

CAYMAN ISLANDS CFATF MUTUAL EVALUATION REPORT

Presentation to Cayman Islands Compliance
Association

By AMLU, Portfolio of Legal Affairs

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FATF Standards

- Technical Compliance
 - ✓ Based of 40 Recommendations
- Effectiveness
 - ✓ Based on 11 Immediate Outcomes

Technical Compliance

- Scoring for 40 Recommendations
 - ✓ 12 “Compliant” (**C**)
 - ✓ 15 “Largely Compliant” (**LC**)
 - ✓ 13 “Partially Compliant” (**PC**)
 - ✓ 0 “Non-Compliant” (**NC**)
- FATF ICRG Technical Compliance Entry Criteria
 - a) 20 or more **NC/PC** ratings for technical compliance; or
 - b) Ratings of **NC/PC** on 3 or more of the following Recommendations: R.3, 5, 6, 10, 11, and 20

Technical Compliance Benchmark Met

Effectiveness

- Scoring for 11 Immediate Outcomes (IOs)
 - ✓ 0 “High Level” (**HL**)
 - ✓ 0 “Substantial Level” (**SL**)
 - ✓ 6 “Moderate Level” (**ML**):
 - ✓ 5 “Low Level” (**LL**)
- FATF ICRG Effectiveness Entry Criteria
 - a) **LL** on 2 IOs plus **LL** or **ML** on 7 or more IOs; or
 - b) **LL** on 6 or more of the IOs
- **Effectiveness Benchmark Not Met**
 - ✓ FATF International Co-operation Review Group Process - Americas Joint Group
 - ✓ Observation Period – Feb 2019 to Feb 2020

Effectiveness Scoring

- IO.1 – Risk, Policy and Coordination – **Mod.**
- IO.2 – International Cooperation – **Mod.**
- IO.3 – Supervision – **Low**
- IO.4 – Preventative Measures – **Low**
- IO.5 – Legal Persons & Arrangements – **Mod.**
- IO.6 – Financial Intelligence – **Low**
- IO.7 – ML Investigation & Prosecutions – **Low**
- IO.8 – Confiscation – **Mod.**
- IO.9 – TF Investigation & Prosecution – **Low**
- IO.10 – TF Preventative Measures & Financial Sanctions – **Mod.**
- IO.11 – PF Financial Sanctions – **Mod.**

IO.3 (Supervision) Findings

- CIMA has a good understanding of ML risks, but understanding of TF risks would benefit from analysis of cross-border transactions in the banking and securities sector.
- 45% of SIBL EPs are subject to full supervision by CIMA, while shareholding and beneficial ownership information of 55% is not maintained by CIMA.
- CIMA continues to address its human resources constraints.
- Recent steps by CIMA to enhance the RBA to supervision.
- Recent powers to CIMA for administrative penalties.
- Attorneys not yet supervised for AML/CFT – hedge funds, private equity, structured finance, wealth structuring & management.
- DCI's risk-based supervisory regime for DPMS, real estate agents and accountants has not yet been fully implemented.

IO.4 (Preventative Measures) Findings

- Formal institutional risk assessments are not yet in place – AMLRs came into force 2017. Understanding of ML/TF risks by smaller FIs and DNFBPs could improve.
- 55% of SIBL EPs not subject to ongoing AML/CFT supervision.
- Improvements are needed wrt ongoing CDD and monitoring (banks and TCSPs).
- TFS (TF & PF) – Smaller FIs do not undertake screening in a timely manner.
- Low SAR reporting from banks not physically present and SIBL EPs
- Real estate agents (non CIREBA) and DPMS are now in the process of assessing their ML/TF risks, and the development of risk mitigating measures is at the beginning stages.

RECOMMENDED ACTIONS

Observation Period

Understanding Risk – IO.1

- Update the NRA and strengthen analysis:
 - ✓ Subsectors subject to limited supervision (e.g. SIBL EPs) or no supervision
 - ✓ Legal persons or arrangements that can be created in the Cayman Islands
 - ✓ Cayman as an International financial centre
 - ✓ Terrorist Financing
- Initiate a comprehensive analysis and assessment of those sectors subject to limited supervision (e.g., SIBL EPs) as well as legal persons and arrangements.
- Provide detailed and effective communication of the risks and vulnerabilities existing in the jurisdiction, such as those identified in the NRA, to the private sector and the wider public. Provide greater outreach and guidance to the private sector.
- The membership of AMLSG and the IACC should be strengthened, by including the ACC.
- Review and prioritise the objectives of the national AML/CFT Strategy, and develop a prioritised action plan that includes (but not limited to) the risk-based allocation of resources.

Financial Intelligence – IO.6

- Implement appropriate technological enhancements and ensure that the FRA, RCIPS, ACC and Customs seek to access financial intelligence on a more regular basis.
- Re-examine (financial intelligence) information collected, and give systemic access to FRA - such as wire transfers and cross-border currency reports.
- FRA's access to information – would enhance jurisdiction's overall awareness and understanding of the risk environment and facilitate greater use financial intelligence.
- FRA and LEAs should be appropriately staffed.
- There should be greater operational integration, coordination and cooperation among law enforcement authorities and the FRA.

ML Investigations/Prosecutions – IO.7

- Improve its ability to identify ML/TF rather than relying on the commission of a predicate offence.
- Refine the Pro-Active Money Laundering strategy to identify how the RCIPS can move from a more reactive to proactive model of investigating ML.
- Pursue a greater variety of ML cases including stand-alone and third-party ML against both natural and legal persons.
- Utilise international engagement to pursue cases against individuals, regardless of citizenship, who use the Cayman Islands to move funds derived from illicit purposes.
- Determine how to move a greater proportion of investigations to prosecutions and ensure they are properly equipped to handle more complex cases. Involve the ODPP at earlier stage.
- The Cayman Islands should achieve more prosecutions based on the commission of ML – including in stand-alone and third party cases.

Confiscation – IO.8

- Consider other measures (to criminal prosecution), such as civil remedies, to remove the benefit of crime.
- Pursue criminal assets abroad. Ensure that competent authorities are properly equipped (with training and resources) to pursue these assets.
- Ensure that authorities are in fact pursuing confiscation consistent with the country's inherent ML/TF risk profile.
- Invest in tools, resources and training to enhance the ability of Customs to identify individuals seeking to move undeclared cash and BNIs into and out of the Cayman Islands.
- Ensure that competent authorities, including official receivers, are appropriately resourced and trained to manage associated assets.

TF Investigations and Prosecutions – IO.9

- Conduct a more thorough analysis of TF risks and vulnerabilities present within the jurisdiction's financial sector.
- Undertake enhanced outreach and guidance to the FIs and DNFBPs on TF indicators.
- Competent authorities should receive more training on the identification of TF. Consider additional resources for the FRA to improve the analysis and identification of TF. Also, the ODPP and Judiciary should receive specialised training on the prosecution and adjudication of TF matters.
- The RCIPS should enhance and refine the Combatting of the Financing of Terrorism Strategy to ensure that there are clear mechanisms in place to facilitate the proactive identification of TF in the financial sector.

Targeted Financial Sanctions (TF/PF)

IO.10, IO.11

- Implement timely communication mechanisms for TFS for TF and PF.
- CIMA should update its supervisory approach to the implementation of TFS, including testing the promptness of these mechanisms.
- FI's and DNFBPs increase staff training to ensure proper and efficient identification of persons and assets subject to TFS.
- Conduct more outreach to FI and DNFBPs that may be holding targeted fund.
- The NPO Registrar should continue its (TF) outreach to the NPO sector encouraging the registration of NPOs and complete the risk assessment for this sector.
- Cayman Islands should review its co-operation and co-ordination mechanisms to ensure that the authorities can identify potential breaches or violations of TFS related to PF.

CFATF AND FATF PROCESSES

Going Forward

CFATF Enhanced Follow-up Process

- Three Follow-Up Reports (FURs) over 5 years following the November 2018 Plenary
- First FUR in **Nov 2019**
 - ✓ Report to plenary on progress made
 - ✓ September 2019 deadline for first CFATF Follow-up Report
- Mini CFATF Mutual Evaluation 5 years following the November 2018 Plenary (Effectiveness)

FATF ICRG Process

- **Observation Period - February 2019 to February 2020**
 - ✓ FATF president has issued a formal notification letter to the Cayman Islands indicating the start of the observation period
 - ✓ Joint Group of the Americas (JG) assigned assess degree & quality of progress made following the period
 - ✓ Current members of the JG include Canada (Co-Chair), Mexico (Co-Chair), FATF Secretariat, CFATF Secretariat, GAFILAT Secretariat, USA, UK, France, Spain, Brazil, Argentina, Peru, and European Commission.
- **March to May 2020** – JG will engage CI – clarify issues
- **June 2020** FATF Plenary - Post-Observation Period Report presented
 - ✓ Exit ICRG, or enter “Grey List” with high level political commitment.
 - ✓ Where a high level political commitment is not provided by CI, the FATF will “blacklist” the jurisdiction by publicly calling for countermeasures.

END

Questions?