GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

CAYMAN ISLANDS



OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Cayman Islands 2013

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

November 2013
(reflecting the legal and regulatory framework
as at January 2013)



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Table of Contents

About the Global Forum 5

Executive Summary 7

Introduction 11

Information and methodology used for the peer review of the Cayman Islands . . 11
Recent developments 16

Compliance with the Standards 17

A. Availability of Information 17

Overview 17
A.1. Ownership and identity information 19
A.2. Accounting records 52
A.3. Banking information 58

B. Access to Information 63

Overview 63
B.1. Competent Authority's ability to obtain and provide information 64
B.2. Notification requirements and rights and safeguards. 69

C. Exchanging Information 73

Overview 73
C.1. Exchange-of-information mechanisms 74
C.2. Exchange-of-information mechanisms with all relevant partners 82
C.3. Confidentiality 83
C.4. Rights and safeguards of taxpayers and third parties. 86
C.5. Timeliness of responses to requests for information 88

Summary of Determinations and Factors Underlying Recommendations 97

Annex 1: Jurisdiction's Response to the Review Report 101
Annex 2: List of All Exchange of Information Mechanisms 102
Annex 3: List of all Laws, Regulations and Other Material Received 104
Annex 4: Persons Interviewed During the Onsite Visit 107

About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to www.oecd.org/tax/transparency and www.eoi-tax.org.

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information for tax purposes in the Cayman Islands as well as the practical implementation of that framework.

2. The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information (EOI) partners. The Cayman Islands has a well-developed legal and regulatory framework, although the report identifies some areas where its legal infrastructure could be improved to more effectively implement the international standard.

3. In respect of the availability of information, the standard focuses predominantly on obligations imposed directly on relevant entities and arrangements. In respect of ownership and identity information, as well as banking information for account holders, there are requisite obligations in place to ensure the availability of this information. These obligations are accompanied by appropriate penalties for non-compliance, although some of these penalties have been introduced very recently and are therefore untested in practice. In addition, although ownership and identity information on companies and partnerships has been available in all cases where this was requested, the lack of monitoring may affect the availability of relevant identity and ownership information on companies and partnerships for the purposes of exchange of information. In addition, it may be difficult to enforce the availability of ownership information in the Cayman Islands in respect of bearer shares where this information is held by a custodian located abroad.

4. In respect of the availability of accounting information, companies, partnerships and trusts are all subject to comprehensive obligations to retain accounting records and underlying documentation for a minimum 5 year period. Effective sanctions also apply to a company, partnership or trust that fails to keep accounting records as required, although the lack of active monitoring and enforcement may affect the availability of accounting records for the purposes of exchange of information.

5. The obligations imposed directly on entities and arrangements are complemented by regulatory laws imposed on a person conducting certain businesses such as banking, trust services, insurance, investment and company management, as well as an anti-money laundering/counter financing of terrorism regime.

6. In respect of access to information, the competent authority of the Cayman Islands is invested with broad powers to gather relevant information. These powers are exercised predominately by issuing notices to require the production of relevant information; and which are complemented by powers that are overseen by a Court, to search premises and seize information as well as to compel oral testimony. Enforcement of these provisions is secured by the existence of significant penalties for non-compliance. Secrecy provisions in Cayman law are overridden where information is required for EOI purposes, and a domestic tax interest requirement is excluded.

7. The Cayman Islands' network for the exchange of information has developed rapidly since April 2009. It now has a network of 30 information exchange agreements, with 25 of those already in force. The agreements generally follow the OECD Model TIEA, and meet the international standard. In addition, the Cayman Islands has implemented a unilateral mechanism by which it may name "Scheduled Countries" to whom it will provide relevant information for tax purposes upon request. Presently, 12 jurisdictions are scheduled including 11 OECD member countries. However, as a bilateral agreement is now in place with seven of these named jurisdictions, exchange of information for tax purposes now takes place in accordance with these agreements.

8. The body in charge of exchanging information for tax purposes is the Cayman Islands Tax Information Authority and is located within the Ministry of Financial Services. The exchange process is very well organised with many internal processes in place for handling EOI requests as well as the unit being well resourced in personnel, IT and technical expertise. As a result, high quality responses are provided to partner jurisdictions and in 87% of cases the time in which a final response was provided has been less than 90 days.

9. As a jurisdiction without a domestic income tax system, the Cayman Islands generally only receives requests for information, and as the Cayman Islands enters into more information exchange agreements the number of incoming requests has been steadily increasing. For the period 2009-11, the Cayman Islands received 65 requests from eight treaty partners.

10. Overall, the feedback from peers was positive and some EOI partners of the Cayman Islands praised its clear and coherent communication during

the course of a request as well as the quality of its co-operation and speed in response times.

11. The Cayman Islands has been assigned a rating[1] for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of the Cayman Islands' legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, the Cayman Islands has been assigned the following ratings: Compliant for elements A.3, B.1, B.2, C.1, C.2, C.3, C.4 and C.5, and Largely Compliant for elements A.1 and A.2. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for the Cayman Islands is Largely Compliant.

12. A follow up report on the steps undertaken by the Cayman Islands to answer the recommendation made in this report should be provided to the PRG within twelve months after the adoption of this report.

1. This report reflects the legal and regulatory framework as at the date indicated on page 1 of this publication. Any material changes to the circumstances affecting the ratings may be included in Annex 1 to this report.

Introduction

Information and methodology used for the peer review of the Cayman Islands

13. The peer review process of the Cayman Islands has been undertaken across three reports; the 2010 Phase 1 report, a 2011 supplementary Phase 1 report and a Phase 2 report. The assessments of the legal and regulatory framework of the Cayman Islands were based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference, and were prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The 2010 Phase 1 report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at May 2010, the Cayman Islands' responses to the Phase 1 questionnaire and supplementary questions, information supplied by partner jurisdictions other relevant sources such as recent reports on the Cayman Islands by the Caribbean Financial Action Task Force.

14. The supplementary Phase 1 report, which followed the 2010 Phase 1 report of the Cayman Islands was prepared pursuant to paragraph 58 of the Global Forum's Methodology and was adopted by the Global Forum in August 2011. The supplementary report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at May 2011 and information supplied by the Cayman Islands.

15. The Phase 2 assessment is based on the laws, regulations, and exchange of information mechanisms in force or effect as at January 2013, the Cayman Islands' responses to the Phase 2 questionnaire, supplementary questions and other materials supplied by the Cayman Islands, information supplied by exchange of information partners and explanations provided by the Cayman Islands during the on-site visit that took place from 5-7 September 2012 in Grand Cayman, Cayman Islands. During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance, the Cayman Islands Tax Information Authority,

the General Registry, the Attorney-General's office and the Cayman Islands Compliance Association. A list of all those interviewed during the onsite visit is attached to this report at Annex 4.

16. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses the Cayman Islands' legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding the Cayman Islands' legal and regulatory framework that either: *(i)* the element is in place, *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement, or *(iii)* the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning the Cayman Islands' practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. An overall rating is also assigned to reflect the Cayman Islands' overall level of compliance with the standards.

17. The Phase 1 and supplementary assessments were both conducted by an assessment team, which consisted of two expert assessors and one representative of the Global Forum Secretariat: Laurence Simon-Michel, Senior Tax Inspector in the French tax administration (Direction Générale des Finances Publiques); Oshna Maharaj, Manager of International Development and Treaties for the South African Revenue Service; and Caroline Malcolm from the Global Forum Secretariat. The assessment team assessed the legal and regulatory framework for transparency and exchange of information and relevant EOI arrangements in the Cayman Islands.

18. The Phase 2 assessment was conducted by an assessment team, which consisted of two expert assessors and two representatives of the Global Forum Secretariat: Philippe Cahanin, from the French Tax Administration (Direction Générale des Finances Publiques); Oshna Maharaj, Manager of International Development and Treaties for the South African Revenue Service; and Mary O'Leary and Mikkel Thunnissen from the Global Forum Secretariat. The assessment team assessed the practical implementation and effectiveness of the legal and regulatory framework for transparency and exchange of information and relevant EOI arrangements in the Cayman Islands.

19. The ratings assigned in this report were adopted by the Global Forum in November 2013 as part of a comparative exercise designed to ensure the consistency of the results. An expert team of assessors was selected to

propose ratings for a representative subset of 50 jurisdictions. Consequently, the assessment teams that carried out the Phase 1 and Phase 2 reviews were not involved in the assignment of ratings. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach. The assignment of ratings was also conducted at a different time from those reviews, and the circumstances may have changed in the meantime. Readers should consult Annex 1 for information on changes that have occurred.

Overview of the Cayman Islands

Governance and Economic Context

20. The Cayman Islands is a self-governed overseas territory of the United Kingdom. It consists of three main islands (Grand Cayman, Little Cayman and Cayman Brac) located in the Caribbean, about 240km south of Cuba. In November 2012, the population was estimated at 56 560, of which 56% are Caymanian citizens.[2] It has the second highest GDP per capita in the Caribbean. The Cayman Islands has a consumption based taxation system; for example, custom duties on imports, tourism-related taxes, and stamp duty on real property transfers, and does not impose direct income or capital gains taxes, nor sales tax. The deficit of the central government was estimated at 2.8% of GDP at end December 2011. The currency is the Cayman Islands dollar, fixed at KYD 1 = USD 1.20 and all amounts referred to in this report are in Cayman Islands dollars, unless otherwise indicated.

21. The Cayman Islands is a parliamentary democracy made up of three branches of government: judicial (of which the UK Privy Council is the highest court of appeal); executive (the Cabinet); and the legislature (one house of parliament only, the Legislative Assembly). The present governing constitution came into effect on 6 November 2009.

22. Whilst 20% of Cayman Islands' GDP is generated by tourism, financial services are the major industry in the Islands contributing about 54% of GDP. The industry consists of banking, investment funds, insurance, companies and partnerships, trusts, structured finance and vessel and aircraft registration, and it has been affected since the global economic downturn commenced in 2007. In 2011, the number of banking and trust licenses issued declined by 4.4% from 246 to 234. Stock exchange listings rose from 1 106 in June 2011 to 1 162 in June 2012; an increase of 5.1%. During the same period new company registrations stood at 4 794, a 1.0% decrease compared to a

2. Figures as given in CIA World Factbook, https://www.cia.gov/library/publications/the-world-factbook/fields/2119.html.

year ago. Total international assets held by banks decreased from USD 1.685 trillion in June 2011 to USD 1.46 trillion in June 2012.

23. In respect of regulated mutual funds, the number of licensed, administered and registered funds stood at 10 979 as at September 2012 and the most up-to-date aggregate net asset value is USD 1.728 trillion (2010). In addition to these funds, there are also a number of unregulated exempt funds. Whilst in the past it was estimated that there were about 3 000 exempt mutual funds resident in the Islands, a 2011 Mutual Funds amendment law has extended the regulatory scope of the funds industry to now cover master funds. This has resulted in 1 849 master funds, which were formerly unregulated exempt funds, being registered with the CIMA as of September 2012 and hence narrowing the number of exempt funds outside of regulation. Only a small proportion of the non-exempt mutual funds are held by licensed funds, and are therefore available for sale to the public.

24. As of September 2012 with 728 insurance entities under licence holding assets of USD 78.9 billion, Cayman remains the second largest offshore captive insurance domicile in the world. The amount of assets held by insurance entities increased by 76% over the three year period March 2009 – March 2012. Cayman authorities have confirmed that this was as a result of the re-domiciliation of a number of very large U.S insurers to the Cayman Islands during this period. As of September 2012 there were 233 licensed banks with total international assets amounting to almost USD 1.46 trillion in June 2012 (although more than half of such assets are held overnight in sweep accounts of Cayman Islands branches of US banks).

Legal and Regulatory Framework

25. The Cayman Islands is a common law jurisdiction which derives its laws from English common law and Cayman Islands statutes.

26. The framework for the exchange of information for tax purposes is presided over by the Cayman Islands' Tax Information Authority (CITIA) which is responsible for all aspects of international co-operation in tax matters pursuant to the Tax Information Authority Law (2009 Revision) (TIA Law). The CITIA's responsibilities include managing the Cayman Islands' reporting obligations pursuant to the EU Savings Directive, which is implemented in domestic law by the Reporting of Savings Income Information (European Union) Law (2007 Revision). Under the TIA Law, the CITIA has been granted powers to access relevant information for the purposes of responding to an EOI request. There is neither a domestic tax database nor a central tax administration for domestic purposes, in the Cayman Islands.

27. In addition, the regulatory framework including licensing and supervision of the financial services sectors is overseen by the Cayman Islands

Monetary Authority (CIMA). In addition to implementing and administering the relevant statutes, regulations and rules, the CIMA has also developed non-binding statements of guidance and principles to assist those working in the industry to meet their legal obligations on obtaining, updating and retaining relevant information and records concerning ownership, identity, accounting and bank information.

28. A complete list of all the relevant legislation and regulations, as well as non-binding statements of guidance and principles is set out in Annex 3.

Exchange of information for Tax Purposes

29. In respect of its network for the exchange of information for tax purposes, the Cayman Islands currently exchanges information pursuant to bilateral mechanisms, comprised of 29 TIEAs and one DTC. Under the auspices of the TIA Law the CITIA may exchange information with jurisdictions with which the Cayman Islands have either entered into an EOI agreement, or which have been named in Schedule 2 of the TIA Law. However, as a bilateral agreement is now in place with seven of the jurisdictions named in Schedule 2, exchange of information for tax purposes now takes place in accordance with these agreements. A complete list of the EOI agreements under which the Cayman Islands has agreed to exchange information for tax purposes is set out in Annex 2.

30. The Cayman Islands have participated in the OECD's work on standards for the exchange of information for tax purposes for over a decade. In June 2000, it made an advance commitment to the international standards for transparency and exchange of information, and went on to work as a Participating Partner in the original Global Forum on Taxation established later that year. As an active member of the Working Group on Effective Exchange of Information, the Cayman Islands assisted in developing the now widely utilised OECD Model TIEA finalised in 2002. In addition, it participated in the Sub-Group on Level Playing Field Issues which used an inclusive approach of OECD member and non-member jurisdictions to develop a framework for commitments to and implementation of high standards for exchange within an acceptable timeline. This led to the development of the annual Tax Co-operation Report which was first published in 2006. On 14 August 2009, the Cayman Islands were recognised as having substantially implemented the international agreed tax standard by signing 12 agreements to the standard. This was reflected in the OECD Progress Report that was first published in April 2009. The Cayman Islands is a member of the Global Forum's Peer Review Group and Steering Group.

Recent developments

31. Since the commencement of its Phase 1 peer review in March 2010, the Cayman Islands have signed a further 14 agreements for the exchange of information for tax purposes, bringing the total number of agreements signed to 30 (see further Annex 2). This includes the most recent agreements with the Czech Republic and Qatar in October 2012, and Italy in December 2012.

32. In late 2012 the Companies Amendment Bill 2012, the Partnership Amendment Bill 2012 and the Exempted Partnership Amendment Bill 2012 and were passed by parliament. Further, in 2013 the Companies Amendment Bill 2013, the Partnership Amendment Bill 2013, the Exempted Partnership Amendment Bill 2013 were passed by parliament and became law. These legislative amendments introduced changes to the Companies, Partnerships and Exempted Partnerships Laws including an increase in the penalties as specified for exempted companies, exempted partnerships and limited partnerships for non-compliance with ownership and identity information keeping requirements. The amendments also introduce new requirements for exempted companies and partnerships to produce ownership and accounting information when requested under a Notice from the CITIA.

33. In 2012, amendments were also made to the Bank and Trust Companies Law (2009) by the Banks and Trust Companies Amendment Bill 2012. Further legislative amendments were introduced by the Private Trust Company (Amendment) Regulations 2013 introducing changes to the Private Trust Companies regulations (2011). The 2013 amendments impose additional information keeping requirements for both the Private Trust Companies themselves and for the trusts that they manage. The 2012 and 2013 amendments impose sanctions on Private Trust Companies for breach of the Private Trust Companies Regulations including for non-compliance with information keeping requirements.

34. Furthermore, pursuant to a recent amendment to the legislation regulating mutual funds, master funds with a single feeder fund will now also have to register with CIMA. The deadline for registration with the CIMA is March 1st. This will bring more mutual funds under regulation by the CIMA.

Compliance with the Standards

A. Availability of Information

Overview

35. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as accounting information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of the Cayman Islands' legal and regulatory framework on availability of information. It also assesses the implementation and effectiveness of this framework.

36. In respect of ownership and identity information, there are obligations imposed directly on companies and partnerships to retain ownership information as well as obligations to provide information to the Registrar. These obligations are generally found to be sufficient to meet the international standard. However, whilst a combination of enforcement measures are in force to ensure the availability of ownership and identity information in respect of companies and partnerships, the new amendments imposing sufficient sanctions are very recent and therefore largely untested in practice. Furthermore, the Registrar does not exercise monitoring and investigatory powers to check compliance with these obligations. Although ownership and identity information on companies and partnerships has been available in all

cases where this was requested, the lack of monitoring and the enforcement of penalties in practice may affect the availability of relevant identity and ownership information for the purposes of exchange of information.

37. In addition to the information retention obligations imposed directly on relevant entities and arrangements, the Cayman Islands also has regulatory and anti-money laundering/counter financing of terrorism regimes, which apply to persons carrying on relevant financial businesses including trustees acting by way of business. They impose additional record-keeping requirements for relevant information which is available for the exchange of information for tax purposes. The Private Trust Company (Amendment) Regulations 2013 have also introduced obligations for Private Trust Companies to keep full ownership and identity information in respect of the trust(s) they manage. For trustees that are individuals the Cayman Islands relies on common law for them to keep identity information regarding the trust(s) they manage, and this has not impeded effective exchange of information in practice. Compliance in respect of obligations imposed on licensed entities to maintain identity and ownership information is monitored by the CIMA via desk-top audits and onsite inspections.

38. Whilst bearer shares may be issued by Cayman companies, such shares are immobilised and must be held by an identified custodian to ensure the availability of ownership information. Custodians may be "authorised" custodians in the Cayman Islands or "recognised" custodians located in other jurisdictions which have equivalent ownership and identity information keeping requirements to the Cayman Islands. However, in cases where the custodian is located outside the Cayman Islands, it may be difficult to enforce the availability of such information.

39. Comprehensive requirements outlined in the Companies Law, Partnerships Law and Trusts Law ensure that the necessary obligations are in place in respect of companies, partnerships and trusts to retain accounting information and underlying documentation for a minimum 5 year period. There are also penalties for non-compliance with these obligations. However, the absence of regular monitoring of these obligations and enforcement of these penalties for non-compliance may hinder the effectiveness of accounting information retention obligations in practice.

40. In respect of banks and other financial institutions, the combination of the anti-money laundering/counter-financing of terrorism regime and licensing requirements generally impose appropriate obligations to ensure that all records pertaining to customers' accounts as well as related financial and transaction information are available.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

Companies (ToR 3 A.1.1)

41. The Companies Law (2012 Revision) (Companies Law) is the central piece of legislation governing the establishment and management of corporations in the Cayman Islands. Under the Companies Law, three main types of companies may be formed:

- Companies limited by shares, which can include segregated portfolio companies
- Companies limited by guarantee
- Unlimited companies

42. Each of these types of companies may also be classified as follows:

- Ordinary Resident – business is conducted mainly within the Islands. As of 31 December 2012 there were 6 576 ordinary resident companies registered.
- Non-resident – business is conducted mainly outside of the Islands, however some limited business may be conducted within the Islands. As of 31 December 2012, there were 8 206 non-resident companies registered.
- Exempted – these companies are restricted from trading in the Islands except in furtherance of business carried on outside of the Islands. Operating as an exempted company allows an entity to obtain a certificate exempting it from any future Islands tax for up to 30 years. As of 31 December 2012, there were 75 754 exempted companies registered.

43. There are two sub-types of exempted companies: limited duration companies and segregated portfolio companies. The specific rules relating to limited duration companies (LDCs) are set out in Part VIII of the Companies Law. LDCs may only be formed for a period not exceeding 30 years, and must have at least two members, who may participate in the management of the company in the style of directors or who may delegate management to a board of directors.

3. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.*

44. Segregated portfolio companies (SPCs) are companies made up of individual portfolio companies, and the rules pertaining to them are addressed in Part XIV of the Companies Law. Each segregated portfolio has its own assets which must be kept separately, and each is a separate legal entity, except as against the SPC itself. Under s221 of the Companies Law, creditors of a segregated portfolio have recourse in the first instance against that portfolio's assets, and in turn against the assets of the SPC but not against assets held by any of the other segregated portfolios. A segregated portfolio may be wound-up whilst the remainder of the SPC remains active. The SPC is a single corporate entity with a single board of directors. Shares may however be issued in respect of each segregated portfolio, and therefore there are not necessarily consistent shareholders across each portfolio in an SPC.

45. Unless otherwise specified in this report the obligations regarding retention of ownership and accounting information which are applicable to exempted companies, apply equally to LDCs and SPCs.

46. There is no obligation that companies incorporated in the Cayman Islands must have resident directors or officers. However acting as the officer of a Caymanian registered company for profit or gain, regardless of that officer's location, will fall within the definition of conducting a "relevant financial business" and thus trigger the requirements of the Money Laundering Regulations which are discussed below.

Company ownership and identity information required to be provided to government authorities

Cayman companies:

47. At the time of registration, all companies are required by s26 of the Companies Law to provide certain information to the Registrar of Companies, a department within the Ministry of Financial Services including:

- Memorandum and articles of association;
- Names and addresses of members (the requirements for bearer shares are set out separately below);
- The part of the Islands in which the registered office is to be situated.

48. Pursuant to ss7 and 11 of the Companies Law, every Cayman company must maintain a registered office in the Islands and that address must be advised to the Registrar (s51). Since 2013, the registered office of exempted and non-resident companies must be located at the address of a licensed service provider (s50(2)), although it has been the practice for almost 20 years for the Registrar not to accept any registrations from such companies where

the registered office was located elsewhere. Only 228 companies (0.27% of exempted and non-resident companies) remain with a registered office at an address other than that of a licensed service provider, which is allowed under the grandfathering clause in s50(2) of the Companies Law. A company that fails to maintain a registered office or to advise the Registrar of its address or changes to its address within 30 days is liable under s77 to a penalty of KYD 5 000 (USD 6 000).

49. In addition, s41 of the Companies Law requires all companies other than exempted companies to file an annual return with the Registrar identifying all legal share ownership details and to report any changes. A company that fails to provide such an annual return to the Registrar is liable for a penalty of up to 100% of the annual company registration fee (presently ranging from KYD 150 to KYD 565 (USD 180 to USD 678)). Since January 2010, licensed service providers have been able to file the annual returns of all entities they act for online and as of September 2012 up to 90% of all returns by service providers had been lodged online.

50. The only information that an exempted company is annually required to provide to the government authority, is a declaration indicating that there has been no alteration to its memorandum of association; to confirm that the company has not traded with any person in the Islands (except in furtherance of business carried on outside the Islands); and to confir m that bearer shares are kept by a custodian.

51. In practice, all company registrations are carried out in person at the offices of the Companies Registrar. A resident company may be registered without the use of a service provider. In respect of the registration of exempt and non-resident companies, the Registrar will only accept registrations through a licensed service provider who will be subject to regulation by the CIMA and subject to obligations under the Money Laundering Regulations. These obligations are both monitored by the regulator (as discussed below at paragraph 96 and 97). In addition, service providers must maintain a register of all the companies that they are the agent for and this register must be open to inspection by the public.

Foreign incorporated Companies:

52. A foreign-incorporated company which establishes a place of business or commences carrying on business in the Islands is subject to the special provisions set out in Part IX of the Companies Law. Within one month of establishing or commencing business in the Islands, s186 requires the company to provide the following information to the Registrar:

- Copy of memorandum and articles of association or other constituting document;

- List of company directors;
- Names and addresses of at least one person resident in the Islands who will accept service on behalf of the company (the local agent)

53. Any change to the information provided to the Registrar must, pursuant to s187, be advised to the Registrar within 21 days. Section 193 imposes a penalty of KYD 100 (USD 120) for failing to comply with any obligation imposed on a foreign company by Part IX, with a further penalty of KYD 10 (USD 12) per day in default. No information on the ownership of a foreign-incorporated company is required to be provided to the Registrar. A person who acts as the local agent is required to be licensed under the Companies Management Law, and will also be a Service Provider subject to the Money Laundering Regulations regarding ownership and identity information described below. As of 31 December 2012, there were 3 176 foreign companies registered.

54. Foreign companies carrying on regulated activities from within the Islands including banking, insurance, trust and investment services must be licensed by the CIMA and will also be subject to the Money Laundering Regulations.

Company ownership and identity information required to be held by companies

55. All Cayman companies are required to maintain a register of members which includes the following information:

- Names and addresses of members;
- Share capital held by each member (the requirements for bearer shares are set out separately below); and
- Date on which each member commenced and ceased to be a member.

56. The penalty for a Cayman company that fails to keep a register of members is KYD 5 000 (USD 6 000). Pursuant to s44, the register must be kept at the company's registered office in the Islands, except in the case of an exempted company in which case it may be kept at any place, within or outside of the Islands. Except in the case of an exempted company, the register of members shall be open to inspection by any person, which must be free of charge for any member and upon payment of KYD 10 (USD 12) or less for any other person (s44(2)). All companies, including exempted companies, must make the register of members available in either paper or electronic format if required pursuant to the service of a notice by the CITIA. Should a company fail to comply with this requirement without reasonable excuse, a

penalty of KYD 500 (USD 600) and a further penalty of KYD 100 (USD 120) per day in default shall be imposed (section 44(1) and (4)).

57. Foreign companies are required to maintain a local agent in the Islands, and a person who acts as such an agent will be a Service Provider and fall within the obligations imposed by the Money Laundering Regulations described at paragraph 89. There are no specific obligations imposed directly on the foreign company itself to retain such information.

Nominee identity information

58. Nominee ownership is permitted under Cayman law, and a nominee may take any legal form including a natural person, exempted company or non-resident person. Where a person acts as a nominee for profit or gain, they are required to be licensed under the Companies Management Law, and subject to the obligations on licensed entities described at paragraph 70 as well as being a "relevant financial business" for the purposes of the Money Laundering Regulations, and subject to those obligations described below.

59. All persons who act as a nominee for profit or gain (even for a nominal sum) are a "relevant financial business" and subject to the AML regime, principally the Money Laundering Regulations. The obligations found in the Regulations are set out with more detailed guidance in the Money Laundering Guidance Notes. The Guidance Notes must be taken into account by a Court when determining whether there has been non-compliance with the Money Laundering Regulations, under regulation 5(4).

60. A nominee subject to the AML regime must verify, and maintain identity information on their clients. In particular, under regulation 7 of the Money Laundering Regulations, as soon as reasonably practicable after contact is first made by a client, the nominee must:

- require the applicant to produce satisfactory identity evidence; or
- take such measures to obtain satisfactory identity evidence.

61. Where the client is a legal person or arrangement, there is an obligation to obtain evidence of a person who is acting on behalf of the client, and of the natural person who ultimately owns or controls the client (Regulation 7(7), Money Laundering Regulations).

62. In certain specific cases the regulations allow for a simplified set of identity verification obligations to apply. Some of the key exceptions to the requirement to maintain identity information include:

(a) For one-off transactions where the person does not know or suspect the transaction is being carried out for the purposes of money

laundering or does not know or have reasonable cause to suspect that the transaction is being carried out for terrorism financing purposes (regulation 7(2) and (3)); and

(b) For one-off transactions of less than KYD 15 000 (USD 18 000), where the transaction does not appear to be linked to other transaction(s) where the total would amount to more than KYD 15 000 (USD 18 000) (regulation 7(4) and (5)).

63. However, these exceptions may not be relied upon where the nominee has "reasonable grounds to assess that the case presents a higher risk of money laundering". Therefore, in light of the balance of the obligations, the exceptions are not considered material in respect of nominees acting for profit or gain who are therefore subject to the AML regime.

64. A nominee who contravenes the obligations imposed by the AML regime is liable on summary conviction to a fine not exceeding KYD 5 000 (USD 6 000) or, on indictable conviction, to a fine and imprisonment for a period not exceeding 2 years.

65. Nominees acting for profit or gain will be subject to the AML regime ensuring the availability of information on the clients for whom a nominee acts. The Cayman Authorities have indicated that in practice there will only be exceptional cases whereby a nominee will not be acting for profit or gain, and therefore represent a very small proportion of all nominees acting in the Cayman Islands. No requests involving nominee shareholders have been received so far by the Cayman Islands, and peers have not raised any issues in relation to nominee shareholders.

Conclusion and practice

66. In the three year period under review (2009 – 2011), 29 EOI requests concerning company ownership information were received. Cayman Islands' authorities have confirmed that in 27 of these cases this information was obtained from the service provider by issue of a notice and in two cases all information was retrieved from the Registrar. In all cases this information was provided within 90 days. Feedback from peers confirms that ownership information on companies was made available in all cases where it was requested and provided in a timely manner.

Bearer shares *(ToR A.1.2)*

67. Cayman companies are permitted to issue bearer shares, although a company that does so may not simultaneously hold land in the Islands. The custody of bearer shares is governed by Part XV of the Companies Law. A company may only issue bearer shares to a custodian whose name

will be recorded in the Register upon incorporation, and they may only be transferred to a custodian, or to the company itself. Pursuant to s2 of the Companies Law, custodians are either "authorised custodians" regulated by the CIMA pursuant to either the Companies Management Law or the Banks and Trust Companies Law; or "recognised custodians" who are carrying on business in a specified country and who have been approved by the CIMA to act as a custodian of bearer shares. There are 583 authorised custodians in the Cayman Islands and 12 recognised custodians operating from outside the Cayman Islands. Authorised Custodians consist of 519 Bank and Trust Licensees and 64 Company Management companies. Recognised Custodians must be approved by the CIMA to act as a custodian of bearer shares. Recognised custodians operate as investment exchange or clearing houses of large international financial trading institutions which must be carrying on business in a country specified in the Third Schedule of the Money Laundering Regulations (countries and territories with equivalent legislation) as per s2 of the Companies Law. The list of approved recognised custodians was gazetted on 25th February 2002. There have been no changes to date since that list and the recognised custodians are:

- Euroclear (Belgium)
- Canadian Depository for Securities (Canada)
- SICOVAM (France)
- Monte Titoli (Italy)
- Clearstream International (Luxemburg)
- IBERCLEAR (Spain)
- Servicio de Compensacion y Liquidacion de Valores, S.A. (SCLV) (Spain)
- CREST (UK)
- London Clearing House (UK)
- Options Marknaden (Sweden)
- Depository Trust and Clearing Corporation (USA)
- U.S. Clearing (USA)

68. In respect of the register of members of a company where bearer shares have been issued, s40 of the Companies Law requires the date of issue, share number and the custodian's name to be recorded. The Money Laundering Guidance Notes includes the following statement:

> Bearer shares can be used to conceal the identity of beneficial owners. Company managers should therefore only be a party to the issue of bearer shares where the shares are physically held by the company manager or by a custodian authorised or recognised by the Monetary Authority to the order of the beneficial owner. Such shares should not be released to the beneficial owner…

69. In practice there are no statistics on the actual number of bearer shares in existence. However, the annual return as submitted to the Registrar must contain a statement that any bearer shares issued are held by a custodian. Both the CIMA and the Registrar confirmed that there has been no incidence of new bearer shares being issued since the custodial arrangement was introduced in 2001.

70. Issues may arise in respect of the availability of information in the Cayman Islands regarding bearer shares that are in the hands of a recognised custodian outside of the Cayman Islands' jurisdiction. When a request for ownership information for a company that has issued bearer shares is made, a notice will be served on the service provider of the company (or the company itself) in the Cayman Islands. The service provider (or the company) would then seek the information from the custodian(s), whose name(s) must be in the company's share register, and forward it to the competent authority. Should the recognised custodian fail to provide the ownership information, it is unclear what steps can be taken to compel the custodian to make the information available in the Cayman Islands. Neither the service provider nor the company can compel the recognised custodian to provide the information. Should the recognised custodian fail to provide the information in the Cayman Islands, the competent authority would be able to respond to the requesting party identifying the recognised custodian and the jurisdiction in which it is located.

71. Furthermore, neither the CITIA nor the CIMA have territorial jurisdiction over the recognised custodians and therefore financial penalties cannot be imposed. Whilst the CIMA may withdraw their approval for the recognised custodian to act as such upon recommendation of the CITIA (which can be given if the CITIA does not receive the ownership information), in practice this measure does not guarantee that the information can be made available within Cayman's jurisdiction. It is noted that the delisting of a recognised custodian as such would force the owners of the bearer shares to deposit the shares with another custodian, who could subsequently be requested to provide ownership information.

72. Cayman Islands authorities have indicated, and feedback from peers has confirmed, that there have been no requests for ownership information involving bearer shares during the three-year review period. Nevertheless, the Cayman Islands should ensure that ownership information with respect to

all bearer shares is made fully available to authorities (see also section A.1.6 regarding enforcement of obligations on custodians).

Licensed entities

73. In the Cayman Islands there are a number of sectors which are specifically regulated and require that the business be carried on by a licence holder. The CIMA is the oversight authority for licensees which are obligated under the regulatory laws and money laundering regulations to obtain and maintain identity and ownership information.

74. Licensing is required for persons carrying on businesses in the following sectors:

- Banking and related services (e.g. currency exchange, deposit taking institutions, building societies). As at September 2012, there were 289 entities licensed to provide these services;
- Fiduciary services including trust business services providers (with the exception of individuals and "private trust companies"), and corporate management and corporate service providers. As at September 2012, there were 349 entities licensed to provide these services;
- Insurance services. As at September 2012, there were 886 entities licensed to provide these services;
- Investment funds and fund administrators, subject to some key exemptions (see paragraph 83 below). As at September 2012, there were 10 996 mutual funds and fund administrators; and
- Securities and Investment businesses. As at September 2012, there were 32 entities licensed to conduct such business.

75. The key pieces of legislation which governs the licensing of these sectors are:

- Banks and Trusts Companies Law
- Building Societies Law
- Money Services Law
- Insurance Law
- Mutual Funds Law
- Companies Management Law
- Securities Investment Business Law

76. These laws are supplemented by regulations and rules which create binding obligations, as well as guidance texts including Statements of Guidance and Statements of Principles. Whilst some of the specific obligations vary according to the licence types, there are some general themes and obligations on licensees which are set out below.

77. Licensing requires that applicants and licensees be "fit and proper" persons with "sufficient expertise" to conduct the business in question. The CIMA is empowered to give directions or impose sanctions for breaches of the licensing requirements. Upon application for a licence, an applicant must provide information to the CIMA including:

- Name and address of the licensee;
- Location of the registered office of the licensee;
- Date of issuance of the license.

78. Pursuant to section 50 of the Companies Law the registered office and the authorised office of the licensee has to be located in the Islands. In the case of a non-resident or exempted company the registered office will be the same address as that of the service provider. A failure to update the information which is required to be provided to the CIMA within 14 days of any change is subject to a fine upon conviction of KYD 10 000 (USD 12 000). Further, a corporate licensee must seek approval from the CIMA in advance of any issue or transfer of shares in the company, including a transfer, disposal or other dealing with the beneficial ownership of the shares. In the case of a publicly traded company, approval from the CIMA is not required but a change in controlling ownership must be advised to the CIMA as soon as reasonably practicable after the event. A contravention of this requirement to seek approval or advise the CIMA will be liable for a fine of KYD 20 000 (USD 24 000) on summary conviction.

79. The industry guidelines include specific references to identity and ownership obligations in respect of trust businesses (see paragraph 117 and following), and in respect of banks and deposit companies (see paragraph 191 and following).

Trade and Business Licensing

80. There is also a Trade and Business Licensing Board which operates under the Cayman Islands Department of Commerce and Investment. Every person carrying on a trade or business mentioned in the Schedule to the Trade and Business Licensing Law (2007 Revision) must, unless exempted from this requirement (s3), take out an annual license in respect of each place where such business is carried on. If the company is less than 60% Caymanian owned and controlled they will also require a Local Companies

(Control) Licence issued under the Local Companies (Control) Law (2007 Revision).

81. A Trade and Business Licence is a licence issued by the Trade and Business Licensing Board which allows a person (including a company) to "carry on business" in the Cayman Islands other than a business which is subject to licensing by CIMA. Therefore, in practice those companies subject to licensing by the Trade and Business licensing board only include local businesses outside of the financial and corporate service sectors (such as contractors, restaurants and small trading premises).

Licensed entities in practice

82. The CIMA oversees compliance with the legislation governing the different licensees as well as with customer due diligence obligations imposed by AML legislation. There are currently more than 150 employees working within the CIMA. There are 20 employees in the Banking Division, 10 employees in the Fiduciary Division, 19 in the Insurance Division and 33 in the Investments and Securities Division. In addition, there are 12 employees within the Compliance Division whose main role is to administer enforcement action against non-compliant entities.

83. Licensed entities are subject to regular onsite inspections by the CIMA. In the previous three financial years 138 onsite inspections were carried out across the banking sector, 48 onsite inspections were undertaken for the fiduciary sector, 99 onsite inspections were carried out in respect of the insurance sector and 58 onsite inspections were carried out in respect of the investments and securities sector. Over that three year period, the CIMA has taken 32 formal enforcement actions in relation to compliance offences as set out under the regulatory laws. These formal enforcements actions did not relate specifically to the non-compliance with obligations to keep ownership information.

Mutual Funds

84. Investment funds are a central part of the Cayman financial services industry, with USD 1.728 trillion (gross USD 2.1 trillion) in total assets held by resident, regulated mutual funds as at December 2010. "Mutual Funds" is defined in s2 of the Mutual Funds Law and includes those types of funds commonly referred to as hedge funds. "Regulated" mutual funds may be licensed, administered or registered, whilst some mutual funds are exempt from regulation. At December 2010, there were 10 871 regulated mutual funds operating in the Cayman Islands.

85. All regulated mutual funds are subject to anti-money laundering obligations in relation to identity and ownership information. There are two principal types of regulated mutual funds which are not directly supervised by the CIMA, but which are indirectly supervised as they are required to engage a licensed Service Provider. These are:

- Administered funds: A fund whose registered office in the Cayman Islands is provided by a licensed mutual fund administrator: s4(1)(b);
- Registered funds: A fund where the minimum purchasable equity interest is KYD 80 000 (USD 96 000): s4(3)

86. In addition, there are funds which are not required to be subject, directly or indirectly, to oversight by the CIMA or a Service Provider:

- Exempt funds: A fund held by 15 or fewer investors, "a majority of whom are capable of appointing or removing the operator of the fund": s4(4)

87. These exempt funds are not required to but may engage Service Providers who are subject to the Money Laundering Regulations, and may also be administered by licensed entities.

88. It is noted that a 2011 amendment to the mutual funds law (Mutual Funds Amendment Law 2011) broadened the scope of those funds regulated by the CIMA to include the regulation of "Master Funds", which are funds that effectively pool the assets of smaller "feeder" funds. In practice, this measure has broadened the scope of the regulation of the mutual funds industry. As of September 2012, 1 849 master funds had registered with the CIMA, bringing down the number of exempt mutual funds which was estimated to be around 3 000 before the new legislation came into force.

89. Whilst there still is a category of mutual funds (i.e. exempt funds) not required to be registered with the CIMA and therefore exempt from regulation, all mutual funds will take the legal form of one of the entities or arrangements described in the report, and will be subject to the applicable ownership and identity obligations which are outlined. Commonly, a mutual fund will take the legal form of an exempted company, an SPC, a unit trust, or an exempted limited partnership. Furthermore, many will come under the supervision of the Fiduciary Division of the CIMA and in practice will be subject to monitoring and onsite inspections as carried out by the regulatory authorities. There are currently 33 employees in the funds area of the CIMA, fully dedicated to the monitoring of regulated funds and the carrying out of onsite inspections of such entities. The CIMA authorities confirmed that samples of ownership information are taken and examined during the course of these onsite inspections.

90. In practice, it is not necessarily expressly stated in an EOI request whether the request pertains to a mutual fund, as these can take the form of either a company, a partnership or a trust. Statistics are therefore not compiled on this specific point. Nevertheless, the Cayman Islands authorities have confirmed that some EOI requests appear to be requesting information connected to a mutual fund but do not always use this term. In all these cases the information was provided or an update given to the requesting party within 90 days.

Service Providers

91. The regulatory regime applicable to Service Providers is a key element in the Cayman Islands' regime to maintain identity, ownership and bank information as well as accounting records which may be relevant to the exchange of information for tax purposes. Most persons conducting business in or from within the Islands will have some involvement with a Service Provider through either a one-off transaction or ongoing business relationship. In each of those instances, the relevant information obligations on Service Providers will be triggered.

92. The regulation of Service Providers is based on international anti-money laundering and counter financing of terrorism standards, and is applicable to all types of entities and arrangements which provide relevant services. "Service Providers" as referred to herein are those persons who are carrying on a "relevant financial business" as defined in regulation 4(1) of the Money Laundering Regulations. Service Providers include licensed banking and trust businesses, insurance, investment management and company management businesses. A Service Provider may take any legal form including a natural person, an exempted company, or a non-resident person. Pursuant to regulation 5(1) of the Regulations, when the business is carried out either in or from the Islands, a Service Provider who conducts a one-off transaction or forms a business relationship with an applicant will be subject to identification and record-keeping requirements in respect of that applicant. That information is not required to be kept in the Cayman Islands.

93. The Money Laundering Regulations set out the general obligations on Service Providers, whilst the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands (Money Laundering Guidance Notes) provide more detailed guidance on what is required to meet the standards. Whilst they are non-binding, on prosecution for non-compliance with the Money Laundering Regulations, a Court is required pursuant to regulation 5(4) to take into account any relevant supervisory or regulatory guidance as well as any other relevance guidance issued by a body (principally, the CIMA) that regulates a profession, business or employment carried on by that person.

94. Part III of the Money Laundering Regulations sets out the requirements imposed on Service Providers in respect of identity information of their clients. Regulation 7 requires that as soon as reasonably practicable after contact is first made by an applicant, a Service Provider must either:

- Require the applicant to produce satisfactory identity evidence; or
- Take such measures to obtain satisfactory identity evidence.

95. Satisfactory evidence means per regulation 11, that the evidence is reasonably capable of establishing that the person is who they claim to be, and the Service Provider is satisfied that it does establish that fact. Where the applicant is a legal person or arrangement, regulation 7(7) specifies that such evidence shall include identity evidence of the person acting on behalf of the applicant and of the natural person who ultimately owns or controls the applicant. In addition, the Money Laundering Guidance Notes recommend at paragraph 3.31, that Service Providers obtain and maintain details of corporate client's principal beneficial ownership.

96. Under regulation 5(3), a Service Provider who contravenes the Money Laundering Regulations including the obligations in respect of identity information and record-keeping, is liable on summary conviction to a fine not exceeding KYD 5 000 (USD 6 000) or, on indictable conviction to a fine, and imprisonment not exceeding 2 years.

97. There are some entities which are not covered by the Money Laundering Regulations including private trust companies and individuals conducting trust businesses. In addition, the Regulations provide for a number of situations where the obligations will not apply or where a Service Provider may apply simplified identification requirements. Exceptions to the more strict requirements on identity and record-keeping requirements are set out in regulations 7, 8 and 10; however the simplified identification requirements may not be relied upon where the Service Provider has "reasonable grounds to assess that the case presents a higher risk of money laundering". Some of the key exceptions to the requirement to retain identity information are:

- In instances where the business relationship is introduced by a person who has provided an assurance, which does not need to be in writing, that evidence of the identity of third parties introduced by him will have been obtained and recorded by that person (regulation 10(1)(c));
- For one-off transactions where the person does not know or suspect the transaction is being carried out for the purposes of money laundering or does not know or have reasonable cause to suspect that the transaction is being carried out for terrorism financing purposes (regulation 7(2) and (3));

- For one-off transactions of less than KYD 15 000 (USD 18 000), where the transaction does not appear to be linked to other transaction(s) where the total would amount to more than KYD 15 000 (USD 18 000) (regulation 7(4) and (5));
- Where the applicant is acting otherwise than as a principal, e.g. an agent, and there is reasonable grounds for believing that the applicant is regulated by an overseas authority similar to the CIMA, the applicant gives a written assurance that the identity information of the principal will have been obtained and recorded (regulation 10(1) (a) and (b));
- Where the timeframe for the providing of satisfactory evidence may be varied to take into account *inter alia* whether it is practical to obtain the evidence before commitments are entered into or before money passes (regulation 11(2)).

98. Despite the above exceptions made available for a service provider to not maintain information, regulation 11(3) states that the simplified identification requirements may not be relied upon where the Service Provider has "reasonable grounds to assess that the case presents a higher risk of money laundering". Furthermore, Cayman Islands authorities have confirmed that these exceptions are not relied upon often in practice. During the course of its onsite inspections, the CIMA has come across a number of instances where a service provider relied upon the introduced business exception. Otherwise the circumstances where these exceptions are relied upon represent a small proportion of cases.

99. CIMA officials regularly carry out onsite inspections of Service Providers in order to monitor compliance with the relevant regulatory laws and obligations under the Money Laundering regulations. An onsite inspection team consists of 3 CIMA officials and their inspection program is based on an initial risk assessment of all licensed service providers. The core considerations when deciding on their onsite inspection program include factors such as reputational risk, customer base and the licensees' compliance with AML obligations. Across these onsite inspections, the CIMA has indicated that compliance with obligations as set out under the regulatory laws and AML obligations is very high.

Partnerships *(ToR A.1.3)*

100. The key legislation in respect of partnerships formed in the Cayman Islands is the Partnerships Law (2011 Revision) and the Exempted Limited Partnership Law (2012 Revision). These laws allow the creation of three types of partnerships:

- General partnerships. As general partnerships do not have to be registered, there are no statistics available on the number of these operating in the Cayman Islands.
- Limited partnerships. As of 31 December 2012 there were 41 limited partnerships registered in the Cayman Islands.
- Exempted limited partnerships. A subset of limited partnership which may not carry on business in the Islands, and may seek an undertaking from the Governor exempting it from any future Islands tax for up to 50 years (s17, Exempted Limited Partnerships Law). As of 31 December 2012 there were 12 947 exempted limited partnerships registered in the Cayman Islands.

101. All partnerships, including limited partnerships and exempted limited partnerships may be formed without using a Service Provider. However, in practice, the Registrar will only accept registration of an exempted limited partnership through a service provider.

Partnership ownership and identity information required to be provided to government authorities

102. The ownership and identity information which is required to be provided to government authorities varies for each type of partnership.

General partnerships

103. A partnership (or other entity or arrangement) which is not otherwise subject to regulation by the CIMA, may only carry on business in the Cayman Islands if it obtains a trade and business license pursuant to the Trade and Business Licensing Law (2007 Revision). Upon application for a licence, the partnership must advise the name of the partners and the address in the Islands from which the business is to be carried on. The licensee must advise the Trade and Business Licensing Board of any changes to the business address (s20), and is also required upon the annual renewal of the licence, to provide the partners names (s13). The penalty under s26 for making a false statement including in respect to the true identity of the partners, is a penalty upon conviction of KYD 5 000 (USD 6 000) or imprisonment for 12 months. The Money Laundering Regulations do not apply to licensees under the Trade and Business Licensing Law.

104. Where the partnership is carrying on a business of a type which is required to be specifically licensed, such as a trust, banking or investment business, then the obligations applicable to licensed entities as well as the Money Laundering Regulations will apply.

Limited Partnerships

105. Upon formation, s49 of the Partnerships Law requires a limited partnership to file a declaration with the Registrar of Limited Partnerships (who is also the Registrar of Companies), which includes the following information:

- Name of the partnership;
- Address of the partnership's registered office in the Islands;
- Name and address of each partner (general and limited);
- For each limited partner, the amount of that partner's capital contribution.

106. Any change to the information provided to the Registrar upon formation must pursuant to s51 be advised to the Registrar by way of declaration by the general partners within 7 days. Failure to file such a declaration will result in every partner thereafter being a general partner, as well as liability on each partner of a KYD 500 (USD 600) penalty plus a further KYD 50 (USD 60) per day in default.

107. An exempted limited partnership is formed by a general partner filing with the Registrar a declaration pursuant to s9 of the Exempted Limited Partnerships Law which includes the following information:

- Name of the partnership;
- Address of the partnership's registered office in the Islands;
- Name and address of each of the general partners; and
- Undertaking that the partnership shall not undertake business in the Islands unless in furtherance of its business exterior to the Islands.

108. A general partner of an exempted limited partnership is required to advise the Registrar of any changes to the information provided upon formation. Under s10 of the Exempted Limited Partnership Law, a partnership which fails to advise the Registrar of any such change is liable to a penalty of KYD 200 (USD 240) per day in default. Where the change relates to the removal of a partner from a partnership, it must be notified within 15 days. There is no time limit within which the Registrar must be advised of other changes.

Partnership ownership and identity information required to be held by the partnership

109. The obligations imposed on partnerships to provide and maintain ownership and identity information vary according to the type of partnership. As with other entities and arrangements, where a partnership is a licensed entity (see paragraph 70) or engages a Service Provider in respect of either a one-off transaction or a business relationship (see paragraph 88), additional identity and ownership obligations apply.

General Partnerships

110. For those partnerships which are carrying on a business or trade, in order to meet the obligations of the Trade and Business Licensing Law, the partnership must have ongoing knowledge of the identity of all the partners, and the business address of the partnership in the Islands. There are no additional obligations relating to ownership and identity information imposed on general partnerships.

Limited Partnerships

111. In order to meet the obligation in s51 of the Partnerships Law to advise the Registrar of any changes to the information declared upon registration, the general partner(s) in a limited partnership must have ongoing knowledge of the identity of all other partners, their residential address and their capital contributions. There are no additional obligations relating to ownership and identity information imposed on limited partnerships.

Exempted Limited Partnership

112. The general partner(s) of an exempted limited partnership must maintain a register which contains the following information (s11(1) of the Exempted Limited Partnership Law):

- Name and address of each partner (general and limited)
- Dates and amounts of each partner's capital contribution, as well as any amount of the capital contribution which has been returned to the partner.

113. An exempted limited partnership which fails to maintain such a register will be liable to a penalty of KYD 10 000 (USD 12 000). Pursuant to s11, the register may be kept at the partnership's registered office in the Islands or at any place, within or outside of the Islands. Where the register is not kept at the exempted partnership's registered office, the general partner must make it available in either paper or electronic format if required pursuant to

the service of a notice by the CITIA. Should a general partner fail to comply with this requirement without reasonable excuse, a penalty of KYD 500 (USD 600) and a further penalty of KYD 100 (USD 120) per day in default shall be imposed (s11(1A)).

Conclusion and practice

114. Up-to-date ownership information on general partnerships carrying on business in the Cayman Islands is kept by the Trade and Business Licensing Board, while ownership information on limited and exempted limited partnerships must be provided to the Registrar. In respect of exempted limited partnerships, only information on the general partners is available with the Registrar, and identity information on the limited partners must be kept by the general partners.

115. Limited partnerships and exempted limited partnerships are required to have a registered office and this must be registered with the Registrar. Whilst all partnerships, including limited partnerships and exempted limited partnerships, may be formed without using a service provider, in practice, the Registrar will only accept registration of an exempted limited partnership through a service provider. The service provider carrying out the registration process will normally also provide the registered office, ensuring that exempted limited partnerships comply in practice with the requirement of maintaining a registered office in the Islands. All service providers must maintain a register of the entities for which they act that is made available to the public. In addition, service providers must maintain certain ownership information in respect of these entities under AML legislation.

116. In the three year period under review, the Cayman Islands has received five EOI requests for information relating to the identity of partners in a partnership. The Cayman Islands authorities have confirmed that in all cases this information was obtained directly from a service provider and was provided within 90 days to the requesting partner. Feedback from peers confirms that information on the identity of partners was made available in all cases where it was requested and was provided in a timely manner.

Trusts *(ToR A.1.4)*

117. Deriving from equity under English law, trusts are recognised, and can be created under Cayman Islands' law. In addition to the common law principles, trusts are governed by the Trusts Law (2009 Revision), which does not include a definition of a trust or trustee. A trustee of a Cayman Islands trust may be a natural or corporate entity, and does not have to be a resident of the Islands. The Trusts Law is the framework for the three types of trust which may be established in the Cayman Islands:

- Ordinary trusts: no formal registration is required, and the rule against perpetuities is overruled to allow a maximum duration of such trusts of 150 years. Under s29, the settlor may reserve some powers in respect of the trust.
- STAR trusts (Special Trusts – Alternative Regime): a form of ordinary trust which is subject to additional statutory provisions set out in Part VIII of the Trusts Law. These include allowing the trust to be formed for a purpose (charitable or not) or persons, or both. The right to enforce a STAR trust is vested in an enforcer. A STAR trust may also be an exempted trust.
- Exempted trusts: a form of ordinary trust which is subject to certain additional statutory provisions in Part VI of the Trusts Law, including for discretionary trusts, a restriction under s83 on the rights of the beneficiary(s) to enforce the trust. An exempted trust is created when an application is made and the Registrar is satisfied that the beneficiaries are not or are not likely to include people resident or domiciled in the Islands (see ss74 and 83). An exempted trust may seek an undertaking from the Governor exempting it from any future Islands tax for up to 50 years. As of 31 December 2012, there were 1842 exempted trusts registered.

118. Persons providing trust services are subject to regulations as a consequence of holding a licence to conduct a trust business and may are also be subject to the Money Laundering Regulations.

Licensed trust businesses

119. A company which carries on a trust business ("the business of acting as trustee, executor or administrator", as defined in s2 of the Banks and Trust Companies Law), is required to be licensed by the CIMA. Individuals and "Private Trust Companies" (PTCs) which are carrying on a trust business, as well as individuals who are acting as trustees (but not carrying on a trust business) are exempt from the licensing requirements however PTCs remain subject to certain registration requirements. As at September 2012, there were 265 licensed trust entities operating in the Cayman Islands. Amongst these 265 licensed entities, there are:

- Unrestricted trust companies which permits the holder of the licence to act as trustee for all types of trust business including commercial trusts, institutional trusts, family trusts and purpose trusts. There are currently 133 unrestricted trust companies in the Cayman Islands.
- Restricted trust companies which entitle a trust company to provide trust services to a limited number of persons which are usually

named or referred to by a category such as members of a particular family. There are currently 69 restricted trust companies in the Cayman Islands.

- Nominee trust companies which entitles the holder of the licence to act solely as the nominee of a trust licensee, being the wholly owned subsidiary of that licensee. There are currently 63 nominee trust companies in the Cayman Islands.

120. When applying for a licence, a corporate trustee must provide to the CIMA the information set out in the Schedule to the Banks and Trust Companies (Licence Applications and Fees) Regulations, including:

- Name of the trust company;
- Address of the company's registered office in the Islands;
- Address of the company's principal office (i.e. place of business) if different;
- Name of any agents of the company in the Island; and
- Character and financial standing references for each director, manager, officer, and those shareholder (including beneficial shareholder) having more than 10% of share capital or voting rights.

121. The trust business licensee must advise the CIMA when this information changes. In addition, the Banks and Trust Companies Law requires that a licensed trust business seeks approval from the CIMA in respect of a change of directors (s16) and all changes to shareholdings (s7) of the licensee.

122. A PTC is defined in regulation 2 of the Private Trust Companies Regulations 2008 and is an entity which is conducting a trust business only for trusts whose assets are contributed by persons who are "connected" (for example, family members, or a trust within the same corporate group) to that trust. Under regulation 3, a PTC must maintain a registered office at the office of a company which holds a trust business licence, and must also be registered with the CIMA pursuant to regulation 4(2) which includes providing the following information on an annual basis:

- Name of the PTC, and its directors;
- Name of the licensed trust company which is providing the registered office as required;
- Declaration that the PTC is in compliance with the requirements of the Private Trust Companies Regulations.

123. Pursuant to the 2013 amendments to the Private Trust Companies Regulations, there is a KYD 5 000 (USD 6 000) fine in place for

non-compliance with this annual requirement. The CIMA may cancel the registration of any PTC which files false, misleading or inaccurate information pursuant to regulation 4(3) of the PTC Regulations. No such cancellation of PTC registrations has occurred in the three year period under review. A PTC which is a Cayman company will also be subject to the obligations in respect of ownership and identity information imposed thereon (see paragraph 38).

124. Pursuant to the Private Trust Company (Amendment) Regulations 2013, Private Trust Companies shall have to maintain at their registered office an up to date copy of the trust deed or other document containing (regulation 3):

- Terms of the trust;
- Name and address of the trustee;
- Name and address of any contributor to the trust;
- Name and address of any beneficiary to whom a distribution is made from the trust; and
- Any deed or other document varying the terms of the trust.

125. The trust deed would contain the names of the beneficiaries in case they are named, and otherwise the class of beneficiaries or other purpose would be mentioned in the trust deed. It can therefore be concluded that PTCs are required to have information about the settlors, any subsequent contributors to the trust, the trustee and the beneficiaries. The Private Trust Company (Amendment) Regulations 2013 have also imposed sanctions in the event of non-compliance with the Private Trust Companies Regulations. A PTC that fails to comply with any of the Private Trust Companies Regulations, including information keeping requirements, may be subject to a fine of KYD 5 000 (USD 6 000) (regulation 7).

Service Providers carrying on a trust business

126. The carrying on of a trust business by an entity (other than an individual or a PTC) is a "relevant financial business" as defined in regulation 4(1) of the Money Laundering Regulations and subject to the obligations on such Service Providers relating to ownership and identity information as described at paragraph 88.

127. Specifically in respect to trusts, the Money Laundering Guidance Notes provide that particular care should be taken by trust business Service Providers

- to verify the identity of the settlor, including new settlors after the initial creation of the trust;

- to verify the source of settled assets, on an ongoing basis;
- in instances involving high risk indicators, such as a total change of beneficiaries, unexplained requests for anonymity; beneficiaries without apparent connection to the settlor, or unexplained urgency.

128. The Money Laundering Guidance Notes also recommends at paragraph 7.7 that where a trust business is providing registered office services to a PTC, that it should request a declaration or an update from the PTC on a semi-annual basis, to ensure the PTC complies with its obligation to maintain up to date copies of the trust deed and other trust related documents at the registered office.

Trust ownership and identity information required to be provided to government authorities

129. Ordinary trusts including STAR trusts are not subject to any registration requirements.

130. An exempted trust is required pursuant to s76 of the Trusts Law to lodge all documents recording the trust's powers and provisions with the Registrar of Trusts. There is no specific requirement that these documents identify the settlor, trustee or beneficiary of the trust. Changes to these documents are not required to be advised to the Registrar, however under s77 on request by the Registrar the trustee must furnish such accounts, minutes and information relating to the trust as the Registrar may require.

Trust ownership and identity information required to be held by the trust

131. There are no statutory obligations imposed in respect of ordinary trusts for any person such as the trustee to maintain any particular identity or ownership information relating to the trust including its settlors or beneficiaries. All trustees are subject to the common law requirements to have knowledge of all documents pertaining to the formation and management of a trust.

132. In practice, the Attorney-General of the Cayman Islands confirmed to the assessment team that English common law relating to trusts and the fiduciary duties of the trustee as applicable to trustees operating in the Cayman Islands is followed. Pursuant to English common law requirements, there are a number of duties that trustees must fulfil and in fulfilment of these duties, trustees must maintain ownership and identity information regarding the trust. Firstly, the trustee is obligated to administer the trust solely in the interests of the beneficiaries and therefore the beneficiaries will have to be made clearly identifiable in the trust deed. Secondly, the trustee

owes a duty to manage the trust in accordance with the instructions of the settlor, meaning that the settlor will also have to be clearly identifiable in the trust deed.

133. Pursuant to English common law, trustees have a duty to account to the beneficiaries and must be able to provide a beneficiary with information concerning the operation and transactions of the trust. Such information will extend to maintaining accounting information and other trust documents such as the trust deed and documents relating to transfers of property made by the settlor and all other documents required in order to ensure that the trustee's duty to the beneficiaries is carried out (see also section A.2 *Accounting Records*). This principle was applied by the Cayman Islands Court in *Re Lemos Trust Settlement* [1992-93 CILR]. The common law duty to account was further discussed in the judgements of *In the matter of the Ojjeh Trust* [1992-93 CILR 348] and *Lemos v Coutts & Co* [1992-93 CILR 460], where the Grand Court and Court of Appeal, respectively, recognised the trustees duty to account to beneficiaries and carefully considered what information would be made available in light of the circumstances of each case.

134. In practice, Cayman Islands' authorities have indicated, and feedback from peers has confirmed, that reliance on common law principles as applicable to trusts has not prevented effective exchange of information during the three-year review period. In the event of non-compliance with these duties by the trustee, beneficiaries have the right to enforce the trust (*Beswick v Beswick* [1968] AC 58). In the event of non-compliance of their duties, the settlor or beneficiaries can commence legal proceedings against the trustee. This should ensure that trustees are complying with their ongoing records keeping requirements although its effectiveness in ensuring the availability of information for EOI purposes in practice should be monitored by the Cayman Islands on an ongoing basis**.**

135. The common law rules relating to ordinary trusts are also applicable to STAR trusts to the extent that they are not altered by the STAR provisions of the Trusts Law. An important exception in this regard is that beneficiaries of a STAR trust cannot, as such, enforce the trust, nor do they have an enforceable right against a trustee or an enforcer, or an enforceable right to the trust property (s100(1) Trusts Law). In addition, the common law rules against perpetuities will not apply to a trust or power subject to the STAR regime, often making STAR trust more attractive as a long term investment mechanism.

136. In respect of STAR trusts, at least one trustee must be a body corporate with an office in the Islands which is either licensed to carry on a trust business (therefore subject to licensing and anti-money laundering obligations) or is a PTC. Under s105 of the Trusts Law, the trustee(s) of a STAR

trust must retain at the office in the Islands of the corporate trustee, a documentary record of the following information:

- The terms of the trust;
- Identity of the trustee(s) and enforcers;
- Identity of all settlors;
- Description of the property settled in the trust;
- Annual account of the trust property, including a record of all distributions of trust property.

137. The penalty under s105(5) for a STAR trustee who knowingly fails to keep such a record is a KYD 10 000 (USD 12 000) fine. However, s105(3) allows a Court to sanction non-compliance with this record requirement if the Court is satisfied that the execution of the trust will not be prejudiced. Whilst non-compliance with this obligation may be permitted by the Court in certain circumstances, Cayman Authorities have confirmed that to date there have been no reported incidences of a Court dispensing with this duty.

138. In respect of an exempted trust, there are no statutory obligations imposed for any person to retain any specific information in respect of the trust. However, upon request by the Registrar of Trusts a trustee of an exempted trust is required by s77 to furnish such information relating to the trust as the Registrar may from time to time require. A trustee who fails to comply with this requirement within 28 days may pursuant to s78 and on application by the Registrar, be removed as trustee on the order of a Court and subject to costs orders. By s80, the provision to the Registrar of knowingly false information may be sanctioned upon conviction by either or both a fine not exceeding KYD 1 000 (USD 1 200) and 3 months imprisonment.

Conclusion and practice

139. In practice, the availability of ownership and identity information in respect of trusts is generally ensured by reliance on a combination of AML and other statutory requirements. In addition, the common law also requires trust(ee)s to maintain certain ownership and identity information, although certain requirements are displaced in the case of STAR trusts. STAR trusts, which are a common form of trust found in the islands are subject to the STAR provisions of the Trusts Law which have comprehensive ownership requirements. One of the trustees of a STAR trust will always be a licensed service provider subject to AML obligations. Only exempted trusts are required to register with the government authorities, and must furnish certain information such as accounts, minutes and other information on request.

However, in practice this will only occur in limited circumstances, such as where a trust is due for strike-off.

140. A company which carries on a trust business is required to be licensed, and the monitoring of their information retention requirements is carried out by the CIMA (See also section A.1.1 *Availability of information* in practice). In practice, such companies will most commonly come under the Banking or Fiduciary Division of the CIMA which will monitor all licensed companies through a comprehensive program of desk top audits and onsite inspections. There are 20 officials employed in the banking area of the CIMA and ten within the Fiduciary Division who will monitor compliance by licensed entities such as companies carrying on a trust business in these respective sectors. In addition there are 12 officials in the Compliance Division of the CIMA who are solely dedicated to administering enforcement actions against non-compliant entities. The CIMA authorities confirmed that samples of identity information are taken and examined during the course of these onsite inspections to ensure that trusts are in compliance with identity keeping obligations.

141. PTCs are not required to obtain a license from the CIMA, but they are required to register with the CIMA. Pursuant to the Private Trust Companies Regulations PTCs must maintain all identity and ownership information concerning the trusts that they manage and in the case of non-compliance, PTCs will be subject to a monetary penalty. PTCs also remain subject to common law requirements to maintain such information. In practice, Cayman Authorities have indicated that PTCs are not widely used and they are mainly used by high net worth individuals and family trusts. As at September 2012, there were 77 PTCs registered in the Cayman Islands.

142. Any person that wishes to establish a business in the Cayman Islands must obtain a license from the Trade and Business Licensing Board or the CIMA, depending on the type of business they wish to conduct. The CIMA is the authority responsible for issuing licenses if such business is the provision of trust(ee) services. As the CIMA can only issue licenses for carrying on trust business to companies, no persons other than companies are currently licensed to provide trust(ee) services.

143. In the three year period under review, the Cayman Islands received three requests for information regarding beneficiaries of a trust. In all cases, the competent authority accessed this information by issuing a notice directly to the service provider. Feedback from peers confirms that all identity information concerning trusts was provided within 90 days.

Foundations (ToR A.1.5)

144. There are no legislative or common law principles which permit the establishment of foundations under Cayman Islands law. Similarly, there are no laws pursuant to which any person or entity in the Cayman Islands who is a founder, member or beneficiary of a foundation formed under the laws of another jurisdiction, is required, on the basis of that relationship, to retain any ownership or identity information relating to that foundation. Where the foundation is a client of a Service Provider, then the requirements on the retention of ownership and accounting information will apply.

Other Relevant Entities and Arrangements (ToR A1)

145. There are no other relevant entities and arrangements permitted to be formed under Cayman Islands' law.

Enforcement provisions to ensure availability of information (ToR A.1.6)

146. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information.

147. The enforcement provisions which address the key information obligations are set out below:

- A company that fails to keep a register of members is subject to a penalty of KYD 5 000 (USD 6 000).
- A Service Provider who contravenes the Money Laundering Regulations is liable on summary conviction to a fine not exceeding KYD 5 000 (USD 6 000) or, on indictable conviction to a fine, and imprisonment not exceeding 2 years.
- A limited partnership which fails to advise the Registrar of changes to the prescribed information within seven days will result in every partner thereafter being a general partner, as well as liability on each partner for a penalty of KYD 500 (USD 600) imposed, with a further KYD 50 (USD 60) per day in default.
- An exempted limited partnership that fails to advise the Registrar of changes to the prescribed information is liable to a penalty of KYD 200 USD 240) per day in default.
- An exempted limited partnership which fails to maintain a register of its general and limited partners will be liable to a penalty of KYD 10 000 (USD 12 000).

- A general partnership carrying on a business or trade subject to the Trade and Business Licensing Law(TBLL) which fails to maintain identity information of all the partners or a business address in the Islands will be subject to a penalty of KYD 5 000 (USD 6 000) or imprisonment for up to one year (s. 26(c) TBLL).
- A STAR trustee that fails to keep a record of the prescribed information relating to the trust (including identity of the trust enforcers, settlors and an annual account of the trust distributions) is liable to a fine of KYD 10 000 (USD 12 000). However, non-compliance with this obligation may be permitted by the Court in certain circumstances.

Enforcement in practice

148. In practice, the monitoring and review of information is largely carried out by the CIMA, which has a supervisory role for regulated entities. The monitoring and review of information provided at registration is presided over by the Registrar, which has almost 50 staff available for dealing with registration and monitoring of obligations. The monitoring of obligations and enforcement of sanctions for non-compliance for each entity is outlined as follows.

Monitoring of Companies and enforcement of penalties in practice

149. As outlined above, all companies are required to register either directly or indirectly (via a company agent or service provider) with the Companies Registrar. The Registrar actively monitors whether companies file their annual returns and other information that has to be furnished to the Registrar, such as changes in the list of directors or registered office. Penalties are imposed when in breach of any obligations under the Companies Law, which are either set a fixed amount or calculated per day in default. Where fines are calculated per day in default, it is within the power of the Registrar to limit the *per diem* fine to KYD 500 (USD 600). When such penalties reach 100% of the annual registration fee (which varies from KYD 700 to KYD 3800 (USD 840 to USD 4 560) approximately), the company or partnership is listed in the gazette for strike-off. If the company then does not fulfil its obligations within 30 days, it will be struck off from the Register. All entities that are struck off have ten years during which they can apply to the court to be reinstated. During the financial year 2009 there were 1914 companies struck from the register for non-compliance with their obligations. Similarly, in 2010 there were 2942 and in 2011 610 companies struck from the register.

150. The Registrar is also responsible for monitoring the obligation on all Cayman companies to keep a register of members. In respect of ordinary and

non-resident companies, the list of members must be attached to the annual return which is provided to the Registrar, and the monitoring regime as described above applies. For exempted companies (74 693 out of the 89 483 companies registered) the register of members is not a document that has to be provided to the Registrar, and no active monitoring, such as in the form of inspections, is carried out by the Registrar to reveal non-compliance with this obligation. Whilst the Companies (Amendment) Law, 2013 has increased the fine for default of this obligation from KYD 25 (USD 30) per day in default to a fixed amount of KYD 5 000 (USD 6 000), such fines are untested in practice. The Cayman Authorities should closely monitor compliance with the obligation to keep a register of members, including the effect of the new amendments, and ensure that in cases of non-compliance fines are being applied.

151. All companies must make the register of members available in either paper or electronic format if required pursuant to the service of a notice by the CITIA. Should a company fail to comply with this requirement without reasonable excuse, a penalty of KYD 500 (USD 600) and a further penalty of KYD 100 (USD 120) per day in default shall be imposed (section 44(1) and (4)). Pursuant to section 199 of the Companies Law, where failure to comply with such an obligations is deemed not to be due to wilful default, the Registrar may limit the *per diem* fine to KYD 500 (USD 600).

152. Although active monitoring and enforcement is not carried out by the Registrar with respect to the obligation to keep a register of members by exempted companies, these companies must engage a licensed service provider in the Cayman Islands, which is subject to supervision by the CIMA as described under A.1.2 and below. In addition, it is noted that in all 29 requests where ownership information on companies was requested, this information was available.

Monitoring of Bearer shares and enforcement of penalties in practice

153. Since April 2001, bearer shares must always be in the hands of either an authorised or a recognised custodian. An owner of a bearer share who transfers ownership of this share without engaging a custodian, is liable on summary conviction to a fine of KYD 10 000 (USD 12 000), and any such transfer shall be ineffective until the custodian has granted its approval (ss229(12) and 229(4) Companies Law). In addition, an authorised custodian who transfers a bearer share into the custody of any person other than another custodian (or the company in certain circumstances) is liable on summary conviction to a fine of KYD 50 000 (USD 60 000) (s229(11). Although these fines have not needed to be applied in practice, the amount appears to be sufficiently dissuasive to ensure that bearer shares are maintained by a custodian and are dealt with in the manner prescribed. As recognised custodians are

located outside the Cayman Islands, no penalties apply under the Companies Law for recognised custodians who do not adhere to their information keeping obligations.

154. The holding of bearer shares by authorised and recognised custodians is permitted by the Companies Law. Authorised custodians operate from within the Cayman Islands and are Banking and Fiduciary licensees of the CIMA and are subject to the CIMA's ongoing monitoring program. In respect of recognised custodians, these must be approved by the CIMA and operate in a jurisdiction specified in the Third Schedule of the MLRs. Whilst no direct monitoring is carried out by the CIMA of a recognised custodian, all recognised custodians are major financial institutions/clearing houses and are subject to supervision in the jurisdiction in which they operate, namely the US, UK, Canada, France, Spain, Sweden, Italy, Belgium and Luxembourg (see paragraph 64) which are subject to regulation and supervision in the jurisdictions where they are located. Where a recognised custodian does not make available ownership information, the CIMA may withdraw their approval of that recognised custodian, but in practice this measure does not guarantee that the information can be made available within Cayman's jurisdiction.

155. In addition to the penalties under the Companies Law applicable to owners of bearer shares and authorised custodians, the Registrar has to be notified of all issues of bearer shares by companies in their annual returns, specifying that these are held by a custodian. The Registrar confirmed that there has been no such notification of bearer shares having been issued since 2001.

Monitoring of Partnerships and enforcement of penalties in practice

156. In respect of general partnerships licensed to do business in the Cayman Islands, the penalty of KYD 5 000 (USD 6 000) or imprisonment for a maximum of one year for not maintaining identity information on all partners appears to be dissuasive enough to ensure compliance. However, the incidence of this fine being applied in practice is unknown as no specific statistics are being kept by the Trade and Business Licensing Board regarding compliance with this obligation.

157. Limited partnerships and exempted limited partnerships must be registered with the Registrar. Limited partnerships must provide (updated) details of their partners to the Registrar, and the monetary penalties that apply in case of non-compliance in combination with the limited partners being regarded as general partners (and thus jointly liable for all debts and obligations of the partnership), appear to be dissuasive enough to ensure compliance. In respect of exempted limited partnerships the register of partners

does not have to be provided to the Registrar, and no active monitoring, such as in the form of inspections, is carried out by the Registrar to reveal non-compliance with this obligation. Whilst the Exempted Limited Partnership (Amendment) Law, 2013 increased the penalty for non-compliance from KYD 25 (USD 30) per day in default to a fixed amount of KYD 10 000 (USD 12 000), such fines are untested in practice. The Cayman Authorities should closely monitor compliance with the obligation to keep a register of partners, including the effect of the new amendments, and ensure that in cases of non-compliance fines are being applied.

158. In cases where the register is not kept at the registered office of the exempted limited partnership, the Exempted Limited Partnership (Amendment) Law, 2013 imposes an obligation to make the register available at its registered office, upon services of an order or notice by CITIA. In the event of non-compliance with this obligation a fine of KYD 500 (USD 600) shall be imposed and an additional KYD 100 (USD 120) per day in default of this obligation.

159. Although active monitoring and enforcement is not carried out by the Registrar with respect to the obligation to keep a register of partners by exempted limited partnerships, these partnerships must engage a licensed service provider in the Cayman Islands, which is subject to supervision by the CIMA as described under A.1.2 and below. In addition, it is noted that in all five cases where ownership information on partnerships was requested, this information was available.

Monitoring of Trusts and enforcement of penalties in practice

160. In respect of the 1 865 exempted trusts registered in the Cayman Islands, no identity information has to be registered with the Registrar, nor is there a specific obligation (other than the common law obligations) that identity information must be kept. Where the trustee of an exempted trust is a licensed service provider, it will be subject to licensing and AML obligations.

161. A company which carries on a trust business must be licensed by the CIMA and is subject to requirements to provide the information as outlined when applying for a licence as well as AML requirements. Failure to provide information to the CIMA under the licensing regime permits them to revoke the licence, impose conditions on the licence, require substitution of any director or officer of the licensee or appoint a person to advise the licensee on the proper conduct of its affairs (section 18 Banks and Trust Companies Law). In addition, the licensee may be liable to a fine of KYD 10 000 (USD 12 000) or to imprisonment for one year (s. 24 Banks and Trust Companies Law). In respect of non-compliance with AML requirements, the monitoring regime as described below on licensed entities in general applies.

162. The Private Trust Company (Amendment) Regulations, 2013 impose obligations under section 3(2) of the PTC Regulations on PTCs to maintain information on the settlors, trustees and those beneficiaries to whom a distribution is made from the trust for which they act. The CIMA has the power to cancel the registration of any PTC which files false, misleading or inaccurate information pursuant to regulation 4(3) of the PTC Regulations. No such cancellation of PTC registrations has occurred in the three year period under review. The Private Trust Company (Amendment) Regulations, 2013 also impose a fine of KYD 5 000 (USD 6 000) under regulation 7 of the PTC Regulations on PTCs that contravene any of the regulations such as failure to maintain the specified information in respect of each trust or non-compliance with the requirement to file an annual declaration.

163. Individuals acting as a trustee in a non-professional capacity do not need a license and are not subject to monitoring by the CIMA. However, they will be subject to the obligations as set out under common law to keep identity information. Cases where an individual will act as a trustee in a non-professional capacity are likely to predominantly be domestic executors and administrators of wills and as such they will be expected to know the identity of the persons for whom they act. Nevertheless, the Cayman Islands should monitor whether identity information on trusts is available where an individual acts as a trustee.

164. Trustees of STAR trusts must keep certain identity information on the trusts they manage, and they are liable to a fine of KYD 10 000 (USD 12 000) in case of non-compliance. At least one trustee of a STAR trust must be a licensed service provider subject to licensing and AML obligations. STAR trusts themselves are not subject to registration nor specific oversight by a government agency. However, the obligation to maintain certain ownership and identity information will be monitored indirectly as at least one trustee is a licensed service provider.

165. Over the three year review period, there have been three EOI requests concerning identity information in respect of trusts. EOI partners have confirmed that this information has generally been made available within 90 days.

Monitoring of Licensed entities and enforcement of penalties in practice

166. Entities subject to licensing requirements, including company service providers, are subject to regular onsite inspections by the CIMA. The onsite inspections regularly carried out by the CIMA encompass checking compliance with both licensing and AML obligations. The selection of entities that will be subject to inspection is based on an initial risk assessment of all

licensed entities and the core considerations include factors such as reputational risk, customer profile and the controls they have in place to ensure compliance with AML obligations.

167. In the previous three financial years 48 onsite inspections were undertaken for the fiduciary sector, 99 onsite inspections were carried out in respect of the insurance sector and 58 onsite inspections were carried out in respect of the mutual funds and securities sector. Samples of ownership and identity information are taken and examined during the course of these onsite inspections to ensure that entities are in compliance with information keeping obligations under AML law. Across the onsite inspections, the CIMA has indicated that compliance, including with obligations as set out under the AML regime, is high. Fines are fixed at a sufficiently high level in the event of non-compliance with the obligation on the service provider to identify their clients, as set out under the AML regulations and the CIMA has indicated that in practice there is as yet no case where this penalty had to be enforced. During the three year period under review the CIMA has taken 32 formal enforcement actions in relation to other compliance offences by licensed entities.

Conclusion

168. A combination of enforcement measures are in force in the Cayman Islands to ensure the availability of ownership and identity information in respect of companies, partnerships and trusts. In particular, recent legislative amendments have ensured that in the case of exempted companies and exempted limited partnerships, which are the most common forms of companies and partnerships in the Cayman Islands, fines for non-compliance are now fixed at an appropriate level. However, the Registrar has not yet exercised monitoring and investigatory powers to check compliance with the obligations on companies and partnerships to keep up-to-date ownership information. Nevertheless, in all 34 cases where it was requested, ownership information on companies and partnerships has been made available.

169. The CIMA supervises all licensed entities, which includes the licensed service providers as engaged by most companies, partnerships and trusts. This supervision includes compliance with AML obligations. An active monitoring and enforcement program is in place, with regular onsite inspections being carried out and enforcement actions being taken. Although the licensed entities are generally found to be compliant with AML obligations, this does not cover the obligation on companies and partnerships to keep full ownership information. As the Registrar also does not actively monitor these obligations and the fines have only recently been increased, it is recommended that the Cayman Islands ensure that a regular system is in place of monitoring whether companies and partnerships keep up-to-date ownership information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Largely Compliant.	
Factors underlying recommendations	**Recommendations**
In practice, bearer shares may be held by recognised custodians operating outside of the Cayman Islands. In such cases ownership information on those bearer shares may not always be available in the Cayman Islands. Furthermore, enforcement of penalties for non-compliance with these obligations may not be possible for those custodians located outside of the Cayman Islands.	The Cayman Islands should ensure that information on the owners of bearer shares is made fully available within the Cayman Islands in all cases.
The Registrar does not have a regular system of monitoring of compliance with ownership and identity information keeping requirements in respect of companies and partnerships, and whilst legislative amendments have increased penalties for non-compliance, these are untested in practice.	The Cayman Islands should ensure that its monitoring and enforcement powers are sufficiently exercised in practice to support the legal requirements which ensure the availability of ownership and identity information in all cases.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

General requirements (ToR A.2.1), Underlying documentation (ToR A.2.2) and the 5-year retention standard (ToR A.2.3)

Company accounting records

170. Pursuant to section 59, all relevant accounting records are required to be kept by all companies formed and registered under the Companies Law. The law also explicitly includes underlying documentation including contracts and invoices (sub-section 59(2)), and there is also a clear

requirement that these accounting records are to be kept for a minimum 5 year period (sub-section 59(3)). A penalty of KY 5 000 for wilful or knowing non-compliance by the company with these accounting record obligations is stipulated (sub-section 59(4)), complemented by a penalty for other (e.g. negligent) non-compliance under s77 of the Companies Law. Pursuant to the changes affected by the Companies (Amendment) Law, 2013, section 59 of the Companies Law imposes obligations on the company to make all accounting records available at its registered office, upon service of an order or notice by CITIA. In the event of non-compliance with such a notice, a penalty of KYD 500 (USD 600) and a further penalty of KYD 100 (USD 120) per day in default shall be imposed.

Partnership accounting records

171. As discussed above (see A.1.2) under Cayman Islands Law, three types of partnerships may be created: the general and limited partnerships (both types subject to the Partnership Law, as applicable), and also exempted limited partnerships (ELPs).

172. The Partnership Law specifies the accounting record requirements applicable to general and limited partnerships. Pursuant to section 28, a partner, other than a general partnership is required to keep:

> "(2) proper books of account including, where applicable, material underlying documentation including contracts and invoices, with respect to –
>
> (a) all sums of money received and expended by the partnership and matters in respect of which the receipt of expenditure takes place;
>
> (b) all sales and purchases of goods by the partnership; and
>
> (c) the assets and liabilities of the partnership.
>
> (3) For the purposes of subsection (2), proper books of account shall not be deemed to be kept if there are not kept such books as are necessary to give a true and fair view of the business and financial condition of the partnership and to explain its transactions."

173. Sub-section (4) requires that these records must be kept for a minimum 5 year period, whilst sub-section (5) imposes a penalty on the partner in cases of wilful or knowing non-compliance, of KYD 5 000 (USD 6 000).

174. The Exempted Limited Partnership Law outlines the accounting record requirements which apply to ELPs. Section 12 of the Law imposes on

the general partner of the ELP the same accounting record requirements and sanctions for non-compliance as described above in respect of general and limited partnerships. Pursuant to the Partnership (Amendment) Law, 2013 and the Exempted Limited Partnership (Amendment) Law, obligations are now imposed on partnerships to make their accounting records available, at their registered office, upon services of an order or notice by CITIA. In the event of non-compliance with this obligation a fine of KYD 500 (USD 600) shall be imposed and a further KYD 100 (USD 120) per day in default of this obligation.

Trust accounting records:

175. Under Cayman Islands law, ordinary, exempted and STAR trusts are all recognised forms of trust, and are subject to requirements described in the Trusts Law.

176. The trustees of ordinary, exempted and STAR trusts will be subject to the requirements outlined under s27A, which says:

> 27A. (1) A trustee shall keep or cause to be kept accurate accounts and records (including underlying documentation) of the trustee's trusteeship appropriate to the trust and trust property.

177. Further, sub-sections 27A(2) and 27A(3) require that those records be kept for a minimum 5 year period, and any knowing or wilful contravention by a trustee is liable for a penalty of KYD 5 000 (USD 6 000).

178. This is in addition to the specific accounting requirements, and related sanctions, applicable to trustees of STAR trusts who are required under s105 of the Trusts Law to maintain in the Cayman Islands for an unspecified period, a documentary record of "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". The penalty under s105(5) for a STAR trustee who knowingly fails to keep such a record is a KYD 10 000 (USD 12 000) fine, however under s105(3) a Court may sanction non-compliance with these requirements if it is satisfied that the execution of the trust will not be prejudiced.

179. Moreover, trustees will be subject to the common law requirements on trustees, which include a fiduciary duty to the beneficiaries to keep proper records and accounts of their trusteeship. The Cayman Authorities confirmed that the common law requirements are those principles as set out under English common law. It is a well established principle of English common law that it is the "duty of a trustee to keep clear and distinct accounts of the

property he administers and to be constantly ready with his accounts".[4] Such accounts should be open for inspection at all times by the beneficiary and should trustees default in rendering such accounts, the beneficiary is entitled to have the accounts seized by the court. In such instances trustees would be held liable for paying the costs of such an order and in certain cases may also be removed. Furthermore where trustees are found guilty of active breaches of trust or wilful default or omission, they may be held personally liable for any loss.[5] The Cayman Islands law being based heavily upon English law mean these principles of English common law apply equally to any trustees of a trust governed by Cayman Islands and these principles have been readily followed in a number of cases in the Cayman Islands (see section A.1.4 *Trust ownership and identity information required to be held by the trust*).

Accounting records required to be kept by licensed entities

180. Licensing requirements are imposed on certain industries in the Islands (banking, fiduciary, insurance, and investment and securities businesses) as explained at paragraph 70. In addition to identity and ownership information requirements, the licensing conditions also impose additional obligations on licensees in respect of accounting records. Licensing laws are supplemented by regulations and rules as well as guidance found in texts issued by the CIMA such as Statements of Principles and Guidance. Whilst some obligations in respect of accounting information vary according to the licence types, there are some general themes and obligations which are set out below.

181. At least every two years, licensees are required to provide a compliance certificate signed by the licensee or a director of a corporate licensee, stating that they have complied with the relevant licensing laws. A person who knowingly signs a compliance certificate containing false information may be liable for penalties including a fine of KYD 5 000 (USD 6 000) and licence revocation. A licensee must also provide an auditor's certificate confirming that the licensee has "adequate procedures" in place to ensure compliance with any applicable Code of Practice. There is no penalty for failure to provide an auditor's certificate.

182. In addition, licensees that provide more complex services such as company management services are subject to additional requirements, as well as additional penalties, including an obligation to provide annual audited

4. The Trustee must allow a beneficiary to inspect the trust accounts and all documents relating to the trust. See *Halsburys Laws of England* Vol. 48, 4th Edition, para 961 and 962.
5. *Lewin on Trusts* 17th Edition, p. 627, 1198 and 1199.

accounts to the CIMA. Such accounts will be in respect of their own business transactions only and generally not for those companies that they manage.

Accounting records required to be kept by Service Providers

183. Regulation 12 of the Money Laundering Regulations requires that Service Providers must retain a record of any "relevant" account files and business correspondence, as well as "details" relating to all transactions. Whilst significant, it is not clear in all cases that the "relevant" account files and business correspondence which are referred to in regulation 12, are the same as those that must be maintained under the standard set out in A2.1 and A2.2 of the Terms of Reference.

184. An indication of the type of account information which is considered relevant for these purposes is set out in Section 7 of the Money Laundering Guidance Notes. This includes:

> all necessary records on transactions to be able to comply swiftly with information requests from the competent authorities. Such records should be sufficient to permit the reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. Financial Service Providers should also keep records of identification data obtained through the customer due diligence process, account files and business correspondence…. This includes records pertaining to enquiries about complex, unusual large transactions, and unusual patters of transactions.

185. Regulation 12(2) of the Money Laundering Regulations provides that accounting records be retained for a minimum period of 5 years from the date on which the relevant business or transaction was concluded. There is no requirement to keep these records within the Islands.

Availability of accounting information in practice

186. Penalties for non-compliance with accounting record keeping obligations are generally set at KYD 5 000 (USD 6 000), which appears to be dissuasive enough to ensure compliance in most cases. In practice, the Registrar is responsible for enforcing accounting record keeping obligations as outlined above under the Companies Law, Partnerships Law and Exempted Partnerships Law. No accounting information is required to be submitted by any entity to the Registrar. There is also no requirement for service providers to maintain accounting information for entities for which they act, except where the service provider is involved in a particular transaction. The Registrar has indicated that no ongoing monitoring and inspections are undertaken to ensure accounting

records are maintained. Therefore, enforcement of these obligations will generally only occur in practice when the Registrar has been notified of an issue relating to an entity such as the entity being listed to be struck off the register and further investigations have to be carried out.

187. The CIMA is responsible for ensuring that accounting information is maintained by regulated entities. This is done during the course of their comprehensive onsite inspection program. In practice the CIMA has indicated that such records are usually found to be kept in accordance with the obligations as set out under law. However, regulated entities only represent a small subset of all entities (approximately 12 500 (mainly being mutual funds) out of a total of over 100 000 entities and an unknown number of trusts) operating within the Cayman Islands.

188. Over the three year period under review, 27 requests concerning accounting information were sent by information exchange partners. The types of accounting information requested include information on books of account, annual returns, statements of solvency, and financial statements. Generally, this information was provided within 90 days. Cayman Islands authorities have confirmed that in all cases this information was obtained directly from the entity by issue of a notice. In one case it took longer than 90 days, and this was largely due to the requested accounting information being held outside the Cayman Islands and therefore a longer timeframe was required to provide this information. As there is no obligation for entities to maintain accounting information in the Islands, where accounting information is held outside the Cayman Islands this may cause delays in practice in responding to EOI requests and thus the Cayman Islands should monitor that no undue delays occur in the provision of such information. Recent legislative amendments to the Companies, Partnerships and Exempted Partnerships Laws now impose an obligation for these entities to make accounting records available at their registered office in the Cayman Islands when served with a Notice to produce such information from the CITIA. Although this creates an explicit obligation to bring the accounting records to the Islands when so requested, delays may still arise in bringing the records to the registered office, and the Cayman Authorities should continue to monitor its effectiveness in practice.

189. In one case, not all of the requested accounting information could be provided. At the time, the CITIA advised the EOI partner of the possible location of such information within another jurisdiction. Such accounting information was not provided as there was no comprehensive obligation to keep such information for 5 years during the period relevant to the request. This deficiency has since been rectified by the 2011 legislative amendments relating to accounting records. However, Cayman Islands authorities should continue to closely monitor the accounting information obligations.

Conclusion

190. All relevant entities and arrangements are subject to obligations under the respective governing laws to keep reliable accounting records, including underlying documentation for a period of at least five years. However, except for those entities that are subject to licensing with the CIMA, no system of monitoring of compliance with accounting record keeping requirements is in place, which may cause the legal obligations to keep accounting records to be difficult to enforce. This is of particular concern as there is no obligation for entities to maintain accounting information in the Islands. It is therefore recommended that the Cayman Islands sufficiently exercise their monitoring and enforcement powers to support the legal requirements which ensure the availability of accounting information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Largely Compliant.	
Factors underlying recommendations	**Recommendations**
Except for those entities that are subject to licensing with the CIMA, no system of monitoring of compliance with accounting record keeping requirements is in place, which may cause the legal obligations to keep accounting records to be difficult to enforce.	The Cayman Islands should ensure that its monitoring and enforcement powers are sufficiently exercised in practice to support the legal requirements which ensure the availability of accounting information in all cases.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

191. The Caymans Islands financial sector comprises a highly diverse banking population from over 44 countries, with the majority being branches or subsidiaries of established international financial institutions conducting business in international markets. Banking licenses fall into two categories: Category A licences, which permit full domestic and offshore banking, and Category B licences, which only permit banking with non-resident customers

subject to certain restrictions. As of September 2012, there were 15 Category A banks and 218 Category B banks operating in the Cayman Islands.

192. Persons carrying on banking businesses are subject to both licensing requirements as well as the obligations imposed on Service Providers. The relevant general identity and account information obligations imposed on Service Providers are detailed at paragraphs 88 and 180 whilst the general obligations on licensed entities are described at paragraphs 70 and 177. The specific guidance imposed on banking businesses pursuant to Money Laundering Regulations are explained below.

Service Providers carrying on banking business

193. The carrying on of a banking business is a "relevant financial business" as defined in regulation 4(1) of the Money Laundering Regulations. In addition to the description of "relevant" account files and business records that must be kept by all Service Providers found in section 7 of the Money Laundering Guidance Notes, section 8 gives specific guidance in respect of persons conducting banking businesses. This includes particular recommendations on the identity verification requirements depending on the legal form of the client; the appropriate circumstances for relying on identity information provided by a third party; the use of enhanced due diligence in certain instances; and the verification requirements in respect of particular transactions.

Sanctions for non-compliance

194. As banks will be subject to the Money Laundering Regulations, the penalties for contravention of these rules including record keeping requirements as outlined above for service providers will be applicable. The penalties of either a fine of up to KYD 5 000 (USD 6 000) or a fine and imprisonment for two years appear dissuasive enough to promote effective compliance in practice.

Availability of banking information in practice

195. The legal obligations in place to maintain banking information both pursuant to the licensing requirements under the BTC Law as well as those obligations imposed on Service Providers under the MLR ensure that banking information is made available when requested. Furthermore, the Banking Division of the CIMA carries out a supervisory function, the review and analysis of regular financial statements and meetings with management, as well as an on-site inspection program which is stipulated in their Regulatory Handbook and is based on the Basel Core Principles for Effective Banking Supervision.

196. The Banking Division of the CIMA, comprising of 20 employees has a comprehensive inspection program in place. After reviewing elements such as the bank's customers, potential market risk and the controls they have in place to monitor suspicious transactions, banks are then either viewed as being of higher or lower risk and the onsite program initially focuses on higher risk banks. Over the past 3 years the Banking Division of the CIMA conducted 138 onsite inspections and aims to conduct a total of 50 inspections every year. A little over half of these onsite inspections are undertaken of banks with physical presence in the Cayman Islands, with the remainder conducted overseas at the head offices of Category B banks that may not have a physical presence in the Islands.

197. Banks without a physical presence in the Cayman Islands are branches and subsidiaries of foreign licensed banks who are not legally required to have a physical presence in the Islands and in most cases they are being managed from their banking head office outside of the Cayman Islands. In these cases, as all books and records and mind and management are maintained at the Head Office, the CIMA regularly conducts onsite inspections in foreign jurisdictions. In addition, these Banks also appoint a Category "A" Bank with a physical presence on the Islands to be its Authorised Agent and Principal Office in accordance with Section 6(2) of the Banks and Trust Companies Law.

198. On receiving an information exchange request relating to banking information the competent authority will go directly to the entity to retrieve this information. In practice, when the competent authority has directly approached banking entities for information, it has been made available. Over the three year period under review there were 17 requests made for banking information. In all cases this information was retrieved by the competent authority directly from the entity. Generally this information was made available within 90 days. In one or two cases, delays were incurred due to banking information not been held in the islands and instead being held at the overseas headquarters. However status updates on this information were provided to the requesting jurisdiction and the information requested was made available to the requesting jurisdiction within 180 days.

199. In practice, where banks operating within the Islands have no physical presence on the Islands ongoing monitoring of these obligations and enforcement for non-compliance may be more difficult. The Cayman Islands should continue to monitor that no undue delays occur in the provision of banking information when such information is kept overseas.

Conclusion

200. The combination of the AML legislation as well as the regulatory regime for licensed banks and other financial institutions ensures that all records pertaining to accounts as well as related financial and transactional information are available. These obligations result in the Cayman Islands being able to provide banking information to its exchange of information partners when requested. In respect of banks without a physical presence in the Cayman Islands, the authorities should continue to monitor that no undue delays occur in the provision of banking information when such information is kept overseas.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

B. Access to Information

Overview

201. A variety of information may be needed in respect of the administration and enforcement of relevant tax laws and jurisdictions should have the authority to access all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities. This section of the report examines whether the Cayman Islands' legal and regulatory framework gives to the authorities access powers that cover the right types of persons and information, and whether the rights and safeguards that are in place would be compatible with effective exchange of information.

202. The Cayman Islands' competent authority has a broad power to obtain relevant information from any person who holds the information. This power is exercised by issue of a notice requesting the production of the information, where non-compliance can be sanctioned with significant penalties. The competent authority also has the power to search premises and seize information and to obtain sworn testimony, with the oversight of a Court.

203. Existing secrecy provisions in Cayman law are excluded from effect where information is sought in respect of an EOI request. The limited notification right which is afforded to an individual who is the subject of a request, is balanced with appropriate exceptions to ensure that it does not unduly prevent or delay exchange of information.

204. In practice, the Cayman Islands Tax Information Authority has to obtain the information requested by their information exchange partners from other government agencies and third parties, as it has no information databases of its own. Direct access to the database of the Registrar facilitates the collection of information, but in the vast majority of the cases a notice to produce information must be issued. This notice is usually served on a service provider or financial institution, as they are often in the possession of the relevant information or are in a position to gather this information from

the entities. Information is generally produced within the 21 day timeframe given by the authorities. No major delays have been experienced to date; although in a few cases information was held outside the Cayman Islands, the information was still obtained in time to be provided to the requesting party within 180 days.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

205. The Cayman Islands Tax Information Authority (CITIA) is the designated competent authority under the Islands' information exchange agreements. This agency is established under the Tax Information Authority Law, and is dedicated to provide international assistance in tax matters. As the Cayman Islands does not currently have an income tax system, the CITIA operates independently and has its own set of powers to obtain and exchange information, as set out below.

Ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2)

206. The powers of the CITIA to obtain relevant information to respond to an EOI request are consistent regardless from whom the information is to be obtained, for example from a government authority, bank, company, trustee, or individual; or whether the information to be obtained is ownership, identity, bank or accounting information. There is also no variation of the powers between instances where the information is required to be kept by a person pursuant to a law, or not.

207. The CITIA has a broad power pursuant to s5 of the Tax Information Authority Law (2009 Revision) (TIA Law) to "do all things necessary or convenient to be done for or in connection with the performance of its functions", where its functions include executing EOI requests. Where the requested information is not already in the possession of the CITIA the information can be required to be produced by issuance of a notice under the process set out below.

Use of information gathering measures absent domestic tax interest (ToR B.1.3)

208. The information gathering powers of the CITIA are not subject to the Cayman Islands requiring such information for its own tax purposes. This is ensured by the incorporation of EOI agreements into the law of the Islands under s3(3) of the TIA Law, rather than by a separate specific domestic provision.

Enforcement provisions to compel production and access to information (ToR B.1.4)

209. As concerns the CITIA's power to access information, there is no distinction between instances where the information is required to be kept by a person pursuant to a law, or not. A notice issued pursuant to s8(4)(b) of the TIA Law requires the holder of relevant information to produce the information sought which the CITIA may copy or take an extract from. "Information" is broadly defined in s2 of the TIA Law to mean "any fact, statement, document or record in whatever form", and specifically includes beneficial ownership information, information held by financial institutions, agents and fiduciaries.

210. In instances where the information is required by the requesting party for proceedings or "related investigations" (being investigations consequential to the proceedings, rather than the investigatory stage of a matter), the CITIA must first apply under s8(4)(a) to a judge for an order to require the production of such information. In such an event, the judge must consider, amongst other things, whether the information is expected to be under possession or control of a person in the Islands, and whether there are reasonable grounds for not granting the request (ss8(7) and 8(9)). As these are all issues which the CITIA would normally already consider themselves, this procedure is designed to act as an additional safeguard and would make it less likely that the person who is served the order will not produce the information, as the procedure has already been reviewed by a judge. All EOI requests to date have been required by the requesting party for the investigatory stage of a matter rather than proceedings or "related investigations". Therefore s8(4)(a) has not yet been utilised to order the production of information. The Cayman Islands foreshadows that the timeframe for such an application to a judge which is heard ex-parte, would be 4-6 weeks. The person who is served the order would then normally have 14 days to produce the information (s8(8)).

Gathering information in practice

211. Each information exchange request received by the competent authority is assigned to one of three officials full time employed within the CITIA who is then responsible for ensuring this information is retrieved and for overall monitoring of the process. For the purpose of responding to an information exchange request, the CITIA official will first check to see if such information is held by another government agency such as the Registrar of Companies, the Registrar of Lands, the Cayman Islands Monetary Authority and the Department of Immigration. The CITIA has secure access to the Registrar of Companies online CORIS database system containing all information on the registers. This allows the CITIA instant access to such information, which is often used to verify the name and registered address of a person in the Cayman Islands that is relevant to the request (such as the holder of the information).

212. Where further information is required from the Registrars, or the information required by the CITIA is held by another government agency, an informal enquiry by the CITIA for the production of the information is the normal accepted practice. The CITIA has the power to serve a formal notice to produce Information (s. 8(4)(b) TIA Law) but in practice this is not necessary for an intergovernmental agency. Whilst to date there has not been a need for formal inter-agency agreements, this is currently being contemplated in the interest of standardising inter-agency cooperation in the area of exchange of information. In two cases over the period under review, the Cayman Islands authorities obtained all information for an EOI request directly from another government agency. In practice, government agencies always comply with requests to produce information as transmitted via informal communication between the CITIA and the relevant agencies.

213. In the vast majority of cases, the requested information has been found to be in the hands of a third party. In these cases, the CITIA issues a notice to produce information pursuant to s. 8 of the TIA Law giving the holder of the relevant information a specified time within which to produce the information. This notice procedure applies whatever the type of information requested and whoever is expected to hold the information. As most entities and arrangements in the Cayman Islands use one or more service providers, and relevant information is often kept by these service providers, most notices so far have been issued to a service provider. Even in cases where the notice has been served to the entity or arrangement itself, the registered office of such entity or arrangement is often also the address of a service provider, which will forward the notice to the entity or arrangement.

214. The time given to the person who is served a notice is usually 21 days, and this deadline is strictly monitored via internal CITIA procedures and checklists. In certain cases, where just cause is shown, the CITIA may,

at its discretion, grant extensions to the 21 day period. In making the decision whether or not to grant an extension, the CITIA will consider the reasons for requesting the extension, the urgency of the request and any other factors particular to the case that may be relevant. Depending on the circumstances, the CITIA may also consult with the requesting competent authority before granting an extension of time, where for example the case is urgent. If an extension is given, the standard extension time is usually seven days and in exceptional cases an extension of fourteen days may be granted. The CITIA has confirmed that in approximately 10% of cases an extension has been requested. So far, an extension has been granted in all cases where this has been requested, and in no case have these extensions caused information to be produced to a requesting party beyond 180 days.

Banking information

215. When an EOI request is received for banking information a notice will be served on the financial institution to produce the information within a timeline of 21 days. As outlined above (See further details in section A.3.1 *Banking Information*), although banks are permitted to operate in the Cayman Islands with no physical presence, these banks require to be licensed by the CIMA and are subject to regulatory obligations under the Banks and Trust Companies Law. Whilst there is the potential for this to affect response times, the CITIA has indicated one instance where the information was located in the jurisdiction of the parent bank causing some delay. However, the information was still provided to the requesting jurisdiction within 180 days. Furthermore, peer inputs confirm that banking information has been made available in all incidences where requested.

Accounting information

216. As detailed accounting information is not maintained by any government agency, requests for accounting information will usually be made via a notice served on the perceived holder of the information, which will usually be the entity or arrangement itself and not a service provider. Cayman Islands exchange of information partners reported that they regularly request accounting information and that this has generally been provided in practice. Prior to the 2011 legislative amendments which brought in comprehensive accounting information keeping obligations in respect of all entities, there was one EOI request which could not be completed due to the accounting information not being available within the Cayman Islands. Although the legislative amendments should ensure that the Cayman Islands is in a position to provide all accounting information for future EOI requests, the Cayman Islands should continue to monitor the effectiveness of these obligations in respect of being able to access accounting information in respect of all entities.

Compulsory powers

217. A failure to produce information pursuant to a notice permits the CITIA to apply (ex parte) to the Grand Court for a warrant to enter premises to search and seize the information sought under s24(3). In considering such an application, the Grand Court must be satisfied of certain matters, including in particular whether the request will be seriously prejudiced unless immediate access to the information can be secured.

218. Where a person served with a notice to produce information fails to comply, then upon conviction they will be liable pursuant to s24(1) to a fine of KYD 10 000 (USD 12 000) and imprisonment for two years. A person who fails to provide testimony as required or to produce information pursuant to a Court order, will be liable upon conviction to a fine of KYD 5 000 (USD 6 000) and imprisonment for one year: s24(6). The recipient of a notice to produce information is advised of these penalties by the inclusion of a penal notice with the information production notice.

Use of compulsory powers in practice

219. In all cases to date where information has been requested either through informal communication with another government agency or where a notice to produce information was issued, these have always been complied with. Therefore in practice it has not been necessary to impose sanctions for non-compliance and no prosecutions have been registered. The Cayman Islands authorities also confirmed that in no cases a formal search warrant has been sought in order to compel the production of information for exchange purposes.

Secrecy provisions *(ToR B.1.5)*

220. Secrecy of certain information is protected in the Cayman Islands under the common law obligations on fiduciaries, and the Confidential Relationships Preservation Law (2009 Revision). However, these secrecy requirements are overridden by ss8(6)(b) and 19 of the TIA Law where information is required to be produced in relation to an EOI request. This allows the CITIA to access and then to exchange information notwithstanding the secrecy provisions. In addition, any offence or liability to civil claims which would otherwise arise against the holder of information as a result of producing that information is expressly excluded by s18 of the TIA Law.

221. The limits on information which can be exchanged that are provided for in the OECD Model TIEA and Article 26 of the OECD Model Tax Convention, apply in the Cayman Islands. That is, information which is subject to legal privilege; would disclose any trade, business, industrial,

commercial or professional secret or trade process; or would be contrary to public policy (*ordre public*) (which must be certified by the Attorney General: s6 of the TIA Law), is not required to be exchanged. There is an express exemption to confidentiality obligations under s8(6)(b) of the TIA Law, whether that confidentiality be imposed pursuant to the Confidential Relationships Preservation Law or under any other law. A person providing information which would otherwise be confidential, pursuant to a notice or order relating to a request, is deemed by ss18 and 19 of the TIA Law not to commit an offence under that Law or a breach of any other duty of confidentiality howsoever arising.

222. The Cayman Islands authorities and their exchange of information partners have indicated that no cases have occurred in practice where information could not be obtained because the holder of the information (lawfully or not) made a secrecy claim. In respect of legal professional privilege, the Attorney-General indicated that assertions of attorney-client privilege rarely arise in the Cayman Islands and any assertions of legal professional privilege raised to date have never been in regards to information sought for exchange of information purposes (see also section C.4 *Right and safeguards of taxpayers and third parties*).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

Not unduly prevent or delay exchange of information *(ToR B.2.1)*

Notification requirement

223. The TIA Law provides a notification procedure in limited circumstances for an individual who is the subject of the request. If the requesting authority identifies the address of the subject (in the Cayman Islands), and the request relates to a non-criminal matter, then the CITIA is required to serve a notice on the subject (s17(1)). If the requesting jurisdiction does not identify

the whereabouts or address of the subject, then the notification requirement is not triggered: s17(4). An amendment to the TIA Law came into effect in September 2012 to also provide for exceptions to the notification requirement in urgent cases or where notification is likely to undermine the success of the investigation of the requesting jurisdiction (s17(5)). These exceptions ensure that the notification procedure does not unduly prevent or delay exchange of information.

224. The notification which is issued to the subject of the request identifies the existence of the request, the jurisdiction which has made the request, and the general nature of the information sought (s17(1)). A person who receives a notification has fifteen days from the date of receipt to make a written submission specifying grounds which the CITIA should consider in determining whether the request is in compliance with the provisions of the relevant EOI agreement, including assertions of legal privilege over the information requested.

225. The competent authority agreement offered by the Cayman Islands to all treaty partners after the signing of a TIEA (see C.1) contains a standard request form including the question whether the requesting party wishes to refrain from notifying the taxpayer(s) involved. The Cayman Islands also generally explains its procedures during the TIEA negotiations as well as in discussions for concluding a competent authority agreement. The Cayman Islands authorities have confirmed that a statement (e.g. that the case is urgent) from the requesting party would be sufficient to invoke this exception to the notification requirement. The Cayman Islands authorities have indicated that the notification ~~of~~ to an individual who is the subject of an EOI request, has so far not occurred in practice, as there have been no cases where the address of an individual in the Cayman Islands who is the subject of request was provided by the requesting party.

Rights and safeguards

226. In respect of trade, business, industrial, commercial or professional secret or trade process, the Cayman Islands is not required to exchange such information pursuant to provisions in its EOI agreements equivalent to Article 7(2) in the OECD Model TIEA. The Cayman Islands may decline a request where the disclosure of the information would be contrary to public policy, if the Attorney-General has issued a certificate that the public policy exception applies: s6 of the TIA Law.

227. The Cayman Islands authorities have confirmed that in no cases has information in relation to any domestic matter or judicial proceeding been denied on the grounds that it related to a trade, business, industrial, commercial or professional secret or trade process. The Attorney General of the

Cayman Islands also confirmed that refusal to comply with a request on the grounds of public policy has never occurred in practice.

Judicial review

228. The content of a notice to produce information is, in practice, very basic. It mentions that a request has been received by the Cayman Islands authorities under an information exchange agreement, that the CITIA has determined it to be a valid request, and that information must be obtained from the person the notice is served to in order to comply with the request. It then sets out what information is sought, if applicable in a particular form, and it is noted that non-compliance is punishable by law. Finally, it is emphasised that the particulars of the notice must be kept confidential. Any person breaching such confidentiality is subject on summary conviction to a fine of KYD 1 000 (USD 1 200) and to imprisonment for six months (s24(2) TIA Law).

229. A decision to issue a notice to produce information may be subject to judicial review. No applications for judicial review were made during the three year period under review. However, one application was made in the second half of 2012 relating to an EOI notice issued early 2011. This matter is presently pending before the Court. As this is the first challenge to a Notice it is not known how long the procedure will take. However, based on other judicial review cases, Cayman Authorities have estimated this could take up to a period of one year, dependent on the issues at stake and the schedule of the Court. A challenge would not affect completion of the EOI request where the application for judicial review occurs after the information has been gathered, which would generally be the case. Furthermore, any such challenge would not affect the Islands' ability to provide a status update to its EOI partner.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

C. Exchanging Information

Overview

230. This section of the report examines whether the Cayman Islands has a network of agreements that would allow it to achieve effective exchange of information in practice.

231. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In the Cayman Islands, the legal authority to exchange information derives from either: (i) tax information exchange agreements once these become part of the Islands' domestic law; or (ii) by a unilateral mechanism whereby a jurisdiction is named as a "Scheduled Country". However, as a bilateral agreement is now in place with seven of these named jurisdictions, exchange of information with these jurisdictions now takes place under the relevant agreement. The Cayman Islands also automatically exchanges information with EU countries pursuant to the EU Savings Directive, which is implemented in domestic law by bilateral agreements with each EU member state pursuant to the Reporting of Savings Income Information (European Union) Law (2007) Revision, and which process is also managed by the CITIA.

232. The Cayman Islands' EOI agreements, as well as the unilateral mechanism, are incorporated into domestic law by the TIA Law. Under s3(5), the Governor in Cabinet of the Cayman Islands has the power to add, amend, revoke or replace any schedule giving effect to an EOI agreement and has the power under s3(6) to add, amend, revoke or replace a schedule listing the "Scheduled Countries".

233. As it does not have a domestic income tax regime, the Cayman Islands negotiates EOI agreements based on the OECD's Model TIEA, rather than double tax conventions. The exception is in respect of the UK, with which the Islands have entered into an arrangement for the avoidance of double taxation and the prevention of fiscal evasion, pursuant to an exchange of letters.

234. In addition to its pre-existing EOI agreement with the USA which was concluded in 2001, the Cayman Islands has actively sought to extend its network of EOI agreements since April 2009. It now has a network of 30 information exchange agreements, with 25of those already in force.

235. The EOI agreements which have been signed by the Cayman Islands mainly follow the terms of the OECD Model TIEA as does the unilateral mechanism. The confidentiality of information exchanged with the Cayman Islands is protected by obligations imposed under the Islands' EOI agreements, as well as in its domestic legislation, and is supported by sanctions for non-compliance. The exceptions to exchange of certain types of information (such as business or professional secrets, or information the subject of attorney-client privilege), which is allowed under the standard, are also incorporated in domestic law as well as in its EOI agreements.

236. Under the three year review period, the Cayman Islands received 65 EOI requests from eight partner jurisdictions. In practice, the Cayman Islands has been able to respond to information exchange requests in a timely manner. In 87% of cases the information was provided within 90 days, and in almost 92% of the cases the information was provided within 180 days. Where the provision of information was delayed, updates and interim responses were sent. Internal monitoring of requests with the guidance of a handbook, checklists and templates results in a streamlined process to obtain information which allows the CITIA to keep its EOI partners informed.

237. The confidentiality of information exchanged with Cayman Islands is protected by obligations implemented in their information exchange agreements, complemented by domestic legislation which provides for officials to keep information exchanged pursuant to an information exchange request secret and confidential. Breach of this confidentiality obligation may lead to a fine or imprisonment. In practice, documentation and all email exchanges regarding information requests is stored on a separate secure server which can only be accessed by the three members of the CITIA.

238. The Cayman Islands' agreements ensure that the contracting parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

C.1. Exchange-of-information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

239. The responsibility for negotiating international agreements in the Cayman Islands lies with the Cayman Islands International Tax Cooperation Team (the Team) which is a body established by Cabinet in 2009. Members

of the Team include the Attorney General, the Financial Secretary, senior officials of the CIMA, the CITIA and the Ministry The Team's Terms of Reference include negotiating and concluding agreements with those jurisdictions within the scope of the letter of entrustment from the United Kingdom Foreign and Commonwealth Office. Once these agreements are agreed at the officials' level the Team then coordinates with the Financial Services Secretariat and the Ministry of Financial Services on the signing of the agreements by the Minister.

240. Exchange of information agreement negotiation is a high priority in Cayman Islands and this is evidenced by the rapid expansion of their treaty network over the past few years. In most cases, the Cayman Islands are approached by other jurisdictions to negotiate agreements. As the Cayman Islands closely follows the wording of the OECD Model TIEA and its treaty partners do also, these negotiations are mainly via email correspondence. Of the 30 EOI instruments signed, only one (with the UK) is in the form of a Double Tax Arrangement with an EOI provision. All other agreements are TIEAs.

241. It is also possible to exchange information pursuant to a "Unilateral Mechanism" whereby 12 jurisdictions are named as "Scheduled Countries" and can request information unilaterally for tax purposes under the provisions of Part IV of the TIA Law. At least one jurisdiction has advised of actively exchanging information pursuant to this mechanism, and for these purposes had agreed on operating procedures and a confidentiality agreement with the Cayman Islands. This interim measure is superseded by a TIEA where this is subsequently agreed and exchange of information then takes place pursuant to the bilateral agreement.

242. Upon the signing of a new agreement the CITIA contacts the competent authorities of the corresponding jurisdiction and initiates discussions for the implementation of a competent authority agreement. A competent authority agreement/MoU on operational matters is offered to all partners along with the option of an implementation meeting or conference call. Such meetings have been held in the Cayman Islands, or in the partner jurisdiction, or in the margins of Global Forum events. There are currently competent authority agreements/MoUs in place with 18 treaty partners, and discussions are underway with 5 others.

243. As the Cayman Islands does not have a domestic income tax system, to date the CITIA has not sent any requests itself. The Cayman Islands authorities anticipate incoming requests to increase in coming years with an increased number of bilateral relationships.

Other forms of exchange

244. In addition to exchanging information on request, the Cayman Islands exchanges information automatically under the Reporting of Savings Income Information (European Union) Law (2007 Revision). By means of this mechanism the Cayman Islands has bilateral agreements with each of the 27 European Union Member States which contain the same measures as are applicable to all European Member States under the European Union Savings Directive. Savings income information is provided annually and automatically by the TIA to counterpart competent authorities in each European Member State. The legal obligations are implemented by the Reporting of Savings Income Information (European Union) Law (2007 Revision) and the Reporting of Savings Income (European Union) Regulations, 2005. The prescribed information, which is provided automatically, includes the name and address of the account holder and other identifying information, the name and address of the agent making the payment, the account number and details, the amount of the payment and the nature of the payment.

245. The terms of the Cayman Islands' laws and agreements governing the exchange of information are set out below.

Foreseeably relevant standard *(ToR C.1.1)*

246. The international standard for exchange of information envisages information exchange to the widest possible extent. Nevertheless it does not allow "fishing expeditions", i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 1 of the OECD Model TIEA, set out below:

> The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

247. This or similar language is found in all of the Cayman Islands' EOI agreements. In addition to the requirements for a request set out in Article 5(5) of the OECD Model TIEA, under the German EOI agreement, the requesting party must specify:

> The reasons for believing that the information requested is foreseeably relevant to the administration and enforcement of the tax law of the requesting Contracting Party, with respect to the person identified in subparagraph (a) of this paragraph.

248. The Cayman Islands authorities indicated that this provision would in practice not result in making a different determination of whether a request meets the foreseeable relevance standard compared to the situation where this provision is not included in the EOI agreement, as they consider the provision to be consistent with the overall purposes of Article 5(5) of the OECD Model TIEA.

249. An amendment to section 21(1) of the TIA Law came into effect in September 2012. Section 21(1) of the TIA Law previously provided that, without prior approval from the CITIA, information could not be used by the requesting jurisdiction *for purposes other than stated in the request*. This appeared to be inconsistent with part of Article 8 of the Cayman Islands' EOI agreements. The amendment to section 21(1) of the TIA Law now provides that information exchanged may be used *for all of the purposes set out in Article 1* and is consistent with the Cayman Islands EOI agreements.

250. The Cayman Islands authorities have advised that they have not declined any request for information received in the three year period under review on the basis that the requested information was not foreseeably relevant, which is confirmed by feedback received from peers. Also, the authorities indicated that they did not need to seek clarifications regarding the foreseeable relevance from a requesting jurisdiction in the three year period under review. This can be largely attributed to the close cooperation between the competent authorities of the Cayman Islands and its partner jurisdictions, in particular the template request form attached to the MoUs the Cayman Islands has concluded with most treaty partners.

In respect of all persons (ToR C.1.2)

251. For exchange of information to be effective it is necessary that a jurisdiction's obligations to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

252. All the EOI agreements contain a provision concerning jurisdictional scope which is equivalent to Article 2 of the OECD Model TIEA. In practice, the Cayman Islands authorities have advised that no issues have arisen regarding the jurisdictional scope in relation with an EOI request.

Exchange information held by financial institutions, nominees, agents and ownership and identity information *(ToR C.1.3)*

253. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Convention and the OECD Model TIEA which are primary authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

254. All of the EOI agreements concluded by the Cayman Islands, do not allow the requested jurisdiction to decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person, in conformity with Article 5(4) of the Model TIEA and Article 26(5) of the Model DTC. In practice, no requests for bank information have been declined by the Cayman Islands.

Absence of domestic tax interest *(ToR C.1.4)*

255. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

256. All of the EOI agreements concluded by the Cayman Islands allow information to be obtained and exchanged notwithstanding it is not required for any Cayman domestic tax purpose.

257. In practice, the issue of domestic tax interest has never triggered any issue in exchanging information, as the Cayman Islands does not have an income tax system and therefore their access powers are specifically designed for international exchange of information.

Absence of dual criminality principles (ToR C.1.5)

258. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to the information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

259. None of the EOI agreements concluded by the Cayman Islands applies the dual criminality principle to restrict the exchange of information, and in practice no issue linked to dual criminality has arisen.

Exchange of information in both civil and criminal tax matters (ToR C.1.6)

260. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

261. All of the EOI agreements concluded by the Cayman Islands provides for the exchange of information in both civil and criminal tax matters. The EOI article in the one DTC signed by the Cayman Islands contains the explicit wording of Article 26(1) of the OECD Model Tax Convention, which refers to information foreseeably relevant "for carrying out the provisions of this Convention or to the administration and enforcement of the domestic [tax] laws". All of the TIEAs signed by the Cayman Islands make express provision for exchange in civil and criminal matters in their article 1.

262. During the three year review period, 12 requests related to criminal tax matters and 53 requests related to civil tax matters. In practice, the Cayman Islands has provided information in response to all EOI requests for civil and criminal tax matters.

Provide information in specific form requested (ToR C.1.7)

263. All of the EOI agreements concluded by the Cayman Islands allow for information to be provided in the specific form requested, to the extent allowable under the requested jurisdiction's domestic laws. This is implemented in domestic law by virtue of s8(4)(b) of the TIA Law.

264. In practice, when information is requested in a specified form to be used in proceedings in the territory of the requesting party, the competent authority can apply to a judge for an order to produce such information in that

form (e.g. testimony). In other cases, not involving proceedings, where the information is required to be produced in a specific form, a notice is issued specifying the information to be produced, the form it is to be produced in and for the information to be authenticated or verified in the manner as the competent authority may require.

265. To date only one information exchange partner has requested that on a routine basis information is to be produced in a specified form and in this case an affidavit must be supplied with the information exchanged. The competent authorities have agreed a standard form for making such an affidavit which is attached to the notice to produce the information. No other jurisdictions have requested information in a specified form and no issue linked to the form of information exchanged has been raised by EOI partners.

In force *(ToR C.1.8)*

266. For effective exchange of information a jurisdiction must have exchange of information arrangements in force. Where exchange of information agreements have been signed, the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

267. Of the total 30 EOI agreements now concluded by the Cayman Islands, 25 have entered into force. The five that are not yet in force are those agreements signed with Curaçao, Sint Maarten, Italy, Qatar and Czech Republic. In the case of the latter three agreements, these agreements were signed recently (October and December 2012). The Cayman Islands has completed all internal procedures and finalised ratification in respect of Curaçao and Sint Maarten and in respect of the recently signed agreements the ratification process in underway and will be completed in early 2013.

268. Once the Team, as the body responsible for the negotiation of EOI agreements, has reached an agreement, the Cayman Islands authorities must provide the draft text to the Foreign and Commonwealth Office (FCO) in London for legal review prior to signing; the Cayman Islands authorities indicated that this process takes on average between three to four weeks. Following legal review, the FCO would notify the Cayman Islands authorities that the signing can take place.

269. When the agreement has been signed, an order scheduling the agreement to the TIA Law goes to the Cayman Islands legislative assembly. Once the order is passed, ratification occurs when the agreement is scheduled to the TIA Law (s3(5) TIA law) when it then has full legal effect as part of the TIA law. The order including the text and any resolutions is gazetted and a formal notification is sent to the partner jurisdiction. The Cayman Islands has confirmed that in practice this scheduling process is quite short and agreements

are usually ratified expeditiously. The whole process of ratification will take between one to six months, with the exact timing mainly depending on the schedule of the legislative assembly.

270. In addition to the bilateral agreements, 12 jurisdictions including 11 OECD member countries are Scheduled Countries with which the Cayman Islands has agreed to provide information for tax purposes pursuant to its unilateral mechanism, although in practice once a bilateral agreement is in place these jurisdictions will use that agreement to request information. The Scheduled Countries with which the Cayman Islands has not yet concluded a bilateral agreement are Austria, Belgium, Luxembourg, the Slovak Republic and Switzerland.

Be given effect through domestic law (ToR C.1.9)

271. For information exchange to be effective the parties to an exchange of information arrangements need to enact any legislation necessary to comply with the terms of the arrangement. The Cayman Islands has enacted domestic legislation, principally the Tax Information Authority Law, to give effect to its arrangements for the exchange of information for tax purposes.

272. In the three year period under review, there has been one case where information could not be made available, as the period to which the information related to predated that of the TIA Law (which came into force in 2005) giving effect to the agreement, and the TIA Law specifically provided that no information was required to be exchanged relating to a taxation matter that arose prior to 1 September 2005 (the commencement date of the TIA Law). However, the TIEA under which the information request was made required the information to be exchanged also where it related to taxation matters that arose before this date. This inconsistency between the TIEA and the TIA Law meant that the information requested could not be provided. As it is practice for international agreements to be scheduled as part of the TIA Law, there was effectively no domestic legislation in place to give the international agreement effect, despite the terms of the international agreement which related to information predating that of the TIA Law.

273. The Cayman Islands Attorney General confirmed that in cases of an inconsistency between international agreements and domestic legislation, as the international agreement is scheduled as part of the TIA Law, the overriding objective of the international agreement, in the case of a TIEA being exchange of information, should be followed. This is usually achieved through statutory interpretation. However, in cases where there is a material inconsistency between the domestic legislation and the international agreement, the domestic legislation should be amended to be in conformity with the international agreement. The Cayman Islands has recognised this

inconsistency, and following the request has amended the TIA Law, which now allows for exchanging information relating to taxation matters that arose prior to 1 September 2005 where the TIEA so requires (s3(2) TIA Law).

274. The CITIA has informed the information exchange partner of the legislative amendment, and is now in the process of obtaining the information.

275. In all other circumstances, exchange of information agreements have been given the proper effect through the domestic law in the manner as described above.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

C.2. Exchange-of-information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

276. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations, in particular with those jurisdictions that have a reasonable expectation of requiring information in order to properly administer and enforce its tax laws, it may indicate a lack of commitment to implement the standards.

277. The Cayman Islands, as a British Overseas Territory, has in place a letter of entrustment from the United Kingdom which specifies those jurisdictions with which they can enter into EOI agreements. At present this includes all OECD, EU and G20 member jurisdictions as well as jurisdictions that were identified as having substantially implemented the international standard. Should the Cayman Islands wish to enter into an EOI agreement with a jurisdiction outside the letter of entrustment, a separate letter of entrustment must be sought from the United Kingdom.

278. The policy of the Cayman Islands with respect to expanding its EOI network has been to focus on jurisdictions which are either OECD or G20

members, as well as with those jurisdictions with which it has a significant economic relationship. It has already signed agreements with 19 OECD members.

279. Further, comments were sought from the jurisdictions participating in the Global Forum, and in the course of the preparation of this report, no jurisdiction advised the assessment team that it was interested in entering into an EOI agreement with the Cayman Islands but that the Islands had refused to negotiate or enter into such an agreement with it.

280. In summary, the Cayman Islands' network of information exchange agreements covers all relevant partners.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	The Cayman Islands should continue to develop its EOI network with all relevant partners.

Phase 2 rating
Compliant.

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

Information received: disclosure, use and safeguards (ToR C.3.1) and all other information exchanged (ToR C3.2)

281. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, countries with tax systems generally impose strict confidentiality requirements on information collected for tax purposes. Confidentiality rules should apply to all types of information exchanged,

including information provided in a request, information transmitted in response to a request and any background documents to such requests.

282. All of the EOI agreements as concluded by the Cayman Islands meet the standards for confidentiality including the limitations on disclosure of information received and use of the information exchanged, which are reflected in Article 8 of the OECD Model TIEA. The confidentiality requirement for information relating to a request is also given effect in domestic legislation by s20 of the TIA Law. A person who breaches the confidentiality requirement in respect of the fact of a request, or a matter relating to the request, if convicted shall be subject to a fine of KYD 1 000 (USD 1 200) and imprisonment for 6 months.

283. Subject to the written consent of the CITIA, under s21(1) of the TIA Law, the Cayman Islands may approve the use of the information by the requesting jurisdiction for a further or other purpose beyond that stated in the request. Where the information has been obtained as oral testimony, or on the order of a judge, a judge must give directions to approve the use of the information for a further or other purpose pursuant to s21(2).

Ensuring confidentiality in practice

Handling and storage of EOI requests and related information

284. The offices of the competent authority are located in a separate building with separate offices for the three personnel who work there. The three personnel of the CITIA are the only ones with keys to the door to these offices, which is locked at all times.

285. When a request for information is received from another jurisdiction by the CITIA, all documents are first stamped with the date and confidentiality stamp. The vast majority of cases come via registered mail. However, there is a small number of requests that are transmitted via fax. The CITIA has its own fax machine and a dedicated mailing PO Box which is controlled by CITIA staff. During the processing of the request where email is used for communication with other competent authorities, the TIA agrees with them on a secure method of transmitting data.

286. Incoming requests are entered onto the CITIA's own stand-alone server, which is hosted securely by the Government's Computer Services Department and only those personnel directly involved in exchange of information cases (the three members of the CITIA) have access to this server. A file is created for each request on the network drive which is only accessible by CITIA staff. Paper copies of the requests are kept and filed in a secure filing cabinet in the office of the CITIA. The filing cabinet is locked and only the members of the TIA have access.

287. The notice to produce information as issued by the CITIA explicitly states that pursuant to the TIA Law the receiver of the notice and their attorney-at-law are to treat the particulars of the notice and all matters that relate to it as confidential for such period as specified by the CITIA (s20 TIA Law). Any person breaching such confidentiality is subject on summary conviction to a fine of KYD 1 000 (USD 1 200) and to imprisonment for six months (s24(2) TIA Law). The further content of the notice is described under element B.2 (*Judicial review*) above. Furthermore, when a notice to produce information is issued, it is always delivered via personal delivery and the importance of the confidentiality of the request is emphasised to ensure that there is maximum awareness of this issue. A receipt of the notice to produce information is signed by the receiving entity which specifies the date of receipt, the name of the person receiving the request and if applicable on part of what business entity, the request identification number and the number of pages of the notice. A hard copy of this is maintained in the hard copy file for each request.

288. Where an individual must be notified of a request under the procedure described in element B.2, the notification identifies the existence of the request, the jurisdiction which has made the request, and the general nature of the information sought (s17(1)). The notification form is prescribed by regulation (TIA Regulations (Amendment 2012) form 4) and also contains a confidentiality clause. Any person breaching such confidentiality is subject on summary conviction to a fine of KYD 1 000 (USD 1 200) and to imprisonment for six months (s24(2) TIA Law).

289. The CITIA conducts regular outreach education seminars with other intergovernmental agencies and third parties in order to brief them on the EOI process and emphasising the importance of confidentiality is a strong component of these presentations.

Provision of requested information to EOI partners

290. When requested information is provided to EOI partners, all information produced and an accompanying letter of production are sent via courier to the named contact in the requesting competent authority, mostly the contact point identified in the CA agreement (if in place). The CITIA does not routinely maintain copies of the information produced but maintains an inventory of all information produced and copies of the requests. In cases where an urgent response is required, the TIA will discuss with the requesting competent authority whether an initial (secure) email or fax response can be given. Feedback from peers did not raise any issues with confidentiality in practice when information has been requested from the Cayman Islands.

Personnel

291. The offices of the competent authority are staffed with three full time staff who, like all civil servants, are subject to declarations of secrecy as part of their contracts of employment. All TIA staff have previously worked in either law enforcement, the prosecution service or Government legal services and are professionally fully aware of their obligations of confidentiality. The CITIA also welcomed the joint Global Forum/OECD publication *Keeping it safe: Guide On The Protection Of Confidentiality Of Information Exchanged For Tax Purposes* and, where relevant, it indicated that it will use it as a guide for best practices related to confidentiality.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

Exceptions to requirement to provide information (ToR C.4.1)

292. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney – client privilege is a feature of the legal systems of many countries.

293. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that, the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where attorney – client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

294. With the exception in one EOI agreement noted below, the limits on information which must be exchanged under the Islands' EOI arrangements mirror those provided for in the OECD Model TIEA. That is, information which is subject to legal privilege; would disclose any trade, business, industrial, commercial or professional secret or trade process; or pursuant to s6 of the TIA Law, would be contrary to public policy, is not required to be exchanged. This is incorporated into Cayman Islands law by the incorporation of its EOI agreements into domestic law under s3(3) of the TIA Law, rather than by a separate specific provision.

295. The exception concerns the definition of "items subject to legal privilege". This phrase is defined in Article 4 of the USA EOI agreement) as meaning:

> (a) communications between an attorney-at-law and his client or any person representing his client made in connection with the giving of legal advice to the client;
>
> (b) communications between an attorney-at-law and his client or any person representing his client or between such attorney-at-law or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
>
> (c) items enclosed with or referred to in such communications and made –
>
> (i) in connection with the giving of legal advice; or
>
> (ii) in connection with or in contemplation of legal proceedings and for the purposes of suchproceedings,
>
> when they are in the possession of a person who is entitled to possession of them; but items held with the intention of furthering a criminal purpose are not subject to legal privilege

296. This definition appears to include information enclosed within a communication between an attorney and client and also within a communication between a client and another person who is not an attorney-at-law, which is beyond the exemption for attorney client privilege under the international standard. The Cayman Islands takes the view that this language merely extends the rule to include certain expert third parties, such as accountants, who are engaged by the attorney to assist in connection with (or in contemplation of) legal proceedings. In practice, this provision has not been an impediment to effective exchange of information.

297. In respect of rights and safeguards of persons, two EOI agreements vary from the OECD Model TIEA in respect of rights and safeguards which

may delay an EOI request. It is unlikely that these variations will materially affect the exchange of information to the standard. In respect of its EOI agreement with New Zealand, the last sentence of Article 1 provides:

> The Requested Party shall use its best endeavours to ensure that any such rights and safeguards are not applied in a manner that unduly prevents or delays effective exchange of information.

298. In respect of its EOI agreement with Germany, Article 1 omits the qualification on observing the rights and safeguards of a person, as it does not include the following words which are found in the OECD Model TIEA:

> The rights and safeguards… remain applicable… to the extent that they do not unduly prevent or delay effective exchange of information. [emphasis added]

299. However in practice, no issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by any of the Cayman Islands' exchange of information partners.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days *(ToR C.5.1)*

300. In order for exchange of information to be effective, the information needs to be provided in a timeframe which allows tax authorities to apply it to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international cooperation as cases in this area must be of sufficient importance to warrant making a request.

301. There are no specific legal or regulatory requirements in place which would prevent the Cayman Islands responding to a request for information by

providing the information requested or providing a status update within 90 days of receipt of the request.

302. In a number of the Cayman Islands' EOI agreements[6], the time within which a status update or response to an EOI request is to be provided is not specified. Instead, they provide words to the effect that:

> The competent authority of the Requested Party shall forward the requested information as promptly as possible to the Applicant Party.

303. The USA EOI agreement provides in Article 5(6)(b) that the requested party is to provide a status update if it has been unable to provide the information requested "within a reasonable period". An acknowledgement of receipt under this agreement is required within 60 days (Article 5(6)(a)).

304. The UK EOI agreement does not specify any timeframes for responses to EOI requests.

305. In the EOI agreement between the Cayman Islands and South Africa, the time within which a status update or response to an EOI request is to be provided is not specified. Instead, they provide words to the effect that:

> The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

Practice

306. In the three year period under review, the Cayman Islands has received 65 requests for information[7] from eight different jurisdictions. The EOI agreements which the Cayman Islands has entered into are relatively new (all have been brought into force in the last six years), and the number of requests have more than doubled over the past three years.

307. On a total of 65 requests, the Cayman Islands was in a position to provide a final response within 90 days in 87% of cases with another 5% been processed within 180 days. The remaining requests were processed

6. The Cayman Islands' agreements with Aruba, the Netherlands, the Netherlands Antilles and New Zealand. The German EOI agreement uses the words "shall use its best endeavours to forward the requested information to the requesting Contracting Party *with the least reasonable delay*".
7. A request is regarded as a single request irrespective of the number of entities involved for which information is requested.

within one year, except for one. This request, which was made in 2011, could not yet be accommodated due to the legal issue described under C.1.9, and is therefore still outstanding. Further details can be found in the table below.

Response Times to incoming requests

Year	Response provided within				No final response provided to date	Total
	90 days	180 days	1 year	more than 1 year		
2009	7					**7**
2010	16	1	2			**19**
2011	34	2	2		1	**39**
Total	**57**	**3**	**4**	**0**	**1**	**65**

308. The response time starts running from the date that the EOI request is received by the Cayman Islands, and only stops once a final reply has been sent. In most cases where requests had not been completely fulfilled within 90 days, this was as a result of either the holder of the information (usually a financial services provider) seeking more time within which to access or collate the relevant information, or where clarification has been sought from the requesting party as a result of new facts coming to light during the processing of the request.

309. It is standard practice in the Cayman Islands to send an acknowledgment of receipt to the requesting jurisdiction (see also C.5.2 below). If the information cannot be provided within 90 days it is procedure for a status update to be provided in all cases. The timelines for responses to the requests are monitored via means of internal spreadsheets and checklists to keep track of all requests and approaching deadlines. If it is anticipated that there will be a delay in obtaining the information, even within the 90 day period, this is communicated to the requesting party by way of update. Where a supplementary request was made which sought information arising out of information previously provided on a fully satisfied matter, the supplementary request would be counted as a separate request.

310. When an entity is served with a notice to produce information, the standard response time given is 21 days. As a result, in most cases information is provided to the requesting party within one or two months of receipt of the request. Incidences where delays may arise are where the holder of the information has had to retrieve the information which is being kept overseas, such as in the case of banks which have their head office in another jurisdiction or where archived information has been transferred to the head office. Similar considerations have arisen where the information must be extracted

from bulk information which is otherwise unconnected with transactions which are relevant to the request.

311. The input from the Cayman Islands exchange of information partners, together with the notes on the statistics provided by the Cayman Islands to the assessment team, establishes that in the vast majority of cases a final response was provided within 90 days (see table above, *Response times to incoming requests).* In addition, the Cayman Islands authorities indicated that it is standard practice to send updates or interim responses within 90 days (see C.5.2 below). Where delays were incurred the CITIA engaged in active dialogue with the requesting jurisdiction via phone and email in order to keep its counterparts well informed.

Organisational process and resources *(ToR C.5.2)*

Organisational process

312. The current organisational process, templates used and guidelines to be followed to obtain and provide information following a request from an information exchange partner is described in the Tax Information Authority Resource Handbook. The CITIA has also developed standard templates and forms of notice which are used in the execution of requests. These are used by all staff along with checklists for processing incoming requests. All templates and forms which apply to the procedures under the TIA Law are either prescribed by regulations, or, where they relate to court procedures, are in a form agreed with the Chief Justice as suitable for use in any application to the Grand Court which may be required under the TIA Law (such as where an order for information to be produced is required). Otherwise, the OECD Manual on the Implementation of Exchange of Information Provisions for Tax Purposes (OECD Manual) and commentary is also followed.

313. When an information request is received, having first been date stamped, it is given a unique reference and is then logged onto an Excel spreadsheet which is used to enable the CITIA to monitor the progress and timelines of all incoming requests. The request and any attachments to it are scanned and stored in electronic format on a secure separate server which is only accessible by the CITIA personnel. Two files are opened, one for correspondence and the other for formal documents. Hard copies of the requests are also kept in secure filing cabinets in the CITIA offices.

314. After the request has been logged and appropriately filed, in compliance with the four eye principle which mandates that two individuals must look over all operations for quality monitoring purposes, at least two members of the CITIA discuss and allocate the request. An internal certificate of compliance stating that the request is valid under the specific EOI agreement,

is then drafted which is placed on the hard file and operates as an internal control mechanism. An acknowledgment of receipt of the request is sent to the requesting party within 7 days by courier and a receipt is kept on file. In the instance that the request is not in the proper form it is practice to revert back to the competent authority of the requesting party in order to clarify and where required modify the request. Pursuant to section 7(2) of the TIA law, the CITIA is permitted to request additional information as may be necessary to assist the Authority in executing the request. In practice it has occurred where the CITIA has had to revert back to the requesting party for further information where the account number of an entity had been inadvertently omitted. However, in all cases such ambiguities have been resolved quickly through close and regular contact with their partner competent authorities and the Cayman Islands has not had to refuse any request on the grounds of it not being in the proper form.

315. Once it is established that the request is valid, the CITIA then decides where to best access the information. As there is no income tax system in the Cayman Islands, and therefore no obligation to file tax returns, information relevant to the exchange of information is generally not held directly in the hands of the CITIA. However, due to close intergovernmental cooperation, the CITIA has access to the CORIS, database of the Registrar of Companies. This is usually where the official in charge of the request will commence their investigations. This database will contain the details as supplied at registration and described above (see section A1.1 *Ownership and Identity Information)* such as the physical address of the entity.

316. All notices to produce information are hand delivered by the CITIA. On delivery the entity is also asked to sign a receipt of the notice to produce information which specifies the name of who received the notice, the date of the request, the quantity of pages contained in the notice and if relevant the name of the business to which it was delivered. The entity is also asked to initial the first five pages of the notice in the presence of the CITIA official. A copy of the receipt of the notice is placed on the manual file for the request back in the CITIA offices. The person or entity served with the notice is generally given 21 days to comply. An extension to this period may be requested, in which case an extension of seven days is the norm and in exceptional cases an extension of fourteen days may be granted.

317. The information is usually delivered via courier to the offices of the CITIA. The official monitoring the request will then check the information supplied and complete a Response to Requests Checklist. This is an internal procedure used to ensure that all information gathering processes have been complied with, that the information requested has been produced and that there have not been any issues regarding timeliness. Where the information is insufficient to meet the requirements of the request, the notice to produce

information is returned to the entity setting out what additional information is needed. The CITIA has confirmed that this happens rarely in practice. After securing that the information obtained meets the requirements of the request, a production letter is signed by the Competent Authority and, along with the information produced, is sent via courier to the requesting competent authority.

318. Throughout the process of information gathering, the CITIA officer responsible for the request closely monitors its progress which is registered on an internal Excel spreadsheet. Given the small size of the CITIA, there is day-to-day communication between all staff on the handling of requests and in addition weekly meetings are also held between the three personnel of the CITIA to discuss the progress of all requests and any issues arising. Where an information request cannot be answered within 90 days, the requesting jurisdiction is informed of the progress via status updates either directly by phone or secure email communication. As the CITIA has competent authority agreements or a Memorandum of Understanding in place with 18 treaty partners, the CITIA maintains regular contact with partners throughout the administration of a request. Several EOI partners have commented on the regular updates and excellent communication by the CITIA over the course of an EOI request.

Resources

319. The CITIA is currently comprised of three personnel, the Director, Deputy Director and Assistant Director and all staff is involved in the administration and processing of requests. The Cayman Islands has indicated that the current resource levels are at an appropriate level to deal with the information exchange requests received. The advance recruitment of further staff members is not projected at this time. However in the event that the amount of information exchange requests increase dramatically this will be adequately met by the allocation of other Ministry personnel to the CITIA or the secondment of Ministry staff on a temporary basis.

320. Training currently takes the form of on the job and hands on training. With the CITIA having well established processes, guidelines and procedures in place, this training is adequate in ensuring that all staff members involved in dealing with information exchange requests are familiar with the EOI process. All staff has previous experience in international cooperation (including mutual legal assistance, anti money-laundering and other areas of law enforcement). All staff members also have experience in evidence and document handling and in the integrity of procedures and practices for handling confidential information.

321. In an international context, both the Director and the Deputy Director have attended OECD and Global Forum training seminars covering exchange of information for tax purposes and are well informed of the exchange of information process. On various occasions Cayman Islands have also provided instructors to such training seminars. In a domestic context, the CITIA also presents regular outreach education seminars to other intergovernmental agencies and third parties in order to brief them on the EOI process.

322. As mentioned prior, the CITIA also handles EOI for the purposes of the European Savings Directive. In the interests of efficiency this annual reporting is in the process of being automated which will result in greater existing staff resources being available for EOI requests. The online system will be active for the 2012 reporting period.

Conclusion

323. The CITIA Resource Handbook as well as the incorporation of the OECD Manual ensures that effective internal processes are followed and that exchange of information in practice is aligned with the international standard. Additionally the development of sound internal processes, checklists, templates and guidelines further ensures that a streamlined, efficient and responsive procedure is in place to facilitate the exchange of information in practice. The competent authority is adequately staffed with appropriately qualified and trained personnel who are each responsible for the execution of all exchange of information requests. All CITIA officials undertake comprehensive on the job training as well as having participated in EOI seminars as provided by the OECD and the Global Forum. CITIA also regularly conducts outreach activities concerning EOI to intergovernmental agencies, associations and third parties.

324. In addition, the competent authority agreements which the CITIA already has in place with 18 treaty partners operate as a further guide to ensure a well organised and coordinated process with the requesting jurisdictions. The close working relationships that the CITIA enjoys with their EOI partners ensures that any potential issues regarding timing, retrieval of information or any other matters can be quickly identified and resolved.

325. The information received from Cayman Island's exchange of information partners shows that the Cayman Islands has been able to respond to information requests in a timely manner. In almost 92% of the cases the information was provided within 180 days and in 87% of cases the information was able to be provided within 90 days. Where the information was not provided within 90 days, updates and provisional information was provided. Whilst delays have been experienced on occasion due to the information being held at an overseas office or due to more information coming to light

during the course of the process, no partner indicated an inappropriate delay and several peers commented on the highly discursive process adopted by the Cayman Islands in keeping them informed of any delays and issues. It can be concluded that the Cayman Islands has both the appropriate organisational processes and adequate resources in place to ensure that exchange of information takes place in an efficient manner and that timely responses are received.

Absence of restrictive conditions on exchange of information (ToR C.5.3)

326. There are no legal or practical requirements in the Cayman Islands that impose unreasonable, disproportionate or unduly restrictive conditions on the exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.

Phase 2 rating
Compliant.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
The element is in place.		
Phase 2 rating: Largely Compliant.	In practice, bearer shares may be held by recognised custodians operating outside of the Cayman Islands. In such cases ownership information on those bearer shares may not always be available in the Cayman Islands. Furthermore, enforcement of penalties for non-compliance with these obligations may not be possible for those custodians located outside of the Cayman Islands.	The Cayman Islands should ensure that information on the owners of bearer shares is made fully available within the Cayman Islands in all cases.
	The Registrar does not have a regular system of monitoring of compliance with ownership and identity information keeping requirements in respect of companies and partnerships, and whilst legislative amendments have increased penalties for non-compliance, these are untested in practice.	The Cayman Islands should ensure that its monitoring and enforcement powers are sufficiently exercised in practice to support the legal requirements which ensure the availability of ownership and identity information in all cases.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
The element is in place.		
Phase 2 rating: Largely Compliant.	Except for those entities that are subject to licensing with the CIMA, no system of monitoring of compliance with accounting record keeping requirements is in place, which may cause the legal obligations to keep accounting records to be difficult to enforce.	The Cayman Islands should ensure that its monitoring and enforcement powers are sufficiently exercised in practice to support the legal requirements which ensure the availability of accounting information in all cases.
Banking information should be available for all account-holders. *(ToR A.3)*		
The element is in place.		
Phase 2 rating: Compliant.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(Tor B.1)*		
The element is in place.		
Phase 2 rating: Compliant.		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
The element is in place.		
Phase 2 rating: Compliant.		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
The element is in place.		
Phase 2 rating: Compliant.		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
The element is in place.		The Cayman Islands should continue to develop its EOI network with all relevant partners.
Phase 2 rating: Compliant.		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
The element is in place.		
Phase 2 rating: Compliant.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
The element is in place.		
Phase 2 rating: Compliant.		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		
Phase 2 rating: Compliant.		

Annex 1: Jurisdiction's Response to the Review Report[8]

This annex is left blank because the Cayman Islands has chosen not to provide any material to include in it.

8. This Annex presents the jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

Annex 2: List of All Exchange of Information Mechanisms

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
1	Argentina	TIEA	13.10.2011	31.08.2012
2	Aruba	TIEA	20.04.2010	01.12.2011
3	Australia	TIEA	30.03.2010	14.02.2011
4	Canada	TIEA	24.06.2010	01.06.2011
5	China	TIEA	26.09.2011	15.11.2012
6	Curaçao[9]	TIEA	29.10.2009	Not Yet In Force
7	Czech Republic	TIEA	26.10.2012	Not Yet In Force
8	Denmark	TIEA	01.04.2009	06.02.2010
9	Faroe Islands	TIEA	01.04.2009	08.09.10
10	Finland	TIEA	01.04.2009	31.03.2010
11	France	TIEA	05.10.2009	13.10.2010
12	Germany	TIEA	27.05.2010	20.08.2011
13	Greenland	TIEA	01.04.2009	24.03.2012
14	Guernsey	TIEA	29.07.2011	05.04.2012
15	Iceland	TIEA	01.04.2009	30.05.2010
16	India	TIEA	21.03.2011	08.11.2011

9. Pursuant to the TIEA made between the Cayman Islands and the former Netherlands Antilles. Following the dissolution of the Netherlands Antilles on 10 October 2010, two separate jurisdictions were formed (Curaçao and Sint Maarten) with the remaining three islands (Bonaire, Sint Eustatius and Saba) joining the Netherlands as special municipalities. The TIEA concluded with the Kingdom of the Netherlands, on behalf of the Netherlands Antilles, will continue to apply to Curaçao, Sint Maarten and the Caribbean part of the Netherlands (Bonaire, Sint Eustatius and Saba) and will be administered by Curaçao and Sint Maarten for their respective territories and by the Netherlands for Bonaire, Sint Eustatius and Saba.

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
17	Ireland	TIEA	23.06.2009	09.06.2010
18	Italy	TIEA	03.12.2012	Not Yet In Force
19	Japan	TIEA	07.02.2011	13.11.2011
20	Mexico	TIEA	28.08.2010	09.03.2012
21	Netherlands	TIEA	08.07.2009	29.12.2009
22	New Zealand	TIEA	13.08.2009	30.09.2011
23	Norway	TIEA	01.04.2009	04.03.2010
24	Portugal	TIEA	13.05.2010	18.05.2011
25	Qatar	TIEA	26.10.2012	Not Yet In Force
26	Sint Maarten[10]	TIEA	29.10.2009	Not Yet in Force
27	South Africa	TIEA	10.05.2011	23.02.2012
28	Sweden	TIEA	01.04.2009	27.12.2009
29	United Kingdom	DTC	15.06.2009	20.12.2010
30	United States	TIEA	27.11.2001	10.03.2006

10. See previous footnote.

Annex 3: List of all Laws, Regulations and Other Material Received

Corporate Laws

Companies Law (2012 Revision)

Companies (Amendment) Law, 2010

Companies (Amendment) Law, 2012

Companies (Amendment) Law, 2013

The Companies Winding Up Rules 2008

Exempted Limited Partnership (Amendment) Law, 2009

Exempted Limited Partnership (Amendment) Law, 2012

Exempted Limited Partnership (Amendment) Law, 2013

Exempted Limited Partnerships (Amendment) Law, 2010

Exempted Limited Partnership Law (2012 Revision)

Partnership Law (2012 Revision)

Partnerships (Amendment) Law, 2010

Partnerships (Amendment) Law, 2012

Partnerships (Amendment) Law, 2013

Trusts Law (2009 Revision)

Trusts (Amendment) Law, 2011

Private Trust Companies Regulations, 2008

Private Trust Companies (Amendment) Regulations, 2013

Regulatory Laws

Banks and Trust Companies Law (2009 Revision)

Banks and Trust Companies (Amendment) Law, 2012

Companies Management Law (2003 Revision)

Mutual Funds Law (2012 Revision)

Mutual Funds (Amendment) Law, 2012

Securities Investment Business Law (2011 Revision)

Insurance Law (2010 Revision)

Trade and Business Licensing Law (2007 Revision)

Anti-Money Laundering/Counter-Terrorism Financing Laws

Proceeds of Crime Law, 2008

Monetary Authority Law (2008 Revision)

Money Laundering Regulations (2009 Revision)

Terrorism Law (2009 Revision)

Information Exchange for Tax Purposes Laws

Tax Information Authority (Tax Information Agreements) Order, 2009

Tax Information Authority (Tax Information Agreements) Order, 2010

Tax Information Authority (Tax Information Agreements) (No. 2) Order, 2010

Tax Information Authority (Tax Information Agreements) Order, 2011

Tax Information Authority (Tax Information Agreements) (No. 2) Order, 2011

Tax Information Authority Law (2009 Revision)

Tax Information Authority (Amendment) Law, 2012

Tax Information Authority Regulations (2009 Revision)

Tax Information Authority (Amendment) Regulations, 2012

Reporting of Savings Income Information (European Union) Law (2007 Revision)

Criminal Justice (International Cooperation) Law (2004 Revision)

Mutual Legal Assistance (United States of America) Law (1999 Revision)

Other Laws

Confidential Relationships Preservation Law (2009 Revision)

Statements of Principles and Guidance Notes (non-binding)

Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands, March 2010

Annex 4: Persons Interviewed During the Onsite Visit

Officials from the Cayman Islands Tax Information Authority (CITIA)
Officials from the Cayman Islands Monetary Authority (CIMA)
Attorney General of the Cayman Islands
Officials from the Cayman Islands General Registry
Officials from the Financial Reporting Authority
Members of the Cayman Islands International Tax Cooperation Team
Representatives from the Cayman Islands Compliance Association (CICA)
Officials from the Cayman Islands Ministry of Finance

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: CAYMAN ISLANDS

This report contains a "Phase 2: Implementation of the Standard in Practice" review, as well as revised version of the "Phase 1: Legal and Regulatory Framework review" already released for this jurisdiction.

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 *OECD Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the *OECD Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

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All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

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