

## THE BAHAMAS: FOLLOW-UP REPORT



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### I. Introduction

1. This report represents an analysis of The Bahamas' report back to the CFATF Plenary concerning the progress that it has made with regard to correcting the deficiencies that were identified in its third round Mutual Evaluation Report. The third round Mutual Evaluation Report of the Bahamas was adopted by the CFATF Council of Ministers in November 2007, in Costa Rica. The Bahamas presented a follow-up report at the last Plenary in St. Kitts and Nevis. Based on the review of actions taken by The Bahamas to meet the recommendations made by the Examiners a recommendation would be made as to whether The Bahamas would remain on enhanced follow-up or be placed on regular follow-up. The Bahamas was rated partially compliant or non-compliant with 27 Recommendations, as indicated below.

Partially Compliant (PC)	Non-Compliant (NC)
R. 1 (Money laundering offence)	R. 7 (Correspondent banking)
R. 5 (Customer due diligence)	R. 19 (Other forms of reporting)
R. 6 Politically exposed persons	SR. VII (Wire transfer rules)
R. 8 (New technologies and non-face-to-face business)	
R. 9 (Third parties and introducers)	
R. 10 (Record keeping)	
R. 11 (Unusual transactions)	
R. 12 (DNFBPs – R. ,6,8-11)	
R. 13 (Suspicious transaction reporting)	
R. 15 (Internal controls, compliance & audit)	
R. 16 (DNFBPs R. 13-15 and 21)	
R. 17 (Sanctions)	
R. 21 (Special attention for higher risk countries)	
R. 22 (Foreign branches & subsidiaries)	
R. 23 (Regulation, supervision and monitoring)	
R. 24 (DNFBPs regulation, supervision and monitoring)	
R. 29 (Supervisors)	
R. 30 (Resources, integrity and training)	
R. 32 (Statistics)	
R. 35 (International cooperation - Conventions)	
SR. I (Implement UN instruments)	
SR. III (Freeze and confiscate terrorist assets)	
SR. VIII (Non-profit organisations)	
SR. IX (Cash couriers)	

## II. Summary of progress made by the Bahamas

2. At the time of the Mutual Evaluation of The Bahamas, there were limitations noted with regard to several areas in The Bahamas' AML/CFT regime. In an effort to address some of the recommendations that were made by the Examiners, The Bahamas Authorities have (a) enacted the Precursor Chemicals Act, 2007; the Trafficking in Persons (Prevention and Suppression) Act, 2008 and the Criminal Procedure Plea Discussion and Plea Agreement Act 2008; (b) amended the following Acts and regulations: the Proceeds of Crime Act; the Banks and Trust Companies Regulations Act; the Central Bank of the Bahamas Act; the Anti-Terrorism (Amendment to First Schedule) Order; the Anti-Terrorism Act; the Securities Industry Act; the Securities Industry Regulations; the Investments Fund Act; the Financial and Corporate Service Providers Act; the Financial Intelligence Unit Act, the Financial Transactions Reporting Act; and the Financial Intelligence (Transactions Reporting) Regulations; (c) brought into force the following regulations: the Banks and Trust Companies (Private Trust Companies) Regulations 2007; the Banks and Trust Companies (Money Transmission Business) Regulations, 2008; the Financial Transactions Reporting (Wire Transfer) Regulations, 2009; and (d) amended the following Guidelines and Codes of Practice: four industry-specific Codes of Practice (Codes) issued by the Compliance Commission (CC); the CBB's AML/CFT Guidelines and the SC's AML/CFT Guidelines.
3. The CC's Codes were developed for the accounting, legal and real estate professions & financial and corporate service providers. The CC's Codes and the Securities Commission of The Bahamas (SC) Guidelines<sup>1</sup> are now directly enforceable, pursuant to amendments to the Financial Intelligence Unit Act (No. 37 of 2008), the Financial Transactions Reporting Act (No. 36 of 2008), the Financial and Corporate Service Providers Act (No. 35 of 2008) and the Financial Intelligence (Transactions Reporting) Regulations (S.I. No. 15 of 2009). The Bahamas also ratified the United Nations Convention against Transnational Organized Crime (the Palermo Convention) on September 26<sup>th</sup>, 2008. A Special Anti-Terrorism Unit was also established in August 2007. The SC has also submitted an application to the IOSCO MOU, on May 23, 2008. At the IOSCO 2009 conference it was announced that the SC was eligible to sign Appendix B of the MOU. The SC has taken the steps necessary to finalise this process and is presently awaiting a response from the IOSCO.

### Recommendation 1

4. The POCA was amended to cure the deficiency noted with regard to section 42(2) of the said Act by repealing the specified section. The enactment of the Precursor Chemicals Act, 2007 has now allowed compliance with the requirements in the Vienna Convention as they pertain to Recommendation 1. Likewise, the ratification of the Palermo Convention and its Protocols is an essential factor in implementing the provisions of the Convention as required by the Examiners. With regard to the last recommendation made by the Examiners under this Recommendation, The Bahamian Authorities have enacted a Trafficking in Persons (Prevention and Suppression) Act, 2008 (Act no. 27 of 2008) to

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<sup>1</sup> The SC Guidelines essentially were amended to state that the SC constituents must adopt the CBB AML/CFT Guidelines when conducting business.

address the issue of human smuggling and trafficking. This Act became law on the 9<sup>th</sup> December 2008. Accordingly, this recommendation has been complied with.

## **Recommendation 5**

5. The Bahamas has enacted the Financial Transaction Reporting (Wire Transfers) Regulations, 2009. These Regulations came into effect on the 14<sup>th</sup> January 2009 (S.I. No. 14 of 2009) and they address the outstanding wire transfer CDD provision under Rec. 5 and also SR. VII. Further, the amendment to Regulation 2 of the FTRR, which now makes the prescribed amount \$15,000 for matters pertaining to Part II of the FTRA (Obligations on Financial Institutions to Verify Identity), meets the Examiners' recommendation with regard to occasional transactions. The documentation of the basis for any reduced or simplified CDD measures is a requirement that is outlined in section 13.3.4-4 of the CC's Codes for the accounting profession. These provisions have been replicated in the CC's other industry-specific Codes. Compliance with this requirement is tested on the on-site examination form for constituents of the Compliance Commission. This requirement however would not cover all designated customers of financial institutions in general since the CC only has AML/CFT regulatory responsibility for gatekeepers i.e. lawyers, accountants, real estate brokers/developers, other providers of financial services not regulated by the Central Bank of The Bahamas (CBB) or SC, and persons dealing in life assurance policies. The FTRR has also been amended (FTRR Regulations 4 and 5) to require minimum mandatory requirements for determining the verification of identity of legal persons. With regard to the recommendation pertaining to E.C. 5.5.2 (a), the Financial Transactions Reporting (Amendment) Regulations 2009 now expressly includes this requirement (Regulations 4(3) and 6(2) respectively). Similarly, the Examiners' recommendation with regard to E.C. 5.7.2 has been included in the CC's Codes for the accounting profession, under section 16.4. These provisions have been replicated in the CC's other industry-specific Codes.
6. The Examiners' recommendation pertaining to E.C. 5.8, which deals with enhanced due diligence for higher risk customers, has been included in the CC's Codes for the accounting profession at section 13.3.4-6 and is replicated in the CC's other industry-specific Codes. With regard to the Examiners' recommendation as to the exemption amounts of life insurance policies, The Bahamas is of the view that no action would be taken as the money laundering risk on \$2,500 is negligible. As it pertains to the Examiners' recommendation that Bahamian dollar facilities below \$15,000 should not be exempted from full CDD measures, the amendments to regulations 3 and 5A of the FTRR have addressed this issue by providing that basic information on the identification of the individual now has to be maintained.
7. The SC's Guidelines have been made enforceable by the amendments to the Financial Intelligence Unit Act & Regulations and the Securities Industries Act. In particular the amendment to section 94 of the SIA removes the reference to guidelines being unenforceable. These amendments came into force January 5, 2009. With regard to the enforceability of the CC's Codes of Practice, which came into effect on 30<sup>th</sup> July 2009) and the SC's Guidelines, amendments to the FIUA, the FI(TR)R and the FSCPA have made provisions for criminal sanctions and other penalties for breaches of the various Guidelines and Codes. The requirements that must be met for OEM are: mandatory language in the Guidelines and Codes; issuance by a competent authority and sanctions for non-compliance. With regard to the latter requirement, the evidence must be provided

that effective, proportionate and dissuasive sanctions have been applied in practice for breaches of AML/CFT compliance. To date, since the amendments came into effect, The Bahamas has resolved breaches through the follow-up examination process. No sanctions have been applied. Amendments to the CC's Codes have made provision for all financial institutions to consider making an STR where they are unable to comply with CDD measures (E.C. 5.15 (b)). It should be noted that ORIC has an MOU with the CC that addresses AML/CFT issues relative to licensees that are life insurers. It should be noted that ORIC (with the passage of its new Insurance Act and regulations) has exclusive responsibility for addressing AML/CFT relative to its licensees. However, the CC conducts the onsite examinations process on ORIC's behalf.

8. Based on the aforementioned, the majority of the Examiners' recommendations for Recommendation 5 have been addressed. The issue with regard to the documentation of any reduced or simplified CDD measures is still partially outstanding and The Bahamas has determined that they will not apply the proposed limited exemption amounts for life insurance policies.

### **Recommendation 6**

9. With regard to the AML/CFT measures pertaining to PEPs being expanded to financial institutions other than those supervised by the Central Bank, the impediments to the enforceability of the SC's Guidelines have been removed. Accordingly, the Guidelines on PEPs would now be applicable to their constituents. The CC as part of its onsite examination is now able to determine the level of compliance with AML/CFT procedures for PEPs. The recommendation regarding E.C. 6.2.1 (senior management approval for continuing a relationship with a customer who is subsequently found to be a PEP or becomes a PEP is dealt with at paragraph 161(iii) of the amended CBB's AML/CFT Guidelines which came into effect on May 1 2009. It is also covered in section 13.3.4-6(b) of the CC's Codes for the accounting profession. Measures for this provision have also been included in industry-specific codes for lawyers, real estate professionals and financial & corporate service providers. Accordingly, the Examiners' recommendations with regard to PEPs have been complied with.

### **Recommendation 7**

10. The Examiners' recommendations regarding correspondent banking have been dealt with by The Bahamas in amendments to the CBB AML/CFT Guidelines at paragraphs 149 thru 158, which came into effect on May 1 2009.

### **Recommendation 8**

11. With regard to Rec. 8, the Examiners recommended that financial institutions should take the necessary measures to prevent the misuse of technological developments in ML or FT schemes (E.C. 8.1). Provisions have been included in section 13.3.4-5(b) of the CC's amended Code for the accounting profession. This provision is replicated in the CC's other industry-specific Codes. Amendments have also been made to the CBB's AML/CFT Guidelines in paragraph 115 to address this issue and in paragraphs 142-148 to address the Examiners' recommendations as it pertains to policies and procedures to address the inherent risks associated with non face-to-face business. These measures will also include SC constituents. The Examiners' second recommendation requires that

policies and procedures to address the specific risks associated with non-face-to-face business relationships should include ongoing due diligence procedures and be applicable to all financial institutions. In this regard, amendments have been made to the CBB's AML/CFT Guidelines to address the Examiner's recommendations. Additionally, the CC Codes of practice have been amended at section 13.3.4-5(a)(ii) to include measures for the accounting profession as it pertains to this issue. Similar provisions have also been replicated in all other industry specific Codes. Accordingly, all of the Examiners' recommendations with regard to Rec. 8 have been complied with.

### **Recommendation 9**

12. The recommendations made by the Examiners with regard to Rec. 9 (E.C. 9.1, 9.3 and 9.5) have been addressed by The Bahamas by the amendments to the CBB AML/CFT Guidelines. The measures referred to in the cited sections of the FTRA and the paragraphs of the Report stipulate the criteria for being an introducer. The FATF requirements stipulate what identification and verification documents must be obtained from the introducer in order to have proper CDD.

### **Recommendation 10**

13. With regard to the recommendations made on recordkeeping, the FTRA has been amended at section 27 to address this issue. The amendment requires liquidators to maintain records for the balance of the statutory period where a financial institution goes into liquidation or is dissolved. The exemption that was granted to partners on dissolution has been removed. The requirements noted in section 17.7 of the Code for accountants are intended to supplement the legislative requirement. This requirement is replicated in the CC's other industry-specific Codes. However for purposes of compliance with Recommendation 10 the Code is not applicable since this is an asterisked provision and should be included in law or regulation.

### **Recommendations 11 and 13**

14. The recommendations for all financial institutions not already covered by law, regulation or guidelines to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose; to place these findings in writing and to make them available to competent authorities and auditors for at least five (5) years has been addressed in the CC's Codes at section 16.3 of the CC's Codes for accountants. This requirement is replicated in the CC's other industry-specific Codes. The same provision has also been addressed in the CBB AML/CFT Guidelines at paragraphs 222-225. These measures are also applicable to the SC since as noted earlier, the SC has adopted the Central Bank's Guidelines. The provision for all financial institutions to pay special attention to the stated types of transactions is dealt with at section 16.1(a) of the Code for accountants and is replicated in the CC's other industry-specific Codes.
15. With regard to Rec. 13 and insuring that measure are taken to ensure effective STR reporting by all financial institutions, the FIU has since the Evaluation targeted and trained sectors from which no or low amounts of STRs were received. This training is ongoing. The CC is expected to begin joint training sessions with the FIU. The CC has

## APPENDIX O

its own training programme which began in 2002. The following institutions were provided with AML/CFT training by the CC during 2008:

<b>ORGANIZATION</b>	<b>DATE</b>	<b>LOCATION</b>	<b>NUMBER OF ATTENDEES</b>	<b>TYPE OF INSTITUTION</b>
Bahamas Mortgage Corporation	15 <sup>th</sup> May, 2008	Russell Road	15	Government Lending Agency
Bahamas Cooperative Credit Union League Ltd.	30 <sup>th</sup> May, 2008	Our Lucaya, Freeport, Grand Bahama	82	Governing Body for Credit Unions & Cooperative Societies
Bahamas Institute of Chartered Accountants	15 <sup>th</sup> July, 2008	British Colonial Hilton	46	Governing Body for the Accounting Profession
Financial & Corporate Service Providers	18 <sup>th</sup> July, 2008	British Colonial Hilton	62	Entities & Persons providing financial & corporate services
Office of the Registrar of Insurance Companies (ORIC)	28 <sup>th</sup> November, 2008	ORIC's office West Bay Street	7	Regulator of Insurance Companies
Bahamas Institute of Chartered Accountants	3 <sup>rd</sup> December, 2008	Freeport, Grand Bahama	17	Governing Body for the Accounting Profession

In addition to the Table above, the CC provided informal sessions at the offices of three (3) law firms, two (2) financial corporate service providers and one (1) credit union. Additionally, the FIU provided the following training noted in the table below. It should be noted that no statistics were provided to show whether the training has resulted in an increased number of STRs being reported from all the relevant sectors.

**LIST OF TRAINING ADMINISTERED BY THE FINANCIAL INTELLIGENCE UNIT FOR THE PERIOD 2006-2009  
IN TARGETING SECTORS FROM WHICH NO OR LOW AMOUNTS OF STRs WERE RECEIVED**

<b>Date</b>	<b>Name of Institution/Group</b>	<b>Type of Institution/Group</b>	<b>Number of Participants</b>
January 15 <sup>th</sup> 2006	Bahamas Casino Operators Association	Casino	30
March 31 <sup>st</sup> 2006	McKinney, Bancroft & Hughes	Attorneys-At-Law	30
April 13 <sup>th</sup> 2006	Raben Payday Advance	Loans	10
June 21 <sup>st</sup> 2006	Bahamas Insurance Brokers Association	Insurance	6
September 28 <sup>th</sup> 2006	Grand Bahama Development Company Limited	Real Estate/Construction	30
October 16 <sup>th</sup> 2006	Crystal Palace Resort & Casino	Casino	80
November 15 <sup>th</sup> 2006	Crystal Palace Resort & Casino	Casino	50
November 21 <sup>st</sup> 2006	Crystal Palace Resort & Casino	Casino	40
March 13 <sup>th</sup> 2007	Crystal Palace Resort & Casino	Casino	45
March 22 <sup>nd</sup> 2007	Bahamas Institute of Chartered Accountants	Accountants	70
May 15 <sup>th</sup> 2007	Crystal Palace Resort & Casino	Casino	45
June 5 <sup>th</sup> -6 <sup>th</sup> 2007	Caledonia Corporate Management Group Limited	Securities Traders	10
October 3 <sup>rd</sup> 2007	Grand Bahama Development Company Limited	Real Estate/Construction	25
March 26 <sup>th</sup> 2008	College of The Bahamas	Educational Institution	35
April 10 <sup>th</sup> 2008	AKJ Corporate Services Ltd.	Corporate Services	4
April 15 <sup>th</sup> 2008	Providence Advisors	Corporate Services	6
May 27 <sup>th</sup> 2008	Crystal Palace Resort & Casino	Casino	68
May 28 <sup>th</sup> 2008	Crystal Palace Resort & Casino	Casino	70
July 1 <sup>st</sup> 2008	Crystal palace Resort & Casino	Casino	50
July 2 <sup>nd</sup> 2008	Crystal Palace Resort & Casino	Casino	50
September 25 <sup>th</sup> 2008	Grand Bahama Development Company Limited	Real Estate/Construction	40
22 <sup>nd</sup> April 2009	ATC Trustees (Bahamas) Limited	Securities	13
17 <sup>th</sup> June 2009	BACO (MLRO) Day 2009	MLROs	82

**TOTAL NUMBER OF PERSONS TRAINED: 889**

## **Recommendation 12**

16. Amendments to the FTRA and the FITRR that would assist in compliance with Recommendation 12 have been enacted and brought into force on January 5, 2009.



Compliance with Recommendation 12 has been achieved with regard to DNFBPs to the extent that Recommendations 5, 6, and 8-11 have been complied with as discussed previously. Additionally, with regard to ‘dealers in precious metals and dealers in precious stones’, The Bahamas Authorities have indicated that no action would be taken with regard to this sector as it has been determined to pose a negligible risk. This conclusion is currently based on import figures of B\$8M or 0.32% for the sector for the year 2005. Based on the latter, The Bahamas has not conducted a statistical survey on this group of DNFBPs. As previously stated, the updated CC’s Codes came into force accordingly; The Bahamas now satisfies the Examiners’ recommendation with regard to Rec. 12.

### **Recommendation 15**

17. With regard to compliance with the Examiners’ recommendation for E.C., 15.1.2 section 18.8.2 of the CC’s Codes for accountants requires that supervised financial institutions ensure that the Compliance and Money Laundering Reporting Officers along with all other authorized persons have timely access to CDD information. This requirements is replicated in the CC’s other industry-specific Codes. While the CBB AML/CFT Guidelines provides for timely access by the MLRO(Compliance Officer) it does not provide for access by appropriate staff. With regard to compliance with the Examiners’ recommendation pertaining to E.C. 15.2, the CBB AML/CFT Guidelines at paragraph 28 provide for an audit function that would test the necessary policy, procedures and controls. Additionally, paragraph 22 of the CBB’s Guidelines provides that licensees are required to ‘instruct their external auditors to prepare and submit a report during the course of the annual audit of financial statements on the adequacy of policies and procedures relating to AML.CFT”. There are also provisions in the IA and the EIA for an independent audit to be conducted of AML/CFT procedures. (Section 207(1) of the IA and section 24(5)(c) and 45(2)(e) of the EIA). Thus, the requirement for an independent audit function to test AML/CFT compliance is addressed for all financial institutions with the exception of Cooperatives. In practice, cooperatives external auditors report on compliance with AML/CFT requirements.
  
18. It should be noted that section 12 of the Codes for accountants provides for the CC’s constituents to conduct a self audit at least once per year. This requirement is replicated in the CC’s other industry-specific Codes. The CBB AML/CFT Guidelines (Paragraph 28) address the Examiners’ recommendation with regard to an independent audit function to test AML/CFT compliance. The final recommendation made by the Examiners pertains to financial institutions having in place screening procedures that would ensure high standards when hiring and in that regard, the CBB AML/CFT Guidelines have been amended (Paragraph 29) to address this issue. With regard to the CC Codes for accountants, section 19 requires financial institutions develop and maintain screening procedures for, inter alia, hiring new staff. This requirement is replicated in the CC’s other industry-specific Codes. It should be noted that paragraph 684 of the Report noted that the CC emphasised these requirements in its training and intended to incorporate them in its Codes. At present, there is almost full compliance with the Examiners’ recommendations as they pertain to Rec. 15.

## **Recommendation 16**

19. Compliance with this Recommendation depends on the application of recommendations formulated by the Examiners with regard to Recs. 13, 15 and 21 being applied to DNFBPs. These matters have been addressed in the CC's Codes for accountants as discussed above with regard to Recommendations 13 and 15. With regard to Recommendation 21, the CC's Codes at section 13.3.4-5(a) deal with business relationships and transactions from countries which do not or insufficiently apply the FATF Recommendations. These requirements are replicated in the CC's other industry-specific Codes. With regard to Recs. 15, there is a minor outstanding issues. Recs. 13 and 21 have however been complied with. Accordingly, the Examiners' recommendations with regard to Rec. 16 have been fully complied with to the extent of the outstanding issue in Rec. 15.

## **Recommendation 17**

20. The SC will have enhanced sanctioning powers under the draft Securities Industry Act (draft SIA)<sup>2</sup> specifically at Part XV of the draft SIA. The draft SIA together with the draft Securities Industry Regulation (draft SIR) have been finalised and have been issued to the industry for public consultation. Additionally, the draft Cooperative Societies Regulations will extend the powers of the Director of Societies with regard to AML/CFT matters. The new Insurance Act, which was brought into force in July 2009, extends the AML/CFT powers of the Registrar of Insurance and introduces ladders of supervisory intervention. Section 18A of the FCSPA (Amendment) Act 2008, increases the powers of the Inspector of Financial Corporate Service Providers (IFCSP). A new External Insurance Act (EIA) was enacted in June 2009 and brought into force on August 19, 2009. This Act addresses the issue of the definition of 'Minister' and the Examiners' recommendation that non-compliance with the FTRA and its regulations should be a consideration for cancelling registration under the IA and the EIA. As a result of the draft status of the SIR and the SIA, the majority of the Examiners' recommendations remain outstanding.

## **Recommendation 19**

21. There is still no evidence that The Bahamas has considered the feasibility of reporting currency transactions above a fixed threshold. With regard to consideration of reporting currency transactions above a fixed threshold, the Group of Financial Services Regulators (GFSR) has in response to a request from the Ministry of Finance, established a subcommittee to review this recommendation and a draft report has been prepared and is currently under consideration. The relevant documentation will be sent to the Secretariat once the review has been completed.

## **Recommendation 21**

22. The Examiners' recommendations covered E.C. 21.1, 21.1.1 and 21.2. With regard to complying with the Recommendation as it pertains to paying special attention to

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<sup>2</sup> Amendments have been made to the existing Securities Industry Act (Securities Industry (Amendment) Act, 2008) and Securities Industry Regulations (Securities Industry (Amendment) Regulations, 2009) to deal with the issue of the enforceability of the SC's Guidelines.

transactions from countries that do not or insufficiently apply the FATF Recommendations, The Bahamas has amended both the CBB AML/CFT Guidelines (paragraphs 166 and 167) and the SC Guidelines. The SC has also adopted the CBB AML/CFT Guidelines. The measures at paragraphs 166 and 167 also pertain to the CBB's licensees and require that they make themselves aware of higher risk jurisdictions. Towards this end, Appendix B of the Guidelines provides several websites to assist licensees. With regard to E.C. 21.2, it should be noted that the reference to regulation 9 of the FTRR cited by The Bahamas while requiring financial institutions to monitor and examine unusual activity in accounts does not require that written findings of the examination of the unusual activity be kept. The Code for accountants however covers this at section 16.3 with similar provisions being replicated in the CC's other Codes. Further, the CBB AML/CFT Guidelines also require their constituents at paragraph 167 to document their findings in writing. While it does not stipulate that it be kept to assist competent authorities this would be covered by the general record keeping provisions (CBB AML/CFT Guidelines paragraphs 916 & 197). Based on the action taken, most of the Examiners recommendations have been met with regard to this Recommendation.

## **Recommendation 22**

23. During the Evaluation, the Examiners noted that the majority of the requirements to deal with foreign branches and subsidiaries were only applicable to banks and trust companies. Accordingly, recommendations were made by the Examiners for all the Essential Criteria. As noted above, the impediments to the enforceability of the SC's Guidelines have been removed. Additionally, the SC has adopted the Central Bank's Guidelines and accordingly this issue has been addressed.

## **Recommendation 23**

24. The Examiners recommended that the SC should implement a system whereby exemption of investment funds is granted on the basis of proven CDD by promoters. In this regard, the SC has taken this recommendation on board to the extent that a review of the existing exemption was conducted. The SC undertook to review the exemption to determine whether a system whereby the exemption of investment funds is granted on the basis of proven CDD by promoters would be appropriate. In order to determine this issue, the SC sought to verify that it was in fact accurate, that the exemption had been initially provided for; on the basis that CDD was being conducted by the promoter of the fund. It was the understanding of the Commission that at the time legislation was drafted the industry had provided justification for this exemption on the basis of CDD being provided by the promoter. The Commission however has never been able to substantiate this claim. To this end, the SC sought to verify the originating object and purpose of the existing exemption. The SC therefore canvassed the industry (in particular three (3) leading licensed administrators and the Bahamas' Funds Working Group) for their input as well as benchmarked the standards of various other jurisdictions.
25. It was submitted that due to the fluid nature of shareholders in the fund, the pace at which shares are subscribed and redeemed and the fact that the shareholder is an investor rather than a facility holder, the approach to verifying the identity of a shareholder of an investment fund must necessarily be different if the business is to be sustained. Also benchmarking results revealed that similar exemption exist in other well regulated jurisdictions. Further it was clarified that the existing exemption is based on the need to accommodate the fluid nature of the investor profile of a fund and not on the fact that the

promoter conducts the CDD. Based on the clarification provided the SC made certain submissions to the Ministry of Finance. The SC is awaiting the response of the MOF. Thereafter the SCB will confirm what position will be taken going forward. Amendments to the Banks and Trust Companies Regulations Act and the Central Bank of the Bahamas Act have formally placed stand-alone money transmission businesses under the supervision of the Central Bank. This is expected to strengthen the registration and supervision regime of these entities as required by the Examiners. The Insurance Act, 2009 and the EIA, which was also recently, enacted. The other recommendations made by the Examiners have not been met since the Cooperatives Societies Regulations, which is expected to address the issues is still in draft

## **Recommendation 24**

26. With regard to regulation, supervision and monitoring of DNFBPs, the Examiners' recommended amongst other things that non-compliance with the FTRA by a casino should constitute grounds for the revocation of a license under the LGA. The Bahamas has accordingly, included the provision on all casino licences and also in the draft of a Bill of proposed amendments to the LGA which are presently under review by the Government of The Bahamas and which it intends to introduce in Parliament sometime before the end of 2009. The Bill includes a provision for the revocation or suspension of the license for non-compliance. The amendment to the LGA will also include increases in fines which is expected to address the Examiners' recommendation with regard to more proportionate and dissuasive sanctions under the LGA. With regard to the recommendation pertaining to the development of Codes of Ethics, The Bahamas contends that all financial institutions that would be part of an SRO are presently under the supervision of the CC for AML/CFT purposes and as such would have been issued Codes of Practice with regard to meeting and implementing obligations imposed by the FTRA. Accordingly, the CC is of the view that any Codes of Ethics developed by SROs<sup>3</sup> would simply act as reinforcement to the CC's Codes. While note has been taken of The Bahamas' response with regard to declarations by real estate brokers who do not accept client funds, this does not meet the Examiners' recommendation because it refers to a one time declaration at the time of registration, while the Examiners' recommendation requires an annual<sup>4</sup> declaration. Accordingly, this recommendation has not been met.

## **Recommendations 29**

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<sup>3</sup> Recent amendments to the FTRA have provided that the Minister may, after consultation with the CC, designate an SRO to act as an AML supervisor.

<sup>4</sup> Specifically, The Bahamas contends that the Declaration signed by real estate brokers also contains an undertaking that should the entity commence to provide prescribed financial services then it is obliged to advise the Commission accordingly. In the circumstances this standard is considered sufficient for monitoring financial services activities within the real estate industry. To require the real estate brokers to make annual declarations is an excessive requirement unparalleled anywhere around the world. Additionally, the procedures of the CC, in accordance with the law, provide for on-site examinations for cause (special on-site examination). In circumstances where the CC becomes alerted to a real estate broker providing financial services where a Declaration has been signed and no subsequent notification to the CC has taken place then CC has the right to conduct an on-site examination and pursue imposing sanctions in appropriate circumstances

27. Legislation, specifically the draft SIA and the new External Insurance Act (enacted June 2009 and brought into force in August 2009) have been prepared to address the Examiners' recommendations under Rec. 29. With regard to the powers of the Registrar of Insurance to conduct inspections without cause, demand documentation sections 69, 70 and 71(1)(d) of the IA and sections 41(1)(b) and (c) and 42(1)(d) of the EIA are relevant. For example under section 69 of the IA the Registrar may conduct an on-site visit of each registered insurer or association and can also request any information relating to any matter dealing with the insurers' business. With regard to the formulation of an offsite inspection programme, the CC commenced its offsite programme on August 1<sup>st</sup> 2008 (commencement of the examination year) and has complied with the Examiners' recommendation. Section 9.5 of the CC's Codes for accountants explains the process for offsite examinations. Similar provisions are replicated in the CC's other industry-specific Codes. Effective January 1<sup>st</sup> 2009, the CC changed its examination year to coincide with the calendar year. They are halfway through the cycle and accordingly could not provide the statistics on the number of offsite inspections that were requested.
28. As previously stated the powers of the Registrar of Insurance are dealt with in the new External Insurance Act, 2009. The Bahamas Authorities have noted the SC Guidelines have been amended and amendments to the FTRA, FIUA, FTRR and the FCSPA have addressed the enforceability issue (See. Discussion above at Rec. 5). With regard to the recommendation for action without a hearing, this matter has been provided for in the draft SIA at section 122(3) and (4).

### **Recommendation 30**

29. With regard to increasing the staff complement of the SC and the CC, it is being addressed as part of the on-going regulatory consolidation exercise, the first phase of which is expected to be completed by December 2009. In relation to the IFCSP, greater autonomy will be achieved once the provision to amalgamate the regulators has been passed. This is expected to take place by December 2009. The expanded powers of the Registrar of Insurance are outlined in the new Insurance Act, 2009. While the title 'Swift Justice' is no longer used, the Office of the DPP is in the middle of a review process in respect of all the outstanding cases on its calendar to determine their evidential and constitutional status, so that only those cases which have a reasonable prospect of prosecution remain listed as outstanding matters. This review process is designed to complement a new Supreme Court procedural requirement, issued by the Chief Justice, in the form of a Practice Direction that all outstanding cases be brought up for a review annually and dates set for their prosecution. In addition, the Government enacted the Criminal Procedure Plea Discussion and Plea Agreement Act, 2008 to provide a statutory basis for concluding criminal matters without going through a full trial, so as to improve the speed with which criminal cases can be concluded. The Office of the DPP also advertised for additional attorneys throughout the Commonwealth Caribbean during 2008 and are now interviewing applicants for positions within the Office of the DPP.

### **Recommendation 32**

30. With regard to the reporting of international wire transfer transactions and the collection, recording and analysis of the information obtained; the Group of Financial Service Regulators (GFSR) has, in response to a request from the Ministry of Finance, established a subcommittee which is reviewing this recommendation. A draft report on

compliance with Rec. 32 has been prepared and is under review by the GFSR. With regard to the maintenance of statistics by the SC on FTRA focused examinations, the SC's routine on-site examination programme covers testing for compliance with the FTRA, FTRR and F(ITR)R. The information is captured in a departmental statistical report that was implemented in December 2006. The statistical report, as part of a departmental procedure, is updated after the completion of every examination. The statistical report includes the deficiencies noted on each examination that would include the FTRA, FTRR and FITRR. The report can be manipulated and/or other reports created to give specific statistics on any type of deficiency identified. Statistics on sanctions applied for non-compliance with AML/CFT requirements to be developed as required. The amendment to the Central Bank of the Bahamas Act and the Banks and Trust Companies Regulation Act addresses the issue of the CBB's power to share information with domestic regulators. With regard to the Examiners' recommendation for an 'umbrella' group, the Government of the Bahamas is considering the establishment of a statutory national AML/CFT Task Force and has appointed Co-Chairs to review the recommended structure.

### **Recommendation 35**

31. The Bahamas has ratified the Palermo Convention (September 26<sup>th</sup> 2008) and in so doing has complied with the Examiners' recommendation in that regard. The amendment to the Anti-Terrorism (Amendment to the First Schedule) Order, 2008 has amended the first schedule to the Anti-Terrorism Act (ATA) to incorporate all the Conventions referred to in the Annex to the Terrorist Financing Convention. The Anti-Terrorism (Amendment) Act, 2008 has also removed the requirement for reciprocity under section 9(4) of the ATA in cases where a foreign state makes an application for a freezing order. Further, the procedures manual for the provision of mutual legal assistance now contains procedures for information relating to suspected terrorism offences. There is no indication that the criminalisation of participation in an organized criminal group as required by the Palermo Convention has been addressed as yet.

### **Special Recommendations I**

32. The amendment to the Anti-Terrorism Order (discussed above), incorporates into the ATA all the Conventions referred to in the Annex of the Terrorist Financing Convention.

### **Special Recommendation III**

33. The reciprocity requirement (section 9(4) of the ATA) for granting an application for a freezing order to foreign jurisdictions has been removed and so meets the Examiners recommendation that an amendment to this section be considered. With regard to clarification of the effect of section 17 (provision of freezing assistance under the ATA) and section 6 of the Mutual Legal Assistance (Criminal Matters) Act (MLA(CM)A), The Bahamian Authorities have deleted the reference to section 6 and substituted it with a reference to section 6 of the Criminal Justice (International Cooperation) Act (CJ(IC) A). The latter section provides for 'Bahamian evidence for use overseas' and the attendant Schedule outlines the procedures for a nominated court with regard to securing attendance of a witness, power to administer oaths, privilege of witnesses and the

transmission of evidence. This section still does not appear to deal with the deficiency noted by the Examiners in that it does not provide any procedure for dealing with the freezing and confiscation of terrorist assets.

34. The Bahamas is currently reviewing the ATA to ensure that it provides full compliance with the UNSCRs and also the provisions of section 9(7) of the ATA as it pertains to the eighteen (18) month maximum freezing period. This is aimed at considering the Examiners' recommendations with regard to the International Obligations (Economic and Ancillary) Measures Act, which the Examiners felt was inadequate to deal with the UNSCRs and the maximum freezing period, which the Examiners felt could be too short. Accordingly, these recommendations are still outstanding. The Special Anti- Terrorism Unit has been established (August 7<sup>th</sup>, 2007) and is led by a Detective Assistant of the Royal Bahamas Police Force and this complies with the Examiners' recommendation in that regard.

### **Special Recommendation VII**

35. The Bahamas has enacted the Financial Transaction Reporting (Wire Transfers) Regulations, 2008 to deal with the enforcement of SR. VII.

### **Special Recommendation VIII**

36. With regard to the Examiners' recommendations on non-profit organisations (NPOs), the Group of Financial Services Regulators (GFSR) has, in response to a request from the Ministry of Finance, established a subcommittee to review this recommendation. The subcommittee has commenced its review of existing laws and policies relative to the non-profit sector and has also begun to receive data on the size and composition of the sector. Following completion of its review the GFSR intends to make recommendations to the Government on measures required to enhance the supervision of the sector.

### **Special Recommendation IX**

37. With regard to the overall system of cross border disclosure, the GFSR has, in response to a request from the Ministry of Finance, established a subcommittee to review the recommendations of the Examiners. The subcommittee completed its review and the GFSR has submitted a report and recommendations on the implementation of SR IX to the Government.

## **III. Conclusion**

38. As noted above, The Bahamas has enacted new legislation and made amendments to several others. There is also legislation that is in draft that is expected to be enacted shortly. It should be noted that some of the amendments have had positive effects on compliance with FATF Recommendations that had received 'LC' ratings. For example Recs. 4, 38, 40 SR. II and VI. With regard to key and core Recommendations, the only outstanding core Recommendation is the one issue pertaining to Recommendation 5 and the outstanding key Recommendations are Recommendations 23, 35 and SRIII. Other outstanding recommendations include Recommendations 15, 16, 19, and 24; with partial compliance with the recommendations for Recommendations 29 and 32.

39. Based on the aforementioned, it is recommended that The Bahamas be placed on regular follow- up and be required to report back to the Plenary at the October/November Plenary and Council meeting in 2010.



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<b>Legal systems</b>				
1. ML offense	PC	<p>POCA section 42(2) has a deficiency with respect to compliance with the requirements of the Vienna Convention and the Palermo Convention.</p> <p>Lack of a precursor chemical statute;</p> <p>The predicate offences for money laundering do not cover two (2) out of the twenty (20) FATF's Designated Categories of Offences, specifically Racketeering and Human Trafficking.</p>	<ul style="list-style-type: none"> <li>Section 42(2) of the POCA should be amended to cure the deficiency noted at paragraph 132 of this Report.</li> <li>The Draft Precursor Chemical legislation is not yet in place and should be enacted to bring the legislation in compliance with the requirements of the Vienna Convention.</li> <li>The Bahamas should proceed to implement the provisions of the Palermo Convention.</li> <li>The Bahamas should proceed to enact laws to deal with Migrant Smuggling and Human Trafficking to ensure compliance with the FATF list of Designated Categories of offences.</li> </ul>	<p>By the Proceeds of Crime (Amendment) Act, 2007 (Act No. 14 of 2007) section 42(2) of the POCA has been repealed to cure the deficiency noted at paragraph 132 of the Report.</p> <p>The Precursor Chemicals Act, 2007 (Act No. 2 of 2007) was passed on the 16<sup>th</sup> of January, 2007 and brought into force on the 23<sup>rd</sup> April, 2007.</p> <p>The Bahamas has ratified the United Nations Convention against Transnational Organized Crime (the Palermo Convention) on 26<sup>th</sup> September, 2008; the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime on the 26<sup>th</sup> September, 2008; and has acceded to the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention Against Transnational Organized Crime on the 26<sup>th</sup> September, 2008. The Convention and the Protocols will enter into force for The Bahamas on the 25<sup>th</sup> December, 2008. A draft Trafficking in Persons (Prevention and Suppression) Act, 2008 which addresses the issue of human smuggling and trafficking in persons for among other reasons, the purpose of labour and sexual exploitation was introduced in Parliament on the 25<sup>th</sup> June, 2008.</p>
2. ML offense— mental element and corporate liability	C	The Recommendation is fully observed		
3. Confiscation and provisional measures	C	The Recommendation is fully observed	<ul style="list-style-type: none"> <li>The Examiners considered the provisions of section 33(5) of the DDA, which permits the</li> </ul>	

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			Minister of Finance to deal with forfeited property upon application by a person who indicates a moral claim. Whilst the Examiners consider that The Bahamas Government does retain a wide discretion to deal with property that has vested in the Crown, the Examiners considered that the terms of the DDA section 33 could be amended to make it clear that the Minister should only exercise the discretion in circumstances where the Minister is satisfied that the applicant was not involved in the criminal activity or any other criminal activity. The provisions of the section may also have to be reconciled with the provisions of the POCA section 52, which establishes the Confiscated Assets Fund.	
<b>Preventive measures</b>				
4. Secrecy laws consistent with the Recommendations	LC	<p>The SC is not generally empowered to access information records or documents for purposes other than investigations under section 33 of the SIA.</p> <p>The CBB cannot share information with the IFCSP or the CC.</p>	<ul style="list-style-type: none"> <li>• The Authorities should move quickly to enact the legislation that will correct the deficiencies that exist with regard to the ability of the regulatory bodies to share information on a domestic basis as pointed out.</li> <li>• The new SIA should be finalized as soon as possible to allow the SC powers to compel information, and to share information with the FIU and the SIR should be amended to grant the SC powers to access bank accounts without a court order.</li> <li>• The requirement for a policyholder to consent to the Registrar of Insurance accessing his account information should be removed from the EIA.</li> <li>• Information exchange with domestic and foreign regulatory authorities should be</li> </ul>	<p>Amendments were passed to Regulators' governing statutes in 2007 that enable domestic regulators to share information.</p> <p>This matter was addressed in amendments to the SIA which became effective January, 2007. The SIAA, 2007 gives SC general powers to compel information, and to share information with any regulatory authority in The Bahamas. Further, the Securities Industry (Amendment) Regulations, 2009 revokes regulation 134 of the SIR, which provides that any request by the Commission to a registered firm or registered or licensed individual for reports, testimony or production of documents regarding banks accounts of the firm or of the individual shall be pursuant to a court order.</p>

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			<p>formalized with the inclusion of information exchange provisions in the COSA, in line with other domestic Statutes. Section 74 of the COSA should be reviewed; and the Society, its officers, members, agents or employees should be required to provide the Inspector with wide access to accounts, securities or other documents required to allow the Inspector to perform his duties. The Director should reserve the right to inspect a Society on the basis of all applications received from members.</p>	<p>A provision for information exchange has been provided for in the new Cooperative Societies Regulations Section 20(3) "Every society shall comply with the Anti-Money Laundering legislative framework including the Proceeds of Crime Act, the Anti-Terrorism Act, and the Financial Intelligence Unit Act." S88 and S89 of the COSA give the Director of Societies the power to access accounts and other documents. (Note that the reference to Section 74 of COSA is incorrect.) . The draft regulations are under review. Sections 80, 81 and 82 however compliment the Act.</p>

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5. Customer due diligence	PC	<p>No requirement for financial institutions to undertake CDD due diligence measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII.</p> <p>No requirement for financial institutions to verify that any person purporting to act on behalf of legal persons or legal arrangements is so authorised, and identify and verify the identity of that person.</p> <p>No requirement for financial institutions to take reasonable measures to determine the natural persons who ultimately own or control legal persons or legal arrangements.</p> <p>The legislative requirements for occasional transactions are limited to transactions involving cash and do not cover all occasional transactions.</p>	<ul style="list-style-type: none"> <li>Legislation should be enacted or amended to require that financial institutions undertake: CDD measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII; <ul style="list-style-type: none"> <li>- verify that any person purporting to act on behalf of legal persons or legal arrangements is so authorised and identify and verify the identity of that person;</li> <li>- take reasonable measures to determine the natural persons that ultimately own or control legal persons or legal arrangements.</li> </ul> </li> <li>The legislative requirement for occasional transactions should be amended to cover all occasional transactions that exceed \$15,000 in value.</li> <li>The basis for the application of any reduced or simplified CDD measures for designated customers should be formally documented by the Authorities.</li> </ul>	<p>The Financial Transaction Reporting (Wire Transfer) Regulations 2009, which came into effect on the 12 January, 2009, addresses the outstanding wire transfers CDD requirement under rec. 5 and SR VII.</p> <p>Amendments have been made to the Financial Transactions Reporting Regulations which , inter alia, establish minimum mandatory requirements for financial institutions to:</p> <ul style="list-style-type: none"> <li>Include minimum mandatory requirements for financial institutions to verify the identity of : <ul style="list-style-type: none"> <li>- persons acting on behalf of corporate entities (Regulation 4(1) (b) and (c)),</li> <li>- persons acting on behalf of partnerships or other unincorporated businesses (Regulation 5(1) (c) and (d)),</li> <li>- settlors and persons exercising effective control over a trust (Regulation 6(2)).</li> </ul> </li> <li>require financial institutions to take reasonable measures to verify the identity of the beneficial owners of corporate entities (Regulations 4(1)(e)),partners or beneficial owners of partnerships and unincorporated business (Regulation 5(1)(a)); to determine the natural persons that own or control legal persons or legal arrangements.</li> </ul> <p>This matter was addressed in amendments to the FTRA which were brought into force in January 2009, and provide a new definition of “occasional transaction” that includes non-cash transactions.</p> <p>SC is working on establishing enforceable AML/CFT Guidelines which will address issues raised with</p>

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		<p>All requirements for verification of the legal status of a legal person or legal arrangements are discretionary.</p> <p>The requirement for financial institutions to understand the ownership and control structure of legal persons or legal arrangements is enforceable only on banks and trust companies.</p> <p>The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date is only enforceable on banks and trust companies.</p> <p>The requirement for financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction is</p>	<ul style="list-style-type: none"> <li>Regulations 4 and 5 of the FTRR concerning the verification of the identity of legal persons should be amended to require minimum mandatory requirements as in Regulation 3 rather than permitting discretion for all requirements.</li> <li>The requirement for financial institutions to understand the ownership and control structure of legal persons or legal arrangements should be enforceable on all financial institutions.</li> <li>Financial institutions should be required to ensure that documents, data or information collected under the CDD process are kept up-to-date.</li> <li>The requirement for financial institutions to perform enhanced due diligence for higher risk categories of customer, business</li> </ul>	<p>respect to FATF rec. 5.</p> <p>This has been the basis of continuous training since January 2004 and has been incorporated into updated CC Codes of Practice. Constituents of the CC are required to submit their AML/CFT policies and procedures in relation to this, along with their on-site examination, so that the appropriateness of risk categorization can be assessed. This instruction is contained on the CC's examination form.</p> <p>With respect to FATF rec. 5, ORIC (with the passage of the new Insurance Act and regulations) has exclusive responsibility for addressing AML/CFT relative to its licensees. However, the Compliance Commission conducts the onsite examinations process on ORIC's behalf. ORIC is also currently revising its industry specific Guidelines with respect to this matter.</p> <p>This matter is addressed in the above mentioned amendments to the FTRR which were brought into force in January 2009.</p> <p>This obligation is found in Regulation 7 of the FTRR and again is enforceable through the mechanism created under Regulation 8 of the FITRR. Specifically in relation to 5.5.2 (b), these requirements are set out in the CC's Codes. Any failure to follow the direction set out in the Codes is dealt with under the sanctions regime established under Regulation 8 of the FITRR. This is also covered in the Codes.</p> <p>Amendments of the FTRA, FIUA and FI(TR)R, which were brought into force in January 2009, have imposed penalties for non-compliance with financial sector AML/CFT guidelines and the Compliance Commission's Codes of Practice.</p> <p>This is mandated by Regulation 9 of the FTRR. It is also covered under the CC Codes (in section 16.4 of</p>

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		<p>enforceable only on banks and trust companies.</p> <p>The exemption for insurance from full CDD measures is not limited to life insurance policies with an annual premium of no more than \$1,000 or a single premium of no more than \$2,500.</p> <p>Bahamian dollar facilities below \$15,000 are exempt from full CDD measures.</p> <p>No requirement for a financial institution to consider making a STR if it is unable to comply with CDD measures.</p>	<p>relationship or transaction should be enforceable on all financial institutions.</p> <ul style="list-style-type: none"> <li>The exemption for insurance should be limited to life insurance policies with an annual premium of no more than \$1,000 or a single premium of no more than \$2,500.</li> <li>Bahamian dollar facilities below \$15,000 should not be exempted from full CDD measures.</li> <li>All financial institutions except those already covered should be required to consider making a STR if it is unable to comply with CDD measures.</li> </ul>	<p>the Codes for the accounting profession). Similar provisions appear in all of the other industry-specific Codes. The FATF's methodology seems to refer specifically to ensuring that the identification and verification documents collected should be periodically reviewed to ensure they are relevant and current. Regulation 9 and the Codes seem to speak specifically to monitoring to ensure consistency with the stated account purpose. This is also addressed in the CBB AML/CFT Guidelines at paragraph 42.</p> <p>This requirement is met through the implementation of the amendments to the FTRA and the FTRR, which were passed in 2003 and have been incorporated in CC's updated Codes (in section 13.3.4-6 of the Codes for the accounting profession). Similar provisions appear in all of the other industry-specific Codes. These amendments introduced a risk based approach for CDD. This is applied to all constituents of the CC, and communicated during all training sessions since 2004.</p> <p>The Bahamas contends that the examples provided at page 14 of the Methodology dealing with reduced CDD must be read in conjunction with the final sentence in paragraph 10 of the Methodology which states: "The examples are not part of the criteria, and are only illustrative, but they may provide guidance as to whether national measures for particular criteria may be appropriate."</p> <p>Based on the circumstances of the Bahamian environment, it was determined that these potentially reduced due diligence circumstances are appropriate. With regards to the \$2,500 annual premium, the Office of the Registrar of Insurance Companies decided that the \$1,000 suggested figure represents a monthly premium of about \$84 and the position is that the probability of anyone trying to launder money at the rate of \$2,500 was negligible.</p>

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				<p>No action taken as money laundering risk on \$2500 negligible.</p> <p>It was determined that Bahamian dollar facilities pose limited opportunity for cross-border money laundering due to the exchange control regime in place in The Bahamas and this should be noted as the opinion of the Bahamian Authorities. With the amendment to Regulation 5A of the FTRR, this is not a blanket exemption.</p> <p>Amendments to the FTRR, which were brought into force in January 2009, have made Regulation 5A of the FTRR subject to Section 10A of the FTRA, expressly requiring financial institutions to verify customer identity if there is a suspicion of money laundering or terrorist financing in the case of Bahamian dollar transactions below \$15,000.</p> <p>This matter is addresses in the CC's updated Codes, (in section 14.8.1(iii) of the Codes for the accounting profession). Similar provisions appear in all of the other industry-specific Codes.</p>
6. Politically exposed persons	PC	Enforceable requirements concerning PEPs are applicable only to banks and trust companies at present.	<ul style="list-style-type: none"> <li>The requirements concerning PEPs detailed in the CBB AML/CFT Guidelines should be imposed on all other financial institutions.</li> </ul>	<p>The SC's Guidelines have been made enforceable by the amendments to SIA the FIUA and the FITRR. Therefore the issues raised with respect to FATF rec. 6 have now been addressed.</p> <p>As a part of its on-site examination process, which commenced 1<sup>st</sup> August 2008, the CC examines whether all necessary procedures relative to PEPs are being adhered to by its constituent financial institutions. Requirements for PEPs have also been incorporated into the CC's training material. The relevant provisions are found in Section 13.3.4-5 of Sub-Part VI of the Code of Practice for the accounting profession under the subject 'High Risk Characteristics'. Similar provisions appear in all of the other industry-specific Codes, for DNFBPs regulated by the CC, including the</p>

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		No requirement for senior management approval to continue a relationship with a customer who is subsequently found to be a PEP or who subsequently becomes a PEP.	<ul style="list-style-type: none"> <li>Senior management approval should be required to continue a relationship with a customer who is subsequently found to be a PEP or who subsequently becomes a PEP.</li> </ul>	<p>legal and real estate professions, and financial and corporate service providers. Through an arrangement, the CC supervises FCSPs for AML/CFT purposes, on behalf of the IFCSP.</p> <p>Amendments of the FTRA, FIUA and FI(TR)R, which were brought into force in January 2009, have imposed penalties for non-compliance with financial sector AML/CFT guidelines and the CC's Codes.</p> <p>The CBB AML/CFT Guidelines have been amended to require senior management approval for the commencement of business relationships with PEPs or to continue business relationships with customers who are found to be or who subsequently become PEPs (Paragraph 161(iii)).</p> <p>Due to the diversity of the group supervised by the CC, the requirement in the Codes allows for flexibility depending on the size and complexity of the DNFBP. The relevant provision is found in Section 13.3.4 of Sub-Part VI of the Codes for the accounting profession. Similar provisions appear in all of the other industry-specific Codes, for DNFBPs regulated by the CC, including the legal and real estate professions, and financial and corporate service providers.</p>



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7. Correspondent banking	NC	<p>No requirement to determine the reputation of a respondent and the quality of supervision.</p> <p>Assessment of a respondent AML/CFT controls is limited to identification procedures.</p> <p>No provision to obtain senior management approval before establishing new correspondent relationships.</p> <p>No provision to document respective AML/CFT responsibilities in correspondent relationships.</p> <p>No requirement for financial institutions with correspondent relationships involving “payable-through accounts” to be satisfied that the respondent financial institution has performed all normal CDD obligations on its customers that have access to the accounts.</p> <p>No requirement for the financial institution to be satisfied that the respondent institution can provide reliable customer identification data upon request.</p>	<ul style="list-style-type: none"> <li>Financial institutions should be required to gather sufficient information about a respondent institution to understand fully the nature of the respondent’s business, the reputation of the institution and the quality of supervision.</li> <li>Financial institutions should assess the respondent institution’s AML/CFT controls and ascertain their adequacy and effectiveness.</li> <li>Financial institutions should be required to obtain approval from senior management before establishing new correspondent relationships.</li> <li>Financial institutions should document respective AML/CFT responsibilities in correspondent banking relationships.</li> <li>Financial institution with correspondent relationships involving “payable-through accounts” should be required to be satisfied that the respondent financial institution has performed all normal CDD obligations on its customers that have access to the accounts and that the respondent institution can provide reliable customer identification data upon request.</li> </ul>	<p>The CBB AML/CFT Guidelines have been amended to address issues relating to FATF rec. 7 as follows:</p> <p>Licensees are required to gather sufficient information about the respondent’s business to understand fully the nature of the respondent’s business and determine the reputation of the respondent and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action. (Paragraphs 152).</p> <p>Licensees are required to carry out due diligence to ascertain and assess whether the Respondent’s AML/CFT controls are in accordance with standards which are at least equivalent to those required under Bahamian law (Paragraph 151).</p> <p>Licensees are required to obtain senior management approval before establishing new correspondent relationships (Paragraph 150).</p> <p>Licensees are required to document the responsibilities of each institution in relation to KYC measures (Paragraph 153).</p> <p>Licensees are required totake reasonable steps to satisfy themselves that sufficient due diligence has been undertaken by the remitting bank on the underlying client and the origin of funds before passing funds through accounts. Licensees must be satisfied that the respondent institution is able to provide KYC documentation on the underlying customer upon request (Paragraph 157) .</p> <p>. The SC’s Guidelines have been made enforceable by the amendments to the Securities Industries Act (SIA) the Financial Intelligence Unit Act (FIUA) &amp; and the Financial Intelligence (Transaction Reporting)</p>

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				<p>Regulations (FITRR). Further, by the SC's adoption of the CBB Guidelines, this issue has been addressed in respect of SC constituents.</p> <p>Paragraph 115 of the amended CBB AML/CFT Guidelines require Licensees to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML and TF.</p> <p>Paragraphs 142-148 of the amended CBB AML/CFT Guidelines require Licensees to take care in their internal systems, policies and procedures to mitigate ML and TF risks inherent to non face-to-face relationships and transactions.</p>
8. New technologies & non face-to-face business	PC	<p>No provision for financial institutions to have in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.</p> <p>Legislative provision for non-face to face transactions does not include ongoing due diligence.</p> <p>Requirements in the CBB AML/CFT Guidelines extend specifically to non-resident customers and are only enforceable for banks and trust companies.</p>	<ul style="list-style-type: none"> <li>Financial institutions should have in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.</li> <li>Requirements for policies and procedures to address specific risks associated with non-face to face business relationships and transactions should include ongoing due diligence and should be enforceable on all financial institutions.</li> </ul>	<p>Paragraph 115 of the amended CBB AML/CFT Guidelines require Licensees to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML and TF.</p> <p>Paragraphs 142-148 of the amended CBB AML/CFT Guidelines require Licensees to take care in their internal systems, policies and procedures to mitigate ML and TF risks inherent to non face-to-face relationships and transactions.</p> <p>The CC's Codes for accountants includes this requirement in section 13.3.4-5(b) of Part VI. This requirement is replicated in the CC's other Codes.</p> <p>The CC's Codes have been amended at Section 13.3.4 of Sub-Part VI of the Code for the accounting profession, to strengthen the provisions for effective CDD procedures when dealing with non-face-to-face customers. There is a similar provision in all of the</p>

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				CC's other industry-specific Codes.
9. Third parties and introducers	PC	<p>No requirement for all financial institutions relying on a third party to immediately obtain from the third party the necessary information concerning elements of the CDD process covering identification and verification of customers and beneficial owners and purpose and intended nature of the business relationship.</p> <p>Only banks and trust companies are required to obtain identification documentation from third parties.</p> <p>No provision requiring financial institutions to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendations 5 and 10.</p> <p>The ultimate responsibility for customer identification and verification when relying on third parties is only enforceable on banks and trust companies.</p>	<ul style="list-style-type: none"> <li>All financial institutions relying on a third party should be required to immediately obtain from the third party the necessary information concerning elements of the CDD process covering identification and verification of customers and beneficial owners and purpose and intended nature of the business relationship.</li> <li>The present requirement for banks and trust companies to obtain copies of all documentation from third parties should be extended to all financial institutions.</li> <li>Financial institutions should be required to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendations 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendations 5 and 10.</li> <li>All financial institutions relying on third parties should be ultimately responsible for customer identification and verification.</li> </ul>	<p>This is provided for in sections 3 (2) and 11 of the FTRA and the CC's Codes (see paras. 542, 544, 546 and 549 of the MER, amongst others).</p> <p>ORIC (with the passage of the new Insurance Act and regulations) has exclusive responsibility for addressing AML/CFT relative to its licensees. However, the Compliance Commission conducts the on-site examinations process on ORIC's behalf. ORIC is also currently revising its industry specific guidelines with respect to this matter.</p> <p>Paragraphs 127-131 of the amended CBB AML/CFT Guidelines address the Examiners recommendations with respect to FATF EC 9.1, 9.3 and 9.5.</p> <p>The SC's Guidelines have been made enforceable by the amendments to SIA the FIUA and the FITRR. Further, by the SC's adoption of the CBB Guidelines, this issue has been addressed in respect of SC constituents.</p> <p>This is provided for in sections 3(2) and 11 of the FTRA and the Codes (see paras. 542, 544, 546 and 549 of the MER, amongst others).</p> <p>This is provided for in sections 3(2) and 11 of the FTRA and the Codes (see paras. 542, 544, 546 and 549 of the MER, amongst others).</p> <p>The CC contends that the Methodology does not indicate that this requirement is a 'basic obligation' that should be in law or regulation. However, it should be noted that the types of reliable introductions permissible under section 3 (2) of FTRA only cover regulated institutions in First Schedule Countries.</p> <p>Paragraph 130 of the amended CBB AML/CFT</p>

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				<p>Guidelines provide that where a third party satisfies the definition of eligible introducer, a Licensee may place reliance upon the KYC procedures of the eligible introducer but remains ultimately responsible for ensuring that adequate due diligence procedures are followed and that the documentary evidence of the eligible introducer that is being relied upon, is satisfactory for these purposes.</p> <p>This is provided for in sections 3(2) and 11 of the FTRA and the Codes (see paras. 542, 544, 546 and 549 of the MER, amongst others).</p> <p>Paragraph 546 of the MER acknowledges that Section 15.1 of the CC's Code for accountants stipulates that the primary duty to verify identity using best evidence and means rests with the financial institution. Similar provisions appear in the CC's other Codes. Any failure to follow the direction set out in the Codes is dealt with under the sanctions regime established under Regulation 8 of the FI(TR)R.</p>

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10. Record keeping	PC	<p>Termination of the obligation to retain transaction records when corporate financial institutions are liquidated and finally dissolved or where financial institutions that are partnerships have been dissolved.</p> <p>Inclusion of the commencement of proceedings to recover debts payable on insolvency as a definition of termination of an account.</p>	<ul style="list-style-type: none"> <li>The legislative provision for the cessation of the obligation to retain transaction records when corporate financial institutions are liquidated and finally dissolved or where financial institutions that were partnerships have been dissolved should be repealed.</li> <li>The inclusion of the commencement of proceedings to recover debts payable on insolvency as a definition of termination of an account should be eliminated.</li> </ul>	<p>Section 27 of the FTRA has been amended to require liquidators to maintain records for the balance of the statutory period where a financial institution goes into liquidation or is dissolved. The exemption that was granted to partners on dissolution has been removed. This matter was addressed in amendments to the FTRA, which were brought into force in January 2009. The amendments require liquidators to maintain records for the balance of the statutory period where a financial institution goes into liquidation and is dissolved. The exemption granted to partners on dissolution has been removed.</p> <p>In the course of an ongoing liquidation, in practice, the liquidator maintains KYC records of the entity being liquidated. Only two points raised by the examiners will require some adjustments by The Bahamas (1) to make express provision for identity and transaction records to be maintained post liquidation and (2) to include an express reference to account files and business correspondence, although in practice these requirements are met by licensees. This requirement is found in the CC's Codes for the accounting profession at Section 17.7 of Sub-Part VII (Record Keeping Procedures). Similar provisions are found in the other industry-specific Codes. Through an arrangement, the CC supervises FCSPs for AML purposes, on behalf of the IFCSP.</p> <p>This provision does not appear in Bahamian law. However, clarification is provided in the CC's Code for accountants at Section 17.5.4 of Sub-Part VII (Record Keeping Procedures). Similar provisions appear in the CC's other industry-specific Codes.</p>
11. Unusual transactions	PC	The monitoring requirement focussing on significant changes and inconsistencies in patterns of transactions is only enforceable on banks and trust companies.	<ul style="list-style-type: none"> <li>All financial institutions except those already covered should be required to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.</li> </ul>	ORIC (with the passage of the new Insurance Act and regulations) has exclusive responsibility for addressing AML/CFT relative to its licensees. However, the CC conducts the on-site examination process on ORIC's behalf. ORIC is currently revising its industry specific Guidelines with respect to this matter.

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		<p>Financial institutions are not required to examine as far as possible the background and purpose of complex, unusual large transactions and to set their findings in writing.</p> <p>Financial institutions are not required to keep such findings available for competent authorities and auditors for at least five (5) years.</p>	<ul style="list-style-type: none"> <li>Financial institutions should be required to examine as far as possible the background and purpose of such transactions (i.e. all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose) and set forth findings in writing.</li> <li>Financial institutions should be required to keep such findings (i.e. for all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose) available for competent authorities and auditors for at least five (5) years.</li> </ul>	<p>These requirements are covered in regulation 9 of the FTRR which deals with continuous monitoring, and which is applicable to all financial institutions as defined in the FTRA and the CC Codes. If the stated purposes have been declared upfront then any transaction which operates outside of the ordinary specification of account purpose and activity, is required to be noted.</p> <p>This provision appears in the CC Code for accountants at Section 16.3 of Sub-Part VI (Client Identification / Verification (KYC) Procedures). This requirement is replicated in the CC's other industry-specific Codes.</p> <p>Additional guidance will be provided to financial institutions in relation to Recommendations 11.2 and 11.3 based on risk and proportionality.</p> <p>This provision appears in the CC Code for accountants at Section 16.3 of Sub-Part VI (Client Identification / Verification (KYC) Procedures). This requirement is replicated in the CC's other industry-specific Codes.</p> <p>Paragraphs 222-225 of the amended CBB AML/CFT Guidelines address the Examiners recommendations with respect to EC 11.2</p> <p>Paragraph 209 of the amended CBB AML/CFT Guidelines address the Examiners recommendations with respect to EC 11.3</p> <p>The SC's Guidelines have been made enforceable by the amendments to SIA the FIUA and the FITRR. Further, by the SC's adoption of the CBB Guidelines, this issue has been addressed in respect of SC constituents.</p>

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12. DNFBP–R.5, 6, 8-11	PC	<p>Dealers in precious metals and dealers in precious stones are not included as DNFBPs under the AML/CFT framework.</p> <p>Deficiencies identified for all financial institutions for Recommendation 5, 6, 8-11, in sections 3.2.3, 3.3.3, 3.5.3, 3.6.3 of this Report are also applicable to DNFBPs.</p> <p>Requirements of Recommendations 5,6, and 8-11 which are stipulated in the Codes of Practice are not enforceable on DNFBPs.</p>	<ul style="list-style-type: none"> <li>Dealers in precious metals and dealers in precious stones should be included as DNFBPs in the AML/CFT framework.</li> <li>Ensure that the recommendations formulated for Recommendations 5, 6, 8-11, in Sections 3.2.2, 3.3.2, 3.5.2, 3.6.2 of this Report are also applied to the DNFBPs.</li> <li>The Codes of Practice should be binding with sanctions for non-compliance.</li> </ul>	<p>Dealers in precious metals and precious stones are basically in business in this jurisdiction to sell to cruise line passengers coming off cruise ships. They make up a small portion of the DNFB sector (amounting for only 0.32% or B\$8 million of imports in 2005). Thus, The Bahamas has not yet conducted a statistical survey on them.</p> <p>With respect to Rec. 12, no action has been taken, as this sector presents negligible risk in the Bahamian context.</p> <p>Amendments to the FI(TR)R and the FTRA, which were brought into force in January 2009 respectively, impose penalties for non-compliance with financial sector AML/CFT guidelines, and may be used to enforce compliance with the CC's Codes.</p> <p>The CC's industry-specific Codes mandated by section 47 of the FTRA are primarily a SUPPORT to the legislation, which contains the sanctions for non-compliance with the Codes. They are the means by which Financial Institutions supervised by the CC receive guidance for implementing provisions of the law.</p> <p>Amendments to the FTRA, which were brought into force in January 2009, impose penalties that may be used to enforce the CC's Codes of Practice.</p>
13. Suspicious transaction reporting	PC	<p>Statistics on STRs suggest that only the banking sector has effectively implemented suspicious transaction reporting measures.</p>	<ul style="list-style-type: none"> <li>Measures should be taken to ensure that there is effective reporting by all financial institutions.</li> </ul>	<p>The FIU has targeted sectors of the financial services industry, from which low or no Suspicious Transactions Reporting have occurred and has provided training to industry participants, which has led to STRs being made by some of the sectors. Training is ongoing.</p> <p>The FIU is proposing to increase the amount of training provided for the non-banking sector, in relation to suspicious transaction reporting.</p> <p>To the extent possible, the CC will convene joint</p>

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				training sessions with the FIU to ensure that this, and similar pertinent matters, are adequately addressed.
14. Protection & no tipping-off	C	This Recommendation is fully observed.		
15. Internal controls, compliance & audit	PC	<p>Access to information which may be of assistance in making a STR is not extended to both the compliance officer and other appropriate staff.</p> <p>Requirement for the establishment and maintenance of internal procedures, policies and controls with regard to the detection of unusual and suspicious transactions is only enforceable on banks and trust companies.</p>	<ul style="list-style-type: none"> <li>Timely access to CDD information, transaction records and other relevant information should be extended to include both the compliance officer and other appropriate staff.</li> <li>Requirements in the CBB AML/CFT Guidelines to establish and maintain internal procedures, policies and controls including the detection of unusual and suspicious transactions should be enforced on all financial institutions.</li> </ul>	<p>While the law requires that any circumstance of suspicion be reported to the MLRO, there is no prohibition from that officer sharing the information with other appropriate staff including the Compliance Officer (in fact, one person might serve as both MLRO and Compliance Officer).</p> <p>Consideration must be given to the diverse group supervised by the CC whose constituents range from sole proprietors to large financial institutions. Thus, the applicability has to be business appropriate.</p> <p>The CC provides clarification in its Codes for accountants where Compliance Officers and other Senior Officers will have access to information, as appropriate. This requirement is found at Section 18.5.3. Similar provisions appear in all of the CC's other industry-specific Codes.</p> <p>The obligation to deal with the detection of unusual transactions appears in Regulations 3-6 of the FI(TR)R (Internal Reporting Procedures). These have been further expanded on in Part C of the CC's Codes for accountants, at Sections 18 and 16.3. Similar requirements exist in the CC's other industry-specific Codes.</p> <p>Further, amendments to the FTRA, which were brought into force in January 2009, impose penalties that may be used to enforce the CC's Codes of Practice.</p> <p>ORIC (with the passage of the new Insurance Act and regulations) has exclusive responsibility for addressing AML/CFT relative to its licensees. However, the Compliance Commission conducts the onsite examinations process on ORIC's behalf. ORIC is also</p>



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		<p>There is no requirement for the maintenance of an adequately resourced and independent audit function to test compliance with procedures, policies and controls.</p> <p>There is no requirement for all financial institutions to put in place screening procedures to ensure high standards when hiring employees.</p>	<ul style="list-style-type: none"> <li>Financial institutions should be required to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with procedures, policies and controls.</li> <li>Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees.</li> </ul>	<p>currently revising its industry specific Guidelines with respect to this matter.</p> <p>Section 12 of the CC's Codes for accountants requires a self audit at least once per year. There is a similar requirement in the CC's other Codes. Resources would have to be based on a number of factors including the size of the DNFBP, and the volume of financial services business it is engaged in. The requirement for self audits will continue to form a part of the CC's training materials for its constituents.</p> <p>Paragraph 29 of the amended CBB AML/CFT Guidelines require Licensees to establish and implement appropriate policies and procedures to ensure high standards are being followed when hiring employees. To this end, Licensees are required to have in place screening procedures, which should involve making diligent and appropriate enquiries about the personal history of the potential employee and taking up appropriate references on the individual.</p> <p>. The SC's Guidelines have been made enforceable by the amendments to SIA the FIUA and the FITRR. Further, by the SC's adoption of the CBB Guidelines, this issue has been addressed in respect of SC constituents.</p> <p>SC is working on establishing enforceable AML/CFT Guidelines which will address issues raised with respect to FATF rec. 15.</p> <p>The requirement to screen employees has always formed a part of the CC's Codes. This requirement is found in Section 19.2 of Part IX of the Codes for the accounting profession. Similar requirements may be found in all of the CC's other industry-specific Codes.</p>

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16. DNFBP–R.13-15 & 21	PC	<p>Deficiencies identified for all financial institutions for Recommendations 13, 15, and 21 in Sections 3.7.3, 3.8.3, and 3.6.3 of this Report are also applicable to DNFBPs</p> <p>Ineffective implementation of suspicious transaction reporting requirements.</p>	<ul style="list-style-type: none"> <li>The Bahamas should ensure that recommendations formulated for Recommendations 13, 15 and 21 in Sections 3.7.2; 3.8.2 and 3.6.2 of this Report are also applied to DNFBPs.</li> </ul>	<p>Constituents of the CC, designated as financial institutions by Section 3 of the FTRA do comply with Recommendations 13, 15 and 21 in Sections 3.7.2; 3.8.2 and 3.6.2 of this Report. All of the requirements under Recommendations 13, 15 and 21 are found in Part C (Internal AML/CFT Procedures) of the CC's Codes.</p> <p>Constituents of the CC are obliged to comply with:</p> <ul style="list-style-type: none"> <li>The Suspicious Transaction Reporting requirements of Part III of the FTRA</li> <li>The suspicious transactions reporting policies and procedure of the Financial Intelligence (Transaction Reporting) Regulations; and</li> <li>The obligations of the Proceeds of Crime Act, 2000.</li> </ul> <p>The CC has a vigorous training programme where all of its constituents are apprised of their AML/ CFT statutory obligations. In addition to training, constituents are required to stipulate the numbers of STRs filed with the FIU, as part of the examination process.</p>
17. Sanctions	PC	<p>The supervisory authorities for financial corporate service providers, insurance and cooperatives have limited sanctions against natural or legal persons.</p> <p>The supervisory authorities for financial corporate service providers, insurance and cooperatives have no powers to sanction directors and senior managers of their licensees under their relevant Statutes.</p>	<ul style="list-style-type: none"> <li>The SC should have powers of sanction against a licensee or registrant who fails to comply with a directive. In addition, the process of applying sanctions requires simplification.</li> <li>The IFCSA, Director of Societies and Registrar of Insurance should be granted more extensive administrative powers of enforcement against licensees, directors and senior officers for failure to comply with AML/CFT requirements. This is particularly relevant given the limited powers of the CC to compel registrants to comply with directives.</li> </ul>	<p>These issues have been provided for at Part XV of the draft SIA. The draft SIA &amp; SIR have been issued to the industry for public consultation.</p> <p>Section 18A of the FCSPA as amended by the FCSPA (Amendment) Act 2008, increases the powers of the IFCSA.</p> <p>This matter has been addressed in amendments to the FCSPs Act, which were brought into force in January 2009, and provide robust powers for the IFCSA.</p> <p>A provision extending the Director of Societies power over AML/CFT matters has been addressed in the new Cooperative Societies Regulations Section 20(3) "Every society shall comply with the Anti-Money Laundering legislative framework including the Proceeds of Crime Act, the Anti-Terrorism Act, and</p>

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			<ul style="list-style-type: none"> <li>• The “Minister”, who has powers to cancel registrations under the EIA, should be defined in that Statute.</li> <li>• Non-compliance with the FTRA and accompanying regulations should be a consideration for cancelling a registration under the IA and EIA.</li> <li>• The IFCSP, Registrar of Insurance and Director of Societies should introduce ladders of supervisory intervention that are broad and proportionate.</li> </ul>	<p>the Financial Intelligence Unit Act.” The draft regulations are under review.</p> <p>Sections 88, 89 &amp; 90 of COSA provide the necessary powers S 175 &amp; 177 speaks to offences. Draft Regs S80, 81&amp;82 compliments the Act.</p> <p>The new Insurance Act, which came into force in July 2009, provides for such powers.</p> <p>The new External Insurance Act, which came into force in July 2009, addresses this concern.</p> <p>Amendments to the Financial and Corporate Service Providers Act, which provide ladders of supervisory intervention, were brought into force in January 2009.</p> <p>This recommendation may be impractical as cancellation of registration will lead to the automatic cancellation of life contracts. ORIC considers that expanding the administrative penalties available to it may be more appropriate.</p> <p>Section 18A of the FCSPA as amended by the FCSPA (Amendment) Act 2008, broadens the sanctioning powers of the IFCSP and introduce ladders of supervisory intervention that are broad and proportionate.</p> <p>Following adoption of the new Cooperative Societies Regulations with the provision for AML/CFT matters (S21(3)), the existing AML Guidelines for Cooperatives would be revised to further address ladders of supervisory interventions.</p> <p>The new Insurance Act, which was brought into force in July 2009, provides for such powers.</p>

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18. Shell banks	C	This Recommendation is fully observed.		
19. Other forms of reporting	NC	No evidence that the Bahamas has considered the feasibility and utility of implementing a fixed threshold currency reporting system.		This matter is under active consideration by the GFSR.
20. Other NFBP & secure transaction techniques	C	This Recommendation is fully observed.		
21. Special attention for higher risk countries	PC	<p>The only requirement for special attention to business relationships is generally for those with high risk countries and it is only applicable to banks and trust companies.</p> <p>Effective measures to ensure that financial institutions</p>	<ul style="list-style-type: none"> <li>Financial institutions should be required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries, which do not or insufficiently apply the FATF Recommendations.</li> <li>Effective measures should be in place to ensure that not only the registrants of the CC</li> </ul>	<p>Paragraphs 141(d), 166 and 167 of the amended CBB AML/CFT Guidelines require Licensees to give particular attention to the business relations and transactions with persons from or in countries and jurisdictions known to have inadequate AML/CFT measures.</p> <p>The SC's Guidelines have been made enforceable by the amendments to SIA the FIUA and the FITRR. Further, by the SC's adoption of the CBB Guidelines, this issue has been addressed in respect of SC constituents.</p> <p>This requirement is covered in Section 9 of the FTRR which deals with continuous monitoring, and which is applicable to all financial institutions as defined in the FTRA and the CC Codes. If the stated purposes have been declared upfront then any transaction which operates outside of the ordinary specification of account purpose and activity, is required to be noted.</p> <p>See Section 13.3.4-5 of Sub-Part VI (Client Identification / Verification (KYC) Procedures) in the CC's Codes for accountants. Similar requirements may be found in the CC's other industry-specific Codes.</p> <p>Further, amendments to the FTRA, which were brought into force in January 2009, impose penalties that may be used to enforce the CC's Codes.</p> <p>ORIC (with the passage of the new Insurance Act and regulations) has exclusive responsibility for addressing</p>

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		<p>are advised of concerns about weaknesses in the AML/CFT systems of other countries have only been implemented by the CC for its registrants.</p> <p>No requirement for written findings of the examinations of transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations that have no apparent economic or visible lawful purpose to be available for competent authorities.</p>	<p>but all other financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.</p> <ul style="list-style-type: none"> <li>• Written findings of the examinations of transactions with persons from or in countries, which do not or insufficiently apply the FATF Recommendations that have no apparent economic or visible lawful purpose should be available to assist competent authorities.</li> </ul>	<p>AML/CFT relative to its licensees. However, the CC conducts the on-site examination process on ORIC's behalf.</p> <p>Section 16.3 (Monitoring of Facilities) of Part VI of the CC's Codes for accountants includes this recommendation. There is a similar requirement in the CC's other industry-specific Codes. Additionally, this requirement forms a part of the CC's training and education campaigns. Any failure to follow the direction set out in the Codes is dealt with under the sanctions regime established under Regulation 8 of the FITRR.</p> <p>Paragraph 167 of the amended CBB AML/CFT Guidelines require Licensees to investigate the background and purpose of transactions to and from countries that insufficiently apply FATF recommendations or where the transactions appear to have no economic or visible lawful purpose and to document their findings</p>

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22. Foreign branches & subsidiaries	PC	The majority of the requirements of the Recommendation are only applicable to banks and trust companies.	<ul style="list-style-type: none"> <li>• Ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations to the extent that local (i.e. host country) laws and regulations permit.</li> <li>• Pay particular attention that AML/CFT standards consistent with FATF Recommendations are observed with respect to their branches and subsidiaries in countries, which do not sufficiently apply the FATF Recommendations.</li> <li>• Where AML/CFT requirements of home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.</li> <li>• Inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures.</li> </ul>	The SC's Guidelines have been made enforceable by the amendments to SIA the FIUA and the FITRR. Further, by the SC's adoption of the CBB Guidelines, this issue has been addressed in respect of SC constituents.
23. Regulation, supervision and monitoring	PC	<p>The SC does not have a system whereby exemption of investment funds is granted on the basis of a proven CDD by promoters.</p> <p>Inadequacies in staffing resources, with the exception of the CBB, of competent authorities impact on the capacity to adequately regulate and supervise all financial institutions.</p>	<ul style="list-style-type: none"> <li>• The SC should implement a system whereby exemption of investment funds is granted on the basis of proven CDD by promoters.</li> <li>• As licensing and supervisory authority, the functions of the Director of Societies should include responsibility for ensuring that licensees and registrants comply with the FTRA. This would facilitate enforcement action for non-compliance with AML/CFT requirements.</li> </ul>	<p>SC has conducted a review of the exemption and has made certain submissions to the MOF and is awaiting its final determination</p> <p>A provision for compliance with FTRA has been provided for in the new Cooperative Societies Regulations Section 20(2) "A society shall not accept shares or deposits in any transaction, above the limit set by the Financial Transactions Reporting Act, from a member or non-member without an accepted declaration of the source of funds." The draft regulations are under review. . S 175&amp;177 addresses offences for non-compliance to the Act.</p>

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		Licensees and registrants under the Registrar of Insurance (with respect to the EIA) and the IFCSP are not subject to adequate fit and proper tests.	<ul style="list-style-type: none"> <li>• The Registrar of Insurance should be authorized by law to make arrangements with a person to assist with the execution of his functions.</li> <li>• Registered insurers under Part II of the IA should be required on an ongoing basis to seek the Registrar's prior approval for changes of directors and partners and beneficial share ownership over the ten percent (10%) threshold. In addition, the Registrar should be informed of changes in managers and officers of registered insurers and incorporated agencies.</li> <li>• Applications for FCSP licences should include information on beneficial shareholders of a significant or controlling interest so as to facilitate due diligence.</li> <li>• Fit and proper criteria should be defined by the Registrar of Insurance for EIA registrants; and strengthened in the case of the IFCSP.</li> <li>• The Bahamas is encouraged to finalize the revisions to the licensing and registration regime for stand-alone MVT service providers so as to strengthen their licensing and ongoing supervision, including monitoring of natural and legal persons.</li> </ul>	<p>The new Insurance Act, which was brought into force in July 2009, provides for such powers.</p> <p>Such information on the beneficial shareholders of a significant or controlling interest is currently required of applicants for FCSP licences.</p> <p>Amendments to the Banks and Trust Companies Regulation Act, (Act No. 1 of 2008) Central Bank of the Bahamas Act (Act No. 2 of 2008) to formally place stand-alone money transmission business under the supervision of the Central Bank were brought into force on 2<sup>nd</sup> May, 2008 and supporting regulations were brought into effect on 6<sup>th</sup> May, 2008.</p>

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24. DNFBP - regulation, supervision and monitoring	PC	<p>Non-compliance with the FTRA does not constitute grounds for revocation of a licence under the LGA.</p> <p>Sanctions and enforcement action under the LGA are neither proportionate nor dissuasive.</p> <p>There is no formal ongoing system to obtain information on changes to beneficial owners of casinos to prevent criminals from holding or becoming the beneficial owner of a significant or controlling interest.</p>	<ul style="list-style-type: none"> <li>Non-compliance with the FTRA should constitute grounds for revocation of a licence under the LGA.</li> <li>Sanctions and enforcement action under the LGA should be proportionate and dissuasive.</li> <li>Consideration should be given to including in SRO codes of ethics/conduct, the need for members who are designated as financial institutions to conform to the requirements of the FTRA.</li> <li>The BREA should institute an annual declaration for brokers who do not accept client funds.</li> </ul>	<p>All casino licences now include a provision that non-compliance with the FTRA will constitute grounds for the revocation of such licences under the LGA; such a provision has also been included in a Bill of proposed amendments to the LGA which the Government of The Bahamas intends to introduce in Parliament sometime before the end of 2009. The Bill includes a provision for the revocation or suspension of the license for non-compliance with the FTRA.</p> <p>Included in the package of proposed amendments to the LGA are increases in fines.</p> <p>All financial institutions that would be part of an SRO are presently subject to direct supervision by the CC for AML/CFT purposes, by virtue of being designated as 'financial institutions' by the FTRA. Recent amendments to the FTRA have provided that the Minister may, after consultation with the CC, designate an SRO to act as an AML supervisor.</p> <p>Codes of Practice have been issued by the CC, to provide guidance to all of its constituent financial institutions, on implementing and meeting obligations imposed by the FTRA.</p> <p>Codes of Ethics/Conduct developed by governing bodies would simply reinforce requirements already managed by the CC, as AML supervisor.</p> <p>At present, the CC secures written undertakings from real estate brokers as part of its registration process, whereby, when appropriate, they are obliged to notify the CC of the fact that they do not accept funds from their clients for the purpose of settling real estate transactions. These persons / firms are designated as 'inactive' by the CC and are not subject to the routine</p>



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				on-site examination process. However, they are not excluded from the CC's random on-site examination process.  The CC is satisfied that the procedure above meets and exceeds international best practice, but will continue to monitor developments internationally, for any changes requiring commensurate action.
25. Guidelines & Feedback	LC	No information on current typologies is presented in the FIU's annual report.	<ul style="list-style-type: none"> <li>The FIU Guidelines for casino operators should be updated to preserve relevance to the existing legal and regulatory framework.</li> <li>The revised Codes of Practice for DNFBPs should be finalized as soon as possible.</li> </ul>	The CC's industry-specific Codes for DNFBPs came into force on 30 <sup>th</sup> July 2009.
<b>Institutional and other measures</b>				
26. The FIU	C	This Recommendation is fully observed.	<ul style="list-style-type: none"> <li>The FIU may wish to consider issuing a narrower set of guidelines, relating to suspicious transactions and Suspicious Transaction Reporting that can be included in the Guidelines issued by the various sub-sectors of the financial services industry.</li> </ul>	The FIU issued its Suspicious Transactions Guidelines Relating To The Prevention of Money Laundering and The Financing of Terrorism on 19 <sup>th</sup> March 2007. The Guidelines replaced the Guidelines, which were issued by the FIU in November 2001. The March 2007 Guidelines indeed have a much narrower focus (i.e., relating exclusively to Suspicious Transactions and Suspicious Transactions Reporting) than the 2001 Guidelines and are consistent with the FIU's mandate as detailed in the Financial Intelligence Unit Act 2000.
27. Law enforcement authorities	C	This Recommendation is fully observed.		
28. Powers of competent authorities	C	This Recommendation is fully observed.		
29. Supervisors	PC	The powers to access and compel information by the SC and the Director of Societies are inadequate. The powers of the Registrar of Insurance to compel information under the EIA are also deficient.	<ul style="list-style-type: none"> <li>The exemption at section 29(7) of the SIA should be removed to ensure that all financial institutions are at a minimum registered with the SC.</li> </ul>	<p>These issues have been provided for at Parts V and VI of the draft SIA. The draft SIA &amp; SIR have been issued to the industry for public consultation.</p> <p>These issues have been provided for at Parts V and VII specifically at sections 64 and 76, respectively of the draft SIA. The draft SIA &amp; SIR have been issued to</p>

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		<p>The SC's powers of enforcement and sanction under the SIA are inadequate.</p> <p>The CC's ongoing AML/CFT supervision lacks an offsite programme.</p>	<ul style="list-style-type: none"> <li>• The SC should have powers under the SIA similar to those at section 49(2) of the IFA, which allow for the appointment of an auditor to assist in examinations.</li> <li>• The Registrar of Insurance should be granted powers to conduct inspections without cause, with respect to the IA, and to appoint an auditor to assist in the execution of his functions.</li> <li>• The CC should formulate an offsite inspection programme to augment the onsite process. This could be of particular benefit when the CC moves away from annual onsite inspection cycles. In addition, the CC should develop procedures and criteria to trigger formal notification of substantive authorities when powers of enforcement and sanction need to be implemented.</li> <li>• The SIA should include provisions for access by the SC to information, and imposition of an obligation on licensees and registrants to provide the SC with any information required to fulfil its mandate.</li> <li>• The Director of Societies and the Registrar of Insurance (with respect to the EIA) should have general powers to compel production of records and other information, as deemed necessary.</li> <li>• The CBB and the CC should continue their efforts to inspect all licensees/registrants.</li> </ul>	<p>the industry for public consultation. This is a feature of the new Insurance Act, which was brought into force in July 2009. However, the current Insurance Act grants such powers under sections 38 and 40 respectively. Sections 88 &amp; 89 of COSA provides for inspection and investigation. Section 80 &amp; 81 of draft Regs amplifies provisions in the Act.</p> <p>There is a legislative framework and procedure in place for the CC to make formal notification to regulatory bodies when powers of enforcement and sanctions are to be carried out. The CC commenced its off-site examination programme effective 1st August, 2008 (the commencement of the new examination year). The off-site examination process is covered in Section 9.5 of Sub-Part IV (Supervisory Framework of the Commission) of the CC's Codes for accountants. There is a similar provision in the CC's other industry-specific Codes.</p> <p>These issues have been provided for at Parts VII of the draft SIA. The draft SIA &amp; SIR have been issued to the industry for public consultation.</p> <p>The Cooperative Societies Act, 2005 Part VI S(10) (a); S175(1) and S177(1) addresses the power of the Director of Societies to compel reporting. Sections 80 &amp; 81 of Draft Regs amplifies this requirement</p> <p>This matter is addressed in the new External Insurance Act, which was brought into force in July 2009.</p> <p>These guidelines have been made enforceable by amendments to the FIU Act, and the regulations there under, which were brought into force in January 2009.</p>

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			<ul style="list-style-type: none"> <li>The issuance of rules by the SC should be fully explored to facilitate enforcement of the guidelines; and both the SIA and the IFA amended to allow for action without a hearing.</li> </ul>	<p>The SC Guidelines have been amended and amendments to the FTRA, FIUA, FTRR and the FCSPA have addressed the enforceability issue.</p> <p>The ability to allow for action without a hearing is provided for at Part XV of the draft SIA. The draft SIA &amp; SIR have been issued to the industry for public consultation.</p>

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30. Resources, integrity and training	PC	<p>There are insufficient resources overseeing AML/CFT with regard to financial institutions.</p> <p>Inordinate length of time to bring matters to trial.</p> <p>There is insufficient operational independence and autonomy of the Registrar of Insurance and the Inspector, FCSP.</p>	<ul style="list-style-type: none"> <li>The SC and CC should consider revising their staff complement to meet the demands of their constituency base.</li> <li>The DPP should seek to recruit additional staff especially at the senior level in order to strengthen the Department's capability.</li> <li>Every effort should be made to reduce the length of time between arrest and a matter coming to trial which can in some instances in the Supreme Court be as long as six years. The 'Swift Justice' project is a good start and its effectiveness should be reviewed and measured on an ongoing basis to ensure all necessary measures are being taken to speed up the administration of justice.</li> <li>The Registrar of Insurance and to a lesser extent, IFCSPs should be granted more operational autonomy under their respective Statutes.</li> </ul>	<p>Adequate human resource personnel s is of continuing concern to SC and will continue to be addressed as an on-going matter.</p> <p>This will be addressed as part of the regulatory consolidation exercise. Government has appointed a Steering Committee from the public and private sectors and a team of Consultants to commence the development and implementation plan. The integration process will occur in 2 phases; first, the merger of four (4) of the regulatory bodies, followed sometime later by the integration of Bank Supervision into the new single integrated regulator. The process has begun, and the first phase is expected to be completed by the end of December 2009.</p> <p>The matter was addressed in the new Insurance Act- A new independent commission was established. .- The new Insurance Act was brought into force on 2 July 2009</p> <p>In relation to the IFCSP, greater autonomy will be achieved once the provisions to amalgamate the regulators have been passed. This is expected to take place by December 2009. The expanded powers of the Registrar of Insurance are outlined in the new Insurance Act, which came into effect in July 2009.</p>
31. National cooperation	C	This Recommendation is fully observed.		
32. Statistics	PC	The legal framework requiring the reporting of international wire transfers is not in place therefore no	<ul style="list-style-type: none"> <li>It is recommended that a legislative framework be put in place requiring the</li> </ul>	This matter is currently under review by the GFSR.

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		<p>statistics are available.</p> <p>Statistics regarding the cross border transportation of cash or negotiable instruments are not maintained, as the legislative framework is not in place requiring such a declaration in the first instance.</p> <p>Statistical information from the SC in support of AML/CFT effectiveness is not maintained.</p> <p>There has been no evidence on which effective implementation can be measured as the police have not received information regarding terrorism or terrorism financing.</p> <p>There has been no evidence on which the effectiveness of the freezing actions with regard to terrorism or terrorist financing can be measured as the police have not received information regarding those matters.</p>	<p>reporting of international wire transfers transactions, and the collection, recording and analysis of the information obtained.</p> <ul style="list-style-type: none"> <li>The SC should maintain statistics on FTRA focused examinations, and sanctions applied for non-compliance with AML/CFT requirements.</li> <li>The legislative reforms that have been proposed should be pursued as a matter of urgency in particular those that will expand the CBB's powers to share information. It may also be useful for the Authorities to consider flexible approaches in terms of information sharing. In addition, the legislative amendments that will enhance co-operation powers of regulators will also be very useful in ensuring that resources are properly allocated.</li> </ul>	<p>With regard to the maintenance of statistics by the SC on FTRA focused examinations, the SC's routine on-site examination programme covers testing for compliance with the FTRA, FTRR and FITRR. The information is captured in a departmental statistical report that was implemented in December 2006. The statistical report, as part of a departmental procedure, is updated after the completion of every examination. The statistical report includes the deficiencies noted on each examination that would include the FTRA, FTRR and FITRR. The report can be manipulated and/or other reports created to give specific statistics on any type of deficiency identified</p> <p>Amendments have been passed by Parliament and came into force on January 2, 2007. Also addressed in amendments made to the SIA and the IFA in 2007.</p> <p>The Government is considering a recommendation to establish a statutory National AML/CFT Task Force to undertake this function.</p>

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		<p>There is no system in place requiring the reporting of STRs based on domestic or foreign currency transactions above a certain threshold.</p> <p>No evidence of review of AML/CFT systems by the Task Force.</p>	<ul style="list-style-type: none"> <li>The Government of the Bahamas should establish some form of 'umbrella' group or committee that can review and make recommendations on AML/CFT matters. These recommendations would be at the policy level and from a strategic perspective using the statistics generated to assist in the decision making process.</li> </ul>	

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33. Legal persons—beneficial owners	LC	No requirement to determine the natural persons who ultimately control legal persons.	<ul style="list-style-type: none"> <li>There should be a legal requirement for financial institutions to take reasonable measures to determine the natural persons that ultimately own or control legal persons.</li> </ul>	<p>These matters are addressed in amendments to the FTRR, which were brought into force in January 2009. The amendments:</p> <ul style="list-style-type: none"> <li>include minimum mandatory requirements for financial institutions to verify corporate customers, partnerships and other unincorporated businesses; and</li> <li>require financial institutions to take reasonable measures to determine the identity of the natural persons that own or control legal persons or legal arrangements.</li> </ul> <p>In the package of proposed amendments to the Lotteries and Gaming Act, provision is being made for the Gaming Board to be notified within thirty (30) days of any change in the beneficial ownership of a casino licensee so as to ensure that the new beneficial owner or owners satisfy the fit and proper test; a Standard Audit Programme has been put in place in order to obtain information on changes to beneficial owners of casinos to prevent criminals from holding or being the beneficial owners of a significant or controlling interest.</p>
34. Legal arrangements – beneficial owners	LC	<p>The ability to obtain and access information on the beneficial ownership and control of legal arrangements for which lawyers provide trust services was hindered by the legal challenge.</p> <p>No requirement to determine the natural persons who ultimately control legal arrangements.</p>	<ul style="list-style-type: none"> <li>A new legislative framework for private trust companies was being proposed and this should be enacted as soon as practicable to further strengthen oversight of all legal arrangements.</li> <li>There should be a legal requirement for financial institutions to take reasonable measures to determine the natural persons that ultimately own or control legal arrangements.</li> </ul>	<p>Legislation and Regulations came into force in December 2006 and January 2007, respectively. Guidelines to the industry were issued in January 2007 and the administrative arrangements to process applications have been set up in the Central Bank.</p> <p>These matters are addressed in amendments to the FTRR, which were brought into force in January 2009. The amendments:</p> <ul style="list-style-type: none"> <li>include minimum mandatory requirements for financial institutions to verify the identity of the ultimate beneficial owners of corporate entities, partnerships and other unincorporated businesses; and</li> <li>require financial institutions to take reasonable measures to determine the natural persons that own or control legal persons or legal</li> </ul>

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				arrangements.



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<b>International Cooperation</b>				
35. Conventions	PC	<p>Section 42(2) of the POCA does not comply with the Vienna Convention requirements.</p> <p>The ATA does not extend to all Conventions and Protocols named in the Terrorist Financing Convention.</p> <p>The Palermo Convention has not been ratified.</p> <p>Section 9(4) does not constitute appropriate grounds for refusing a request for freezing from a foreign State under the ATA.</p>	<ul style="list-style-type: none"> <li>The procedures for mutual legal assistance issued by the ILCU should be further improved to deal with the treatment of potential requests for information relating to suspected terrorism offences. The GFSR should include in its procedures manual the procedures that will apply in these cases, and particularly in cases of applications for freezing under the ATA.</li> <li>The Bahamas has not ratified the Palermo Convention and should move to do.</li> <li>The Bahamas should also move to criminalize a person's participation in an organized criminal group as required by the Convention and to extend the existing measures to cover this type of offence.</li> </ul>	<p>The Procedures Manual now contains the procedure for requests for information relating to suspected terrorism offences</p> <p>The Anti-Terrorism (Amendment to First Schedule) Order, 2008 (Statutory Instrument No. 52 of 2008) amends the First Schedule to the Anti-Terrorism Act to incorporate all of the Conventions referred to in the Annex to the Terrorist Financing Convention.</p> <p>The Anti-Terrorism (Amendment) Act, 2008 (Act No. 24 of 2008) amends section 9 of the Anti-Terrorism Act by removing the requirement for reciprocity in section 9 (4) of the ATA in cases where a foreign state makes an application for a freezing order.</p> <p>The Bahamas ratified the United Nations Convention against Transnational Organized Crime (the Palermo Convention) on 26<sup>th</sup> September, 2008.</p>
36. Mutual legal assistance (MLA)	C	This Recommendation is fully observed.	<ul style="list-style-type: none"> <li>With regard to Recommendation 36, the ILCU should incorporate into their manual of procedures relating to mutual legal assistance matters, guidance with regard to the procedures that will be applicable when a request is made for freezing pursuant to section 9 of the ATA. This would be useful in providing a legal interpretation as to the effect of section 17 of the ATA and section 6 of the MLA(CM)A.</li> <li>The Authorities may wish to clarify in the law, the effect of section 3(1) of the ML(CM)A.</li> </ul>	<p>The Anti-Terrorism (Amendment) Act, 2008 ( Act No. 24 of 2008) amends section 17 of the Anti-Terrorism Act to delete the reference to section 6 of the MLA (CM)A and substitute in its place section 6 of the CJ(IC)A.</p> <p>It is our view that section 3 (1) of the ML(CM)A is clear. Section 3(1) of the ML(CM)A states that the ML(CM)A shall prevail if there is an inconsistency between the ML(CM)A and any other written law. Section 3(1) further states that the only laws that the</p>

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				ML(CM)A will not prevail over an Act prohibiting the disclosure of information or prohibiting its disclosure under certain conditions.
37. Dual criminality	C	This Recommendation is fully observed.		
38. MLA on confiscation and freezing	LC	Freezing assistance under the ATA is limited on the grounds of reciprocity.		The Anti-Terrorism (Amendment) Act, 2008 (Act No. 24 of 2008) amends section 9 of the Anti-Terrorism Act by removing the requirement for reciprocity in section 9 (4) of the ATA in cases where a foreign state makes an application for a freezing order.
39. Extradition	C	The Recommendation is fully observed		
40. Other forms of co-operation	LC	<p>The Registrar of Insurance does not have powers to compel production of information under the EIA.</p> <p>The SC does not have powers to conduct inquiries on behalf of foreign counterparts.</p>	<ul style="list-style-type: none"> <li>The Registrar of Insurance and the Director of Societies should be granted powers to compel production of information under the EIA and COSA, respectively in order to effectively facilitate international cooperation.</li> <li>The SC should have power similar to the CBB to access records of its licensees and registrants.</li> <li>All regulatory authorities should have the power to conduct inquiries on behalf of foreign counterparts.</li> </ul>	<p>The Cooperative Societies Act, 2005 Part VI s(10) (a); s175(1) and s177(1) addresses the power of the Director of Societies to compel reporting.</p> <p>This matter is addressed in the proposed new External Insurance Act.</p> <p>Addressed in amendments made to the Securities Industry Act and the Investment Funds Act in 2007.</p> <p>Addressed in amendments made to the Securities Industry Act and the Investment Funds Act in 2007.</p>
<b>9 Special Recommendations</b>				
SR.I Implement UN instruments	PC	<p>The ATA does not extend to all Conventions and Protocols named in the Terrorist Financing Convention.</p> <p>The ATA does not fully implement the requirements of UNSCRs 1267 and 1373 particularly as they relate to the freezing of the funds or assets of terrorists.</p> <p>The ATA does not deal with the prohibition on the movement of aircraft owned leased or operated by the Taliban.</p>	<ul style="list-style-type: none"> <li>The ATA should be extended to criminalize conduct referred to in the Conventions and Protocols that are named in the Terrorist Financing Convention but that are currently not named in the ATA.</li> </ul>	The Anti-Terrorism (Amendment to First Schedule) Order, 2008 (Statutory Instrument No. 52 of 2008) amends the First Schedule to the Anti-Terrorism Act to incorporate all of the Conventions referred to in the Annex to the Terrorist Financing Convention.

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SR.II Criminalize terrorist financing	LC	<p>The offence of terrorist financing under the ATA does not extend to all of the offences listed in the Annex to the UN Convention on the Financing of Terrorism.</p> <p>The FT offence does not cover all the types of conduct set out in Art. 2(5) of the Terrorist Financing Convention specifically Art. 2(5)(c).</p>	<ul style="list-style-type: none"> <li>The special unit to deal with terrorism within the Royal Bahamas Police Force should be established.</li> <li>The Examiners considered that the ATA did provide for the criminalization of the financing of terrorism; however the fact that the scope of the crime of terrorism did not cover all of the conduct referred to in the Annex to the Terrorist Financing Convention constituted a serious shortfall that the Authorities should move to rectify.</li> <li>The Bahamas should ensure that the offences of terrorism financing under the ATA extends to all of the offences specified in Article 2(5) of the Terrorist Financing Convention.</li> </ul>	<p>The Special Anti-Terrorism Unit was established on 7<sup>th</sup> August, 2007 and is led by a Detective Assistant.</p> <p>The Anti-Terrorism (Amendment to First Schedule) Order, 2008 (Statutory Instrument No. 52 of 2008) amends the First Schedule to the Anti-Terrorism Act to incorporate all of the Conventions referred to in the Annex to the Terrorist Financing Convention.</p> <p>See response immediately above.</p>
SR.III Freeze and confiscate terrorist assets	PC	<p>The ATA does not address UNSCR 1267 adequately as freezing cannot take place solely upon a designation by the UN Security Council without delay.</p> <p>The reciprocal requirements for the granting of an application for a freezing order to a foreign jurisdiction could inhibit the granting of such requests.</p> <p>The International Obligations (Economic and Ancillary Measures) Act is a pre-existing measure that was not designed to meet the combating of the financing of terrorism and the related UNSCRs.</p>	<ul style="list-style-type: none"> <li>SR. III (E.C. III.2) requires that countries should have procedures to examine and give effect to actions initiated in other countries provided that there are reasonable grounds or a reasonable basis to freeze funds. Section 9(4) introduces different criteria in relation to freezing terrorist funds and an amendment should be considered.</li> <li>The authorities should provide clarity, whether in the law or in the policies outlined by the Attorney General's Office as to the effect of section 17 of the ATA and section 6 of the MLA(CM)A, and consequently the basis upon which requests made under the ATA by foreign States would be addressed.</li> <li>It is the view of the Examiners that the International Obligations (Economic and Ancillary Measures) Act would have been a pre-existing measure, with a particular focus on applying international economic sanctions</li> </ul>	<p>The Anti-Terrorism (Amendment) Act, 2008 (Act No. 24 of 2008) amends section 9 of the Anti-Terrorism Act by removing the requirement for reciprocity in section 9 (4) of the ATA in cases where a foreign state makes an application for a freezing order.</p> <p>The Anti-Terrorism (Amendment) Act, 2008 amends section 17 of the Anti-Terrorism Act to delete the reference to section 6 of the MLA (CM)A and substitute in its place section 6 of the CJ(IC)A.</p> <p>The Bahamas is currently reviewing the ATA to ensure full compliance with the UNSCRs.</p>

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			<p>against Nation States. It would not meet the focus of SR III as being a preventative measure that is necessary and unique in the context of stopping flows or the use of funds or other assets to terrorist groups. It is therefore recommended that the ATA should be amended to achieve compliance with the UNSCRs.</p> <ul style="list-style-type: none"> <li>• The Special Anti-Terrorism Unit should be established within the Royal Bahamas Police Force.</li> <li>• The language at section 9(7) of the ATA should be clarified to establish whether the period of 18 months is an absolute outer limit for freezing and the Authorities may wish to consider whether this is appropriate given the length of time that an offence under the ATA may take to reach to trial.</li> </ul>	<p>The Special Anti-Terrorism Unit was established on 7<sup>th</sup> August, 2007 and is led by a Detective Assistant.</p> <p>The Bahamas is currently reviewing the provisions of the ATA in order to clarify section 9(7) of the ATA.</p>

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SR.IV Suspicious transaction reporting	C	This Recommendation is fully observed.		
SR.V International cooperation	LC	The reciprocity requirement could hinder international cooperation.  The SC does not have powers to conduct inquiries on behalf of foreign counterparts.	<ul style="list-style-type: none"> <li>The legislation for the SC should be fast tracked to allow for stronger information gathering powers. The SC may also wish to establish MOUs for the sharing of information with overseas counterparts.</li> </ul>	The SC submitted an application to the IOSCO MOU, on May 23, 2008. At the IOSCO 2009 conference it was announced that the SC was eligible to sign Appendix B of the MOU The SC has taken the steps necessary to finalise this process and is presently awaiting a response from IOSCO.
SR.VI AML requirements for money and value transfer services	LC	No requirement for money value transfer service operators to maintain a current list of their agents which must be made available to the designated authority.	<ul style="list-style-type: none"> <li>MVT service operators should be required to maintain a current list of their agents, which must be made available to the designated authority.</li> <li>The Bahamas should implement the amendments to the legal framework as soon as possible to bring about full compliance with SR VI.</li> </ul>	<p>The Banks and Trust Companies (Money Transmission Business) Regulations, 2008 [S.I. No. 30 of 2008] requires persons acting as Money Transmission Agents on behalf of a Money Transmission Service Provider to register with CBB.</p> <p>The Financial Transaction Reporting (Wire Transfers) Regulations were brought into effect in January 2009.</p>
SR.VII Wire transfer rules	NC	<p>There are no measures in place to cover domestic, cross-border and non-routine wire transfers.</p> <p>There are no requirements for intermediary and beneficial financial institutions handling wire transfers.</p> <p>There are no measures in place to effectively monitor compliance with the requirements of SR VII.</p>	<ul style="list-style-type: none"> <li>With regard to SR VII, The Bahamas is compliant with only the first criterion of the recommendation. See. Paragraph 662. It is recommended that the review of The Bahamas' legislative and regulatory provision take consideration of all requirements of the recommendation and appropriate legislation be enacted as soon as possible.</li> </ul>	The Financial Transaction Reporting (Wire Transfers) Regulations, which gave effect to FATF SR VII, were brought into effect in January 2009
SR.VIII Nonprofit organizations	PC	<p>No information was available for the Examiner's to gauge the size and risk of NPO activity.</p> <p>No evidence of review of the adequacy of laws and regulations that relate to NPOs.</p> <p>Specific guidance with regard to NPOs is enforceable only on banks and trust companies.</p> <p>Only friendly societies and foundations (by virtue of their secretaries) are included as financial institutions</p>	<ul style="list-style-type: none"> <li>The Authorities should review the adequacy of the laws that relate to NPOs.</li> <li>The requirements concerning NPOs in the CBB AML/CFT Guidelines should be enforceable on all financial institutions.</li> </ul>	The GFSR has, in response to a request from the Ministry of Finance, established a subcommittee to review this recommendation. The subcommittee has commenced its review of existing laws and policies relative to the non-profit sector and is in the process of obtaining data on the size and composition of the sector.

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation  
The Bahamas**

<b>FATF 40+9</b>	<b>Rat- ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by The Bahamas</b>
		under the FTRA.	<ul style="list-style-type: none"> <li>The Authorities should consider some of the additional measures in the Best Practices Paper to Special Recommendation VIII to ensure that funds or other assets collected by or transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations.</li> </ul>	
SR.IX Cash Couriers	PC	<p>The legal framework requiring the declaration of cross border transportation of cash or negotiable instruments is only applicable to travellers to the USA.</p> <p>The detection method used by the Authorities appears to have deficiencies as outlined by the Courts.</p> <p>Customs forms should clearly outline the obligations for the traveller to disclose the value of the sums being carried above a certain amount.</p>	<ul style="list-style-type: none"> <li>The Government of The Bahamas should implement a more rigorous system of cross border disclosure and declaration, which meets the requirements of Special Recommendation IX. This can be achieved by way of an amendment to current legislation or enacting new legislation to address this issue.</li> <li>A system should be implemented to collect, collate and analyze declarations of cross border transportation of cash or negotiable instruments. Ideally this could be achieved by means of a computerized system, which would allow authorities, possibly the FIU, to have ready access to the information and the ability to spot trends or make a query against a specific target.</li> <li>Customs forms should clearly outline the obligations for the traveller to disclose the value of the sums being carried above a certain amount.</li> </ul>	<p>The GFSR in response to a request from the Ministry of Finance established a subcommittee to review the recommendations of the Examiners. The GFSR has completed its review and forwarded its recommendations on measures required to enhance implementation of SR IX to the Government.</p> <p>This matter is under review.</p>