an offence under the PCCL apply to the court for production orders in relation to particular material or material of a particular description.

- **Section 40 PCCL (2006 revision).**
    - **Search warrant.** RCIP may for the purpose of an investigation into an offence under the PCCL apply to the court for a search warrant

- **Section 40 and Schedule 4 TL 2003**
    - **Account monitoring order.** RCIP may apply to a judge for account monitoring orders in respect of accounts of specified persons held with a specified financial institution

- **Section 55 TL 2003**
    - **Interception of communications order**. RCIP may, with the written consent of the Attorney General, apply to the Governor for an interception of communications order in relation to specified communication or communication of a specified description. The information gathered under this section is admissible in evidence, notwithstanding that it contains hearsay.

- **Section 75(2)(a) The Information and Communication Technology Authority Law (2004 revision)**
    - Provides that no offence is committed under the Law in relation to interception, monitoring or interruption of messages transmitted over an ICT network in obedience to a warrant issued by the Governor. The Governor has reserve powers in relation to security matters under which he has the authority to issue such warrants.

180. In the case of controlled deliveries, as noted above, there is no specific legislation which permits this. But, as in the case in countries with similar legal systems, there is no legal impediment concerning the use of a controlled delivery, as long as the operation does not result in the commission of an offence by a law enforcement officer. Both the RCIP and Customs have internal guidelines which govern the use and application of controlled deliveries for investigative purposes.

181. To date, the FCU has relied extensively on the use of search warrants, production orders, letters of request and the use of informants to investigate any matters related to money laundering and associated predicate offences. (At the time of the onsite visit, the RCIP stated that they have not had any investigations related to the financing of terrorism.) It was apparent that there are some logistical issues which do impede the RCIP's ability to use certain techniques, such as undercover police officers. Given the size of their jurisdiction, many of the RCIP officers are known in the local communities. Therefore, their ability to remain undercover and "blend in" with the general public for the purposes of undercover work is extremely difficult. For undercover operations, the RCIP could request the assistance of a neighboring law enforcement agency if required. The RCIP did indicate that in the past they have used the services of foreign law enforcement officers for undercover work. There were no statistics available at the time of the onsite that illustrated the number of times they had requested this type of assistance.

182. As noted above, the FCU of RCIP is the primary unit responsible for the investigations of all money laundering and terrorist financing offences. The work of the FCU is complemented and enhanced by the JIU which is comprised of the RCIP, Customs and Immigration officers. The JIU's primary function is to gather and disseminate intelligence to both domestic and international law enforcement agencies to facilitate criminal investigations.

183. A number of joint investigations have been conducted by the RCIP and Customs in the past. Throughout the course of these investigations Customs has been able to use their regional contacts in the US, Mexico, Bermuda and Canada to share and gather information and intelligence. It should also be noted that the Cayman Islands has a seat on the Executive of the Caribbean Customs Law Enforcement Council (CCLEC) which promotes and fosters the sharing of information and intelligence amongst its member agencies. As part of this process CCLEC is the custodian of a regional intelligence database which warehouses information that is available and may be used by the members of the council.

184. At the present time, there does not appear to be any formal mechanism by which typology and trends analysis information is promulgated amongst the law enforcement community in the Cayman Islands. Based on the information gathered by the assessment team, the AMLSG would appear to be the mechanism by which Cayman Islands typology information from the FRA would be disseminated. The Cayman Islands indicated that the FRA is currently compiling such typology information. However, information from the FRA confirmed that an analytical product reflecting these typologies and trends has not yet been published.

Powers of search, seizure and compelling evidence (R. 28)

185. Under s. 39 of the PCCL, the police may apply *ex parte* to the Grand Court for a production order for the purposes of investigating any offences covered by the PCCL. This order may cover any *"… particular material or material of a particular description.*" The order is issued once the court is satisfied, *inter alia,* that;

> *(a) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from an offence to which this law applies;*
>
> *(b) there are reasonable grounds for suspecting that the material to which the application relates,*
>
> > *(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and*

(ii) does not consist of or include items subject to legal privilege[6]

186. Once granted, access to the relevant material would also include the possibility of entering the premises where the material is held and seizing it. This would also include the production of the material in a readable format, if it entails the seizure of information such as computer data. Furthermore, any information which is the subject of a production order will not be protected by secrecy or other restrictions as outlined in section 39(8)(b) of the PCCL which states; " *… shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information whether imposed by the Confidential Relationships (Preservation) Law (1995 Revision) or any other law or by the common law; …".* Under section 39(9) of the PCCL, it is an offence for anyone knowing or suspecting that an investigation is taking place to make any disclosure likely to prejudice the investigation.

187. In addition to the above-noted, section 40 of the PCCL also provides the police with the ability to obtain a search warrant from the Grand Court for investigative purposes, under similar rules as those which apply to production orders. There are also parallel provisions for production orders and search warrants under sections 44 and 45 of the MDL in relation to investigations related to drug trafficking offences.

188. The RCIP has the ability to take witnesses' statements for use in any investigations and/or prosecutions related to any suspected criminal offence(s), as part of normal police powers. Section 87 (i) of Part IX of the Police Law (2006 Revision) states that, *" The Governor may make regulations for the good order and government of the Force and for carrying into effect any of the purposes or provisions of this Law including the following – (i) the interrogation of suspects and witnesses; …".* Such regulations have not been made; however, the RCIP internal guideline and procedures governing this area apply.

Confiscation and seizure

189. Any information obtained pursuant to production or seizure orders under the PCCL or MDL is available for use in investigations and prosecutions of ML/FT and underlying predicate offences or for use in related actions such as actions to freeze or confiscate the proceeds of crime. Sections 26 and 27 of the MDL spell out the conditions which must be met for the seizure and eventual forfeiture of money associated to drug trafficking activities. The forfeiture is based upon the civil test which is the "balance of probabilities." Section 6 of the PCCL describes the confiscation, restraint and charging orders and their administration and enforcement. It should also be noted that section 192 (1) of the Criminal Procedure Code states that, *"Any court may order the seizure of any property which there is reason to believe has been obtained by or is the proceeds or part of the proceeds of any offence, or into which the proceeds of any offence have been converted, and may direct that the same shall be kept or sold and that the same, or the proceeds thereof if sold, shall be held as such court directs until some person establishes a right thereto to the satisfaction of such court. If no person establishes such a right within twelve months from the date of such seizure, the property or the proceeds thereof, shall vest in the Financial Secretary for the use of the Islands and shall be disposed of accordingly."*

[6] Legal privilege is defined in sections 37(8) and (9) of the PCCL as attaching to legal advice or communication in connection with and for the purpose of legal proceedings, except where the furthering of a criminal purpose is involved.

Prosecution and police structure, resources, integrity standards and training (R.30)

Prosecution:

190. The Criminal Division of the Legal Department currently has eleven (11) qualified and experienced prosecutors with an operating budget (06/07) of CI$3.44 million. In addition to the Solicitor General, there are eight (8) crown counsel and one (1) senior crown counsel, two (2) dedicated to financial crime, one (1) dedicated to international affairs with three (3) additional resources that assist as required.

191. The department falls under the responsibility of the Solicitor General who operates independently from Cabinet. She has complete financial and managerial control of the department, as well as complete autonomy in the hiring of staff. In the opinion of the assessment team the legal department operates in an independent environment which is free from any undue influence or interference.

192. The International Affairs section is also responsible for liaising with the FCU, the FRA and CIMA. It is also charged with the responsibility of overseeing the restraint and confiscation of criminal assets.

Law Enforcement:

193. The FCU is the stand-alone RCIP unit responsible for the investigation of all financial, ML, TF and corruption offences within the Cayman Islands. It plays a key role in providing assistance to the Legal Department in the execution of mutual legal assistance requests received from foreign authorities. The Unit is headed by a detective superintendent and has a full-time staff complement of seventeen (17). The FCU has sufficient operational independence within the RCIP chain of command and its ability to investigate and make inquiries appears to be completely free from any undue influence or interference from any third party interests.

194. The FCU is lead by a detective superintendent who has an extensive policing background and financial crime investigative experience. His second in command is a detective inspector who also possesses a great deal of policing experience within the financial crime field. In addition to this are two inspectors, each heading an operational team – one team covers fraud and corruption matters and the other ML/PCCL/FT/asset confiscation/ fraud prevention matters. Within these two operational groups, the police investigators have various levels of experience, ranging from new recruits to those having 15 to 30 years of experience. The vast majority of the investigators within the FCU fall into the latter category.

195. The FCU also has a forensic accounting capacity. The accountant/consultant assigned to the unit is also the Commandant of the Special Constabulary. He is a fellow of the Institute of Chartered Accountants in England & Wales and he also has had extensive experience at the senior partner level with one of the "Big Four" international accounting firms. He works with the FCU on a part-time basis to provide accountancy expertise and advice on financial crime and fraud investigations as required.

196. Officers within the RCIP are chosen based on the selection standards outlined within section 48 of the PSML, as well as, section 9 of the *Police Law (2006 Revision)*. All RCIP officers are expected to conduct themselves in an ethical and professional manner at all times.

Any officer found to be in breach of disciplinary standards would immediately be transferred out of the FCU pending the outcome of any disciplinary and/or criminal proceedings. At the time of the onsite, the FCU stated that they are in the process of dealing with a situation where an officer has been transferred pending the outcome of a criminal matter involving an off-duty incident.

197. A significant number of investigators within the FCU are well-trained and have a great depth and breadth of experience in financial investigations. Most of the training within the FCU is by way of a mentoring-type process, whereby the more experienced staff train and guide the less experienced members of the unit. In addition to this, the FCU also provides opportunities for its investigators to pursue overseas training opportunities, i.e. AML/CFT conferences/seminar and typology exercises. The RCIP also provides financial support to any of its officers wishing to pursue educational opportunities related to their professional/investigational duties.

198. The FCU is also exploring the development of a national fraud course tailored to the Cayman Islands financial environment. This is being pursued in partnership with the University of Teesside in the United Kingdom with the goal of the course receiving university accreditation. The FCU added that they have also been involved in some cross-training events involving the FRA, Customs and the Legal Department.

Courts and Prosecution

199. The Chief Justice of the Cayman Islands is highly experienced in ML matters and has presided over such cases. To the extent that general training for the courts and the other judges on seizure, freezing and confiscation orders may be of value, there are mechanisms available for the delivery of same. In the opinion of the assessment team, the judiciary possesses the requisite skills, knowledge, experience and capacity to deal with any ML/FT matters that may be brought before them. As noted in section 1, facilities for electronic or paperless trials are available and have enhanced the efficiency of the court system, and there are plans to implement e-filing of documents to initiate new cases or advance existing ones.

200. Since 2003, members of the Legal Department have participated in courses conducted by the now defunct Caribbean Anti-Money Laundering Programme (CALP), the Cambridge International Symposium on Economic Crime and seminars on asset forfeiture and confiscation, anti-corruption, fraud, developments in proceeds of crime law and recent trends in international law held in the Caribbean and other regions. A senior crown counsel was seconded to the Asset Forfeiture and Recovery Unit of the UK Crown Prosecution Service and the Asset Recovery Agency for approximately four months from October 2006 to January 2007 for training in money laundering/ asset forfeiture and confiscation prosecutions and the operations of a civil forfeiture scheme.

2.6.2 Recommendations and Comments

201. The judiciary, prosecution and law enforcement authorities in the Cayman Islands exhibit a high degree of competency in matters related to AML/CFT and other criminal-related matters.

202. Despite the high level of experience and competence of the FCU, consideration should be given to the development of a more formal training process. This could include a basic financial

crime course which would include elements of AML/CFT. In addition to this, measures to ensure that all investigators within the FCU remain up to date vis-à-vis the latest trends and typologies should also be considered.

203. The working relationship between the Legal Department and the FCU is excellent. The Solicitor General stated that the FCU cases have been extremely well prepared which has facilitated the presentation of the evidence in court proceedings: and that the quality of the testimony presented by investigative officers has been very good.

204. Legislative authorities within the Cayman Islands should also take steps to allow judicial authorization for the monitoring of bank accounts in matters related to money laundering. This currently exists for matters related to FT; however it has not yet been extended to ML. It is expected that this will be addressed in the new consolidation of the PCCL and MDL that is currently being developed.

205. The FCU, the Legal Department, the FRA and other competent authorities are also encouraged to pursue AML/CFT cross-training opportunities where possible. Particular emphasis should be placed on the cooperative analysis of ML/FT trends and typologies, as well as, the identification of new investigative techniques and international "best practices".

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**C**	• This recommendation is fully observed
R.28	**C**	• This is recommendation is fully observed

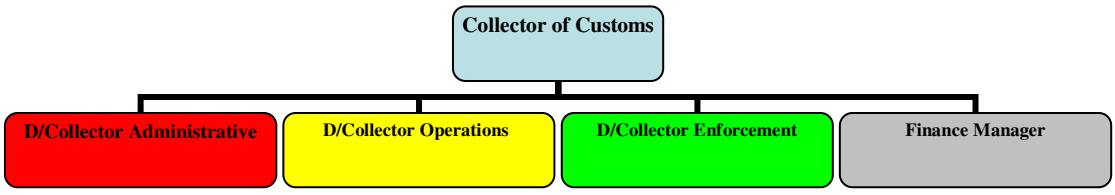
2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

206. The primary responsibility for border control at air and sea ports rests with Her Majesty's (HM) Customs Service of the Cayman Islands. The Customs Service is a line department under the Portfolio of Finance & Economics and has three specialist units: a Narcotics Enforcement Team (C-NET) a Fraud Division (C-FED) and a Fraud Prevention & Inspections Unit (C-PIU). C-NET is the specialist team most usually involved in AML matters, and has 11 officers. Customs also provides an officer to the JIU and several to the joint Customs-RCIP marine unit.

207. The four primary divisions in the organizational structure of HM Customs are as follows:

Chart 3: Organisational Chart of HM Customs



208. The D/Collector Administrative is responsible for training, IT systems, collections (25 officers), bonded warehouse (4 officers) and parcel post.

209. The D/Collector Operations has responsibilities for courier clearance services, seaport (7 stationed officers), and airport (17 stationed officers).

210. The D/Collector Enforcement responsibilities include CPIU, CNET and CFED. These units have a total of 22 officers.

211. The Finance Manager, as the name indicates, is responsible for budget and finance.

212. It is widely known that the Cayman Islands is a "tax free" jurisdiction, and government revenue sources are from indirect/consumption-based taxes, including import duty. Given this, the HM Customs Service plays a vital role in collecting revenue for the government treasury. According to statistics provided by the Cayman Islands Government, HM Customs generates approximately 40% of the country's total revenue - this translates into approximately CI$ 160 million (2006/7).

213. At the time of the onsite visit, the Cayman Islands did not have a mandatory disclosure or declaratory system for the cross border movement of cash. On May 28th 2007, the Customs Law was amended (Supplement No.1, Gazette No.11 dated 28 May 2007) to introduce a definition of 'money' compliant with SR IX and to ensure that the regulation-making power in the Law clearly enabled regulations to be made in relation to money. On August 10 2007, the *Customs (Money Declarations and Disclosures) Regulations, 2007 (*CMDDR) were enacted. These regulations establish the legal framework for a mandatory declaratory system for the cross-border movement of cash that is inbound and a disclosure system for money that is outbound and imposes requirements for compliance with the obligations of SR IX.

214. Regulation 3(1) of the CMDDR requires all persons transporting money totaling CI $15,000 or more or its equivalent into the jurisdiction to declare such amount in writing to an officer at the time of entry. Persons transporting $15,000 or more are required to provide further particulars to Customs. Regulation 4 of the CMDDR requires persons carrying money out of Cayman Islands to make a truthful declaration upon verbal or written inquiry by an officer. The making of a false declaration or disclosure (which includes a failure to declare or disclose) or supplying false particulars is an offence and punishable on summary conviction by a fine of $6,000 and imprisonment for 6 months and forfeiture of up to 25 percent of the actual amount transported. The threshold level of CI $15,000 is equivalent to € 13,200 and therefore within the level stipulated in SR IX.

215. Regulation 3 (6) of the CMDDR provides exemption from declaring cross border movement of money for CIMA, a common carrier of passengers with respect to money being transported or imported by its passengers , a common carrier of goods in respect of shipment of money by third parties, and any other designated legal persons or category of legal persons designated by Order by Cabinet.

216. Regulation 5 (1) of the CMDDR empowers an officer to question any person entering or leaving the islands on the basis of suspicion or randomly with a view to ensuring compliance with the CMDDR. Regulation 5 (2) empowers an officer on the basis of a reasonable suspicion of

money laundering or terrorism financing or false declaration to seize and detain any money.

217. Pursuant to regulation 6 of the CMDDR , the Collector of Customs is required to collect, compile and retain for at least 5 years records of declarations and disclosures under regulations 3 and 4, and false or suspicious declarations or disclosures. Regulation 7 requires officers to submit a SAR to the FRA upon reasonable suspicion that a person is transporting money that is related to money laundering or terrorism financing.

218. Regulation 8 imposes confidentiality obligations on customs officers with regard to information acquired in the course of duties under the CMDDR. A gateway for the provision of information to overseas customs authorities is provided for under certain conditions which include a MOU with the recipient authority approved by the Financial Secretary, and the recipient authority being subject to adequate legal restrictions on further disclosure.

219. At the time of the mutual evaluation, Customs did state that in the absence of a declaratory system they had been able to investigate cases of suspicious inbound money with a view to seizure, pursuant to powers in sections 26 and 27(1) of the MDL where it could be linked to a drug offence. In the absence of a drug offence, the currency could also be seized / forfeited pursuant to section 192 of the CPC if an investigation revealed that the funds were suspected to be of illegal origin. Customs also possesses powers for the seizure of money under the TL (see paragraphs 226 and 227 below).

220. During the course of the onsite visit, the evaluation team reviewed a report from the HM Customs dated May 28th, 2007. This report stated that there have only been two cases since 1996 where suspicious funds were detained by Customs officials for further investigation. In both cases the funds were returned due to lack of evidence.

221. Customs authorities have stated that (prior to the CMDDR) when the physical cross border movement of money was detected they filed the information with the JIU and not directly with the FRA. It was then the responsibility of the JIU to gather all the relevant information and channel it to the FRA.

222. Based on the very low number of cases, the evaluation team was unable to confirm that the FRA was receiving any information from HM Customs. In reviewing the FRA 2005/2006 Annual Report, the "Source of Cases" chart illustrated on page 6, did not indicate that any of its cases originated from HM Customs or the JIU.

223. At the domestic level there appears to be a sufficient level of cooperation amongst customs, immigration and other competent authorities, vis-à-vis the cross border movement of cash. HM Customs and RCIP conduct joint marine patrols and they also share vital information with Immigration authorities as part of the JIU. A number of joint investigations have been conducted by the RCIP and Customs in the past. Throughout the course of these investigations Customs has been able to leverage the use of their regional international contacts located in the US, Mexico, Bermuda and Canada. This has proved to be of great investigational value.

224. As noted previously, HM Customs works in a very cooperative manner with its international counterparts. Most of its cooperative work is with the United States. As a result, the HM Customs has entered into an MOU with the US Customs and there are arrangements for an ICE (Immigration/Customs/Enforcement) liaison officer to facilitate the exchange and sharing of information. Customs also has an MOU with CCLEC in matters pertaining to customs. In the opinion of the assessment team, there is no significant impediment to the sharing of customs-

related information with foreign customs and/or law enforcement partners.

225. At the time of the onsite visit, pre-CMDDR, there were no specific requirements to declare/disclose transports of money and therefore no criminal sanctions that could be levied against a person who made a false declaration/disclosure. To date, Customs officials have attempted to pursue cross border currency matters on a number of occasions, using powers under section 26 of the MDL; based on the statistics, this has lead to very little success.

226. There are also provisions under Schedule 3, section 2 of the TL which states that:

> *(1) An authorized officer may seize any cash if he has reasonable grounds for suspecting that it is terrorist cash.*
> *(2) An authorized officer may also seize cash part of which he has reasonable grounds for suspecting to be terrorist cash if it is not reasonably practicable to seize only that part.*

227. Furthermore, section 3 of Schedule 3 states:

> *(1) While the authorized officer continues to have reasonable grounds for his suspicion, cash seized may be detained initially for a period of forty-eight (48) hours.*
> *(2) The period for which the cash or any part of it may be detained may be extended by an order made by the summary court; but the order may not authorize the detention of any cash –*
>
> *(a) beyond the end of the period of three (3) months beginning with the date of the order; and*
> *(b) in the case of any further under this paragraph, beyond the end of the period of two years beginning with the date of the first order.*

Rec. 30 (Customs authorities)

228. At the time of the onsite it was apparent that the Customs Service is currently operating with insufficient financial and human resources. (The total staff of the Customs Service is 103 and its 06/07 budget was approximately CI$ 9 million.) In assessing its overall remit the primary focus of the Customs service has been the collection of revenue for the government. As previously mentioned in this report, HM Customs is responsible for approximately 40% of the government revenues in the form of import duties. This situation, in the opinion of the assessment team, has adversely affected the ability of the Customs service to vigorously pursue matters related to ML and FT under the powers that Customs has. This view is supported by two facts: (1) the largest section in HM Customs is the collections section which has twenty-five (25) officers and (2) the lack of ML/FT enforcement statistics related to Customs' exercise of their powers, i.e. seizures and related prosecutions. Given this situation, HM Customs is feeling undue pressure and stress as they carry out their day-to-day duties. Furthermore, information provided by Customs authorities indicates that they need new equipment, such as currency-sniffing dogs and ion scanners to assist them in carrying out their duties in a more effective manner. Insufficient human resources has led too many of their personnel working extended hours on a regular basis and, as a result, they are losing them because of health problems (burnout) or more attractive jobs elsewhere. In the opinion of the assessment team, the Customs service is currently unable to carry out its ML/FT duties and functions in an effective manner.

229. The following is a chart which illustrates some of the work being conducted by HM

Customs:

Chart 4: Breakdown of Customs' Functions

Airport & Seaport **Processing and Inspection of Vessels and Aircraft**	**Total**
No. of aircraft processed and inspected	12633
No. of marine craft processed and inspected	1459
In bond & Collections Section **Inspection and Clearance of Cargo**	
No. of hours spent on inspection and clearance of cargo	19151
Marine Unit **Patrolling of Coastal Waters by Customs Department**	
No. of marine patrols	259
No. of man hours available for emergency assistance and investigation of reported suspicious activity	4595
No. of hours spent on aerial patrols	40
Customs Enforcement **Identification and Investigation of Customs Offences**	
No. of hours spent in interdiction activity and investigation of offences	15923

230. All employees within HM Customs are subject to the public servant's code of conduct under the PSML. The behavior and performance standards for government employees outlined in the Law (that include honesty, professionalism and integrity) are expected to be followed or surpassed as a condition of continued employment.

231. Within the organizational structure of HM Customs there is a dedicated Training Unit which is responsible for the training needs of Customs employees. Customs officials stated during the onsite that generally their training requests and needs have been well received and granted by the Cayman Islands government. The assessment team is aware that some type of training regime exists, however the team was unable to determine if the training is delivered in a timely manner or on a regularly scheduled basis for Customs enforcement officers.

232. It appears that Customs officers are aware of their obligation to report and intercede on border matters related to ML, TF and other criminal matters. Despite this, it appears that very little ML/FT information or intelligence is being generated for enforcement purposes. This in the opinion of the assessment team is of significant concern.

Recommendation 32

233. Statistics on the cross border transportation of currency and bearer monetary instruments are not currently maintained by HM Customs or the Cayman Islands government but will be captured henceforward under the CMDDR

2.7.2 Recommendations and Comments

234. With the enactment of the CMDDR, the Cayman Islands comply with the requirements of SR IX; however the assessment of the effectiveness of the system established by the CMDDR is not possible due to recent enactment of the regulations. .

235. It is the assessment team's recommendation that Cayman Islands Customs authorities should consider the implementation of new investigative techniques and methods similar to those outlined in the Best Practices Paper for SR IX, e.g. canine units specifically trained to detect currency.

236. Customs officials should also consider working more closely with the FRA and other law enforcement authorities to develop typologies, analyze trends and share information amongst themselves to more effectively combat cross border ML and FT issues.

237. The Cayman Islands is a popular tourist destination. Each year the number of visitors continues to rise, yet the number of Customs resources remains static. If this situation is allowed to continue, the Cayman Islands may become susceptible to an influx of cross border currency and bearer monetary instruments related to ML or FT activities. (Note: approximately 2.1 million people visited the islands in 2006.) It is recommended that the financial and human resources of the Customs service be increased to enable the Customs service to carry out its duties and functions in an effective manner.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**PC**	• Assessment of effectiveness of system is not possible due to the recent enactment of the regulations • Effective implementation of recently enacted regulations in doubt due to inadequate human and financial resources of Customs.

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

General

238. The AML/CFT preventative measures applicable to the Cayman Islands financial system are contained in the PCCL (for the SAR obligation), TUNMOTO, TL, MLR (issued under the PCCL) and the GN issued by CIMA pursuant to the MAL.

239. The PCCL was amended in May 2007 in section 37(7) to clearly incorporate the terrorist financing offences in section 19-22 of the TL into the definition of money laundering, for the purposes of the regulation-making power in s.21 of the PCCL. In so doing, the authorities have achieved the objective of effecting both ML and TF measures through a single set of regulations, the MLR. The amended definition was imported into the MLR on 1st June 2007, when other updating of AML/CFT measures was also introduced, in particular the requirements under SR VII. The definition of money laundering in both primary and secondary legislation is therefore congruent and references to ML in the MLR accordingly cover TF.

240. CIMA is the single regulatory authority for banks, insurance companies, trust companies, company management, mutual funds, fund administrators, securities firms, money services firms, building societies and cooperative societies. CIMA is also responsible under subsection 6 (1)(b)(ii) of the MAL for monitoring compliance with the MLR.

Scope of Money Laundering Regulations

241. The MLR outline the AML/CFT preventative measures that are applicable to all "relevant financial business". These preventative measures are prescribed in Regulation 5(1) and include customer identification, recordkeeping, internal reporting to comply with SAR obligations under the PCCL, internal controls, and employee training.

242. Regulation 4 of the MLR defines "relevant financial business" to which AML/CFT preventative measures apply as follows:

a) Banking or trust business carried on by a licensee under the BTCL;

b) Acceptance by a building society of deposits made by any person (including the raising of money from members of the society by the issue of shares);

c) Business carried on by a co-operative society within the meaning of the Co-operative Societies Law;

d) Insurance business and the business of an insurance manager, an insurance agent, an insurance sub-agent or an insurance broker within the meaning of the IL;

e) Mutual fund administration or the business of a regulated mutual fund *(note: this would include hedge funds)* within the meaning of the MFL;

f) The business of company management as defined by the CML (which includes company formation and registered office services); and

g) Any of the activities set out in the Second Schedule, which include -

- Acceptance of deposits and other repayable funds from the public
- Lending
- Financial leasing
- Money transmission services *(* refer to MSL*)*
- Issuing and administering means of payment (e.g. credit cards, travellers cheques and bankers drafts)
- Guarantees and commitments
- Trading for own account or for account of customers in -
    i. money market instruments (cheques, bills, CDs, etc.);
    ii. foreign exchange;
    iii. financial futures and options;
    iv. exchange and interest rate instruments; or
    v. transferable securities
- Participation in securities issues and the provision of services related to such issues
- Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings
- Money broking
- Portfolio management and advice
- Safekeeping and administration of securities
- Safe custody services
- Financial, estate agency and legal services provided in the course of business relating to the sale, purchase or mortgage of land or interests in land on behalf of clients or customers
- The services of listing agents and broker members of the Cayman Islands Stock Exchange as defined in the Cayman Islands Stock Exchange Listing Rules and the Cayman Island Stock Exchange Membership Rules respectively
- The conduct of securities investment business *(*note*:* refer to SIBL)

243. The scope of 'relevant financial business' corresponds with the definitions of 'financial institutions' and 'designated non-financial business and professions' (DNFBP) in the FATF AML/CFT regime, except in relation to casinos (prohibited under Cayman Islands law) and dealers in precious stones/metals. By the *Money Laundering (Amendment) (No 2) Regulation 2007* enacted on August 7, 2007, dealers in precious metals or precious stones were included in the definition of relevant financial business and were thus brought under the AML/CFT regime. However, it should be noted that these Regulations also indicated that no person will be prosecuted under the amendment for an offence committed prior to January 1, 2008. This effectively removes the threat of sanctions from dealers in precious stones or precious metals until 2008.

244. The only sub-sector of financial activity excluded on a risk basis is property and casualty insurance. The authorities have advised that this exclusion was inherited from UK statutes, assumedly based on the view that these activities are of low risk. The GN however do encourage FSPs to ensure that where an insurable interest exists, to be alert for bogus or inflated claims and have systems of internal controls to identify and detect fraud.

Status of Guidance Notes

245. The GN are the primary source of guidance on compliance with the MLR. Specifically, the GN provide guidance to financial service providers (FSPs) regarding implementation of the

preventative measures required by the MLR (e.g., requirements regarding customer identification, record keeping, transaction monitoring, suspicious activity detection and reporting, and training), as well as summaries of indicators of higher risk customers, products, services, and activities that may signal the need for a SAR. The GN also contain guidance for real estate brokers and agents on compliance with the MLR.

246. The GN are developed by the GNC. The committee is chaired by CIMA and includes representatives from the private sector associations, including The Bankers Association, the Fund Administrators Association, the Company Managers Association, the Insurance Managers Association, and The Society of Trust and Estate Practitioners (Cayman Islands Branch). Other business associations have indicated that they expect their members to observe the GN to the extent that they conduct relevant financial business within the scope of the MLR, including the Cayman Islands Real Estate Brokers Association, the Cayman Islands Society of Professional Accountants, the Cayman Islands Law Society, the Caymanian Bar Association and the Cayman Islands Compliance Association.

247. The assessment team concluded that the GN are other enforceable means under the Methodology for the following reasons. Firstly, while the GN are not themselves law, the courts in determining whether a person has complied with the Regulation (5) (1),[7] are obliged to take the GN into consideration (Regulation 5(3) of the MLR).

248. Secondly, the GN are formally promulgated by CIMA pursuant to statutory authority under Section 34 (1) (b) of the MAL; which connects with CIMA's powers by virtue of section 6(1)(b)(ii) of the MAL to monitor for compliance with the MLR.

249. Thirdly, CIMA can take (and has advised that it has taken) non-compliance with the GN into account in assessing whether to take enforcement action under the relevant regulatory laws under one or more of the available grounds of: failure to comply with the MLR; operating in a manner detrimental to the public interest; or failure to direct and manage the business in a fit and proper manner[8]. The foreword of the GN states as follows; "*These Guidance Notes provide guidelines that should be adopted by those involved in the provision of financial services in order to maintain the integrity of the Cayman Islands*" Further, paragraph 1.4 states:

> "*It is expected that all institutions conducting relevant financial business pay due regard to all the Guidance Notes in developing responsible anti-money laundering procedures suitable to their situation. If a Financial Services Provider appears not to be doing so the Monetary Authority will seek an explanation and may conclude that the Financial Services Provider is carrying on business in a manner that may give rise to sanctions under the applicable legislation."*

250. The assessment team ascertained from its discussions with industry representatives during the on-site that the industry regards the GN as enforceable by CIMA.

251. Section 34 (6) of the MAL provides that a breach of guidance does not constitute an

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[7]Regulation 5(1) which deals with preventative measures, covers; (i)customer identification; (ii) record keeping; (iii) internal reporting to comply with SAR obligations pursuant to s 37 of the PCCL; (iv) internal controls; and (v) employee training.

[8]See example enforcement case in box on page 59, as also referred to in paragraph 478 below.

offence or give rise to any right of action by persons affected, or affect the validity of any transaction. The absence of criminal sanctions for breach, however, does not preclude imposition of regulatory sanctions, as enforcement action by CIMA is not dependent on the commission of an offence by a licensee but rather arises from breaches of the safety and soundness or MLR-related parameters in the relevant regulatory laws. An example is s 18(1) of the BTCL which gives CIMA the authority to take enforcement action (including licence revocation, imposition of further licence conditions, appointment of a controller, mandating the substitution of any director or officer) where it is of the opinion *inter alia* that a licensee is carrying on business in a manner detrimental to the public interest or that the direction and management of the business has not been conducted in a fit and proper manner.

Summary of enforcement case involving significant AML concerns

The case involved an entity that held an unrestricted Class 'B' insurer's licence ("the company"). A summary of the main facts in the matter is as follows:

The Authority became aware that an overseas regulatory authority had filed an emergency civil action to halt an ongoing offering fraud that targeted Latin American investors. The company and its principals, along with other entities, were named as defendants in the action. Among other things, the complaint alleged that the principals of the company had misappropriated US$15 million of investors' funds in the scheme.

The Authority reviewed the matter and identified regulatory breaches under the Insurance Law. The Authority's initial enforcement action was to require the company not to make any payments from its bank accounts or write any new insurance business for an initial period of thirty days without the prior approval of the Authority.

An on-site inspection began the day after the requirements were imposed. The inspection revealed significant breaches of the Insurance Law. In addition, the inspection team identified four large transactions that flowed through the company's bank account that did not fit with the expected activity that would result from the business plan filed with the Authority. Furthermore, there was also concern regarding whether sufficient inquiries had been made regarding the source of funds for the transactions identified. The Authority filed an SAR with the FRA regarding its findings. These deficiencies highlighted breaches of the MLRs and GN, specifically i) failure to identify and report a transaction that had no rationale and concerned funds that were of an unknown source; ii) failure to conduct ongoing monitoring of the movement of funds in the accounts; and iii) failure to properly train employees.

The key findings from the onsite inspection showed that the direction and management of the company's business had not been conducted in fit and proper manner. The findings also indicated that the manner in which the company had been managed might have put it at risk of being used for the purposes of money laundering or other financial crime.

The Authority took urgent enforcement action to take control of the company and secure its assets. The Authority appointed a person to assume control of the affairs of the company ("the Controllers"). Based on the Controllers' findings and recommendations, the Authority formed the view that time was of the essence in light of the seriousness of the breaches highlighted, both prudential and AML-related. In addition, the Authority also believed that the breaches identified by the Controllers were too severe to be remedied and that the best course of action would be to prevent the company from doing business. The Authority thus placed the company into provisional liquidation and into official liquidation thereafter. The company's licence was revoked simultaneously with the appointment of the Joint Official Liquidators.

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

252. To date, the Cayman Islands authorities (under the aegis of the AMSLG) have not undertaken a formal risk assessment of the economy, consequently, the magnitude of risk in various sectors has not been assessed. As such the required AML/CFT measures as outlined in the MLR apply equally to all relevant financial business as defined in the MLR. The GN advise FSPs to consider the money laundering risks posed by the products and services that they offer, and devise and document their procedures with due regard to that risk. The GN go on to identify factors which should be taken into consideration in assigning products into high risk or low risk categories, the former thus attracting enhanced CDD measures. In tandem with the risk approach advocated by the GN for FSPs, CIMA also utilizes a risk-based approach to its supervisory work. This allows CIMA to direct its resources to those entities which on the basis of risk assessment require greater oversight. This is particularly relevant given the number of regulated institutions CIMA has to supervise.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

Recommendation 5

253. Customer identification requirements are set out in the MLR and elaborated in the GN.

Anonymous accounts

254. Regulation 5 (1) of the MLR effectively prohibits anonymous accounts or account in fictitious names by prohibiting the forming of a business relationship or the carrying out of a one-off transaction unless a person in the course of relevant financial business maintains identification procedures in accordance with regulations 7 and 9. Regulation 7 of the MLR requires that all financial service providers have procedures that require the production by the applicant for business of satisfactory evidence of his identity or to take such measures as will produce satisfactory evidence of his identity. Evidence of identity is satisfactory if it is reasonably capable of establishing that the applicant is the person he claims to be and the person obtaining the evidence is satisfied that it does establish that fact (regulation 11 of the MLR).

When CDD is required

255. Regulation 7 of the MLR requires identification procedures to be applied in the following instances:

a) Where parties form or resolve to form a business relationship between them

b) Any one-off transaction or linked one-off transactions that exceed $15,000

c) Any one-off transaction, where there is knowledge or suspicion that the applicant is engaged in money laundering or terrorist financing

256. In relation to wire transfers, a recent amendment to the MLR (1 June 2007), has introduced a new Part VII which now covers the electronic transfer of funds (in any currency) which are sent or received by a payment service provider, in line with the FATF SR VII. However, this regulation has a transition provision which defers prosecution for an offence under this regulation until January 1, 2008. Sanctions for non-compliance are therefore not applicable until 2008, thereby making this regulation, under the FATF Methodology, ineligible to satisfy the requirement as law or regulation until 2008. While paragraphs 4.10 to 4.13 of the GN also provide guidance to the effect that FSPs should ensure that they have originator and beneficiary information in relation to wire transfers, their status as other enforceable means does not meet the requirement for legislative compliance with the FATF obligation for wire transfers. .

257. Regulation 7 effectively imposes CDD measures on all relationships and one-off transactions that exceed $15,000. The exemption for one-off transactions below $15,000 is however, removed where there is knowledge or suspicion that the applicant is engaged in money laundering or terrorist financing, and is compliant with FATF requirements. There is no *legislative* requirement for financial institutions to undertake CDD measures when they have doubts as to the veracity or adequacy of previously obtained customer identification data. An amendment to the GN was made in May 2007 to impose this requirement (GN paragraphs 4.5 and 4.6). The threshold limit as applied for one-off transactions of CI$15,000 is equivalent to €13,200 and therefore within the FATF threshold.

Required CDD measures

258. Regulation 7 of the MLR requires financial institutions to maintain identification procedures that require:

a) The production, by the applicant for business of satisfactory evidence of his identity; or

b) The taking of such measures specified in the procedures as will produce satisfactory evidence of his identity,

259. The GN provide detailed guidance with regard to required documented identification information and appropriate identification documents which should be obtained, either originals or certified copies that bear the signature and photograph of the applicant. These documents include current valid passport, driver's license and employer or armed forces card. (paragraph. 3.15 of the GN) Guidance in relation to persons without standard identification documentation is provided along with appropriate steps in verifying the name and address of applicants (paragraph. 3.19 of the GN).

260. The list of acceptable identification documents should be reviewed with regard to the employer ID card, given the vulnerability of this form of identification to unlawful reproduction. The industry has indicated that CDD measures are in line with the requirements in the MLR and the GN and in some instances more stringent e.g. only government issued identification is accepted as evidence.

Legal persons or legal arrangements

261. There is no legislated requirement to verify that persons purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person. With regard to legal persons the GN require financial service providers to obtain the following documentation/information:

262. **Corporate clients** (GN 3.29)

i. Certificate of incorporation or equivalent, details of the registered office, and place of business;
ii. Explanation of the nature of the company's business, the reason for the relationship being established, an indication of the expected turnover, the source of funds, and a copy of the last available financial statements where appropriate;
iii. Satisfactory evidence of the identity of each of the principal beneficial owners, being any person holding 10% interest or more or with principal control over the company's assets and any person (or persons) on whose instructions the signatories on the account are to act or may act where such persons are not full time employees, officers or directors of the company;
iv. In the case of a bank account, satisfactory evidence of the identity of the account signatories, details of their relationship with the company and if they are not employees an explanation of the relationship. Subsequent changes to signatories must be verified;
v. Evidence of the authority to enter into the business relationship (for example, a copy of the Board Resolution authorising the account signatories in the case of a bank account);
vi. Copies of Powers of Attorney, or any other authority, affecting the operation of the account given by the directors in relation to the company;
vii. Copies of the list/register of directors;
viii. Satisfactory evidence of identity for two directors, one of whom should if applicable, be an executive director where different from account signatories.

263. **Partnerships and unincorporated businesses** (GN 3.36)

i. Identification evidence for at least two partners/controllers and/or authorised signatories, in line with the requirements for direct personal clients. When authorised signatories change, care should be taken to ensure that the identity of the current signatories has been verified.
ii. Evidence of the trading address of the business or partnership and a copy of the latest report and accounts (audited where applicable).
iii. An explanation of the nature of the business or partnership to ensure that it has a legitimate purpose. In cases where a formal partnership arrangement exists, a mandate from the partnership authorising the opening of an account or undertaking the transaction and conferring authority on those who will undertake transactions.

264. **Trust and fiduciary clients** (GN 3.37)

i. the general nature of the trust (e.g. family trust, pension trust, charitable trust etc) and the source of funds;
ii. identification evidence for the settlor(s), i.e. the person(s) whose property was settled in the trust; and
iii. in the case of a nominee relationship, identification evidence for the beneficial owner(s) if different from the settlor(s).

265. Regulation 9(1) to (3) of the MLR requires that if the applicant for business is or appears to be acting otherwise than as a principal, there must be reasonable measures taken to establish the identity of any person on whose behalf the applicant for business is acting, with reasonable measures determined by all the circumstances of the case and applicable best practice in the relevant field of business.

Beneficial ownership

266. The requirement for financial service providers to identify the beneficial owner is set out in Regulation 9 of the MLR. Further, substantial guidance is provided by way of the GN as can be seen in the above documentation requirements for applicants for business. Specifically, paragraphs 3.29(iii), 3.33, 3.35 and 3.37 provide guidance to FSPs as to the process for satisfying themselves as to the ownership and control structure and then taking reasonable measures to verify the identity of those individuals. The measures as advised by CIMA include identifying the natural persons with a controlling interest who comprise the mind and management of the legal person or arrangement. Additionally, where the owner of the controlling interest is a company, FSPs are directed to obtain satisfactory evidence of the identity of beneficial owners, directors and authorized signatories of the company. In relation to insurance, paragraphs 12 and 13 of the sector-specific guidance in section 8 of the GN provides for policyholders to be identified and verified.

267. Whereas the requirements for the identification of beneficial owners and the determination of the natural persons that ultimately own or control customers are adequately outlined in the GN, compliance with the FATF criterion concerning natural persons requires that this obligation be codified in primary or secondary legislation.

Purpose and intended nature of the business relationship

268. The CDD measures in the GN that are expected to be undertaken by FSPs include ensuring that sufficient information is obtained on the nature of the business that the customer expects to undertake, and any expected or predictable patterns of transactions. This requirement is further repeated in the details for corporate clients, partnerships/unincorporated businesses, trust and fiduciary clients and non-profit associations (paragraphs 3.1, 3.29, 3.36, 3.37, 3.41, 4.1 of the GN).

Ongoing due diligence

269. The requirement for ongoing monitoring is adequately set out in section 4 of the GN. However, the requirement needs to be upgraded to be included in statute as currently the MLR do not address this issue in a sufficiently specific and comprehensive manner. Regulation 5(1)(a)(iv) which is purported to satisfy this requirement, obliges an FSP *inter alia*, not to form a business relationship unless it maintains such other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering. The authorities also referenced the Regulation 12(1)(b) requirement to maintain transaction records. It is the examiners view that these regulations are broad and not sufficiently specific to fully satisfy the FATF requirement for ongong due diligence on the business relationship.

270. Section 4 of the GN sets out the required regime for the ongoing monitoring of business relationships. Under paragraph 4.2 of the GN, FSPs are expected to have appropriate systems and controls in place to monitor on an ongoing basis the relevant activities in the course of the business relationship. As stated in the GN, the purpose of this monitoring is for FSPs to be vigilant for any significant changes or inconsistencies in the pattern of transactions. It goes further to explain that inconsistency is measured against the stated original purpose of the relationship. It also provides guidance as to possible areas for monitoring, identified as -

(a) transaction type

(b) frequency
(c) amount
(d) geographical origin/destination
(e) account signatories

271. With regards to implementation, the industry has indicated that ongoing monitoring is a routine aspect of their AML/CFT framework.

272. The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant is triggered by specified risk related events rather than by undertaking routine reviews of existing records, particularly for higher risk categories of customers or business relationships.

Risk

Enhanced due diligence

273. While the GN provide direction to FSPs as to enhanced due diligence to be carried out on the higher risk accounts such as PEPs and customers based in high-risk countries, the GN are silent in this regard on those countries from which business is sourced if they happen to be on the list of Schedule 3 countries – countries deemed to have an equivalent legal framework for AML/CFT as the Cayman Islands. However, the GN do require that FSPs carry out enhanced due diligence on customers who presents a potential exposure to reputation risks. In this regard, appendix K of the GN sets out a list of situations which would warrant suspicion and thus enhanced due diligence.

274. The GN state that no financial sector is immune from the activities of criminals and that all FSPs are obliged to consider the ML risks posed by the products and services that they offer, and devise and document their procedures with due regard to that risk (paragraph 1.10 of the GN).

275. Regulation 10(1) of the MLR expressly provides for simplified measures to be applied, except in instances of knowledge or suspicion of ML (regulation 10(2)), where –

a) The applicant for business is bound by the MLR, which would thus cover all persons conducting relevant financial business;
b) The applicant for business is based or incorporated in a country specified in schedule 3 to the MLR and is acting in the course of business in relation to which an overseas regulatory authority, as defined in regulation 9(6), exercises regulatory functions;
c) A one-off transaction with or for a third party who has been the subject of verification procedures applied by a person in (a) or (b);
d) The proceeds of a one-off transaction are directly reinvested on behalf of the client to whom the proceeds were otherwise payable, provided that transaction records are kept and that at no stage can funds be disposed of other than by re-investment for, or direct payment to that client;
e) There is an insurance policy connected with an employee or occupational pension scheme, where the policy has no surrender clause and may not be used as loan collateral;
f) A premium payable under an insurance policy is payable in one installment in an amount not exceeding $2,000; or
g) A periodic premium payable under an insurance policy does not exceed an annual amount of $800.

276. Paragraph 3.77 of the GN provides at (f) further guidance on (e) above; and also identifies two other categories of client where the application of simplified procedures would be considered compliant with the obligations in regulation 7(1), being -

(1) a central or local government, statutory body or agency of government; or
(2) a company listed on the Cayman Islands Stock Exchange or other market or exchange approved by the Monetary Authority and listed in Appendix H of the GN.

277. Simplified procedures may also be applied to a subsidiary of, or an entity having common ownership with, a person in (a), (b), and (1) or (2) above. In such cases, the GN recommend that FSPs obtain written confirmation of the relationship. No simplified procedures are permitted where there is knowledge or suspicion of ML – (MLR; paragraph 3.69 of the GN).

278. By virtue of regulation 7(1)(4) of the MLR, a one-off transaction below $15,000 does not require evidence of identity to be obtained, provided that it is not a linked transaction under regulation 7(5) or is not known or suspected to involve ML (regulation 7(3) of the MLR).

279. Under regulation 8 of the MLR, where it is reasonable for a payment to be made, or instructions in relation to it to be given, by post or electronic means, the fact that the payment is debited from a bank account at a bank licensed in the Cayman Islands or regulated and based or established in a country listed in Schedule 3 of the MLR is capable of constituting satisfactory evidence of identity, provided that the payment, *inter alia*, is not known or suspected to involve ML or is not being made for the purposes of opening an account at a Cayman Islands bank (regulation 8(2)(a) of the MLR).

280. In the context of the simplified measures under regulation 10(1)(b) and (1)(c)(ii) of the MLR, (i.e. where the applicant for business is overseen by an overseas regulatory authority and is based or established in a country listed in Schedule 3 to the MLR), Schedule 3 is a list of countries deemed to have equivalent AML/CFT legislation and effective implementation and includes most FATF countries plus some selected others. In determining equivalency and effectiveness, the authorities advisedly have regard, *inter alia,* to i) the FIU and SAR system, ii) the financial regulatory system, iii) international cooperation system, iv) membership in international/regional anti-money laundering bodies and v) any AML/CFT assessment by an international or regional standard setter or other relevant international body.

281. However, the process of removal of countries deemed to be non-compliant with FATF AML/CFT measures from the approved list is not clear, especially as it relates to less than satisfactory assessments from international AML/CFT bodies. For example at least one of the countries included in the schedule has been assessed by the FATF as not complying with standard CDD measures.

282. Most of the business transacted in the Cayman Islands originates from outside of the territory, and the fact that business transactions originating from Schedule 3 countries do not require as high a level of vigilance as non- Schedule 3 countries is an aspect that could be vulnerable to exploitation by launderers and terrorists. Given that the MLR allow for reduced due diligence for business being introduced from these countries, corresponding care should be applied to the regular review of Schedule 3.

283. Regulations 7(3),7(2)(a), 8(2) and 10(2) of the MLR operate to disallow simplified CDD measures when there is a suspicion of money laundering or terrorist financing; however the

Regulations do not address the issue of specific higher risk scenarios. Further the GN do not provide more specific direction as to the application in this regard.

284. Under the Cayman Islands regime, the application of simplified as well as full measures is governed by the MLR and the GN, with which all FSPs are required to comply; FSPs are not permitted to independently determine the extent of the baseline (as opposed to enhanced) CDD measures on a risk-sensitive basis.

Timing of verification

285. Under regulation 7(1) of the MLR, FSPs are required to obtain satisfactory evidence of identity "*…as soon as is reasonably practicable after contact is first made between that person and an applicant for business concerning any particular business relationship or one-off transaction …"*

286. Regulation 11(2) of the MLR provides that, in determining for the purposes of regulation 7(1) the time span in which satisfactory evidence of a person's identity has to be obtained, all the circumstances are to be taken into account including, in particular, i) the nature of the business relationship or one-off transaction concerned, ii) the geographical location of the parties, iii) whether is practical to obtain the evidence before money passes, iv) the earliest stage at which it could be determined that an amount of $15,000 or more was involved.

287. The GN (paragraph 3.57) permit FSPs, if it is necessary for sound business reasons, to open an account or enter into a $15,000-plus one-off transaction before verification can be completed. Where this occurs, the FSPs are to have stringent controls to ensure that any funds received are not passed to third parties. Alternatively, a senior member of staff may give appropriate authority. Such authority is not to be delegated, and is only to be exercised in exceptional circumstances. Any decision to pass funds to third parties is to be recorded in writing.

288. Section 8 of the GN also provides sector -specific guidance on timing of verification of identity.

289. As regards insurance companies, the GN provide that identification and verification of customers and beneficial owners should take place when the business relationship is established. It also allows for a delay in identification and verification until the contract is concluded, however this is contingent on the money laundering and FT risks being low in addition to being effectively managed. In any event verification of identity is required prior to claims settlement, premium refunds or when the beneficiary intends to exercise vested rights under the policy.

Failure to satisfactorily complete CDD

290. Regulation 7(1) of the MLR states that where evidence of identity is not obtained the business relationship or one-off transaction in question shall not proceed any further. Additionally, the GN in paragraphs 5.33 to 5.35 deal with reporting of declined business, and require FSPs to give consideration to making a SAR in circumstances where the business is declined due to suspicion of criminality. The industry indicates that it is a common practice for a SAR to be submitted in such instances.

291. Further, the GN stipulate that once verification has begun, it should normally be pursued either to a satisfactory conclusion or to the point of refusal (paragraph 3.58). Where business is terminated due to inability to comply with regulation 7(1), paragraph 5.33 of the GN requires FSPs to give consideration to making a SAR.

Existing customers

292. The authorities have indicated that there was a transitional provision (no longer extant) introduced into the MLR as regulation 17 that required FSPs to conduct retrospective due diligence on all relationships established prior to September 1, 2000 (the date of introduction of the MLR). The Authorities have also indicated that the exercise was completed in 2003 and that the Cayman Islands is one of the only two jurisdictions known to have undertaken such an exercise.

293. FSPs were required to implement the following policies and procedures where information on existing customers was not obtained:

a) Make a record of their non-compliant business relationships and note in each case what information or documentation was missing and the reason or supposed reason for its absence; such record was to be available to CIMA for the purposes of it carrying out its responsibility for monitoring compliance with the MLR.
b) Establish procedures to deal with the business relationship in those situations where satisfactory evidence was not obtained by September 30th 2003 and continue to make reasonable efforts to secure compliance.
c) Where the FSP was unable to satisfy the verification required by Regulation 17 it was to consider appropriate measures to ensure compliance, by for example, refusing to accept further funds from that person or provide further services to that person or by freezing funds held on his behalf or by terminating the business relationship altogether. Any such action was to be carried out if and to the extent that it could properly be done by the FSP without prejudicing third parties (including clients who have verified their identity) and without exposing the FSP to liability, loss or prejudice.

294. The Authorities have indicated that as a result of the requirements under the MLR for identification and verification of customer accounts and the retrospective due diligence requirements of Regulation 17 (since spent) all clients existing at the time the MLR were first introduced have been subject to CDD measures.

Recommendation 6

295. Requirements for CDD measures with regard to politically exposed persons (PEPs) are stipulated in the GN. PEPs are defined as individuals holding important public positions and include heads of state, ministers, influential public officials, judges and military commanders. Persons or companies clearly related to these individuals are also included in the definition. Section 3.46 of the GN specifies that FSPs should, in relation to PEPs, in addition to performing normal due diligence measures:

a) Have appropriate risk management systems to determine whether the customer is a politically exposed person.
b) Obtain senior management approval for establishing business relationships with such customers.
c) Take reasonable measures to establish the source of wealth and source of funds.
d) Conduct enhanced ongoing monitoring of the business relationship.

296. Further the GN make no distinction between domestic and foreign PEPs; however this is not unusual given that most of the business transacted by this jurisdiction is derived from outside

of the territory.

297. While the above requirements satisfy most of the criteria of Recommendation 6, there is no obligation for FSPs to obtain senior management approval to continue a business relationship once a customer or beneficial owner has been found to be or subsequently becomes a PEP.

298 In discussions with the industry, FSPs indicated that they do have policies and procedures in place to deal with PEPs as required in the GN. The FSPs also advised that publicly available data bases are utilized in conducting their due diligence on PEPs as well as the OFAC and the UN list circulated by CIMA. The Authorities have noted that the 2003 UN Convention against Corruption has not been extended to the Cayman Islands (see section 1.1 , however).

Recommendation 7

299. There is no legal framework in place in the Cayman Islands that treats with the issue of correspondent banking. Although the activity may be limited, interviews indicated that some banks operating on the Islands offer this service. Interviewees in this regard indicated that they rely on the policies of their head offices in relation to the offering of correspondent services. CIMA has also indicated that its on-site findings and discussions with licensees have revealed that for those institutions that are involved in this activity, policies and procedures which classify such services as high risk are in place and in this regard the relationships are subject to enhanced due diligence pursuant to paragraph 1.12 and other applicable sections of the GN. In particular, they argue that banks' policies require that adequate information is provided on respondent banks in relation to their business and activities, the location of the bank and quality of supervision in the home jurisdiction. CIMA has also indicated that assurances are sought from external auditors and home regulators of the bona fides of the respondent bank.

Recommendation 8

300. The Cayman authorities have indicated that most retail banks provide internet banking facilities in addition to debit and credit cards. CIMA is committed to keeping up to date with the fast pace of technological and product development and the resultant regulatory and legal implications. . In this regard CIMA has recently ruled that the issuance of certain types of stored value card ('SVC') is an activity that falls within the MSL.

301. The framework to prevent the misuse of technological developments in money laundering or terrorist financing schemes is not sufficiently comprehensive. Paragraph 3.28 of the GN provides some guidance on non face-to-face customers in stating that where it is impractical or impossible for FSPS to obtain sight of original documents, a copy is acceptable where it has been certified by a suitable certifier as being a true copy of the original document and that the photo is a true likeness of the applicant for business.

302. The issue of internet banking is addressed at paragraphs 3.5 to 3.53 of the GN. Additionally, a SOG on internet banking requires FSPs to have in place adequate policies and procedures to ensure compliance with the MLR. The GN in this regard indicate that it is not appropriate for FSPs to offer on-line live account opening, allowing full immediate operation of the account in a way which would dispense with or bypass normal identification procedures. Further, that the account, in common with accounts opened through traditional means, should not be put into full operation until the relevant account opening provisions have been satisfied in accordance with the GN.

303. The GN prescribe a number of requirements and procedures for dealing with non-face-to -face operations. However, the methodology requires that the responsibility for the management of the risks associated with technological advances reside with FSPs, who should be required to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.

3.2.2 Recommendations and Comments

304. *Recommendation 5* Financial institutions should be legislatively required to undertake CDD measures when they have doubts as to the veracity or adequacy of previously obtained customer identification data.

305. Financial institutions should be legislatively required to verify that persons purporting to act on the behalf of a customer is so authorised and identify and verify the identity of that person.

306. Financial institutions should be legislatively required to determine the natural persons who ultimately own or control the customer.

307, Financial institutions should be legislatively required to conduct ongoing due diligence on the business relationship

308. Financial institutions should be required to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking routine reviews of existing records.

309. Simplified CDD measures should be unacceptable in specific higher risk scenarios.

310. *Recommendation 6* Financial institutions should be required to obtain senior management approval to continue a business relationship once a customer or beneficial owner is found to be, or subsequently becomes a PEP

311. *Recommendation 7* The specific requirements of Recommendation 7 with regard to cross-border correspondent banking and other similar relationships should be imposed on financial institutions in the Cayman Islands.

312. *Recommendation 8* Financial institutions should be required to have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions.

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3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**PC**	• Requirement for CDD measures for occasional transaction that are wire transfers in the circumstances covered by the Interpretative Note to SR VII is only implemented through GN rather than legislation

		• Requirement for financial institutions to undertake CDD measures when they have doubts as to the veracity or adequacy of previously obtained customer identification data is only implemented through GN rather than legislation. • No legislative requirement to verify that persons purporting to act on the behalf of a customer is so authorised and identify and verify the identity of that person. • Requirement to determine the natural persons who ultimately own or control the customer is only implemented through GN rather than legislation • Requirement to conduct ongoing due diligence on the business relationship is only implemented through GN rather than legislation • The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant is triggered by specified risk-related events rather than by undertaking routine reviews of existing records. • No requirement for simplified CDD measures to be unacceptable in specific higher risk scenarios.
R.6	**LC**	• No obligation for FSPs to obtain senior management approval to **continue** a business relationship once a customer or beneficial owner has been found to be or subsequently becomes a PEP.
R.7	**NC**	• No obligations with regard to correspondent banking specifically.
R.8	**LC**	• 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.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

313. Under the Cayman Islands AML/CFT regime, introduced business is permitted from persons who are either covered by the obligations in regulation 5(1) of the MLRs or by equivalent obligations if the introducer is outside of the Cayman Islands, as permitted by regulation 9(4) and (5). Both these categories comprise the 'eligible introducer' ('EI') set. The relevant portions of the GN are paragraphs 3.60 to 3.67 and appendix F.

314. Although the MLR and the GN require as a general rule that FSPs obtain documentary evidence of identity of all clients, it allows for exceptions to this general rule, when, according to the GN obtaining that evidence may be i) an unnecessary duplication; ii) commercially onerous; and iii) of no real assistance in the identification of or subsequent investigation into money laundering. The guidance in these circumstances is that it may be appropriate to place reliance on the due diligence procedures of others who have conducted client verification procedures in

accordance with the Cayman's CDD regime and instructs FSPs that in these circumstances, the EI form should be completed.

315. In relation to foreign EIs, regulation 9(4) of the MLRs allow FSPs to accept a written assurance from a person who qualifies under regulation 9(5)[9] to the effect that evidence of client identity will have been obtained and recorded by the EI.

316. Regulation 9(5)(b) relates to applicants for business from Schedule 3 countries – juridisctions deemed to have equivalent AML/CFT legislation and effective implementation. In determining equivalency and effectiveness, the authorities advise that regard is had, *inter alia,* to i) the FIU and SAR system, ii) the financial regulatory system, iii) international cooperation system, iv) membership in international/regional anti-money laundering bodies and v) any AML/CFT assessment by an international or regional standard setter or other relevant international body.

317. However, the regime for monitoring and ensuring that countries listed in Schedule 3 of the MLR maintain AML/CFT regimes that satisfy the FATF AML/CFT requirements sufficient to allow for FSPs to rely on their assurance as to the identity of persons being introduced for business in the Cayman Islands is not readily apparent. .

318. Paragraph 3.64 of the GN requires that all EI (foreign or domestic) complete the above-mentioned EI Form - appendix F of GN- or its functional equivalent, which requires the EI to stipulate to qualifying status and to having obtained satisfactory evidence of client identity and that same will be provided to the FSP on request. The only information that the Appendix F EI Form provides on applicants for business is name and address. The FATF criterion requires that the elements of the CDD process in criteria 5.3 to 5.6 should be immediately obtained from the third party. These elements include not only information about identity but also in the case of legal persons or arrangements, identification of the person purporting to act on behalf of the legal persons, names of trustees, legal form, address, directors, ownership and control structure of the customer and the identity of the natural persons that ultimately own or control the customer.

319. In addition, paragraph 3.64 of the GN also requires that senior management of the FSP be satisfied that it is reasonable to rely on the EI and maintain a written record of the basis on which it is determined that the FSP may so rely; and when considering whether it is reasonable, senior management is required to consider -

(a) whether the EI is a member of and in good standing within the professional body to which it belongs;
(b) whether there is a pre-existing client relationship between the Cayman FSP and the introducer and/or between the introducer and the client and the length of that relationship;
(c) whether the nature of the business of the EI and client are appropriate to the business being introduced; and
(d) whether the EI is itself established and reputable.

320. Further, paragraph 3.61 of the GN stipulates that the FSP is ultimately responsible for ensuring that adequate due diligence procedures are followed in relation to introduced business and that the documentary evidence of the EI that is being relied upon is satisfactory for these

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9 The person (a) acts in the course of a business relation to which an overseas regulatory authority exercises regulatory functions; and (b) is based or incorporated in, or formed under the law of, a country specified in the Third Schedule.

purposes. The June 2007 amendments to the MLR amend regulation 9 to make it clear, as it is in the GN, that ultimate responsibility for CDD measures resides with the Cayman FSP.

321. The above requirements replace the obligation for documentary evidence of identity with a written assurance that evidence of client identity has been obtained and recorded. There is no requirement for financial institutions to immediately obtain necessary information other than the customer's identity and the purpose and intended nature of the business relationship. The GN do stipulate certain conditions for qualifying as an eligible introducer and regulation 9(5) of the MLR requires that the FSP must have reasonable grounds for believing that an EI is regulated or supervised and is based in a Schedule 3 country. However, there is no requirement that financial institutions be satisfied that the EI is regulated and supervised in accordance with Recommendations 23, 24 and 29 and has measures in place to comply with the CDD requirements of Recommendations 5 and 10.

322. In addition to the issue under the Schedule 3 regime that has already been discussed, one aspect of the EI Form (Appendix F of MLR), allows for the EI to confirm that it is not required to have evidence of identity of its client if the business relationship pre-dated the AML regime of its country of domicile. No guidance is provided for FSPs in this instance. Subject to any impact of criterion 5.17 and footnote, FATF requirements would suggest that lack of evidence of identity should be the basis for not proceeding any further with the particular client of the EI. Given that introduced business is by nature high risk, this aspect needs to be substantially tightened as it presents an area of vulnerability.

323. It is noted however that in terms of implementation, generally the industry seems to be applying a higher standard than required by the MLR and GN in relation to the obtaining of customer identification information, which the industry advises is routinely collected.

3.3.2 Recommendations and Comments

324. Financial service providers relying on a third party should be required to immediately obtain from the third party the necessary information concerning all relevant elements of the CDD process in criteria 5.3 to 5.6.

325. Financial service providers should take adequate steps to be satisfied that the regulation and supervision of foreign eligible introducers is in accordance with Recommendations 23, 24 and 29. The eligible introducers should have measures in place to comply with the CDD requirements of Recommendations 5 and 10.

326. Guidance should be issued with regard to circumstances where an eligible introducer confirms that it is not required to have evidence of identity of its client if the business relationship pre-dated the AML regime of its country of domicile.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**PC**	• No requirement for financial institutions to immediately obtain necessary information on the elements of the CDD process in criteria 5.3 to 5.6 other than the customer's identity and the purpose and intended nature of the business relationship. • No requirement that the regulation and supervision of a foreign eligible

		introducer be in accordance with Recommendations 23, 24 and 29 and that it has measures in place to comply with the CDD requirements of recommendations 5 and 10. .

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

327. The CRPL imposes statutory confidentiality obligations. Its provisions reflect common law confidentiality principles and contain a number of gateway provisions enabling confidential information to be provided without contravention of the CRPL. Additionally, the CRPL provides that the Law does not apply to the seeking, divulging or obtaining of confidential information '*in accordance with this or any other Law'*(s. 3(2)(c)). In light of this provision and the gateways allowed for under other laws, there are advisedly no secrecy laws that inhibit the implementation of the FATF recommendations.

328. With regard to CIMA, the regulatory laws provide for access to the books and records of all supervised FSPs. The applicable provisions of the relevant laws are as follows:

- Ss 13(3) of the BTCL
- Ss 16(1) (b) &(2) of the CML
- Ss 5(1) of the IL
- S 18 of the MSL
- Ss 29(2) (c) of the MFL
- Ss 16(1) of the SIBL

329. In addition, s.34 (8) of the MAL empowers CIMA to require i) a person regulated under the regulatory laws, as well as ii) a connected person or iii) a person reasonably believed to have information relevant to an enquiry by the Authority, to provide or produce information that CIMA may reasonably require in connection with the exercise of its regulatory functions. The parallel provision enabling CIMA to exercise its powers on behalf of an overseas regulatory authority is in s. 34 (9).

330. Among CIMA's regulatory functions as specified in s.6 (1) (b) (ii) of the MAL is monitoring for compliance with the MLR. Failure to comply with a direction from CIMA pursuant to s.34(8) or (9) is an offence (s.34(17)), and in the event of a failure to provide information within 3 days of the date of direction to do so, CIMA may apply to the court for the direction to be enforced (s.34(10)). Persons who comply are expressly protected under the MAL against being treated as having breached any restriction on disclosure of information by or under any law and against any civil liability (s. 34(19)). Under s.34 (14), the obligation to comply does not attach to information covered by legal privilege, as defined in s. 34(16)(b) and (c))[10].

331. In relation to information sharing, confidential information in CIMA's possession is protected from disclosure under s.50 (1) of the MAL, which makes disclosure an offence.

[10] Defined per the PCCL, i.e. as attaching to legal advice or communication in connection with and for the purpose of legal proceedings, **except** where the furthering of a criminal purpose is involved

However, s.50 (2) contains a number of gateways that enable CIMA to share such information domestically and under s.50 (3) (see paragraph 332 below) without committing an offence.

332. Under section 50(3)–(12) of the MAL, CIMA is given comprehensive powers to share information further to requests for assistance from overseas regulatory authorities. It is a statutory function of CIMA under s.6 (1)(c) of the MAL to provide assistance to overseas regulatory authorities. In this regard, CIMA has advised that although not a pre-requisite to international cooperation, it has in place bilateral information-sharing agreements with 9 overseas regulatory authorities and a multilateral agreement with 8 regional regulatory authorities. CIMA also advises that they have shared information under these agreements. The situation in relation to law enforcement authorities is dealt with under Sections 2.5, 2.6 and 6.3.

333. As regards the provision of information to parent company to facilitate global monitoring of AML/CFT, CIMA advises that although there are no restrictions on parent companies having unimpeded access to information at branches, this is not the case for subsidiaries which are separate legal entities and therefore the sharing of information is required to conform to the applicable law. The GN provide no guidance in relation to global monitoring of AML/CFT as contemplated by the FATF regime.

334. CIMA advises however, that the GN will be amended in the near term to address this shortcoming. The industry has advised that generally, AML is not implemented on a global basis but one regional bank advised of advanced plans to implement AML/CFT on a global basis.

335. There are no restrictions on the sharing of information between financial institutions where this is required by R.7 (correspondent banking) and R.9 (third parties and introduced business). Regarding wire transfers, paragraph 4.12 of the GN requires that FSPs ensure that details of senders and beneficiaries are incorporated in all payment messages sent via electronic payment and message systems such as SWIFT.

3.4.2 Recommendations and Comments

336. The recommendation is fully met

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	• This recommendation is fully observed

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Recommendation 10

337. Under regulation 5 (1)(a)(ii) of the MLR, FSPs are required to maintain record-keeping procedures in accordance with regulation 12 when they form a business relationship or carry out a one-off transaction. These procedures require the keeping of records for not less than 5 years commencing on the date on which the business relationship or one-off transaction is completed

(regulations 12 (2) and (3)). The records to be kept under regulation 12 are i) customer identification records and ii) transaction records.

338. Regulation 12 (1)(a) of the MLR 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. Regulation 12 (1)(b) of the MLRs requires a record to be kept of details relating to all transactions carried out by an FSP in the course of relevant financial business.

339. Regulation 12 (2) specifies the retention period for identification records to be at least five years from the date of the termination of the business relationship or date of the completion of all activities taking place in the course of a one-off transaction or linked transactions. Regulation 12 (4) further stipulates that where a business relationship has been dormant for longer than five years and not formally terminated, then the date of the last transaction is to be treated as the date on which the relevant business was completed. This exemption is not allowed under the FATF criteria which require the retention period to commence from the termination of the business relationship. With regard to transaction records, the retention period is at least five years from the date on which all activities with regard to the transaction are completed.

340. The above regulations do not cover account files and business correspondence as required by the FATF criteria. In relation to regulation 12 as it relates to relevant records, paragraph 7.4 of the GN gives examples of the types of transaction records to be kept. These include details of personal identity, including names and addresses of: the customer; the beneficial owner of the account or product; and any other counter party. It also includes details of securities and investment transacted including: the nature of such securities/investments; valuation(s) and price(s); memoranda of purchase and sale; source(s) and volume of funds and bearer securities; destination(s) of funds and bearer securities; memoranda of instructions(s) and authority(ies); book entries; custody of title documentation; the nature of the transaction; the date of the transaction; and the form (eg. cash, cheque) in which funds are offered and paid out.

341. Additionally, under the access to information powers under the various regulatory laws (see section 3.4.1 above); FSPs have an obligation to provide CIMA with information on a timely basis.

342. In interviews with the industry, FSPs indicated that records are kept in excess of the 5-year minimum period required by the law. CIMA has also indicated that based on exam findings FSPS are generally in compliance. One issue however that must be noted is the relative infrequency of CIMA's on-site examinations due mostly to resource constraints and the number of institutions within the system.

SR VII

343. On June 1 2007, the *Money Laundering (Amendment) Regulations, 2007* became effective. One of the changes enacted with this amendment was the addition to the MLR of Part VII stipulating the identification and record keeping requirements relating to wire transfers. Regulation 17(1) outlines the scope of application of the Part VII – electronic transfer of funds, in any currency, which are sent or received by a payment service provider (PSP) carrying on business in or from within the Cayman Islands. The framework excludes transfers using credit or debit cards in circumstances where the payee has an agreement with the payment service provider permitting payment for the provision of goods and services and a unique identifier allowing the

transaction to be traced back to the payer accompanies such transfer of funds. The framework also does not apply to transfers of funds –

a) where the payer withdraws cash from his or her own account,
b) where there is a debit transfer authorization between the two parties permitting payments between them through accounts, if a unique identifier accompanies the transfer of funds, enabling the person to be traced back;
c) where truncated cheques are used;
d) for fines, duties or other levies within the Islands; or
e) where both the payer and the payee are payment service providers acting on their own behalf.

344. The above exclusions under the Cayman Islands framework are permitted by the FATF criteria, as in all stated cases, information sufficient to allow for identification of both originator and beneficiary are required. The Cayman Islands elected not to apply the *de minimis* threshold of less than USD/€ 1,000 as permitted by SR VII.

345. Regulation 18 addresses information accompanying transfers of funds and the keeping of records. The regulation requires that a PSP of the payer shall ensure that transfers of funds are accompanied by complete information on the payer. It also requires that (i) the PSP before transferring the funds, verify the complete information on the payer on the basis of the documents, data or information that meet the requirements of identification as defined by regulation 11(1). Regulation 18 also requires PSPs to keep records of complete information on the payer accompanying transfers of funds for five (5) years.

346. Complete information on the payer is defined in regulation 2(1)(a) as consisting of name and address or date and place of birth or customer identification number or number of a government –issued document evidencing identity and account number or an unique identifier which allows the transaction to be traced back to the payer.

347. Regulation 19 deals with domestic wire transfers requiring that the account number of the payer or a unique identifier allowing the transaction to be traced back to the payer accompany the transfer. Additionally, if so requested the PSP of the payer shall make available to the PSP of the payee complete information on the payer within three working days of receiving the request.

348. With regard to cross-border batch file transfers from a single payer in Cayman Islands, Regulation 20 states that complete originator information is not necessary for each individual transfer once the batch file contains the information and the individual transfers carry the account number of the payer or a unique identifier.

349. Regulation 21 requires beneficiary PSPs to have effective procedures in place to detect whether complete information on payers as required by law is missing. Regulation 22 requires beneficiary PSPs to reject wire transfers with missing or incomplete information on the payer or request complete information. Where an originating PSP regularly fails to supply the required information on the payer, the beneficiary PSP is required to adopt reasonable measures to have the originating PSP correct the failure before rejecting future transfers of funds, or restricting or terminating its business with the originating PSP.

350. Regulation 23 requires beneficiary PSPs to consider missing or incomplete information on a payer as a factor in assessing whether a transfer of funds or any related transaction is suspicious and whether it should be reported to the FRA. Beneficiary service payment providers are required to keep records of any information received on the payer for five years (Regulation

24).

351. Regulation 25 requires intermediary PSPs to ensure that all information received on the payer that accompanies a transfer of funds is kept with the transfer. Regulation 26 stipulates that where an intermediary PSP uses a payment system with technical limitations, the said PSP shall make available to the beneficiary PSP upon request all information on the payer which it has received within three days of the request.

352. While the above requirements were enacted in June 2007 and fully comply with the criteria of SR VII, a transitional provision states that no person will be prosecuted under these requirements for an offence committed prior to January 1, 2008. This provision effectively removes sanctions for non-compliance with these requirements until 2008. As such, these regulations do not meet the conditions for laws regulations or other enforceable means at the time of the mutual evaluation.

353. However, the GN provide guidance to the industry as it relates to implementation of electronic payment and message systems. Paragraphs 4.10 to 4.13 of section 4 of the GN are relevant in this regard. Specifically paragraph 4.12 of the GN requires that FSPs ensure that details of senders and beneficiaries are incorporated in all payment messages sent via electronic payment and message systems such as SWIFT. Records of all electronic payments and messages must be retained in accordance with section 7 of the GN which requires specific details of personal identity and transactions. FSPS are required to maintain the records of these transactions for the requisite 5 years at a minimum. The section also requires FSPs to have systems in place to identify wire transfers lacking complete information. A lack of complete originator information may be considered a factor in assessing whether a wire transfer or related transaction is suspicious and, as appropriate, whether they are thus required to be reported to the FRA.

354. With regard to the above while the recently enacted regulations comply fully with the criteria of SRVII, at present they cannot be considered to be in full effect. As such, the only basis to evaluate Cayman Islands on SRVII is on the GN which as other enforceable means does meet all of the criteria except for those dealing with inbound cross-border and domestic wire transfers and requiring beneficiary financial institutions to consider restricting or even terminating their business relationship with financial institutions that fail to meet SR. VII standards.

355. In relation to onsite reviews of FSPs it is a statutory function of CIMA under s.6 (1)(b)(ii) to monitor FSPs for compliance with the MLR. CIMA advises that it reviews compliance through on-site inspections and internal and external audit reports. If non-compliance is observed, financial institutions are required to take remedial measures and depending on the circumstances, CIMA might also file an SAR with the FRA, pursuant to regulation 16(1) of the MLR.

356. However as indicated elsewhere, the capacity of CIMA to monitor licensees through on-site inspections is affected by insufficient resources. The industry has indicated however that it is the general practice to obtain complete information on both originator and beneficiary for wire transfers and that records are kept in excess of the required period.

3.5.2 Recommendations and Comments

357. *Recommendation 10* Financial institutions should be required to maintain records of account files and business correspondence for the same period as identification data.

358. The retention period for identification records for accounts dormant for longer than five years as stated in Regulation 12 (4) should be repealed.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• No requirement for financial institutions to maintain records of account files and business correspondence for the same period as identification data. • The retention period for identification records for accounts dormant for longer than five years commences from the date of the last transaction rather the termination of the account.
SR.VII	**PC**	• No requirement covering domestic and inbound cross-border wire transfers. • No requirement for beneficiary financial institutions to consider restricting or even terminating their business relationship with financial institutions that fail to meet SRVII standards.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11

359. The GN were amended in May 2007 to incorporate the monitoring of complex, unusual transactions as part of an FSP's monitoring regime. Paragraph 5.13 of the GN sets out the regime for monitoring complex transactions as follows:

360. "*Where a transaction is inconsistent in amount, origin, destination, or type with a customer's known, legitimate business or personal activities, the transaction must be considered unusual, and the staff member put "on enquiry". Complex transactions or structures may have legitimate purposes. However, Financial Service Providers should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should as far as possible be examined and documented by the Financial Service Provider. "*

361. Documented enquiries regarding complex, unusual large transactions and unusual patterns of transactions are to be made available to the relevant authorities upon request. The GN provide a list of activities which should serve as triggers for further inquiry. These include:

- any unusual financial activity of the customer in the context of his own usual activities
- any unusual transaction in the course of some usual financial activity;
- any unusually-linked transactions;
- any unusual employment of an intermediary in the course of some usual transaction or financial activity

- any unusual method of settlement;
- any unusual or disadvantageous early redemption of an investment product;
- any unwillingness to provide the information requested.

362. The above requirements do not include financial institutions being obliged to keep findings regarding enquiries about complex, unusual large transactions or unusual patterns of transactions available for competent authorities and auditors for at least five years.

Recommendation 21

363. As mentioned earlier, the Cayman Islands AML/CFT regime permits financial transactions and business relationships from countries deemed to have an equivalent AML/CFT regime to be subject to simplified CDD measures as opposed to those from counties not included on that list - Schedule 3 of the MLR. Non-inclusion on the list advisedly automatically triggers the exercise of increased caution. The GN specifically advise FSPs to exercise additional caution and conduct enhanced due diligence on individuals and/or entities based in high-risk countries. Similar caution in respect of the acceptance of certified documentation from individuals/entities based in high-risk countries/territories and appropriate verification checks to ensure legitimacy and reliability are also mandated (Paragraph 3.49 of the GN).

364. Additionally, FSPs are advised by the GN to consult publicly available sources of information regarding high-risk countries, and are given examples of websites such as FATF, the US Financial Crimes Enforcement Network (FinCEN) for country advisories, the US Office of Foreign Assets Control (OFAC) for information pertaining to US foreign policy and national security; and Transparency International for information on countries vulnerable to corruption (paragraph 3.48 of the GN).

365. The GN provisions described in paragraphs 360 and 361 would comprehend transactions from high risk jurisdictions that have no apparent economic or visible lawful purpose. Further paragraph 5.14 of the GN requires that enquiries regarding these transactions and their results be properly documented and made available to the relevant authorities upon request. .

366. In relation to the framework applicable to countries that do not apply or sufficiently apply the FATF Recommendations, the Authorities have advised that the relevant legislation does not specifically address the application of country counter-measures, although in the context of terrorism, lists of prohibited persons and organizations promulgated by the UN Sanctions Committee are given legal effect in the Cayman Islands.

3.6.2 Recommendations and Comments

367. *Recommendation 11* Financial institutions should be required to keep findings regarding enquiries about complex, unusual large transactions or unusual patterns of transactions available for competent authorities and auditors **for at least five years**.

368. *Recommendation 21* The authorities should be able to apply appropriate counter-measures against countries which do not or insufficiently apply the FATF Recommendations.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**LC**	• No requirement for financial institutions to keep findings regarding enquiries about complex, unusual large transactions or unusual patterns of transactions available for competent authorities and auditors **for at least five years.**
R.21	**LC**	• No provision for the authorities to apply appropriate counter-measures against countries which do not or insufficiently apply the FATF Recommendations.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis[11]

Recommendation 13 & Special recommendation IV

369. Suspicious transaction reporting is covered by the PCCL which encompasses drug trafficking offences as well as all other predicate offences, by virtue of s.37(7), which was amended in May 2007 to include the terrorism financing offences under the TL. This latter is in addition to the reporting offence contained in s.23 of the TL.

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370. Under the Cayman Islands AML/CFT regime, Section 37(1) of the PCCL makes it an offence if a person knows or suspects another is engaged in ML, and the information came to his attention in the course of his trade, profession, business or employment and the information is not disclosed to the Reporting Authority as soon as is reasonably practicable. There is an exception for professional legal advisors under s. 37(2) if the information comes in privileged circumstances, as defined in s.37(8) and (9)[12].

371. The PCCL stipulates the penalty for failure to report as a fine of $50,000 on summary conviction and on conviction on indictment, an unlimited fine and 2 years' imprisonment (s. 37(10)). It is also noted that the SAR obligation as stated in the PCCL extends not just to FSPs, but to anyone who comes by knowledge or suspicion of ML in the course of his trade, profession, business or employment

372. The FATF criterion for reporting suspicion or knowledge of ML expressly states that: "This requirement should be a direct mandatory obligation and any indirect or implicit obligation to report suspicious transactions, whether by reason of possible prosecution for a ML offence or otherwise (so called "indirect reporting") is not acceptable." The requirement to make a suspicious transaction report under the Cayman Islands regime is effected by imposing criminal liability for failure to report when there is suspicion or knowledge of money laundering. While the obligation is expressed in the negative and might therefore appear to be "indirect", the

[11] The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

[12] Defined per the PCCL, i.e. as attaching to legal advice or communication in connection with and for the purpose of legal proceedings, **except** where the furthering of a criminal purpose is involved

criminal offence for failing to report can be considered to be a direct reporting obligation, and is a different situation to that whereby the making of an STR provides a defence to a charge of money laundering (which was the concern underlying the creation of the need for a direct obligation in the FATF standards). This interpretation is consistent with that in FATF mutual evaluation reports.

373. It is noted that for FT, a limited-scope duty of disclosure is contained in Article 8 of TUNMOTO. Under that provision, relevant institutions (CIMA and persons taking deposits in the course of carrying on deposit-taking business) commit an offence if they know or suspect a person is engaged in FT or committing acts of terrorism and do not disclose their suspicion. More broadly, under s. 23 of the TL, it is an offence for a person not to disclose belief or suspicion regarding FT arising in the course of trade, profession, business or employment. A person guilty of an offence under section 23 of the TL is liable on summary conviction, to imprisonment of six months and to a fine of four thousand dollars or on conviction on indictment, to imprisonment for five years, and to a fine.

374. The obligation for persons in the regulated and public sectors (the former defined in s.2 of the TL to mean all those regulated under the laws that CIMA administers) is higher. In this regard, such a person commits an offence if he knows or suspects or has reasonable grounds for knowing or suspecting, that another person has committed an offence under section 19 to 22 of the TL and (a) the information or other matter on which his knowledge of suspicion is based or which gives reasonable grounds for such knowledge or suspicion came to him in the course of a business in the regulated sector, (b) and he does not disclose the information or other matter to a constable or a nominated officer as soon as is practicable after it comes to him.

375. In determining whether a person committed an offence in the above regard, the court must consider whether the person followed any relevant guidance which was at the time, appropriately issued by the Reporting Authority or any other appropriate body. The penalty for failure to report an offence under sections 19 to 22 of the TL for persons in the regulated or public sector is the same as for other persons, that is, on summary conviction, imprisonment for 6 months and a fine of four thousand dollars; or on conviction on indictment, to imprisonment for five years and a fine.

376. Comments similar to those in paragraph 372 above about the requirements to make suspicious transaction reports to the authorities about ML can also be applied to the requirements for reporting suspicions for TF.

377. The suspicious transactions reporting requirements have no *de minimis* limits. While the primary legislation does not explicitly require that attempted suspicious transactions be reported, section 49 of the Interpretation Law indicates that the offence of money laundering includes attempted money laundering. Specifically, section 49 states: *"a provision which constitutes an offence shall, unless the contrary intention appears, be deemed to provide also that an attempt to commit such offence shall be an offence against such provision, punishable as if the offence itself had been committed."* Paragraphs 5.33 to 5.35 of the GN provide direction as to the treatment of attempted transactions. It is important to note that the guidance in this area states that while it is commendable for FSPs to decline business they *suspect* might be criminal in intent or origin, they *"should give consideration as to whether they are obliged in such circumstances to make a report, albeit that no transaction has taken place."* Although the GN require that the FSP refrain from referring such business to other FSPs, it only advises that the reporting of declined business is consistent with developing best practice. Importantly, there is no clear guidance in relation to attempted transactions that are in fact suspicious nor the

consequences of non-reporting. As such the directions provided by the GN are ambiguous.

378. The Cayman Islands is a tax free jurisdiction in relation to direct taxes and as such, there are no predicate offences in this regard. It is noted that the terms of the PCCL and TL obligation contemplates the reporting for all FATF predicate offences, without exception.

Recommendation 14

379. Section 28(1) of the PCCL provides that without prejudice to any other provision of the PCCL, where there is a disclosure to the FRA concerning proceeds of criminal conduct, suspected proceeds of criminal conduct, ML, suspected ML, terrorism or FT, *"the disclosure shall not be treated as a breach of any restriction upon the disclosure of information by any enactment or otherwise and shall not give rise to any civil liability."*

380. Further, ss 32(3), 33(5) and 37(4) of the PCCL provide that *"[w]here a person discloses to the Reporting Authority his suspicion or belief that another person is engaged in money laundering or any information or other matter on which that suspicion or belief is based, the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise, and shall not give rise to any civil liability."*

381. Under section 35 of the PCCL, a person is guilty of an offence if he knows that an investigation is being or about to be initiated, or that a SAR has been made to the FRA, and he discloses information that is likely to prejudice the investigation or any proposed investigation. In this regard, disclosures to or by a professional legal adviser for the purpose of legal advice or legal proceedings, unless this is done in view of furthering any criminal purpose, are not tipping off (s. 35(4)). The authorities indicate that currently there is no tipping off offence in the PCCL or the MDL in relation to the filing of SARs for drug-related ML; however s. 44(9) of the MDL makes it an offence to tip off relating to production orders and search warrants. The authorities have also indicated that this gap will be addressed in the proposed revision/consolidation of the PCCL and the MDL which is currently in progress.

382. Section 29(1) of the PCCL imposes confidentiality obligations on the FRA, except in the circumstances where the officer is required or permitted under the requisite laws or by an order of the Grand Court to disclose information. It is an offence to communicate any information in breach of section 29(1) and the guilty party is liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for five years.

Recommendation 25

383. The authorities advised that, the FRA in 2006 initiated an outreach program to FSP MLROs. Beginning with the banks, the FRA advisedly presented and discussed statistics on disclosures and sanitized money laundering cases. It has also produced specific briefing material to educate jewellery stores as to their obligations under s.37 of the PCCL. The Authority also provides acknowledgement letters when SARs are received and status letters on completion of the analysis. The FRA has also produced an annual report that provides, among other things, statistics. The report is publicly available.

Recommendation 19

384. The Cayman Islands has not implemented a large currency transaction reporting system

(CTR). The authorities advise that the general policy preference is to promote targeted and useful vs abstract and rote reporting. They advise that the AMSLG considered the feasibility and utility of implementing such a system; however given that by far, most of the high-value currency transactions through FSPs are wire transfers or non-cash monetary instruments with highly visible audit trails, the utility of a CTR system was not evident. Further it was the view of the authorities that a fixed-threshold cash reporting system is counter to the risk-based approach increasingly adopted world-wide.

385. In relation to cash transactions which are more likely to be in the domestic sector, the GN in section 5 provide guidance for FSPs when conducting cash transactions. Paragraph 5.18 stipulates that where cash transactions are being proposed by customers, and such requests are not in accordance with the client's known reasonable practice, FSPs will need to approach such situations with caution and make further relevant enquiries. Paragraph 5.19 provides that, depending on the type of business that a FSP conducts, the service provider may wish to set its own parameters for the identification and further investigation of cash transactions. Further, that where the FSP is unable to satisfy itself that the cash transaction is reasonable activity, and if the FSP considers it suspicious, it should make a disclosure as appropriate.

Recommendation 32

386. There is no system in place in the Cayman Islands requiring the reporting of SARs based on domestic or foreign currency transactions above a certain threshold. See discussions on R.19 at paragraphs 384 and 385 above.

3.7.2 Recommendations and Comments

387. *Recommendation 13 & Special Recommendation IV* GN should provide clear and unambiguous guidance as to the treatment of attempted suspicious transactions.

388. *Recommendation 14* The proposed revision/consolidation of the PCCL and the MDL prohibiting disclosing of information in relation to the filing of SARs for drug- related ML should be enacted as soon as possible.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**LC**	• No clear guidance in GN with regard to treatment of attempted suspicious transactions or consequences of non-reporting.
R.14	**LC**	• No law prohibiting disclosing of information in relation to the filing of SARs for drug- related ML
R.19	**C**	
R.25	**LC**	• See factor in section 3.10
SR.IV	**LC**	• No clear guidance in GN with regard to treatment of attempted

		suspicious transactions or consequences of non-reporting.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Recommendation 15

389. The governing legislation in the area of internal control and compliance is the MLR supported by the GN. In this regard regulation 5(1) of the MLR requires FSPs to have –

a) identification procedures - (1)(a)(i);
b) record keeping procedures - (1)(a)(ii);
c) internal SAR reporting procedures - (1)(a)(iii);
d) such other procedures of internal control including an appropriate internal audit function and communication as may be appropriate for the purposes of forestalling and preventing ML - (1)(a)(iv); and
e) training programmes - (1)(b) and (c)

390. Further, regulation 14 of the MLR requires an FSP to identify an appropriate person to whom staff should report any information or other matter which gives rise to a knowledge or suspicion of ML – an MLRO[13]. Under paragraph 5.2 of the GN, FSPs are expected to appoint a suitably senior, qualified and experienced person as MLRO. This requirement does not fully satisfy the FATF standard which stipulates that the AML/CFT compliance officer be at management level.

391. The GN provide that in instances where an FSP has no employees in the Cayman Islands, the FSP may identify someone else as the appropriate person to whom a report is to be made, provided that that person has the following characteristics: (i) is a natural person; and (ii) is autonomous (meaning the MLRO is the final decision maker as to whether to file a SAR); and (iii) is independent (meaning no vested interest in the underlying activity); and (iv) has and shall have access to all relevant material in order to make an assessment as to whether the activity is or is not suspicious.

392. Regulation 14(c) of the MLR requires that the person who is responsible for considering whether an SAR should be made is to have reasonable access to all available information. The wording of regulation 14 (c) should be more specific as "reasonable" access to information could operate to impede the necessary access to information as contemplated by the FATF framework. It also allows for subjectivity as some person would have to determine what information is "reasonable" for the MLRO to have access to.

393. In discussions with the industry, FSPs advised that policies are in place that satisfies the requirements of the legal framework and that MLROs who are all at senior levels have unimpeded access to information to facilitate effective implementation. MLROs do act independently and can report to senior management or the board of directors. CIMA's checks in

[13] Issues in relation to TF are covered by the new definition of ML, both in the PCCL and the MLR.

relation to MLROs are detailed in paragraphs 493, 513 and 514 below. However, CIMA's ability to confirm the industry's state of compliance based on examination findings is limited due to constraints as regards its on-site examination programme.

394. Regulation 5(1)(a)(iv) was amended in June 2007 to expressly require FSPs to maintain procedures for an appropriate internal audit function. The authorities posit that this requirement encompasses the audit function as required under the FATF framework. However the regulation 5 requirement is general and no further guidance in this regard has been provided in the GN. The Authority indicated that a Statement of Guidance (SOG) on Internal Audit is in place for banks, and that CIMA is considering similar SOGs for other licensees. The internal audit function for banks as outlined by the SOG relates to the general operations of banks and does not specifically require that the function relate to AML. The FATF framework however requires that this audit function relate specifically to the AML/CFT regime of the institution and not just to the general internal audit and control functions that are required in any effective corporate governance framework; and requires the function to be adequately resourced and independent.

395. In terms of compliance by the industry, in discussions, FSPs indicated that their AML/CFT framework is periodically audited by internal audit.

396. Regulations 5(1)(b) and (c) of the MLR require FSPs to take measures to ensure that staff: receive appropriate training on ML prevention including the recognition and handling of ML transactions and are aware of the FSP's procedures, requirements and obligations under the legislation. Section 6 of the GN also requires that FSP ensure that staff is appropriately trained in ML prevention measures on a regular basis. The GN also require that FSPs ensure that all relevant staff fully understands the procedures and their importance, and that staff are made aware that they will be committing criminal offences if they contravene the provisions of the legislation. FSPs are allowed to tailor their training programme to their circumstances.

397. In terms of implementation, the industry indicates that training is carried out on an on-going basis. There are no requirements for financial institutions to put in place screening procedures to ensure high standards when hiring employees. It is noted, however, that CIMA applies statutory fit and proper criteria to institutions' senior people (see under R.23).

Recommendation 22

398. The Authority has advised that Cayman-incorporated FSPs in the regulated sector do not typically have foreign branches or subsidiaries, and only a very small number exist. The Authority indicated that under most of the regulatory laws, Cayman-incorporated licensees need CIMA's approval to open a branch, subsidiary, agency or representative office outside the Cayman Islands – see e.g. s. 11 of BLCL; s.14 of the CML, s.14 of the SIBL; and s.16 of the MSL. CIMA advises that it would take into consideration the AML/CFT measures in a proposed host country as part of the evaluation process for approval.

399. In May 2007, the GN were revised to include requirements for overseas branches, subsidiaries, agencies and representative offices. Paragraphs 1.24 and 1.25 require FSPs to ensure that branches, subsidiaries, agencies and representative offices in other jurisdictions observe the AML standards established in the Cayman Islands or adhere to local standards if those are at least equivalent. Additionally all such entities should be kept informed of current group policy and the local reporting point equivalent to the FRA in the Cayman Islands and be conversant with the procedures for reporting suspicious activities. FSPs are also required to

inform CIMA when local laws prohibit the implementation of these standards.

400. The above requirements would include the obligation for FSPs to pay particular attention that their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations observe the requirements. However, given the recent issuance of these requirements, sufficient time has not elapsed to allow or test for effective implementation. It is noted that Cayman Islands only has 4 locally incorporated financial institutions that have foreign branches or subsidiaries which between them have a combined total of 13 such branches and subsidiaries.

3.8.2 Recommendations and Comments

401. *Recommendation 15* Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees.

402. Financial institutions should be required to designate an AML/CFT compliance officer at management level.

403. CIMA should provide detailed guidance on an appropriate AML/CFT internal audit function for all FSPs

404. Regulations should be amended to permit the person responsible for considering whether a SAR should be submitted to have unimpeded access to relevant information.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• 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 management. • Requirement for internal audit is general with no guidance as to specifics identified in the FATF criteria. • Regulation only allows for reasonable access to information by a person responsible for considering submission of an SAR rather than unimpeded access.
R.22	**LC**	• The recent issuance of requirements does not allow for sufficient time to allow or test for effective implementation.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

405. Shell banks are not permitted in the Cayman Islands by virtue of s. 6(6) of the BTCL and

the relevant Statement of Guidance on Physical Presence for Banks. In particular, section 6 (2) of the BTCL, stipulates that a licence will not be granted to a bank unless it has a place of business in the Cayman Islands and two individuals or a body corporate approved by CIMA. Further, in relation to 'class B' banks (i.e. banks not doing business in the domestic market), s.6(6) of the Law provides as follows-

i. *'…a holder of a 'B' licence which is not a branch or subsidiary of a bank licensed in a country or territory outside of the Islands, shall not after 26th April 2003 carry on business in the Islands unless it has such resources (including staff and facilities) and such books and records as the Authority consider appropriate having regard to the nature and scale of the business.'*

406. When the new requirement in s. 6(6) BTCL relating to those class 'B' banks that are not branches or subsidiaries of established banks was introduced in 2001, there were 62 banks in that category[14], of which 43 did not at the time meet the physical presence standards of the new requirement. Licensees opting to establish a physical presence were subjected to a rigorous inspection program (yearly full scope inspections and on-going follow up on the implementation of recommendations) to ensure compliance with section 6(6) of the BTCL. Of the original 43, only 7 remain, having satisfied the physical presence standards.

407. Albeit that the provision of correspondent banking services is currently limited, there is no prohibition against FSPs entering into or continuing correspondent banking relationships with shell banks or a requirement to be satisfied that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. In discussions with the industry however, FSPs indicated that with regards to correspondent banking relationships, they are guided by the policies of their head office, and that they apply the AML/CFT framework as regards correspondent banking. CIMA advised that it covers this area in its on-site examinations.

3.9.2 Recommendations and Comments

408. Financial institutions should not be permitted to enter into, or continue, correspondent banking relationships with shell banks

409. Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**PC**	• No prohibition against FSPs entering into or continuing correspondent banking relationships with shell banks. • No requirement for FSPs to be satisfied that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks

[14] These banks were established before 1992, when the Cayman Islands amended its licensing policies to cease issuing licenses for such structures. The residual category of 62 was subsequently subject, in 2001, to the new requirements included in s.6(6) BTCL.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

3.10.1 Description and Analysis

Authorities/SROs roles and duties & structure and resources - R.23, 30

Recommendation 23

Overview of Competent Authorities and Oversight System

410. CIMA is the competent authority that monitors AML/CFT compliance by financial institutions and DNFBPs, pursuant to s.6(1)(b)(ii) of the MAL. CIMA was established in 1997 as a body corporate under the MAL to perform four principal functions:

1) monetary functions, including the issuance and redemption of Cayman Islands currency and the management of currency reserves;

2) regulatory functions, including the regulation and supervision of financial services businesses (FSBs) operating under defined "regulatory laws,"[15] the monitoring of compliance with the money laundering regulations, and the performance of other regulatory or supervisory duties imposed on CIMA;

3) cooperative functions, including the provision of assistance to overseas regulatory authorities; and

4) the provision of advice to the Cayman Islands Government on monetary, regulatory and cooperative matters, including those related to international regulatory standards and recommendations. *See* s 6(1) of the MAL.

411. CIMA has SAR reporting obligations. SARs are prepared and filed by CIMA's MLRO.. The assessment team was advised that approximately 116 SARs have been filed by CIMA in the last 6 years.

412. The MAL requires CIMA, in the performance of its regulatory functions, to "*endeavour to reduce the possibility of financial services business or relevant financial business being used for the purpose of money laundering or other crime."*[16]

413. As the regulatory and supervisory body for all FSBs operating under the regulatory laws (which cover the activity scope of the FATF financial institutions and DNFBP categories except as noted in paragraphs 417 and 418 below), CIMA is responsible for granting FSB operating

[15] The term 'regulatory laws' is defined to include: BTCL; *Building Societies Law (2001 Revision)*; CML; CSL; IL; MSL; MFL, and any other laws that may be prescribed by the Governor. By virtue of s. 16(3) of the SIBL, that Law is deemed a regulatory law for the purpose of the MAL. .

[16] The MAL provides that "money laundering" has the meaning given by section 37(7) of the PCCL. The PCCL, as amended in 2007, expanded the definition of money laundering to include the FT offences in the TL.

licenses and for supervising compliance with prudential, or "safety and soundness," laws, and the MLR.

414. The MLR delineate AML/CFT preventative measures that all relevant financial business/FSBs and other specified businesses and professions must establish and maintain. The preventative measures covered by the MLR include customer identification, employee training, record-keeping, and internal and external (to FRA) reporting of suspicious transactions.

415. The MLR apply to all persons and business entities carrying on "relevant financial business," defined under regulation 4 of the MLR to include licensed banking, insurance (not including property and casualty) and trustee services, mutual fund administration, mutual funds, company management business, business carried on by a cooperative society and acceptance of deposits by a building society. The definition also cross-references a list of other financial activities, specified in the Second Schedule of the MLR, that correspond (with some overlap with regulation 4) to the activity covered under the FATF definition of financial institution plus the 'residual' DNFBP activity not captured under the regulatory laws (and thus not regulated by CIMA), i.e. real estate activity and dealers in precious metals/stones.[17] Money services business is a regulated activity under the MSL and is covered under the MLR in the Second Schedule.

416. As previously noted, the provision of trust and company services is a CIMA-regulated activity and thus lawyers, accountants and other professionals who engage in this or any other regulated activities on the Second Schedule, are subject to the MLR and supervision and AML/CFT compliance monitoring by CIMA.

417. Real estate brokers and agents in the Cayman Islands fall within the scope of "relevant financial business" and, therefore, are subject to the MLR and CIMA's AML/CFT compliance monitoring. CIMA has issued guidance for real estate agents and brokers in the GN on compliance with the MLR, but CIMA has not developed a formal AML/CFT compliance monitoring program for these businesses.

418. Similarly, CIMA does not have supervisory authority under the regulatory laws with respect to dealers in precious metals and precious stones added to the Second Schedule of the MLR by the *Money Laundering (Amendment) (No 2) Regulation 2007* enacted on August 7, 2007, and thus brought under the AML/CFT regime. However, it should be noted that the above-mentioned regulations also indicated that no person will be prosecuted under the amendment for an offence committed prior to January 1, 2008. This effectively removes the threat of sanctions from dealers in precious stones or precious metals until 2008

419. CIMA has the authority under the MAL to: (1) issue or amend rules or guidance concerning the conduct of licensees and their officers and directors; (2) issue or amend statements of guidance concerning the requirements of the MLR; and (3) issue or amend rules or guidance to reduce the risk of FSBs being used for money laundering or other criminal purposes. The law provides that such rules or guidance may be issued only after consultation with private sector representatives and after obtaining the approval of the Governor. Pursuant to this authority CIMA has issued guidance in the form of the GN.

[17] See also paragraphs 240-244 above. As noted in paragraph 243 above, casinos are not included as they are not permitted under Cayman Islands law.

420. The GN are the primary source of guidance on compliance with the MLR. Specifically, the GN provide guidance to FSPs regarding implementation of the preventative measures required by the MLR (*e.g.*, requirements regarding customer identification, record keeping, transaction monitoring, suspicious activity detection and reporting, and training), as well as summaries of indicators of higher risk customers, products, services and activities that may signal the need for a SAR. The GN contain guidance for real estate brokers and agents on compliance with the MLR.

421. CIMA also is required by the MAL to issue a Regulatory Handbook that sets out the policies and procedures to be followed by CIMA in performing its cooperative and regulatory functions. CIMA has issued several additional sources of guidance.

Recommendation 30

CIMA's Structure and Operations

422. CIMA is responsible under the regulatory laws for all licensing, enforcement and administrative decisions with respect to all relevant financial businesses. The Authority is governed by a Board of Directors composed of a managing director and up to nine additional directors. All of the directors are appointed by the Governor. No CIMA director may be a member of the Cabinet or the Legislative Assembly.[18] Three of the directors are overseas directors. All directors must meet a "fit and proper" test. The Managing Director is an employee of CIMA on such terms and conditions of service as the Governor, after consultation with the Board of Directors, may decide. The appointments of the members of the Board of Directors, with the exception of the Managing Director, are limited to three years. The appointment of the Managing Director may be terminated by the Governor on the recommendation of the Board of Directors. The Governor may terminate the appointment of any director who, for example, becomes of unsound mind or incapable of carrying out his duties, becomes bankrupt, is convicted of an offence involving fraud, or is guilty of serious misconduct in relation to his duties. The Governor may also terminate the appointment of any director in the public interest.

423. The Board may delegate to the Management Committee of the Board or other sub-committee such licensing, supervisory and other powers and duties that the Board sees fit. The Management Committee is comprised of the Managing Director as Chairperson, the Deputy Managing Director, the Legal Counsel and the Heads of the supervisory divisions, or their delegates. The Management Committee decides licence applications on the recommendation of personnel from the supervisory divisions.

424. The day-to-day operational authority of CIMA is vested in the Managing Director and the Deputy Managing Director. The Managing Director reports directly to the Board of Directors and in turn has oversight of five CIMA executives - the Deputy Managing Director, the General Counsel, the Head of Policy & Development, the Chief Financial Officer, and the Head of Currency. The heads of the supervisory divisions, along with the Information Systems Unit and the Human Resources Unit report to the Deputy Managing Director; and the Head of Compliance reports to the General Counsel.

425. CIMA's regulatory functions are carried out by professional staff in four supervisory divisions (Banking, Investments & Securities, Insurance, and Fiduciary); four non-supervisory

[18] see paragraph 463 regarding conflicts of interest rules for CIMA directors

divisions (Currency, Policy & Development, Legal, and Compliance); and three support units (Finance, HR, and IT).

Oversight of Bank and MSBs[19]

426. The Banking Supervision Division is responsible for processing applications for licences to the Management Committee for decision and for ongoing supervision and regulation in relation to banks (including the Cayman Islands Development Bank), money service business , building societies and credit unions.

427. Bank supervision is based on the Basel Core Principles. The Division monitors licensees by analyzing regular audited and un-audited financial statements, meeting with bank management, reviewing periodic detailed reports, and conducting on-site inspections or commissioning examinations by auditors on specific areas of internal controls and systems. Certain operational parameters - capital adequacy, asset quality, management capability and expertise, earnings and liquidity - are assessed on an ongoing basis.

428. Applications for banking licences are considered from: direct branches of international banks world-wide; wholly owned or controlled subsidiaries of international banks worldwide; affiliates of international banks worldwide; and in exceptional circumstances, a banking licence may be granted to a bank falling outside the categories (i.e. purely domestic bank).. Ninety-two percent of banks licensed in the Cayman Islands are branches or affiliates of international banks based in other jurisdictions. As part of the licence application process, CIMA routinely seeks assurances from the home country supervisory authority of consolidated supervision and good standing of the applicant.

429. The Division also has supervisory jurisdiction over the licensing and supervision of non-banking financial intermediaries such as money services businesses, credit unions and building societies.. The general licensing, auditing, inspection and reporting requirements and protocols applicable to other FSBs also apply. As previously noted, money services business falls within the definition of "relevant financial business" under the MLR and is therefore subject to the MLR and CIMA's supervision for AML/CFT purposes. .

430. CIMA also participates in several important groups and organizations worldwide. These include The Offshore Group of Banking Supervisors, The Caribbean Group of Banking Supervisors, and The Association of Supervisors of Banks of the Americas. Through these groups CIMA has a vital link to the Basel Committee on Banking Supervision. .

Oversight of Insurance Business

431. The Insurance Division is responsible for processing applications for licences under the IL to the Management Committee for decision and ongoing supervision and regulation of insurance companies and insurance managers, brokers and agents.

[19]See section 1.3 above for description of the various sectors covered in paragraphs 426 *et seq*. Detailed information on the on-site and off-site inspection programmes referred to is provided in paragraphs 504 *et seq*.

432. The Division's supervisory approach is based on the International Association of Insurance Supervisors (IAIS) core principles. The Division monitors licensed insurance entities to ensure that they are operating in a satisfactory manner and remain solvent. Monitoring is on-going and is both compliance and risk based - an assessment of whether the licensee complies with the relevant legislation, applicable rules or guidance issued by CIMA and any conditions or enforcement directives issued to the entity. Regular reporting, on-site inspections and off-site supervision are all essential elements of monitoring.

433. The IL stipulates that every captive must appoint an insurance manager resident in the Cayman Islands to be responsible for maintaining proper records of its business. The insurance manager's primary duty is to ensure the captives are complying with the provisions of the law and maintain timely communications with CIMA.

434. Representatives from the Insurance Managers Association advised the assessment team that all insurance managers follow customer due diligence procedures for new clients that require disclosure of: beneficial owners of 10 percent or more of the voting/controlling interests in the company to be managed; source of funds; and identity verification and background checks using reputable commercial resources. Because insurance managers actually run their clients' captive insurance companies on-going customer due diligence is an integral part of the managers' operations. Background checks on clients are simplified where they are publicly listed companies (frequently the case); the other typical clients are major not-for-profit organizations, such as hospital groups. The Association also advised the team that most members of the Association retain consultants to provide AML/CFT compliance training for employees on an annual basis. The Association regularly distributes e-mails with updates on changes to AML/CFT laws, regulations, guidance, and best practices.

435. The assessment team was advised that CIMA's Insurance Division staff conducted approximately 30 AML special inspections of holders of Class A licenses in the last two years.

Oversight of Mutual Funds and Securities Businesses

436. The Investments and Securities Division's duties encompass the processing of licence and registration applications under the MFL and the SIBL for decision by the Management Committee and the supervision and regulation of mutual funds, mutual fund administrators and persons licensed to conduct securities investment business, which includes market makers, broker-dealers, securities arrangers, securities advisors and securities managers.

437. The supervisory approach is based on the relevant International Organisation of Securities Commission (IOSCO) Core Principles. Monitoring is on-going and is both compliance and risk based - an assessment of whether the licensee complies with the relevant legislation, applicable rules or guidance issued by CIMA and any conditions or enforcement directives issued to the entity. Regular reporting, on-site inspections and off-site supervision are all essential elements of monitoring. Applications for licensed funds (the most regulated category of the three categories of regulated fund) are reviewed by CIMA in order to ascertain that each promoter is of a sound reputation, that the administration of the mutual fund will be undertaken by persons who have sufficient expertise to administer the mutual fund and that business of the mutual fund and any offer of equity interest will be carried out in a proper way.

438. In relation to administered and registered funds in particular, CIMA's supervisory approach relies on the functions of licensed mutual fund administrators and approved external auditors (all funds must submit annual audited financials, and the auditors must be Cayman Islands auditors), both of whom have specific reporting and other obligations to CIMA under sections 16, 17 and 35 of the MFL. For example, under section 35(1)(e), an auditor is required to report to CIMA if in the course of an audit he acquires knowledge or suspicion that a fund is contravening the MLR. At the time of the assessment CIMA's web site stated that the MFL places some of the "supervisory obligation" in the hands of mutual fund administrators and approved external auditors.

439. Failure of a fund administrator to discharge his obligations exposes him to enforcement sanctions by CIMA under section 31 of the Law and enforcement action may be taken against a fund directly (all categories) as well, pursuant to section 30 of the Law.

440. The Company Managers Association advised the assessment team that a majority of Cayman Islands mutual funds are managed by affiliated managers based in countries in Schedule 3 of the MLR.

441. The SIBL provides for the regulation of persons carrying on securities investment business, including market makers, broker-dealers, securities arrangers, securities advisors and securities managers, in or from the Cayman Islands. The Law provides for a licensing regime for persons engaging in securities investment business as defined in the Law, unless otherwise exempted under the Third Schedule (Excluded Activities) or the Fourth Schedule (Excluded Persons). Excluded persons are required to register with CIMA

442. As of March 2007 there were approximately 7,800 registered mutual funds; 550 administered mutual funds; 108 licensed mutual funds; 150 mutual fund administrators and 20 licensees under the SIBL.

Oversight of Trust Companies and Company Managers/Corporate Service Providers

443. The Fiduciary Services Supervision Division's duties encompass the supervision and regulation of company managers, corporate service providers and all trust companies not having a banking licence. The Division makes recommendations to CIMA's Management Committee on licence applications. These entities are subject to similar processes and procedures for licensing, and to similar inspection and monitoring protocols, as those applicable to other FSBs licensed and supervised by CIMA. All licensees are required to advise CIMA of any change in resident or principal office and submit requests for approval to issue or transfer shares and prior to appointment of a director or controller.

444. A company manager's licence covers the full scope of activity defined as the "business of company management" in the CML in particular the provision of managerial services such as director or officer or managing the whole or part of the substantial assets of the company. A corporate services licence covers corporate and administrative services that do not involve provision of directors and officers or management of assets, such as company formation and registered office services.

445. The Division undertakes ongoing monitoring of licensees through, for example, receipt and analysis of regular audited financial statements, meetings with the licensees' management,

and periodic detailed reports or inspections by auditors on specific areas of internal controls and systems. Capital adequacy, asset quality, management capability and expertise, earnings and liquidity are all assessed on an ongoing basis. During on-site inspections transaction testing is conducted to evaluate the effectiveness of the control environment and whether fiduciary duties are appropriately executed. The Company Managers Association advised the assessment team that CIMA conducts on-site inspections of company management companies approximately once every two years.

446. Banks that offer separate trust services must obtain a specific trust license in addition to the banking license. CIMA Fiduciary Division staff work closely with Banking Division staff in inspections of banks offering trust services. The Banking Division staff typically takes the lead in these inspections.

447. The Society of Trust and Estate Practitioners (Cayman branch) advised the assessment team that the Society periodically sponsors lectures on AML compliance and law, and has developed a model customer due diligence manual for its membership.

CIMA's Non-Supervisory Divisions

The Policy and Development Division

448. The Division is responsible for researching topics relating to the financial industry and regulation, and for drafting policy, rules and guidance. The Division has a cross-functional role and supports CIMA's four supervisory Divisions by providing: (i) information, (ii) advice on policy issues and (iii) recommendations on required changes to policy and legislation for the financial sector. The Division is responsible for the coordination of the development of policies, rules and guidance for the industry to ensure that it is well regulated in accordance with, where applicable, international standards such as the Basle Core Principles for Banking, IOSCO Core Principles, and the IAIS Core Principles.

449. The development of the various rules, principles and guidance is carried out by the Division in collaboration with the private sector associations by means of a statutory consultation process. CIMA recognizes that the success of its initiatives is dependent on the extent to which the industry collaborates with CIMA both in terms of the development and the implementation of initiatives. This 'culture of consultation' extends to the subsequent amendment of any rules, statements of principle or guidance concerning the conduct of licensees, their officers and employees.

450. The Division is also responsible for the production of industry statistics. The Division is currently developing a statistical digest of aggregate statistical information collected on licensees. It falls under the responsibility of the Managing Director and has 6 staff members, presently comprised of a head, deputy head, two chief policy officers, one policy officer and one administrative assistant.

The Compliance Division

451. The Division is responsible for investigating serious breaches of the regulatory laws, collecting pertinent evidence and recommending enforcement actions. All enforcement actions

are authorized by CIMA's Board of Directors and conform with the powers under the respective regulatory laws.[20]

452. CIMA has issued the "Guidelines on Fitness and Propriety," setting out the sub-criteria that it will use to determine whether persons are fit and proper to act as directors, shareholders, managers, officers and controllers of licensed entities based on the main criteria as contained in the regulatory laws. The Compliance Division is tasked with conducting the necessary due diligence on applicants as referred to it by the regulatory divisions. The nature and scope of the work to be performed by the Compliance Division is dependent on the risk assessment made on each application, and may incorporate a range of steps including independent verification of the documentation submitted and review of public information.[21]

453. The Division's mandate also includes administering and responding to non-routine requests for assistance received from overseas regulatory authorities.

454. The Division falls under the responsibilities of CIMA's General Counsel. It has a staff compliment of 9, including a Head who is CIMA's MLRO, a Deputy Head, a Chief Analyst, three Senior Analysts and three Analysts.

CIMA Staffing and Resources

455. The assessment team was advised by CIMA that it has experienced a 30 percent growth in staff since 2002. As of May 2007, total professional staff levels (and number of inspection staff) in the regulatory divisions were: Banking 19 (16), Fiduciary 7 (5), Insurance 11 (10), Investments & Securities 23 (18). CIMA periodically assesses staffing needs with a focus on areas/businesses that present the greatest supervisory challenges or AML/CFT risks. Staffing assessment is part of the annual budget process, which begins in October before the end of the fiscal year (30 June).

456. Recruiting efforts are targeted in the Cayman Islands and abroad to identify and recruit staff with appropriate expertise. The minimum qualifications for inspection staff and analysts are rigorous and formalized consistent with widely accepted international standards. Analysts (chief, senior and junior) are required to have professional degrees and certificates, and relevant work experience. A recent CIMA advert for a senior analyst job vacancy in the Banking Division projected that the selected candidate would devote approximately 20 percent of the job to monitoring of bank & trust activities; 15 percent to analyzing annual returns and financial statements; 20 percent to drafting correspondence, investigating consumer complaints and keeping abreast of developments in domestic and international regulation and standards; and 3 percent to producing statistics for regulated businesses. Presumably the remainder of the job (approximately 42 percent) would be devoted to planning and conducting on-site inspections.

457. CIMA considers its staffing and resources to be adequate in terms of qualifications of staff, retention of staff, succession planning and salary and benefits.

458. CIMA's operating budget for fiscal year ended June 2007 was approximately CI $12.5 M (US $15 M). CIMA's budget must be approved by the Governor in Cabinet. In practice, CIMA has not had difficulty obtaining funding in keeping with its budget requests. It appears to the

[20] See under R.29 & R.17 below

[21] See further under R.23 (market entry)

assessment team that CIMA has not been required to defend its budget requests in any substantive, formal fashion in recent years. The assessment team was advised that approximately 18 percent of the Cayman Island's annual revenues are derived from CIMA fees.

CIMA Facilities and Disaster Recovery Plans

459. CIMA's primary office facility is a modern, well-constructed building with ample space for staff and equipment. CIMA has established security systems and protocols to protect staff, data and equipment from unauthorized intrusion and severe weather.

460. CIMA has established two data recovery sites; one on Grand Cayman in a separate building and one on Cayman Brac. Both sites contain copies of production data and primary application services i.e. CIISMA, Email and user files. This data is maintained by real-time data replication services.

461. The Grand Cayman data recovery site is designated as the primary recovery site and is configured as a "hot-site" i.e. the recovery suites and systems are configured for recoverability within three hours of activation. Seating is available for 15-20% of current staff. Each work station is equipped with a system comparable to the main facility's systems and is configured with standard applications.

462. CIMA's crisis and business recovery process is formalized in the Crisis Management and Business Recovery Plans, which covers CIMA's overall crisis response. CIMA also has developed individual Business Recovery plans for each Division or Unit within CIMA. During 2007 CIMA intends to conduct a review and full scale testing of the plans, including the invocation of the recovery site and simulated recovery.

CIMA Staff Professional Standards

463. CIMA's Board of Directors has adopted guidelines on significant corporate governance issues. These guidelines include the Board of Directors Code of Conduct, the Management Committee Code of Conduct and the Board of Directors Conflicts of Interests Code which is based on statutory provisions in sections 18 and 19 of the MAL All codes require CIMA's directors and management to adhere to high standards of professional and ethical conduct.

464. All CIMA employees are required to comply with CIMA's conflicts of interest policy. Under the policy, a conflict of interest is deemed to exist whenever an employee has a financial interest, direct or indirect, in any principal dealing with CIMA, and that interest is of such extent or nature that it might reasonably affect his/her judgment or decisions exercised on behalf of CIMA. Employees must not hold any interest in a regulated entity, other than as customer or depositor. All interests and shareholdings must be declared and the Board may, upon review, require an employee to place such interests in trust.

465. CIMA staff is also subject to the Cayman Islands public servant's statutory code of conduct. Confidentiality standards in the MAL provide that any director, officer, employee, agent or adviser of CIMA who discloses information acquired in the course of his duties or in the exercise of CIMA's functions under law, is guilty of an offence and liable on summary conviction to a fine of CI$10,000 and to imprisonment for one year, and on conviction on indictment to a fine of CI$50,000 and to imprisonment for three years. The prohibition on disclosure covers information relating to: (1) the affairs of the Authority; (2) any application made to the Authority or the Government under the regulatory laws; (3) the affairs of a licensee;

or (4) the affairs of a customer, member, client or policyholder of, or a company or mutual fund managed by, a licensee.

CIMA Staff Training

466. CIMA's staff is provided regular training opportunities related to the supervisory functions of CIMA. All banking staff are subject to a structured banking supervisory training program, utilizing courses offered by regional central banks, the Federal Reserve System in the United States, the Office of the Comptroller of the Currency, the Financial Stability Institute, the Toronto Center, and the Bank for International Settlements.

467. CIMA staff is provided with specific AML/CFT training as part of induction and on an ongoing basis to ensure that the necessary expertise to conduct the surveillance and inspections. Such training includes sessions provided by banking, accounting, and legal associations, financial institutions, and foreign regulatory and supervisory authorities and regional and international organizations. Eight CIMA staff members have earned their Certified Anti-Money Laundering Specialist (CAMS) certification, and a further 18 staff members are slated to sit the exam in 2007.

468. Representatives of various banks advised the assessment team that CIMA's staff has a thorough understanding of the banks' business and that on-site inspections were well planned and conducted.

469. Given the above outline of the various responsibilities and duties of CIMA's supervisory divisions with about 1,400 licensees[22], and approximately 8,400 mutual funds, a staff complement of 60 for all divisions does give cause for concern about the capability to provide adequate supervision for all licensed entities. While the risk-based approach is designed to allow for more efficient allocation of resources, the initial and continuing task of risk assessing all licensees appears challenging given the present size of the staff. Consideration should be given to reviewing present human resource capacity with a view to improving supervisory coverage.

Authorities, Powers and Sanctions – R.29 & 17

Recommendation 29

CIMA Powers and Sanctions

470. Under s 6 of the MAL, CIMA is responsible for monitoring compliance with the MLR. With respect to FSBs, this duty is carried out primarily in each of CIMA's supervisory divisions as part of the off-site and on-site monitoring and inspection processes.

471. During on-site inspections, CIMA staff: reviews the written AML/CFT policies and procedures in place; review internal and external auditors' reports; reviews the Board of Directors' minutes, assesses compliance with internal and regulatory policies; and performs a customer due diligence review by sampling a number of client files and conducting transaction

[22] Broken down as follows: banks, 19%; fund administrators, 10%; captives, 50%; trust companies, 10.5%; company managers, 5.3%; MSBs, 0.47%, insurance managers, 1.7%; class A insurers, 1.7%; securities, 1.4%.

testing. CIMA staff also verifies that logs of suspicious activity reports are properly maintained and review statistics on the number of SARs filed. CIMA staff does not examine specific SARs filed by the FSB. CIMA conducts ongoing off-site surveillance and periodic on-site inspections of licensees that include, *inter alia*, review, assessment, and verification of the implementation and operation of the requirements of the laws and regulations that apply to FSB.

472. Under various provisions of the regulatory laws, CIMA may require the provision of any information or the production of any documents that may be reasonably required in connection with CIMA's regulatory functions, including internal audit reports. This authority may be exercised with respect to: (1) a "person" regulated under the regulatory laws (including a "connected person" (defined in subsection (16)(d)); and (2) a person reasonably believed to have information relevant to an enquiry by CIMA. The MAL also gives CIMA authority to exercise these powers at the request of or on behalf of an overseas regulatory authority.

473. Failure to comply with a request for information or records from CIMA pursuant to the MAL is an offence. In the event of a failure to provide information, CIMA may apply to the court for the direction to be enforced.

474. The record keeping requirements, together with various access provisions for the benefit of both law enforcement and regulatory authorities, ensure that both customer and transaction records are accessible and available to CIMA on a timely basis.

475. The Cayman Islands Bankers Association advised the assessment team that Cayman Islands licensed banks typically respond to requests for information from CIMA or the FRA within 21 days of receipt of the request.

CIMA's Enforcement Approach

476. The Regulatory Handbook describes CIMA's assumptions, perspectives and approach to the exercise of its enforcement powers:

- The effectiveness of the regulatory regime depends to a significant extent on the maintenance of an open and co-operative relationship between CIMA and those whom it regulates.
- CIMA will seek to exercise its enforcement power in a manner that is transparent, proportionate, and consistent with its publicly stated policies and guidelines.
- CIMA will seek to ensure the fair treatment of those who are subject to the exercise of its enforcement powers.

477. The regulatory laws enable CIMA to take enforcement action on an array of grounds and with an array of sanctions. Under the regulatory laws, CIMA has authority to pursue enforcement action for non-compliance with the MLR, either specifically or under other statutory grounds of operating in a manner detrimental to the public interest, or failure to direct and manage the FSB in a fit and proper manner.

Table 9: Summary of enforcement actions taken by CIMA July 2002 to March 2007

Sector	Revocation of License	Appointment of Controllers	Winding up Petitions	Appointment of Advisor	Other Enforcement Actions [23]	Total
Banking	2	3	4	0	1	10
Insurance	14	10	9	0	4	37
Investments & Securities	9	3	3	2	0	17
Fiduciary	1	0	0	0	0	1
Total	26	16	16	2	5	65

478. CIMA advised the assessment team that during this period one enforcement case involved violations related to money laundering. The violations included failure to identify and report a transaction which had no rationale and concerned funds which were of an unknown nature, failure to conduct ongoing monitoring of the movement of funds in the accounts and a failure to properly train employees. CIMA filed a SAR with the FRA regarding its findings (see box on page 58 for full details).

Recommendation 17

CIMA's Enforcement and Sanctioning Powers

479. With respect to AML/CFT **criminal** sanctions (apart from the offences of ML and FT proper) the following applies–

1) Failure to disclose knowledge or suspicion of money laundering for offences under the PCCL is punishable upon conviction on indictment with 2 years imprisonment and an unlimited fine, and upon summary conviction, a fine of $50,000.
2) Tipping off under the PCCL is punishable on summary conviction with a fine of $5,000 and imprisonment of 2 years, and upon conviction on indictment, to a fine and imprisonment for 5 years.

[23] The Other Enforcement Actions were comprised of the suspension of three Class `B' Insurers' licences and the imposition of conditions on a Class 'B' Insurer's licence and a Class 'B' Banking licence.

3) Under the TL, failure to disclose knowledge or suspicion of terrorism finance is punishable on conviction on indictment with imprisonment for 5 years and an unlimited fine, and upon summary conviction, imprisonment for 6 months and a fine of $4,000.
4) Failure to comply with the MLR is punishable by a fine of $5,000 (summary conviction) or on conviction on indictment an unlimited fine and 2 years' imprisonment.

480. A person who fails to comply with the a CIMA direction to provide information under the provisions of the MAL is guilty of an offence and liable on summary conviction to a fine of $ 10,000 and on conviction on indictment to a fine of $100,000, and for a continuing offence after conviction, a fine of $10,000 for every day on which the offence continues.

481. While the MAL allows CIMA to issue or amend rules or statements of principle or guidance, section 34 (7) states that rules may provide for the imposition by CIMA of penalties for breach of such rules, but that no penalty shall exceed one thousand dollars; and the rules shall establish the procedure and policy for imposing the penalty. It should be noted that this provision only applies to rules and does not cover statements of principle or guidance and therefore is not applicable to the GN.

482. The competent authority for prosecutions under the PCCL, MLR and the TL is the Attorney General, as provided in those laws. The competent authority for enforcement of administrative sanctions against FSB is CIMA. CIMA's sanction powers may be exercised in respect of directors and officers of licensees. The MLR expressly permits offences to be applied to directors and senior officers where it is proven that the offence was committed with the consent, connivance, or attributable to the neglect of, such officer. The criminal sanctions may be applied to "persons," which includes natural and legal persons.

Range of Administrative Sanctions

483. CIMA has a wide range of sanctions available to it under the various regulatory laws. The range of sanctions available to CIMA, and the manner in which sanctions are applied (known as the "ladder of compliance"), is outlined in the Enforcement Manual:

(i.) suspend or revoke the licence;
(ii.) impose conditions, or further conditions, as the case may be, upon the licence and may amend or revoke any such condition;
(iii.) require the substitution of any director, partner, manager, officer or shareholder of the licensee;
(iv.) at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs and to report to CIMA thereon within three months of the date of his appointment;
(v.) at the expense of the licensee, appoint a person to assume control of the licensee's affairs who shall, *mutatis mutandis*, have all the powers of a person appointed as a receiver or manager of a business appointed under section 18 of the *Bankruptcy Law (1997 Revision)*; and
(vi.) require such action to be taken by the licensee as CIMA considers necessary.

484. Under the IL, CIMA may suspend a license pending a full enquiry into the licensee's affairs. CIMA may also apply to the Grand Court of the Cayman Islands for a licensee/registrant to be wound up by the court.

485 As outlined in the Enforcement Manual, statutory grounds under which CIMA considers enforcement action include when a licensee: is unable to, or appears to become unable to, meet its obligations as they fall due; is carrying on business that is, or is likely to be, detrimental to the public interest, the interests of stakeholders, or any other third party; contravenes the regulatory laws or the MLR; fails to comply with a condition of its licence; or breaches a rule.

486. In deciding what action or actions to take (and the timing thereof), CIMA considers, among other things:

i. the impact on stakeholders' interests, third parties and market confidence;
ii. the nature and extent of the contravention;
iii. the ability and extent to which remedial action will rectify the contravention;
iv. the willingness and ability of the licensee to cooperate with and assist CIMA in terms of its investigations and recommendations (including how quickly, effectively and completely the licensee brought the contravention to the attention of CIMA; the degree and timeliness of cooperation in meeting the requests of CIMA for information, documents etc; any remedial actions the licensee has already taken or intends to take in rectifying the situation; and any action that has been taken to ensure that such a contravention does not arise in the future);
v. the compliance history of the licensee (including whether CIMA or any other regulator has taken any previous action against the licensee; whether the licensee has previously failed to comply with licence conditions or directions or rules of CIMA; and the general compliance history of the licensee in terms of any other correspondence considered relevant by CIMA);
vi. the amount of the loss incurred or any benefit lost as a result of the contravention;
vii. the nature and extent of any crime facilitated, occasioned or otherwise attributable to the contravention;
viii. the nature and extent of civil and/or criminal proceedings that have been or are expected to be commenced against the licensee or any of its directors and/or shareholders;
ix. the extent to which the directors and officers have acted in a fit and proper manner;
x. whether there are a number of issues which, when considered individually may not justify disciplinary action, but which do, when considered collectively, indicate a pattern of unfit and improper behaviour;
xi. whether any rules or guidance have been issued in respect of the contravention and, if so, the extent to which the licensee has followed the relevant rules or guidance; and,
xii. action taken by CIMA or other regulatory authorities in previous similar cases.

487. In most cases the Compliance Division will investigate and collect any further information that it deems necessary to determine an appropriate action. This may include receipt of legal advice regarding the sufficiency of the evidence obtained and the appropriateness of the proposed course of action.

Market entry – Recommendation 23

488. Persons who conduct, as a business, activity falling within the FATF definition of financial institution as well as DNFBPs such as trust and company service providers (but excluding casinos, which are prohibited by law) are subject to CIMA's prudential regulation and supervision and are required to be licensed by CIMA. CIMA staff advised the assessment team that they usually make determinations on licence applications within 4 to 6 weeks.

489. CIMA is required to refuse to grant a licence if it is of the opinion that the business to which the application relates would not be carried on by persons who are fit and proper persons to be directors, managers, or officers. The fit and proper criteria are set forth in various provisions of the regulatory laws and cover (1) honesty, integrity and reputation; (2) competence and capability; and (3) financial soundness. CIMA requires the completion of detailed personal questionnaires to assist in assessing compliance with these criteria

490. The fit and proper assessment is both an initial one undertaken at the licence application stage and a continuing test in relation to the conduct of the business. Therefore, CIMA may require the substitution of any person holding a position as a director, manager or officer if he is not fit and proper (s. 14(1) (iii) of the BTCL; s. 13(1) (v) of the IL; s. 17(2) (vi) of the SIBL; ss 30(3) (c) and 31(3)(c) of the MFL; and s. 19(1) (iii) of the MSL)

491. Under the regulatory laws, shares in the relevant licensed institutions cannot be issued, transferred or disposed of without prior approval of CIMA. Publicly traded companies are exempt from this requirement on the condition that CIMA is notified of the acquisition by any person or group of more than ten percent of shares and provided with information necessary to assess whether persons acquiring control or ownership are fit and proper. (s. 7 of the BTCL; s. 8 of the IL; s. 8 of the SIBL: and s. 13 of the MFL)

492. The assessment team was advised that CIMA staff conduct background checks of proposed officers and directors and shareholders/beneficial owners holding or exercising in excess of 10 percent of the voting or controlling interests. For private, non-public companies, checks are conducted on all beneficial owners, including those holding less than 10 percent of the voting or controlling interests. CIMA staff use commercial data bases to assist with the background checks, including World-Check. In addition, licensees are required to advise CIMA of any changes in officers and directors. CIMA inspectors review changes in beneficial ownership of licensed entities during periodic inspections and via periodic filings. The MAL grants CIMA broad authority, in performing its regulatory functions, to have regard to the protection of the financial services sector from being used for money laundering or other crime.

493. CIMA staff also review the qualifications of the proposed MLRO. The GN provide that experience and independence of the proposed MLRO are two of the key factors that are considered by CIMA.

494. The Company Managers Association advised the assessment team that Cayman Islands company management service providers routinely conduct background checks on proposed directors to ensure that the pool of directors available to Cayman Islands mutual funds and insurance companies (the products they typically service) meet the fit and proper test.

Money value transfer and money exchange

495. The MSL requires the provision of the following services to be licensed under the law:

i) money transmission (including stored value cards)
(ii) cheque cashing
(iii) currency exchange
(iv) issuance, sale or redemption of money orders or travelers; cheques
(v) such other services as the governor in cabinet may specify.

496. At the time of the assessment there were seven money services businesses (MSBs) licensed by CIMA and supervised by the Banking Supervision Division. They are subject to the same measure of supervision as other licensees, including the filing of returns and audited financials and on-site inspection.

497. The Compliance Division conducts the following procedures in connection with a review of a MSB license application:

a) The Personal Questionnaire (PQ) is thoroughly reviewed, ensuring that all questions have been properly answered and that the PQ is dated within 6 months of the application;
b) The three references are reviewed to ensure they meet the Policy on Minimum Standards for Reference Letters issued by CIMA;
c) References are verified by calling the reference writers, who are asked to validate the information set out in the reference.
d) The affidavit or police clearance is reviewed to ensure it meets the following standards:
    - Dated within 6 months of the application;
    - If it is a police clearance certificate, it is stamped and signed.
    - If it is an affidavit, it is:
        i. Signed by the Applicant;
        ii. Signed by a notary, affixed with the seal as required in that jurisdiction;
e) Information in the three references is compared to the PQ for internal consistency, including:
    - Checking the names and addresses on the references to PQ: Q2 and Q4; and,
    - Comparing information on employment on the references to PQ: Q9.
f) A search for the applicant's names is conducted on the in-house blacklists.

498. Where the applicant is deemed to be "medium-risk" or "high-risk", then additional due diligence measures are taken by CIMA in accordance with CIMA's guidelines for assessing fitness and propriety. .

499. All financial institutions and DNFBPs (except casinos) as defined in the FATF 40+9 come within the definition of "relevant financial business" covered by the MLR and the GN, including businesses and professions that are not required to be licensed pursuant to any regulatory law (realtors; dealers in precious metals/stones). Relevant financial business covered by the regulatory laws that is not subject to Core Principles include MSBs, building societies, cooperative societies, fund administrators, trust companies, company managers, and corporate services providers. These FSPs come within CIMA's obligation under Section 6(1)(b)(ii) of the MAL to monitor compliance with money laundering regulations. The statements of guidance on licensing for MSBs, trust companies, and company managers and corporate services providers highlight the obligation of licensees to adhere to the MLR.

Ongoing supervision and monitoring – R.23 & 32

CIMA's Approach to Supervision

500. The AML laws and regulations and CIMA's application of these and related supervisory practices reflect a combination of risk-based and rules-based approaches. The regulatory laws and CIMA's internal policies and procedures establish minimum prudential standards that FSB must meet governing licensing requirements (including fit and proper standards for management), changes of entity ownership and control, approval of appointment of directors, capital adequacy and other factors bearing on safety and soundness.

501. Each CIMA supervisory division operates a comprehensive and effective risk-based supervision program, consisting of continuous off-site surveillance, periodic on-site inspection, and ongoing communications with licensees and, where applicable, their home country supervisory authority. CIMA has developed and implemented supervisory polices and procedures for both the off-site and on-site processes. The diverse nature of the licensee population requires independent assessment of each licensee to determine the necessary risk-based scope of supervision.

502. Formal risk assessments are conducted at regular intervals but the system allows for ongoing off-site and inspections findings to flow into the process and update the risk profiles and inform supervisory actions as necessary. Currently there are six weighted[24] **risk groups** in the rating methodology: Financial Soundness, Environment, Business Plan, Controls, Organisation, and Management. Each risk group is further broken down into **risk elements**. For example, under the Controls risk group, the risk elements include: Business Continuity, Internal Audit, Track Record, Foreign Regulatory Oversight, Compliance, AML Controls, and Risk Management. Risk elements are further broken down into specific **risk factors.** Under the AML Controls, for example, the specific risk factors include Policy, MLRO training, CDD Procedures, Identification of Suspicious Activity, and Recordkeeping. Each regulatory division derives a percentage score for each licensee which allocates it to one of five risk categories (high, moderately high, medium, moderately low and low).[25]

503. CIMA is responsible for monitoring compliance with the MLR. This duty is carried out primarily in each of CIMA's supervisory divisions as part of the off-site and on-site planning and inspection processes. CIMA conducts on-site inspections of FSB to verify compliance with various legal and license-related requirements and conditions. CIMA reviews FSB compliance with the requirements of the MLR and GN during these on-site inspections and in connection with CIMA's ongoing surveillance through the review of periodic returns and reports filed by licensees.

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[24] Each regulatory division sets the weights (out of 100%) for the risk groups, by type of entity under its supervision.

[25] Each entity is assigned a score for each risk factor. The scores for each risk factor are summed and divided by the maximum attainable score for each risk group, and the resulting ratio is then multiplied by the weight for the risk group. The composite percentage for each risk group is then summed to derive the overall percentage score for each licensee. From CIMA's risk rating conducted in 2005/6, licensees falling into the **high/moderately high** risk category had the following distribution: Banks – 5%; TSPs/CSPs – 2%; Insurance – 9%; Investment & Securities – 4%. It should be noted that because of the structure of the captives sector, on-site inspections of insurance managers inherently cover their managed captives.

On-Site Inspections

504. As described in the Regulatory Handbook, the role of examiners in the on-site inspection process is to maintain a high level of familiarization with every licensee's operations and performance to ensure that it is operating in a satisfactory manner. The monitoring process is ongoing. The primary goal is the early detection of weaknesses and deficiencies in the controls and systems of licensees, and to advise management of necessary corrective actions that should be taken by the licensee.

505. There are three categories of on-site inspection: full scope; limited scope; and follow-up. A full scope inspection will usually involve a review of all lines of business undertaken by the licensee along with all areas of operations. A limited scope inspection focuses on a particular segment(s) of a licensee's business and operations, or a particular issue that might be of interest to CIMA, such as AML/CFT or IT systems.

506. The Regulatory Handbook indicates that examiners may consider engaging outside assistance to scope out a detailed money laundering review to be conducted by the institution's external auditors pursuant to the relevant section of the Regulatory Laws.

507. The key objectives of inspections include: confirm that the licensee is operating in a prudent manner with adequate capital and competent management; review for compliance with applicable laws, regulations and international standards, including AML/CFT; obtain an accurate and timely understanding of business operations; evaluate the licensee's assessment and management of risks; assess the adequacy of internal systems and controls; and identify operational and legal violations, problems and weaknesses and communicate them to management informally and via an inspection report with appropriate recommendations for corrective action.

508. During on-site inspections, CIMA staff assesses the quality and effectiveness of policies, procedures and systems pertaining to AML/CFT and other legal and regulatory requirements. Specifically, on-site inspections include a review of internal and external (independent) audit reports; corporate governance (including a review of Board and shareholder meeting minutes, key operational documents (and amendments thereto) and material developments in officers and management); succession planning; compliance policies and procedures (and amendments thereto)(including CDD and SAR reporting procedures); internal systems and controls; record-keeping systems and procedures (including a review of specific account files for CDD and specific transactions); training programs and records; procedures and records regarding account-openings, closings and redemptions. CIMA staff also interview senior management and independent auditors. CIMA inspectors review statistics on the number of SARs filed and verify that logs of suspicious activity reports are properly maintained. CIMA staff do not examine specific SARs filed by licensees.

509. CIMA's web site states that "In order to avoid duplication of effort, the inspection endeavors to rely on the work of the internal auditors. As part of the inspection, a basis for reliance upon the work of the internal auditor is established."

510. As a general rule, the scope of on-site inspections is determined based on the risk profile of the licensee through a pre-inspection planning and analysis process, using the results of off-site surveillance and previous on-site inspections to produce an inspection plan.

511. The assessment team was advised that there is no regulation or formal, written policy that determines the frequency with which institutions are examined. In practice, during the first quarter of the fiscal year, the inspection staff identifies the institutions that will be inspected during the year. In making these determinations, staff considers, among other things, results from previous exams, prudential meetings with management, independent research, and discussions with external auditors of institutions.

512. CIMA's web site indicates that inspections are carried out on a one- to three-year rotation, depending on the nature of the institution and the risk assessment thereof conducted by the appropriate supervisory division. CIMA supervisory staff, however, advised the assessment team that FSB deemed to be high-risk is scheduled to be examined annually, while those deemed to be lower risk are scheduled to be examined every 18 months to 6 years.

513. Pursuant to the MLR, all licensees are required to appoint an MLRO who is a suitably qualified and experienced officer of their institution to whom suspicious activity reports must be made by staff. The MLRO is usually a senior member of staff carrying out a Compliance, Audit or Legal role within the licensees' business. Licensees are also expected to appoint a Deputy, who should be a person of similar status and experience to the MLRO. Accordingly, CIMA examiners review MLRO policies and procedures to ensure that MLRO has unimpeded access to all relevant documents and information.

514. The assessment team was advised that inspections have not revealed any problems with management cooperation with MLROs. The Cayman Islands Bankers Association advised the assessment team that most Cayman Islands licensed banks have adopted procedures that give MLROs very broad access to any account or transaction related information that the MLRO deems necessary to investigate suspicious activity, advise CIMA of any concerns, and make SARs to the FRA.

515. A meeting with management is conducted following the inspection to discuss its results and recommendations; depending on the issues involved the meeting may also involve the licensee's directors. Findings and recommendations are included in the inspection report. Meetings are also held with the licensee's independent (external) auditor during each on-site inspection.

516. The Regulatory Handbook emphasizes that FSB operating on a group basis should adhere to the most stringent anti-money laundering requirements applicable to it, whether from a foreign supervisor or CIMA.

517. When conducting exams involving branches or subsidiaries businesses based in foreign countries, CIMA usually contacts foreign competent authorities and regulatory agencies to advise of the scope, goals and protocol of the inspection and request relevant information. CIMA frequently meets with foreign authorities in connection with such exams.

518. Inspection manuals for each relevant business sector have been developed by CIMA that include a specific programme for AML compliance that incorporates key principles and procedures contained in the GN. The inspection manuals set out the on-site objectives, responsibilities, and methodologies for conducting and reporting on the results. They include inspection programmes covering all areas of risk within the licensee, which are used as necessary to address the scope of each inspection. In addition, each of the supervisory divisions has developed detailed AML/CFT checklists for use during full scope and limited scope inspections.

519. Representatives of The Cayman Islands Law Society advised the assessment team that CIMA staff periodically perform inspections of law firms with practitioners who conduct "relevant financial business."

520. During the fiscal years 2003 to 2006 the Banking Division conducted 95 inspections, including 85 inspections of banks, 8 inspections of money services businesses and 2 inspections of credit unions. The Insurance Division conducted 53 full scope inspections. The Investments and Securities Division conducted 35 inspections. The Fiduciary Division conducted 36 inspections.

Table 10 : CIMA's On-Site Inspection Programme 2004/5-2006/7 (May)

Division	2004/2005			2005/2006			2006 – 05/2007			Total
	Full Scope	Limited Scope (AML)	Limited Scope - Other	Full Scope	Limited Scope (AML)	Limited Scope - Other	Full Scope	Limited Scope (AML)	Limited Scope - Other	
Banking	18	-	1	7	4	-	6	1	1	37
Fiduciary	3	-	-	3	-	-	3	-	-	9
Insurance	2	1	4	1	28	5	6	-	1	48
Investment & Securities	-	1	-	-	16	-	1	9	-	27
Total	**23**	**1**	**5**	**11**	**48**	**5**	**16**	**10**	**2**	**121**

521. Most of the 50 full scope inspections included AML/CFT matters. Full scope inspections conducted by the Insurance Division during last two years did not include AML/CFT due to the limited scope inspections that the division conducted that had an AML/CFT focus. Among all the divisions, there were 59 AML/CFT related limited scope inspections during the period.

Prudential Meetings with Licensees

522. The supervisory divisions also maintain regular contact with licensee management through a program of prudential meetings. These meetings are conducted at least annually with persons and entities that operate in the domestic market and approximately once every two years with the branches and locally-incorporated subsidiaries of foreign businesses. The Insurance Division holds prudential meetings with management of Class A companies approximately on a quarterly basis. These meetings are usually attended by senior management, but may also include members of the licensee's board, internal and/or external auditors, department heads, etc., as necessary based on the requirements of the meeting agenda. These meetings generally include discussions of operating performance, off-site surveillance or on-site inspection issues, corporate strategies, AML/CFT compliance, risk management, and other ongoing prudential matters. The risk assessment conducted by CIMA staff during on-site inspections determines the frequency and scope of subsequent exams and prudential meetings. Frequent changes in board, directors, management, auditors, business plan, service providers, etc are 'red flags' from CIMA's risk rating perspective and would therefore be raised and discussed at prudential meetings. These 'red flags' would also accelerate an on-site visit. Similarly, periodic reports are also important from CIMA's supervisory perspective: a late filing of a financial statement is a 'red flag' increasing the attention focused on the licensee and the likelihood of an accelerated on-site visit.

523. The number of prudential meetings held during 2004/2005 to May 2007 is shown in the table below:

Table 11 : Prudential Meetings 2004/5-2006/7 (May)

Division	**2004/2005**	**2005/2006**	**2006 – 05/2007**
Banking	289	160	192
Fiduciary	22	79	36
Insurance	323	376	415
Investments & Securities	-	32	9
Total	**634**	**647**	**652**

Off-Site Monitoring

524. All FSBs must file audited financial statements with CIMA annually. The statements are prepared by auditors who are approved by CIMA. The standardized prudential and financial reporting provides information, on an individual and consolidated basis, for on- and off-balance sheet assets and liabilities, profit and loss, capital adequacy (including reserves), liquidity, large exposures, loan loss provisioning and delinquencies, market risk, and deposit sources.

525. Annual audited information is required of banks & trusts and MSBs within 90 days after the period-end. Annual audited financial statements are required from trust companies, company managers, corporate service providers, mutual funds, fund administrators and insurance companies within 6 months of the end of the reporting period.

526. As of March 29, 2007, E-filing of periodic reports became available to mutual funds and mutual fund administrators, but not other FSBs. Annual statements are submitted electronically via the Funds Annual Return (F.A.R.) system, which facilitates the filing of a summary financial statement (including information from prospectuses and offering documents and audited financial statements) and the audited financial statements themselves. Reports are submitted by insurance companies electronically via a system that is similar to the F.A.R. system available to mutual funds. CIMA is considering adoption of e-filing procedures for all FSBs.

527. Representatives of the Cayman Islands Society of Professional Accountants (CISPA) advised the assessment team that there are approximately 27 public accounting firms licensed to conduct business on the Cayman Islands. CIMA staff and the accounting and auditing professionals approved by CIMA follow generally accepted international accounting, auditing, and reporting practices and standards. Auditors review their clients' AML compliance as a part of the auditor's general legal compliance review, including adherence to widely accepted international standards. The AML related review is focused on internal systems and controls, and their actual or potential impact on the client's financial condition. Auditors typically test transactional and SAR reporting systems. An auditor finding of non-compliance can adversely affect the auditor's general opinion or the opinion regarding a client's status as a "going concern." Also, if a client fails to provide sufficient information regarding its AML programme and compliance practices the scope of an auditor's opinion could be limited to a degree that is unacceptable under applicable auditing standards.

528. Representatives of CISPA advised the assessment team that auditors report to CIMA and file a SAR with the FRA whenever they discover AML/CFT non-compliance during an audit of a licensee. In addition, as a matter of practice, auditors submit to CIMA copies of management letters to clients that reveal any weaknesses in systems and controls. The whistle-blower provisions of the Regulatory Laws give auditors the responsibility to report a wide range of compliance problems to CIMA. Few SARs have been filed by member firms in recent years. CISPA is aware of only a few expressions of concern by auditors regarding the effectiveness of SAR reporting procedures and systems in FSB entities.

529. Members of CISPA conduct audits of approximately 8,400 Cayman Islands mutual funds. The Association advised the assessment team that many of the audits conducted to comply with Cayman Islands law are essentially summary reviews of audits and reports prepared by foreign offices of the firms in accordance with guidance provided by the Cayman offices.

Table 12: Reporting Schedule for Prudential and Statistical Returns to CIMA 2006 - 2007

Reporting Period	Returns/Surveys	Frequency of report	Date that report is due	Method of Report	Divisional Owner
December 2006, March, June and September 2007	Banking Division-Quarterly Prudential Returns (BS Form)	Quarterly	23rd Jan, April, July, and 22nd Oct., 2007	Electronic reporting via email.	Banking Supervision Division

Year-End	Bank & Trust Licenses - Audited Financial Statements.	Annual	Within 3 months of the Licensee's financial year-end.	Hard Copy	Banking Supervision Division
December 2006, March, June and September 2007	Money Services Business Form (MSB Form)	Quarterly	23rd Jan, April, July, and 22nd Oct., 2007	Electronic reporting via email.	Banking Supervision Division
Year-End	Money Services Businesses -Audited Financial Statements	Annual	Within 3 months of licensee's financial year-end.	Hard Copy	Banking Supervision Division
December 2006	Securities Investment Business Annual Declaration Form (Excluded Persons)	Annual	31st January 2007	Hard Copy	Investments and Securities Division
December 2006, March, June and September 2007	Securities Investment Business Form (Broker/Dealers)	Quarterly	31st Jan, 23rd April, 23rd July and 22nd October, 2007	Electronic via email	Investments and Securities Division
Year-End	Securities Licensee's - Audited Financial Statements	Annual	Within 6 months of licensee's financial year-end.	Hard Copy	Investments and Securities Division
Year-End	Mutual Funds – Audited Financial Statements and Fund Annual Return (FAR).	Annual	6 months of Fund's financial year-end	Electronic reporting via e-filing.	Investments and Securities Division
December 2006 and June 2007	Company Managers' Bi-Annual Report	Bi-annual	30th January and 27th, July 2007	Electronic reporting via email.	Fiduciary Services Division
Year-End	Company Management-Audited Financial Statements	Annual	Within 6 months of licensee's financial year-end.	Hard Copy	Fiduciary Services Division

December 2006, March, June and September 2007	Quarterly Return Class 'A' Insurance Co.	Quarterly	15th February, May, August and November 2007	Electronic via email.	Insurance Division
Annual	Class 'B' Annual Statement of Operations	Annual	15th January annually	Hard Copy	Insurance Division
Year-End	Class 'A' and 'B' Audited Financial Statements	Annual	Within 6 months after licensee's financial year-end.	Hard Copy	Insurance Division
Year-Ends	Class 'B' Insurance Co. Audited Financial Statements	Annual	Within 6 months after licensee's financial year-end.	Electronic reporting via email	Insurance Division

December 2006	Coordinated Portfolio Investment Survey	Annual	30th March 2007	Electronic reporting via email.	Policy and Development Division
December 2006 and June 2007	Non-Compliant Accounts Form	Bi-annual	23rd Jan. and July, 2007	Electronic Reporting via email.	Policy and Development Division
December 2006, March, June and September 2007	Locational Banking Survey	Quarterly	30th Jan., April, July and 29th Oct., 2007	Electronic reporting via email.	Policy and Development Division
December 2006, March, June and September 2007	Domestic Banking Activity (DBA Form)	Quarterly	30th Jan., April, July and 29th Oct., 2007	Electronic reporting via email.	Policy and Development Division

Additional Monitoring Mechanisms and Supervisory Tools

530. CIMA has the authority under the regulatory laws to use private auditors and consultants to conduct special audits and other investigations on its behalf. CIMA also may request special reporting from individual licensees or the entire population of licensees, as it deems necessary.

531. Most FSB entities are required by the Regulatory Laws to report to CIMA any material changes in management and operations (including compliance violations).

532. CIMA has an MOU with the FRA to facilitate information sharing. CIMA does not have an information sharing MOU in place with the FCU. Nonetheless, the assessment team was advised that CIMA staff have, on approximately 4 occasions in the last few years, directly contacted FCU staff when they become aware of potential crime at an FSB.

533. Under the *Public Accountants Law, 2004*, sole practitioner public accountants and public accounting firms are required on an annual basis by 31 January to provide a certificate (the "PCCL Certificate") to CIMA confirming compliance with the PCCL and regulations made under that law, including the MLR. Proposed legislation that would impose a similar annual certification obligation on lawyers is under consideration.

Requests for Assistance from an Overseas Regulatory Authority (ORA)

534. CIMA has responsibility under section 6(1)(c) of the MAL to provide assistance to overseas regulatory authorities (ORAs). While not a pre-requisite, CIMA can enter into Memorandum of Understanding (MOUs) with ORAs to facilitate such assistance. CIMA has entered into MOUs with Banco Central Do Brazil, Isle of Man Financial Services Commission, Bermuda Monetary Authority, Bank of Jamaica, the Superintendency of Banks of the Republic of Panama, and the Office of the Superintendent of Financial Institutions Canada. CIMA also has a multilateral MOU with The Regional Authorities for the Exchange of Information and Co-operation and Consultation, an Understanding with the US Securities and Exchange Commission, and an Undertaking for Sharing of Information with the US Commodity Futures Trading Commission. Negotiations are ongoing with other ORAs. These MOUs are viewed as enhancing the quality and timeliness of information on licensees' operations overseas, reducing the cost of obtaining such information, and simplifying the administrative processes when requests are received. CISPA advised the assessment team that CIMA periodically requests information directly from FSB entities in response to an information request from a foreign regulatory authority or law enforcement.

535. As the sole regulator in this area, CIMA takes an integrated approach to the application of prudential regulation, which takes account AML/CFT requirements. In performing its regulatory functions, CIMA is required by the MAL to issue guidance on implementing the MLR and otherwise *"to endeavor to reduce the possibility of financial services business or relevant financial business being used for the purpose of money laundering or other crime."* (s.6 (3)(b) of the MAL) .

536. The Regulatory Handbook describes the Cayman Islands government's perspective: *"The Cayman Islands government has undertaken a far-reaching program to enforce measures against money laundering. The government is committed to cooperating with international efforts and standards for combating money laundering, and the financing of terrorism as one aspect of its determination to prevent criminals from using the financial industry of the Cayman Islands."*

537. The MAL provides that "money laundering" has the meaning given by section 37(7) of the PCCL. The PCCL, as amended in 2007, expanded the definition of money laundering to include the FT offenses under the TL. Thus, CIMA has express statutory authority under the MAL to issue guidance governing terrorism finance. CIMA staff advised the assessment team that the GN will soon be amended to expand on FT-related guidance.

538. MSBs are regulated by CIMA under the MSL and are included as "relevant financial business" under the MLR. Therefore, MSBs are subject to CIMA's supervision for AML/CFT purposes. The regulatory framework for MSBs under the Law includes -

- Licensing requirements
- The filing of prudential returns and audited financials
- Examination of the affairs of the business
- Access to books and records
- Money laundering compliance certification

539. Building societies, cooperative societies, trust companies, company managers and corporate services providers are subject to supervision and oversight for AML/CFT by CIMA. These businesses file audited statements and prudential returns with CIMA and are also subject to inspection by CIMA.

540. The GN contain sector-specific guidance for real estate brokers and agents on compliance with AML/CFT regulations. However, CIMA has not developed a supervision program for real estate agents and brokers.

541. CIMA does not have supervisory authority under the regulatory laws with respect to dealers in precious metals and dealers in precious stones because such business is not required to be licensed by CIMA. By the *Money Laundering (Amendment) (No 2) Regulation 2007* enacted on August 7, 2007, dealers in precious metals or precious stones were included in the definition of relevant financial business and were thus brought under the AML/CFT regime. However, it should be noted that the above mentioned regulation also indicated that no person will be prosecuted under the amendment for an offence committed prior to January 1, 2008. This effectively removes the threat of sanctions from dealers in precious stones or precious metals until 2008.

542. The above Cayman Island's supervisory regime utilizes modern procedures and technical resources, however the numerical adequacy of supervision resources is a concern. The assessment team identified a number of factors that potentially indicate the need for additional supervisory staff at CIMA:

(1) The relatively low minimal number of inspections in recent years, across all risk categories compared to the total number of licensees, has implications for CIMA's ability to satisfy itself that the MLR and the GN are being complied with. The number of inspections carried out by three of the supervisory divisions has declined during the period 2004 to May 2007.[26] The outer range for the completion of a full inspection cycle of 6 years for low risk entities is outside the norm., but understandable given the level of staff;

(2) CIMA has acknowledged partial reliance on, or deference to: (i) audits performed by internal and external auditors of licensees; (ii) examinations performed by foreign competent authorities of foreign-based licensees; (iii) guidance developed by industry associations; and

[26]It is noted that the Authority cautions against concluding that the decline is as a result of a lack of resources -- it cites the banking sector as an example, where a number of issues contributed to the decline in the number of inspections, including decline in the number of licensees, improved off-site supervisory procedures and IT enhancements (CIISMA) to enable enhanced monitoring of changes in banks' operations as well as more communication, cooperation and coordination with home country supervisors.

(iv) peer reviews undertaken by industry associations and the cross-industry Compliance Association;

(3) CIMA periodically uses outside consultants to assist with particularly complex full scope and limited scope (AML/CFT) inspections;

(4) While prudential meetings are legitimately an integral part of the supervisory regime, and can be used to address any "red flags", these meetings do not entail a full rigorous review of compliance with AML/CFT standards and, therefore, should be viewed as an augmentation of, not a replacement for, routinely planned and scoped inspections;

(5) CIMA's plans to institute e-filing for all licensees likely will enhance staff efficiency, but may also divert staff resources from supervisory responsibilities until the systems are fully operational.

Guidelines – R.25 (Guidance for financial institutions other than on STRs)

543. CIMA issues the GN pursuant to the authority granted under the MAL. The GN are developed under the auspices of a GN Committee, which is chaired by CIMA and includes representatives from all the FSP associations as well as the Legal Department and the Portfolio of Finance & Economics. The GN are the primary source of guidance on compliance with AML/CFT laws and regulations, particularly the MLR. The GN provide guidance to FSPs regarding implementation of the preventative measures required by the MLR (*e.g.*, requirements regarding customer identification, record keeping, transaction monitoring, suspicious activity detection and reporting, and training), as well as summaries of indicators of higher risk customers, products, services, and activities that may signal the need for a SAR or enhanced CDD measures. At present the GN do not fully incorporate specific guidance with regard to terrorism financing or dealers in precious metal and precious stones. The GN are revised periodically as deemed necessary by the GN Committee. .

544. Pursuant to the MAL, CIMA also has issued a Regulatory Handbook that sets out the policies and procedures to be followed by CIMA in performing its cooperative and regulatory functions. CIMA has issued several additional sources of guidance that cover, among other things, licensee retention and CIMA access to records, and procedures for assessing officer and director fitness and propriety.

3.10.2 Recommendations and Comments

545. The supervisory regime implemented by CIMA is comprehensive and in accordance with international requirements for the various sectors. CIMA utilizes appropriate supervisory techniques and has well qualified, competent, experienced staff. However, the number of staff appears inadequate in comparison with the number of supervised entities. Additionally, the GN does not fully incorporate specific requirements for terrorism financing or cover dealers in precious metals and dealers in precious stones. As such the following is recommended:

546. *Recommendation 23 & 30* Inadequate staffing in the area of inspectors and analysts in view of the number of licensees and extensive on-site and off-site responsibilities under CIMA's supervisory programme raises concern about the adequacy of supervision of licensees. CIMA should review present staff complement with a view to improving supervisory coverage.

547. *Recommendation 29* CIMA's powers of enforcement and sanction are broad and, by virtue of the MAL cross reference to the PCCL definition of money laundering, extend to terrorism financing. However, enforcement action in relation to the GN is necessarily limited, since the GN does not fully incorporate specific requirements for terrorism financing. The GN should be amended to specifically cover terrorism financing.

548. *Recommendation 25* The GN should be extended to dealers in precious metals and precious stones.

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**C**	• This recommendation is fully observed
R.23	**LC**	• Effective supervision by CIMA limited by quantitatively inadequate human resources
R.25	**LC**	• Guidance notes do not fully cover terrorism finance or include dealers in precious metals and precious stones
R.29	**LC**	• The GN do not fully incorporate specific requirement for terrorism financing, thereby limiting CIMA's range of enforcement powers via the GN in relation to terrorism financing.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

549. At the time of the mutual evaluation there were 7 money services businesses (MSBs), all licensed by CIMA and supervised by the Banking Supervision Division. These businesses are governed by the MSL which require persons who carry on money services business to obtain a licence to operate (ss 4(1) of MSL). Failure to obtain such a licence is an offence punishable on summary conviction to a fine of CI $10,000 and imprisonment for I year and in the case of a continuing offence to a fine of CI $1,000 for each day during which the offence continues (ss 4(2) of the MSL). Section 2 of the MSL defines money services business to include the following:

i) money transmission (including stored value cards)
(ii) cheque cashing
(iii) currency exchange
(iv) issuance, sale or redemption of money orders or traveller's cheques
(v) such other services as the Governor in Council may specify

550 The MSBs are subject to the same measure of supervision as other licensees, including the filing of returns and on-site inspection. Due diligence is performed on Directors and Senior Officers. This is facilitated by the provision of relevant information via a Personal Questionnaire that is required to be completed by all directors and senior officers. This information facilitates the 'fit and proper' tests undertaken by CIMA for these persons. In

addition to the 'fit and proper' process, names are also scrubbed against CIMA's in-house data base of prohibited persons.

551. Where the applicant is deemed to be "medium-risk" or "high-risk", then additional due diligence measures are taken by CIMA in accordance with the CIMA's guidelines for "Assessing Fitness and Propriety".

552. MSB providers are covered by the MLR by virtue of their being designated as relevant financial business. As such the newly introduced Part VII of the MLR implementing SR VII in relation to wire transfers also applies to MSBs. However as already noted, a transitional provision in the relevant amendment postpones the imposition of criminal sanctions for Part VII until 2008, thereby making this amendment ineligible to meet the FATF criteria. CIMA advises that these service providers currently record both originator and payee transfer details in line with the FATF requirements in this regard.

553. By virtue of the definition of MSB at (b) in s. 2 of the MSL, agents and franchise holders are required to be licensed by CIMA thereby ensuring that CIMA is aware of all licensed agents and franchise holders. Since MVT providers are designated as relevant financial business, the offences and penalties that are outlined in the MLR are also applicable to them.

3.11.2 Recommendations and Comments

554. Money service businesses in the Cayman Islands have been brought under the AML/CFT regime and are licensed and supervised by CIMA. With regard to the application of the relevant FATF Recommendations, it is noted that the requirements of SR VII are not enforceable until 2008.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**LC**	• Requirements of SR VII for wire transfer are not enforceable until 2008

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

DNFBPs & authorised activities

555. AML/CFT preventive measures are applicable to all "relevant financial business" under the MLR and the GN issued by CIMA. The definition of "relevant financial business "includes most of the entities and activities listed for DNFBPs in the FATF AML/CFT regime. DNFBPs excluded from Cayman Islands AML/CFT regime are casinos which are prohibited in the jurisdiction and at the time of the mutual evaluation, dealers in precious metals and precious stones. The only AML/CFT requirement imposed on dealers in precious metals and precious stones is the obligation to report suspicion or knowledge of ML or TF to the FRA. By the *Money Laundering (Amendment) (No 2) Regulation 2007* enacted on August 7, 2007, dealers in precious metals or precious stones were included in the definition of relevant financial business and were thus brought under the AML/CFT regime. However, it should be noted that a transitional

provision in the above amendment also indicated that no person will be prosecuted for an offence committed prior to January 1, 2008. As dealers are not covered by the regulatory laws, there are no enforcement measures deployable by CIMA in this area. This effectively removes the threat of sanctions from dealers in precious stones or precious metals and thereby invalidates the amendment as law or regulation under the Methodology until 2008. As such, dealers in precious metals and precious stones are still not considered part of the AML/CFT regime for the purposes of this mutual evaluation report.

556. With regard to DNFBPs' activities, the definition of relevant financial business includes the following:

- Financial, estate agency and legal services provided in the course of business relating to the sale, purchase or mortgage of land or interests in land on behalf of clients or customers

- The business of company management as defined by the CML (which includes company formation and registered office services);

557. The first activity would cover all real estate agents and lawyers, notaries and independent legal professionals providing legal services in the buying and selling of real estate. The second activity as outlined in the CML would encompass the following FATF DNFBP activities;

- acting as a formation agent of legal persons;

- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

- providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;

- acting as (or arranging for another person to act as) a nominee shareholder for another person.

558. The above activities together with the provision of trust services which are regulated under the BTCL and are part of the definition of relevant financial business cover all the FATF activities for trust and company service providers. Lawyers, accountants and any other businesses or professionals who conduct these services are required to be licensed under the BTCL or the CML. With regard to lawyers acting as company service providers, all perform these activities as corporate entities separate and distinct from their other legal functions. These corporate entities are supervised by CIMA for compliance with AML/CFT requirements.

559. Lawyers, notaries and other independent legal professionals and accountants managing client money, securities or other assets and bank, savings or securities accounts as required in the FATF list of DNFBP activities would be covered as relevant financial business under the MLR and in most instances constitute activity governed by SIBL, CML or MFL.

560. With regard to the MLR and the GN, CIMA's enforcement powers are applicable to all those DNFBPs which are licensed as trust and company service providers under the BTCL and

the CML or otherwise under the regulatory laws. However, CIMA does not have such powers with regard to real estate agents and brokers or functions carried out by lawyers and other independent legal professionals in relation to real estate transactions.

561. At the time of the mutual evaluation, DNFBPs in Cayman Islands consisted of 50 real estate agencies/brokers, 232 licensed trust and company service providers among which 16 company managers and 10 trust service providers are owned by law firms or partners of law firms or are affiliated with law firms, 404 lawyers distributed among 44 law firms and 27 firms of accountants approved by CIMA for the purpose of conducting audits of regulated entities. With regard to dealers in precious metals and precious stones, there are two main jewellers who operate most of the retail outlets and a dozen or so independent stores. Customs statistics indicate that precious metals and stones, primarily in the form of articles of jewellery were imported to the value of CI $24.8m in 2006.

4.1 Customer due diligence and record-keeping (R.12)

Recommendation 12
(applying R.5, 6, 8-11)

4.1.1 Description and Analysis

562. The preventative measures in the MLR and GN apply to all persons that carry on "relevant financial business." These activities include those conducted by DNFBPs, with the exception of casinos (which are illegal under Cayman Islands law) and dealers of precious metals and precious stones (measures apply but are not considered enforceable until 1 January 2008). The GN incorporates sector specific guidance for company formation and management, trust services and real estate. CIMA's enforcement powers are not applicable to real estate agents and brokers or functions carried out by lawyers and other independent legal professionals in relation to real estate transactions.

Recommendation 5
563. The customer due diligence requirements applicable to all FSBs, including DNFBPs, stipulated in the MLR and the GN has been detailed in section 3.2 of this report. The GN also includes specific guidance on CDD measures for DNFBPs as follows:

Company Formation and Management

564. With regard to company formation, an explanation of the nature of the proposed company's business, source of funds and satisfactory evidence of the identity of each of the proposed beneficial owners are required. In the case of company management, appropriate due diligence on the shareholders, beneficial owners, the directors and anyone who gives instructions to the company manager on behalf of the company, directors officers or shareholders is required. Appropriate due diligence is also required on anyone who initially approaches a company manager and gives instructions on behalf of the company. In certain circumstances the due diligence of an introducer can be relied upon, once the introducer himself has been subjected to appropriate due diligence and approved by senior management.

565. In the case of structured finance companies, FSPs must identify the parties and the commercial purpose and conduct enquiries on any or all of the following persons and entities:

i. The arranger
ii. The originator
iii. Where relevant the promoter; and
iv. Investors in the securities of the company

.

566. With regard to discontinued relationships funds held to the order of a client or prospective client should only be returned to the source from which they came and not to a third party. Company managers are required to continue monitoring the activities of their client companies for signs of unusual or suspicious activities such as changes in transaction type, frequency, unusually large amounts, geographical origins and destination attributes and changes in account signatories.

567. Hold mail and c/o addresses while not necessarily suspicious are identified in the GN as higher risk and requiring special attention. In the case of hold mail, evidence of the identity of the beneficial owners is required even where the client is introduced by an eligible introducer

568. Company managers can only be a party to the issue of bearer shares where the shares are physically held by a custodian authorized or recognized by CIMA to the order of the beneficial owner who must be recorded by the custodian. Under Part X of the CL such shares cannot be released to the beneficial owner and can only be physically transferred to another entity authorized or recognized to act as a custodian.

569. A company manager who is requested by a prospective client to take over the management of a company from another service provider is required to communicate with that service provider and ascertain the reason for the transfer of business.

570. Company managers are required to ensure that all statutory requirements with regard to the keeping and filing of details of shareholders, directors and officers as required by law are complied with within the stipulated period.

Trusts

571. FSPs and CIMA are expected to pay particular attention to ensuring that competent qualified and experienced staff works in the trust operations. In the creation of a trust, the FSP is required to make appropriate enquiries as to the settlor/s and the source of the assets a settlor intends to settle. Ongoing procedures are required for trusts, particularly when assets are added to the trust by a new or existing settlor.

572. An FSP who is an additional or successor trustee is required to inquire of the existing or predecessor trustees whether appropriate inquiries were made of the settlor or settlors at the time of creating the trust and at the time of the addition of any assets to the trust and seek to obtain the originals or copies of the relevant due diligence documentation. Where documentation is not available, the FSP is required to make inquiries of the settlor if alive or of the existing or predecessor trustees or the beneficiaries if the settlor is dead.

573. The GN provide instances of circumstances which should prompt FSPs to increased vigilance. These include links with high risk countries, total change of beneficiaries, unexplained requests for anonymity, beneficiaries with no apparent connection to the settlor, unexplained urgency and politically exposed persons.

Real Estate

574. The GN provide specific guidance on CDD measures in relation to real estate. These include the types of applicant both vendor and purchaser and the relevant evidence of identification required to be obtained from them. The requirements are in line with those already stipulated for all other individual and corporate applicants. The GN stipulate that the principal focus of real estate agents and brokers' due diligence should be on the identification of the purchaser and the source of funds.

575. Payment made through the banking system in the Cayman Islands or from a Schedule 3 country does not require further steps to verify identity unless there is suspicion or knowledge of ML or that payment is made for the purpose of opening a relevant account with a bank in the Cayman Islands.

576. The GN require real estate agents and brokers to obtain documentary evidence of source of funds and give examples of such documentation. Reliance on third parties for due diligence is acceptable only from those third parties which conduct client verification procedures in accordance with the GN. These situations are the same as those that apply for all FSPs as outlined in sections 3.60 – 3.67 of the GN.

577. With regard to ongoing monitoring of a business relationship in the case of real estate industry, this will only apply with developers or investors who are involved in more than one property. In such circumstances the GN requirements on ongoing monitoring of business relationships for all FSPs are also applicable

Recommendation 6

578. The requirements for CDD measures with regard to PEPs are stipulated in the GN, dealt with in section 3.2 of this report and are applicable to all DNFBPs. However the GN are not enforceable by CIMA on real estate agents and brokers and lawyers and other independent legal professionals who are involved in real estate transactions, as such activity does not fall under the regulatory laws.

Recommendation 8

579. The legal framework for AML/CFT does not fully address the issue of technological developments in money laundering or terrorist financing schemes. There are no requirements for FSPs to have policies and procedures to prevent the misuse of technological developments in money laundering or terrorist financing schemes. There is guidance on non-face- to-face customers and internet banking in the GN.

Recommendation 9

580. Requirements for introduced business are set out in the MLR and the GN as detailed in section 3.3 of this report. It was noted that there is no requirement for financial institutions to immediately obtain necessary information other than the customer's identity and the purpose and intended nature of the business relationship. Additionally, financial institutions are not required to take adequate steps to be satisfied that the eligible introducer is regulated and supervised in accordance with Recommendations 23, 24 and 29 and has measures in place to comply with the CDD requirements of Recommendations 5 and 10.

Recommendation 10

581. The recordkeeping provisions in the MLR applicable to all FSPS including DNFBPs are largely compliant with the requirements of Recommendation 10 as noted in section 3.5 of the report.

Recommendation 11

582. The GN were amended in May 2007 to set out the requirements for monitoring complex and unusual transactions. The requirements do not include financial institutions being obliged to keep findings regarding enquiries about complex, unusual large transactions or unusual patterns of transactions available for competent authorities and auditors **for at least five years.**

4.1.2 Recommendations and Comments

583. Deficiencies identified for all FSPs as noted for Recommendations 5, 6, 8-11, in the relevant sections of this report are also applicable to DNFBPs. Implementation of the specific recommendations in the relevant sections of this report will also apply to DNFBPs.

584. With regard to real estate activities, the GN is not enforceable by CIMA on the relevant DNFBPs since CIMA's enforcement powers under the regulatory laws do not extend to entities engaged in real estate.

585. It is recommended that the GN cover dealers in precious metals and stones.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**PC**	• Deficiencies identified for all financial institutions for R.5, R.6, R.8-R.11 in sections 3.2.3, 3.3.3, 3.5.3 and 3.6.3 of this report are also applicable to DNFBPs • Dealers in precious metals and stones are effectively not included in the AML/CFT regime until 1 January 2008.

4.2 Suspicious transaction reporting (R.16)

Recommendation 16 (applying R. 13-15, & 21)

4.2.1 Description and Analysis

586. The provisions of section 37 of the PCCL impose reporting requirements on all persons who in the course of their trade, profession, business or employment acquire information which leads to suspicion or knowledge of ML. There is a similar reporting obligation in the TL with regard to terrorism financing. The ambit of both provisions extends well beyond FSPs and DNFBPs under Cayman Islands' AML/CFT regime and would include dealers in precious metals and precious stones. The particulars of other provisions including safe harbour from liability and tipping off are detailed in section 3.7 of this report.

587. With regard to legal professional privilege, under section 37 (2) of the PCCL, professional legal advisers are exempted from disclosing any information or other matter which has come to them in privileged circumstances. Unless furthering of a criminal purpose is involved. Section 37 (8) of the PCCL states that information comes to a legal adviser in privileged circumstances if communicated as follows; –

a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
b) by, or by a representative of, a person seeking legal advice from the adviser; or
c) by any person-
    i. in contemplation of, or in connection with, legal proceedings; and
    ii. for the purpose of those proceedings

588. There are parallel provisions in the TL to those in the PCCL related to privileged information. All DNFBPs operating within the Cayman Islands are required to file SARs with the FRA. The details of compliance with the requirements of R. 14, R15 and R21 as outlined in sections 3.7, 3.8 and 3.6 of this report are also applicable to DNFBPs operating in the Cayman Islands

589. Representatives of the Cayman Islands Law Society advised the assessment team that most Cayman Islands law firms require all member lawyers to follow firm-wide AML/CFT policies and procedures, even those lawyers who are not engaged in a relevant financial business.

590. The assessment team was advised on several occasions that Cayman Islands accounting and law firms, and a number of other businesses and associations, have developed AML/CFT as a matter of sound business practice and in furtherance of a favorable reputation among clients and the general public.

591. The Cayman Islands Law Society advised the assessment team that most SARs filed by lawyers involve matters that fall outside of attorney-client privilege because the lawyer determines that further representation of the client would further a criminal enterprise. Also, some lawyers become aware of suspicious activity from sources other than clients, so privilege is not applicable.

592. A proposed amendment to the *Legal Practitioners Law* would require lawyers to file annual certifications similar to the certification currently required of auditors under the *Public Accountants Law, 2004*. The Cayman Islands Law Society advised the assessment team that the society is not opposed to the proposal.

593. The SAR requirement extends to the information arising "in the course of… trade, profession, business or employment." The requirement is very broad in scope and is also not tied to any monetary threshold. Auditors also have particular whistle-blowing obligations to CIMA, under the regulatory laws. Under the *Public Accountants Law, 2004*, sole practitioner public accountants and public accounting firms are required on an annual basis by 31 January to provide a certificate (the "PCCL Certificate") to CIMA confirming compliance with the PCCL and regulations made under that law, including the MLR. Proposed legislation that would impose a similar annual certification obligation on lawyers is under consideration.

4.2.2 Recommendations and Comments

594. The requirements for DNFBPs are the same as for all other financial institutions under the PCCL and the MLR. The deficiencies identified with regard to specific recommendations are also applicable to DNFBPs. Given the AML/CFT framework in the Cayman Islands, implementation of the specific recommendations in the relevant sections of this report will also include DNFBPs.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**	• Deficiencies identified for financial institutions for R13, R15, and R21 in sections 3.7.3, 3.8.3, and 3.6.3 of this report are also applicable to DNFBPs.

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

Recommendation 24& 25

595. CIMA's supervisory regime includes all FSPs that operate under the BTCL, IL, SIBL, MFL, MSL and CML. Consequently, all trust and company service providers, including lawyers, other independent legal advisers and accountants engaged in these activities, are subject to the full scope of CIMA's regulatory powers and sanctions. The MLR and the GN are also enforceable on these DNFBPs via CIMA's enforcement powers. The GN contain guidance for implementing AML measures applicable to all FSPs including DNFBPs, including guidance for specific DNFBPs activities such as company formation and management, trust services and real estate. CIMA's regulatory regime is detailed in section 3.10 of this report.

596. At the time of the on-site assessment, casinos, (which are prohibited in the Cayman Islands) and dealers in precious metals and precious stones at the time of the mutual evaluation were excluded from Cayman Islands AML/CFT regime. An amendment to the MLR enacted on August 7, 2007, will be effective to bring dealers in precious metals and precious stones under the AML/CFT regime as of 1 January 2008. Following this development, there is a need to assign an appropriate authority to monitor and enforce compliance by dealers in precious metals and precious stones with AML/CFT measures.

597. Pursuant to section 6 (1)(b) of the MAL, CIMA is responsible for monitoring compliance with the money laundering regulations. Consequently, CIMA is responsible for ensuring that real estate agents, brokers and lawyers dealing with real estate transactions comply with AML/CFT measures. While the GN contain guidance specific to real estate, at the time of the mutual evaluation, CIMA had not developed a monitoring program for real estate agents and brokers, as they do not fall within the ambit of the regulatory laws. .

598. The real estate sector's interests are represented primarily by CIREBA. The association has 31 member companies that together affiliate with 187 individual real estate agents. The association's membership constitutes approximately 85 percent of the residential real estate

agents with a business presence in Cayman Islands. Some of the member companies are prominent U.S. firms. According to CIREBA, all of the member companies conduct activities that fall within the MLR definition of "relevant financial business."

599. CIREBA functions as an informal SRO in relation to AML/CFT matters. CIREBA retained a consultant last year to conduct an AML/CFT audit of all member companies and develop a model AML compliance manual. The association advised that it intends to conduct comprehensive AML/CFT audits once every two years. The association periodically refers members to consultants that provide AML/CFT training.

600. CIREBA advised the assessment team that, as a matter of practice, members of the association conduct customer due diligence on prospective clients that includes background checks, and members typically retain client records for a minimum of 7 years, consistent with MLR requirements.

601. According to CIREBA's records, members of the association filed seven SARs since 2004. CIREBA advised the assessment team that real estate transactions conducted on the Cayman Islands primarily involve wire transfers that originate from Schedule 3 countries; transactions are not cash based and rarely involve the use of checks drawn on foreign banks.

4.3.2 Recommendations and Comments

602. While CIMA's AML/CFT supervisory programme is extensive, it does not include real estate agents, brokers and real estate activities of lawyers. Dealers in precious metals and precious stones are not part of the AML/CFT regime until 1 January 2008 and are not included in CIMA's AML/CFT supervisory programme. The concern about the resourcing of CIMA's on-site inspection programme for FSPs identified in section 3.10 is also applicable to DNFBPs. It is recommended that the authorities in Cayman Islands implement a monitoring programme to ensure that real estate agents, brokers, dealers in precious metals and precious stones and lawyers when dealing with real estate transactions comply with AML/CFT measures.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**LC**	• No monitoring programme by the authorities to ensure that real estate agents, brokers or lawyers when dealing with real estate transactions comply with AML/CFT measures
R.25	**LC**	• GN do not fully cover terrorism finance or include dealers in precious metals/stones

4.4 Other non-financial businesses and professions Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

Recommendation 20

603. The Cayman Islands has extended the suspicious reporting obligation beyond financial institutions and DNFBPs by requiring **any** person to report knowledge or suspicion of ML and TF acquired in the course of his trade, profession, business or employment.(s 37 (1) of the PCCL). This effectively applies to all persons, businesses and professions operating in the Cayman Islands. The FRA has sought to advise retailers of high value goods about their reporting obligations by publishing a pamphlet outlining the role of the FRA, defining money laundering and explaining their obligations.

604. The assessors were advised that with a lot of construction projects taking place on the Islands there was an itinerant work force that dealt only with cash. Information on the size of the work force was not available. However, most of the retail banks issue debit cards which are widely used. The Cayman Islands Bankers Association provided information from the three leading retail banks in the card market. The number of debit cards issued by these three banks increased from 22,988 in 2004 to 31,682 in 2006. Point of sale terminals linked to these banks increased in the same period from 794 to 1134. The amount of gross US$ sales transacted through these point of sale terminals increased from $111,244,853 in 2004 to $147,872,718 in 2006. At the time of the mutual evaluation, the three banks had 26 ATMs on the Islands. The largest denomination bank note issued by CIMA is $100.

4.4.2 Recommendations and Comments

605. The recommendation is fully observed

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**C**	• This recommendation is fully observed

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

606. The Cayman Islands' Registry of Companies, a registry within the General Registry, registers and maintains records related to Cayman Islands business entities. Current registrations of corporations, limited partnerships, and exempted trusts exceed 80,000, the majority of which are corporations. Registration of companies is governed by the CL. The MLR and the regulatory

laws (in instances where the entity is regulated by CIMA) also establish operational requirements for these entities, including AML/CFT preventative measures and filing and disclosure requirements related to beneficial ownership of registered entities, required to be applied by company service providers.

607. The Registry's public web page states that the key advantages of registering a company, limited partnership or exempted trust in the Cayman Islands are: tax neutrality (there are no direct taxes of any kind in the Cayman Islands); a well-established legal regime; reasonable reporting requirements; flexible corporate structures and an expedited registration process that usually permits registration within 24 hours provided that all of the correct documentation is filed.

608. The business of company formation is a regulated activity under the CML. All company registration applications, with one exception, must be submitted by CIMA-licensed corporate service provider.[27] The Registrar General advised the assessment team that approximately 92 percent of the company registrations are for non-domestic companies.

609. The procedural and documentary requirements for registration of a company in the Cayman Islands are uncomplicated and entail submission of the company's constitutional documents (memorandum of association and articles of association) and the registration fee. Company registration submissions are reviewed by one of the assistant registrars to confirm compliance with basic requirements, *e.g*., that there is a registered office specified (which must be in the Cayman Islands); that the name of the company is not a prohibited name; and that the company is not set up for purposes illegal under Cayman Islands law. The Registrar General advised the assessment team that staff of the Registry do not conduct customer due diligence, identity verification or background checks regarding organizers or beneficial owners of registered entities, as this is required to be performed by corporate services providers. Provided the registration documents are in order the company is assigned a registration number and formally registered, and a certificate of incorporation is issued to the filer.

610. Under the CL, all Cayman Islands companies must maintain the following registers, books and records:

- a register of members containing the names and addresses of members and including a statement of shares held by each member and the date upon which each member became and ceased to be a member;[28]
- a register of mortgages and charges (limited company only);
- a register of directors[29];
- proper books of accounts[30]; and

[27] The only exception permitted is in respect of an "ordinary company" ("OC"), which is allowed to be formed directly by the individuals involved. The OC form is the primary form of company used to operate exclusively in the Cayman Islands. Such companies must have minimum 60% Caymanian ownership and must be licensed by the Trade & Business Licensing Board to whom beneficial ownership details must be submitted..

[28] All companies, except exempted companies, must file the register annually with the Registry; exempted companies are required to maintain, but do not need to file with, the Registry.

[29] All companies must advise the Registrar of any changes to directors within 30 days of any such changes.

[30] Defined in s. 59 CL as "such books as are necessary to give a true and fair view of the state of the company's affairs and explain its transactions

- minutes of all resolutions and proceedings of members and directors or managers.

611. Where bearer shares are issued, the entry in the company's register of members must record the date of issue of the bearer shares and the name of the authorised or recognised custodian holding the shares (ss 2, 40 and Part XV of the CL). Further description on the bearer share regime is provided below (paragraph 620).

612. The information concerning a Cayman Islands company that is held by the Registrar (derived from various required filings by the company) includes:

- The capital of the company
- The names and addresses of subscribers
- The address of the registered office
- The directors and officers
- Register of shareholders (in respect of ordinary companies only)[31]
- The memorandum and articles of association
- Copies of any special resolutions

613. The following company information and documentation held by the Registrar is available for public inspection:

- name, type and status (good standing);
- the registration date; and
- the address of the registered office.

614. The register of members is available for inspection by members of the public, except in relation to an exempted company. Members of an exempted company have the right to inspect the register of members, where such right is included in the company's articles of association, as is the common practice. The register of mortgages and charges is open to inspection by any creditor or member of the company.

615. The General Registry maintains company records for 10 years from the date of dissolution or "strike-off." No records other than the original ones are maintained regarding registered offices in that period, but if a company seeks re-instatement to the register within 10 years, it must provide, *inter alia*, registered office details.

616. The Registrar General advised the assessment team that the General Registry's operating budget was $5 million for the last fiscal year. The General Registry believes that it has adequate staff (55 full-time employees) and resources.

617. All persons seeking to be licensed under the Regulatory Laws are subject to a statutory fit and proper test applied by CIMA. CIMA retains the beneficial ownership and control records submitted by applicants pursuant to this requirement. In addition, under the MLR and GN, all FSPs are required to identify beneficial owners with regard to corporate clients, trusts and fiduciary clients. The GN also gives specific guidance for company service providers requiring appropriate due diligence on shareholders, beneficial owners, the directors and anyone

[31] The assessment team was advised that the CL requires domestic companies to file beneficial ownership information on formation and each January thereafter (s. 41 CL).

who gives instructions to the company manager on behalf of the company. (see paragraphs 261 – 264 above)

618. As noted above, under the CL all companies are required to maintain a register of members. In addition, all companies are required to maintain - and file with the Registry - a register of directors and officers. All of this information is accessible by the competent authorities, for either domestic law and regulatory enforcement purposes or international cooperation purposes. The Cayman authorities (FCU, FRA, CIMA, Legal Department) advise that their experience to date with requesting information has not pointed to any systemic difficulties, either as to cooperation or the quality of the information provided.

619. The Registrar General advised the assessment team that staff of the General Registry enforces the CL requirement that domestic companies disclose beneficial ownership information. For companies not operating domestically that are registered through company service providers, as noted above, the General Registry staff does not collect beneficial ownership information; this information is maintained by the company service provider.

620. The CL permits the issuance of bearer shares. The assessment team was advised that, the practical effect of the requirements in the CL is that any bearer shares are "immobilized" to the extent that they are required to be in the physical custody of a custodian who must also maintain ownership information (see also section 1). In this manner, bearer shares issued in the Cayman Islands do not have the characteristics of typical bearer shares that permit transfer by mere delivery and preserve anonymity.

5.1.2 Recommendations and Comments

621. While the Cayman Islands has a system of central registration for companies, the information maintained does not include beneficial ownership data except in respect of OCs.. Beneficial ownership is maintained by company service providers, who account for 92 % of company registration. All FSPs are required to maintain beneficial ownership information on their customers. Provision of corporate services is a regulated activity which is governed by the MLR and therefore subject to CDD, recordkeeping and other requirements. Specific guidance is also provided for corporate service providers in the GN regarding the required due diligence on companies. CIMA, law enforcement and judicial authorities all have power to access beneficial ownership information from FSPs when necessary.

5.1.3 Compliance with Recommendations 33

622. This recommendation is fully observed.

	Rating	Summary of factors underlying rating
R.33	**C**	• This recommendation is fully observed

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

623. The types of trusts in the Cayman Islands are briefly described in section 1.4 of this report. Except in the case of exempted trusts, there is no central filing requirement for trusts and no register of all trusts in the Cayman Islands. Provision of trust services is a regulated activity which is governed by the MLR and therefore subject to CDD, recordkeeping and other requirements. Specific guidance is also provided for trust service providers in the GN regarding the required due diligence on settlors, settled assets, and beneficiaries.

624. Information on trusts maintained by licensed trust service providers can be readily accessed by the investigative and examination powers of the regulatory and law enforcement authorities under the relevant statutes. The record-keeping provisions of the MLR require licensed trust service providers to ensure that records are readily available for timely access by the competent authorities.

5.2.2 Recommendations and Comments

625. This recommendation is fully observed.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**C**	• This recommendation is fully observed

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

626. The regime for NPOs is governed by section 80 of the CL. There is no separate charities law in the Cayman Islands. Section 80 requires NPOs to be licensed by the Governor in Cabinet. Special licensing rules were issued in 2002 to implement SR VIII. At the time of the assessment there were approximately 250 registered NPOs. The assessment team was advised by CIMA and other competent authorities in the Cayman Islands that the NPO population is considered "low risk" for potential money laundering and terrorism finance activities based on the fact that i) their activity is focused on the domestic community, ii) since 2002, CDD measures are applied to NPO executive committees/boards and iii) no ML/FT issues have emerged to date.

627. Application to become an NPO under section 80 of the Companies Law must be made to the Cabinet Office and comply with the requirements of the special licensing rules (see paragraph 636 below). The processing of these applications involves vetting of the memorandum and articles of association by the Legal Department and the General Registry and vetting of the proposed members of the NPO's executive committee by the FCU. Once these reviews are completed a recommendation paper is submitted to the Cabinet for a decision on the grant of the licence. If the licence is granted, the company then files a copy of the licence, together with the

memorandum and articles of association, with the General Registry to formalize the company's registration.

628. The General Registry does not monitor NPOs after they are registered. There is no formal enforcement regime for NPOs licensed under section 80 of the Companies Law. Although on-going monitoring of NPOs is permissible under applicable law, and provided for under the licensing rules, no competent authorities engage in any formal monitoring of NPOs after the licensing stage.

629. At the time of the assessment the authorities were in the process of developing a database containing material details of NPOs licensed under section 80 of the Companies Law for posting on a public web site.

630. Of the approximately 250 NPOs licensed under s 80 of the Companies Law, four percent are service clubs, 22 percent are trade or professional associations, 22 percent are sports clubs, 24 percent are churches or church-affiliated associations, and 28 percent are classified as "other" (*e.g.,* cultural, artistic, health, or educational in nature).

631. A review of the adequacy of domestic laws and regulations that relate to NPOs was carried out in 2002 resulting in the introduction of the special licensing rules referred to in paragraph 636. No competent authority has undertaken any formal outreach efforts to the NPO sector regarding AML/CFT requirements or best practices. The assessment team was advised that the Cayman Islands government intends to initiate an outreach program in the near future.

632. The assessment team was advised that the vast majority of NPOs licensed under the Companies Law operate exclusively in the Cayman Islands, serving the needs of the domestic community. Moreover, no one NPO, or sub-set of NPOs, is viewed by the government as controlling a significant portion of the sector's financial resources.

633. Under the CL and NPO licensing procedures, proposed NPOs must file a memorandum of association stating the objectives of the organization and submit details on all persons proposed to be on the executive committee (EC) of the NPO. Due diligence is conducted on proposed EC members as part of the licence application process, and no changes may be made to the EC membership without the prior approval of the Governor in Cabinet. There are no systems or procedures in place to make this information available to the public.

634. Under the terms of the NPO licence, failure to comply with the terms of the license and applicable law is punishable by revocation of the license. NPOs are not immune from law enforcement sanctions. However, as already noted no competent authorities engage in any formal monitoring of NPOs after the licensing stage.

635. As required of all types of business entities formed under the Companies Law, NPOs must maintain: i) a register of member and directors; ii) proper books of accounts; iii) minutes of all resolutions and proceedings; and iv) a register of mortgages and charges. All of this information is subject to inspection under the authority of the Governor in Cabinet.

636. In addition, the special licensing rules require that i) records of contributions and how the contributions were applied be maintained; ii) where gross income is $50,000 or more, accounts be subject to an annual audit review; and iii) the NPO maintain its primary bank account with a licensed Cayman Islands bank.

637. The records required to be maintained by NPOs are subject to inspection, and NPOs are not immune from law enforcement investigatory powers. In addition, under provisions of the TL, a person who has any information which may be of assistance in preventing an act of terrorism or securing the arrest or prosecution of another person for an offence under the law is required to disclose it to the police.

638. The only repositories for information on NPOs licensed under the CL are the Governor in Cabinet and the General Registry. The assessment team was advised that historically there have been no impediments to coordination and cooperation between these bodies.

639. Mechanisms already in place for the sharing of information among all relevant competent authorities with regard to FSPs and DNFBPs would be utilised in taking preventative or investigative action when there is suspicion or reasonable grounds to suspect that a NPO is being exploited for terrorist financing. Since there has never been any knowledge or suspicion that any person or entity in the Cayman Islands has been or is involved in terrorism or terrorism financing there has been no need for investigation in this area with regard to NPOs.

640. Competent authorities are presently considering the designation of appropriate points of contact and procedures to respond to international requests for information regarding NPOs that are suspected of terrorist financing or other forms of terrorist support. No such requests have been received to date.

5.3.2 Recommendations and Comments

641. The Cayman Islands has a system for licensing and registering NPOs. This system while allowing for initial due diligence at the time of licensing does not have an agency responsible for ongoing monitoring. The following is recommended:

- The authorities should undertake an outreach programme to the NPO sector with a view to protecting the sector from terrorist financing abuse.
- A supervisory programme for NPOs should be developed to identify non-compliance and violations.
- Systems and procedures should be established to allow information on NPOs to be publicly available.
- Points of contacts or procedures to respond to international inquiries regarding terrorism related activity of NPOs should be put in place.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**PC**	• No supervisory programme in place to identify non-compliance and violations by NPOs. • No outreach to NPOs to protect the sector from terrorist financing abuse

		• No systems or procedures in place to publicly access information on NPOs • No formal designation of points of contacts or procedures in place to respond to international inquiries regarding terrorism related activity of NPOs.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31)

6.1.1 Description and Analysis

642. In the opinion of the assessment team, there is a very high level of cooperation amongst competent authorities in the Cayman Islands in matters related to AML/CFT. As previously mentioned in this report, the FRA works hand-in-hand with law enforcement officials, CIMA and the JIU. The FRA also has an MOU with CIMA which clearly articulates their respective roles, responsibilities and the sharing of information within the AML/CFT framework. From an operational perspective, authorities within the Cayman Islands have fostered an environment in which they can reach out to any domestic enforcement or supervisory agency for assistance when and as required.

643. The spirit of cooperation has been duplicated within the policy realm as well. It is accomplished through the AMLSG which consists of the Attorney General (chairman), the Financial Secretary (deputy chairman), the Commissioner of Police, the Collector of Customs, the Managing Director of CIMA and the Solicitor General. Pursuant to section 24 of the PCCL, the AMLSG is responsible for the general oversight of the AML policy of the Government, oversight of the FRA, promoting effective collaboration between regulators and law enforcement agencies and monitoring interaction and co-operation with overseas financial intelligence units.

644. The AMLSG meetings are held quarterly, or more frequently on an "as needed "basis. The Director of the FRA may also participate in the AMLSG meetings at the discretion of the AMLSG chairman. This approach ensures that all agencies with an AML/CFT remit are working together in a coherent and cohesive manner. All AML/CFT policy issues are reviewed and dealt with by this group. The AMLSG also reviews submissions from the FRA, as outlined in section 2.5 of this report. One of the main responsibilities of the AMLSG is to review and discuss proposed amendments to the MLR. Recommendations from these discussions are forwarded to the Attorney General's Chambers for commencement of the legislative process.

645. Authorities in the Cayman Islands have developed a consultative mechanism which, in the opinion of the assessment team, appears to be working very well. It is the GNC. This Committee is responsible for the continuous review of any new amendments to the GNs which may be proposed by CIMA and to provide appropriate advice to them on the implementation and impact of any such amendments. The Committee is chaired by CIMA and includes private sector representatives from the Bankers' Association, Fund Administrators' Association, the

Company Managers' Association, Insurance Managers' Association, Society of Trust & Estates Practitioners, Society of Professional Accountants, Compliance Association, Law Society, Real Estate Brokers Association, and Bar Association. Government representatives include the FRA, Attorney General's Chambers and the Portfolio of Finance & Economics.

646. In 2006 the FRA also initiated an outreach program to the MLROs of the FSPs. This forum has allowed the FRA to discuss suspicious activity reporting, statistics on disclosures, as well as, the sharing of sanitized money laundering cases for educational purposes. The FRA has also developed an information pamphlet for retailers of high value goods, such as; jewelers

Recommendation 32

647. Competent authorities in the Cayman Islands meet on a regular basis to review their domestic AML/CFT systems and framework. This is done through the AMLSG as already mentioned. Ever mindful of the need to ensure a reputation for integrity and compliance with international standards, the authorities keep abreast of developments in the AML/CFT arena and seek to adjust the regime in the Cayman Islands appropriately. This was evident in the recent passage of amendments to the MLR in the beginning of June 2007 and subsequent amendments passed after the mutual evaluation visit to deal with certain deficiencies identified in preparing for the mutual evaluation.

648. Each of the members of the AMLSG has sufficient technical support to discharge the Group's policy-making functions and to make operational contributions in the functional areas represented.

6.1.2 Recommendations and Comments

649. The Cayman Islands has an effective system for domestic co-operation to counter money laundering and terrorism financing at policy and operational levels. The Cayman Islands should continue to foster an environment of cooperation vis-à-vis AML/CFT matters.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**C**	• This recommendation is fully observed

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

650. As an Overseas Territory of the UK, the Cayman Islands cannot directly ratify Conventions, and relies on the UK to extend appropriate ones to the Islands via Order in Council once it itself has ratified. However, the Cayman Islands can make legislation domestically to implement the provisions of the Conventions, which does not necessarily rely on prior extension.

Recommendation 35

651. The Vienna Convention was extended to the Cayman Islands in 1995, and is implemented through several laws including the MDL, PCCL and the CJICL**.** The MDL has measures to establish criminal offences for the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption, sale, distribution, administering, and trafficking which incorporates the provisions of the Vienna Convention as corresponding law and sections relating to enforcement of powers on ship. Schedule 2 of the CJICL outlines the provisions of the Vienna Convention as incorporated in the law.

652. The Palermo Convention was ratified by the UK in February 2006, but has not yet been extended to the Cayman Islands. However, the full implementation platform exists under current ML, PCCL, MAL and international cooperation laws such as the CJICL. Sections 229 to 233 of the Penal Code criminalize any group, association engaged in organized crime or whose primary activity is the commission of an indictable offence. The PCCL and MDL criminalize money laundering/retention and control of proceeds. The CJICL has provisions for measures to offer mutual legal assistance and the tools/measures i.e. production orders, restraints, seizures that may be used. The CJICL also allows for the power of enforcement of foreign judicial orders and incorporates the application of provisions for extradition and international cooperation as envisaged by the Palermo Convention.

653. A 2002 request for extension of the International Convention for the Suppression of the Financing of Terrorism (ICSFT) to the Cayman Islands has not yet been actioned by the UK, although the provisions of the Convention are implemented by TUNMOTO and the TL as indicated in the table below.

Table 13: Implementation of Terrorist Financing Convention

Terrorist Financing Convention	**Cayman Islands Domestic Legislation**
Article 2; Terrorist Financing	TL -Part III-Sections 18-22
Article 3; Scope of the Convention	TL- Sections 10 and 31
Article 4; Penalties	TL Part III - Section 27 Part 2 Sections 3 -9
Article 5; Liability for legal entity engaged in terrorist activity	TL Part II- Section 12
Article 6; Legislation prohibiting the commission of terrorist acts on, *inter alia,* racial, political, ideological grounds	TL - Section 2 - Definition and Section 8 .
Article 7; Jurisdiction	TL Part 2 and Section 31, see also *Merchant Shipping Law* Section 436.
Article 8; Forfeiture of funds used in connection with terrorist activity	TL Part III- Sections 28 & 29 and Schedules 2 and 3 .
Article 9; Investigation, Extradition & Due Process	TL Part VII- Investigation- Section 36; Extradition/Prosecution- Part VI Sections 32-35 Schedule 5 and Due Process/ Terrorist's rights while in custody- Schedule 6.
Article 10; Conditional Extradition, State	TL Part II

Party's obligation to prosecute if it does not extradite terrorist	
Article 11; Extraditable offences for purposes of extradition treaty, Counter Terrorism convention to be used as basis for extradition	TL Part VI Section 33
Article 12; Mutual Legal Assistance	TL Part VI- Sections 32-35
Article 13; Financing of terrorist activity shall not constitute a fiscal offence for purposes of extradition or mutual assistance.	TL Part III
Article 14; Financing of terrorist activity shall not constitute a political offence for purposes of extradition or mutual assistance.	TL- Part VI Section 35
Article 15; No obligation to extradite if requested State believes that terrorist activity is pretense for prosecution on the basis of race religion, ethnicity etc.	Extradition Treaties and Law. See for example section 6 of the *Extradition (Overseas Territories) Order 2002*.
Article 16; Temporary Transfer of Prisoners	Section 17 of the CJICL .
Article 17; Fair Treatment	TL Schedule 6- Treatment of persons detained.
Article 18; Prohibition Against illegal activities of persons and organizations who engage in terrorist activity; Monitoring the financial transactions of legal entities	TL - Part II- Section 14; Part *N* Section 30 PCCL - MLR .

Additional elements

654. The 1990 Council of Europe Convention has not been extended to the Cayman Islands, but a 2000 report of a regulatory and AML assessment conducted by KPMG which included the Convention in the AML assessment standards, concluded that the Cayman Islands was largely compliant with the standards (para 15.3.1, p.132, *Review of Financial Regulation in the Caribbean Overseas Territories and Bermuda* – Cayman Islands volume, Cm 4855-IV, 2000).

Special Recommendation I

655. As duly noted above, while ICSFT has not been extended to the Cayman Islands the relevant details have been implemented as outlined in sections 2.2 to 2.4. UNSCR 1267 and 1373 are specifically implemented by ATUNMOTO and TUNMOTO, respectively. In addition, effect can be given to them via the TL and the PCCL.

6.2.2 Recommendations and Comments

656. The Cayman Islands is to be commended for fully implementing the relevant articles of the Palermo and Terrorist Conventions, in the absence of due extension by the U.K. Due extensions of the said conventions are required.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	Due extensions of the conventions are required**.**
SR.I	**LC**	Due extensions of the conventions are required.

6.3 Mutual Legal Assistance (R.32, 36-38, SR.V)

6.3.1 Description and Analysis

Recommendation 36

657. 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 146 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 (s.2(2) of the CJICL). While other laws provide for mutual legal assistance as well, the CJICL is the primary vehicle.[32]

658. The purposes for which mutual legal assistance is available are specified in s.3 of the CJICL, as follows-

a) taking evidence or statements from persons;

b) effecting service of judicial documents;

c) executing searches and seizures;

d) examining objects and sites;

e) providing information and items of evidence;

f) providing originals or certified copies or relevant documents and records, including bank, financial, corporate or business records;

g) identifying or tracing proceeds, property, instruments or such other things for the purposes of evidence;

h) immobilising criminally obtained assets; and

i) assisting in proceedings related to forfeiture and restitution.

659. Items a) to g) correspond to the purposes listed in Article 7 of the Vienna Convention; items h) and i) were added by the Cayman Islands.

[32] Mutual legal assistance between the Cayman Islands and the US continues to be effected primarily via pre-existing, equivalent provisions under the *Mutual Legal Assistance (United States of America) Law* and treaty.

660. By virtue of s. 24 of the CJICL which deals with requests involving g), h), and i), ss. 43-48 of the PCCL, dealing with enforcement of external confiscation orders and proceedings, apply *mutatis mutandis* (except in relation to i) the list of countries serviced, which is the CJICL list, and ii) the requirement for proceedings to have been instituted). The Central Authority under the CJICL is the Attorney- General. Section 17 of the CJICL provides for the transfer of any person in lawful custody in the Cayman Islands to the territory of a party in response to a request by that party for his presence as a witness if that person and the authority consent to such a transfer..

661. The Legal Department executes mutual legal assistance requests on behalf of the Central Authority and has an international cooperation group comprising the Solicitor General plus 4 crown counsel and an articled clerk designated to deal with such matters.

662. The CJICL does not require proceedings to have been instituted and while dual criminality is a condition, technical differences in offence taxonomy do not pose an impediment. Section 8(1) of the CJICL identifies the bases on which a request for assistance may be refused. These include that –

i. the request does not conform with s.5, which specifies what a request is to contain;

ii. the request does not establish reasonable grounds for believing that a criminal offence has been committed;

iii. the request does not establish reasonable grounds for believing that the information sought relates to the offence and is located in the Cayman Islands;

iv. the requesting party would not be able to provide reciprocity in accordance with the Vienna Convention;

v. the request is likely to prejudice the security, public order or other essential interests of the Cayman Islands,

vi. the request is prohibited by law in the Cayman Islands with regard to a similar offence,

vii. the request is contrary to the laws of the Cayman Islands to grant mutual legal assistance in the circumstances relating to the request..

663. Requests must be in English (s. 5(5) of the CJICL); and the Authority may postpone giving assistance pursuant to a request where such assistance would interfere with a domestic investigation, prosecution or other proceeding (s.9 (1) of the CJICL).

664. The CJICL does not apply to a request for the exchange of information made pursuant to a law or an agreement which has legal effect in the Cayman Islands and which enables international cooperation in taxation matters relating to the collection, calculation or assessment of a tax or matters incidental thereto. (s. 23(2) of the CJICL)). Pure fiscal offences would need to use the *Tax Information Authority Law* channel.

665. Confidentiality/secrecy of the information requested is not one of the bases for refusal under s. 8(1) of the CJICL; and as previously noted, under s. 3(2)(c) of the CRPL, the said Law does not apply to the seeking, divulging or obtaining of confidential information provided '*in accordance with this or any other Law.*'

666. Two provisions of the CJICL reinforce this: persons who divulge any confidential information or give testimony, pursuant to a request expressly do not commit an offence under the CRPL (s.15 (1) CJICL); and the requirement under s.4 of the CRPL, to seek directions from

the court when proposing to provide confidential information for evidentiary purposes, does not apply to CJICL matters (s. 16 of the CJICL).

667. Under ss.11 and 12 of the CJICL the Central Authority can request the RCIP and prosecutors to apply to the court for production orders and search warrants for relevant materials and documents. Section 10 of the CJICL also permits the Central Authority to apply to the court to obtain testimony required by a request. Additionally, section 50(3) of the MAL allows information that has been provided to an overseas regulatory authority (ORA) to be onward-disclosed for the purposes of criminal investigations, where the Attorney- General has issued an opinion that there are reasonable grounds for believing that an offence, specified in the ORA's request for assistance, has been committed.

668. There is no formal mechanism for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country. There are discussions between Police Authorities, namely the FCU and usually the FBI, in respect of cross border cases. These usually take into account the presence or absence of the potential defendant in the jurisdiction, the location of the majority of the witnesses and other evidence and the loss suffered by victims in the Cayman Islands.

669. The powers of competent authorities to compel production of, search persons or premises for, seize and obtain documents and take witnesses' statements are only applicable in the context of formal requests for assistance from foreign judicial or law enforcement authorities through the Central Authority.

Recommendation 37 (dual criminality relating to mutual legal assistance)

670. Section 2(2) of the CJICL stipulates that the CJICL applies to any offence under the laws of the Cayman Islands and conduct which would constitute an offence if it had occurred in the Cayman Islands. Cayman Islands law covers all of the designated offences under the FATF 40 Recommendations and 9 Special Recommendations. While the provision establishes dual criminality for mutual legal assistance, the authorities have advised that technical differences in the categorizing and denominating of an offence by a requesting country do not pose an impediment to the provision of mutual legal assistance, as it is the underlying conduct criminalized in the offence that is the important factor.

Recommendation 38

671. In addition to the provisions in the TL referred to in section 2.4 of this report, section 3(g), (h) and (i) of CJICL provides for mutual legal assistance for the identification or tracing of proceeds, property, instruments, etc; immobilisation of criminally obtained assets; and proceedings related to forfeiture and restitution. As already noted, provisions for the enforcement of external confiscation orders and proceedings in ss 43 – 48 of the PCCL, by virtue of s. 24 of the CJICL, apply, *mutatis mutandis*, except in relation to the list of countries serviced, which is the CJICL list, and the requirement for proceedings to have been instituted.

672. The assistance available under the heads listed above would not extend to drug-related offences, which would be dealt with under the *Misuse of Drugs (Drug Trafficking Offences)(Designated Countries Order)*. This order was issued under what is now s. 49 of the MDL, and governs the provision of assistance in relation to foreign restraint or confiscation

orders. The provisions are similar to those contained in the PCCL. All Vienna Convention countries are covered.

673. Arrangements for coordinating seizure and confiscation actions with other countries can be done where the Cayman Islands authorities are aware of the need.

674. While there is no formal asset forfeiture fund, seized funds are paid into general revenue for accounting purposes, but are then segregated internally by the Treasury to be applied to AML and anti-narcotics purposes. Since 1992, all funds have been dedicated to such purposes, with the judiciary, the Attorney General and the Portfolio of Finance & Economics jointly making recommendations to Cabinet regarding the application of such funds.

675. 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, and a UK agreement, extended to the Cayman Islands, applicable for sharing with Canada. Asset-sharing occurs on a regular basis.

676. There is no distinction made in the PCCL (and therefore the CJICL) between criminal and non-criminal external confiscations orders, and it does not seek to dictate the procedure by which such an order is issued in the requesting country. Once a confiscation order is issued by the relevant court as designated by the country, it may be recognised and enforced in the Cayman Islands.

Special Recommendation V

677. The CJICL may be used in relation to all offences under Cayman Islands law; therefore the relevant responses above with regard to R36, R37 and R38 apply with regard to the requirements of Special Recommendation V.

Recommendation 32

Table 14: Total requests and results from countries other than U.S.A 2003-2007 (May)

Year	Money Laundering		Predicate Offences	
	No. of requests	No. granted	No. of requests	No. granted
2003	11	9	21	3
2004	6	5	32	8
2005	6	4	40	23
2006	5	3	33	15
2007 (to May)	3	1	12	4
Total	31	22	138	53

Table 15: Total requests and results from U.S.A

Year	Money Laundering		Predicate Offences	
	No. of requests	No. granted	No. of requests	No. granted
2003	2	2	4	4
2004	7	7	2	2
2005	1	1	1	1
2006	4	4	1	1
2007 (to May)	0	0	1	pending
Total	14	14	9	8

678. The reasons for refusal over the said periods have included: a) information provided did not duly disclose an offence; b) information and/or subject matter sought was not present in the Cayman Islands; c)non- provision of other required information. The response time to requests has been relatively timely, with few exceptions.

6.3.2 Recommendations and Comments

679. The legislative provisions and measures established for mutual assistance are comprehensive, and are effective. However the provisions for mutual assistance in the CJICL do not include facilitating the voluntary appearance of persons not in lawful custody for the purpose of providing information or testimony to the requesting country. It is recommended that the CJICL be amended accordingly. The authorities may also consider an express enactment creating an asset forfeiture fund, with appropriate obligations and applications; rather than the current, but non-binding segregation in practice. In the absence of the recommended formalization, the said segregation and application of the funds are progressively apposite and commendable.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**LC**	• Mutual legal assistance 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.
R.37	**C**	• This recommendation is fully observed
R.38	**C**	• .This recommendation is fully observed
SR.V	**LC**	• There have not been any mutual legal assistance requests with respect to terrorism to duly determine the effectiveness thereof.

6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

Recommendation 39& SR V

680. The extradition of persons between the Cayman Islands and other countries is governed

by the UK Extradition Act, the provisions of which have been extended to the Cayman Islands by various UK Orders in Council. The European Convention on Extradition has also been extended to the Cayman Islands. Extradition between the USA and the Cayman Islands is provided for by the *United States of America Extradition Order 1976* and the *United States of America (Extradition)(Amendment) Order 1986.*

681. The *Extradition (Overseas Territories) Order 2002* provides for extradition between the Cayman Islands and Commonwealth countries where the conduct is punishable by imprisonment of 12 months or more in both requesting and requested countries. This order has been amended to cover Hong Kong as well. As ML and FT are punishable in the Cayman Islands by a term of imprisonment of 2 years, these extradition arrangements apply to ML, FT and terrorism offences. In addition, Part VI of the TL has specific provision on extradition where if the United Kingdom becomes a party to a counter-terrorism convention and extends it to the islands, any extradition arrangement between the United Kingdom and another country which is party to the same convention is given effect under the TL.

682. The Cayman Islands is able to extradite its own nationals to other states, and does not object to doing so. All extradition requests are handled by the Legal Department and matters are dealt with expeditiously.

683. Persons cannot be extradited based only on warrant of arrest or judgments. There is a simplified procedure for consenting persons who waive formal extradition proceedings.

Recommendation 37

684. Dual criminality is required for extradition. Where both countries criminalize the conduct underlying the offence, this satisfies the dual criminality element, and technical differences in taxonomy do not pose an impediment.

Recommendation 32

685. There have been only two extradition requests which were granted in 2005 with two fugitives being returned to the U.K. and the U.S.A., respectively.

6.4.2 Recommendations and Comments

686. The system for extradition is the same as for mutual assistance and has a similar level of compliance with FATF requirements.

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6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	**C**	• This recommendation is fully observed
R.37	**C**	• This recommendation is fully observed
SR.V	**LC**	• There have not been any extradition requests with respect to terrorism to duly assess the effectiveness thereof.

6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

Recommendation 40 & SR V

687. In general law enforcement, the FIU, and supervisors can engage in a wide range of international co-operation. Cayman Islands authorities attempt to render assistance to foreign authorities in as expeditious a manner as possible, and information concerning money laundering, predicate offences and terrorist financing maybe exchanged upon request, provide that it is in accordance with Cayman Islands law. Competent authorities within the Cayman Islands are permitted to conduct inquiries on behalf of their foreign counterparts. An example of this would include; inquiries made by Cayman Islands law enforcement on behalf of a foreign law enforcement agency.

688. The assessment team found that there is one restriction and/or condition which has been placed on the FRA for the purposes of sharing information with an external FIU, i.e. the FRA requires the written permission of the Attorney General before any sharing may occur. Based on the information gathered during the onsite, this does not appear to cause any significant delay or operational impediment. The FRA, as part of the Egmont Group, must respect the *Principles for Information Exchange* (June 2001) and the *Best Practices for the Exchange of Information* adopted by the Egmont Group. Specifically, the principles indicate that, "… *information exchanged between FIUs may be used only for the specific purpose for which the information was sought or provided. The requesting FIU may not transfer information shared by a disclosing FIU to a third party, nor make use of the information in an administrative, investigative, prosecutorial, or judicial purpose without the prior consent of the FIU that disclosed the information."*

689. As a matter of general practice, foreign agencies which request information from Cayman Islands authorities must disclose the nature and purpose of their inquiries. If authorities in the Cayman Islands are not satisfied with a request from foreign competent authorities, they reserve the right to ask for clarification and additional information to determine if they can or will assist. However, the Cayman Islands does its utmost, within the parameters of its legislation, to share information. Requests for assistance where the offence is specified by the requesting party as a pure fiscal offence would be referred to the dedicated channel under the *Tax Information Authority Law*, under which assistance can be provided to countries with whom the Cayman Islands has a bilateral agreement covering such offences.

690. The Cayman Islands appears to have adequate safeguards and controls to ensure that information received by competent authorities is used only in an authorised manner. The FRA appears to take all the necessary precautions to protect all information which comes into its possession. It should also be noted that it is an offence to disclose information except as permitted by the PCCL or any other law or by an order of the Grand Court pursuant to section 29(1) and (2) of the PCCL.

691. As previously noted, a claim of confidentiality / secrecy of the information being requested is not one of the bases for refusal under s. 8(1) of the CJICL; and s. 3(2)(c) of the CRPL, that Law does not apply to confidential information provided *'in accordance with this or any other Law.'* Additionally, there are two provisions of the CJICL which reinforce this: (1)

persons who divulge any confidential information or give testimony pursuant to a request expressly do not commit an offence under the CRPL (s.15 (1) CJICL); and (2) the requirement under s.4 of the CRPL to seek directions from the court when proposing to provide confidential information for evidentiary purposes does not apply to CJICL matters (s. 16 of the CJICL).

692. **Law enforcement**: The law enforcement community in the Cayman Islands is able to provide international cooperation to their foreign counterparts through a number of fora, including Interpol, CCLEC, as well as direct police to police contact.

693. **FIU**: As a member of the Egmont Group, the FRA shares information and practices with other international FIUs. The FRA is authorised to conduct whatever inquiries are necessary in relation to SARs in response to requests from foreign counterparts. Statistics on international cooperation (i.e. the number received and responded to, etc.) reveal that approximately 25% of all inquiries for information are from foreign FIUs.

694. **Supervisors**: CIMA may also share information with other supervisors when required, with appropriate confidentiality requirements on both supervisory parties. CIMA has MOUs with several foreign financial supervisory authorities regarding the supervision of financial undertakings on a consolidated basis.

Table 16: Requests processed from Overseas Regulatory Authorities 2002 to 2007 (June)

Year	Routine	Non-routine	Total
2002	114	12	126
2003	105	8	113
2004	97	13	110
2005	100	17	117
2006	118	18	136
2007 (June)	50	12	62
Total	**584**	**80**	**664**

Additional Elements

695. All competent authorities are authorized to conduct inquiries on behalf of foreign counterparts with the exception of the FRA, which is not an investigative authority. These types of requests must be handled by the RCIP FCU. Where an SAR has been filed with the FRA, it has powers to seek supplementary information in accordance with s.23 (2) (c) of the PCCL.

Recommendation 32

696. Cayman Islands authorities do not maintain detailed statistics on the number of requests for assistance made by law enforcement authorities and supervisors.

6.5.2 Recommendations and Comments

697. Cayman Islands authorities should maintain detailed statistics on the number of requests for assistance made by law enforcement authorities and supervisors including whether the request

was granted or refused.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**C**	• This recommendation is fully observed
SR.V	**LC**	• See factors for rating in sections 6.3 and 6.4

7. OTHER ISSUES

7.1 Resources and statistics

698. The description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections.

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	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	**PC**	• Quantitatively inadequate human resources at CIMA limits effectiveness of supervision • Insufficient human resources at HM Customs to carry out all functions**.**
R.32	**LC**	• HM Customs does not yet maintain statistics on the cross border transportation of currency and bearer monetary instruments, due to recent implementation of SR IX. • Cayman Islands authorities do not maintain detailed statistics on the number of requests for assistance made by law enforcement authorities and supervisors

7.2 Other relevant AML/CFT measures or issues

7.3 General framework for AML/CFT system (see also section 1.1)

TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

- **Table 1. Ratings of Compliance with FATF Recommendations**

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

Forty Recommendations	Rating	Summary of factors underlying rating[33]
Legal systems		
1. ML offence	**LC**	• ML offence of concealing, disguising, converting or transferring of property is not defined in accordance with the Vienna Convention
2. ML offence – mental element and corporate liability	**C**	• This recommendation is fully observed
3. Confiscation and provisional measures	**LC**	• There are no provisions for asset-tracing
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	• This recommendation is fully observed
5. Customer due diligence	**PC**	• Requirement for CDD measures for occasional transaction that are wire transfers in the circumstances covered by SR VII is only implemented via GN rather than legislation • Requirement for financial institutions to undertake CDD measures when they have doubts as to the veracity or adequacy of previously obtained customer identification data is only implemented via GN rather than legislation. • No legislative requirement to verify that

[33] These factors are only required to be set out when the rating is less than Compliant.

		persons purporting to act on the behalf of a customer is so authorised and identify and verify the identity of that person. • Requirement to determine the natural persons who ultimately own or control the customer is only implemented via GN rather than legislation • Requirement to conduct ongoing due diligence on the business relationship is only implemented via GN rather than legislation • The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant is triggered by specified risk related events rather than by undertaking routine reviews of existing records. • No requirement for simplified CDD measures to be unacceptable in specific higher risk scenarios.
6. Politically exposed persons	**LC**	• No obligation for FSPs to obtain senior management approval to **continue** a business relationship once a customer or beneficial owner has been found to be or subsequently becomes a PEP.
7. Correspondent banking	**NC**	• No obligations with regard to correspondent banking specifically
8. New technologies & non face-to-face business	**LC**	• 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.
9. Third parties and introducers	**PC**	• No requirement for financial institutions to immediately obtain necessary information on the elements of the CDD process in criteria 5.3 to 5.6 other than the customer's identity and the purpose and intended nature of the business relationship. • No requirement that the regulation and supervision of a foreign eligible introducer be in accordance with Recommendations 23, 24 and 29 and that it has measures in place to comply with

		the CDD requirements of recommendations 5 and 10.
10. Record keeping	**LC**	• No requirement for financial institutions to maintain records of account files and business correspondence for the same period as identification data. • The retention period for identification records for accounts dormant for longer than five years commences from the date of the last transaction rather the termination of the account.
11. Unusual transactions	**LC**	• No requirement for financial institutions to keep findings regarding enquiries about complex, unusual large transactions or unusual patterns of transactions available for competent authorities and auditors **for at least five years.**
12. DNFBP – R.5, 6, 8-11	**PC**	• Deficiencies identified for all financial institutions for R., R.6,R.8-R.11 in sections 3.2.3, 3.3.3, 3.5.3 and 3.6.3 of this report are also applicable to DNFBPs • Dealers in precious metals/stones are effectively not included in the AML/CFT regime until 1 January 2008
13. Suspicious transaction reporting	**LC**	• No clear guidance in GN with regard to treatment of attempted suspicious transactions or consequences of non-reporting.
14. Protection & no tipping-off	**LC**	• No law prohibiting disclosing of information in relation to the filing of SARs for drug- related ML
15. Internal controls, compliance & audit	**PC**	• 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 management. • Requirement for internal audit is general with no guidance as to specifics identified in the FATF criteria. • Regulation only allows for reasonable access to information by a person responsible for considering submission of an SAR rather than unimpeded access

16. DNFBP – R.13-15 & 21	**PC**	• Deficiencies identified for financial institutions for R.13, R.15, and R.21 in sections 3.7.3, 3.8.3, and 3.6.3 of this report are also applicable to DNFBPs.
17. Sanctions	**C**	• This recommendation is fully observed
18. Shell banks	**PC**	• No prohibition against FSPs entering into or continuing correspondent banking relationships with shell banks. • No requirement for FSPs to be satisfied that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks
19. Other forms of reporting	**C**	• This recommendation is fully observed
20. Other NFBP & secure transaction techniques	**C**	• This recommendation is fully observed
21. Special attention for higher risk countries	**LC**	• No provision for the authorities to apply appropriate counter-measures against countries which do not or insufficiently apply the FATF Recommendations.
22. Foreign branches & subsidiaries	**LC**	• The recent issuance of requirements does not allow for sufficient time to allow or test for effective implementation.
23. Regulation, supervision and monitoring	**LC**	• Effective supervision by CIMA limited by quantitatively inadequate human resources
24. DNFBP - regulation, supervision and monitoring	**LC**	• No monitoring programme by the authorities to ensure that real estate agents, brokers or lawyers when dealing with real estate transactions comply with AML/CFT measures.
25. Guidelines & Feedback	**LC**	• Guidance notes do not fully cover terrorism finance or include dealers in precious metals and precious stones
Institutional and other measures		
26. The FIU	**LC**	• FRA has not developed any comprehensive typologies and/or trends for the annual report.
27. Law enforcement authorities	**C**	• This recommendation is fully observed
28. Powers of competent authorities	**C**	• This recommendation is fully observed
29. Supervisors	**LC**	• The GN do not fully incorporate specific requirement for terrorism financing, thereby limiting CIMA's range of enforcement powers via the GN in relation to terrorism financing.
30. Resources, integrity and training	**PC**	• Quantitatively inadequate human resources at CIMA limits effectiveness of supervision

		• Insufficient human resources at HM Customs to carry out all functions
31. National co-operation	**C**	• The recommendation is fully observed
32. Statistics	**LC**	• HM Customs does not yet maintain statistics on the cross border transportation of currency and bearer monetary instruments, due to recent implementation of SR IX. • Cayman Islands authorities do not maintain detailed statistics on the number of requests for assistance made by domestic law enforcement authorities and supervisors
33. Legal persons – beneficial owners	**C**	• This recommendation is fully observed
34. Legal arrangements – beneficial owners	**C**	• This recommendation is fully observed
International Co-operation		
35. Conventions	**LC**	• Due extensions of conventions are required
36. Mutual legal assistance (MLA)	**LC**	• Mutual legal assistance 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.
37. Dual criminality	**C**	• This recommendation is fully observed
38. MLA on confiscation and freezing	**C**	• This recommendation is fully observed
39. Extradition	**C**	• This recommendation is fully observed
40. Other forms of co-operation	**C**	• This recommendation is fully observed
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	**LC**	• Due extensions of conventions are required
SR.II Criminalise terrorist financing	**LC**	• No statistics available to determine the effectiveness of the CFT regime
SR.III Freeze and confiscate terrorist assets	**LC**	• There have been no restraints or confiscations under the CFT legislation, therefore the effectiveness cannot be duly determined • There are no legislative provisions for independent domestic listing and delisting.
SR.IV Suspicious transaction reporting	**LC**	• No clear guidance in GN with regard to treatment of attempted suspicious transactions or consequences of non-reporting.
SR.V International co-operation	**LC**	• There have not been any mutual legal

		assistance requests with respect to terrorism to duly determine the effectiveness thereof. • There have not been any extradition requests with respect to terrorism to duly assess the effectiveness thereof.
SR VI AML requirements for money/value transfer services	**LC**	• Requirements of SR VII for wire transfer are not enforceable until 2008
SR VII Wire transfer rules	**PC**	• No requirement covering domestic and inbound cross-border wire transfers. • No requirement for beneficiary financial institutions to consider restricting or even terminating their business relationship with financial institutions that fail to meet SRVII standards.
SR.VIII Non-profit organisations	**PC**	• No supervisory programme in place to identify non-compliance and violations of NPOs. • No outreach to NPOs to protect the sector from terrorist financing abuse • No systems or procedures in place to publicly access information on NPOs • No formal designation of points of contacts or procedures in place to respond to international inquiries regarding terrorism related activity of NPOs.
SR.IX Cross Border Declaration & Disclosure	**PC**	• Effective implementation of recently enacted regulations in doubt due to inadequate human and financial resources of Customs. • Assessment of effectiveness of system is not possible due to the recent enactment of the regulations

- **Table 2: Recommended Action Plan to Improve the AML/CFT System**

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• It is 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.
2.2 Criminalisation of Terrorist Financing (SR.I)	
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• It is recommended that the proposed revision/consolidation of the MDL and the PCCL which will include specific asset-tracing and comprehensive civil forfeiture provisions be enacted.
2.4 Freezing of funds used for terrorist financing (SR.III)	• There is a need for the development of a publicly known listing and delisting process for independent domestic designations, whether by way of s. 60 of the TL or otherwise . • There is need for legislative provisions for independent domestic listing and delisting.
2.5 The Financial Intelligence Unit and its functions (R.26)	• Despite the enhanced level of training, the FRA should take measures to establish a more formalized AML/CFT training program for its employees to ensure that they remain abreast of current trends and typologies. This could be accomplished through the development of partnerships with foreign FIUs, law enforcement, CIMA and representatives from the financial sector. • The FRA or CIMA should mandate that all SARs which are filed by reporting entities follow the prescribed format which is outlined in Appendix J of the GN. At the time of the onsite the SAR reporting

	format was simply a "suggested" format. This would reduce the probability of key information being left out of the SARs and therefore enhance the ability of the FRA analysts in identifying transactions of a criminal nature. • The current practice concerning the onward disclosure of SAR information appears to be occurring in a timely manner. In the opinion of the assessment team, consideration should be given to the removal of the requirement that the Director of the FRA seek permission from the AG prior to the dissemination of information to a foreign FIU. This would significant mitigate the risk of any unnecessary delay in exchanging SAR information. • The FRA should also focus on the development of analytical products/reports in collaboration with its partners (e.g. law enforcement and CIMA) to identify new ML/FT trends and/or typologies. They should also continue to provide feedback to both financial and non-financial reporting entities concerning the submission of SARs and, they should actively seek out opportunities to participate in training seminars and media programs to educate both professionals and the public on AML/CFT matters. • The FRA should also develop a website which would be readily accessible to the general public. The content of this website should include; the mandate and responsibilities of the FRA, all relevant AML/CFT laws and regulations, GN, legal obligations to files SARs, contact information for general inquiries, links to other AML/CFT resources, (e.g. CFATF, FATF, IMF, Egmont Group), as well as, any other information that would be considered useful to educate and inform the general public and AML/CFT investigative partners. • An enhanced outreach program should also be considered by the FRA in order to educate businesses and the general public on various typologies, trends and other matters related to AML/CFT. • In the 2005/2006 FRA Annual Report statistics show that the total number of SARs from 2002 to 2006 has dropped from 443 in 2002 to 221 in 2005/6 (approx. 50% decrease). At the time of the onsite visit the FRA stated that this decrease may be due to one of the following reasons: firstly, that in the wake of the

	introduction of the MLR in 2002 and the retrospective due diligence requirement, there was a reporting spike. Secondly, that defensive reporting may have been occurring in response to the establishment in 2000 of a direct offence for failure to disclose knowledge or suspicion of money laundering. Cayman Islands authorities should continue to monitor this closely to ensure that the level of vigilance of the reporting entities is not waning and that complacency is not setting in. • Consideration should also be given to legislative amendments to the PCCL which would allow the FRA to directly impose administrative sanctions or penalties on those entities who fail to comply with reporting obligations, in addition to the criminal penalty. Currently, CIMA may impose regulatory sanctions against entities that it regulates for failure to have the reporting systems and procedures required by the MLR in place. An FRA sanction would streamline the process and reduce the workload of CIMA.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• Despite the high level of experience and competence of the FCU, consideration should be given to the development of a more formal training process. This could include a basic financial crime course which would include elements of AML/CFT. In addition to this, measures to ensure that all investigators within the FCU remain up to date vis-à-vis the latest trends and typologies should also be considered. • Legislative authorities within the Cayman Islands should also take steps to allow judicial authorization for the monitoring of bank accounts in matters related to money laundering. This currently exists for matters related to FT; however it has not yet been extended to ML. It is expected that this will be addressed in the new consolidation of the PCCL and MDL which is currently being developed. • The FCU, the Legal Department, the FRA and other competent authorities are also encouraged to pursue AML/CFT cross training opportunities where possible. Particular emphasis should be placed on the cooperative analysis of ML/FT trends and typologies, as well as, the identification of new investigative techniques and international “best practices”.

2.7 Cross Border Declaration & Disclosure	• It is the assessment team's recommendation that Cayman Islands Customs authorities should consider the implementation of new investigative techniques and methods similar to those outlined in the Best Practices Paper for SR IX, e.g. canine units specifically trained to detect currency. • Customs officials should also consider working more closely with the FRA and other law enforcement authorities to develop typologies, analyze trends and share information amongst themselves to more effectively combat cross border ML and FT issues.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• Financial institutions should be legislatively required to undertake CDD measures when they have doubts as to the veracity or adequacy of previously obtained customer identification data. • Financial institutions should be legislatively required to verify that persons purporting to act on the behalf of a customer is so authorised and identify and verify the identity of that person. • Financial institutions should be legislatively required to determine the natural persons who ultimately own or control the customer. • Financial institutions should be legislatively required to conduct ongoing due diligence on the business relationship • Financial institutions should be required to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking routine reviews of existing records. • Simplified CDD measures should be unacceptable in specific higher risk scenarios. • Financial institutions should be required to obtain senior management approval to continue a business relationship once a customer or beneficial owner is found to be, or subsequently becomes a PEP • The specific requirements of Recommendation 7 with

	regard to cross-border correspondent banking and other similar relationships should be imposed on financial institutions in the Cayman Islands. • Financial institutions should be required to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.
3.3 Third parties and introduced business (R.9)	• Financial service providers relying on a third party should be required to immediately obtain from the third party the necessary information concerning all relevant elements of the CDD process in criteria 5.3 to 5.6. • Financial service providers should take adequate steps to be satisfied that the regulation and supervision of eligible introducers is in accordance with Recommendations 23, 24 and 29. The eligible introducers should have measures in place to comply with the CDD requirements of Recommendations 5 and 10. • Guidance should be issued with regard to circumstances where an eligible introducer confirms that it is not required to have evidence of identity of its client if the business relationship pre-dated the AML regime of its country of domicile.
3.4 Financial institution secrecy or confidentiality (R.4)	
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• Financial institutions should be required to maintain records of account files and business correspondence for the same period as identification data. • The retention period for identification records for accounts dormant for longer than five years as stated in Regulation 12 (4) should be repealed.
3.6 Monitoring of transactions and relationships (R.11 & 21)	• Financial institutions should be required to keep findings regarding enquiries about complex, unusual large transactions or unusual patterns of transactions available for competent authorities and auditors **for at least five years.** • The authorities should be able to apply appropriate counter-measures against countries which do not or insufficiently apply the FATF Recommendations.
3.7 Suspicious transaction reports	• GN should provide clear and unambiguous guidance

and other reporting (R.13-14, 19, 25 & SR.IV)	as to the treatment of attempted suspicious transactions. • The proposed revision/consolidation of the PCCL and the MDL prohibiting disclosing of information in relation to the filing of SARs for drug-related ML should be enacted as soon as possible.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees. • Financial institutions should be required to designate an AML/CFT compliance officer at management level. • CIMA should provide detailed guidance on an appropriate AML/CFT internal audit function for all FSPs • Regulations should be amended to permit the person responsible for considering whether a SAR should be submitted to have unimpeded access to relevant information.
3.9 Shell banks (R.18)	• Financial institutions should not be permitted to enter into, or continue, correspondent banking relationships with shell banks • Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	• CIMA should review present staff complement with a view to improving supervisory coverage. • The GN should be amended to specifically cover terrorism financing. • The GN should be extended to dealers in precious metals and precious stones.
3.11 Money value transfer services (SR.VI)	
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• The GN should cover dealers in precious metals and stones.

4.2 Suspicious transaction reporting (R.16)	
4.3 Regulation, supervision and monitoring (R.24-25)	• It is recommended that the authorities in Cayman Islands implement a monitoring program to ensure that real estate agents, brokers, dealers in precious metals and precious stones and lawyers when dealing with real estate transactions comply with AML/CFT measures.
4.4 Other non-financial businesses and professions (R.20)	
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	
5.3 Non-profit organisations (SR.VIII)	• The authorities should undertake an outreach programme to the NPO sector with a view to protecting the sector from terrorist financing abuse. • A supervisory programme for NPOs should be developed to identify non-compliance and violations. • Systems and procedures should be established to allow information on NPOs to be publicly available. • Points of contacts or procedures to respond to international inquiries regarding terrorism related activity of NPOs. should be put in place.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• Due extensions of the said conventions are required.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• 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 mutual legal assistance • The authorities may also consider an express

	enactment creating an asset forfeiture fund, with appropriate obligations and applications; rather than the current, but non-binding segregation in practice..
6.4 Extradition (R.39, 37 & SR.V)	
6.5 Other Forms of Co-operation (R.40 & SR.V)	
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	• Cayman Islands authorities should maintain detailed statistics on the number of requests for assistance made by domestic law enforcement authorities and supervisors including whether the request was granted or refused. • CIMA should review present staff complement with a view to improving supervisory coverage. • The financial and human resources of the Customs service be increased to enable the Customs service to carry out its duties and functions in an effective manner.
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country Comments

ANNEXES

Annex 1: **List of abbreviations**
Annex 2: **Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.**
Annex 3: **Copies of key laws, regulations and other measures**
Annex 4: **List of all laws, regulations and other material received**

ANNEX 1

Abbreviations used

ACAMS	Association of Certified Anti-Money Laundering Specialists
AMLSG	Anti-Money Laundering Steering group
ATUNMOTO	Al – Qa'ida and Taliban (United Nation Measures) (Overseas Territories) Order 2002
BTCL	Banks and Trust Companies Law
CALP	Caribbean Anti-Money Laundering Programme
CAMS	Certified Anti-Money laundering Specialist
CCLEC	Caribbean Customs Law Enforcement Council
C – FED	Customs – Fraud Division
CICA	Cayman Islands Compliance Association
CIMA	Cayman Islands Monetary Authority
CIREBA	Cayman Islands Real Estate Brokers Association
CISPA	Cayman Islands Society of Professional Accountants
CJICL	Criminal Justice (International Cooperation) Law
CL	Companies law
CM	company manager
CMDDR	Customs (Money Declarations and Disclosures) Regulations, 2007
CML	Companies Management law
C – NET	Customs – Narcotics Enforcement Team
CPC	Criminal Procedure Code
C – PIU	Customs – Fraud Prevention and Inspections Unit
CRPL	Confidential Relationships (Preservation) Law
CSP	corporate services provider
CTR	currency transaction reporting
EC	Executive committee
EI	Eligible introducer
FCU	Financial Crime Unit
FinCEN	US Financial Crimes Enforcement Network
FRA	Financial Reporting Authority
FSB	financial services business
FSP	Financial service provider
GN	Guidance Notes on Prevention and Detection of Money Laundering in the Cayman Islands
GNC	Guidance Notes Committee
IAIS	International Association of Insurance Supervisors
ICE	Immigration/Customs/Enforcement
ICSFT	International Convention for the Suppression of the Financing of Terrorism
ICT	information and communication technology
IL	Insurance law
IMF	International Monetary Fund
IOSCO	International Organisation of Securities Commission
MAL	Monetary Authority Law
MDL	Misuse of Drug Law
MFL	Mutual Funds Law

MLR	Money Laundering Regulations
MLRO	money laundering reporting officer
MOU	Memorandum of Understanding
MSB	money service business
MSL	Money Services Law
NPO	Non-profit organization
OFAC	US Office of Foreign Assets Control
OGBS	Offshore Group of Banking Supervisors
OGIS	Offshore Group of Insurance Supervisors
ORA	overseas regulatory authority
PCCL	Proceeds of Criminal Conduct Law
PSML	Public Service Management Law
PSP	Payment service provider
PQ	personal questionnaire
RCIP	Royal Cayman Islands Police
SAR	suspicious activity report
SEC	US Securities and Exchange Commission
SIBL	Securities Investment Business Law
SOG	statement of guidance
SPV	special purpose vehicle
TL	Terrorism Law
TUNMOTO	Terrorism (United Nations Measures) (Overseas Territories) Order 2001

ANNEX 2

All Bodies Met During the On-site Visit

GOVERNMENT AGENCIES

Cayman Islands Monetary Authority
General Registry
Her Majesty's Customs Service of the Cayman Islands
Office of the Chief Justice
The Anti-Money Laundering Steering Group
The Financial Crime Unit of the Royal Cayman Islands Police Service
The Financial Reporting Authority
The Legal Department
The Portfolio of Finance & Economics
The Portfolio of Legal Affairs

INDUSTRY BODIES

Alternative Investment Management Association
Cayman Islands Bankers' Association
Cayman Islands Compliance Association
Cayman Islands Law Society
Cayman Islands Real Estate Brokers Association
Cayman Islands Society of Professional Accountants

FINANCIAL SECTOR

Aon Insurance Managers (Cayman) Ltd.
Appleby
Bank of Nova Scotia
British Caymanian Insurance Co. Ltd.
Butterfield Bank (Cayman) Limited
Cayman Management Ltd.
Cayman National Bank
CIBC Bank and Trust Company (Cayman) Limited
Citco Fund Services (Cayman Islands) Limited
CLICO Cayman Limited
Close Brothers (Cayman) Limited
Deutsche Bank (Cayman) Limited
Ernst & Young
Financial Integrated Services Ltd. (MoneyGram)
FirstCaribbean International Bank (Cayman) Limited
Goldman Sachs (Cayman) Trust Ltd
International Management Services Ltd.
Julius Baer Bank and Trust Company Ltd.
Kensington Management Group Ltd.

KPMG
Maples & Calder
Maples Finance Limited
Marsh Management Services Cayman Ltd.
PriceWaterhouseCoopers
RBC Dominion Securities Global Limited
Royal Bank of Canada
Spectrum Global Fund Administration (Cayman)
Walkers
Walkers SPV