Does holding offshore jurisdictions to higher AML standards really assist in preventing money laundering?

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Abstract

Purpose – This paper aims to contend that when tackling financial crimes such as money laundering and terrorist financing, international regulators are seeking to hold offshore jurisdictions such as the Cayman Islands to higher standards and that this detracts from the pursuit of detecting and prosecuting money launders.

Design/methodology/approach – This paper will deal with the following perceived issues: firstly, to offshore jurisdictions as a concept; secondly, to outline the efforts made by the Cayman Islands to combat money laundering and to rate these changes against Financial Action Task Forces' (FATAF's) technical criteria; thirdly, to demonstrate that the Cayman Islands is among some of the world's top jurisdictions for compliance with FATAF's standards; and finally, to examine whether greylisting was necessary and to comment upon whether efforts by international regulators to hold offshore jurisdictions to higher standards detracts from the actual prosecution of money laundering within the jurisdiction.

Findings – Greylisting the Cayman Islands in these authors' view was something that should have never happened; the Cayman Islands is being held to standards far beyond what is expected in an onshore jurisdiction. There is a need for harmonisation in respect of international anti money laundering rules and regulations to shift the tone to prosecution and investigation of offences rather than on rating jurisdictions technical compliance with procedural rules where states have a workable anti-money laundering (AML) regime.

Research limitations/implications – The implications of this research are to show that offshore jurisdictions are being held by FATAF and other international regulators to higher AML standards than their onshore counterparties.

Practical implications – The author hopes that this paper will begin the debate as to whether FATAF needs to give reasons as to why offshore jurisdictions are held to higher standards and whether it needs to begin to contemplate higher onshore standards.

Originality/value – This is an original piece of research evaluating the effect of FATAF's reporting on offshore jurisdictions with a case study involving primary and secondary data in relation to the Cayman Islands.

Keywords Anti-money laundering, Cayman Islands, FATAF, Offshore jurisdictions, Prosecuting money laundering

Paper type Research paper

The Cayman Islands are an island group and overseas territory of the UK in the Caribbean Sea, comprising the islands of Grand Cayman, Little Cayman and Cayman Brac and situated about 180 miles (290 km) northwest of Jamaica [1] [2]. The Islands are home to over 60,000 [3] people,

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113,182 [4] companies, 12,451 [5] active mutual funds and 111 banks [6]. The Tax Justice Network [7] rates the Cayman Islands as the top jurisdiction in the world for financial secrecy and thus one of the top destinations for hiding and laundering money. However, over the past three years the Cayman Islands Government has addressed a critical evaluation [8] of its anti-money laundering (AML) regime and introduced a raft of regulatory and legislative changes to place the Cayman Islands firmly within international regulatory standards. In spite these actions the Cayman Islands remains grey listed by the Financial Action Task Forces (FATAF) because, firstly, there is a perception that local financial regulators have not imposed enough by way of fines on institutions for AML breaches. Secondly, a perception that insufficient fines have also been levied against service providers and their clients for failing to provide accurate and up to date information in relation to beneficial ownership.

This paper will seek to contend that when tackling financial crimes such as money laundering and terrorist financing, international regulators are seeking to hold offshore jurisdictions such as the Cayman Islands to higher standards and that this detracts from the pursuit of detecting and prosecuting money launders.

This paper will deal with the following perceived issues: firstly, to offshore jurisdictions as a concept; secondly, to outline the efforts made by the Cayman Islands to combat money laundering and to rate these changes against FATAF's technical criteria; thirdly, to demonstrate that the Cayman Islands is among some of the world's top jurisdictions for compliance with FATAF's standards ahead of the UK and the USA; And fourthly, to examine whether greylisting was necessary and to comment upon whether efforts by international regulators to hold offshore jurisdictions to higher standards detracts from the actual prosecution of money laundering within the jurisdiction.

Conclusions will be reached to demonstrate that there is an obsession by financial regulators with offshore jurisdictions and their legal and AML regimes in the Cayman Islands case there is a workable and internationally compliant AML regime. Therefore, the focus of regulators and the international community needs to move on from technical compliance and greylisting workable regimes to the actual detection and prosecution of money laundering offences.

Offshore jurisdictions and international community

Until the Financial Crisis of 2008, the Caribbean Islands and the Alpine financial strongholds were viewed as being at the margins of the global financial order. Offshore jurisdictions are however embedded into the global economy accounting for up to $36tn in untaxed wealth globally [9].

Initially, offshore jurisdictions were defined as cities, areas or countries which have made a conscious effort to attract offshore banking business, i.e. non-resident foreign currency dominated business, by allowing relatively free entry and by adopting a flexible attitude where taxes, levies and regulation is concerned [10]. This definition, however, is not satisfactory as it implies something disreputable. The connotations are that those seeking to use an offshore jurisdiction and the offshore jurisdiction itself are doing so to conceal something and to undertake activities at the margins of the law. This image has not been assisted by regulatory bodies such as the International Monetary Fund who when exploring the concept of an Offshore Jurisdiction focus on flexible regulatory environments and low or zero taxation [11].

Tax havens are defined as the legislative, judicial, fiscal and regulatory spaces provided by jurisdictions that encourage the relocation of economic transactions to their domain [12]. As a general rule the wealthier an individual or corporation the more likely they are to engage in tax planning, legitimately planning one's income and affairs to reduce tax liability. Such planning may include investment in an offshore jurisdiction or a tax haven which allows for low rates of

taxation or zero taxation for businesses and individuals or for total tax avoidance [13]. Tax havens cost international governments between $500bn and $600bn in lost tax revenue annually [14] and with such staggering fiscal losses to high tax nations it is hardly surprising that tax havens actions are highly scrutinised and viewed by international bodies to be harmful and disruptive [15] to the global financial order. It is therefore not surprising that corporate regulators around the globe are seeking corporations to peruse tax planning behaviours where profitability is not moved to tax neutral jurisdictions and seeking to ensure a fiscal gain where an entity does business in a jurisdiction.

Jurisdictions around world allow for free movement of capital across borders and the offshore world provides in the post financial crash era a neutral conduit to allow international finance and investment to flow smoothly. The international community, however, views the use of offshore accounts and corporate structures with a degree of scepticism. Yet it needs to be recognised by the international community that the taxation and corporate codes of G7 Jurisdictions allow for companies and individuals to structure their affairs to include holding wealth offshore. The international community needs to stop relying on the concept of tax havens as portrayed in John Grisham's *The Firm* and switch its approach to targeting abuses and the underlying weaknesses or flaws in various domestic legal frameworks [16].

The innovative contribution of offshore jurisdictions such as the Cayman Islands is a level of regulatory sophistication in areas such as hedge funds which exceeds that available in the major onshore money centres [17]. While the jurisdiction may cater to non-resident investors the legislative framework of the offshore jurisdictions possesses advances in trusts, banking, insurance, financial and company law [18]. There is room in the global economy for niche market operators, offshore jurisdictions are desirable to the international financial community because of their ability to enact legislation that meets its needs together with the confidentiality offered towards those who participate in legitimate business with appropriate reasons for protecting their privacy.

The international community needs to come to terms with the success of the Caribbean and Alpine financial centres. They offer a quality service to reflect international financial needs and providing expertise and the ability to legislate to enhance the legitimate business interests of the international community [19]. Provided an offshore jurisdiction follows internationally accepted legal and compliance regimes, they should be left to openly compete on the global financial scale and to flourish in the niche areas in which they operate. For the international community to take the other position leads to level playing field arguments and this could affect the way in which legitimate business wishes to do its necessary business in the onshore world.

Money laundering and the offshore world the Cayman Islands example

Money laundering is a criminal offence which involves the conversion or transfer of property, knowing that such property is derived from any offense(s), for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such offense(s) to evade the legal consequences of his actions [20]. Money laundering comprises three stages: First Placement which involves moving the funds from direct association with the crime; Second Layering to disguise the trail to foil pursuit; and thirdly Integration, making the money available to the criminal from what seem to be legitimate sources. Common methods used for money laundering include purchasing of luxury items and the transfer of money by a complex network of legal business via shell corporations. The value of this operation is estimated to be between 2% and 5% of global GDP or US$800bn and US$$2tn [21].

The offshore world is viewed by the global regulatory environment to be conducive to money laundering. Firstly, because of location, most offshore jurisdictions lie in an archipelago in the Caribbean Sea between the producers of cocaine in South America and the markets into which it is predominantly sold in North America and Europe making it a prime target for the funds to be hosted. Secondly, the growth in financial services offered by countries in the Caribbean, most of the world offshore banks are located in the Caribbean [22] offering strong confidentiality laws that raise obstacles for anti-corruption investigations. Thirdly, as previously discussed, offshore jurisdictions are perceived by the international community to be poorly regulated and thus offering opportunities for money laundering through their corporate structures combined with opportunity to hold criminal funds away from tax authorities.

Using the Cayman Islands as an example this paper will now illustrate the efforts made by an offshore jurisdiction to endeavour to alleviate the international communities' concerns in relation to money laundering and to rate its system against FATAF's technical criteria.

The Cayman Islands underwent its fourth round of mutual evaluation in 2019. Since its last mutual evaluation in 2007 [23], it was noted that its AML regime had undergone considerable overhaul and reform which had augmented and strengthened the AML regime within the jurisdiction [24]. Core areas of strength were recognised in respect of preventative measures and supervision for financial institutions, trusts and corporate service providers, international cooperation and the criminalisation of money laundering and terrorist financing. Significant legislative changes found in the Proceeds of Crime Act, Anti Money Laundering Regulations, Companies Act and in other pieces of legislation were found to improve the overall effectiveness of the AML regime [25]. Yet apprehensions remained as to the effectiveness of these legislative changes, serious further deficiencies within the compliance framework were also identified in respect of simplified measures and reliance on third parties within the Jurisdiction which hamper the implementation of the AML regime [26].

The 2019 Mutual Evaluation Report made forty recommendations and required eleven immediate outcomes. Overall the Cayman Islands was rated compliant in relation to twelve recommendations, largely compliant in respect of fifteen recommendations and partially complaint in respect of thirteen recommendations [27]. Three broad areas of action were required by the Cayman Islands to ensure that their AML regime was seen to be internationally robust. Firstly, consideration was required as to the legal arrangements within the Jurisdiction, an assessment was required as to the specific types of legal persons that existed and how these legal arrangements could be used for the purposes money laundering. In addition to assessing the types of legal person that existed significant reflection was needed in respect of the island's innovative financial sector predominantly those areas perceived to be subjected to a limited form of supervision [28]. Secondly, under the Securities Investments Business Act (SIBIA) excluded persons [29] must have appropriate AML policies, procedures and internal controls adopted together with sufficient risk mitigation procedures. With respect to international banks that are headquartered outside of the Cayman Islands and excluded persons for the purposes of SIBIA there needed to be an evidenced training regime to ensure that there was sufficient understanding of how to file subject access requests [30] with The Cayman Islands Monetary Authority. Thirdly, the Cayman Islands needed to implement significant changes in its criminal detection and investigation of AML offences. The Royal Cayman Islands Police Service needed to move from a reactive based investigation module to a proactive one. Furthermore, Cayman Islands Customs had to be more active in identifying illegal movements of cash. There also needed to be a demonstration by the Cayman Islands that it was taking the benefit out of crime and

seeking to peruse the property equivalence value by ensuring civil asset forfeiture in cases where criminal forfeiture fails and ensuring that the sanctions regime reflects more proportionate and dissuasive measures [31] against using the jurisdiction for money laundering purposes.

Following the 2019 Mutual Evaluation Report, the Cayman Islands Government then lead by Premier Hon. Alden McLaughlin gave a robust commitment to ensure that a strong AML system was in place under the enhanced follow up process. In July of 2019, the Cayman Islands Legislative Assembly (now Parliament) introduced 13 Bills [32] before the house to address the deficiencies identified in the 2019 Mutual Evaluation Report.

The Companies (Amendment), Bill 2019 inserted into the Companies Act [33] a requirement that a company's current list of directors is maintained and available for public inspection [34]. Any changes made to the company's directors or officers will need to be notified to the company's registry within thirty days [35]. This is in line with notifications regimes in other jurisdictions. Furthermore, a Company registered in the Cayman Islands is now required to confirm within its register of members, the number and category of shares held by each member and whether each category of shares held carries voting rights under the articles of association [36]. The Cayman Islands has also taken a plunge in the absence of an internationally accepted standard and with only six G20 countries having central beneficial ownership registers [37] and introduced penalties for failure to comply with beneficial ownership reporting obligations [38]. Mirroring the provisions for Limited Liability Companies, legislation [39] requires a list of current managers of each limited liability company be maintained and be made available for inspection by the Companies Registry. There is also an increase in the relevant fines for failure to comply with the beneficial ownership reporting provisions under the Act [40]. Following these legislative changes in respect of Companies the Cayman Islands also introduced legislation [41] requiring Limited Liability Partnerships to hold information in relation to the partnership, the interests of each partner under the partnership agreement together with its registered offices. Like Companies penalties are introduced for failing to comply with the relevant beneficial ownership information [42].

In respect of both professional and non-professional trustees both in and outside of the Cayman Islands, new legislative provisions [43] were passed requiring trustees to maintain accurate and up to date records in relation to settlors contributors, beneficiaries, protectors, enforcers, service providers and controlling persons as well as up to date accounting records. The legislation also empowers the Registrar of Trusts to request further information where a person is acting in contravention of Cayman Islands law [44] and provides for sanctions for failure to comply with the relevant legislation of up to $120,000 [45].

The *Banks and Trust Companies (Amendment), Bill 2019* revisions are intended to ensure that there are appropriate transparency measures, in the form of disclosure requirements for trust structures. These require trustees to disclose to counterparties when they are acting in their capacity as trustees [46]. The *Mutual Fund and Insurance (Amendment) Bills 2019* create sanctions for those who provide corporate management services but fail to maintain the required beneficial ownership information in relation of their clients. Furthermore money service businesses are required to monitor their client's compliance with their AML programs and to ensure that businesses meet AML requirements [47]. Finally, fundamental changes in respect of Trade and Business licensing were tabled [48] to ensure that when applying for a business license the board considers an applicant's compliance with AML legislation before it grants renews or revokes a license for any designated non-financial business or profession [49].

At the Cayman Islands Enhanced Follow Up Report in February 2021, after significant work by key stakeholders, the Cayman Islands were found to have made good progress in addressing the technical compliance difficulties which were identified in its mutual evaluation in March 2019 [50]. In all the Cayman Islands satisfied all but three actions required by the 2019 Mutual Evaluation Report to strengthen its AML regime. By enacting the significant legislative reforms that are outlined in this piece it is clear that the AML systems in place within the Jurisdiction are dissuasive to money laundering activity and are effective and proportionate for the Cayman Islands position as a global financial centre. There is a clear demonstration by the Cayman Islands through its commitment to international standards to impose adequate sanctions for AML abuses and to effectively detect and prosecute cases of money laundering.

However, despite this positive progress the international AML standard setter FATAF stated that the Cayman Islands must further improve in the areas of sanctions on financial institutions for AML breaches and its regulators must show that they penalise those who do not provide accurate up to date beneficial ownership information [51]. FATAF decrees that as an international financial centre Cayman seeks commensurate measures against parties in the jurisdiction and clear evidence money laundering offences are being effectively prosecuted with proportionate penalties being imposed. In FATAF's view, the Cayman Islands have not demonstrated this to a sufficient standard and as a result was placed on the grey list in February 2021 along with Jurisdictions such as Zimbabwe, Yemen and Pakistan. This is an unjust outcome based on the level of compliance the Cayman Islands has with FATAFs criteria.

When examining the consolidated assessment ratings published by FATF [52] for all of the G7 Countries which are outlined in Figure 1 below. The Cayman Islands is now compliant or largely complaint with thirty nine of the forty FATAF recommendations.

The Cayman Islands has clearly demonstrated a willingness to comply with international AML standards since the 2019 Mutual Evaluation report and has made excellent progress in putting systems in place to ensure compliance, enforcement and detection of financial crime. As a result of legislative reforms the Jurisdiction has advanced from only being partially compliant with thirteen of the technical criteria to being in a position where it is among the top five rated jurisdictions with the highest technical

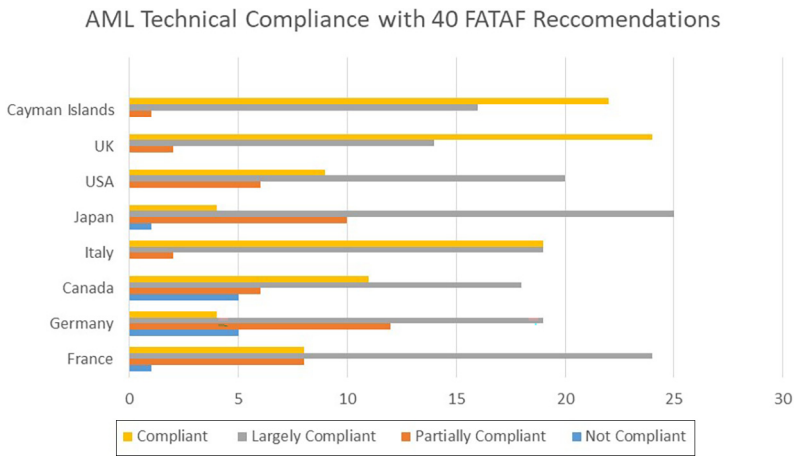

Figure 1.
AML technical compliance with FATAF 40 recommendations

compliance with FATAF's standards ahead of many G7 countries such as the USA, Canada and Germany. Nevertheless, remaining on an international watch list in relation to AML standards for a perceived failure to enforce the rules against companies and corporate service providers. This I contend was unnecessary and unjustified. The Cayman Islands is being challenged by FATAF and is now held to a higher standard of due diligence than any onshore jurisdiction. The Cayman Islands has reached an age of super compliance and must identify and document every director and officer and drill through corporate ownership to identify beneficial owners. No similar obligations applies in the G7, Europe or OCED jurisdiction [53]. International regulators still clearly have concerns about the severity of money laundering in offshore jurisdictions because of the financial services that the geographic location has made available and which money launderers have exploited. Yet it needs to be recognised that offshore jurisdictions such as the Cayman Islands are making considerable efforts to improve their statutory framework to combat money laundering [54]. In the Cayman Islands case, FATAF has taken a decision that is inconsistent with the rigorous nature of the current AML system.

Overthrowing the offshore regulatory myths

An Offshore Jurisdictions fight against money laundering has double motivation of, firstly, fighting organised crime and, secondly, preserving the integrity of the jurisdiction's financial market and market economy [55], which will offer highly specialised financial products. Offshore Jurisdictions are moving to an increased level of regulation in relation to AML and CTF as international pressure has ensured that major jurisdictions will not tolerate or do business with poorly regulated cowboy states.

However, following the recent overhaul of the Cayman Islands AML legislative framework and rulebook, it is still being treated by international regulators, such as FATAF, as if it is a backwater jurisdiction. This is likely because of the international community's imbedded prejudice in relation to offshore jurisdictions in relation to tax avoidance, strong bank confidentiality laws and corporate structures that could be used by those who seek to launder money.

Tax avoidance, in various forms, has no doubt existed as long as taxation has. Following the First World War, business and individuals with international investments or businesses tried to find ways of reducing their tax liability [56]. Rather than treating these jurisdictions as pariahs for daring to operate in this way the international community needs to develop a balance between the interests of international finance and commerce on the one hand and the international community at seizing ill-gotten gains. Rather than pointing blame in the direction of places like the Cayman Islands, states need to ensure that they have a more effective tax administration and states should seek coordination on policy. This has to be done without placing additional burdens on society [57] or taking away the ability of offshore jurisdictions to compete on the international financial market.

Among international regulators, the perceived bank secrecy offered in the offshore and alpine financial centres is pejorative. Yet as any law student knows laws providing for the protection of confidential information have existed onshore and offshore for many years. It is acknowledged in the G7 and most western democracies that bank confidentiality is part of the bank customer relationship [58]. In the UK in the case of *Tournier* [59] Bankes LJ provides four qualifications to that duty: Firstly where disclosure is under the compulsion of law. Secondly where there is a duty to the public to disclose. Thirdly where the interest of the bank require disclosure and fourthly where the disclosure is made with the express or implied consent of the customer. These exceptions are widely regarded in the jurisprudence as exceptions to the duty and as if they had statutory force [60]. The Cayman Islands and

many other offshore jurisdictions especially those adopting a common law system, have the principles embedded in *Tournier* enshrined in statute together with more extensive statutory exceptions to the basic rules of confidentiality. The Cayman Islands statute [61] in *Section 3(1)* provides for disclosure not only within the *Tournier* exceptions but also in compliance with directions of a court, to a constable of the rank of inspector or above investigating a criminal offence committed within the Islands, in compliance with an order or search warrant made by the Central Authority pursuant to the Criminal Justice *(International) Co-Operation Act (2021 Revision)* , in compliance with an order made by the Cayman Authority pursuant to the *Mutual Legal Assistance (United States of America) Act (2015 Revision)*, in compliance with an order for evidence made by the Grand Court pursuant to the *Evidence (Proceedings in Other Jurisdictions)(Cayman Islands) Order, 1978 (S.I 1890/78)*, to the Monetary Authority, where the disclosure made is pursuant to a duty imposed under the *Monetary Authority Act (2020 Revision)* or regulatory laws, to the Financial Reporting pursuant to a duty imposed by the *Proceeds of Crime Act (2020 Revision)* or *Terrorism Act (2018 Revision)*, to the Anti-Corruption Commission pursuant to a duty imposed by the *Anti-Corruption Act (2019 Revision*), in accordance with a right or duty created by any other Law or Regulation. Furthermore, under *Section 3(2)* a person who discloses information on wrongdoing in relation to a serious threat to life, health, safety of a person or in relation to a serious threat to the environment shall have a Defence to an action for breach of a duty of confidence provided they acted in good faith. I would conclude that within the international community the exceptions provided for in statutory law have been lost in a sea of misinformation. The legislation provides for a broader number of exceptions and has allowed the law to develop in a novel manner. It has allowed in the Cayman Islands case an efficient set of procedures to be put in place to deal with applications for appropriate disclosures which are far border than found in onshore jurisdictions. It is clearly not the case that money launders are protected by banking confidentiality within the Cayman Islands as there are a broad number of gateways upon which suspicious activity being detected it can be reported to the appropriate investigatory authorities.

In addition, the unique corporate structures available in offshore jurisdictions are generally perceived by international regulators to be used for money laundering. However, with legislative reforms that include subsistence requirements and the introduction of public beneficial ownership registers [62] discussed offshore jurisdictions such as Cayman are ensuring that they develop procedures that satisfy the three obligations to know your customer, to ensure the provenance of the funds and the nature of the transaction [63]. Therefore, in spite of the scrutiny from onshore government and their regulatory agencies, responsible offshore jurisdictions such as the Cayman's are taking active steps to ensure that there are measures in place to prevent criminals disrupting the fiscal system through money laundering activities. This should be recognised by onshore jurisdictions and their regulatory agencies and deemed to be fair in relation to their AML demands and processes [64].

Conclusions: way forward

Globalisation [65] has given new opportunities for organised crime and new and ever evolving challenges for legal systems and their enforcement mechanisms. Organised crime is entrepreneurial and adapts to new circumstances and opportunities [66] rapidly in order for it to survive. Criminal operations can be so complex to hinder investigation and prosecution and have previously included the use of shell corporations, banking secrecy, corporate secrecy, offshore jurisdictions, alpine financial centres, trusts and lawyer and client privilege. However, the international regulatory community should not seek to cast a shadow over those with genuine interests.

The international community needs to understand how money is laundered and to develop a culture in the financial sector and within the legal and banking professions that encourages cooperation with the authorities and treats those that are suspected of money laundering with the full force of the law [67]. In essence, jurisdictions and regulatory agencies need to treat organised crime as a business model and to use effective means of investigation and prosecution to those who act on its behalf. Law enforcement authorities need to identify the areas of business for organised crime and disrupt those organisations business capabilities by targeting those who launder money. This will affect the cash flow of organised crime and limit the working capital to pay employees and limit investment in new criminal ventures [68].

Investigating these practices will involve not only offshore jurisdictions having robust AML systems but also cooperation with the law enforcement [69] authorities of various onshore jurisdictions. The work of FATAF and the Basel Committee on Banking Supervision in relation to customer due diligence needs to be applied consistently by all jurisdictions so that through international cooperation those engaged in fiscal fraud and other criminal matters will be caught through exchange of information between states which will support criminal investigations and prosecutions. In order for money laundering to be brought under control, regulatory agencies need to be proactive rather than reactive to put up a robust fight against such activities. The systems for detection remain fragmented, with varied regulatory environments across jurisdictions [70]. The focus of regulators needs to be on the adoption of common standards rather than the persecution of Offshore Jurisdictions such as the Cayman Islands based upon a post-mortem regulatory mentality. The steps the Cayman Islands have taken far outweigh efforts by onshore jurisdictions in Cayman there is a culture of super compliance.

The Cayman Islands have moved to an age of increased regulation and are demonstrating that as an offshore jurisdiction they are active participants in the prevention of international crime. This is more than mere lip service; fundamental legal changes have taken place to deter those participating in money laundering to do so in the jurisdiction. Other offshore jurisdictions such as The Bahamas, The Netherlands Antilles and the British Dependent Territories are following suit with major legislative reforms to prevent money laundering and to protect the integrity of their financial systems. These actions need to be recognised by FATAF and the international community as a whole. Furthermore the international community needs to stop treating the offshore world as somewhere to do shady business and to recognise that there are comparable if not higher standards than many onshore jurisdiction. The question of tax avoidance by corporations and individuals also needs to be put to one side by the onshore world who need to take action against perceived tax avoidance or to reform their systems in a way that allows a level playing field in respect of tax matters.

Greylisting the Cayman Islands in this authors view was something that should have never happened, the Cayman Islands is being held to standards far beyond what is expected in an onshore jurisdiction. There is a need for harmonisation in respect of international anti money laundering rules and regulations to shift the tone to prosecution and investigation of offences rather than on rating jurisdictions technical compliance with procedural rules where states have a workable AML regime.

Notes

1. (Cayman Islands | Culture, History, & People, 2021).
2. (Cayman Islands | Culture, History, & People, 2021).

3. (World Population Prospects – Population Division – United Nations, 2021).
4. (Company Statistics, 2021).
5. (Cayman Islands Investment Funds Statistics, 2021).
6. (2021) https://corporatefinanceinstitute.com/resources/careers/companies/top-banks-in-the-cayman-islands/-.
7. (Cayman Islands – Tax Justice Network, 2021).
8. (CFATAF, 2019)
9. (Henry, 2021).
10. See (Dufey and Giddy, 1994) and (McCarthy, 1979).
11. (Zorare, 2007). Classified a definition of offshore jurisdictions as being primarily orientated towards non-residents with a flexible regulatory environment, low or zero taxation and a disproportion between the size of the financial sector and domestic financial needs.
12. (Murphy, 2009).
13. (Zuckerman, 2013).
14. (Crivelli, deMooj and Keen, 2015).
15. (Harmful Tax Competition: An Emerging Global Issue, 1998).
16. (Orlov, 2004).
17. (Hay, 1999).
18. (Rose-Marie Belle Antoine, 2004).
19. (Powell, 2001).
20. (Vienna Convention).
21. (Online, 2021).
22. (Working Paper of the United Nations Office for Drug Control and Crime Prevention). The United Nations Forum January 2000 at page 6 identifies 42% of the worlds offshore banks are located in the Caribbean.
23. The 2007 Mutual Evaluation concluded that the Cayman Islands were compliant with 14 Recommendations, largely compliant with 24; partially compliant with 10 and non-compliant with 1.
24. (CFATAF, 2019, at paragraph 8).
25. (CFATAF, 2019 at paragraph 9).
26. (CFATAF, 2019 at paragraph 9).
27. (CFATAF, 2019 at Summary of Technical Compliance pp. 266-269).
28. (CFATAF, 2019 at Chapter 7 Immediate Outcome 5 and Recommendations 24 and 25).
29. (Securities Investment Business Act) outlines the categories of persons ("Excluded Persons") engaging in securities investment business who are exempted from the requirement to be licenced.

    Section 5(4) of SIBA requires persons to whom paragraphs 1, 4 and 5 of Schedule 4 applies to register with the Authority and pay an annual fee. Among the persons falling within the category of Excluded Persons" as set out in Schedule 4 of SIBA are those to whom section 4(1) of the act

applies but who are "regulated in respect of securities investment business by a recognised overseas regulatory authority in the country or territory (other than the Islands) in which the securities investment business is being conducted".

30. (CFATAF, 2019, at Chapters 5 and 6 in particular Immediate Outcomes 3 and 4 and Recommendations 9 to 23, 26 to 28 and 34 to 35).
31. (CFATAF, 2019 at Chapter 3 in particular Immediate Outcomes 6 to 8 and Recommendations 3, 4 and 29 to 32.).
32. Legislation introduced and passed by the Cayman Islands Legislative Assembly on 24 July 2019. The Bills introduced were The Companies (Amendment) Bill, 2019. The Limited Liability Companies (Amendment) Bill 2019. The Trusts (Amendment) (NO.2) Bill, 2019. The Banks and Trusts Companies (Amendment) Bill, 2019. The Limited Liability Partnership (Amendment) Bill, 2019. The Mutual Funds (Amendment) Bill, 2019. The Insurance (Amendment) Bill, 2019. The Money Services (Amendment) Bill, 2019. The Trade and Business Licensing (Amendment) Bill, 2019. The Building Society (Amendment) Bill, 2019. The Cooperative Societies (Amendment) Bill, 2019. The Auditors Oversight (Amendment) Bill, 2019 and The Monetary Authority (Amendment) (No.2) Bill, 2019.
33. (Companies Act, 2021 (Revision))
34. (Companies Act, 2021, S40.).
35. (Companies Act, 2021, S55).
36. (Companies Act, 2021 S40).
37. (James, 2019).
38. (Companies Act, 2021 (Revision))
39. (Limited Liabilities Companies (Amendment), Bill 2019).
40. (Limited Liability Companies Law, 2021(Revision). 34A))
41. (Limited Liability Partnerships (Amendment), Bill 2019.)
42. (Limited Liability Partnerships Act, 2021 (Revision)).
43. (The Trusts (Amendment), Bill 2019).
44. In particular the Ant-Corruption Act, Monetary Authority Act, Proceeds of Crime Act, Tax Information Authority Act.
45. (Trusts Act, 2021 (Revision)).
46. (Bank and Trust Companies Act (2021) (Revision).
47. (Money Services Act, 2020 (Revision)).
48. (Trade and Business Licensing (Amendment), Bill 2019).
49. (Trade and Business Licensing Act, 2021 (Revision)).
50. (CFATAF, 2021).
51. (Pleyer, M 2021).
52. See Consolidated Assessment Ratings. (www.fatf-gafi.org, 2021)
53. (Travers, 2004)
54. (Drayton, 2002).
55. (Nedelcu, 2018).

56. (Picciotto, 2007).
57. (Tavares, 2012).
58. (Young, 2013).
59. (Tournier v National Provincial and Union Bank of England, [1924]).
60. (Cranston and Al, 2017)
61. (Confidential Information Disclosure Act, 2016).
62. (Thomas James, 2020).
63. (Ridley, 1998).
64. (Hay, 2001).
65. The term globalisation has been defined in a number of ways however, a common theme is the whole world is viewed as borderless and nationless with goods, capital and people moving freely see (Sera, 1992).
66. (Welling and Rickman, 1999).
67. (Wardle, 1999).
68. (Bell, 1999).
69. (Otusanya and Adeyeye, 2021).
70. (Mugarura, 2020).

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