



Anti-money laundering and counter-terrorist financing measures

Bermuda

Mutual Evaluation Report

January 2020

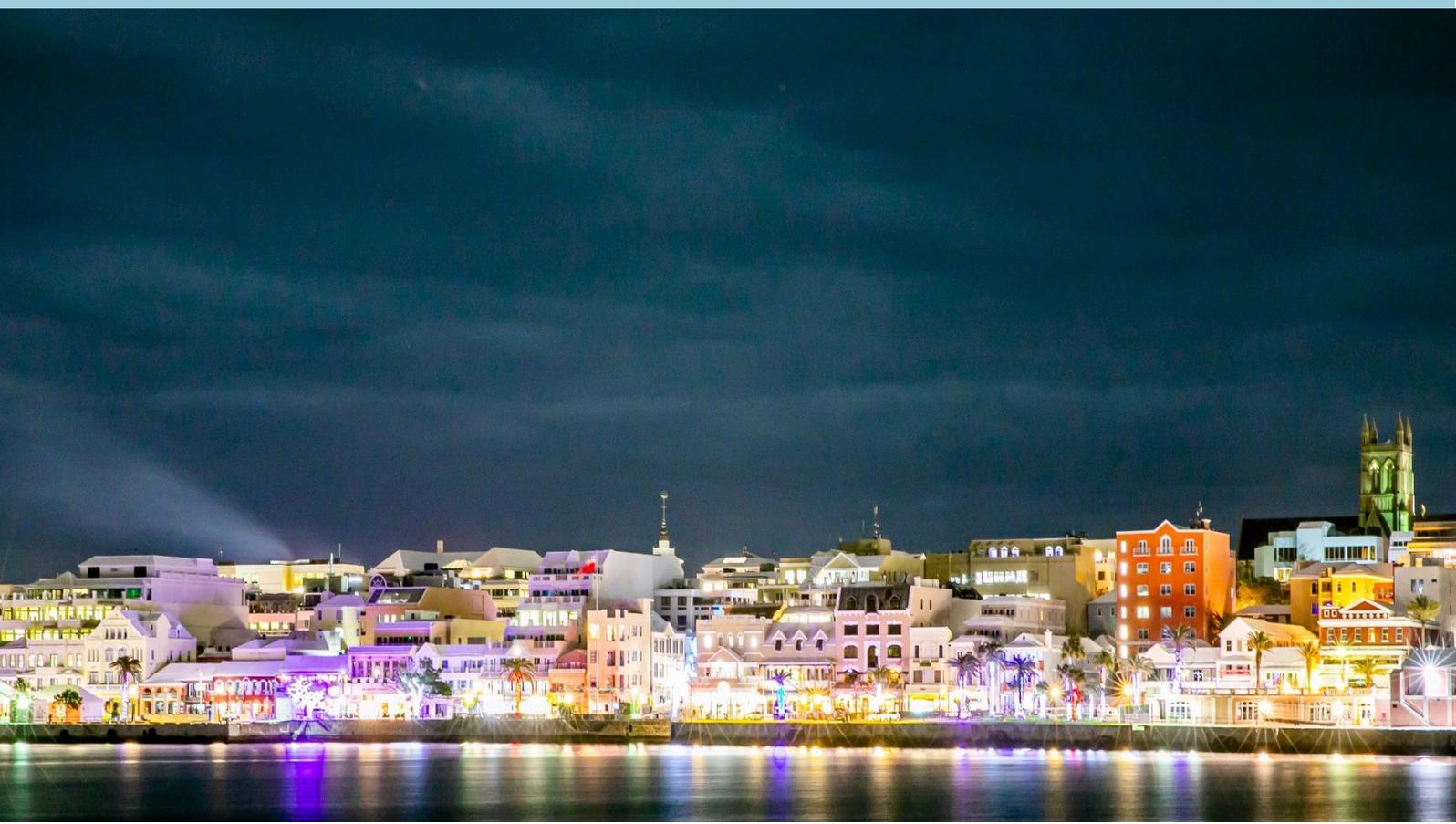


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Executive Summary

1. This report provides a summary of the Anti-Money Laundering/Countering Financing of Terrorism (AML/CFT) measures in place in Bermuda as at the date of the on-site visit September 24th – October 5th, 2018. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Bermuda’s AML/CFT system and provides recommendations on how the system could be strengthened.

Key Findings

- a) Overall, Bermuda has a high level of understanding of its ML/TF risk. Three National Risks Assessments (NRAs), focusing on ML risks in 2013 (with updates in the 2017 NRA), and on TF risks in 2016 were completed.
- b) The authorities have understood the salient ML/TF risks facing the jurisdiction through the NRAs, and the Legal Persons Vulnerabilities Assessment, and have also assessed the emerging ML/TF risks posed by emerging industries such as the Casino Gaming and FinTech Business (Digital Asset Business and Initial Coin Offering) industries.
- c) AML/CFT Supervision measures are robust and most of the regulated financial institutions (FIs) in Bermuda have effectively identified, assessed, managed and mitigated their ML and TF risks both at the institutional and at the client levels. Historically however, the banking, MSB and Regulated Professional Firm (RPF) sectors were not consistently conducting ML/TF business risk assessments that meet the criteria as set out by their respective supervisory authorities and which are completed in accordance with their review cycles. There has been marked improvement over time.
- d) The National Anti-Money Laundering Committee (NAMLC) has been instrumental in fostering an understanding of ML/TF risks across all sectors and accordingly, equipping each stakeholder with the ability to implement preventative measures that would have the greatest mitigating impact. The major Financial Institutions (FIs), particularly the banks, have adopted the most effective preventative measures by standardizing since 2017 both enterprise and business relationship ML/TF risk assessments, as well as implementing sustained ML/TF training for all relevant personnel. Not all FIs and DNFBPs are at that high standard, however Bermuda continues to do significant work to bring about a high level of compliance across all sectors.
- e) Whilst the BMA has maintained BO information in relation to the incorporation of legal persons for many decades, and if updated through the Exchange Control regime, shareholder information is subject to further verification and vetting, Bermuda has recently significantly enhanced its beneficial ownership regime with requirements for companies, Limited Liability Companies (LLCs) and partnerships to maintain registries, keep them updated and to file the information with the Bermuda Monetary Authority (BMA). The establishment of the

Registrar of Companies (ROC) compliance unit in April 2017 addressed for the first time, legislative requirements including those in relation to beneficial ownership being monitored and enforced. Regulated financial institutions, TSPs, CSPs (licensed since 2017) and other DNFBPs are required to conduct CDD on all customers and this includes the requirement to maintain up to date and current BO information and has been appropriately monitored by the relevant supervisors. The beneficial ownership information, which is held, is available to competent authorities (CAs) and for international cooperation.

- f) Legal persons' vulnerabilities assessments have been undertaken in relation to ML and the (CAs) understand these.
- g) Trust Service Providers (TSPs) act as trustees on behalf of approximately 90% of the 317 Private Trust Companies (PTCs) registered in Bermuda and have been subject to licensing and AML/CFT control since 2008. PTCs themselves have been subject to the Country's Exchange Control regime since inception, by virtue of the TSPs who act as trustees on their behalf. Ten percent (10%) of the PTCs were found to be managing their underlying trusts in-house and the BMA requires them to register under the AML/CFT framework as non-licensed persons (NLPs).
- h) Despite registration with the FIA's goAML system, not all real estate companies have put into practice the filing of Suspicious Activity Reports (SARs) during 2017 and 2018 despite the outreach by the SoRE to bring attention to this area.
- i) The ability to restrain funds to prevent their dissipation is hampered by the fact that restraint orders can only be obtained immediately prior to a charge being laid. The amount of funds restrained and recovered via criminal investigations is low, particularly considering Bermuda's status as an international financial centre (IFC).
- j) Bermuda has provided a wide range of international cooperation by both Mutual Legal Assistance (MLA) and other means, however Bermuda has only sought international cooperation to a limited extent in relation to ML related to foreign predicates and cross border ML.
- k) Financial intelligence is routinely used by CAs in the investigation of ML and TF to identify SARs filed on subjects and associates, banking information and assets and property overseas (through international requests for information). Financial intelligence is sought and obtained by CAs whenever ML/TF is pursued.
- l) The investigation of ML offences is actively pursued in Bermuda and there have been prosecutions for these offences. The dissuasiveness of sanctions is apparent in that there has been no recidivism of persons who have been convicted for these offences. The investigation of complex ML matters has been demonstrated to some extent, however there is a lag in that this has not yet resulted in corresponding prosecutions due to some being subject to judicial review and others pending charges.
- m) There have been no prosecutions or convictions for TF matters in Bermuda which is consistent with its TF risk profile. All intelligence and reports of suspected TF are robustly investigated by Bermuda's law enforcement authorities. There is a National Combatting Terrorist Financing (CTF) Strategy to reduce the risk of terrorism-related offences in Bermuda. The national strategy has informed the CFT policies of competent authorities. There are mechanisms to detect suspected TF but the ability to detect TF by some competent authorities which may feed such information into the Bermuda Police Service (BPS) and the Financial

Intelligence Agency (FIA) appears limited. There has been limited targeted training across Immigration, Customs and the FIA in this regard.

- n) Supervisors monitor for targeted financial sanctions (TFS) compliance and FIs and DNFBPs are aware of their obligations as far as screening against designated person lists. However, there is insufficient activity in terms of ownership and control i.e. in relation to those who do not appear on the lists, and the distinction between TFS for TF and PF has not been adequately addressed.

Risks and General Situation

2. Bermuda is the United Kingdom's oldest overseas dependent territory with a population of just over 63,000 people and an internal self-government system. It comprises an archipelago of 150 islands in the Atlantic Ocean, about 570 miles east southeast of the mid-Atlantic region of the United States. Ten of the islands are linked by bridges and causeways to form the principal mainland which covers an area of approximately 21 square miles. The official language of Bermuda is English, and the Bermuda dollar (BD) is pegged to the US dollar at par.
3. Bermuda's economy is based primarily on international financial services (particularly catastrophe reinsurance) and tourism. It is the world's third largest reinsurance market and largest domicile for captive insurance companies. The jurisdiction has completed two ML National Risk Assessments (NRA) in 2013 and 2017 and one TF NRA in 2016. Based on the 2017 ML NRA and the 2016 TF NRA, Bermuda's inherent exposure to ML predominately arises from its economy being largely dominated by international financial businesses. The banking, securities, trust service provider (TSP) and corporate service provider (CSP) sectors were assessed as having high inherent ML risks, while long term direct insurance, money service businesses (MSBs), and the legal profession were assessed as having medium-high inherent ML risks.
4. The 2016 Terrorist Financing Risk Assessment found that most of Bermuda's sectors were low risk for TF with the notable exceptions being the banking and CSP sectors (both ranked as Medium-Low) and the non-profit organization (NPO) sector ranked as Medium risk for TF. The number of Bermuda's regulated entities and their supervisors are found in Table 6.1.

Overall Level of Compliance and Effectiveness

5. Bermuda underwent its 3rd Round Mutual Evaluation in 2008 and since then, the AML/CFT/PF framework has undergone significant changes which has strengthened the overall regime.
6. There has been significant improvement to the country's AML/CFT technical compliance status since the last mutual evaluation exercise conducted in 2008. This has been demonstrated by the enactment and amendment of several key pieces of legislation. There has also been the implementation of several policy initiatives. Notable is the amendment of the Proceeds of Crime Act 1997 (through the enactment of the Proceeds of Crime (Miscellaneous) (No. 4) 2018 Act) which formally identified the National Anti-Money Laundering Committee (NAMLC) as the entity responsible for coordinating activities to cyclically identify, assess and understand Bermuda's ML and TF risks. As previously noted, Bermuda has undertaken three national risk assessment (NRA) exercises. The organization and coordination of these NRAs has been led by the NAMLC and carried out by various working groups.
7. The effectiveness of the measures to mitigate the risks are however limited by the recent implementation of some of the measures, particularly within the DNFBPs sectors. However, it should be noted that there

were factors that mitigated the inherent risks in these sectors even before they were brought into scope, such as the non-acceptance of cash by most of the dealers in precious metals and stones (DPMS); real estate purchases subject to statutory immigration controls; the vetting of all beneficial owners (BOs) of legal persons by the BMA; a moderate corporate register; the limited number of PTCs not managed by licensed TSPs or CSPs, and the fact that there were only two (2) small unregistered lending institutions.

8. The main technical compliance strengths are in the areas of understanding ML and TF risks at the national and institutional levels, national cooperation and coordination, customer due diligence, record keeping, internal controls, legal persons and arrangements, criminalisation of ML and TF and the responsibilities of law enforcement and investigative authorities.
9. There were amendments to legislation immediately prior to the onsite to address matters such as the enhancement of beneficial ownership requirements and the registration of PTCs as Non-Licensed Persons (NLPs). TSPs act as trustees on behalf of approximately 90% of the 317 PTCs registered in Bermuda and have been subject to licensing and AML/CFT control since 2008. PTCs have been subject to Bermuda's Exchange Control regime since inception. TSPs who act as trustees on their behalf have also been subject to licensing and AML/CFT control since 2008. Ten percent (10%) of the PTCs were found to be managing their underlying trusts in-house and the BMA requires them to register under the AML/CFT framework as NLPs. These mitigating factors were in place prior to the legislative amendments, however the effectiveness of the actual amendments themselves to further mitigate ML/TF/PF risks could not be determined at this early stage.
10. Despite the solid responsibilities and authority given to law enforcement and investigative authorities, there are low levels of restraint and recovery of funds utilized in illicit activities particularly considering Bermuda's status as an IFC and its exposure to ML risks. The low restraints are primarily because restraints can only be obtained immediately prior to a charge being laid.

Assessment of risk, coordination and policy setting (Chapter 2; IO.1, R.1, 2, 33 & 34)

11. The country has conducted strong assessments of its ML/TF risks and demonstrated a sound understanding of these risks. At the time of the onsite, the 2017 NRA was finalized, disseminated to regulated entities and posted online for access by all interested parties. Where the risk rating of any sector increased between the 2013 and 2017 NRAs, supervisory authorities communicated the increased risk-rating to all stakeholders. Bermuda enjoys a longstanding coordination framework, with domestic coordination by, and information exchanged between, the authorities within NAMLC and its various working groups. Also, there are MOUs between various supervisors and CAs that facilitate cooperation outside the realm of the NAMLC.
12. Closed-end funds are treated as low risk products in practice, although the 2017 NRA concluded that there was a medium inherent vulnerability for this type of product. At the time of the onsite, closed-end funds were not regulated, which was considered when assessing accuracy of its vulnerability rating. However, the regulation of the entire Fund sector is projected to conclude in 2019. Additionally, closed-end funds are viewed as lower risk for ML/TF due to inherent mitigant controls built into the trading processes of these instruments.
13. NAMLC, through its work in the three NRAs, has created Bermuda's National AML/ CFT Policy, which encompasses ten (10) high level national policy statements that seek to address the three (3) FATF intermediate outcomes. The NRAs are scheduled to be updated every three (3) years. Bermuda

developed a National Action Plan in 2015, which has since been updated regularly as mandated by the Policy. The items stemming from each NRA have been incorporated into the National Action Plan.

***Financial intelligence, ML investigations, prosecutions and confiscation
(Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)***

14. As the main source of financial intelligence, the Financial Intelligence Agency (FIA) is equipped with staff with the requisite training to carry out its functions of receipt, analysis and dissemination of financial intelligence, which supports various CAs in the conduct of work regarding ML and TF investigations. Financial intelligence is routinely accessed by the primary law enforcement entity, the Bermuda Police Service (BPS), in the conduct of ML and TF investigations. This access occurs through spontaneous disseminations from the FIA as well as through court orders such as production orders (routinely obtained), customer information orders and monitoring orders.
15. The BPS is the primary CA for the investigation of ML. The BPS has a dedicated unit, the Organised and Economic Crime Department (OECD) which consists of officers specially trained to investigate ML. Investigations of standalone ML, parallel ML investigations, third-party ML and self-laundering investigations have been demonstrated. These investigations have led to prosecutions predominately in the area of drug trafficking and standalone ML. There were two prosecutions of cases involving foreign predicates. There were no investigations of legal persons during the period under review. The investigation of complex ML cases is ongoing and has not yet resulted in prosecutions. The period between the investigation of matters and the commencement of prosecution is analysed in IO7.
16. There are a wide range of confiscation powers available to CAs, and their use has been demonstrated. However, the prevention of the dissipation of funds is hampered by the fact that Restraint Orders can only be obtained immediately prior to a charge being laid. There has been a negligible amount of restraints and criminal confiscation proceedings resulting from domestic criminal investigations in relation to property of equivalent value during the period under review.

Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5–8, 30, 31 & 39.)

17. Although there have been no TF investigations or prosecutions in Bermuda, this corresponds to Bermuda's medium-low risk assessment in the 2016 TF NRA. There are various detection mechanisms which include intelligence gathering by the FIA, close cooperation with international sources such as Interpol; law enforcement to law enforcement direct contact; and detection at ports of entry. The FIA has received SARs where TF was suspected however upon further examination and analysis, they were not found to be TF matters. With respect to the assessment of the TF risk a comprehensive process was undertaken. The approach considered the controls that have been adopted to detect and counter TF (such as law enforcement efforts, supervisory and regulatory initiatives and international cooperation assistance) as well as factors such as geography, access through various ports and financial flows. A legislative framework is in place for the criminalisation and prosecution of TF matters in Bermuda's courts. TF specific training was observed to be deficient across some CAs as further described in the discussion of IO.9.
18. Targeted Financial Sanctions (TFS) are implemented without delay and the importance of TFS is understood by FIs and DNFBPs as it relates to screening against those designated persons who appear on the lists. Many FIs and DNFBPs use sophisticated software to conduct screening, however some of the smaller, less material entities only screen once per week and are thus reliant on notification of changes in designations. Such changes are emailed to supervisors with instructions to notify their

supervisees. Some of the Governor's powers related to TFS were delegated during the period of the onsite visit, and a new Financial Sanctions Implementation Unit (FSIU) was established.

19. The Charities Act came into force in 2014 and the Authorities commenced the registration and supervision of NPOs for CFT compliance in 2015. A subsection of the high risk NPOs were identified and a series of outreach programmes and seminars for NPOs commenced to sensitize the registered NPOs on the risk of being abused. The Registry General entered into an MOU with a registered charity, as part of its work to promote and advocate for an effective and sustainable third sector. Through this agreement the registered charity provides training & education aimed at fostering collaboration and supporting volunteerism. Proliferation Financing (PF) has not yet been developed as a distinct area. A PF working group met for the first time in September 2018. Customs lacks the training and resources to deal with its PF obligations.

Preventive measures (Chapter 5; IO.4; R.9–23)

20. Not all FI and DNFBP sectors are of equal risk or weighting in Bermuda. Accordingly, the Assessment Team's rating of Bermuda's implementation of preventive measures is aligned with Bermuda's own weighting of their inherent ML/TF risks, with the focus (both positive and negative) leaning more toward rating the preventive measures that were commensurate with the highest ML/TF risks. The Assessment Team's views in this regard are set out in the Report and informs the overall conclusions about the implementation of preventive measures.
21. The banking sector which comprises four (4) banks and one (1) credit union, plays a vital role in Bermuda's economic activity and is considered inherently high-risk overall for ML, and medium-low for TF. Across all sectors, deposit accounts were assessed to have the highest inherent vulnerability because of the number of accounts, and their significant inflows/outflows. Preventive measures commensurate with the ML/TF risks were prevalent in the banks. This includes Boards of Directors demonstrating leadership in this area, senior management ensuring adequacy of resources in the AML/CFT space, ensuring that the budget is in place to facilitate robust and ongoing AML/CFT training for relevant persons and the existence of effective three lines of defence regimes to mitigate ML/TF risks.
22. The three lines of defence comprise the business line that owns the risk and is the first line of defence; the compliance and/or risk management function as the second line of defence ensures that compliance to legislation, regulation and policy is maintained, and the third is the independent audit which provides challenge and tests the controls to ensure that the first and second lines are operating as mandated.

Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)

23. All Supervisors have issued AML/CFT Guidance Notes (GNs) to assist their regulated entities to bring about a high level of understanding and compliance with Bermuda's AML/CFT legal and regulatory framework. More specifically, the GNs interpret the requirements of the relevant Acts and Regulations, including how implementation may be achieved in practice and outline good industry practices in the application of AML/CFT procedures using a proportionate risk-based approach (RBA).
24. The BMA, as the sole financial regulator and the regulator for the TSP and CSP sectors, has demonstrated that it has robust measures in place to effectively identify, assess and understand, ML /TF risks, both at the sectoral and at the enterprise levels. Fitness and propriety vetting are a critical component to the registration and licensing processes of the BMA.

25. Effective systems and measures to mitigate risks were not as mature in some parts of the DNFBP space such as in the real estate and Dealers in Precious Metals and Stones (DPMS) sectors. This was largely due to the infancy stages of the ML/TF risk-based framework for these sectors.

Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)

26. The BMA through its roles of vetting upon incorporation, the Controller of Foreign Exchange, as the sole financial regulator and regulator for the TSP and CSP sectors, has a framework in place that permits to a large extent the transparency of legal persons and arrangements as evidenced by the finding that most basic information on legal persons is publicly available and legal persons are required to maintain registers of members and category of shares. Additionally, a registered office is required, which cannot be a P.O. Box. The provision of registered offices as a business requires licensing as a CSP and supervision by the BMA whereby the CDD requirements in relation to beneficial ownership are more than 10% as opposed to other regulated entities where the requirement is more than 25%. Regulated financial institutions, TSPs, CSPs (licensed since 2017) and other DNFBPs are required to conduct CDD on all customers and this includes the requirement to maintain up to date and current BO information and has been appropriately monitored by the relevant supervisors.
27. Bermuda has significantly enhanced its beneficial ownership regime by requiring companies, LLCs and partnerships to maintain beneficial ownership (BO) registers, for which information must also be filed with the BMA. This ensures that BO information is accurate and up-to-date, and that current information is accessible by competent authorities. Private Act companies (unless registered with the ROC), (and overseas companies and overseas partnerships) are not covered by the new legislative requirements.
28. The BMA vets BO upon incorporation as it has done for decades with the definition now being extended to ensure a wider range of beneficial owners are encompassed and if updated through the Exchange Control regime, shareholder information is subject to further verification and vetting, to ensure the information maintained at the BMA is accurate, current and up to date.
29. Since 2017, the ROC was mandated to ensure compliance with the various legislative requirements which include BO registers as well as other legislative requirements. Bermuda has conducted a comprehensive assessment of the ML vulnerabilities of legal persons which are well understood by CAs, FIs and DNFBPs.
30. The issuance of bearer shares has been prohibited for over thirty years. However, there are no provisions regarding the immobilization of bearer share warrants.
31. The only legal arrangements which exist in Bermuda are trusts. Trustees can be licensed TSPs regulated by the BMA, licensed individuals (currently none), private trust companies or individual trustees. Licensed TSPs are subject to the Proceeds of Crime Regulations (POCR) requirements including CDD on beneficial ownership. PTCs were found to hold a large amount of wealth and to be high risk. To mitigate this risk, PTCs were required to register as NLPs with the BMA, which also makes them subject to the POCR requirements. It should be noted that an estimated 90% of PTCs were already subject to some form of regulation. However, the effectiveness of this measure could not be determined as it had not yet been fully implemented. Individual non-professional trustees are required to identify all beneficiaries under the Trustee Act but there is no means of monitoring this requirement.

32. Whilst Bermuda has not yet demonstrated that all the relevant sanctions are proportionate and dissuasive, the penalties applied to supervised entities by the BMA appear to have been dissuasive although limited.

International cooperation (Chapter 8; IO.2; R.36–40)

33. Bermuda has a comprehensive legislative framework to allow for international cooperation both by Mutual Legal Assistance Treaties (MLATs) and through other means of cooperation. Whilst a wide range of requests have been responded to, international cooperation to pursue ML in cases with foreign predicates and cross border ML has only been sent out to a limited extent. The extension by the United Kingdom of the Extradition Act 2003 to Bermuda, effective 2017, has streamlined Bermuda's extradition process.

Priority Actions

34. The prioritised recommended actions for Bermuda, based on these findings, are:

- a) Amend the POCA in relation to the restraint powers to ensure these are available prior to the charging process.
- b) Increase focus on the recovery of the cross-border movement of the proceeds of crime, as identified by the NRA. Increase outgoing international requests to pursue ML and the proceeds of crime by focusing on cross border ML investigations in line with Bermuda's risk profile.
- c) Provide AML and CFT training to the Judiciary.
- d) Periodic training in CFT measures should be instituted for CAs such as Customs, the Department of Public Prosecutions (DPP), the Financial Intelligence Agency (FIA and the BMA.
- e) Increase the resources and training available to Customs in relation to ML, TF and PF.
- f) Ensure that the ROC Compliance Unit is sufficiently resourced to undertake its compliance monitoring mandate, particularly in relation to the beneficial ownership registry requirements.
- g) AML/CFT Business risk assessments should be conducted by entities in all relevant sectors as set out by their respective supervisory authorities and in accordance with their review cycles.
- h) Ensure SAR obligations by all sectors are observed, but in particular the real estate and legal sectors.
- i) There should be an increased focus on the understanding of PF and its implications, which should be the subject of guidance and outreach.
- j) All FIs and DNFBPs should be able to demonstrate that they have periodically revisited their own risk rating methodologies to ensure continued validity of the framework, particularly when there are changes in legislation and regulations or in their own customer profile and risk appetite.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings¹

| | | | | | | | | | | |
|------|------|------|------|------|------|------|------|------|-------|-------|
| IO.1 | IO.2 | IO.3 | IO.4 | IO.5 | IO.6 | IO.7 | IO.8 | IO.9 | IO.10 | IO.11 |
| HE | SE | SE | ME | SE | SE | ME | LE | SE | SE | ME |

Technical Compliance Ratings²

| | | | | | | | | | |
|------|------|------|------|------|------|------|------|------|------|
| R.1 | R.2 | R.3 | R.4 | R.5 | R.6 | R.7 | R.8 | R.9 | R.10 |
| C | C | C | LC | C | LC | LC | C | C | C |
| R.11 | R.12 | R.13 | R.14 | R.15 | R.16 | R.17 | R.18 | R.19 | R.20 |
| C | LC | C | C | C | C | C | C | C | C |
| R.21 | R.22 | R.23 | R.24 | R.25 | R.26 | R.27 | R.28 | R.29 | R.30 |
| C | C | C | LC | LC | LC | C | C | C | C |
| R.31 | R.32 | R.33 | R.34 | R.35 | R.36 | R.37 | R.38 | R.39 | R.40 |
| C | PC | C | LC | LC | C | LC | LC | C | C |

¹ Effectiveness ratings can be either a High- HE, Substantial- SE, Moderate- ME, or Low – LE, level of effectiveness.

² Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – non compliant.

MUTUAL EVALUATION REPORT

Preface

35. This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system and recommends how the system could be strengthened.
36. This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. The evaluation was based on information provided by Bermuda, and information obtained by the evaluation team during its on-site visit to Bermuda from September 24th - October 5th, 2018.
37. The evaluation was conducted by an assessment team consisting of:
 - Elisabeth Lees, Office of the Director of Public Prosecutions, Cayman Islands (Legal Expert).
 - Donilia Cuffy, Financial Services Commission, Montserrat, (Financial Expert).
 - Dwayne Baker, Financial Intelligence Agency, Turks and Caicos Islands, (Law Enforcement Expert).
 - Charles Virgill, Central Bank of The Bahamas, (Financial Expert).
 - Dawne Spicer, Executive Director, CFATF Secretariat (Mission Leader) and Joanne Daniel, Deputy Executive Director, CFATF Secretariat (Co-Mission Leader).
38. The report was reviewed by Mrs. Vyana Sharma, Ministry of the Attorney General and Legal Affairs, Trinidad and Tobago, Mr. Matthew Shannon, Canada, the APG Secretariat and the FATF Secretariat.
39. Bermuda previously underwent a FATF Mutual Evaluation in 2007, conducted according to the 2004 FATF Methodology. The May 7th - 23rd, 2007 evaluation and April 2009 - November 2013 Follow-Up Reports have been published and are available at www.cfatf-gafic.org.
40. That Mutual Evaluation concluded that the country was compliant with 9 Recommendations; largely compliant with 10; partially compliant with 16; and non-compliant with 14. Bermuda was rated compliant or largely compliant with 8 of the 16 Core and Key Recommendations. Bermuda was placed in regular follow-up in November 2007 and removed from follow-up in November 2013.

1. ML/TF RISKS AND CONTEXT

1.1. ML/TF Risks and Scoping of Higher Risk Issues

41. Bermuda is an archipelago of approximately 21 square miles located in the North Atlantic Ocean. It is less than 2 hours by air from gateway North American cities in the North-East and there is direct scheduled air access from Bermuda to the United States of America (USA), United Kingdom (UK) and Canada. Bermuda is an English-speaking country with a population of approximately 64,237 of which 18,532 residents are foreign born and have residency status; 13,110 of these are foreign workers. The population of foreign workers is drawn from many countries, with the UK, Canada, the USA, Azores/Portugal and the Caribbean accounting for the largest percentages. There is a high standard of education and literacy in Bermuda.
42. Bermuda is the UK's oldest overseas territory with internal self-government that allows for a high degree of control over its own affairs. Issues pertaining to defence and international affairs are collaborative with the UK. The Head of State is the British Monarch, represented on Island by the Governor. Bermuda has a bicameral legislative system, comprising the House of Assembly (36 elected members) and the Senate (11 appointed members). The party in power is the one which holds most seats in the House of Assembly and its leader serves as the Premier of Bermuda. The Senate does not have power to veto or amend any legislative proposals presented by the House of Assembly without the legislative proposal being returned to the House of Assembly to consider the Senate's suggested amendments and can only defer a proposal for a period of one year. The Cabinet is accountable to the Legislature. The Government is currently comprised of 11 ministries. General elections are usually held every five years, with the most recent being held on July 18th, 2017. Bermuda's legal system is based on the British model, consisting of codified legislation and English Common Law. The court system is made up of Magistrate Courts, the Supreme Court, a local Court of Appeal, with final appeal to the Privy Council in the UK.
43. Bermuda's economy is heavily reliant on financial services, and the provision of catastrophe reinsurance. It is the world's second largest centre for captive reinsurance. Financial services account for approximately 49% of GDP, with tourism a distant second pillar to the economy. Revenue generated by financial services and tourism represented a significant portion of Bermuda's GDP of BD \$4.6 Billion. Bermuda has a fixed exchange rate that is pegged to the US dollar at a rate of 1:1.

1.1.1. Overview of ML/TF Risks

44. Regarding ML/TF risk, the country is exposed to significant inherent ML risks due to the threat of foreign predicates and the cross-border transfer of funds. Exposure to TF risks were assessed as minimal. Bermuda has a relatively low crime rate, and a high standard of living. Notwithstanding, Bermuda's overall threat rating for ML was increased from "medium" in 2013 to "medium high" in 2017. The National Anti-Money Laundering Committee (NAMLC) attributes this to a better understanding of the threats that exist, such as international tax crime, which has increased the threat levels, rather than an increase in such threats.

45. Bermuda has adopted a risk-based approach (RBA) to AML/CFT risk management, evidenced by its reference in various pieces of legislation and regulations. The country has immediate plans to grow its economy, by the introduction of new industries such as casino gaming and digital assets and to lessen its dependence on the reinsurance and tourism sectors. Bermuda is currently exposed to international ML/TF risks associated with cross-border activity and customers, and to a much lesser extent, to domestic ML/TF risks that arise from local drug trafficking.
46. The main predicate offences for ML are international tax crimes, corruption, fraud, drug trafficking as well as market manipulation and insider trading. The banking sector, securities sector, Private Trust Companies (PTCs and Trust and Corporate Service Providers (TSPs and CSPs) are considered vulnerable for laundering the proceeds of crime. Non-profit organizations (NPOs) and charities are considered more vulnerable to TF abuse when compared to the financial sector.

1.1.2. Country's Risk Assessment & Scoping of Higher Risk Issues

47. The 2013 NRA was launched in January of that year with a national workshop facilitated by personnel from the World Bank (WB). There was a concerted effort to involve the private sector through representatives from the real estate, legal, accounting, betting, construction, dealers in precious metals and stones as well as other dealers in high value items such as cars, boats and motorcycles. The work done on the non-financial sectors during the 2013 NRA assisted in developing the regulatory framework in those sectors that were not already regulated and in creating an understanding of the need for more focus on potential ML risks. The national findings on ML risk and the sectoral findings on ML vulnerability were shared with all relevant stakeholders and published online. The 2013 NRA led to various actions including the establishment of the post of a National Coordinator as the Head of the Office of NAMLC.
48. A TF risk assessment, undertaken in 2016, found no evidence of terrorism or TF having occurred in Bermuda and so the assessment of sectoral vulnerability was based on potential risk. The sectoral TF vulnerability was assessed as either low or medium-low with only the NPO sector assessed as having a medium rating. Bermuda used international typologies to assess its potential TF vulnerabilities.
49. In 2017, a more detailed updated ML NRA was conducted with high-level support from Cabinet and the Civil Service Executive evidenced by the weekly reports and quarterly presentations to Cabinet by the Chair of the NAMLC. Technical support for this NRA was provided by a consultant familiar with the WB tool. The 2017 NRA consisted of 18 working groups with representatives from government agencies, industry representatives (banking sector and others) and supervisors.
50. The NRA processes undertaken by the jurisdiction were well structured, and the conclusions were reasonable. The onsite interviews confirmed the involvement of a wide range of government agencies, and the private sector in the NRA process. Additionally, the publications of the 2016 and 2017 NRAs and the significant outreach by regulators resulted in a high level of sectoral familiarity with Bermuda's ML/TF risks.
51. In deciding what issues to prioritise, the Assessment Team reviewed material provided by Bermuda on national ML/TF risks. The NRA report presented areas of higher ML/TF risks, including threats and inherent vulnerabilities. Bermuda's status as an international financial centre (IFC) with a significant level of international finance and business transacted in and through the jurisdiction along with financial services accounting for approximately 49% of the jurisdiction's USD 4.6B GDP informed the higher and lower risk issues for the onsite examination. Consideration was also given to the consequential impact of financial flows from predicate offences, sectors and systems within Bermuda which may be

exploited for illicit purposes. The following were assessed as the main contributors to the higher ML/TF risks posed to Bermuda:

- Predicate offences (drug trafficking, corruption/bribery, international tax crimes, fraud);
- The financial sector (namely banking, insurance, securities);
- Money Service Businesses (MSBs), Trust & Corporate Service Providers (TCSPs); and
- Beneficial Ownership of corporate structures and potential misuse of legal persons and arrangements.

52. **Drug Trafficking:** Bermuda's 2017 NRA assessed drug trafficking as a high ML threat. Law enforcement authorities, supported by annual reports produced by the Department of National Drug Control, have also concluded that the annual average value of the drug market in Bermuda is approximately USD 25M³.
53. **Corruption/Bribery:** Corruption/bribery was identified as a high ML threat in Bermuda's 2017 NRA. This rating was supported by the evidence of two civil recovery cases relating to foreign corruption/fraud, which involved the confiscation of over USD35.25M in funds. In addition, the two largest cases currently being investigated by the Organized and Economic Crime Department (OECD) of the Bermuda Police Service (BPS) relate to critical incidents of corruption⁴.
54. **International Tax Crimes:** International tax crimes were assessed to represent a high ML threat, with an estimation that the undetected proceeds of foreign tax crimes would likely exceed USD10M.
55. **Fraud:** Fraud represents a high ML threat in Bermuda. International fraud, while probably representing a significantly fewer number of cases than domestic fraud, poses a more significant threat for ML because of the much higher value of proceeds involved and the actual use of the financial system in Bermuda to launder those proceeds. Domestic fraud is of a lower value and of less threat.
56. **Banking sector:** Bermuda's banking sector was assessed as having an inherently high ML risk with approximately USD\$23B in assets as at year-end 2016 and considerable exposure to international businesses. Ninety-six percent (96%) of the overall financial sector market are clients from countries worldwide while 4% of the market, representing 64,237 persons of which 18,532 are foreign workers⁵ is domestic. The Bermuda deposit-taking sector consists of 4 banks and 1 credit union with some banks offering tailored services (cash management, letters of credit, treasury, custody and investment services) to other sectors for example, insurers⁶. The provision of financial services to persons and legal entities operating in other sectors within Bermuda, therefore increases the ML/TF exposure of the banking sector.
57. **Securities⁷:** Bermuda's securities sector comprises investment businesses, fund administrators and investment funds. The sector maintains a substantial level of foreign investments holdings and offers a diverse range of products primarily to an international client base many of whom are high net worth individuals. Bermuda had 567 registered funds at year end 2016 with net asset value of approximately USD137.15B. However, suspicious activity reporting in the sector is relatively low. Bermuda has USD156B in assets under administration as reported by the 31 fund administrator licensees at the end

³ National Risk Assessment of Bermuda, page 35 (based on estimated detection rate of 20%)

⁴ Government of Bermuda – Submission on Effectiveness submission for Immediate Outcome (IO)1, page 20.

⁵ Government of Bermuda – Submissions on Effectiveness May 2018 p. 95

⁶ Government of Bermuda – Submissions on Effectiveness May 2018 p. 96

⁷ Government of Bermuda – Submissions on Effectiveness May 2018 p. 96

of 2015.⁸ The international nature of the funds and associated investors may make it harder to determine the source of funds, which may increase the exposure to ML.

58. **Insurance Sector:** At the end of 2016, total assets in Bermuda's financial sector amounted to USD791.57B with 20% (approximately USD158.3B) of assets held by entities subject to the AML/CFT Regulations⁹. With total assets of USD632B in 2016 and more than 1,200 insurance entities, the insurance industry in Bermuda accounts for approximately 80% of the total assets in the financial services sector, with 99% of the insurance sector comprising non-life insurance and reinsurance entities. The assessors examined the non-life insurance and reinsurance subsectors, particularly due to the sheer size of the latter in Bermuda. Bermuda conducted a comprehensive and targeted ML/TF risk analysis of the sectors, the rigour and results of which were considered and accepted by the assessors. Based on the analysis of factors which included the risks, threats and vulnerabilities of the products, distribution channels, and geographical implantations, the assessors are satisfied that the activities within the reinsurance sector in Bermuda are low risks and do not fall within the definition of financial institutions as set out in the FATF Recommendations.
59. **Beneficial ownership of corporate structures and the misuse of legal persons and arrangements:** Of its register of approximately 17,000 legal entities, Bermuda has 10,704 legal persons classified as 'Exempted Companies,¹⁰ which have been deemed to have an inherent high ML/TF vulnerability¹¹. These Exempted Companies include 329 Segregated Account Companies (SAC)¹², of which 279 are regulated entities and 50 are unregulated entities. During the onsite visit it was determined that 48 of these unregulated entities in fact had AML/CFT regulated SAC representatives who were subject to CDD requirements, thus leaving just two SACs without such regulation (a church and an investment pool). The prominence of Bermuda's financial sector and its international exposure increases the vulnerability of the jurisdiction to misuse of legal persons and legal arrangements for ML/TF. The onsite accordingly focused on the verification process in relation to beneficial ownership (BO) information at the stage of incorporation, changes to BO as well as the monitoring and supervision of these legal persons and legal arrangements.
60. **DNFBPs - TCSPs:** The TCSPs (Trust and Corporate Service Providers) have been assessed as having high inherent ML risk, given the global reach of each sector. Trusts administered by TSPs have high value asset transfers and high-net-worth customers some of whom are resident and non-resident PEPs, while CSPs facilitate complex international financial transactions and manage many companies.
61. **Money services businesses (MSBs):** There are only two money remittance firms licensed and operating in Bermuda, which cater largely to non-Bermudian foreign workers remitting funds abroad, and to

⁸ Bermuda NRA Public report page 51

⁹ The insurance subsectors which fall outside the AML/ATF Regulations (i.e. non-life and reinsurance sectors) accounted for approximately 80% of the total assets in the financial sector in Bermuda.

¹⁰ Exempted companies operate internationally and have the majority ownership attributed to foreigners, which in turn creates a greater potential for involvement in the layering and integration stages in the money laundering process thereby increasing the ML/TF vulnerability for exempted companies. (Bermuda Effectiveness submission for IO5, paragraph 5.2.12).

¹¹ Government of Bermuda – Submissions on Effectiveness May 2018 p. 264

¹² Segregated accounts and separate accounts are set up by persons to have independence from the general account and in some cases are managed by third parties. For this reason, there may be AML /ATF risks as the beneficial owners are separate from the owners of the company and may not be vetted in accordance with the AML/ATF legislation in Bermuda. (Source: Bermuda Monetary Authority May 2018 Consultative Paper on Segregated and Separate Accounts Retrieved from: <http://www.bma.bm/document-centre/consultation-papers/AMLATF%20II/CP%20-%20Segregated%20Accounts%20Companies%20and%20AML%20ATF%20Risks.pdf>)

tourists. In 2016, an approximate total value of USD235M (184,732 transactions¹³) was transferred by this sector, representing inflows and outflows.

Terrorist Financing:

62. TF was determined to be a medium-low risk. Bermuda has no known incidents of TF or attempts relative to same. However, TF risk was included in the scoping of issues for consideration during the onsite visit due to the volume of international financial flows into and out of the jurisdiction and the increased sophistication of financing models and sources of international terrorist organisations.

Emerging Risks and Sectors

63. Virtual currencies/cryptocurrencies/crypto assets were identified as having inherent ML/TF risks. Given the very recent amendments to the Banks and Deposit Companies Act (BDCA) which allows for the creation of fintech banks and amendments to the Companies and Limited Liability Company (Initial Coin Offering) Amendment Act, 2018 (the “ICO Act”), which seeks to create a framework for the regulation of initial coin offerings; this area was scoped.
64. There is political will in Bermuda to introduce Casino Gaming and Digital Asset Business to the Bermudan market. In this regard, the Bermuda Casino Gaming Commission (BCGC) and the BMA have been identified as the respective supervisors of these two sectors. At the time of the onsite, only one provisional licence had been issued for Casino Gaming (the commencement of the stage in the licensing process known as the suitability phase). There were no licences issued for Digital Assets operators, although Bermuda’s preparedness is far advanced in anticipation of both.
65. The Gaming Provisional licence does not permit the licence holder to begin casino activities. It is simply a first step to acknowledge that an application is pending. The provisional licence holder is being assessed for suitability during this phase and a full casino licence will be granted if this assessment proves favourable. During this period, the applicant is welcome to apply for the full licence, although all application fees are non-refundable. EDD measures are enacted on the Source of Funds (SOF) and the source of wealth of the applicant. Fit and proper assessments are conducted on the ultimate BO, all members of executive management and the Board of Directors.
66. Digital Asset Business will require FinTech banks with restricted licenses to be introduced into the Bermudan economy. An Assessment and Licensing Committee was established, consisting of senior management from the supervisory, policy and information technology departments within the BMA and chaired by a managing director responsible for supervising Digital Asset Business (DAB). This Committee’s responsibility is to review and assess applications weekly and decide whether to approve, defer or decline same and to consider AML/CFT considerations as well.

1.2. Materiality

67. Bermuda is a significant international financial services centre. Its economy is based primarily on international financial services (particularly catastrophe reinsurance) and tourism. It is the world’s second largest centre for captive reinsurance and financial services account for approximately 49% of GDP.
68. At the end of 2016, total assets in Bermuda’s financial sector amounted to USD791.57B with 20% (approximately USD158.3B) of assets held by entities subject to the AML/CFT Regulations. A breakdown of the financial services industry is as follows: The insurance sector is the largest financial

¹³Government of Bermuda Effectiveness Submission, page 96

sub-sector in Bermuda and has significant international influence. In 2016, the insurance sector's USD632B in assets accounted for approximately 72% of Bermuda's total assets, and 28% of Bermuda's total GDP.

69. Bermuda's Securities sector comprised investment businesses, fund administrators and investment funds 567 registered fund entities at year end 2016 with net asset value approximately USD137.15B. The securities sector is also very significant, and its USD144B in net asset value accounts for 19% of the country's total financial services sector assets, making securities second only to insurance in Bermuda's financial industry.
70. Bermuda's Banking sector comprised USD23B in assets as at year-end 2016. Bermuda has five deposit-taking entities – four banks and a credit union, with combined assets of USD23B. Income totalled USD795M for the sector in 2016, which constituted 13% of national GDP.
71. Bermuda has over 50 years of experience in the trust business. As at 2016 there were 28 licensed trust businesses in the jurisdiction. There are three broad categories of trust; licensed trust companies, private trust companies and the unsupervised private individual trustees (who act in a non-professional capacity for friends and family members and do not have "clients").
72. Company formation is moderate with a register of less than 17,000 legal entities. There is a wide spectrum of DNFBPs in Bermuda. Bermuda's corporate registry has approximately 17,000 registered entities, of which approximately 1,300 are AML/CFT regulated FIs.

1.3. Structural Elements

73. Most of the key structural elements required for a sound AML/CFT system exist in Bermuda. The country exhibits political and institutional stability with competent regulatory capacity. Competent authorities such as investigative bodies namely the Bermuda Police Service (BPS) (and to a lesser extent Customs), the Director of Public Prosecutions (DPP), Mutual Legal Assistance – the Attorney General's Chambers (AGC), an independent Judiciary and the national AML/CFT coordinator - NAMLC provide a robust framework. There is also strong political commitment to support the necessary AML/CFT systems in Bermuda.

1.4. Background and Other Contextual Factors

74. Bermuda is considered mature in terms of its financial services industry and is recognised as an IFC. It has attracted talented professionals globally and developed its local talent to support this industry. International business activity is dominated by the international reinsurance market which accounts for 26% of GDP; real estate and the rental sector 17%; business services such as professional services: computer, accounting and legal services 9%, with the other major industries being education, health and social services, wholesale, retail trade, repair services, construction and quarrying. An institutional framework exists for implementation of Bermuda's AML/CFT regime with the NAMLC and BMA (the country's lead supervisor) at the forefront of these activities as coordinator and supervisor respectively.

1.4.1. AML/CFT strategy

75. In 2016 Cabinet initially approved the summary report of the 2013 ML NRA, along with the 2016 – 2018 National Action Plan, which was developed as a result of the findings of the 2013 NRA. This National Action Plan delineated actions and strategies to enhance Bermuda's AML/CFT regime and working collaboratively, NAMLC agencies began to execute these actions over the ensuing years. The 2016 TF NRA and the 2017 update to the ML NRA were both action items in the initial version of the

action plan. At the end of each of the 2016 and 2017 NRAs, further proposed action items were developed and subsequently approved by Cabinet respectively. These resulting action items iteratively updated the original National Action Plan, which was treated as a living document and updated as the national programme progressed.

1.4.2. Legal & institutional framework

76. Bermuda has criminalised ML in accordance with the 1988 United Nations Vienna Convention and the Palermo (2000) Convention. Preventive measures to be taken by AML/CFT regulated FIs and regulated DNFBPs are contained mainly in the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations (POCR). The Proceeds of Crime (Anti-money Laundering and Anti-Terrorist Financing Supervisory and Enforcement Act 2008 (SEA) establishes the supervisory framework whereby supervisory authorities monitor for compliance under the Proceeds of Crime Act 1997 (POCA) and the Anti-Terrorism (Financial and other Measures) Act 2004 (ATA). Criminal justice measures are found mainly in the POCA, the ATA 2004 and the Criminal Code Act 1904.
77. Bermuda's AML/CFT institutional framework is comprised of the following Committees, CAs and other bodies:
 - a. **The National Anti-Money Laundering Committee (NAMLC)** was established by s. 49 of the POCA and advises the Minister of Legal Affairs and the Minister of Finance in relation to AML, CFT and APF. It also coordinates activities to identify, assess and understand Bermuda's ML/TF risks and takes the necessary steps to ensure that such risk assessments are kept up to date. The Committee has 14 statutory members consisting of a Chairperson, the Solicitor General (SG), the Commissioner of Police (COP), the Director of the FIA, the DPP, the CEO of the Bermuda Monetary Authority (BMA), the Collector of Customs, the National Coordinator, the Financial Secretary, the Permanent Secretary for the Ministry of Legal Affairs (MOLA), the Registrar General, the Registrar of Companies (ROC), the Superintendent of Real Estate (same person as the Registrar of Companies), the Executive Director of the BCGC. Through its mandate, NAMLC advises on the development of a national plan of action, which includes recommendations on effective mechanisms to enable competent authorities to coordinate with each other on the development and implementation of policies and activities to combat ML/TF/PF and activities to identify, assess and understand ML/TF risks.
 - b. **The Ministry of Finance (MOF)** has administrative responsibility for the office of NAMLC, the ROC and the Office of the Tax Commissioner and overall responsibility for providing a framework for the financial management and control of Government activities and national finances. Through the Treaty Unit the MOF meets Bermuda's international obligations regarding the exchange of tax information.
 - c. **The Ministry of Legal Affairs (MOLA)** has portfolio responsibility for the Attorney General's Chambers (AGC), the Judiciary, the Department of Court Services, the DPP and the Legal Aid Office. The Minister is the Enforcement Authority for civil asset recovery matters under Part IIIA of the POCA. The Ministry holds the overarching responsibility for upholding the Bermuda Constitution, the continuance of the legal system of Bermuda and providing legal services to the Government and all other Ministries and Government Departments. The Minister also has portfolio responsibility for AML/CFT matters and has recently become the delegated authority for overseeing the TFS regime, with the establishment of the Financial Sanctions Implementation Unit (FSIU).
 - d. **The Attorney General's Chambers (AGC).** The Attorney General is the primary legal advisor to the Government, responsible for among other matters, providing mutual legal

assistance by responding to foreign requests and requesting assistance in criminal matters, which includes ML/TF. The AGC prosecutes civil actions on behalf of MOLA, which is the designated enforcement authority for civil asset recovery matters.

- e. **The Financial Intelligence Agency (FIA)** was established in November 2008 by the Financial Intelligence Agency Act, 2007 as an independent agency authorised to receive, gather, store, analyse and disseminate information relating to ML, suspected proceeds of crime and potential TF. The FIA receives this information in the form of suspicious activity reports (SARs). Separate and distinct from these functions are those of the Supervisory Unit of the FIA which supervises dealers in high value goods, including dealers in precious metals and precious stones.
- f. **The Bermuda Police Service (BPS)** is responsible for detecting and investigating criminal matters. The Organised and Economic Crime Department (OECD) specialises in offences which may contain elements of ML/TF. The POCA places obligations on the BPS to investigate, trace and confiscate the proceeds of criminal conduct.
- g. **The Customs Department** was established under the Customs Department Act, 1952. It is one of the Government's two principal collectors of revenue and has responsibilities for immigration and customs control at all ports of entry to Bermuda. This function entails the interdiction of drugs and other contraband, monitoring cross-border transportation of currency and other negotiable instruments, facilitating legitimate trade; and assessing and collecting revenue.
- h. **The Department of Public Prosecutions (DPP)** was established by s. 71A of the Bermuda Constitution Order 1968, to institute, conduct and supervise prosecutions and related proceedings. The Director makes prosecutorial decisions on behalf of the public on a professional basis, independent of political influence or control. The Director's prosecuting role is also independent of the BPS and other investigative agencies. The Department has responsibility for prosecuting all proceeds of crime offences and acting in relation to confiscation of the proceeds of criminal conduct.
- i. **The Bermuda Monetary Authority (BMA)** was established by the Bermuda Monetary Authority Act 1969. Its overarching responsibility is to regulate Bermuda's financial services sector and entities in the banking, credit unions, insurance, securities, TSPs, MSBs and most recently, CSPs sectors.
- j. **The Superintendent of Real Estate (SoRE)** was designated as the AML/CFT supervisory authority for the real estate sector in Bermuda pursuant to the 2008 POCA and POCR. Currently, there are approximately 55 brokers and 196 agents under their supervision.
- k. **The Registrar of Companies (ROC)** was established in 1970 and the ability to appoint a Registrar was established by s. 3 of the Companies Act 1981. The Department is responsible for maintaining a registry of all legal persons formed or registered in Bermuda under the Corporate Act, including: Companies Act 1981; Partnerships Act 1902; and Limited Liability Company Act 2017 (i.e. companies, partnerships, and limited liability companies), the Limited Partnership Act, 1883 and the Exempted Partnership Act, 1992. The Department is also responsible for revenue collection, company winding-ups/strike-offs and insolvency.

1. **The Bermuda Casino Gaming Commission (BCGC)** was established in 2015 by the Casino Gaming Act 2014 to regulate casino gaming in anticipation of the development of this industry in Bermuda.
- m. **The Registry General:** The framework for oversight of charities was updated with the enactment of the Charities Act 2014 which formally appointed the Registrar General as the supervisory authority for registered charities and allowed for a focus on TF matters. As at the date of assessment, the Registry was responsible for the supervision of 391 Charities.
- n. **The Office of the NAMLC** was established in 2009 as a unit within the MOLA, to provide secretariat support to the Committee and to play a key role in the coordination functions of the Committee. In October 2017, the Office was moved to the Ministry of Finance.
- o. **The Barristers and Accountants AML/ATF Board** (the Board) is a statutory Board established jointly by the Chartered Professional Accountants of Bermuda (CPA Bermuda) and the Bermuda Bar Association, pursuant to s. 8A of the Chartered Professional Accountants of Bermuda Act 1973 and s. 25A of the Bermuda Bar Act 1974. The legal and accounting sectors are therefore self-regulating. The Board commenced its supervisory activities in 2013 and is responsible for the regulation of law and accounting firms which provide ‘specified activities’ as defined in the POCA. At March 2018 there were 23 legal and 6 accounting regulated professional firms under the Board’s remit.

1.4.3. Financial sector and DNFBCPs

78. The combined assets of Bermuda’s deposit taking entities is approximately USD23B. Income totalled USD 795M for the sector in 2016, which constituted 13% of GDP. The corporate registry has less than 17,000 registered entities, approximately 1,300 of which are AML/CFT regulated financial institutions. Both the insurance and securities sectors have significant international influence, USD 632B in assets (2016) and USD144B (2016) in assets respectively. In terms of the analysis in IO.3 and IO.4, more weight was given primarily to banks due to the heavy inflows and outflows of international transactions, as well as the large number of international businesses in Bermuda which conduct their banking with the banks in Bermuda. Bermuda is also the world’s second largest centre for captive reinsurance. This sub-sector does not fall within the definition of financial institutions as set out in the FATF Recommendations.
79. In relation to other DNFBCPs, at the time of the onsite there were two dealers in precious metals and stones (DPMS), twenty-three law firms/attorneys and 5 accounting firms/accountants, 251 real estate brokers/agents, over 300 NPOs/Charities and no casinos. DNFBCPs are all regulated and subject to the AML/CFT framework, Laws and Guidance Notes (GNs) issued by the BMA, the SoRE, the Board and the FIA.

Table 1.1 Entities that comprise the Financial and DNFBP sectors¹⁴

| Sector | Number of Regulated Entities in Sector (Dec 2017) |
|---|---|
| Insurance ¹⁵ | 1,485 |
| Securities | 892 |
| Real Estate | 53 |
| Banking (including 1 credit union) | 5 |
| Law Firms (registered with the AML/CFT Board) | 23 |
| Trust Service Providers | 28 |
| Corporate Service Providers | 62 |
| Money Service Businesses | 2 |
| Accounting Firms (registered with the AML/CFT Board) | 6 |
| Dealers in precious metals and stones and other high value goods (DiHVGs) | 2 |
| Gaming (Casinos) | 0 |
| Non-Bank Lending Entities | 0 |
| Other financials (Bermuda Stock Exchange) | 1 |

80. Regarding the DNFBP sub-sectors, in descending order of weighting, the assessment team assigned greater weighting to the effectiveness findings in relation to the following: TSPs, CSPs, real estate companies, regulated professional firms (RPFs), PTCs and DPMS.
81. The weighting and assessment of the relevant sectors were commensurate with the sectors' sizes and contributions to Bermuda's GDP with one notable exception – the insurance sector. While the insurance sector is the largest contributor to GDP in Bermuda, as noted previously this is a direct result of the fact that Bermuda has the second largest reinsurance business in the world. Reinsurance is not assessed by the NRA as a high-risk product does not fall within the definition of financial institutions as set out in the FATF Recommendations, however, they are subject to targeted financial sanction requirements in Bermuda and required to file SARs when appropriate. Long-term direct (LTD) insurance is considered inherently high risk but is not considered to be large in terms of context and represents as at December 2017 only 53 licensees, and less than 1% of the insurance market. Nevertheless, LTD insurance entities have been under the regulations for a number of years and all insurance managers underwriting any LTD insurance were brought under the regulations in 2017. The sector has multiple industry groups that meet to discuss AML/CFT and other insurance issues. The BMA has found them to be largely compliant in 2017 regarding the content and quality of their business risk assessments that encompasses AML/CFT requirements. Sector representatives interviewed during the onsite were found to have a sound understanding of their AML/CFT risks and have attributed their most prevalent ML/TF risks in the international long term, direct insurance market and the challenge of conducting the proper due diligence for international policy holders.
82. The securities sector is considered inherently high risk. Along with the banking sector, the securities sector is considered to have the highest inherent risk to the country for ML, with a predominantly

¹⁴ The Assessment of Bermuda's National Money Laundering and Terrorist Financing Risk Report

¹⁵ The higher risk long term direct insurance which is included in the FATF standards comprise only 1% of the insurance sector (Effectiveness Submission).

international client base and substantial foreign policy holdings. The investment funds in Bermuda had a total net asset value of approximately USD144B. The last onsite reviews conducted by the BMA found the sector to be compliant in its business risk assessments that incorporates ML/TF risks.

83. The real estate sector is the largest contributor to Bermuda's GDP (after insurance and securities) and comprises 251 brokers/agents. However, the most significant threat for ML in Bermuda originates from foreign predicates, and Bermuda's real estate market poses significant challenges for foreigners to enter due to statutory immigration controls. This restriction on foreigners entering the market has had a mitigating effect on the ML risks for the sector.
84. As at the end of 2016, the 4 banks (totalling 13 branches) had total assets of USD23B; 93% and 96% of the deposit and loan account holders respectively, reside in Bermuda. The three sub-sectors of Bermuda's banking are the retail and business banking for local residents (high inherent ML risk due to the sheer size of this sub-sector), corporate and transaction banking for international companies domiciled in Bermuda (high inherent ML risk due to its international nature and transaction volume), and wealth management/private banking for high net worth individuals (high inherent ML risk due to the complexity of products and services and the culture of confidentiality). TF risks were assessed by the NAMLC as medium-low. The banks have had business risk assessments consistently in place over the last several years, with more recent enhancements considering the risks in the Bermuda market. The two largest banks account for most bank deposits, have multiple foreign regulators who insist on them having a "sophisticated understanding of the ML/TF risks facing them."¹⁶ In the interviews with sector representatives, the Assessors were comfortable that in general, this sophisticated understanding of ML/TF risks was present within the banks.
85. The other sectors such as the TSPs are considered inherently high risk due to their international nature and high net worth clientele. However, the risks in this sector have been greatly mitigated by the fact that PTCs are now regulated by the BMA. Most Bermudian CSPs are owned or controlled by regulated law firms, accounting firms or FIs which mitigates the ML risks accordingly. The final review of beneficial owners and, where applicable controllers of all client entities must still be approved by the BMA at incorporation, and prior to changes to the share register being made although this is not always the case, see IO.5¹⁷.
86. The MSB sector is inherently high risk due to the transient, one-off nature of the customers. In 2016 this sector handled approximately USD444M in transactions, the majority constituting outgoing transactions to the Philippines, Jamaica, USA and Portugal. The risk is somewhat mitigated by the average outgoing transactions which is less than USD400 on average. As at the time of the onsite, there were only two MSB operators in Bermuda.
87. It was a requirement for the legal sector who provided the specified activities as defined in s. 49(5) of the POCA to register with the Board and the legal entities that were registered as a result of their engagement in specified activities represented less than a third of the entire legal sector in Bermuda. The Board had begun conducting onsite examinations of the Regulated Professional Firms required to be registered.
88. The remaining sectors (accounting professionals, DPMS, stand-alone betting and non-bank lending) are not considered significant contextually, with very minimal GDP contributions and ML/TF risks to be assessed as low in the NRA. Any risks and accompanying mitigating controls were consequently

¹⁶ Bermuda's Effectiveness Submission page 194

¹⁷ NRA Report, Chapter 12 page 66

assessed as having minimal impact materially. There were two non-bank lenders in Bermuda at the time of the onsite visit which were not materially significant.

1.4.4. Preventive measures

89. Financial institutions (FIs), TCSPs and other DNFBPs are subject to a host of legislation and regulation which are enforceable, as well as GNs (which are unenforceable as they do not carry the force of law) to assist with the prevention and prohibition of ML/TF. In addition, each regulated industry has a regulatory Act, statements of principles, various manuals, procedures and guidance documents.
90. Generally, FIs and regulated DNFBPs understand their inherent ML/TF risks and have put policies, procedures, practices and other preventative measures in place to mitigate those risks. AML/CTF frameworks have been put in place across sectors and there is a vigorous licensing process for all new entities conducting business in the country. Effective supervision across sectors has helped entities to implement strategies and to strengthen practices to prevent ML and TF and to effectively mitigate the risk. The fact that many are global institutions ensures that there is multiple regulation that strengthens the ML/TF preventive measures employed by entities in the country.

1.4.5. Legal persons and arrangements

91. The main types of legal persons that may be established in Bermuda are companies, limited liability companies (LLCs) and partnerships. Companies and LLCs may be local (60% ownership and control is attributable to Bermudians) or exempted. Partnerships may also be local or exempt and may elect to have legal personality by filing a declaration with the ROC. Overseas companies and partnerships are those incorporated outside of Bermuda which seek to engage in business in or from Bermuda and require a permit from the relevant Minister. Private Act companies may also be established in Bermuda and are not required to register with the ROC. Private Act companies limited by shares, where their Act does not preclude this, are also governed by the Companies Act.
92. Composition of legal persons as of June 2017:

Table 1.2 Types of Companies-Comparison between the Companies Ordinances

| Sector | Sub sector | No. of legal persons |
|-----------------------------|---------------------------------|--|
| Companies | Local Companies | 3,080 |
| | Exempted Companies | 10,704 |
| | Overseas (Permit) Companies | 466 |
| Partnerships | Overseas Partnerships | 89 (registered with ROC) |
| | General Partnerships (local) | (380 Registered with the Office of the Tax Commissioner) |
| | General Partnerships (Exempted) | 11 (registered with ROC) |
| | Exempted Limited Partnerships | 1,023 (registered with ROC) |
| Limited Liability Companies | Local LLCs | 2 |
| | Exempted LLCs | 14 |
| Private Act Companies | N/A | 1,173 ¹⁸ |

¹⁸ As at March 2018. 520 registered with ROC, research ongoing in relation to the remaining 653 as to whether they are still in existence.

93. Bermuda is not a significant centre for the formation of legal persons and has focused on developing material financial services sectors, particularly insurance. Approximately 22% of companies formed in Bermuda are listed on publicly traded stock exchanges, which limits ML/TF risks.
94. Legal arrangements under Bermuda law are limited to trusts which are established in accordance with the principles of Common Law. Trustees may be TSPs licensed by the BMA or PTCs which, since 2018, are required to register with the BMA as NLPs if not otherwise indirectly regulated. The final category of trustee are individual non-professional trustees who are not regulated. Trustees are required to act in accordance with the Trustee Act 1975 whether regulated or not.

Table 1.3 Composition of trusts as at June 2017

| Sector | Sub sector | No. of entities |
|--------------------------|--|-----------------|
| Licensed Trustees | Discretionary Trusts | 2,027 |
| | Fixed Interest Trusts | 80 |
| | Purpose Trusts | 359 |
| | Charitable Trusts (where managed by licensed trustees) | 95 |
| | Other Trusts (Unit Trusts, Pension Trusts) | 191 |
| Private Trust Company | Unknown | 317 |
| Non-professional Trustee | Unknown | Unknown |

1.4.6. Supervisory arrangements

95. The BMA is the financial sector and TCSP regulator. In Bermuda this encompasses Banking, Insurance, Securities, MSBs, NLPs, the Bermuda Stock Exchange, TSPs and CSPs. As per s. 20A(1) of the Bermuda Monetary Authority Act 1969 (BMAA), the BMA is granted the authority to supervise, regulate and inspect FIs. Pursuant to the Act, “Every person, body or entity referred to as a financial institution, operating in or from within Bermuda shall be subject under this Act or the Regulations made there under to supervision, regulation and inspection by the Authority”. The specific legal authority for its AML/CFT obligations in relation to the entities included in the description of “AML/CFT Regulated Financial Institutions” is to be found in the SEA. This includes functional supervision, regulation and inspection for AML/CFT guidance.
96. The Superintendent of Real Estate (SoRE) is the supervisory authority for real estate brokers, for the purpose of detecting or preventing ML/TF/PF. S.s 5 and 6A(3) of the SEA gives the SoRE the power to perform all duties as the supervisory authority.
97. There were no casinos operating in Bermuda during the onsite visit, however, s. 9(1)(c)(1) of the CGA, provides the BCGC with the regulatory authority to supervise, regulate and inspect the operations of casinos, the persons operating them and the conduct of gaming within the casinos.
98. As stated earlier, the Barrister and Accountants (AML/ATF) Board (the AML/ATF Board) is the Supervisory Authority for regulated law firms and accounting firms in Bermuda that provide services in relation to specified activities.
99. The FIA Supervisory Unit is the supervisory authority for DPMS and other high value dealers in specified retail sectors. Collectively referred to as Dealers in High Value Goods (DiHVGs) pursuant to s. 5 of the SEA. DiHVGs (including DPMS) are prohibited from accepting payments in cash exceeding BD7,500 (including by way of a series of linked payments) unless registered with the FIA pursuant to s. 9 of the SEA.

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100. The Registry General is the supervisory authority for charities under the Charities Act 2014. The applicable AML requirements are detailed under the Charities AML/CFT regulations and as required under the FATF Recommendations, allows for a TF focused RBA, both in relation to the requirements imposed and to the monitoring and enforcement of compliance. This agency is part of the Ministry of Home Affairs.
101. The Registrar of Companies was established in 1970 and regulates all registered entities (i.e. companies, partnerships, and LLCs) formed under the relevant operative legislation.

1.4.7. International cooperation

102. As an IFC, the potential use of Bermuda to launder the proceeds of crime is a significant threat. The Criminal Justice (International Co-operation)(Bermuda) Act 1994 (CJICA) established the framework to enable Bermuda to provide legal assistance; evidence and other material support; to co-operate with other countries in the investigation and prosecution of criminal offences and the detention and recovery of criminal proceeds and provide international assistance on a regulator-to regulator basis to support investigators by foreign regulators of core principle institutions. The Central Authority for MLA is the AGC. Bermuda's most significant international partners with respect to ML/TF issues are the UK, USA and Canada.

2. NATIONAL AML/CFT POLICIES AND COORDINATION

2.1. Key Findings and Recommended Actions

Key Findings

- a) Bermuda has completed 2 ML NRAs and 1 TF NRA. The process engaged all the CAs, the SRB (the Board) and members of the private sector. Through training and involvement in these exercises, most of the authorities such as the BMA, the FIA, the Board, the BPS, the MOF, the BCGC, the MOLA, the SoRE and the AGC have a good understanding of ML/TF risks.
- b) The ML NRAs have been sufficiently robust to highlight ML risks in each sector. Due to a lack of TF or terrorism incidents Bermuda made proactive use of international typologies to assist with TF risk mitigation developments and the completion of the TF NRA.
- c) Domestic coordination, cooperation and information exchange at the operational level is robust. The NAMLC leads various working groups with CAs representation from all the major sectors of the economy. One such working group is the Supervisory Forum which includes the Board as an AML/CFT supervisory authority.
- d) A National AML/CFT Policy (the Policy) featuring 10 high-level policy statements has been prepared by NAMLC, approved by Cabinet in May 2018 and communicated to CAs.
- e) The Policy has successfully addressed the ML/TF risks identified in the 2 ML NRAs, 1 TF NRA, and the 10 policy statements have successfully guided the AML/CFT internal policies, strategies and measures undertaken by CAs.
- f) There has been no specific domestic coordination or cooperation on PF until very recently.
- g) A review and update of the National AML/CFT policies is conducted annually to ensure that significant findings from supervisors in relation to their own periodic sectoral risk assessments is reported to and considered by NAMLC, as mandated in detailed policy 1.2 of the National AML/CFT Policy. This is recognized by the Assessors as an excellent methodology to ensure that the ML/TF risks in Bermuda are considered on an ongoing basis and that all CAs are aware of the country's ML/TF risk status.
- h) Some CAs such as Customs do not have enough policies and procedures in place to reflect the national position.

Recommended Actions

- a) Customs should be provided with adequate AML/CFT/CPF training, and resources and should establish policies to reflect the findings of the NRA and fulfil its mandate in relation to AMLCFT/CPF matters.
- b) National cooperation and coordination in the area of PF should be pursued as a distinct area, as begun by the recent establishment of the PF Working Group. The mechanism should be strengthened and entrenched within Bermuda's AML/CFT/CPF framework.
- c)

103. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34.

2.2. Immediate Outcome 1 (Risk, Policy and Coordination)

2.2.1. Country's understanding of its ML/TF risks

104. Bermuda has successfully demonstrated that the ML/TF risks in each of its regulated sectors have been identified, analysed and understood. Bermuda's NRA process has established a basis for the DNFBPs, private sector and government agencies to understand the jurisdiction's ML/TF risks. This was evidenced during the onsite discussions with both the government agencies and private sector, and with representatives from some of the larger DNFBP sectors.
105. The CAs in Bermuda determined that reinsurance (general and non-life insurance) does not fall within the definition of financial institutions as set out in the FATF Recommendations. The CAs in Bermuda determined that this sub-sector generally poses a low risk to the jurisdiction. However, due to the sheer size of the insurance sector in Bermuda (28% of GDP – 99% of this from reinsurance), the CAs have appropriately considered the ML/TF risks. by NAMLC Members, supervisory bodies and the financial sector. The NRA considered national which was assessed as medium-low for ML and low to medium-low for TF. Bermuda conducted its first NRA exercise in 2013 using the World Bank (WB) tool. Members of NAMLC and the regulated sector were trained in its use during the first two weeks of January 2013 by the WB and the 2013 NRA was completed vulnerabilities and threats, as well as, the vulnerabilities assessment of FIs and DNFBPs. The findings in the ML NRA report relate only to "inherent ML risk", as the ratings do not factor in the presence and effectiveness of AML/CFT preventive measures as mitigating controls.
106. A considerable amount of resources and efforts were invested by Bermuda to collect and analyse information and data for the 2013 NRA. Where data was limited or unavailable due to unregulated sectors or sectors in early stages of regulation, the NRA tool had default findings on vulnerability. There was comprehensive data collected from FIs covering the banking, insurance, securities, and trust sectors. The collection and analysis of this data allowed the BMA to develop a risk modelling tool which would inform the supervisory process, sector risk assessments and the updating of future NRAs. Additionally, the 2013 NRA findings resulted in a more robust coordination mechanism within NAMLC, by the establishment of the post of National Coordinator as a permanent position within the Civil Service and as Head of the Office of NAMLC effective January 2015.
107. In 2015, a high-level team was established that revisited the findings of the 2013 NRA and prepared a summary report of the assessment, with recommendations which were used to develop a draft National Strategy and Action Plan. The Strategy and Action Plan was circulated to NAMLC agencies for review and input of detailed actions to achieve specified outcomes. An update of the NRA on ML and the conduct of an NRA on TF were included in the Action Plan. The result was the 2017 NRA, which provided a more comprehensive, inclusive and evidence-based/data-centric ML risk assessment.
108. Eighteen working groups facilitated the 2017 NRA, with representation from all CAs including the self-regulating AML/CFT Board which chaired both the Legal and Accounting Working Groups.
109. A wide array of inherent vulnerability factors was used to assess the risk in every sector. Such factors included:
- a) size of the business and average transaction size within different business/product/service lines;
 - b) the client base profile;
 - c) level of cash activity;

- d) level and frequency of international transactions;
- e) anonymous/omnibus use of the product/service;
- f) existence of ML typologies on the abuse of the product or service;
- g) traceability of transactions;
- h) availability of non-face to face use of the product/service; and
- i) the delivery channels used; and other vulnerability factors unique to each sector.

110. Using the WB Model, the evaluated vulnerabilities were categorized as input variables and intermediate variables. Other variables such as domestic crime trends and determining if there were sectors of the population sympathetic to foreign terrorist organizations were also considered, with the former found to be minimal contextually and the latter non-existent. In 2016, domestic offences spanned these three categories:

- i. Crimes against the person (e.g. murder, robbery);
- ii. Crimes against property (e.g. thefts, burglary); and
- iii. Crimes against the community (e.g. drug trafficking)

111. Serious crime in Bermuda is uncommon, and most crime is of an opportunistic nature. The NAMLC working groups comprised representatives from all CAs such as law enforcement, prosecutorial, tax and supervisory authorities, Department of Statistics, Department of Immigration, the Cybercrime Department and other relevant authorities such as the Maritime Dept./Authority. These working groups examined the amount of criminal proceeds laundered through Bermuda's financial and non-financial sectors. Based on this exercise, the working group determined which sectors in the economy featured most prominently, and if the ML threat was international, domestic or a combination of both. In addition, the working group completed a cross-border analysis on foreign investment and cross-border to form opinions on the international nature, scope and direction of the ML threat¹⁹ based on the countries and region that featured most prominently in goods or trade with Bermuda.

112. The findings of the 2017 ML assessment cited the banking, securities, unlicensed PTCs, TSP and CSP as having high ML risks. While Bermuda only has 4 banks and 1 credit union, the banks play a vital part in Bermuda's economic activity. They are internationally exposed, deposit taking, engage in cross-border funds transfers and are utilised in the main by the majority of Bermuda's populace. Interviews with the BMA have confirmed that the annual sectoral risk assessments conducted by BMA informs the triennial NRA. Banks constitute 13% of Bermuda's GDP and the Assessors are satisfied that the NRA appropriately considered the inherent risks that typically affect this sector, while considering the impact that the banks have on the country's GDP. The vulnerabilities each type of banking sub-sector existing in Bermuda pose to the jurisdiction have been assessed and feed into the overall conclusions presented in the NRA. The Assessors agree with the methodology of assigning a ML risk rating that is informed by the sector's vulnerabilities and impact to the country's GDP.

113. There have been no recorded instances of TF convictions in Bermuda and the methodology utilised to assess TF risks for all sectors was dependent upon global typologies, factoring domestic and foreign intelligence, requests for assistance and SARs/STRs. During interviews with banking representatives from all 4 banks in Bermuda, all concurred that the NRA findings are consistent with their own overall ML/TF enterprise risk assessments. However, the more contextually significant deposit taking institutions have undertaken enterprise risk assessments for ML/TF to truly understand their own ML/TF risks.

¹⁹ Assessment of Bermuda's National ML/TF Risk Report

114. Bermuda has a very large securities sector representing 19% of the country's total financial services sector assets. It comprises mainly international clients, and the CAs have considered the risks of investment businesses (including investment managers and investment broker-dealers), fund administrators and investment funds and determined that for general business insurance, the inherent ML risk is medium-low and for long-term direct insurance, the inherent ML risk is medium-high. The TSP and CSP sectors are also considered high risk due to their global reaches, the high value of asset transfers and the high net worth clients which can be at times, international PEPs. Representatives from investment companies, and corporate and trust service providers in Bermuda, interviewed during the onsite, are of the view that all the risks have been considered for their sectors during the NRA and that they understand these risks through international risk profiles and participating in the Working Groups for the NRA exercises. The Assessors are comfortable that Bermuda understands the risks these sectors pose.
115. The potential inherent ML risk level for gaming is medium. For gaming, this assessment is derived from the fact that there are no casinos yet in operation, however the analysis appropriately recognises the high vulnerability level of the gaming sector. During the onsite interview, the Authorities were very responsive and very proactive regarding evolving risks and the new and emerging threats.
116. During onsite interviews, the Board which supervises the legal and accounting professions, opined that the rating of medium-high for ML/TF risk relative to these sectors is considered appropriate. The Board chaired two of the NRA Working Groups during the last NRA exercise. As the Board is self-regulatory, its involvement with NAMLC's Supervisory Working Group from which it was formed in late 2015 is vital to ensure that the NRA has received its input to ML/TF risks in the accounting and legal sectors.
117. Based on interviews with TSP sector representatives, their TSPs conduct annual institutional and operational risk assessments, incorporating the feedback from the NRA exercise and other risk events to determine and understand the ML/TF risks in their discretionary, fixed purpose, special purpose, charitable and other trust arrangements. Criteria considered include international tax and other financial crimes from World Check screening, complexity of the structures, customer risk, bribery and corruption risk, monetary size, expected transactional activity, PEP status and sources of wealth.
118. The real estate sector comprises 16.6% of Bermuda's GDP and is considered medium risk for ML and low risk for TF. The medium ML risk is driven by the large transaction sizes involving real estate sales, the inability of the sector to identify PEPs and the CDD that must be undertaken by real estate professionals to identify the BOs for transactions involving trusts. Since the conclusion of the 2017 NRA, ML/TF guidance has been issued by the SoRE; real estate brokers have been licensed and brought into scope of the AML/CFT framework; and the AML/CFT requirements for the sector are stringent.
119. MSBs pose a medium-high risk for ML and a low risk for TF in Bermuda. The customer base is transient, and the service is easily accessible to the open market. While MSBs are inherently a high risk globally for ML, due to its limited contribution to Bermuda's GDP and the small number of operators (2), this has driven the medium-high ML rating. Bermuda has assessed a low inherent risk to MSBs as conduits of TF for 3 reasons: a) they are supervised by the BMA; b) the MSBs are mandated to conduct proper CDD and client risk assessments; and c) the BMA conducts an annual onsite examination of the MSBs in Bermuda. The BMA and the MSB Working Groups in conducting the 2013 and 2017 NRAs, and during this engagement, held discussions with representatives from the MSB industry on select general input variables.
120. DiHVGs comprise dealers in precious metals and stones (DPMS), as well high value goods dealers, assessed as medium and medium-low for ML risk, and assessed as medium-low for TF risk. The number of entities is minimal which at present, serves to reduce the exposure of transactions from this sector to ML/TF risks. Interviews with sector representatives have identified opportunities for improvement with regard to a complete understanding of the ML/TF risks affecting their sector, however this deficiency is

mitigated due to the relatively small size of the sector, and its contribution to the country's GDP which is less than 1%, and by the fact that cash was not accepted for expensive items in the majority of the entities in the sector.

121. To gain a full understanding of all ML/TF risks in the country, three known betting facilities in the country were included in the NRA although they are contextually very small. The sector has been assessed as medium risk for ML and low risk for TF. FATF Standards do not mandate the inclusion of this sector. However, as a best practice to ensure that the sector's ML/TF vulnerabilities are always considered, the Authorities decided to have the betting sector supervised by the BCGC both in a prudential and an AML capacity by 2019, a decision which is considered to be very proactive under the circumstances.
122. Lending activity (outside of banks) has recently been formally brought into scope by reason of amendments to the AML/CFT legislation that was enacted in August 2018 and mandates that all entities that are engaging in this type of business activity be registered with the BMA before the end of 2018. Currently, there are only 2 known entities that engage in this type of business.
123. The 2017 ML assessment rated Bermuda's overall ML threat at medium-high (as compared to medium in 2013). The Authorities stated that the change in rating does not reflect a change in the national situation, but rather reflects a better understanding and more effective analysis of the threats that exist, owing to more comprehensive information, statistics and a greater level of experience and expertise. Bermuda has taken significant steps and has comprehensively engaged all critical stakeholders to fairly assess their ML/TF risks and as a result, Bermuda's assessments of ML/TF risks, especially in the 2016 and 2017 NRAs were reasonable, credible and comprehensive. The efforts undertaken by NAMLC and all supervisory authorities to engage and communicate with relevant stakeholders about the results of the 2016 and 2017 NRAs, as well as the appropriate steps to be taken in relation to these findings, has resulted in CAs, the SRB and private sector stakeholders having a very robust understanding of sectoral and national ML/TF risks.
124. Bermuda commenced its TF NRA in 2016 to address one of the priority action items included in the National Action Plan. There was coordination by NAMLC with technical level support from the BMA on the use of the WB tool. Bermuda's assessment of TF risk is derived from international typologies and based on potential risk since the Authorities reported that there was no evidence of terrorism or TF detected in Bermuda. The contents of relevant sections of the National Action Plan are distributed to the appropriate CAs as demonstrated by Bermuda.
125. Separate to the NRA, Bermuda conducted a legal persons' vulnerabilities' assessment, which is discussed in detail in IO.5. The Assessors formed the view that the risks of legal persons and their structures were understood. The regulated trust sector was evaluated as part of the NRA, PTCs and individual trustees were looked at by individual working groups to ensure that all trustees were contemplated.

2.2.2. National policies to address identified ML/TF risks

126. Bermuda's National Policy successfully seeks to address the ML/TF risks identified in the 2 ML NRAs and the TF NRA. As previously stated, the Policy features 10 high-level policy statements, prepared by NAMLC and approved by Bermuda's Cabinet. Initiatives, policies and actions comprehensively considers the expectations of the FATF's 11 Immediate Outcomes. It has not been publicly communicated due to its sensitive nature but has been shared to the CAs which comprise the NAMLC.
127. NAMLC is the main national AML/CFT policy coordination agency established under s.49 of the POCA 1997. This Committee which advises Government Ministers on AML/CFT matters presently includes a Chair, appointed by the Minister of Finance, and the Heads of all CAs that are primarily involved in AML/CFT matters. Four permanent working groups have been established within NAMLC - the

Legislative and Policy Working Group, the Supervisory Forum, the Operational Working Group and a Sanctions Working Group established to address key matters in relation to the development and implementation of TFS.

128. The National AML/CFT Policy is annually reviewed and updated to ensure that significant findings reported to NAMLC from CAs in relation to their own periodic sectoral risk assessments, are considered. The 2016 – 2019 National Action Plan is constantly tweaked to ensure that it comprehensively covers strategies developed by Bermuda and the next scheduled update should cover the period 2020 – 2023. This requirement is articulated in detailed policy 1.2 of the National AML/CFT Policy and is considered by the Assessors as a good methodology to ensure that the ML/TF risks identified in Bermuda are considered on an ongoing basis rather than awaiting the conduct of the triennial NRA exercise. This annual exercise also assists CAs in their awareness of Bermuda’s ML/TF risk status.
129. The Cabinet approved the National AML/CFT Policy, which mandates all government ministries, departments and agencies, as well as any other authorities affected by the Policy to ensure that strategies are established and implemented to give effect to the Policy. The Policy aims at a two-tier approach with the first addressing compliance with the FATF Recommendations and other relevant international standards and the second tier aimed at compliance with the national legislation, regulations, recommendations and industry guidance. Several examples of the actions and policies that have already been implemented to mitigate ML/TF risks and address issues identified as driving some of those risks, were noted by the Assessors.
130. Bermuda’s Joint Money Laundering Intelligence Task Force (JMLIT) concept was derived from the 2017 NRA’s identification of foreign crimes such as fraud, corruption, market manipulation/insider trading and international tax crimes, and domestic crimes such as drug trafficking as posing the highest ML threats to Bermuda. The concept of JMLIT is to have collaboration between CAs and the private sector (namely the Bermuda Banker Association or BBA) to improve the quality of suspicious transaction monitoring and the filing of SARs, as per detailed in policy 4.4.
131. The enactment of the Companies and Limited Liability Company (Beneficial Owner) Amendment Act 2017 and the Partnerships, Exempted Partnerships and Limited Partnership (Beneficial Ownership) Amendment Act 2018 is a result of recognising that the definition of BO did not also extend to control. To ensure that legislation is clear to incorporate the definitions of both ownership and control, these Acts were amended, as per the tenets of detailed policy 5.2.
132. The referenced initiatives in the preceding three paragraphs are only examples to underscore the Assessors’ affirmation that the National Policy adequately incorporates ML/TF risks identified in the NRAs. The National Policy prioritises the conduct of the country’s NRAs every 3 years, the review of national AML/CFT policies annually, the need for CAs to continuously enhance their respective AML/CFT risk frameworks, the publishing and dissemination of NRA results, and the conduct of annual AML/CFT risk assessments by CAs.
133. In recent times Bermuda’s CAs have proactively decided to regulate casino gaming and digital assets which are inherently high ML/TF risk from a global perspective, in preparation for the opening of such operations. Regulating existing risks which are not within the FATF Standards such as betting has also been proactive, despite these enterprises have very few known operators and being of a very low materiality contextually. Nevertheless, regulating these entities should bring about an even higher level of mitigating controls to Bermuda’s overall range of national ML/TF risks.

2.2.3. Exemptions, enhanced and simplified measures

134. There are no specified exemptions for reporting entities in their application of AML/CFT measures.

135. FIs must undertake enhanced due diligence (EDD) for customers identified as having a higher risk profile, for example a PEP, the BO of gaming proceeds, a resident of a high-risk country, or subject to transaction(s) from a high-risk country and correspondent banking relationships (re. R.1 and criterion 10.17). These and other higher risk clients are considered in elements of the NRA process. FIs are expected to utilise this information in the conduct of their own entities' risk assessments.
136. DNFBPs supervised by the Board, the SoRE, the FIA and the BCGC must carry out EDD when procedures identify a higher risk, for example a PEP. While there is no specific provision requiring entities to automatically utilise the ML/TF assessments by the NRA, based on information obtained from supervisors, there is an expectation that the NRA results will be considered when conducting their own AML/CFT risk assessments. GNs issued by the relevant authorities promote a RBA to be undertaken.
137. The Authorities have informed the Assessors that in the case of lending, leasing and guarantees, most activities within these categories are carried out by FIs (banks and insurance companies) or are structured by lawyers or accountants acting for their clients. These sectors are under full regulation and/or AML/CFT supervision by the BMA and the Board.
138. Regarding the issue of enhanced measures, the Authorities reported that there were no findings of high or medium-high TF risk in the 2016 TF NRA and so no enhanced measures were required for CFT. The findings in the 2017 ML NRA indicate areas of high or medium-high exposure to ML risks, however, the findings served to confirm that Bermuda understands its heightened exposure to ML risks arising from cross-border sources. The banking, securities, long-term insurance, TSPs, lawyers and CSPs were all identified as having higher exposure to this risk. Preventive measures and the implementation of a RBA for FIs to mitigate these higher risks are deeply enshrined in the AML/CFT legislative framework and in the policies and procedures of Bermuda's FIs, and very pronounced in Bermuda's 4 banks. The ML NRA findings drives Bermuda's enhanced approach to the regulation and supervision of TSPs and CSPs, whereby they are subject to both prudential regulation/licensing and AML/CFT supervision. This enhanced measure supports Bermuda's policy approach towards ensuring that there is a robust gatekeeper function for the intake of foreign business, as this is the most significant source of the ML/TF risk.
139. An example of where Bermuda has adopted simplified measures entails close-ended funds. This assessment of low risk to allow simplified measures is based on the fact that although securities as a sector are high risk, the closed-end fund securities sub-sector in Bermuda, has inherent risk mitigating factors. For example, only a fixed number of shares are issued through these funds and they are traded publicly on Bermuda's Stock Exchange, a medium which is also subject to AML/CFT regulations. In addition, the closed-end nature of the fund disallows the issuance of additional shares to grow the fund, which curtails the number of investors and thus reduces the risk of criminals participating in the fund. The Assessors agree that under these circumstances, the methodology of considering closed-end funds as lower risk products is sound.
140. *"The long-term reinsurance sub-sector in Bermuda has a medium-low ML risk and is currently not supervised for AML/CFT compliance. The scale of the sub-sector, average transaction sizes and its amount of international business could leave it susceptible to ML. However, there are no known instances of reinsurance companies being abused or misused for ML in Bermuda, and the BMA considers the sector to have medium-low ML vulnerability."* (Consolidated NRA-2017). General reinsurance business is also not AML/CFT supervised, although the sector is vast in Bermuda and "has a diverse international customer base". While Bermuda's captive domicile is the largest in the world, reinsurance does not fall within the definition of financial institutions as set out in the FATF Recommendations and only 1% of the insurance sector constitutes the higher risk long term direct insurance.

141. A recent amendment to regulation 10(1A) of the POCA now expressly imposes an obligation on regulated entities (relevant persons) to apply simplified due diligence only after they have assessed the ML/TF risk and having done so, have reasonable grounds for believing that the ML and TF risk is low. While FIGNs have historically addressed the need to apply a proper analysis of risk when new business is being considered, the amendments to legislation now allows for the enforceability of such guidance.

2.2.4. Objectives and activities of competent authorities

142. In keeping with the mandate of the approved National AML/CFT Policy and the findings of the NRA, in interviews with NAMLC, they and other CAs confirmed that when the NRA process was finalized part of the process was to initiate feedback. A two-day workshop was conducted, hosted by all sectors and attended by industry bodies and individual institutions. All CAs were represented. CAs have all taken steps to ensure that their policies, procedures or action plans consider the findings and outcomes of these documents to varying degrees. Supervisors have incorporated the results into their RBA to supervision. Actions taken include, the implementation of an annual risking exercise for the NPO sector by the Registry General (RG); the registration of previously exempted privately funded charities where they are not administered by either a licensed Trust Company or a licensed CSP (Charities Amendment Act 2018). The Board has ensured that the Bermuda Bar Act requires that lawyers meet ‘fit and proper’ conditions to obtain a practising certificate. The NAMLC has coordinated the self-assessment process as well as the national level workshops to develop and refine the National Action Plan. The DPP and BPS also have policies in place in relation to ML, TF and the proceeds of crime. There is also a joint policy for civil recovery between the DPP and the AGC as the Enforcement Agency.

143. The ongoing efforts to address risk is also evidenced by the actions taken following the release of the Paradise Papers where the BMA increased their focus on ensuring that CSP licensing was implemented (the 2013 ML NRA had concluded that the licensing of CSPs be expedited) and the Board also undertook additional focused monitoring activities to address risk. Other CAs were required to report to a high-level task force. A 2018 meeting of a supervisory college concerned a large Trust company, and discussed issues arising following the Paradise Papers, including the progress of AML/ CFT remediation. The ROC and the BMA as supervisors of CSPs and the Exchange Controller have signed an MOU to coordinate their respective functions to implement the updated BO regime for Bermuda.

144. Customs abides by the World Customs Organisation guidelines on the Role of Customs Administrations in Tackling ML and recovering Proceeds of Crime. These are however very dated and not specific to Bermuda. Customs did not refer to any AML/CFT policies specific to their role in Bermuda or related to the National Action Plan during the onsite visit. However, the Customs’ Department Counter Terrorist Financing Policy came into effect on 4th October 2018. This may be indicative of the larger problem of resources facing Customs, who indicated that they were under resourced and that their policies have been focused on revenue rather than law enforcement (see further discussion at IO.8/11)

2.2.5. National coordination and cooperation

145. There is a good framework in place for national AML/CFT/CPF coordination and cooperation in Bermuda. The NAMLC under s.49(1) of the POCA coordinates activities to identify, assess and understand Bermuda’s ML and TF risks. NAMLC has 14 statutory members as listed previously (see Chapter 1 of the MER); has various sub-committees such as the Policy and Legislative Working Group, the Sanctions Working Group, the Operations Working Group and the Supervisory Forum. Ad hoc working groups are also formed to address specific projects as they arise. For example, the Self-Assessment Steering Committee was established in mid-2016 with a mandate to organise NAMLC agencies to undertake a self-assessment of Bermuda’s regime against the FATF Standards and Methodology; the Terrorist Financing National Risk Assessment Working Group conducted the risk assessment in 2016.

146. The NAMLC meets frequently (20 meetings between 1st January 2014 and 31st December 2017). There were 3 meetings in 2014, 4 in 2015, 4 in 2016 and 9 in 2017. The increase in meetings of 125% over 2016 was attributable to the NAMLC decision to increase to monthly meetings in consideration of increased activity regarding Bermuda's 4th round Mutual Evaluation.
147. Discussions at the meetings were related to Bermuda's AML/CFT work. Some of the discussions related to the discussion of ML cases and their outcomes, the formation of an AML/CFT sub-committee to be dedicated to Mutual Evaluation preparations, discussions on and approval of the National Action Plan, outreach and awareness to wider community of the NRA, discussions on sanctions, developing trends in AML/CFT which impacted the jurisdiction among other related discussions. NAMLC demonstrated active participation among its members with all members or their designates recording attendance at the meetings. There was routine follow up at each meeting and reporting by the various sub-committees on the progress of various projects and initiatives. Such focus on AML/CFT matters at the NAMLC's meetings along with deliverables whether they be the development of related policies, or the formation of the sub working groups in anticipation of and to address issues as they arose demonstrated Bermuda's active national coordination and cooperation efforts.
148. Prior to September 2018 there was no identified agency to coordinate or oversee outreach relating to PF, although NAMLC has a general coordination mandate which includes PF pursuant to s.49 of the POCA. Previously, there was a Sanctions Working Group, which focused primarily on the delegation of power from the Governor regarding these matters and so there were no specific PF activities. The resolution of the delegation along with the establishment of the FSU and the PF Working Group means there will be a greater focus on PF coordination and cooperation going forward.
149. Among departments and Agencies several MOUs have been signed. Although many MOUs were executed in 2018, relationships were in existence between the CAs prior to that time. The MOUs demonstrate the formalisation of those domestic coordination efforts and relate primarily to cooperation and coordination of AML/CFT activities to improve.

Table 2.1 Domestic MOUs

| MOU | Date Executed/ Purpose |
|--------------------------------------|---|
| SRE & FIA | Feb.21.18 Cooperation on AML/CFT matters |
| FIA & Customs | Sep. 8. 2010 Operational MoU establishing CLO within the FIA & Jun.27.18 Cooperation on AML/CFT matters |
| BPS & Customs | Sep.28.18 Cooperation on AML/CFT matters |
| BMA & BPS | Sep.28.18 Cooperation on AML/CFT matters |
| BCGC & BMA | Apr.28.17 (27/03/2018) Mutual cooperation on AML/CFT matters |
| BPS & BCGC | Oct.23.17 Cooperation and assistance on AML/CFT matters and investigations |
| BPS & BMA | Apr.28.17 Cooperation on AML/CFT matters |
| BPS & FIA | Aug. 11. 2009 Transitional MoU establishing Administrative FIU; Aug.18. 2010 Operational MoU establishing Police Liaison Officer within FIA; & Jan.30.18 Operational MoU – BPS direct access to FIA Intelligence database |
| FIA & ROC | Feb 21.18 Cooperation, coordination and investigative assistance on AML/CFT matters |
| FIA & RG | Dec. 13.17 Cooperation, coordination and investigative assistance on AML/CFT matters & Jan.30.18 |
| SoRE & BMA | Feb 21.18 Cooperation on AML/CFT matters |
| RG & BPS | Jan.17.18 Mutual assistance on AML/CFT matters |
| ROC & RG | Jan 30.18 Cooperation, coordination and investigative assistance on AML/CFT matters |
| MoF Office of Tax Commissioner & FIA | Feb 21.18 Cooperation on AML/CFT matters |
| RG & Centre of Philanthropy | Sep 4.18 Cooperation on AML/CFT matters |

| | |
|---------------------------|--|
| BMA & ROC | Sep 25.18 Cooperation on AML/CFT matters |
| FIA & Tax Commissioner | Dec. 15. 17 Cooperation on AML/CFT matters |
| BMA & FIA | Mar. 31. 17 Cooperation on AML/CFT matters |
| BMA & RG | May 10. 18 Cooperation on AML/CFT matters |
| FIA & Board | May 17. 18 Cooperation on AML/CFT matters |
| SoRE & Board | May 17. 18 Cooperation on AML/CFT matters |

150. Additionally, Bermuda has demonstrated its intention to utilise other platforms for the sharing of information and intelligence regarding ML/TF risks and resulting suspicious activity. One such platform is the JMLIT which as noted previously is a collaborative effort between the FIA, BPS and the BMA on the one hand and the private sector on the other hand.

2.2.6. Private sector's awareness of risks

151. Bermuda took a comprehensive approach in conducting its NRA as private and public-sector officials participated in working groups to identify and assess the jurisdiction's ML/TF risks. The majority of the FIs, DNFBPs and NPOs interviewed during the onsite visit confirmed that they were aware of the NRA which provided an enhanced understanding of the potential risk and vulnerabilities that in some instances were already identified through their own risk assessments.

152. Publication of the consolidated report was coordinated within the NAMLC. The NRA was given high visibility through a Press Conference held by the Premier at which the media was provided with an electronic copy of the consolidated ML/TF NRA report by the Government's Department of Communication and the download link. The consolidated ML/TF NRA report has been published on the websites of the Bermuda Government, the BMA, FIA, SoRE, ROC and goodbusiness.bm and the Board.

153. Bermuda's CAs properly identify, assess and understand existing and emerging ML and TF risks on a continuous basis, and co-ordinate appropriate actions domestically to mitigate these risks. All CAs are involved along with the private sector where appropriate, to coordinate, communicate and implement those AML/CFT procedures and practices in a coordinated way across the proper mediums to achieve a substantial level of mitigation to combat ML and TF. These activities are coordinated by the NAMLC which meets frequently as previously stated. There is also collaboration in joint outreach and awareness conducted by CAs and private sector entities such as accounting firms. The national coordination in the area of PF is in its nascent stages as previously noted.

154. All CAs were notified via e-mail of the NRAs publication by the NAMLC and supervisory authorities. CAs in turn disseminated information on the NRA to reporting entities via sectoral outreach to discuss the key conclusions on the national and sectoral threats and on the sectoral inherent vulnerabilities. In addition, they provided an overview of the national assessments for ML and TF risks assessments.

155. The information has in part been directly pertinent to increasing awareness of ML/TF risks, internal controls and high-risk customers. (see. IO.3 discussion).

156. FIs and the contextually material DNFBPs understand or are aware of their risks and the mitigating measures to be implemented. The NRA process and the national understanding of risks have benefitted from input by FIs and to a lesser extent DNFBPs because of their newness to the regime.

Overall conclusions on IO.1

157. **Bermuda is rated as having a High level of effectiveness for IO.1.**

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

3.1. Key Findings and Recommended Actions

Key Findings

Use of financial intelligence (Immediate Outcome 6)

- a) Bermuda has an operational Financial Intelligence Agency (FIA) that is properly resourced and has demonstrated that it is conducting its functions, including the receipt, analysis and dissemination of intelligence reports to the relevant CAs, including the BPS.
- b) The use of financial intelligence in addressing ML/TF in Bermuda forms a core part of law enforcement investigations. CAs have demonstrated that they are accessing and utilising financial intelligence to conduct their functions. The BPS, which is the premier law enforcement agency in Bermuda and one of the largest users of financial intelligence has demonstrated that it is using financial intelligence and relevant information to conduct investigations into ML and associated predicate offences.
- c) Bermuda authorities, specifically the FIA and other LEAs have demonstrated that there is a high level of cooperation and coordination relative to the exchange of financial intelligence. Partnerships such as JMLIT between financial institutions and CAs also exist. Cooperation and coordination among some of these entities has resulted in successful outcomes such as the prosecution for ML offences.
- d) The FIA has commenced work to improve the quality of SAR reports received from the financial sector. While commendable, the same focus has not been placed on the DNFBP sectors.
- e) While some feedback is received by the FIA regarding the usefulness of its intelligence disseminations, this is primarily from the BPS and not all CAs.

ML investigation and prosecution (Immediate Outcome 7)

- a) The BPS as the premier law enforcement agency; and the DPP have developed policies and systems regarding the investigation, prosecution and prioritisation of ML.
- b) Although the OECD and the DPP have demonstrated that they are conducting ML investigations and prosecutions, this is not being done in a manner that is consistent with the findings of the NRAs conducted and the AML/CFT policies in place.
- c) Bermuda has demonstrated its ability to pursue other criminal justice measures where a ML conviction was not obtained.
- d) While there have been investigations of complex ML matters (some of which commenced in 2012) there has been no prosecution of these matters.

Confiscation (Immediate Outcome 8)

- a) Bermuda has demonstrated its ability to use a range of powers to forfeit the proceeds and instrumentalities of crime. However, the powers are only being used to a limited extent in relation to criminal restraint and confiscation, considering the ML risk of the jurisdiction.

- b) There is a low level of ROs in the context of domestic criminal investigations where the process is hindered by the lack of a power to restrain funds until immediately prior to a charge.
- c) The proceeds of crime, which have been moved to or are located in different countries are pursued to a limited extent.
- d) MLA requests have resulted in the restraint of the proceeds of crime, realisation of funds and asset sharing.
- e) Customs does not have enough resources or adequate policies to carry out its AML/CFT functions.

Recommended Actions

Use of financial intelligence (Immediate Outcome 6)

- a) SAR reporting by TSPs and lawyers is low and should be enhanced given the inherent high and medium-high risk respectively attributed to those sectors in the 2017 NRA. SAR reporting by other DNFBPs relatively new to AML/CFT regime such as DiHVG and the real estate sector should also be enhanced.
- b) The FIA should expand its focus regarding improving the quality of disclosures received, beyond the financial sector to include other categories of reporting entities to enhance the identification of ML/TF such as DNFBPs.

ML investigation and prosecution (Immediate Outcome 7)

- a) ML investigation and prosecution by the BPS and DPP respectively should be pursued in line with the assessed ML risk and prosecutions should be advanced where there have been long delays.

Confiscation (Immediate Outcome 8)

- a) Amend the POCA in relation to the timing of applications for ROs to ensure they are available prior to a decision to charge i.e. at the investigative stage.
- b) Increase focus on the recovery of the cross-border movement of the proceeds of crime related to foreign predicate offending as identified by the NRA.
- c) Increase the restraint and confiscation of the proceeds of crime and property of equivalent value beyond that seized at the time of the offence.
- d) Increase the resources and training available to Customs in relation to their role in the identification and recovery of assets and ensure that Customs has an adequate policy in relation to the confiscation of falsely/not declared cross border movements of currency and bearer negotiable instruments.
- e) Ensure that the Judiciary are sufficiently trained in matters relating to confiscation.

158. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32.

3.2. Immediate Outcome 6 (Financial Intelligence ML/TF)

3.2.1. Use of financial intelligence and other information

159. Bermuda's CAs access a wide range of financial, law enforcement and administrative information, directly and indirectly. The FIA, and the BPS are the largest users of financial intelligence and related information. This is due in part to their functions which include but are not limited to: analysis of suspicious transactions; investigation of ML, associated predicate offences and TF; and the identification, tracing and freezing of assets that can be confiscated. Other CA's such as regulators and supervisors have demonstrated that they use financial intelligence to assist in the conduct of their functions such as inspections. The FIA can request information from any person pursuant to s.16 FIAA Notices, which do not require an application to any Court. The Authorities provided data to the Assessors to show that during 2014-2018²⁰, 2460 s.16 FIAA Notices were issued to and information obtained from Government Offices and the private sector - both regulated and unregulated entities. The main sources were banks and credit unions - (494 notices), MSBs - (523) and Government agencies (311). Requests totals were consistent over the review period.
160. The BPS made 132 domestic requests (2014-2017) for information to the FIA 37 requests (2014-2017) were sent via the Egmont Secure Web (ESW) and 6 requests to the BMA. The FIA has direct access to the BPS database called Memex; and the Customs Automated Processing Systems (CAPS) through the Customs Liaison Officer (CLO) who works as an analyst at the FIA on a full-time basis. At ports of entry, Customs officers carry out some immigration functions such as passport control with travellers on behalf of the Department of Immigration. As a result of this, the Customs Department has access to the Department of Immigration's traveller database, which in turn allows the CLO access to travel history and identification information. This information is uploaded into the FIA's goAML database by the CLO. Information is also obtained from other Government departments through established points of contact. The FIA received 47 requests in total from the Customs Department, the BMA and the ROC during 2014-2018. This indicates that in addition to the FIA's spontaneous disclosures CAs are using the FIA as a resource for information that may be captured in SARs.
161. The FIA aids the BPS during its ML, associated predicate offences and TF investigations by obtaining information from various domestic and international sources. The FIA develops information to produce intelligence products that are useful to the BPS. Such products include disclosures which analyse the suspicious activity reported to the FIA. The information requested consisted of identification of SARs filed regarding subjects and associates, banking information, identification of accounts, businesses, associates, addresses and contact information, MSB accounts and ATM transactional activity. Overseas requests involved the identification of assets and accounts from confiscation; information on criminal activity or law enforcement intelligence; tracing and tracking of funds both domestically and internationally. Assistance in the freezing of funds using the FIA's powers under s.15 of the FIAA has also been used. The FIA spontaneously or upon request shares information with CAs such as the BMA which has assisted them in targeting the AML/CFT examinations of regulated entities and Customs which has resulted in compliance checks on persons and goods arriving and departing Bermuda. Disclosures to CAs other than the BPS relate to information which enables them to carry out their statutory functions such as AML/CFT supervision and prudential supervision.
162. Customs and the BPS also routinely exchange information. Customs provides the BPS with reports of cash and drug seizures which assists in the development of profiles of subjects which can be used to develop cases. An example of the use of financial intelligence and information shared amongst CAs namely the FIA, BPS and Customs is demonstrated below:

²⁰ 2018 as at October 5th.

Box 3.1. Use of Financial Intelligence and Relevant Information

In February 2016, two foreign nationals, (Subject 1 and Subject 2) landed in Bermuda and were engaged in criminal activity, namely ATM skimming during their time on the island. As a result of their criminal activity, these two Subjects attempted to remit the stolen funds to their home country using a local MSB. The Subjects were eventually caught, arrested and convicted in Bermuda for attempted theft and ML.

In the latter part of 2016 two other foreign nationals (Subject 3 and Subject 4) landed in Bermuda and engaged in criminal activity, namely ATM skimming. These two Subjects were from the same country as Subjects 1 and 2. However, in this case, the actions of Subjects 3 and 4 were not identified until after they left Bermuda. As a result of the second investigation involving Subjects 3 and 4 that was conducted by the BPS, a lookout was placed for them at the LF Wade International Airport (Bermuda) in case they returned.

In October 2017, Joint Intelligence Unit (JIU) staff alerted the Custom's Liaison Officer (CLO) embedded within the FIA that Subject 3, who had been placed on lookout, had returned to Bermuda. This time, Subject 3 returned to Bermuda with a different Subject (Subject 5), who was later identified as being a sibling of Subject 3. JIU also disseminated this information to the BPS. This investigation is ongoing.

163. The conversion of intelligence into evidence for use in criminal investigations is achieved via Production Orders (POs) that are granted by the Supreme Court of Bermuda during an ex-parte application by a Police Officer. These POs are also a good source of obtaining financial intelligence and relevant information from supervised entities and government agencies. The BPS has demonstrated that they are utilising POs to a substantial degree and in keeping with the risk and context of the jurisdiction to obtain financial intelligence and relevant information. In order to obtain a PO, an affidavit is prepared by the BPS from information generated from sanitised intelligence reports. The affidavit identifies the nature of the investigation and the type and location of the evidence required for the investigation. From 2014 to 2018 the BPS achieved a 100% success rate in the obtaining of POs issued by the Courts for various types of financial information to be used as evidence in criminal investigations. The information presented in the table below shows the number of POs obtained and the agencies on which they were served. The total number of court orders is an amalgamation of those obtained under the POCA and the PCEA specifically for ML matters.

Table 3.1 Production Orders Obtained by the BPS 2014 – 2018 (Oct. 5th)

| Year | Number of Court Orders | Banks | CSP/Trust | Insurance | MSB | Government Agencies |
|---------------|------------------------|------------|-----------|-----------|-----------|---------------------|
| 2014 | 62 | 24 | 2 | 2 | 6 | 28 |
| 2015 | 115 | 65 | 6 | 0 | 11 | 33 |
| 2016 | 109 | 55 | 6 | 1 | 11 | 36 |
| 2017 | 173 | 94 | 5 | 3 | 13 | 58 |
| 2018 (Oct. 5) | 72 | 26 | 17 | 3 | 9 | 17 |
| Total | 531 | 264 | 36 | 9 | 50 | 172 |

164. The information in the table above shows that the BPS has obtained a total of 531 ML related production orders during the period 2014-2018 to obtain financial intelligence and relevant information from several FIs and government agencies to effectively investigate ML, associated predicate offences and TF along with identifying and tracing the proceeds of crime. Most of the POs were obtained in relation to the banking sector which filed the largest number of SARs and was the sector from which a greater

degree of information relevant to the BPS for investigations was sourced. Banks were followed by government agencies and is reflective of these agencies possessing a variety of relevant information that is pertinent to the functions of the BPS. The information also shows that there is a consistent yearly increase in the POs obtained by the BPS and is an indication of the agency's willingness to utilise financial intelligence and relevant information to conduct its functions. There was a noted increase in POs in 2017 170% increase to banks; 161% to Government agencies; 118% to MSBs and 300% to insurance over 2016. This increase demonstrates increased robustness in the BPS' efforts to obtain information to assist in its ML investigations.

3.2.2. STRs received and requested by competent authorities

165. Reporting entities are required to register for an account on the FIA's goAML system. Money Laundering Reporting Officers (MLROs) directly upload SARs to the database, which provides alerts that SARs have been received. These SARs upon receipt are reviewed by the FIA's Head Analyst for completeness and quality. If the SAR is incomplete it is referred to the reporting entity who receives an alert via e-mail. The FIA has demonstrated that it is conducting its core function by receiving SARs from reporting entities. During the period under review (2014-2018), the FIA received a total of 2,716 SARs as reflected in table 3.2 below. The information provided shows that most of the SARs were filed by banks, followed by MSBs and long-term insurers and is consistent with the risk profile of the jurisdiction.

166. Table 3.2 below also shows SAR filings by sector. Banks submitted the most SARs over the review period followed by MSBs and long-term insurers. The lowest number of SARs were filed by NPOs (1), DiHVG (3 consisting of 2 from registered DiHVGs and 1 from an unregistered DiHVG), Real Estate brokers (3); and Accounting firms (4). The proportionality of the three highest reporting sectors is consistent with the nationally assessed risk as high and medium-high. It is noted however that among other sectors rated as high risk to ML such as CSPs; and medium- high such as TSPs and Lawyers; SARs reporting is relatively low. This may suggest a need for additional and focused outreach and awareness geared towards developing the reporting regime among those sectors.

Table 3.2 SAR filings to the FIA by Sector 1st January 2014- 2018 (Oct. 5th)

| SAR Reporting | 2014 | 2015 | 2016 | 2017 | 2018 | TOTALS |
|---------------------------------|------|------|------|------|------|--------|
| Banks (includes a Credit Union) | 234 | 306 | 246 | 554 | 295 | 1635 |
| Investment Service Providers | 1 | 7 | 12 | 18 | 22 | 60 |
| Money Service Businesses | 47 | 77 | 139 | 143 | 76 | 482 |
| Law Firm | 1 | 10 | 1 | 3 | 12 | 27 |
| Trust Company | 1 | 2 | 1 | 4 | 8 | 16 |
| Long Term Insurers | 45 | 37 | 52 | 184 | 46 | 364 |
| Accounting Firm | 1 | 0 | 0 | 2 | 1 | 4 |
| Fund Administrator | 0 | 1 | 14 | 4 | 5 | 24 |

| | | | | | | |
|--|------------|------------|------------|------------|------------|-------------|
| Insurance Company/Manager | 0 | 0 | 1 | 8 | 24 | 33 |
| Corporate Service Providers | 0 | 3 | 10 | 9 | 25 | 47 |
| Registered Charity (NPO) | 0 | 0 | 0 | 1 | 0 | 1 |
| Real Estate Broker | 0 | 0 | 1 | 1 | 1 | 3 |
| Dealers in Precious Metal and Stones | 0 | 0 | 0 | 1 | 1 | 2 |
| Dealer in High Value Goods (Not Registered with the FIA) | 0 | 0 | 0 | 0 | 1 | 1 |
| Local Regulators | 1 | 4 | 1 | 5 | 6 | 17 |
| TOTAL No. OF SARs | 331 | 447 | 478 | 937 | 523 | 2716 |

3.2.3. Operational needs supported by FIU analysis and dissemination

167. Financial Intelligence from the FIA has been used as part of the BPS' strategy to target money launderers and smurfs. The CAs to whom disclosures under s.18 of the FIAA can be made are:

- a) the FIA in its supervisory capacity;
- b) the Governor in relation to his international sanctions functions;
- c) the Ministers of Finance, Legal Affairs and National Security to discharge their functions under any statutory provision;
- d) the Collector of Customs, or customs officer designated by him, to discharge functions under any statutory provision;
- e) the Registrar of Companies (including in his capacity as Superintendent of Real Estate), to discharge functions under any statutory provision;
- f) the Registrar General; to discharge functions under any statutory provision;
- g) the Bermuda Monetary Authority, to discharge functions under any statutory provision;
- h) the Bermuda Casino Gaming Commission, to discharge functions under any statutory provision; or
- i) the Barristers and Accountants AML/CFT Board, to discharge functions under any statutory provision;

168. The dissemination of disclosures has been demonstrated by Bermuda to entities listed above.

169. The FIA intelligence division consists of 8 staff – The Director, a senior legal counsel, 3 analysts (one was vacant), an IT Network Coordinator, Customs Liaison Officer and an administrative officer. The FIA receives its own budget which is managed by the Director. The Director can hire staff as required to meet the FIA's operational needs. The FIA is well resourced with computers and relevant software to conduct its analysis. Analysis of SARs was demonstrated in the use of the FIA's goAML software.

170. The SAR is reviewed against indicators for ML/TF predicate offences and other crimes against a built-in database and graded according to priority. It is then assigned to an Analyst. The analytical process includes as necessary, requests for further information to the reporting entity or other entities which the

FIA believes holds useful information and analysis of the SAR information including the suspicious activity, further examination of the subjects, their association with legal and natural persons and criminal background. Upon completion of the analysis, the analyst will develop a report based upon the information contained within the SAR, the identified suspicious activity of the subject(s) (including activity for which there is reasonable grounds to suspect criminality) along with all additional information obtained by them which is then disseminated to the BPS for investigation. If the matter involves activities or persons outside of Bermuda a report is prepared and spontaneously disseminated via the ESW to other FIUs. Other matters not disseminated are retained as intelligence. The FIA provided a demonstration to the Assessors which showed the process taken from the registration of entities on the goAML database, the receipt of SARs and the dissemination. All information and intelligence are stored, analysed and managed on the goAML database, which is in a secure area on its own dedicated server with various security features to monitor and limit access. Analysts are required to log into the database using their own unique username and password. The process observed was efficient and the staff were competently able to demonstrate its various features and how it is applied to conduct analysis and provide relevant financial intelligence.

171. The FIA conducts operational and strategic analysis. In 2013, the FIA conducted a strategic analysis of SARs filed by long-term life insurers that identified suspected criminal proceeds being invested in Bermuda's annuity products by overseas clients. It identified the need for a broader mechanism to pursue criminal proceeds in the absence of a criminal conviction or criminal proceedings. As a result, the FIA engaged with the AGC to address the deficiency which resulted in the enactment of Civil Recovery legislation which was directly linked to the strategic analysis conducted by the FIA. Since enactment, monies have been forfeited and recovered as part of suspected criminal proceeds. Most strategic analysis reports produced by the FIA were disseminated to the BPS.
172. The BPS and FIA meet on a regular basis to discuss disclosures and ensure that the FIA prioritises its analysis and disclosures to match the BPS' priorities. In these meetings, the BPS provides feedback to the FIA to highlight which disclosures have been escalated to ML investigations. This assists the FIA in determining the quality and intelligence value of its disclosures. The FIA also has regular meetings with the BMA and has a close working relationship with the Customs Department. Table 3.3 below shows the classification of SARs filed with the FIA. The information shows that ML involving the movement of cash is the predominant activity identified, followed by stand-alone ML. The Table also shows a progressive increase in SAR reports over the 2014–2018 period with a significant increase from 2016 to 2017 of 51.5%. The Assessors are of the view that this notable increase in SARs can be attributable to increased awareness associated with the various activities linked to the work on Bermuda's NRA and work conducted by the various CAs regarding engagement with reporting entities.

Table 3.3 SAR filings by classification of suspicious activity 2014 – 2018 (Oct. 5th)

| Suspected Offences | | Total No. of SARs linked to suspected offences | 2014 | 2015 | 2016 | 2017 | 2018 |
|--------------------------------|--|--|------|------|------|------|------|
| Money Laundering/Cash Exchange | | 1021 | 102 | 131 | 195 | 438 | 155 |
| Money Laundering | | 981 | 156 | 169 | 173 | 271 | 212 |
| Tax Offences | | 262 | 23 | 92 | 12 | 106 | 29 |
| Fraud | | 226 | 17 | 24 | 52 | 49 | 84 |
| Corruption/Bribery | | 115 | 26 | 20 | 25 | 23 | 21 |

| | | | | | | |
|--------------|-------------|------------|------------|------------|------------|------------|
| Total | 2605 | 324 | 436 | 457 | 887 | 501 |
|--------------|-------------|------------|------------|------------|------------|------------|

173. The case study below demonstrates the use of FIA information in support of the BPS' operational needs.

Box 3.2: Use of FIA information in BPS Operation

In 2016, the BPS conducted an investigation of a 48-year-old male drug addict and alcoholic with a history as a prolific offender involved in low level crime. He was recruited by his drug dealer to change Bermuda dollars to US dollars by opening bank accounts with the three main banks in Bermuda. He was the subject of bank SARs which were analysed by the FIA. As a result of a strategy meeting with the BPS it was agreed that a real time arrest was required to prevent further offending. He was apprehended in a bank in possession of BD10,000 cash which he was in the process of changing to US dollars. The investigation evidenced he had laundered nearly BD218,000 over an eighteen-month period. The subject was charged and convicted for the offence. He received a two-year prison sentence and the cash was forfeited.

174. The FIA makes disclosures to CAs, following the analysis of SARs where the information is identified as being relevant to the respective CA. These disclosures to other CAs (Table 3.4 below) can either be spontaneous or upon request. Written feedback is provided to the FIA from CAs on occasion but most times the feedback is verbal and discussed during scheduled meetings held monthly and quarterly. Statistics provided to the Assessors showed that 323 spontaneous disclosures to the BPS from the FIA triggered the commencement of 58 criminal investigations. These matters related to cash exchanges involving smurfs used by drug traffickers. The use of this information to conduct investigations demonstrates that it supports the BPS' operations. Further, as a result of the 323 Spontaneous Disclosures and other intelligence sources available, the BPS submitted 167 Incoming Requests for Information to the FIA which in turn resulted in an additional 108 Response Disclosures by the FIA. Typically, one BPS investigation may have at its core numerous FIA Disclosures which have been identified as the analysis reveals links between different subjects.

Table 3.4 Disclosures to the BPS and Other Competent Authorities from the FIA 2014 – 2018 (Oct. 5th)

| Disclosures disseminated to Competent Authorities | 2014 | 2015 | 2016 | 2017 | 2018 | TOTAL |
|---|------|------|------|------|------|-------|
| Bermuda Police Service | 91 | 106 | 87 | 55 | 46 | 385 |
| Customs | 1 | 1 | 3 | 0 | 3 | 8 |
| Bermuda Monetary Authority | 1 | 0 | 1 | 0 | 3 | 5 |
| Minister for Legal Affairs | 1 | 2 | 2 | 0 | 0 | 5 |
| Registrar of Companies | 0 | 0 | 0 | 2 | 0 | 2 |
| Total number of disseminations for years | 94 | 109 | 93 | 57 | 52 | 405 |
| SARS utilised in Disclosures | 240 | 426 | 447 | 258 | 317 | 1688 |

3.2.4. Cooperation and exchange of information/financial intelligence

175. Financial Intelligence is shared both laterally among law enforcement to law enforcement e.g. Customs and BPS and diagonally between CAs such as the BMA and law enforcement, the BPS and the FIA. CA's such as regulators and supervisors have demonstrated that they use financial intelligence to assist in the conduct of their functions such as inspections. This exchange of information in Bermuda is significant and is supported by various MOUs signed between the competent authorities (see list of MOUs at Table 2.1), and legislative provisions. As noted earlier, a CLO works directly within the FIA as an analyst on a full-time basis and thus provides the FIA with access to the Customs databases in real time. Likewise, the FIA can directly share intelligence with Customs. From 2014 – 2018 the FIA made 324 requests to Customs for information such as travel history; passport numbers and identification documents. Customs also shares information with the BPS through its JIU and the FIA through its CLO such as inbound and outbound currency declarations and seizures. Regarding TF, the FIA disseminated 6 domestic TF related intelligence reports to the BPS for investigation. (See. IO.10).
176. CAs have demonstrated that there exists a good working relationship between the FIA and the BPS particularly the Organised and Economic Crime Department (OECD). This relationship and cooperation are demonstrated through the number of request and disclosure of information between both entities and the meetings that are held between the agencies. The BPS routinely makes requests to the FIA in the course of its investigations for information on or from the following: FIs and/or to query if the FIA received any SARs on subjects of interest; identification of accounts; businesses; associates; addresses and contact information; MSB/account and ATM transactional activity inclusive of video footage; overseas requests – identify assets and accounts for confiscation; criminal activity or law enforcement intelligence; tracing and tracking of funds both domestic and internationally; and assistance in freezing of funds/assets for 72 hours utilizing the FIA's powers under s.15 of the FIAA.
177. Customs and the BPS also routinely exchange information. Customs provides the BPS with reports of cash and drug seizures, which assists in the development of profiles of subjects which can be used to develop cases. An example of the use of financial intelligence and information shared amongst CAs namely the FIA, BPS and Customs is demonstrated below at Box 3.3.
178. In April 2017, the BPS and BMA signed a MOU which provided a framework for the sharing of financial intelligence regarding regulated entities and activities. The BPS has since made requests for information which was provided by the BMA. Since August 2018, the BMA has been able to share BO information directly with the BPS. Prior to this, the FIA used its extensive intelligence gathering powers to obtain relevant information on BO from the BMA on behalf of the BPS. The passing of the Proceeds of Crime (Miscellaneous) (No 4) Act 2018 on August 10th, 2018 permitted the BMA to share BO information directly with the BPS.
179. The FIA requests information from the BMA such as details of all company and licence information; names of all associated real or legal persons; any and all other pertinent information including but not limited to application form(s), photographs, correspondence and KYC documentation. Information relating to the subjects contact with the BMA concerning incorporation of any company or obtaining of any licence is also requested and obtained.
180. The Joint Intelligence Unit (JIU) was created in 1992 and functions to supply Customs, the BPS and other LEAs with intelligence. It is staffed by officers from Customs and the BPS who monitor inbound and outbound passengers at all ports of entry. The JIU is tasked to detect and prevent the illicit cross border transportation of cash, and bearer negotiable instruments (BNIs). The JIU also has various other passenger monitoring and review functions; liaison and cooperation functions with bodies such as the World Customs Organization (WCO), the Caribbean Customs Law Enforcement Council (CCLEC) and US Customs and Border Protection (USCBP) daily. The CLO is also responsible for liaising between Customs and the FIA for the purpose of sharing intelligence/information. Reports of inward and outward

passenger declarations for currency and BNIs are entered into the FIA's goAML database by the CLO. This information is used by the FIA in the conduct of its operational analysis.

181. A Customs officer is permanently stationed in the BPS' National Intelligence Department which allows for the direct exchange of information between those two departments.

Box 3.3: Cooperation and exchange of information involving Customs, BPS and the FIA.

In October 2017 the CLO embedded within the FIA received an alert from the JIU office regarding the arrival of two foreign nationals (One Male, One Female). The male had previously visited Bermuda in 2016 and was on an Immigration lookout.

JIU were able to link the female by viewing the immigration declarations. Along with informing the FIA, JIU also disseminated this information to the BPS.

The CLO conducted an immediate analysis and notified the BPS of their arrival in Bermuda. At the request of the BPS, further information was retrieved and forwarded for their immediate attention. Further inquiries were also made with an overseas jurisdiction utilizing the Egmont Secure Website.

As a result of the prompt assistance provided by the JIU and FIA (CLO), the BPS was able to arrest and detain and charge the subjects with Conspiracy to commit theft by rigging ATMs. The Bermuda Magistrate court found the male defendant guilty and sentenced him to six months incarceration.

182. Regarding disclosures to the FIA which may assist with ML identification, since January 2018 the FIA, BPS and BMA have worked collaboratively with the BBA regarding the creation of a Joint Money Laundering Intelligence Task Force (JMLIT). The aim of the JMLIT is to further strengthen information sharing capabilities in real time. It is believed that this increased partnering with local banks will result in better quality disclosures from the financial sector consistent with the findings in the 2017 NRA. The JMLIT in February 2018 created a JMLIT Formation Group consisting of representatives from the BMA, FIA, BPS and BBA. The Group has formally met three times to develop the operational structure and guidelines that will govern the operations of JMLIT. A JMLIT joint Experts Advisory group led by a public/private experts' group within the task force is engaged at a higher-level strategic role and meets while the JMLIT Formation Group continues its work. This Group although in its early stages has begun to demonstrate its effectiveness. The Assessors were informed by the BPS that an emerging threat involving cyber-fraud resulted in financial loss to Bermuda companies amounting to approximately USD7.5M in a two-week period prior to one of the Group's meetings. However, following the Group meeting, the outcome was increased awareness within the banking sector and the sharing of non-confidential information that allowed the banks to assist in the prevention of further incidents of that kind.
183. Bermuda has demonstrated that CAs request, obtain and use financial intelligence and other relevant information in the course of conducting ML/TF and predicate offences investigations. There are a wide range of intelligence sources from which such information is obtained nationally and information is also actively sought internationally where applicable. Restrictions on the ability of CAs to acquire such information were not observed by the Assessors. Further there was no evidence to suggest such impediments to CAs ability to obtain financial intelligence and other information. CAs have good, established working relationships and as described are in various partnerships whereby representatives from some CAs are imbedded within each other's Units. This has facilitated smooth, seamless, real time access to relevant financial intelligence and other information which in turn is used to effectively facilitate the CAs execution of their functions

184. Bermuda has demonstrated that Financial Intelligence is routinely being accessed by CAs in the conduct of ML investigations and has also been provided for investigations in instances of suspected domestic TF matters. While the FIA is the primary source of this intelligence, it was observed that information is also obtained from a wide range of institutions and among CAs. Moderate improvements in the identification of the usefulness of intelligence and enhanced reporting across some sectors as highlighted in the recommendations is needed.

Overall conclusions on IO.6

185. **Bermuda is rated as having a Substantial level of effectiveness for IO.6.**

3.3. Immediate Outcome 7 (ML investigation and prosecution)

3.3.1. ML identification and investigation

186. ML investigations are conducted by the OECD of the BPS. This Unit specialises in the investigation of financial crimes, drug crimes, serious fraud, ML, cyber-crime, corruption and bribery. The OECD consists of 22 officers all of whom have been trained to conduct ML investigations. Basic financial investigation training is provided to all new officers upon joining the OECD. Specialist training undertaken by officers includes but is not limited to: Anti-Corruption and Bribery, Fraud Investigation, Criminal Investigations, Financial Investigation, Enhanced Financial Investigation, Advanced Financial Investigation, Certified Anti Money Laundering Specialist and Confiscation.

187. The primary methods for the identification of ML activities in Bermuda are through disclosures from the FIA, investigations of predicate offences, and human sources, such as suspects, victims and informants. Should another investigative department require information about a financial investigation, the OECD would be contacted, and would provide support in making any investigative applications such as Production Orders. ML may also be disclosed during investigations into other offences using financial investigation techniques, when carrying out proactive investigations, in cases involving suspects who directly benefit from criminal activity and through intelligence sources.

188. During the period 2014 – 2017 100 ML investigations were started based on information from the FIA, MLA requests and other sources (see table 3.5 below). These cases resulted in 18 prosecutions for which 14 persons were convicted. Further detailed in paragraph 195. It was noted by Bermuda authorities that due to an increase in violent crimes against persons during the relevant reporting period, law enforcement prioritized investigations and prosecutions of firearms and gang related cases. As a result, priority was given to existing ML investigations, and fewer new ML investigations were initiated. During the review period there were 46 requests for MLA in which Fraud, ML, Drugs, Bribery and other offences were identified. Three local investigations commenced as a result of MLA requests. Where it is discovered that there is a link that confirms suspicion or allegations of ML, the BPS takes the matter to the DPP who may apply to the Court for a restraint order. It was noted however that funds can only be restrained at the point of charge which is a limitation to the ability to prevent dissipation of funds while an investigation is being conducted. Financial information is included in case files that are prepared and submitted to the DPP for advice and charge approval if appropriate. In doing this, the DPP can more easily decide as to whether there is a case for a ML charge and look at whether a civil recovery route should be pursued by the AGC.

Table 3.5 ML Investigations initiated by source 2014 - 2017

| Year | No. of investigations started by FIA disclosure | No. of investigations started by other sources | No. of local investigations started by MLA Requests | No. of Information Gathering Orders sought | No. of ML prosecutions commenced | No. of offenders convicted of ML |
|---------------|---|--|---|--|----------------------------------|----------------------------------|
| 2014 | Total 32 | | | | | |
| | 15 | 16 | 1 | 68 | 4 | 2 |
| 2015 | Total 20 | | | 124 | 5 | 4 |
| | 3 | 17 | 0 | | | |
| 2016 | Total 24 | | | 138 | 6 | 3 |
| | 4 | 18 | 2 | | | |
| 2017 | Total 24 | | | 225 | 3 | 5 |
| | 12 | 12 | 0 | | | |
| Totals | Total 100 | | | 555 | 18 | 14 |
| | 34 | 63 | 3 | | | |

189. The Court of Appeal ruling in the matter of Cox [2012] Bda LR22 (March 22, 2012) confirmed that ML may be prosecuted as a standalone offence, affirming the BPS' history of investigating suspected ML when no specific predicate offence is apparent, but the criminal origin of the property can be inferred from all the circumstances.

190. All technical staff in the FIA have received ML training, with most having gained CAMS, ICA and ACFE certification. The DPP's specialist team is specifically trained in prosecuting ML matters and is adequately equipped to prosecute ML offences including complex cases and all members of the OECD have training in Proceeds of Crime matters. The Customs Department is under resourced and AML/CFT training has been limited and consequently, appropriate staffing with requisite training to respond to Bermuda's ML risk has been affected. Except for one sitting Judge attending one AML/CFT/CVE (counter Violent Extremism) training conference, the two Judges with expertise in relation to ML matters retired in mid-2018. The Judiciary has received limited ML training.

3.3.2. Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

191. Drug trafficking and Fraud were identified in the 2017 NRA as having high ML risk. The BPS Policy statement 0-4/002 speaks about investigating ML cases. The prioritisation of ML is achieved through the presence of a dedicated team of officers with specialist skills in the investigation of ML within the OECD. The DPP's Policy on Prosecuting ML Offences 2017 ensures that prosecutors are mandated to look for possible ML offences at charge approval whether or not such charges have been recommended by the police. The policy also requires that, where such decisions are made by the DPP, the case is brought to the attention of the relevant BPS and DPP teams for further action. Prioritisation of ML is achieved in the DPP through the formation of a specialist team within the DPP who are specifically trained in prosecuting ML matters. This specialist team is headed by a Senior Crown Counsel with expertise in prosecuting financial crimes, including ML. Of the DPP's staff compliment of 15 Counsel, 5 are part of the specialist team.

192. Given the risk rating of drug trafficking in Bermuda as 'High' and ML as Medium-high (2017 Risk Assessment), the number of prosecutions for ML where drug trafficking was the predicate appears marginal particularly when contrasted with the value of the drug market in Bermuda which was assessed at USD25M based on Police detections and the 364 separate drug cases prosecuted which resulted in

326 convictions (2017 NRA). Ten drug matters were prosecuted for ML and convictions were obtained in 6 cases which are further described below.

193. Regarding other crimes, Bermuda's authorities have indicated that the 2013 NRA had a higher emphasis on drug trafficking, while the 2017 NRA placed more emphasis on corruption. This has resulted in the difference in cases recorded based on the shift in risk. However, there can be improvement regarding consistency of the prosecution of higher risk cases. The 'High' threat rating assessed for fraud, corruption and bribery is not reflected in the number of prosecutions for this offence. However, while there were no prosecutions, the Assessors were satisfied that corruption matters are being investigated and were provided with evidence of several matters reflecting high level ML and complex domestic fraud as part of ongoing investigations which were being progressed towards prosecution. The Assessors take note that the preparation of high-level corruption cases for presentation before the courts take considerable time; along with the inherent sensitive nature of the offences. Another factor that impacts the lack of cases for corruption and bribery may be the increase in violent crimes against the person during the relevant reporting period. Bermuda authorities recorded that due to the increase in violent crimes against the person during the relevant reporting period, law enforcement prioritized investigations and prosecutions of firearm and gang related cases. As a result, priority was given to existing ML investigations, and fewer new ML investigations were initiated.

3.3.3. Types of ML cases pursued

194. The BPS has conducted investigations of complex ML matters. While there has been an improvement in the number of investigations commensurate with the risk profile these cases were not advanced to the point of prosecution at the time of the onsite. The result was that the number of prosecutions in line with the risk profile was low. Assessors were provided access to the confidential case files and can confirm that they involved complex ML matters requiring collaboration with both domestic and foreign authorities. While the matters are being pursued in a steadfast manner, the Bermuda authorities noted that by their very nature these matters which consist primarily of corruption/bribery take a long time. As stated above, the Assessors note that these matters can take a considerable time. However, in some cases upon completion of the investigation there appears to be a long period before a decision to charge is forthcoming. The BPS has sought assistance from external law enforcement partners to pursue high – profile, complex ML investigations by drawing upon expertise in specialist areas such as cybercrimes to decipher enhanced encryption methods used by suspects. While Bermuda aids foreign counterparts regarding ML and other matters, there have been no prosecutions for ML in relation to foreign predicate offences. The Case study below (Box 3.4) provides an example of the type of ML cases pursued.
195. Data provided by Bermuda shows that during the period 2013-2018 (Oct.5th) there were 27 prosecutions for ML offences which consisted of 16 stand-alone ML cases, 10 for drug trafficking and 1 for fraud. From the 10 drug matter convictions were obtained in 6 of them for the drugs, 2 for other offences, 1 acquittal and 1 nolle prosequi. Custodial sentences ranged from 3 months (2 cases) where the ML value was USD2,538 and USD23,885, confiscation of the ML amount was obtained in both cases; 12 months (1 case) USD11,928 ML value and confiscated; 16 months (1 case) ML value USD114,943.96 and confiscated; 2 years 6 months (1 case) ML value USD179,240.46 confiscation pending; and 3 years imprisonment (1 case) respectively. For the fraud, the sentence was 2 years imprisonment and confiscation of USD19,000. Of the 16 standalone ML cases convictions were obtained in 9 for the ML, 1 for other offences, 1 is pending appeal, 1 nolle prosequi, 2 acquittals and 2 are ongoing. Custodial sentences ranged from 2.5 months (1 case) ML value USD9,387 and confiscated, 3 months (2 cases), 1 was suspended for 12 months ML value USD 43,053 USD35,343 confiscated and the other suspended for 24 months ML value USD10,500 and confiscated; 18 months (3 cases) ML value USD 41,000 and confiscated, ML value USD 97,382, ML value USD142,000 and confiscated respectively; and 3 years (1 case) ML value USD 482,118.41. These statistics provide evidence that there is capacity within Bermuda to investigate and prosecute standalone ML.

Box 3.4: Type of ML cases pursued

The subject, a dual citizen of a North American and a Central American country, was alleged to have been involved in a black-market currency exchange scheme which involved the misuse of his dual nationality to make fraudulent declarations to both governments regarding his transporting currency across the border. The subject deposited USD4M in the North American country investment product and another USD3M in an investment product in Bermuda, both of which are believed to be the proceeds from his illegal currency scheme. As a national of the North American country, he was prohibited from investing in the Bermudian investment product. In 2012, the FIA received a request from the North American country's FIU, relating to the subject and specifically seeking information about the alleged investment of suspected criminal proceeds in Bermuda.

In late 2014, the BPS had discussions with the North American authorities who confirmed that they were proceeding with charges against the subject. However, following his arrest and seizure of his assets by US state authorities, the subject met an untimely death before the criminal case could conclude. After his death, the FIA received notification from the Bermudian financial institution that the subject's widow was attempting to redeem the entire investment held in Bermuda. The FIA prevented the redemption and informed the BPS of the widow's actions.

The BPS began an investigation and in January 2015, after which a file was submitted to the DPP for review. Given the death of the subject, Counsel in the DPP exercised the discretion not to commence a prosecution. The matter was then submitted to the AGC in its capacity as the Enforcement Authority (EA) for consideration. Counsel for the EA contacted the overseas attorneys for the widow to advise of their intention to take legal action to confiscate the proceeds. Counsel for the EA also contacted the Office of the Criminal District Attorney, in a US state for information in relation to the disposition of the North American seizure and was advised that it had been settled by consent. The US authorities informed the AGC that they were not going to attempt to seize the funds held in Bermuda.

In February 2016, after numerous conferences with Counsel for the wife, the EA entered into a Consent Order which saw the EA retain 10% of the funds in the local account with a total value of USD303,000.

3.3.4. Effectiveness, proportionality and dissuasiveness of sanctions

196. In Bermuda, penalties for ML related offences range from 5 years or a fine of BD50,000 to imprisonment for 20 years or an unlimited fine or both. The range depends on whether there is a summary conviction or a conviction on indictment. Based on the statistics that were provided to the Assessors, there were 27 ML prosecutions, with 78% of the trials resulting in a conviction while 89% of those convictions resulted in immediate incarceration. In the 2 cases where the defendants did not immediately go to prison, their sentences were suspended. The periods of imprisonment have ranged from 2.5 months to 3 years' imprisonment with confiscation granted in most instances. The nature of the offences has primarily been drug trafficking, followed by standalone ML. The combination of sanctions and the lack of travel²¹ has resulted in no recidivism for persons who have been convicted for ML. Based on the lack of recidivism, the Assessors are of the view that the sanctions have been dissuasive. They are also proportionate with sanctions provided for other types of serious crimes in Bermuda. Notwithstanding that the maximum sentence is 20 years imprisonment, the sentences imposed can be viewed as appropriate.

3.3.5. Use of alternative measures

197. Bermuda can impose non-conviction-based sanctions including forfeiture (s.51 of the POCA). During the relevant period there were 34 successful applications for forfeiture in the Magistrate's Court. Most of these applications were granted by Consent, with few being contested. Another option is the use of

²¹ In addition to the sanctions, Bermuda cited a further disincentive through the fact that persons convicted of crime in Bermuda are subject to limitations on travel to other countries from Bermuda, as a result of being denied entry. Bermuda noted that this was particularly inhibitive as persons using commercial air travel must do so through gateways to only 3 countries, any one of which may deny entry to persons travelling from Bermuda with criminal convictions.

‘civil recovery orders’ (s.36X of the POCA), which was used 9 times during the period under review. The 9 civil recovery actions were initiated by the Enforcement Authority (EA) with 8 of these actions resulting in successful recoveries amounting to BD4,724,186.21 with one matter pending. The Assessors found that the application of non-conviction-based sanctions in Bermuda is actively pursued and has been an effective tool in the recovery of significant sums where civil recovery has been applied

198. The civil recovery regime has also been successfully implemented. During the review period (2013-2016) BD2.4M from drug trafficking was confiscated. Case Study (Box 3.5) demonstrates the application of alternative measures namely civil recovery in Bermuda where a criminal charge was dismissed.

Box 3.5: Civil recovery, cooperation between the DPP and EA.

The subject arrived in Bermuda on a flight from Canada in 2015. There was intelligence suggesting he was collecting the proceeds of crime. Officers visited his hotel and found BD700,000 and USD126,000. It was suspected that the funds were the proceeds of drug trafficking and that the subject was hired to move the money. The BPS sent 12 Egmont requests to assist with their investigations and there were also police to police cooperation. The suspect was charged with possession of criminal property and bailed to appear before the Magistrates Court for a Preliminary Inquiry Hearing. When the criminal charge was dismissed, the EA immediately filed an ex parte application for a freezing order for \$826,000. The full amount was recovered. It should also be noted that the DPP advised that the difficulty in this matter was that the preliminary inquiry hearing was listed within a month of the arrest and therefore there was insufficient evidence to place before the Court at that time with overseas inquiries ongoing. Preliminary Inquiries have subsequently been abolished, which should ensure that such a difficulty with the criminal proceedings does not occur in the future.

199. Based on the data provided and the evidence presented during the onsite, the Assessors are of the view that Bermuda is actively pursuing the investigation and prosecution of ML with various matters before the courts and other more complex ML matters in progress. Additionally, Bermuda has secured ML convictions and imposed sanctions that are considered to be both proportionate and dissuasive. Bermuda’s relevant CAs are using the legislative means available to investigate and prosecute ML matters. As the primary investigative authority, the BPS is responsible for the investigation of ML in Bermuda. Bermuda has demonstrated a legislative framework that permits the BPS to carry out this function. The BPS and the DPP have developed policies regarding the investigation of ML. The NRA identified 9 predicate crimes as having a medium to high ML risk in Bermuda. Although some ongoing investigations have begun to be addressed in line with the risk profile the cases have not reached the prosecution stage that would satisfy the Assessors that investigations and prosecutions were being identified and aligned with the country’s ML risk profile. This finding has revealed that although the BPS and the DPP have demonstrated that they are conducting other ML investigations and prosecutions, when placed in context of Bermuda’s position as an IFC, the results thus far are inconsistent with the findings of the NRAs conducted and the AML/CFT policies in place.

Overall conclusions on IO.7

200. **Bermuda is rated as having a Moderate level of effectiveness for IO.7.**

3.4. Immediate Outcome 8 (Confiscation)

201. Bermuda has demonstrated its ability to use a wide range of powers to recover the proceeds of crime including civil recovery, which has also been used in matters where the original criminality was conducted outside the jurisdiction. Bermuda has restrained and confiscated the proceeds of crime as a result of international requests for legal assistance. The ability to restrain funds and prevent their

dissipation at an early stage in domestic criminal investigations is however hampered by the fact that such restraints can only be obtained where the Court is satisfied that a person is to be charged and not prior to this. The power to recover the benefit of the crime including property of equivalent value using confiscation orders has not been adequately utilized. There have only been 3 restraints for approximately BD300,000 and two confiscations for \$55,000 during the four-year period. Given the identified threat to Bermuda, as an IFC, (albeit with most financial services relating to insurance) in relation to the proceeds of foreign predicate offences, the results particularly in relation to domestic investigations are not consistent with such risks. The increased focus on cross border, complex ML matters as identified in IO.7 has not yet lead to an increased recovery in the proceeds of crime, nor to an increase in the amount of funds restrained. Customs is under resourced and requires adequate policies to address their AML/CFT role.

3.4.1. Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

202. Bermuda has demonstrated its commitment to recovering the proceeds of crime through documents issued by various CAs. The primary CAs involved in the confiscation of proceeds and the forfeiture of instrumentalities and other property are the BPS, the DPP, Customs and the AGC as advisor to the Enforcement Authority. The BPS is responsible for identifying and tracing assets that may have been derived from the proceeds of crime and investigates all matters that ultimately lead to the confiscation of the proceeds of crime, whether or not a conviction has been obtained. The DPP is responsible for conviction-based domestic confiscations and the AGC, acting on behalf of the Enforcement Authority (the Minister of Legal Affairs is, in law, the designated Enforcement Authority), is responsible for the civil recovery or non-conviction-based forfeitures. The AGC as the central authority for MLA matters, is also responsible for handling the confiscation of criminal proceeds as a result of MLA requests from foreign countries.
203. The BPS' policy document SSI Number 04/002 (Financial Investigations (Proceeds of Crime, Anti Money Laundering and Terrorist Financing) (undated) promotes its commitment to ensuring that financial investigations become the cornerstone of all major proceeds generating cases and TF cases thus assisting in the tracing and ultimate confiscation of assets in accordance with the national strategy. Further, the BPS' Strategic Plan 2016 – 2018, which is a public document, underlines the commitment to ensure that the OECD is adequately staffed, and that the BPS will enhance their ability to use local asset confiscation and forfeiture laws to take away illicit profits from criminals. All OECD officers have been trained in financial investigations, while specific officers have received specialized training in relation to restraint, asset forfeiture, asset recovery and confiscation. The OECD utilises a 'checklist' in relation to the enquiries to ensure that the relevant financial checks have been conducted and all available information and intelligence utilized.
204. The DPP has demonstrated its commitment to recovering the proceeds of crime through recent policies and strategies. The Asset Recovery Strategy, (finalized in October 2018), and the DPP's Action Plan 2018 – 2020 (finalized 1st June 2018) highlight that asset recovery is an essential tool for prosecutors who consider asset recovery in every case in which a defendant has benefited from criminal conduct. The DPP's Action Plan 2018 – 2020 states that priority will be given to the confiscation/forfeiture of the proceeds of crime and the DPP will ensure that adequate efforts are made to trace, identify and legally pursue assets of equivalent value where appropriate. The DPP's policy on the prosecution of TF offences (September 2018) also refers to applications for forfeiture as a matter of priority, however there were no forfeitures regarding TF offences. The EA and the DPP have demonstrated their commitment to work together and recover the proceeds of crime through civil asset recovery where criminal prosecutions are not feasible by way of the Joint Civil Asset Recovery Policy of August 2017. The DPP's 'Policy on Enforcement of Confiscation Orders' (September 2018) formalizes the policy to be pursued following the enactment of a statutory framework for the enforcement of the payment of

confiscation orders and cooperation between the court and the DPP to ensure that enforcement takes place swiftly²². No examples were provided, and the Assessment Team was unable to assess the effectiveness of the policy, although it should be noted that it seems that in most cases it is the amount that was originally seized or restrained which is pursued and therefore enforcement would not be relevant. The Assessors therefore expect that the implementation of the policy will become more relevant as more complex cases are pursued by the DPP utilising confiscation orders with benefit figures, applying lifestyle assumptions and pursuing property of equivalent value.

205. All proceeds of crime recovered and realised are paid into the confiscated assets fund (CAF) that is provided for under the POCA. Monies from the CAF are generally used to support Bermuda's AML/CFT functions, including the financing of TF and ML investigations and civil recovery training. Between 2015 and July 2018 a total of USD 4,168,221 was received by the EA, NAMLC, the BPS, the Registrar of Companies (used to assist in building its Compliance Unit) and Customs. The BPS had also recently received approval for two additional financial investigators from the UK, paid for by this Fund. Further, the DPP used funds to establish a case management system. Thus, the disbursements have been aimed at strengthening operations and it is recognised that such confiscated asset funds assist in motivating the relevant CAs.
206. In order to implement the above policies training is essential to ensure that proceeds can be traced and confiscated. Whilst training has been undertaken by the DPP and BPS, as with other AML/CFT areas, the Judiciary has not benefited from confiscation or civil recovery training, except for one sitting Judge attending one AML/CFT/CVE training conference. The two Judges who had expertise in relation to confiscation and civil recovery matters retired in mid-2018. Therefore, if more complex matters were to come before the court the Judges hearing the matters would not have benefited from the relevant proceeds of crime training.
207. For both the DPP and the BPS, the recent written policies, stated to formulate previous unwritten policies, to pursue the proceeds of crime have not resulted in increased amounts being recovered, particularly in relation to foreign predicates established as being high risk in the NRA. As demonstrated in table 3.6 and the previous discussion, the amounts being restrained and subject to confiscation orders over the period 2014 – 2017 are low. Further, outgoing international requests have not been sufficiently utilized to trace and recover assets although in the more complex cases whilst limited in number, requests for a substantial amount of material have been sent. There have also been no restraints in relation to the more recent investigations, some of which have been ongoing for some time but have not yet resulted in a charge, due to the fact that a 'settled intention' to charge is required (see below). Further, it seems that there was previously insufficient focus on pursuing the benefit of the criminal conduct and property of equivalent value for example, through the use of the lifestyle provisions in the POCA, which have not been used.
208. The civil recovery policy came into force in August 2017, however, no civil recovery cases were pursued in 2017, although generally civil recovery is utilized to recover the proceeds of crime, including where there are foreign predicates. It should also be noted that the freezing of funds for civil recovery can be obtained without the impediment which applies to criminal restraints although this power could not be used where a criminal investigation was ongoing.

3.4.2. Confiscation of proceeds from foreign and domestic predicates, and process located abroad.

(a) Criminal investigations leading to recovery of proceeds of crime

²² S.26A of the POCA

209. The DPP has obtained two Confiscation Orders that were granted by the Courts during the four-year period 2014-2017 and involve proceeds recovered from the commission of domestic predicate offences of ML and fraud following the conviction of the defendant. The first order, granted in 2015, was for USD35,343 (stand-alone ML) and the second was in 2016 for USD19,900 (fraud). In the 2015 matter, the benefit amount was found to be USD 43,053 with USD 35,343 being recoverable.
210. The confiscation and provisional measures processes are hampered by the fact that a RO cannot be obtained in relation to domestic applications until the court is satisfied that a person is to be charged for an offence. Bermuda has only obtained 3 ROs for domestic criminal investigations between 2014 and 2017. These related to offences of drug trafficking, theft and ML. The first restraint was discharged as the Judge believed the sentence itself was sufficient punishment. The limited ML training for the judiciary referred to in IO.7 also extends to a lack of restraint and confiscation training. The second restraint was discharged following an acquittal and the third RO remains in place pending confiscation as the defendant has been convicted.

Table 3.6 Restraints obtained in relation to criminal investigations 2014 – 2017

| Date | Nature of investigation | Amount anticipated to be confiscated | Items restrained | Outcome |
|---------|---|--------------------------------------|---|---|
| 9/2/16 | Drug trafficking | US\$2500 | Motor vehicle | Defendant convicted no order made |
| 3/10/17 | Theft | US\$56,284.14 | All assets | Defendant acquitted pending appeal |
| 24/1/17 | Money Laundering Drug Trafficking Predicate | US\$240,153.10 | All assets including a motor vehicle and two apartments | Defendant convicted pending POCA confiscation |

211. As can be seen from Table 3.6, the number of restraints (3) obtained in relation to criminal investigations between 2014 and 2017 was very low, particularly considering the risk and context of the jurisdiction, thus hampering the prevention of the dissipation of assets. Whilst it was suggested that the Supreme Court could use its inherent jurisdiction under s.12 of the Supreme Court Act, 1905 to apply the principles of English case law and order repatriation of restrained assets, this has never been attempted and would not resolve the issue of preventing the removal of the funds from the jurisdiction. If a RO were in place, then a removal action would amount to a contempt by a restrained person and any third party on notice of the RO. It should be noted that even though larger more complex investigations have begun, no restraints were obtained in those matters, even in 2018, as they had not yet reached the stage where the Court could be satisfied that charges were to be laid. This means that during complex investigations, which may take a year or more (some of these investigations had been going on for more than two years) the dissipation of the assets cannot be prevented.
212. The BPS has the power to apply to forfeit items seized at the time of the offence; rewards and instrumentalities under s.48A and 51 of the POCA as well as s.37 of the MDA. Table 3.7 shows the amounts seized under each of these forfeiture powers. During the period under review cash was the only instrumentality seized. However, the Authorities have demonstrated other instrumentalities were seized in the past²³ The cash forfeitures under s.48A of the POCA listed below relate to 4 stand-alone ML offences, 6 ML offences with the predicate involving drugs and 1 ML offence with the predicate of conspiracy. Property seized may also be forfeited under s.51 of the POCA if, on the balance of

²³ in 2010 s.48A of the POCA was used in relation to the forfeiture of a boat and satellite phones.

probabilities, it is found to derive from crime or intended for use in its commission, (as this is a civil forfeiture power its remit has now moved to the EA). S.37 of the MDA provides for forfeiture in respect of money or other property used in the commission of drug-related offences or received or possessed as a result of such offences and is also available upon acquittal.

Table 3.7 Recovery of the proceeds of crime by other means 2014 - 2017

| Power used | Amount recovered | Number of cases |
|--|--------------------|-----------------|
| S. 48A of the POCA forfeiture following ML conviction | US\$433,433 | 11 |
| S. 51 of the POCA forfeiture POCA following s. 50 seizure (non-cross border) | US\$ 104, 863 | 10 |
| S. 37 of the MDA forfeiture | US\$247,559 | 6 |
| Total | US\$785,855 | 27 |

213. The AGC is the Central Authority in relation to international cooperation requests. Bermuda has legislation in place to obtain RO and register external Confiscation Orders as a result of international requests for assistance. The law also specifically provides for up to 50% of the proceeds to be retained by Bermuda (or such other amount as deemed appropriate). Between 2014 and 2017 the Central Authority applied for and obtained 4 ROs; 3 of them in 2014 and 1 in 2017, totalling USD 5,263,971. Two of these Orders were at the request of one requesting jurisdiction, and two on behalf of another. These matters were ongoing at the time of the onsite visit. Therefore, Bermuda demonstrated it was able to respond and assist regarding these requests and obtain the restraints sought.
214. In addition to the four ongoing requests, there were two MLA requests that were realized during the period reviewed by the Assessors. Regarding the first, USD 2,445,827.18 was restrained in 2013 on behalf of the requesting state and an external confiscation order was registered and granted by the Bermuda Court in 2015 for the full amount with 50% of the total amount confiscated retained by Bermuda. The second RO in 2013, which was also on behalf of the same country was later pursued as a civil recovery matter and resulted in an Order being made in 2016 for just over USD 2,762,065.58, with 50% of the total amount recovered retained by Bermuda. Therefore, Bermuda has demonstrated its ability to realize assets restrained on behalf of other jurisdictions.

Box 3.6: International request resulting in civil recovery.

Following FIU exchanges in relation to a PEP involved in an ML investigation involving an investment account with a Bermudian FI (balance US\$2.7 million) an MLA was received along with supplementary requests, however the Court ruled that a Warrant in Rem was not a final Order for forfeiture. The BPS also commenced an investigation, which resulted in a file being submitted to the DPP and the DPP decided not to prosecute the FI but rather refer it to the EA so they could proceed with an action for civil recovery of the funds under s. 36X of the POCA. These proceedings were successful, and the funds were recovered and subject to asset sharing.

215. The case above and the other responses to international requests for restraint, confiscation and other orders and assets sharing demonstrate Bermuda's ability to use restraint and confiscation powers on behalf of requesting jurisdictions in international cooperation matters. The Assessors also noted that Bermuda was able to use a request for international cooperation to begin civil recovery proceedings.

The Assessors have therefore concluded that where international requests are received, which relate to the restraint or confiscation of assets within Bermuda, the AGC can and has demonstrated its powers to obtain these.

216. As noted in IO.2, there are only a limited number of outgoing requests and therefore the recovery of proceeds abroad has not been fully demonstrated.

Civil Recovery

217. In addition to the freezing action taken in 2013 resulting in the civil recovery in 2016 referred to above, the EA has commenced actions using their civil recovery powers to freeze and recover property under s.36X of the POCA on 8 occasions during the period 2014 – 2017, as demonstrated below.

Table 3.8 Civil Recovery amounts frozen 2014 - 2017

| Year | Case type | Amount frozen | Amount recovered | Amount returned | Foreign or domestic criminal activity | Disposition of case |
|--------------|--------------------------------------|-----------------------|-------------------------|-------------------------|---------------------------------------|------------------------------------|
| 2014 | Fraud, ML | US\$3,600,000 | Nil – case discontinued | US\$3,600,000 Released | Foreign | Predicate state took jurisdiction. |
| 2015 | Obtaining deception by | US\$3,030,000 | US\$303,000 | US\$2,757,000 Returned | Foreign | Consent Order |
| 2015 | Obtaining deception by | US\$3,634,836 | US\$50,000 | US\$3,584,836 Returned | Foreign | Consent Order |
| 2015 | Proceeds of Crime – drug trafficking | US\$826,000 | US\$826,000 | 0 | Domestic | Judgment |
| 2015 | Proceeds of Crime – drug trafficking | | US\$340,231 | US\$42,455 (legal fees) | Domestic | Consent Order |
| 2015 | Proceeds of Crime, ML, Fraud | | US\$52,554 | 0 | Domestic | Consent Order |
| 2016 | Proceeds of Crime, drug trafficking | US\$33,770 | US\$33,770 | 0 | Domestic | Judgment |
| 2016 | ML, obtaining by deception, fraud | US\$5,178,575 | US\$356,565 | US\$4,822,010 | Foreign | Consent Order |
| TOTAL | | US\$16,313,181 | US\$1,962,120 | US\$14,806,301 | | |

218. The Table above shows that there have been 7 civil recovery order applications (one of the original freezing orders was discontinued as the predicate state took jurisdiction, the retention of the funds having been ensured by Bermuda), 5 of which were obtained by consent and there were two contested matters in which there were Judgments. In relation to the two “obtaining by deception” matters, the amount of funds established as the proceeds of crime, were less than initially thought. In relation to the final ML matter where almost USD5M was returned, this related to an Interpol warrant for smuggling. However, evidence was not forthcoming from the country, which had issued the warrant despite an MLA request. Therefore approximately 90% of the original amounts frozen were released. It is also noticeable that 5 of the 7 civil recovery orders related to 2015 and there were none in 2017. Only half (four) of the original 8 freezing orders related to foreign offending behaviour, in line with Bermuda’s risk profile. The total amount recovered as a result of actions commenced since 1st January 2014 was USD1,962,120. The amount frozen is therefore significantly higher than the amount recovered, however this does not appear

to be due to a deficiency in the system but rather in relation to the amount originally identified and, in the case of the MLA request, a lack of response from the requested jurisdiction.

219. The DPP and EA's shared policy on civil asset recovery ensures that there is liaison between the two offices in addressing criminal matters and civil recovery orders. Where it is not feasible to secure a conviction, or a conviction has been secured but no confiscation or forfeiture order is made the policy mandates that the DPP liaises with the EA to recommend that it should consider using the non-conviction-based powers available under the Act. The level of cooperation was demonstrated to the Assessors onsite and an example of this cooperation is contained below.

Box 3.7: Civil Recovery.

In 2015 two Caribbean/American tourists visited a local bank to deposit almost BD300,000 in Bermuda currency (equivalent of USD300,000) into a business account, to which neither had previously been connected. An immediate disclosure was made by the bank's MLRO and BPS officers visited the bank. The men were arrested, and the cash was seized. A further USD43,000 was seized from the defendants' hotel room. Enquiries were made with the US law enforcement agencies and Immigration and Customs. While a decision was made not to pursue criminal charges, the Enforcement Authority used civil forfeiture powers to forfeit the cash and USD342,583 was forfeited by consent.

3.4.3. Confiscation of falsely or undeclared cross-border transaction of currency/BNI

220. Only regularly scheduled commercial airlines arrive and depart the LF Wade International Airport via the USA, Canada and the UK. There are also 3 main ports of entry for passenger and cargo ships. There is a pre-clearance facility at the Bermuda Airport with USA departures being monitored by the United States Customs and Border Protection (USCBP) in conjunction with the JIU. It is the responsibility of Customs to monitor the movement of cash and other BNI across the border.
221. Travellers carrying more than USD10,000 in currency or its equivalent must submit a declaration form. Customs use x-ray, intelligence and physical examination to detect the movement of undeclared currency or other negotiable instruments.

Table 3.9 Customs currency declarations

| Year | Amount declared incoming | | Amount declared outgoing |
|------|--------------------------|------------|--------------------------|
| | \$Canadian | \$US | \$US |
| 2015 | 54,000 | 892,209.50 | No collection of data |
| 2016 | 11,000 | 190,679.95 | 10,804 ²⁴ |
| 2017 | 0 | 69,614.96 | 1,464,915.71 |
| 2018 | 0 | 163,269.03 | 1,231,061 ²⁵ |

²⁴ This is not a full year as data collection began in 2016

²⁵ Up to October 5th, 2018

222. Currency exceeding BD10,000 (or the equivalent in any foreign currency, which amounts to USD10,000) that is not declared and where there are no grounds to suspect the currency is the proceeds of crime is seized as liable to forfeiture and restored subject to payment of an appropriate monetary penalty. The Revenue Act at ss.16(5) and 86 provides for the seizure of undeclared, undervalued or wrongly described/classified goods. During the period 2014 to 2017 a total of BD385,127 was levied in administrative penalties in relation to the evaded duty of BD339,833 in 1,233 cases. The figures do not include the airport arrivals prior to 2016 as there was no IT system available at that time to collect the data.

Table 3.10 Customs outgoing currency/BNI seizures

| | Number of detentions | Amount detained | Number of detentions where no further police action | Forfeited under POCA (/RA penalty) | Pending | Total forfeited |
|--------------|----------------------|--|---|------------------------------------|----------|--------------------|
| 2014 | 7 | BDA \$140, 758 US\$54,189.03 | 5 | 2 | 0 | US\$151,674 |
| 2015 | 4 | US\$47,993 GBP 345 Gold bars \$9,352.24 JMD 8,800 | 1 | 3 | 0 | US\$47,993 |
| 2016 | 8 | BDA\$51,800 US\$114,342 CAD\$100 | 2 | 4 | 2 | US\$71,395 |
| 2017 | 4 | US\$23,100 GBP2,765 | 3 | 1 | 0 | US\$7,000 |
| Total | 23 | BDA\$192,558 US\$239,624.03 CAD\$100 GBP3,110 Gold bars \$9352.24 JMD8,800 | 11 | 10 | 2 | US\$278,062 |

Table 3.11 Customs incoming currency/BNI seizures

| | Number of detentions | Amount detained | Number of detentions where no further police action | Penalty / forfeiture | Pending | Total forfeited |
|------|----------------------|--|---|----------------------|---------|-----------------|
| 2014 | 3 | BDA\$15,930 US\$11,967 | 3 | 0 | 0 | 0 |
| 2015 | 4 | BDA\$1,200 US\$23,733 CAD\$505 GBP140 | 3 | 0 | 1 | 0 |

| | | | | | | |
|--------------|-----------|--|----------|----------------------------------|----------|----------------|
| 2016 | 2 | GBP 9,960 BDA\$60,000 cheque | 0 | 1: Penalty under s.16(5) RA | 1 | \$1,000 |
| 2017 | 3 | BDA\$50 US\$7,269 Counterfeit US\$ 460 | 2 | 1: Forfeited under s. 51 POCA | 0 | \$1,097 |
| Total | 12 | BDA\$17,180 US\$42,969 CAD\$505 GBP10,100 | 8 | 2 | 2 | \$2,097 |

223. Bermuda demonstrated that there was a total of 23 detentions in outgoing matters and 12 in incoming matters over a four-year period. Customs indicated that all 35 matters were referred to the police but in one matter this was referred back, the individual had failed to declare that she was in possession of an amount over the threshold, enquiries were conducted, and an administrative penalty was imposed. Between 2014 and 2017, 4 of these matters progressed to prosecution, 2 defendants were found guilty and sentenced to 9 months and 18 months imprisonment respectively, 2 were pending trial at the time of the onsite despite the seizures occurring in 2016, a delay of some two years. Based on the data presented, most of the cash was returned. The Authorities indicated that in these cases the cash was found to be legitimate. The number of detentions and particularly the detentions leading to prosecution is therefore low.
224. Customs reported during the onsite interview that there was no AML/CFT policy specific to Bermuda but that they were guided by the WCO. However, the Customs Department – Counter Terrorist Financing policy came into effect on 4th October 2018 (the day before the end of the onsite examination). The Assessors were therefore unable to ascertain the impact of this new policy. However, it was noted the policy states the role of Customs in relation to counter Terrorist Financing Strategies and identifies the roles of other agencies, with whom liaison may be necessary. This may therefore ensure that in future all Customs’ officers have their attention drawn to these matters and are aware of their obligations.
225. Customs has had a policy in place in relation to civil penalties, forfeiture and restoration, since 2014 and lists the relevant civil penalty even in cases of aggravated dishonesty which includes acting with intent to deceive. It also includes offences involving premeditation, organization and conspiracy. There is negligible reference to criminal prosecutions although it would allow for the Collector of Customs to proceed civilly against offenders in cases where the DPP does not wish to proceed criminally or if a criminal prosecution has failed. However, it is not stated that these actions should be considered first. The Policy relates to the Revenue Act and there is no reference to POCA or any policy by Customs and its role in the detection of cross border movement of falsely/not declared currency and BNIs in relation to ML. Whilst Customs stated that all detentions are reported to the BPS, for a decision as to how to proceed before the currency is released, this was not located in any policy document and did not assist in relation to the identification and seizure process, at which stage the BPS would not be involved. However, Customs has turned over a small number of matters to the BPS for investigation and prosecution under POCA as outlined above. Customs is under resourced with just 173 staff in place out of its staff compliment of 237 (which includes about 23 civilian staff). This has an impact on the deployment of resources particularly for AML/CFT/PF matters and hampers the ability of Customs to deal with these matters.

Box 3.8: Forfeiture and Seizure of Cash

In 2016 an American citizen, who had been on vacation in Bermuda was stopped in the US pre-clearance processing. She was questioned and subject to a random search. Approximately \$40,000 (mostly in Bermudian currency) was detected concealed in various items. The subject was handed over to JIU and the BPS was notified. The BPS arrested the subject and seized the cash. As a result of intelligence, the BPS investigated and revealed that a second party was involved. At the trial for conspiracy to remove criminal property the co-defendant was acquitted, the subject was convicted and sentenced to 18 months imprisonment and the cash was forfeited. Intelligence lead to the arrest and subsequent conviction of a further individual for ML offences, with a three-month sentence suspended for 2 years and the seizure of \$10,650 in cash.

3.4.4. Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

226. For the period 2014 to 2017, domestic criminal investigations resulted in the recovery of USD789,577. Civil recovery resulted in the recovery of \$1,962,120, four of these orders related to foreign predicates. Additionally, \$5,207,892 was recovered as a result of two earlier international requests (one of which was obtained through domestic civil recovery), 50% of which was returned to the requesting jurisdiction. In relation to detentions carried out by Customs these resulted in forfeiture by way of criminal measures approximately \$280,000. Therefore, a total of \$8,239,589 was recovered over a four-year period, primarily through civil recovery and as a result of international requests.
227. As an IFC, Bermuda has identified the threat arising from the proceeds of foreign predicates being laundered in Bermuda. Bermuda's primary sector is the insurance sector, specializing in catastrophe reinsurance, therefore the risk of use and flexibility of these being likely vehicles for the movement of funds is lower than in other IFCs. Bermuda's NRA identified as high threats of money laundering in Bermuda the following: drug trafficking, international fraud, international tax crimes and market manipulation/ insider trading taking place overseas and corruption/bribery (with the primary factor being the activities in this area occurring outside of Bermuda). However, the low value of the confiscation results provided thus far are not consistent with that risk. They are however more consistent with the risk identified from drug trafficking, as there have been seizures and some confiscations resulting from the prosecution of these matters although primarily linked to cash seized at the time of the offence. The recent increased focus on cross border crime and corruption has not yet lead to further ROs, which is largely attributable to the late stage at which these can be obtained. Therefore, both the lack of previous cross border investigations consistent with the risk profile of the jurisdiction combined with the legislative difficulty, has meant that even in those cases under investigation at the time of the onsite restraints had not been obtained and that the confiscation results are not consistent with the identified ML/TF risks. However, the use of civil recovery powers as well as the actions taken as a result of international requests for assistance have been more consistent with the risk profile.

Overall conclusions on IO.8

228. **Bermuda is rated as having a Low level of effectiveness for IO.8.**

4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

4.1. Key Findings and Recommended Actions

Key Findings

Terrorism financing investigation and prosecution – TF offence (Immediate Outcome 9)

- a) There is no evidence of terrorism or TF occurring in Bermuda. This is consistent with the assessment of TF risk which assessors found to have been a detailed process as described in IO.1.
- b) The absence of any TF investigations or prosecutions correlates to the medium-low assessment of Bermuda's TF risk. The risk of TF remains mainly in the international financial sector as opposed to TF generated domestically.
- c) Access to a range of information sources such as Interpol, the FIA and international law enforcement cooperation and interviews conducted suggests that the ability to detect matters involving suspected TF particularly by the BPS is reasonable.
- d) TF specific training has not been provided to Customs, the FIA, DPP and the Judiciary.

TF related targeted financial sanctions and NPOs (Immediate Outcome 10)

- a) Bermuda has implemented their TFS Framework.
- b) There has been a recent delegation (September 2018) from the Governor to the Ministry of Legal Affairs regarding the submission of information on names on the sanctions list in relation to freezing actions taken. Stakeholders are aware of the new obligations. Prior to this delegation the Office of NAMLC assisted the Governor on an ad hoc basis.
- c) Bermuda has taken steps to strengthen the oversight of the NPO sector in order to safeguard NPOs from abuse, following the enactment of the Charities Act in 2014 and amendments to the said Act in 2017 to satisfy the enhanced international standards which requires a risk-based approach to NPOs.
- d) Bermuda has a reasonable understanding of the TF risks associated with NPOs and applies a targeted risk-based approach to mitigating those risks. The Registrar General (RG) conducted a reasonable assessment of NPO sector and sustained outreach and useful guidance on risk and risk mitigation
- e) Bermuda has not had any instances of seizing TF assets or instrumentalities, which is consistent with its risk profile.
- f) The registration and risk-based supervision of NPOs are ongoing.
- g) The RG entered into an MOU with a registered charity to assist with providing training & education for the NPO sector and to foster collaboration and support volunteerism.

(Immediate Outcome 11)

- a) TFS concerning the UNSCRs relating to PF are generally implemented without delay.

- b) There is a good understanding amongst FIs and DNFBPs of their obligations in relation to TFS, in terms of checking against those who appear on the list (including the designated persons on the PF lists), although the screening is not specific to PF or those who may be deliberately evading TFS.
- c) There is an adequate level of supervision and monitoring by competent authorities of TFS in relation to screening against the UN designated persons and entities although not specifically in relation to PF.
- d) Communications of changes in designations are not always conducted without delay. On rare occasions, OFSI may take three or four calendar days when designations occur on Fridays, Saturdays or on public holidays, however, this is a minor deficiency but one upon which Bermuda is reliant.
- e) No funds or other assets regarding PF have been identified, frozen or reported.
- f) The establishment of the new FSIU will enhance Bermuda's PF regime, however the effectiveness of the new Unit could not yet be determined.

Recommended Actions

Immediate Outcome 9

- (a) Periodic training in CFT should be instituted for CAs such as Customs, the DPP, the FIA and the judiciary; and others (e.g. the BMA) where applicable, to, enhance CAs' ability to detect TF that supports and enhances the BPS investigations of TF and the application of the relevant and connected Acts.

Immediate Outcome 10

- a) Bermuda should continue to ensure that NPOs understand their TF risks.
- b) Bermuda should continue the registration of NPOs and implement appropriate countermeasures in line with RBA supervision.
- c) The FSIU should improve the mechanisms for communicating changes in designations to FIs and DNFBPs.

Immediate Outcome 11

- a) Coordination and cooperation by CAs in Bermuda should be enhanced regarding PF to ensure that entities and individuals acting on the behalf of or at the direction of designated persons and entities are identified.
- b) The FSIU should improve the mechanisms for communicating changes in designations to FIs and DNFBPs.
- c) Substantial outreach should be conducted to FIs and other entities to explain the TFS obligations as it relates to ownership and control by designated persons and the area of PF specifically.
- d) Bermuda should review trends and typologies, specific PF factors relevant to Bermuda risk factors, entities and persons of concern both nationally and internationally and issue guidance/red flag indicators.
- e) Guidance should be produced on the circumstances where customers and transactions are more vulnerable to be involved in PF activities.
- f) Ensure Customs has enough resources and training in relation to PF.
- g) Ensure that formal and informal communication and cooperation channels are understood and fully made use of and that information is shared with counterparts from relevant countries as appropriate.

229. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5–8, 30, 31 and 39.

4.2. Immediate Outcome 9 (TF investigation and prosecution)

4.2.1. Prosecution/conviction of types of TF activity consistent with the country's risk-profile

230. Bermuda has not encountered terrorism and, based on an assessment of international TF typologies conducted during its NRA, assessed a medium-low risk to being used for TF. The Assessment team has concluded that the Authorities understanding of the jurisdiction's TF risk is good as extensively detailed in IO.1.
231. Consistent with Bermuda's understanding of its TF risk profile, no formal MLAT requests were received in relation to TF. The BPS has shared information on an informal police-to-police basis. An example was seen in relation to an investigation into Bermudian nationals in the UK, in which the BPS was able to aid UK law enforcement authorities in the form of providing historical background information on subjects, which was not available to the investigating authority.
232. There have been no prosecutions or convictions for TF in Bermuda consistent with its assessed risk profile. However, should such occur the DPP is the competent authority for the prosecution of such matters. While it was noted that there has been specialist training in ML matters it is believed that TF specific training can enhance these competencies. No TF cases have been tried in the courts. The judiciary can benefit from TF training.

4.2.2. TF identification and investigation

233. Notwithstanding Bermuda's low risk rating for TF, Bermuda's Authorities have demonstrated their serious approach to any matter that could potentially have a terrorism or TF element. The BPS acting on information and intelligence has conducted investigations (based on statistics provided and interviews conducted) into a small number of potential TF cases. However, after initial inquiries with overseas partners and others, the investigations did not reveal any actual instances of TF. Since 2014 the BPS has received 10 alerts broadcast by Interpol's Counter Terrorist Directorate in the form of "All points lookouts". Regarding the 10 "All points look-outs" from Interpol, the BPS conducted investigations into all subjects consisting of checks against the FIA's intelligence database, the JIU and BPS database searches and no connection to Bermuda or TF activity was found. Additionally, the FIA disseminated 6 domestic TF related intelligence reports to the BPS for investigation. Upon completion of their investigation, the BPS determined that there were no links to terrorism or TF. This outcome is consistent with the findings in the Bermuda TF NRA, which assessed the risk of TF in Bermuda as medium-low. The BPS has trained 5 officers dedicated to TF investigations (four in the OECD and one in Special Branch). These officers received specialised CFT training from the UK's Metropolitan Police in 2017.
234. Bermuda's FIA identifies TF through various mechanisms, namely SARs which may disclose a connection to TF activity, Intelligence requests from foreign FIUs and those shared by the BPS and CAs. The information received is checked against sanctions lists and the FIA's database. During the review period 2014 – 2018 (Oct. 5th) the FIA received 14 SARs where TF was the suspicion. Upon conducting its analysis and inquiries these matters were not found to be true cases of TF meaning that no link to TF was found. Where information revealed possible overseas interests the FIA made requests to its foreign counterparts via Egmont to support police investigations. None of those responses to the requests revealed any TF. Examples of identification and investigation of TF matters is demonstrated in the case study example below. Based on the actions taken, the Assessors are of the view that Box 4.1

demonstrates that Bermuda authorities were able to expeditiously establish that there was no credible TF activity being undertaken. All intelligence gathered by the authorities in Bermuda was provided to the relevant foreign authorities. The Assessors are of the view that the BPS and the FIA both have the willingness and the ability to identify and investigate TF matters.

Box 4.1: SAR - wire transfer flagged

In September 2016, a 40-year-old subject who had been resident in Bermuda for 15 years attempted to make two wire transfers from his chequing account at a local bank to a bank in Country X.

The bank red flagged the transactions due to the following concerns: Country X's reported links with TF, the transactions were out of character with the customer's usual transaction pattern and the receiver was an unknown individual. As a result, the bank delayed the wire transfers and filed a SAR with the FIA.

The FIA notified the BPS and conducted urgent financial enquiries with the other local banks where it was discovered that within two days the subject transferred funds to another account held at a different bank in Bermuda and used internet banking to send the funds to a bank in Country X.

The FIA informed the BPS of the bank's concerns that this may be a transaction linked to TF. A strategic meeting was expedited, and an agreed set of actions compiled. Both parties expedited enquiries and reached out to international law enforcement agencies and foreign FIUs in the UK, USA and Canada to establish if there was any known intelligence regarding the subject and the receiver of the funds.

An intelligence profile was completed on the sender and his partner which established they were persons of good character with no known criminal or terrorist associations. International enquires could not establish the identity of the receiver of the funds due to the limited information available and the lack of an address link.

The Authorities were also able to establish the legitimacy of the source of the funds and their legitimate use overseas, which was the purchase of property in the sender's home country.

4.2.3. TF investigation integrated with –and supportive of- national strategies

235. To ensure that TF investigations are dealt with in line with overall AML/CFT strategies, the DPP, BPS and FIA each have policies relating to TF. The DPP's policy focuses on the prosecution of TF related offences, while the BPS' "Combating TF Policy" ensures that all matters relating to TF are given the highest priority and are adequately resourced. The FIA's policy on TF relates to the analysis of SARs and providing an urgent TF incident response which gives the highest priority to TF matters.
236. Bermuda's Central Authority has the power to exchange information on TF if requested, however they have not received any such requests. As noted previously the BPS has assisted with international investigations.
237. There is also a National Combating Terrorist Financing Strategy Policy, which is based on the current terrorism and TF legislation. The purpose of the strategy is to reduce the threat to Bermuda and internationally from TF. The continued assessment of TF threat forms part of the policy and sets the framework for broadening the understanding of TF risk, identifies the lead agency for TF investigation and response to TF intelligence and activity. It also covers the requirement for training and professional development of CAs and the requirement that they in turn develop policies relevant to TF. It sets out the responsibilities of CAs which in turn guides the CA's policies. Copies of corresponding policies for CAs were reviewed which were aligned to the overarching National Strategy Policy. Bermuda has created and demonstrated a robust CFT framework across competent authorities.

4.2.4. Effectiveness, proportionality and dissuasiveness of sanctions

238. In the period under review, there have been no TF prosecutions and convictions. This was consistent with Bermuda's TF risk profile but as a result, the Assessors could not determine whether sanctions or measures applied against natural persons convicted of TF offences were effective, proportionate and dissuasive. However, it must be noted that appropriate sanctions exist under the ATA legislative framework in accordance with R. 5.

4.2.5. Alternative measures used where TF conviction is not possible (e.g. disruption)

239. Bermuda's legal framework for TF allows the use of alternative measures where a TF conviction is not possible. S. 15 of the CFTA provides measures such as the forfeiture of terrorist cash in civil proceedings. Account monitoring orders (and production orders) may be used under s.16 of the CFTA to investigate any further criminality during an investigation. Under s.40 of the British Nationality Act 1841, there is a provision to deprive a person of their British Overseas Territory Citizenship if it is satisfied that the deprivation of said citizen is conducive to the public good thus disrupting the travel movements of such a person.

240. Bermuda has demonstrated that TF matters are given high priority for investigation notwithstanding the 2016 TF NRA threat rating of medium-low and overall risk rating of medium-low. There is a high level of understanding of the jurisdiction's TF risk by LEAs particularly the BPS through which all TF investigations are conducted. Training for CFT while being undertaken by the CAs should be increased for some such as Customs who may be able to provide vital cross border information or intelligence to support the BPS in terrorism and TF matters. Notwithstanding, the lack of investigations and prosecutions for TF in Bermuda is consistent with the assessed TF rating of medium-low. Bermuda has however demonstrated that it has the capacity to identify and investigate TF should such matters arise, particularly within the capacity of the BPS. Concomitantly this lack of investigations and prosecutions presents challenges in assessing to a full extent the requirements of this IO.

Overall conclusions on IO.9

241. **Bermuda is rated as having a Substantial level of effectiveness for IO.9.**

4.3. Immediate Outcome 10 (TF preventive measures and financial sanctions)

4.3.1. Implementation of targeted financial sanctions for TF without delay

242. Bermuda implements UNSCRs by extension from the UK through Orders in Council. Where Bermuda is not specified in an Order in Council, Bermuda utilizes its International Sanctions Act and Regulations to bring into force domestically the relevant provisions. The Afghanistan (United Nations Measures) (Overseas Territories) Order 2012 and the Isil (Da'esh) and Al-Qaida (Sanctions) (Overseas Territories) Order 2016 and the International Sanctions Regulations 2013 accordingly bring into force in Bermuda the relevant regimes. The Policing and Crime Act 2017 and the related Overseas Territories Order allow the automatic and immediate extension of specified UNSCR designations pending the EU Council Regulations and prevents previous delays, which had occurred. Therefore, once a designation is made by the United Nations Security Council in relation to either of UNSCR 1267/1989 or 1988, it is immediately in effect in Bermuda for a period of 120 days or until it is superseded by the extension of the EU Council Regulations, whichever occurs first.

243. EU and UK designations under UNSCR 1373 apply automatically in Bermuda in accordance with the Terrorist Asset-Freezing Act 2010 (Overseas Territories) (Amendment) Order 2017 (TAFOTO). The

Governor of Bermuda is the CA that has the responsibility for proposing persons or entities for designation under this Order, in consultation with the UK Secretary of State. No such designations have been made or proposed. The Governor may also make a designation at the request of other countries provided the statutory test in TAFOTO is met.

244. As of 25th September 2018, certain functions were delegated from the Governor to the Minister of Legal Affairs (MOLA) including obtaining evidence and information, issuing and revoking licenses, serving as a reporting depository, authorising the exercise of powers in relation to customs powers and investigations. The delegation of certain functions (licensing) to MOLA is aimed at increasing efficiency and a higher level of awareness of delegations by FIs and DNFBPs, with the FSIU as a dedicated team to deal with TFS matters.
245. Prior to the establishment of the FSIU, the Governor held the responsibility for TFS and prior to mid-2018 there was little relevant training or experience in the area of TFS within the Governor's Office (although there was access to the UK's resources and expertise if required). Previously the Office of NAMLC was located in MOLA (2013 – 2017) and assisted the Governor on an informal, ad hoc basis as required from 2014-2018 including in relation to license applications. Bermuda had during this period liaised with the UK in relation to recommendations regarding Orders in Council relevant to the Overseas Territories, which were implemented. The Working Group on Sanctions had established as far back as 2012 that a delegation of the Governor's functions was recommended in order to improve effectiveness because the Governor's office did not have the required capacity or resources. However, this delegation to the FSIU did not occur until September 2018 (during the onsite visit). The current FSIU comprise two persons (the Head and Legal Counsel); both of which have had relevant training (July 2018) with additional training to be provided going forward. Following this delegation, guidance notes and FAQs were published on the FSIU website and a procedures and policies document is now also in place. The Head of the FSIU reports to the Minister in relation to financial sanctions matters. The FSIU's budget is BD339,000, which is primarily for salaries but also contains an allotment for training. Additional staff are also expected to be added to the Unit. The delegation process as noted above was said to have solidified contacts with the UK and provided a direct contact with counterparts at OFSI.
246. The Assessors were informed that the FSIU had already engaged in discussions with the BMA regarding outreach sessions to the industry. The FSIU has also collaborated with the BMA regarding the contents of alerts about TFS on the BMA's website. While the FSIU does not have the power to issue fines for breaches of compliance (only criminal sanctions are possible), the Unit can liaise with the relevant supervisor for the possibility of imposing fines for any breaches. The Assessors found that all stakeholders were aware of the delegation of TFS functions to MOLA and its FSIU and agree that this change has brought added value to Bermuda's TFS regime.
247. FIs and DNFBPs must, upon knowledge or reasonable cause to suspect that a person is a designated person or has committed an offence under the legislation, immediately freeze funds and/or economic resources of a designated person and immediately report it to the FSIU. FIs and DNFBPs must also complete a Compliance Reporting Form (as of September 2018). The FSIU is responsible for monitoring compliance with the various financial sanctions regimes and for assessing suspected breaches. The FSIU has the power to refer cases to LEAs for investigation and potential prosecution. Given the recent establishment of the FSIU (during the onsite) its effectiveness in this regard could not be assessed. Supervisors also have enforcement powers under their respective laws in relation to monitoring TFS compliance and enforcement (see IO.11 discussion).
248. The official web address for the list of designated persons and restricted goods is www.gov.bm/international-sanctions-measures specified in the International Sanctions Notice of 2017. This provides links to the UK consolidated list of persons and restricted goods. Sanctions updates are contained on the government webpage with the Financial Sanctions Guidance and FAQs. The Guidance states that the FSIU strongly advises all regulated entities to subscribe to OFSI's Consolidated List

(paragraph 150) and information on subscribing to the consolidated list is also provided (paragraph 30). Regarding financial sanctions notices, MOLA through the FSIU has, since May 2018, sent e-mails to supervisors, who then disseminated to their supervised entities. MOLA distributes the updates on the same day it receives them unless the day the updates are received is a weekend or bank holiday (on rare occasions). Supervisors must then disseminate to their supervised entities, with any delays in redistribution caused by the day on which the e-mail is received. Assessors were informed by supervisors that dissemination would generally occur upon receipt of the notification from MOLA (again dependant on when the MOLA email is received). This is an improvement from the previous system whereby the Office of NAMLC's subscriber list was used to disseminate information via e-mail to those who had subscribed to it, which was entirely voluntary.

249. Accordingly, BMA e-mail messages to the regulated entities they supervise using the BMA's e-mail notification system, and they also post the sanctions list to the BMA's website. For the BMA, subscription is voluntary but is considered during any inspection and reported as a deficiency under the POOCR. The FIA shares the information received from MOLA/FSIU with the Registered Dealers via e-mail notification. The Board shares the information received from MOLA/FSIU with the MLROs of all regulated professional firms via e-mail notification. The SoRE sends information bulletin notifications to real estate brokers and agents via e-mail notification, which provides information on the TFS updates and relevant webpage links and reminds real estate brokers of their compliance obligations. Updates are also placed on the SoRE's page on the government portal. Prior to May 2018, NAMLC's subscriber list was used to disseminate information. From 2015 to 2017, 68 notifications were placed on the international sanctions page on the Government portal (previously on the NAMLC website) in relation to Afghanistan, ISIL Da'esh and Al-Qaida, and the UK Terrorist Asset Freezing etc Act 2010.
250. During the on-site, the Assessors discussed TFS with a wide range of FIs and DNFBPs who all appeared to have a good understanding of the TFS process and its implementation to the extent that names of individuals and entities on the list would be screened for and detected. The larger entities including TCSPs utilize software and screen directly against the UN lists every 24 hours. Some smaller DNFBPs screened only weekly and would therefore be dependent upon e-mail notifications of changes to designations, which may not therefore be acted upon without delay due to the delays in the e-mail dissemination outlined above and the fact that not all supervised entities may be receiving the e-mail notifications. However, given that this only related to some of the smaller DNFBPs, the effect would not be significant.
251. A detailed discussion in relation to the supervision and monitoring of TFS obligations by supervised entities is contained at IO.11. The identification of false positives, methods in place to confirm these and the facts that funds were frozen pending such confirmation further demonstrated to the Assessors the use of the screening tools and a good understanding of the screening processes although it was unclear how many of these related to TF TFS. In all the cases identified, the false positives were reviewed and clarified within the FI/DNFBP without the need for alerts.
252. TFS are implemented without delay, however the mechanism of communication to FIs and DNFBPs is not yet completely streamlined. While most institutions including FIs screen frequently, some smaller DNFBPs only screen weekly and therefore the notification channels are particularly relevant to them (albeit they are of less materiality in the context of Bermuda).

4.3.2. Targeted approach, outreach and oversight of at-risk non-profit organisations

253. Bermuda has undertaken significant work to identify which NPOs are at risk of abuse for TF. The RG is the CA for the regulation of NPOs and has progressively worked with NPOs to ensure that the NPO sector is not abused and proactively applies targeted and proportionate measures to such NPOs which are identified as high risk.

254. Bermuda has taken steps to strengthen the oversight of the NPO sector in order to safeguard NPOs from abuse, following the enactment of the Charities Act in 2014 and amendments to the said Act in 2017 to satisfy the enhanced international standard which requires a risk-based approach to NPO's. Pursuant to the 2014 Charities Act, registered charities must provide annual reports on their activities in addition to financial information on the receipt and disbursement of Charity funds. In early 2017, the Registry General conducted a mapping exercise of all registered charities for the purpose of identifying higher risk charities, as informed by risk criteria developed from the findings of the 2016 TF NRA. This was the first phase enabling the development and implementation of the Registry General's risk based supervisory programme. From the mapping exercise, 33 charities were selected for an enhanced desk-based review, from which 12 charities were identified as high risk for TF and therefore the Registry General included these 12 on their onsite programme for 2018. The selected charities submitted policies and procedures and the results of the review were used to inform the on-site component of the Registry General risk based supervisory program for 2018.
255. In addition, given the period within which the Charities Act was amended, the Authorities have demonstrated that they made progress in ensuring that outreach to raise awareness of the vulnerability of NPOs being abused by terrorist and terrorist organisations was conducted, the risk-assessment methodology and the implementation of risk based supervisory programme for the NPO.
256. Bermuda has the appropriate law and regulations and enforcement powers (Charities Act, the Charities Regulations and the Charities AML/CFT Regulations) in place to safeguard NPOs from abuse. The RG conducted outreach to raise awareness of the vulnerability of NPOs being abused by terrorist and terrorist organisations. This outreach took the form of the issuance of GN on NPOs' AML/CFT obligations. In addition, training sessions were provided to charities' COs on a quarterly basis. NPOs interviewed during the onsite visit confirmed that training was provided by the RG, the FIA and the CP. Based on the feedback provided to the Assessors, the outreach seemed to have benefited the NPOs as it increased their understanding of the TF risk and the mitigating factors.
257. A holistic approach was adopted in response to the findings of the 2016 NRA, which highlighted the potential risk of TF for NPOs that were not registered with a regulated supervisory entity. These entities included privately funded trust and companies limited by guarantee that were not historically required to be registered as charities and were risk profiled by the RG, based on an assessment of their TF vulnerability. The assessment was carried out based on certain criteria, which are recognised by the FATF as vulnerability factors for NPOs which included:
- i. the charities' volume of international/cross-border activities (foreign sources of funding or where a charity had overseas branches, or was itself a branch of an overseas entity);
 - ii. whether there was substantial economic impact in Bermuda (as determined by asset size, revenue and expenditure);
 - iii. exposure to international extremism – based on the geographic locations of the sources or beneficiaries of their charitable funding; and
 - iv. failure to submit AML/CFT compliance documentation.
258. This enabled the RG to determine that high risk charitable entities existed within the sector. Donors can range from family members, to private individuals, to private or public corporations. However, the NPO only accepts donor-advised funds or gifts. Cash donations are not accepted. In addition, the Assessors noted that no public fundraising is conducted and that all donations are submitted online. Source of funds and source of wealth must be submitted with donations. Moreover, all donations over \$7,500 are considered high risk business and are subject to EDD. The Authorities have policies and procedures in place for receiving monetary donations.

259. The RG reviews the NPOs' policies and procedures as part of the desk-based review and determines which NPO should be reviewed further as part of the onsite process. Following the desk-based review; charities assessed as high risk are subject to ongoing compliance/onsite visits by the RG. These onsite inspections were to ensure that registered charities are in compliance with the requirements in the Charities Act 2014 and Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations, 2014 which require the designation of a Compliance Officer and relevant training be provided to the Officer; the reporting of suspicious transaction to the FIA; and that the record keeping requirements and due diligence requirements are adhered to. During the on-site visit, one NPO interviewed confirmed that an on-site examination was conducted on their organisation and the results of the examination were helpful in assisting with the identification of their weaknesses and areas of vulnerabilities.
260. In 2017 the RG commenced a compliance review of all registered charities to identify non-compliant charities so that appropriate action could be taken. As a result of this review several dormant charities were deregistered. Moreover, civil penalties have been imposed on 6 charities for non-compliance (failure to submit Annual Reports and financial statements within the specified timeline) totalling an amount of USD1,800. Penalties under the Charities (AML, CFT and Reporting) Regulations 2014 include a fine of up to USD750,000 and/or two years imprisonment (except for failure to provide an annual report for which the maximum fine is USD10,000). The sanctions are considered dissuasive. At the time of the onsite, the transitional period for the registration of privately funded charities that were not exempt was still in effect and therefore the registration process for those charities was in progress. The amendments to the Charities Act came into effect on August 10th, 2018 with a 3 months transitional period.
261. The RG has 375 registered charities. There are 95 charitable trusts with licensed TSPs; 2 of which are included in the 375. The remaining charitable trusts registered with the RG have individual trustees although in some cases they may be administratively supported by a licensed trust company. Further 3 of the 375 charitable trusts are in fact corporate bodies founded by Private Act. The information remained outstanding regarding the exact number of trustees who were managing registered charitable trusts that are not managed by licensed TSPs. It should be noted that 'trusts' in relation to a charity, means the provisions establishing it as a charity and regulating its purposes and administration, whether those provisions take effect by way of trust or not (s.2 of the Charities Act 2014). Only those charitable trusts, which are trusts as defined under the Trust Act would be subject to the requirements of that law. Charitable trusts must register with the RG (unless they are privately funded and either have one of their trustees as a licensed trustee or are administered by a licensed CSP) and are subject to the requirements of the Charities Act and Regulations. There are some requirements in relation to monitoring relationships and confirming identities these relate to cases where 'there is a reasonable risk of ML or TF'. The sector as a whole represented about USD200M in assets and capital. Following the amendment to the law in August 2018 charities which are privately funded are also required to register, with 3 months to do so. Therefore, the figures provided did not include these additional charitable trusts.
262. The RG has undertaken 12 onsite reviews of charities during the four-year period reviewed by Assessors. The RG also conducted an in-house risk review of all registered charities. The RG has issued civil penalties for non-compliance and de-registered some charities for non-compliance. Every charity must have a policy to address the Bermuda Sanctions regime and appropriately screen relevant parties. As stated earlier, an example of an onsite report was provided where the RG had noted that the charity did not have a policy to address the Bermuda Sanctions Regime. The RG noted the situation as 'high priority' with a required action that the charity must have a policy to address the Bermuda Sanctions regime and appropriately screen relevant parties.

263. The RG entered into an MOU with a registered charity as part of its work to promote and advocate for an effective and sustainable Third sector by providing training & education, fostering collaboration and supporting volunteerism.
264. The Authorities informed that the registered charity is a much-used resource for the charities sector and the relationship provides an effective way of building on their services for the betterment and enhanced education of the charity sector in Bermuda.

4.3.3. Deprivation of TF assets and instrumentalities

265. Bermuda has a legislative framework in place to address the deprivation of TF assets and instrumentalities both in relation to TF investigations and TFS. Bermuda has not had any instances of seizing TF assets or instrumentalities either by way of TF investigation or as a result of TFS. There have been no investigations of TF which could have led to the confiscation of such assets, which is not inconsistent with Bermuda's assessment of its TF risk, and there has been no identification of assets subject to TFS.

4.3.4. Consistency of measures with overall TF risk profile

266. Bermuda's NRA was posted to their Website in 2018 and reflects the overall threat level for TF risk as medium-low with TF risks in specific sectors ranging from low to medium., There are no known or suspected acts of terrorism or TF in Bermuda and thus data from within Bermuda was not available to conduct the TF assessment to measure effectiveness. Nevertheless, Bermuda proactively used global TF typologies to conduct the assessment which focused on direction of funds, sources of funds and channels of funds as discussed earlier in the MER. These measures are generally consistent with its overall TF risk profile. In addition, international cooperation conducted by relevant competent authorities in Bermuda assisted with the reduction of possible TF, in turn preventing possible terrorist activities.

Overall conclusions on IO.10

267. **Bermuda is rated as having a Substantial level of effectiveness for IO.10.**

4.4. Immediate Outcome 11 (PF financial sanctions)

4.4.1. Implementation of targeted financial sanctions related to proliferation financing without delay

268. Bermuda is not a transit point for ships travelling to North Korea or Iran. However, Bermuda is exposed to the risk of PF as an IFC, particularly considering its large insurance and reinsurance sector.
269. As stated in the discussions on IO.10 Bermuda implements UNSCRs relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing via the UK which implements the relevant EU Council Regulations. Orders in Council extend these to Bermuda with the use of the International Sanctions Act and Regulations. The combination of the 2017 Policing and Crime Act in the UK and the corresponding Overseas Territories Order mean that once an Order is made by the UN Security Council in relation to the DPRK (UNSCR1718 (2006) and its successor resolutions) it is immediately in effect in Bermuda for a period of 120 days or until it is superseded by the extension of the EU Council Regulations, whichever occurs first.
270. The Policing and Crime Act and subsequent Order do not extend to the Iran sanctions set out in UNSCR 2231 (2015) and the Joint Comprehensive Plan of Action (JCPOA) annexed to that Resolution. However, these are in force via the Iran (Sanctions) Overseas Territories) Order 2016 and the Iran (Sanctions) Regulations. Designations made under the existing Order and amendments to the Order come into effect automatically. When a subsequent order is made this can be brought into effect in

Bermuda the same day as in the UK. Further, if UN designations were to be implemented again following the JCPOA, an amendment could be made to the Linking Regulations to the existing Policing and Crime Act, which would take effect in Bermuda under the Policing and Crime Act (Financial Sanctions)(Overseas Territories) Order 2017. Once the OT Order and Linking Regulations were in place the ensuing Orders made by the UN Security Council would come into effect immediately in Bermuda as is the case for the sanctions in respect of the DPRK.

271. As stated above in the discussion on IO.10, prior to the establishment of the FSIU, the Governor held the responsibility for TFS and prior to mid-2018 there was little relevant training or experience in the area of TFS or specifically PF (although there was access to the UK's resources and expertise if required). One Counsel and the National Coordinator (from 2015) had relevant training and experience and assistance was provided in relation to reviewing applications and drafts for licenses and providing a written opinion 3 times under the Iran Sanctions Regime between 2013 and 2016 (and 4 times under other sanctions regimes). Bermuda was also proactive in raising issues regarding the discrepancy in relation to the JCPOA in relation to Iran, whereby sanctions remained in force in Bermuda between January and March 2016 while they had ceased to be in force in the UK and the EU. Proactive intervention was also made by Bermuda regarding the 120-day time frame for ensuring that the temporary measures under the Policing and Crime Order allow for sufficient time for the Order to come into force in the Overseas Territories. These efforts and measures are relevant to demonstrating that Bermuda had some experience and activity in this area.
272. The Working Group on Sanctions had established as far back as 2012 that a delegation of the Governor's functions was recommended in order to improve effectiveness because the Governor's office did not have the required capacity or resources. However, this delegation to the FSIU (see IO.10) did not occur until September 2018 (during the onsite visit). Following this delegation, guidance notes and FAQs were published on the FSIU website and a procedures and policies document is now also in place. The Head of the FSIU reports to the Minister in relation to financial sanctions matters. The FSIU's budget is USD339,000, which is primarily for salaries but also contains an allotment for training. Additional staff are also expected to be added to the Unit, currently comprising the Head and Legal counsel who have both had relevant training (July 2018). The delegation process as noted above was said to have solidified contacts with the UK and provided a direct contact with counterparts at OFSI.
273. The FSIU Guidance Notes state that Customs is responsible for implementing trade sanctions and embargoes. Customs however does not have a good understanding of PF and have themselves identified the need for further training and resources in this area. This may impact compliance with proliferation related sanctions and the sharing of relevant data even though Bermuda is not generally a transit point for ships travelling to North Korea or Iran.
274. The PF Working Group that has been established as a result of the National Action Plan is reviewing the current mechanisms in place regarding PF and will be considering the effectiveness of national coordination efforts. The Working Group was established in recognition of the need for a coordination committee in relation to Bermuda's obligations in relation to the UN PF sanctions and to agree the roles of all relevant stakeholders in the public sector. The PF Working Group met for the first time in September 2018. The agencies were due to report back approximately a month later with updates on their current activities in relation to PF, and a determination as to the cooperation that was needed. Further, legislative amendments were made in August 2018 in order to add to gateways for the FIA, BMA and others to report to the Governor and the Governor's delegated authority and others on TFS matters. It is anticipated that this Working Group will assist in ensuring that those evading sanctions are identified.
275. As previously indicated, the official web address for the list of designated persons and restricted goods is www.gov.bm/international-sanctions-measures specified in the International Sanctions Notice of 2017. This provides links to the UK consolidated list of persons and restricted goods. The previous 2013

Notice contained the web address <http://www.namlc.bm> as providing links to the UK Treasury consolidated lists of persons constituting the target of financial sanctions and relevant guidelines and the consolidated list of restricted goods. Changes were usually posted to the portal within 24 hours of receipt of the relevant notice from the UK's HM Treasury. Bermuda placed 40 notifications on the Government portal from 2015 to 2017 in relation to the DPRK and Iran. Sanctions updates are now contained on the FSIU's government webpage.

276. The process for the dissemination of notices by the FSIU to supervisors and by the supervisors (BMA, FIA, the BA Board and SoRE) to their supervised entities is noted above in the discussion on IO.10. The issue with delays for smaller DNFBPs in receiving the notice as a result of delays in receiving the e-mails from their supervisors still exists as the smaller DNFBPs are reliant on the notifications in order to update their own screening. It is therefore in this context that the delays become relevant albeit that these smaller entities are less material in the Bermuda context in relation to monitoring for sanctions.

4.4.2. Identification of assets and funds held by designated persons/entities and prohibitions

277. Bermuda has not identified any funds or other assets belonging to a designated person or entity in relation to PF and consequently no reports have been made to the Governor or the FSIU. Bermuda is planning on taking the additional step of conducting a review of relevant institutions to establish whether any assets are in fact held.
278. Freezing obligations are applicable to all natural and legal persons in Bermuda as outlined above. Freezing obligations apply to all types of funds and the regulations prohibit making available directly or indirectly funds or economic resources for designated persons or for their benefit. The obligations under the Orders in Council brought into force under the International Sanctions Act apply to all persons in Bermuda with only FIs having a reporting obligation to the Governor. In order to impose similar reporting obligations on DNFBPs, an amendment to the International Sanctions Regulations was made, which came into force for each of the DNFBP sectors on 17th September 2018, thus ensuring they must also report.
279. As indicated in IO.10, as of 25th September 2018, certain functions were delegated from the Governor to the Minister of Legal Affairs. While the Governor maintains the role of designations, following the designation of natural and legal persons entities and bodies must supply the FSIU as soon as possible with the information they are mandated to provide under the Orders including the nature and amount or quantity of any funds or economic resources held for the designated person. The FSIU is now the central point to collate any such information regarding any actions taken in relation to TFS.
280. The Minister responsible for Justice has an additional power under s.2B(2) of the ATA to issue a direction to an AML/CFT regulated FI or insurer if the Minister reasonably believes that a country is involved in the development, production, delivery or development of nuclear, radiological, biological or chemical weapons, which poses a significant risk to the national interests of Bermuda. This power was used in 2010 to direct that FIs and insurers did not enter into or continue business relationship with two specific business entities or any of their branches, in response to international concerns about the role these entities were playing to facilitate PF in Iran.

4.4.3. FIs and DNFBPs' understanding of and compliance with obligations

281. During the on-site visit, TFS was discussed with a wide range of FIs and DNFBPs and nearly all FIs and DNFBPs spoken to had a good understanding of their obligations and an awareness of the importance of compliance with the UN sanctions regimes although this was limited to screening against the UN lists. All relevant parties of a business relationship including beneficial owners were screened

at on-boarding. Only one DNFBP indicated that the beneficiary of a transaction would not be screened. Most FIs and larger DNFBPs also utilized sophisticated software, online sources and/or the outsourcing of screening using third party automatic software, to ensure that any entities or persons on the list would be detected, some interviewed entities did these activities every 24 hours. Some of the smaller operations screened weekly, although most indicated they would also do so upon receipt of a notification of a change in designation.

282. While there were no positive matches reported to the Governor, nearly all interviewees were aware of this obligation regarding TFS and of the fact that it must also be located within their own procedures. Furthermore, although the delegation of compliance monitoring to the FSIU had only just occurred during the onsite, all interviewees had received notification and were fully aware of the change and its reporting implications. The identification of false positives, methods in place to confirm these and the fact that funds were frozen pending such confirmation further demonstrated to the Assessors the use of the screening tools and a good understanding of the screening processes although it was unclear how many of these related to PF. In all the cases identified, the false positives were reviewed and clarified within the FI/DNFBP without the need for alerts. The FIA has only received one SAR in relation to TFS since 1st January 2014. This SAR was filed in 2017 and related to a Bermuda incorporated company which was in the process of liquidation. The liquidators were concerned regarding a transaction with a foreign bank, which was listed albeit on a non-PF list. Analysis has been conducted and support to the foreign FIU is ongoing.
283. As noted previously, the financial sector also demonstrated their awareness of TFS in relation to PF when, between January and March 2016, sanctions remained in force in Bermuda, which were no longer in effect in the EU, the UK and the US. This provides some evidence that the financial sector is monitoring the UN lists and their applicability in Bermuda.
284. The financial sector showed a good understanding of the importance of TFS and a desire to ensure compliance by screening for names which appeared on the lists. However, there appeared to be little awareness of the wider risks of sanctions evasions or additional steps to mitigate these. For example, there was no evidence that actions were being taken in relation to those acting on behalf of or at the direction of those designated. The understanding relates to TFS generally and there is little specific PF awareness. There was no evidence of risk management systems in place which were specific to the PF risks associated with Iran and DPRK. Further, there was no evidence that the potential for misuse of trade financing or insurance products for PF was considered within the guidance or by the FIs or DNFBPs. (The BMA also demonstrated that general TFS training had been provided but there was no PF specific guidance in relation to red flags etc.).

4.4.4. Competent authorities ensuring and monitoring compliance

285. CAs ensure and monitor compliance in relation to TFS to a reasonable degree although there is no PF specific monitoring. Monitoring is limited to ensuring names have been checked against the UN lists and not in relation to wider evasion.
286. Since September 2018 the FSIU is responsible for monitoring compliance with the various financial sanctions regimes and for assessing suspected breaches and has the power to refer cases to law enforcement agencies for investigation and potential prosecution. The effectiveness of this new Unit could not be assessed. In July 2018, a two-day training was given in relation to all aspects of TFS by HM Treasury, to competent and supervisory authorities. This training was the first in a series of training events. The Director of the FSIU indicated that the goals of the new Unit included making industry more aware of their obligations and responsibilities and that the FSIU would also engage in outreach (which is also stated within the Guidance document). In order to get a better understanding of possible PF funds, the FSIU also intends to annually send out a form to ascertain whether any supervised entities are holding

funds in order to provide an accurate record in relation to any frozen funds held under the financial sanctions in force in Bermuda.

287. All supervisory authorities, which includes the BMA, the SoRE, the Board, the FIA, and the BCGC, must effectively monitor, on a risk sensitive basis, the relevant persons and financial groups for whom they are the supervisory authority and take effective measures for the purpose of securing compliance with the international sanctions obligations (SEA). This includes international sanctions imposed by a UK Order in Council, either listed in Schedule 1 to the International Sanctions Regulations, 2013 or extended to Bermuda and any amendments to such Orders. The supervisory approach for PF is the same as for all TFS monitoring. Recent amendments require that the supervisory authority must also issue Guidance as to compliance with international sanctions and must update the Guidance to take account of amendments to Regulations and legislation and developments in best practice.

BMA

288. In determining whether business is being conducted in a prudent manner, the Authority shall consider any failure by the registered person to comply with the provisions of international sanctions in force in Bermuda, as mandated by the law. The BMA issued Guidance on TFS in 2016, which was available as a public document. The Guidance explained the background to the Bermuda Sanctions Regime, referred to the need for each institution to have policies and procedures, and to determine their risk profile and to conduct due diligence and screening. The Guidance referred to what to do when a transaction affected by sanctions measures is identified and the reporting requirements and was general to TFS and did not address PF as a discrete topic in terms of what institutions should pay special attention to in relation to PF sanctions evasion.
289. The BMA ensures entities have policies and procedures to address the Bermuda Sanctions Regime requirements by on-site and off-site reviews. Since 2014 onsite examination procedures include TFS questions and offsite procedures include whether the manual of the supervised entity addressed sanctions. Documents required to be produced prior to the onsite include policies and procedure manuals with sanctions and copies of all compliance reports and monitoring. The BMA conducted 329 reviews of TFS between 2013 and 2018. Examples of reports in relation to these were provided to the Assessment Team showing for e.g. the entity's manual needed to be expanded to include reporting requirements; a remediation report; and providing evidence of screening even in instances of a false positive. Another example showed that the supervisee had to create a training presentation to include compliance with Bermuda's sanctions regime.
290. The BMA informed the Assessors that during on-site visits almost all entities have appropriate sanctions procedures and policies, train their staff on sanctions and screen their customers and customer base for sanctioned individuals and countries. Adverse findings related to informing the BMA or FIA prior to the Governor's notification or screening not taking place on a more frequent basis, or not evidenced on each file. These were dealt with via the lowest level of enforcement being a letter instructing an entity to update their practices rather than systemic issues such as having no policies or procedures in place, clients undetected on the sanctions list or no knowledge of Bermuda's sanctions regime. An example was provided where the supervisee had not always evidenced the screening of customers and/or transactions for sanctions. That supervisee was instructed that they must produce and place evidence of screening on the customer file even if the screening resulted in a negative result and that the information had to be made available to the Authority, to which they agreed. During the process of granting CSPs licenses the BMA reviewed procedures for compliance with Bermuda's sanctions regime.
291. Mandatory AML/CFT data calls have recently been sent out with respect to FIs obligations under the sanctions regime. These questions include queries on whether beneficiaries are screened and whether

assets have been frozen by the company. Where assets were frozen there is a requirement for details to be provided.

292. The BMA provided the average level of compliance rating for TFS 2014 to 2018. This was derived from the results of examinations conducted over the relevant timeframe. The analysis reviewed the results of onsite inspections and prepared the data on a four-point scale depending on the level of compliance. The result was expressed as a percentage in relation to how many were ‘largely compliant’. Almost 80% of FIs (securities, banks, MSBs) and TSPs received a largely compliant level of compliance with TFS. This excludes long term insurers who were closer to 67%.

Box 4.2: BMA

A CSP submitted an application for incorporation in 2016. The 100% owner of the shares was a citizen of a sanctioned jurisdiction and so enhanced due diligence was conducted by the BMA. It appeared that the individual had been convicted of ML. However, reputable news sites suggested that the charges may have been politically motivated. The BMA confirmed that the name did not appear on any sanctions list. The submitting agent was contacted who advised all charges were politically motivated and the individual had been pardoned. The BMA requested and received a copy of the pardon letter, information from Interpol and a statement of asylum from the country granting asylum based on political targeting. The information was reviewed and discussed with the Ministry of Finance. It was also established that the country granting asylum had conducted due diligence and so consent was granted by the BMA. Conditions were placed on the application; namely restricting the activities of the company and a requirement to notify the BMA if the owner moved out of his current jurisdiction or changed nationality.

FIU as a supervisor – Dealers in High Value Goods

293. The 2016 Guidance Notes issued to the DiHVGs sector by the FIA indicates the importance of TFS and that all DiHVGs must be compliant with the applicable requirements. The Guidance states that customers must be checked against the sanctions list. No further guidance or any PF specific guidance is offered. The onsite reviews conducted by the FIA in its role as supervisor of DiHVGs checks for screening customers against lists and the use to be made of the findings, the methods used, what to do if there is a positive hit, false positives, procedure for monitoring on an ongoing basis and checks on frequency etc. In the onsite reviews of the two registered dealers conducted in 2017, deficiencies were identified, regarding screening procedures, and these were included within the remediation plans for both registered dealers. One of the ‘high priority’ actions was that all CTR subjects were to be screened for compliance with the Bermuda Sanctions Regime. Post onsite visits completed in April 2018 confirmed that these deficiencies were remedied. The Assessors are of the view that while there has been some activity in this area, it is lacking a PF specific focus. It is accepted that the materiality of the DiHVG sector in this context is less than for other sectors.

The Superintendent of Real Estate

294. The SoRE commenced onsite examinations in April 2018 and conducted 10 onsite reviews during the first half of 2018. The Guidance Notes of Sept 2018 explain the international sanctions and state that policies and procedures, due diligence and screening, systems and controls, staff awareness and ongoing review of effectiveness of sanctions must be present. Guidance is provided on what to do depending on when a match is identified including reporting and the consequences of failure to comply. There is no guidance in relation to sanctions evasion nor any PF specific guidance. The SoRE conducts a desk-based review of real estate brokers AML/CFT policies and procedures and the TFS policies and procedures

are tested during the onsite. An example of a letter from SoRE to a regulated entity was provided stating that the entities policy and procedures made mention of sanctions checks but did not provide specific details on the process. TFS screening has not been identified as a deficiency during onsite examinations. In relation to the 10 onsite inspections conducted between May and October 2018 there were found to be no deficiencies regarding TFS and 100% compliance.

Barristers and Accountants AML/CFT Board (The Board)

295. The Board established in 2012 is the only SRO in Bermuda and was established to supervise lawyers and accountants that engage in specified activities. There is a total of 79 registered law firms in Bermuda with 23 regulated for engaging in specified activities, and 6 registered accounting firms with five of them providing specified activities. The Board undertook onsite visits of all 23 law firms and 5 accounting firms. The onsite included discussion on matters such as: how the firms obtain details of official lists; what methods are used to screen customers during onboarding and who undertakes this process; whether the firms' procedures include further analysis when a positive hit is returned and whether the firm has procedures in place to ensure that it monitors customers against official lists on an ongoing basis and at what frequency. The Board did not identify any deficiencies in relation to TF or PF. However, there is no distinction drawn between TF and PF and there is just a short PF section in the Guidance Notes for the Legal Sector and for the Accounting Sector, which is descriptive in nature.²⁶

Registrar of Companies

296. Although the ROC is not a supervisor under the SEA, it has also demonstrated its commitment to furthering compliance with TFS by including in its letters to entities best practices in relation to TFS.

297. FIs and DNFBPs demonstrated a good understanding of the importance of TFS screening as it relates to designated persons and entities themselves. Supervisors adequately monitor compliance for TFS although this is not specific to PF. The system of communicating changes in TFS needs to be improved to ensure that those smaller DNFBPs (although of less materiality in this context) which rely on such notifications are receiving them immediately and screening any assets accordingly. This would not however affect onboarding, at which stage all FIs and DNFBPs screen against the relevant lists individually.

298. Following the delegation from the Governor in September 2018 and the establishment of the PF Working Group, further work is needed to ensure that FIs and DNFBPs are aware of PF and specific identification factors, which have not previously been sufficiently distinguished from TFS in general. Under the current system those seeking to deliberately evade sanctions would not be detected if they did not appear on the UN list i.e. where 'control' is exercised by a designated person who does not appear as a BO.

Overall conclusions on IO.11

299. Bermuda is rated as having a Moderate level of effectiveness for IO.11.

²⁶ At 8.59 and 8.57 respectively

5. PREVENTIVE MEASURES

5.1. Key Findings and Recommended Actions

Key Findings

- a) The understanding of ML/TF risks across the financial sector in Bermuda is currently strong and has benefited from the efforts of NAMLC to have an integrated application of appropriate preventive measures such as GNs, policies and procedures, throughout the country.
- b) Most FIs, securities firms and TCSPs have adopted strong preventive measures commensurate with results of their enterprise ML/TF risk assessments, business relationship ML/TF risk assessments and ongoing standardized AML/CFT procedures. There is also targeted training which appropriately bolsters their understanding and mitigation of risks.
- c) Bermuda's POCR were amended in 2016 to strengthen the requirement for risk assessments and to include an obligation for this information to be shared with the relevant supervisory authority. The assessors determined through a review of the BMA reports that the banking sector became fully compliant in the compilation of their AML/CFT business risk assessments in 2017 and remained compliant up to the time of the onsite in 2018. The RPF sector also began risk assessments in 2017, and not all entities in the MSB sector were compliant with their submissions of business risk assessments
- d) Although assessed as medium-high and medium ML risks in the 2017 NRA, SAR reporting by the real estate and legal sectors respectively, is lower on average than other sectors (except the DPMS sector).
- e) CDD, EDD, correspondent banking, record keeping, and internal controls are implemented commensurate to identified risks, and generally adhered to by the FIs and the TCSPs. More than 50% of SARs received from FIs and TCSPs are generated by the banking sector.
- f) While AML/CFT training was offered and executed by and on behalf of the DPMS and Real Estate Supervisors to their respective sectors, Examiners noted during the onsite interviews that the effectiveness of this training for the DPMS sector was not evident to a demonstrable degree and that the AML/CFT training was not enhanced for the COs and MLROs of the real estate sector which can impact these sectors' application of internal procedures to ensure compliance with their AML/CFT obligations.
- g) Some of the less sophisticated entities such as those in the regulated real estate, cooperative and DPMS sectors in Bermuda do not have adequately robust KYC identification and transaction monitoring protocols and/or systems in place, or sanctions screenings formally documented as a procedure. As a result, they can potentially be challenged to ensure that their in-house mechanisms, procedures, protocols and practices are adequate and sufficiently deployed to identify potential and existing relationships that are high risk, so that appropriate EDD measures can be undertaken in these instances.
- h) Despite outreach since 2016 from the SoRE to the real estate sector in preparation for AML/CFT supervision which came into effect in 2017, and notwithstanding the requirement

for real estate brokers to register with the FIA's goAML system, the fulfilment of SAR filing obligations for the sector have continued to be limited during 2017 and 2018.

Recommended Actions

- a) The MSB and RPF sectors must conduct ML/TF business risk assessments that meet the criteria as set out by their supervisory authorities in order to demonstrate their understanding of ML/TF risks.
- b) The TSP, real estate and RPF sectors must demonstrate marked improvement in the implementation of SAR obligations.
- c) The DPMS, cooperative and real estate sectors must increase their understanding of ML/TF risks and obligations by receiving additional, sector-specific AML/CFT training for all relevant personnel, particularly those that hold CO and RO positions.

300. The relevant Immediate Outcome considered and assessed in this chapter is IO.4²⁷. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23.

5.2. Immediate Outcome 4 (Preventive Measures)²⁸

301. In weighting the relative importance of the various FI and DNFBP sectors in Bermuda, the assessment team considered the following factors:

- Size of sector
- Extent of facilitation of cross-border activities
- Customer profiles (including geographic range, nature (PEPs, high net-worth etc)
- Cash intensity of transactions
- Number of entities in the sector
- Extent of coverage of entities in Bermuda's AML/CFT framework
- Dominant services or products or portfolio of services and products

302. In descending order of weighting, the assessment team assigned greater weighting to their findings in relation to the banking, securities, TCSPs, MSBs, legal professionals and PTCs within the Bermudan AML/CFT framework.

303. The banking sector which comprises 4 banks and 1 credit union constitutes 13% of the national GDP (2016 statistics) and plays a vital role in Bermuda's economic activity. The two largest banks, which are international banks, account for the majority (90%) of all bank deposits and the primary activities of banks in Bermuda are retail banking, corporate banking, wealth management and private banking. As a result of the above, within the banking sector, the effectiveness assessment relative to banks have been given the highest weighting by the assessors whilst very little weight has been assigned to the credit union subsector which accounts for only 0.06% of the deposit-taking sector, with deposits directly from Bermuda union members as transfers from bank accounts.

²⁷ When assessing effectiveness under Immediate Outcome 4, assessors took into consideration the risk, context and materiality of the country being assessed.

²⁸ The initial paragraphs give a short summary of what relative importance assessors have given to the different types of financial institutions and designated non-financial businesses and professions, taking into account the risk, context and materiality of the country being assessed.

304. The securities sector, supervised by the BMA accounts for 19% of the jurisdiction’s financial sector assets and is “well developed, offers a sophisticated range of products and caters to a diverse, international client base with substantial foreign portfolio holdings” (2017 NRA). Due to the global reach of trusts, the high value of asset transfers and the risk profile of customers (which includes residents, non-residents and high-net worth individuals and PEPs) unlicensed and unregulated Private Trust Companies (PTCs) have posed significant ML risks to Bermuda between 2013 and 2017. However, the vast majority of PTCs in Bermuda have a licensed trustee in their corporate structure or utilize the services of a Bermuda-licensed TCSP, both of which are supervised by the BMA. At the time of the onsite visit, an estimated 14 PTCs (approximately 5% of total PTCs) were outside the country’s AML/CFT regime and not subject to AML/CFT monitoring by a licensed service provider nor registered as non-licensed professionals (NLPs).
305. The PTCs and CSPs have more recently been brought under AML/CFT regime in 2018 and 2017 respectively and in 2017, CSPs in Bermuda were estimated to have administered and serviced over 14,000 entities, representing 83% of all companies and partnerships formed in Bermuda. PTCs and CSPs have a medium-low risk for TF activities, and MSBs in Bermuda are assessed as having a low risk for TF activities.
306. CSPs are obligated to obtain BMA approval at the formation or change of ownership or controllers. The scrutiny and analysis conducted by the BMA, is applied to CSPs and FIs alike, on natural or legal persons who aspire to have beneficial ownership of more than 10% or who are seeking to amend their level of control and extends to executive management who wish to have a new or different individual assume a regulated function within a registered entity. Such management positions include CEO, board member, Head of Compliance, Compliance Officer, Money Laundering Reporting Officer and Head of Risk.
307. Among DNFBPs the legal professionals’ sector posed the highest risk for ML activities, driven mainly by the close affiliation with a significant segment of the CSP sector. Bar Rules however require law firms to ring-fence their legal practice from their CSPs business, if any, in order to help mitigate the risks within their law practices. Recent legislative amendments updated the framework to establish a more robust mechanism for the Board to identify law firms that carry out “specified activities”. All law firms advising in respect of “specified activities” were registered with the Board prior to and throughout the assessment period and these “specified activities” are consistent with those identified by FATF as potentially posing ML/TF risks.
308. At the time of the onsite, there were no casinos operational in the jurisdiction and no licensed undertakings carrying on digital asset business within the jurisdiction.
309. There were only 2 money remittance firms licensed and operating in Bermuda, at the time of the onsite. The MSBs cater largely to foreign workers sending funds abroad and to tourists. In 2016, an approximate total value of USD235M was transferred by this sector and included 184,732 transactions.

5.2.1. Understanding of ML/TF risks and AML/CFT obligations

FIs

310. FIs in Bermuda demonstrated a strong understanding of their exposure to ML/TF risks and most interviewees were able to explain the risk-based internal processes, procedures and practices in place in their own institutions to identify, assess, mitigate, manage, and report risks. The risk assessment frameworks utilized by larger FIs (particularly banks, insurance companies and securities entities) are mature, and more particularly for those that are a part of an international group and exposed to higher ML/TF risks. These mature risk rating frameworks include enterprise wide risk assessments undertaken on an annual basis covering a wide span of factors including products/services, geographic risks, financial crime analyses and risk controls. In the banks and securities entities, these systems also

facilitate the review and assessment of risks and control frameworks throughout the year which further contribute to these sub-sectors' robust and continued understanding of their ML/TF risks.

311. The input by FIs and TCSPs into the national risk assessment and the guidelines issued by the BMA have contributed to the strong understanding of ML/TF risks across the FI and TCSP sectors.
312. Onsite and offsite reviews conducted by the BMA have shown that the banking sector was generally non-compliant in 2014 and 2015, and partially compliant in 2016 with respect to their business risk assessment systems. From 2017 however, the BMA noted a demonstrable improvement in the identification, assessment and understanding of ML/TF risks in the banking sector which was evidenced during the onsite visit with FIs being able to clearly articulate areas of higher and lower ML/TF risks consistent with the findings of the NRA. Through interviews conducted with three of the five deposit-taking entities in Bermuda, the sources of the most prominent AML concerns were identified as illicit deposits by unscrupulous foreign and domestic PEPs, proceeds from foreign and domestic white-collar crime, as well as proceeds from domestic drug trafficking disguised as legitimate business revenue.
313. As part its own annual risk assessment exercise and to support the NRA, the BMA conducts a data call to all FIs and TCSPs to feed into its entity and sectoral risk assessments. This exercise and the questions posed by the BMA bring a greater sense of AML/CFT awareness to the FIs, as questions relate to size, complexity, products, customer geographic dispersion and risk rating ratios. This activity has also contributed to a greater level of understanding of ML/TF risks in the financial services industry. Across all sectors, representatives' understanding of TF risks were pronounced as representatives noted that despite the lack of evidence that such activity existed in Bermuda, the application of suitable typologies together with examination of their business, products, customer and geographic activities were depended upon to gain a theoretical understanding of TF risks.
314. FIs and TCSPs demonstrated to a large extent that the requirements set out in the GNs have been well understood and have been adopted into their own policies and procedures as minimum standards which in most cases are exceeded. This is supported by largely compliant ratings given by supervisors in the conduct of onsite examinations for compliance with obligations relating to Compliance Officers and Policies and Procedures for these sectors. In addition, there was accurate and clear articulation by all interviewed supervised entities of the most recent changes in reporting requirements relating to TFS, demonstrating a sound and consistent understanding of AML/CFT obligations.
315. The understanding of ML/TF risks and obligations in the insurance sector is particularly strong as the conduct of business risk assessments has been executed since 2015. The larger companies are all part of international groups predominantly servicing international customers and generally, robust risk assessments that inform the business AML frameworks are comprised of two components – (i) AML Procedures and guidelines based on Bermuda and international standards which examine products, flow of funds, types of clients, geography and distribution channels and (ii) Client risk assessment methodologies that scrutinize geography, PEPs or close associations and identification of natural person beneficial owners. These methodologies which appear to be consistent across the sector bolsters the understanding of ML/TF risks facing the sector and the mitigating actions undertaken.
316. For the insurance sector, determining all the businesses in which their clients are involved, poses their greatest ML/TF challenge, as well as the cross-border transactions of long-term direct insurers which demand a heightened exercise of due diligence. Systems and processes, such as information sharing are however improving to assist in this regard, and this was supported by the findings of more recent BMA onsite assessment results.
317. The MSB sector representatives have a solid understanding of ML risks and the mitigating controls relative to their unique businesses and this has particularly resulted from these entities being part of international financial groups. They identified domestic drug trafficking as a challenge which could negatively impact their business.

RPFs, PTCs, TSPs, and CSPs.

318. Other groups in the financial sector such as the PTCs and the CSPs do have risk rating frameworks or programs albeit not as mature or developed as that of the banks. However, most showed a good understanding of the ML/TF risks affecting their respective institutions as a result of geographic exposures and the products and services that they offer. The PTC and CSP sectors have identified some sources of their ML/TF risks to be possible criminal acts such as international tax evasion, foreign bribery and foreign corruption. The sound understanding of ML/TF risks in these sectors are attributable to over 90% of the PTC vehicles being serviced by locally licensed service providers and consequently being incorporated in the licensed entities' business risk assessment and supervised by the BMA's AML/CFT Department. For the remaining <10% they are required to have documented business risk assessments as part of the requirement to be registered for AML/CFT supervision as NLPs. Private Individual Trusts (PITs) which are unsupervised do exist in Bermuda, however, they are managed by private individual trustees who act in a non-professional capacity for friends and family members and do not have "clients" (and accordingly are not considered TSPs for the purposes of the FATF ML/CFT framework). While the CAs do not have the exact numbers, they are deemed to be inconsequential and the implementation of any preventive measures not required for this sub-sector.
319. Relative to TSPs, this sector is mature in Bermuda and AML/CFT training is standardized for all relevant persons. The level of understanding of ML/TF risks for supervised TSPs is very high. Sector representatives have articulated that their greatest ML/TF risks can emanate from wealthy families who may be wishing to contravene tax laws in their countries of domicile, however actual cases have not materialized as far as the sector representatives interviewed are concerned. The risk assessment frameworks utilized generally incorporate highly developed software and point systems and entail more frequent review and monitoring of risks annually. Although there was no direct involvement by some individual entities in the NRA exercise, all representatives were aware of the NRA results shared through associations and industry boards. Entities were well able to articulate the alignment of the NRA findings to their own business experiences and assessments and demonstrated a sound understanding of their AML/CFT obligations.
320. RPFs, namely, Law firms and accountant firms, are under the supervision of the Board. The twenty-three law firms and six accounting firms who are registered under the Board and regulated since 2013 do not have as evolved AML/CFT regimes as the banks and insurance companies which have been regulated since 2008. Five of the six registered accounting firms are active and performing services in relation to specified activities. Between 2013 to 2016, there is no record that this sector conducted any business risk assessments (BRAs) according to the results of the onsite examinations conducted by the Board and it should be noted that the legal requirement for BRAs only came into effect January 2016 and BRAs did not commence until 2017.
321. Several of the initial risk assessments conducted by this sector did not consider the inherent risk factors as identified by the Board, although quality of the risk assessments has substantially improved more recently. Notwithstanding this, representatives from the legal and accounting sectors were able to demonstrate a good appreciation of the ML/TF risks during the onsite interviews by articulating that ML/TF risks for their sector were enhanced when conducting trust services and/or forming companies for foreign nationals. As part of its routine of supervisory activities, the Board conducts regular guidance/educational meetings with RPFs which outlines emerging red flag indicators, inherent risks within the sector and legislative amendments. This guidance has contributed to the understanding of ML/TF risks in the sector and educational meetings ensure that ongoing consultations improve awareness and understanding of their AML/CFT obligations. BRAs will bolster the sector's AML/CFT efforts.

DPMS and Real Estate Sectors

322. Contextually, the DPMS sector face very minimal ML/TF risks in the jurisdiction and contribute less than 1% to the country's GDP. Their exposure to AML/CFT regulation is fairly recent and opportunities exist for a more fulsome understanding of the sector's ML/TF risks. The sector representatives are aware however, of the results of the NRA and of their AML/CFT obligations, particularly reporting cash limits of USD7500 and above. In 2017 and 2018 the DPMS sector filed 9 and 4 CTRs (cash transaction reports) respectively with the FIA, a demonstration of their understanding of one of the key AML/CFT obligations.
323. The real estate sector is supervised by the SoRE. The Assessors' interviews with sector representatives confirmed that they understand that their ML/TF risks are primarily derived from the trust structures some of the real estate professionals encounter in serving their international clients, particularly as it relates to ascertaining the identities of beneficiaries and making the necessary filings to extract trust deeds where applicable. There was a solid understanding of AML/CFT obligations particularly with respect to identifying all legal and natural persons who have beneficial ownership or control in any real estate transaction of 25% or more.

5.2.2. Application of risk mitigating measures

324. Regulated entities within Bermuda's AML/CFT framework have programmes and procedures to mitigate ML/TF risks. The strength of the structure and implementation of these risk mitigating programmes however vary across sectors.
325. All FIs and TCSPs (excluding MSBs) were largely compliant with the requirement to undertake an external audit as part of their licensing conditions, as well as independent audits that cover ML/TF risk management as part of the BMA's supervisory mandate. In addition, for these entities, AML/CFT policies and procedures and risk mitigating measures are well-established and appropriately adhered to. The generally consistent application of these requirements amongst the FIs and TCSPs are consistently commensurate with the ML/TF risks faced. The larger, more complex FIs and TCSPs also have an independent compliance function in place which assesses compliance for AML/CFT requirements and further contributes to their commensurate mitigation of ML/TF risks by complimenting the three lines of defence functions (business line, compliance, independent audit) that exists in the AML/CFT regimes of the larger and more contextually material entities.
326. In the banking, securities and insurance sectors the mitigating measures employed are advanced and robust due to the complexity of the organisations' structures, their international reach and reporting obligations as part of large financial groups and the maturity of supervisory oversight. Mitigating measures in these sectors are generally well implemented and are commensurate with the risks which arise from the business activities, products and customers. Robust onboarding processes are implemented which includes strict adherence to internal requirements for the breakdown of company structures; provision of certified company structure charts where customers comprise complex legal entities; global screening of identified key personnel; and rejection of business unless CDD is completed.
327. Limited insurers and TSPs conduct formal reviews of low risk relationships every 3 years in practice, regardless of triggering events. Regarding smaller FIs, while only triggering events may have prompted an automatic relationship review in the past, more recently all relationships are now subject to EDD.
328. Banks assess ML/TF risks both at an enterprise level, and at a relationship level in each institution, with areas of risk duly noted for further analysis. In practice, in the vast majority of cases, trigger events, including system notifications when accounts demonstrate activity beyond established or expected parameters, or conversely, become inactive, do compel the larger institutions to conduct a formal ML/TF review and high-risk clients are reviewed annually. PEP screenings are reviewed monthly.

329. Bermuda has been a hub for services such as Trust provision for quite some time. Trustees interviewed consistently rate settlors, beneficiaries and other natural persons connected with the trust structures as high-risk and enhanced onboarding measures are executed. The enhanced onboarding measures are commensurate with the high-risk rating which was also given to this sector both in 2013 and 2017 within the ML NRAs.
330. There is no evidence that some of the less material entities in Bermuda (for example some entities in the MSB, real estate and the smallest deposit-taking FI) are periodically revisiting risk methodologies to ensure continued validity of the framework, particularly the appropriateness of risk mitigating measures or when there are changes in legislation and regulations or changes in their own risk appetites. AML/CFT business risk assessments, training and ongoing monitoring requirements over the past five years although training mechanisms and frequency has improved over time and monitoring systems have gotten more robust. In general, however, the findings indicate that there is further opportunity for improvement in these sectors. There are also variances within the regulated sectors with the employment of search engines such as World Check and Lexus Nexus during the on-boarding, on-going monitoring and sanction screening processes, however minimum standards appear to be met.
331. There are some risk mitigating measures that the less material entities have employed however not all implemented measures are commensurate with risks. For the real estate sector, real estate sales are always conducted in a face-to-face environment to ensure that the identities of the sellers and purchasers are verified and the agents in at least one real estate firm interviewed meets weekly to discuss KYC and EDD trends and measures. The DPMS sector however has only recently established AML/CFT policies and procedures and general and ongoing AML/CFT risk training was not demonstrated during the onsite interview of the Sector's CO, except as it related to completing CTRs. Additionally, checking sanctions lists is a practice that is not enshrined in policy for this sector. MSBs have undergone training with the Intelligence Unit of the FIA to detect unusual transactions and have risk-assessed all products offered and AML/CFT training is undertaken for all staff annually. For MSBs money remittances have been assessed the highest transactional ML/TF risks and monitoring systems are constantly updated with risk profiles and transaction parameter limits to mitigate these risks. In at least one entity, however, the third line of defence (the independent internal audit function) was lacking in their operations, and that their identification of PEPs is strictly based on recognition by client-facing staff and accurate self-declarations by individuals categorized as PEPs which increases the ML risks faced.
332. Due to the small size of the MSB and DPMS sectors the application of risk mitigating measures such as duty segregation is challenged by smaller staff numbers.

5.2.3. Application of Customer Due Diligence (CDD) and record-keeping requirements

FIs and TCSPs

333. Proper risk-based compliance measures which govern CDD, EDD (enhanced due diligence), SDD (simplified due diligence) and record-keeping requirements for transactions have been implemented and maintained by FIs and TCSPs in general. There is a high level of understanding of the need for BO identification and verification across FIs and TCSPs. Customer identification and verification measures, ongoing due diligence and record-keeping are generally effectively performed. FIs generally do not accept new business if CDD is incomplete and the banking sector is for the most part, well versed in the application of SDD, CDD and EDD. Training for new and existing staff relative to these applications is continuous to ensure consistent implementation of CDD and record keeping requirements. Processes are also in place to detect PEPs for the majority of FIs and TCSPs and to compare prospective and existing customers against sanctions lists from HM Treasury and OFAC.

334. The small percentage of the insurance sector which underwrites LTD insurance is well versed in the various CDD applications, however improvement is required relative to insurance managers. Onsite examinations conducted by the BMA have confirmed that this sector requires further improvement in the implementation of CDD, ongoing monitoring, internal controls and risk assessments. The Securities sector has been regulated for AML/CFT from 2008 and many entities in the sector are subject to regulations from other jurisdictions as well. The sector has been recently rated as largely compliant by the BMA with regard to the implementation of CDD measures.
335. Interviews with FI and TCSP representatives, as well as a review of a sample of policies and procedures confirm that legislative and regulatory mandates are being effectively implemented. This was further evidenced by the Compliant and Largely Compliant ratings assigned by supervisors for Record-keeping and EDD in these sectors. Law firms, accounting firms and regulated financial institutions that control or own approximately 85% of CSPs ascertain the BOs of all new and existing business, including complex PTCs as a standard part of their CDD practice.
336. The vast majority of the FIs and TSPs are equipped with automated systems in their mitigation activities and their transaction monitoring systems can flag abnormal and unusual financial patterns. For high risk relationships, alert thresholds are more sensitive and undergo a higher degree of monitoring. Depending on the client type, more mitigating measures may be taken, such as filing SARs, or de-risking the client (or both).
337. All FI and TCSP representatives generally seek further information from their clients if deemed necessary and for the larger institutions, employing search engines to obtain corroborating information for higher risk relationships is standard practice.

DNFBPs

338. Whilst control measures commensurate with risks are employed by the DNFBP sectors, the onsite examinations and offsite surveillance activities employed by the Supervisors between 2013 and 2017 of FIs and DNFBPs have uncovered challenges in some of the less material sectors, such as the DPMS, the RPFs and the MSB sectors.
339. In case of the DPMS sector, earlier challenges included failure to screen all CTR subjects for compliance with the Bermuda Sanctions regime was identified as one challenge (amongst others such as failure to adopt a current and effective AML/CFT Risk Assessment and insufficient ML/TF training for the CO/MLRO functions). The Authorities confirmed in April 2018 during a follow-up visit that these deficiencies had been rectified and in interviews, DPMS representatives were able to outline their sanctions screening regimes which were satisfactory. The Real Estate sector is new to AML/CFT supervisory oversight however, the sector has been involved in the 2017 NRA and has developed an understanding of the CDD and record-keeping requirements. Statutory immigration controls are applied for purchases of real estate by foreigners in Bermuda and confirmation of compliance with these immigration controls are a standard requirement implemented by all real estate agents which mitigates some of the risks that would otherwise exist.
340. The larger and more material DNFBPs such as CSPs and TSPs, are aware of the country's CDD identification and record-keeping requirements. During the interview process, it was noted that some opportunities exist to improve and ensure that some of the smaller DNFBPs such as the DPMS, are fully aware of CDD requirements.

5.2.4. Application of EDD measures

341. The AML/CFT policies provided during the onsite visit, and interviews with FI and TCSP representatives indicate a high cognizance by the sector of the need to identify, understand and consider

higher risk factors and situations as soon as they occur. Risk areas associated with both foreign and domestic PEPs, TFS, higher-risk countries, charities and other NPOs, introduced businesses, non-face to face transactions, and emerging technologies, requiring additional enhanced measures are already considered in policies, procedures, GNs and are practised by entities. The banks and TCSPs were more comfortable in articulating their procedures in this regard, as well as the MSBs.

342. FIs generally assess all PEPs, both domestic and foreign, as high risk. They have in place adequate systems to identify PEPs, their family members, and close associates. Generally, FIs make use of open sources and commercial databases for the screening process and conduct their own research. The approval of senior management is consistently sought before on-boarding PEPs as clients.
343. Relationships such as PEPs considered a high risk for ML or TF are reviewed annually as part of the FIs' EDD procedures. PEPs are deemed high ML risks automatically and the interpretation of "PEPs" in Bermuda also includes the immediate family members of those individuals holding political positions. All of Bermuda's regulated entities do not have systems to assist in the identification of the immediate family members or close associates of domestic PEPs, which may potentially pose a challenge to employ EDD as per FATF standards and their own policy.
344. Onsite reviews by the SoRE indicate that 95% of all real estate firms and brokers apply EDD measures appropriately. Their understanding of situations requiring such enhanced measures have been confirmed at the onsite review by the Assessors. It was also noted that the supervisory reviews indicated that the DPMS sector did not have a sanctions screening regime in place, until November 2017. In addition, they did not have an adequate mechanism in place to detect all PEP categories.
345. Smaller FIs and TCSPs, as well as DNFBPs in Bermuda who do not have many international clients and focus their business on other financial services for the local populace. Consequently, they usually rely on less sophisticated systems which may include manual monitoring activities such as self-created local PEP listings to ascertain if EDD is required.

Correspondent Banking

346. The CAs have reported that Bermuda's four banks act as respondent banks only, are not correspondent banks and have had a relationship with their correspondents for several years without incident. Due diligence for ML/TF risks have been conducted on each of these banks by their correspondents and up to the time of the onsite, these relationships continued unabated.

New Technologies, Emerging Risks, Wire Transfers

347. The banking sector has considered the ML/TF risks in Casino Gaming which was included in the 2017 NRA and has been rated as having a high vulnerability to ML risks, a low ML threat rating and an overall medium ML risk as there are none in operation currently. The BCGC is the regulator for Casino Gaming. The Digital Assets sector is currently supervised by the BMA and at the time of the onsite examination, there were no regulated entities in existence that offered digital asset business.
348. FIs have generally demonstrated a sound level of understanding of ML/TF risks associated with wire transfers and new technologies and have incorporated new measures to mitigate risks where required. Quarterly, a Probability and Financial Impact Assessment is conducted for each inherent business risk that are a result of any new products and services that are planned to be introduced to the market, and this assessment includes ML/TF considerations. Annually, full BRAs are conducted which also consider the results of the Assessment. For the banks, additional measures include using the independent audit and/or business risk functions of their foreign head offices to analyse the ML/TF risks associated with any new products and services in order to guide the formation and embedding of AML/CFT policies and procedures relative to same.

349. Electronic systems that capture and report transactional breaches that are designed to initiate EDD activity from senior management and from the MLRO functions at these institutions are in effect at the banks and at the larger FIs. The FIs which on-board international customers have these systems and procedures in place through their own in-house AML/CFT software, using various search engines for the most part, and electronic sanctions listings. These systems detect high risk clients such as foreign PEPs and their associates, those that have had a criminal history, those with negative news, clients from high risk jurisdictions, complex transactions, and linked transactions that breach established expected transactional parameters. On-boarding systems include an electronic risk rating process that is replicable once the same information is analysed and can electronically risk rate new relationships at onboarding and again during a periodic review process. High-risk ratings that are assessed either at onboarding or during the ongoing monitoring of the relationship mandate the use of EDD by the FI.

Targeted Financial Sanctions

350. FIs are aware of the requirements in relation to TFS and have measures in place to comply and screen before the establishment as well as during the business relationship. FIs maintain databases of names of persons and entities designated under UNSCRs relating to the prevention and suppression of terrorism and TF and these lists are usually acquired from and updated through third party providers as well as through notifications from supervisory authorities. These lists are checked, generally using sophisticated IT solutions, against names of existing customers and parties to transaction however some of the smaller, less material entities only screen once per week and are thus reliant on notification of changes in designations (See Chapter 4). DNFBPs have knowledge of EDD requirements in relation to TFS, however many entities in this group do not have the automated systems in place to detect sanction breaches and depend upon the sanctions lists that are posted. Most sector representatives are aware of the procedures to undertake if sanction breaches are encountered but not all have the practices in-bedded in documented policy.

Higher Risk countries

351. Large FIs in Bermuda apply effective and proportionate enhanced measures when dealing with customers who are found to be connected to countries or territories identified as higher risk by the CAs. HM Treasury, OFAC Sanctions and High-Risk Country lists are disseminated to the sectors by the various supervisors. The list of high-risk countries is built into entities' risk-rating frameworks as a high-risk factor that must be considered in their overall risk rating/scoring of their customers. These frameworks are tested by the BMA during onsite reviews.

352. Other FIs and TCSPs have policies and procedures which address the use of EDD. However, during interviews, a few of the smaller DNFBPs and one of the very small FIs representatives could not articulate how EDD measures undertaken differed from normal CDD practices. These instances involved sectors that are not contextually material, and this is reflective of the Largely Compliant rating determined by the BMA in its examination of EDD implemented across these sectors.

353. The number and quality of SARs filed are also an excellent barometer to measure how well FIs and DNFBPs respond to trigger events that result in the application of enhanced due diligence and the subsequent filing of SARs when appropriate. SAR filings have been notably lacking by the real estate sectors as outlined below.

5.2.5. Reporting obligations and tipping off

354. SARs filed by the relevant sectors between 2014 and 2018 were as follows:

Table 5.1 SAR Filings across all sectors

| Sector | AML/CFT Regulator | # of Regulated Entities in Sector as at Dec 31.17 | SARs filed (Jan 2014-Dec 2017) | SARs filed (Jan 1 –Oct 5 2018) |
|---------------------------|-------------------|---|--------------------------------|--------------------------------|
| Deposit Taking | BMA | 5 (INCL. 1 CU) | 1340 | 295 |
| Securities | BMA | 978 | 57 | 27 |
| TSPs | BMA | 28 | 10 | 8 |
| CSPs | BMA (Partial) | 62 | 22 | 25 |
| Insurance | BMA | 369 | 318 | 46 |
| Legal | B&A AML/CFT Board | 23 | 15 | 12 |
| MSBs | BMA | 3 | 406 | 76 |
| DPMS | FIA | 2 | 1 | 2 |
| Real Estate Professionals | SORE | 53 | 2 | 1 |
| Accounting Professionals | Board | 6 | 3 | 1 |
| Local regulators | Not appl. | 5 | 11 | Not avail. |
| Total # of SARS filed | | | 2195 | 493 |

355. The SAR reporting process is gradually becoming more robust in Bermuda and most sectors have filed SARs at some point, however the real estate sector appears to be challenged in this area. The SoRE has an Action Plan in place to address the SAR filing deficiencies in the real estate sector.
356. Through interviews, it was determined that SAR Filings are independent and MLROs do not have to seek authority to file from higher authority. Banks and other FIs have submitted disclosures to the FIA prior to foreign tax evasion (of all types and categories of legally imposed taxes in foreign countries) becoming a predicate crime. However, after the amendments to the POCA in 2017, the number of SARs filed relative to suspected tax offenses increased exponentially. This exemplifies a high degree of responsiveness and agility by most of the sectors in adjusting their systems to monitor and report considering recent changes. A culture of compliance and strong monitoring weighs in heavily here.
357. The jurisdiction is also commended for having the legislation in place (s.46 of the POCA) to require all legal and natural persons who encounter suspicious financial activity to file SARs. Even those sectors that are not included in the FATF standards are expected to have the systems in place to file SARs. These include the reinsurance and betting sectors, as well as the Bermuda Stock Exchange and the local regulators.
358. The FIA has observed that SAR submissions have improved over time in most sectors, in terms of both quality and nature of detail. The FIA is satisfied that appropriate information is contained within the SARs to clearly articulate and support the submitting entity's suspicions. This is supported by the Largely Compliant/Compliant ratings for SARs and Reporting across most sectors.
359. For the Trust, Legal, Real Estate, Accounting and the DPMS sectors, SARs were filed very sporadically with the FIA for over four years (2014 to 2017), however this is inclusive of the periods when these sectors were not regulated. We note for 2018 up to the last date of the onsite review, the SAR filings have increased for the most part as these sectors are now supervised (see Table 5.1). It was also noted that although during the interviews the FIA was largely satisfied with the content of the SAR filings in general, they did not consistently provide feedback to sectors that were smaller in context and materiality.
360. FIs ML/TF training is robust particularly in the larger institutions and covers SAR methodology. Policies and procedures to guide staff also cover SAR methodology, and there are sections on tipping off contained in the policy documents and in training material reviewed onsite, particularly for the deposit-

taking institutions. As stated above, the larger FIs have adequate electronic monitoring systems that allow breaches to established parameters and other unusual activity to be flagged at the point of sale, which assists with the immediate internal or external filing of unusual and suspicious transactions.

5.2.6. Internal controls and legal/regulatory requirements (e.g. financial secrecy) impeding implementation

361. It was determined through interviews and review of the documents, that usually, internal controls, legal and regulatory requirements are implemented rapidly, thoroughly and without impedance. Internal policies, procedures and controls are documented, reviewed, updated when applicable and routinely approved by the Board of Directors, when appropriate, but not less than on an annual basis. Particularly, larger banks and other FIs and DNFBPs that are jointly regulated by Bermudan supervisors and their foreign counterparts. Joint regulation does exist in Bermuda and there are no impediments of regulators sharing information on joint licensees. There have been occasions for regulatory college forums over the years, dealing with specific issues of mutual concern.
362. FIs are subject to independent audits, as per licensing requirements and regulated entities with international linkages are also audited by group compliance units as well as undergo independent audits for compliance with internal policies and procedures.
363. Whilst compliance of banks, insurance companies, securities firms and MSBs is strong with respect to policies and procedures and compliance officers, in practice AML/CFT training is not a prerequisite to hold office of CO or MLRO at all institutions, particularly within the real estate sector and the less material DPMS sector.
364. Bermuda has exhibited most of the characteristics of an effective system and has made commendable effort to reform its ML/TF risk management regime by rapidly adopting and implementing significant preventive measures throughout most of its major sectors, particularly in more recent times as noted during the onsite visit. The reformation included the legislative mandate in 2016 to strengthen the requirements for regulated entities (including FIs) to produce BRAs and submit them to their respective supervisors. This initiative has resulted in a vast improvement in the compilation of same from 2017 up to the time of the onsite. Through the efforts of NAMLC there is an integrated application of appropriate policies and procedures throughout the country. Notably, CDD, EDD, correspondent banking, record keeping, and internal controls are implemented and adhered to, particularly regarding the FIs and the larger DNFBP sectors.

Overall conclusions on IO.4

- 365. Bermuda is rated as having a Moderate level of effectiveness for IO.4.**

6. SUPERVISION

Key Findings

- a) Bermuda has a sound legal and risk-based supervisory framework, with the BMA having robust supervisory procedures and practices, a sound understanding of the risks of its sectors and good communication with its sectors. The BMA is also a strong, professional and well-resourced risk-based supervisor, and is demonstrating effective supervision of the high-risks FIs and TCSP sectors which carry the bulk of the AML/CFT risks in Bermuda.
- b) All Supervisors, particularly the BMA have demonstrated that it has robust measures in place to ensure that most of the entities that it supervises have effectively identified, assessed, managed and mitigated their ML and TF risks, both at the institutional and at the business entity levels.
- c) Bermuda has well implemented market entry fit and proper controls across FIs and DNFBPs. Fit and proper procedures are in place in all supervised authorities' regulated functions within the AML/CFT sectors, namely, for controllers, directors, officers and senior executives. Enhanced due diligence is employed if the proposed natural person or legal person wishing to hold a regulated position displays enhanced risks such as PEPs, have had known instances of criminality, or if the legal entity seeking incorporation (or the natural person(s) seeking approval) resides or is located in a known high-risk jurisdiction.
- d) There were a variety of comprehensive onsite examinations that touched the key elements of the risk frameworks of the sectors, particularly in 2018 regarding the high risk **CSP and TSP**, and medium-high risk legal sectors.
- e) Bermuda has recently developed and extended AML/CFT registration and supervision to a segment of the DNFBP sector, in particular the newly supervised high risk CSP sector. However, the BMA has launched an aggressive onsite examination campaign in a bid to understand the ML/TF risks of this sector.
- f) The Supervisors have demonstrated that they have identified the risk relative to the emerging sectors.
- g) Onsite Supervision of DNFBPs (other than TSPs) are new and supervisory authorities have only recently started to fully assess and understand the ML/TF risks at the institutional and sectoral levels on an ongoing basis.
- h) The SoRE has not ensured that in practice, all the real estate agencies support the filing of SARs.

Recommended Actions

- a) The BMA should strengthen and deepen its understanding of the ML/TF risks facing the newly acquired CSP sectors through enhanced onsite examinations and meetings.
- b) The Supervisory Authorities for the newly supervised DNFBPs should understand of risk in their respective DNFBP sector.
- c) The Board should ensure that it has adequate resources including staff, to adequately conduct its supervisory functions.

d) The SORE must ensure that the real estate sector routinely practices the submission of SARs where warranted, through encouragement, training and enforcement.

366. The relevant Immediate Outcome considered and assessed in this chapter is IO.3²⁹. The Recommendations relevant for the assessment of effectiveness under this section are R.14, R. 26-28, R.34, and R.35.

6.1. Immediate Outcome 3 (Supervision)³⁰

367. The BMA is the sole financial regulatory authority in Bermuda and has the responsibility for regulating the FIs and TCSPs which encompass Banking, Insurance, Securities, Money Service Businesses (MSBs), Non-Licensed Persons (NLPs), the Bermuda Stock Exchange, TSPs and CSPs. Barristers and Professional Accountants in independent practice offering services to clients who conduct “specified activities”³¹ are regulated by the Barristers & Accountants AML/ATF Board (the Board). The Superintendent of Real Estate (SoRE) licenses and supervises real estate brokers and agents. Brokers are directly subject to the AML/ CFT regulations as a condition of their license, while agents are indirectly subject to the AML/ CFT regulations as each agent must operate as an agent employed by or associated with a licensed broker. Dealers in High Value Goods are regulated by the FIA and encompass Jewellery/Precious Metal and Stone Dealers, Car Dealers, Boat Dealers, Motorcycle Dealers, Antique Dealers and Auctioneers.

368. In terms of risk and context, not all sectors are of equal importance in Bermuda. As outlined in the previous chapter, in examining the effectiveness of Bermuda’s AML/CFT supervisory framework, greater importance was placed by the Assessors on banks and long-term insurance, securities, TSPs, CSPs, PTCs, MSBs and legal professionals due to the ML/TF risks posed by sector size, products and services, customer profiles, delivery channel and geography of these sectors.

369. Table 6.1 below gives a breakdown of the FI and DNFBP sectors in Bermuda and their respective AML/ CFT supervisors.

²⁹ When assessing effectiveness under Immediate Outcome 3, Assessors took into consideration the risk, context and materiality of the country being assessed./.

³⁰ The first paragraph should give a short summary of what relative importance assessors have given to the different types of financial institutions and designated non-financial businesses and professions, taking into account the risk, context and materiality of the country being assessed. This should be supplemented by a cross-reference to the more detailed information in Chapter One on how each sector has been weighted (based on risk, context and materiality) (as required by page 131 of the Methodology).

³¹ As defined in s.49(5) of the POCA specified activities include—buying and selling real property; managing of client monies, securities and other assets; management of bank, savings or securities accounts; organisation of contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements, and buying and selling business entities.

Table 6.1 Breakdown of the FI and DNFBP sectors in Bermuda and their respective AML/CFT supervisors

| Sector | Activity Sector | No. of Entities as at YE 2017 | No. of Entities as at 5.10 2018 | Supervisory Authority | Date Regulations Came into force |
|------------------------------------|--|-------------------------------|---------------------------------|----------------------------|----------------------------------|
| FIs | | | | | |
| Deposit-Taking Institutions | Banks | 4 | 4 | Bermuda Monetary Authority | 2008 |
| | Credit Union | 1 | 1 | | |
| Insurance | Life (Long-Direct) Insurance | 54 | 52 | Bermuda Monetary Authority | 2008 |
| | Intermediaries | 203 | 199 | Bermuda Monetary Authority | 2008 ³² |
| | Insurance Managers | 113 | 90 | Bermuda Monetary Authority | 2008 ³³ |
| Securities | Investment Businesses | 52 | 54 | Bermuda Monetary Authority | 2008 |
| | Fund Administrators | 29 | 27 | Bermuda Monetary Authority | 2008 |
| | Investment Funds | 543 | 410 | Bermuda Monetary Authority | 2008 |
| | NLP –Exempt Investment Business | | 78 | | |
| | NLP- Excluded/Exempt (Class A/BO Investment Funds) | 386 | 308 | | |
| Money Businesses | Service | N/A | 2 | Bermuda Monetary Authority | 2008 |
| Stock Exchange | N/A | 1 | 1 | Bermuda Monetary Authority | 2008 |
| DNFBPs | | | | | |

³² Insurance intermediaries who service Long-Term Insurers have been regulated since 2008.

³³ Insurance Managers who service Long-Term Insurers have been regulated since 2008, and those that service general and reinsurance only, were brought under the regulations in 2017.

| | | | | | |
|--|--------------------------------|-----|-----------------|--|------|
| Trust Business | Trust Service Providers | 28 | 28 | Bermuda Monetary Authority | 2008 |
| Corporate Service Provider Business | Corporate Service Providers | 62 | 94 | Bermuda Monetary Authority | 2017 |
| Legal | N/A | 23 | 23 | Barristers & Accountants AML/CFT Board | 2012 |
| Regulated Firms Accountants | Professional -Professional | N/A | 6 ³⁴ | Barristers & Accountants AML/CFT Board | 2012 |
| Real Estate Brokers | Purchase & Sale of Real Estate | 53 | 55 | Superintendent of Real Estate | 2017 |
| Dealers in Precious Metals and Stones - Registered | N/A | 2 | 2 | Financial Intelligence Agency | 2016 |
| Other Dealers in High Value Goods - Registered | NA | 0 | 0 | Financial Intelligence Agency | 2016 |
| Casino Gaming | Casino Gaming Operators | 0 | 0 | Bermuda Casino Gaming Commission | 2016 |

6.1.1. Licensing, registration and controls preventing criminals and associates from entering the market

370. The licensing and registration controls implemented by supervisors to prevent criminals and their associates from entering the markets are generally strong and effective. The well-matured BMA, and the other supervisory authorities albeit new to supervision, routinely conduct criminal background checks on qualifying shareholders, BOs and members of the management of supervised entities and have dedicated resources to ensure that unlicensed or unregistered activity is detected in ‘policing the perimeter’ activities.

FIs and TCSPs

371. The BMA has AML/CFT supervisory responsibility for 1,475 entities across the FI and DNFBP sectors and has strong control processes to prevent criminals from beneficially owning a significant or controlling interest or holding a management function in a supervised entity. In Bermuda, a two-stage process for market entry is employed which comprises of a registration & incorporation stage and a licensing stage.

Registration and Incorporation

372. The first stage in the registration procedure is the reservation of a name with the ROC. The application to form a company, partnership, or LLC (herein referred to as a “registered entity”) is then submitted to the BMA for vetting. FIs are required to be registered with the BMA in order to conduct business in Bermuda.

373. The controls implemented by the BMA to prevent criminals and their associates from owning or controlling financial institutions include an appropriately stringent layer of scrutiny and analysis executed by the BMA’s Corporate Authorizations Unit. The scrutiny and analysis are conducted on

³⁴ Accounting Regulated Professionals are registered with the Board, but only 5 were active and actually participating in “specified activities” and have been actively regulated.

natural or legal persons who aspire to have beneficial ownership of more than 10% (or who are seeking to amend their level of control) in a registered entity and extends to executive management who wish to have new or different individuals assume a regulated function in an FI. Such management positions include CEO, board member, Head of Compliance, CO, MLRO or Head of Risk.

374. To determine suitability of applicants, criminal background, negative information via various databases (such as World Check, LexisNexis, and Bloomberg) and open sources are checked. An additional layer of control exists for non-Bermudan natural person applicants, who are required to obtain a work permit and a Police Character Certificate. The BMA also utilizes mechanisms such as regulator-to-regulator requests and agreements with home country supervisory authorities to ensure that home country requirements are satisfied and that the supervisor would be willing to exchange information for AML/CFT purposes where a regulated legal person, licensed in a foreign jurisdiction, proposes to be a controller of a financial institution in Bermuda.
375. CSPs, at the formation or change of ownership or controllers, are also obligated to seek authorization from the BMA as Exchange Controller.
376. Enhanced vetting is another mechanism through which the BMA prevent criminals and their associates from entering the market as owners of supervised entities. Enhanced vetting is employed by the BMA when risk analysis, aided by the findings of the NRA determines that a regulated entity is high risk for ML. The enhanced vetting is also employed if the proposed BOs are PEPs, have had known instances of criminality, or if the legal entity seeking incorporation (or the natural person(s) seeking approval) resides or is located in a known high-risk jurisdiction. All applications are paused, and the Corporate Authorizations Unit seeks clarification from the CSP or submitting agent if any negative information is uncovered during the vetting process. At that time, the analyst vetting the application along with their manager would submit an internal SAR and may escalate to the Legal and Enforcement Department of the BMA or approve with routine ongoing monitoring or reject the application.

Licensing

377. Subsequent to registration or incorporation of an entity, the second layer of additional control is executed by the BMA's Licensing Department which is resourced with 7 qualified persons. This layer of control is focused on prudential and AML/CFT issues such as personal and institutional questionnaires, business plans and policies and procedures that are used to govern operations and manage risk, physical presence information and evidence of capital and liquidity availability and previous track records of previous regulatory relationships. The information submitted with the licensing application is vetted by the BMA using its due diligence processes and includes supervisor-to-supervisor enquiries via Multilateral MOUs covering information on criminal background which strengthens the BMA's ability to prevent criminals and their associates from holding or being the beneficial owner of a significant interest or holding a management function in these institutions.
378. Table 6.2 below shows the number of license applications received, the number approved, and the number rejected, withdrawn or deferred for insurers, investment business, investment funds, non-licensed persons and CSPs during the period 2014 – Q1 2018.

Table 6.2 Registration/Licensing activity for insurers, investment business, investment funds, non-licensed persons and CSPs for the period 2014-Q1 2018

| Sector | 2014 | 2015 | 2016 | 2017 | Q1 2018 |
|------------------|------|------|------|------|---------|
| Insurance | | | | | |
| Applications | 111 | 89 | 67 | 83 | 23 |
| Approvals | 102 | 88 | 56 | 75 | 22 |

| | | | | | |
|--------------------------------------|-----|-----|-----|-----|----|
| Rejections/withdrawals/ deferrals | 9 | 1 | 11 | 8 | 1 |
| Investment Businesses | | | | | |
| Applications | 1 | 2 | 4 | 3 | 0 |
| Approvals | 1 | 2 | 2 | 1 | 1 |
| Rejections/withdrawn/ deferrals | 0 | 0 | 0 | 2 | 0 |
| Investment Funds | | | | | |
| Applications | 80 | 75 | 44 | 69 | 12 |
| Approvals | 477 | 388 | 414 | 368 | 59 |
| Rejections/withdrawals/ deferrals | 45 | 63 | 20 | 12 | 4 |
| Corporate Service Providers | | | | | |
| Applications | 0 | 0 | 99 | 7 | 6 |
| Approval | 0 | 0 | 0 | 62 | 21 |
| Rejections/withdrawals/ deferrals | 0 | 0 | 0 | 38 | 10 |

379. Although not disaggregated in Table 6.2 above, evidence was provided onsite to demonstrate the BMA's ability to reject 2 CSP applications due to failure to satisfy the fit and proper requirements. Specific to CSPs, 99 applications were received in 2016, 7 in 2017 and 6 as at the time of the onsite visit in 2018, equating to 112 applications. Of these 83 were approved, 8 applications deferred prior to licensing and 2 declined due to failure to satisfy the fit and proper requirements. All applications received in 2017 were deferred.

380. A further control tool used by the BMA Enforcement team is "policing the perimeters" where the BMA actively looks for entities or individuals as well as unlicensed businesses that are not complying with the legislation and/or operating in Bermuda without the appropriate permissions. There are GNs drafted in this regard. The Assessors noted that historically the activity around policing the perimeters was not tracked. However, when the CSPs were brought under regulation, the policing the perimeters programme was enhanced to include actions designed to identify unregulated CSP activities. This involved a daily review of the published legal notices and additional google alerts. In 2018, the Authority issued 9 Cease and Desist letters to companies in the newly regulated CSP Sector. Six (6) of these were issued to companies who submitted licence applications but were declined; 3 remaining letters were issued to legal firms who continued to offer CSP services without obtaining a licence. Two (2) of these companies understood the requirement for a licence and ceased offering CSP services. The other company continued to operate, which resulted in a Public warning being posted to the BMA's website.

381. During the period under review the BMA issued 4 public warnings. Of these, 1 was for a business operation within Bermuda without a licence, while 3 were issued to companies operating outside Bermuda. The business operating within Bermuda was contacted by the BMA, which resulted in a change of content to the Facebook page. The BMA also had discussions with the BPS, but no evidence of the business having any customers, or conducting business was found and no further action was taken in this regard.

382. The case study below details a breach that was detected during a routine onsite visit by the BMA Prudential Supervision Team.

Box 6.1 Policing the Perimeter

Detection during routine onsite visits by the BMA Prudential Supervision Team revealed unauthorized entities operating contrary to the Investment Business Act 2003. The Team demonstrated that procedures are in place to address such matters using a ladder approach and in one case a meeting was arranged between the Authority's investment supervisors and Prudential Supervision Team and it was determined that an IBA exemption was required. The company subsequently provided submissions to the BMA which resulted in them receiving an exemption. The company was advised that as part of the exemption an NLP, they were required to register under S.9(1) of the SEA. The Company submitted their application to the BMA. The Company was not executing transactions nor was it providing investment advice. The Company did not have its own retail clients but were reviewing portfolios of clients already subject to AML policies and procedures administered by a regulated Trust Company. The Company's activity therefore posed no AML risk. No sanction was required in this case.

DNFBPs

383. The Real Estate Brokers' Licensing Act sets out the requirement that a real estate agent can only be licensed in Bermuda if he is an agent of a licensed broker and the Superintendent is satisfied that the minimum criteria for fit and proper has been met. The SoRE boasts strong fitness and propriety entry controls for those legal and natural persons aspiring for a realtor's license as persons applying to be a real estate broker or agent must be Bermudian, the spouse of a Bermudian, a Permanent Resident Certificate (PRC) holder (a statutory classification of permitted permanent resident in Bermuda) or a naturalised Bermudian. For applicants who purport to be a spouse of Bermudian, a PRC holder or a naturalised Bermudian, the SoRE undertakes the necessary due diligence to verify that those applicants have the requisite immigration status as claimed, or in the case of some spousal categories that they have approval to work in Bermuda. Work permit holders are not eligible to hold a real estate broker or agent licence. In addition to the work permit checks, the SoRE also conducts checks against sanctions lists and criminal background checks before licensing. This procedure is repeated annually to renew the license which ensures ongoing strength of controls. These controls, together with the stringent legal parameters for acquisition of property in Bermuda (one of which is the mandatory engagement of a lawyer in the process), significantly reduces the ML/TF risk posed to the sector and prevents criminals and associates from holding controlling interests in this sector.

384. The table below shows the number of applications received and the number approved from the real estate sector during the period 2014 – 2017, including the number who did not renew their applications or are who are inactive.

Table 6.3 Registration activity for real estate sector for the period 2014-2017

| Real Estate Brokers | 2014 | 2015 | 2016 | 2017 |
|-----------------------|------|------|------|------|
| Applications | N/A | N/A | N/A | 55 |
| Applications Approved | N/A | N/A | N/A | 53 |

385. Box 6.2 below outlines the SoRE's ability to cancel a licence due to failure to provide a criminal background check.

Box 6.2

Broker A submitted real estate licence renewal applications for the real estate firm on 30 November 2017, the final date of submission. Agent B disclosed in item 15 of his licence application form that he was convicted of breaking and entering in 2011. The Office of the Superintendent followed up with Broker A and explained the requirement for the submission of a criminal background check letter from the BPS to verify the disclosure and to determine if there were any additional criminal convictions. The Office of the Superintendent explained to Broker A the duty to ensure that persons with criminal convictions are prohibited from entering the real estate sector to trade in real estate.

On 2 January 2018, Broker A notified the Office of the Superintendent via email correspondence to cancel the application for Agent B and requested a refund for the licence fee as Agent B opted not to pursue a real estate agent's licence at that time. The Office of the Superintendent of Real Estate subsequently cancelled the application for Agent B and processed the refund of the agent licence fee as requested.

386. There are acceptable AML/CFT entry controls relative to legal practitioners in Bermuda. Individuals seeking to be called to the Bermuda Bar, in addition to their professional credentials, must provide an affidavit of good character to the Supreme Court of Bermuda. Barristers going into independent practice must register with the Board and be evaluated on a “fit and proper” basis in accordance with SEA. Firms (partnerships) and professional companies (legal persons) must likewise register with the Board.
387. In addition, the Bermuda Bar Act 1974, and the Certified Public Accountants of Bermuda Act 1973 direct that the composition of the Board, jointly appointed by the Bar Council and CPA, be no less than 4 and no more than 8 members, half of which shall be lawyers, with the other half being accountants. The membership of the Board is prohibited from being employed, affiliated or having a financial interest in any professional regulated firm. The Structure and eligibility requirements described in the preceding sentences ensure that there is a balance of representation between the two supervised professions and conflicts of interest are avoided on the part of Board members in the performance of their oversight functions.
388. At the time of the onsite, 50 legal practices were listed on the Country's webpage with only 23 regulated by the Board. The 23 were law practices were self-assessed as engaging in “specified activities”. The Board subsequently enhanced its oversight and entry controls in the sector by completing inspections in 2013 of 100% of the regulated law practices in Bermuda, with follow up inquiries in October 2017. Based on the inspections, the Board risk rated the sector Medium for ML/TF risk.
389. In August 2018, the framework was further enhanced through s.11B of the SEA which requires all legal practices (both firms and sole practitioners) to register with the Board. The Board then determines whether or not they are to be regulated and executes fitness and propriety tests on owners, controllers, directors and senior executives. Between 2013 and August 2018, the requirement for registration with the Board, pertained to persons in independent legal practice (both firms and sole practitioners) who provided services related to “specified activities” were mandated to register and be subject to the AML/CFT requirements and supervision.
390. All 6 public accounting firms existent in Bermuda are registered by the Board and are rated Low for ML/TF risk. These firms are all linked to international accounting organizations that are themselves supervised in their respective jurisdictions. These linkages allow for some consolidated risk management activity and as a result help to mitigate some of the ML/TF risks by this sector. According to CPA Bermuda, all the 6 RPFs in the accounting sector are owned or controlled by persons who are professional accountants. Accordingly, the BO of a significant or controlling interest in accounting sector RPFs, and those holding material decision making management functions, are professional

accountants initially vetted to international standards intended to prevent criminals and their associates from owning or controlling accountancy practices in Bermuda.

391. The FIA, the independent supervisory authority for DPMS has demonstrated that controls are in place to prevent criminals and their associates from owning or controlling the sector. These controls include a detailed registration form which must be submitted by applicants and the conduct of fit and proper assessments on persons associated with the business, (every director, controller and senior executive of the business along with the reporting and compliance officers for the business). The fit and proper test assesses the persons' probity, competence and soundness of judgement in fulfilling the responsibility of that position and ascertains whether the interests of the registered DPMS are likely to be threatened in any way by the holding of the position.
392. Another control that the FIA has in place to ensure that the sector is not owned or controlled by criminals and their associates is the implementation of a procedure which enables applicants to report any material change to the registration information provided or if it becomes apparent that information provided was inaccurate. It is mandatory, that such information must be provided within 28 days from the date of the occurrence of the change. The FIA has the power to request additional information from an applicant that it may reasonably consider necessary to enable it to decide on the application.
393. The FIA may refuse to register an applicant if any registration requirements have not been met, which include any information provided in the registration is false or misleading in a material manner, the application fee has not been paid and the person associated with the applicant has not passed the Fit and Proper test. The Assessors were informed however that the FIA received 2 applications for registration as DPMS and fit and proper assessments were conducted on both. The FIA was satisfied with the positive results from the review of the applications and as a result both applicants were successfully registered.

6.1.2. Supervisors' understanding and identification of ML/TF risks

394. All supervisory authorities in Bermuda recognize that the well-developed financial sector is inherently vulnerable to both ML and TF risks. The process for identifying and maintaining an understanding of ML/TF risk at the sectoral and institutional level is tailored for each supervisory authority and varies slightly across the supervisory authorities. All supervisors contributed to the 2013 and 2017 NRAs and considered the NRA findings when formulating their own risk assessments.

FIs and TCSPs

395. The BMA has demonstrated a very good understanding of the ML/TF risks in the sectors it supervises. As a mature and well-resourced regulator, the BMA has responsibility for supervising all the high-risk FI and TCSP sectors. The BMA's understanding and identification of ML/TF risks is informed by a number of inputs namely institution-specific risk assessment data and a well-established risk-rating methodology. There is also onsite and offsite supervision and a sector-wide data analysis approach through involvement with NAMLC and the compilation of the ML and TF NRAs. As onsite examinations increase, the BMA's understanding of both ML and TF risks at the institutional and sectoral levels will continually be updated and improved, including with respect to the higher risk CSP sector.
396. The BMA Internal Risk Assessment Model requires each FI to complete an annual questionnaire/statutory return specific to its sector. These returns are designed to collect data to assess the inherent ML/TF risk as well as certain measures the entities undertake to mitigate their risks. These annual returns have significantly strengthened the BMA's understanding of ML/TF risks across the sectors as well as by entities supervised.

397. The BMA maintains an up-to-date understanding of risks in the sector by using data gathered during on-site and off-site inspections, and AML/CFT annual data filing from FIs and TCSPs to update its assessment of risks across and within sectors. This approach allows the BMA to maintain an ongoing understanding of ML/TF risk in the supervised sectors and their component entities, and to calibrate its supervisory focus and priorities when circumstances change. In addition, the ML/TF risk assessments conducted by the supervised entities on their businesses provide additional institutional risk information to inform the supervisors' risk profiling activities, even when the risk ratings conducted by the BMA varies from those reported by entities. Additional effort could be made to compare these risk ratings particularly those where significant ratings are reported.
398. The BMA was able to discuss in-depth the ML risks facing the FI and TCSP sector. The primary sources of ML/TF risks relative to FIs and TCSPs were identified as the high net worth individuals, PEPs and their associates, charities, cash-intensive businesses, complex legal structures and non-resident persons. The supervisor also has a robust understanding of the inherent risks in certain business lines, such as retail and business banking for local residents, corporate and transaction banking mostly for international companies domiciled in Bermuda and wealth management and private banking services for high-net-worth individuals. The authority's use of international typologies and the data used in the TF NRA in order to ensure its sound understanding of TF risks given that there were no known terrorist or TF incidents was also well demonstrated.
399. The multi-component model has also been employed by the BMA to identify and understand ML/TF risks relative to other sectors under its supervisory purview.
400. With respect to the MSBs, the BMA has a very clear understanding of the nature of the sector and of the transactions. The BMA has conducted analysis of the risks associated with the primary destinations of remittances - the USA, Jamaica, Portugal and the Philippines, the volume and value of transactions and the absence of evidence of radicalization, the influence of foreign terrorist organisations in Bermuda and found the overall risk to be low.
401. As with the Banks, Securities, TCSP and MSB sectors, the BMA also has a sound knowledge and understanding of ML/TF risks in the insurance sector (which, based on its model, emanates from the life sub-sector, which is a relatively small component of the entire sector). For the period 2017-2018 the FIA reports that 19% of all SARs emanated from this sector, which indicates that systems are in place to enable insurers to identify and analyse risk and report suspicious activity. It also indicates that AML/CFT training in this sub-sector is adequate. The different parameters of the BMA model also allowed the supervisor to identify that sector as being more vulnerable to fraud than to ML, although little fraud has been detected in practice.
402. Despite the recent extension of AML/CFT supervisory responsibility for CSPs, as part of the licensing process, priority was given to a desk-based review of all applicant CSPs and since licensing, during 2018 The BMA conducted onsite inspections, targeting the larger CSPs first. The BMA is increasing its cache of information on the sector based on these examinations to fully grasp the risks and nuances of this new sector to supervision and the examinations conducted are considered a steppingstone for more in-depth analysis. In addition, the BMA played a lead role in the NRAs at the sectoral level and as such, has a keen grasp of the risks relative to this sector.
403. In relation to PTCs, the 2017 NRA assessed the risks and as a result a review of the sector was undertaken. The results of this review revealed that the bulk of the PTCs were serviced by Bermudan regulated service providers and legislation was introduced to formally require the PTCs to register as NLPs by September 2018. While TSPs and CSPs have a large international client base and a culture of confidentiality which increases the ML/TF risks, they are subject to enhanced supervision by the BMA. The BMA's involvement in the ML NRA in 2017 has resulted in their sound understanding of the risks in the PTC sub-sector.

DNFBPs

404. In addition to TSPs and CSPs, all other DNFBP sectors have been risk assessed as part of the NRA processes coordinated by the NAMLC which involved all supervisory authorities and sector representatives. Through this process the supervisory authorities' understanding of sectoral risk is good which provides the foundation for strengthening the supervision framework for these sectors.
405. The Board was able to demonstrate a fair understanding of ML/TF risks facing legal professionals and accountants operating in Bermuda. The supervisory approach which includes the conduct of on sites, desk-based reviews and data calls have all assisted with the Board's understanding of risks in the sector. The Board considers several factors in the conduct of risk assessments for the legal professionals who provide TSP and CSP services through separately incorporated and licensed/regulated affiliates. These factors include skill set of the CO, robustness and adequacy of policies and procedures, the state and adequacy of business risk assessments, the state and content of training, and adherence to targeting financial sanctions. The Board also has an MOU with the BMA and these two regulators meet regularly with a view to providing effective oversight relative to law firms that have common ownership with CSPs. The Board and the BMA have co-operated closely in their respective supervision such entities, ensuring that their supervision is mutually informed by any relevant issues. This has further contributed to its understanding of risks despite the infancy stage of its supervisory responsibility. This arrangement is in place to provide effective oversight relative to law firms that have common ownership with TCSPs. The international nature of the specified activities advised upon by the law firm and the higher risk activities conducted by CSPs which on occasion may have common ownership with law firms were identified as the two underlying risk factors in the sector. The types of transactions which carry with them a higher risk, are performed by the CSP and not the law firm and the law firm activities generally relate to domestic activities including conveyancing matters which are regarded as low risk.
406. Overall the SoRE is aware of and generally understands the ML risks of the sector albeit that it is in a less solid position than the BMA. The SoRE conducted the sectoral assessment in April 2018 which was informed by the results of the 2017 NRA, sector-wide risk assessments for the sector using information from the annual statistical returns from the licensees, as well as information gathered from both desk-based and onsite inspections conducted in 2018. The results of the sectoral risk assessment informed the supervisory activities that the SoRE has since undertaken with respect to onsite/offsite examinations. When the consolidated results are received, the plan is to continuously update the risk assessments with results from onsite inspections. The SoRE derives its understanding of ML/TF risk in the real estate sector through the results of the NRA and the reporting entity risk assessments. The results of the real estate sector vulnerability assessment were a direct result of a coordinated NRA process that involved several meetings between the SoRE, NAMLC and industry representatives. The SoRE knowledge of TF is developing.
407. The FIA has a sound understanding of ML/TF risks in the DPMS sector. To accurately assess the on-going ML/TF risks for the high value goods sector in Bermuda, the FIA conducts an annual sector risk assessment. Registration of the DPMS was completed in May 2017 and onsites were conducted of both DPMS in November 2017 of the existence of the supervisory regime. During onsite interviews, the Assessors noted that the 2018 follow-up onsite reviews were scheduled for November 2018. The FIA tested five core components of the sector's AML/ CFT regime and found the CO function and policies/procedures to be largely compliant, while the entities' business risk assessments for AML/ CFT, training and targeting financial sanctions to be largely complaint. As part of this assessment, the FIA compiles a questionnaire that is sent to all businesses in the sector irrespective of the entity being registered with the FIA.
408. Given the newness of the supervisory regime for the DiHVG, the findings of the annual sectoral risk assessment along with information gathered during the 2017 NRA will help to further develop the FIA's

understanding of the ML/TF risk in this sector which in turn will determine the frequency and intensity of supervision and policing the perimeter activities.

409. With regards Casino gaming, as at the time of the on-site there were no license issued for a Casino in Bermuda. There was one provisional license given and the provisional licence holder was being assessed by the CAs. As previously discussed, in Bermuda, there is a sound understanding of ML/TF risks associated with this activity.
410. Regarding unlicensed gaming, the CAs suspect that unlicensed gaming activities such as internet gaming may be occurring in the Bermudan communities and are looking to regularize this sector in 2019.
411. In conclusion, there is evidence of risk assessments conducted on the FI and DNFBP sectors in the NRA. Evidence was also provided to demonstrate that supervisory authorities had also individually risk assessed each entity within these sectors. There was active and continuing involvement and communication with all supervisory authorities throughout the NRA exercise, and continuing work at the entity level have rebounded to a strong understanding of risks across sectors in Bermuda.

6.1.3. Risk-based supervision of compliance with AML/CFT requirements

FIs

412. The BMA has put in place a supervisory framework with strong elements of a risk-based approach to ML/TF supervision to assess compliance with FIs and TCSPs under its supervision and to mitigate sectoral risks. This framework assesses the impact and probability of risks with respect to all aspects of the institutional FIs' operations and controls on an ongoing basis in order to facilitate a timely supervisory response to identified weaknesses or possible failures. Sectors considered high risk (banks/credit union, securities sector, private trustees and corporate service providers) are prioritized by the BMA and all supervised entities are subject to with respect to onsite examinations and offsite monitoring. These supervisory activities are conducted by a well-resourced large contingent of prudential and AML supervisory departments, BMA staff (See details of staff components under heading "Human Resource"). Onsite Examinations are decided upon at the beginning of the year and the calendar of inspections can be revised usually amended as during the year progresses largely if not exclusively based on changes in the risk profile of institutions, including factors and the results of "refresh" risk assessments.
413. The BMA's risk-based framework for AML/CFT supervision is underpinned by the risk profiles of each sector and of their component institutions and the 2017-2018 framework was heavily informed by the 2017 NRA results. The development of BMA's supervision strategies, prioritization and resourcing has all been influenced by the outcomes of the 2017 NRA exercise. These include establishing the intensity and frequency of supervisory activities (e.g. onsite examinations) as well as staffing, outsourcing, training and related budgeting requirements. The BMA produces a supervisory inspection plan annually which is approved by the On-site Review Committee prior to implementation. The AML Department regularly reviews the supervisory plans to take account of any new information on ML/TF risks impacting the sectors or individual entities.
414. BMA's off-site reviews entails the review of the institution's AML/CFT policies and procedures and the results are communicated to the entities via letter. In addition to the above core off-site AML/CFT activities, the prudential and AML/ CFT units also hold regular outreach meetings with industry groups, external auditors and other stakeholders to discuss supervisory issues, including regulatory developments, SAR reporting, risk issues. As part of its supervisory function, the BMA reviews the working papers of external auditors to verify the scope of an FI's internal control, corporate governance

and legal compliance framework. The AML/ CFT independent audits are also a source of information on the effectiveness of the FI's AML/ CFT programme and compliance with the AML/ CFT legislation.

415. The assessment of sectoral and institutional ML/TF risk profiles informs the supervisory strategy, objectives, scope, depth and frequency of examinations, which include a mix of documentary reviews and interviews with key staff of FIs during inspections. BMA's objectives of on-site inspections are to verify the adequacy of FIs AML/ CFT programmes (policies, procedures, risk management systems and controls) and to determine if they are commensurate with their risk and, inter alia, size, business model and ML/TF risks and to verify compliance with national AML/ CFT legal requirements. The BMA develops its understanding of the ML/TF risks facing sectors under its supervision by conducting an annual risk assessment at both sector and entity levels, using data calls and questionnaires.
416. The BMA's risk assessments are structured in three stages: understanding the inherent risk within a sector; assessing the effectiveness of the ML/TF controls in place; and estimating the level of residual risk in that sector. This risk assessment is used to inform the RBA to AML/CFT supervision across all stages of the AML/CFT supervisory lifecycle. The BMA's types of on-site supervisory examinations of the FIs are (1) full scope, (2) Limited/targeted scope (3) Follow-up examination and (4) Thematic examinations. The BMA employs one or more types of examinations depending on the risk profile of FIs.
417. In keeping with the risk-based approach and its supervisory findings, the BMA focussed its 2014 on-sites on higher risk sectors including long-term insurers, banks, trust companies, the investment sectors and money service businesses. Since 2014, the risk modelling outcomes and the results of the BMA's on-site and off-site processes determined the frequency of on sites, especially as it relates to the banking sector. During interviews of sectoral representatives, it was determined that negative news/intelligence gleaned externally may also prompt sudden, unplanned onsite visits or affect the frequency of visits. This was noted to be the case during the Panama Papers crisis.
418. Additionally, there is evidence that onsite examinations are increasing. However, no copies of examination schedules were received from each supervisor to determine the frequency and scope of the examinations planned for 2019 to determine whether planned activities correlate to known ML/TF risks.
419. With regards the LTD Insurance Companies, the SARs are a good barometer to assess how effective the supervisory method employed for the LTD Insurance companies have been, particularly as the FIA has reported that the quality of SARs have improved across all sectors and that defensive filing is kept to a minimum.
420. In cases where critical non-compliance is highlighted, BMA will execute a one-on-one meeting with the entity to discuss the identified deficiency. A further on-site inspection is planned to establish the status of those issues to ensure closure of identified deficiencies.
421. On completion of the on-site examination a draft report containing the main findings and recommendations, including remedial actions and where applicable sanctions is presented to the examined entity. The combined supervisory activity of the AML/CFT Unit's onsite and offsite teams and the prudential unit teams complement each other and combine to ensure a highly effective, highly developed AML/CFT supervisory regime.

Table 6.5 Onsite Examinations Across All Sectors (2014 – 5 October 2018)

| SECTOR# | AML/CFT Regulator | No. of Regulated Entities in sector | FIs | | | | | |
|---------|-------------------|-------------------------------------|------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|-------------------------|
| | | | No. of Regulated Entities in | No of entities examined (2014) | No of entities examined (2015) | No of entities examined (2016) | No of entities examined (2017) | No of entities examined |
| | | | | | | | | |

| | | as at 31.12.17 | sector as at 05.10.18 | | | | | d 5.10.18 |
|---|--------------------------------------|-------------------|-----------------------------|-----|-----|-----|---|--------------|
| Deposit Taking Institutions (Banks & Credit Union) | BMA | 5 | 5 | 2 | 1 | 3 | 4 | 5 |
| Insurance | BMA | 370 | 341 | 1 | 5 | 4 | 8 | 9 |
| Securities | BMA | 1008 | 877 | 12 | 9 | 18 | 9 | 9 |
| MSBs | BMA | 2 | 2 | 2 | 0 | 1 | 1 | 1 |
| DNFBPs | | | | | | | | |
| DNFBPS | | | | | | | | |
| TSPs | BMA | 28 | 28 | 11 | 4 | 6 | 7 | 2 |
| CSPs | BMA | 62 | 94 | n/a | n/a | n/a | 0 | 27 |
| Regulated Professional Firms – Legal | B&A AML/CFT Board | 23 | 23 | n/a | 20 | 1 | 1 | 5 |
| Regulated Professional Firms – Professional Accountants | B&A AML/CFT Board | 6 | 6 | 0 | 4 | 2 | 0 | 0 |
| Real Estate Brokers | Superintend ent of Real Estate | 53 | 55 | n/a | n/a | n/a | 0 | 10 |
| Dealers in Precious Metal & Stones | FIA | 2 | 2 | n/a | n/a | 0 | 2 | 0 |
| Other Di- HVG | FIA | 0 | 0 | n/a | n/a | n/a | 0 | 0 |

422. Sector representatives have inferred that the onsite examinations will continue to increase after 2017 as the sectors that have recently been added to supervisory regimes continue to become monitored to ensure that adherence to legislation and regulation is achieved where applicable. The table above demonstrates that onsite examinations were not conducted for CSPs, RPFs and Real Estate professionals during the period 2017. However, in relation to the real estate sector, onsite examinations for real estate brokers commenced in April 2018 and a total of 10 onsite examinations were completed up to the time of the onsite visit to Bermuda. In relation to RPFs, in the legal sector, 4 onsite examinations were conducted during 2018, prior to the Assessors' onsite visit. Twenty-seven (27) onsite examinations were conducted for the CSPs by the BMA during 2018.

423. As at end 2017, the BMA had entered into 29 supervisory MOUs with foreign supervisors. The BMA conducts group supervision for the insurance sector with a range of supervisory activities including onsite examinations and supervisory colleges for insurance sector. During 2016 the BMA conducted 11 examinations of insurance groups and hosted 15 supervisory colleges covering groups in which the BMA is group supervisor.

424. In 2017, the BMA conducted 14 group on-site reviews and participated in 22 supervisory colleges for insurance as group supervisor. In addition, the BMA was host supervisor for a further 20 colleges.

During the colleges, the BMA presented and received detailed analyses, and coordinated supervisory plans with overseas regulators for insurance groups with Bermuda-related operations.

425. For banking, the BMA participated in two supervisory college events during 2016, and one supervisory college during 2017. A joint AML/CFT Trust supervisory college occurred in November 2017 with regulators from the Crown Dependencies, Cayman and BVI with a follow-up on February 7th, 2018.
426. The BMA also assesses the adequacy of risk controls in the Banking Sector through the onsite examinations process. The BMA focuses on the core elements of the sector's AML/CFT risk management framework including the Compliance Function, Policies and Procedures, Risk Assessments, Training and Targeted Financial Sanctions, and has determined that the level of risk controls and AML/CFT Compliance for this sector has improved from being Partially Compliant in 2016 to Largely Compliant in 2017.

DNFBPs

427. The Board is the only self-regulating body in Bermuda and has also developed a framework to supervise the legal and accounting firms under its ambit. Reasonable controls in relation to lawyers at both the licensing stage and thereafter are in place. The Board (in conjunction with the Bar Association) requires attorneys to obtain an affidavit of good character upon entry into the sector. It has developed an onsite protocol document to ensure that onsite visits are conducted based on risk. Barristers must also register with the FIA.
428. The Board has developed and documented a risk-based framework methodology to supervision which entails desk-based reviews of their policy and procedures manuals which was then used as the basis for onsite reviews on all the RPFs. There is a requirement to look at additional resources and to determine if and where the firms may have connections to trusts, as well as to determine if any groups are connected to law firms through trust structures and do not pose an unacceptable risk. No deadlines to complete these exercises have been determined. Joint Compliance and ML/TF onsite visits with the BMA has also been conducted in relation to 22 of the 23 regulated attorneys and to all 5 of the regulated accountants during the period under review, some of them more than once. The supervisory regime is new and as a result, the Board ensures frequent follow-up visit for continuous monitoring of compliance. All 9 firms were placed on remediation plans. Prior to the Assessors' onsite visit to Bermuda, all 9 firms had all already successfully completed their remediation plans.
429. Data calls have been utilized by the Board as one component of its supervisory approach which supports the onsite examinations and desk-based reviews. All legal firms that did not supply the Accounting and Barrister Board with the requested documentation such as their policies and procedures during the Board's first round of onsite reviews were designated as high-risk for the purpose of sequencing of the onsite inspection schedule for the sector. These matters were however addressed through remediation plans which the Board had already assessed as completed, based on follow-up reviews of these firms.
430. The supervisory functions of the DPMS are executed by the supervisory unit of the FIA. The supervisory unit functions independently from the main arm of the FIU and has separate human and financial resources to execute its functions. The supervisory regime for the DPMS is new and at the time of the onsite visit, there were only 2 Registered Dealers. The Assessors noted that the supervisory authority had conducted onsite visits of both businesses during September 2017 which focused on CDD, record-keeping, suspicious transactions reporting, staff training on the prevention & detection of money laundering and the functions of the MLRO. To gain an understanding of the sector, the FIA has taken actions to "police the perimeter". The FIA undertook outreach to raise awareness of the registration requirements and commenced collaboration with other DNFBP supervisors in relation to enhancing the understanding of Bermuda's ML/TF risk.

431. The FIA has conducted random sampling of unregistered businesses in the sectors under the provisions of Part 3 of the SEA (s.16-17), to gather information and conduct on-site visits to ascertain if a business within the sector that has not registered with the FIA is accepting cash payments in excess of the threshold amount of USD7,500 (thereby contravening s.9 of SEA). This is a major component of the FIA's policing the perimeter activities and supervisory regime. Most of the results of these assessments of unregistered businesses concluded and indicated that a significant majority of businesses were not accepting cash payments above the statutory threshold.
432. Given the relative newness of supervision of DNFBSs (other than trusts), the supervisory authorities have only recently started to fully assess and understand the ML/TF risks at the institutional and sectoral levels on an ongoing basis. The supervisory authorities must therefore continue to enhance their risk-based framework and provide ongoing training in order to ensure that their supervised entities better understand their risks and that they are effectively monitored commensurate with such risks.

Human Resources

433. The BMA supervisory structure is made up of the Corporate Authorization, prudential and AML/CFT Departments. The Corporate Authorizations Department has a staff complement of 5 members. The prudential areas of the BMA have 103 supervisory team members who oversee the FIs and TCSPs. Specifically, 70 staff members supervise insurance and 33 members supervise the banking, securities and TCSPs. The BMA executives indicated that the number of staff in the Corporate Authorization Department is projected to increase in the short term.
434. The Enforcement Team which is responsible for both policing the perimeter and applying dissuasive actions, comprises of four persons in total (3 attorneys and one investigator). There is an Enforcement Committee to whom all ML/TF regulatory breaches are reported whether discovered during an onsite examination or offsite surveillance. The Enforcement Committee advises what action should be taken when such breaches occur, and the affected FI or TCSP is made aware of any BMA decision notices. The FI has a right to appeal, which is also handled by the Ministry of Finance.
435. The Policy Unit comprised of 5 staff members is charged with writing, amending and interpreting policy. The BMA has plans to grow its supervisory ambit to cover two additional sectors (Digital Assets and Digital Coin) and is launching a consultation paper to this effect to the general public by Q1 2019.
436. Within the BMA there is an AML/CFT Supervision Department that comprises 14 staff, increased from 5 over the past year. The unit's responsibilities include reviewing and approval of licensing applications, conducting AML/CFT focused assessments of FI and TCSPs. The Assessors noted that a Risk and Analytics team sits within the AML/CFT department and has responsibility of conducting data calls and entity level risk assessments. The BMA also has a Licensing Department. The BMA has set up a Financial Stability Unit, where AML/CFT is ranked as top priority. During the interview, the Assessors were informed that BMA staff are trained in financial stability, trust management and the Federal Reserve System. The Assessors also noted that staff are ACAM Specialists and attend regular ACAMS workshops/conferences. The attendees inform the BMA on new developments in the AML/CFT Regime. BMA Staff also attended the CFCFT Assessors training and gained knowledge on how to apply the FATF Recommendation and Methodology.
437. The Government of Bermuda has the political will to grow Bermuda's economy with the addition of digital assets and casino gaming and the BMA (and the BCGC) are currently in preparation for the anticipated added supervisory responsibilities that these emerging sectors will bring.
438. The Superintendent of Real Estate's structure is made up of 4 units, i.e. the policy, revenue, licencing and compliance units and is staffed with 19 members. Supervision of the real estate industry is new, however the Assessors noted that the SoRE has developed and implemented a risk based supervisory

framework and has conducted 46 desk-based reviews and 10 onsite inspections up to October 5th, 2018. The SoRE must ensure that it continues to enhance its risk-based framework and provide ongoing training in order to ensure that its level of understanding the risks faced by its supervised entities are adequately understood and effectively monitored.

439. The supervision by the Board is new and the Assessors were informed that the Bar Council and CPA – Bermuda is required to increase its resources including staff in order to adequately conduct its supervisory functions.

6.1.4. Remedial actions and effective, proportionate, and dissuasive sanctions

FIs and TSPs

440. The BMA has a range of enforcement powers, both financial and non-financial, that allows it to apply sanctions in accordance with the severity of breaches of law and regulations. To effectively implement these powers, the BMA has issued an Enforcement Statement of Principle and Guidance. The BMA's inspection reports require remedial actions to be undertaken and FIs to provide a formal response to the reports, including an action plan to address such deficiencies. The BMA would seek remediation from the FI and TCSPs before resorting to its powers of enforcement under the Act. Depending on the severity of issues found, the BMA has the power to revoke licenses and to revoke approvals of individuals for regulated functions which it has used in the past. Inspection reports themselves speak to enforcement prospects. The supervised entities are also given deadlines to correct the infraction, after which formal enforcement can commence. The BMA has implemented a follow-up and monitoring process from the time deficiencies and breaches are identified up to the time that it is satisfied that the expected corrective action has been taken.
441. The BMA also incorporates the RBA supervision in the implementation of its enforcement powers. For instance, identified deficiencies and breaches of law that adversely impact a regulated entity's effective ML/TF risk management systems and processes would attract enhanced supervisory attention. The range of remediation and enforcement tools available to the BMA include:
- Alerting the FIs and TCSPs Board of Directors of the breach/infraction;
 - Submitting a warning notice;
 - Imposing directions, restrictions and conditions;
 - Imposing a civil penalty;
 - Injunctions;
 - Public censure;
 - Objections to controllers;
 - Prohibiting individual directors and officers;
 - License revocation;
 - FIs and TCSPs windups; and
 - Referrals to the Police.
442. For the period under review, the following sanctions, fines and penalties were levied:

Table 6.6 Sanctions, Fines and Penalties Levied 2014 – 2018(Oct. 5th)

| DATE | SECTORS | ACTIONS | OUTCOME |
|-------------------------------|----------------------------------|------------------|------------------------------|
| FINANCIAL INSTITUTIONS | | | |
| 2014 | Securities | Decision Notice | \$1.5M Civil Penalty |
| 2015 | Banking | Decision Notice | Settled |
| 2016 | Banking | Decision Notice | \$250 Thousand Civil Penalty |
| | Insurance | Decision Notice | \$750 Thousand Civil Penalty |
| 2017 | Securities | Decision Notice | \$1.5M Civil Penalty |
| DNFBPS | | | |
| 2015 | TSP | Decision Notice | \$250 Thousand Civil Penalty |
| 2017 | TSP | Decision Notice | License Restrictions |
| 2018 | CSPs | Cease and Desist | |
| | CSPs | Cease and Desist | |
| | CSPs | Cease and Desist | |
| | CSPs | Cease and Desist | |
| | CSPs | Cease and Desist | |
| | CSPs | Cease and Desist | |
| | CSPs | Cease and Desist | |
| | CSPs | Cease and Desist | |
| | Precious Metals & Stones Dealers | Warning | |

443. Table 6.6 depicts supervisory action and outcomes that are clear, with the corrective and enforcement administrative actions applied to FIs and TCSPs robust, effective and ongoing. Although the numbers of fines undertaken (Table 6.7) are low in comparison to the high number of FIs and TCSPs existent in Bermuda, the lack of correlation is not indicative of the proportionality or dissuasiveness of the sanctions applied as assessors note the positive impact of the risk-based supervision and the level of compliance in the more material sectors.

444. The following corrective/enforcement actions have been issued by the relevant DNFBP supervisors for the period under review:

Table 6.7 Corrective/Enforcement Actions 2014 – 2018(Oct. 5th)

| DATE | SECTORS | ACTIONS |
|-------------------------------|----------------------------------|-----------------------------|
| FINANCIAL INSTITUTIONS | | |
| 2014 | Deposit Taking | 2 remedial letters issued |
| | Securities | 11 remedial letters issued |
| | Insurance | 1 remedial letter issued |
| | MSBs | 2 remedial letters issued |
| 2015 | Deposit Taking | 1 remedial letter issued |
| | Securities | 9 remedial letters issued |
| | Insurance | 5 remedial letters issued |
| 2016 | Deposit Taking | 3 remedial letters issued |
| | Securities | 17 remedial letters issued |
| | Insurance | 4 remedial letters issued |
| | MSBs | 1 remedial letter issued |
| 2017 | Deposit Taking | 4 remedial letters issued |
| | Securities | 9 remedial letters issued |
| | Insurance | 8 remedial letters issued |
| | MSBs | 2 remedial letters issued |
| 2018 | Deposit Taking | 5 remedial letters issued |
| | Securities | 35 remedial letters issued |
| | Insurance | 51 remedial letters issued |
| | MSBs | 1 remedial letter issued |
| DNFBPS | | |
| 2014 | TSPs | 11 remedial letters issued |
| 2015 | TSPs | 4 remedial letters issued |
| | Law Firms | 9 remedial letters issued |
| 2016 | TSPs | 6 remedial letters issued |
| 2017 | TSPs | 7 remedial letters issued |
| | CSPs | 101 remedial letters issued |
| | Precious Metals & Stones Dealers | 2 remedial letters issued |
| 2018 | TSPs | 2 remedial letters issued |
| | CSPs | 27 remedial letters issued |
| | Real Estate Brokers | 9 remedial letters issued |

DNFBPs

445. As indicated above, both financial and non-financial sanctions have been applied in practice, and risk issues are also considered in the application of sanctions by supervisors of FIs and DNFBPs. The supervisory processes for the less material DNFBP sectors (other than TSPs) are still evolving and have not yet identified the need to apply the full range of available corrective measures and sanctions. Notwithstanding, as the DNFBP (non-TSP) supervisors further implement their risk-based supervisory frameworks, conduct more onsite inspections and enforce the training obligation of DNFBPs, the effectiveness of these supervisors' enforcement powers should also improve.

6.1.5. Impact of supervisory actions on compliance***FIs and TSPs***

446. The BMA has articulated a vast improvement in the compliance culture of, and understanding of risks by FIs & TCSPs, coupled with an improvement of the numbers and quality of SARs filed, and there was a corresponding rise in supervisory actions that have led to a robust improvement in AML/CFT compliance since the last MEVAL in 2008. Where a risk assessment has indicated that more robust measures need to be adopted, the banks have implemented best practices such as enhanced screening,

transaction monitoring and analytics. Serious administrative fines have been levied to other sectors for breaches, with a notable increase in these activities over the years. We note that onsite supervisory examinations have been identifying consistent improvement in all sectors of five core areas examined. The banking sector has been assessed for from 2014 to 2017 and onsite assessment results have confirmed a marked improvement from partially compliant in 2014 to largely compliant in 2017.

447. Through its supervisory processes and initiatives, the BMA has achieved considerable improvement in the compliance culture, and in the understanding of risks by FIs & TCSPs. This is also evidenced by a notable improvement of the number and quality of SARs filed. Assessors noted a corresponding rise in supervisory enforcement actions that have led to a robust improvement in AML/CFT compliance since the last MEVAL in 2008. Implementation of a risk-based approach has also contributed to positive impact on supervised sectors by identifying areas where proportionately more robust measures are required. This has resulted in some banks implementing more effective practices such as enhanced customer screening, transaction monitoring and risk analysis. Dissuasive administrative fines have been levied to other sectors for breaches, with a notable increase in these activities over the years. In all sectors, onsite supervisory examinations have been identifying consistent improvement in five core areas examined. Onsite assessment results for the banking sector for the period 2014 to 2017 have confirmed a marked improvement in compliance ratings from partially compliant in 2014 to largely compliant in 2017.
448. The securities and MSB sectors have also been examined from 2014 to 2017 and the examination results for both sectors reflect a trend upward from partially compliant to largely compliant, evidencing the impact of the supervisory process on compliance.

DNFBPs

449. There have been improvements in the compliance culture of other DNFBPs through onsite inspections, review of the procedures, and SARs filed since the last MEVAL in 2008. However, the risk-based methodology employed by the DNFBPs supervisors is relatively new but is evolving and starting to show a higher degree of effectiveness. Work continues to show that the supervisory programs adopted by these supervisors have started to have the desired effect. TSP onsite examinations have recorded overall improvements from partially compliant to largely compliant. Between 2014 and 2017, there were no onsite supervisory examinations of licensees in the real estate, RPF-Professional Accountants CSPs. However, in relation to the real estate sector, onsite examination for the real estate brokers commenced in April 2018 and a total of 10 onsite were completed up to the time of the Assessors onsite visit. In relation to Regulated Professional Firms in the legal sector, 5 onsite examinations were conducted during 2018, prior to the Assessors' onsite visit. 27 onsite examinations were conducted for the CSPs by BMA in 2018.

6.1.6. Promoting a clear understanding of AML/CFT obligations and ML/TF risks

FIs and DNFBPs

450. FIs and DNFBP supervisors generally promote clear understanding of the AML/CFT obligations by publishing guidelines which are detailed on ML/TF risks. The various supervisors also provide relevant information on their websites.
451. At the conclusion of the NRA exercises, relevant supervisors held meetings with their regulated entities to ensure that the rated risks identified and assessed in of the relevant sectors are clearly communicated and understood. The NRA was also posted to the country's website to facilitate access by all sectors and the global market. This enabled a clear understanding of the sectoral risks facing Bermuda.

452. BMA uses a variety of means to promote an understanding by FIs of their AML/CFT obligations. For example:

- i. Published sectoral guidance notes, coordinates outreach programs and regularly updates the BMA website.
- ii. Developed policy and consultation papers that support the goals of the supervisory units.
- iii. Conduct outreach to industry where gaps were noted during on-sites or where changes to the Regulations necessitated communication with industry.
- iv. Published guidance documents to enhance the understanding of ML/TF risks and support the compliance to regulations and international standards by FIs.
- v. Coordinated the dissemination of updates on topics such as regulatory policy, the BMA's supervision.
- vi. Conducted a series of sector specific workshops on the key deficiencies noted during on-site examinations. Topics ranged from CDD, Ongoing Monitoring and Systems to Risk Assessment and the Risk Rating Process. The purpose of these sessions was to raise the awareness among FIs and Trust Companies about their AML/CFT obligations.
- vii. Industry engagement, such as conferences and joint exercises with other Supervisory Authorities.
- viii. Regularly attend industry association meetings to provide on-going updates on ML/TF risks and regulations.

453. The other supervisory Authorities such as the Board, the SoRE and the FIA also use a variety of means to promote the understanding by their supervised entities. For example:

- i. Issuance of Guidance Notes on AML/CFT
- ii. Conducted training and outreach sessions
- iii. Development of Awareness Strategy

454. Although the NRA results did not show a high level of cash transactions involved in the real estate sale and purchase transactions in Bermuda, it revealed that the sector was in need of more in-depth training and awareness of its new obligations under the AML/CFT legal framework, especially as it relates to the treatment of PEPs, CDD and where applicable, EDD measures for legal persons, and the filing of SARs with the FIA. Along with sectoral risk assessments conducted since the NRA, the Superintendent has commenced its outreach sessions with the engagement of the FIA to assist brokers understanding on how to address these matters.

455. Bermuda has exhibited most of the characteristics of an effective supervisory system and has made commendable effort to reform its ML/TF risk management regime. Supervisors have adopted an integrated approach to supervision and have tried to coordinate efforts as much as possible. However, some supervisory regimes namely the BMA, are more developed and mature than some of the less material sectors, but overall all supervisors are implementing the risk-based approach taken by the country which were informed by the NRAs, sectoral and institutions' risk assessments.

456. BMA has licensing and registration controls in place to prevent criminals and their associates from holding or being the beneficial owner or performing a management function in the financial institutions. The licensing regime implemented by the BMA is robust and the BMA has adopted the RBA supervisory framework and is aware of the ML/TF risks faced by the respective entities they supervise.

457. Fit and proper procedures are in place in the FI sectors for regulated functions such as the CO, MLRO and Board Directors and are adhered to. In addition, external and internal auditors are required for FIs which are also adhered to. Enhanced due diligence is employed if the proposed natural person or legal person wishing to hold a regulated position displays enhanced risks such as PEPs, have had known

instances of criminality, or if the legal entity seeking incorporation (or the natural person(s) seeking approval) resides or is located in a known high-risk jurisdiction.

Overall conclusions on IO.3

458. **Bermuda is rated as having a Substantial level of effectiveness for IO.3.**

7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings

- a) Legal persons' vulnerabilities assessments have been undertaken and the CAs understand the legal persons' risks.
- b) Private Trust Companies, which were exempt from licensing with the BMA, and identified as high risk, have now been required to register as NLPs, if they are not otherwise supervised, to mitigate their high risk. The effectiveness of the measures, which affects approximately 10% of PTCs, could not yet be assessed.
- c) Private Act Companies, including those which are SACs do not fall under beneficial ownership framework unless registered with the ROC (unregistered Private Act Companies represent approximately 4% of legal persons) or otherwise supervised by the BMA.
- d) The issuance of bearer shares has been prohibited for many years. However, bearer share warrants may be traded.
- e) Available information concerning the beneficial ownership of legal persons and legal arrangements created in Bermuda is accessible to the CAs and can be provided in response to international requests.
- f) Bermuda has significantly enhanced its BO requirements with legislative amendments mandating that companies, LLCs and partnerships maintain up-to-date beneficial ownership registries (effective March 2018) and file them with the BMA (effective December 2018). The Assessors were not able to assess the effectiveness of the new provisions.
- g) Prior to the legislative amendments the BMA verified and maintained 'BO' information, which did include natural persons prior to formation.
- h) Another component of the mitigation measures to prevent misuse of legal entities in Bermuda is the obligation for all exempted companies to have a Bermuda resident director or Bermuda resident secretary or resident representative in Bermuda.
- i) The establishment of the ROC Compliance Unit in April 2017 ensures that legislative requirements including those in relation to BO are monitored and enforced.
- j) Whilst Bermuda has not yet demonstrated that all the relevant sanctions are proportionate and dissuasive, the penalties applied to supervised entities by the BMA appear to have been dissuasive although limited.

Recommended Actions

- a) Ensure that the ROC's Compliance Unit is sufficiently resourced to undertake its compliance monitoring mandate, particularly in relation to the BO registry requirements.
- b) Ensure that all relevant PTCs, which were not otherwise supervised, are registered as NLPs and supervised under the new framework.
- c) SACs should be required to utilize an AML/CFT regulated SAC representative.
- d) Private Act companies should be mandated to provide up-to-date and accurate BO information, including notification of changes.

- e) Monitoring should be conducted to ensure CSPs are aware of their obligation to hold adequate BO information in relation to all entities for whom they provide services including those which pre-date their licenses.

459. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24-25.³⁵

7.1. Immediate Outcome 5 (Legal Persons and Arrangements)

7.1.1. Public availability of information on the creation and types of legal persons and arrangements

460. There are three main types of legal persons in Bermuda; companies, limited liability companies (LLCs) and partnerships. Information on the types and formation of most of these legal persons is available on government websites such as the ROC website³⁶ and the BMA website³⁷. Companies and LLCs may be local (at least 60% of the equity beneficially owned by Bermudians) or exempted. Only local companies are permitted to carry on and compete for business which is in Bermuda (and elsewhere). Exempted companies may be resident in Bermuda but must carry on business from Bermuda in connection with transactions and activities which are external to Bermuda or with other exempted companies or may carry on business with the local market if licensed to do so by the Minister of Finance. Overseas companies, also known as permit companies, are companies incorporated or formed in other jurisdictions which have applied for and received a permit to carry on business in or from Bermuda³⁸. Most companies are limited companies however, no information is available on the website in relation to unlimited companies (there were only 35 unlimited companies on the register at the time of the on-site evaluation).
461. There is publicly available information regarding local, exempted and overseas partnerships as well as the distinction between limited and general partnerships. Partnerships may elect to have a legal personality by filing a declaration with the ROC.
462. Private Act companies (PACs) may also be formed in Bermuda by way of an Act of Parliament approved by a special joint [bipartisan] select committee. There is limited information on the private act companies although the procedures for the use of the Private Act process are enshrined in Standing Orders available on Bermuda's Parliamentary website.³⁹ PACs which are limited by shares are required to register with the ROC. In 2018, there were 653 PACs which were not registered by the ROC and 520 which were registered.
463. In relation to legal persons, as at June 2017 there were a total of 15,378 broken down as follows: 3,080 local companies, 10,704 exempted companies (626 of which were publicly listed companies) and 466 overseas (permit) companies. There were 89 overseas partnerships, 380 general partnerships (local) and 1,023 general partnerships (exempted). There were 2 local LLCs and 14 exempted LLCs.

³⁵ The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

³⁶ <https://www.gov.bm/department/registrar-companies>

³⁷ <https://www.gov.bm/department/registrar-companies>

³⁸ It should also be noted that overseas companies and overseas partnerships (companies granted a permit to operate in Bermuda) will not be subject to the new BO requirements, however they are not 'incorporated' in Bermuda.

³⁹ <http://parliament.bm/admin/uploads/standing/99f12904b01e6fe5ab054a8069d24c03.pdf>. (Bermuda House of Assembly Official Standing Orders 15 and 33 revised July 12, 2013)

464. Information in relation to the creation and types of legal arrangements, which in Bermuda is limited to trusts, is available, for example, on the websites of law firms operating within Bermuda and some information in relation to regulated trusts is also available on the BMA website⁴⁰.
465. In relation to licensed trustees, in June 2017 there were 2,027 discretionary trusts, 80 fixed interest trusts, 359 purpose trusts, 95 charitable trusts (not including those registered with the Registrar General, only those managed by licensed trustees) and 191 other trusts such as Unit Trusts, Pension trusts etc.

7.1.2. Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

466. The identification, assessment and understanding of ML/TF risks and vulnerabilities of legal persons in Bermuda is grounded upon assessments conducted by two CAs, namely the BMA and the ROC. In June 2017, the BMA conducted a preliminary assessment of the various entities formed in Bermuda based upon the concentration and nature of the customer's business, ownership structure and control. Exempted companies, overseas companies and overseas partnerships were found to be "high risk" whilst limited partnerships and exempted LLCs were found to be "medium-high" risk.
467. The ROC then commenced an inherent vulnerability assessment of legal persons in November 2017 to determine their inherent vulnerability to ML/TF. This assessment preliminarily concluded that exempted companies (as well as exempted LLCs) were high vulnerability owing to the global nature of their businesses, the high dollar value of transactions and the complexity of transactions and corporate structures. Nearly all had business activities involving holding companies, investment holding, finance, or insurance/reinsurance. In August 2018 the ROC completed, in collaboration with other agencies such as the BMA, the FIA and the BPS, a more detailed inherent vulnerability risk assessment on legal persons which included a review of legal persons' inherent characteristics, nature of business activities, geographic reach and the level of anonymity, if any, which could be provided by the legal person.
468. It also included for the first time a review of any relevant cases in relation to specific entities as provided by the BPS or the FIA. Four typologies were provided by the BPS in relation to exempted companies being used for tax evasion, fraud and ML. Exempted limited companies (10,402 as of March 31st, 2018, mostly relating to the finance-related business sector and accounting for approximately 50% of GDP), exempted partnerships (previously medium vulnerability), Segregated Account Companies (SACs) and PACs were found to be high vulnerability. Exempted LLCs were assessed as medium vulnerability.
469. The NRA had included a brief sectoral analysis of the TF risk of regulated sectors and private trust companies. It concluded that the TF risks were low except for the NPO sector which was assessed as medium. There was no evidential support for Bermuda being a source of TF, but the potential channels of TF funding, given the nature of Bermuda's international financial services sector, were recognised (see discussion in Chapter 4 of the MER). ML typologies were considered during the ROC vulnerability assessment (as well as an updated check on any TF typologies in Bermuda, which was negative). During the TF risk assessment international typologies were considered, including the use of NPOs.
470. All CAs spoken to by the Assessors were aware of the ML risks posed by legal persons and legal arrangements and all were well versed in discussing the use of structure charts and the need to identify the natural person behind the structure. The Assessors determined that there was a sound understanding of the vulnerabilities posed and the mitigating actions needed although the FIs and DNFBPs were not yet aware of the findings of the updated August 2018 ROC assessment.
471. Bermuda has conducted a comprehensive vulnerability assessment of legal persons. CAs, FIs and DNFBPs have a good understanding of the risks involved and the importance of identifying BOs.

⁴⁰ www.bma.bm

7.1.3. Mitigating measures to prevent the misuse of legal persons and arrangements

Legal Persons

472. A key measure in the prevention of the misuse of legal persons in Bermuda is the requirement for all companies incorporated and LLCs and partnerships formed in Bermuda to submit an application to the BMA for review. Once there is a satisfactory result from the appropriate review and vetting of owners, the BMA gives a “no objection” to the ROC for the formation and ownership structure. Companies are then registered with the ROC and are required to supply the company name, proof of incorporation, legal form, and address of the registered office, memorandum of association and the list of directors. LLCs are required to file the certificate of formation, name, whether local or exempted and the registered office. Partnerships may elect to have legal personality by filing a declaration with the ROC and must then also maintain a registered office. Such partnerships are vetted by the BMA through an application process similar to Companies.
473. Upon receipt of consent to the formation from the BMA the partnership must then register with the ROC, must maintain an office in Bermuda, appoint a resident representative and keep proper records of account as required under the Exempted Partnerships Act. Exempted limited partnerships are the most commonly used partnership in Bermuda. All partnerships must keep, either at the principal place in Bermuda from which it carries on business or at its registered office proper records of account, if the records are kept at a place outside Bermuda there must be kept in Bermuda such records as will enable the partners to ascertain, with reasonable accuracy, the financial position of the partnership at the end of each three-month period.
474. In addition to the above processes, registered office addresses for such entities cannot be post office boxes and the provision of services as a registered office for a profit organisation requires licensing and supervision as a CSP by the BMA. The Registrar maintains a register of legal persons registered at the ROC, which was mandated by law in 2018, and contains information which must be made available to the public (for a fee or on the website). (This was the previous practise but was not mandated by law). Companies are required to keep a register of members (which includes shareholders) and the statement of shares held by each member. In 2018 an amendment was made to the Companies Act to include a requirement that a company maintains categories of shares including the nature of associated voting rights. LLCs are required to maintain a register of members and limited, and exempted partnerships are also required to keep a register of partners.
475. Another component of the mitigation measures to prevent misuse of legal entities in Bermuda is the obligation for all exempted companies to have a Bermuda resident director or Bermuda resident secretary or resident representative in Bermuda. Where the resident representative becomes aware of a breach of the legislation which has a material effect on the affairs of the company or where the issue or transfer of shares has been affected in contravention of statutory requirements, he must report the breach to the Registrar. These requirements are similarly applied to all limited and exempted partnerships to have a resident representative and a registered office in Bermuda.⁴¹ The requirements mean that in all cases there is a natural person in Bermuda who is responsible for compliance with the rules to which the legal persons are subject. There is no registry at the ROC for local partnerships, which have been assessed as medium-low risk for ML/TF. However local general partnerships are required to register with the Office of the Tax Commissioner for payroll tax purposes. All LLCs are required to have a registered office in Bermuda and exempted LLCs which do not have a Bermuda licensed CSP are required to have a resident representative in Bermuda.

⁴¹ The resident representative for overseas partnerships has a duty to report on various matters including whether the exempted partnership is not keeping accounts or failure to deliver to the Registrar any changes.

476. The BMA has maintained BO information in relation to the incorporation of legal persons for many decades. After 1970, with the introduction of the formation of companies by registration and Exchange Control legislation the collection of BO information continued. Currently, at the time of incorporation the BOs are listed on Form 1 for any person who is seeking to own 10% or more of the voting shares or the right to appoint a director, along with a personal declaration for persons who are non-resident. Further, under the Exchange Control legislation no shares may be issued or transferred to non-residents with rights to voting shares or the right to appoint directors without permission of the Controller of Foreign Exchange.
477. The BMA vets the names provided and conducts enhanced vetting where necessary and maintains the relevant records. Under the Exchange Control legislation exempted companies are also required to register changes to the shareholders where this involves transfers of 10% or more. Regarding exempted partnerships, the BMA carries out the same review of the BOs of general partners at the time of formation and whenever there is a change of the general partners. However, there is no Form for so doing and no monitoring or enforcement of the requirement. Further, the BMA noted that they had received some notifications after the shares had been transferred. Under such circumstances, the BMA will carry out a full review of the BOs and may refuse to issue permission or approve the partner where relevant. Further, without the permission to exchange, it was submitted that there could be no lawful transfer.
478. Between 2014 and 2017 in relation to the issue or transfer of shares by exempted companies, the BMA reviewed 16,335 share transfers or share issues for Exchange Control permissions for non-publicly listed companies and as part of that process vetted the BO of the persons acquiring the shares (this includes FIs). The ROC has indicated that during this 4-year period there were 2,931 incorporations, therefore 13,404 did not relate to incorporation, taking away the publicly traded companies, this means that there were 13,404 transfers for a population of 10,078 legal persons. A failure of a company to seek and obtain the necessary permissions on the transfer of shares may put the validity of the shareholdings and associated rights at risk providing an incentive to new shareholders to obtain the necessary permission. Without the exchange control permissions, the legality of the transaction is void and the rights and interests in the securities may not be secured. There is also a duty on the resident Representative to report to the Registrar where he becomes aware of any issue or transfer of shares in contravention of any statute regulating the issue or transfer of securities (s.130 Companies Act 1981). As a result of greater focus internationally on transparency matters and significant developments in that regard, as well as following the Paradise Papers the BMA's Corporate Authorisations team, which consists of 5 personnel (who have been subject to some AML/CFT training), undertook to take an enhanced approach to reviewing PEPs when they are identified as a BO.

Box 7.1: Vetting of BO information by the BMA

In May 2018 an application for incorporation for a virtual currency company was received by the BMA, which was subject to enhanced due diligence. Upon reviewing the personal declaration form of one of the BOs it was confirmed he had been an undischarged bankrupt and had been subject to investigation. Negative press articles were also found. The CSP stated his license was revoked due to an error and no wrongdoing had been found and that the negative press was due to a disgruntled business partner. An in-depth review was conducted by the BMA and it was established that the negative website information was not credible and no other allegations or lawsuits, investigations or criminal activity was found. The BOs were deemed to be credible and consent was granted. They were however added to the ongoing monitoring list due to the nature of the activity of the application and the history of bankruptcy of one of the owners.

479. Since March 2018, companies, partnerships and LLCs are required to maintain an up-to-date register of their BOs, with a transitional period (originally September 2018) to make the statutory filing with the BMA. This transitional period was extended to 15th December 2018 (which post-dates the on-site visit).

The definition of BOs now encompasses any individual who owns or controls more than 25% of the shares, voting rights or interests in the company through direct or indirect ownership. If no such individual can be identified, then any individual who controls the legal person by other means is considered the BO. If none of these exists or can be identified, the individual who holds the position of senior manager of the legal person must be identified. Legal persons must take reasonable steps to identify the individuals who are BOs and all relevant legal entities, including, where applicable, giving a notice in writing to the BOs. The person domiciled in Bermuda who represents the legal person must have access to the register, which must be kept up-to-date and current with changes updated as soon as practicable and no later than 14 days after the change has been identified.

480. The legislation will ensure that beneficial ownership information is maintained by the legal person as well as the BMA, that the definition also includes ‘control’, and that changes are noted within 14 days both in the company’s register and with the BMA in relation to all legal persons to whom the legislation applies. The registers will also be monitored by the ROC’s Compliance Unit (see below). Whilst these amendments will enhance the transparency of legal persons created in Bermuda and the availability of up-to-date BO information and demonstrate action taken by Bermuda to mitigate the risks posed by its legal persons, the effectiveness of this new measure could not be evaluated by the Assessors. Although initial onsite inspections had begun many had to be flagged for follow up as the requirements were not yet fully in force.
481. There are limited exemptions listed under the various pieces of legislation, (primarily for those otherwise subject to BO requirements). Closed ended funds are also exempted if they engage a service provider who is registered, authorised or licensed by the BMA or by a foreign regulator recognised by the BMA. Recognized jurisdictions only include the USA and the EU Member States as provided for in the BMA Guidance notes dated October 2013. Further, the requirements do not apply to the 653 PACs, which are not registered with the ROC. To establish such a company a petition is required to be filed with the Clerk of the Legislature which requires information on the shareholders, which is reviewed. There is no requirement to update BO information for those PACs which are not registered with the ROC, supervised by the BMA or subject to Exchange Control (which is not in any event monitored). According to the authorities many of these PACs are churches and private organizations and the ROC is actively reviewing the status of the PACs as some are thought to be dormant. It is therefore thought that these are lower risk entities.
482. Bermuda also provides for the formation of SACs. This may be by way of a Private Act or by registration under the Segregated Accounts Company Act. The majority of SAC structures are used for insurance and investment fund businesses, but other types of businesses have also been approved. At the time of the onsite, there were a total of 335 SACs, 290 of which were regulated by the BMA. Of the 45 unregulated SACs, 43 had regulated service providers who act as the SAC representatives. All SACs must have SAC representatives, but the representatives are not required to be BMA-regulated by law. There are therefore only 2 active SACs which are unregulated and have an unregulated SAC representative, one of which is a charitable company, and the other a local horse-ownership and sporting activity club. As well as mandating the requirement for SACs to utilize an AML/CFT regulated representative, Bermuda is also exploring the BO requirements applying to each of the segregated accounts, which would further ensure the transparency of these entities. It should be noted that unregistered PACs and unregulated SACs represent approximately 4% of the registry.
483. In addition to the role of the Controller outlined above, CSPs were added to the definition of institutions which came under the POCA regulations in 2013. However, CSPs were not licensed and therefore not subject to AML requirements and specific oversight until institutions were issued licenses starting in 2017 (with some express exemptions). Further, CSPs were only added to the definition of AML/CFT regulated institutions under the POCA in February 2017. This deficiency was mitigated by the fact that, according to the information obtained by the BMA during the licensing process, approximately 85% of

services offered in Bermuda were offered by CSPs owned or controlled by law firms, accounting firms or regulated FIs who were subject to CDD requirements including BO requirements.

484. Up to 27th August 2018 the BMA had processed and granted 93 CSP applications and 6 applications were declined. Onsite supervision began with the highest risk CSPs, including the largest five. For CSPs the CDD threshold for BOs is more than 10% of the shares as opposed to more than 25%, which mirrors the ongoing requirement under the Exchange Control Act. Although this is not applied retrospectively, there is a general requirement that the CSP must apply CDD measures at appropriate times to existing customers on a risk-sensitive basis⁴². The BMA found that the CSPs had some difficulty documenting all their obligations required under the AML/CFT regime and engaged closely with the applicants to ensure that it was done properly.
485. The BMA may grant unlimited licenses to CSPs who will be given general permission, but at the time of the onsite no unlimited CSP licenses had been issued. In relation to partnerships similar procedures are in place for disclosure and vetting of BO by CSPs and approval by the BMA. Sector specific Guidance Notes were issued for CSPs in October 2018 which provide guidance on the RBA and obtaining and verifying BO information. The Guidance Notes should assist in further increasing awareness in this area.
486. The issuance of bearer shares has been prohibited in Bermuda since 1970, this included a prohibition on the issuance of shares which could be obtained by a warrant. However, there are no provisions in relation to bearer share warrants to prevent their exchange. The concept of ‘nominee’ director does not exist in Bermuda law, although the concept of ‘alternate director’ does exist and does not contain the necessary disclosure obligations. Where CSPs offer directorship services they are supervised by the BMA. Only licensed CSPs may provide nominee shareholder services and they are required by the BMA to hold at the registered office, up-to-date and accurate information of the BOs who the nominee shareholders represent, and this will also be subject to inspection by the ROC’s Compliance Unit. All nominee shareholders are required to complete Form 1, as noted above, but there is no additional requirement specific to them.
487. The Registrar of Companies (Compliance Measures) Act, 2017 provides the Registrar with compliance monitoring powers and enforcement powers to ensure that registered entities are in compliance with the various laws which govern them, including the Companies Act, the various Partnership Acts and the Limited Liability Company Act. The ROC’s Compliance Unit was formed in April 2017 and onsite inspections began thereafter to ensure that registered entities were maintaining the records required under the relevant Acts and performing required duties.
488. Registered entities selected for on-site inspections were asked whether the entity had the following information: register of shareholders; proper records of account; register of directors and officers and the annual financial statements with auditor’s report. The entities were selected using an RBA considering the nature of the business activity, whether regulated, the size and geographic scope of the business transactions and the risk of corporate non-compliance. Starting in March 2018, the Compliance Unit performed additional onsite inspections of entities focusing on the business activities of unregulated sectors. The results from the NRA and the BMA’s risk assessment and the preliminary findings of the ROC’s vulnerabilities assessment of legal entities were utilized. The ROC’s Compliance Unit has a staff of 5, of which 4 posts were filled at the time of the on-site visit. It was not established however that this will be enough to monitor the 15,000 plus entities for compliance with up-to-date BO registry requirements.

⁴² Regulation 6(2) The POC (AML ATF Financing) Regulations 2008.

489. In 2017 the ROC compliance unit inspected 17 local companies who were found to have an overall rate of compliance in relation to shareholder information of 88%, 74 exempted companies (overall compliance rate 99%) and 74 limited and exempted partnerships (overall compliance rate 88%).
490. Starting in 2018, the ROC's onsite inspections required companies to provide BO registers. However, this legal requirement only came into force for companies in March 2018 and for the filing with the BMA in December 2018, no enforcement actions had been taken. All exempted companies inspected in 2018 did maintain shareholder records at their registered office regarding legal ownership. Local companies also had BO registers. At the time of the onsite 139 entities had been checked in relation to BO requirements, 54 were found to be compliant (16 local limited and 38 exempt limited) and 74 were flagged for follow up (52 exempted limited and 22 local limited), with 11 found to be exempt. An MOU was completed between the ROC and the BMA in September 2018, which will enhance the exchange of information and cooperation in the oversight of compliance, particularly in relation to BO registers.
491. The above obligations are supplemented by due diligence processes required when legal persons and arrangements conduct business with local FIs and DNFBPs, who are obliged to obtain and verify BO information and to keep this information adequate, accurate and accessible. Based on the BMA's onsite inspections of CSPs there were limited cases of incomplete CDD on the BO information contained in their records. Eighty-one percent (81%) of CSPs inspected required no further action in relation to CDD, including beneficial ownership requirements, 19% required some form of remedial action. The BMA demonstrated extracts from CSP reports, which evidence BO related findings, there were very few instances where the verification of UBO was not identified on the file but there were examples of the BMA indicating that while management was able to describe the nature and purpose of the business relationships and the ownership structures, those details were not clearly and consistently documented in the file. The BMA also noted that an entity did not consistently identify and verify intermediary controllers. This was therefore demonstrative of the attention paid to the BO requirements by the BMA during their examinations.
492. The BMA also undertook a review of the level of compliance with AML/CFT obligations related to CDD and an average score of those entities, which were largely compliant. Over the period 2013 to 2017 90% or more of MSBs, barristers and accountants were largely compliant and over 75% of insurance, TSPs, securities, banks and DiHVG were largely compliant.
493. The Assessors therefore conclude that the mitigating measures in place in Bermuda to prevent the misuse of legal persons including the vetting by the BMA on incorporation, the use of the Exchange control regime, the licensing requirements for regulated entities and the CDD requirements for FIs, now supplemented by the additional legislative requirements are indicative of a robust and transparent framework.

Legal Arrangements

494. In Bermuda, the only legal arrangements are trusts. Trustees in Bermuda can be licensed professional trustees, licensed trust companies or private trust companies (PTCs), who are all subject to the Trust (Regulation of Trust Business) Act 2001 or individuals acting without reward, who are not subject to the Act. At the time of the onsite, there were no licensed professional trustees. There were 28 licensed trust companies which were licensed pursuant to the Regulation of Trust Business Act and regulated by the BMA. PTCs, who are all exempt from licensing, act primarily as the trustee for family trusts, but also for charitable trusts and for multiple trusts, provided the funding is done by the same economic settlor. PTCs and other exempted trustees who carry on a trust business and do not utilize the services of a CSP licensed by the BMA or have in their structure a trustee licensed by the BMA are required to register with the BMA as a non-licensed person (NLP) for AML/CFT supervision. Non-professional, natural persons acting without reward as individual trustees are not required to be licensed or register. Whilst there is no restriction on the types of trusts which can be managed by individual trustees, the

majority are family related trusts to hold property, however the number of such trustees and value of the trusts they manage is unknown. The Trustee Act covers all trustees regardless of whether regulated or not. As trusts often involve lawyers, accountants, bankers or investment professionals, who assist in the running of the trust, further mitigation is provided in that they have their own CDD and ongoing monitoring obligations in relation to the trust and the BOs.

495. TSPs have been subject to regulation in Bermuda under the Trusts (Regulation of Trust Business) Act since 2002 (and prior to this licensing was required under the Trust Companies Act 1991). According to the BMA, the TSP sector remains moderately strong in its compliance with AML/CFT regulations. The BMA has put in place a dedicated team within its AML/CFT department, to oversee the Trust sector along with CSPs. Outreach sessions on the NRA and ML/TF risks and obligations have been held with the Bermuda Association of Licensed Trustees. The June 2017 BMA legal persons' vulnerabilities assessment also included a review of trusts, which were managed by licensed TSPs. The vulnerability of discretionary Trusts, purpose trusts and other trusts (unit trusts, pension trusts) was assessed as medium-high and the vulnerability of the 95 charitable trusts managed by licensed TSPs were assessed as medium. Due to the nature of NPOs and potential exposure to TF, these factors are considered when they are monitored for this purpose by the BMA (in addition to any requirements they may be subject to as NPOs with the RG).
496. Working Groups were established under the umbrella of NAMLC to review the risks related to private trust companies and non-professional individual trustees and determine appropriate measures to mitigate them. PTCs (317 as of June 2017) were found to hold approximately BD93B in assets (this relates to PTCs who responded to the data call). In order to ensure that PTCs that are exempted from licensing requirements are within Bermuda's AML/CFT legal framework amendments were made requiring PTCs in particular circumstances to register as NLPs (as above). It was also determined that all but approximately 10% of the PTCs engaged a trustee or licensed CSP and therefore were already subject to appropriate monitoring.
497. As of 30th June 2017, there were 317 PTCs on the register in Bermuda; 43 were identified for follow up regarding the status of their use of either a licensed TSP or CSP. One PTC had agreed to be struck off before the end of the year. One firm advised they did not carry out PTC business and therefore the exemption was revoked; 22 firms confirmed they were represented by licensed CSPs and did not need to register, and 5 firms advised they will be required to register as NLPs and applications were sent to the BMA. The confirmation deadline of 21st September 2018 was missed by 14 firms and these cases are being investigated by the BMA's Enforcement Team. Whilst these measures are indicative of actions taken by Bermuda in order to mitigate the risks posed by these legal arrangements, the level of effectiveness of the new measures could not yet be assessed by the Assessors.
498. There is no indication of the value of assets held by individual non-professional trustees although these kinds of trusts were determined to be family trusts holding primarily family homes. The Working Groups determined that trusts with any substantial holdings usually involved banks and other professional advisors such as lawyers who were subject to AML/CFT requirements thereby mitigating the risk posed.
499. Therefore the Assessors would conclude that the requirement of the Trusts (Regulation of Trust Business) Act 2001, which is applicable to licensed Trust Service Providers and the bringing of the PTCs into scope, along with the disclosure obligations on non-professional trustees are all positive measures in place in Bermuda to prevent the misuse of legal arrangements.

7.1.4. Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

500. In relation to basic information, the FIA can obtain information from the ROC within one hour and the BPS usually obtains hard copy documents within 24 hours.

501. Whilst BO information has been obtained from the BMA by the CA, BPS, FIA and the Treaty Unit in a timely manner, its accuracy and current status of the information could not be established. The vetting conducted by the BMA at the time of incorporation and from Exchange Control Permissions, if applied for (the BMA has vetted and approved over 16,000 share issue and transfer permissions under the Exchange Control Permissions in the last five years, 13,404 of these related to share transfers) would ensure that, if there had been no changes, the information was accurate.
502. Although there was no monitoring or enforcement under the Exchange Control legislation as to whether changes were registered in a timely manner or at all, a failure of a company to seek and obtain the necessary permissions on the transfer of shares may put the validity of the shareholdings and associated rights at risk providing an incentive to new shareholders to obtain the necessary Exchange control permissions. In relation to regulated entities, there was also supervision of changes to BO by the supervisors.
503. The BMA's information has been collected and maintained by the BMA in an electronic corporate registry, searchable by the name of the company or owner. Searches can also be conducted on individuals to find out whether they are linked to any legal persons, as BOs or otherwise. This system is currently being replaced by a more detailed integrated system to manage applications to form legal persons and to provide electronic filing for the BOs with the CA to manage changes. The new system will also capture changes to shareholdings of local companies and capture changes to BO, which are presently not captured by the electronic corporate registry.
504. The FIA can obtain information from any person or entity using a s.16 FIAA Notice to provide BO information when enquiring into suspicious transactions relating to ML/TF. Information from entities is usually required within 5 days (but the FIA can declare a stricter timeframe where urgent) and provided via the Compliance Officers and MLROs. The FIA has issued s. 16 FIAA Notices on CSPs to obtain BO information between 2014 and 2018 and the requested information was received within the requested time of 5 days. Further, the FIA has requested BO information from the BMA and has been provided with the legal person owning the shares as well as the identity of the natural person behind the legal person. This information is provided without delay. The FIA received 11 international requests from Egmont members in relation to BO information in Bermuda between 2013 and 2017. The BMA received a total of 12 requests for BO information by way of s.16 Notices out of 36 requests submitted to the BMA to support investigations.
505. The BPS has had access to BO information held by the BMA by way of the FIA, the Minister of Finance in the public interest and where evidentiary information is required by way of a Production Order issued under s.37 of the POCA. In April 2017 the BMA and the BPS signed an MOU in order to share information following which the BPS have made 6 requests for intelligence regarding 14 subjects. The information was provided by the BMA within 3 business days. In 2018 amendments were made to the BMAA, which clarified the process for sharing information directly with the BPS. For the BPS to obtain BO information in evidence from the BMA a Production Order under s.37 of the POCA is required. These are usually responded to within a day. The BPS has also obtained Production Orders which have been served on banks, CSPs/TSPs, insurance companies, MSBs and government agencies. The BPS stated these have always included requests for BO information. A Production Order is usually obtained in 2 days and responded to within 14 days. According to the BPS, information has been of good quality and assisted the BPS in identifying the BO of the account or entity.

Table 7.1 BPS requests for BO information

| Year | Banks | CSPs / TSPs | Insurance | MSBs | Govt Agencies |
|------|-------|-------------|-----------|------|---------------|
| 2014 | 24 | 2 | 2 | 6 | 28 |
| 2015 | 65 | 6 | 0 | 11 | 33 |
| 2016 | 55 | 6 | 1 | 11 | 36 |

| | | | | | |
|------|----|---|---|----|----|
| 2017 | 94 | 5 | 3 | 13 | 58 |
|------|----|---|---|----|----|

506. Between 2014 and 2017 the BPS served 2 Production Orders on the BMA in relation to an MLA request, which were obtained by the BPS with the assistance of the AGC. Due to the type of information requested, most of it was obtained from the ROC. The BPS often served Production Orders directly on FIs, which adequately provided the required BO information including the corporate banking form provided, the ultimate BOs, percentage ownership, country of citizenship and country of residence.
507. The BMA has not collated specific details on regulator-to-regulator international requests relating to BO information until recently.
508. In 2016, the Government of Bermuda entered into an Exchange of Notes Agreement with the UK Government in respect to the sharing of BO information. Under that agreement the BMA assists the UK Government and between June 2017 and the onsite (September 2018) received 3 official requests for intentional cooperation. Of these, 2 requests were satisfied, and one was deemed non-compliant with the terms of the applicable Agreement due to the fact that it was received from the Tax Authority as opposed to one of the agencies recognised under the Agreement. This exchange of information related to criminal investigations, but the provision of information lies with the BMA as they are the holders of BO information.
509. Between 2014 and 2017 the Treaty Unit received 49 requests relating to BO information and 33 of these were sent to the BMA with a response time to the Treaty Unit of 7 days or less. The other 16 requests related to BO information from a FI or a trust. Two requests were declined, one did not meet the requirements of the Tax Information Exchange Act (TIEA) and in relation to the second request the liquidator had destroyed the records in accordance with a Court Order. The average response time to the Treaty Partner was 65 days. (Only 4 of these cases took over 100 days, all of which involved legal proceedings). The Assessors view these as effective response times.

Box 7.2: Case Example

In December 2016 the Central Authority of Bermuda received a request for assistance from a Caribbean jurisdiction in relation to offences of conspiracy to defraud and conspiracy to cheat. The offences concerned the collapse of companies and a bank in the requesting jurisdiction. The allegation was that the subjects of the investigation failed to disclose their beneficial interest in a company registered in Bermuda, by holding the interest in the name of a company. Following a request for further information from the Requesting State a Production Order was sought by the BPS and granted and served on a local bank and CSP in September 2017. All the evidence was received and forwarded to the Caribbean jurisdiction.

Box 7.3: Case Example

In relation to a corruption case, the investigation team asked the BMA for all information regarding a Bermuda based entity and subsequent entities that had been set up. The BMA provided the identification and percentage ownership of several individuals behind the company, which owned the shares. The BMA also furnished the BPS with internal notes and the structure and business plan of the companies. The information identified key witnesses for the BPS to speak to and new lines of enquiry. The information greatly assisted with the investigation and was provided within 48 hours of the request.

510. The above cases demonstrate that Bermuda is willing and able to respond to requests in relation to Bermuda registered companies. Even when the new requirements are fully active, up-to-date BO information will not be available in relation to those PACs which are not registered with the ROC. There are 520 registered with the ROC, 653 are companies or bodies corporate who are not registered with the ROC, further work is being undertaken in relation to this pool, to review the status of the PACs as some are thought to be dormant, the 653 PACs represent just 4% of the total incorporations in Bermuda. In addition, the accessing of BO information in relation to those exempt from the new requirements, which includes closed ended funds if registered, authorised or licensed by a foreign regulator recognised by the BMA, may take longer to access.
511. Basic information on legal persons is required to be publicly available and the list of directors is available on the ROC website.⁴³ Basic information may not have been up-to-date and does not appear to have been monitored prior to the establishment of the ROC's Compliance Unit in 2017.
512. Granted that BO information is available in a timely manner from licensed TSPs and from PTCs who utilize a CSP (although these were only supervised since 2017/18), this could not be assessed in relation to the remaining PTCs or individual non-professional trustees although the recent requirement that PTCs register as NLPs should improve the accessibility and availability of the required information. This is a small category of approximately 10% of the PTCs and therefore less material than the overall amount from whom BO information is available. All Trustees in Bermuda, whether regulated or non-professional, are required to declare their status to FIs and other regulated service providers, whenever they do business with them on behalf of the trust for which they are responsible.
513. All regulated entities including TSPs, CSPs and other professional service providers such as regulated professional firms in the legal and accounting sectors are required to conduct CDD on all customers and this includes the requirement to maintain up-to-date and accurate BO information on customers that are legal persons and legal arrangements with whom they do business (whether or not such customers were created in Bermuda).
514. The assessors were satisfied that CA's are able to access on a timely basis BO information from both regulated institutions and information filed with the BMA. The information filed with the BMA is verified and vetted at the time of formation of the legal person and if updated through the Exchange Control regime, shareholder information is subject to further verification and vetting. The Exchange Control regime imposes legal and commercial consequences where permissions for share issues and transfers are not approved, mitigating the observed lack of monitoring and enforcement. Regulated financial institutions, TSPs, CSPs (licensed since 2017) and other DNFPBs are required to conduct CDD on all customers and this includes the requirement to maintain up to date and current BO information and has been appropriately monitored by the relevant supervisors.
515. 516. Therefore the combination of the vetting upon incorporation by the BMA, the exchange control shareholder change approvals and the CDD requirements on regulated service providers (whilst CSPs were only fully supervised as a distinct category in 2018, this was mitigated by the fact that most had common ownership with other regulated institutions and by their role in submissions to the BMA) meant that the assessors were satisfied that beneficial ownership information was available to competent authorities and had indeed been provided and used to further investigations.

⁴³ <https://www.gov.bm/registrar-of-companies-directory>

7.1.5. Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

516. In relation to legal arrangements administered by TSPs, there was no difficulty reported in obtaining basic or BO information. However, until the requirement that all PTCs must be registered as NLPs, the information held by such trustees was not subject to AML regulation (although it may have been subject to indirect regulation through e.g. the use of a CSP, see above, this was estimated at 90% of PTCs), although the Trustee Act did mandate that some information was maintained, such as that on the BOs of the trust. No examples were provided in relation to basic or BO information being obtained from PTCs, or individual non-professional trustees, who may be difficult to identify as no such requests had been made. Therefore, the timely access to adequate, accurate and current basic and BO information in relation to those PTCs, which must now be registered as NLPs, and individual non-professional trustees could not be assessed via these means, however where a TSP, Bermuda bank account or legal professional was used the information would have been required to be available via these regulated entities.
517. All Trustees in Bermuda, whether regulated or non-professional, are required to declare their status to FIs and other regulated service providers, whenever they do business with them on behalf of the trust for which they are responsible.
518. The CA received two requests in 2016 for BO information in relation to a licensed trust company. Production Orders were served on the trust company and the documents were supplied. In one case, a sentence of 12.5 years imprisonment was imposed by the Requesting State in addition to a \$25 million restitution order.
519. The trustees met during the onsite, both for TSPs and PTCs, indicated that trusts were generally subject to EDD as they were higher risk, therefore the systematic identification and verification of the BOs was carried out, including through use of structure charts where appropriate.
520. As previously indicated, the FIA can obtain information on legal arrangements using s.16 FIAA Notices. The FIA uses the information contained within the SAR to determine on which trust company the s.16 FIAA Notice should be served. If the information is not contained within the SAR, the FIA then approaches the bank which in most cases has the information themselves or advises which trust company is administering the trust.
521. The BPS can request basic and BO information directly from the ROC and BMA for intelligence purposes. For evidential purposes an application is made to the Supreme Court for a Production Order. The BPS has made 23 applications directly to TSPs or CSPs for information (no separate breakdown was provided). In all cases, the applications have been complied with in full, normally within 21 days.

Box 7.4:

The subject, a citizen of a foreign country, was accused with others of misusing the funds of investors, resulting in a loss of approximately 25 million dollars. Two FIU requests were received and processed seeking intelligence on a licensed trust company. The Central Authority then requested information from Bermuda through service of a Production Order. The trust company advised that they themselves had invested funds in the companies in question and provided the records of the transactions. Following a subsequent request, the matter was resolved by the Managing Director providing an affidavit. The matter was then reported to the BMA, who commenced their own investigation to determine whether the trust company had been in breach of their record keeping obligations under the POOR. The BMA concluded that no enforcement action was justified as the local trust company had acted appropriately in discharging their obligations. The information was communicated to the Central Authority of the requesting country.

7.1.6. Effectiveness, proportionality and dissuasiveness of sanctions

522. The Registrar is empowered to impose an effective, proportionate and dissuasive fine, up to a maximum BD250,000 civil penalty and there is a policy in relation to enforcement measures (March 2018). Alternatively, criminal penalties are also available for obstruction of the Registrar; making a false statement and related offences, which attract fines of up to BD\$25,000 and up to two years imprisonment. During the 191 onsite visits performed by the ROC's Compliance Unit in 2017 most of the deficiencies found were addressed within 30 days. There were however a few instances where required information was not provided. In each of those cases, the companies were also non-compliant with payment of annual fees that were due to the Registrar. These companies were submitted for strike-off from the register. Also, in 2018 the Compliance Unit performed desk-based monitoring of overseas companies and found that 23 were non-compliant with payment of annual fees due to the Registrar.
523. Penalties for non-compliance with legislation governing companies and partnerships for the years 2014 to 2017 were \$449,480, \$430,020, \$442,691, \$403,193.24 respectively.
524. At the time of the onsite visit no sanctions had been applied under the Companies Act in relation to the new BO requirements, the maximum penalty under the legislation specific to this requirement is USD/BD5,000 which may not be dissuasive depending on the size of the entity found liable of an offence. No sanctions had previously been imposed under the Exchange Control legislative framework, which again only attracted a penalty of BD5000 until a recent legislative increase to BD25,000 (which is the equivalent amount in US\$). Although these specific penalties are low, the general penalty of \$250,000 remains available and in the case of false statements or obstructing the Registrar, criminal penalties may be imposed including imprisonment.
525. In 2017 the Registrar of companies conducted 191 on-site monitoring actions. There were 7 corrective actions resulting in revocation of a permit of an overseas company and 2 corrective actions resulting in the striking off a local or exempted company and 6 corrective actions resulting in dissolution of a limited and exempted partnership. In relation to 2018 (up to September) 70 on-site monitoring actions had been conducted and 23 desk-based inspections. This had resulted in 16 corrective actions resulting in revocation of a permit of an overseas company, other corrective actions were ongoing.

Box 7.5: ROC

A permit company was incorporated in country A and selected for on-site inspection by the ROC's Compliance Unit due to non-payment of annual fees (an indicator of lax corporate governance and internal controls). The company also did not respond to the pre-inspection questionnaire. The company registry was searched, which indicated the company was active. The Compliance Unit contacted the registered office in country A and the CSP to provide an updated registered office address in Bermuda. No response was received. The Compliance Unit informed the Minister of Finance and the company's permit was revoked due to non-payment of the annual fee.

526. Under the Trustee Act, all trustees, including exempted and non-professional trustees, are subject to a penalty of BD\$20,000 (ss.13A, 13AAA and 54A of the Trustee Act 1975). Under s. 13B there is also a criminal penalty of a fine of BD75 per day (applicable to exempted companies and expected trustees). No evidence was provided that any such penalty had been imposed. However, these penalties would only need to be relied upon in relation to non-professional individual trustees, who were not otherwise regulated e.g. as trustees of a charitable trust, subject to the Penalties under the Charities (AML/CFT and Reporting) Regulations 2014 include a fine of up to \$750,000 and/or two years imprisonment (except for failure to provide an annual report for which the maximum fine is \$10,000) or as licensed trustees.

527. Licensed trustees, and more recently PTCs registered as NLPs, and CSPs, are subject to the penalties, which can be imposed by the BMA. Corrective/enforcement actions available to the BMA include a wide range of penalties, which include a remedial letter, imposition of directions, restrictions and conditions, imposition of a civil penalty (maximum BD10M), injunctions, public censure, objection to controllers, prohibition orders against individual directors and officers, revocation of license and cancellation of NLP Registration, winding up and referral to the police. These penalties to the regulated sector are dissuasive and appear to have been applied proportionately (as demonstrated at table 7.2), which should be further ensured in the future by use of the BMA's recent Enforcement Guide.

528. The BMA undertook seven enforcement actions between 2014 and 2017 in relation to CDD requirements. There are no enforcement actions directly attributable to BO deficiencies, but the table illustrates the ongoing nature of inspection and enforcement in this area.

Table 7.2: BMA enforcement actions 2014 to 2017 relevant to CDD requirements

| | Entity | Breach | Action | Outcome | Publication |
|------|------------------------------|-------------------------|-----------------|-----------------------------|--|
| 2014 | Licensed Investment Business | CDD, EDD, (and other) | Decision Notice | \$1.5 million civil penalty | No |
| 2015 | Licensed Trust Company | CDD (and other) | Decision Notice | \$250,000 civil penalty | Published in BMA annual report, company not named |
| 2016 | Licensed Bank | CDD, EDD PEPs and other | Decision notice | Civil penalty \$250,000 | Statement in 2016 BMA annual report without naming company |

| | | | | | |
|------|------------------------------|--|--------------------------------------|---|--------------------------------------|
| 2016 | Licensed Long-Term Insurer | CDD, EDD, PEPs and other | Decision Notice | Civil Penalty \$750,000 | Press release without naming company |
| 2017 | Licensed Investment Business | CDD and other | Decision Notice | \$1.5 million civil and penalties and license restriction | Press release naming company |
| 2017 | Licensed Trust Company | Fitness and propriety of Directors (and other) | Decision Notice | License Restriction preventing it from taking on new business | Under appeal |
| 2017 | Mutual Fund | Failure to submit audited financial statements (and other) | Winding up petition in Supreme court | Company wound up; liquidators appointed | In public domain |

529. Limited sanctions have been imposed thus far by the ROC. Regulated entities including TCSPs are subject to dissuasive sanctions and some penalties have been imposed.

Overall conclusions on IO.5

530. **Bermuda is rated as having a Substantial level of effectiveness for IO.5.**

8. INTERNATIONAL COOPERATION

Key Findings

- a) The Central Authority has responded to a wide range of requests for international assistance within a reasonable time frame.
- b) The extension of the United Kingdom's Extradition Act to Bermuda has streamlined and made more efficient the extradition process.
- c) Bermuda has sought international cooperation to pursue domestic ML, associated predicate offences and TF cases with transnational elements to a limited extent although with the increased focus on complex ML cases, more requests have begun to be sent.
- d) Other forms of International cooperation have been provided and demonstrated by the FIA, BPS, Customs and the BMA. However, insufficient statistics are maintained by the BPS and Customs in relation to the number of incoming and outgoing requests and the response times. While the FIA has been faced with occasional challenges in executing requests in a timely manner, the authorities have commenced establishing mechanisms for improving both quality and timeliness of information exchanged with foreign FIUs.
- e) Bermuda has provided available BO information to requesting jurisdictions.
- f) Bermuda is a signatory to the International Association of Insurance Supervisors (IAIS) (MMOU) and the International Organization of Securities (IOSCO) MMOU, under which it co-operates the exchanges information for the purposes of regulatory enforcement of insurance and securities matters.
- g) The BMA actively participates in supervisory colleges where AML/CFT issues are discussed.

Recommended Actions

- a) Increase outgoing MLA requests to pursue domestic ML and associated predicate offences particularly in relation to the high-risk areas identified in the NRA as begun with the pursuit of more complex cross border ML matters.
- b) The Central Authority should ensure a procedure is in place for the case management system to send alerts on actions to be taken.
- c) Customs should improve its data collection systems for recording requests received and the time taken to respond.
- d) The BPS should record incoming and outgoing requests separately and the time taken for responses in order to monitor and confirm that international cooperation is provided in a timely manner.

531. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R. 36-40.

8.1. Immediate Outcome 2 (International Cooperation)

532. Bermuda has a comprehensive framework in place to provide mutual legal assistance and to seek and respond to extradition requests. The Central Authority has responded to a range of MLA requests within a fair amount of time. Bermuda seeks international cooperation to pursue domestic ML and associated predicate offences with transnational elements to a limited extent, although more complex requests in relation to cross border ML cases have begun to be sent, some of which are substantive in content and nature. As an international financial centre and having identified risks in relation to foreign predicate offences, more outgoing requests of a complex nature would be expected, although it is noted that Bermuda's IFC model is based on its insurance sector which predominantly specializes in catastrophe reinsurance, and it is therefore of lower risk than other IFCs. Whilst other forms of international cooperation are provided and assistance has been offered by a range of competent authorities, statistics were not adequate in relation to the BPS or Customs. The FIA has faced occasional challenges in their timelines in executing requests and the nature of the available statistics. The Authorities have however commenced establishing mechanisms for improving both quality and timeliness of information exchange with foreign FIUs. Whatever BO information is held within Bermuda can be and has been provided in response to formal MLAT requests and BO information has also been provided via the Treaty Unit, the FIA, BPS and the BMA.

8.1.1. Providing constructive and timely MLA and extradition

533. Bermuda is an international financial centre (although it is accepted that the largest sector is the insurance sector with a focus on reinsurance, making it less vulnerable than some other IFCs) and the NRA identified that the highest threats came from foreign crimes such as fraud, corruption, market manipulation / insider trading, international tax crimes and foreign bribery and corruption (as well as drug trafficking in the domestic landscape). Therefore, international cooperation is crucial in the facilitation of action against criminals and their assets. Whilst Bermuda has provided constructive and, in most instances, timely assistance when requested by other countries, it has to a limited extent sought international cooperation to pursue domestic ML and associated predicate offences in a manner consistent with its context or identified risks. Overall Bermuda has achieved this immediate outcome to a large extent.

(a) Incoming MLA requests

534. Bermuda has a comprehensive framework for the provision of mutual legal assistance and has provided such assistance in relation to a wide range of matters between 2014 and 2017. Bermuda has not refused any request for assistance. Bermuda has one Mutual Legal Assistance Treaty with the United States. All other requests are processed based on reciprocity without the requirement for a treaty relationship. Basic information in relation to the process for making a request is available on the AGC page of the Government portal: <https://www.gov.bm/mutual-legal-assistance>. There are two counsel within the AGC who deal with MLA requests (amongst other matters) and training in this area is limited. The AGC's MLA policy 2010, as updated in 2018, prescribes time limits within which acknowledgments must be sent and action taken upon the request. There is also a prioritization strategy if numerous requests are received at the same time, in keeping with the NRA's findings.

535. Whilst the time for completion of requests depends on the complexity of the matter and the number of exchanges with the requesting jurisdictions, the overall time frame could continue to be further improved. For example, in 2015 the average response time was 184 days, which increased to 220 days in 2016, although there was a decrease to 90 days in 2017. Whilst timeframes are largely dependent on the complexity of the case and the assistance sought, the response time has improved and the one 2018

request which had been completed prior to the onsite was completed in 17 days (a request for asset sharing of a drug trafficking forfeiture).

Table 8.1 International Requests for Assistance Received 2014 -2017

| Year | Number of requests received | Offence type | Nature of request | Average number of days to completion |
|------|-----------------------------|---|--|--------------------------------------|
| 2014 | 5 | ML, fraud, bribery | Production orders, restraint, evidence, | 58 (one matter) ⁴⁴ |
| 2015 | 8 | ML, fraud, bribery | Search warrant, production orders, evidence | 184 |
| 2016 | 12 | Bribery, homicide, fraud, tax evasion | Production orders, restraint, search warrant | 220 |
| 2017 | 13 | Fraud, ML, drugs, homicide, sexual offences | Production orders, police file, court documents, evidence, restraint | 90 ⁴⁵ |

536. Between 2014 and 2017, 37 requests were received from 17 jurisdictions relating primarily to production orders for bank and company information. Requests also included taking evidence, police records, restraint, search warrants, copy of court documents, service of documents and trust records. The offences mainly related to fraud and ML although there were also sexual offences, bribery, homicide, tax evasion and three relating to drugs' offences.
537. In 28 of the 37 requests received, the Central Authority had no information regarding the outcome of the matters in relation to which they provided assistance. In 2 matters the requests were later withdrawn. In the 4 restraint matters (totalling \$5,263,971) all were ongoing at the time of the onsite. In only two matters was the outcome known, namely 12.5 years imprisonment with a \$25M restitution ordered and a 7-year four-month sentence with a 1.8 million confiscation order. In relation to the second matter, feedback was received thanking Bermuda for its assistance and advising that confiscation proceedings were being pursued, bank account records having been provided. In a third matter the outcome was listed as 'forfeiture' without further explanation.
538. Bermuda asked in just 2 of the 37 matters, whether any further assistance was required. The current case management system does not have a mechanism, such as alerts or notifications of outstanding matters, in relation to responses needed by Bermuda. These aspects lead to delays and impact the effective response on mutual legal assistance provided. Feedback was provided spontaneously to Bermuda in five matters. In one matter Bermuda was thanked for the exceptional level of collaboration and professionalism in relation to the attendance in Bermuda of officers from the requesting jurisdiction. In another matter it was stated that Bermuda helped efficiently on short notice and the requesting jurisdiction was very satisfied with the assistance provided. In one of the conviction matters referred to above Bermuda was thanked for its assistance and was informed confiscation proceedings were being pursued. In the fifth matter concern was raised about the funds retained by Bermuda (and not repatriated to victims) but the issue was resolved. In the remaining 31 matters (excluding the request, which was withdrawn) no feedback was received although general feedback was received in the Compilation of International Cooperation for Bermuda, which was positive. There are therefore examples of Bermuda

⁴⁴ Three matters are restraints which are awaiting the final outcome in the requesting states. One matter took a total of 1298 days as it involved five supplemental requests and has not been included.

⁴⁵ One matter is a restraint which is outstanding pending the final order.

providing effective mutual legal assistance as requested and ensuring that feedback is sought in every case would assist in confirming that the assistance is effective and that any improvements can be made where appropriate.

539. The greatest number of requests were received from the USA, the UK and Poland. Bermuda has received general feedback from the UK stating that it is satisfied with the assistance provided and requests are executed swiftly. It stated that on occasion, evidence had been submitted directly to the requesting authority in the UK without going through the UKCA, which has since been remedied. Bermuda also received feedback, upon request, from the US DOJ who advised that Bermuda is very responsive to requests for mutual legal assistance and easily reached⁴⁶. The USA also stated that the DPP was extremely responsive to the DOJ inquiries. General feedback was also received from Trinidad and Tobago who stated that they had made a complex MLA request and were satisfied with the response received.

Box 8.1: A proactive approach to international cooperation

Due to a report received from the Accountant General in 2013 the BPS commenced an investigation and discovered that approximately 2.4 million had been stolen from a government department. The BPS traced the stolen funds to the UK. The BPS liaised with the UK on a police-to-police basis, which facilitated the obtaining of bank documents and bank accounts, vehicles and properties at a value of \$1.8 million were restrained. In anticipation of a formal request for assistance from the UK in relation to ML offences, the DPP advised the BPS to conduct interviews with witnesses in Bermuda. MLA requests were sent by the UK Central Authority to Bermuda.

The BMA was contacted by the BPS and reviewed the material obtained from the original production order and provided guidance in order to obtain more detailed information on all transactions, account activity and documentation from the Bank, in order to assist the UK investigation.

As a result of this cooperation and after a four-year joint international police investigation the subject pleaded guilty to ML in 2018 and was convicted. The subject was sentenced to 7 years and 4 months imprisonment. Confiscation proceedings commenced and are ongoing, the funds are to be repatriated to Bermuda.

(b) Asset-Sharing

540. Bermuda's legislation has provisions under which it may share assets that have been confiscated as a result of the enforcement of a confiscation order made pursuant to an MLA request. Under these provisions, Bermuda may retain 50% or such other percentage as the Minister considers appropriate in the Confiscated Assets Fund. Thus far Bermuda has only had to utilize this provision in relation to two confiscation orders both arising from US requests. One restraint, which had been obtained in 2013 was finalized in 2015. The amount restrained was \$2,445,827.18, the order was granted by the court for the full amount and 50% was retained by Bermuda (see case study below). In relation to a second restraint obtained in 2013 on behalf of the Requesting State, in 2016 the matter was proceeded with by way of civil recovery, \$2,762,065.58 was recovered, 50% of which was repatriated from Bermuda to the US.

⁴⁶ The USA stated that they became significantly concerned in 2016 that Bermuda was not properly sharing or transferring assets forfeited in Bermuda pursuant to USA MLAT requests in cases where the money should have been used to compensate the victims of crime. The AG and DPP were responsive to these concerns and met with DOJ officials and the concerns were addressed. Bermuda however reiterated their commitment to return funds to the victims of crime except in those cases where no such victims were identified, such as the matter in question.

Box 8.2: Asset sharing

In 2012 following an Egmont request for international cooperation in relation to an investigation into ML, fraud and corruption the FIA identified that the subject had an investment account in Bermuda holding a balance of approximately BDA \$2.4 million. As a result, An MLA request was then sent to Bermuda requesting assistance in forfeiting the fund. The DPP's office obtained a restraint order for the full amount. A supplemental request was received by the Central Authority in 2015 containing the final judgment of forfeiture. This was registered and the full amount of \$2,445,827.18 was forfeited. 50% of the funds were retained in Bermuda and the remainder was repatriated to the US. The BMA, as a result of the request conducted two inspections which resulted in the publishing of a Decision, fines and other consequential actions.

(c) *Incoming Extradition Requests*

541. Following the extension of the UK Extradition Act 2003 to Bermuda in 2016 and its enactment into local legislation in 2017 the process for extradition has been improved and streamlined. There are 6 counsel in the DPP's office who deal with extradition requests. Training, including a secondment to the UK's extradition team has been undertaken. There have been two requests to Bermuda for extradition between 2014 and 2018, both from the USA. In relation to the first matter, the subject consented to extradition and was extradited 9 days after the provisional arrest warrant was received. The second matter, which is contested, is currently before the court. Neither request related to ML or predicate offences.

8.1.2. Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements

542. The AGC is the Central Authority responsible for formal international cooperation. However, the AGC has, on occasion, formally handed the authority for the MLA process to the DPP to ensure a more efficient process and this delegation can be used when required.
543. The AGC/DPP has sent 6 requests for international legal assistance between 2014 and 2017 and 5 supplemental requests, these related to 3 investigations. In relation to the 6 requests sent, in three instances the request was not pursued. At the time of the on-site visit, two were ongoing and one matter was completed (i.e. satisfied in full). The two ongoing matters related to domestic ML, these cases have not yet been prosecuted although the requests were sent in 2014 and 2015, the investigations are ongoing. In relation to the completed request, the investigation is ongoing. Therefore between 2014 and 2017 just three international request matters were pursued, none of these proceedings have concluded. This would not appear to be consistent with Bermuda's risk and context. Bermuda has not sought legal assistance to pursue TF cases as no TF investigations have progressed to a stage which would require evidence for trial. However, the requests sent were substantial in nature and involved both evidential and tracing and recovery of assets requests.
544. Regarding matters where response times were listed, four were received within approximately one month and one within six months. It is unclear whether there was follow up in relation to the matters for which no response was received. It was stated in one matter that where the response time was not available this was because the response had been ongoing over a significant period with various supplemental requests and responses.
545. In relation to investigations, which were ongoing in 2018 and were of a more complex nature, there had also been outgoing international cooperation requests sent out in order to progress some of these investigations, some all of which are incorporated in the numbers referred to in the table below. (No outgoing requests were sent in 2018 as at 4th October 2018).

Table 8.2. Outgoing MLA requests sent by Bermuda 2014-2018

| Country | Nature of investigation | Requests sent | Supplementary request sent | Year | Response time ⁴⁷ | Outcome of request |
|-----------|-------------------------|---------------|----------------------------|--------------|-----------------------------|--------------------|
| USA | Domestic ML, fraud | | 2 ⁴⁸ | 2015 2016 | No response | Ongoing |
| USA | Domestic ML, fraud | 1 | 1 | 2015, 2016 | Not available | Ongoing |
| Germany | Domestic ML, fraud | | 1 ⁴⁹ | 2016 | No response | Not pursued |
| TCI | Domestic ML | 1 | 0 | 2014 | 154 | Ongoing |
| Jamaica | Domestic ML, fraud | 1 | 1 | 2016 2017 | 20 37 | Completed |
| Cayman | Domestic ML, fraud | 1 | 0 | 2016 | 37 | Not pursued |
| Gibraltar | Domestic ML, fraud | 1 | 0 | 2016 | 10 | Not pursued |
| UAE | Domestic ML, fraud | 1 | 0 | 2016 | No response | Not pursued |

546. The Central Authority has made two requests for assistance in civil recovery matters, in 2015 one request was sent to a European country, to register a freezing order initially made in Bermuda, however the matter was ultimately taken up by the European country and Bermuda discontinued its proceedings. The second request was sent in 2017 to an Asian country, as no response was received, and a Consent Order was agreed in relation to just 7% of the total amount frozen, the rest of which was released.

547. MLA has been sought to a limited extent to pursue domestic ML and associated predicate matters between 2014 and 2017. This is expected to increase due to the increased focus on more complex cross border matters, such as those currently under investigation (outlined in IO7), some of which have already involved outgoing MLA requests. These investigations are more complex in nature and, although limited in number, the outgoing requests have been substantial in nature and the volume and detail of items requested.

Box 8.3: An outgoing MLA request

In an ongoing high-level ML and fraud investigation the BPS and the DPP were informed by the receiving Authority that the new information sought was potentially outside of the scope of an initial MLA request made. The AGC formally handed the authority for the MLA process to the DPP to ensure a more efficient process and to allow direct dialogue between the relevant authorities. The Requested jurisdiction asked that the DPP liaise directly with the lawyers representing the potential witnesses from whom evidence was requested. The DPP provided, via a new MLA, letters of comfort for the witnesses and reassurance as to the legal scope of the request. This was done in a short period of time and resulted in new evidence being obtained by Bermuda and several key witnesses being interviewed.

⁴⁷ Number of days by the end of the on-site visit.

⁴⁸ Original request sent 2013

⁴⁹ Original request sent 2013

Extradition

548. In relation to ML, Bermuda has sought extradition in relation to one ML matter during the relevant period, namely in 2016. The matter began with a SAR to the FIA who alerted the BPS to the activity. The defendant was convicted of theft and ML and sentenced to 4 months imprisonment. The Crown appealed the sentence, which was increased to two years, however the defendant had already completed his original sentence and left the jurisdiction. A warrant of arrest was issued by the Court of Appeal and an Interpol Red notice issued, the subject was apprehended in the United Kingdom, following which the full request for extradition was sent to the UK within 12 days. The subject was serving a sentence in the UK which ended on 19th May 2017. The extradition was contested; however, the subject was extradited to Bermuda to serve the remainder of his sentence one year and two months after the request was made. Therefore, the case highlights the effective actions of various CAs within Bermuda. Given the context of Bermuda as an IFC, the increased focus on cross border ML investigations may lead to further extradition requests.

8.1.3. Seeking other forms of international cooperation for AML/CFT purposes

(a) FIA

549. As a member of the Egmont Group since 2008, the FIA can reach out to its foreign counterparts for international cooperation to exchange financial intelligence. The FIA does not require an MOU to facilitate information exchange with any foreign FIU. In those cases where a foreign FIU does require an MOU to exchange information, the FIU will negotiate and conclude such MOUs in a timely manner. In this regard, the FIA has signed 43 MOU's with different jurisdictions, to facilitate the free flow of intelligence. Since the establishment of the FIA in 2008, it has exchanged information with 75 countries. For the period 2014 to 2017 the FIA made a total number of 104 requests to foreign FIUs. The FIA utilises the ESW to request information. Having analysed SARs received, and where it is determined that a request for information needs to be sent to an overseas agency, this is classed by the FIA as an Outgoing Request for Information (ORI). All requests for assistance are documented with goAML, the FIA's operational software. The FIA exchanges information with FIUs via the Egmont Group Secure Web (ESW). Communication via the ESW is secured by end to end encryption. Information provided by the FIA in response to requests has been periodically delayed as discovered in follow up requests from international partners.

550. The type of information requested from foreign FIUs included:

- i. Basic Company information (such as Register of Directors, incorporation details);
- ii. Financial Statements for Legal Person;
- iii. Whether SAR filings have been made to foreign FIU on subjects currently under investigation in Bermuda; and
- iv. The existence of criminal investigations in the foreign jurisdiction regarding subjects under review in Bermuda

551. The table below details the number of requests for international cooperation made by the FIA to foreign FIUs:

Table 8.3 No. of requests for international cooperation made by the FIA to foreign FIU's

| | 2014 | 2015 | 2016 | 2017 | 2018 |
|------------------------------|------|------|------|------|------|
| FIA requests sent via Egmont | 12 | 59 | 16 | 17 | 31 |

(b) The BPS

552. The BPS has specific designated liaison officers and is in frequent contact with the USA, Canada and the UK on ML and related matters. The BPS Intelligence is also shared through the Interpol office. The BPS was unable to provide timelines for the responses received to the requests made although its effective assistance was demonstrated through e.g. case studies. Figures were provided for incoming and outgoing enquiries combined; therefore, it was not possible to separate the incoming and outgoing figures. Nevertheless, the BPS has sought assistance in relation to locating and interviewing witnesses in the USA and Canada. In the last 4 years the OECD have interviewed five persons who were beneficial owners of foreign entities. Additionally, the OECD have interviewed witnesses in the US who have been located by their overseas partners.
553. The BPS utilizes Egmont through the FIA to seek international cooperation to exchange intelligence. The FIA facilitated 37 Egmont requests from the BPS between 2013 and 2017. The BPS has also worked together with the FIA to utilize the Egmont exchange of information in relation to a possible TF matter (see Box 8.3). The BPS has sought international assistance in relation to ongoing matters of a more complex nature. Further, the BPS has sought the assistance of the UK and Australia to obtain information regarding the establishment of a public/private information sharing partnership and lead to the establishment of the JMLIT which is currently in its initial stages. Therefore, the ability to request international assistance in such matters exists and has been utilized to some extent although larger cross border prosecutions, consistent with Bermuda's risk profile have not yet commenced.

Box 8.3: BPS seeking international cooperation re TF

Following a SAR being filed in relation to funds being sent to a country linked to TF and the transactions being out of character. Both the FIA and the BPS expedited enquiries and reached out to international law enforcement agencies and foreign FIUs in the UK, USA and Canada to establish if there was any known intelligence in respect to of the subject and the receiver of the funds. An intelligence profile was completed on the sender and his partner which established they were persons of good character with no known criminal or terrorist associations. The funds were ultimately released.

Table 8.4 BPS information sharing with overseas law enforcement partners incoming and outgoing⁵⁰

| Country | 2014 | 2015 | 2016 | 2017 |
|---------------------|------------|------------|------------|------------|
| USA | 229 | 347 | 319 | 265 |
| UK | 20 | 111 | 301 | 319 |
| Canada | 25 | 26 | 33 | 22 |
| BVI | 0 | 0 | 1 | 0 |
| Bahamas | 0 | 0 | 1 | 5 |
| Bulgaria | 0 | 0 | 1 | 0 |
| Finland | 0 | 0 | 0 | 1 |
| France | 0 | 2 | 0 | 1 |
| Egypt | 0 | 0 | 0 | 1 |
| Interpol | 10 | 25 | 34 | 35 |
| Cruise ship liaison | 5 | 5 | 0 | 4 |
| Total | 289 | 516 | 690 | 653 |

(c) Customs

⁵⁰ The trend in relation to the USA, UK and Canada being the most frequent partners continued up to the time of the on-site visit.

554. The Joint Intelligence Unit (JIU) is the intelligence hub of the Bermuda Customs Department. Through this unit, in which the Customs Liaison Officer has been based since 2014, the Customs Department is able to request international cooperation. The Customs Department is a member of the Caribbean Customs Law Enforcement Council (CCLEC) whose mission is to upgrade the effectiveness of its member Customs' administrations including through cooperation and information/intelligence sharing. The Joint Intelligence Office is the intelligence arm of the CCLEC, and the head of the office is the Regional Intelligence Liaison Officer (RILO) who is also the liaison to the World Customs Organisation (WCO). The appointed RILO Officer is employed by Customs in Bermuda and stationed in Bermuda.
555. A Bermuda Principal Customs Officer has been appointed the Enforcement Liaison Officer to establish a direct link to the WCO RILO and the CCLEC JIO. Most requests for information are required to be immediate as the time is limited to the arrival time (three hours to Canada and five hours to the UK). Searches of boats allow for a longer time for a request to be made but these are usually made within a day of gathering intelligence to form the basis of the request. Data was not kept by Customs prior to 2016 and it is not disaggregated according to the specific nature of the requests although it was stated that requests to the UK are primarily in respect of persons who cannot travel to, nor transit through the US from Bermuda. Requests to Canada are generally for information on persons travelling from Bermuda who may have restrictions on their travel options. Requests to CCLEC are primarily in respect of information required on small vessels. As USCBP operate a pre-clearance facility in Bermuda, USCBP officers share and request information from JIU directly and without delay. An MOU has been in place between Bermuda and USCBP since 1994, which includes the exchanging of information. General feedback was provided by Canada who stated that the cooperation with Bermuda Customs was excellent and there was a free flow of intelligence and information.

Table 8.5 Requests made by JIU 2016 – 2017

| Request to | 2016 | 2017 |
|-------------------------------|------------|------------|
| UK Border Force | 97 | 83 |
| Canada Border Services Agency | 28 | 42 |
| CCLEC / JIO | 286 | 563 |
| Total | 411 | 688 |

Box 8.4:

On 29 May 2017, a vessel departed Bermuda. This vessel was of interest to Bermuda Customs and there were three males on board, 2 Bermudian and one from the UK. The vessel declared its next port of call as a Western European port. However, Bermuda Customs suspected that it was in fact headed to the Caribbean and spontaneously placed an alert with the JIO as well as within the Regional Clearance System, requesting any information on this vessel and requesting the notification of Bermuda Customs if it was seen in the Caribbean. An enforcement action was also requested. The vessel was intercepted on Sunday 2 July 2017 during an at sea joint operation with the police force, defence force and coast guard of a Caribbean jurisdiction and subsequently brought into port. At this time, only the 2 Bermudians were on-board; the UK national had left. During the search of the vessel, 4 duffle bags containing over 200kg of plant material was discovered. The subjects subsequently appeared in court facing drug importation charges. Upon their guilty pleas, they were convicted and are currently awaiting sentence.

(d) The BMA

556. Although it is not a requirement for BMA to have a co-operation agreement in place in order to seek and provide assistance, BMA has 29 bilateral MOUs. The BMA is also a signatory to the IAIS and

IOSCO and other Multilateral Memoranda of Understanding (“MMOU”) with various national and international regulators to facilitate a broad range sharing of information on supervisory issues of international cooperation topics including AML/CFT.

557. Just one regulator-to-regulator request was sent for the period 2013 to 2015. For the period 2016 to 2017, the BMA made a total number of 26 requests to Foreign Regulatory Bodies. The UK received the largest number of requests, followed by the Cayman Islands and Jersey.
558. The table below, details the number of requests made by BMA, the number or pending requests and the time taken for responses to be received. Limited data was available for the period 2013 – 2015 other than the fact that just one request was sent.

Table 8.6 Requests made by the BMA 2016 – 2018

| No. of Requests | 2013 - 2015 | 2016 | 2017 | 2018 |
|--------------------------------|-------------|----------------------|------------------------|------------|
| Sent/Outgoing | 1 | 9 | 17 | 13 |
| Pending | - | 3 | 8 | 0 |
| Responses Sent | - | 6 | 10 | 13 |
| Time taken to receive response | -Unknown | Between 5 to 41 days | Between 1 and 150 days | 13-62 days |

(e) The BCGC

559. While the BCGC currently has no casino to supervise, it is authorized to grant a provisional license under certain conditions and one provisional license has been granted thus far. The BCGC established and utilized a Letter of Cooperation establishing a cross-jurisdictional co-operative relationship with the New Jersey Division of Gaming Enforcement as the competent authority for casino gaming in the State of New Jersey. International cooperation will be sought in the suitability of the proposed operator, which includes CDD procedures and forensic auditing.

8.1.4. Providing other forms international cooperation for AML/CFT purposes

(a) FIA

560. Although the FIA does not require an MOU with a foreign FIU to exchange information, the FIA has signed 43 MOUs with different jurisdictions, to facilitate the free flow of intelligence. For the period 2014 to 2018, FIA received 115 requests from foreign FIUs and made a total number of 45 disclosures to foreign FIUs. Approximately 50% of the requests received by the FIA from foreign FIUs are considered “fishing” requests in that they are sent simultaneously to several FIUs with no explanation as to what link there is to Bermuda. Despite the high number of “fishing requests” the FIA will respond to every request inviting the foreign FIU to provide further information to identify the link with Bermuda. These requests are nonetheless logged into goAML to determine if there is any relevant information currently held within the FIA’s database. In addition to responding to requests for information, the FIA makes spontaneous disclosures to foreign FIUs via the Egmont Secure Website (ESW). The goAML system is also used by the FIA to disclose and receive intelligence from competent local authorities. From 2014-Oct. 5th, 2018 the FIA has made 120 spontaneous disclosures.
561. The FIA routinely requested feedback regarding the quality and timeliness of information it provides. However foreign FIUs were not providing feedback to the FIA as requested. As a result, in 2018, the inclusion of a separate and more detailed feedback form with all its disseminations was supplemented in a separate Feedback Request Form attached to every disclosure.

562. There were delays in the FIA's response to some requests which were only detected through follow-up requests from international partners. The Authorities however indicated that the matters were fully addressed and modifications to internal procedures which includes periodic alerts for ongoing or incomplete requests have been implemented to ensure such oversights did not occur going forward.
563. The Assessors noted that the FIA have commenced establishing mechanisms for improving both the quality and timeliness of information exchanged with foreign FIUs which will ensure that benchmarks surrounding information exchanged mandated by the Egmont Group are always adhered to.

Table 8.8 FIA-Number of Requests received for the period 2014 to 2018 (Oct. 5th) and the response times

| | 2014 | 2015 | 2016 | 2017 | 2018 |
|------------------------|------------------------|---------------------------|-----------------------|----------------------|----------------------|
| No. of Requests | 28 | 34 | 26 | 11 | 16 |
| Response times Range | Between 13 to 267 days | Between 1 day to 378 days | Between 2 to 505 days | Between 1 to 75 days | Between 3 to 96 days |
| Average response times | 72 | 68 | 64 | 17 | 17 |

564. The FIA has successfully responded to 115 requests for the period 2014 to the time of the onsite visit, (5th October 2018) as shown in the table 8.8. The timelines for the FIA's response to foreign FIUs varies, depending on the complexity of the case and the request. Requests of more complex nature require more detailed information and involve joint analysis/investigation and ongoing dialogue with local and foreign agencies. The average response times for the period 2014 -2018 was 48 days which is within the Egmont Principles of Information Exchange which suggests that requests should be responded to as far as possible within 60 days.

(b) The BPS

565. The BPS provides assistance to foreign counterparts as evidenced in several case studies. The BPS was unable to provide figures differentiating incoming or outgoing requests nor were they able to provide timelines for the length of time taken to respond to their requests, however they demonstrated by way of case examples their ability to assist and the assistance they had provided. The joint amount of incoming and outgoing requests is listed above at table 8.4. The BPS also investigated domestically 2 MLA requests and one police to police request, none resulted in prosecution. They were however referred to the Enforcement Authority for Civil Asset Recovery and resulted in the recovery of funds. (see. Case study at Box 3.6).
566. At the time of the onsite the BPS was conducting a parallel financial investigation into ML and criminal tax evasion following an incoming international request. The BPS has established links with the most common overseas counterparts and has responded to LEA requests for basic information on legal persons, facilitating the presence of overseas officers, providing antecedent and background information on suspects, providing available information in relation to cybercrime matters. The BPS has also provided assistance to their foreign counterparts by other means, including assisting with the provision of two officers who attended Montserrat and conducted investigations in relation to a high profile fraud, ML and corruption investigation in 2012, for which convictions were obtained for several counts of 'obtaining securities by deception'. In 2017 the BPS were required to review further allegations.
567. The AGC has also provided information on an informal basis to another Central Authority upon their request via telephone. This resulted in a formal MLA request being sent at a later date.

(c) Customs

568. Customs indicated that all requests received were actioned so there was no differentiation between requests received and requests actioned. No timelines were available although it was indicated that requests relating to airline passengers are responded to almost immediately and requests made to the JIU office are usually responded to within 48 hours. Customs attributes the increase in the number of requests received from the UK to the increased number of persons leaving Bermuda and emigrating to the UK to avoid the increased gang violence and activity in Bermuda which escalated from 2015 to 2017. The increased requests from Canada were attributed to Bermuda being assigned a direct point of contact for the Canada Border Services Agency and a strengthened relationship ensued. Examples were given in relation to the provision of information regarding birth and travel information of Bermudians being investigated in another jurisdiction for terrorism and the exchange of information in relation to skimming cases and DiHVG.

Table 8.9 Customs: Requests received / actioned by JIU from overseas agencies 2014 to 2017

| Country | 2014 | 2015 | 2016 | 2017 |
|--------------------|-----------|-----------|------------|------------|
| US | 32 | 44 | 74 | 95 |
| UK | 16 | 21 | 64 | 187 |
| Canada | 3 | 9 | 12 | 24 |
| Dominican Republic | 0 | 0 | 0 | 1 |
| France | 2 | 2 | 0 | 2 |
| Jamaica | 1 | 1 | 0 | 0 |
| St Maarten | 0 | 1 | 1 | 0 |
| Interpol | 0 | 0 | 1 | 1 |
| CCLEC / JIO | 0 | 0 | 59 | 74 |
| Total | 54 | 78 | 211 | 384 |

Box 8.6: Customs and international cooperation

In 2016 UK Border Force requested information and intelligence on a Bermudian national due to enter the UK from a Caribbean jurisdiction due to his travel pattern, which had aroused suspicion. The JIU relayed antecedent information to the UK Border Force, which subsequently undertook enforcement action upon the arrival of the subject in the UK. The subject was found to be in possession of a controlled substance and was prosecuted in the UK.

(d) The BMA

569. Although it is not a requirement for the BMA to have a co-operation agreement in place in order to seek and provide assistance, the BMA has 29 bilateral Memoranda of Understanding (“MOU”) and is a signatory to the IAIS and IOSCO and other Multilateral Memoranda of Understanding (“MMOU”) in place with various national and international regulators to facilitate a broad range sharing of information on supervisory issues of international cooperation topics including AML/CFT. The BMA has provided information upon request to foreign Regulatory Bodies. A total number of 292 requests were received by the BMA from foreign regulators for the period 2014 to 2017. The table below, details the number of requests received by the BMA, the number of pending requests, the number denied and the number of requests where information was sent for the period 2014 to 2017.

Table 8.10 BMA-Number of Requests received from Foreign Regulator for the period 2014 to 2017

| No. of Requests | 2014 | 2015 | 2016 | 2017 |
|-----------------------|------|------|------|------|
| Received | 68 | 70 | 69 | 85 |
| Pending | 19 | 16 | 11 | 31 |
| Denied | 1 | 1 | 0 | 0 |
| Responses Sent | 48 | 53 | 58 | 54 |
| Average response time | 33 | 13 | 28 | 16 |

570. The timelines of the BMA's responses to overseas regulatory bodies varies, depending on the nature of the investigations. Requests were predominantly in the securities sector and involved insider trading, market manipulation and suspicious trading activity. The timelines however are not in adherence with the BMA's internal procedure of responding to request which is within 5 days of receipt. The largest number of requests were received from Malta and the Cayman Islands, followed by the UK, the Isle of Man, Singapore and Canada.

571. The table below, details the timelines of BMA responses to requests by foreign regulatory bodies, where it has obtained that information from an RFI using a statutory request:

Table 8.11 BMA-Response time to request made by Overseas Regulatory Bodies for Information held by an RFI

| Nature of Investigation | Assessment of Times |
|--|--|
| Insider Trading | Majority of the responses provided between 16 to 30 days |
| Market Manipulation | Majority of the responses between 10 to 40 days |
| Receipt of fees and commissions in violation of prior order/disbarring | Majority of responses between 14 to 20 days |
| Violation of administrative order | Majority of responses between 10 to 20 days |
| Fraud and misappropriation (Israel) | Over 280 days |
| Misappropriating Assets | 44 days |
| Material misstatements to investors | 45 days |
| Suspicious Transactions Activity | Majority of responses between 13 to 41 days |

(a) The Treaty Unit

572. The Treaty Unit within the Ministry of Finance is the competent authority to provide international assistance in respect of tax matters under the tax exchange treaties and agreements. Between 1st April 2013 and 31st March 2016 Bermuda received 77 requests from 12 jurisdictions, just under one third related to criminal tax requests. Twenty-four (24) of the requests related to BO information, this information was obtained from the BMA on 15 occasions, with a response time of 7 days or less. The Ministry of Finance Treaty Unit's average response time to Bermuda's international Treaty Partners' Requests is approximately 73 days.

8.1.5. International exchange of basic and beneficial ownership information of legal persons and arrangements

573. Basic information on all legal persons is available upon request by competent authorities and requests are generally fulfilled within a few hours. Basic information on legal arrangements is available from TSPs and, since 2017, PTCs are now required to be registered at the BMA making access to such information more efficient. Whilst individual non-professional trustees are also required by law to hold basic and beneficial ownership information, it would be difficult to locate these individuals if they were not identified within the request as trustees. Access to accurate and up-to-date beneficial information is expected to be greatly improved by the introduction of the new beneficial ownership legislative

requirements including company's maintaining their own registry and filing with the BMA, which must be complied with beginning September 2018 (extended to December 2018) (see IO.5). However, local FIs or other regulated personnel e.g. lawyers where utilized would also be required to hold the BO information on the legal person or arrangement.

Central Authority

574. The Central Authority has received 5 requests for beneficial ownership between 2014 and 2017. Production orders were served on banks, the BMA, the CSP and the licensed trust company. During the period the BPS served 2 production orders on the BMA in relation to MLA requests. The BPS also served production orders directly on financial institutions which provided the required beneficial ownership information. The corporate banking form provided by a local financial institution disclosed the ultimate beneficial owner, country of citizenship, country of residence and date of birth. One request was received and responded to in relation to basic information. Therefore, the Central Authority has demonstrated its ability to obtain BO information from various sources.

Box 8.7:

In 2016 the Central Authority received an MLA request in relation to a conspiracy to defraud and the concealment of an interest in a company registered in Bermuda. A production order was granted and served on various entities including a local bank and CSP. All the evidence mandated by the production orders was received and the beneficial ownership and other information was sent to the requesting state.

The BPS

575. The BPS does not keep statistics on the number of law enforcement to law enforcement requests for identifying and exchanging beneficial ownership information, which, in any event are usually passed onto the FIA. The BPS has provided basic information to overseas partners, no figures are available. Prior to the MOU between the BMA and the BPS requests from foreign LEAs were addressed by directing the request through the FIA.

The FIA

576. The FIA can obtain information from any person or entity using a s.16 notice to provide beneficial ownership information when enquiring into suspicious transactions relating to ML or TF. Information from entities is usually required within five days and provided via the compliance and MLRO officers. The FIA issued s.16 notices on CSPs to obtain BO information and the requested information was received in the requested time. The BMA and has also provided, upon request from the FIA, the legal person owning the shares as well as the identity of the natural person behind the legal person, an example of which was shown to the Assessors.

577. The Assessors noted that the FIA has recorded BO requests as a distinct category of requests within its case management system (goAML) received since 2016. However, from a review of the FIA records it was able to ascertain that it has sought BO information from the BMA on behalf of the foreign FIUs on 25 occasions from 2013-5 Oct. 5th, 2018. In 2016 a total of 7 such requests were received and responded to, in 2017 only 2 requests were received and in 2018, 4 requests for BO information were received.

578. The FIA Business Plan and Performance Goals 2018 – 2020 states that the provision of basic and BO information of legal persons and arrangements will be high priority and a policy will be implemented outlining the timeframe within which these requests will be actioned by the intelligence unit.

The BMA

579. The BMA has not collated specific details on international regulator-to-regulator requests relating to BO information until recently. The Assessors noted that only in rare cases are foreign regulators solely requesting BO information and where BO information is sought it is usually in relation to insider trading and market manipulation matters. Although there are no formal rules directing the method by or timeframes within which BO requests are executed by the BMA, the BMA has provided BO information upon request in relation to requests of other CAs. For the period 2013 to 2017, the BPS with the assistance of the AGC served 2 production orders on the BMA in relation to an MLA request which led to identification of the natural person behind the legal person who was the shareholder. In April 2017 the BMA and the BPS signed a MOU in order to share information following which the BPS have made 6 requests for intelligence regarding 14 subjects which was provided within 3 business days. It is unclear whether these relate to international or local investigations, but it does indicate that the BMA can provide such BO information when requested.
580. As noted in the discussion of IO.5, in 2016 the Government of Bermuda entered into an exchange of notes agreement with the UK Government in respect to the sharing of BO information. Under that agreement the BMA assists the Government and between June 2017 and the onsite (September 2018) there were 3 official requests for intentional cooperation received by the BMA. Of these, 2 requests were satisfied, and one was deemed non-compliant with the terms of the applicable agreement. Although the exchange relates to criminal investigations, the provision of information lies with the BMA as they are the holders of the beneficial ownership information.

The Treaty Unit

581. Between 2014 and 2017 the Treaty Unit received 49 requests relating to BO information. Thirty-three (33) of the requests were sent to the BMA and the response time to the Treaty Unit was 7 days or less. The other 16 requests related to BO information from a financial institution and a trust. In 2 cases the request was declined. The first request declined did not meet the requirements of the TIEA and in relation to the second the information had already been destroyed as part of the liquidation process. The average response time to the Treaty Partner was 65 days. (Only 4 of these cases took over 100 days, all of which involved legal proceedings).

Overall conclusions on IO.2

582. **Bermuda is rated as having a substantial level of effectiveness for IO.2.**

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.
2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in May 7th to 23rd, 2007. This report is available from <https://www.cfatf-gafic.org/cfatf-documents/mutual-evaluation-reports/bermuda-1/53-bermuda-3rd-round-mer/file>.

Recommendation 1 – Assessing risks and applying a risk-based approach

3. This recommendation was issued in February 2012 and is being evaluated for the first time during this mutual evaluation. Recommendation 1 requires countries to assess and apply a risk-based approach (RBA).
4. **Criterion 1.1** – Bermuda has identified and assessed the ML/TF risks posed to the jurisdiction. During the period 2013 – 2017 Bermuda has conducted three NRAs two of which were specific to ML risks (2013 and 2017) and one assessment in 2016 in relation to TF risks.
5. **Criterion 1.2** - S.49(1)(a) of the Proceeds of Crime Act, 1997 (POCA 1997). Established the National Anti-Money Laundering Committee (NAMLC) and assigned the Committee the responsibility for advising the Minister concerning mechanisms to enable competent authorities (CAs) to coordinate with each other for development and implementation of policies and activities to combat ML/TF and PF. The role of the NAMLC as stipulated is an advisory role. Section 49(1)(e) of POCA 1997 *inter alia* stipulates that NAMLC is responsible for coordinating activities to identify, assess and understand Bermuda’s ML/TF risks.
6. **Criterion 1.3** - The conduct of an ML NRA in 2013 and another in 2017 is evidence that the jurisdiction has updated its assessment of ML risks. The TF risk assessment was conducted in 2016 and there have been no further updates. S. 49(1)(e) of the POCA 1997 as well as Bermuda’s National Policy (High Level Policy Statement 1 and detailed policy 1.1) allows NAMLC to take the necessary steps every three years to conduct/update ML/TF risk assessments and identify and assess new developments, threats and vulnerabilities.
7. **Criterion 1.4** - S.49(2) of the POCA 1997 delineates the members of the NAMLC and its working groups, which include all CAs within the jurisdiction. The membership comprises representatives from the Attorney General’s Chambers (AGC), the Bermuda Casino Gaming Commission (BCGC), the Bermuda Monetary Authority (BMA), the Bermuda Police Service (BPS), the Customs Department (Customs), the Department of Public Prosecutions (DPP), the Financial Intelligence Agency (FIA), the Ministry of Finance (MoF), the Ministry of Legal Affairs (MOLA), the Registrar of Companies (ROC), the Superintendent of Real Estate (SoRE), the Registry General (RG) and the Barrister and Accountants AML/CFT Board (the Board). The 2016 TF and 2017 ML NRA results were circulated to all NAMLC member agencies and there are no barriers to sharing of such information between CAs. Additionally, the National AML/CFT Policy (at 1.4) stipulates that the conclusions from NRAs will be published and disseminated by NAMLC and that supervisory authorities will directly inform their

regulated entities and other stakeholders in Bermuda about changes to Bermuda's ML/TF risk profile at both the national and sectoral levels.

8. **Criterion 1.5** - Bermuda has formulated a National Anti-Money Laundering/Anti-Terrorist Financing Policy. The National AML/CFT Policy *inter alia* outlines appropriate agency and institutional policies that address risks identified in the most recent NRAs. It focuses on the highest risk sectors in, and the most significant threats to Bermuda's economy. The first High Level National AML/CFT Policy Statement declares that "Bermuda's Competent Authorities will prioritise AML/CFT strategies and action plans based on known ML/TF risks". This is further supplemented by the establishment of a special Cabinet Committee that meets bi-weekly and the invocation of a reporting mechanism for the NAMLC to report on the activities of member agencies. A National Action Plan was developed out of the findings and recommendations of the NRAs and included the detailing of resourcing issues specific to individual agencies.
9. **Criterion 1.6** - The exemption of closed end funds is based on a proven low risk as analysed in the 2017 NRA and justified circumstances for exclusion have been established.
10. **Criterion 1.7** - Financial institutions and DNFBPs are required to (a) take enhanced measures to manage and mitigate risks where higher risks are identified (s.16(i)(ea)(iii) POCR ; and (b) ensure this information is incorporated into their risk assessments (s.16(i)(e) (POCR).
11. **Criterion 1.8** - S.10(1A) of the POCR 2008 allows the lifting of the requirements for relevant persons to perform CDD measures when establishing a business relationship, carrying out occasional transactions and for certain life insurance and pension contracts provided that the risk has been assessed and there are reasonable grounds to believe there is a low risk of ML/TF and the relevant person has no suspicion of ML or TF. However, the Proceeds of Crime (Misc.) No. 4 Act 2018 amends this position by substituting the text in 1A that allowed for the complete lift of CDD measures stating that "*subject to paragraph 1A, a relevant person is not required to apply the full due diligence measures*" thus indicating that a complete list of CDD obligations is not to happen in these circumstances, but allowing simplified due diligence measures to be employed "*after assessing the risk, the relevant person has reasonable grounds for believing that there is a low risk of ML and TF; and the relevant person has no suspicions of ML or TF.*"
12. **Criterion 1.9** - S.3 of the Proceeds of Crime (AML/CFT Supervision & Enforcement Act 2008) (SEA) specifies the supervisory authorities within Bermuda to be the BMA, FIA, So RE, the BCGC and any designated professional bodies for relevant persons regulated by it. S.5(1) of the SEA obligates the supervisory authorities to monitor relevant persons and take necessary measures to ensure compliance with the AML/CFT Regulations, including their risk-based compliance obligations.
13. **Criterion 1.10** - Relevant persons are obligated under s.16(1)(ea) of the POCR to have policies and procedures relating to risk mitigating measures which consider the national or the relevant person's risk assessment results or conclusions. There is also an explicit requirement in regulation 16(5) of the POCR for FIs and DNFBPs to take reasonable steps (including the use of risk mitigation mechanisms) to identify, assess and understand their ML/TF risks. The requirement for the conduct, documentation and sharing of risk assessments under regulation 16(1)(es) and 16(5) is referenced to all relevant risk factors, namely the type of customers, business relationships, country of geographic areas, services, delivery channels, products or transactions. Further regulation 16(5) requires FIs and DNFBPs to document their risk assessments and keep them updated.

14. **Criterion 1.11** - Section 16(1) of the POCR requires relevant persons to have risk-mitigating procedures approved by their respective governing body. Relevant persons are required to monitor and manage compliance with risk-mitigating policies and procedures and to apply enhanced measures where the risk assessments identify higher risks. (Reg. 16 of the POCR as amended by PC(M)(4) 2018).
15. **Criterion 1.12** - Regulation 10(1A) of the POCR expressly imposes an obligation on regulated entities to carry out a risk assessment, prior to applying simplified due diligence. Regulated entities can only apply simplified due diligence after they have assessed the ML / TF risk and, having done so, have reasonable grounds for believing that the ML/TF risk is low, and they also must have no suspicion of ML/TF.

Weighting and conclusions

16. **Recommendation 1 is rated compliant.**

Recommendation 2 - National Cooperation and Coordination⁵¹

17. This recommendation (previously R.31) was rated 'PC' in the 3rd round MER. The deficiencies identified were that (i) The policy development and coordination functions of NAMLC were not sufficiently robust to keep up with a heavy agenda of unfinished initiatives and (ii) Coordination and cooperation among agencies was ad hoc and inconsistent. R.2 has new specific requirements to have national policies which are informed by risks and the element of cooperation, exchange of information and domestic cooperation regarding financing of proliferation.
18. **Criterion 2.1** – Bermuda has a National AML/CFT policy which is informed by the risks identified in the NRA. The Bermuda NAMLC has conducted 3 risk assessments in the past 5 years, the most recent in 2017. The National policy commits the Government and competent authorities to regularly review the national and operational AML/CFT policies and that the policy is subject to annual review and approval. NAMLC is responsible for leading and coordinating this activity.
19. **Criterion 2.2** – The NAMLC, established under s.49 of the POCA 1997, is an advisory body to policy makers and responsible for the national coordination of the AML/CFT Strategy.
20. **Criterion 2.3** – NAMLC is the primary coordination forum and mechanism for the formulation of national AML/CFT policies, strategies and action plans. The NAMLC consists of a wide range of policy makers who co-ordinate domestically on policy and operational matters⁵².
21. **Criterion 2.4** - Section 4 of the Proceeds of Crime and Related Measures Amendment Act, 2013 expanded the mandate of NAMLC to include domestic cooperation and coordination to combat the financing of proliferation (PF) of weapons of mass destruction.

Weighting and conclusions

⁵¹ The FATF revised R.2 in February 2018 to ensure compatibility of AML/CFT requirements and data protection and privacy rules, and to promote domestic inter-agency information sharing among competent authorities. This evaluation does not assess Bermuda's compliance with revised R.2 (C.2.5) because, at the time of the on-site visit, the FATF had not revised its assessment Methodology accordingly. Bermuda will be assessed for technical compliance with revised R.2 in due course in the context of its mutual evaluation follow-up process.

⁵² Ref Criterion 1.4 to see the CAs that comprise NAMLC

22. Recommendation 2 is rated compliant.

Recommendation 3 - Money laundering offence

23. R. 3 (formerly R.1 & 2) were previously both rated 'LC'. The 3rd MER notes that the deficiency with R. 3 was that fines with respect to summary convictions and certain convictions on indictment were too low. Bermuda disputed this criticism and, the issue was no longer raised in the 4th Follow-Up Report. (There were also criticisms which related to effectiveness).
24. **Criterion 3.1** – ML has been criminalized based on Art. 3(1)(b) & (c) of the Vienna Convention and Art. 6(1) of the Palermo Convention. The Proceeds of Crime Act (POCA) ss. 42 to 45 are relevant. s.3, 4 and 8 of the Bribery Act and s.27, 111, 118, 125A and 125B of the Criminal Code satisfy Art. 8 and 23 (Corruption and Obstruction of Justice) of the Palermo Convention, as required by paragraph 2(b) of Art. 6 in order to apply Article 6(1).
25. **Criterion 3.2** – Predicate offences for ML are based on the concept of activities relating to 'criminal conduct'. S.3 of the POCA defines 'criminal conduct' to mean 'drug trafficking or any relevant offence'. 'Drug trafficking' includes the importation, exportation, production, supply, possession with intent to supply and handling of all controlled drugs and the cultivation of cannabis. 'Relevant offence' means: any indictable offence in Bermuda (other than a drug trafficking offence), any act or omission which, had it occurred in Bermuda, would have constituted an indictable offence (other than a drug trafficking offence); or any criminal act or omission in relation to any tax lawfully established in a jurisdiction outside Bermuda which, notwithstanding s.2 of the Taxes Management, would have constituted an offence contrary to s.37(2) of that Act had it occurred in Bermuda (criminal tax evasion). All designated categories of offences are criminalised. There are no serious offences which are only capable of being tried summarily that would be relevant for the purposes of ML.
26. **Criterion 3.3** – Bermuda uses a combined approach. Pursuant to s.3 of the POCA, relevant offences are predicate offences for ML. Relevant offences are indictable offences, which means that they may be tried before Bermuda's Supreme Court. Drug trafficking offences (see above) are predicate offences to ML and are listed. The offences are punishable by a maximum penalty of more than one year.
27. **Criterion 3.4** – S.4 of the POCA defines 'property' as 'money and all other property, movable or immovable, including things in action and other intangible or incorporeal property'. S.42A establishes that criminal property is property which 'constitutes a person's benefit from criminal conduct or represents such a benefit (in whole or part and whether directly or indirectly)'. Value is irrelevant to the definition of either property or criminal property.
28. **Criterion 3.5** – There is no requirement that a person be convicted of a predicate offence to prove that property is the proceeds of crime. British case law interpreting comparable provisions of the case law of England and Wales (see *Anwoir* [2009] 1 WLR 980 and also *Bholah* [2011] UKPC 44), which has been applied in Bermuda concludes that the criminal origin of the property can properly be proved inferentially and without direct evidence of a specific predicate crime.
29. **Criterion 3.6** – Pursuant to s.3 of the POCA, predicate offences for ML (drug trafficking and relevant offences) cover criminal conduct whether it occurred in Bermuda or elsewhere.
30. **Criterion 3.7** – Based on the description of a ML offence under ss.43 and 45 of the POCA, a person who commits the predicate offence will also be captured once the persons engage in activities noted

in those sections. Section 44 of the POCA, which concerns ‘assisting another to retain the proceeds of crime’ is the only offence that relates specifically to another’s proceeds of crime.

31. **Criterion 3.8** – Pursuant to s.44 of the POCA, the ML offences require the *meaning* of ‘knows or suspects’ which incorporates the ability to prove ML from objective factual circumstances. For offences under s.43 and 45 of the POCA there is no inference included, however, Bermuda’s Evidence Act, 1905 at s.28(b) provides that in determining whether the accused committed an offence ‘...shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence that appear proper in the circumstances’.
32. **Criterion 3.9** – S.48 of the POCA includes ML penalties, which on summary conviction consists of imprisonment for 5 years or a fine not exceeding US\$50,000 or both. For conviction on indictment, the penalty consists of imprisonment for 20 years or an unlimited fine or both. Additionally, the DPP is empowered to require that an either way offence is tried on indictment under s.450 of the Criminal Code.
33. **Criterion 3.10** – Based on s.56 of the POCA, offences committed by a body corporate, a partnership or unincorporated association and their ‘officers’ can be liable and proceeded against and punished accordingly. Officers or natural persons who are found to have consented or connived with the legal person to commit the offence are also liable. Officers include a director, manager, secretary, chief executive, member of the committee of management or a person purporting to act in that capacity. The term ‘officer’ is also applicable to any member of an association or its governing body or a person purporting to act in that capacity and partners or persons purporting to be such. The POCA at s.56(6) alludes to a fine for offences committed by a partnership or unincorporated association but does not mention any amounts. There is no reference of a fine for body corporates. However, s.70G of the Criminal Code Act, 1907 provides that ‘a corporation that is convicted of an offence is liable, in lieu of any imprisonment that is prescribed as punishment for that offence, to be fined in an amount, except where otherwise provided by law – (a) that is in the discretion of the court, where the offence is an indictable offence this includes either way offences and includes ML. Based on the court’s discretionary power to impose an unlimited fine for an indictable offence, the sanctions that are applicable to legal persons for ML offences are proportionate and dissuasive.
34. **Criterion 3.11**– The ancillary offences to ML of attempt, conspiracy, incitement, aiding, abetting/enabling, counselling and procuring are covered by ss.27, 30-33 and 230-232 of the Criminal Code Act, 1907. The March 2018 amendment to the Proceeds of Crime Act includes at s.44 the offence of entering into an arrangement knowing or suspecting it facilitates ML by or on behalf of another.

Weighting and conclusions

35. **Recommendation 3 is rated compliant.**

Recommendation 4 - Confiscation and provisional measures

36. Bermuda was rated ‘PC’ for R.4 (formerly R.3) in its 3rd MER. The main deficiencies were that: 1) the legislation did not provide for the confiscation of instrumentalities of ML, FT or other predicate offenses; 2) the legal basis for applying the broadest scope of realizable property of an offender convicted for ML was not clearly stated; and 3) while there was a new provision for voiding contracts, it did not provide the authorities with the means to prevent actions which hinder the recovery of property subject to confiscation. There were also two other deficiencies related to the low number of

seizures, confiscations and forfeiture, and the lack of statistics which made it difficult to assess the implementation of the provisional measures.

37. During the follow-up process the main deficiencies were addressed through the POCA Amendment Act 2008, and the Proceeds of Crime and related Measures Amendment Act 2013 for the two deficiencies relating to seizures, confiscations and forfeiture, and the lack of statistics.
38. R. 4 now requires countries to also have mechanisms for managing and disposing (when necessary) of property that was frozen, seized or confiscated.
39. **Criterion 4.1** - (a) S.48A of the POCA allows for the forfeiture of laundered property. (b) Section 48A (2) also provides for the forfeiture of any property used or intended to be used for committing a ML offence. Property used or intended for use in predicate offences can be forfeited pursuant to s. 37 of the Misuse of Drugs Act 1972 and/or s.70IA of the Criminal Code. (c) s.14 of the Anti-terrorism (financial and other measures) Act 2004 (ATA), provides for the forfeiture of terrorist property. At s.14 (3) the court by or before which a person is convicted for an offence (including terrorism and financing of terrorist organisations) under ss.5(3) of the said ATA is empowered to make a forfeiture order against any money or other property which the convicted person had in his possession or under his control and which at the time that person suspected would or might be used for the purpose of terrorism. (d) Property of corresponding value is addressed at s.9 of the POCA. Here, once a determination of benefit from criminal conduct has been made by the court, the said court is required to order the defendant to pay an amount equal to his benefit from the criminal conduct.
40. **Criterion 4.2** - (a) Part IV (ss. 37–41) of the POCA sets out a range of information gathering measures applicable for determining the whereabouts of any proceeds of criminal conduct. These information gathering powers include s.37 Production Orders; s.39 Search warrants; s.40 Disclosure of information by Government Departments; s.41 Monitoring orders; and s.41A Customer information orders. S.37 permits the court to grant a production order requiring a person who appears to be in possession of material which is likely to be of substantial to an investigation to produce such material to a police officer. s. S.39 permits the court to issue a search warrant which authorizes a police officer to enter and search specified premises where a production order has not been complied with or where there are reasonable grounds for suspecting that there is material on the premises which is likely to be of substantial benefit value in determining whether a person benefited from criminal conduct or the extent or whereabouts of any proceeds of criminal conduct. (b) The court may make a restraint order (s.28(1) of the POCA) to prohibit any person from dealing with realisable property. s.28(4) of the POCA permits restraints orders to be made by the DPP on an ex parte application before a Judge in Chambers. s.36H of the POCA also provides for property freezing orders to be obtained ex parte against recoverable property which is property obtained through unlawful conduct. However, a restraint order may only be made when proceedings have been instituted s.27(1)(a) or a person is to be charged with a drug trafficking or relevant offence s.27(3), therefore limiting the ability to prevent any dealing, transfer or disposal of property if proceedings have not commenced. (c) The measures through which Bermuda can take steps that will prevent or void actions that prejudice the country's ability to seize, freeze or recover property include ss.6, 9, 28(8), 33(5), 45A and 52A of POCA. S.33(5) of POCA specifically provides that no account shall be taken of any obligations of the defendant or the recipient of any such gift which conflicts with the obligation to satisfy a confiscation order. (d) The BPS can commence any criminal investigation and this authority is provided under the Police Act (PA) and the Criminal Evidence Act (CEA).
41. **Criterion 4.3** – The rights of bona fide third parties are protected through s.16 of the POCA where the court, upon application from such a third party, is required to make an order declaring the nature, extent and value of such a person's interest in realizable property. S. 48A(4) provides for a third party making an ownership claim on property that is subject to forfeiture, to be heard by the court before the forfeiture order is made.

42. **Criterion 4.4** - The mechanisms for managing realisable property that is restrained to prevent the dissipation of its worth or from obscuring it, is premised on intervention from the court which may appoint a receiver in this regard (ss.28(6) and 31(2) of the POCA). This intervention can take place at any time following the granting of the restraint order and the receiver so appointed has the authority to: take possession of such property and to manage or otherwise deal with it (s.28(6); enforce any charge made against that property or any interest or dividends payable in respect of it (s.31(3) (a)); realise the property (s.31(5)). Regarding income generating property, the concept of a charging order is addressed at s. 29 of the POCA and the court (s.31(3) (a)) may also empower the appointed receiver to enforce any charge imposed on realizable property.

Weighting and conclusions

43. There is a good legal framework for confiscation and other provisional measures; however, the requirement for proceedings to have commenced, significantly limits the ability of competent authorities to prevent any dealing, transfer or disposal of property considering the importance of such a provision in preserving and securing assets that can become subject to a confiscation order.
Recommendation 4 is rated Largely compliant.

Recommendation 5 - Terrorist financing offence

44. R. 5 (formerly SR. II) was rated 'PC' in the 3rd MER. The deficiencies noted in the 3rd MER related to the definition of terrorism, which did not reference the 9 Conventions referred to in the Terrorist Financing Convention (TF Convention); no legislative reference to the financing of terrorist organisations or to extra-territorial offences related to terrorist organizations. The deficiencies were all addressed by relevant amendments to the ATA. See. 4th FUR.
45. **Criterion 5.1.** – S. 5 of the Anti-Terrorism (Financial and Other Measures) Act, 2004 (ATA) criminalizes TF and is consistent with Art. 2 of the TF Convention. The offence created applies to anyone who invites another to provide money or other property, receives money or other property or provides money or other property. Any such act done, intending or suspecting that the money/property should/ may be used for the purposes of terrorism, financing terrorist organizations or financing a person participating in a terrorist activity, amounts to an offence. Ss. 6, 7, and 8 of the ATA supplement this offence by creating offences related to the use of money for terrorism, possession of money intended for use in terrorism, funding arrangements and the laundering of terrorist property. S. 3(2) provides for all acts covered by the 9 Conventions listed in the Annex to the TF Convention to be criminalized.
46. **Criterion 5.2.** - S. 5 of the ATA stated above satisfies this requirement.
47. **Criterion 5.2. bis-** Financing of travel of individuals to other States for the purpose of perpetration, planning, or preparation of or participation in terrorist acts or providing or receiving terrorist training is criminalized pursuant to ss.5(1)(b)(iv), 5(2)(b)(iv) and 5(3)(b)(iv) of the ATA 2004. S.5(1)(b)(iv) covers inviting another to provide money or other property, intending or suspecting it may be used to finance a persons' travel to a country for the purpose of the perpetration, planning or participation in acts of terrorism or the providing or receiving of training for the purpose of terrorism. S.5(2)(b)(iv) relates to receiving money or other property and s.5(3)(b)(iv) relates to the provision of money or other property. These latter two sections contain the same mens rea and purposes.
48. **Criterion 5.3.** – TF offences apply to money or other property, which is given a broad definition, covering any property 'wherever situated and whether real or personal, heritable or moveable, and things in action and other intangible or incorporeal property' (s.2 ATA). S. 4 of the ATA specifically defines 'terrorist property' as money or other property that is likely to be used for terrorism; proceeds

of the commission of the act of terrorism and proceeds of acts carried out for the purpose of terrorism. While it does not specify whether the funds are from a legitimate or illegitimate source, S. 5 does provide for money or other property that is intended for use for the purpose of funding terrorism. Given that neither source is excluded or specified, money or property from legitimate sources appears to be included.

49. **Criterion 5.4.** – Although the offences under Ss.5 (except for the financing of a person participating in terrorist activity), 6 and 7 of the Act do not specifically state that the offences do not require that the money or property are used to carry out or attempt a terrorist act or that it is not required that the funds to be linked to a specific terrorist act, this is implied. In relation to the S.8 offence of ML, this relates to ‘terrorist property’, which includes property that is likely to be used for the purposes of terrorism.
50. **Criterion 5.5.** –) Under S. 28(b) of the Evidence Act, 1905, in looking at whether the accused had committed an offence, the court ‘... shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.’
51. **Criterion 5.6.** - S.13 of the ATA provides that natural persons convicted on indictment under ss.5 -8 are punishable by an unlimited fine or 20 years’ imprisonment or both. The maximum penalty for summary conviction is a fine of \$50,000 or imprisonment of 5 years, or both. S.14 of the ATA allows the Court to order forfeiture of the property concerned. It is noted that the DPP may elect trial on indictment (see 3.9 above).
52. **Criterion 5.7.** – S.5B of the ATA provides for the liability of bodies corporate, partnerships and unincorporated associations for offences under the Act and includes that where an offence by such a body can be shown to have been committed with the consent or connivance of an officer/partner/member or to be attributable to his neglect, such officer/partner/member is also (personally) guilty of the offence and liable to punishment accordingly. Additionally, criminal liability extends to legal persons for all TF offences since pursuant to the Interpretation Act, ‘person’ is defined to include ‘any company or association of persons, whether corporate or unincorporated’. The fines noted in s.13 of the ATA will be applicable to bodies corporate, partnerships and unincorporated associations. The unlimited fine or imprisonment for 20 years or both is dissuasive to a legal person or officer/partner/member.
53. **Criterion 5.8.** - Under Bermuda law the same principles of inchoate liability apply to TF offences as to other offences. The applicable provisions in the Criminal Code are ss.27 (counselling and procuring), 28 (joint enterprise), 30 (accessory after the fact), 31-33A (attempt) and 230-232 (conspiracy). These sections apply to all offences and not just those created by the Criminal Code itself. S.5A of the ATA makes it an offence for a person to organise or direct another person to commit an offence specified in s.5 (TF offences).
54. **Criterion 5.9.** - Since the TF offences are indictable, they are automatically ‘relevant offences’ capable of forming predicate criminality for the ML offences under S. 3 of the POCA. S. 8 of the ATA also creates a ‘money laundering’ offence committed by a person who becomes concerned in an arrangement which facilitates the retention or control of terrorist property by or on behalf of another person by concealment, removal from the jurisdiction, transfer or in any other way.
55. **Criterion 5.10.** - ‘Terrorism’ as defined in s.3 of the ATA and s.3(4) makes it clear that references in that definition to ‘action’, ‘persons’ or ‘property’ include their occurrence/situation outside of Bermuda; and reference to ‘the public’ in that definition, also includes the public of a country other than Bermuda. Thus, an individual based in a jurisdiction outside Bermuda could be liable for a TF offence committed in Bermuda in relation to a terrorist organization based in a third territory.

Weighting and conclusions

56. Recommendation 5 is rated compliant.

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

57. R. 6 (formerly SR. III) was rated ‘LC’ in the 3rd MER. The deficiencies pertained to the lack of specific guidance issued to the regulated sector concerning its obligations to implement measures with respect to the UNSCR list and the fact that there were no specific procedures for delisting or unfreezing. New guidance notes included guidance on freezing of assets and the UN and EU obligations. The NAMLC website was updated to include a section providing information as to who to contact in order to petition for de-listing requests. At the time of the 5th FUR it was noted that the guidance had been issued, however there were still no specific procedures for delisting or unfreezing.
58. **Criterion 6.1** – (a) The Governor of Bermuda is the competent authority (CA) that has responsibility for proposing persons or entities under the Al-Qaida or the Afghanistan sanctions regimes pursuant to UNSCR 1267/1989 and 1988 or any other UNSC Committee. Although this is not specifically stated, it is the Governor who has the authority to issue licenses and relevant institutions must inform the Governor where it suspects that a customer is a designated person, committed an offence, and when it credits a frozen account (Articles 20 and The Afghanistan (United Nations Measures) (Overseas Territories) Order 2012 and Articles 7 and 11 of the ISIL (Da’esh) and Al-Qaida (Sanctions) (Overseas Territories) Order 2016. The proposed designations would be submitted by the Governor to the Foreign Commonwealth Office (FCO) for consideration as to submission to the UNSC. (Met) (b) The UN’s website was referred to by the Authorities. The Designated Impact Assessment (DIA) form was supplied, and the procedures governing its use in Bermuda. However, no mechanisms were provided for identifying targets for designation by the BPS or FIA. (c) The DIA form specifically refers to a ‘reasonable suspicion’ that the individual or group meet the criteria. Therefore, proposals are not conditional upon the existence of a criminal proceeding. (Met). (d) The UN website and the DIA form are used to make proposals to the FCO, as for other OTs. If the proposed listing is accepted by the FCO, the FCO advances the matter to the UN, using the UN standard forms and procedures. (Met) (e) The DIA form required the full name (including aliases) and any identifying information, statement of reasons for listing and an impact assessment. It does not require that Bermuda states whether its status as a designating state may be made known. When in agreement with the proposal, the FCO progresses the matter to the UN using the UN standard form. (Mostly Met).
59. **Criterion 6.2** - (a) EU and UK designations under UNSCR 1373 apply automatically in Bermuda in accordance with the Terrorist Asset-Freezing Act 2010 (Overseas Territories) (Amendment) Order 2017. (TAFOTO). The Governor of Bermuda is the CA that has responsibility for proposing persons or entities for designations under this Order. If the Governor identifies a person that he considers should be designated under this Order, he must consult the UK Secretary of State before making a final designation (s.4(4)(b) of Schedule 2). (b) The TAFOTA as amended sets out provisions for the Governor to make a final designation consistent with the designation criteria set out in UNSCR 1373, for e.g. where he reasonably believes that the person is or has been involved in terrorist activity, (s.2 of Schedule 2). This includes conduct that facilitates the preparation of such acts, or that is intended to do so (s.2(2)(b)). The DIA form requires that information is provided including statement of reasons for listing. The Governor consults with counterpart agencies and the proposer provides the DIA form to the FSIU who reviews it and submits to the Minister who makes the recommendation to the Governor (procedures and policy handbook, pages 13 – 14). Where a request is made by another country the same procedure is followed whereby, they must complete the DIA form with the reasons and evidence for listing, the form is sent to the FSIU who vets it and provides the completed package to the Governor (FSIU Guidance manual para 122 – 124). . (c) No provisions were cited in relation to making a prompt determination on receiving a request. The DIA form requires that there is a ‘reasonable suspicion’ for listing, Art. 2 of TAFOTO gives the power to the Governor to propose a

designation. (d) Under the TAFOTO, the criterion on which basis the Governor is empowered to make a designation is premised on ‘reasonable belief’ (s.2, Schedule 2). Also, the activity which would ground a belief that a person is or has been involved in terrorist activity is specified in the Order and does not include a pre-requisite for any criminal proceedings to have commenced against that person or in relation to that activity. (Met)(e) In order to request another country to give effect to the actions initiated under the freezing mechanisms the Governor would contact the FCO using the DIA from including identifying specifying information setting out the reasons for proposing the designation and the evidence to support the proposal. The completed DIA form is sent via the Minister to the Governor. If satisfied the Governor sends the form to the FCO who decides whether to pursue the proposed measures. (FSIU policy and procedure manual page 15).

60. **Criterion 6.3** – (a) S.20 of the TAFOTO provides the Governor with the power to request information from a designated person; a person acting under a licence, pursuant to s.17; or any person in or resident in Bermuda to provide such information as the Governor may reasonably require for establishing certain things about the designated person. While there is a general power under the Police Act, 1974 for the Governor to issue general directions to the Commissioner of Police (s.3) and s.4 states that the functions of the service shall be, amongst other things, to take lawful measures for performing such functions as the Governor may, in the interests of law enforcement or of internal security require (s.4(p)), There are general police powers in relation to requesting information relating to a person where there is reasonable basis to suspect meets the criteria, as outlined in R. 31, such as the power to obtain production orders under s.19 of the ATA or search warrant under the ATA/PACE and to stop or search a person under PACE. (b). The Governor has the power to operate ex parte against a person or entity that has been identified, and a person may be designated without being consulted or given notice until after the decision is made as long as certain criteria are met e.g. for reasons connected with the prevention or detection of serious crime or in the interests of justice (s.3 of Schedule 2 of the TAFOTO).
61. **Criterion 6.4** – Bermuda implements targeted financial sanctions (TFS) without delay. Since Bermuda is an Overseas Territory (OT) the UK is responsible for providing the mechanism to implement UN TFS in Bermuda through various OT Orders. In Bermuda the International Sanctions Act (ISA) empowers the Minister responsible for legal affairs to make regulations to give effect in Bermuda to the international sanctions obligations of the UK. The International Sanctions Regulations (ISR) list all the sanctions-related Orders in force in Bermuda. The ISR also provides for the coming into force immediately of any amendments that are made to existing Orders already in force in Bermuda (s.2). The Policing and Crime Act in the UK is designed to ensure UN financial sanctions can be given immediate effect on a temporary basis and contains a permissive clause that enables the temporary measures to be extended to the OTs. The Policing and Crime Act (Financial Sanctions) (Overseas Territories) Order 2017 extends these measures to the OTs. The Regulations extend the provisions to the ISIL and Al-Qaida sanctions, whereby designations are immediately in effect for 120 days after the day on which the relevant UN financial sanctions Resolution is adopted. The provisions are in force in Bermuda due to the International Sanctions (Policing and Crime Act) Amendment Regulations 2017.
62. In relation to 1373 (2001), the TAFOTO was amended to allow for automatic application of those designations with effect from March 8th, 2017. Thus, under TAFOTO ‘designated person’ includes a person designated by Treasury in accordance with part 1 of the TAFOTO as it applies to the UK; a person designated under Art. 2(3) of Council Regulation (EC) 2580/2001; and a person designated by the Governor. Therefore, as soon as a person is designated in the UK they are automatically designated in Bermuda. The procedure upon receipt of a request for designation from another country is set out in Chapter 7 of the Financial Sanctions Guidance, which is publicly available on the government webpage.

63. **Criterion 6.5** – (a) For freezing pursuant to UNSCR 1267, the Overseas Territories Orders noted above apply to all natural and legal persons and require that funds are frozen and that neither funds nor economic resources be made available to persons designated. Regarding freezing under UNSCR 1373 the Terrorist Asset Freezing Act (Overseas Territories) Order 2011 requires all natural and legal persons within Bermuda to freeze without delay and without prior notice the funds or other assets of designated persons and entities.
64. (b) (i) In relation to UNSCR 1267: Art. 5 of the ISIL (Da'esh) Al-Qaida (Sanctions) (Overseas Territories) Order 2016; and Arts .14 – 18 of the Afghanistan (United Nations Measures) Overseas Territories) Order 2012 prohibit dealing with funds or economic resources owned, held or controlled by a designated person, and prohibit making funds, financial services and economic resources available to designated persons or to another person for their benefit. There is no requirement that the funds are tied to a particular terrorist act, plot or threat. In relation to UNSCR 1373, under the Terrorist Asset Freezing Act (Overseas Territories) Order 2011 funds and economic resources which are owned, held or controlled by a designated person are included. (ii), (iii), (iv) In relation to the ISIL (Da'esh) and Al-Qaida (Sanctions) (Overseas Territories) Order 2016, the Afghanistan (United Nations Measures) Overseas Territories) order 2012 and the Terrorist Asset Freezing Act (Overseas Territories) Order 2011 'funds' includes financial assets and benefits of every kind. 'Economic resources' means assets of every kind. Funds and economic resources which are controlled by a designated person are included. There are prohibitions on making these available to another person for the benefit of the designated person and on funds and economic resources under their control. The funds derived or generated from funds or other assets owned or controlled directly or indirectly by designated person or entities or to other assets of persons and entities acting on behalf of or at the direction of designated persons or entities would therefore be covered as well as persons and entities acting on behalf of or at the direction of designated persons or entities as these would be under their control. There is no specific reference to funds or other assets which are jointly owned or controlled, however the FSG guidance document states that the requirement extends to assets belonging to individuals who act on behalf of the designated person and some guidance is provided in relation to assets which are jointly owned.
65. (c) Under the Afghanistan Order natural and legal persons are prohibited from making funds or economic resources available to any person for the benefit of a designated person (ss.14 – 18 Afghanistan Order). There is no reference to financial services. There is an exception for licenses granted by the Governor under s.20. Under the ISIL Order it is an offence to make funds or economic resources available (directly or indirectly) to a designated person or to any person for the benefit of a designated person. There are no references to financial services. There is an exception for licenses granted by the Governor under s.11. Under the Terrorist Asset Freezing Order a legal or natural person must not make funds or economic resources available (directly or indirectly) to a designated person (s.12). A person must not make funds or financial services available to any person for the benefit of a designated person (s.13) and a person must not make economic resources available (directly or indirectly) to a designated person (s.14) or for the benefit of a designated person (s.15). There is an exception for licenses under s.17.
66. (d) The Governor must maintain and publish a list of designated persons and restricted goods and keep it up to date under the Afghanistan Order (Art. 3) and the ISIL Order (Art.14). Article 3 of the Terrorist Asset Freezing Order requires the Governor to take steps to publicise the final designations. The Governor issued and published an updated International Sanctions Notice 2017 on 16th March 2017 which states the website where the list will be published and maintained. The Notice is published in the Bermuda government website which provides links to the UK Treasury lists. Changes to designations are posted to the NAMLC sanctions webpage on the Government portal, the Authorities submit this is usually done within 24 hours of receipt of the relevant notice from the UK's HM Treasury. The procedure for communicating to FIs and DNFBPs is to notify the supervisors that they must immediately inform their supervised entities of changes in designations (policy and procedure

handbook pages 15 – 17). When new OT Orders come into force in Bermuda the ISR 2013 are gazetted thereby bringing the Order into force in Bermuda. This can be done on the same day as the amendment comes into force in the UK. Amendments to Orders which are in force come into force automatically and a link to the amendment notice on the UK Treasury website is uploaded on the government portal which is available to the public. General guidance was issued by the BMA in 2016 in relation to the sanction's regime and their compliance obligations. Other supervisors have also included information in their sector specific guidance notes. Guidance was also issued by the FSIU in September 2018.

67. (e) Relevant institutions, which includes FIs, are required to report to the Governor the nature and amount or quantity of any funds or economic resources held for the designated person since the customer first became a designated person under the Afghanistan (Art. 22) and ISIL orders (Art. 7). Relevant institutions are to disclose to the Governor the nature and amount of any funds or economic resources held by the person since they first had knowledge or suspicion that the person was designated under the Terrorist Asset Freezing Order (s.19). The International Sanctions Amendment Regulations 2018, in force 17th September 2018, inserted Reg. 2A whereby DNFBPs are made subject to the Orders, the requirement does not extend to 'any actions taken' in compliance with the prohibition or to attempted transactions.
68. (f) Arts. 5(6) of the ISIL Order and Art. 29 of the Afghanistan Order protect the rights of bona fide third parties implementing the obligations under R.6, if they have not been negligent.
69. **Criterion 6.6** – (a) The de-listing procedures are contained within the document '*Bermuda De-Listing Information July 2018*', which is available on the sanctions webpage. This document states that a delisting request can be submitted to the Governor, who, if in agreement, may forward this to the FCO. The FCO will decide whether to submit the request to the relevant UN Committee. Additionally, delisting procedures are set out in chapter 8 of the FSIU Financial Sanctions Guidance available on the website. (b) In relation to a person designated under UNSCR 1373 a designated person can submit a petition for de-listing to the Governor. The legislation states that the Governor may, after consulting the UK Secretary of State revoke a final designation (s.5). This procedure is contained in the de-listing information on the website and the FSIU guidance at chapter 8. The FSIU Guidance notes indicate that upon notification of removal from the list, checks must be made for frozen funds or assets, verification made, removal from the list and un-freezing as well as sending notifications and notifying the FSIU (para. 154). (c) S.26 of the TAFOTO provides that the designated person may appeal against a decision to the Supreme Court. (Met) (d) The de-listing document and FSIU guidance (chapter 8) on the web page contains information on the availability of the Focal Point, contact details and web page. (Met) (e) The de-listing procedure on the website and in the FSIU Sanctions Guidance contains contact details and the fact of the availability of the United Nations Office of the Ombudsperson to accept de-listing petitions. No provisions were cited in relation to informing the designated person of this although in relation to UK designations the UK does inform designated persons/entities of their rights of due process and the availability of de-listing procedures. (f) The de-listing procedure on the website informs readers that persons or entities with the same or similar name who are inadvertently affected may request de-listing and should first contact the relevant institution applying the sanction. Provisions for false positives are set out in chapter 8 of the FSG and also in the Policy and Procedures Handbook (page 20). (Met) (g) Changes to designations are posted on the NAMLC sanctions webpage. It was submitted the changes are published by means of notice, usually within 24 hours of receipt of the relevant notice from the UK's HM Treasury. The process for communicating delisting and unfreezing of designated persons to FIs and DNFBPs is set out in Chapter 8 of the Financial Sanctions Guidance (FSG) (paragraphs 151 -154) and in the Policy and Procedures Handbook (PPH) (at pages 21 – 22) whereby the supervisors are notified by email of the change and asked to immediately inform the FIs and DNFBPs. General Guidance in relation to sanctions has been provided by the BMA (2016) and other supervisors have referred to the sanctions webpage in their sector guidance notes.

70. **Criterion 6.7**– Under the Afghanistan (Art. 20) and ISIL (Art. 11) Orders licences may be made by the Governor to allow access to frozen funds under certain prescribed circumstances including necessary basic expenses of designated persons and dependent family members and payment of necessary extraordinary expenses as determined by the Governor with the consent of the Secretary of State. In relation to the TAFOTO there is statutory authority for the Governor to issue a license to authorise access to frozen funds.

Weighting and conclusions

71. In relation to the current regimes, these are all in force in Bermuda and any change in designation comes into force immediately upon designation. Amendments to orders in force do not require further legislation. In relation to the ISIL Order, this does not state that it applies to financial services. Communications to the financial sector and DNFBPs who may be holding targeted funds are made through the FSIU sending an email to the supervisors. DNFBPs and FIs are required to report to the Governor upon suspicion that a customer is designated. The requirement does not extend to ‘any actions taken’ in compliance with the prohibition or to attempted transactions although it does include reporting on all funds held by the designated person, which is broad. Information is contained on the website regarding de-listings however no provisions were cited regarding specifically informing designated persons apart from a reliance on the UK procedure. **Recommendation 6 is rated largely compliant.**

Recommendation 7 – Targeted financial sanctions related to proliferation

72. Recommendation 7 is a new recommendation, there is therefore no previous rating or country information.
73. **Criterion 7.1.** - As a BOT, Bermuda implements the sanctions regime via UK Overseas Territories Orders. Where an Order is not extended directly to Bermuda it is brought into force via the ISR 2013 pursuant to the ISA. The requirements of UNSCR 1718 (2006) are implemented in Bermuda through the Democratic People’s Republic of Korea (Sanctions) (Overseas Territories) Order 2012 (SI 2012/3066) (‘the North Korea Order’). As this Order does not specifically apply to Bermuda, Bermuda brought it into force via the ISR 2013. The legislation implementing the requirements of UNSCR 2231(2015) is the Iran (Sanctions) (Overseas Territories) Order 2016 and the Amendment Orders, which are listed in the ISR 2013. Amended Orders come into force automatically in Bermuda.
74. The UK enacted the Policing and Crime Act (PCA) which was brought into effect in Bermuda on 4th December 2017 via the International Sanctions Regulations and gives the UK powers to temporarily implement UN financial sanctions to ensure they are given immediate effect, it also enables the temporary measures to be extended to the OTs. This is done by Regulations (156) and addressed in Bermuda by the PCA. UN designations under UNSCR 1718 (2006) therefore come into effect immediately in Bermuda for a maximum temporary period of 120 days. However, these provisions do not apply to the Iran Order. Therefore, if additional Orders were made in relation to Iran the UK would have to amend the Linking Regulations or enact a temporary Iran Regime, which would come into effect in Bermuda under the PCA. Bermuda can bring legislation into force on the same day as it comes into force in England and Wales as demonstrated by the ISR, which came into effect in Bermuda on 17th March 2016, the day it was gazette and the same day as the Iran (Sanctions)(Overseas Territories) Order 2016 came into force.
75. **Criterion 7.2.** – (a) As previously stated, the Governor is the CA in Bermuda responsible for implementing TFS. The regulated entities are monitored for compliance by the Supervisory Authorities. In relation to the North Korea Order and the Iran Order persons (natural or legal) are prohibited from dealing with funds or economic resources belonging to or owned, held or controlled

by designated persons. The prohibition does not require that notice is given. The Orders apply to any person in the territory and to Bermuda residents and nationals located elsewhere. The Orders also apply to bodies incorporated or constituted under the law of Bermuda. (b) Under the North Korea Order, it is an offence to make funds or economic resources available (directly or indirectly) to a designated person or to any person for the benefit of the designated person. This includes funds or economic resources controlled by a designated person. While there are no specific provisions regarding funds or other assets which are jointly owned or controlled, the FSG guidance document states that the requirement extends to assets belonging to individuals who act on behalf of the designated person and some guidance is provide in relation to assets which are jointly owned (chapter 3). The FSIU FAQ document also states that a person that owns a joint account with a designated person cannot transfer ownership of the account without obtaining a license from the FSIU. (c) Under the North Korea Order, it is an offence to make funds or economic resources available for the benefit of designated persons. There is an exception for licenses made by the Governor with the consent of the Secretary of State (Art. 11 North Korea Order, Art. 7 Iran Order). (d) The Governor must maintain and publish a list of designated persons under the North Korea Order and the Iran Order. The Governor issued an International Sanctions Notice in 2017 which specified the website which would be used to do this. The website provides links to the UK consolidated list of designated persons and their guidance. Changes to designations are posted to the sanctions-measures webpage of the Government Portal. Amendments to the Orders are notified to the public by publication in the official gazette. FIs and DNFBPs are notified of changes by emails from the FSIU to supervisors. The BMA has issued general guidance notes regarding sanctions (2016) to FIs. Other supervisors have also included information on TFS in their sector specific guidance notes. Guidance has also been published by FSIU (September 2018) (e) Under the North Korea Order and the Iran Order relevant intuitions are required to disclose to the Governor the nature and amount of any funds or economic resources held by the relevant institution since the person became designated. The International Sanctions Amendment Regulations 2018 (BR 101/2018) extend the reporting requirements to DNFBPs. The requirement does not extend to ‘actions taken’ in compliance with the prohibitions or attempted transactions however, it requires the reporting of the nature and amount of all funds held, which is broad. (f) Art. 4(6) of each of the relevant Orders protect the rights of bona fide third parties acting in good faith when implementing the obligations under this Recommendation.

76. **Criterion 7.3.** - The Governor is the CA in respect of TFS related to proliferation. Certain functions were delegated to MOLA under the International Sanctions (Delegation of Governor’s Functions) Notice 2018, in force 25th September 2018. Monitoring is done by CAs of their supervised entities in respect of compliance with the North Korea OT Order 2012 and Iran OT Order 2016 and there are applicable regulatory sanctions. Criminal sanctions are applicable under the Orders. Additionally, the FSIU is the unit established to enable the Minister to carry out obligations to effectively implement and enforce TFS (although no additional penalties are available).
77. In addition to the criminal penalties under the Orders (7 or 2 years depending on the breach and/or an unlimited fine), there are other penalties available within Bermuda, under the regulatory acts under which supervisors must monitor compliance with international sanctions in force in Bermuda. For example, under s.20(1A)(a) of the SEA, the BMA may impose a civil penalty of up to BD10M, the SoRE and the FIA in its supervisory capacity may impose a civil penalty of up to BD250,000, which mitigate the low fines to some extent. There are also a range of disciplinary measures available under the SEA; The power to issue directives – s.20A; The power to restrict licences – s.20B; The power to revoke licences – S.20C; The power to publicly censure – sections.20E; The power to issue prohibition orders in relation to individuals who are not fit and proper – s.20F; The power to apply for injunctions – s.20H; and the power to petition the Courts for winding-up or dissolution – s.201.
78. **Criterion 7.4.** – (a) The UK Orders give the Treasury the responsibility for delisting and publishing de-listings. This involves a petition to the Governor to submit a de-listing request to the UN, if in

agreement the Governor submits the de-listing petition to the FCO, who conduct a policy and legal assessment to decide whether to take the de-listing forward to the relevant UN Sanctions Committee or the Security Council. A document entitled ‘Bermuda de-listing information July 2018’ was provided, which is available on the sanction’s web page. Information is also contained in the Financial Sanctions Guidance available on the website (chapter 8) (b) A document entitled ‘Bermuda de-listing information July 2018’ was provided, which is available on the sanction’s web page, which includes addressing ‘false positives’. Provisions for false positives are set out in the Financial Sanctions Guidance document (paragraphs 130 – 137) and also in the Policy and Procedure Handbook (page 20). (c) Access to funds is provided by way of Licenses granted by the Governor pursuant to Art. 11 of the North Korea Order 2012 and Article 7 of the Iran Order. The licensing process is referred to on the sanction’s website with a Bermuda Asset Freeze License Application Form. Guidance regarding licensing is also provided for in Chapter 5 of the Financial Sanctions Guidance. (d) De-listing notices are published by the UK Treasury and are published in Bermuda on the sanctions webpage of the Government portal as specified in the 2017 Notice. Amendments to the Orders under the International Sanctions Regulations are notified to the public by publication in the official gazette. The BMA has issued General Guidance notes regarding sanctions (2016) to FIs to make them aware of the sanctions regime, sanctions list and of their compliance obligations. Other supervisors have included information on TFS in their sector specific guidance notes. The process for communicating de-listings and unfreezing to FIs and DNFBPs as well as guidance is set out in Chapter 8 of the Financial Sanctions guidance, whereby emails are sent to the supervisors for distribution.

79. **Criterion 7.5** – (a) Under the North Korea Order (Art. 5) and the Iran Order (Art. 5) credits can be made to a frozen account or interest or other earnings or payments due etc. The account will continue to be frozen. (b) Under the Iran Order, Arts. 7, 11 and 13 provide for the conditions for paying amounts due. The Order implements Council Regulation 267/2012, which allows for such payments to be made provided they are not in respect of any activity prohibited by the regulation and there is no objection from the Sanctions Committee. In Bermuda, the Minister would send the relevant documents to the Governor to obtain the Secretary of State’s consent and the Secretary of State would consult with the Sanctions Committee to ascertain whether there are any objections, before providing consent to any license. The licensing procedures for designated persons is set out in Part B of the FSIU’s Policies and Procedures Handbook.

Weighting and conclusions

80. UN designations and subsequent orders under UNSCR 1718 (2006) come into effect immediately in Bermuda. The Iran (Sanctions) (Overseas Territories) Order 2016 and the amendment are also in effect in Bermuda although the legislation ensuring immediate effect to new Orders does not apply. The legislation does not specifically refer to assets which are jointly owned or controlled but there is some guidance provided by the FSIU. FIs and DNFBPs are informed of changes by way of an email from FSIU to their supervisors, asking for immediate onward dissemination. The requirement for FIs to notify the Governor upon suspicion of a designated person has been extended to DNFBPs, however it does not extend to ‘actions taken’ in compliance with the prohibitions or attempted transactions. It does however require the reporting of the nature and amount of all funds held, which is broad. **Recommendation 7 is rated largely compliant.**

Recommendation 8 – Non-profit organisations

81. This Recommendation, which was formerly SR. VIII, was rated ‘PC’ in the 3rd MER. In June 2016, R.8 and its Interpretive Note were significantly amended to better align the implementation of R.8/INR.8 with the risk-based approach and to clarify the subset of NPOs which should be made subject to supervision and monitoring.

82. **Criterion 8.1.** – (a) Bermuda has identified its charity sector, comprising 375 registered entities as at March 2018, as falling within the FATF definition of NPOs. The charity sector broadly aligns with the FATF definition of NPOs, including the charities’ volume of activities, international/cross-border activities (particularly where a charity had overseas branches, or was itself a branch of an overseas entity); exposure to countries and regions that are vulnerable to terrorism (including but not limited to terrorism known to be associated with religious extremism); and whether there was substantial economic impact in Bermuda (as determined by the volume of assets, revenue and expenditure). These factors were used to create a risk matrix for assigning a risk profile to every registered charity.
83. Using a World Bank tool Bermuda has undertaken a risk assessment to identify which subset of NPOs are at risk of TF abuse. The primary source of information was the Registrar General which is charged with functions in relation to charities. In addition to the 2016 assessment, a mapping exercise was also conducted of all registered charities by a registered charity, an umbrella organization for charities, using data collected by the RG.
- (b) (Met) - The jurisdiction’s 2016 TF assessment identified the conduit of funds to and from overseas jurisdictions as the major threat of its charities being used or abused for TF. (c) (Met) – Subsequent to its third round AML/CFT assessment, Bermuda has enacted the Charities Act, the Charities Regulations and the Charities AML/CFT Regulations in 2014 and the Charities Act and underlying Regulations were further amended in December 2017 demonstrating that a review of its AML/CFT measures have been undertaken. In relation to applying the RBA, the RG initiated an NRA of all NPO’s in operation in Bermuda for the risk of being used as a vehicle for ML/TF. (d) (Met) All registered charities are reviewed annually by the RG and their risk profiles re-assessed to identify any emerging risks in accordance with the responsibilities of the RG imposed by ss.37 and 38 of the Charities Act.
84. **Criterion 8.2.** – The requirements for completion of registration forms which capture name, addresses and contact details of the charity and individuals representing the charity (s.3(3) of the Charities Regulations 2014 and the requirement for annual audit statements for registered charities which have an annual income or assets equal to or exceeding the set audit threshold in any year (s.11(2)) of the Charities Regulations), are measures embedded to promote integrity and public confidence in the administration and management of charities in Bermuda. (b) Bermuda has outreach and educational programmes in place to raise and deepen awareness about potential vulnerabilities of NPOs to TF abuses. In assessing the NPO sector, the RG identified the nature of threats posed by terrorist entities to NPOs in line with Bermuda’s identified risks. (c) (Met) Bermuda has processes in place to work with NPOs to develop and refine best practices to address TF and vulnerabilities. Following FATF’s introduction of risk-based oversight for NPOs into the Standards in late 2016, the RG provided outreach and training for the NPO sector to develop an RBA supervisory programme and to ensure that the NPOs understand TF vulnerabilities. (d) S.4 (d) of the Charities Regulations 2014 empowers the RG to require “such other documents or information” reasonably necessary for the purpose of registering charities. Charities are encouraged to conduct transactions via the regulated financial system owing to the requirement imposed under s.4(5) of the Charities Regulations, 2014 which mandates all charities to submit a copy of their bank mandate which must require at least two signatures for authorization of payments and transactions, one of which must be the organization’s Treasurer.
85. **Criterion 8.3.** – As a function of the Registrar stipulated at s.11(1)(da) of the Charities Act, Bermuda, has a RBA to supervision and monitoring of charities at risk for TF abuse including requirements for such charities to be registered and the capturing of information about their purpose, activities and the identity of principal parties and proposed main beneficiaries. Under s.36(1) of the Act, charity trustees of every registered charity are obligated to prepare statement of accounts in respect of its financial year and the Registrar may make provisions for the content of such statements for different classes of

charities determined by the level of annual income. In addition, S. 35 of the Act requires registered charities to preserve accounting records for at least seven years from the end of the financial year.

86. **Criterion 8.4** – S.11(1)(da) of the Charities Act imposes as a function of the Registrar General, identifying and investigating apparent misconduct or mismanagement in the administration of charities, and taking remedial or protective action in connection with misconduct and mismanagement. Part 4 (S.s 25 – 30) empowers the Registrar with the ability to take actions such as call for information, conduct on-site inspections, institute investigations and investigative techniques in order to fulfil its obligations in relation to monitoring and supervision for compliance. The Registrar is also empowered by s.23(2), 45(3), and 47(b) of the Charities Act, to apply sanctions for non-compliance by NPOs and persons acting on behalf of those NPOs. The sanctions available are effective, dissuasive and proportionate.
87. **Criterion 8.5** – (a) Bermuda has established a NAMLC which comprises the RG (designated CA over charities) as a member of the Supervisory Forum, one of NAMLC’s permanent working groups, which helps facilitate co-operation, co-ordination and information-sharing among all the supervisory authorities in Bermuda who have AML/CFT functions. In addition, MOUs have been agreed between the RG and the DPP, the BPS, the ROC and the FIA in relation to sharing of information. Reporting requirements for NPOs in relation to suspicious activity as well as due diligence, BO and accounting information are in place for all registered charities and the RG is empowered to both gather and disclose information in the discharge of its functions. (b) – The RG has investigative capabilities under ss. 25 – 28, 30 and 33 of the Charities Act which can be used to examine charities. (C) – The registration process for all charities meeting the conditions for registration ensure full access to information and management of NPOs. In addition, as indicated in criteria 8.2 (a) and 8.3, statements of accounts are also captured and required to be kept and are available to the RG in conducting its functions inclusive of investigative functions. (D) – S.32(5) of the Charities Act obligates the RG to disclose to the FIA any information that gives him reasonable suspicion that a charity is or has been involved in ML/TF which covers all situations listed in this criterion.
88. **Criterion 8.6** - The Bermuda central point of contact for international cooperation is the Attorney General and requests for information regarding NPOs suspected of TF or involvement in other forms of terrorist support is addressed in the same way as other international cooperation requests. Further, Ss.32(2) permits the RG to disclose to any public authority any information received in the execution of its functions if the disclosure is made for the purpose of enabling or assisting the public authority to discharge any of its functions.

Weighting and conclusions

89. **Recommendation 8 is rated compliant.**

Recommendation 9 – Financial institution Secrecy Laws

90. This Recommendation formerly R. 4 was rated ‘C’ in the 3rd MER.
91. **Criterion 9.1** - There are no statutory or other inhibitions, specifically financial secrecy laws, that hinder the implementation of the FATF Recommendations. Under s.16 of the POC (AML/CFT) Act, CAs have the power to access information to execute their functions and under s.32 sharing/disclosure of information by and between CAs is facilitated. There are no hindrances to the sharing of information between FIs as required for correspondent banking, wire transfers and reliance on third parties.

Weighting and conclusions

92. **Recommendation 9 is rated Compliant.**

Recommendation 10 – Customer due diligence

93. This Recommendation (formerly R. 5) was rated ‘NC’ in the 3rd MER due to 14 deficiencies concerning the fact that the AML regime for FIs did not include CFT; lack of enforceability of the Guidance Notes; limited CDD requirements re identification and verification, suspicion of ML, wire transfers and doubt about previously obtained customer CDD information; good practice recommendations in Guidance notes weaken compliance; no requirement for FIs to obtain information on the purpose and intended nature of the business relationship, no requirement to update and conduct ongoing CDD/monitoring etc. for high risk customers; exemptions/reductions in customer identification in the Guidance Notes were not justified and no requirement to update information for clients in existence when the POCA and its regulations were introduced.
94. The deficiencies were addressed through the enactment of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations, 2008 (POCR), (contained in Part 4 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008); and ensuring the enforceability of the Guidance Notes.
95. **Criterion 10.1** - Regulation 13(3) of the POCR (as amended by s.5(f)(iii) of the POCA (AML/CFT) 2018) prohibits FIs from establishing or maintaining an anonymous account or an anonymous pass book for any new or existing customer in obviously fictitious names and fully satisfies the requirements of this criterion. S.8B(1) of the POCR expressly applies to the casino sector.
96. **Criterion 10.2**– Subject to Regulations 6(1)(a-d) of the POCR, a relevant person must apply CDD measures when establishing a business relationship; carrying out an occasional transaction; suspects ML/TF; or doubts the veracity or adequacy of documents, data or information previously obtained for the purpose of identification or verification.
97. **Criterion 10.3** – Regulations 5 and 6 of the POCR require relevant persons to identify and verify the identity of their customers, whether they are natural or legal persons or legal arrangements.
98. **Criterion 10.4** – Compliance of criterion requirements is achieved through the stipulations of regulation 5(f) of the POCR (AML/CFT) 2008, FIs are required to verify that persons purporting to act on behalf of a customer is so authorized and the identity of such persons are required to be captured and verified
99. **Criterion 10.5** - Regulations 5 (Sect. a-f) and 6 (Sect 1-7) of the POCR(AML/CFT) 2008 require relevant persons to identify and verify the identity of their customers, whether they are natural or legal persons or legal arrangements. The regulations fully satisfy the requirements of this criterion.
100. **Criterion 10.6** – Regulation 5(e) of the POCR defines a component of CDD measures as obtaining information on and taking steps to understand the purpose and intended nature of the business relationship with the customer.
101. **Criterion 10.7** – Subject to Regulation 7 of the POCR, FIs are required to conduct ongoing due diligence on the business relationship, (a) including scrutinizing transactions undertaken throughout the course of that relationship to ensure that they are consistent with the FI’s knowledge of the customer, their business and risk profile. This includes where necessary, the SOF (Reg 7(1)(2)(a)); and (b) ensuring that documents, data or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of exiting records, particularly for higher risk categories of customers (Reg 7(1)(2)(c)).
102. **Criterion 10.8** – The CDD requirements for legal persons and arrangements under regulation 6(1B) of the POCR and the definition of CDD under regulation 5(b) includes information on control and ownership, the legal form, nature and purpose of such entities. FIs are required to understand the

nature, control and ownership structure of their clients' business as evidenced by these two Regulations.

103. **Criterion 10.9** – Relevant persons are required under regulation 6(1B) of the POCR to identify and verify the identity of customers that are legal persons or arrangements through name, legal form, official identification number as proof of existence, and registered office address, control and ownership. The Regulation fully satisfies the requirements of 10.9(a) and 10.9(c) of this criterion. Relevant persons are also required to have the names of persons in a senior management position, in the legal person or arrangement. Regulation 5(d) of the POCR satisfies this criterion which makes up part of 10.9(b). The POCA (Misc.) 2018 (s. 5(c)(iii)(k) which amends Regulation 5(d), satisfies the other part of 10.9(b) which addresses FIs having powers to regulate and bind the legal person or arrangement.
104. **Criterion 10.10** – a) The identity of the natural person who is the beneficial owner must be captured and the identity verified in accordance with Regulation 5(d) of the POCR (AML/CFT) 2008 where the customer is a legal entity. Further, “beneficial owner” is defined under S. 3 (1) as any individual who ultimately owns or controls more than 25% of shares or voting rights or otherwise exercises control of the management of the entity. (b) S. 5 (d) additionally requires that in the case of a legal entity, identifying and verifying the identity of a natural person (either customer, beneficial owner, person of control or ownership) *by some means* and, (c) where no natural person has been identified, identifying a relevant natural person holding the position of (i) a chief executive; or (ii) a person of equivalent or similar position to the official under subparagraph (i). Accordingly, the regulations fully satisfy the requirements of this criterion.
105. **Criterion 10.11** – For customers that are legal arrangements, FIs are required to identify and take reasonable measures to verify the identity of beneficial owners, as follows: (a). For trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership). S. 3(3)(a-d) and 3(5)(a) of the POCR (AML/CFT) 2008 satisfies the requirements of this criterion. (b). For other types of legal arrangements, the identity of persons in equivalent or similar positions. S. 6(1b)(a-i) of the POCR (AML/CFT) 2008 satisfies the requirements of this criterion.
106. **Criterion 10.12** – For life insurance and other investment-related insurance policies, regulation 6(1A) of the POCR stipulates that CDD should be applied to relevant persons as soon as the beneficiary is designated: (a) as a specially named natural person and (b) by characteristics of class, (c) Regulation 8(4) of the POCR requires that in relation to the duties under Regulation 6(1A) that the verification of the identity of the beneficiary of a life insurance policy or trust should take place at latest at or before the time of pay-out or at or before the time the beneficiary exercises a right vested under the policy or trust.
107. **Criterion 10.13** – Regulation 11(1)(b) of the POCR provides for enhanced CDD to be applied “in any other situation which by its nature may present a higher risk of ML/TF”. Regulation 6 (3A) of the POCR imposes an express obligation on relevant persons to include the beneficiary of a life insurance policy as a risk factor in determining the extent of CDD measures required in accordance with regulation 6(3).
108. **Criterion 10.14** – Relevant persons are required to complete CDD prior to establishing a business relationship or conducting occasional transactions. Verification may be completed during the establishment of a business relationship or after the establishment of a business relationship or an account has been opened provided that (a) the verification is completed as soon as practicable after contact is first established; (b) if this is necessary not to interrupt the normal conduct of business; and

(c) there is little risk of ML/TF occurring, and any ML/TF risks that may arise are effectively managed. “Relevant persons” include AML/CFT regulated FIs. (Regulation 8(3) of the POCR 2008).

109. **Criterion 10.15** - Verification of identity after establishing business relationships is only permitted (a) in the case of life insurance or trusts, if the verification takes place at or before the time of pay-out or at or before the time the beneficiary exercises a right vested under the policy or trust (Regulation 8(4) of the POCR 2008) or (b) for bank accounts established only if there are adequate safeguards to ensure the account is not closed and transactions are not carried out by or on behalf of the account holder before verification is completed (Regulation 8(5) of the POCR 2008).
110. **Criterion 10.16** – Relevant persons are required to apply CDD at appropriate times, to existing customers as at the date that the new national requirements were brought into force on a risk-sensitive basis, (Regulation 6(2) of POCR).
111. **Criterion 10.17** – Under regulation 11(1) of the POCR, relevant persons in Bermuda are required to apply enhanced due diligence (EDD) where ML/TF risks are higher.
112. **Criterion 10.18** – Regulation 16(5) requires relevant persons to conduct a risk assessment on a continual basis to assess ML/TF risks. Regulation 10(1A) has an expressed requirement that relevant persons can only apply simplified due diligence (SDD) if the risk assessment concludes that there is a low risk of ML or TF and no other suspicion of ML or TF exists.
113. **Criterion 10.19** – Where a FI is unable to comply with the relevant CDD measures: (a) Regulation 9 of the POCR disallows FIs from carrying out a transaction through a bank account, or conducting an occasional transaction with the customer, establishing a business relationship with the customer, and the FI is to terminate any existing business relationship with the customer. In the case of a patron in a casino, the patron shall not be permitted to place any bet, or to undertake any further transactions of any nature, until such time as he has been able to apply the CDD measures. (b). The FI is also required to consider whether the customer is required to make a disclosure by s.46(2) of the POCA 1997 or paragraph 1 of Part I of Schedule I of the ATA 2004.
114. **Criterion 10.20** – Regulation 6(5) of the POCR requires that relevant persons not pursue CDD where they have a suspicion of ML/TF and believe performing CDD will tip-off the customer. Under such circumstances the relevant disclosure is required to be made to the FIA pursuant to regulation 6(6).

Weighting and conclusions

115. **Recommendation 10 is rated compliant.**

Recommendation 11 – Record-keeping

116. This Recommendation (formerly R. 10) was rated ‘LC’ in the 3rd MER due to weak recordkeeping requirements in the financial regulatory laws, and the need to expand good practice recommendations in the Guidance Notes re wire transfers and securities. The deficiencies were addressed by regulation 15 of the AML/CFT Regulations.
117. **Criterion 11.1** – FIs are required to keep for a period of 5 years the supporting evidence and records of transactions after the relationship beginning on the date on which the business relationship ends or 5 years beginning on the date the occasional transaction is completed. (Regulation 15(3) (b) of the POCR). Regulation 4 defines ‘carrying out business’ in Bermuda and includes both domestic and international transactions.

118. **Criterion 11.2** - Regulation 15(1) – (3) of the POOCR places the requirement on relevant persons to keep necessary records in relation to business relationships and occasional transactions for at least 5 years from the time of termination of the relationship and for at least 5 years from the completion of the transaction for occasional transactions. In addition, Regulations 15(2)(a) imposes a requirement on FIs to maintain adequate records which includes information obtained through CDD measures, account files and business correspondence, and results of any analysis undertaken.
119. **Criterion 11.3** – Regulation 15(2) (b) stipulates that documentation to be kept should consist of the supporting evidence and records of transactions (consisting of original documents or copies admissible in court proceedings), provided that the retained records be enough to facilitate reconstruction of individual transactions.
120. **Criterion 11.4** – Regulation 16(4) of the POOCR allows prompt access to all records, by CAs who have appropriate authority to require a regulated entity to produce such records upon request.

Weighting and conclusions

121. **Recommendation 11 is rated compliant.**

Recommendation 12 – Politically exposed persons

122. Bermuda was rated ‘NC’ for R.12 (formerly R.6) in its 3rd MER. There were no requirements for FIs to conduct enhanced CDD for PEPs. The deficiency was addressed by the regulations to the Anti-Terrorism (Financial and other Measures) Act, 2004 (ATA). The 4th FUR for Bermuda noted that a minor shortcoming remained regarding the lack of any obligations for persons who became PEPs after the business relationship was established.
123. **Criterion 12.1** – (a) Regulation 16(2)(c) of the POOCR requires a relevant person to establish and maintain appropriate and risk-sensitive policies and procedures “to determine whether a new or existing customer is a PEP. Reg. 11(6) set out the scope of persons who are Foreign PEPs. In addition to performing the CDD measures required under R.10, FIs are required to:
- a. Put in place risk management systems to determine whether a customer or the BO is a PEP (Reg. (11)(6B))
 - b. Obtain senior management approval before establishing (or continuing, for existing customers) such business relationships (Reg. 11(4)(a)-(c)).
 - c. Take reasonable measures to establish the source of wealth and the source of funds of customers and BOs identified as PEPs (Reg. 11(4)(b))
 - d. Conduct enhanced ongoing monitoring on that relationship (Reg. 11(4)(c))
124. **Criterion 12.2** – Regulation 11(6A) and 11(6B) of POOCR mandates that relevant persons adopt measures set out in sub-criteria 12.1 (b) – (d) in relation to domestic PEPs and international organization PEPs who are in or from Bermuda. Regulation 16(2)(c) sets out the requirements for FIs to have a system to identify such persons.
125. **Criterion 12.3** - Family members and close associates of all PEPs are captured, and measures are required to be applied accordingly under Regulations (11)(6)(c) and (d), 11(7) and paragraphs 2(1)(d) and (e) of the Schedule to POOCR.
126. **Criterion 12.4** - In relation to life insurance policies, FIs must take reasonable measures to determine whether the beneficiaries and/or, where required, the BOs of the beneficiary, are PEPs or family

members or close associates of PEPs (Reg. 6(1A)). This must occur at or before any payment is made or before the time the beneficiary exercised a right vested under the policy or trust. (Regulation 8(4)). There are no specific requirements for FIs to inform senior management before pay-out, however general provision is made under Reg. 11(4)(a) for senior management to approve the establishment and the continuation of the business relationship with a PEP. The non-binding AML/CFT Guidance Notes for FIs informs that life insurance companies should have procedures in place to assess the risk of the business relationship with PEPs, including the pay-out of life insurance policies (Paragraph 5.102). Regs. (6)(5) and (6)(6) make general provisions for FIs to conduct enhanced scrutiny and consider filing an STR respectively.

Weighting and conclusions

127. Bermuda meets most of the elements of R.12; however, there are no specific requirements in the Regulations for FIs to inform senior management before pay-out of the policy proceeds.
Recommendation 12 is rated largely compliant.

Recommendation 13 – Correspondent banking

128. The Recommendation (formerly R.7) was rated ‘NC’ in the 3rd MER since there were no requirements for FIs to conduct EDD with respect to correspondent banking and similar relationships. The deficiency was addressed through regulation 11(3) of the POCR (1st FUR).
129. **Criterion 13.1** - This criterion is fully met by Regulation 11(3) of the POCR which requires banking institutions (the “correspondent”) which have or proposes to have a correspondent banking relationship with a respondent institution (the “respondent”) from a country or territory other than Bermuda to gather sufficient information about the respondent to understand fully the nature of its business; determine from publicly-available information the reputation of the respondent and the quality of its supervision as per Criterion 13.1(a); assess the respondent’s controls relating to AML control and CFT controls as per Criterion 13.1(b); obtain approval from senior management before establishing a new correspondent banking relationship as per Criterion 13.1(c); and document the respective responsibilities of the respondent and correspondent, be satisfied that, in respect of those of the respondent’s customers who have direct access to accounts of the correspondent, the respondent has verified the identity of, and performs ongoing due diligence on, such customers; and is able upon request to provide relevant CDD data to the correspondent, thus clearly understanding the respective AML/CFT responsibilities of each institution as per Criterion 13.1(d).
130. **Criterion 13.2** – This criterion is fully met by Regulation 11(3)(f) of the POCR which requires banking institutions (the “correspondent”) to be satisfied that, in respect of those of the respondent’s customers who have direct access to accounts of the correspondent, the respondent has verified the identity of, and performs ongoing due diligence on, such customers as per Criterion 13.2(a); and is able upon request to provide relevant CDD data to the correspondent as per Criterion 13.2(b).
131. **Criterion 13.3** – This criterion is met by Regs. 13(1) and (2) of the POCR which states that banking institutions (a) shall not enter into or continue a correspondent banking relationship with a shell bank and (b) must take appropriate measures to ensure it does not enter into or continue, a correspondent banking relationship with a bank which is known to permit its accounts to be used by a shell bank.

Weighting and conclusions

132. **Recommendation 13 is rated compliant.**

Recommendation 14 – Money or value transfer services

133. This Recommendation formerly SR. VI was rated ‘PC’ in the 3rd MER with the primary weakness identified as the absence of granted licenses despite the existence of laws. Subsequent to the assessment, the BMA started to grant licenses.
134. **Criterion 14.1** – S.8(1) of the Money Service Business Act 2016 (MSBA) requires all persons carrying out such business to be licensed.
135. **Criterion 14.2** - S.53(1)(a) of the MSBA empowers the BMA to conduct investigations as an action of identifying persons carrying out money service business without a licence. Further S.8(1) prohibits a person from carrying out an MSB unless licenced under the Act. S. 8(3) of the MSBA imposes a criminal penalty for persons operating an MSB without a licence. In relation to the sanctions, the penalty is on summary conviction a fine of BD100,000 or imprisonment for a term of 5 years or both such fine and imprisonment. This sanction is proportionate in comparison with those applicable for AML/CFT measures.
136. **Criterion 14.3** - By s.3(1) of the SEA, the BMA is the supervisory authority for regulated FIs (the definition of which includes MSBs). Further by S.5 of the SEA, the BMA is charged with monitoring AML/CFT compliance of all regulated FIs.
137. **Criterion 14.4** – S.8(1) of the MSBA as amended by s.13 of the POCM 4 2018 prohibits the operation of agents.
138. **Criterion 14.5** – S.8(1) of the MSBA as amended by s.13 POCM 4 2018 strictly prohibits the carrying on of MSB as an agent of another person who carries on MSB.

Weighting and conclusions

139. **Recommendation 14 is rated compliant.**

Recommendation 15 – New technologies⁵³

140. Bermuda was rated as “NC” for R.15 (formerly R.8) in the 3rd MER. The lone deficiency identified during that assessment was no requirement for FIs to implement measures to prevent misuse of technological developments that could facilitate ML/TF. Bermuda sought to remedy the deficiencies via provisions in Regulations 9, 11(2), 11(3), 12 and 13 of the POOCR as stated in its 5th FUR. The revised R.15 focuses on the ML/TF risk associated with new technologies, products and new business practices and sets out the obligation for countries and FIs to identify and assess the ML/TF risk.
141. **Criterion 15.1** - Regulations 16(1A) of the POOCR stipulates that where a relevant person intends to introduce a new product, practice or technology, the regulated FI must perform and document a risk assessment prior to the launch of such product, practice or technology. In addition, Regulation 16(1)(e) of the said Regulations stipulates that a regulated FI must establish and maintain appropriate and risk-

⁵³ The FATF revised R.15 in October 2018 and its interpretive note in June 2019 to require countries to apply preventive and other measures to virtual asset service providers and virtual asset activity. This evaluation does not assess Bermuda’s compliance with revised R.15 because, at the time of the on-site visit, the FATF had not yet revised its assessment Methodology accordingly. Bermuda will be assessed for technical compliance with revised R.15 in due course, in the context of its mutual evaluation follow-up process.

sensitive policies and procedures, approved by its governing body, relating to the performance and documentation of any products or services (prior to launch) and the continual documentation of risk assessment and management of such products and services, in a form available to share with the supervisory authority.

142. **Criterion 15.2** - (a) A relevant person is required to conduct and undertake the risk assessment prior to the launch of its product, practice or technology (Reg. 16 (1A) of the POCR). (b) A relevant person is required to established, maintain and document appropriate risk-sensitive policies and procedures prior to the launch of the product or services (Reg. 16 (1) (e) of the POCR). Pursuant to Reg. 16(1) (ea) (iii) of the POCR, the relevant person is also required to have risk mitigation measures in place, including the application of enhanced measures for higher risk issues.

Weighting and conclusion

143. **Recommendation 15 is rated compliant.**

Recommendation 16 – Wire transfers

144. This Recommendation was rated ‘NC’ in the 3rd MER due to fact that there were no record-keeping requirements for full originator information, the threshold for CDD and full originator record-keeping requirement was US\$10,000 which was significantly above the FATF limit of \$1,000 and no provision for originator information to be included and retained in domestic wire transfers. Additionally, there were no provisions that require intermediary and beneficiary FIs in a wire transfer payment chain to transmit originator information, no requirement for risk-based procedures for wire transfers not accompanied by complete original information, no requirement that the lack of such information as a basis for deciding if a transaction is suspicious and there was no system to review and sanction for non-compliance with wire transfer requirements. During follow up, deficiencies were remedied by legislation and Guidance Notes. There are new requirements for transfers below the threshold and for ordering, intermediary and beneficiary FIs and links to R. 6 and R. 20.
145. **Criterion 16.1** – (a)-(b) Regulation 23(1) of the POCR mandates the payer’s PSP to ensure that all transfers of funds are accompanied by complete information on the payer (the originator) and the payee (beneficiary). The payer’s PSP shall, before transferring funds, verify the complete information on the payer on the basis of documents, data or information obtained from a reliable and independent source (Reg. 23(2)). In the case of transfers of funds from an account, the complete information on a payer shall be deemed to have been verified if the payer’s PSP has complied with the, requirements of CDD under Part 2 (Reg.23(3)). Regulation 21 defines “complete information” in the case of the payee as information consisting of the name and account number or unique identifier that allows the transaction to be traced to the payee; in the case of the payer complete information is defined as the payer’s name, account number and address and in cases of natural persons the address may be substituted with the date and place of birth, customer identification or national identification number.
146. **Criterion 16.2** – S. 4(10) of the POCM (No.4) 2018 amends Regulation 21 of the POCR by adding that “batch file transfer” means several individual transfers of funds that are bundled together for transmission; being transferred to the same PSP but may or may not be ultimately intended for different payees”. – These additions along with Regulation 23(1) as amended satisfy the requirements of this criterion.
147. **Criterion 16.3** - (a), (b) All wire transfers of any amount from established accounts, must be accompanied by the required “complete information” for payer (originator) and payee (beneficiary) as described in criteria 16.1. The *de minimis* threshold of BMD1,000 or less only applies for transfers

that are not paid from the payer's (originator) account (Reg. 23 (4)). The requirement for the verification of accuracy is not required for wire transfers under this threshold. The Regulations satisfy both payer and payee requirements of this criterion.

148. **Criterion 16.4** – As noted in criteria 16.3, wire transfers not made from an account that are under the de minimis threshold are not verified for accuracy. Regulation 6(1)(c) of POCR requires FIs to execute CDD measures, including verification, when they suspect ML or TF.
149. **Criterion 16.5** - Reg. 24(1) and (2) of the POCR addresses domestic wire transfers and modifies the requirement for complete information on the payer and payee as stipulated by Regulation 23(1) in the POCR. Reg. 24(1) of the POCR specifically allows for transfers of funds to be accompanied only by the account number of the payer or a unique identifier allowing the transaction to be traced back to the payer (originator), in circumstances where both the payer's (originator) PSP and the payee's (beneficiary) PSP are situated in Bermuda. However, in these circumstances, Reg. 24(2) mandates the payer's PSP to make available the complete information on the payer, to the payee's (beneficiary) PSP or a CA (namely a supervisory authority) upon their request, within 3 working days of receiving that request. In the case of the Police investigating criminal conduct or the proceeds thereof, Reg. 24(3) of the POCR empowers them to compel by search warrant or production order, the payer's (originator) PSP to immediately produce complete information on the payer. See. Also, AML/CFT Guidance Notes at paragraphs 8.64 and 8.65.
150. **Criterion 16.6** – Pursuant to Reg. 24(1) of the POCR for domestic wire transfers, the payer/ordering institution need only provide the account number or unique transaction reference number allowing the transaction to be traced back to the payer. When the payee/beneficiary FI or a CA (such as the BMA) requests the complete information from the payer/ordering institution this information must be made available to the beneficiary FI within 3 working (business) days of the request as stated in Reg. 24(2) of the POCR. As noted above, Reg. 24(3) of the POCR allows law enforcement as part of their investigation to compel, the sending institution by search warrant or production order, to immediately produce the complete information on the transfer, as described in criterion 16.1. The BMA is empowered under s.16(1)(a) of the SEA to direct a regulated FI to provide (any) information – CDD or otherwise – by written notice. The Police is empowered under ss.37 and 39 of the POCA, to apply to the Supreme Court for a production order or a search warrant to obtain information to an investigation into drug trafficking, ML, or to determine whether a person has benefited from criminal conduct or to identify the location of the proceeds of such conduct. A production order or search warrant can be used to obtain information from the payer's PSP. The default period for a production order is 7 days, but the Court may specify any shorter period as it deems appropriate. Search Warrants generally empower the police to have immediate access to the premises to be searched, without a waiting period after the issue of the warrant.
151. **Criterion 16.7** – Reg. 23(6) of the POCR requires the payer/ordering FI to maintain complete/all originator and beneficiary information collected for identification and verification purposes and to keep such information for 5 years.
152. **Criterion 16.8** – Reg. 23(5) of the POCR requires that the payer/ordering FI not allow the transfer of funds in accordance with Reg. 23 if the requirements for complete information on payer and payee stipulated in Reg. 23(1) are not complied with.
153. **Criterion 16.9** - An “intermediary PSP” is defined in Reg. 21 of the POCR as the PSP that participates in the execution of the transfer but does not act for either the payer or the payee. Reg. 30 mandates that intermediary PSPs must ensure that all information on the payer and the payee that accompanies the transfer is kept with the transfer. This requirement applies to all wire transfers, including cross-border wire transfers. See. Also, AML/CFT Guidance Notes at paragraph 8.36.

154. **Criterion 16.10** - Reg. 31(2) of the POOCR states that “where technical limitations prevent the intermediary PSP from including all required payer or payee information accompanying the cross-border funds transfer in a related domestic funds transfer, the intermediary PSP shall keep a record, for at least 5 years of all the information received from the payer’s PSP or another intermediary PSP.”
155. **Criterion 16.11** – Reg. 30(2) of POOCR requires an intermediary PSP to take reasonable measures which are consistent with straight through processing to identify transfers of funds that lack complete information for the payer or the payee.
156. **Criterion 16.12** – Regulation 30(3) of the POOCR provides that the provision of Reg. 27 will apply (with appropriate adjustment in language) where an intermediary PSP becomes aware, when receiving a transfer of funds, that information on the payer or payee is missing or incomplete. Reg. 27 goes further to outline risk-based policies and procedures for determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (b) the appropriate follow-up action which may include inter alia: asking for complete information on the payer, rejecting any future transfers of funds; or deciding whether or not to restrict or terminate the business relationship taking further steps such as issuing warnings to the payer’s PSP; setting deadlines for the payer’s PSP to comply with the requirements and reporting to the BMA.
157. **Criterion 16.13** - Reg. 26(2)(b) of the POOCR requires that the beneficiary FIs take reasonable measures which may include post-event monitoring or real-time monitoring where feasible, to identify cross-border wire transfers that lack required originator information.
158. **Criterion 16.14** – Regs. 29(1) to (3) of the POOCR for cross-border wire transfers of USD/EUR/BMD1,000 or more, a beneficiary FI must verify the identity of the beneficiary through verifying the complete beneficiary or payee information. Reg. 29(1) of the POOCR provides that the payee’s PSP shall, before transferring funds, verify the complete information on the payee based on documents, data or information obtained from a reliable and independent source. (2) In the case of transfers of funds from an account, the complete information on a payee shall be deemed to have been verified if the payee’s PSP has complied with the requirements of CDD under Reg. 29(2) of the POOCR. (3) In the case of transfers of funds not made from an account, the payee’s PSP shall verify the information on the payee only where the amount exceeds BD1,000, unless the transaction is carried out in several operations that appear to be linked and together exceed BD1,000. The payee (beneficiary) institution is required to maintain any information received from the originator and beneficiary for 5 years (see Reg. 29(3)).
159. **Criterion 16.15** – Beneficiary FIs are required to establish and maintain risk-based policies and procedures, in accordance with Reg. 16(1)(e) of the POOCR, approved by its governing body, relating to the performance and documentation of any products or services (prior to launch) and the continual documentation of risk assessment and management of such products and services, in a form available to share with the supervisory authority. Regs. 27 and 29 specify the risk-based policies and procedures that a beneficiary FI must apply. The general AML/CFT Guidance Notes at Paragraph 8.53 are also relevant.
160. **Criterion 16.16** – Reg. 2(2)(f) of POOCR refers to the definition of AML/CFT Regulated Financial Institutions in s.42A(1) of the POCA which consolidates the definition and includes MSBs which are required to comply with the requirements for wire transfers. Notably, the two MSBs in Bermuda carry out money transmissions through local banks, are agents of U.S. based regulated entities, have no sub-agents and are not participants in the SWIFT payment system. If at any point the MSBs do commence direct wire transfers service this would be considered a material change which must be approved by the BMA.
161. **Criterion 16.17** - Part 4 of the POOCR is amended by s.4(14) of the POC 4 MA to include obligations in circumstances where a PSP controls both payee and payer to take reasonable measures to determine

whether a SAR has to be filed and to file a SAR with the FIA as per Criterion 16.17(a); and where a determination has been made to file with the FIA about a transfer of funds, to also make a disclosure to the relevant FIU in any country affected by the transfer of funds and also make the relevant transaction information available to the FIA.

162. **Criterion 16.18** – The provisions in the Banks & Deposits Companies Act 1999, Second Schedule ss.4(1) and 4(10)(c) requires institutions to conduct, its business “in a prudent manner” and “prudent manner” is defined to include compliance with the provisions of international sanctions in force in Bermuda. UNSCR 1373 and its successor resolutions have been implemented in Bermuda, by means of the UK’s TAFOTO and Bermuda has also implemented UNSCR 1267 and its successor resolutions, by means of the International Sanctions Regulations 2012.

Weighting and Conclusion

163. **Recommendation 16 is rated compliant.**

Recommendation 17 – Reliance on third parties

164. This Recommendation was rated ‘NC’ in the 3rd MER due to no obligations for FIs (i) to immediately obtain CDD information from third parties; (ii) to satisfy themselves that CDD documentation has been obtained by third parties and that such documentation can be made available to FIs promptly on request. Other deficiencies include (i) agreements obtained by FIs from introducers/intermediaries in other countries do not generally assure that secrecy and confidentiality restrictions will not be an impediment to access CDD information when requested; (ii) insufficient information available to the industry with respect to adequacy of regulation and supervision of other FIs, and on implementation of FATF Recommendations by countries to justify reliance on third parties and there was a need to specify as seems to be the practice that ultimate responsibility for CDD lies with the Bermudian FIs. During the follow up, these weaknesses were addressed in legislation. The new requirements of the Recommendation include a clear delineation of ultimate responsibility remaining with the FI and a more flexible approach to intra-group reliance.
165. **Criterion 17.1** - Reg. 14(1) of the POCR permits FIs to rely on third parties to perform CDD measures but restricted to those measures set out in Reg. 5(a) through (f) of the POCR relate to identification and verification. (A) Regulation 14(1) (b) of the POCR requires that notwithstanding the relevant person’s reliance on the third-party entity, the relevant person must immediately obtain enough CDD information for identifying the BO and understanding the nature of the business. (a) Where relying on a third party the FI must be satisfied in accordance with Regs. 15(6), (7) and (7A) of the POCR that the third party will keep records and provide such records during the recordkeeping time as soon as reasonably practicable and without delay. (c) Under Reg. 14(2)(c)(iv) of the POCR the FI has a duty to satisfy itself that the third party is subject to requirements equivalent to those laid down in the POCR and the third party is supervised for compliance with the requirements equivalent to supervision carried out by his own supervisor (see reg. 14(2)(c)(iv)). (b) **and** (c). The provision in Reg. 14(2)(c) satisfies the requirement in criterion 17.1(c) in relation specifically to CDD and recordkeeping requirements.
166. **Criterion 17.2** – Reg. 14(1)(b)(ii) of the POCR provides that an FI shall allow a third party to carry out its CDD measures only when it is satisfied that such reliance is appropriate given the level of risk for the jurisdiction in which the party to be relied upon is usually resident.
167. **Criterion 17.3** – There are no restrictions which prevent a FI from relying on a third party that is part of the same financial group. (a) Regulation 12A of the POCR requires financial groups to implement group-wide policies and procedures to mitigate ML/TF risks, applicable to all members of the group. These policies and procedures should address CDD, record-keeping, systems, training, wire transfers,

information sharing for AML/CFT, unusual transactions and account information. . (b): S. 5 of the revised SEA mandates that a supervisory authority takes the necessary measures for the purpose of securing compliance with AML/CFT regulations, directions, or license conditions by the financials groups which they supervise. . Further, s.5 of the SEA 2008 as recently amended and Reg. 12(2)(b) of the POOCR requires the application of additional measures to handle ML/TF risks where the laws of a country does not permit the application of equivalent measures.

Weighting and Conclusion

168. Recommendation 17 is rated compliant.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

169. Recommendation 18 is a combination of (formerly R. 15 and 22). Former R. 15 was rated ‘PC’ because of: 1) Limited obligations in the AML/CFT Regulations for FIs to formulate and implement AML/CFT policies, compliance and controls; 2) No requirement in the Regulations that the reporting officer be designated at the management level; the scope of compliance management function to SAR activities was limited; 3) No requirements for maintaining an independent and adequately resourced internal audit function; 4) Limited coverage in the Regulations of training obligations to “relevant employees”; and 5) No obligation in the AML Regulations for employee screening. Recommendation 22 was rated ‘NC’ because there were no provisions in the AML Regulations for applying AML/CFT measures to overseas branches and subsidiaries and no requirements on FIs to inform the Bermudian authorities when their overseas operations cannot observe appropriate AML/CFT measures.
170. The POOCR, mandated relevant persons to establish and maintain appropriate policies and procedures relating to AML/CFT including CDD and ongoing monitoring, reporting, record keeping, internal controls, risk assessment and the monitoring and management of compliance with and the internal communication of such policies and procedures. The CDD measures at Reg. 5 were also extended to include a wider range of measures which were more closely aligned to the requirements of the then R.5. That meant the procedure requirements mentioned above now extend to that wider range and consequently would cure the shortcoming identified in the MER. Regarding R.22, the two deficiencies noted by the Assessors were resolved by Reg. 12 of the POOCR which provides that FIs must require their branches and subsidiaries located outside of Bermuda to apply, as far as the law in the country of location permits, measures with regard to CDD, ongoing monitoring and record-keeping.
171. **Criterion 18.1** – Regulation 16 of the POOCR requires FI’s to establish and maintain appropriate and risk sensitive policies and procedures to combat and prevent ML/TF and at Reg. 16(1)(f) the monitoring and management of compliance with and the internal communication of such policies and procedures in order to prevent activities related to ML and TF is enshrined. (a) The designation of a person employed at managerial level as the Compliance Officer is addressed at Reg. 18A. (b) At Reg. 18(1)(c) FIs are required to take appropriate measures so that all relevant employees are screened prior to hiring to ensure high standards. (c) Reg. 18(1)(b) imposes the obligation for regular training in how to recognise and deal with transactions which may be related to ML or TF. Reg. 18A(2) of the POOCR also mandates relevant persons to be responsible for ensuring that their Compliance Officer is adequately trained to carry out the role. Further, the specificity of the training requirements is fleshed out at para. 10.2 and 10.3 of the general AML/ CFT guidance notes. At para. 10.5 of the general AML/ CFT guidance notes training is required to be ongoing and premised on the risks identified through the business risk assessment. (d) Reg. 17A(2) of the POOCR obliges all FIs to maintain an independent audit function to be conducted by a qualified independent third party or internally by persons independent of any other function in the FI. Reg. 17A (2) mandates the independent audit function must provide and document an independent and objective evaluation of the robustness of the

AML/CFT framework, and the reliability, integrity and completeness of the design and effectiveness of the AML/CFT risk management function and AML/CFT internal controls framework.

172. **Criterion 18.2** – (a)) Reg. 12A(b) and 12(1)(a)(i) and (ii) of the POOCR mandates a relevant person to require its branches and subsidiary undertakings which are located in a country or territory other than Bermuda to adopt group-wide policies and procedures in order to manage the risk of ML and TF. At 12(1)(a)(i) such policies must include procedures that facilitate the sharing of CDD and transaction information. (b) Reg. 12A (c) also requires the provision at group level compliance, audit, and or AML/CFT functions and transaction information from branches and subsidiaries when necessary for AML/CFT purposes. Reg.12(1)(a)(i). (c)) Reg. 12(1)(a)(ii) also mandates adequate safeguards on the confidentiality and use of information exchanged.
173. **Criterion 18.3** – The requirements of this criterion are met by regulation 12(1)(b) of the POOCR which mandates relevant persons to require its branches and subsidiary undertakings which are located in a country or territory other than Bermuda to adopt group-wide policies and procedures , to the extent permitted by the law of that country or territory, are at least equivalent to those set out in these Regs. with regard to CDD measures, ongoing monitoring and record-keeping”. Where the law of such a country or territory does not permit the application of such equivalent measures by the branch or subsidiary undertaking located in that country or territory, the relevant person shall inform the BMA accordingly; and take additional measures to handle effectively the risk of ML/TF (s. 12(2)(a) and (b)).

Weighting and Conclusion

174. **Recommendation 18 is rated compliant.**

Recommendation 19 – Higher-risk countries

175. This Recommendation (formerly R. 21) was rated ‘NC’ in the 3rd round MER as there were no requirements to pay special attention, examine and record business relationships/transactions with persons from or in countries which do not sufficiently apply the FATF Recommendations. At that time, there was no system to ascertain and inform FIs about which countries do not or insufficiently apply the FATF Recommendations, nor to apply countermeasures against such countries. R.19 requires the application of EDD measures for transactions and business relationships from countries and to be able to apply countermeasures when this is called for by the FATF. Countries are required to inform FIs of possible AML/CFT weaknesses in other countries.
176. **Criterion 19.1** – Pursuant to Reg.11(1)(aa) of the POOCR, FIs in Bermuda are required to apply EDD to business relationships and transactions from or in a country that has been identified as having high risk by the FATF and where it is called for by the FATF.
177. **Criterion 19.2** - Pursuant to s.49A of the POCA 1997 and s.12B of the ATA, 2004 the Minister of Legal Affairs is empowered to issue directions to either specific regulated entities, a class of such entities or all regulated sectors mandating them to apply the countermeasures specified by the Minister when called upon to do so by (a) FATF; and (b) independently of any call by the FATF. The types of requirements that can be imposed by the Minister’s directives include undertaking CDD; ongoing monitoring; systematic reporting and limiting or ceasing business (ss.49E and 49F of the POCA 1997 and s.12D of the ATA.
178. **Criterion 19.3** – Bermuda’s Ministry of Legal Affairs issues Ministerial Advisories about the risks in other jurisdictions arising from inadequate systems and controls to combat ML and TF. These

Advisories notify the public of the most recent FATF Public Statements, as well as any public statements issued by the CFATF; and mandates all AML/CFT obligated entities in Bermuda to comply with the requirement to apply EDD for the higher risk jurisdictions notified in the Advisory. The Advisory is published on the International Sanctions Measures' page of the Government's website.

Weighting and conclusions

179. Recommendation 19 is rated compliant.

Recommendation 20 – Reporting of suspicious transaction

180. This Recommendation (formerly R.13 and SR. IV) were both rated 'PC' in the 3rd MER. The main factors underlying the ratings were the fact that the POCA did not provide an explicit requirement for filing SARs for attempted transactions and there was no requirement to file TF-related SARs for funds linked to terrorist organizations. During the follow-up process the recommended actions were taken by Bermuda to address these weaknesses through the Proceeds of Crime and related Measures Amendment Act 2013 which amended s.5 of the ATA to include the financing of terrorist organisations and enhanced training.

181. **Criterion 20.1** - S.46(A1) of the POCA provides the legal obligation of persons to promptly make a disclosure to the FIA when he knows, suspects or has reasonable grounds to suspect that any currency, funds or other assets are derived from or used in connection with any criminal conduct, or a ML offence has been committed; is in the course of being committed or has been attempted. S.46(2) makes it an offence not to promptly make such disclosures to the FIA. For TF, s.9 of the ATA is amended by s.6(2)(a) of the POCA (Miscellaneous Act) (No.4) Act 2018 to include an obligation to promptly report to the FIA his belief or suspicion that another person is committing, or attempting to commit or has committed a TF offence. Paragraph 1(4), Part 1 of Schedule 1 of the ATA 2004.

182. **Criterion 20.2** - Any funds irrespective of the amount suspected of being used in connection with criminal conduct must be reported to the FIA pursuant to s. 46(A1) of the POCA including attempted transactions. S.9(1)(a) of the ATA provides for persons to report TF transactions including attempts and paragraph 1(2) of Schedule 1 to the ATA, requires regulated and public sectors to disclose to the FIA their knowledge or suspicion that a person is committing, attempting to commit or has committed a TF offence.

Weighting and conclusions

183. Recommendation 20 is rated compliant.

Recommendation 21 – Tipping-off and confidentiality

184. Bermuda was rated 'PC' for R.21 (formerly R.14) in its 3rd MER. The deficiencies identified were; (i) protection for those filing SARs was limited to reports based on ML and did not cover those that have a nexus to TF; (ii) no explicit protection from criminal liability resulting from SAR filing; (iii) tipping-off offences did not explicitly cover a SAR filing and the contents therein, and (iv) tipping-off relating to a SAR was only an offence if likely to prejudice an investigation. The Authorities in their 5th FUR sought to address the deficiencies identified through amendments to the ATA 2004; and POCA 2008 and 2013. The revised R.21 now mandates that tipping-off and confidentiality provisions should not inhibit information sharing under R.18.

185. **Criterion 21.1** – A person who makes a disclosure to the FIA does not commit any breach of confidence owed by the person making the disclosure or any restriction on the disclosure of the information (however imposed) (s.20(1) of the FIAA). Similar provisions for protection of persons relative to a disclosure to the FIA regarding currency, funds and assets suspected to be derived or intended for use in criminal conduct or ML exists within (ss. 44(3), 45(5)(a), 46 (1) of the POCA 1997

(as amended). Disclosures are made based on suspicion and having reasonable grounds for suspecting; therefore, the person does not require knowledge of whether the act occurred, and neither do they need to know the specific offence. Additionally, s.20 of the FIAA as read with s.46 of the POCA provides that FIs, their directors, officers and employees are protected from criminal and civil liability for disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

186. **Criterion 21.2** – A person is guilty of an offence if he knows or suspect or has reasonable grounds to suspect that a disclosure has been made relative to ss.44, 45 and 46 of the POCA and he discloses to any person that a disclosure was made with the FIA (Ss.47(2)(a)(b) of the POCA, 1997). Unauthorized disclosure is also prohibited under the ATA when a report has been filed with the FIA or a reporting officer within the organisation (s.10A(2) of the ATA). ss.47(2)(a) and (b)(i) of POCA 1997 makes it an offence to disclose that that an STR is being filed with the FIA.

Weighting and Conclusion

187. **Recommendation 21 is rated compliant.**

Recommendation 22 – DNFBPs: Customer due diligence

188. Recommendation 22 (formerly R. 12) was rated ‘NC’ in the 3rd MER since except for trust providers, the other relevant DNFBPs were not subject to CDD, recordkeeping and oversight arrangements for AML/CFT. The deficiencies were addressed by the POCA, the POCR and the SEA.

189. **Criterion 22.1** – (R10) – Criterion 22.1 – DNFBPs are required to comply with the CDD requirements set out in R.10 in the following situations:

- a) Casinos – Although there are no casinos operating in Bermuda at present, the legislative framework has been established to impose AML/CFT obligations on this sector, whenever it becomes operational, and to subject them to AML/CFT supervision. Reg. (8A) prescribes the obligation to identify and verify the identity of casino patrons carrying out transactions equivalent to or exceeding \$3,000.
- b) Real estate agents – when they are involved in transactions for a client concerning the buying and selling of real estate.
- c) DPMS – when they engage in any cash transaction with a customer equal to or above \$ 7,500 s.9 of the SEA.
- d) Lawyers, notaries, other independent legal professionals and accountants when they prepare for, or carry out, transactions for their client concerning the following specified activities— buying and selling real property; managing of client monies, securities and other assets; management of bank, savings or securities accounts; organization of contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements, and buying and selling business entities. s.49(5) of the POCA
- e) TCSPs when they perform such services as: forming companies or other legal persons; acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; providing a registered

office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement; or acting as (or arranging for another person to act as) a nominee shareholder for another person. Reg. 6(1B) of the POCR.

190. **Criterion 22.2** (R.11) - DNFBPs are required to comply with the same record-keeping requirements as FIs as set out in Recommendation 11 – see analysis of R.11.
191. **Criterion 22.3** (R.12) - DNFBPs are required to comply with the same PEPs as FIs in Recommendation 12– see analysis of R.12. However, the shortcoming in R12.4 is applicable to life insurance policy which has no relevance to the DNFBPs.
192. **Criterion 22.4**(R.15) - DNFBPs are required to comply with the same new technologies requirements as FIs in Recommendation 15– see analysis of R.15.
193. **Criterion 22.5** - (R.17) – DNFBPs are required to comply with the same reliance on third parties as FIs in Recommendation 17 – See analysis of R.17.

Weighting and Conclusion

194. **Recommendation 22 is rated compliant.**

Recommendation 23 – DNFBPs: Other measures

195. In its 3rd round MER, Bermuda was rated ‘NC’ for R. 23 (formerly R. 16) with underlying deficiencies that all DNFBPs are subject to general requirements to report suspicious activities although a few SARs were filed by DNFBPs; none by lawyers, except for trust service providers. None of the other relevant DNFBPs were subject to oversight with respect to reporting obligations and the regime was not effectively implemented. It was noted that these deficiencies were cured in Bermuda’s 5th FUR.
196. **Criterion 23.1**(R.20) – All DNFBPs are required to comply with the SAR requirements set out in R.20, subject to the following qualifications:
- a) Lawyers, notaries, other independent legal professionals and accountants – when, on behalf of, or for, a client, they engage in a financial transaction in relation to the activities described in criterion 22.1(d).
 - b) Dealers in precious metals or stones – when they engage in a cash transaction with a customer equal to or above \$7,500 as described in criterion 22.1(c).
 - c) TCSPs – when, on behalf or for a client, they engage in a transaction in relation to the activities described in criterion 22.1(e)
197. **Criterion 23.2**(R.18) – DNFBPs are required to comply with the same internal control requirements as FIs under the MLRs–see analysis of R.18.
198. **Criterion 23.3**(R.19) – DNFBPs are required to comply with the same higher-risk countries requirements as FIs under the MLRs –see analysis of R.19.
199. **Criterion 23.4**(R.21) – DNFBPs are required to comply with the same tipping-off and confidentiality requirements as FIs –see analysis of R.21.

Weighting and Conclusion

200. **Recommendation 23 is rated compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

201. Recommendation 24 (formerly R.33) was rated ‘C’ in the 3rd MER. R. 24 now additionally requires that countries have a framework which identifies different types, forms and basic features of legal persons, as well as the process for their creation and for obtaining and recording basic BO information. Proportionate and dissuasive sanctions are required. International cooperation on BO information and monitoring the quality of assistance received is also required.

202. **Criterion 24.1** – (a) (Met) The Authorities have identified 3 types of legal persons, namely companies, partnerships⁵⁴ and limited liability companies. Companies may be limited by shares, by guarantee or may be unlimited liability companies. Partnerships may be general, exempted, limited, exempted limited or overseas. Companies may be local companies (60% Bermudan owned) or exempted companies or overseas companies operating on a permit⁵⁵. The Authorities identified 3 websites (BMA, ROC and the Bermuda Economic Development Corporation), which provide information on the above types and basic features of legal persons and the processes for their creation. . In relation to private act companies (PACs) the procedures for private bills are enshrined in Standing Orders available on the parliamentary website.⁵⁶ (b) (Partly Met) The processes for creation of the different legal persons are briefly outlined on the websites. There is publicly available information on the website of the ROC regarding processes for obtaining and recording basic information and how to request a search for basic information. There was no publicly available information regarding processes for obtaining and recording BO information.

203. **Criterion 24.2** – In June 2017 the BMA completed a preliminary assessment of legal persons formed in Bermuda based upon the concentration and nature of the customer’s business, ownership structure and control. This found that exempted companies (and overseas companies, overseas partnerships) were high risk and exempted LLCs were medium-high risk. In November 2017 the ROC completed a vulnerability assessment of legal persons available for use in Bermuda. A more detailed assessment, with input from various agencies including the BMA and the BPS’ and FIA’s experience in relation to financial investigations involving legal persons in ML was completed in August 2018. The updated assessment differed in that Exempted LLCs were medium risk whilst exempted partnerships were high risk as opposed to their previous medium risk rating. This assessment also included PACs, which were found to be high risk.

204. **Criterion 24.3** – All companies created in Bermuda, except PACs (which are only registered in certain circumstances), are registered in the company registry, which records the company name, proof of

⁵⁴ A partnership may elect to have legal personality by filing a declaration with the Registrar of Companies (s4A Partnerships Act).

⁵⁵ Companies incorporated outside of Bermuda are not further discussed. It is noted that those on a permit under s.134 of the Companies Act 1981, are excluded from the new BO obligations, however, the Minister may impose conditions including that the permit company have one or more directors ordinarily resident in Bermuda and that the permit company inform the Minister of any change in its beneficial ownership (s. 136(1)). A permit company is required to appoint and maintain a principal representative in Bermuda and any change to such principal representative must be notified within 21 days to the Registrar (s.136A of the Companies Act 1981). The Exchange Control requirements apply to such companies and changes in BO must be reported within 14 days.

⁵⁶ Bermuda House of Assembly Official Standing Orders 15 and 33 revised July 12, 2013 which is available on the Parliamentary website: <http://parliament.bm/admin/uploads/standing/99f12904b01e6fe5ab054a8069d24c03.pdf>.

incorporation, legal form, the address of the registered office, the memorandum of association and a list of directors. Partnerships formed under the Limited Partnership Act and the Exempted Partnerships Act are required to sign a certificate, which must be registered with the Registrar and contains the particulars of the limited partnership, including its name, the names and address of the general partners and the registered office in Bermuda (which cannot be a post office box). For LLCs the Limited Liability Company Act 2016 requires that the certificate of formation, including the name, whether local or exempted and the registered office address (not a post office box) is filed with the Registrar. The ROC must keep in the public file for companies the name of the company, the certificate of incorporation, the Memorandum of Association and the address of the registered office. For LLCs the Registrar must enter in the register the name of the LLC, the certificate of formation and the address of the registered office. For limited and exempted partnerships, the Registrar must enter in the register the name, certificate and address. The register is open to inspection by the public at the Registrar's office during normal business hours (s.14(4) and (5) Companies Act 1981, ss.31(2) and (3) Limited Liability Company Act 2016, ss.4(4) and (5) Limited Partnership Act 1883 and s.22(1)(A) Exempted Partnerships Act 1992). Every company must file with the Registrar a list of directors, which shall be available for public inspection (s.92A of the Companies Act, 1981). Local general partnerships are registered with the Office for the Tax Commissioner, these files are also available for inspection.

205. **Criterion 24.4** – Companies are required to keep a register of members (which includes shareholders) in particular the names and address of the members, in the case of a company having a share capital, a statement of the number of shares held by each member, distinguishing each share by its number so long as the share has a number and, in respect to any shares that are not fully paid, specifying the amount paid or agreed to be considered as paid on such shares and in respect of any company that does not keep a branch register, the date at which each person was entered into the register as a member (s.65 of the Companies Act 1981). The categories of shares including the nature of the associated voting rights must also be maintained by companies and LLCs must keep the categories of membership interests including the nature of associated voting rights on their registers (s.55(2) LLC Act 2016). These provisions do not apply to PACs, which are not registered with the ROC except those which are limited by shares unless otherwise provided for in the incorporating Act (s.4(1)(c) Companies Act 1981). The register of members shall be kept at the registered office of the company or, after giving written notice to the Registrar, at such other place in Bermuda convenient for inspection by members of the company and other persons entitled to inspect. (s.65(2) of the Companies Act 1981). Under the LLC Act LLCs are mandated to keep the register of members at their registered office (s.55(1)).
206. Companies, partnerships and LLCs must establish and maintain a beneficial ownership register which shall include a statement of the nature and extent of the interest held by each such registrable person (s.98H(1) and (2)(e) of the Companies Act 1981, s.65F(1) and (2)(e) of the LLC Act, S.4R(1) and (2)(e) of the Partnership Act (which also applies to limited partnerships and exempted partnerships under s.8AA of the Limited Partnership Act and s.13G of the Exempted Partnership Act). The beneficial ownership register must also be kept at the registered office of the company or after giving written notice to the Registrar of the place at such other place in Bermuda convenient for inspection by the Registrar (s.98H of the Companies Act 1981). These provisions do not apply to PACs except those which are limited by shares unless otherwise provided for in the incorporating Act (s. 4(1)(c) Companies Act 1981)
207. **Criterion 24.5** - The provisions requiring that the information referred to in criteria 24.3 and 24.4 is updated on a timely basis where provided for companies, LLCs and partnerships. Applications to the Registrar to alter a company's memorandum of association must be made within 21 days. Changes among directors or officers must be entered on the register within 14 days and notified to the Registrar within 30 days. Changes to the provisions in the bye-laws must be filed with the Registrar within 30 days of such change (s.13(2A) of the Companies Act, 1981). Any change in beneficial ownership

- which impacts an entry in the BO register must be updated as soon as practicable after the company is notified of the change, but no later than 14 days thereafter (s.98I of the Companies Act 1981).
208. In relation to Limited Partnerships, changes are effected by signing a certificate and delivering it to the Registrar for registration. A register of limited partners must be maintained at the registered office of the limited partnership in Bermuda. Exempted partnerships must sign a certificate and deliver it to the Registrar before a change is made to the general partners, name of partnership etc. A partnership's beneficial ownership register must be updated as soon as practicable after the partnership is notified of a change but no later than 14 days thereafter (s.4S(1) of the Partnership Act), which also applies to limited partnerships and exempted partnerships).
209. LLCs may amend their certificate of formation by filing a certificate of amendment with the Registrar, the change is effective at the time of filing with the Registrar (unless otherwise provided for). A register of managers must be kept at the registered office and the register must be changed and the change notified to the Registrar within 14 days of the change taking place (s.59(1) of the LLC Act). S.65G of the LLC Act requires the LLC to update its beneficial ownership register as soon as practicable after the LLC is notified of such change but no later than 14 days thereafter.
210. No mechanisms were cited to ensure accuracy of the above information except that the Registrar has powers under Part 2 of the Registrar of Companies (Compliance Measures) Act 2017 to conduct inspections.
211. **Criterion 24.6** – There are obligations on companies, LLCs and partnerships (with some exemptions primarily for those otherwise in scope) to file in a timely manner BO information with the BMA, to obtain and hold current information on their BO in registers maintained at their registered offices in Bermuda and to keep them up-to-date. These provisions do not apply to PACs (except for those registered with the ROC), overseas companies or overseas partnerships, which are not incorporated in Bermuda.
212. BO is defined in the Companies Act (s.98E), the LLC Act (s.65C) and the Partnership Act (s.4O) (the beneficial ownership requirements of the Partnership Act (s.4N(1)) also applies to all partnerships including under the Exempted Partnership Act and the Limited Partnership Act) in accordance with FATF standards. Companies and partnerships (except those which are exempt) are required to take reasonable steps to identify any individual who is a BO and to keep records of the action taken where no such person is identified. Companies and LLCs are required to issue a notice in writing to BOs/registrable persons requiring any such person within 30 days of receipt to state whether or not such person is a BO. Companies, LLCs and partnerships have a duty to establish, maintain and keep a beneficial ownership register and shall enter into such register the minimum required information, which includes name, date of birth, nationality and residential address or address for services. For a legal entity, the required information includes the address of the registered office or principal office, date and place of registration, form of legal entity and name of stock exchange (if applicable). The nature and extent of the interest held by each person etc. must also be included. The beneficial ownership register must be kept up-to-date and current, changes must be made as soon as practicable but no later than 14 days after the company/partnership is notified of the change. Companies and partnerships are required to file the BO information with the BMA and to file changes within 14 days. The beneficial ownership register must be kept for 5 years from the date of the dissolution or striking off of the company/LLC/partnership.
213. The BO regime does not apply to companies and partnerships listed on the Bermuda Stock Exchange or an appointed stock exchange. The BO requirements do not apply to closed ended investment vehicles if managed or administered by AML/CFT regulated FIs who are in any event required to hold the necessary accurate and up-to-date BO information in accordance with Reg. 15 of the POCR. They must also have systems in place to make such information available promptly to their supervisory

authority, the BPS or FIA (Reg. 16). Closed ended funds are also exempted if the fund has engaged an administrator or investment manager registered, authorised or licensed by a foreign regulator recognised by the BMA, recognised jurisdictions include the US and the EU Member States (BMA Guidance notes October 2013). FIs are excluded from the newly enacted BO requirements as they are subject to their own BO requirements (10% of the shares/voting rights) under the relevant regulatory Acts.

214. The Exchange Control Act 1972 and the Exchange Control Regulations 1973 also apply in relation to beneficial ownership for the purposes of exchange control. Beneficial ownership is defined (Regulation 2) as any individual who ultimately owns 10% or more of the shares, voting right or interests in the company through direct or indirect ownership thereof. Under Reg. 12 and 13 the transfer of securities of a Bermuda company to or from a non-resident resulting in a beneficial ownership position of 10% or more must have the prior approval/permission of the Controller (the BMA). Subsequent changes of ownership are required to be submitted and approved if they relate to a transfer from or to non-residents and reach the threshold of 10% unless general permission is available via a Notice to the Public. Any changes to the UBO are also required to be notified to, and filed, with the Controller. Such information must be accurate, current and up to date.
215. Furthermore, licensed CSPs must perform CDD on the proposed BOs of their customers (Reg 5, POCR). In this context the definition of BO means an individual who ultimately owns or controls more than 10% of the shares /interest of the customer (Reg. 3(11) of the POCR).
216. **Criterion 24.7** – Companies and LLCs (except those which are exempt, see above, are required to obtain and keep BO information and to keep the information current and up to date (ss.98F, 98H and 98I of the Companies Act and ss.65D, 65F and 65G of the LLC Act). The BO register must be changed as soon as practicable but no later than 14 days after the company being notified of the change (the same time frame exists for partnerships). Under s. 98L of the Companies Act where there is a change in respect of information being filed with the BMA relating to a BO the company shall file with the BMA updated, accurate and current information regarding such change, LLCs must file updated, accurate and current information when there has been a change (under sections.65J of the LLC Act). The BO information must be maintained in Bermuda at the registered office or other location in Bermuda (with notification to the ROC) (ss.98H(3) of the Companies Act and 65F (3) LLC Act). Companies and LLCs are also required to file current and updated BO information with the BMA (ss.98L Companies Act and 65J LLC Act). Partnerships (except those which are exempt, see above) are also required to obtain and keep BO information in Bermuda and to keep such information current and up-to-date (ss. 4P, 4R and 4S of the Partnership Act, s.8AA of the Limited Partnership Act and s.13G of the Exempted Partnership Act). The BO information must be maintained in Bermuda at the partnership’s registered office or such other location in Bermuda as may be notified to the Registrar (s.4R(3) of the Partnership Act 1902). Partnerships are also required to file current and updated BO information with the BMA (s.4V of the Partnership Act 1902). No provisions were cited regarding accuracy prior to a change being filed although there are requirements to file changes and to verify the correct information.
217. **Criterion 24.8** - Companies, LLCs and partnerships (except those excluded, which are listed at 24.6 above) are required to identify their BOs and to maintain an up-to-date BO register and to file such information with the BMA, which means that the information will be accessible to the Bermuda government. The BO information is also required to be kept by the company in Bermuda (see 24.7). Additionally, where there is a change regarding beneficial ownership this must be filed with the BMA and must be updated, accurate and current (s.98L of the Companies Act, s.65J of the LLC Act).
218. Exempted companies include closed ended funds if registered, authorised or licensed by a foreign regulator recognised by the BMA, recognised jurisdictions include the US and the EU Member States (BMA Guidance notes October 2013). All close-ended funds must have a Bermuda representative

who, if a Bermuda licensed CSP or Fund Administrator, will have access to the BO information. Other representatives would be required to be able to obtain BO information upon request.

219. Further, all exempted companies must have directors in Bermuda or a secretary or resident representative in Bermuda (s.130 of the Companies Act). The Resident representative has a duty to report failures to comply with the BO registry provisions (s.130(6)). Where the Resident becomes aware of a breach of the Companies Act or a regulation which has a material effect on the affairs of the company or any issue or transfer of shares has been effected in contravention of statutory requirements, he must report to the Registrar. This includes the obligation to keep a beneficial ownership registry and to file with the BMA. These provisions also apply to exempted partnerships (s.17 of the Exempted Partnership Act 1992) and limited partnerships.
220. In addition, where the company/LLC/partnership has a CSP or where the resident representative is licensed as a CSP, the CSP has to keep a record of the BO of companies which are clients. The BMA also acts as the Controller under the Exchange Control Act which imposes requirements on the exchange of securities to and from non-residents where the BO requirements reach 10% or more. Permit companies, which are excluded from BO requirements would be caught by the Exchange Control Act requirements.
221. The penalty under s.98O(1) of the Companies Act for breach of the BO obligations is a fine not exceeding \$5000. Providing false information to the ROC or the BMA attracts a penalty of \$50,000. Where an offence is committed by a body corporate with the consent or connivance of an officer of the company then both the officer and the company commit the offence and are liable to be punished. (ss.98O(1) and 98O(3)). Similar requirements are set out in the LLC Act (at s.65M) and the Partnership Act (s.4Y) in respect of LLCs and partnerships.
222. Under sections.8 of the Registrar of Companies (Compliance Measures) Act 2017 the ROC has the power to enter any premises that the Registrar has reasonable cause to believe are being used in connection with the business of a registered entity, to inspect and take copies of documents reasonably required in connection with the exercise of his functions. This includes ensuring that companies, partnerships and LLCs meet their statutory obligations including the requirement to have and keep BO registers. The enforcement powers under the Registrar of Companies (Compliance Measures) Act 2017 include powers to impose default fines per day (s.10), civil penalties up to \$250,000 (s.11), to lay criminal charges for specified offences under (ss.14 and 15) with a fine and a period of imprisonment available.
223. Under s.31(1AB) of the BMA Act, the BMA can disclose this information to the BPS to assist them in their functions. However, a Production Order issued under ss.37 – 39 of the POCA is required in order for the police to access this information in the form of evidence for use in court proceedings. The police may also access the information through the FIA. The Controller of Foreign Exchange may give to any person in or resident in Bermuda directions requiring him to furnish to the Controller any information in his possession or control which the Controller may require for the purpose of securing compliance with or detection of the evasion of the Regulations (s.47 of the Exchange Control Regulations (ECR)). The FIA has powers under s.16 of the FIAA to obtain information via notice in writing from any person.
224. Provisions were not cited in relation to PACs, overseas companies or overseas partnerships. There are 653 PACs which are not registered with the ROC.⁵⁷

⁵⁷ Provisions do not apply to 466 overseas companies and 89 overseas partnerships.

225. **Criterion 24.9** – Where a company or LLC is dissolved via liquidation, s.255(A1) of the Companies Act and s.204(A1) of the LLC Act mandate the liquidator to keep the records of the company (records of account, beneficial ownership register, liquidator’s books and papers) for 5 years from the date of the dissolution of the company/LLC/partnership. Where a company or LLC is dissolved via striking off (with no liquidator) the responsibility is on every person who was a director or officer of the company at the date of striking off to retain the records of account and BO register for 5 years from the date of dissolution (Companies Act s.261(5A), LLC Act s.210(5A)). In the case of the dissolution of a Partnership the responsible person has to retain records of account and BO register for 5 years from the date of dissolution or date of cancellation of the limited and/or exempted partnership (s.44A of the Partnership Act, s.14A of the Exempted Partnerships Act, and s.9B of the Limited Partnership Act).
226. In relation to any records required to be kept in accordance with Reg. 15 of the POCRs, the record retention is 5 years from the date the company/LLC/partnership ceases to be their customer.
227. **Criterion 24.10** – The ROC and the BMA have access to basic and BO information pursuant to ss.98L and 98N of the Companies Act 1981, this can be accessed in a timely manner. The ROC holds basic information on all registered entities in Bermuda. The Registrar of Companies website has information on the registration and basic details of the entity involved. The ROC Compliance Measures Act empowers the ROC to monitor and regulate all registered entities through inspections and enforcement. This includes entering premises and inspecting and taking copies of documents. Under the Companies Act the Minister may appoint an inspector to investigate the affairs of a company and report on them. Provisions were not cited in relation to private act companies which are not registered with the ROC (653). The FIA, BPS and BMA may use their powers to obtain information from a FI who would have basic and BO information or indeed from the PAC, although this may be limited as there are no legislative requirements for those PACs which are not subject to the Companies Act 1981 to hold all the required information.
228. The Inspector can ensure that companies, partnerships and LLC have kept current BO registers. CAs responsible for supervision, namely the BMA, BCGC, the FIA and the SoRE have powers under s.16 of the SEA to require the production of information and documents from a person or entity over which it has supervision. The Barristers and Accountants AML/CFT Board (the Board) has similar powers under s.30D. Under ss.32(1) and (2) all supervisory authorities can disclose information to the FIA, the BPS or the DPP to assist the FIA to discharge their statutory functions and in the case of the BPS and DPP to assist in relation to criminal proceedings. Where a legal person or individual refuses to comply with information requested by a supervisory authority the supervisory authority can apply to the Supreme Court under ss.19 or 30G for an Order. In addition, under ss.17 and 30F supervisory authorities have the power of entry to observe, inspect and copy information found on the premises. Under s.18 of the SEA an officer of the BMA may enter any premises occupied by any person under whom a requirement has been made under s.22 for the purpose of obtaining information or documents if the BMA has reasonable cause to believe that notification of entry would lead to the destruction of documents or otherwise not be complied with. S.31(1AA) of the BMA Act allows the disclosure by the BMA of information to the Minister of Finance to assist in the discharge of his functions or to the ROC. The BMA may also disclose to the FIA.
229. S.47(1) of the ECR gives the Controller the power to give any person in or resident in Bermuda directions requiring him to furnish to the Controller any information in his possession or control which the Controller may require for the purpose of securing compliance with or detecting evasion of the Regulations.
230. Ss.30A and 30B of the BMA Act provide powers to require information from any person to assist a foreign regulator. Pursuant to Reg. 46 of the ECR, the Controller may serve notice on any person who has information about the ownership of securities registered in Bermuda. The RG also has power under

the Charities Act to obtain information by way of notice, onsite inspections, investigations or power to obtain search warrants (ss.25 – 33).

231. Ss.37, 39 and 40 of the POCA allow for production orders and search warrants as well as disclosure of information by Government Departments. S.6 of the Criminal Justice (International Cooperation) (Bermuda) Act allows for production orders and search warrants to be obtained following requests for Mutual Legal Assistance. The BPS signed an MOU with the BMA which facilitates the process for requesting information on regulated entities and entities subject to the Exchange Control Act. Under s.31(1AB) of the BMA Act, the BMA can disclose this information to the police to assist them in their functions. The BPS also have powers under ss.17 – 19 of the Police and Criminal Evidence Act to enter and search properties and to seize property. The FIA has broad powers to obtain information under s.16 of the FIAA 2007 by issuing a Notice. Under the International Tax Information Exchange Agreement Act 2005 the Minister has the power to apply to Court for production orders to compel the production of documents, information and evidence, which relates to tax information. A similar power is found under s.5 of the USA Bermuda Tax Convention Act. The provisions allow the access in a timely manner.
232. **Criterion 24.11** – Bermuda’s law does not permit legal persons issuing bearer shares (s.53 of the Companies Act). This is prohibited. Under s.2(1) of the Companies Act ‘bearer shares’ includes shares that may be transferred by delivery of the warrant or certificate relating thereto. Although there are no provisions in relation to existing bearer shares the prohibition on the issuance of bearer shares predates the provisions of s.53 of the Companies Act and has been in place since the 1970 Act which the Companies Act replaced. Therefore, it is not lawful to issue shares that may be transferred by delivery of the warrant relating thereto or to issue a bearer share warrant allowing for shares to be issued in registrable form. However, there was no express prohibition on bearer shares warrants. It should also be noted that s.82(6) of the LLC Act 2016 provides that LLCs shall not have the power to issue a certificate of LLC interest in bearer form.
233. **Criterion 24.12** – The Authorities state that the concept of a nominee director does not exist in Bermuda Law. However, ‘alternate directors’ can be appointed and are included in the definition of ‘director’. Alternate directors can only be appointed in accordance with a resolution of the members or by a director in such manner as may be provided in the byelaws. All Directors must be maintained on the register and be publicly available. The alternate director is not entitled to attend or vote at a meeting of the directors unless it is in the absence of the director for whom he is the alternate (s.91(2A) of the Companies Act). The requirement to have a director resident in Bermuda excludes that person being an alternate director (s.130(1)). There are no specific provisions in relation to the requirement that a nominee shareholder records their nominee status and maintains information identifying their nominator and makes the information available to the competent authorities. However, only licensed CSPs may provide nominee shareholder services and they are required by the BMA to hold at the registered office, up-to-date and accurate information of the BOs who the nominee shareholders represent, and this will also be subject to inspection by the ROC’s Compliance Unit. The BO provisions in the relevant acts provide that companies, partnerships and LLCs shall establish and maintain a beneficial ownership register. This would not apply to all nominee shareholders but only would apply where the BO threshold was met although it would not require a declaration that they were in fact a nominees and would also not apply to PACs, which are not registered with the ROC (or limited by shares where the Act does not otherwise prevent them from being subject to the Companies Law (s. 4(1)(b)). Any information in the BO register would be available to CAs through the mechanisms noted in criterion 24.10.
234. **Criterion 24.13** – Under the POCA s.19 states that failure to comply with any requirement in the regulations is an offence liable to a fine of \$50,000 or, on indictment, to a fine of \$750,000 or to imprisonment for 2 years or both. This applies to licensed CSPs and other AML obligated persons,

- who must comply with the BO requirements. Under Reg. 49A of the ECR the Controller may impose a civil penalty not exceeding \$25000 on a company which fails to comply with BO requirements or fails to provide information upon request under Reg. 46A. A contravention of the ECR contains a maximum fine of \$5000 or 3 months in the summary court or \$25,000 and imprisonment for 2 years on indictment. In addition, any person who obstructs a person in the exercise of any powers pursuant to s.5 of the ECA commits an offence punishable on summary conviction to 3 months imprisonment or a fine of \$1000 or both. Failure to comply with the measures of the ROC Compliance Measures Act (such as the obligation to produce the register of shareholders, register of directors and officers) are subject to a default fine of between \$100 and \$500 in default or to civil penalties of up to \$250,000.
235. Under s.98O(1) of the Companies Act failure to comply with BO requirements attracts a penalty on summary conviction of a fine not exceeding \$5,000. Knowingly providing false information to the Registrar or the BMA attracts a fine of a maximum of \$50,000. If an offence is committed by a body corporate with the consent or connivance of an officer of the body corporate the officer as well as the body corporate commits the offence and is liable to be proceeded against and punished (sections.98O(3)). Similar requirements are set out at s.65M of the LLC Act as well as s.4Y of the Partnership Act (which also applies to exempted partnerships and limited partnerships).
236. A registered entity/person who fails to comply with any requirement under the ROC (Compliance Measures) Act 2017 is liable to a penalty of up to \$250,000 (s.11). Under the same Act, a person who makes a statement which he knows to be false or recklessly makes a statement which is false, or misleading commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for 2 years or both. Also, willfully obstructing or knowingly failing to comply with any request, direction or instruction of, the Registrar is an offence and liable on summary conviction to a fine of \$10,000 or imprisonment for 6 months or both (s.15).
237. Also, contravention of the requirement regarding keeping and filing BO information in accordance with the provisions of ss.98H – 98L of the Companies Act is an offence, attracting a penalty on summary conviction of a maximum \$5,000. Providing false information to the Registrar of the BMA attracts a maximum fine of \$50,000.
238. Under s.50 of the ECR a contravention or breach of the Regulations is an offence attracting a penalty on summary conviction of \$5000 or 2 months or both and, on indictment, \$25,000 or 2 years or both. Obstructing any person in the exercise of any powers pursuant to s.5 of the ECA is punishable on summary conviction of 3 months imprisonment or a fine of \$1000 or both. Under s.49A of the ECR the Controller may impose a civil penalty on a company which fails to comply up to a maximum of \$25,000.
239. The penalties for non-regulated entities for failure to comply with BO requirements under the laws which impose the requirements are not dissuasive. However, the general penalty available to the ROC of up to \$250,000 is more dissuasive. Although, in the context of a legal person this may still not be sufficiently dissuasive although regulated entities would be caught by the higher penalties outlined above. Criminal penalties are also available.
240. **Criterion 24.14** – Basic information is available on the public register of the ROC or on demand. s.40 of the POCA allows for disclosure of basic information held by a Government Department. Ss.37 and 39 of the POCA allow for production orders and search warrants. S.5 of the ICA allows for these powers to be used when providing Mutual Legal Assistance. In addition, the BPS states it informally assists counterparts in the UK and the USA to provide international cooperation with respect to basic and BO information although there are no statutory provisions for doing so (except for the general s.4 Police Act power). International cooperation in relation to tax matters is provided by the Treaty Unit in the Ministry of Finance. The BMA and other supervisory authorities have power to assist CAs who carry out functions similar to the BMA under s.32 of the SEA. Under ss.30A and 30B of the SEA, the

BMA may assist and obtain information for CAs from third parties by serving notice on any person in Bermuda who may have the information.

241. The BMA is a signatory to key MMOUs and regional MMOUs and bilateral MOUs with CAs, which detail the way the BMA and the CA may cooperate and manage requests. Under ss.30A and 30B of the BMA Act the BMA has powers to obtain information from any person in Bermuda to assist supervisory authorities and can also share information with foreign financial supervisors carrying out similar functions as the BMA under Regulatory Acts such as the Insurance Act, the Investment Business Act, the Investment Funds Act and the MSB Act. There are also gateways in relation to DNFBPs under the Trusts (Regulation of Trust Business) Act and the CSP Business Act. The BMA can also share information with the BPS under the SEA in relation to a criminal investigation and the FIA to discharge its function, which includes sharing information with international police authorities. Under the FIAA, the FIA can disseminate information to a foreign financial intelligence authority when a request is received relating to suspected proceeds of criminal conduct, potential ML offences and potential TF offences. The FIA may conduct enquiries and disseminate the intelligence. Under s.16 the FIA may serve a notice on any person to obtain information.
242. **Criterion 24.15** - The central authority, Treaty Unit and BMA have not made any requests for basic or BO information. However, the BMA does track requests it makes, and the BMA is required by IOSCO to identify any inadequate responses for international assistance made pursuant to the IOSCO MMOU. The process for managing requests is set out in the policy for International Cooperation. No provisions were cited for monitoring by the BPS, AGC, or FIA although it was stated that the quality has been noted as it may for example impact investigations.

Weighting and Conclusion

243. Bermuda does have mechanisms which identify and describe different forms and basic features of most legal persons. BO requirements have been amended to place obligations on companies, LLCs and partnerships (with some exemptions) to retain the information and to submit it to the BMA. The ROC Compliance Measures Act empowers the ROC to monitor and regulate all registered entities through inspections and enforcement. This is in addition to the previously existing Exchange Control obligations (and the requirements on FIs and other regulated professions to obtain the BO information). Private Act companies, (except for those which are registered with the ROC or have share structures and no Act precluding them from being subject to the Companies Act). Thus, the vast majority of legal persons created in Bermuda are required to comply with these obligations. The mechanisms by which BO information can be obtained are not publicly available, however it is available to CAs and via international cooperation mechanisms. Alternate directors are permitted under the Companies' Act but there are no associated disclosure requirements. There are no specific provisions regarding nominee shareholders although the general BO requirements would apply. **Recommendation 24 is rated largely compliant.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

244. This Recommendation (formerly R. 34) was rated 'C' in the 3rd MER. R. 25 includes obligations for all the countries whether they recognise trust law or not. Trustees should provide information to the FIs or DNFBPs regarding establishment as a trustee and guarantee that such information can be accessed in a timely manner by CAs.
245. In Bermuda, trusts are governed by the common law, with statutory requirements also found under the Trustee Act and the regulatory acts. Trustees can be licensed trust companies, private trust companies (PTCs) or individuals who carry on the business of acting as a trustee or non-professional trustees. Licensed Professional Trustees and licensed trust companies are licensed pursuant to the Regulation of Trust Business Act and regulated by the BMA. At present there are no individual trustees acting as professional trustees and therefore requiring a license pursuant to the Regulation of Trust Business

Act under s.3 of the Trusts (Regulation of Trust Business) Exemption Order 2002. PTCs can act primarily as the trustee for family trusts, but also for charitable trusts, provided the funding is by the same economic settlor. They are permitted to manage multiple trusts, but only on behalf of the same family or settlor. PTCs which do not utilise the services of a CSP licensed by the BMA or have in their structure a trustee licensed by the BMA are required to register with the BMA as a non-licensed person (NLP) for AML/CFT supervision.

246. Other Exempted Trustees include one or more of the following categories: members of recognised professional bodies, co-trustees with a licensed trustee, professional persons who appoint a specified licensed trust company to maintain records, and bare trustees. Additionally, a person would not require a license to act as trustee of a registered pension trust fund, a registered pension plan, or authorized or exempted investment funds. All these persons are however required to register as NLPs for AML/CFT supervision. In addition, there is overlap with the Barristers and Accountants AML/CFT Board for professionals under the remit of that Board. Professional persons who are lawyers or accountants and take advantage of these exemptions and carry on trusteeships as a business would also be conducting “specified activities” and therefore be registered with the Board. Non-professional, natural persons acting without reward as individual trustees are the hardest group to quantify as they are not required to be licensed or register. In this regard, an individual, such as a relative, a trusted friend or an adviser, can act as a trustee and there is no restriction on the types of trusts which can be managed by non-professional trustees. The majority are family related trusts to hold property, most often the family home. There are also trusts established to hold public property in Bermuda such as schools, public centres, and worker’s clubs. There are no restrictions on the types of trust a trustee can provide services for, save as outlined above in the case of PTCs.
247. **Criterion 25.1** – (a) POOCR which applies to AML/CFT regulated FIs and independent professionals, who participate in financial or real property transactions concerning creation, operation or management of legal persons or arrangements, impose a duty on the trustees to hold BO of any trust they administer, which includes, beneficiaries (any individual who is entitled to a specified interest in the capital of the trust property or the class of persons in whose main interest the trust is set up or operates. This therefore covers both the beneficiaries and the natural person in whose interest the trust is set up (i.e. the person exercising ultimate effective control over the trust), settlor and any individual who has control over a trust (which would include protectors) (Reg 3 of the POOCR). They are required to identify the BO and take adequate measures, on a risk sensitive basis, CDD and ongoing monitoring to verify identity including measures to understand the ownership and control structure of the person, trust or arrangement. Those trustees who fall under the POOCR are therefore required to hold adequate, accurate and current information.
248. Under s.13B of the Trustee Act, PTCs are required to retain identification information in respect of the trustees, settlors and beneficiaries, protector and any other natural person exercising ultimate effective control over the trust. Under s.13AA of the Trustee Act non-professional trustees are required to keep accurate records on the identity of the settlor, trustee, protector and beneficiaries any other natural person exercising ultimate effective control over the trust.
249. S.13B(2) applies the same obligation to other exempted trustees. These obligations mandate the information is accurate, current, updated and adequate.
250. (b) Under s. 13A of the Trustee Act professional trustees are required to keep accurate accounts and records with respect to assets, liabilities, additions to trust and distributions, purchases and sales and income and expenses. Professional trustees are also required to hold current, adequate and accurate basic information updated on a timely basis on regulated agents of and service providers to the trust including investment advisors or managers, accountants and lawyers. There is no separate professional group of regulated persons or entities described as ‘tax advisors’; Such services are provided by lawyers and / or accountants and these activities would bring them into the scope of the AML / CFT

Regulations. These requirements do not include non-professional trustees. Under s. 13B(4) Trustee Act a company or other trustee exempted trustee shall from time- to-time keep a current and accurate record of the names and addresses of the regulated agents and service providers who provide services to the trust.

251. (c) Under Reg. 15 of the POCR trustees are required to keep copies of documents for CDD purposes and records of transactions for a period of 5 years after the business relationship ends or in the case of a transaction for 5 years after the transaction. Obligations are imposed on non-professional trustees by s.13AA of the Trustee Act 1975, requiring them to keep records for 5 years and to keep information on the BOs during the whole period of the trust. Obligations are imposed on exempted professional trustees by s.13B of the Trustee Act 1975, requiring them to keep records for 5 years and to keep information on the BOs during the whole period of the trust.
252. **Criterion 25.2** - The Trustee Act requires all professional trustees to accounts and records current, accurate and up to date under s.13A in relation to assets, liabilities, additions to the trust and distributions, purchases, sales income and expenses and in relation to the information required under 25.1. Non-professional trustees. Under s.13AA current, accurate and up to date records of the identity, residential address and relevant information about the settlor, protector and beneficiaries must be kept.
253. **Criterion 25.3** – Ss.1 and 2A of the Trustee Act impose a duty on a trustee to disclose his status as trustee to regulated agents and service providers (which includes DNFBPs) whenever the trustee conducts business with them on behalf of the trust.
254. **Criterion 25.4** – Under s.16 of the SEA, an officer of a CA can by notice in writing require a person or entity or connected person to provide such information as specified in the notice. This only applies to any AML/CFT Regulated FI including trustees as well as the Board as set out under s.30D of the SEA. S.37 of the POCA empowers enforcement authorities to obtain through court order information and/or evidence. There is no prohibition in any law in Bermuda or under the Regulatory Act, being the Regulation of Trust Business Act or the Trustee Act restricting the provision of information by trustees to CAs, both domestic or international, or to FIs and DNFBPs with respect to the BO and the assets of the trust in connection with the establishment and continuation of business relationships with trustees.
255. **Criterion 25.5**- There are various powers vested in the enforcement authorities including the BPS, FIA, Customs, the Enforcement Authority, the Central Authority and the Registrar to have access to information held by trustees and other parties including FIs and DNFBPs. The BPS also have powers under ss.17 -19 of the PACE to enter and search properties and seize. Under ss.37 and 39 of the POCA production orders and search warrants may be issued for specified investigations including ML, locating the proceeds of crime and civil recovery investigations (Customs also have the same powers under s.57). The FIA has the power to request any information it requires to discharge its statutory duty as it relates to proceeds of crime, ML and TF under s.16 of the FIAA. This power to request information applies to trustees and to FIs and DNFBPs regarding the BO of any customer which is a trustee managing a trust, the residency and the assets held. The Central Authority has powers under ss.37 and 39 of the POCA (and the CJICA) to issue production orders and search warrants to obtain information regarding trustees. The RG has powers under the Charities Act (ss.25–33) including obtaining information by way of notice, onsite inspections and search warrants.
256. All DNFBPs and FIs have an obligation to identify and verify BO of customers which are trusts as set out under Reg. 16, which also provides that all FIs and DNFBPs must have systems in place to respond properly to requests from a supervisory authority, the FIA or BPS.
257. CAs being the BMA, BCGC, the FIA and the SoRE, have powers under s.16 of the SEA to require the production of information and documents from a person or entity over which it has supervision. Under s.6 of the SEA, the BMA has the duty of supervisory authority over AML/CFT regulated FIs, which

includes a person who carries on a trust business including those which are exempt except where they are utilising a CSP or licensed trust business. Under s.32 the CAs can disclose this information to the FIA, the BPS or the DPP, the Minister of Justice or Finance in relation to criminal proceedings. Where the subject refuses to provide the information, under s.19, the CA, as a supervisor, can apply to the Supreme Court for an Order mandating him within a specified time to do what he has failed to do. (s. 30E vests similar powers in the Board). In addition, under s.17 of the SEA the CAs, which are supervisors have the power of entry to observe, inspect and copy any information found on the premises (s.30F vests similar powers in the Board). The BMA also has power under s.37 of the Trusts (Regulation of Trust Business) Act 2001 to require a licensed undertaking to produce documents or information required to ensure that the undertaking is complying with the provisions of the Act. Under s.28 premises may be entered if a notice has been served, to obtain the information. Under s.50 the information may be disclosed to the DPP and the BPS. Similar powers are vested in the BCGC (ss.14A, and 15 of the Bermuda Casino Gaming Act 2014) and the SoRE (ss.21 and 22 of the Real Estate Brokers Licensing Act 2017).

258. The Treaty Unit, which is responsible for fulfilling Bermuda's treaty obligations in relation to the exchange of tax information has the power for the Minister to access information from the government and public authorities such as the BMA and the Office of the Tax Commissioner. The Minister also has the power to apply for a Production Order under s.5 of the USA Bermuda Tax Convention Act and s.5 of the International Cooperation (Tax information Exchange Agreements) Act 2005 (TIEA 2005). The Treaty Unit has not been identified as a competent supervisory authority.
259. **Criterion 25.6-** –Some information on trusts will be held by Government Departments such as the Office of the Tax Commissioner, the ROC, FIs and DNFPBs such as licensed trustees and PTCs registered as NLPs. Therefore, information can be accessed for the purposes of international cooperation from those trustees via those sources. In relation to companies, which are trustees, BO information is now held by the company and the BMA under the Companies Act and the Limited Liability Company Act as well as by Partnerships under the various Partnership Acts. The BMA also acts as the Controller of Exchange Control and obtains information on the BOs of legal persons who acquire securities which are subject to exchange control and which may include information on trusts as owners of securities as set out under Reg. 12 and 13 of the Exchange Control Regulations 1974.
- a) Basic information may be accessed by foreign CAs either by way of MLAT request, direct request to the Registry or via police to police or Egmont requests via the FIU.
 - b) Domestically available information on trusts may be exchanged on a police-to-police, supervisor to supervisor basis (s.32 of the SEA) or via Egmont. (Met)
 - c) MLA requests may be made for production orders or search warrants (s.8A of the CJICA and, ss. 37-39 of the POCA) to be obtained by the BPS in relation to BO information. Under ss.30A and 30B of the BMA Act the BMA has additional powers to obtain information from any person in Bermuda to assist its international counterparts. S.32(3) of the SAE Act provides a similar provision for other supervisors.
260. The Treaty Unit in the Ministry of Finance may use the Minister of Finance's powers under s.5 of the TIEA 2005 to access information on trusts in the possession of third parties and may obtain information without using such powers which is in the possession of other government departments or public authorities under the policy direction of the government in order to respond to requests from a foreign tax authority.
261. **Criterion 25.7 -** Where the trustee is an AML/CFT regulated FI (which now includes PTCs) the BMA has the power to impose a civil penalty of up to \$10M for failing to comply with the requirements of the POCA, under s.20 of the SEA.

262. A non-professional trustee is required under s.13AA of the Trustee Act to hold proof of identity, residential address and relevant information about the settlor, protector and beneficiaries of the trust and information about transactions carried out on behalf of the trust. Under s.54A of the Trustee Act if this requirement is knowingly and wilfully contravened the Supreme Court may impose a civil penalty of \$20,000. In relation to professional trustees, who are exempt from being licensed, there is an obligation under s.13B of the Trustee Act to hold information on BO with a penalty of \$75 for every day that the trustee does not fulfil this obligation. Therefore, the penalty in relation to non-AML/CFT regulated trustees is not dissuasive.
263. **Criterion 25.8** – Under Reg. 16(4) of the POCR there is a duty on all professional trustees, subject to regulation, to have systems in place to respond as soon as reasonably possible to requests for information from the BPS and the FIA. Under Reg. 19 of the POCR a failure to do so is a criminal offence attracting a penalty of a fine of \$50,000 on summary conviction or a fine of \$750,000 or imprisonment for 2 years (or both) on indictment. For non-professionals who do not provide information in a timely fashion, enforcement authorities can issue a summons and compel the non-professional trustees to disclose information as set out under ss.37-39 of the POCA. Non-professional trustees must retain information pertaining to the trusts they manage under s. 13AA of the Trustee Act and are subject to a civil penalty under s.54A of the Trustee Act of \$20,000, which is dissuasive for a non-professional trustee. There is also the power vested in the Court to take action to remove a trustee.
264. Under s.36 of the Trust (Regulation of Trust Business) Act, the BMA has the power to obtain information and reports from a licensed undertaking. The BMA has authority under s.37 of this Act to demand information and failure to produce such information is a criminal offence. Under s.37(6) of the same Act, if a person without reasonable excuse fails to comply with the requirement imposed on him, he is guilty of an offence and liable on conviction to a fine of \$10,000- or 6-months imprisonment or both. Pursuant to s.38(1) of the same Act the BMA has the right of entry to search premises without a court order. Obstruction of the search effort under s.38.2 of the Trust (Regulation of Trust Business) Act is a criminal offence with a maximum penalty of \$10,000 fine and/or 6 months imprisonment or both. The civil penalties available to the BMA are a maximum of \$10M, which is dissuasive.
265. Under s.30D of the BMA Act, where the BMA requests information on behalf of an international supervisory authority and any trustee fails to provide the information, it is a criminal offence with a penalty on summary conviction to 6 months imprisonment or a fine of \$5,000 or both. If the person provides information that is false or misleading or recklessly provides information that is false or misleading, it is a criminal offence which is liable on summary conviction to 2 years imprisonment or a fine of \$25,000 or both. This power may be applied to any trustee private or professional regardless of whether the trustee is subject to AML/CFT supervision as an AML/CFT regulated FI.

Weighting and Conclusion

266. The required information including BO information is required to be kept by TSPs and PTCs, who are regulated. Some of this information is also required to be kept by individual non-professional trustees but they are not requested to keep information on other regulated agents of, and service providers to, the trust. There are powers available to the BMA in relation to information, which is kept, and penalties are in place for failure to comply. Under ss.30A and 30B of the BMA Act the BMA has powers to obtain information from any person in Bermuda to assist its international counterparts.
- Recommendation 25 is rated largely compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

267. This Recommendation was rated NC in the 3rd MER due to inadequate AML supervision of the non-banking sectors and no CFT supervision, limited scope of AML onsite inspections and no AML/CFT supervisory, enforcement and sanctioning authority under the AML Regulations for the BMA. Deficiencies were addressed by enactment and amendments in the main AML law and individual FI

legislation. The BMA also introduced operational changes in its supervision and increased its resources. There has been no substantive change in the Recommendation except for the inclusion of the prohibition of shell banks.

268. **Criterion 26.1** – As per ss.3(1)(a) and 5 of the SEA the BMA is the designated supervisory authority for regulating and supervising AML/CFT regulated FIs and insurers for compliance with AML/CFT Regulations, directions or licence conditions. AML/CFT regulated FIs include those carrying out banking activities, investment business, trust services, insurance and MSBs. Under s.5(1A) of the SEA, the BMA’s supervisory responsibility also extends to ensuring their compliance with international sanctions obligations (those sanctions imposed by every Order (made by the Privy Council as a United Kingdom Order in Council). FIs carrying on lending and financial leasing which were not subject to AML/CFT supervision have been brought into the scope of the AML/CFT framework as at September 18th, 2018 (Schedule 3 of the POCA 1997 amended to include leasing etc. in definition of FI). The AML/CFT Regulations incorporate the original 2008 Regulations and subsequent enactments. Closed-end funds are not included in Bermuda’s AML/CFT framework.
269. **Criterion 26.2** – - AML/CFT regulated FIs can be either licensed or non-licensed. Those that are licensed are subject to either licensing or registering requirements under the SEA, Bank and Deposits Act (s.11), Investment Business Act (s.12), Insurance Act (ss.3 and 10), Investment Funds Act (S. 5 and 41) and Money Service Business Act (S. 8) and the Credit Union Act S. 7). A non-licensed AML/CFT regulated FI is required under s.9 of the SEA to apply to the BMA for registration. The above measures require the core principles FIs to be licensed. Licensing requirements as set out ss. 13 and 14 of the Banking and Deposit Act prevent the establishment of shell banks. A few types of FIs categorized as “lending outside of banks” are required to be registered with the BMA as NLPs.
270. **Criterion 26.3** – - At the time of licensing, FIs are required to notify the BMA of the proposed appointments or ownership of shares or interest and the minimum threshold for shareholder/member control is 10%. (See ss.30CA-30J of the IA, ss.25-27 of the BDCA; sections.28-32 of the IBA; sections.45A-45E of the Investment Funds Act and ss.25-29 of the MSB Act. The Authorities have advised that under each of the Regulatory Acts for AML/CFT no person may be a shareholder or controller unless the Authority has issued a “no objection”, that is, if it approves of their participation. The legislative power is set out in s.25 of the BDCA. The definition of controller under s.7(3) of the BDCA 1999, defines controller broadly including shareholder controllers and any other persons in control of the FI i.e. parent holding companies. The BMA may direct disclosure of the BOs and has the broad power to seek any information under s.25(2) of the BDCA 1999.
271. Controllers, owners, directors and senior executives of licensed persons are required to be fit and proper. This obligation is included in all prudential regulation as part of the minimum licensing criteria. The Authorities have advised that where a person is found by the BMA not to be fit and proper the BMA can object to that person having any role in a licensed entity, as per s.17(1) of the BDCA 1999.
272. The “fit and proper” requirements also apply to associates of an individual with controlling interest. Definitions of associates are set out in each of the regulatory Acts and include close family members for persons and in the case of legal entities directors or employees. (s.7(9) of the BDCA; ss.1A (10)-(11) of the Insurance Act; ss.7(9)-(10) of the Investment Business Act; s.ss.2A(6)-(7) of the Investment Funds Act and ss.3(8)-(9) of the MSB Act. The above provisions provide measures to prevent criminals or their associated from holding significant or controlling interest or holding a management function in a FI at the licensing stage. While the Authorities have advised that the measures are also applied for subsequent changes and the approval of the BMA is required for these changes as inferred in s17(1) of the BDCA., Additionally, none of the provisions deal with BOs.
273. **Criterion 26.4** – FIs are regulated and supervised in line with the Principles set by the BCBD, IOSCO and IAIS. Additionally, “the SEA 2008, s.5(1) directs supervisory authorities “. . . to supervise on a

risk-sensitive basis and take effective measures for the purpose of securing their compliance with AML/CFT Regulations, directions or license conditions. This approach establishes the basis for planning the frequency, scope and depth of supervision based on institutional and sectoral risk profiles. Supervisory authorities must effectively monitor, on a risk-sensitive basis, the relevant persons and financial groups for whom it is the supervisory authority and take effective measures for the purpose of securing their compliance with their international sanctions obligations,” which meets the requirements of sub-criterion (a). This also applies equally to all FIs that are included in the definition of the term “AML/CFT regulated financial institution”, as defined in s.42A of the POCA and to financial groups, as specified in relation to s. 6(2) of the SEA as the BMA is designated as the supervisory authority for such entities. (s.3(1)(a) of the SEA).

274. **Criterion 26.5** – S.5 of the SEA 2008 has been amended to direct that supervisory authorities must supervise using an RBA). The BMA has developed a Model to identify and quantify the ML/TF risk at the level of each individual FI. The Model is an essential part of the BMA’s wider risk-based AML/CFT Supervisory Framework and enables the Authority to allocate its supervisory resources in the most effective way as per Criterion 26.5(a). The results from the Model are primarily used to develop the BMA onsite and offsite supervisory plan and feeds into the sectoral and national risk assessments as per Criterion 26.5(b). The Model quantifies the FI’s inherent ML/TF risk, as well as the effectiveness of controls the FI has in place to reduce that risk as per Criterion 26.5 (c).
275. **Criterion 26.6** – The BMA has updated and revised profiles of FIs based upon periodic data calls. The BMA has further instituted an annual data call to inform and refine FI risk profiles, and by extension the sectors to which they belong. Data calls are conducted via notice for all sectors except insurance industry which has data calls imbedded in the legislative requirements of the Insurance Act. Regarding groups, the BMA has designated particular financial groups which are significant to have consolidated prudential supervision incorporating AML/CFT as part of consolidated supervision.

Weighting and Conclusion

276. Bermuda’s FIs are regulated and supervised by the BMA except for closed-end funds, which are not under the AML/CFT framework. **Recommendation 26 is rated largely compliant.**

Recommendation 27 – Powers of supervisors

277. This Recommendation was rated PC in the 3rd MER because there was no explicit mandate for the supervisory body to monitor, enforce and sanction for compliance with AML (no CFT application) obligations and no clear AML/CFT enforcement and sanctioning powers. The deficiencies were addressed by amendments to the SEA and the AML/CFT regulations. There is no revision to the Recommendation other than supervisors should have powers to supervise and monitor compliance.
278. **Criterion 27.1** – Ss.3(1)(a) and 5 of SEA gives the BMA the authority for regulating and supervising “AML/CFT regulated FIs, financial groups and insurers that carry on business in or from Bermuda” to ensure compliance with AML/CFT Regulations, directions or licence conditions. The BMA’s responsibilities also include monitoring for the purpose of securing compliance with the AML/CFT Regulations, directions, or license conditions and international sanctions obligations as outlined in S.s 5(1) and 5(1A) and 5(1B)) of the SEA. Powers of the BMA also include information gathering (s.16), onsite inspections (s.17) and application of disciplinary measures as outlined in Chapter 4 of the SEA. Additionally, s.6(2) of the SEA enables the BMA to extend its prudential supervisory powers.
279. **Criterion 27.2** – S.17 of the SEA gives the BMA the authority to conduct onsite inspections of AML/CFT regulated FIs and insurers.

280. **Criterion 27.3** – S.16 of the SEA provides for the BMA to compel production of information from AML/CFT regulated FIs and insurers or their employees without the need to require a court order. This provision would allow the BMA to compel specified information necessary for monitoring compliance with AML/CFT obligations.
281. **Criterion 27.4** - S.20 of the SEA empowers the BMA to impose on FIs a civil penalty of up to \$10M for failure to comply with the AML/CFT requirements set out in the POCR. Additionally, under the various regulatory Acts the BMA has the power to both restrict and revoke a licence for failure to comply with AML/CFT laws. (ss.17-18 (Banks and Deposit Companies Act): ss.41-42 (IA): ss.20-21 (IBA): ss.51-52 (IFA): ss.14-15 (MSB Act), and the Credit Unions Act 2010 ss.14-15). Restrictions of licences include requiring taking or refraining from certain actions, restricting scope of business, imposing limitations or prohibitions on activities, requiring removal of any director, controller or senior executive and specifying any other appropriate action. The BMA is also empowered to: issue directives – s.20A of the SEA, 2018; restrict licenses – s.20B; revoke licences – s.20C; publicly censure – s.20E; issue prohibition orders in relation to individuals who are not fit and proper – s.20F; apply for injunctions – s.20H and petition the Courts for winding-up or dissolution – s.20I.

Weighting and Conclusion

282. **Recommendation 27 is rated compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

283. Recommendation 28 (formerly R.24) was rated ‘NC’ in the 3rd MER. At that time, apart from TSPs, no CA was designated for monitoring DNFBPs for compliance with AML/CFT requirements. Based on the FURs, Bermuda attempted to address the outstanding deficiencies by establishing a supervisory framework for barristers and accountants (SEA Amendment Act, 2010). At the time of the 4th and final FUR there were still issues as to whether the supervisory functions were being carried out regarding DNFBPs.
284. **Criterion 28.1** - (a) Under s.31(1) of the Casino Gaming Act (CGA) 2014, no person can operate a casino in Bermuda without having a valid licence. (b) S.33 of the CGA mandates the BCGC to ensure that the management and operation of a casino is carried out by persons who are suitable and remain free from criminal influence or exploitation and not to grant such licences unless it has taken measures to ensure the fitness and propriety of applicants. Such persons include associates as defined under s.3 of the CGA meaning a person who holds any relevant financial interest 5% or more in capital in the casino business of the casino operator or applicant. This is an ongoing requirement and applies to: s.56 Change in situation of casino operator; s.57 Change in situation of associate; and s.58. On-going monitoring of associates and others captured in the CGA. (c) The BCGC is the established authority and is charged to execute supervision of compliance with AML/CFT obligations under s.5(1) of the SEA.
285. **Criterion 28.2** – Bermuda, through s.3 of the SEA establishes supervisory authorities for the various segments of the DNFBP sector. Namely the BMA for licensed trustees and CSPs; the SoRE for real estate brokers and real estate agents; the Board, in relation to the supervision of lawyers and accountants; the FIA for a regulated non-financial business or profession other than a casino i.e. DPMS.
286. **Criterion 28.3** - All categories of DNFBPs are subject to systems for monitoring compliance with AML/CFT requirements.
287. **Criterion 28.4** - (a) The BMA as the CA for regulating and supervising DNFBPs conducting business as trustees and CSPs has the power under s.31(a) together with S.ss.2(1)(d) and (h) of the SEA to

monitor and supervise these businesses for AML/CFT compliance; similar provision for the Board is found under s.3(1)(b) together with ss.2(1)(a) and (b) of the SEA; the FIA for a regulated non-financial business or profession other than a casino under s.3(1)(c) of the SEA - this includes DPMS; and the SoRE for real estate brokers and dealers under s.3(1)(aa) of the SEA. (b) - The BMA fulfils this criterion at ss.24 -28, 6 and 4(9) –(10) of the Trust (Regulation of Trust Business) Act 2001 (TRTBA) and ss.22-26, 6 and 3(8)-(9) of the CSP Business Act 2012; the Board at ss.9 and 17 of the Bermuda Bar Act, S.25C(3) of the POCR, ss.30C, 30H and 38 of the SEA; the FIA at ss.9, 11A and 12 of the SEA; and the SoRE at ss.13, 17, 18, 45 and 46 of the Real Estate Brokers Licensing Act 2017 (REBLA), Schedules 1 and 3 of the REBLA. (c) – Sanctions for failure to comply with AML/CFT requirements can be applied by the BMA at s.20 of the SEA with civil penalties not exceeding USD10M per breach ss.15 – 16 of the TRTBA and ss.14 – 15 of the CSP Business Act 2012; the Board at ss.30H, 30I and 30K of the SEA with civil penalties not exceeding USD250,000; the FIA at ss.20 -23 & 33 of the SEA with civil penalties not exceeding USD250,000; and the SoRE at ss.20 – 22, 33, of the SEA and ss.35, 49, 50 of the (REBLA), with financial civil penalties not exceeding USD250,000.00 and non-monetary sanctions under ss.17 and 18 of the REBLA.

288. **Criterion 28.5** - (a) S.5(1) of the SEA directs supervisory authorities of DNFBPs to supervise on a risk- sensitive basis and take effective measures for the purpose of securing their compliance with AML/CFT Regulations, directions or license conditions. This approach establishes the basis for planning the frequency, scope and depth of supervision based on institutional and sectoral risk profiles. (b) – Under s.5(1) of the SEA supervisory authorities must monitor DNFBPs on a risk-sensitive basis. Supervision entails monitoring of compliance and the adequacy of risk control systems.

Weighting and Conclusion

289. **Recommendation 28 is rated compliant.**

Recommendation 29 - Financial intelligence units

290. Bermuda was rated ‘LC’ for R.29 (formerly R.26) in its 3rd MER mainly due to the fact that there was no specific legal provision establishing and empowering the FIU as a national Centre for receiving and processing SARs and other relevant information concerning suspected ML or TF activities. The new FIA was established in 2008, is operational and has played a significant role in Bermuda’s 13 ML convictions at the time they exited the follow-up process. Six of those convictions were directly related to STR disclosures whilst the FIA supported the other seven through STR related information.
291. Since Bermuda’s 3rd round MER, changes to the FATF Standards now require that the FIU: (i) conducts operational and strategic analysis; (ii) has access to the widest possible range of information; (iii) has the ability to disseminate information spontaneously; (iv) information is protected by: (a) rules for security and confidentiality; (b) levels of staff security clearance; and (c) limiting access to the FIU’s facilities; (v) has the operational independence and autonomy: (a) to freely carry out its functions; (b) to independently engage in the exchange of information; (c) has distinct and core functions if it is located within the existing structure of another authority; (d) is able to individually and routinely deploy its resources as it freely determines; and (vi) has applied for Egmont membership.
292. **Criterion 29.1** – S.14 of the FIA Act established the FIA as a national centre for receiving, analysing and disseminating information relating to suspected proceeds of criminal conduct, potential ML and TF offences.
293. **Criterion 29.2** – (a) S.14 of the FIAA permits the FIA to receive disclosures filed by Bermuda’s reporting entities pursuant to s.46(A1) of the POCA and s.9 of the ATA. (b)(met) S.9(3) of the SEA mandates the FIA to receive disclosures of cash transactions from registered DiHVG who accept cash over BD7,500. Additionally, s.132A(1) of the CGA requires casino operators (none in operation at

time of the writing of this report) to maintain a record of all single transactions of \$10,000 or more from patrons who either give or take cash from the casino, and file these reports with the FIA.

294. **Criterion 29.3** – (a) The FIA may, while enquiring into a suspicious transaction relating to a ML, TF, or predicate offence, serve a notice in writing on any person requiring that person to provide the FIA with such information as it may reasonably require for the purpose of its enquiry (s.16(1) of the FIAA). The FIA is not limited in its ability to obtain the information it needs to carry out its analytical functions. (b) S.16 of the FIAA permits the FIA to demand the widest possible range of information required to undertake its functions.
295. **Criterion 29.4** – (a) The FIA’s functions include conducting analysis. The procedures for the conduct of operational analysis are outlined in its “FIA Operational Manual – Guide for the Operations Team.” Operational analysis is conducted on reports that are received by the FIA that are selected for more in-depth analysis to establish ML/TF links and targets, and which form the basis for disseminations to law enforcement when warranted. The analysis consists of requests which can be made to any person for information under s.16 of the FIAA to further develop its analysis, checks of open source information and of its goAML database for links to previous reports, requests received by the FIA from CAs, the type of criminal conduct identified and links to PEPs. (b) The FIA also conducts strategic analysis. Procedures for the conduct of strategic analysis are outlined in its “FIA Operational Manual – Guide for the Operations Team.” Information used to conduct strategic analysis is obtained from a wide range of sources including CAs. The FIA has produced, and shared strategic analysis reports prepared from SAR’s filed by specific reporting entities. The analysis reports have determined trends and patterns relative to specific geographical locations of concern and have been disclosed to the relevant CAs locally and overseas.
296. **Criterion 29.5** - The FIA is permitted to disseminate, on its own volition and upon request, information it obtained in connection with its functions (s.18(1) of the FIAA) to any entity once the disclosure is required for enabling the FIA to discharge its functions and to several CAs listed at s.18(1)(a) to (h). Reading this together with s.14(1)(a) of the FIAA, dissemination under this provision also includes dissemination of the results of its analysis. S. 21A of the FIAA mandates the FIA to use secured protected channels for dissemination of the results of its analysis to CAs.
297. **Criterion 29.6** - (a) (met) S.21A of the FIAA provides that information received, processed, held or disseminated by the FIA should be securely protected and disseminated or disclosed only in accordance with agreed procedures, policies, laws and regulations. (b) (met) S.6(2) of the FIAA directly mandate the FIA ensure that its staff have the necessary security clearances and an understanding of their responsibilities in handling and disseminating sensitive or confidential information. (c) (met) Access to the FIA’s facilities is restricted to staff only and is controlled by a key fob entry system. The FIA uses the goAML database management system, to store its information. The system has built in access levels of control and access to the system is restricted to authorised FIA personnel only.
298. **Criterion 29.7** – (a) (a) . S.4(6) of the FIAA mandates that the FIA shall be operationally independent and have the authority and capacity to carry out its functions freely, including the autonomous authority to analyse, request and disseminate information. The responsibility of day-to-day administration of the affairs of the FIA is vested with the Director, (s.7(5)). S.7 of the FIAA addresses the appointment and termination of the Director. Appointment is made by the FIA Board of Directors, subject to the approval of the Minister of Justice. (b) S.19 of the FIAA provides the FIA with the authority to enter into exchange agreements with bodies or persons either in Bermuda or overseas as it considers appropriate. (c) (Not applicable) The FIA is not located within the structure of another authority. S.3 of the FIAA establishes the FIA as a body corporate with perpetual succession and the clear functions noted at s.14 of the said Act. (d) The FIA is legislatively empowered to have the independent operational authority to acquire and to deploy the necessary human resources needed to

carry out its functions both singularly and on an ongoing basis. Funding for the FIA is provided from either the Confiscated Assets Fund which is established under s.55A of the POCA or directly from the Government as specified in s.8 of the FIAA. The FIA submits its budget on an annual basis to the Minister of Legal Affairs for administering on behalf of the Government.

299. **Criterion 29.8** – The FIA has been a member of the Egmont since 2009.

Weighting and Conclusion

300. **Recommendation 29 is rated compliant**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

301. Bermuda was rated ‘LC’ for R. 30 (formerly R. 27). The sole deficiency relates to an effectiveness issue, namely, very low number of prosecutions reflect the low priority given to ML/TF by the Police Service. Recommendation 30 requires that there should be a Law Enforcement Authority (LEA) responsible for ML/TF investigations in a national context. Further, it requires that countries designate a CA to identify, trace and initiate actions to freeze and seize property subject to confiscation.

302. **Criterion 30.1** – The BPS is responsible for policing all laws and preventing and detecting crimes within Bermuda. (s.3 of the Police Act). Further, the POCA (s.57) and the ATA (s.18) provides police officers with relevant powers to effectively apply and enforce this legislation. The OECD is the specialized department established within the BPS to carry out this mandate.

303. **Criteria 30.2** – the OECD by virtue of being a department within the BPS (the agency tasked with preventing and detecting all crimes within the jurisdiction including predicate offences) and being staffed with police officers, is authorized to pursue the investigation of any related ML/TF offences during any parallel investigation.

304. **Criteria 30.3** – The POCA designates the responsibilities of identifying and tracing properties that may be subject to confiscation or is suspected of being the proceeds to a police officer, as they have the authorization to apply for the relevant identification and tracking mechanism under the Act (ss.37, 39 and 41). The DPP is the CA that is responsible for the restraint of properties that is subject to criminal confiscation proceedings (s.28(3) of the POCA). The Enforcement Authority within the AGC is responsible for freezing properties subject to non-conviction base confiscation (s.36H- POCA).

305. **Criterion 30.4** - The provisions of R.30 are applicable to Customs authorities. Customs authorities are tasked with the investigation of associated predicate offences and trade-based ML. Customs authorities are encompassed in the definition of a “*police officer*” in the POCA (s.57) and have the power to investigate the commission of an offence or make arrest for breaches under the POCA (s.57(3)).

306. **Criterion 30.5** – There is no separate designated anti-corruption agency responsible for investigation of ML/TF arising from corruption. The BPS is tasked with the responsibility of investigation of corruption and ML/TF arising from that offence.

Weighting and conclusions

307. **Recommendation 30 is rated compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

308. Bermuda was rated ‘C’ for R. 31 (formerly R. 28). R. 31 expands the powers of LEAs and Investigative Authorities (IAs). CAs should have mechanisms in place to identify whether natural or legal persons

hold or control accounts and be able to request information from the FIU when conducting relevant investigations.

309. **Criterion 31.1** – (a) A police officer may apply to the Supreme Court, pursuant to s.37 of the POCA and s.19 of the ATA, for a production order. Such an Order can be obtained against any person specified in the application for the Order who appears to the court to be in possession of material relating to ML or the whereabouts of any proceeds of criminal conduct and the investigation of TF. (b) A police officer may apply to the Supreme Court, pursuant to s.39 of the POCA and s.20 of the ATA, for a search warrant authorising him or her to enter and search specified premises where there are reasonable grounds for suspecting that a specified person has carried on or has benefited from criminal conduct or committed a TF offence. S.8(1) of the Police and Criminal Evidence Act (PACE) provides for a police officer to obtain a search warrant from a magistrate permitting the search of premises where there are reasonable grounds to suspect that an indictable offence has been committed. S.459 of the Criminal Code Act allows the police to stop and search a person where there is reason to suspect that anything unlawful may be found. (c) The authority for Police officers to record statements is found under s.2 of Code E of the PACE Codes of Practice. (d) S.19 of the PACE permits a police officer who is lawfully on any premises to seize anything which he has reasonable grounds for suspecting is evidence in relation to any offence.
310. **Criterion 31.2** - (a) Undercover operations are permitted through the written authority of the Assistant Commissioner of Police under the BPS Directed Surveillance Authority Policy. It's application was demonstrated in sampled BPS operations (b) The provision to intercept intercepting communications is found under s.28D and s.62 of the Telecommunications Act; (c) the provision to access computer systems is found under s.37(7) of the POCA and S.11 of the Computer Misuse Act; (d) The ability to conduct controlled delivery in Bermuda is present as evidenced in practice and demonstrated in cases where this tactic has been used for example Commissioner of Police v Winston Robinson.
311. **Criterion 31.3** – (a) S.41A of the POCA allows a police officer to apply to a Magistrate or the Supreme Court (in the case of a civil recovery investigation) for a customer information order regarding a confiscation, ML or civil recovery investigation. The FIA has the authority to request information from any person under s.16(1) of the FIAA requiring that person to provide the FIA with such information as it may reasonably require for the purpose of its inquiry. This includes information on natural and legal persons. S.16(2) permits the FIA to request that information in a timely manner. (b) S.37 of the POCA empowers the Supreme Court to grant production orders to compel any person to provide information which will identify assets, S.41 for monitoring orders and customer information orders. Search warrants under s.39 of the POCA are also applicable and can be used to search specified premises without prior notification. Both production orders and search warrants are ordinarily obtained ex parte. S.16 of the FIAA permits the FIA to make requests to identify assets without prior notification to the owner.
312. **Criterion 31.4** – The BPS as the CA in Bermuda for conducting investigations of ML, associate predicate offences and TF may request information from the FIA pursuant to ss.14 and 18 of the FIAA.

Weighting and conclusions

313. **Recommendation 31 is rated Compliant.**

Recommendation 32 – Cash Couriers

314. Bermuda was rated 'NC' for R.32 (formerly SR. IX) in the 3rd MER. The deficiencies included (i) no disclosure or declaration system for either incoming or outgoing transportation of currency, (ii) the scale of civil and criminal monetary fines was not sufficiently dissuasive, (iii) domestic cooperation on customs issues insufficient, (iv) information sharing between customs and LEAs insufficient and (v) no consideration given to a procedure to notify other customs agencies of search and detention

reports relating to precious metals other than gold and precious stones. Bermuda addressed the foregoing deficiencies, through enactment and amendment to legislation namely the Revenue Act as is detailed in its 2nd and 3rd FURs. The new requirements for the 4th Round are in criteria 32.2 and 32.10 and are related to the declaration of currency or BNIs and the existence of safeguards which ensure the proper use of information collected through the declaration/disclosure system.

315. **Criterion 32.1-** Bermuda has implemented a declaration system, for both incoming and outgoing cross-border transportation of currency and negotiable instruments whether transported by traveller, mail or cargo (s.16 of the Revenue Act (RA)). The declaration system requires any person entering, importing or exporting currency or negotiable instruments or arriving at or leaving Bermuda to make a declaration using a prescribed customs declaration form.
316. **Criterion 32.2 –** a) The Collector of Customs under S.16(2) of the RA may prescribe the form of customs declarations and the documents that must accompany a customs declaration. Declarations must be made on a Customs Form as prescribed at S.4(2) of the Revenue Customs Declaration Notice (RCDN) 2010 (b) (met) S.4(c) of the RCDN mandates that travellers with cash or negotiable instruments greater than USD10,000 must make a written declaration to Customs. (c) (not applicable) Bermuda has a written declaration system for all travellers.
317. **Criterion 32.3 -** Bermuda has employed a written declaration system.
318. **Criterion 32.4 –** There are measures which give the CAs the authority to request and obtain further information from the carrier in the context of the discovery of a false declaration or disclosure of cash or BNIs. S.99(1)(B) of the RA mandates that a customs officer may within 2 years of importation or exportation require the importer, exporter or owner to produce records, answer questions or make a written declaration with respect to currency or negotiable instruments.
319. **Criterion 32.5 -** Bermuda sanctions for false declaration are proportionate and dissuasive. Any person making a false declaration is liable to forfeiture and payment of a civil penalty of USD12,000 in accordance with s.111A of the RA; or on indictment to imprisonment for up to a maximum of 5 years or to a maximum fine of USD100,000 or to both; or in addition have the item forfeited. (s.86 of the RA).
320. **Criterion 32.6 -** a) Information obtained through the declaration system is made available to the FIA. Firstly, the FIA is notified by the Joint Intelligence Unit (JIU). The JIU is made up of Customs, Immigration and the BPS. (b) The information obtained is communicated to the FIA Customs liaison officer (Customs Officer situated in the FIA) in accordance with S. 16 of the FIAA 2007 and supplemented by a MoU between Customs and the FIA entered June 27th, 2018. The MoU provided by the Authorities addressed the matter of secondment of staff between the FIA and Customs and the access to all Customs data by the FIA. The agreement also allows the FIA direct access to the customs database and information relative to the processing of customs declarations on all imports and exports.
321. **Criterion 32.7 -** Coordination and cooperation on issues relative to the implementation of R.32, takes place through the Joint Intelligence Unit (JIU). Further, coordination and cooperation are strengthened between the FIA and the Customs Authorities with a customs officer that is situated at the FIA acting as a liaison. Although the Authorities referenced meetings between the Commissioner of Police, DPP, Customs and the Director of the FIA to discuss strategic matters relative to R.32, no documentation demonstrating such was provided.
322. **Criterion 32.8 -** (a) The POCA (S.50(2)) authorizes a police officer (inclusive of a customs officer s.57) to seize cash, if he has reasonable grounds that it directly or indirectly represents a person's criminal conduct or is intended by any person for use in criminal conduct for an initial period of 48 hours. Subsequent detention can follow for a period of 3 years, if authorized by a Magistrate.

323. (b) Ss.16(5) and 86(3) of the RA prescribe that if a false customs declaration is made in respect of currency or BNIs, the currency or BNI in question is liable to forfeiture. Under the RA 1898, all goods, currency or negotiable instruments subject to forfeiture may be seized by a customs officer in accordance with the powers granted under s.100(1). There is also a power of seizure under s.50 of the POCA where the officer has reasonable grounds to suspect the currency or BNIs represent the proceeds of criminal conduct or is intended for use in criminal conduct. Cash may be detained for 48 hours; further detention must be authorized by a Magistrate.
324. **Criterion 32.9** – The Collector of Customs has issued a Collector’s Directive (provided for under s.2(2) of the Customs Department Act although this merely appoints the Collector of Customs) dated 18th July 2018 requiring that official government documents including declarations be retained in accordance with the defined retention periods. Failure to adhere to the Directive would constitute misconduct. No provisions were cited in relation to the use of this information to facilitate international cooperation. Further, it was not clear that the information would include the amount of currency or BNIs disclosed or otherwise detected or the identification of the bearer (if other than that declared). Therefore, the Assessors concluded that the Directive would assist but would not mandate the retention of all the required information in relation to (a) declarations or disclosures exceeding the prescribed threshold (b) declarations or disclosures which were false or (c) declarations or disclosures where there was a suspicion of ML/TF.
325. **Criterion 32.10** - S.125 of the RA imposes an obligation on Customs officers not to disclose information which shows the value of any particular goods or consignment of goods, which is a criminal offence. However, this does not cover the security of all information collected. Bermuda’s cross border declaration requirements do not appear to restrict trade payments or limit the movement of capital.
326. **Criterion 32.11** - (a) The criminal sanctioning regime appears to be proportionate and dissuasive relative to cash that has a nexus to ML and TF. Once charged and convicted the penalties captured at criterion 3.6 and 5.6 apply. (b) CAs can apply for forfeiture and confiscation of cash that is suspected to be derived from criminal conduct or is deemed to be terrorist property in line with measures under R.4 (ss.9 and 51 of the POCA; s.15 of the ATA).

Weighting and conclusion

327. Bermuda has implemented systems for the monitoring and declaration of cross border movement of cash and negotiable instruments. No provisions were cited in relation to the use of information retained by Customs to facilitate international cooperation. Further, it was not clear that the information would include the amount of currency or BNIs disclosed or otherwise detected or the identification of the bearer (if other than that declared). There are inadequate safeguards in relation to the confidentiality of the information retained. **Recommendation 32 is rated partially compliant.**

Recommendation 33 – Statistics

328. This Recommendation (formerly R. 32) was rated ‘PC’ in the 3rd MER. The main deficiencies were the inadequacy of the statistics being maintained in some sectors and the little use to which the statistics were being put at the time. During the follow-up process statistics were provided to demonstrate that Bermuda was in fact maintaining the statistics as required by R.32.
329. **Criteria 33.1-** (a) the FIA maintains comprehensive statistics on SARs received and disseminated as evidenced in its published annual reports. (b) . The BPS and DPP maintain statistics on prosecutions and convictions and can readily reproduce those relating to predicate offences investigated and prosecuted, ML/TF investigations, prosecutions and convictions. (c) The DPP maintain statistics on property frozen, seized and confiscated and can produce the number of orders and the sums of monies collected from confiscations and forfeitures. Statistics on civil recover actions by the AGC are also

maintained. (d) Both the AGC and the DPP maintain statistics on the number of international cooperation requests received and made in relation to criminal matters. The FIA maintains comprehensive statistics on the number of international requests made and received with foreign counterparts and through Egmont.

Weighting and conclusions

330. **Recommendation 33 is rated compliant.**

Recommendation 34 – Guidance and feedback

331. This Recommendation (formerly R. 25) was rated ‘PC’ in the 3rd MER, the deficiencies found at the time were that the Guidance Notes did not provide adequate descriptions of TF techniques; did not cover CFT, were outdated and limited in scope. Additionally, amongst the TSPs and CSPs only the TSPs were covered by the Guidance Notes and there were no procedures in place for providing feedback to FIUs. The deficiencies were addressed through sector specific guidance conducted through quarterly feedback meetings by the BMA. Bermuda also has automatically generated reports by the Goal application software, annual reports and regular industry outreach sessions.

332. **Criteria 34.1** – S.49M of the POCA refers to the use of Guidance issued by a supervisory authority in the determination of non-compliance offences. Under s.5(2) of the SEA a supervisory authority must issue guidance as to compliance with the POCA, other specific legislation and international sanctions and update the guidance to take account of amendment to the regulations, legislation and best practice. The BMA has issued guidelines to the AML/CFT regulated FIs and DNFBPs under its purview, the SoRE has issued guidance for real estate brokers and agents and the FIA has similarly executed same for DiHVG. The Board has issued guidance for lawyers and accountants. No provisions were cited regarding the BMA providing feedback to regulated entities in relation to detecting and reporting suspicious activity. No provisions were cited in relation to specific feedback by the FIA although the FIA relies on its annual report publications as the means for providing some feedback in relation to this.

Weighting and Conclusion

333. Feedback to assist regulated entities in detecting and reporting suspicious activity is limited.
Recommendation 34 is rated largely compliant.

Recommendation 35 – Sanctions

334. In its 3rd round MER, Bermuda was rated PC with R. 17 with four (4) underlying deficiencies Bermuda has taken steps to close these gaps in its 5th FUR.

335. **Criterion 35.1** - As it relates to R.6, the penalty for contravening the provisions in relation to the freezing of funds and making funds available under the Afghanistan (United National Measures)(Overseas Territories) Order 2012 is only 2 years whereas for the other two Orders the relative sanction is 7 years imprisonment, which is more dissuasive. The fines in relation to the main offences are unlimited. However, the Afghanistan Order also does not impose a dissuasive sanction in relation to a relevant institution failing to declare the required information to the Governor nor in relation to those who fail to comply with or wilfully obstruct a request for evidence or information (\$5000). Under the ISIL Order failing to comply with a request for evidence or information or disclosing information obtained in accordance with an Order attracts only attracts a fine of \$5000. Under the UNSCR 1373 Order, a relevant institution which fails to comply with reporting obligations is liable to a fine not exceeding the statutory maximum. A person who fails to comply with a request for information is liable to the same penalty. All the penalties under each of the three Orders are applicable to legal persons, natural persons and, where the offence is committed by a body corporate, to an officer who has consented or connived in its commission or whose negligence has led to the commission of the offence. Therefore, the fines for the offences outlined above, especially with regard to legal persons are not dissuasive.

336. In addition to the penalties under the Order, there are other penalties available within Bermuda, under the regulatory acts under which supervisors must monitor compliance with international sanctions in force in Bermuda. For example, under s.20(1A)(a) of the SEA the BMA may impose a civil penalty of up to BD10M, the SoRE and the FIA in its supervisory capacity may impose a civil penalty of up to \$250,000, which mitigate the low fines to some extent. There are also a range of disciplinary measures available under the SEA; the power to issue directives – s.20A; The power to restrict licences – s.20B; the power to revoke licences – s.20C; the power to publicly censure – s.20E; the power to issue prohibition orders in relation to individuals who are not fit and proper – s.20F; the power to apply for injunctions – s.20H; and the power to petition the Courts for winding-up or dissolution – s.20I.
337. There may be cases for example, where the AML/CFT breach is considered to give rise to prudential concerns and a breach of the minimum criteria enabling the BMA to impose sanctions under the relevant regulatory Acts. The BMA may choose to use the powers under the relevant regulatory Act to more effectively address the problem in addition to/instead of a civil penalty. These powers are acceptably dissuasive.
338. There is no distinction between natural and legal persons and that a person who fails to comply with Regs. 3 (general duties), 4 (due diligence requirements), 5(1) and (3) (systems and controls), 6 (record-keeping), 7 (internal reporting procedures) and 8(1) (training, etc.) are liable on summary conviction, to a fine not exceeding \$50,000 and on conviction on indictment, to a fine not exceeding \$750,000, or up to 2 years imprisonment, or both. A person who fails to comply with Reg. 9 (annual reports) is liable on summary conviction, to a fine not exceeding \$5,000 and on conviction on indictment, to a fine not exceeding \$10,000, or up to 2 years imprisonment, or both. Administrative penalties can be found under s.20(1A)(a) of the SEA, which allows the BMA to impose a civil penalty to a maximum of BD10M for failure to comply with any requirement of the POCR. In Bermuda there also exists non-financial penalties, which are in addition to the range of criminal penalties available. There are also a wider range of disciplinary measures available under Chapter 4 of the SEA, to the BMA, the FIA and the SoRE, which have been stated above at criterion 35.1. These are acceptably dissuasive.

DNFBPs (R.23)

339. Ss.20, 21, 35, 49 and 50 of the SEA places the relevant obligations on real estate brokers and agents. Reg. 19 of the POCR provides the Board with the power to impose penalties and sanctions on Barristers and Accountants for non-compliance with requirements in R. 18 and 22.
340. In addition to the penalty provisions under s.20 of the SEA which applies for FIs and DNFBPs, expanded disciplinary powers are available under the recently amended Chapter 4 of the SEA. Except for the Board, the enforcement powers under Chapter 4 are available to the other DNFBP supervisors. The Board's enforcement powers are prescribed in s.30H of the SEA (power to issue directives) and 30I (power to impose civil penalties).
341. Regulation 2A of the International Sanctions Amendment Regulations 2018 expanded the application of the provisions of all of the Overseas Territories Orders, to “*relevant businesses or professions*” – a term which is defined to include auditors, casinos, DPMS, external accountants, independent legal professionals, real estate agents, tax advisers and TCSPs. In consequence of this, the obligations under these Orders and the penalties available thereunder also apply to these DNFBP sectors.
342. ***Criterion 35.2*** - Where a body corporate is in breach of AML/CFT requirements and the breach was committed with the consent or the connivance of an officer of the body corporate the CA may impose a civil penalty against both the body corporate and the officer (s.24D of the). ‘Officer’ means a director, manager, chief executive, member of the committee of management, or a person purporting to act in such capacity. Criminal penalties are also applicable.

Weighting and conclusions

343. Most of the penalties in relation to Recommendation 6 are dissuasive, however, there are some offences for which the penalties, particularly where there is no corresponding regulatory breach are low. There is a range of civil and criminal penalties for natural and legal persons who fail to comply with AML/CFT requirements (R.8-23) which appear proportionate to similar offences in Bermuda but not dissuasive. **Recommendation 35 is rated largely compliant.**

Recommendation 36 – International instruments

344. Recommendation 36 (formerly R. 35 and SR. I) was rated ‘LC’ and ‘PC’ respectively in the 3rd MER. The deficiencies highlighted were shortcomings in relation to the implementation of provisions in the Vienna, Palermo and Terrorist Financing Conventions. For SR. I the deficiencies were that the definition of ‘person’ and ‘entity’ were not consistent and may affect whether terrorist groups are captured for some offences and that there was no provision under terrorism legislation for access to frozen funds as required by UNSCRs 1373 and 1452.
345. **Criterion 36.1**– The following Conventions have been extended to Bermuda by the Government of the United Kingdom of Great Britain and Northern Ireland : a) United Nation Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) on February 8th 1995, b) United Nations Convention against Transnational Organized Crime (Palermo Convention) on August 5th 2000 and c) International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention) on October 3rd 1999. The United Nations Convention against Corruption (Merida Convention) was extended to Bermuda on 4th June 2018.
346. **Criterion 36.2** – Bermuda has implemented the Vienna, Palermo, Merida and Terrorist Financing Conventions through the following legislation: Misuse of Drugs Act, International Cooperation Act, Proceeds of Crime Act, Criminal Code and the Bribery Act

Weighting and conclusions

320. **Recommendation 36 is rated compliant.**

Recommendation 37 - Mutual legal assistance

347. Recommendation 37 (formerly R. 36 and SR. V) were both rated ‘C’ in the 3rd MER. Countries are now required to provide non-coercive assistance regardless of dual criminality provisions.
348. **Criterion 37.1** S.6 of the Criminal Justice (International Cooperation) (Bermuda) Act 1994 (CJICA) provides for the AGC to act as the Central Authority. The AG must be satisfied that an offense has been committed or that there are reasonable grounds for suspecting that such an offense has been committed to provide mutual legal assistance. If so, he should nominate a court in Bermuda ‘forthwith’ to receive the evidence (s.6 POCM4 amending s.6 CJICA). A wide range of mutual legal assistance can be provided for matters related to ML, TF and predicate offences, investigations, prosecutions and related proceedings as long as it is an offence in the requesting jurisdiction. Production orders, search warrants and disclosure of information are addressed by ss.37, 39 and 40 of the POCA.
349. **Criterion 37.2** – The AGC acts as the central authority pursuant to ss.5 and 6 of the CJICA. Additionally, the AGC maintains a database system to manage and monitor progress on requests received. There is a prioritisation of requests based on the NRA and timelines are provided for in the Attorney General’s MLA Procedure and Policy document of May 2010, updated July 2018.
350. **Criterion 37.3** – There are no prohibitive or unreasonably restrictive conditions to MLA. Pursuant to Part IIA, s.11E of the CJICA the CA the ability to decline a request if the requesting jurisdiction does not agree to assist with costs in excess of BD500 (labour costs not considered). The Attorney General may decline the request under s.11E if it relates to a summary offence and relates to a period which is more than 12

months after the offence was committed, the information is not in the control of the person named in the request, the information is subject to legal professional privilege, Bermuda would not be able to obtain the information under its own laws, the disclosure of the information would be contrary to public policy or the AG is not satisfied that the requesting state will keep the information confidential.

351. **Criterion 37.4-** (a) The grounds for refusal outlined in s.11EE of the CJICA do not include fiscal matters. Assistance can be provided in fiscal matters where there is dual criminality see 37.6. (b) Pursuant to s.11E(2)(c) of the CJICA, requests are not refused on the grounds of secrecy or confidentiality requirements on FIs or DNFBSs, unless the relevant information that is sought is held in circumstances where legal professional privilege applies.
352. **Criterion 37.5-** The CJICA at s.11N provides that information obtained on behalf of a requesting state and requests for the location or identification of persons and items are all subject to confidentiality requirements. Additionally, the confidentiality of the requests is maintained as only certain officers within the AGC are assigned to and have access to the hard copy and electronic copy of the files whilst the matter is pending. A separate filing cabinet has been obtained to secure the MLAT files and only certain officers within the AGC have access to the filing cabinet key.
353. **Criterion 37.6 -** Bermuda does not impose dual criminality save in limited circumstances for fiscal offences when proceedings have not yet been instituted in the foreign country. S.6(3) of the CJICA requires that the request relate to conduct that constitutes an offence of the same or similar nature if it had occurred in Bermuda. Criminal tax evasion is an offence in Bermuda under s.37 of the Taxes Management Act 1976, however this section does not apply to income tax (s.2 Taxes Management Act 1976). Where tax evasion is a predicate offence for ML dual criminality is met under s.3 of the POCA, which disapplies s.2 of the Taxes Management Act for the purposes of relevant offences for ML. No provisions have been cited to allow the Assistance to be rendered where the request does not involve coercive action in fiscal matters.
354. **Criterion 37.7-** Dual criminality is only required for fiscal offences in which proceedings have not yet been instituted by the requesting jurisdiction. However, even where a request is received in which proceedings have not yet been instituted by the requesting jurisdiction for fiscal offence, International Cooperation Act 1994 does not require that both countries place the offence within the same category of offence, or denominate the offence by the same terminology, to meet dual criminality requirements but rather that the conduct is examined (s. s.6(3)(9b) of the CJICA).
355. **Criterion 37.8 -** (a) The investigative powers of production orders and search warrants are also available for use in response to requests for mutual legal assistance (s.37(12) of the POCA). Seizure powers exist upon the execution of a search warrant (s.39(4A)(5)). Witness statements may be taken under s.6(3) of CJICA. (b) No provisions were cited to indicate that a broad range of other powers and investigative techniques may be used in response to requests for MLA although general police powers have been used (under s.4 of the Police Act and ss.6 and 8A of the CJICA).

Weighting and Conclusion

356. Bermuda does not impose dual criminality save in limited circumstances for fiscal offences when proceedings have not yet been instituted in the foreign country. In these instances, dual criminality is met where tax evasion is a predicate for ML but not where tax evasion is the sole offence. However, given the risk profile of Bermuda, it is the risk of tax evasion as a predicate for ML which is of greater significance. Further, once proceedings have been instituted in the foreign country dual criminality is not required. The AGC is the central authority and maintains a database system to manage and monitor progress on requests received. The ability to use the CJICA for production orders and search warrants was established. However, the power to use the other domestic investigative powers outlined under criterion 31.1 in relation to international requests was only available via general police powers, no specific power in relation to international requests as opposed to domestic investigations was provided. This may hinder

the ability to assist Requesting States with their investigations by providing a broad range of other powers and investigative techniques. **Recommendation 37 is rated largely compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

357. Bermuda was rated ‘LC’ for R.38 in its 3rd MER on account that there were no specific procedures facilitating expeditious action or establishing precise timelines for responding to MLA by foreign countries with respect to identifying, freezing, seizing or confiscating proceeds of crime or instrumentalities of ML, FT or other predicate offenses. In addition, there was no statutory provision for external confiscation requests relating to instrumentalities and no arrangements for coordinating seizure and confiscation actions with other countries.
358. The new FATF requirements are at criteria 38.2, 38.3 (b) and 38.4. The analysis of 38.4 is required in so far as this criterion is now a direct obligation whereas in the 2004 methodology the obligation was only due for consideration. The issues are: (i) whether measures exist for aiding requests for non-conviction-based confiscation; (ii) whether measures exist for managing and disposing of property frozen, seized and confiscated; and (iii) whether measures exist for managing and sharing confiscated proceeds with other countries.
359. **Criterion 38.1** - (a) to (e) S.53 of the POCA provides for the AG to make, by Order provision for the enforcement of overseas forfeiture and confiscation orders. An external confiscation order under schedule 3 regarding criteria 38.1(a)-(e) can be found in Art. 2A(1)(a)(ii) of the Proceeds of Crime (Designated countries and Territories) Order, 1998 (POCDCTO) which outlines that an external confiscation order can be an order made by a designated country for the purpose of recovering property, obtained as a result of or in connection with a relevant offence. Article 2A(2) references an external confiscation order, decree, direction or judgment or any part thereof however described.
360. **Criterion 38.2** - S.6 of the CJICA provides for the giving of assistance where criminal proceedings have been instituted or a criminal investigation has begun, regardless of whether the perpetrator is unavailable by reason of death, flight, absence, or the perpetrator is unknown, assistance can be provided. S.6(2)(a) and (b) articulates the conditions precedent to the AG nominating a court in Bermuda to accept the evidence to which the request relates. S.6A of the CJICA covers the requirements of this criterion for non-conviction-based confiscation proceedings and related provisional measures.
361. **Criterion 38.3** - (a) Bermuda currently has an agreement with the USA relating to Mutual Legal Assistance in Criminal Matters dated 12th January 2009, which provides for coordinating seizure and confiscation actions. There are no formal arrangements for coordinating seizure and confiscation actions with other countries. However, Bermuda has made efforts for the extension of UK treaties to its jurisdiction and this is in progress. (b) Under s.31 of the POCDCTO a receiver can be appointed by the Supreme Court which has direct oversight as to the final order regarding the disposal of the property.
362. **Criterion 38.4** Bermuda can share property or the proceeds of the sale of property that was made pursuant to an external confiscation or recovery order (s.54A of the POCA). Here consideration will be given to the total value of the order, the total law enforcement effort and the level of assistance provided by Bermuda. Bermuda agreement with the USA provides for the sharing of confiscated property.

Weighting and Conclusion

363. Other than the USA there are no formal arrangements for coordinating seizure and confiscation actions with other countries. **Recommendation 38 is rated largely compliant.**

Recommendation 39 – Extradition

364. This Recommendation was rated ‘LC’ in the 3rd MER. There were concerns regarding undue delays due to the undefined structure of the request process. According to the 3rd FUR the AGC and the DPP had established processes for both initiating and receiving extradition requests. The revised FATF Standards

require an adequate legal framework for extradition with no unreasonable or unduly restrictive conditions when assessing and rendering extradition requests. There should be a clear and efficient process to facilitate the execution of extradition requests, and the progress should be monitored by a case management system.

365. **Criterion 39.1** - (a) The UK Extradition Act 2003 was extended to Bermuda by The Extradition Act 2003 (Overseas Territories) Order 2016, on the 10th November 2016, and was fully entrenched into local legislation on the 27th April 2017 by amendment to the Extradition Act (EA). ML and TF offences would qualify for extradition pursuant to s.137 of the Order, which deems any offence which is punishable by at least 12 months' imprisonment in both the requesting and requested territory an extraditable offence. S.138 adds the additional requirement of a minimum 4-month sentence in cases where the offender has already been sentenced. (b) Bermuda has processes for requests for extradition in relation to ML and TF to be executed without undue delay. The DPP has an electronic case management system that assists in providing timely execution of extradition requests. There is also a Specialist Section consisting of 5 Counsel within the Department who can prioritize requests as appropriate. The legislation provides for the urgent arrest of fugitive offenders on receipt of a provisional request, the requirements for which are less rigorous than those for a full request. (ss.74(10) and (11) of the EA). Any extradition hearing scheduled, whether the process was initiated by way of a full request or provisional arrest, must be fixed 'such as to ensure no unnecessary delay' (ss.75(2) 75(2) and 76(3)). (cS.79 of the UK Extradition Act, 2003 as extended, contain the bars to extradition which reflect common international standards for extradition and are not unreasonable. Ss.80-84 of the EA present the circumstances under which a judge is required to decide whether the person's extradition is barred. S.87 requires the extradition judge to consider the subject's rights under the European Convention on Human Rights.

366. **Criterion 39.2** - There is no constitutional or statutory bar to the extradition of Bermudians or British nationals from Bermuda. It is submitted that Bermuda has extradited Bermudians in the past.

367. **Criterion 39.3** – Dual criminality is required for extradition. See ss.137 and 138 of the UK Extradition Act (as extended to Bermuda). The requirement is deemed to be satisfied regardless of whether both countries place the offence within the same category of offences or name the offence by the same terminology. What is required is that both countries criminalise the conduct underlying the offence and that both offences attract a maximum penalty of at least 12 months' imprisonment.

368. **Criterion 39.4** - S.127 of the UK Extradition Act, 2003 sets out mechanisms to extradite by consent. The fugitive must consent his willingness in writing to be extradited. The effect of such consent is that the case is sent immediately to the Governor for final decision. The Order also allows for the admission in extradition proceedings of documents sent by facsimile transmission and electronic transmission (see s.203).

Weighting and Conclusion

369. **Recommendation 39 is rated compliant.**

Recommendation 40 – Other forms of international cooperation

370. This Recommendation was rated 'C' in the 3rd MER. There were no deficiencies.

371. **Criterion 40.1** – there are various provisions for the exchange of information regarding ML/TF and associated predicate offences both spontaneously and upon request. These include letters rogatory s.6 of the CJICA as read with Order 70 of the Rules of the Supreme Court, Provisions under the POCA, MOUs between the BMA and the IAIS and IOSCO and 26 bilateral MOUs with CAs and Exchange of Notes (2016) with the UK regarding the exchange of BO information. S.14 of the FIAA prescribes the functions

of the FIA and permits the FIA to exchange all information obtained by the FIA while carrying out its functions to a foreign FIU. S.18 of the FIAA permits the exchange of information with foreign FIUs spontaneously and upon request, Information Exchange By Request - Bilateral Instruments - TIEAs, USA - Bermuda Foreign Account Tax Compliance Agreement, UK - Bermuda Foreign Account Tax Compliance Agreement, US-Bermuda Country By Country Agreement, OECD Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information and OECD Multilateral Competent Authority Agreement on the Automatic Exchange of Country-By-Country Reports are a sample of the wide range of international co-operation options available.

372. **Criterion 40.2** – (a) The legal basis for the provision of information is found in various statutes. For example, s.6 of the CJICA provides a lawful basis for the AGC to provide cooperation. For the BMA this is found under s.32 of the SEA; the FIA – ss.4(6), 14, 18 and 19 of the FIAA; the MoF -s. 5 and 6A of the International Cooperation TIEA; the Treaty Unit – s. 4A of the USA Bermuda Tax Convention Act; The Registry General – ss.31 and 32 of the Charities Act. (b) the authority to use the most efficient means to cooperate is connected to the lawful basis for providing cooperation as outlined at 40.2(a) and (c) clear, secure gateways for the transmission of information include the use of sealed envelopes using international mail services and express couriers -AGC and Treaty Unit; dedicated gateways on websites – BMA; Interpol – BPS and ESW – FIA. (d) The AGC has a policy which gives a 3-5-day time frame to address requests. Requests are prioritized considering their level of threat under the NRA. The BMA service policy stipulates 10 days for responses. The FIA prioritizes TF and urgent requests. International requests are typically responded to within 30-60 days. (e) AGC – only specific authorized persons have access to information received confidentially; Customs maintains a secure IT network; The FIA has a security policy and uses goAML for its data management, this program is driven by a security model that specifies what kind of access and rights each user has. This provides an audit trail and full logging of every transaction done by each user. Treaty Unit – s.3A of the USA Bermuda Tax Convention Act provides that no person who receives a request; or obtains information directly or indirectly shall disclose the request or the information to another person except in accordance with the Act. The procedure followed by the Treaty Unit representatives for handling incoming requests is set out in the Treaty Unit – Processing of Exchange of Information Requests document. The BMA Policy sets out processes for safeguarding information, additionally s.31 of the BMAA and s.31 of the SEA outlines statutory requirements to keep information in its possession confidential.
373. **Criterion 40.3** - Although bilateral and multilateral agreements and MOU agreements are not required for Bermuda authorities to provide assistance, CAs have signed several bilateral and multilateral agreements and MOU agreements in a timely manner to facilitate cooperation with foreign counterparts.
374. **Criterion 40.4** - There is no restriction to CAs' provision of feedback to CAs from which they have received assistance, on the use and usefulness of the information obtained.
375. **Criterion 40.5** - (a) Provisions for CAs to exchange information are found under various Acts. See references at 40.1, There is no restriction regarding fiscal matters. (b) There are no conditions or limitations on CAs pertaining to the sharing of information based on legal professional privilege or secrecy; the only exception applies to the AGC ss.8A and 11E CJICA where information subject to legal professional privilege or secrecy will not be shared. (c) Only if assistance will impede or prejudice a local investigation would a request be refused. The Treaty Unit within the MoF pursuant to s.5 of the USA Bermuda Tax Compliance Act (BTCA) does not have this limitation. (d) There is no restriction on the exchange of information based on the status of the counterpart authority, s.6(1) of the CJICA only requires that the AG is satisfied that the counterpart authority appears to have the function of making the kind of request to which s.6 applies.

376. **Criterion 40.6**- Various legislative provisions are in force to control and safeguard that information exchanged is used by CAs only for the purpose intended and authorised namely ss.30A(3) and 31 of the BMAA, s.21 of the FIAA, ss.5 and 11D of the CJICA, ss.58 58 and 58A of the CDCTO, ss.2(1), 3(2) and 5A of the International Cooperation TIEA Act, ss.3, 3A and 5A of the USA Bermuda Tax Convention Act.
377. **Criterion 40.7** – The confidentiality of all information handled by the BMA is provided for under s.31 of the BMAA and ss.31 and 32 of the SEA. S.17 of the FIAA imposes similar confidentiality requirements for the protection of all information handled (received, disseminated, processed and held) by the FIA. These legislative provisions also present for the AGC under s.11E of the CJICA; and the Treaty Unit under ss.2(1), 3(2) and 5A of the International Cooperation TIEA Act. S.4(g) of the International Cooperation TIEA Act permits the Minister of Finance to decline the request if the information cannot be protected by the requesting CA.
378. **Criterion 40.8** - S. 30B of the BMAA and s. 14 of the FIAA empowers these CAs to conduct enquiries on behalf of foreign counterparts and to exchange all information that would be obtainable by them if such enquiries were being carried out domestically. These provisions also exist for the AGC under s.8A of International Cooperation Act, the BPS under s.4 of the Police Act.
379. **Criterion 40.9** – Bermuda has the legal basis for cooperating and can conduct enquiries and co-operate with a foreign FIU pursuant to s.14(3) of the FIAA.
380. **Criterion 40.10** – During the period of 2013 to 2016 the FIA has received approximately 20-25 number of requests for feedback from foreign FIUs. In all cases the FIA has provided feedback within an average time of 3-5 days. During 2018 the FIA has responded to two feedback requests from foreign FIUs and received 1 in return that was sent to an overseas FIU.
381. **Criterion 40.11**- This is provided by ss.14 and 18 of the FIAA information that would be obtainable by the FIA if it were conducting domestic inquiries can be exchanged with foreign FIUs in addition to being sought and exchanged if not already within the possession of the FIA.
382. **Criterion 40.12** - Under s.32 of the SEA there is express provision to cooperate with other CAs carrying out supervisory functions.
383. **Criterion 40.13** –Under s.31 of the BMAA and s.32 of the SEA, the BMA can exchange information obtained or domestically available to the Authority, including information held by FIs, provided the BMA is satisfied the information is for the purposes of the foreign CAs carrying out functions similar to foreign counterparts.
384. **Criterion 40.14** - The powers for sharing information by the BMA as regulator with other regulators that have a shared responsibility for FIs operating in the same group includes information relevant to AML/CFT and is set out in s.32 of the SEA and s.31 of the BMAA. Under these circumstances the BMA is enabled to share (a) details of the regulatory framework and general information; (b) information of core principles, BO management, and fitness and propriety; and (c) information on internal AML/CFT policies and procedures, CDD information, samples of accounts and transaction information.
385. **Criterion 40.15** - S.30 of the BMAA enables the BMA to assist those overseas regulators with enquiries as appropriate, specific to the core principles of the FIs which the foreign counterpart also regulates in order to facilitate effective group supervision. There is no restriction under Bermuda law which would prohibit a foreign counterpart from carrying on its own inquiries.

386. **Criterion 40.16-** The statutory provisions in s.31 of the BMAA and s.32 of the SEA which enable the BMA to share information, follow the international standards in that the BMA requires authorisation to disseminate information it has obtained from a requested CA or use to for its supervisory purposes. It is a criminal offence to share information without the necessary consent. The BMA reiterates this statutory requirement in all bilateral MOU's it enters.
387. **Criterion 40.17 -** S.4 of the PA, gives the BPS a broad mandate to investigate all crimes and to prevent and detect crime. The BPS Strategic Plan 2016 – 2018 references exchange of information with foreign counterparts in terms of keeping within the broad mandate of the BPS. In addition, the BPS AML/CFT policy recognizes that information sharing with overseas law enforcement agencies is an effective way of both preventing and investigating these matters. There are information sharing protocols with internationally recognized bodies such as Interpol, EGMONT, ARIN- CARIB, and specific liaison with various countries such as Canada, USA and the UK among others. Further the BPS policy 04-002 articulates the mandate to investigate cross-border organized crime and exchange of information with overseas agencies is identified as a formal part of investigating ML, associated predicate offences and TF.
388. **Criterion 40.18 -** The BPS runs both joint, & parallel investigations to those being investigated overseas. Customs has the ability to form joint investigative teams and has MOUs with the Joint Intelligence Unit (JIU), National Intelligence Department (NID), United States Customs and Border Protection (USCBP), Bermuda Immigration and the FIA that facilitate this. The BPS has a MOU with the BMA which allows it to access BO information on behalf of foreign LEAs. The BPS has also entered a MOU with a foreign LEA for the purposes of the exchange of information although not required due to the broad powers conferred by s.4 of the PA. The BPS policy 04-002 provides for this information sharing regime and abides by any restrictions on the use imposed by foreign counterparts.
389. **Criterion 40.19 -** Bermuda has demonstrated that law enforcement authorities are able to form joint investigative teams to conduct investigations. Joint investigative teams have been formed among the JIU and the NID and the USCBP. The BPS has also teamed with US and UK law enforcement in the conduct of investigations.
390. **Criterion 40.20 -** The BMA is enabled to share information with other CAs which carry out functions like those carried out by the Authority and those authorities that are set out in the legislation under s.31 of the BMAA and s.32 of the SEA. If the counterparty does not meet those requirements, the BMA will assist by identifying the relevant authority in Bermuda and assist the Bermuda CA to respond although no specific legislative provisions provide for this. Non-counterparts can exchange information with non-counterparts in other countries setting out the purpose of the exchange of information and on whose behalf the request is made where the receiving country permits this and has no objection although no specific legislative provisions allow for this. Information that would be obtainable by the FIA if it were conducting domestic inquiries can be exchanged with foreign FIUs in addition to being sought and exchanged if not already within the possession of the FIA (s.18 of the FIAA). S.19 of FIAA permits the FIA to enter into information exchange agreements with foreign FIUs or non-counterparts (foreign or domestic) if needed. The FIA adheres to the Egmont Principles of Information Exchange between FIUs with respect to indirect cooperation with foreign non-counterparts. Therefore, the exchange of information indirectly with non-counterparts is available although it may involve the use of intermediary agencies.

Weighting and Conclusion

391. **Recommendation 40 is rated compliant.**

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations

| Recommendations | Rating | Factor(s) underlying the rating |
|---|--------|---|
| 1. Assessing risks & applying a risk-based approach | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 2. National cooperation and coordination | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 3. Money laundering offences | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 4. Confiscation and provisional measures | LC | <ul style="list-style-type: none"> • A RO may only be made when proceedings have been instituted, which limits law enforcement and prosecution's ability to prevent any dealing, transfer or disposal of property if proceedings have not commenced. |
| 5. Terrorist financing offence | C | <ul style="list-style-type: none"> • The Recommendation is fully met |
| 6. Targeted financial sanctions related to terrorism & TF | LC | <ul style="list-style-type: none"> • No mechanisms were provided for identifying targets for designation by the BPS or FIA or requesting information from a person there is reasonable basis to suspect meets the criteria for designation. • No provisions were cited in relation to making a prompt determination on receiving a request. • There is no specific reference to funds or other assets which are jointly owned or controlled. • The reporting requirement for FIs and DNFBPs does not extend to 'any actions taken' in compliance with the prohibition or to attempted transactions. • No provisions were cited in relation to informing the designated person of de-listing. |
| 7. Targeted financial sanctions related to proliferation | LC | <ul style="list-style-type: none"> • In relation to any new order made in relation to UNSCR 2231(2015) Bermuda would be reliant upon the UK to enact new legislation to ensure this came into force without delay. • The reporting requirement for FIs and DNFBPs does not extend to 'actions taken' in compliance with the prohibitions or attempted transactions. |
| 8. Non-profit organisations | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 9. Financial institution secrecy laws | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 10. Customer due diligence | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 11. Record keeping | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 12. Politically exposed persons | LC | <ul style="list-style-type: none"> • There are no specific requirements in the regulations for FIs to inform senior management before pay-out of the policy proceeds. |
| 13. Correspondent banking | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 14. Money or value transfer services | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 15. New technologies | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 16. Wire transfers | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 17. Reliance on third parties | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 18. Internal controls and foreign branches and subsidiaries | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 19. Higher-risk countries | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 20. Reporting of suspicious transaction | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 21. Tipping-off and confidentiality | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |
| 22. DNFBPs: Customer due diligence | C | <ul style="list-style-type: none"> • The Recommendation is fully met. |

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| 23. DNFBPs: Other measures | C | <ul style="list-style-type: none"> The Recommendation is fully met. |
| 24. Transparency and beneficial ownership of legal persons | LC | <ul style="list-style-type: none"> There was no publicly available information regarding processes for obtaining and recording beneficial ownership information. |
| 25. Transparency and beneficial ownership of legal arrangements | LC | <ul style="list-style-type: none"> Some penalties are not dissuasive, particularly for non-professional trustees. No requirement for non-professional trustees to keep information on regulated agents and service providers. No powers of SRE and FIA (as supervisor) to obtain relevant information. |
| 26. Regulation and supervision of financial institutions | LC | <ul style="list-style-type: none"> Closed-end funds are not included in Bermuda's AML/CFT legal framework. |
| 27. Powers of supervisors | C | <ul style="list-style-type: none"> The Recommendation is fully met. |
| 28. Regulation and supervision of DNFBPs | C | <ul style="list-style-type: none"> The Recommendation is fully met. |
| 29. Financial intelligence units | C | <ul style="list-style-type: none"> The Recommendation is fully met. |
| 30. Responsibilities of law enforcement and investigative authorities | C | <ul style="list-style-type: none"> The Recommendation is fully met. |
| 31. Powers of law enforcement and investigative authorities | C | <ul style="list-style-type: none"> The Recommendation is fully met. |
| 32. Cash couriers | PC | <ul style="list-style-type: none"> No provisions were cited in relation to the use of official government documents including declarations to facilitate international cooperation. It was not clear that the information would include the amount of currency or BNIs disclosed or otherwise detected or the identification of the bearer (if other than that declared). The security of information other than the value of any particular goods or consignment of goods is not covered. |
| 33. Statistics | C | <ul style="list-style-type: none"> The Recommendation is fully met. |
| 34. Guidance and feedback | LC | <ul style="list-style-type: none"> No provisions were cited regarding the BMA providing feedback to regulated entities in relation to detecting and reporting suspicious activity. No provisions were cited in relation to specific feedback by the FIA. |
| 35. Sanctions | LC | <ul style="list-style-type: none"> The sanctions for legal person who don't commit corresponding regulatory breaches are too low. |
| 36. International instruments | C | <ul style="list-style-type: none"> The Recommendation is fully met. |
| 37. Mutual legal assistance | LC | <ul style="list-style-type: none"> The ability to use the other domestic investigative powers outlined under criterion 31.1 in relation to international requests was not established. |
| 38. Mutual legal assistance: freezing and confiscation | LC | <ul style="list-style-type: none"> There are no formal arrangements for coordinating seizure and confiscation actions with countries other than the USA. |
| 39. Extradition | C | <ul style="list-style-type: none"> The Recommendation is fully met. |
| 40. Other forms of international cooperation | C | <ul style="list-style-type: none"> The Recommendation is fully met. |

*Glossary of Acronyms*⁵⁸

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| AGC | Attorney General's Chambers |
| AML/CFT | Anti-Money Laundering/ Countering the Financing of Terrorism |
| ATA | Anti-Terrorism (Financing and Other Measures) Act 2004 |
| BD | Bermuda Dollar |
| BCGC | Bermuda Casino Gaming Commission |
| BDCA | Banks and Deposits Company Act 1999 |
| BMA | Bermuda Monetary Authority |
| BMAA | Bermuda Monetary Authority Act 1969 |
| BNIs | Bearer Negotiable Instruments |
| BO | Beneficial Owner/Beneficial Ownership |
| BOT | British Overseas Territory |
| BPS | Bermuda Police Service |
| BRAs | Business Risk Assessments |
| CAs | Competent Authorities |
| CAF | Confiscated Assets Fund |
| CAMLTRF | Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014 |
| CAPS | Customs Automated Processing System |
| CDD | Customer Due Diligence |
| CGA | Casino Gaming Act, 2004 |
| CJICA | Criminal Justice (International Cooperation) (Bermuda) Act, 1994 |
| CLO | Customs Liaison Officer |
| CO | Compliance Officer |
| CPF | Countering Proliferation Financing |
| CSP | Company Service Provider |
| CTRs | Cash Transaction Reports |
| CUA | Credit Unions Act, 2010 |
| DAB | Digital Asset Business |
| DABA | Digital Assets Business Act, 2018 |
| DIA | Designated Impact Assessment |
| DiHVGs | Dealers in High Value Goods |
| DNFBPs | Designated Non-Financial Businesses or Professions |
| DPMS | Dealers in Precious Metals and Stones |
| DPP | Department of Public Prosecutions |
| EA | Enforcement Authority |
| ECA | Exchange Control Act 1972 |
| ECR | Exchange Control Regulations |
| EDD | Enhanced Due Diligence |
| ESW | Egmont Secure Website |
| FCO | Foreign Commonwealth Office |
| FIs | Financial Institutions |
| FIA | Financial Intelligence Agency |

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| FIAA | Financial Intelligence Agency Act 2007 |
| FIs | Financial Institutions |
| FSG | Financial Sanctions Guidance |
| FSIU | Financial Sanctions Implementation Unit |
| FUR | Follow-up Report |
| GN | Guidance Notes |
| IA | Insurance Act 1978 |
| IBA | Investment Business Act 2003 |
| ICO Act | Companies and Limited Liability Company (Initial Coin Offering) Amendment Act, 2018 |
| IFA | Investment Funds Act 2006 |
| IFC | International Financial Centre |
| ISA | International Sanctions Act 2003 |
| ISR | International Sanctions Regulations 2013 |
| JIU | Joint Intelligence Unit |
| JMLIT | Joint Money Laundering Intelligence Task Force |
| LEAs | Law Enforcement Agencies |
| LLCs | Limited Liability Companies |
| LTD | Long term direct (re insurance) |
| MLATs | Mutual Legal Assistance Treaties |
| MLRO | Money Laundering Reporting Officer |
| MOLA | Ministry of Legal Affairs |
| MSB | Money Service Business |
| MSBA | Money Services Business Act, 2016 |
| NID | National Intelligence Department |
| NLPs | Non-Licensed Persons |
| OECD | Organized and Economic Crime Department |
| OFAC | Office of Foreign Assets Control |
| PA | Police Act 1974 |
| PAC | Private Act Company |
| PACE | Police and Criminal Evidence Act 2006 |
| PCA | Policing and Crime Act 2017 |
| PITs | Private Individual Trusts |
| PO | Production Orders |
| POCA | Proceeds of Crime Act 1997 |
| POCDCTO | Proceeds of Crime (Designated countries and Territories) Order, 1998 |
| POCR | Proceeds of Crime (Anti-Money Laundering Anti-Terrorism Financing) Regulations, 2008 (as amended) |
| PPH | Policy and Procedures Handbook |
| PTCs | Private Trust Companies |
| RA | Revenue Act 1898 |
| RBA | Risk Based Approach |
| RCDN | Revenue Customs Declaration Notice |
| REBLA | Real Estate Brokers' Licensing Act, 2017 |
| RG | Registrar General |
| RILO | Regional Intelligence Liaison Officer |
| RO | Restraint Order |
| RPFs | Regulated Professional Firms |
| SAC | Segregated Account Companies |
| SDD | Simplified Due Diligence |
| SEA | Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act |
| SOF | Source of Funds |
| SoRE | Superintendent of Real Estate |

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| STRs | Suspicious Transaction Reports |
| TAFOTO | Terrorist Asset-Freezing Act 2010 (Overseas Territories) (Amendment) Order 2017. |
| The Board | Barristers and Accountants AML/ATF Board |
| TSPs | Trust Service Providers |
| UBO | Ultimate Beneficial Owner |
| UK | United Kingdom |
| USA | United States of America |
| USCBP | United States Customs and Border Protection |



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Anti-money laundering and counter-terrorist financing measures – Bermuda *Fourth Round Mutual Evaluation Report*

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Bermuda as at the date of the on-site visit on-site visit September 24 to October 5, 2018. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Bermuda's AML/CTF system and provides recommendations on how the system could be strengthened.