



CARIBBEAN FINANCIAL
ACTION TASK FORCE

Fifth Follow-Up Report

Bermuda

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MUTUAL EVALUATION OF BERMUDA: FIFTH FOLLOW-UP REPORT

Application to move from regular follow-up to biennial updates

Key decision: Does the plenary agree that Bermuda has taken sufficient action to be moved from regular follow-up to biennial updating?

I. INTRODUCTION

1. The third round Detailed Assessment Report (DAR) of Bermuda was adopted by the CFATF Council of Ministers in November of 2007 in Costa Rica and the country was placed in a regular follow-up process. Bermuda reported back to the CFATF Plenary in May 2009 ([Bermuda 1st Follow-up Report](#)) and was kept in regular follow-up on the basis that, having enacted new laws and amending existing ones, some of the core, key and other Recommendations were still outstanding. Bermuda reported back to the CFATF Plenary in May 2011 ([Bermuda 2nd Follow-up Report](#)), and was again kept in a regular follow-up process and directed to report back in May 2013 on the basis that, having enacted more amendments to existing laws, some Key, Core and Other Recommendations were still outstanding and there was the need to demonstrate effective implementation, particularly with the said Core and Key Recommendations. In May 2013 Bermuda reported back to the CFATF Plenary ([Bermuda 3rd Follow-up Report](#)), produced an action plan, and indicated its intention to seek removal from regular follow-up at the November 2013. At the November 2013 Plenary Bermuda was advised to apply to exit the follow-up process at the May 2014 Plenary.
2. As prescribed by the CFATF Mutual Evaluation Programme - Process and Procedures May 2nd 2007 (As amended), Bermuda provided the Secretariat with a full report on its progress. The Secretariat has drafted a detailed analysis of the progress made for Recommendations 3, 5, 13, 23, 35, SR.I, SR.II, and SR.IV and the Other Recommendations. The draft report was provided to Bermuda for its review and comments were received. The comments from Bermuda were taken into account in the final draft. During the process, Bermuda provided the Secretariat all the information the Secretariat requested.
3. The analysis of this report was predicated on the basis of information provided by Bermuda and is inherently a desk evaluation. As a result, the level and nature of information provided and accepted in many instances is inherently different to that which would have been accepted during an onsite visit.

II. SCOPE OF THIS REPORT

4. This report is written in accordance with the procedure for removal from regular follow-up to biennial updating, detailed at paragraph 67 of the CFATF Mutual Evaluation Programme - Process and Procedures May 2nd 2007 (As amended). It contains a description and detailed analysis of the actions Bermuda has taken to close the gaps for the Key and Core Recommendations rated non-compliant (NC), partially compliant (PC) and largely compliant (LC) and a description and analysis of the Other Recommendation rated PC and NC. For a country to be considered for removal from regular follow-up *the Plenary will consider that significant action has been taken by the Examined Member where it has an effective AML/CFT system in force, under which it has implemented the “core and key” Recommendations at a level essentially equivalent to a C or LC taking into consideration that there would be no re-rating*

5. Bermuda received ratings of PC or NC on eight (8) of the sixteen (16) Core and Key Recommendations as follows:

Table 1: Ratings for Core and Key Recommendations

Rec.	1	3	4	5	10	13	23	26	35	36	40	I	II	III	IV	V
Rating	LC	PC	C	NC	LC	PC	NC	LC	PC	LC	C	PC	PC	LC	PC	C

6. With regard to the other non-core or key Recommendations, Bermuda was rated partially compliant or non-compliant as indicated below:

Table 2: ‘Other’ Recommendations rated as PC and NC

PARTIALLY COMPLIANT (PC)	NON-COMPLIANT (NC)
R. 14 (Protection & no tipping-off)	R. 6 (Politically exposed persons)
R. 15 (Internal controls, compliance & audit)	R. 7 (Correspondent banking)
R. 17 (Sanctions)	R. 8 (New technologies & non face-to-face business)
R. 25 (Guidelines & Feedback)	R. 9 (Third parties and introducers)
R. 29 (Supervisors)	R. 11 (Unusual transactions)
R. 30 (Resources, integrity, and training)	R. 12 (DNFBP–R.5, 6, 8–11)
R. 31 (National cooperation)	R. 16 (DNFBP–R.13–15 & 21)
R. 32 (Statistics)	R. 21 (Special attention for higher risk countries)
SR. VI (AML/CFT requirements for money/value transfer services)	R. 22 (Foreign branches & subsidiaries)
SR. VIII (Non-profit organizations)	R. 24 (DNFBP—regulation, supervision and monitoring)
	SR. VII (Wire transfer rules)
	SR. IX (Cross Border Declaration & Disclosure)

7. The following table is intended to assist in providing an insight into the level of risk in the main financial sectors of Bermuda:

Table 3: Size and integration of Bermuda's financial sector as at December 2013

		Banks	Other Credit Institutions	Investment Funds	Insurance	TOTAL
Number of institutions	Total #	4	1	698	970	1,673
Assets	BD\$	\$25.1bn	6,728,043	\$176.36bn	\$452bn	\$653.46bn
Deposits	Total: BD\$	\$22.3bn	See Note 3 5,571,829			\$22.30bn
	% Non-resident	See Note 1	See Note 3			
	% Foreign-owned:	See Note 2	See note 3	See note 4	See note 5	
International Links	#Subsidiaries abroad	6	NA	See note 4	See note 6	

Bank statistics as of Q4 2013 (From BMA Regulatory Information December 2013)

Investment Funds as of Q4 2013 (From BMA Regulatory Information December 2013)

Insurance statistics as of BMA annual report year ended 2012 for end of year 2011

1. The percentage of non-resident deposit balances is presently not tracked, through the prudential information reporting process. As at Q4 2013, the banking sector reported \$19.9 billion in foreign currency assets (primarily USD) and \$19.3 billion in net deposits denominated in currencies other than the Bermuda dollar.
2. Of the four banks currently licenced, three have foreign ownership with HBBM being part of the HSBC Group out of the UK; BCB being majority owned by Australian investor Duncan Saville; and BNTB being 50% owned by a consortium of the Carlyle Group from the USA and CIBC Bank from Canada.
3. From Q4 2013 PIR (in whole dollars). The percentage of non-resident members of the Credit Union is not tracked; however, its membership is limited to the Bermuda Industrial Union and persons related.
4. The percentage of foreign ownership and the number of subsidiaries abroad is not tracked for Investment Funds.
5. Foreign ownership of Insurance Companies is identified; however the percentage of foreign ownership of Insurance Companies is not tracked.
6. Foreign owned subsidiaries of insurers are tracked for members of an insurance group for which Bermuda is group supervisor. For other insurers which do not have a registered group in Bermuda information on foreign owned subsidiaries is not tracked as comprehensively.

Table 4: Definition of abbreviations used in this follow-up report

ABBREVIATION	DEFINITION
POCA	Proceeds of Crime Act 1997
RA	Revenue Act 1898
IA	Insurance Act of 1978
T(RTB)A	Trusts (Regulation of Trust Business) Act 2001
CSP Act	Corporate Service Provider Business Act 2012
SEA	Proceeds of Crime Regulations (Supervisory and Enforcement) Act 2008
IBA	Investment Business Act 2003
AML/ATF Regulations	Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008
CSP	Corporate Service Providers
BMA	Bermuda Monetary Authority
AML/AFT	Anti-money laundering /Anti -terrorism financing
BDCA	Banks and Deposit Companies Act 1999,
R(A)A 3	Revenue Amendment Act 2012:3
R(A)A 16	Revenue Amendment Acts 2012:16
ATFA	Anti-Terrorism (Financial and Other Measures) Act 2004

III. MAIN CONCLUSION AND RECOMMENDATIONS TO THE PLENARY

Core and Key Recommendations

8. Bermuda's recent legislative action have addressed all the deficiencies for the Core and Key Recommendations 13, II, IV, 3, 36, and SRIII. For Rec. 35 and SRI, even though the domestic legislation has been enacted to give full effect to the various articles, the Conventions have not as yet been extended to Bermuda.

Other Recommendations

9. Bermuda has progressed to the point where only Recommendation 12 can be considered to be outstanding. Recommendations 11, 14 and 24 have been significantly addressed and now have just very minor shortcomings. All of the Other Recommendations which were rated as PC and NC have been fully rectified.
10. Based on all of the above it is recommended that Bermuda's request for removal from Regular follow-up to biennial updates be accepted and the Jurisdiction be asked to provide a written update to the November 2014 Plenary to be followed by updates every two (2) years commencing from November 2014.

IV. SUMMARY OF PROGRESS MADE BY BERMUDA

Overview of the main changes since the adoption of the DAR

11. Since publication of the MER in 2007 Bermuda has set about strengthening its AML/CFT legislative framework through the enactment of the Anti-Terrorism (Financial and Other Measures) Act, 2004; the Proceeds of Crime Act 1997, the Proceeds of Crime Amendment Act 2007 and the Revenue Act 1898. New Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations were enacted to replace the Proceeds of Crime (Money Laundering) Regulations 1998, which were in force at the time of the Mutual Evaluation. Additionally, in order to make the necessary provisions requiring the Bermuda Monetary Authority and other designated professional bodies to take measures which would secure compliance with regulations made under the Proceeds of Crime Act 1997 and the Anti-Terrorism (Financial and Other Measures) Act 2004, and also to provide powers to impose civil penalties, inter alia, the Proceeds of Crime Regulations (Supervisory and Enforcement) Act 2008 (SEA) was enacted. The Anti-Terrorism Order which specifies the classes of businesses which belong to the regulated sector was enacted and wire transfer regulations were enacted. New Guidance Notes were put into force on 27th March 2009. Bermuda replaced the Financial Investigation Unit which was a creature of the Bermuda Police Service with the Financial Intelligence Agency. Additionally, the Revenue Act 1898 (RA), the Insurance Act of 1978 (IA), the Banks and Deposit Companies Act 1999 (BDCA), the Investment Business Act 2003 (IBA), and the Trusts (Regulation of Trust Business) Act 2001 T(RTB)A. Bermuda has also enacted new legislation in the form of the Corporate Service Provider Business Act 2012 (CSP Act). The CSP Act became law on January 1, 2013, and is intended to regulate corporate service provider business and also for protecting the interests of clients and potential clients of persons carrying on corporate service provider business. The CSP Act requires CSPs to be licensed with, and supervised by the BMA. This action ensures that a prudential and AML/ATF regime for CSPs, under the aegis of the BMA, similar to that which was already in place for the trust industry, will not only enhance the efficiency of the corporate formation process but is also consistent with international best practice standards for the sector.
12. By way of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Designation Order 2012, Bermuda, in August 2012, established a new supervisory authority in the form of the Barristers and Accountants Anti-Money Laundering and Anti-Terrorist Financing Board (the Board) for legal and accountancy service businesses i.e. “Regulated professional firms”. Therefore “independent professionals” i.e. persons carrying on legal and accountancy service business have now been brought under the scope of the AML/ATF Regulations and are therefore “relevant persons” pursuant to pursuant to **r. 2(1) and 4(b)** of the said AML/ATF Regulations. Also, during 2012, the Minister of Legal Affairs approved the Guidance Notes for the Accounting and Legal Sectors.

13. Bermuda enacted the Proceeds of Crime and Related Measures Amendment Act 2013 and the Transnational Organised Crime Act 2013 in September 2013. These laws were assented on October 4, 2013 and became operative on November 8, 2013. These laws amended the POCA, ATFA and related legislation in order to strengthen the AML/CFT framework. The said legislation also, amongst other things, incorporated provisions of the Palermo Convention and the SFT Conventions into the domestic legislative framework in order to address gaps and to enable the extension of the said conventions to Bermuda by the UK. Further additional changes have been made to POCA (Proceeds of Crime Amendment (No. 2) Act 2013) (POCA 2 Amend 2013) to incorporate provisions for a Civil Asset Recovery Regime to further enhance and strengthen the AML/CFT framework. On March 7, 2014, Bermuda laid before its Parliament, further amendments to the POCA which will give effect to Essential Criteria 11.2 and 11.3. On April 1, 2014, the Customs Department became part of the Ministry of National Security, to maximise the synergies among the various law enforcement agencies.

V REVIEW OF MEASURES TAKEN IN RELATION TO THE CORE RECOMMENDATIONS

14. **Recommendation 1 was rated as LC.** The only deficiency was the inability to gauge effectiveness because there had only been one (1) ML prosecution at the time. Since then however Bermuda has had seven (7) ML convictions six (6) of which occurred in 2012. Additionally there are currently four (4) ML cases pending before the Bermudian courts. Please [see here](#) for detailed statistics on Bermuda's ML cases. This Recommendation is *fully rectified*.
15. **Recommendation 5 was rated NC** and the assessors recommended seventeen actions to close the deficiencies noted in the DAR.
- i. *Extend the regulatory regime for FIs to explicitly cover CFT issues.* As was noted in the first follow-up report ([Bermuda 1st Follow-up Report](#)) this gap was closed through the enactment on January 1st 2009, of the new Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations (AML/ATF Regulations). Here Regulations 6 and 11 specifically mandates that CDD and enhanced CDD measures, where applicable, must be conducted by the relevant persons when he suspects terrorist financing. This gap is *closed*.
 - ii. *Establish in the Regulations or in other enforceable instrument (Other Enforceable Means) all of the applicable requirements under FATF Recommendations 5–8. The current Regulations are limited and the Guidance Notes are not enforceable.* Part 2 of the AML/ATF Regulations is concerned with CDD. As to the status of this enactment as OEM it is noted that the Minister of Legal Affairs, pursuant to **s.49 (3)** of the **POCA** and **s.12A** of the ATFA made the AML/ATF Regulations as part of the laws of Bermuda. They are applicable to all AML/ATF regulated financial institutions and independent professional when conducting business in or from Bermuda. Regulation 19 created the penalties that are applicable for failure to comply with the obligations set out in the CDD related regulations. This gap is *closed*.
 - iii. *Extend the CDD requirements beyond customer identification.* The AML/ATF Regulations have extended beyond identification. At Part 2, regulation 7 is concerned with ongoing monitoring in relation to CDD; regulation 9 has is concerned with the requirements to cease a transaction the relevant person is unable to apply the prescribed CDD measures; regulation 11 is concerned with enhanced CDD, the circumstances which would trigger it, and the commensurate action to be taken by relevant persons; regulation 12 is the branches and subsidiaries of AML/AFT regulated financial institutions located outside Bermuda whilst regulation 13 speaks to the prohibition of shell banks and anonymous accounts. Based on the above, this gap is *closed*.
 - iv. *Require CDD in all cases (business relationships and one-off transactions) where there is knowledge or suspicion of ML/FT and not only in cases of one-off transactions. Also, clarify that the threshold for one-off transactions does not apply when there is suspicion. This requirement should also include reporting of suspicion when an FI cannot obtain the required identification/CDD information under Rec. 5.15 and 5.16.-* According to regulation **6 (1) (c)** of the AML/ATF Regulations relevant persons in Bermuda must apply CDD when he suspects ML or TF. This clarifies that the application of CDD measures is inclusive of all transactions where ML/TF is suspected. This gap is *closed*.

- v. *Reduce the minimum CDD threshold for wire transfers to the equivalent of US/BD\$1,000. (See recommendation on recordkeeping under section 3.5.3. – The wire transfer regulations which were enacted in March of 2010 addressed this deficiency by mandating at Regulation 23 (4) that the payment service providers verify information on the payee only where the amount exceeds \$1000. This gap is **closed**.*

- vi. *Extend the CDD requirements to cases where there is doubt as to the veracity or adequacy of previously obtained information. See recommendation below on the need to update information for “grandfathered accounts”. This has been achieved at regulation 6 (1) (d) of the AML/ATF Regulations where CDD is applicable where a relevant person is mandated to apply such measures where he doubts the veracity or adequacy of documents, data or information previously obtained for the purpose of identification or verification. This gap is **closed**.*

- vii. *Reg. 4(4) could more explicitly establish the requirement to identify and obtain CDD information on underlying beneficiaries, including for legal persons and arrangements. This would make the Guidance Notes more consistent with the Regulations. This deficiency is addressed at Part 2 of regulation 5 (b) of the AML/ATF Regulations which defines CDD measures in relation to beneficial owners who are not the customers. Here there is the requirement to identify the beneficial owner and taking adequate steps on a risk-sensitive basis to the extent that the relevant person is satisfied that he knows who the beneficial owner is. In this regard, where the business involves a legal person, trust or similar arrangement, there must also be measures to understand the ownership and control structure of the legal person trust or other arrangement. This gap is **closed**.*

- viii. *Review the customer identification exemptions provided for in the Guidance Notes for consistency with the Regulations and FATF Rec. 5, 8, and 9. At paragraph 84 of the DAR, the assessors wrote that Bermuda’s AML Regulations and guidance notes provided exemptions or reduced customer identification requirements but there was no established basis for such exemptions. Life insurance business as well as clients who were other regulated financial institutions and ‘small’ one-off transactions were exempted. Bermuda has sought to close this deficiency at regulation 6 of the AML/ATF Regulations where a relevant person is required to apply CDD measures when establishing a business relationship, carrying out an occasional transaction, upon suspecting ML of TF or when he is in doubt about the veracity or adequacy of any data or information presented to him. There are no exemptions prescribed here. However at regulation 8 (3) a relevant person is permitted to carryout verification during the establishment of a business relationship if this timing became necessary in order not to disrupt the normal conduct of the business and also where there is a little risk of ML or TF occurring. In this case the verification must be carried out as soon as practicable after contact is first made. Where a life insurance policy is concerned, regulation 8 (5) permits identity verification of the beneficiary to be carried after establishing the business relationship once this is done prior to any payout or at the time of or before the beneficiary takes advantage of any rights he has vested in the policy. At regulation 10 simplified CDD is prescribed for AML/ATF regulated financial institutions which are subject to the AML/ATF Regulations and AML/ATF regulated financial institutions situated in jurisdictions which impose CDD obligations equivalent to those imposed in Bermuda and which are actually being supervised with those CDD obligations. This gap is **closed**.*

- ix. *Review the wording of Guidance Notes 129, 130, 139, 140 and 140 on exemptions from identification to ensure that they do not create a practical limitation of CDD in the insurance and investment services sectors. Similar review is required for GNs 131, 132 and 133 for investment services. This should also be reviewed in the context of timing of verification for purposes of Rec. 5.13 and 5.14. As noted above, this has been achieved at regulation 8 of the AML/ATF Regulations. This gap is **closed**.*
- x. *CDD requirements that include the purpose and nature of business relationships (and significant one-off transactions) should be established. This is in fact a requirement at regulation 5 (c) where CDD is defined so as to include ‘obtaining information on the purpose and intended nature of the business relationship’. Regulation 6 (3) is also relevant because it mandates a relevant person to determine the level of CDD he would apply on a risk-sensitive basis but depending on the type of customer, business relationship product or transaction. This gap is **closed**.*
- xi. *Require FIs to conduct enhanced monitoring for higher risk business and regular updating of customer profile information, to conduct enhanced CDD for higher risk customers, business relationships and transactions. Regulation 11 is concerned with enhanced CDD and relevant persons are mandated to apply it on a risk-sensitive basis. CDD is taken in the context of regulation 6 which includes the obligations for ongoing monitoring particularized at regulation 7. At 7(2)(b) there is the obligation to keep CDD information up-to-date. This gap is **closed**.*
- xii. *Require FIs to conduct enhanced CDD for higher risk customers, business relationships or transactions in either in the POCA, Regulations or other enforceable means. As noted above regulation 11 of the AML/ATF Regulations has sufficiently addressed this deficiency. This gap is **closed**.*
- xiii. *Review the exemptions/simplifications provided for in the Regulations and (non-mandatory) Guidance Notes to ensure that they are justified on the basis of proven (documented) low risk. Where applicable, such lower exemptions/simplifications should be allowed only where customer information is publicly available or when there are otherwise adequate checks and controls in the system, especially when the clients are not other regulated FIs. Simplified CDD is prescribed at regulation 10. See viii above. This gap is **closed**.*
- xiv. *Where simplified CDD is allowed, there should be provisions to limit these to cases where non-resident customers are from countries that have effectively implemented the FATF Recommendations. Simplified CDD is prescribed at regulation 10. See viii above. This gap is **closed**.*

- xv. *As a general rule, do not allow exemptions or reduced CDD measures when there is suspicion of ML/FT.* Provisions made under regulation 6(1) (c) and regulation 11 satisfy this requirement. Under regulation 6(1)(c) CDD must be applied where there is a suspicion of ML/FT and there is no exemption from this requirement nor can simplified due diligence (under regulation 10) be conducted where there is a suspicion of ML/FT. Additionally, regulation 11 also requires that enhanced CDD be conducted where a situation by its nature presents a higher risk of ML/FT. This gap is **closed**.
- xvi. *Remove the general exemption in Guidance Note 50 on the timing for verification when payment is to be made from “other account” as this could be interpreted, e.g. from an account held by any non-FI business or unregulated person.* The Guidance Notes which were in force at the time of the onsite are no longer applicable. The AML/ATF Regulations has addressed timing of verification at regulation 8 (see viii) above. This gap is **closed**.
- xvii. *Require FIs to expedite the conduct of CDD and update client documentation for clients in existence when the Regulations were issued, the so called “grandfathered” customers. The Regulations were issued in 1998 (about 9.5 years ago) and the slow progress in updating such information creates a significant vulnerability across the industry.* Bermuda has indicated that the new Guidance Notes at 5.37 – 5.40 addressed the gap identified relative to E.C. 5.13 and the recommendation that FIs update the client documentation of “grandfathered” accounts. Bermuda has chosen to adopt a risk-based approach to this recommendation at 5.38 of the new Guidance Notes where financial institutions are now required, as risk dictates to take steps to ensure that they hold appropriate information to demonstrate that they know all their customers. This gap is **closed**.

Recommendation 5, overall conclusion.

- 16. The DAR identified 17 deficiencies for Recommendation 5. The positive legislative action taken by Bermuda has the effect of **fully resolving all the noted deficiencies**.
- 17. ***Recommendation 10 was rated LC*** with three (3) deficiencies. (i.) *Include in all the Schedules for minimum licensing criteria of the financial regulatory laws a recordkeeping requirement to comply with the AML/CFT legislation, not only for purposes of the regulatory laws;* (ii.) *Consider rewording Reg. 5(4) to make it more consistent with Guidance Note 95 to state that the retention period in cases of an investigation would be longer than the minimum five-year period specified. Also clarify what constitutes the “outcome of the investigation” and whether it would include, e.g. the prosecution, trial, conviction or confiscation procedures;* (iii.) *Revise the Guidance Notes (G97) to ensure that the retention of transaction records are not limited to details of securities and investments transacted, and that they apply to non-securities related business, e.g. banking and insurance transactions.* – These three deficiencies are addressed at regulation 15 of the AML/ATF Regulations. At regulation 15(5) once a police officer has informed a relevant person, in writing, that certain records may be relevant to an investigation which is being carried out such person must keep the records until the completion of that investigation. Additionally, the records required to be kept includes evidence of the customer’s identity obtained pursuant to the CDD and enhanced CDD requirements at regulation 6, 1, 13 and 14. These three gaps are **closed**.

Recommendation 10 overall conclusion.

- 18. The DAR identified three (3) deficiencies in relation to Recommendation 10. Based on the specific action by Bermuda these are completely addressed thus having the effect of **fully resolving all the noted deficiencies**.

19. For **Recommendation 13**, a **PC** rating was applied for the two (2) deficiencies noted in the DAR. Deficiency 1: *Amend ATFA to require FT-related SARs for funds linked to terrorist organizations* was addressed through the Proceeds of Crime and Related Measures Amendment Act 2013 which amended **s.5** of the ATFA to include the financing of terrorist organisations. S.5 is concerned with fund raising and an offence is committed whereby a person either, invites another to provide money or other property; receives money or other property; or provides money or other property with the intent that it be used or where such a person suspects that it may be used for the purpose of financing terrorist organisations. As a direct consequence of this amendment, FT related funds linked to terrorist organisations are now covered and will be subsumed by Bermuda's SAR reporting obligations. This gap is **closed**.
20. Deficiency 2: *Enhance training for identification of FT-related transactions*. Because FT related transactions were not previously captured there was no requirement for training in the identification of such transactions. Notwithstanding, Bermuda has demonstrated implementation of the existing provisions through the filing of four (4) SARs by its reporting entities, related to terrorist financing. Additionally, in order to enhance its ability to track and detect SARs related to terrorist financing, the FIA has deployed application software that has the ability to red flag such reports, based on specific parameters defined, by the FIA. Finally here, the FIA has included TF issues in its AML/CFT training module for its reporting entities. This gap is **closed**.

Recommendation 13 overall conclusion.

21. The two deficiencies for Recommendation 13 are now closed through a legislative amendment, training and the rolling out of proprietary application software. Recommendation 13 is now **fully rectified**.
22. **Special Recommendation II was rated PC and the assessors recommended four (4) actions to close the deficiencies noted in the DAR:**
- i. *Amend the ATFA's definition of terrorism to include the acts covered by the nine conventions referred to in the SFT Convention.* - The new definition of terrorism in the 2008 amendment of the Anti-terrorism (Financial and other measures) Act suffices. Additionally, Clauses 6 and 7 of the Proceeds of Crime and Related Measures Amendment Act 2013 amended section 3 of ATFA broadening the recognised means by which acts of terrorism can be committed in order to ensure that all of the acts covered by the list of nine conventions referred to in the SFT Convention are included in the definition of terrorism. This gap is **closed**.
 - ii. *Amend ATFA to include acts taken against international organizations.* This is addressed at **s.3 (1) (b)** of the amended ATFA. Here terrorism also means the use or threat of action designed to influence an international organization. Action in this regard falls within the meaning prescribed at **s.3 (2) (a) – (g)**. This gap is **closed**.
 - iii. *Amend the ATFA to include a reference to the financing of terrorist organizations.* Specifically addressed at Clause 8 of the Proceeds of Crime and Related Measures Amendment Act 2013. Here **s.5** of the **ATFA** has been amended to include financing of terrorist organisations. This gap is **closed**.

- iv. *Amend the ATFA to cover extra-territorial acts relating to terrorist organizations.* Bermuda has proffered s.17 of the amended ATFA as addressing the deficiency here. Here a person is culpable where he does anything outside Bermuda and his action constituted the commission of a terrorism financing offence under s.5 and s.6. As noted above the financing of terrorist organisations is now covered by the amendment at s.5 of the ATFA. This gap is **closed**.

Special Recommendation II overall conclusion.

23. Bermuda has taken a number of positive steps through the enactment of amendments to the ATFA. As noted at the analyses above, these amendments specifically addressed and closed all the gaps noted in the DAR, resulting in this Special Recommendation being **fully rectified**.
24. For **Special Recommendation IV which was rated PC**, the deficiencies and recommended cures are identical to that of Recommendation 13. The analyses for Rec.13 are also relevant here and as such Recommendation IV is now **fully rectified**. ([Please see above](#)).

V. REVIEW OF MEASURES TAKEN IN RELATION TO THE KEY RECOMMENDATIONS

25. **Recommendation 3 was rated as PC.** Deficiency 1: *Explicitly provide in legislation for the confiscation of property which constitutes instrumentalities intended for use in the commission of ML or other non-drug trafficking predicate offenses.* As reported in the first follow-up report ([Bermuda 1st Follow-up Report](#)), this deficiency was partially addressed by virtue of the POCA Amendment Act 2008, at clause 7, by empowering the court, where a person is convicted of a money laundering offence, to order the forfeiture of any property which at the time of the offence, he used or intended to use for the purposes of the offence. This amendment specifically referred to ML offences, therefore in circumstances where the instrumentalities involved are related to non-drug trafficking predicate offences, forfeiture would be unlikely. The Proceeds of Crime and Related Measures Amendment Act 2013 is intended to close the deficiency noted in the first follow-up report, by allowing for the making of a Deprivation Order by the Court, to deprive convicted persons of 'tainted property'. Clause 14 of the Proceeds of Crime and Related Measures Amendment Act 2013 amended the Criminal Code Act 1907 by inserting section 70IA. Property here is property that was used in or in connection with the commission of an offence and captures property which constitutes instrumentalities intended for use in the commission of predicate offences. Bermuda has reported on two (2) cases involving convictions for illegal gaming and fraud where confiscations orders were made for \$1.4 million and \$800,000 respectively. This demonstrates the effectiveness of the POCA and the ability of the Bermudian authorities to successfully utilise the related provisions. Instrumentalities related to all offences are now captured in Bermuda resulting in this gap being **closed**.
26. Deficiencies 2 *Explicitly provide in legislation that, for the purposes of confiscation of the benefits of ML offenses, the proceeds that are the basis of the offense may include any payments received by the defendant at any time in connection with the ML offense carried out by him or by another person* and Deficiency 3: *With respect to the voiding of contracts, explicitly provide the authorities with the means to prevent actions to hinder the recovery of property subject to confiscation.* Both these deficiencies were reported in the first follow-up report report ([Bermuda 1st Follow-up Report](#)) to have been sufficiently addressed by Bermuda. These gaps are **closed**.

Recommendation 3 overall conclusion.

27. Recommendation 3 is now ***fully rectified***.
28. **Recommendation 23 was rated as NC.** (Deficiencies 7; and 10): (7)*Review and where necessary strengthen licensing practices in a consistent manner that reflects concerns not only of the applicant, but of other members of the group, including enforcement of the ongoing need for fit and proper criteria under the minimum licensing requirements.* (10) *Conduct a systemic review to ascertain whether other financial activities covered by the FATF Recommendation is taking place in or from within Bermuda on a regular commercial basis.*
29. For deficiency 7 Bermuda has reported that the licensing procedure adopted by the Bermuda Monetary Authority (BMA) involves an evaluation and review process which ensures that the business to be carried out by the proposed licensee is provided for in Bermudian law and the said licensee has the requisite systems and procedures in place to conduct such business. These licensing procedures also include steps to ensure that the persons proposing to manage and direct such businesses are fit and proper to act as controllers and officers of the said business. At this stage as well an evaluation is done on any issues which may have an impact on the licensee and other members of the group. (See Bermuda's report [here](#) for a more details of this aspect of the BMA's licensing procedure). This gap is ***closed***.
30. For deficiency 10 Bermuda reported that a preliminary risk assessment was carried out in 2011-2012 and followed by a more detailed national risk assessment (NRA), which was completed in November 2013. The completed NRA required lists of products and services to be obtained from all regulated financial institutions along with activity and volume statistics. Here, the results of which are being used to identify other areas of activity that might require more detailed review and determine if any additional financial services activities should be brought into scope. However, it should be noted that the key financial activities covered by FATF are already in scope. (See Bermuda's report [here](#) for a more details on Bermuda's ongoing NRA.) This gap is ***closed***.

Recommendation 23 overall conclusion.

31. There were ten (10) deficiencies noted in the MER. The previous follow-up reports ([Bermuda 1st Follow-up Report](#)), ([Bermuda 2nd Follow-up Report](#)), ([Bermuda 3rd Follow-up Report](#)), have already detailed the technical analyses of Bermuda's action and concluded that the only outstanding gaps were in relation to deficiencies 7 and 10. Based on all of the above this Recommendation is now ***fully rectified***.
32. **For Recommendation 26 which was rated as LC** the assessors recommended that Bermuda: *Ensure that the new FIA is established and becomes operational, and provide sufficient staffing levels at the existing Police FIU.*
33. The new FIA was established in 2008, is operational and has played a significant role in Jurisdiction's 13 money laundering convictions since the adoption of the MER. Here six (6) of those convictions were directly related to STR disclosures whilst the FIA supported the other seven (7) through STR related information. Bermuda has also reported there are other AML related matters under investigations and before the Bermudian courts. (Please see [here](#) for other supplementary information provided by Bermuda in relation to the FIA). The second part of the recommended action for increased level of staffing at the Police FIU would be addressed at Recommendation 30. This gap is ***closed***.

Recommendation 26 overall conclusion

34. The single recommended action for Recommendation 26 has been fully resolved resulting in this Recommendation being ***fully rectified***.
35. **Recommendation 35 rated PC** with one (1) deficiency: *The SFT and Palermo Conventions have not been extended to Bermuda.*
36. Bermuda reported that it has formally requested the UK to extend the SFT and Palermo Conventions to it. In the meantime legislation is currently before the Senate to strengthen the framework necessary to enshrine both Conventions. This Special Recommendation remains ***outstanding***.
37. **Recommendation 36 was rated as LC** owing to there being *no specific procedures facilitating expeditious action to be taken or establishing precise timelines for response to MLA requests*. Bermuda has reportedly addressed this through the Attorney General's office where a policy establishing precise timelines to address requests for Mutual Legal Assistance has been established. This Recommendation is ***fully rectified***.
38. **Special Recommendation I rated PC** with I deficiency: *The SFT and Palermo Conventions have not been extended to Bermuda.* The comments above in relation to Recommendation 35 are also relevant here. Bermuda reports that in August 2012 the requirements of UNSCR 1267 (1999) as amended, and other additional European Union ("EU") measures, were brought into force in Bermuda: The Al-Qaida (United Nations Measures) (Overseas Territories) Order 2012 No. 1757 ("Al-Qaida Order 2012") and The Afghanistan (United Nations Measures) (Overseas Territories) Order 2012 No. 1758 ("Afghanistan Order 2012"). The requirements of UNSC Resolution 1267 (1999) were previously implemented in Bermuda through The Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002, as amended. This Special Recommendation remains ***outstanding***.
39. Of the four (4) actions required to close the deficiencies of the DAR only one can be considered to have been sufficiently addressed. The comments at paragraph 43 are also relevant here. This Special Recommendation is ***outstanding***.
40. **Special Recommendation III was rated LC** and two (2) deficiencies were noted in the DAR: Deficiency 1 & 2: (1) *No specific guidance has been issued to the regulated sector concerning its affirmative obligation to implement measures with respect to the UNSCR list.* (2) *There are no specific procedures for delisting or unfreezing.*
41. In March of 2009 the BMA issued Guidance Notes for AML/ATF regulated financial institutions pursuant to **s.52 of the SEA, s.49A of the POCA and s.12B of the ATFA**. Paragraphs 5.304 to 5.311 are concerned with 'Persons institutions should not accept as customers'. Specifically, at 5.305 mention is made of the UK's Terrorism (United Nations) (Overseas Territories) Order of 2001 and its restrictions on making funds and financial services available to listed persons. At 5.306 the obligations of the Governor to issue a Notice freezing funds held by relevant persons is noted. This gap is ***closed***.
42. Deficiency 2 is still being addressed. Here Bermuda's National Anti-money Laundering Committee is reported to be working with the Government House and the UK Foreign and Commonwealth Office to develop procedures for delisting requests and unfreezing of funds. This gap is ***open***.

Special Recommendation III overall conclusion

43. Of the two (2) minor deficiencies which led to the application of an LC rating in the DAR one (1) has been completely addressed whilst the other continues to be in abeyance. This Special Recommendation is ***outstanding***.

VI. DEVELOPMENTS REGARDING THE OTHER RECOMMENDATIONS RATED PC OR NC: R6, R7, R8, R9, R11, R12, R14, R15, R16, R17, R21, R22, R24, R25, R29, R30, R31, R32, SRVI, SRVII, SRVIII, and SRIX.

44. **Recommendation 6 was rated NC** on account of the single deficiency whereby there was no requirement for FIs to conduct enhanced CDD for PEPs. This deficiency has been addressed at regulation 11 of the ATFA Regulations, which is concerned with enhanced due diligence. Specifically with regards to PEPs, at **11 (4) (c)**, where a relevant person has entered into a business relationship with a PEP he is required to conduct enhanced ongoing monitoring of that business relationship. Before this however, senior management approval is a pre-requisite for establishing the business relationship and adequate measures must be put in place to establish the source of wealth and source of funds which are involved in the business relationship or occasional transaction, as the case may be. At paragraph 4.28 of the Guidance Notes, a relevant person must consider the appropriate procedures to identify changes in customer characteristics, which come to light in the normal course of business. If during an institution's ongoing monitoring of a business relationship [Reg. 7(1)] a customer is identified as a PEP, then the obligations of Regulation 11(4) would be triggered and senior management approval required. This gap is ***closed***.

Recommendation 6 overall conclusion

45. The lone deficiency for Recommendation 6 has been closed therefore Recommendation 6 is ***fully rectified***.
46. **Recommendation 7 was rated NC** on account of the single deficiency whereby there was *no requirement for FIs to conduct enhanced CDD with respect to correspondent banking and similar relationships*. Regulation **11(3)** of the **AML/ATF Regulations** has been mandated a banking institution which has or is proposes to have a correspondent banking relationship with a respondent institution outside of Bermuda to do the following:
- a) gather sufficient information about the respondent to understand fully the nature of its business;
 - b) determine from publicly-available information the reputation of the respondent and the quality of its supervision;
 - c) assess the respondent's controls relating to anti-money laundering control and anti-terrorism financing controls;
 - d) obtain approval from senior management before establishing a new correspondent banking relationship;
 - e) document the respective responsibilities of the respondent and correspondent;
 - f) be satisfied that, in respect of those of the respondent's customers who have direct access to accounts of the correspondent, the respondent—

- i. has verified the identity of, and performs ongoing due diligence on, such customers; and
- ii. is able upon request to provide relevant customer due diligence data to the correspondent.

Recommendation 7 overall conclusion

- 47. The lone deficiency has been closed and consequently Recommendation 7 is ***fully rectified***.
- 48. **Recommendation 8 was rated NC** with the lone deficiency that there were *no requirements for FIs to implement measures to prevent the misuse of technological developments that could facilitate ML/TF*. Bermuda has implemented the recommendation of the examiners by detailing at 9 (1) of the Proceeds of Crime (Anti-money laundering and Anti-terrorist financing) Regulations 2008, requirements to cease transactions. Additionally, at 11(2) of the same Regulations, financial institutions are required, where a customer has not been physically present for identification purposes, to take specific measures so as to compensate for the higher risk. These measures are detailed at 11(2) (a), (b), and (c) and include ensuring that additional documents, data or information is used to establish the customer's identity; and or using supplementary measures to verify or certify any documents supplied, or requiring confirmatory certification by a financial institution that is also subject to equivalent regulations. These provisions have the effect of ensuring that this gap is ***closed***.

Recommendation 8 overall conclusion

- 49. The lone deficiency has been closed and consequently Recommendation 8 is ***fully rectified***.
- 50. **Recommendation 9 was rated PC** and there are four (4) recommended actions made by the assessors intended as cures to the deficiencies in the DAR.
 - i. *Require FIs to immediately obtain CDD information from acceptable third parties when relying on their CDD* – Resolution of the deficiency here is dependent on the Proceeds of Crime and related Measures Amendment Act 2013. - According to Bermuda's submission for removal from the follow-up process, the necessary provisions are found at Clause 21 of the Proceeds of Crime and Related Measures Amendment Act 2013. Clause 21 has amended Regulation 14 of the 2008 Regulations and a relevant person relying on another person must obtain information sufficient to identify customers. Even though the necessary standard, according to the Assessors, is for the relevant person to obtain the CDD information "immediately" and the Clause 21 amendment makes no reference to the timing for obtaining CDD information from a reliant third person, regulation 6 of the AML/ATF Regulations is relevant because it mandates that CDD be conducted before a transaction. This gap is ***closed***.

- ii. *When allowing FIs to rely on CDD conducted by third parties, require them to have addressed themselves that the requisite CDD documentation has been obtained by such third parties, and that it will be made available to the FIs promptly on request.* Bermuda has proffered that regulation 15 (7) of the AML/ATF Regulations has addressed the deficiency here. According to this regulation, a relevant person in Bermuda is mandated to take steps to ensure that the third party whom he relies upon to apply CDD measures will provide copies of identification and verification data and other relevant identification documents as soon as practicable after these have been requested by the relevant person. The provisions of regulation 6 of the AML/ATF Regulations are also relevant here in that they mandate that CDD be conducted prior to a transaction. The 2009 Guidance Notes at 5.245 to 5.264 have provided detailed guidance on multipartite relationships including reliance on third parties. This gap is **closed**.
- iii. *Periodically review the adequacy of the basis on which FIs rely on the CDD of other third parties whether in Bermuda or in other countries, with respect to their supervision for AML/CFT purposes, and implementation of the FATF Recommendations by countries where the third parties are located.* This is specifically addressed through the BMA's on-site protocol which requires a review, where appropriate, of third party reliance. Since 2012 the BMA, through its on-site inspections, has identified 4 instances where external reliance has been found to be inadequate. Bermuda provided the Secretariat with the related pages of the BMA's on-site handbook as evidence of this aspect of their on-site inspections being part of their usual practice. This gap is **closed**.
- iv. *Make it explicit that where reliance on others for certain aspects of CDD is allowed, that the ultimate responsibility lies with the FI.* Resolution of the deficiency here was achieved through Clause 21 of the Proceeds of Crime and Related Measures Amendment Act 2013 which amended regulation 14 of the AML/ATF Regulations to include that the relevant person will remain liable for any failure to apply any CDD measures. This gap is now **closed**.

Recommendation 9 overall conclusion

- 51. The Proceeds of Crime and Related Measures Amendment Act 2013 together with the BMA's on-site protocol has conclusively addressed all of the Assessors' recommendations. This Recommendation is **fully rectified**.
- 52. **Recommendation 11 was rated NC** and the assessors recommended that Bermuda *introduce in law, regulations or OEMs a requirement to monitor, examine and record information on complex, unusually large, or unusual patterns of transactions that have no apparent economic or lawful purpose*. This recommendation has been significantly addressed through the Proceeds of Crime and Related Measures Amendment Act 2013. Amendments were made to Regulations 7 and 15 in Clause 19 (amends Reg. 7 of the ATFA) and Clause 22 (amends Reg. 15 of the AML/ATF Regulations). The amendment to Reg. 7 provides for ongoing monitoring to include "all complex, unusually large transactions, and all unusual patterns of transaction which have no apparent economic or lawful purpose"; and Reg. 15 was amended to provide for the keeping of records, for all documents related to investigations of complex transactions, unusually large transactions, or unusual patterns of transactions in relation to Reg. 7, for a minimum period of 5 years. Bermuda tabled further amendments before its Parliament to give effect to EC 11.2 and 11.3 on May 9, 2014 and these are expected to come into force in the coming weeks.

53. For **Recommendation 12, Bermuda was rated as NC** and the assessors made six (6) recommendations to cure the deficiencies they noted in the MER. A detailed analysis of Bermuda's action to close these gaps can be found in the third follow-up report ([Bermuda 3rd follow-up report](#)). There it was noted that several of the deficiencies noted by the assessors were still open. For assessors recommendation #iii Bermuda has reported that the intent is to enshrine as a requirement that all real estate transactions be settled by bank transfer once the real estate agents are brought into scope. However, the risks in this sector have now been largely mitigated by industry practice and the fact that lawyers, who currently are involved in the transfer of property, are already in scope. This Recommendation is **outstanding**.
54. For **Recommendation 14 which was rated as PC**, the assessors made four (4) recommendations to close the deficiencies of the DAR.
- i. *Amend ATFA and POCA to provide explicit protection for those who are required file SARs based on FT.* Provisions under the Anti-Terrorism (Financial and Other Measures) Act 2004, Schedule 1, Part 1(2) have addressed this recommendation. Persons making TF related SAR are protected, provided that the information they disclose came to their knowledge in the course of a business in the regulated sector and the information causes the person making the disclosure to suspect that the subject of the disclosure has committed a terrorist financing offence and such disclosure is made as soon as possible after it was discerned. This gap is **closed**.
 - ii. *Amend POCA to provide explicit protection from criminal liability resulting from a SAR filing.* The POCA now provides protection from criminality resulting from a SAR filing. The related provisions can be found at Clause 6 of the 2008 amendment of the POCA. This gap is **closed**.
 - iii. *Amend POCA to provide for tipping-off offence that explicitly covers the fact of or any information about a SAR filing and the contents therein.* Provisions to address this was made under the Proceeds of Crime and Related Measures Amendment Act 2013. Consequently an offence has been created where a person discloses to any other person his knowledge or suspicion that a disclosure or related information has been filed with the FIA or where a person discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following such a disclosure. It is not a defense if the person accused of tipping-off did not know or suspect that the disclosure was likely to be prejudicial to an investigation because clause 10 has deleted provisions for such a defence which was found at s.10 of the 2004 Act. It is therefore now a strict liability offence for any person to disclose the fact that a SAR or related information has been filed with the FIA, to any other person. This gap is **closed**.
 - iv. *Amend POCA to limit the scope of the exemption from tipping off by lawyers in a manner consistent with R.14 and R.16.* Bermuda has reported that having carried out a thorough review of Bermuda's related provisions and similar provisions in other jurisdictions, it is their opinion that Bermuda's provisions in this regard are consistent with those in other jurisdictions so no change is required at this time.

Recommendation 14 overall conclusion

55. All of the deficiencies for Recommendation 14 required legislative amendments. Bermuda has positively addressed three (3) of them and compared the deficiency, which the other legislative amendment is supposed to address, to similar provisions in other jurisdictions, before concluding that an amendment is not necessary at this time. In light of the fact that this Recommendation was

rated as PC and the majority of deficiencies have been cured, Recommendation 14 is now significantly improved with just the very minor issues related to iv above still outstanding.

56. **Recommendation 15 was rated as PC** and the assessors recommended four (4) actions to close the deficiencies noted in the DAR. The first and second follow-up reports ([Bermuda 1st Follow-up Report](#)), ([Bermuda 2nd Follow-up Report](#)) have detailed Bermuda's actions thus far.
57. The first recommended action: *extend the procedures requirements to the full range CDD and recordkeeping requirements, and also require the formulation of AML/CFT policies, compliance and controls. Also consider specifying, in all cases, that the control systems requirements contained in the financial regulatory laws apply to AML/CFT* has been done (see the first follow-up report) so the gap here is **closed**.
58. The second recommended action: *expand the role of the AML/CFT compliance function beyond suspicious activity reporting and include a requirement for an independent internal audit function that covers AML/CFT*. The conclusion in the first follow-up report is relevant here. Regulation 16 of the AML/ATF Regulations has in fact expanded the compliance function beyond suspicious activity reporting whilst the Guidance Notes at 3.15-3.22 has covers the requirements for an independent internal audit function that covers AML/CFT. This gap is **closed**.
59. The third and fourth recommended actions: (3) *extend the training requirements beyond those "relevant employees" defined in the Regulations to others who can play a role in implementing and monitoring compliance with institutional and legal AML/CFT requirements* and (4) *Include employee screening requirements in the AML Regulations to complement the fit and proper requirements for senior officials of FIs contained in the financial regulatory laws* are addressed in the Proceeds of Crime and Related Measures Amendment Act 2013. Here amendments made to Regulation 18 under Clause 23 broadened the meaning of relevant employee in relation to training requirements and related measures, as well as requires such persons to be properly screened prior to hiring. This gap is **closed**.

Recommendation 15 overall conclusion.

60. All four (4) recommended actions of the assessors have been addressed resulting in Recommendation 15 being fully **rectified**.
61. **Recommendation 16 was rated as NC** and the assessors recommended five (5) actions to cure the two (2) deficiencies they noted.
- i. *Amend POCA to ensure that SAR reporting requirement conforms to the applicable FATF Recs., including requirements for legal professionals.*- Bermuda has reported that provision already made under POCA s.46(2)(6) satisfy this requirement. At s.46 (2) the generic reporting obligations now capture legal professionals. This gap is **closed**.
 - ii. *The authorities should take additional measures, including but not limited to the issuance of regulations and guidance, to ensure that DNFBP, including lawyers, file SARs when appropriate.* Here Bermuda has reported that **s.46** of the POCA and the AML/ATF Regulation 9 cures this. As noted above legal professional advisors have been captured by the generic reporting obligations prescribed. This gap is **closed**.

- iii. *Revise relevant legislation with respect to tipping off by lawyers, in order to protect the confidentiality of SAR information.* The analyses and conclusions related to 14.iii above are relevant here. This gap is **closed**.
- iv. *As recommended in 5.2 above, bring all DNFBPs under the preventive measures regime called for in POC Regulations 1998. Mandatory measures should include requirements to have effective systems and controls to monitor transactions for suspicions and to ensure that suspicious activities are reported.* Here Bermuda has reported that the legislative framework requiring FIs and DNFBPs to have the required systems and controls is in place. To date TSPs, CSPs, lawyers and accountants have been brought into scope under the regime. With regard to the reporting of SARs, the reporting requirement is already in place for all DNFBPs. This gap is **closed**.
- v. *Any AML/CFT supervisory regime introduced for DNFBPs (TSBs are already covered) should include powers for the supervisor to ensure effective implementation of SAR reporting requirements.* This has in effect been addressed through the SEA which gives the necessary powers to the supervisory authorities. Here the analyses for Recommendation 23 detailed in the previous follow-up reports are relevant. This gap is **closed**.

Overall conclusion for Recommendation 16.

- 62. All five (5) recommended actions of the assessors have been addressed resulting in Recommendation 16 being fully **rectified**.
- 63. Relative to **Recommendation 17 which was rated as PC** the outstanding issue is related to the second assessors' recommendation that *finer under POCA with respect to summary convictions and certain convictions on indictment should be raised*. Here Bermuda has opined that relevant sanctions are at appropriate levels and are in fact higher than those sanctions applicable in a number of jurisdictions. According to **s.25(1)** of the **Summary Jurisdiction Act of 1930** where a person is summarily convicted of an offence triable on indictment and the court is of the opinion that greater punishment, than that court is empowered to impose, should be imposed, the court is empowered to commit that person to the Supreme Court for sentencing. Notwithstanding Bermuda is contending that even in the absence of this provision the penalties applicable upon summary conviction for related offences in Bermuda is higher when compared to other specific countries. Bermuda has produced the following table which compares the penalties applicable in Bermuda with those that would apply in Guernsey, Cayman Islands and the UK.

Table 5: Summary of penalties applicable in Bermuda and other countries

Penalties	Bermuda	Guernsey	Cayman Islands	UK
MER Rating (Rec 17)	PC Jan 2008	LC Jan 2011	C Nov 2007	LC Jun 2007
ML (summary)	5 years or a fine of \$50,000.00 or both	12 months and/or a fine not exceeding £10,000	2 years and/or a fine not exceeding \$5,000	6 months or a fine not exceeding the statutory maximum or both

ML (indictment)	20 years or an unlimited fine or both	14 years and/or an unlimited fine	14 years and/or an unlimited fine	14 years and/or a fine
Failure to disclose (summary)	3 years or a fine of \$15,000.00 or both	6 months and/or a fine not exceeding £10,000	Fine of \$50,000	6 months or a fine not exceeding the statutory maximum or both
Failure to disclose (indictment)	10 years or an unlimited fine or both	5 years or to an unlimited fine or both	2 years and/or an unlimited fine	5 years and/or an unlimited fine
Tipping off (summary)	3 years or a fine of \$15,000.00 or both	6 months and/or a fine not exceeding £10,000	2 years and/or a fine not exceeding \$5,000	6 months or a fine not exceeding the statutory maximum or to both
Tipping off (indictment)	10 years or an unlimited fine or both	5 years or an unlimited fine or both	5 years and/or a fine	5 years and/or an unlimited fine or both

Overall conclusion for Recommendation 17.

64. Of the two (2) recommendations made by the examiners one (1) has been specifically addressed through legislation (SEA 2008) whilst Bermuda has pointed to an apparent inconsistency in the application of the rating which has resulted in the PC rating. This Recommendation is ***closed***.
65. **For Recommendation 21 which was rated as NC.** In Bermuda the Minister of Legal Affairs, subsequent to each FATF plenary issues advisories highlighting the FATF's public statements and its published list of countries with strategic deficiencies. These advisories warn industry to note the risks related to each jurisdiction and to take these risks into account in their business processes and procedures. Regulation 11(1) (b) imposes the requirement to apply enhanced CDD in any situation which by its nature can present a higher risk of ML or TF. Paragraph 3.13 of the Guidance Notes addresses this point and encourages institutions to make appropriate use of international findings such as FATF assessments where countries have been found to be materially deficient. Paragraph 5.131 also addresses this point where the location of the customer may present a higher risk of ML or TF. Clause 20 of the Proceeds of Crime and Related Measures Amendment Act 2013 amended Regulation 11(1) to include 11(1)(aa) to require enhanced due diligence to be applied where the country that the customer is from is identified by FATF as a high risk. DAR Paragraph 366 has been addressed by the obligation of Reg 7, to conduct the examination of transactions of no economic or lawful purpose. This Recommendation is now fully ***rectified***.
66. **Recommendation 22 was rated NC** and the first follow-up report has already concluded that "*the enactment of these Regulations has the effect of ensuring that this Recommendation is now fully met*". This Recommendation is fully ***rectified***.
67. At **Recommendation 24 which was rated as NC** the assessors made three (3) recommendations to close the gaps they noted in the MER. Please see the first, second and third follow-up reports

([Bermuda 1st Follow-up Report](#)), ([Bermuda 2nd Follow-up Report](#)) ([Bermuda 3rd follow-up report](#)) for Bermuda's action thus far. The comments at [paragraph 32](#) relative to the ongoing NRA is relevant here and positively affects this deficiency. However the other comment that *No information was provided on the resources, including technical resources and skill etc. that are available to these supervisory authorities to effectively perform their functions. As well, no data was provided to demonstrate that any supervisory functions were actually being carried out* are still relevant. This gap is **open**.

68. The third recommended action relative to updated guidance has been significantly addressed through the sector specific guidance notes, which were approved by the Minister and issued to the sector in 2012, for trust and barristers and accountants. It must be noted as well that updated guidance for all financial institutions including the trusts sector were last issued in 2010. Bermuda It is unclear whether any other Guidance has been issued. This gap is **closed**.

Overall conclusion for Recommendation 24.

69. Recommendation 24 now has a very minor shortcoming remaining, that is really linked to implementation of the measures taken to close the noted deficiency.
70. For **Recommendation 25 which was rated as PC**, the three previous follow-up reports are relevant. Bermuda has now indicated that sector specific guidance are issued through quarterly feedback meetings, by the BMA, through automatically generated reports by the GoAML application software, annual reports, regular industry outreach sessions and quarterly feedback meetings. This Recommendation is **closed**.
71. At **Recommendation 29 which was rated as PC**, the outstanding recommendation is in relation to the assessors' recommendation that Bermuda, "*Specify clear powers in the Credit Union Act that the BMA, under delegated authority, can supervise and inspect these FIs, including for compliance with AML/CFT obligations*". The framework for monitoring and supervision of credit unions are predicated on the fact that a credit union is a deposit taking business as defined in **s.4 of the Banks and Deposit Companies Act 1999**. The definition here¹ encompasses the activities of a credit union because credit unions lend money received by way of deposit to others and finances its other activities out of the interest received on the loans.
72. Both regulation 2(2) of the AML/ATF Regulations and **s.2 (1)** of the SEA include in the definition of an AML/ATF regulated institution "a person who carries on deposit taking business within the meaning of **s.4 of the Banks and Deposit Companies Act 1999**. Regulation 4(a) makes AML/ATF regulated financial institutions "relevant persons" within the scope of the regulations and therefore all of the AML/CFT requirements of the regulations apply to the credit union. , Pursuant to **s. 3(1)(a) of the SEA** the BMA is the supervisory authority for AML/ATF regulated financial institutions; and under **s.5 and 6 of the SEA** the BMA has the duty to monitor AML/ATF regulated financial institutions (including credit unions) for compliance with the regulations etc., which

¹ Section 4(1): **Meaning of "deposit-taking business"** Subject to the provisions of this section, a person carries on deposit-taking business for the purposes of this Act if

(a) in the course of the business, he lends money received by way of deposit to others; or
(b) he finances any other activity of the business wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.

(2) For the purposes of subsection (1), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.

includes the power to conduct on-site examinations to test for compliance. This Recommendation is fully *rectified*.

73. For **Recommendation 30 which was rated as PC** the first, second and third follow-up reports have detailed Bermuda's action thus far. There were ten (10) recommended actions made by the assessors
74. The first and second recommended actions were for the BMA to *enhance training for BMA staff to facilitate the identification of deficiencies relating to AML/CFT and the BMA should enhance staff capacity to undertake more comprehensive AML/CFT supervision including the conduct of effective consolidated supervision whether as home or host supervisor*. Following the commencement of the SEA in 2008 the role of the BMA was expanded to include a duty to monitor financial institutions' compliance with the AML/ATF Regulations. As a consequence of this a dedicated anti-money laundering and anti-terrorist financing unit was established and seven (7) persons were appointed and Bermuda has reported that these officers average 20 years' experience per member in compliance, operational risk, money laundering investigations and enforcement pertaining to regulatory procedures and have worked in the various financial sectors. The unit members also hold relevant diplomas, certifications and degrees such as CAMS. Bermuda reports that 2010 the AML Team has conducted a number of separate week long internal training programmes to develop competencies in supervisory staff to review and evaluate AML compliance during supervisory on-sites. These gaps are *closed*.
75. The third recommended action *ensure continuation of the experience and skill in financial investigations in the Commercial Crime Department* has been addressed. Please refer to the first follow-up report. ([Bermuda 1st Follow-up Report](#)). This gap is *closed*.
76. The fourth recommended action *A liaison officer should be named and existing FIU staff should train their successors in order to facilitate the transition from the FIU* has been achieved because two (2) officers from the former FIU were seconded to the FIA to assist in the transition. This gap is *closed*.
77. The fifth recommended action *the number of open positions in the DPP's office should be remedied, and efforts made to retain professional staff* has been addressed. Please see the first follow-up report ([Bermuda 1st Follow-up Report](#)). This gap is *closed*.
78. The sixth recommended action that *sufficient resources should be made available for training of DPP, Customs and Police staff*. Please see the first follow-up report ([Bermuda 1st Follow-up Report](#)). Additionally Bermuda has reported that training is ongoing. This gap is *closed*.
79. The seventh recommended action *efforts should be made to attract qualified personnel to the FIU, and to provide continuity in the transition to the new FIA* appears to have been partially addresses because as was noted at paragraph 65, above two (2) officers from the former FIU were seconded to the FIA to assist in the transition when the FIA was established. As the FIA is now fully staffed, this gap is *closed*.
80. The eight recommended action for increased training has been addressed. In addition to reporting that training is ongoing, Bermuda has also reported that the training needs in the FIA and other law enforcement agencies have been addressed through FINTRAC and other authorities on Analytical and Intelligence Training. FIA staff have participated in training in the following areas: Tactical Analysis, Strategic Analysis, Financial Intelligence Analysis, Compliance, and Terrorist Financing.

Staff continue to attend and actively participate in Conferences, Seminars and Workshops provided by FATF, CFATF, Egmont, other FIUs. Training has occurred locally and internationally involving law enforcement, regulators and foreign FIU staff. Funding for annual training has been budgeted and provided to the FIA. In respect of training in the DPP Office, since 2009, the members of the Specialist Section continue to train through hands on involvement in money laundering prosecutions, restraint and confiscation of criminal proceeds. Members of the Specialist Section have also attended relevant training in AML/CFT and fraud overseas. With regards to the Bermuda Police Service five (5) officers in the unit are currently CAMS certified. Two (2) supervisors in the office hold Advanced Diplomas in Compliance and Financial Crime Prevention with International Compliance Association (ICA) and have or are in the process of completing bachelor's degrees in 'white collar crime. As for the BMA training is ongoing. This gap is **closed**.

81. The ninth recommended action was for the FIA to be *adequately funded, staffed and provided with technical resources, particularly in terms of technical expertise such as forensic accounting*. Here Bermuda has reported that “The FIA is adequately funded, structured, staffed and is provided with technical and other resources to fully and effectively perform its mandated function The FIA has acquired the United Nation’s goAML software solution which allows for all reporting entities to file suspicious activity reports (SARs) on-line through a secured environment. The system receives stores, collates and provides feedback on all filed SARs. This has allowed for an effective and efficient disclosure process that has already shown an increase in workflow and disclosures made to law enforcement, foreign FIUs and other authorities” This gap is **closed**.
82. The tenth recommended action to *ensure that the new administrative Financial Intelligence Unit (FIA) is established and becomes operational and provide sufficient staffing levels at the existing Police FIU to enable an increased number of ML/FT-related investigations* has been addressed, See paragraph 81. This gap is **closed**.

Overall conclusion for Recommendation 30.

83. All ten (10) recommended actions have been definitively closed resulting in Recommendation 30 being **fully rectified**.
84. **Recommendation 31 was rated as PC** with two (2) recommended actions. The first: *a national AML/CFT coordinator should be appointed and the policy development role of NAMLC should be energized*. This has been addressed. Please see the first and second follow-up reports ([Bermuda 1st Follow-up Report](#)), ([Bermuda 2nd Follow-up Report](#)). The outstanding issue relating to the Policy not mentioning CFT is addressed in the Proceeds of Crime and related measures Amendment Act 2013 where **s.49 (1)** of the POCA has been amended to include the terrorist financing. This gap is **closed** and consequently Recommendation 31 is now **fully rectified**.
85. For **Recommendation 32 which was rated PC** Bermuda has provided detailed statistics to the Secretariat which demonstrated that the Jurisdiction is in fact maintaining the statistics as required by Recommendation 32. Those statistics can be viewed by [clicking here](#). This Recommendation is **fully rectified**.
86. For **Special Recommendation VI which was rated as PC** the recommended action was *Licensed money transfer services should be required to maintain a list of their agents and to make this list available to the authorities. Since the new legal regime for money service business is untested, there is no basis for evaluating effective implementation*. There are 2 licensed money service businesses currently operating in Bermuda. Both are subject to the same AML obligations as other

financial institutions in Bermuda and have been subjected to onsite inspections in December 2012. Here the comments for Recommendation 23. This Recommendation is *fully rectified*.

87. **Special Recommendation VII has already been fully rectified.** The second follow-up report ([Bermuda 2nd Follow-up Report](#)) details all the action taken by Bermuda to fully implement the assessors recommended actions.
88. **Special Recommendation VIII was rated PC.** Following public consultation on the NPO sector the Charities Act 2014 was enacted and passed in both the Lower House (House of Assembly on 14 March 2014) and the Upper House (the Senate on 24 March 2014) and was given assent by the Governor on 26 March 2014.) The Act provides that accounting records must be kept by the charity trustees (**Section 34**) for a period of at least 7 years from the end of the financial year of the charity in which they are made (**Section 35(1)**). Additionally, there is a requirement under the Act to prepare annual reports (**Section 38** sets out the components that must be included) and such reports and statement of accounts (**Section 36(1)**) must be kept for at least 7 years from the end of the financial year to which any such statement or report relates (**Section 39**). These provisions fully addresses the second recommendation made by the Assessors which was related to record keeping requirements. It should be noted here that the timeframe for keeping records goes beyond the five (5) year period suggested at SR.VII3.4. As for the third Assessors recommendation relating to the implementation of measures to ensure that the competent authorities effectively investigate and gather information on NPOs, part 4 of the Charities Act of 2014 provides for information gathering and investigations. The related provisions can be found at sections 25-33 and include the general powers to institute investigations, obtaining evidence for the purpose of investigations and the execution of search warrants. This therefore fully addresses the Assessors recommendations and has the effect of completely ensuring that Special Recommendation VIII is *fully rectified*.
89. **Special Recommendation IX was rated as NC.** Please see the first and second and third follow-up reports ([Bermuda 1st Follow-up Report](#)), ([Bermuda 2nd Follow-up Report](#)) ([Bermuda 3rd follow-up report](#)) for detailed analyses of Bermuda's action at closing the deficiencies noted in the MER. This Special Recommendation is *fully rectified*.

CFATF Secretariat
May 12, 2014

Report and Submission to CFATF for Removal from Follow-up Process

Bermuda (March 2014)

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
Legal systems				
1.ML offence	LC		<p>The effectiveness of the updated legal framework was highlighted in a ML prosecution under s. 44 of POCA in 2009. The guilty verdict on all 11 Counts reaffirmed the efficacy of the anti-ML provisions as well as the skills of the law enforcement, and prosecuting teams which worked on this matter over a 3 year period. From 2009 to 2011, there were an additional 3 convictions for money laundering; 1 in the Magistrates' Court, and 2 in the Supreme Court.</p> <p>As of 31 August 2013 there have been a total of 13 convictions for money laundering in Bermuda; two convictions have been in the Magistrates Court and 11 convictions in the Supreme Court. Thus, there were a further 9 convictions for money laundering during the period 1 February 2011 to 31 August 2013.</p> <p>UPDATE: As of 31 December 2013 there have been 14 local Money Laundering convictions in Bermuda since inception of the legislation and 13 have been obtained since 2008. In addition there were two additional and successful US prosecutions based on evidence obtained in Bermuda.</p> <p>There have also been two additional Bermuda based money laundering convictions in 2014 up to 7 March 2014.</p> <p>Further, there are currently 4 individuals charged with offences of Money Laundering before the Supreme Court and Magistrate's Court in Bermuda.</p> <p>In addition there have been many more arrests for money laundering during the period and although this has not resulted in further prosecutions, the evidence in respect of these arrests has been used towards successful convictions in regards to existing matters before the courts. These prosecutorial decisions have been assisted by the effective ML legislation. The overall effectiveness of the legislation is now being regularly and rigorously tested and being upheld at all levels of the system. This has resulted in not only positive results</p>	

			but with appropriate case law being created by affirmative Appeals Courts decisions.	
2.ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> i) Fines under POCA with respect to summary convictions and certain convictions on indictment should be substantially increased. ii) Additional investigations and prosecutions are necessary in order to maintain an effective AML/CFT framework, particularly given that there has only been one prosecution of ML in the last five years and limited numbers of ML investigations. 	<ul style="list-style-type: none"> i) It was our view that no action was required to be taken on this recommendation as we did not agree that it was appropriate. We presented to the Secretariat the required information to support our position (copy attached in Addendum, Section A II) and were informed by the Secretariat that this item was now considered closed (via email from Jefferson Clarke dated 20 May 2013). ii) The effectiveness of the updated legal framework was highlighted in a ML prosecution under s. 44 of POCA in 2009 (see Rec.1 above). There have been a number of confiscation orders as well as forfeitures. Further, the Bermuda authorities have been directly responsible for successful convictions in 5 cases in the United States, while two subjects have been convicted of money laundering offences in the UK. In addition, three persons have been charged with money laundering offences in the Caribbean and are awaiting trial. Other investigations are ongoing locally and there is close cooperation between the DPP and the BPS in this regard. <p>As of 31 December 2013 there have been a total of 14 convictions for money laundering in Bermuda. The sentence for these offences have ranged from 3 years to 8 years imprisonment, and demonstrates the ability of the BPS and the DPP to investigate and prosecute these offences. There has been one (1) not guilty verdict for money laundering during the period 1 February 2011 to 31 December 2013.</p> <p>Additionally, as noted above, there are currently 4 individuals charged with offences of Money Laundering before the Supreme Court and Magistrate's Court in Bermuda. This demonstrates willingness by both the Bermuda Police Service and Department of Public Prosecutions to investigate and prosecute complex money laundering cases.</p> <p>As of 7 March 2014 there have been two (2) additional Bermuda based money laundering convictions thus far for 2014.</p> <p>Further, there are currently 4 individuals charged with offences of Money Laundering before the Supreme Court and Magistrate's Court in Bermuda.</p> <p>The significant time and effort that has been expended in analysis of information, investigation and prosecution of these cases demonstrates the willingness of Bermuda authorities to effectively use Bermuda's AML/ATF legislative framework to investigate and prosecute, at times, complex money laundering cases.</p>	
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> i) Explicitly provide in legislation for the confiscation of property which constitutes 	<ul style="list-style-type: none"> i) Clause 14 of the Proceeds of Crime and Related Measures Amendment Act 2013 came into force on 8 November 2013. Clause 	

		<p>instrumentalities intended for use in the commission of ML or other non-drug trafficking predicate offenses.</p>	<p>14 amended the Criminal Code Act 1907 by inserting section 70IA, which allows a court to make a Deprivation Order to deprive a convicted person of tainted property, which is property that was used in or in connection with the commission of an offence and captures property which constitutes instrumentalities intended for use in the commission of predicate offences.</p> <p>The non -drug trafficking M/L convictions and confiscations cited below (pursuant to section 10 of POCA) highlight the effectiveness of legislation and willingness of jurisdiction to utilise the various provisions in the AML/ATF legislation.</p> <p>Conviction of Roger Cox based on predicate offence of illegal gaming and subsequent confiscation orders of \$1.4 million.</p> <p>2012 conviction of fraudsters Kyril and Delcina Burrows and subsequent confiscation order for \$800,000.</p>	
		<p>ii) Explicitly provide in legislation that, for the purposes of confiscation of the benefits of ML offenses, the proceeds that are the basis of the offense may include any payments received by the defendant at any time in connection with the ML offense carried out by him or by another person.</p> <p>iii) With respect to the voiding of contracts, explicitly provide the authorities with the means to prevent actions to hinder the recovery of property subject to confiscation.</p>	<p>ii) Provisions made under POCA Amendment 2008, clause 7, s. 48A (3) have addressed this recommendation.</p> <p>iii) Section 10 of the POCA Amend. Act 2007 has addressed this recommendation.</p>	
Preventive measures				
4. Secrecy laws consistent with the Recommendations	C			
5.Customer due diligence	NC	<p>i) Extend the regulatory regime for FIs to explicitly cover CFT issues.</p> <p>ii) Establish in the Regulations or in other enforceable instrument (Other Enforceable Means) all of the applicable requirements under FATF Recommendations 5–8. The current Regulations are limited and the Guidance Notes are not enforceable.</p> <p>iii) Extend the CDD requirements beyond customer identification.</p> <p>iv) Require CDD in all cases (business relationships and one-off transactions) where there is knowledge or suspicion of ML/FT and not only in cases of one-off transactions.</p>	<p>i) Provisions made under Regs. 6 and 11 have addressed this recommendation.</p> <p>ii) Provisions made under Regs. Part 2, regulations 5 -14 have addressed this recommendation.</p> <p>iii) Provisions made under the Regs, Part 2, regulations 7, 9, 11, 12 and 13 have addressed this recommendation.</p> <p>iv) Regulation 6 satisfies this requirement in that Reg 6(1)(c) mandates that there must be CDD when there is knowledge of suspicion of ML/FT. It also applies even if the threshold for one-off transactions does not apply.</p>	

		<p>Also, clarify that the threshold for one-off transactions does not apply when there is suspicion. This requirement should also include reporting of suspicion when an FI cannot obtain the required identification/CDD information under Rec. 5.15 and 5.16.</p> <p>v) Reduce the minimum CDD threshold for wire transfers to the equivalent of US/BD\$1,000. (See recommendation on recordkeeping under section 3.5.3.</p> <p>vi) Extend the CDD requirements to cases where there is doubt as to the veracity or adequacy of previously obtained information. See recommendation below on the need to update information for "grandfathered accounts".</p> <p>vii) Reg. 4(4) could more explicitly establish the requirement to identify and obtain CDD information on underlying beneficiaries, including for legal persons and arrangements. This would make the Guidance Notes more consistent with the Regulations.</p> <p>viii) Review the customer identification exemptions provided for in the Guidance Notes for consistency with the Regulations and FATF Rec. 5, 8, and 9.</p> <p>ix) Review the wording of Guidance Notes 129, 130, 139, 140 and 140 on exemptions from identification to ensure that they do not create a practical limitation of CDD in the insurance and investment services sectors. Similar review is required for GNs 131, 132 and 133 for investment services. This should also be reviewed in the context of timing of verification for purposes of Rec. 5.13 and 5.14.</p> <p>x) CDD requirements that include the purpose and nature of business relationships (and significant one-off transactions) should be established.</p> <p>xi) Require FIs to conduct enhanced monitoring for higher risk business and regular updating</p>	<p>v) Part 4 – Wire Transfers Regulations makes provisions relating to electronic funds (wire transfers) and satisfies this recommendation. (The updated Regulations came into force in March 2010). In particular, this issue is addressed in Regulation 23 (4).</p> <p>vi) Provisions made under Reg. 6 have addressed this recommendation.</p> <p>vii) Provisions made under Regs. 5(b) and 6(4) (b) have addressed this recommendation.</p> <p>viii) Provisions made under Regs. 8(3), 8(4), 8(5) and Reg. 10 have addressed this recommendation.</p> <p>ix) Provisions made under Regs. 10(4), 10(6) and Reg. 8 have addressed this recommendation.</p> <p>x) Provisions made under Regs. 5(c) and 6(3) have addressed this recommendation.</p> <p>xi) Provisions made under Regs. 11(1), 11(2), and 11(3) have addressed this recommendation.</p>	
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		<p>of customer profile information, to conduct enhanced CDD for higher risk customers, business relationships and transactions.</p> <p>xii) Require FIs to conduct enhanced CDD for higher risk customers, business relationships or transactions in either in the POCA, Regulations or other enforceable means.</p> <p>xiii) Review the exemptions/simplifications provided for in the Regulations and (non-mandatory) Guidance Notes to ensure that they are justified on the basis of proven (documented) low risk. Where applicable, such lower exemptions/simplifications should be allowed only where customer information is publicly available or when there are otherwise adequate checks and controls in the system, especially when the clients are not other regulated FIs.</p> <p>xiv) Where simplified CDD is allowed, there should be provisions to limit these to cases where non-resident customers are from countries that have effectively implemented the FATF Recommendations.</p> <p>xv) As a general rule, do not allow exemptions or reduced CDD measures when there is suspicion of ML/FT.</p> <p>xvi) Remove the general exemption in Guidance Note 50 on the timing for verification when payment is to be made from "other account" as this could be interpreted, e.g. from an account held by any non-FI business or unregulated person.</p>	<p>xii) Provisions made under Regs. 11 have addressed this recommendation.</p> <p>xiii) Provisions made under Regs. 10 have addressed this provision.</p> <p>xiv) Provisions made under Regs. 10(2) (b) and 10(4) have addressed this recommendation.</p> <p>xv) Provisions made under Reg. 6(1) (c) and Reg. 11 satisfy this requirement. Under Reg 6(1)(c) CDD must be applied where there is a suspicion of ML/FT and there is no exemption from this requirement nor can simplified due diligence (under Reg 10) be conducted where there is a suspicion of ML/FT. Additionally, Reg 11 also requires that enhanced due diligence (EDD) be conducted where a situation by its nature presents a higher risk of ML/FT.</p> <p>xvi) The Guidance Notes issued in 1998 are no longer applicable and reference should be made to the new guidance notes. Paragraphs 46-50 of the old guidance notes refer to the "Timing and Duration of Verification." At the time these GNs were issued, the POC Regulations did not require verification of identity and as you are aware, the GN are not OEMs. The new regulations require the verification of identity and therefore the 'general exemption' (I believe it should have said paragraph 48) is no longer applicable. S. 8 of the regulations addresses the 'Timing of Verification' which must be completed prior to establishing a business relationship or conducting an occasional transaction. S.8 provides three exceptions to this rule, as provided for in the FATF recommendation. Therefore</p>	
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		<p>xvii) Require FIs to expedite the conduct of CDD and update client documentation for clients in existence when the Regulations were issued, the so called “grandfathered” customers. The Regulations were issued in 1998 (about 9.5 years ago) and the slow progress in updating such information creates a significant vulnerability across the industry.</p>	<p>the timing of verification has been legislated for and the old GN are not applicable. Paragraphs 5.16 - 5.19 of the new GNs refer.</p> <p>xvii) Para 5.37 – 40 of the GN address the issue of dealing with ‘grandfathered’ accounts.</p>	
6. Politically exposed persons	NC	Require FIs to conduct enhanced CDD for PEPs.	<p>Provisions made under Regs. 11(4), 11(5), 11(6), 11(7) and the Schedule, section 2 of Regs have addressed this recommendation.</p> <p>The onsite review process examines the relationship with PEPs, and identifies where enhanced due diligence has not been carried out where a PEP has been identified, whether initially or subsequently through the ongoing monitoring process. In any instance where a PEP has been identified, (whether before or after the person has become a customer) the AML process requires that the process for PEP ‘onboarding’ be initiated forthwith, and failure to do so would attract remedial or regulatory action. The Guidelines and the review process make it clear that senior management approval is required in every instance that a PEP is identified and do not distinguish between those identified before/ when the person becomes a customer or those who are identified or fall into that category subsequent to becoming a customer.</p> <p>In paragraph 4.28 of the Guidance Notes, it states that an institution must consider the appropriate procedures to identify changes in customer characteristics, which come to light in the normal course of business. This includes the requirement to have appropriate risk-based procedures to determine whether a customer is a PEP (GN 5.238). If during an institution’s ongoing monitoring of a business relationship [Reg. 7(1)] a customer is identified as a PEP, then the obligations of Regulation 11(4) would be triggered and senior management approval required.</p>	
7. Correspondent banking	NC	Require FIs to conduct enhanced CDD with respect to correspondent banking and similar relationships.	Provisions made under Regs. 11(3) have addressed this recommendation.	
8. New technologies & non face-to-face business	NC	Require FIs to address risks associated with non-face to face business relationships or transactions, and to implement measures to prevent misuse of technological developments that could facilitate ML/FT.	Provisions made under Regs. 9, 11(2), 11(3), 12, and 13 have addressed this recommendation.	

9.Third parties and introducers	NC	<p>i) Require FIs to immediately obtain CDD information from acceptable third parties when relying on their CDD.</p> <p>ii) When allowing FIs to rely on CDD conducted by third parties, require them to have addressed themselves that the requisite CDD documentation has been obtained by such third parties, and that it will be made available to the FIs promptly on request.</p> <p>iii) Periodically review the adequacy of the basis on which FIs rely on the CDD of other third parties whether in Bermuda or in other countries, with respect to their supervision for AML/CFT purposes, and implementation of the FATF Recommendations by countries where the third parties are located.</p> <p>iv) Make it explicit that where reliance on others for certain aspects of CDD is allowed, that the ultimate responsibility lies with the FI.</p>	<p>i) Reg. 14 has been updated to address this recommendation. Regulation 14 directs that a relevant person may rely on a third party to apply CDD measures where the person falls within one of the categories set out in regulation 14(2) provided the person gives their consent. Under Clause 21 of the Proceeds of Crime and Related Measures Amendment Act 2013, (which, as noted above, came into force on 8 November 2013) this Regulation has now been amended and provides that notwithstanding the relevant person's reliance on another party (person), the relevant person must obtain information sufficient to identify customers. Further, the amendment requires that a relevant person must ensure that the reliance is appropriate, given the level of risk for the jurisdiction in which the party to be relied upon is usually resident.</p> <p>ii) Provisions made under Regs. 14, 15(6), (7) have addressed this recommendation. Reg 15(7) requires that a Relevant Person "must take steps to ensure that the third party will if requested" provide the relevant information. It follows that the relevant steps would include verification which must be carried out in accordance with Reg 6 in that CDD must be obtained prior to the transaction. Further guidance at paragraphs 5.262, 5.263, 5.264 of the Guidance Notes all identify the steps which it is expected that institutions will follow in meeting this requirement.</p> <p>iii) Provisions made under Reg. 14 have addressed this recommendation – see ii) above.</p> <p>iv) Clause 21 of the Proceeds of Crime and Related Measures Amendment Act 2013 (which came into force on 8 November 2013) has addressed this recommendation by amending Reg. 14. That is, Reg 14 has been amended to include that the relevant person (FI) will remain liable for any failure to apply any CDD measures (Reg. 14(b)(iii)). The said Amendment Act brought into effect in November 2013.</p>	
10.Record keeping	LC	<p>i) Include in all the Schedules for minimum licensing criteria of the financial regulatory laws a recordkeeping requirement to comply with the AML/CFT legislation, not only for purposes of the regulatory laws.</p>	<p>i) The record keeping provisions at s.15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 meet the requirements of FATF recommendation 10. Guidance Notes Chapter 8 paragraphs 8.1 – 8.28 refer.</p> <p>ii) Regulation 5(2) of the OLD regulations refers to keeping records for the minimum retention period (five years) if they would assist in the</p>	

		<p>ii) Consider rewording Reg. 5(4) to make it more consistent with Guidance Note 95 to state that the retention period in cases of an investigation would be longer than the minimum five-year period specified. Also clarify what constitutes the “outcome of the investigation” and whether it would include, e.g. the prosecution, trial, conviction or confiscation procedures.</p> <p>iii) Revise the Guidance Notes (G97) to ensure that the retention of transaction records are not limited to details of securities and investments transacted, and that they apply to non-securities related business, e.g. banking and insurance transactions.</p>	<p>investigation of money laundering. The NEW regulations - S.15(5) makes specific reference to keeping records, in the case of an institution being notified those records may be relevant to an investigation, "pending the outcome of the investigation." S.15(5) of the NEW regulations makes no reference to the 5 year retention period in these circumstances. Therefore the situation has been rectified as required.</p> <p>ii) Provisions made under Reg. 15(2) have addressed this recommendation.</p>	
11.Unusual transactions	NC	<p>Introduce in law, regulations or OEMs a requirement to monitor, examine and record information on complex, unusually large, or unusual patterns of transactions that have no apparent economic or lawful purpose.</p>	<p>We were of the view that provisions in Regs. 7, 15 and 16 adequately addressed the FATF requirements. However, for the avoidance of doubt, further amendments were made to Regulations 7 and 15 in Clause 19 (amends Reg.7) and Clause 22 (amends Reg. 15) of the Proceeds of Crime and Related Measures Amendment Act 2013 (which came into force on 8 November 2013). The amendment to Reg. 7 provides for ongoing monitoring to include “all complex, unusually large transactions, and all unusual patterns of transaction which have no apparent economic or lawful purpose”; and Reg. 15 was amended to provide for the keeping of records, for all documents related to investigations of complex transactions, unusually large transactions, or unusual patterns of transactions in relation to Reg. 7, for a minimum period of 5 years. The said Amendment Act came into force on 8 November 2013.</p> <p>Additionally, Regs 7 and 15 were amended by the Bill being laid before Parliament on 9 May 2014 to include the requirements of Essential Criteria points 11.2 and 11.3 to examine the background of unusual transactions, document those findings in writing and follow the obligations of record-keeping in Reg 15. These said Amendments are expected to come into force in the coming weeks.</p>	
12.DNFBP – R.5, 6, 8-11	NC	<p>i) Amend POCA and the POC Regulations 1998 to require lawyers, accountants, company service providers, dealers in precious metals and stones, including jewelers, and real estate agents to implement AML/CFT programs covering: (a)CDD, (b) record-keeping, (c) internal reporting programs (to</p>	<p>i) Lawyers and accountants were brought into scope under POCA Amend. 2008, ATFA Amend. 2008 and Regs. Parts 2 and 3. The SEA Amendment Act 2010 established the complete framework for the supervision of DNFBP's. A new SRO (Barristers and Accountants AML/ATF Board) has been set up to supervise lawyers and ICAB Accountants. The Barrister and Accountants AML/ATF Board was designated as the supervisory authority for Lawyers and ICAB Accountants by the Minister of Legal Affairs in August 2012 (pursuant to s. 4 of SEA) and these independent professionals are</p>	<p>i) The required steps are now taken to bring the outst DNFBPs, including dealers in p metals and stones and real agents, into scope. However, it be noted that having brought la accountants, Trust and Co Service Providers into scope, w</p>

		include reporting by an MLRO to the FIU), and (d) training.	now within scope for AML/CFT supervision. Under the SEA Amendment Act, the FIA was designated as the regulatory body for Regulated Non-Financial Businesses and Professions (which was intended to include all DNFBPs not supervised by the BMA or the Barristers and Accountants AML/ATF Board Supervisory Board). The BMA became the supervisory authority, as defined in the SEA Act, for corporate service providers when the Corporate Service Providers Act 2012 came into effect on 1 January 2013. It is intended that Orders will be enacted within this year to bring other specified DNFBPs under the supervision of the FIA.	essentially covered all of the key risk DNFBP sectors.
	ii)	In the case of lawyers and accountants, the AML/CFT program obligation should apply either when they plan for or when they carry out for their client the transactions enumerated in Rec. 12. Consideration should be given to extending the AML/CFT program obligations for accountants to all of their activities.	ii) Provisions made under POCA and Reg. 2 satisfies the relevant requirements under Recommendation 12. Extending the AML/CFT program obligations for accountants to all of their activities is not a FATF requirement and having given full consideration to this matter as discussed below, it was our view that such a change is not required at this time.	
	iii)	Given evidence that local drug dealers have made investments in the local property market, and the requirements of C 12.1, the AML/CFT program requirements for real estate dealers should cover all real estate transactions, not just those carried out in cash. Consideration should be given to requiring that all real estate transactions be settled by bank transfer.	ii) Discussions have commenced on the development of the regime for the real estate sector and it is intended that we will incorporate the matters required by FATF in the regime. In relation to the recommendation that all real estate transactions should be settled by bank transfer, we would note that in our discussions with the sector, we have been informed that in fact, property sales are not settled by cash. <i>It is intended that we will enshrine this as a requirement once the real estate agents are brought into scope. However, as noted above, the risks in this sector have now been largely mitigated by industry practice and the fact that lawyers, who currently are involved in the transfer of property, are already in scope.</i>	
	iv)	Any SRO arrangements established for monitoring and oversight of AML/CFT program compliance should include adequate powers for the designated supervisor to review the policies and procedures and records of supervised parties as well as powers to effectively enforce compliance.	iv) Section 5 of the SEA Act also addresses the general duties of supervisory authorities. The SEA Act was amended in July 2010. In particular, the amendment Act expanded the supervisory framework to a designated SRO. It gives the full range of powers required to monitor and enforce compliance. Therefore this recommendation is now satisfied.	
	v)	All high value dealers, specifically dealers in precious metals and precious stones, including jewelers, engaging in cash transactions with customers of	v) High value dealers to be brought in scope during a future phase. As noted in i) above, it is intended that Orders will be enacted within this year to bring other specified DNFBPs under the supervision of the FIA.	v) As noted in the previous column i) above, steps are being taken to bring high value dealers into scope.
			vi) An awareness campaign for the financial institutions (which includes TSP's) and lawyers and accountants was carried out in 4 th	

		<p>\$15,000 or more should be subject to the AML/CFT preventive measures regime.</p> <p>vi) An awareness campaign should be undertaken to familiarize DNFBPs with their responsibilities and obligations under any new AML/CFT laws or regulations.</p>	<p>quarter 2008. Since then, there have been ongoing sessions held with the Trust sector to reinforce the AML/ATF requirements and strengthen compliance.</p> <p>In addition, the BMA has recently embarked on an outreach program to Corporate Service Providers in relation to their AML/CFT obligations. The Barristers and Accountants AML/ATF Board has held a number of informational sessions with the entities that they are responsible for supervising. Further, during Bermuda's NRA the FIA commenced discussions with companies in other DNFBP sectors regarding the AML/ATF framework and in relation to the filing of SARs.</p>	
13.Suspicious transaction reporting	PC	<p>i) Amend ATFA to require FT-related SARs for funds linked to terrorist organizations.</p> <p>ii) Enhance training for identification of FT-related transactions</p>	<p>i) Legislative amendments made in Clause 8 of the Proceeds of Crime and Related Measures Amendment Act 2013 (which came into force on 8 November 2013) amends section 5 of the Anti-Terrorism (Financial and other Measures) Act 2004 (ATFA) to broaden the prescribed offences to include the financing of terrorist organisation. Thus the disclosure provisions contained in section 9 of ATFA that require reporting suspicious activity to the FIA, now captures financing of terrorist organisations offences under section 5 of ATFA.</p> <p>It should also be noted that legislative amendments made in Clause 2 of the Proceeds of Crime and Related Measures Amendment Act 2013 amended section 46 of POCA so that the reporting obligation now takes the form of a non-disclosure violation. Under section 46 of POCA it is an offense for a person not to make a required disclosure to the FIA.</p> <p>This is defined as a disclosure of knowledge or suspicion that another person is engaged in money laundering or that the currency, funds or other assets are derived from the proceeds of criminal conduct, which has come to him in the course of his trade, profession, business or employment. Accordingly, this reporting requirement extends to all types of businesses.</p> <p>ii) The previous regulations and guidance notes did not address FT related matters. Therefore, there was previously no formal requirement for training on FT related transactions. The new regulations, apply to FT as well as ML matters. Training on FT related transactions is now a requirement (Reg 18) and failure to do so can result in a criminal or civil penalty.</p> <p>Additionally, the FIA confirms that entities are filing SARs on Terrorist Financing (TF) with the FIA. Six (6) SARs have been filed and disclosed. One with the former FIU/BPS and the others with the current FIA. Additionally, Go-AML software used by the</p>	

			<p>FIA allows them to track filings on terrorist financing made by reporting entities and a UN Terrorist list has been built in the system to red flag such reports of interest.</p> <p>FIA staff has attended International Conferences/Seminars/Workshops on terrorist financing. Further, the FIA does cover AML/CFT in their training module to reporting entities (or FI's).</p>	
14. Protection & no tipping-off	PC	<p>i) Amend ATFA and POCA to provide explicit protection for those who are required file SARs based on FT.</p> <p>ii) Amend POCA to provide explicit protection from criminal liability resulting from a SAR filing.</p> <p>iii) Amend POCA to provide for tipping-off offence that explicitly covers the fact of or any information about a SAR filing and the contents therein.</p> <p>iv) Amend POCA to limit the scope of the exemption from tipping off by lawyers in a manner consistent with R.14 and R.16.</p>	<p>i) Provisions under the Anti-Terrorism (Financial and Other Measures) Act 2004, Schedule 1, Part 1(2) have addressed this recommendation.</p> <p>ii) Provisions made under POCA Amend. 2008, clause 6, section 46 have addressed this recommendation.</p> <p>iii) Provision to address this was made under the Proceeds of Crime and Related Measures Amendment Act 2013. <u>Clause 3 amended section 47 of POCA and Clause 10 amended section 10A of ATFA to remove the defence that the person accused of tipping off did not know or suspect that the disclosure made to the FIA (or the BPS) was likely to be prejudicial to an investigation.</u></p> <p><u>It is now a strict liability offence for any person to disclose the fact that a suspicious activity report or related information has been filed with the FIA to any other person.</u></p> <p><u>Given the power that is available to the FIA under section 16 of the FIA Act 2007 to request additional information from <u>any person</u> whilst inquiring into a suspicious activity, the amendments to POCA and ATFA created the ADDITIONAL tipping-off offence for disclosing information or any other matter which is likely to prejudice an investigation which might be conducted.</u></p> <p><u>As noted above, this Amending Act came into force on 8 November 2013.</u></p> <p>iv) Having carried out a thorough review of our provisions and similar provisions in other jurisdictions, we have noted that our provisions in this regard are consistent with those in other jurisdictions so we are of the view that no change is required at this time.</p> <p><u>Additional Element- Confidentiality of Reporting Staff (c14.3).</u> <u>para 386 of the DAR</u></p> <p><u>We note the following:</u></p> <p><u>The examiners noted at para 386 of the DAR that there is no explicit provision in law to protect the confidentiality of the names and other details</u></p>	

			<p>relating to those that report but did go on to reference the restriction imposed by POCA at section 58(1) upon all persons that receive information from any persons that are complying with POCA. In essence the persons receiving the information, whether it be a member of the BPS or the FIA, are prohibited from disclosing that information outside of the performance of their statutory functions under POCA “without the consent” of the relevant person. The penalty upon conviction for contravening this prohibition is found in Section 58(3) of POCA is \$50,000 fine and/or two years imprisonment.</p> <p>The DAR did not indicate any deficiency with the wording in section 58 nor was there any recommended action on this point.</p> <p>Additionally, please note that a similar prohibition and penalty for contravention was included in the FIA Act 2007 at section 17 which states the following:</p> <p><u>Restricted information</u></p> <p><i>17 (1) Except as provided by section 18</i></p> <p><i>(a) no person who under or for the purposes of this Act receives information relating to the business or other affairs of any person; and</i></p> <p><i>(b) no person who obtains such information directly or indirectly from a person who has received it as aforesaid,</i></p> <p><i>shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.</i></p> <p><i>(2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources, or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.</i></p> <p><i>(3) Any person who discloses information in contravention of this section is guilty of an offence and is liable on summary conviction to a fine of \$50,000 and to imprisonment for two years or to both.</i></p> <p>This strict prohibition ensures that neither the BPS nor the FIA are able to disclose the names or the personal details of any person that files information with either entity under the statutory provision of either POCA or the FIA Act.</p>	
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			Accordingly, we submit that the explicit provision in law protecting the confidentiality of the names (and other details) of reporting persons does exist.	
15.Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> i) Extend the procedures requirements to the full range CDD and recordkeeping requirements, and also require the formulation of AML/CFT policies, compliance and controls. Also consider specifying, in all cases, that the control systems requirements contained in the financial regulatory laws apply to AML/CFT. ii) Expand the role of the AML/CFT compliance function beyond suspicious activity reporting and include a requirement for an independent internal audit function that covers AML/CFT. iii) Extend the training requirements beyond those “relevant employees” defined in the Regulations to others who can play a role in implementing and monitoring compliance with institutional and legal AML/CFT requirements. iv) Include employee screening requirements in the AML Regulations to complement the fit and proper requirements for senior officials of FIs contained in the financial regulatory laws. 	<ul style="list-style-type: none"> i) Provisions under Regs. 5, 6, 7, 11 and 16 have addressed this recommendation. ii) Provision made under Reg. 16 expands the role of the AML/CFT compliance function beyond suspicious activity reporting. The requirement for an independent internal audit function that covers AML/CFT has been included in the revised Guidance Notes (sections 3.15-3.22). iii) & iv) Amendments made to Regulation 18 under Clause 23 of the Proceeds of Crime and Related Measures Amendment Act 2013 broadens the meaning of relevant employee in relation to training requirements and related measures, as well as requires such persons to be properly screened prior to hiring. These amendments were brought into effect in November 2013. 	
16.DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> i) Amend POCA to ensure that SAR reporting requirement conforms to the applicable FATF Recs., including requirements for legal professionals. ii) The authorities should take additional measures, including but not limited to the issuance of regulations and guidance, to ensure that DNFBP, including lawyers, file SARs when appropriate. iii) Revise relevant legislation with respect to tipping off by lawyers, in order to 	<ul style="list-style-type: none"> i) Provision already made under POCA s.46(3)(6). ii) The requirement to file SAR’s is in POCA section 46 and ATFA section 9 and Schedule 1. This is reinforced through Reg 17 and the Guidance Notes – Chapter 6. iii) Provisions to address this were made under the Proceeds of Crime and Related Measures Amendment Act 2013 (which came into force on 8 	

		<p>protect the confidentiality of SAR information.</p> <p>iv) As recommended in 5.2 above, bring all DNFBPs under the preventive measures regime called for in POC Regulations 1998. Mandatory measures should include requirements to have effective systems and controls to monitor transactions for suspicions and to ensure that suspicious activities are reported.</p> <p>v) Any AML/CFT supervisory regime introduced for DNFBPs (TSBs are already covered) should include powers for the supervisor to ensure effective implementation of SAR reporting requirements.</p>	<p>November 2013). Clause 3 amended section 47 of POCA and Clause 10 amended section 10A of ATFA to remove the defence that the person accused of tipping off did not know or suspect that the disclosure made to the FIA (or the BPS) was likely to be prejudicial to an investigation.</p> <p>It is now a strict liability offence for any person to disclose the fact that a suspicious activity report or related information has been filed with the FIA to any other person.</p> <p>Additionally, there is a restriction imposed by POCA at section 58(1) upon all persons (including lawyers) that receive information from any persons that are complying with POCA. In essence the persons receiving the information, whether it be a member of the BPS, FIA or a lawyer, are prohibited from disclosing that information outside of the performance of their statutory functions under POCA “without the consent” of the relevant person. The penalty upon conviction for contravening this prohibition is found in Section 58(3) of POCA is \$50,000 fine and/or two years imprisonment. .</p> <p>iv) The legislative framework requiring FIs and DNFBPs to have the required systems and controls is in place. To date TSPs, CSPs, lawyers and accountants have been brought into scope under the regime. With regard to the reporting of SARs, the reporting requirement is already in place for all DNFBPS.</p> <p>v) Provisions under the SEA Act give supervisory authorities the full range of powers required for effective supervision. As noted previously, in relation to DNFBPs, the sectors already in scope are TSPs, CSPs, lawyers and accountants.</p> <p>As all Real Estate transactions require the use of a lawyer, bringing lawyers into scope has addressed key risks in the Real Estate sector as well.</p>	<p>In relation to item iv), the r outstanding actions have been d under Recommendation 12.</p>
17.Sanctions	PC	<p>i) Enact legislation for civil money penalties and conservatorship powers to be applied by the BMA.</p>	<p>i) Chapter 4 of the SEA Act 2008 implements civil money penalties to be applied by the BMA. In 2010-2011 the Authority imposed civil penalties against 3 entities for significant and substantial failures in AML compliance. The total fines were \$150,000.</p> <p>Conservatorship powers are only mentioned by way of “examples of types of sanctions include...”, followed by a list of examples</p>	

		<p>ii) Fines under POCA with respect to summary convictions and certain convictions on indictment should be raised.</p>	<p>including conservatorship. It is not a FATF requirement that all the examples given be legislated. There is no power to take any form of conservatorship over an Institution's operations because of AML breaches, however it is possible to remove or restrict an Institutions licence or registration should the circumstances justify it. In one instance in 2009, the Authority issued a notice proposing such an action; however the Institution voluntarily closed until it could develop policies and procedures to meet its obligations, and the Authority did not proceed with the proposed action.</p> <p>ii) As noted under Recommendation 2 above, it was our view that no action was required to be taken on this recommendation as we did not agree that it was appropriate. We presented to the Secretariat the required information to support our position (copy attached in Addendum, Section A II) and were informed by the Secretariat that this item was now considered closed (via email from Jefferson Clarke dated 20 May 2013).</p>	
18.Shell banks	LC	Consider incorporating an explicit prohibition on the licensing of shell banks or requiring in the licensing criteria that licensees maintain a significant presence and mind and management in Bermuda, consistent with the Basel Paper on shell and parallel banks.	Provisions under Reg. 13 have addressed this recommendation.	
19.Other forms of reporting	C			
20.Other NFBP & secure transaction techniques	C			
21.Special attention for higher risk countries	NC	Require FIs to pay special attention, examine and record business relationships/transactions with persons from or in countries which do not sufficiently apply the FATF Recommendations, and implement a system identify such countries	<p>Regulation 11(1) (b) is applicable to this circumstance as it imposes the requirement to apply enhanced CDD in any situation which by its nature can present a higher risk of ML or TF. Paragraph 3.13 of the Guidance Notes addresses this point and encourages institutions to make appropriate use of international findings such as FATF assessments where countries have been found to be materially deficient. Paragraph 5.131 also addresses this point where the location of the customer may present a higher risk of ML or TF.</p> <p>However, to further strengthen the requirements in this regard, Clause 20 of the Proceeds of Crime and Related Measures Amendment Act 2013 amended Regulation 11(1) to include 11(1)(aa) to require enhanced due diligence to be applied where the country that the customer is from is identified by FATF as a high risk. This amendment Act came into force on 8 November 2013. It is submitted that Reg 11(1) (aa) meets the requirements of paragraph 365 of the DAR via the enhanced due diligence. DAR Paragraph 366 has been addressed by the obligation of Reg 7, to conduct the examination of transactions of no economic or lawful purpose.</p> <p>Also the Minister of Legal Affairs issues an advisory after each FATF Plenary providing the information in the FATF Public Statement and the</p>	

			<p>List of Countries with Strategic Deficiencies. This Advisory warns industry to note the risks related to each jurisdiction and to take these risks into account in their business processes and procedures.</p> <p>In addition, CFATF Public Statements are uploaded to the website of the National Anti-Money Laundering Committee (NAMLC) and highlighted in the “News Alerts” section and the “CFATF Public Statements” section; and an email is also circulated to the NAMLC Agencies advising of the Public Statement issued by the CFATF.</p>	
22.Foreign branches & subsidiaries	NC	<p>i) Include in the Regulations an obligation for FIs to implement AML/CFT measures in overseas branches and subsidiaries.</p> <p>ii) Require FIs to inform the Bermudian authorities when their overseas operations cannot observe appropriate measures.</p>	<p>i) Provisions made under Reg. 12 have addressed this recommendation.</p> <p>ii) Provisions made under Reg. 12(2) have addressed this recommendation.</p>	

23.Regulation, supervision and monitoring	NC	<p>i) Develop and implement both an offsite and onsite supervision program for AML/CFT that is risk-based, and prioritizing for full scope inspections those sectors and institutions that present a higher degree of ML/FT risk, including in the insurance sector.</p> <p>ii) Expand the scope of onsite reviews including a focus on the adequacy of formal policies and the demonstrated commitment of the Board of Directors and senior management.</p> <p>iii) Enhance the onsite inspections program by focusing on particular areas of potential high risk activities and business relationships especially with respect to wire transfers, CDD on ultimate beneficiary clients, and controls and compliance involving reliance on intermediaries or introducers of business.</p>	<p>i, ii, iii) Section 3 of the SEA Act gives the Bermuda Monetary Authority (“the Authority”) the duty and power to effectively monitor compliance by financial institutions with the Regs. and other AML/ATF legislation and to enforce compliance with their provisions.</p> <p>In order to carry out its functions under the Act, the Authority has created and staffed a dedicated anti-money laundering and anti-terrorist financing unit (“the AML/ATF Unit”) to carry out the supervisory functions of the Authority. This includes both an on-site and off-site monitoring program. The unit was fully staffed by August 2009. Additionally, the unit works along with the Supervisory Departments for banking, investment, trust and insurance. Staff members in the supervisory Departments also have training in AML/ATF and complement the supervisory work carried out by the AML/ATF Unit.</p> <p>The Authority commenced an active on-site regime in 2009 and has carried out a risk based approach in planning the onsite programme. The initial focus of the regime was the banking sector, given the high vulnerability of this sector to ML/TF activities. On-sites were carried out on all institutions in this sector and they have had regular follow-up reviews since the initial on-sites were carried out. In 2010 and 2011 the Authority focused on the activities of the Trust sector, based on the vulnerability caused by the nature of the Trust business, the attendant risk, and given the international nature of the Bermuda Trust industry. On-sites were conducted on some 18 licensed trustees. Between 2010 and 2012 on-site reviews were also conducted in the Investment Business and Investment Funds sectors, based on the Authority’s view of the relative vulnerability of these sectors to the risks of AML/ATF. In all some 34 (of 93) licensed institutions in these sectors were the subject of on-site reviews.</p> <p>In 2013 the Authority commenced a review of AML/ATF compliance in the direct Long Term Insurance sector, again based on the Authority’s view of its relative vulnerability. Sixteen onsite inspections have taken place between January and August 2013, six of which were on the direct long term insurance sector.</p> <p>In 2011 the Authority engaged a third party to do an informal assessment of AML/ATF vulnerability in the financial sector, which broadly confirmed the Authority’s own assessment of relative risks in this area.</p> <p>Where deficiencies were identified with specific institutions remediation plans were put in place. The remediation plans were then monitored. In some cases this entailed a follow up onsite inspection.</p> <p>In summary there were a total of 102 AML/ATF on-sites carried out from 2009-2013 as follows: 2009 – 20 2010 – 33</p>
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		<p>2011 – 27 2012 – 22 2013 – 20</p> <p>The 122 on-sites resulted in the review of 107 separate licenses (it should be noted that an entity can carry multiple licences).</p> <p>On-site inspections are regulatory inspections conducted by the Authority at the premises of the institution, which require BMA officers to examine the books, records and controls of an institution and to hold discussions with its senior management on the financial institution's AML compliance framework. The on-site reviews include a review of the financial institution's risk based AML/ATF policies and procedures as well as an evaluation of the commitment and involvement of senior management. Included in the review of all policies and systems is an assessment of the process for identification of beneficial owners, wire transfers and the controls in place to ensure compliance by intermediaries.</p> <p>In addition to the above the Authority conducted a sector wide survey in 2009, which sought to identify where specific institutions had not fully complied with AML/ATF obligations. On-site reviews and other mechanisms were used to address identified deficiencies. Further, in 2012 and 2013 the Authority has been conducting desk based reviews of all sectors, starting with the trust sector, to ensure that all institutions with AML/ATF obligations had suitable policies and procedures in place to deal with their AML/ATF risks.</p> <p>This review included 38 off-sites, or desk-based reviews, for the trust, investment business and fund administration industries; and 179 desk-based reviews for non-licensed persons (such persons are not required to be licensed under the prudential regulatory regime but come under the AML/ATF framework). As at the end of August 2013 reviews have been completed for all long term insurers who write direct business. Notwithstanding the risk based approach taken by the Authority in relation to its supervision of FIs, it should be noted that at the end of the 2013, the Authority will have completed either on-site or desk based reviews (off-site) of all AML/ATF regulated financial institutions, which currently total 1250.</p> <p>The number of visits to an institution is determined by the Authority's risk assessment of the institution and its record of compliance. Financial institutions whose business presents an inherently high risk to money laundering or terrorist financing are subject to routine visits more frequently.</p> <p>iv) Develop and implement a framework for conducting consolidated supervision for AML/CFT compliance beyond banking, paying urgent attention to FIs that are parent and operating holding companies</p>	<p>iv) Outside of the banking sector there are few groups of any consequence within the financial services sectors other than insurance. The one major group in the investment sector is reviewed by a dedicated team in the investment department along with AML/ATF unit. With regard to insurance, the Insurance Act 1978 has been amended to</p>
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		<p>with significant operations overseas. Supervision should particularly focus on the existence and adequacy of applications for group-wide risk management, compliance and audit functions.</p> <p>v) Enhance the review of the sufficiency and quality of SAR reporting systems, and take fuller account of the work of external auditors in their review of the AML/CFT control environment.</p> <p>vi) Review the effectiveness of the overall supervisory process for purposes of applying enforcement action for AML/CFT related breaches and concerns.</p>	<p>allow for Group supervision, following extensive consultation with the insurance sector. Presently Bermuda has a register of 22 groups for which the Authority is recognised as group supervisor. The Insurance Department has been setting up colleges to work with regulators who supervise members of a particular group. Group-wide evaluations of AML compliance are being conducted, where appropriate, and recommendations addressing the obligations of different group members are made following on-site inspections.</p> <p>v) The onsite program was amended in January 2010 to broaden the tests for Internal reporting procedures to ensure institutions' employees are aware of who the MLRO is, the process each company has established for reporting and their responsibilities in reporting any suspicious activity directly to the MLRO. The independence of the MLRO position is established by reviewing the companies' organisational charts, job description and documentation showing unlimited access to information to enable the position to be effectively executed. A review of the company's internal reporting log and the number of SARS reported is requested to ensure the reporting process has been effective. In addition, as part of the onsite process there is a review of any internal or external audits and where there are issues raised about AML/CFT controls these are incorporated in the examination work plan.</p> <p>vi) The SEA Act empowers the BMA to impose civil monetary fines where a financial institution is found to be in breach of the regulations. The Act provides for a maximum fine of \$500,000 and the amount levied would be, in each particular instance, consistent with the principle that the fine must be appropriate, i.e. "effective, proportionate and dissuasive".</p> <p>Recent amendments in 2012 made to the Insurance Act 1978, the Banks and Deposit Companies Act 1999, the Investment Business Act 2003 and the Trusts (Regulation of Trust Business) Act 2001 introduced a uniform set of enforcement powers, and associated procedures for these Acts. Additional powers include:</p> <ul style="list-style-type: none"> • The power to impose civil penalties of up to \$500k for breaches of the relevant Act • The power to prohibit an individual from performing specific activities in respect of entities regulated under each Act • The power to seek injunctions to restrain or compel conduct. • The power to publish a statement where the Authority considers an Institution has breached an obligation under the relevant Act. • The various Acts also contain an express provision allowing the Authority to publish Decisions made in relation to enforcement activity. 	
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		<p>vii) Review and where necessary strengthen licensing practices in a consistent manner that reflects concerns not only of the applicant, but of other members of the group, including enforcement of the ongoing need for fit and proper criteria under the minimum licensing requirements.</p>	<p>Similar amendments are being developed for the Investment Funds Act 2006. The new powers augment the existing range of powers available for enforcement purposes; and the BMA has taken steps to issue a comprehensive Statement of Principles dealing with the use of the powers for enforcement under all of the Acts.</p> <p>In addition, the Corporate Service Providers Act 2012 brought corporate service providers within the AML regulatory regime.</p> <p>In respect of enforcement measures, in one instance in 2009, the Authority issued a notice proposing to withdraw a licence following AML breaches because of the perceived risk of money laundering. However the Institution voluntarily closed until it could develop policies and procedures to meet its obligations and the Authority did not proceed with the process.</p> <p>In 2010 and 2011 the Authority imposed civil penalties against 3 entities, for significant and substantial failures in AML compliance. Total fines imposed were \$150,000. In 2011 restrictions were imposed on the operations of a financial institution.</p> <p>vii) The Bermuda Monetary Authority's licensing process evaluates and reviews amongst other things: that the business to be carried on by the proposed licensee falls within the provisions of relevant Bermuda law; that the licensee will have the requisite systems, procedures and policies in place to conduct the business to be carried on; and that persons proposing to manage and direct such business are fit and proper to act as controllers and officers of the proposed licensee in accordance with established Bermuda law requirements. The licensing process includes the review and evaluation of any issues which may have an impact on the licensee and other members of a group; and discussions are held with relevant overseas supervisory authorities in this regard. In addition, the process also requires a copy of proposed AML/ATF policies to be submitted and evaluated for adequacy prior to the issuance of a license by the Authority. In particular all submissions are vetted by the Licensing and Authorisations department to ensure that all principals involved in the business, are fit and proper. This includes performing world check and internet searches to confirm the validity of the information. The individual qualifications of the officers of the company are also reviewed and approved by the Authority at the time of the application. There is also a requirement to submit the shareholders of the company, and they are vetted by the Licensing and Authorisations department prior to approval as well. Fitness and Propriety of shareholders, Directors and officers of licensed institutions is monitored on an ongoing basis through the following mechanisms:</p> <ul style="list-style-type: none"> • There is an obligation contained in each of the regulatory Acts to advise the Authority of any proposed change in shareholder 	
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		<p>viii) Review licensing procedures to ensure that the full requirements for ultimate beneficiaries of proposed licensees are established in accordance with the application documentation requirements. Also, conduct a review of application documentation review procedures to ensure that signed applicant declaration forms relating to competence and probity, are consistent with the type of license being sought.</p> <p>ix) Expedite the licensing/registration process for money services firm(s) and the provisions under Section 20AA of the BMA Act and the Regulations thereunder, to ascertain the adequacy of or need for provisions relating to agents/subagents of such licensees, as well as certain aspects of their operations to give practical implementation to issues such as</p>	<p>controllers. Any new shareholder controller is assessed for suitability in the same manner as that conducted during the licensing process, prior to approval being given for the shareholding transfer. In the event the proposed transferee is found to be unsuitable the Authority can refuse its consent to the transfer</p> <ul style="list-style-type: none"> • The on-site review processes as well as the annual reporting process are both used to identify any issues in conduct or competence in the management of the institution on an ongoing basis. There are minimum criteria in each of the Regulatory Acts requiring Directors and others to meet standards of fitness and propriety on an ongoing basis. Each Act contains the power to issue Directions or Restrictions to individual Institutions which could include requirements as to training, excluding individuals from specific activities, remedial actions, etc. • Each Act contains a provision that permits the Authority to ban an individual from specific or general activities in relation to any entity licensed under the relevant Act, if the BMA concludes that the individual does not currently meet the standards of fitness and propriety required in the minimum criteria. <p>viii) The Authority periodically reviews its licensing and application procedures and amends as required. The Authority's Assessment and Licensing Committee (ALC) process and manage the procedures for licensing. The ALC considers applications (licensing and other related matters) referred to it by the executive member responsible for the supervision of insurance, banking, trust, investments, fund administration business and money service business in Bermuda. The Authority is currently reviewing the licensing process with updated procedures due to be adopted prior to year end, which coincides with the implementation of the CSP legislation. With respect to the review of declaration forms relating to competence and probity, this is also an ongoing process. For example the Fund Administrators' declaration form was reviewed and updated in December 2011.</p> <p>ix) The licensing and registration process is in place to allow the BMA to grant a license to an institution to carry on money service business. As of August 2013 two financial institutions have been granted a license under the Money Service Business Regulations 2007. Institutions licensed under the MSB Regulations are subject to the same AML/ATF framework as other financial institutions in Bermuda. The current MSB license holders do not have any agents or sub agents and in respect of the money service business do not 'hold' client money.</p>	
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		<p>minimum holding period of client money</p> <p>x) Conduct a systemic review to ascertain whether other financial activities covered by the FATF Recommendation is taking place in or from within Bermuda on a regular commercial basis</p>	<p>x) A preliminary qualitative risk assessment carried out in 2011-2012 informed the Authority generally of the areas of vulnerability in Bermuda in addition to determining the on-site and off-site schedules. A quantitative risk assessment based on the World Bank model was completed in November 2013, the results of which are being used to identify other areas of activity that might require more detailed review and determine if any additional financial activities need to be brought into scope. However, it should be noted that the key financial activities covered by FATF are already in scope.</p> <p>The Authority has, as part of the quantitative risk assessment of the national risk assessment initiative, assembled data on supervisory activities and financial information on regulated entities. This project is ongoing but will continue to better inform the Authority about the details of the regulated sector and assist in effective resource allocation for supervisory and oversight purposes. Staff was trained on the World Bank Risk Assessment Tool in January 2013, the risk assessment was completed in November 2013 and the next round of the National Risk Assessment is set to begin by mid-2014.</p> <p>Additionally, a portion of the NRA requires that lists of products and services are obtained from all regulated financial institutions along with activity and volume statistics. This information will allow the Authority, as part of the process, to ascertain whether other financial activities covered by the FATF recommendations are taking place on a regular commercial basis.</p>	
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24. DNFBP - regulation, supervision and monitoring	NC	<p>i) When lawyers, accountants, company service providers, real estate agents, jewelers and high value dealers are brought under the AML/CFT preventive regime, ensure that effective supervisory arrangements are established for each sector, including adequate powers for the supervisors to monitor and sanction, and adequate resources to carry out the supervisory function.</p>	<p>i) The supervisory framework has now been established through the SEA Amendment Act 2010. An SRO has been established for the supervision of lawyers and ICAB accountants and the FIA has been designated as the regulatory authority for all other DNBP's. Both bodies have full powers to effectively monitor and enforce compliance.</p> <p>As noted above the legislative framework requiring FIs and DNFBPs to have the required systems and controls is in place. To date TSPs, CSPs, lawyers and accountants have been brought into scope under the regime. Additionally, the Barristers and Accountants AML/ATF Board (the SRO for lawyers and accountants) is adequately funded and is effectively carrying out its functions under the relevant legislation. The Supervisor is an experienced senior lawyer with extensive AML/CFT knowledge. The SRO has conducted the following: outreach to all the law firms and accounting firms; held public information sessions in addition to Continuing Legal Education sessions for law firms; finalised the registration of all regulated law firms and accounting firms; requested that all regulated firms provide for review, any and all AML/AFT documented policies and procedures in relation to processes for mitigation against money laundering and terrorist finances; completed desk based reviews for such firms who provided the above said information; and commenced the on-site review process on firms deemed high risk due to non-compliance in regards to the request to submit to the Board the above requested information and documents.</p> <p>In Bermuda, Trust Service Providers (TSPs) and Corporate Service Providers are designated as FIs. The BMA, which is the supervisor for all FIs including TSPs and CSPs is also adequately funded and staffed. The BMA has an AML Unit that regularly conducts outreach and awareness raising sessions, as well as onsite and offsite. A comprehensive outline of their supervisory regime has been provided under R 23. Further, as noted in Rec. 12(i) above, it is intended that Orders will be enacted within this year to bring other specified DNFBPs under the supervision of the FIA.</p>	
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		<p>ii) Ensure that the scope of activities of professional lawyers and accountants that is subject to AML/CFT obligations and to supervision conforms to the requirements of Rec. 24.</p> <p>iii) Updated guidance should be issued relevant to all DNFBPs.</p>	<p>ii) Professional lawyers and accountants are brought into scope of the Regulations through Reg 4. The scope of activities covered is detailed under the definition of “independent professional in Reg 2(1). The Barristers and Accountants AML/ATF Board was designated as the supervisory authority for Lawyers and ICAB Accountants by the Minister of Legal Affairs in August 2012 (pursuant to s. 4 of SEA) and these independent professionals are now within scope for AML/CFT supervision. In particular, section 5 of the SEA Act addresses the general duties of supervisory authorities.</p> <p>The SEA Act was amended in July 2010, and the amendment Act expanded the supervisory framework to a designated SRO. Thus, the Act gives the full range of powers to the Barristers and Accountants AML/ATF Board required to monitor and to enforce compliance.</p> <p>iii) The GN for AML/ATF regulated financial institutions applies to TSPs and CSPs. Additionally, specific guidance Notes for the Trust Sector were published in 2012.</p> <p>The Barristers and Accountants AML/ATF Board’s Guidance Notes were approved by the Minister and issued to the sector in 2012. Please also note that General Guidance Notes for all Financial Institutions, including the Trust Sector was issued by the BMA in 2009 and updated in 2010.</p> <p>Guidance notes for all outstanding DNFBPs will be issued by the relevant supervisory body once the sectors are brought into scope.</p>	
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25. Guidelines & Feedback	PC	<p>i) Review/update the Guidance Notes for completeness and relevance to the current needs of industry, and remove inappropriate exemptions or simplifications in customer due diligence.</p> <p>ii) Develop guidance for FIs and DNFBP relating to latest industry-specific typologies and additional preventative measures.</p> <p>iii) Formalise procedures for providing feedback on SARs.</p>	<p>i, ii) The Regs. have incorporated and expanded upon many of the requirements that were previously in Guidance.</p> <p>These regulations have been made pursuant to section 49(3) of POCA and section 12A of ATFA and revoke the previous regulations.</p> <p>The Bermuda Monetary Authority, as supervisor of financial institutions, has now finalised new guidance to assist with compliance with the revised regulations and various sections of the Proceeds of Crime Act 1997 and the Anti-Terrorism (Financial and Other Measures) Act 2004. The new GN replaces the previous guidance and, along with the Regs. address the issue at point one.</p> <p>Further, general Guidance Notes for all Financial Institutions, including the Trust Sector were published by the BMA in 2009 and updated in 2010. Additionally, specific guidance Notes for the Trust Sector were published in 2012. The Investment Business Sector and Investment Fund Sector specific Guidance Notes are being finalised and sector specific Guidance Notes for CSPs are being developed. Also in 2012 GNs were issued by the Barristers and Accountants AML/ATF Board Board for lawyers and accountants and by the BMA for the Trust sector. Trends and typologies are shared with industry (inc. FIs and DNFBPs) as follows:</p> <ul style="list-style-type: none"> - by the BMA with the FIs/Trust Sector during their quarterly feedback meetings; - by the FIA through i) GoAML system which automatically sends typologies reports to reporting entities (any FIs/DNFBPs that have filed a SAR), ii) Annual Report, iii) regular industry outreach sessions, and iv) quarterly feedback meetings with the banks and MSBs; -by the publication on a quarterly basis of the NAMLC newsletter which is distributed via email to industry (inc FIs/DNFBPs) and available on the NAMLC website (www.namlc.bm); -by the specific guidance notes for the trust, legal and accountancy sectors including typologies (see BMA AML/ATF Sector Specific Guidance Notes for Trusts, Guidance Notes for the Accounting Sector, and Guidance Notes for the Legal Sector (<i>hyperlinks</i>)). <p>iii) The FIA has a formalised procedure for providing feedback to FIs and other legislated authorities in place to direct how the feedback is to be sent in relation to SAR reporting. Quarterly meetings take place with FIs to provide them with feedback on both general and specific issues that arise.</p> <p>Meetings with the Banks and Money Service Businesses (MSBs) are held on a quarterly basis, wherein these FIs are provided with a written report outlining feedback that is specific to their institution along with a review of their relevant industry sector and the overall country review.</p>
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			Expansion of the FIA outreach sessions to all reporting entities that are registered with the FIA's goAML online filing system (which includes FIs and DNFBPs) includes information on trends and typologies, case studies, red flags and ML/FT indicators. Further, during Bermuda's NRA the FIA commenced discussions with DNFBP sectors regarding the AML/ATF framework and in relation to the filing of SARs and there is ongoing dialogue between the FIA and the relevant DNFBP sectors.	
Institutional and other measures				
26.The FIU	LC	Ensure that the new FIA is established and becomes operational, and provide sufficient staffing levels at the existing Police FIU to enable an increased number of ML/FT-related investigations.	<p>The new FIA is now operational and has adequate staff in posts to deal with the number of SARs currently being generated by FIs and other entities.</p> <p>An MOU is in place between the FIA and BPS that allows for the presence of a Police Liaison Officer at the FIA. This assisted in the transition from the FIU to the FIA and also enhances the day to day continuity between the two bodies.</p> <p>An MOU is in place with the FIA and HM Customs which allows for the full-time presence of a Customs Liaison Officer at the FIA. This serves to enhance the day to day continuity between the two bodies.</p> <p>Since the IMF assessment of May 2007, the Bermuda Police Service, which was already conducting ongoing money laundering investigations, has undertaken a number of additional money laundering cases.</p> <p>Additionally, since the FIA became operational in November 2008 there have been 16 convictions for money laundering in Bermuda. In respect of these convictions, at least 6 are a directly related to disclosures, and other convictions have been supported by SAR information.</p> <p>The FIA plays an active role in both CFATF and the Egmont Group. Within CFATF, the FIA sits on the Steering Group Committee and is involved in the Accreditation and Typologies Working Group. Within the Egmont Group, the FIA Director is a member of the Egmont Committee by virtue of his position as the Regional Representative for the Americas Region. FIA Bermuda is also the Vice Chair of the Legal Working Group. The Director is involved in two training programs with the Egmont Training Working Group (Strategic Analysis and Legal Entities and Financial Products).</p>	
27.Law Enforcement Authorities	LC	i) The authorities should make greater efforts to follow up on signs and traces of ML and to initiate non-SAR triggered investigations.	i) The Police FCU has commenced a number of non-SAR triggered investigations. In recent months, two very large ML enquiries have been generated from within the Bermuda Police Service, and subsequently supported with SAR information.	

		<p>ii) Investigating and prosecuting ML/FT cases should be made a priority by law enforcement authorities, with sufficient resources allocated reflecting that priority.</p>	<p>ii) One key example of the commitment to investigation of ML/FT matters was the 2009 ML prosecution under s.44 POCA. The guilty verdict on all 11 counts reaffirmed the efficacy of the anti-ML provisions as well as the skills of the law enforcement and prosecuting teams which worked on this matter over the past 3 years. There have been a number of confiscation orders as well as forfeitures. Further, the Bermuda authorities have been directly responsible for the successful conviction on 5 cases in the United States, while two persons are currently subject to money laundering charges in the Caribbean. Other investigations are currently ongoing. We would note that the current BPS Strategic Plan outlines the high priority which the Services afford ML and FT. It states, in particular:</p> <ul style="list-style-type: none"> • Maintaining capability to match the threat of serious and series offenders who commit crimes in Bermuda and internationally; • Maintaining capability to investigate all major crime committed in Bermuda; • Increasing capability to maximize the benefits of the Proceeds of Crime Act the Confiscated Assets Trust Fund and other statutory provisions, and becoming a centre of excellence for financial investigation. <p>As stated previously (see Recs. 1 and 2) the BPS has brought more than 16 money laundering cases before Bermuda's courts. The convictions in at least 13 of these cases are testimony to the hard work and commitment of the organisation to investigate these matters. Further, in addition to convictions locally, the BPS has provided direct assistance to overseas counterparts in several other money laundering prosecutions. The stated success has been achieved in a climate where the BPS has had to employ additional resources to investigate the upswing of gun and gang activity. The BPS objectives have focussed on guns, gang violence and drugs, and to this end the financial links between these activities have been the focus of the FCU. Of the 6 convictions for ML in 2012, 4 are believed to be related to these predicate activities.</p> <p>In addition the new s.50 amendment to the POCA has resulted in an increase in cash seizures, forfeitures and confiscations. In 2012 35 cash seizures were made and were a direct result of POCA's s.50 amendment.</p>	
28.Powers of competent authorities	C			
29.Supervisors	PC	<p>i) For purposes of consistency with other sectors, consider extending the definition of covered financial institutions and supervisory powers</p>	<p>i) Provisions under SEA Act have addressed this recommendation.</p>	

		<p>under the BMA Act to the insurance sector.</p> <p>ii) Establish an explicit mandate for the BMA to monitor, enforce and sanction for compliance with the AML/CFT obligations of FIs and review the adequacy of the proposed Bill to amend the POCA/BMA Act to ensure that it provides a clear and complete mandate to the BMA in all these areas.</p> <p>iii) Specify clear powers in the Credit Union Act that the BMA, under delegated authority, can supervise and inspect these FIs, including for compliance with AML/CFT obligations.</p> <p>iv) Extend in the Bank and Deposit Companies Act, prudent conduct/minimum licensing criteria to compliance with other laws so as to cover AML/CFT legislation.</p> <p>v) Include in the legislation a specific power for the BMA to enforce compliance with the AML/CFT requirements, including for the application of administrative measures and sanctions, as exist in the financial regulatory laws.</p> <p>vi) Consider clarifying in the proposed Bill to amend the BMA Act that the scope of BMA's AML/CFT supervision includes a monitoring function as well as enforcement and sanctions powers under the regulatory laws.</p>	<p>ii) This has been addressed through the SEA Act.</p> <p>iii) A new Credit Union Act was enacted in 2010 to strengthen the BMA's oversight of the Credit Unions. As noted on Page 2 of the addendum to this Report, through SEA, the Regulations and the Credit Union Act, a strong and robust regime has been put in place for the Credit Union and the BMA has the required powers to supervise and enforce compliance of its operation including AML/CFT requirements. That is, the Credit Union is licensed by the Authority for prudential purposes under the Credit Union Act 2010. However, the framework for monitoring and supervision of AML/ATF compliance is based on the fact that the Credit Union is a deposit taking business as defined by section 4 of the Banks and Deposit Companies Act 1999. Deposit taking business is captured by definitions contained in both the POCA Regulations and the SEA Act, i.e. "a person who carries on deposit taking business within the meaning of section 4 of the Banks and Deposit Companies Act. Credit Unions are therefore captured as relevant persons for the purpose of AML/ATF supervision by the Authority.</p> <p>iv) This has been addressed through Section 6 of the SEA Act.</p> <p>v) Provisions made under the SEA Act have addressed this recommendation.</p> <p>vi) Provisions made under the SEA Act have addressed this recommendation.</p>	
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30.Resources, integrity and training	PC	<p>i) Enhance training for BMA staff to facilitate the identification of deficiencies relating to AML/CFT requirements for FIs, including, but not limited to internal controls, CDD, SARs filings, recordkeeping, MLRO qualifications and operations. Increased specialization and focus on AML/CFT supervision, if the insurance and investment business/mutual fund sectors may be given priority.</p> <p>ii) The BMA should enhance its staff capacity to undertake more comprehensive AML/CFT supervision, including for the conduct of effective consolidated supervision whether as home or host supervisor.</p> <p>iii) Ensure continuation of the experience and skill in financial investigations in the Commercial Crime Department.</p>	<p>i, ii) With the commencement of the SEA Act 2008, the Authority's role expanded to include a duty to effectively monitor financial institution's compliance with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (the "Regulations") and to enforce compliance with the said legislation. In order to carry out this duty the Authority established a dedicated anti-money laundering and anti-terrorist financing unit ("the AML/ATF Unit") comprised of a team of officers experienced in AML/ATF.</p> <p>The appointment of a dedicated unit (7 persons), which works independently of and with the regulatory units, enhances both staff capacity and training capabilities to carry out AML/CFT supervision. The AML Unit averages 20 years' experience per member in compliance, operational risk, money laundering investigations and enforcement pertaining to regulatory procedures and have worked in the various financial sectors. The unit members also hold relevant diplomas, certifications and degrees such as CAMS. The team is supported by the supervisory departments of The Authority which carry out, in accordance with their annual supervisory plan, onsite and offsite examinations and annual reporting reviews to ensure regulated financial institutions are compliant with the financial services legislation.</p> <p>In 2009 the Authority conducted external presentations dealing with general AML obligations for the sectors under its supervisory regime. The Authority continues to build on these sessions and to date they include: 6 external presentations in 2010; 10 outreach and 5 internal seminars in 2011; 5 outreach and 6 internal seminars in 2012; and in first quarter of 2013 2 outreach seminars and 1 internal seminar.</p> <p>In addition, since 2010 the AML Team has conducted a number of separate week long internal training programmes to develop competencies in supervisory staff to review and evaluate AML compliance during supervisory on-sites.</p> <p>iii) The Commercial Crime Unit was renamed the Financial Crime Unit, and established as a new department under the Asst. Commissioner of Police Serious Crimes. All officers in the Unit are experienced Detectives. Since Bermuda's first Follow-up Report, 7 officers in the FCU held Certification as Anti-Money Laundering Specialists with the ACAMS organisation; due to natural attrition 5 officers in the unit are currently CAMS certified. Two Supervisors in the Office hold Advanced Diplomas in Compliance and Financial Crime Prevention with International Compliance Association (ICA) and have or are in the process of completing bachelor's degrees in 'white collar crime'.</p>	
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		<p>iv) A liaison officer should be named and existing FIU staff should train their successors in order to facilitate the transition from the FIU to the FIA.</p> <p>v) The number of open positions in the DPP's office should be remedied, and efforts made to retain professional staff.</p> <p>vi) Sufficient resources should be made available for training of DPP, Customs and Police staff.</p> <p>vii) Efforts should be made to attract qualified personnel to the FIU, and to provide continuity in the transition to the new FIA</p> <p>viii) Training should be increased at all agencies and at all levels not only in AML/CFT issues including typologies, analysis and international standards, but also in fundamentals such as</p>	<p>Since the assessment the FCU have successfully replaced their analyst (on retirement) with another qualified analyst with over 30 years detective and analytical experience, and the BPS has obtained additional capacity by agreeing short term contracts with trained Financial Investigators (FIs) for specific investigations. Currently three additional FIs are so employed; this allows for additional capacity in the unit and increases the internal mentoring and training within the department.</p> <p>iv) Two officers from the former FIU were seconded to the FIA to assist in the transition. The FCU have provided training modules to new police recruits, detective training courses and senior investigating officer (SIO) training courses. This together with regular training and liaison with uniform staff and HM Customs has ensured that Proceeds of Crime Offences and powers have become more effectively utilised in the jurisdiction and has laid the foundation for future development of the unit.</p> <p>Following the completion of the transition of the FIA, a MOU was signed with the FIA and BPS that allowed for the full-time presence of a Police Liaison Officer at the FIA to facilitate training and communication and networking between the two agencies.</p> <p>v) The Specialist Section within the Office of DPP is fully staffed. The specialist section is tasked with the management and conduct of hearings and the provision of advice in respect to the proceeds of crime, mutual legal assistance and extradition. The section is also specifically tasked with all AML/CFT advice and hearings. The staff compliment of the section includes 1 Senior Legal Crown Counsel, 1 Crown Counsel, and 2 Crown Counsel – Junior Grade.</p> <p>Training in the department of public prosecutions is on-going in the area of AML/CFT.</p> <p>vi) See above and below. It should further be noted that, effective April 1, 2014, the Customs Department will become part of the Ministry of National Security, to maximise the synergies among the various law enforcement agencies, which will now all be part of the same Ministry.</p> <p>vii) The FIA is appropriately staffed and two officers from the former FIU assisted in the transition when the FIA was established.</p> <p>viii) Training needs in the FIA and other law enforcement agencies (including BPS and Customs Staff) have been addressed through FINTRAC and other authorities on Analytical and Intelligence Training. Additional training courses have been undertaken.</p>	
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		<p>investigating and prosecuting white collar crime cases, managing complex cases, and criminal procedure. Assessor training courses offered by CFATF, the IMF and the World Bank should be considered as a means of developing AML/CFT expertise.</p>	<p>Training is ongoing at the FIA. FIA staff has participated in training in the following areas: Tactical Analysis, Financial Intelligence Analysis, Compliance, and Terrorist Financing. Staff continue to attend and actively participate in Conferences, Seminars and Workshops provided by FATF, CFATF, Egmont, other FIUs. Training has occurred locally and internationally involving law enforcement, regulators and foreign FIU staff. Funding for annual training has been budgeted and provided to the FIA.</p> <p>The FIA has also taken part in the Strategic Analysis Course provided by the Egmont Group. It is anticipated that a staff member will be qualified to deliver the SAC Training from June, 2013. All analysts (which includes both the Police Liaison Officer and Customs Liaison Officer working at the FIA) of the FIA have taken part in the Tactical Analysis Course also developed by the Egmont Group. The FIA has a member of its analytical team that is qualified to deliver this Tactical Analysis Course. It is anticipated that this course will be delivered to members of the FCU during 2013.</p> <p>The FIA continues to enhance its skills and products by providing local training and presentations to FI's and other organisations upon request. Training has also been provided to the Association of Bermuda Compliance Officers and the Society for Trusts and Estates Practitioners.</p> <p>In respect of training in the DPP Office, since 2009, the members of the Specialist Section continue to train through hands on involvement in Money Laundering prosecutions, Restraint and Confiscation of Criminal Proceeds. Members of the Specialist Section have also attended relevant training in AML/CFT and Fraud overseas. The Specialist Section has also trained other counsel in the Office of DPP in relation to applications for forfeiture of the proceeds of crime and complex case management.</p> <p>As noted previously, training at the BMA is also ongoing. With regard to the BPS, as mentioned above, 5 officers in the unit are currently CAMS certified. Two Supervisors in the Office hold Advanced Diplomas in Compliance and Financial Crime Prevention with International Compliance Association (ICA) and have or are in the process of completing bachelor's degrees in 'white collar crime'.</p> <p>It is also further noted that representatives from the BMA, FIA, DPP's Office and the Office of NAMLC participated in a Mutual Evaluation Workshop held by the World Bank in conjunction with the CFATF.</p> <p>ix) The FIA is adequately funded, structured, staffed and is provided with technical and other resources to fully and effectively perform its mandated function.</p>	
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		<p>ix) The FIA should be adequately funded, staffed and provided with technical resources, particularly in terms of technical expertise such as forensic accounting.</p> <p>x) Ensure that the new administrative Financial Intelligence Unit (FIA) is established and becomes operational and provide sufficient staffing levels at the existing Police FIU to enable an increased number of ML/FT-related investigations.</p>	<p>The FIA has acquired the United Nation's goAML software solution which allows for all reporting entities to file suspicious activity reports (SARs) on-line through a secured environment. The system receives stores, collates and provides feedback on all filed SARs. This has allowed for an effective and efficient disclosure process that has already shown an increase in workflow and disclosures made to law enforcement, foreign FIUs and other authorities</p> <p>x) The new FIA has been established and is fully functional. Staffing and resource levels are reviewed on a regular basis to ensure that the FIA can effectively carry out its duties.</p>	
31.National co-operation	PC	<p>i) A national AML/CFT coordinator should be appointed and the policy development role of NAMLC should be energized.</p> <p>ii) Systematic mechanisms should be put in place for coordination among and between all AML/CFT agencies and departments. These mechanisms could</p>	<p>i) POCA Amendment 2008, clause 8, s. 49 addresses this recommendation. Additionally, the Office of the National Money Laundering Committee has been established and staffed and is tasked with coordinating and progressing Government's and NAMLC's AML/CFT initiatives in relation to money laundering, terrorist financing and the financing of proliferation. In addition, Government continues to engage the services of an AML/ATF consultant to ensure that NAMLC is actively involved in policy development.</p> <p>Further, amendments have been made to Sections 49 to specifically note NAMLC's involvement in policy development in the areas of terrorist financing and the financing of proliferation (see Clause 4 of the Proceeds of Crime and Related Measures Amendment Act 2013, which came into force on 8 November 2013).</p> <p>ii) Coordination among agencies has been further enhanced with regular meetings established between relevant agencies. Under the leadership of NAMLC, three sub-committees meet on a regular (quarterly basis), they are:</p>	

		include assigned duties to individuals for coordination, regularly scheduled meetings and distribution of contact lists.	<ul style="list-style-type: none"> • Legal Working Group (containing representatives of BMA, DPP, AG's Office, Office of NAMLC and FIA) • Sanctions Working Group (containing representatives from BMA, Office of NAMLC, AG's Chambers, and other agencies as required) • Operational Working Group (containing representatives from the BPS(FCU), FIA, HMC, Tax Commissioner, DOSI, AG's, BMA, MOF (Tax Treaty Team). <p>Each group report regularly to the NAMLC Committee within their specialist areas to provide recommendations to the Committee. The OWG for example has this year had responsibility for completing modules 1 and 2 of the NRA. The OWG group is a platform to discuss current typologies and trends and has proven to be an excellent source of information and a vehicle to enhance operational successes.</p> <p>In addition an MOU exists between the FIA and BPS, and the FIA and HMC to ensure collaborative work. To enhance this work the BPS and HMC have both agreed to have a member of staff from their respective agencies permanently seconded to the FIA. Weekly strategic and operational meetings are conducted between these three agencies. The FIA and BMA meet on a quarterly basis. However, it should also be noted that additional operational meetings are conducted as the need arises.</p> <p>Due in part to the size of the jurisdiction, but also the recognition of its importance, all agencies report a close working relationship. An on-going example of this is the close liaison between the FCU and BMA in two current parallel investigations (due to sensitivity these cannot currently be named).</p> <p>The BPS assists the Inter-Agency Gang Task Force, which is made up of representatives of several government ministries, and sits in an advisory capacity on a second task force, which includes community partners that has been set-up to holistically tackle the crime culture in Bermuda which includes tackling the profits in crime. The agencies report an increase in intelligence and cooperation between all parties.</p>	
32.Statistics	PC	<p>i) Additional statistics should be maintained on amounts of restrained property compared with amounts ultimately confiscated and the types of crimes related to these actions.</p> <p>ii) Also needed is information on the recovery rates of the amounts subject to</p>	<p>It is our view that the recommendations in this regard have now been addressed. We have provided as an annex statistics to demonstrate the effectiveness of Bermuda's AML/CFT Regime, including in relation to the awareness raising and outreach activities of the relevant AML/CFT authorities; money laundering and terrorist financing investigations, prosecutions and convictions; seizures and confiscations; Suspicious Activity Reports; cash declarations; supervision and oversight of Financial Institutions and DNFBPs; and mutual legal assistance and international cooperation..</p>	

		<p>confiscation orders, and the amounts actually recovered.</p> <p>iii) Statistical systems should be updated and maintained in line with the recommendations in R.32.</p>	<p>i), ii) A record is now kept in the DPP of all cases with current restraint orders in effect; pending confiscation matters with flags on the relevant timelines; as well as orders made for confiscation and forfeiture..</p> <p>iii) Performance data in relation to FCU's investigations is regularly reported on and FIA statistics are shared with reporting agencies and other appropriate authorities on a quarterly basis. This allows the FIA to produce useful trends and typologies for publication.</p> <p>These trends and typologies are shared with the reporting entities during their quarterly feedback meetings in addition to being provided to NAMLC for publication on a quarterly basis.</p> <p>Further, the Attorney General's Chambers, in conjunction with the Department of Statistics, developed a computer database program to electronically capture statistical information on MLA Requests. Additionally statistics are also captured in respect of extradition requests made by and to Bermuda's Central Authority. It is also anticipated that the completion of Bermuda's NRA will assist the authorities with determining whether other statistical information should also be captured.</p>	
33. Legal persons – beneficial owners	C			
34. Legal arrangements – beneficial owners	C			
International Co-operation				
35. Conventions	PC	Request that the UK extend the SFT and Palermo Conventions to Bermuda.	<p>The Proceeds of Crime and Related Measures Amendment Act 2013 and the Transnational Organised Crime Act 2013 have been passed in the Lower House and both Acts came into force on 8 November 2013. The passage of these Acts has strengthened Bermuda's legislative framework so that the articles of the SFT and Palermo Conventions are enshrined in the legislative framework.</p> <p>In addition, Bermuda has formally requested that the UK extend the said Conventions to Bermuda and have provided the UK with relevant comparative charts setting out Bermuda's legislative provisions that give effect to the said Conventions.</p>	Bermuda Authorities are awaiting details from the UK in regards to the extent of the Conventions to Bermuda.
36. Mutual legal assistance (MLA)	LC		The Attorney General's Chambers has implemented a policy establishing precise timelines to address requests for Mutual Legal Assistance. Further, the BPS continues to assist the Attorney General's Chambers in these matters and is able to turn around MLA requests in an appropriate time frame.	

			<p>As noted above, the Attorney General's Chambers, in conjunction with the Department of Statistics, developed a computer database program to electronically capture statistical information on MLA Requests.</p> <p>The BPS worked closely with the FBI in respect of recent requests for Mutual Legal Assistance (2012-2013) that resulted in the conviction of two US based fraudsters for their part in multimillion dollar Ponzi Schemes.</p>	
37.Dual criminality	C			
38.MLA on confiscation and freezing	LC	Amend relevant statute to provide for external confiscation requests relating to instrumentalities used in a commission of an ML, FT or other predicate offense.	<p>The Attorney General's Chambers, in conjunction with the Ministry of Legal Affairs and the Department of Public Prosecutions established a Treaties Working Group, and are in the process of making recommendations to Cabinet to request the UK authorities extend a number of treaties with foreign jurisdictions to Bermuda. This exercise will also involve amending relevant domestic legislation, which will include a provision for mutual legal assistance in respect of external confiscation requests for proceeds and instrumentalities of crime and terrorist funds.</p> <p>This process has been protracted as it has involved consultation with the UK authorities. However, the matter is progressing and Cabinet approval was given and legislation is currently being drafted, and it is anticipated that the legislation will be enacted in the 2nd quarter of 2014.</p>	
39.Extradition	LC	Review resources available at AGC and Police/FIU to ensure that MLA requests are acted upon in as efficient a manner as possible.	<p>The AGC and the BPS have addressed matters pertaining to resources necessary to ensure that MLA requests are acted upon most efficiently (see also response for Rec. 36).</p> <p>The Attorney General's Chambers and the Department of Public Prosecutions have established processes in place for both initiating and receiving extradition requests.</p>	
40.Other forms of co-operation	C		In addition to formalised MLAT requests the BPS's FCU/ Intelligence and Drugs units work closely with overseas law enforcement agencies and information/intelligence is obtained and supplied on a daily basis. The close relationship with the USA authorities is outlined in their annual reports and the regular testimony of their officers in Bermuda drug trafficking cases.	
Nine Special Recommendations				
SR.I Implement UN instruments	PC	Request that the UK extend the SFT and Palermo Conventions to Bermuda.	The comments under R35 should be noted in this regard. In addition, we would note that in August 2012, the requirements of UNSCR 1267 (1999) as amended, and other additional European Union ("EU") measures, were brought into force in Bermuda: The Al-Qaida (United Nations Measures) (Overseas Territories) Order 2012 No. 1757 ("Al-Qaida Order 2012") and The Afghanistan (United Nations Measures) (Overseas Territories) Order 2012 No. 1758 ("Afghanistan Order 2012"). The requirements of UNSC Resolution 1267 (1999) were previously implemented in Bermuda through	Letter has been sent to Government requesting that the UK extend conventions to Bermuda, and we received and responded to queries from UK authorities in relation to our request.

			The Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002, as amended.	
SR.II Criminalise terrorist financing	PC	<p>i) Amend the ATFA's definition of terrorism to include the acts covered by the nine conventions referred to in the SFT Convention.</p> <p>ii) Amend ATFA to include acts taken against international organizations.</p> <p>iii) Amend the ATFA to include a reference to the financing of terrorist organizations.</p> <p>iv) Amend the ATFA to cover extra-territorial acts relating to terrorist organizations.</p>	<p>i) Provisions under Clause 3 of ATFA Amendment Act 2008 have addressed this recommendation. In addition, Clauses 6 and 7 of the Proceeds of Crime and Related Measures Amendment Act 2013 amended section 3 of ATFA broadening the recognised means by which acts of terrorism can be committed in order to ensure that all of the acts covered by the list of nine conventions referred to in the SFT Convention are included in the definition of terrorism.</p> <p>ii) Provisions under Clause 3 of ATFA Amend. 2008 have addressed this recommendation</p> <p>iii) The Proceeds of Crime and Related Measures Amendment Act 2013 (Clause 8) amended section 5 of ATFA to include offences in respect of the financing of terrorist organisations and the financing of a person or persons participating in terrorist activity. This amendment Act came into force on 8 November 2013.</p> <p>iv) Provisions made under ATFA Amend 2008, Part. IV, s. 17 has addressed this recommendation.</p>	
SR.III Freeze and confiscate terrorist assets	LC	<p>i) Guidance should be issued to the regulated sector concerning affirmative obligations to freeze assets of persons listed by the UNSCR 1267 Committee and the EU. These affirmative obligations should include incorporating the information into their AML/CFT compliance programs, and reporting to authorities on any transactions that may be connected to terrorist financing.</p> <p>ii) Procedures for delisting requests and the unfreezing of funds should be developed and published.</p>	<p>i) The new GN para 5.304 – 312 provide guidance on freezing of assets and the UN and EU obligations.</p> <p>ii) The Office of NAMLC is working in conjunction with Government House and the UK Foreign and Commonwealth Office in relation to the procedures for delisting requests and the unfreezing of funds. Following the receipt of information from the European Commission in respect of de-listing procedures in August 2013, the NAMLC Sanctions webpage on the NAMLC website (www.namlc.bm) has been updated to include a section titled</p>	

			“Challenging European Union and United Nations Designations”, which provides information to persons as to who to contact in order to petition the respective committee for de-listing requests.	
SR.IV Suspicious transaction reporting	PC	Amend ATFA to require FT-related SARs for funds linked to terrorist organizations.	Clause 8 of the Proceeds of Crime and Related Measures Amendment Act 2013 amended section 5 of the Anti-Terrorism (Financial and other Measures) Act 2004 (ATFA) to broaden the prescribed offences to include the financing of terrorist organisation. Thus the disclosure provisions contained in section 9 of ATFA that require reporting suspicious activity to the FIA, now captures financing of terrorist organisations offences under section 5 of ATFA. As noted above, this Amending Act came into force on 8 November 2013.	
SR.V International co-operation	C			
SR VI AML requirements for money/value transfer services	PC	Licensed money transfer services should be required to maintain a list of their agents and to make this list available to the authorities. Since the new legal regime for money service business is untested, there is no basis for evaluating effective implementation.	As of August 2013 two financial institutions have been granted a money service business license. Both are subject to the same AML obligations as other financial institutions in Bermuda. The relevant regulations do not make any provision for the utilisation of agents in the operation of a money service business and neither business operates utilising the services of agents. By its nature this business is considered high risk and regular on-sites are held with full review of all systems and procedures in accordance with the Authorities’ on-site and off-site monitoring programme. Since 2009 annual onsite examinations have occurred at both money service businesses with the last one taking place between November and December 2012.	
SR VII Wire transfer rules	NC	<ul style="list-style-type: none"> i) Reduce the minimum recordkeeping threshold to the equivalent of US\$1,000, and specify that full originator information should be obtained and retained for the minimum period in accordance with SRVII. ii) Ensure that the Regulations, Guidance Notes, examination procedures and general oversight of FIs includes compliance with wire transfer requirements as set out under all the essential criteria of SRVII. iii) Include lack of complete originator information as a basis for determining whether a suspicious activity report is filed with the FIU. 	<ul style="list-style-type: none"> i) Regulations 23 and 26 specifically address this recommendation. ii) New Regulations -and Guidance Notes were issued in March 2010 which meets the FATF requirement. In particular, Regs21 – 32 are part of a new Part IV which deal with SR VII. iii) Reg. 28 specifically addresses this recommendation. 	

SR.VIII Non-profit organisations	PC	<p>i) The authorities should undertake a review of laws and regulations related to non-profit organizations to ensure that they cannot be misused for financing of terrorism.</p> <p>ii) Recordkeeping requirement should be established in line with C. SR VIII 3.4.</p> <p>iii) The authorities should implement measures to ensure that they can effectively investigate and gather information on NPOs, as called for in C. SR VIII.4</p>	<p>i.), ii), iii) The Charities Bill 2014, was tabled in the House of Assembly on 28 February 2014 and passed in the House of Assembly on 14 March 2014 and passed in the Senate on 24 March 2014 and assented to by the Governor on 26 March 2014. This Bill establishes the Registrar General as the competent authority, assisted as appropriate by the Charities Commission and establishes a comprehensive framework for Charities that is consistent with the FATF requirements.</p>	
SR.IX Cross Border Declaration & Disclosure	NC	<p>i) Adopt the declaration system now being considered by the authorities;</p> <p>ii) Cover outgoing transportation of currency by the declaration system, and not just incoming as currently planned;</p> <p>iii) Amend relevant laws to substantially increase the scale of civil money fines and criminal penalties for customs violations;</p> <p>iv) Enhance domestic cooperation on customs issues;</p>	<p>i), ii) The Collector of Customs, in exercise of the powers conferred by section 16 of the Revenue Act 1898 (RA), has issued “The Customs Traveler Declaration Notice 2010” (BR 39/2010). In this Notice the Collector requires, among other things, that every person arriving at Bermuda or leaving Bermuda must declare when they have currency in excess of \$10,000.</p> <p>The Customs Traveler Declaration Notice 2010 covers both incoming and outgoing transportation of currency.</p> <p>In addition, HM Customs is currently drafting the Revenue (Bermuda Customs Declaration) Notice 2013 to be Gazetted with statutory effect by the end of October 2013. The implementation of the said Notice will provide for the obligation to declare cash or Bearer Negotiable Instruments (BNIs), greater than \$10,000.00, which are imported or exported via post or a courier service.</p> <p>iii) The Revenue Act 1898 has been amended so that in the new section 86(2), the fine for the indictable offence of a false declaration has been upgraded from the level 5 amount (\$30,000) to the level 7 amount (\$100,000). The term of imprisonment has likewise been increased from 2 years to 10 years in order to correlate with the increase in the level of the fine.</p> <p>iv) Domestic cooperation has been enhanced through NAMLC and Bermuda Law Enforcement Review Group; and there is ongoing dialogue between relevant agencies, as required.</p> <p>In 2010, the BPS FCU assisted in training HMC staff and BPS personnel in the area of cash seizures and bulk currency smuggling. Additionally, an MOU is in place with the FIA and HM Customs which allows for the full-time presence of a Customs Liaison Officer at the FIA. This serves to enhance the day to day continuity between the two bodies.</p>	

		<p>v) Ensure sufficient information-sharing between Customs and other law enforcement authorities;</p> <p>vi) Amend the Revenue Act to provide clear legal authority, as now exists in POCA, to charge directors and officers who have connived with the corporation with an offense.</p> <p>vii) In addition, consideration should be given to (1) amending the relevant laws to provide the Customs Department with explicit legal authority to seize, detain, and confiscate currency in the event of a false declaration and (2) developing a procedure to notify other customs agencies of search and detention reports relating to precious metals other than gold, as well as to precious stones.</p>	<p>v) Periodic meetings are held between the relevant agencies and there is a MOU in place that allows for formal transmission of appropriate information.</p> <p>Customs routinely informs the Police Financial Crime Unit (FCU) and the Financial Intelligence Agency (FIA) of all currency seizures and receives feedback regarding suspects from the FIA.</p> <p>vi) Bermuda amended the Revenue Act of 1989 by inserting section 91A, which provides that where a body corporate has been proved guilty of committing an offence under the said Revenue Act, any director, officer, person or the body corporate who committed the act, consented or connived shall be guilty of the offence held liable and punished accordingly [section 91A inserted by amendment 2008:14, effective 25 March 2008].</p> <p>vii) (1) Section 16 of the Revenue Act 1898 has been amended to expand the Collector's power to require persons to make customs declarations in respect of currency and negotiable instruments. In addition, the new Revenue Act section 86(3) provides that any article (including currency) is liable to forfeiture if that article is not declared or is falsely declared. Therefore, there is currently no restriction on the importation of currency and bearer negotiable instruments in Bermuda; however items that are not declared are liable to forfeiture.</p> <p>Notwithstanding the above, it should be noted that the gap in question (explicit legal authority to seize, detain and confiscate currency in the event of a false declaration") was addressed by 2008 amendments to RAss16 and 86. RA s16 was also amended with the addition of subsection (5) to provide for the forfeiture of falsely declared cash. The Customs (Traveller Declaration Notice) 2010 imposes an obligation on travellers to declare cross-border movements of cash and negotiable instruments.</p> <p>Effective June 1st 2012 two separate but linked Revenue Amendment Acts (2012:3 and 2012:16) significantly enhanced customs powers to search goods and persons. As a result all customs summary powers of search are now exercisable in respect of any cash, the importation or exportation of which, is restricted or prohibited by or under any Act. Such searches can now be made at any time (not just at the time of arrival/importation); in a customs area (or outside a customs area in cases of hot pursuit); or on board any vessel or aircraft being lawfully boarded by customs. Customs powers to search under a Magistrate's warrant have been similarly enhanced to allow for search of any place suspected of containing cash (s.97 RA 1898).</p>	
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			<p>These changes affected the following sections of the Revenue Act 1898:</p> <p>S. 2 – Interpretation (refer to definition of “uncustomed goods”, which has been amended and now includes currency and negotiable instruments)</p> <p>S. 82 – Powers of customs officers to board any ship, secure hatches, mark goods</p> <p>S. 96 – Search of person suspected of carrying uncustomed goods</p> <p>S. 97 – Grant of search warrant for smuggled goods</p> <p>S. 98 – Power of search</p> <p>It is worth noting that the authority for police officers to exercise customs search powers has been preserved (refer to definition of “customs officer” in RA S.2).</p> <p>It should also be noted that section 86(3) of the RA provides that in addition to any penalty for failure to declare, or for mis-declaring any article, that article shall be liable for forfeiture. Cash and negotiable instruments are ‘articles’ and as such are liable to forfeiture pursuant to s.86(3) if they are not lawfully declared or are falsely declared (RA s.2 defines goods).</p> <p>(2) Procedures are already in place, and information is presently sent to the WCO CEN database, and CCLEC RILO database.</p>	
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Addendum to the Bermuda Action Plan - CFATF Third Follow-Up Report (Report)

It is the view of Bermuda that the recommended actions of the MER and of the CFATF Follow-up Reports noted in this document have been addressed, *viz.* in relation to certain legislative provisions and statistics. In light of the evidence submitted in this Addendum, we would therefore be grateful if CFATF could please confirm whether Bermuda would now be deemed to have effectively addressed these recommended actions.

This Addendum provides the following information:

A. Additional information to document how Bermuda has addressed specific recommendations of the 2007 Mutual Evaluation Report (MER)	2
B. Statistics which demonstrate the effectiveness of Bermuda's AML/CFT Regime	7
C. High level summary of legislative matters that are intended to be addressed in relation to the 2007 MER	18

Section A provides evidence to document the completion of certain recommended actions, particularly in relation to the powers of supervisors for credit unions (Rec 29), the provision of statistics (Rec 32), and the level of certain penalties (Rec 17). **Section B** provides statistics which demonstrate the effectiveness of Bermuda's AML/CFT Regime, including in relation to the awareness raising and outreach activities of the relevant AML/CFT authorities; money laundering and terrorist financing investigations, prosecutions and convictions; seizures and confiscations; Suspicious Activity Reports; cash declarations; supervision and oversight of Financial Institutions and DNFBPs; and mutual legal assistance and international cooperation. **Section C** provides a high level summary of the legislative matters in relation to the outstanding matters identified in the 2007 MER that, unless otherwise indicated, will be presented to Parliament in the upcoming session for enactment by August 2013.

It should also be noted that in January 2013, Bermuda embarked on a National Risk Assessment. Further, it is expected that a number of legislative enhancements will be made in 2013 to reflect the 2012 revisions to the FATF standards.

A. Additional information to document how Bermuda has addressed specific recommendations of the MER

Section A of this Addendum provides evidence to document the completion of certain recommended actions, particularly in relation to the supervision of credit unions, the provision of statistics, and the level of certain penalties. Section I provides additional information to document the completion of certain recommendations of the MER, and section II provides the rationale for Bermuda's position that no action is required with regard to the recommendation of the MER addressing penalties.

I. Additional information to document the completion of certain recommendations of the MER

i. Powers of Supervisors: Credit Union (Recommendation 29)

Paragraph 32 of the CFATF third follow-up report states: “At **Recommendation 29**, the outstanding is in relation to the assessors’ recommendation that Bermuda, “*Specify clear powers in the Credit Union Act that the BMA, under delegated authority, can supervise and inspect these FIs, including for compliance with AML/CFT obligations*”. Bermuda has indicated that “*as Credit Unions are captured as “deposit-taking business” pursuant to section 4 of the Banks and Deposit Companies Act 1999*. This Recommendation remains *outstanding.*”

Evidence to document the completion of the recommendations of the MER: We are of the view that the Bermuda AML/CFT legislation contains all of the required powers for effective monitoring and enforcement of compliance of credit unions with the AML/CFT obligations, as noted on page 32 of the Action Plan in relation to Recommendation 29. Please also see the below summary of the legislative provisions which enable the Bermuda Monetary Authority (BMA) to supervise and monitor credit unions for the purposes of AML/CFT. The Credit Union is licensed by the BMA for prudential purposes under the [Credit Union Act 2010](#) (*hyperlink*). However, the framework for monitoring and supervision of AML/ATF compliance uses provisions that are based on the fact that the Credit Union is a deposit taking business as defined in section 4 of the Banks and Deposit Companies Act 1999. The definition in section 4² of the [Banks and Deposit](#)

² Section 4(1): **Meaning of "deposit-taking business"** Subject to the provisions of this section, a person carries on deposit-taking business for the purposes of this Act if

(a) in the course of the business, he lends money received by way of deposit to others; or

[Companies Act 1999](#)” (BDCA) (*hyperlink*) clearly encompasses the activities of a Credit Union, as a Credit Union lends money received by way of deposit to others and finances its other activities out of the interest received on the loans. It should be noted that the importation of that definition into the AML/ATF legislation makes it irrelevant whether an entity is licensed under the BDCA.

Both Regulation 2(2) of the [Proceeds of Crime \(Anti-Money Laundering and Anti-Terrorist Financing\) Regulations 2008](#) (Regulations) (*hyperlink*) and Section 2(1) of the [Proceeds of Crime \(Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement\) Act 2008](#) (SEA Act) (*hyperlink*) include in the definition of an AML/ATF regulated institution “a person who carries on deposit taking business within the meaning of section 4 of the Banks and Deposit Companies Act 1999”. Regulation 4(a) makes AML/ATF regulated financial institutions “relevant persons” within the scope of the Regulations and therefore all of the AML/CFT requirements of the Regulations apply to the Credit Union, as a deposit taking business, (e.g. CDD, ongoing monitoring, record-keeping, systems and training). Pursuant to section 3(1)(a) of the SEA Act the BMA is the supervisory authority for AML/ATF regulated financial institutions; and under sections 5 and 6 of the SEA Act, the BMA has the duty to monitor AML/ATF regulated financial institutions (inc. credit unions) for compliance with the Regulations etc., which includes the power to conduct on-site examinations to test for compliance. Section 6(2) of the SEA, coupled with the inclusion of the Credit Union Act under the definition of regulatory Acts in section 2(1,) allow the BMA to utilise all of the powers in the Credit Union Act in the enforcement of AML/ATF obligations.

ii. **Statistics (Recommendation 32)**

Paragraph 35 of the Report states: “Relative to **Recommendation 32** the assessors had recommended that, “*Statistics should be maintained on amounts of restrained property compared with amounts ultimately confiscated and the types of crimes related to these actions*”. Bermuda has not provided any data to demonstrate that statistics are being maintained in accordance with this recommendation but has reported that, “*For the period 2011-2012 there were 7 confiscation orders and 5 forfeiture orders, and this further evidences the*

(b) he finances any other activity of the business wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.
(2) For the purposes of subsection (1), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.

effectiveness of the legislation. This gap remains *open*. Whilst neither of the other two (2) recommendations of the assessors has as yet been taken on board, Bermuda has also reported having had 13 money laundering convictions, up to January 2013, with sentences ranging from between 3-8 years imprisonment. This Recommendation remains *outstanding*.”

Evidence to document the completion of the recommendation of the MER: We are of the view that Bermuda does maintain the required statistics, as noted on page 38 of the Action Plan in relation to Recommendation 32. Section B of the Addendum provides comprehensive statistics to assist in the evaluation of Bermuda’s AML/CFT Regime, including in relation to the awareness raising and outreach activities of the relevant AML/CFT authorities; money laundering and terrorist financing investigations, prosecutions and convictions; seizures and confiscations; Suspicious Activity Reports; cash declarations; supervision and oversight of Financial Institutions and DNFBPs; and mutual legal assistance and international cooperation.

II. Rationale for Bermuda’s position that the recommendation of the MER in relation to penalties (Recommendation 17) has already been complied with
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- i. Paragraph 26 of the Report states:** “Relative to **Recommendation 17** paragraph 14 is relevant. However the comments noted in both the first and second follow-up reports are still relevant in that Bermuda is of the opinion that relevant penalties are at appropriate levels. This Recommendation is *outstanding*.”

Evidence to document the completion of the recommendation of the MER: It is our considered view that there are adequate penalties for money laundering, failure to disclose knowledge or suspicion, and tipping-off under the Proceeds of Crime Act 1997 (POCA 1997) (as discussed on page 15 of the Action Plan in relation to Recommendation 17). We would note that the penalties in force in Bermuda are actually higher than a number of jurisdictions, including Guernsey³, Cayman Islands⁴ and the United Kingdom⁵. Furthermore, these jurisdictions received in their Detailed Assessment Reports a ‘largely compliant’ or ‘compliant’ rating for Recommendation 17 with no recommended actions in relation to their criminal sanctions for money laundering etc. Please see the chart 1 on page 6 for a summary of the penalties in the various jurisdictions.

The Bermuda MER of 2007 concludes that one of the factors for the underlying rating of “PC” for Recommendation 17 is that fines under POCA for summary convictions and certain convictions on indictment are deemed much too low. Please note that “summary offences” under POCA are in respect of offences that are deemed not as serious and to be tried without a jury in Magistrates Court, whilst offences deemed more serious are tried on indictment in the Supreme Court with a jury. Offences tried on indictment, given the more serious nature would therefore warrant the higher penalties. Moreover, where a matter is tried summarily, upon conviction the Magistrate has authority to commit the defendant to the Supreme Court for sentencing if he deems the circumstances of the case warrant a penalty higher than the threshold that can be levied by the Magistrate’s Court (section 25 of the [Summary Jurisdiction Act 1930](#)).

Chart 1: Summary of the penalties in various jurisdictions

Penalties	Bermuda	Guernsey	Cayman Islands	UK
MER Rating (Rec 17)	PC Jan 2008	LC Jan 2011	C Nov 2007	LC Jun 2007

³ See paragraph 795-797 on page 214 and 215, and pages 226 and 343 of the Guernsey [Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism](#) (hyperlink)

⁴ See paragraph 87 on page 28, paragraph 479 on page 99, and pages 148 and 156 of the Cayman Islands [Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism](#) (hyperlink)

⁵ See paragraph 131 on page 35, paragraph 803 on page 166, and pages 285 and 291 of the UK [Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism](#) (hyperlink)

ML (summary)	5 years or a fine of \$50,000.00 or both	12 months and/or a fine not exceeding £10,000	2 years and/or a fine not exceeding \$5,000	6 months or a fine not exceeding the statutory maximum or both
ML (indictment)	20 years or an unlimited fine or both	14 years and/or an unlimited fine	14 years and/or an unlimited fine	14 years and/or a fine
Failure to disclose (summary)	3 years or a fine of \$15,000.00 or both	6 months and/or a fine not exceeding £10,000	Fine of \$50,000	6 months or a fine not exceeding the statutory maximum or both
Failure to disclose (indictment)	10 years or an unlimited fine or both	5 years or to an unlimited fine or both	2 years and/or an unlimited fine	5 years and/or an unlimited fine
Tipping off (summary)	3 years or a fine of \$15,000.00 or both	6 months and/or a fine not exceeding £10,000	2 years and/or a fine not exceeding \$5,000	6 months or a fine not exceeding the statutory maximum or to both
Tipping off (indictment)	10 years or an unlimited fine or both	5 years or an unlimited fine or both	5 years and/or a fine	5 years and/or an unlimited fine or both

B. Statistics on the effectiveness of Bermuda's AML/CFT Regime

In response to the comments noted in paragraph 35 of the Report (in relation to old Rec. 32), we would note that it is the view of Bermuda that the relevant statistical data is maintained in Bermuda. Section B of this Addendum provides the updated statistics in relation to the effectiveness of Bermuda's AML/CFT Regime to date.

Chart 1(a)

Money laundering and terrorist financing investigations, prosecutions and convictions; on property frozen, seized and confiscated

Summary of Statistics:

- Sixteen (16) convictions for Money Laundering Offences from 2009 to 7 March 2014 (there were none prior to 2009);
- Bermuda assisting its overseas counterparts, resulting in seven (9) overseas convictions, seven (7) in the USA and two in the UK between 2009 and 2013; and
- Over \$2.6m in cash and assets was seized between 2009 and 2011, and approximately \$3.1m in cash and assets has been seized between 2012 and 4 March 2014 (totaling over \$5.7m from 2009).

Factors/Elements	2011	2012	2013 (31 August)	31/12/2013	7/3/2014
INVESTIGATIONS					
ML investigations	5 commenced 2 ongoing (most investigations have multiple subjects (smurfs))	3 commenced 8 ongoing (most investigations have multiple subjects (smurfs))	4 commenced 5 ongoing (most investigations have multiple subjects (smurfs))	8 New 5 Ongoing	1 new money laundering investigation
FT investigations	0	0	0	0	0
PROSECUTIONS					
ML prosecutions	10 commenced; 5 ongoing	3 commenced; 2 ongoing	1 new 4 ongoing	4	4
FT prosecutions	0	0	0	0	0
CONVICTIONS					
ML convictions	3	6	0	4	2
FT convictions	0	0	0	0	0
PROPERTY FROZEN, SEIZED, CONFISCATED					
Property restrained	4, 1 restraint lifted following conviction. 1 lifted following not guilty verdict. (\$1.2million returned to US Victim)	1 on-going 2 lifted following conviction	1 new restraint value \$2,200,000. (MLAT/CJIC) 1 restraint ongoing	29 Cash/Property Seizures with Magistrates Courts Detention Orders 2 Supreme Court Restraints on accounts/ property prior to Trial(s)	Three Restraints under new Civil Recovery to the value of approx\$9,000,000

Number of cases and the amounts of property frozen, seized (s50 Proceeds of Crime 1997 (POCA)), forfeited and confiscated relating to criminal proceeds (incl. ML)	Total: \$3,148,873.88: S50 POCA seizures: \$1,633,575.67 Confiscation (7 confiscation orders): \$1,474,613.82 Forfeiture (1 forfeiture orders): \$40,684.39	Total: \$ 1,172,516.16 S50 POCA seizures: \$339,934.14 Confiscation: \$632,524.02 Forfeiture: \$200,058.00	Total: \$410,298.01 S50 POCA seizures: \$167,748.01 Confiscation: 0 Forfeiture: \$82,550.00 PACE ML Seizure: \$160,000.00	\$423,380.01 S.50 Seizures \$300,475.01 Confiscation 0 Forfeiture: \$122,905.00	1 additional cash seizure for 2014 \$8,600 Forfeiture/confiscation 9 new forfeitures value of \$469,365
No of cases, frozen, seized, and confiscated re FT	0	0	0	0	0
No of persons/entities and amounts of ppty frozen pursuant to UNSCR re FT	0	0	0	0	0
Any sanctions applied re SR.III	0	0	0	0	0
Level of resources dedicated to the ML/TF related investigations and prosecutions	BPS/FCU = 1 Insp 2 Sgts + 6 Detectives + 1 Analyst + 1 Consultant investigator (split role with fraud/corruption)	BPS/FCU = 1 Insp 2 Sgts + 8 Detectives + 1 Analyst (split role with fraud/corruption)	BPS/FCU = 1 Insp 2 Sgts + 7 Detectives + 1 Analyst (split role with fraud/corruption) + 3 consultant financial investigators	1 Insp 3 Sgt's, 7 Constables, 2 Consultants & 1 Analyst	1 Insp 3 Sgt's, 7 Constables, 2 Consultants & 1 Analyst

Chart 1(b)(i)
Annual statistics on STRs received and disseminated

Factors/Elements	2011		2012		2013		2014 (28 February)	
QUANTITY								
ML: suspicious transaction reports, and other reports where appropriate under domestic law, received and disseminated	327		377		370		62	
TF: suspicious transaction reports, and other reports where appropriate under domestic law, received and disseminated	0		1		3		0	
STR received by the FIU by type of financial institution, DNFBP, and by other business or person making the STR	Banks (includes a Credit Union)	157	Banks (includes a Credit Union)	244	Banks includes a Credit Union)	217	Banks (includes a Credit Union)	49
	Investment Service Providers	7	Investment Service Providers	2	Investment Service Providers	9	Investment Service Providers	0
	Money Service Businesses (MSB)	140	Money Service Businesses (MSB)	103	Money Service Businesses (MSB)	101	Money Service Businesses (MSB)	6
	Corporate Service Providers (CSP)	2	Corporate Service Providers (CSP)	2	Corporate Service Providers (CSP)	0	Corporate Service Providers (CSP)	0
	Law Firm	1	Law Firm	7	Law Firm		3	
	Trust Company	4	Trust Company	5	Trust Company		0	
	Local Regulators	3	Local Regulators	1	Local Regulators	7	Local Regulators	0

	Long Term Insurers	11		Long Term Insurers	14		Trust Company	2		Long Term Insurers	7
	Other (Metal Dealers)	1		Other (Metal Dealers)	0		Local Regulators	0		Other (Metal Dealers)	0
	TOTAL	327		TOTAL	378		Long Term Insurers	37		TOTAL	62
							Other (Metal Dealers)	0			
							TOTAL	373			
QUALITY											
No of SARs used in investigations, result of supervision of the FIA	130 SARs Disclosed		193 SARs Disclosed		296 SARs Disclosed		53 SARs Disclosed				
Ongoing training to stakeholders relative to the manner of reporting	Yes. The FIA undertakes ongoing training relative to all reporting entities (17 were conducted in 2011).		Yes. The FIA undertakes ongoing training relative to all reporting entities (21 were conducted in 2012).		Yes. The FIA undertakes ongoing training relative to all reporting entities (18 were conducted in 2013).		Yes. The FIA undertakes ongoing training relative to all reporting entities (2 were conducted in 2014 – Feb 2014).				
Awareness of specified STR reporting form	The FIA conducts training in electronic reporting of SARs on a regular basis.		The FIA conducts training in electronic reporting of SARs on a regular basis.		The FIA conducts training in electronic reporting of SARs on a regular basis.		The FIA conducts training in electronic reporting of SARs on a regular basis.				

Chart 1(b)(ii) Customs Authorities (R.26 & 27 and SR.IX)

Factors/Elements	2011	2012	2013	2014 (28 February)
Number of Reports (in relation to seizures) made by Customs to the Police	Approx. 12	Approx. 12	Approx. 17	Approx. 1
Number of declarations of cash in excess of \$10,000	Approx. 280	Approx. 280	Approx. 101	Approx. 7
Amounts seized/confiscated	\$53,639.00 USD	\$140,672.00 USD	\$355,898.32 USD	\$8,900.00 USD

Number of operations aimed at identifying/targeting illicit cash couriers	0*	1 – <u>Leg B4 Wicket</u> Operation was planned with HM Customs and US Customs personnel to identify cash couriers. No one was identified during this period (25 th July – 1 st August 2012)*	H. M. Customs and US Customs had a joint operation from 25 th July- 4 th August 2013. *The Agencies regularly share information on persons suspected of being involved in drug smuggling and money laundering	
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***On a daily basis, the Joint Intelligence Unit:-**

1. checks airline manifests
2. monitors passengers departing for the United States (Assist and work along with US Customs and Border Protection at the US Departure Gate)
3. monitors passengers departing on the Air Canada & Westjet flights to Toronto; monitor passengers departing on the British Airways flight to London, Gatwick when operational
4. provides intelligence to all Sections in the Department including the Cruise Ship Enforcement and the Yacht Reporting centre

JIU disseminates information of all cash seizures to the Police Financial Crime Unit and the Financial Intelligence Agency; and also disseminates information to US Customs and Border Protection; Canada Border Service Agency (CBSA); UK Border Agency and to members of the Caribbean Customs Law Enforcement Council.

Chart 1(c)
Supervision and Oversight

Factors/Elements	2011	2012	2013
RESULTS			
R.17 (sanctions) and SR.VI (MSBs)- the number of cases where sanctions have been applied, the nature of the failings and the type of sanctions applied	<ul style="list-style-type: none"> 0 cases 	<ul style="list-style-type: none"> 0 cases 	<ul style="list-style-type: none"> 0 cases
R.23 (Reg/Supervision of FIs) & 29 (powers of supervisors) and the operations of the AML/ATF Unit - the number of on-site supervisory inspections that covered AML/CFT issues; the frequency and duration of inspections; the types and range of institutions inspected having regard to ML/TF risks; the nature of the on-site inspection, the use of other supervisory techniques e.g. offsites; and the results in terms of compliance by FIs	<ul style="list-style-type: none"> 27 on-sites 5-10 day duration of inspections Frequency: Regulated FIs (RFIs) were selected for an onsite based on the risk based approach Range of RFIs inspected include all sectors covered by the Bermuda AML framework The onsite process is composed of three stages; a review of the company's submissions which in part include their AML/ATF policies and procedures; a structured visit to the licence holder's offices to conduct face to face interviews with management and staff; onsite file testing and 	<ul style="list-style-type: none"> 22 on-sites 5-10 day duration of inspections Frequency: for those RFIs that did not have an on-site inspection as documented in the reply to Rec 23(i), off-sites or desk based review were completed for those RFIs (Trusts, Investment Businesses, Fund Administrators, Funds and NLPs). As outlined in the reply to Rec 23(i) and Rec 23(x), the NRA will assist in on-going prioritisation of on-sites and off-sites from a risk based approach. Range of RFIs inspected include all sectors covered by the Bermuda AML framework <p>GN 5.67 The institution should obtain the following information in relation to the private individual;</p> <ul style="list-style-type: none"> Full name; Residential address; and 	<ul style="list-style-type: none"> 20 on-sites 5-10 day duration of inspections Frequency: for those RFIs that did not have an on-site inspection as documented in the reply to Rec 23(i), off-sites or desk based reviews were completed for those RFIs (Long Term Insurers writing direct business were completed on August 31st). As outlined in the reply to Rec 23(i) and Rec 23(x), the NRA will assist in on-going prioritisation of on-sites and off-sites from a risk based approach. Range of RFIs inspected include all sectors covered by the Bermuda AML framework The onsite process is composed of three stages; a review of the company's submissions which in part include their AML/ATF policies and procedures; a structured visit to the licence holder's offices to conduct face to face interviews with management and staff; onsite file testing and other reports as deemed necessary. The offsite process began in 2012 for all regulated FIs which have not had a face to face onsite in the last two years or one scheduled for 2013. Other supervisory techniques includes external/internal outreach and seminars on

	<p>other reports as deemed necessary.</p> <ul style="list-style-type: none"> • Other supervisory techniques includes external/internal outreach and seminars on AML; continuous dialogue with RFIs • RFI compliance post inspection or review is carried out through remediation and follow-up inspections 	<ul style="list-style-type: none"> • Date of birth. • The onsite process is composed of three stages; a review of the company's submissions which in part include their AML/ATF policies and procedures; a structured visit to the licence holder's offices to conduct face to face interviews with management and staff ; onsite file testing and other reports as deemed necessary. • The offsite process began in 2012 and continues in 2013 for all regulated FIs which have not had a face to face onsite in the last two years or one scheduled for 2013. • Other supervisory techniques includes external/internal outreach and seminars on AML; along with the use of off-site or desk based review inspections; continuous dialogue with RFIs • RFI compliance post inspection or review is carried out through remediation and follow-up inspections 	<p>AML; along with the use of off-site or desk based review inspections; continuous dialogue with RFIs</p> <ul style="list-style-type: none"> • RFI compliance post inspection or review is carried out through remediation and follow-up inspections
R.23 data to demonstrate - enforcement of ongoing fit and proper criteria; reviewing of the licensing procedures to ensure full requirements for ultimate beneficiaries of proposed licensees are	<ul style="list-style-type: none"> • 0 enforcement cases • SPR Committee reviews all the ALC processes and procedures for licensing 	<ul style="list-style-type: none"> • 0 enforcement cases • SPR Committee reviews all the ALC processes and procedures for licensing 	<ul style="list-style-type: none"> • 0 enforcement cases • SPR Committee reviews all the ALC processes and procedures for licensing [please refer to the reply for Rec 23(vii)-(viii)]

established in accordance with the applicant documentation	[please refer to the reply for Rec 23(vii)-(viii)]	[please refer to the reply for Rec 23(vii)-(viii)]	
STRUCTURAL ISSUES			
R.23 and SR VI: general organisation of the AML/ATF Unit; adequacy of resources (financial, staff, technical, etc. especially in relation to the “Unit’s” responsibility for registering/licensing under SR VI) and adequate capacity/expertise (including staff background, training and professional standards)	5 staff in the AML unit The ALC reviews all applications and licenses	6 staff in the AML unit The ALC reviews all applications and licenses	5 staff in the AML unit The ALC reviews all applications and licenses
GUIDANCE			
Specificity of guidance to particular types of FIs and persons engaged in other business activity	<ul style="list-style-type: none"> Trust Specific AML Guidance Notes – (in progress) 	<ul style="list-style-type: none"> Completed Trust Specific AML Guidance Notes Investment Business Specific AML Guidance Notes – (in progress) 	<ul style="list-style-type: none"> Completed Investment Business Specific AML Guidance Notes Funds and Fund Administration Specific AML Guidance Notes – (in progress, near completion)
AWARENESS RAISING			
(Rec. 25, SRVI and SRVIII) Number of awareness raising campaigns and seminars conducted.	10 Outreach 5 Internal Seminars	5 Outreach 6 Internal Seminars	2 Outreach 1 Internal Seminar

Chart 1(d)
Statistics on mutual legal assistance or other international requests for cooperation (R.36-40)

Factors/Elements	2011	2012	2013	2014 (28 February)
MUTUAL LEGAL ASSISTANCE: All mutual legal assistance requests (including requests relating to freezing, seizing and confiscation) that are made or received in relation to: (including the nature of the request, whether it was granted or refused, and the time required to respond)				

Details of MLA	The Central authority responsible for MLA maintains a MLA database which records the following information: the nature of each request, the outcome of each request, and the completion time of each request. The Central Authority responds to all requests within 5 days of receipt of the request. However, the time in which the MLA request is completed is contingent on the nature of the request and the entities involved.			
ML	4	1	9	0
TF	0	0	0	0
Predicate offences	3	2 (note: 1 for murder)	4	0
EXTRADITION: All extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received in relation to: (including the nature of the request, whether it was granted or refused, and the time required to respond)				
ML	0	0	0	0
TF	0	0	0	0
Predicate offences	0	0	1 (murder)	0
Other formal requests for assistance made or received, including whether the request was granted or refused				
Competent authorities in Bermuda are able to rapidly, constructively and effectively provide the widest range of international cooperation. For example, the Bermuda Financial Intelligence Agency has MOUs with 35 Egmont Members.				
30B requests (US SEC)	18	5	2 (for US SEC) 9 (total for 2013 requests)	0 (for US SEC) 1 (total for 2014 requests)
o FIU Exchanges of Information	Outgoing Requests for Information: 28 Incoming Requests for Information: 32	Outgoing Requests for Information: 47 Incoming Requests for Information: 34	Outgoing Requests for Information: 42 Incoming Requests for Information: 23	Outgoing Requests for Information: 5 Incoming Requests for Information: 3

C. High level summary of legislative matters to be addressed

Section C of this Addendum provides a high level summary of the legislative matters that will be addressed in relation to the outstanding matters identified in the 2007 MER. The key pieces of legislation that will be effected by the proposed amendments include:

- Proceeds of Crime Act 1997 (POCA 1997),
- Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (POCA Regulations), and
- Anti-Terrorism (Financial and Other Measures) Act 2004 (ATFA 2004).

The following amendments will be made in the Parliamentary session which commences in May 2013:

- 1.1 Powers of law enforcement and investigative authorities: Amendment of relevant AML/ATF legislation to specifically note NAMLC's role in relation to ATF policy.
- 1.2 Ongoing monitoring and record-keeping of unusual transactions: Clarification necessary to ensure that all documents related to investigations of complex or unusually large or unusual patterns of transactions are recorded and kept for five years.
- 1.3 Internal control: Expansion of the scope of persons who are subject to AML/ATF training (Relevant Employees) to include any person who plays a role in implementing and monitoring compliance with the AML/ATF requirements. Additionally, it is proposed that all shortlisted/potential Relevant Employees are screened to ensure they meet standards for "fitness and propriety".
- 1.4 EDD (Regulation 10) and EDD: Expansion of the criteria for carrying out SDD and EDD. . It is proposed that two distinct amendments be made:
 - 1.4.1 SDD: SDD would not be permitted whenever there is ML/TF suspicion or where specific higher risk scenarios apply.

- 1.4.2 EDD: Expansion of the criteria for carrying out EDD to include closer scrutiny of a customer who is from a country identified by FATF as high risk.
- 1.5 Reliance on third parties: Amendment of the third party reliance in relation to CDD measures as follows: (i) a relevant person must obtain information sufficient to identify the customers, and (ii) a relevant person must satisfy himself that reliance is appropriate given the level of risk for the jurisdictions in which the party to be relied upon is usually resident.
- 1.6 Tipping-off and confidentiality (section 47 of POCA 1997 and section 10A of ATFA 2004): Amendment of the tipping-off provisions as follows: (i) offence of “tipping-off” to explicitly cover any disclosure on the filing, and content, of a SAR, and (ii) consider limitation of the scope of the tipping-off exemptions for members of legal profession.
- 1.7 International Conventions: Implementation in Bermuda of the outstanding provisions of the United Nations International Convention for the Suppression of the Financing of Terrorism (SFT) and United Nations Convention Against Transnational Organised Crime (Palermo). In this regard, the UK has already been requested to extend the SFT and Palermo to Bermuda. In relation to the SFT, it is proposed that the offence of terrorism be extended to cover the financing of “terrorist organisations”, the financing of “individuals participating in terrorist activity”, and all of the acts covered by the list of nine conventions referred in the SFT. In addition to this, section 15A of ATFA 2004 should be amended to refer to the latest terrorist-asset freezing Overseas Territories Order in Council, the Terrorist-Asset Freezing etc. Act 2010 (Overseas Territories) Order 2011.
- 1.8 Confiscation: Explicit provision for confiscation of property which constitutes instrumentalities intended for use in the commission of money laundering or other non-drug trafficking predicate offences.

- 1.9 Regulation of those Designated Non-Financial Businesses and Professions (DNFBPs): It is intended that Orders will be enacted within this year to bring other specified DNFBPs under the supervision of the FIA. (High Value Dealers, Dealers in Precious Metals & Stones, Real Estate Agents).
- 1.10 Non Profit Organisations (NPOs): The Ministry of Home Affairs has committed to progressing this matter and amendments to the Charities legislation were highlighted in the Throne Speech in February 2013. Since which the Ministry of Home Affairs has conducted a domestic review of the NPO sector and issued a public Consultation Paper (consultation period closed in early April 2013). A Cabinet Memorandum, which sets out the legislative amendments, is currently being finalised and is expected to be submitted to Cabinet shortly and the amendments laid in Parliament in the session which begins by November.

With regard to these Legislative amendments, it should be noted that a consultation paper has been issued to ensure that industry is aware of the proposals; cabinet approval to proceed with drafting has been received; and steps are being taken to progress the drafting. A draft bill is expected to be completed at or near end May for submission to Parliament in June and subsequent enactment.