



MINISTRY OF
FINANCIAL SERVICES,
COMMERCE & ENVIRONMENT
CAYMAN ISLANDS GOVERNMENT

Government Administration Building
133 Elgin Avenue, Box 126
Grand Cayman KY1-9000
CAYMAN ISLANDS
www.caymanfinance.gov.ky
twitter: @CaymanFinServ

Public Consultation: Beneficial Ownership of Cayman Islands-Registered Companies

25 November 2013

CONTENTS

FOREWORD.....	III
CONSULTATION PROCESS	V
GLOSSARY.....	VI
BACKGROUND.....	9
CONSULTATION QUESTIONS ON SECTIONS 2 AND 3	11
CONSULTATION QUESTIONS ON SECTION 6.....	15
APPENDIX: CAYMAN ISLANDS GOVERNMENT ACTION PLAN TO PREVENT THE MISUSE OF COMPANIES AND LEGAL ARRANGEMENTS	17

FOREWORD

I am pleased to ask industry, clients and the general public for their input regarding beneficial ownership of Cayman Islands-registered companies. Simply put, the purpose of this consultation is to ensure appropriate transparency in our business environment – in other words, it is to ensure that we have appropriate mechanisms to effectively maintain information on who owns and controls Cayman-registered companies, and that this information is readily available to appropriate authorities.

Transparency is important, on a local and global scale, because it is a means to mitigate financial crimes. It protects investors, as well as public revenue. Transparency also generates public trust in the integrity of our systems, and increases confidence in the stability of our jurisdiction.

This consultation covers sections 2 and 3; and section 6 of the Cayman Islands Action Plan to Prevent the Misuse of Companies and Legal Arrangements, which is further explained in this document's appendix.

Not all aspects of the action plan require public consultation at this time. However, it is essential that Government hears your opinions on the sections listed above, because the outcomes could affect our financial services providers, and every person who has a company – whether resident, non-resident, exempt, or foreign – that is registered in the Cayman Islands. I therefore strongly encourage industry, and the owners of Cayman-registered businesses, to provide feedback.

To members of the general public, I note that while you may not have a Cayman-registered business, you nevertheless benefit from the government services that are provided with the public revenue that these companies generate. Therefore, your voice also is important.

Regarding the action plan, Government released it on 18 June 2013, in response to initiatives stemming from the UK-chaired G8 Summit. The plan commits Cayman to a review of our financial services regime, to ensure that business conducted in our Islands continues to meet international standards on combating money laundering, and the financing of terrorism and proliferation.

While Cayman's robust response to such financial crimes has been recognised by third-party global bodies such as the Financial Stability Board and the Financial Action Task Force, we will continue to evaluate further proposed changes in light of the intended benefits to law enforcement and tax authorities, the costs of implementation, and the potential impact on our competitive position.

Again, this is why your input is important. Our commitment to consult with industry, clients and the public strongly indicates the current Government administration's position regarding maintaining and wherever possible, enhancing, the strength of our business environment.

We recognise Cayman's role as a global business centre, and our responsibility to act in a manner that supports internationally accepted standards, as well as promoting a level playing field across all jurisdictions. Inventive criminals make it necessary for all countries involved in global business, including Cayman, to ensure that they do not provide safe havens for any kind of illegal activity.

On behalf of my Government colleagues, I sincerely thank you for your input on this consultation. We look forward to receiving your submission by Friday, 31 January 2014.

G. Wayne Panton
Minister for Financial Services, Commerce, and Environment

CONSULTATION PROCESS

The Ministry of Financial Services, Commerce and Environment seeks your feedback on beneficial ownership of Cayman Islands-registered companies. The comments you provide will be considered by Government as part of its decision-making process on these issues.

Please note that you may submit comments electronically or by post; however, emailed submissions – in Word, PDF or RTF format – are preferred. Also, you should be aware that information contained in your submission may be made available to the public, either by disclosure as part of the Ministry’s public reporting on the consultation results, or if the Ministry receives a request to release information under the Freedom of Information Law.

If you would prefer your comments to remain private, you can request that all or part of your submission remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose.

For those comments that you wish to provide in confidence, please provide them in a separate submission, marked as confidential. Please note that an FOI request for information must be processed in accordance with that law.

A report on the outcome of the consultation will be published after the responses have been collated and analysed.

Closing date for submissions: Friday, 31 January 2014

Email: wilbur.welcome@gov.ky

Mail: Wilbur Welcome
Senior Policy Analyst
Financial Services Secretariat
Ministry of Financial Services
Government Administration Building
133 Elgin Avenue, Box 126
Grand Cayman KY1-9000
Tel: 244-2246

Enquiries: Enquiries can be directed to Wilbur Welcome at wilbur.welcome@gov.ky.

GLOSSARY

Anti Money-Laundering (AML): A set of procedures, laws or regulations designed to stop the practice of generating income through illegal actions. In most cases, money launderers hide their actions through a series of steps, to make it appear that money coming from illegal or unethical sources was earned legitimately.

Anti Money-Laundering Steering Group (AMLSG): A statutory body created by the Cayman Islands Government, and charged with oversight of Government's AML/Combating the Financing of Terrorism policy.

Automatic Exchange of Information: The systematic, periodic transmission of 'bulk' taxpayer information by the country that has the information, to the country in which the taxpayer is considered responsible for reporting taxable income.

Bearer Shares: Bearer shares refers to negotiable instruments that accord ownership in a legal person to the person who possesses the bearer share certificate.

Beneficial Ownership: The benefits of ownership enjoyed by a natural person(s) who ultimately¹ owns or controls a customer² and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

[1] Reference to 'ultimately owns or controls' and 'ultimate effective control' refers to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.

[2] This definition should also apply to beneficial owner of a beneficiary under a life or other investment-linked insurance policy.

Bilateral Instruments, or Bilateral Agreements: Agreements between two participants, such as governments.

Caribbean Financial Action Task Force (CFATF): The Caribbean arm of the Financial Action Task Force (FATF). See Financial Action Task Force.

Combating the Financing of Terrorism (CFT): A process by which the financing of terrorism is investigated, analysed, deterred and prevented.

Cayman Islands Monetary Authority (CIMA): The authority regulates and supervises Cayman's financial services, and monitors compliance with anti money-laundering regulations. It also assists overseas regulatory authorities.

Central Registry: For the purposes of this consultation, a central register would provide for a centralised repository of data.

Competent Authority: A person or organisation that has the legally delegated or invested authority, capacity or power to perform a designated function.

Comprehensive Reporting Requirements: See FATCA (Foreign Account Tax Compliance Act).

Designated Non-Financial Businesses and Persons (DNFBP): According to the Financial Action Task Force, these are casinos, real estate agents, dealers in precious metals, dealers in precious stones, lawyers, notaries, etc. More information is available on www.fatf-gafi.org/pages/glossary/d-i/.

FATCA (Foreign Account Tax Compliance Act): A major global initiative by the US that imposes comprehensive reporting requirements on financial institutions, in order to assist the US Internal Revenue Service in preventing tax evasion by US persons. The UK has implemented a similar reporting mechanism for the Overseas Territories and Crown Dependencies.

Financial Action Task Force (FATF): An intergovernmental body, the FATF has developed a series of recommendations that are recognised as the international standard for combating money laundering, as well as the financing of terrorism and proliferation of weapons of mass destruction.

Global Forum on Transparency and Exchange of Information for Tax Purposes: See the Organisation for Economic Co-operation and Development.

International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: These are the FATF Recommendations.

Know Your Customer (KYC): KYC requires financial services providers to know detailed information about their clients' risk tolerance, investment knowledge and financial position.

Legal Arrangements: According to the FATF, this refers to express trusts or other similar legal arrangements.

Multilateral Instruments, or Multilateral Agreements: Agreements among three or more participants, such as agencies or governments.

Organisation for Economic Co-operation and Development (OECD): The OECD promotes policies to improve the economic and social well-being of people around the world. The Global Forum on Transparency and Exchange of Information for Tax Purposes has been the multilateral framework within which work in the area of transparency and exchange of information has been carried out by both OECD and non-OECD economies since 2000.

Registrar of Companies (ROC): The Cayman Islands ROC is the official government agency responsible for maintaining corporate registers, including those for resident, non-resident, exempt, and foreign companies.

Tax Information Authority (TIA): This government department carries out the lawful and effective implementation of Cayman's international cooperation arrangements in tax matters.

Tax Information Exchange Agreement (TIEA): TIEAs are legal instruments that are used to facilitate exchange of information for tax purposes.

Sources: Ministry of Financial Services; Investopedia; Defence against Terrorism Review; Wikipedia; Business Dictionary.com; Organisation for Economic Co-operation and Development; Financial Action Task Force

BACKGROUND

The way that global business is conducted – and the domino effect it has on local business – is changing at an unprecedented pace.

At the centre of this change are international tax and transparency initiatives. These have become more urgent in the aftermath of the global recession, which strained public revenue flows in both developing and developed countries.

Evidence of the urgency placed upon these initiatives is found in language that increasingly is being used in statements made by governments, business, and international bodies such as the G20. For example, the G20 St Petersburg Leader's Declaration states the following.

- It commits G20 countries (which include the US, UK, Canada, Germany and France) to ensuring that they meet Financial Action Task Force (FATF) standards on identifying the beneficial owners of companies and other legal arrangements, and makes the point that this identification is relevant for tax purposes.
- It encourages all countries to tackle risks that are raised by not knowing the beneficiaries of companies and other legal arrangements.
- It commits G20 countries to ensuring that information on beneficial owners is available – for example, through central registries or other appropriate mechanisms – to law enforcement, tax collection agencies and other relevant authorities.
- It requests an update from G20 finance ministers regarding their countries' progress in meeting FATF standards on beneficial ownership and other legal arrangements.

The G20; Organisation for Economic Co-operation and Development (OECD); and other international agencies, along with individual jurisdictions, have also stepped up efforts to help developing countries to enhance the efficiency of their domestic tax systems, and improve their international cooperation efforts.

They are doing so because spurring economic growth in developing countries, strengthening tax systems, and improving the flow of tax-related information to assist in the collection of taxes, is seen as a way to reduce dependency on international aid. As the St Petersburg Declaration states, *'Developing countries should be able to reap the benefits of a more transparent international tax system, and to enhance their revenue capacity, as mobilising domestic resources is critical to financing development'*.

As a result of these concerns and objectives, a number of global initiatives, promoted by various groups, are being used to shape this new business landscape, and these initiatives are rapidly aligning. Principal initiatives include multilateral instruments; the wider use of different methods for exchange of tax information (such as automatic exchange of information); comprehensive reporting requirements; and advancements in interagency cooperation.

For decades the Cayman Islands Government has been engaged in these initiatives. Our participation has fomented our belief that fairness in the system of international business is best achieved when all countries, and not just select countries, follow standards that are globally accepted and practiced.

Based on the knowledge and insights gleaned through our ongoing engagement, we believe that our continued adherence to global standards on regulatory and international cooperation is a key driver to the further development and success of our financial services industry.

We therefore reaffirm our commitment to globally accepted and practiced standards, including the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (the FATF Recommendations), which were revised in February 2012. Moreover, we reaffirm our commitment to enacting local laws and regulations to ensure that we fulfil our responsibilities, locally and internationally, in combating financial crime. We consider this to be a matter of good governance.

As another indication of our commitment, immediately following the G8 Summit on 18 June 2013, the Cayman Islands Government published its Action Plan¹ to Prevent the Misuse of Companies and Legal Arrangements. All of the G8 countries,² as well as UK Crown Dependencies and some Overseas Territories,³ have also released their own action plans.

This consultation paper asks you to provide input on sections 2 and 3, and section 6, of the Cayman Islands action plan.

Explanatory notes regarding the Government's plan are in the appendix to this document. However, for convenience and to provide an overview, here is a summary of the plan's eight sections.

1. National Risk Assessment: Conduct, and share the findings of, a national assessment of money laundering and terrorist financing risks by 2015.
2. Legal and Beneficial Ownership: Further evaluate established policies and legislative measures to ensure that information on the ownership and control for companies and express trusts continues to be effectively and accurately maintained.
3. Central Registry of Beneficial Ownership Information: Conduct an assessment of whether a central registry of the beneficial ownership and control of companies is the most appropriate and effective way to improve transparency.
4. Company Formation: Continue the longstanding supervision of those who execute company formation in the Cayman Islands.
5. Financial Services Sector Review: Conduct a review of supervision and regulation of the financial services sector, including category A and B banks, during 2015.
6. Corporate Transparency (Bearer Shares): Further review corporate transparency, including the use of bearer shares.
7. International Cooperation: Maintain our high standards of international cooperation.
8. International Tax Cooperation and Arrangements: Continue to negotiate and enter into international tax cooperation agreements and arrangements.

¹ Appendix 1 is the Cayman Islands action plan as released on 18 June 2013.

² Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States.

³ Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey, and Montserrat.

CONSULTATION QUESTIONS ON SECTIONS 2 AND 3

SECTION 2: LEGAL AND BENEFICIAL OWNERSHIP

What it means: The Cayman Islands will further evaluate established policies and legislative measures to ensure that information on the ownership and control of companies and express trusts continues to be effectively and accurately maintained, and that this information continues to be readily available to the appropriate authorities.

Explanatory notes:

- a. This section covers two concepts of ownership: legal owners, and beneficial owners.

A legal owner is a person whose name appears on the share register of a company. All companies are required to maintain a register of members that includes:

- i. the names and addresses of members;
- ii. the share capital held by each member; and
- iii. the date on which each member commenced or ceased to be a member.

Every company in the Cayman Islands must also maintain a registered office in the Islands, and that address must be on file with the Registrar of Companies (ROC). The registered offices of exempted and non-resident companies must be located at the address of a licensed service provider that is regulated by CIMA, and subject to obligations under the Cayman Islands Money Laundering Regulations (MLRs).

The MLRs set out the general obligations on service providers regarding information on the identities of their clients. However, the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands⁴ provide more details on what is required to meet the obligations established in the MLRs. Specifically, paragraph 3.31 of the guidance notes states that service providers should obtain and maintain details of a corporate client's principal beneficial ownership.

Persons providing trust services are subject to regulations because they hold a licence to conduct a trust business. They also are subject to the MLRs.

A beneficial owner, as defined in the FATF Recommendations glossary, is the natural person(s) who ultimately owns or controls a customer, and/or the natural person on whose behalf a transaction is being conducted. It also includes persons who exercise ultimate effective control (therefore having a controlling ownership interest) over a legal person or arrangement.

The concept of a controlling ownership interest depends on the ownership structure of the company. The FATF suggests that it may be based on a threshold – for example, any person owning more than a certain percentage of the company.

Paragraph 3.35 of Cayman's guidance notes states that a beneficial owner is a person on whose behalf an account is opened, a business relationship is established, or a transaction is conducted. Sometimes, the identity of beneficial ownership may not always be the most relevant factor in

⁴ http://www.cimoney.com.ky/AML_CFT/aml_cft.aspx?id=144

establishing the control of a corporate client. In such circumstances focus should be placed upon principal control of the operation of the corporate entity. Cayman's guidance notes state that a person has 'control' if they hold 10% interest or more, or have principal control over the company's assets.

- b. FATF Recommendations 24 and 25 address transparency and beneficial ownership of legal persons and arrangements. Both state that countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons and express trusts (including information on the settlor, trustee and beneficiaries) that can be obtained or accessed in a timely fashion by competent authorities.

SECTION 3: CENTRAL REGISTRY OF BENEFICIAL OWNERSHIP INFORMATION

What it means: The Cayman Islands will conduct an assessment of whether a central registry of the beneficial ownership and control of companies is the most appropriate and effective way to improve transparency, in support of domestic legal compliance and the implementation of cross-border assistance, in accordance with internationally adopted and implemented standards during 2015.

Explanatory notes:

- a. Knowing the beneficial owners of a company has become an increasingly heard topic of discussion in the international community regarding the transparency of legal entities. In line with the FATF Recommendations, the Cayman Islands already obtains beneficial ownership information to mitigate the risk of money laundering and terrorist financing, and has been doing so for more than a decade.
- b. At the Open Government Partnership summit on 30 October 2013, UK Prime Minister David Cameron announced that the UK would '*establish a central register of company beneficial ownership,*' and that '*it's also going to be open to the public*'.
- c. The UK's announcement was made following public consultation on the elements of their G8 action plan relating to company beneficial ownership and corporate transparency. The consultation was launched in a discussion paper released in July 2013 by the UK's Department for Business, Innovation and Skills, titled *Transparency and Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business*.
- d. The FATF Methodology for assessing compliance with FATF Recommendation 24 states that countries are to ensure that information on the beneficial ownership of a company is obtained by that company; is available at a specified location in their country; or can be otherwise determined in a timely manner by a competent authority. To accomplish this, the methodology states that countries should use one or more of the following mechanisms.
 - Require companies or company registries to obtain and hold up-to-date information on the companies' beneficial ownership.
 - Require companies to take reasonable measures to obtain and hold up-to-date information on the companies' beneficial ownership.
 - Use existing information, including (i) information obtained by financial institutions and/or DNFBSs, in accordance with FATF Recommendations; (ii) use information held by other competent

authorities on the legal and beneficial ownership of companies; (iii) use information held by the company as required in FATF criterion; and (iv) use available information on companies listed on a stock exchange, where disclosure requirements ensure adequate transparency of beneficial ownership.

For the purposes of consultation on sections 2 and 3, the Cayman Islands Government welcomes your views on these questions. It would be most helpful if you would provide explanations for your answers.

1. Is the establishment of a central register of the beneficial ownership and control of companies in the Cayman Islands the most appropriate and effective way to ensure transparency?
2. Is there a need for enhancement of the current system, by which the information is already held by licenses service providers and made accessible to appropriate authorities? If so, how?
3. What are your views on the FATF definition of beneficial ownership and its application in respect of information to be held by a central registry?
4. If pursued, what types of companies and legal entities should be in the scope of the registry? What do you expect to happen if, as suggested by some parties, these registries are limited to companies and exclude other entities like trusts?
5. Should there be exemptions for certain types of company? If so, which?
6. Should companies be required to identify the beneficial ownership of blocks of shares representing more than 10% of the voting rights or shares in the company? Or should companies be required, in any other way, to identify the beneficial owner who has equivalent control over the company?
7. Should beneficial owners be required to disclose their beneficial ownership of the company to the company?
8. Are there other requirements that the Cayman Islands could apply to continue to ensure that information on all companies' beneficial ownership is obtained and improve the availability of such information? If so, what?
9. Should trustee(s) of express trusts be disclosed as the beneficial owner of a company?
10. Is it appropriate for the beneficiary or beneficiaries of the trust to be disclosed as the beneficial owner as well? Under what circumstances?
11. Should the same requirements regarding a company's legal owners be applied as the model for beneficial ownership information to be provided to the ROC?
12. If not, what other information might be required?
13. Should companies be required to update beneficial ownership information at fixed intervals, or as the information changes?

14. Should beneficial owners be required to disclose changes in beneficial ownership information proactively to the company?
15. What are appropriate timeframes for notification of changes to the company or ROC?
16. Should information in a registry (if such were to be created) be made available publicly? Please explain your answer.
17. If yes to the previous question, should a framework of exemptions from a public record be put in place? If yes, which categories of beneficial owners might be included? How might this framework operate?
18. Should any beneficial ownership information held by the company be made publicly available? How?
19. Should any framework of exemptions in relation to information held by the registry also apply to information held by the company?
20. What are your opinions on the costs and benefits of this change for companies, beneficial owners, regulated entities, DNFPBs and other organisations?

CONSULTATION QUESTIONS ON SECTION 6

SECTION 6: CORPORATE TRANSPARENCY (BEARER SHARES)

What it means: The Cayman Islands Government will further review corporate transparency, including the use of bearer shares (all of which are already immobilised and subject to regulation in the Cayman Islands) as recommended in the Phase 2 Peer Review Report by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, by 2014.

Explanatory notes:

- a. FATF Recommendations note that ‘countries should take measures to prevent the misuse of bearer shares and bearer share warrants.

‘This can be done by applying one or more of the following mechanisms: a) prohibiting them; b) converting them into registered shares or share warrants (for example through dematerialisation); c) immobilising them by requiring them to be held with a regulated financial institution or profession intermediary; or d) requiring shareholders with a controlling interest to notify the company, and the company to record their identity.’

- b. The Cayman Islands operates an immobilisation regime for companies that issue bearer shares. A company may issue bearer shares only to a custodian whose name must be recorded in the register of members. Custodians are either ‘authorised custodians’ regulated by CIMA, or ‘recognised custodians’ who are carrying on business in a specified country and who have been approved by CIMA to act as a custodian of bearer shares.
- c. The 2013 Global Forum Peer Review Phase 2 Report for the Cayman Islands notes that ‘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’.
- d. The report therefore recommends that ‘the Cayman Islands should ensure that information on the owners of bearer shares is made fully available within the Cayman Islands in all cases’.

For the purposes of consultation on section 6, the Cayman Islands Government welcomes your views on these questions.

1. Should the ‘recognised custodian’ regime be discontinued? Why or why not?
2. Should there be a prohibition of bearer shares altogether? Why or why not?

THANK YOU FOR YOUR INPUT

For decades, the Cayman Islands Government has been keeping abreast of global changes related to business development, tax and transparency. Active engagement and necessary action has resulted in the recognition of our Islands, by key global bodies such as the OECD, as a jurisdiction with legislation and regulation that meets and in some cases, exceeds, globally accepted standards.

Based on our engagement, we reiterate our belief that regulatory and international cooperation is a key driver to the development and success of the global financial services industry. As a matter of good governance, we also reaffirm that we will continue to adhere to standards that are applied and practiced globally, as the only way to ensure fairness in the system of global business.

This public consultation on our action plan is further indication of our commitment. We thank you for your input, which will be considered as part of our decision-making process on any necessary actions in regard to the accessibility of beneficial ownership of Cayman Islands-registered companies..

If you have questions about this particular consultation on beneficial ownership, please email wilbur.welcome@gov.ky.

APPENDIX: CAYMAN ISLANDS GOVERNMENT ACTION PLAN TO PREVENT THE MISUSE OF COMPANIES AND LEGAL ARRANGEMENTS

SECTION 1: NATIONAL RISK ASSESSMENT

What it means: The Cayman Islands Government will conduct, and share the findings of, a national assessment of money laundering and terrorist financing risks by 2015, through coordinated action by the public and private sectors to assess risks, and to apply resources and mitigate those risks.

Explanatory notes:

- a. According to FATF Recommendation 1, a national assessment is the process by which a country identifies, assesses, and understands its money laundering and terrorist financing risks. This includes analysing these risks and taking appropriate action to mitigate them.

The FATF specifies that appropriate actions should include the designation of an authority or 'mechanism', which would coordinate the actions to assess risks and also apply resources to ensure that the risks are mitigated effectively. Countries should apply a risk-based approach to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified.

- b. Additionally, countries should have national Anti Money-Laundering and Combating the Financing of Terrorism (AML/CFT) policies, based on the risks identified. These risks and policies should be regularly reviewed and updated by a designated mechanism or authority.

- c. The assessment will require coordinated action by the public and private sectors in assessing the risks, and applying resources that will mitigate them.

- d. The Cayman Islands Government is committed to conducting this review, and to implementing measures to mitigate those risks. An important step in the process has been the establishment of the AML Unit, under the auspices of the Attorney General, as the authority that will coordinate the assessment. This unit will be staffed and operational in early 2014.

- e. To facilitate public and private sector cooperation, the AML Unit will reach across several governmental agencies, including the Cayman Islands Monetary Authority, the Financial Reporting Authority, the Financial Crimes Unit, and other relevant entities to ensure that all applicable risks are considered. This will ensure that a holistic approach to the assessment is taken, and that appropriate mitigating controls are implemented.

SECTION 2: LEGAL AND BENEFICIAL OWNERSHIP

What it means: The Cayman Islands will further evaluate established policies and legislative measures to ensure that information on the ownership and control of companies and express trusts continues to be effectively and accurately maintained, and that this information continues to be readily available to the appropriate authorities.

Explanatory notes:

- b. This section covers two concepts of ownership: legal owners, and beneficial owners.

A legal owner is a person whose name appears on the share register of a company. All companies are required to maintain a register of members that includes:

- i. the names and addresses of members;
- ii. the share capital held by each member; and
- iii. the date on which each member commenced or ceased to be a member.

Every company in the Cayman Islands must also maintain a registered office in the Islands, and that address must be on file with the Registrar of Companies (ROC). The registered offices of exempted and non-resident companies must be located at the address of a licensed service provider that is regulated by CIMA, and subject to obligations under the Cayman Islands Money Laundering Regulations (MLRs).

The MLRs set out the general obligations on service providers regarding information on the identities of their clients. However, the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands⁵ provide more details on what is required to meet the obligations established in the MLRs. Specifically, paragraph 3.31 of the guidance notes states that service providers should obtain and maintain details of a corporate client's principal beneficial ownership.

Persons providing trust services are subject to regulations because they hold a licence to conduct a trust business. They also are subject to the MLRs.

A beneficial owner, as defined in the FATF Recommendations glossary, is the natural person(s) who ultimately owns or controls a customer, and/or the natural person on whose behalf a transaction is being conducted. It also includes persons who exercise ultimate effective control (therefore having a controlling ownership interest) over a legal person or arrangement.

The concept of a controlling ownership interest depends on the ownership structure of the company. The FATF suggests that it may be based on a threshold – for example, any person owning more than a certain percentage of the company.

Paragraph 3.35 of Cayman's guidance notes states that a beneficial owner is a person on whose behalf an account is opened, a business relationship is established, or a transaction is conducted. Sometimes, the identity of beneficial ownership may not always be the most relevant factor in establishing the control of a corporate client. In such circumstances focus should be placed upon principal control of the operation of the corporate entity. Cayman's guidance notes state that a person has 'control' if they hold 10% interest or more, or have principal control over the company's assets.

- c. FATF Recommendations 24 and 25 address transparency and beneficial ownership of legal persons and arrangements. Both state that countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons and express trusts (including information on the settlor, trustee and beneficiaries) that can be obtained or accessed in a timely fashion by competent authorities.

⁵ http://www.cimoney.com.ky/AML_CFT/aml_cft.aspx?id=144

SECTION 3: CENTRAL REGISTRY OF BENEFICIAL OWNERSHIP INFORMATION

What it means: The Cayman Islands will conduct an assessment of whether a central registry of the beneficial ownership and control of companies is the most appropriate and effective way to improve transparency, in support of domestic legal compliance and the implementation of cross-border assistance, in accordance with internationally adopted and implemented standards during 2015.

Explanatory notes:

- e. Knowing the beneficial owners of a company has become an increasingly heard topic of discussion in the international community regarding the transparency of legal entities. In line with the FATF Recommendations, the Cayman Islands already obtains beneficial ownership information to mitigate the risk of money laundering and terrorist financing, and has been doing so for more than a decade.
- f. At the Open Government Partnership summit on 30 October 2013, UK Prime Minister David Cameron announced that the UK would '*establish a central register of company beneficial ownership,*' and that '*it's also going to be open to the public*'.
- g. The UK's announcement was made following public consultation on the elements of their G8 action plan relating to company beneficial ownership and corporate transparency. The consultation was launched in a discussion paper released in July 2013 by the UK's Department for Business, Innovation and Skills, titled *Transparency and Trust: Enhancing the Transparency of UK Company Ownership and Increasing Trust in UK Business*.
- h. The FATF Methodology for assessing compliance with FATF Recommendation 24 states that countries are to ensure that information on the beneficial ownership of a company is obtained by that company; is available at a specified location in their country; or can be otherwise determined in a timely manner by a competent authority. To accomplish this, the methodology states that countries should use one or more of the following mechanisms.
 - Require companies or company registries to obtain and hold up-to-date information on the companies' beneficial ownership.
 - Require companies to take reasonable measures to obtain and hold up-to-date information on the companies' beneficial ownership.
 - Use existing information, including (i) information obtained by financial institutions and/or DNFBPs, in accordance with FATF Recommendations; (ii) use information held by other competent authorities on the legal and beneficial ownership of companies; (iii) use information held by the company as required in FATF criterion; and (iv) use available information on companies listed on a stock exchange, where disclosure requirements ensure adequate transparency of beneficial ownership.

SECTION 4: COMPANY FORMATION

What it means: Government will continue the longstanding supervision of those who execute company formation in the Cayman Islands, and keep the regulatory regime under review.

Explanatory notes:

- a. As stated in section 2, company formation is carried out by service providers who must be licenced by the Cayman Islands Monetary Authority (CIMA) and are subject to Anti Money-Laundering / Countering the Financing of Terrorism (AML/CFT) obligations under the Cayman Islands Money Laundering Regulations (MLRs). In addition, Cayman has produced sector-specific guidance notes for company formation and management.
- b. Via desktop audits and onsite inspections, CIMA monitors compliance in respect of obligations imposed on licensed entities, such as service providers, to maintain identity and ownership information.

Company formation agents are licensed under the Companies Management Law (2003 Revision). There are two types of corporate services licenses issued by CIMA:

1. **Companies Management Licence.** Section 3(1) of the law authorises the holder to provide corporate services, or any other corporate services as may be prescribed under that section.
 2. **Corporate Services Licence.** This authorises the holder to provide only the corporate services specified in section 3(1)(a) through (e).
- c. In addition to the Companies Management Law (2003 Revision), company managers and corporate services providers are subject to laws including the Monetary Authority Law (2013 Revision); the Proceeds of Crime Law, 2008; the Companies Law (2013 Revision); and relevant rules, guidance, policies and procedures issued by CIMA. As a member of the Group of International Finance Centre Supervisors, CIMA subscribes to the group's international best practices in relation to trust and corporate services.
 - d. Ongoing supervision and regulation of the activities of licensed company managers and corporate services providers is conducted through the receipt and analysis of audited financial statements; meetings with the licensees' management; and periodic detailed reports or examinations by auditors on specific areas of internal controls and systems. Capital adequacy, management capability and expertise, earnings and liquidity are all assessed on an ongoing basis.
 - e. CIMA's onsite examinations of company managers and corporate services providers include reviews of the licensees' control environment and compliance with relevant laws, regulations and supervisory directives. These include compliance with relevant AML/CFT laws regulations and guidance. Onsite examinations test transactions to evaluate the effectiveness of the control environment and whether fiduciary duties are being upheld. As part of the inspection process, discussions are held with external auditors to review the licensees' strength of internal controls, compliance with legislation and prudential standards, and adequacy of provisions.

SECTION 5: FINANCIAL SERVICES SECTOR REVIEW

What it means: Cayman will conduct a review of supervision and regulation of the financial services sector, including category A and B banks, during 2015 to establish effectiveness of supervision and enforcement of existing rules on beneficial ownership.

Explanatory notes:

- a. CIMA will conduct an AML/CFT analysis of supervision and regulation of financial services, taking into account the new FATF Recommendations, and the FATF's Methodology for Assessing Technical

Compliance with the FATF Recommendations and Effectiveness of AML/CFT Systems, which were set out in February 2013.

- b. This analysis will consider the risks and vulnerabilities identified through previous assessments, as well as identify gaps resulting from revisions to the FATF Recommendations.
- c. Key findings will enable CIMA to contribute to the 2015 National Risk Assessment, and to the broader review of the supervision and regulation of the financial services sector, including category A and B banks, to establish effectiveness of supervision and enforcement of existing rules on beneficial ownership.

SECTION 6: CORPORATE TRANSPARENCY (BEARER SHARES)

What it means: The Cayman Islands Government will further review corporate transparency, including the use of bearer shares (all of which are already immobilised and subject to regulation in the Cayman Islands) as recommended in the Phase 2 Peer Review Report by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, by 2014.

Explanatory notes:

- a. FATF Recommendations note that 'countries should take measures to prevent the misuse of bearer shares and bearer share warrants.

'This can be done by applying one or more of the following mechanisms: a) prohibiting them; b) converting them into registered shares or share warrants (for example through dematerialisation); c) immobilising them by requiring them to be held with a regulated financial institution or profession intermediary; or d) requiring shareholders with a controlling interest to notify the company, and the company to record their identity.'

- b. The Cayman Islands operates an immobilisation regime for companies that issue bearer shares. A company may issue bearer shares only to a custodian whose name must be recorded in the register of members. Custodians are either 'authorised custodians' regulated by CIMA, or 'recognised custodians' who are carrying on business in a specified country and who have been approved by CIMA to act as a custodian of bearer shares.
- c. The 2013 Global Forum Peer Review Phase 2 Report for the Cayman Islands notes that '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'.
- d. The report therefore recommends that 'the Cayman Islands should ensure that information on the owners of bearer shares is made fully available within the Cayman Islands in all cases'.

SECTION 7: INTERNATIONAL COOPERATION

What it means: The Cayman Islands has agreed to maintain our high standards of international cooperation, including the timely and effective exchange of basic and beneficial ownership information on legal persons and arrangements.

Explanatory notes:

- a. The Cayman Islands' competent authority for tax cooperation arrangements is the Cayman Islands Tax Information Authority (TIA). TIA also administers bilateral agreements with EU

Member States in relation to the automatic reporting of savings income information, which Cayman has undertaken since 2005.

- b. CIMA has a statutory obligation to cooperate with overseas regulatory authorities on a worldwide basis, under the regime outlined in the Monetary Authority Law. This law provides extensive powers to CIMA . CIMA has more than 15 bilateral agreements in effect with overseas regulatory authorities. Additionally, CIMA endeavours to fulfil its regulatory and supervisory mandate having due regard to international standards. CIMA is represented in various bodies.
- c. CIMA also participates in the International Monetary Fund’s information framework initiative, under which statistical information is provided to the IMF.
- d. Additional agreements such as the Mutual Legal Assistance Treaty with the United States (MLAT); Misuse of Drugs Law (200 Revision); Misuse of Drugs (Drug Trafficking Offences) (Designated Countries) Order, 1991; Criminal Justice (International Cooperation) Law; Terrorism Law; Evidence (Proceedings in other Jurisdictions) (Cayman Islands) Order; and extradition treaties provide the Cayman Islands with significant legislation to allow for, and enhance, international cooperation in respect to many issues.
- e. The Mutual Legal Assistance Treaty (MLAT) that was signed in 1986 between the Cayman Islands and the US is evidence of the continued cooperation of the Cayman Islands on a wide range of matters. The MLAT has allowed the two governments to cooperate on more than 252 requests for assistance, which has resulted in successful law enforcement actions.
- f. The Cayman Islands continues to play its role in cooperating with all jurisdictions in relation to a wide range of global business, tax and transparency matters. The Cayman Islands’ international cooperation has been recognised by these international organisations, among others.

- **OECD Global Forum Phase 1 Peer Review Report** – A 2011 report published by the Global Forum found the Cayman Islands’ legal and regulatory regime to be in compliance with all nine essential elements of international tax transparency and exchange of information standards, as set by the Phase 1 assessments.

The supplementary report also notes Cayman’s continued development of its information-exchange network, through the signing of tax information exchange agreements (TIEAs). The full report can be accessed from www.oecd.org.

- **International Monetary Fund** – A 2009 assessment by the IMF found the Cayman Islands to have a generally sound framework in place for the provision of mutual assistance through domestic law and international treaties and arrangements.

In relation to the international cooperation elements of the international standards for banking (Basel), securities (International Organisation of Securities Commissions) and insurance (International Association of Insurance Supervisors), the assessment reports a high level of compliance. The full IMF assessment can be accessed from www.imf.org.

- **International Organisation of Securities Commissions** – In June 2009, CIMA was formally admitted as an ordinary (i.e., full) member of IOSCO, becoming a party to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information.

Admission to IOSCO is a strong validation of CIMA’s ability and willingness to engage other regulators to facilitate cross-border information exchange and assistance. More information can be found on www.iosco.org.

- **Caribbean Financial Action Task Force** – A November 2007 third-round AML/CFT evaluation of the Cayman Islands found that the legislative provisions and measures for mutual [legal] assistance are comprehensive and effective. The full CFATF evaluation can be accessed from www.cfatf.org.

SECTION 8: INTERNATIONAL TAX COOPERATION AGREEMENTS AND ARRANGEMENTS

What it means: The Cayman Islands will continue to negotiate and enter into international tax cooperation agreements and arrangements under the entrustment of the United Kingdom, where appropriate, including tax information exchange agreements and double taxation agreements; intergovernmental agreements in support of automatic exchange of tax information (such as under the US Foreign Account Tax Compliance Act); and the Convention on Mutual Administrative Assistance in Tax Matters.

Explanatory notes:

- a. Recent milestones of Cayman’s cooperation in global tax and transparency matters include:
 - the signing of tax information exchange agreements with 31 jurisdictions. Negotiations are either completed, or underway, with a further 18 jurisdictions;
 - participation in the G5 pilot, which has been a key driver in the development of the new global standard for automatic exchange of information for tax purposes;
 - the extension of the UK’s membership in the Convention on Mutual Administrative Assistance in Tax Matters to the Cayman Islands, which Cayman requested in August 2013; and
 - on 5 November 2013, becoming the first Overseas Territory to sign a FATCA-style intergovernmental agreement (IGA) with the UK for automatic exchange of information for tax purposes.
 - Cayman also expects to sign a Model 1 IGA with the US in the very near future. A Model 1 IGA, which was endorsed by Cayman’s financial services industry, provides for the exchange of information on a government-to-government level. A Model 2

agreement would have required financial institutions to provide information directly to the US Internal Revenue Service.