

## **BERMUDA: FIRST FOLLOW-UP REPORT**



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**[cfatf@cfatf.org](mailto:cfatf@cfatf.org)**

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### **I. Introduction**

1. This report represents an analysis of Bermuda's 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 Bermuda was adopted by the CFATF Council of Ministers in November of 2007 in Costa Rica. Bermuda was rated partially compliant or non-compliant with 30 Recommendations, as indicated below.

<b>Partially Compliant (PC)</b>	<b>Non-Compliant (NC)</b>
R.3 (Confiscation and Provisional Matters)	R.5 (Customer Due Diligence)
R.13 (Suspicious transaction reporting)	R.6 (Politically exposed persons)
R.14 (Protection & no tipping-off)	R.7 (Correspondence Banking)
R.15 (Internal controls, compliance & audit)	R.8 (New Technologies & non face-to-face business)
R.17 (Sanctions)	R.9 (Third parties and introducers)
R.25 (Guidelines and feedback)	R.11 (Unusual transactions)
R.29 (Supervisors)	R.12 (DNFBPs R.5, 6, 8-11)
R.30 (Resources, integrity and training)	R.16 (R.13-15 & 21)
R.31 (National co-operation)	R.21 (Special attention for high risk countries)
R.32 (Statistics)	R.22 (Foreign branches and subsidiaries)
R.35 (Conventions)	R.23 (Regulation, supervision and monitoring)
SR.I (Implement UN instruments)	R.24 (DNFBP – regulation, supervision and monitoring)
SR.II (Criminalise terrorist financing)	SR.VII (Wire transfer rules)
SR.IV (Suspicious transaction reporting)	SR.IX (Cross border declaration & disclosure)
SR.VI (AML requirements for money/value transfer services)	
SR.VIII (Non-profit organisations)	

### **II. Summary of progress made by Bermuda**

2. At the time of the Mutual Evaluation of Bermuda, deficiencies were noted within several areas of their AML/CFT infrastructure resulting in many recommendations being made by the Mutual Evaluation examiners as possible cures for these deficiencies. In an effort to fill these gaps, the Bermudan authorities have made amendments to the following Acts: the Anti-Terrorism (Financial and Other Measures) Act, 2004; the Proceeds of Crime Act 1997, the Proceeds of Crime Amendment Act 2007 and the Revenue Act 1898. New

Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations were enacted to replace the Proceeds of Crime (Money Laundering) Regulations 1998, which were in force at the time of the Mutual Evaluation. Additionally, in order to make the necessary provisions requiring the Bermuda Monetary Authority and other designated professional bodies to take measures which would secure compliance with regulations made under the Proceeds of Crime Act 1997 and the Anti-Terrorism (Financial and Other Measures) Act 2004, and also to provide powers to impose civil penalties, inter alia, the Proceeds of Crime Regulations (Supervisory and Enforcement) Act 2008 (SEA) was enacted. *The Anti-Terrorism Order which specifies the classes of businesses which belong to the regulated sector was enacted and wire transfer regulations have been circulated for consultation.* New Guidance Notes were put into force on 27<sup>th</sup> March 2009. Bermuda has also established its Financial Intelligence Agency to replace the Financial Investigations Unit.

### **Recommendation 3**

3. The examiners had recommended in the MER that Bermuda explicitly provide in legislation for the confiscation of property which constitutes instrumentalities intended for use in the commission of ML or other non-drug trafficking predicate offences. Bermuda, by virtue of the POCA Amendment Act 2008, at clause 7, has sought to implement this recommendation by empowering the court, where a person is convicted of a money laundering offence, to order the forfeiture of any property which at the time of the offence, he used or intended to use for the purposes of the offence. This amendment specifically refers to ML offences, therefore in circumstances where the instrumentalities involved are related to non-drug trafficking predicate offences, forfeiture would be unlikely. At clause 7, Section 48 A (3) of the POCA Amendment Act 2008, the recommendation of the examiners that legislation explicitly state that any payment received by a defendant at any time in connection with the ML offence carried out by him, be subject to confiscation, has been met. The third recommended action relating to the voiding of contracts has been addressed through an amendment to the Proceeds of Crime Act 1997, by incorporating the broad provision whereby any agreement entered into, for the purposes of facilitating the commission of a money laundering offence, is void.

### **Recommendation 5**

4. With the coming into force on January 1<sup>st</sup> 2009, of the new Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations, some of the deficiencies noted in the MER are now covered. Bermuda has drafted wire transfer regulations with a view to reviewing the recommendation that the minimum CDD threshold for wire transfers be reduced to the equivalent of US/BD\$1,000. As it relates to not allowing exemptions or reduced CDD measures where there is suspicion of ML/TF, the 2008 regulations do not explicitly provide for this recommendation. Reg. 6(3) allows FIs to determine the CDD measures they consider appropriate whilst Reg. 11 (1) (b) provides for the application of Enhanced CDD in circumstances where activities by their very nature pose a risk or are susceptible to ML or TF. Bermuda has

indicated that the new Guidance Notes at 5.37 – 5.40 addressed the gap identified relative to E.C. 5.13 and the recommendation that FIs update the client documentation of “grandfathered” accounts. Bermuda has chosen to adopt a risk-based approach to this recommendation at 5.38 of the new Guidance Notes where financial institutions are now required, as risk dictates to take steps to ensure that they hold appropriate information to demonstrate that they know all their customers

#### **Recommendation 6**

5. The recommendation of the examiners that Bermuda require financial institutions to conduct enhanced due diligence for PEPs has been addressed by the Bermudan authorities through Regulations 11(4), 11(5), 11(6) and 11(7) of the Proceeds of Crime (Anti-money laundering and Anti-terrorist financing) Regulations 2008. Consequently this Recommendation is fully observed.

#### **Recommendation 7**

6. The recommendation by the examiners that Bermuda be required to ensure that their financial institutions conduct enhanced customer due diligence with respect to correspondence banking has been met by virtue of Regulation 11(3) of the Proceeds of Crime (Anti-money laundering and Anti-terrorist financing) Regulations 2008. This Recommendation is fully observed.

#### **Recommendation 8**

7. Bermuda has implemented the recommendation of the examiners by detailing at 9 (1) of the Proceeds of Crime (Anti-money laundering and Anti-terrorist financing) Regulations 2008, requirements to cease transactions. Additionally, at 11(2) of the same Regulations, financial institutions are required, where a customer has not been physically present for identification purposes, to take specific measures so as to compensate for the higher risk. These measures are detailed at 11(2) (a), (b), and (c) and include ensuring that additional documents, data or information is used to establish the customer’s identity; and or using supplementary measures to verify or certify any documents supplied, or requiring confirmatory certification by a financial institution that is also subject to equivalent regulations. These provisions have the effect of ensuring that this Recommendation is fully met.

#### **Recommendation 9**

8. Bermuda has not addressed the recommendations of the examiners relating to Rec. 9, essential criteria 9.1 and 9.4. As it relate to the other recommendations particularised as cures to the existing deficiencies, the Proceeds of Crime (Anti-money laundering and Anti-terrorist financing) Regulations 2008 have in fact addressed these.

#### **Recommendation 11**

9. The Proceeds of Crime (Anti-money laundering and Anti-terrorist financing) Regulations 2008 have created the requirement that all relevant persons

establish and maintain policies and procedures which will enable them to identify and scrutinize complex or unusually large transactions; unusual patterns of transactions which have no apparent economic or visible lawful purpose and any other activity determined by the relevant persons to likely be related to money laundering or terrorist financing. It appears however that although these requirements do indeed satisfy the recommendations of the examiners, they do not in fact fully comply with Rec. 11, essential criteria 11.2 and 11.3.

## **Recommendation 12**

10. The Proceeds of Crime Act of 1997 was amended so that Trust Service Providers, lawyers and accountants are now subject to the same CDD, record keeping and supervision arrangements as financial institutions. Additionally the Proceeds of Crime (Anti-money laundering Anti-Terrorist financing) Regulations have incorporated these entities into its CDD and record keeping provisions. The Proceeds of Crime Regulations (Supervisory and Enforcement) Act 2008 (SEA), at Part 3 Section 6(2) empowers the Bermuda Monetary Authority to exercise its supervisory powers over persons licensed under the Bermuda Monetary Act of 1969 and the regulatory Acts, in relation to failure to comply with AML/ATF Regulations. This general function would effectively enable the BMA, in circumstances involving any SRO arrangements that have been established for the purpose of AML/CFT oversight and monitoring, to effectively enforce compliance on such supervised parties. In the last quarter of 2008, Bermuda reportedly conducted an AML/CFT awareness campaign, aimed at financial institutions (which now include the entities mentioned above). The other recommendations by the examiners have not as yet been addressed.

## **Recommendation 13**

11. Regulation 18 of the Proceeds of Crime (Anti-money laundering Anti-Terrorist financing) Regulations has mandated relevant persons to ensure that their employees are made aware of AML and TF laws and to regularly conduct training in the recognition and handling of suspected ML and TF transactions. It is unclear however to what extent this regulation has in fact redounded to the enhancement of the ability of related employees to identify suspected FT related transactions.
12. Bermuda third round MEVAL examiners had recommended an amendment to the ATFA to cater for FT-related SARs for funds linked to terrorist organizations. Although the ATFA 2004 predates the third round Mutual Evaluation Report, for which this Follow-up report is being produced, Bermuda has relied on section 9 of that Act to satisfy the aforementioned recommendation. In the absence of the recommended amendment therefore this Recommendation still remain outstanding.

## **Recommendation 14**

13. Persons making TF related SAR are protected, provided that the information they disclose came to their knowledge in the course of a business in the regulated sector and the information causes the person making the disclosure to suspect that the subject of the disclosure has committed a terrorist financing offence and such disclosure is made as soon as possible after it was discerned. The examiners had recommended that an “explicit” amendment be made to the ATFA and POCA to provide for this exemption. It is unclear whether the protection as it is currently provided for in the ATFA represents the explicitness that the examiners had recommended. Notwithstanding, the POCA now provides protection from criminality resulting from a SAR filing. The other examiners’ recommendations relating to tipping-off are currently being reviewed and consequently have not been taken on board by Bermuda. This recommendation remains outstanding.

### **Recommendation 15**

14. The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations, which came into force on January 1, 2009, has mandated relevant persons to establish and maintain appropriate policies and procedures relating to AML/CFT including CDD and ongoing monitoring, reporting, record keeping, internal controls, risk assessment and the monitoring and management of compliance with and the internal communication of such policies and procedures. The CDD measures at Regulation 5 were also extended to now include a wider range of measures which are more closely aligned to the requirements of Recommendation 5. This would mean that the procedure requirements mentioned above now extend to that wider range and consequently would cure the shortcoming identified in the MER. This also ensures that the role of the compliance function now extends beyond suspicious activity reporting.
15. As it relate to the recommendation that a requirement for an internal audit function to cover AML/CFT be included, the 2009 Guidance Notes has mandated the senior management of BMA supervised institutions to commission an annual report which assesses the institutions operations and effectiveness as these relate to managing money laundering and terrorist financing risks. This report must include the outcome of any internal audit reviews of the institution’s AML/CFT processes. Indirectly therefore, the requirement for an internal audit function has been included. The 2009 Guidance Notes is silent as to whether this internal audit function would in fact be an independent one.
16. There is still limited coverage of the training obligations to “relevant employees”

### **Recommendation 16**

17. The examiners had recommended that with the exception of service providers, DNFBPs were not subject to oversight of reporting obligations and had made recommendations accordingly. Bermuda has not as yet made the DNFBPs mentioned subject to such oversight. It is Bermuda’s intention to enact

legislation which will create a supervisory regime for DNFBPs, with the power to ensure effective implementation of SAR reporting requirements. The other recommendations made by the examiners have been addressed through amendments to the ATFA and the enactment of Proceeds of Crime (Anti-money laundering Anti-Terrorist Financing Regulations). Notwithstanding, all the examiners recommendations have not been addressed with regard to this Recommendation.

### **Recommendation 17**

18. The SEA Act at Section 20 has empowered the BMA to impose civil penalties, not exceeding \$500,000, as it considers appropriate, i.e. effective, proportionate and dissuasive.
19. As it relate to the recommendation that the fines for summary conviction and certain convictions under the POCA be raised, Bermuda is of the view that the existing penalties are appropriate.

### **Recommendation 21**

20. Bermuda has not as yet addressed the shortcoming noted by the examiners relating to relationships/transactions with persons from countries which do not sufficiently apply the FATF Recommendations. The 2008 Regulations have included a general provision requiring relevant persons to apply enhanced CDD in any situation which by its nature can present a higher risk of money laundering or terrorist financing. Additionally, the 2009 Guidelines at 3.15 have pointed institutions to websites from which they can obtain Mutual Evaluation Reports from which information on AML/CFT deficiencies can be discerned.

### **Recommendation 22**

21. The two deficiencies noted by the examiners have now been cured by the Proceeds of Crime (Anti-money laundering Anti-Terrorist financing) Regulations, at Reg. 12. Pursuant to Rec. 12 FIs must require its branches and subsidiaries located outside of Bermuda to apply, as far as the law in the country of location permits, measures with regard to CDD, ongoing monitoring and record-keeping. Where the laws in the country of location does not permit any such FIs to apply such AML/CFT measures then they must inform the Bermudan Monetary Authority and take additional measures to effectively manage the ML and TF risks which may become inherent in those circumstances. The enactment of these Regulations has the effect of ensuring that this Recommendation is now fully met.

### **Recommendation 23**

22. The SEA Act has charged the Bermuda Monetary Authority with the responsibility for monitoring FIs compliance with the Proceeds of Crime (Anti-money laundering Anti-Terrorist financing) Regulations and to enforce

compliance with these Regulations through the ability to impose civil monetary fines of up to \$500,000.

23. A dedicated anti-money laundering and anti-terrorist financing unit has reportedly been established and staffed within the BMA to carry out the functions of the supervisory authority. This reportedly includes both on-site and off-site monitoring programmes.
24. As it relate to the recommendation that Bermuda develop and implement a consolidated supervision framework for AML/CFT compliance beyond banking and to pay urgent attention to FIs that are parent and operating holding companies with significant operation overseas, the Bermudan authorities have indicated that the BMA has already started that process of grouping supervision for commercial insurers. A Steering Committee was appointed in June of 2008 to oversee this project. The hosting of supervisory colleges to complement this effort took place in November of 2008. Jurisdictions where some of Bermuda's major insurers have a presence attended.
25. The licensing and registration process for MSBs is in place to allow the BMA to grant licenses. As a result, in August of 2008, two financial institutions were granted MSB licenses pursuant to the MSB Regulations, 2007. Bermudan authorities have indicated that these institutions are subject to the same AML/ATF frame work as are the other financial institutions in Bermuda.
26. No action has been taken towards: enforcing ongoing fit and proper criteria; reviewing the licensing procedures to ensure full requirements for ultimate beneficiaries of proposed licensees are established in accordance with the applicant documentation; conducting a systematic review to ascertain whether other financial activities covered by FATF Recommendations is taking place in or from within Bermuda on a regular commercial basis.

#### **Recommendation 24**

27. The activities of professional legal advisors and accountants have now been brought into focus through the 2008 Regulations. The Regulations now apply in circumstances where such persons are acting in the course of business carried on by them in or from Bermuda.
28. The SEA Act makes provisions, at Section 3, for designated professional bodies, by the order of the Minister, to be supervisory authorities for the relevant persons regulated by it. The duties of any such supervisory authority include the issuing of AML/ATF Regulations. Consequently, once designated, guidance to the DNFBP sectors for which they are responsible must be issued pursuant to Section 5 of the SEA Act. It is unclear whether any supervisory authorities have as yet been ordered by the Minister.

#### **Recommendation 25**



29. As previously mentioned, updated Guidance Notes were issued on March 27<sup>th</sup> 2009. Bermuda has reportedly incorporated and expanded upon many of the requirements that were previously in Guidance. No specific citations were provided.
30. As it relate to the recommendation that the procedures for providing feedback on SARs be formalized, Bermuda has reported that an internal policy is in place to direct this feedback process. The FIA has also reportedly set out and communicated to the financial institutions the procedures relating to feedback to and from the FIA on SARs. Feedback is provided through the sending of a formal letter which details the outcome of the SAR which was reported.

### **Recommendation 29**

31. The definition of financial institution under the SEA Act includes insurance companies (not reinsurers) licensed under Bermuda's Insurance Act.
32. The BMA has been mandated by the SEA Act to monitor the relevant persons for whom it is the supervisory authority and to take the necessary measures that will ensure compliance with AML/ATF Regulations. As was indicated at the comments under Recommendation 17 of this Report, the power to impose civil sanctions on AML/ATF regulated financial institutions is also a feature of the SEA Act.
33. Bermuda's MEVAL examiners had recommended that clear powers in the Credit Union Act be specified that the BMA, under delegated authority, can supervise and inspect such financial institutions including for compliance with AML/CFT obligations. Monitoring duties as supervisory authority has been imposed on the BMA by the SEA Act, empowering it to take the necessary measures required for the purpose of ensuring compliance with AML/ATF obligations. Bermuda has not indicated whether it intends to specify these powers in the Credit Union Act.
34. The recommended amendment to the Bank and Deposit Companies Act so that it would extend prudent conduct/licensing requirements to compliance with other laws so as to cover AML/CFT legislation has not been made. Instead Bermuda has indicated that the functions of the BMA imposed by the SEA Act, specifically at Section 6 where it states that nothing in the SEA Act would preclude the BMA from exercising its supervisory authority over licensed persons under the BMA Act of 1969 and the regulatory Acts in relation to failure to comply with AML/ATF Regulations, is an indirect way of effecting the above amendment.

### **Recommendation 30**

35. In order to ensure a smooth transition from the FIU to the FIA two officers were seconded from the FIU thereby ensuring a smooth process. The in house training, in AML/CFT and MLA, of one junior counsel of the DPP commenced in June of 2008. Also, the strength of the DPP's office was increased by the addition of one Deputy Director and one Crown Counsel.

This was also done in June of 2008. The need to ensure continuation of the experienced staff of the Commercial Crime Department was addressed by establishing the Financial Crime Unit as a new department under the Assistant Commissioner of Police responsible for serious crimes. The training needs of all stakeholder agencies have already been reviewed and some additional training has been undertaken. The BMA has established a dedicated AML/ATF unit assigned to AML/ATF duties. It is unclear whether the members of this unit underwent the enhanced training recommended by the MEVAL examiners

### **Recommendation 31**

36. Bermuda has made an amendment to the POCA of 2007 which effectively has enabled the NAMLC to act as the national coordinator for the country's AML policy by giving it the authority to develop mechanisms which would enable competent authorities in Bermuda to coordinate with each other the development and implementation of AML policies and activities. Interestingly however, the new amendment makes no mention of CFT. Bermuda reportedly is in the process of reviewing coordination among agencies.

### **Recommendation 32**

37. The DPP's office has begun maintaining statistics on areas which were identified as gaps for this Recommendation. As it relate to information on the recovery rates on the amounts actually recovered compared to the amounts which were subject to confiscation, this information was not forthcoming. The Financial Crime Unit of the Bermuda Police Force is reportedly now maintaining appropriate statistics. Bermuda has made no mention as to the steps that were being taken to update their system of statistics so that such statistics would be maintained in line with this Recommendation.

### **Recommendation 35**

38. No action has been taken regarding extending the SFT and Palermo Conventions to Bermuda.

### **SR I**

39. No action has been taken regarding extending the SFT and Palermo Conventions to Bermuda.

### **SR II**

40. The ATFA Amendment 2008 has amended section 5 of ATFA 2004, "*Offences by bodies corporate etc*" It appears that through this amendment extra-territorial acts committed by terrorist organisations will now be captured. Bermuda still has not included all the acts covered by the nine conventions referred to in the SFT Conventions. The amended provision for the ATFA to

include a reference to the financing of terrorist organisations is still in draft form.

#### **SR IV**

41. The comments relative to Recommendation 13 is also applicable here.

#### **SR VI**

42. The BMA has started the process of granting licenses to MSBs. See comments for Recommendation 23. Consequently, the effectiveness of the implementation of the essential criteria for this Recommendation can now be tested. Neither of the MSBs has agents or subagents

#### **SR VII**

43. Bermudan authorities report that wire transfer regulations and guidance notes have been drafted and circulated among industry stakeholders for consultation.

#### **SR VIII**

44. The approval of the Bermudan Cabinet is reportedly being sought for legislative amendments to address the deficiencies identified in relation NPOs.

#### **SR IX**

45. Bermuda has redesigned the Customs Traveller Declaration form(CTD form) to give effect to a declaration system for ~~both~~ incoming transportation of currency and bearer negotiable instruments from all countries and outgoing transportation of currency to the United States of America, and a disclosure system for the outgoing transportation of currency and bearer negotiable instruments to all countries, excluding the United States of America.

46. In instances where seized currency is suspected to be the proceeds of crime, Customs are mandated to forward the resultant case for investigation and prosecution before the courts, by the relevant authority. In instances involving false customs declarations the Revenue Amendment Act 2008 has amended the Revenue Act of 1898 and now imposes a penalty of \$100,000 (up from \$30,000) or a term of imprisonment of between 2 to 10 years on any person found guilty of this indictable offence.

47. Customs is a member of the NAMLC and the Bermuda Law Enforcement Review Group and there has reportedly been ongoing dialogue between relevant agencies as the need require.

48. Bermuda has amended the Revenue Act of 1898 so that where a body corporate has been proved guilty of committing an offence under the said Revenue Act, any director, officer, person or the body corporate who committed the act, consented or connived shall be guilty of the offence held liable and punished accordingly. Other amendments to the Revenue act include the expansion of the Collector's power to require persons to make

customs declarations of goods or negotiable instruments and the possibility of seizure of any article which a person fails to declare or falsely declares.

### **III Conclusion**

49. Since the Mutual Evaluation, Bermuda has implemented measures in many of the specific areas to address some of the gaps identified in the Report. As was indicated above, several amendments were done to existing legislation, new POC regulations were enacted and put into force and a comprehensive review of the previous guidelines were done leading to the current new guidelines. It is noted that a significant number of deficiencies were cured in key Rec. 5. Additionally, the actions of Bermuda have had positive effects on Recommendations which were rated as being LC, particularly Recs. 10, 18 and 26.
50. Given the aforementioned, it is recommended that Bermuda remain on regular follow-up and report back to the Plenary in May of 2011.

## Matrix with Ratings and Follow-up Action Plan 3rd Round Mutual Evaluation

### Bermuda

Forty Recommendations	Rating	Summary of factors underlying rating <sup>1</sup>	Recommended Actions	Undertaken Actions
<b>Legal systems</b>				
1.ML offence	LC	<ul style="list-style-type: none"> <li>While criminalization of ML is generally comprehensive, the effectiveness of the legal framework is difficult to gauge given that there has only been one prosecution for ML in the last five years, and limited numbers of investigations.</li> </ul>		The effectiveness of the legal framework was demonstrated in the recent ML prosecution under s. 44 POCA. The Guilty verdict on all 11 Counts reaffirms the efficacy of the anti-ML provisions as well as the skills of the law Enforcement and Prosecuting teams which worked on this matter over the past 3 years.
2.ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> <li>Fines under POCA with respect to summary convictions and certain convictions on indictment are much too low.</li> <li>The effectiveness of the legal framework is difficult to gauge given that there has only been one prosecution for ML in the last five years, and limited numbers of investigations.</li> </ul>	<ul style="list-style-type: none"> <li>i) Fines under POCA with respect to summary convictions and certain convictions on indictment should be substantially increased.</li> <li>ii) Additional investigations and prosecutions are necessary in order to maintain an effective AML/CFT framework, particularly given that there has only been one prosecution of ML in the last five years and limited numbers of ML investigations.</li> </ul>	<ul style="list-style-type: none"> <li>i) ) We do not agree with this recommendation. Summary offences are limited in the level of fines that would be applicable .With regard to the levels of fines for conviction on indictment it is our view that the current levels are appropriate..</li> <li>ii) The effectiveness of the legal framework was demonstrated in the recent ML prosecution under s. 44 of POCA. The guilty verdict on all 11 Counts reaffirms the efficacy of the anti-ML provisions as well as the skills of the law enforcement and prosecuting teams which worked on this matter over the past 3 years. There have been a number of confiscation orders as well as forfeitures. Further, the Bermuda authorities have been directly responsible for successful convictions in 5 cases in the United States, while two subjects have been convicted of money laundering offences in the UK. In addition, three persons are currently subject to money laundering charges in the Caribbean. Other investigations are ongoing locally and there is close cooperation between the DPP and the BPS in this regard.</li> </ul>
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> <li>The legislation does not provide for the confiscation of instrumentalities of ML, FT or other predicate offenses.</li> <li>The legal basis for applying the broadest scope of realizable property of an offender convicted for ML is not clearly stated and should be made</li> </ul>	<ul style="list-style-type: none"> <li>i) Explicitly provide in legislation for the confiscation of property which constitutes instrumentalities intended for use in the commission of ML or other non-drug trafficking predicate offenses.</li> </ul>	<ul style="list-style-type: none"> <li>i) Provisions made under POCA Amend. 2008, clause 7, s. 48A satisfy this recommendation.</li> </ul>

<sup>1</sup> These factors are only required to be set out when the rating is less than Compliant.

		<p>explicit in legislation.</p> <ul style="list-style-type: none"> <li>• While there is a new provision for voiding contracts, it does not provide the authorities with the means to prevent actions to hinder the recovery of property subject to confiscation.</li> <li>• The implementation of the legal framework for provisional measures and confiscation shows a relatively low total of seizures, confiscations and forfeiture, which may be due to the insufficient resources available to law enforcement and prosecutorial services.</li> <li>• Implementation of provisional measures and confiscation is difficult to assess, since statistics are lacking with regard to amounts of restrained property compared with amounts ultimately confiscated and the types of crimes related to these actions. Also lacking is information on the recovery rates of the amounts subject to confiscation orders, and the amounts actually recovered.</li> </ul>	<p>ii) Explicitly provide in legislation that, for the purposes of confiscation of the benefits of ML offenses, the proceeds that are the basis of the offense may include any payments received by the defendant at any time in connection with the ML offense carried out by him or by another person.</p> <p>iii) With respect to the voiding of contracts, explicitly provide the authorities with the means to prevent actions to hinder the recovery of property subject to confiscation.</p>	<p>ii) Provisions made under POCA Amend. 2008, clause 7, s. 48A(3) satisfy this recommendation.</p> <p>iii) Section 10 of the POCA Amend. Act 2007 satisfies this recommendation.</p>
<b>Preventive measures</b>				
4. Secrecy laws consistent with the Recommendations	C			
5. Customer due diligence	NC	<ul style="list-style-type: none"> <li>• The AML Regime for FIs (in particular the POC Regulations) does not cover CFT.</li> <li>• The lack of enforceability of the Guidance Notes limits the effectiveness of implementation of all the applicable provisions under Rec. 5.</li> <li>• Inadequate coverage in the Regulations of the insurance sector, securities/investments, money remittance, and payments management sectors.</li> <li>• CDD requirements are limited to customer identification and verification, and do not extend to the full range CDD under FATF.</li> <li>• CDD is required when there is suspicion of ML only in cases of one-off transactions.</li> <li>• CDD for wire transfers is only required when the transaction is US\$10,000 or more, far exceeding the US\$1,000 FATF threshold.</li> <li>• No CDD requirements when in doubt of adequacy of previously obtained customer identification information.</li> <li>• Good practice recommendations in Guidance Notes, e.g. G42 and G44 on simplified measures for non-face-to-face business, are not justified</li> </ul>	<p>i) Extend the regulatory regime for FIs to explicitly cover CFT issues.</p> <p>ii) Establish in the Regulations or in other enforceable instrument (Other Enforceable Means) all of the applicable requirements under FATF Recommendations 5–8. The current Regulations are limited and the Guidance Notes are not enforceable.</p> <p>iii) Extend the CDD requirements beyond customer identification.</p> <p>iv) Require CDD in all cases (business relationships and one-off transactions) where there is knowledge or suspicion of ML/FT and not only in cases of one-off transactions. Also, clarify that the threshold for one-off transactions does not apply when there</p>	<p>i) Provisions made under Regs. 6 and 11 satisfy this recommendation.</p> <p>ii) Provisions made under Regs. Part 2, regulations 5 -14 satisfy this recommendation.</p> <p>iii) Provisions made under the Regs, Part 2, regulations 7, 9, 11, 12 and 13 satisfy this recommendation.</p> <p>iv) Provisions made under Regs. 6 and 9 satisfy this recommendation.</p>

		<p>and weaken implementation of the AML Regulations and FATF requirements.</p> <ul style="list-style-type: none"> <li>• Good practice recommendations in Guidance Notes 129, 130, 139, 140 and 140 with respect to insurance and investment services weaken implementation of the CDD requirements.</li> <li>• Good practice recommendations in Guidance Notes 131, 132 and 133 for investment services weaken compliance with the CDD requirements.</li> <li>• No requirements for FIs to obtain information on the purpose and intended nature of the business relationships.</li> <li>• FIs are not required to update and conduct ongoing CDD/monitoring nor enhanced CDD for higher risk customers, business relationships or transactions.</li> <li>• The exemptions/reductions in customer identification in the Guidance Notes are not justified on the basis of low risk, are not limited to clients from countries that have effectively implemented the FATF Recommendations, and are too broad, and should not apply when there is suspicion of ML/FT.</li> <li>• No requirement to update information for clients in existence when the POCA and Regulations were introduced, and in practice this is a key challenge for FIs.</li> </ul>	<p>is suspicion. This requirement should also include reporting of suspicion when an FI cannot obtain the required identification/CDD information under Rec. 5.15 and 5.16.</p> <ul style="list-style-type: none"> <li>v) Reduce the minimum CDD threshold for wire transfers to the equivalent of US/BD\$1,000. (See recommendation on recordkeeping under section 3.5.3.</li> <li>vi) Extend the CDD requirements to cases where there is doubt as to the veracity or adequacy of previously obtained information. See recommendation below on the need to update information for “grandfathered accounts”.</li> <li>vii) Reg. 4(4) could more explicitly establish the requirement to identify and obtain CDD information on underlying beneficiaries, including for legal persons and arrangements. This would make the Guidance Notes more consistent with the Regulations.</li> <li>viii) Review the customer identification exemptions provided for in the Guidance Notes for consistency with the Regulations and FATF Rec. 5, 8, and 9.</li> <li>ix) Review the wording of Guidance Notes 129, 130, 139, 140 and 140 on exemptions from identification to ensure that they do not create a practical limitation of CDD in the insurance and investment services sectors. Similar review is required for GNs 131, 132 and 133 for investment services. This should also be reviewed in the context of timing of verification for purposes of Rec. 5.13 and 5.14.</li> <li>x) CDD requirements that include the purpose and nature of business relationships (and significant one-off transactions) should be established.</li> <li>xi) Require FIs to conduct enhanced monitoring for higher risk business and regular updating of customer profile information, to conduct enhanced CDD for higher risk customers,</li> </ul>	<ul style="list-style-type: none"> <li>v) Draft regulations have now been prepared as well as draft guidance notes. These are being submitted for industry consultation for commencement in Q2 2009.</li> <li>vi) Provisions made under Reg. 6 satisfy this recommendation.</li> <li>vii) Provisions made under Regs. 5(b) and 6(4)(b) satisfy this recommendation.</li> <li>viii) Provisions made under Regs. 8(3), 8(4), 8(5) and Regs. 10 satisfy this recommendation.</li> <li>ix) Provisions made under Regs. 10(4), 10(6) and Regs. 8 satisfy this recommendation.</li> <li>x) Provisions made under Regs. 5(c) and 6(3) satisfy this recommendation.</li> <li>xi) Provisions made under Regs. 11(1), 11(2), and 11(3) satisfy this recommendation.</li> </ul>
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			business relationships and transactions.	
			xii) Require FIs to conduct enhanced CDD for higher risk customers, business relationships or transactions in either in the POCA, Regulations or other enforceable means.	xii) Provisions made under Regs. 11 satisfy this recommendation.
			xiii) Review the exemptions/simplifications provided for in the Regulations and (non-mandatory) Guidance Notes to ensure that they are justified on the basis of proven (documented) low risk. Where applicable, such lower exemptions/simplifications should be allowed only where customer information is publicly available or when there are otherwise adequate checks and controls in the system, especially when the clients are not other regulated FIs.	xiii) Provisions made under Regs. 10 satisfy this provision.
			xiv) Where simplified CDD is allowed, there should be provisions to limit these to cases where non-resident customers that are from countries that have effectively implemented the FATF Recommendations.	xiv) Provisions made under Regs. 10(2)(b) and 10(4) satisfy this recommendation.
			xv) As a general rule, do not allow exemptions or reduced CDD measures when there is suspicion of ML/FT.	xv) Provisions made under Reg. 6(3) and Reg. 11 satisfy this requirement.
			xvi) Remove the general exemption in Guidance Note 50 on the timing for verification when payment is to be made from "other account" as this could be interpreted, e.g. from an account held by any non-FI business or unregulated person.	xvi) The Guidance Notes issued in 1998 are no longer applicable and reference should be made to the new guidance notes. Paragraphs 46-50 of the old guidance notes refer to the "Timing and Duration of Verification." At the time these GNs were issued, the POC regulations did not require verification of identity and as you are aware, the GN are not OEMs. The new regulations require the verification of identity and therefore the 'general exemption' (I believe it should have said paragraph 48) is no longer applicable. S. 8 of the regulations addresses the 'Timing of Verification' which must be completed prior to establishing a business relationship or conducting an occasional transaction. S.8 provides three exceptions to this rule, as
			xvii) Require FIs to expedite the conduct of CDD and update client documentation for clients in existence when the Regulations were issued, the so called "grandfathered" customers. The Regulations were issued in 1998 (about 9.5 years ago) and the slow progress in updating such information creates a significant vulnerability across the industry.	



				<p>provided for in the FATF recommendation. Therefore the timing of verification has been legislated for and the old GN are not applicable. Paragraphs 5.16 - 5.19 of the new GNs refer.</p> <p>xvii) Para 5.37 – 40 of the GN address the issue of dealing with ‘grandfathered’ accounts.</p>
6.Politically exposed persons	NC	<ul style="list-style-type: none"> <li>No requirements for FIs to conduct enhanced CDD for PEPs.</li> </ul>	Require FIs to conduct enhanced CDD for PEPs.	Provisions made under Regs. 11(4), 11(5), 11(6), 11(7) and the Schedule section 2 of Regs. satisfy this recommendation.
7.Correspondent banking	NC	<ul style="list-style-type: none"> <li>No requirements for FIs to conduct enhanced CDD with respect to correspondent banking and similar relationships.</li> </ul>	Require FIs to conduct enhanced CDD with respect to correspondent banking and similar relationships.	Provisions made under Regs. 11(3) satisfy this recommendation.
8.New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> <li>No requirements for FIs to implement measures to prevent misuse of technological developments that could facilitate ML/FT.</li> </ul>	Require FIs to address risks associated with non-face to face business relationships or transactions, and to implement measures to prevent misuse of technological developments that could facilitate ML/FT.	Provisions made under Regs. 9, 11(2), 11(3), 12, and 13 satisfy this recommendation.
9.Third parties and introducers	NC	<ul style="list-style-type: none"> <li>No requirement for FIs to immediately obtain CDD information from third parties.</li> <li>No requirement for FIs to satisfy themselves that CDD documentation has been obtained by third parties and that such documentation can be made available to FIs promptly on request.</li> <li>Agreements obtained by FIs from introducers/intermediaries in other countries do not generally assure that secrecy and confidentiality restrictions will not be an impediment to access to CDD information when requested.</li> <li>Insufficient information available to the industry with respect to adequacy of regulation and supervision of other FIs, and on implementation of FATF</li> </ul>	<ul style="list-style-type: none"> <li>i. Require FIs to immediately obtain CDD information from acceptable third parties when relying on their CDD.</li> <li>ii. When allowing FIs to rely on CDD conducted by third parties, require them to satisfy themselves that the requisite CDD documentation has been obtained by such third parties, and that it will be made available to the FIs promptly on request.</li> <li>iii. Periodically review the adequacy of the basis on which FIs rely on the CDD of other third parties whether in Bermuda or in other countries, with respect to their supervision for AML/CFT purposes, and implementation of the FATF Recommendations by countries where the third parties are located.</li> </ul>	<ul style="list-style-type: none"> <li>i. Provisions made under Regs. 14 satisfy this recommendation.</li> <li>ii. Provisions made under Regs. 14, 15(6), (7)</li> <li>iii. Provisions made under Regs. 14 satisfy this recommendation.</li> </ul>

		<p>Recommendations by countries to justify reliance on third parties.</p> <ul style="list-style-type: none"> <li>Need to specify, as seems to be the practice that ultimate responsibility for CDD lies with the Bermudian FIs.</li> </ul>	<p>iv. Make it explicit that where reliance on others for certain aspects of CDD is allowed, that the ultimate responsibility lies with the FI.</p>	<p>iv. Provisions made under Regs. 14 satisfy this recommendation.</p>
10.Record keeping	LC	<ul style="list-style-type: none"> <li>Weak recordkeeping requirement in the financial regulatory laws, and expand good practice recommendations in the Guidance 154 Notes, G97 (securities only) and G98 (wire transfers).</li> </ul>	<p>i) Include in all the Schedules for minimum licensing criteria of the financial regulatory laws a recordkeeping requirement to comply with the AML/CFT legislation, not only for purposes of the regulatory laws.</p> <p>ii) Consider rewording Reg. 5(4) to make it more consistent with Guidance Note 95 to state that the retention period in cases of an investigation would be longer than the minimum five-year period specified. Also clarify what constitutes the “outcome of the investigation” and whether it would include, e.g. the prosecution, trial, conviction or confiscation procedures.</p> <p>iii) Revise the Guidance Notes (G97) to ensure that the retention of transaction records are not limited to details of securities and investments transacted, and that they apply to non-securities related business, e.g. banking and insurance transactions.</p>	<p>iv) The record keeping provisions at s.15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 meet the requirements of FATF recommendation 10. Guidance Notes Chapter 8 paragraphs 8.1 – 8.28 refer.</p> <p>v) Regulation 5(2) of the OLD regulations refers to keeping records for the minimum retention period (five years) if they would assist in the investigation of money laundering. The NEW regulations - S.15(5) makes specific reference to keeping records, in the case of an institution being notified those records may be relevant to an investigation, "pending the outcome of the investigation." S.15(5) of the NEW regulations makes no reference to the 5 year retention period in these circumstances. Therefore the situation has been rectified as required.</p> <p>i) Provisions made under Regs. 15(2) satisfy this recommendation.</p>
11.Unusual transactions	NC	<ul style="list-style-type: none"> <li>No requirement to pay special attention, examine and record information on complex, unusually large, or unusual patterns of transactions that have no apparent economic or lawful purpose.</li> <li>Inadequate systems in some FIs, e.g. do not aggregate customer accounts for purposes of monitoring for unusual and suspicious transactions throughout the FI or on a group-wide basis. I</li> </ul>	<p>Introduce in law, regulations or OEMs a requirement to monitor, examine and record information on complex, unusually large, or unusual patterns of transactions that have no apparent economic or lawful purpose.</p>	<p>Provisions made under Regs. 16 satisfy this recommendation.</p>
12.DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> <li>Except for trust providers, the other relevant DNFBPs are not subject to CDD, recordkeeping and oversight arrangements for AML/CFT.</li> </ul>	<p>i) Amend POCA and the POC Regulations 1998 to require lawyers, accountants, company service providers, dealers in precious metals and stones, including jewelers, and real estate agents to implement AML/CFT programs covering: (a)CDD, (b) record-keeping, (c) internal reporting programs (to include</p>	<p>i) Lawyers and accountants are brought into scope under POCA Amend. 2008, ATFA Amend. 2008 and Regs. Parts 2 and 3. Other DNFBP's will be brought into scope during a future phase.</p>

			<p>reporting by an MLRO to the FIU), and (d) training.</p> <p>ii) In the case of lawyers and accountants, the AML/CFT program obligation should apply either when they plan for or when they carry out for their client the transactions enumerated in Rec. 12. Consideration should be given to extending the AML/CFT program obligations for accountants to all of their activities.</p> <p>iii) Given evidence that local drug dealers have made investments in the local property market, and the requirements of C 12.1, the AML/CFT program requirements for real estate dealers should cover all real estate transactions, not just those carried out in cash. Consideration should be given to requiring that all real estate transactions be settled by bank transfer.</p> <p>iv) Any SRO arrangements established for monitoring and oversight of AML/CFT program compliance should include adequate powers for the designated supervisor to review the policies and procedures and records of supervised parties as well as powers to effectively enforce compliance.</p> <p>v) All high value dealers, specifically dealers in precious metals and precious stones, including jewelers, engaging in cash transactions with customers of \$15,000 or more should be subject to the AML/CFT preventive measures regime.</p> <p>vi) An awareness campaign should be undertaken to familiarize DNFBPs with their responsibilities and obligations under any new AML/CFT laws or regulations.</p>	<p>ii) Provisions made under Regs. 6 and 7 satisfy this recommendation. Extending the AML/CFT program obligations for accountants to all of their activities is not a FATF requirement.</p> <p>iii) Matter requires further review.</p> <p>iv) The powers for the BMA to supervise TSP's are provided in the SEA Act. Section 5 of the SEA Act also addresses the general duties of supervisory authorities.</p> <p>v) High value dealers to be brought in scope during a future phase.</p> <p>vi) An awareness campaign for the financial institutions (which includes TSP's) and lawyers and accountants was carried out in 4<sup>th</sup> quarter 2008.</p>
13.Suspicious transaction reporting	PC	<ul style="list-style-type: none"> <li>POCA does not provide an explicit requirement for filing SARs for attempted transactions.</li> <li>No requirement to file FT-related SARs for funds linked to terrorist organizations.</li> <li>No FT-related SARs have been filed.</li> <li>Since the vast majority of SARs have been</li> </ul>	<p>i) Amend ATFA to require FT-related SARs for funds linked to terrorist organizations.</p>	<p>i) Section 7(b) of ATFA notes that a person commits an offense if "he knows or suspects that it will or may be used for the purposes of terrorism" and then Section 9 requires that a person has a responsibility to report a belief or suspicion relating to, among other things, matters addressed in section 7. This therefore creates an obligation to file SAR's for funds</p>

		filed by banks even though they make up a small part of the financial sector, it appears that other sectors may be underreporting.	ii) Enhance training for identification of FT-related transactions	linked to terrorist organisations.  ii) The previous regulations and guidance notes did not address FT related matters. Therefore, there was previously no formal requirement for training on FT related transactions. The new regulations, apply to FT as well as ML matters. Training on FT related transactions is now a requirement (Reg 18) and failure to do so can result in a criminal or civil penalty.
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> <li>• Protections for those who file SARs are limited to SARs based on ML and do not cover those who are required to file SARs based on FT.</li> <li>• There is also no explicit protection from criminal liability resulting from a SAR filing.</li> <li>• Tipping-off offenses do not explicitly cover the fact of a SAR filing and the contents therein, and tipping-off generally relating to SARs is only an offense if likely to prejudice a possible investigation.</li> </ul>	i) Amend ATFA and POCA to provide explicit protection for those who are required file SARs based on FT.  ii) Amend POCA to provide explicit protection from criminal liability resulting from a SAR filing.  iii) Amend POCA to provide for tipping-off offense that explicitly covers the fact of or any information about a SAR filing and the contents therein.  iv) Amend POCA to limit the scope of the exemption from tipping off by lawyers in a manner consistent with R.14 and R.16.	i) Provisions under the Anti-Terrorism (Financial and Other Measures) Act 2004, Schedule 1, Part 1(2) satisfy this recommendation.  ii) Provisions made under POCA Amend. 2008, clause 6, section 46 satisfy this recommendation.  iii) Matter being reviewed.  iv) Matter being reviewed.
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> <li>• Limited obligations in the AML/CFT Regulations for FIs to formulate and implement AML/CFT policies, compliance and controls. Only covers procedures with limited application.</li> <li>• There is no requirement in the Regulations that the reporting officer be designated at the management level but in practice this generally appears to be the case.</li> <li>• Limited scope of the compliance management function to suspicious activity reporting activities.</li> <li>• No requirements for maintaining an independent and adequately resourced internal audit function in the Regulations.</li> <li>• Limited coverage in the Regulations of</li> </ul>	i) Extend the procedures requirements to the full range CDD and recordkeeping requirements, and also require the formulation of AML/CFT policies, compliance and controls. Also consider specifying, in all cases, that the control systems requirements contained in the financial regulatory laws apply to AML/CFT.  ii) Expand the role of the AML/CFT compliance function beyond suspicious activity reporting and include a requirement for an independent internal audit function that covers AML/CFT.  iii) Extend the training requirements beyond those “relevant employees” defined in the Regulations to others who can play a role in	i) Provisions under Regs. 5, 6, 7, 11 and 16 satisfy this recommendation.  ii) Provision made under Reg. 16 expands the role of the AML/CFT compliance function beyond suspicious activity reporting. The requirement for an independent internal audit function that covers AML/CFT was reviewed and is now included in the revised Guidance Notes. (sections 3.15-3.22).  iii) The record keeping provisions under Reg. 15 of meet the requirements of FATF

		<p>training obligations to “relevant employees”.</p> <ul style="list-style-type: none"> <li>No obligation in the AML Regulations for employee screening and limited coverage in the various regulatory laws</li> </ul>	<p>implementing and monitoring compliance with institutional and legal AML/CFT requirements.</p> <p>iv) Include employee screening requirements in the AML Regulations to complement the fit and proper requirements for senior officials of FIs contained in the financial regulatory laws.</p>	<p>recommendation 10. Guidance Notes Chapter 8 paragraphs 8.1 – 8.28 refer.</p> <p>iv) Matter under consideration</p>
16.DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> <li>All DNFBPs are subject to general requirements to report suspicious activities although few SARs have been filed by DNFBs and none by lawyers.</li> <li>With the exception of trust service providers, however, none of the other relevant DNFBPs are subject to oversight with respect to reporting obligations and the regime is not effectively implemented.</li> </ul>	<p>i) Amend POCA to ensure that SAR reporting requirement conforms to the applicable FATF Recs., including requirements for legal professionals.</p> <p>ii) The authorities should take additional measures, including but not limited to the issuance of regulations and guidance, to ensure that DNFBP, including lawyers, file SARs when appropriate.</p> <p>iii) Revise relevant legislation with respect to tipping off by lawyers, in order to protect the confidentiality of SAR information.</p> <p>iv) As recommended in 5.2 above, bring all DNFBPs under the preventive measures regime called for in POC Regulations 1998. Mandatory measures should include requirements to have effective systems and controls to monitor transactions for suspicions and to ensure that suspicious activities are reported.</p> <p>v) Any AML/CFT supervisory regime introduced for DNFBPs (TSBs are already covered) should include powers for the supervisor to ensure effective implementation of SAR reporting requirements.</p>	<p>i) Provision already made under POCA s. 46(3)(6).</p> <p>ii) The requirement to file SAR’s is in POCA section 46 and ATFA section 9 and Schedule 1. This is reinforced through Reg 17 and the Guidance Notes – Chapter 6.</p> <p>iii) Provisions made under POCA s. 47(3) and ATFA Amend. 2008, clause 5, s. 10A satisfy this recommendation.</p> <p>iv) Provisions under Regs. 7, 15, 16, 17, and 18 require that lawyers and accountants have effective systems and controls to monitor transactions for suspicions and to ensure that suspicious activities are reported.</p> <p>v) Provisions under the SEA Act satisfy this recommendation with regard to Trust Service Providers. Other DNFBPs to be addressed in later phase.</p>
17.Sanctions	PC	<ul style="list-style-type: none"> <li>Although BMA has a wide range of sanctions powers, according to officials, formal sanctions have never been imposed on a FI for a violation or deficiency relating to AML/CFT requirements.</li> <li>Two key sanctions are missing from the sanctions regime: civil money fines and conservatorship powers.</li> <li>The administrative money penalties which</li> </ul>	<p>i) Enact legislation for civil money penalties and conservatorship powers to be applied by the BMA.</p> <p>ii) Fines under POCA with respect to summary convictions and certain convictions on indictment should be raised.</p>	<p>i. Chapter 4 of the SEA Act 2008 implements civil money penalties to be applied by the BMA. Conservatorship powers are only mentioned by way of “examples of types of sanctions include...” followed by a list of examples including conservatorship. It is not an FATF requirement that all the examples given be legislated.</p>

		<p>may be imposed by Customs are much too low for ML or FT offenses involving the movement of cash or negotiable instruments.</p> <ul style="list-style-type: none"> <li>Fines under POCA with respect to summary convictions and certain convictions on indictment are much too low.</li> </ul>		<p>ii. We do not agree with this recommendation. Summary offences are limited in the level of fines that would be applicable. With regard to the levels of fines for convictions on indictment, it is our view that these are at appropriate levels</p>
18.Shell banks	LC	<ul style="list-style-type: none"> <li>No prohibition against the establishment and dealing with shell banks.</li> </ul>	<p>Consider incorporating an explicit prohibition on the licensing of shell banks or requiring in the licensing criteria that licensees maintain a significant presence and mind and management in Bermuda, consistent with the Basel Paper on shell and parallel banks.</p>	<p>Provisions under Reg. 13 satisfy this recommendation.</p>
19.Other forms of reporting	C			
20.Other NFBP & secure transaction techniques	C			
21.Special attention for higher risk countries	NC	<ul style="list-style-type: none"> <li>No requirement to pay special attention, examine and record business relationships/transactions with persons from or in countries which do not sufficiently apply the FATF Recommendations.</li> <li>No system to ascertain and inform FIs about which countries do not or insufficiently apply the FATF Recommendations, or to apply countermeasures against such countries.</li> </ul>	<p>Require FIs to pay special attention, examine and record business relationships/transactions with persons from or in countries which do not sufficiently apply the FATF Recommendations, and implement a system identify such countries</p>	<p>The Regulations 2008 do not include specific provisions covering this point. However, Regulation 11(1) (b) is applicable to this circumstance, the application of enhanced CDD in any situation which by its nature can present a higher risk of ML or TF. Paragraph 3.13 of the Guidance Notes addresses this point and encourages institutions to make appropriate use of international findings such as FATF assessments where countries have been found to be materially deficient. Paragraph 5.131 also addresses this point where the location of the customer may present a higher risk of ML or TF.</p>
22.Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> <li>No provisions in the AML Regulations for AML/CFT applying measures to overseas branches and subsidiaries.</li> <li>No requirements on FIs to inform the Bermudian authorities when their overseas operations cannot observe appropriate AML/CFT measures</li> </ul>	<p>i) Include in the Regulations an obligation for FIs to implement AML/CFT measures in overseas branches and subsidiaries.</p> <p>ii) Require FIs to inform the Bermudian authorities when their overseas operations cannot observe appropriate AML/CFT measures.</p>	<p>i) Provisions made under Reg. 12 satisfy this recommendation.</p> <p>ii) Provisions made under Reg. 12(2) satisfy this recommendation.</p>
23.Regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>Inadequate AML supervision of FIs, particularly for the non-banking sectors, and no CFT supervision.</li> <li>Onsite (AML) supervision only commenced in 2007 for the insurance sector and mutual fund administrators are still to be licensed</li> </ul>	<p>i) Develop and implement both an offsite and onsite supervision program for AML/CFT that is risk-based, and prioritizing for full scope inspections those sectors and institutions that present a higher degree of ML/FT risk, including in the insurance sector.</p>	<p>i, ii, iv) The SEA Act section 3 gives the Bermuda Monetary Authority the duty to effectively monitor financial institution's compliance with the Regs. and to enforce compliance with their provisions</p>

		<p>and supervised for AML/CFT.</p> <ul style="list-style-type: none"> <li>Limited scope of AML onsite inspections procedures both in terms of institutions and review areas.</li> <li>The AML Regulations do not assign AML/CFT supervisory, enforcement and sanctioning authority to the BMA.</li> <li>Insufficient consolidated AML/CFT supervision to include group-wide compliance, especially in the non-banking sectors, and insufficient use of the work of external auditors in the area of systems and controls.</li> <li>Insufficient AML/CFT staff capacity and training.</li> <li>Need for enhanced implementation of licensing criteria and procedures for new and existing licensees, and to take account of group-wide fit and proper concerns.</li> <li>Until December 2006/January 2007, there as no framework for licensing or registering money services business, and licensing/supervision of money services firms is still to be implemented.</li> <li>Bermuda has not conducted a review to ascertain whether other FIs covered by the FATF Recommendations not currently subject to the AML regime should be licensed or registered, e.g. financial leasing on a commercial scale.</li> </ul>	<p>ii) Expand the scope of onsite reviews including a focus on the adequacy of formal policies and the demonstrated commitment of the Board of Directors and senior management.</p>	<p>In order to carry out its functions under the Act, the Authority has created and staffed a dedicated anti-money laundering and anti-terrorist financing unit ("the AML/ATF Unit") to carry out the functions of the supervisory authority which will include both an on-site and off-site monitoring program</p> <p>Onsite inspections are routine regulatory inspections conducted by the Authority, which require its officers to examine the books, records and controls of an institution and to hold discussions with its senior management on the financial institution's compliance framework. The on-site reviews will include a review of AML/ATF policies and procedures and an evaluation of the commitment and involvement of senior management.</p> <p>The number of visits to any institution would be determined by the Authority's risk assessment of the institution and its record of compliance. Financial institutions whose business presents an inherently high risk to money laundering or terrorist finance would be subject to routine visits more frequently.</p> <p>The Authority would also use the results of the national risk assessment on the vulnerability of Bermuda's financial institutions to money laundering and terrorist financing to determine the financial sectors posing the greatest risk. This would assist in determining the level of monitoring and the frequency of on-site visits for each class of institution. Visits would be tailored to address the risk associated with each financial institution or class of financial institution being monitored or be tailored to focus on particular aspects of AML/ATF such as customer due diligence or reliance on third parties. Specialist AML on-site visits will form part of the monitoring program.</p>
			<p>iii) Develop and implement a framework for conducting consolidated supervision for AML/CFT compliance beyond banking, paying urgent attention to FIs that are parent and operating holding companies with</p>	<p>iii) The BMA has started down the road to group supervision for commercial insurers. A Group Steering Committee was appointed in June 2008 to oversee the project. To complement these efforts, the BMA is hosting supervisory colleges in Bermuda, the first of which was held in</p>

			<p>significant operations overseas. Supervision should particularly focus on the existence and adequacy of applications for group-wide risk management, compliance and audit functions.</p> <p>iv) Enhance the onsite inspections program by focusing on particular areas of potential high risk activities and business relationships especially with respect to wire transfers, CDD on ultimate beneficiary clients, and controls and compliance involving reliance on intermediaries or introducers of business.</p> <p>v) Enhance the review of the sufficiency and quality of SAR reporting systems, and take fuller account of the work of external auditors in their review of the AML/CFT control environment.</p> <p>vi) Review the effectiveness of the overall supervisory process for purposes of applying enforcement action for AML/CFT related breaches and concerns.</p> <p>vii) Review and where necessary strengthen licensing practices in a consistent manner that reflects concerns not only of the applicant, but of other members of the group, including enforcement of the ongoing need for fit and proper criteria under the minimum licensing requirements.</p> <p>viii) Review licensing procedures to ensure that the full requirements for ultimate beneficiaries of proposed licensees are established in accordance with the application documentation requirements. Also, conduct a review of application documentation review procedures to ensure that signed applicant declaration forms relating to competence and</p>	<p>November 2008. In attendance were regulators from key jurisdictions where some of Bermuda's major insurers also have a presence.</p> <p>iv) See above</p> <p>v) The on-site program will include the review of internal reporting systems and the resulting quality of SARs and will incorporate both internal and external audit reports.</p> <p>vi) The SEA Act empowers the BMA to impose civil monetary fines where a financial institution is found to be in breach of the regulations. The Bill provides for a maximum fine of \$500,000 and the amount levied would be, in each particular instance, consistent with the principle that the fine must be appropriate, i.e. "effective, proportionate and dissuasive.</p> <p>vii) The Authority is reviewing this recommendation in the light of the new AML/ATF framework that has been established..</p> <p>viii) The BMA periodically reviews its licensing and application procedures and am ends as required.</p>
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			<p>probity, are consistent with the type of license being sought.</p> <p>ix) Expedite the licensing/registration process for money services firm(s) and the provisions under Section 20AA of the BMA Act and the Regulations thereunder, to ascertain the adequacy of or need for provisions relating to agents/subagents of such licensees, as well as certain aspects of their operations to give practical implementation to issues such as minimum holding period of client money.</p> <p>x) Conduct a systemic review to ascertain whether other financial activities covered by the FATF Recommendation is taking place in or from within Bermuda on a regular commercial basis</p>	<p>ix) The licensing and registration process is in place to allow the BMA to grant a license to an institution to carry on money service business. As of August 2008 two financial institutions have been granted a license under the Money Service Business Regulations 2007. Institutions licensed under the MSB Regulations are subject to the same AML/ATF framework as other financial institutions in Bermuda. The current MSB license holders do not have any agents or sub agents and in respect of the money service business do not 'hold' client money.</p> <p>x) Work has been started to prepare for a systemic review in 2009.</p>
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>With the exception of trust service providers, no competent authority has been designated with responsibility for monitoring and ensuring compliance with AML/CFT requirements of other relevant DNFBPs.</li> </ul>	<p>i) When lawyers, accountants, company service providers, real estate agents, jewelers and high value dealers are brought under the AML/CFT preventive regime, ensure that effective supervisory arrangements are established for each sector, including adequate powers for the supervisors to monitor and sanction, and adequate resources to carry out the supervisory function.</p> <p>ii) Ensure that the scope of activities of professional lawyers and accountants that is subject to AML/CFT obligations and to supervision conforms to the requirements of Rec. 24.</p> <p>iii) Updated guidance should be issued relevant to all DNFBPs.</p>	<p>i) Consultation with the relevant professional bodies regarding supervisory arrangements is currently taking place.</p> <p>ii) Professional lawyers and accountants are brought into scope of the Regulations through Reg 4.</p> <p>iii) The GN for AML/ATF regulated financial institutions apply to TSP's. Once designated, other supervisory authorities will be responsible for issuing guidance for other DNFBP's</p>
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> <li>The Guidance Notes do not provide adequate descriptions of FT techniques, do not cover CFT, are outdated, and are limited in scope.</li> <li>Among DNFBPs, only trust service providers are covered by the Guidance Notes.</li> <li>No procedures are in place for providing</li> </ul>	<p>i) Review/update the Guidance Notes for completeness and relevance to the current needs of industry, and remove inappropriate exemptions or simplifications in customer due diligence.</p> <p>ii) Develop guidance for FIs and DNFBP</p>	<p>i, ii) The Regs. have incorporated and expanded upon many of the requirements that were previously in Guidance.</p> <p>These regulations have been made pursuant to section 49(3) of POCA and section 12A of</p>

		feedback to FIUs.	relating to latest industry-specific typologies and additional preventative measures.	<p>ATFA and will revoke the regulations currently in effect.</p> <p>The Bermuda Monetary Authority, as supervisor of financial institutions, and to assist with compliance with the revised regulations and various sections of the Proceeds of Crime Act 1997 and the Anti-Terrorism (Financial and Other Measures) Act 2004, will issue guidance on the prevention of money laundering and the combating of terrorist financing. The new guidance will replace guidance currently in place and, along with the Regs. address the issue at point one.</p>
			iii) Formalize procedures for providing feedback on SARs.	iii) An internal policy is in place to direct how the feedback is to be sent in relation to SAR reporting. A formal letter is sent providing feedback on SARs which details the outcome of the SAR reported
<b>Institutional and other measures</b>				
26.The FIU	LC	<ul style="list-style-type: none"> <li>The FIU has limited specialized financial analysis capacity.</li> <li>There is no specific legal provision establishing and empowering the FIU as national centre for receiving and processing SARs and other relevant information concerning suspected ML or FT activities.</li> </ul>	Ensure that the new FIA is established and becomes operational, and provide sufficient staffing levels at the existing Police FIU to enable an increased number of ML/FT-related investigations.	<p>The new FIA is now operational and is fully staffed.</p> <p>Since the IMF assessment of May 2007, the Police FIU, which was already conducting ongoing money laundering investigations, has undertaken a number of additional money laundering cases.</p>
27.Law enforcement authorities	LC	<ul style="list-style-type: none"> <li>Very low number of prosecutions reflects the low priority given to ML and FT by the Police Service.</li> </ul>	<p>i) The authorities should make greater efforts to follow up on signs and traces of ML and to initiate non-SAR triggered investigations.</p> <p>ii) Investigating and prosecuting ML/FT cases should be made a priority by law enforcement authorities, with sufficient resources allocated reflecting that priority.</p>	<p>i) The Police FIU has commenced a number of non-SAR triggered investigations and continues to do so. In recent months, two very large ML enquiries have been generated from within the Bermuda Police Service, and subsequently supported with SAR information.</p> <p>ii) The commitment to ML/FT matters was demonstrated in the recent ML prosecution under s.44 POCA. The guilty verdict on all 11 counts reaffirms the efficacy of the anti-ML provisions as well as the skills of the law enforcement and prosecuting teams which</p>

				<p>worked on this matter over the past 3 years. There have been a number of confiscation orders as well as forfeitures. Further, the Bermuda authorities have been directly responsible for the successful conviction on 5 cases in the United States, while two persons are currently subject to money laundering charges in the Caribbean. Other investigations are currently ongoing. We would note that the current BPS Strategic Plan outlines the high priority which the Services afford ML and FT. It states, in particular:</p> <p>Maintaining capability to match the threat of serious and series offenders who commit crimes in Bermuda and internationally;</p> <p>Maintaining capability to investigate all major crime committed in Bermuda;</p> <p>Increasing capability to maximize the benefits of the Proceeds of Crime Act the Confiscated Assets Trust Fund and other statutory provisions, and becoming a centre of excellence for financial investigation.</p>
<b>28.Powers of competent authorities</b>	<b>C</b>			
29.Supervisors	PC	<ul style="list-style-type: none"> <li>No explicit mandate in the POCA and AML Regulations to a supervisory body to monitor, enforce and sanction for compliance with AML (no CFT application), and unclear application of powers in the regulatory laws to supervise for compliance.</li> <li>Need to include clear AML/CFT enforcement and sanctioning powers in the BMA Act and regulatory laws.</li> <li>The Credit Union Act should provide clear and adequate powers for the BMA to supervise/conduct onsite inspections that can include AML/CFT compliance.</li> <li>The Banks and Deposit Companies Act does not extend prudent conduct/licensing</li> </ul>	<p>i) For purposes of consistency with other sectors, consider extending the definition of covered financial institutions and supervisory powers under the BMA Act to the insurance sector.</p> <p>ii) Establish an explicit mandate for the BMA to monitor, enforce and sanction for compliance with the AML/CFT obligations of FIs and review the adequacy of the proposed Bill to amend the POCA/BMA Act to ensure that it provides a clear and complete mandate to the BMA in all these areas.</p> <p>iii) Specify clear powers in the Credit Union Act that the BMA, under delegated authority, can</p>	<p>i) Provisions under SEA Act satisfy this recommendation.</p> <p>ii) This has been addressed through the SEA Act.</p> <p>iii) The SEA Act along with the AML/ATF regulations meets the criteria for compliance</p>

		requirements to compliance with other laws/AML/CFT laws.	<p>supervise and inspect these FIs, including for compliance with AML/CFT obligations.</p> <p>iv) Extend in the Bank and Deposit Companies Act, prudent conduct/minimum licensing criteria to compliance with other laws so as to cover AML/CFT legislation.</p> <p>v) Include in the legislation a specific power for the BMA to enforce compliance with the AML/CFT requirements, including for the application of administrative measures and sanctions, as exist in the financial regulatory laws.</p> <p>vi) Consider clarifying in the proposed Bill to amend the BMA Act that the scope of BMA's AML/CFT supervision includes a monitoring function as well as enforcement and sanctions powers under the regulatory laws.</p>	<p>with this recommendation. Credit unions are subject to all AML/ATF requirements the same as any other AML regulated financial institution (see paragraph 2(1)(a) of the Act). The BMA now has a duty to monitor credit unions for compliance with the regulations which includes the power to conduct on-site examinations to test for compliance.</p> <p>iv) This has been indirectly addressed through Section 6 of the SEA Act.</p> <p>v) Provisions made under the SEA Act satisfy this recommendation.</p> <p>vi) Provisions made under the SEA Act satisfy this recommendation.</p>
30.Resources, integrity and training	PC	<ul style="list-style-type: none"> <li>The existing FIU does not have sufficient qualified personnel to take on its current responsibilities, and to provide continuity in the transition to the new FIA.</li> <li>The existing FIU does not have a liaison officer named to facilitate the transition from the existing FIU to the FIA, nor does it have adequate staff available to train their successors.</li> <li>The DPP's office has too many open positions and inadequate efforts have been made to retain professional staff, regardless whether they are Bermudian or non-Bermudian, staff or contract employees.</li> <li>There is an inadequate prioritization of investigations and prosecutions of AML/CFT cases by the Police Commissioner, AG and DPP.</li> </ul>	<p>i) Enhance training for BMA staff to facilitate the identification of deficiencies relating to AML/CFT requirements for FIs, including, but not limited to internal controls, CDD, SARs filings, recordkeeping, MLRO qualifications and operations. Increased specialization and focus on AML/CFT supervision, if the insurance and investment business/mutual fund sectors may be given priority.</p> <p>ii) The BMA should enhance its staff capacity to undertake more comprehensive AML/CFT supervision, including for the conduct of effective consolidated supervision whether as home or host supervisor.</p>	<p>i, ii) With the commencement of SEA Bill 2008, the Authority will be charged with the duty to effectively monitor financial institution's compliance with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (the "Regulations") and to enforce compliance with their provisions. In order to carry out this duty the Authority will establish a dedicated anti-money laundering and anti-terrorist financing unit ("the AML/ATF Unit") comprised of a small number of experienced officers assigned to AML/ATF duties.</p> <p>The appointment of a dedicated unit will enhance both staff capacity and training capabilities to carry out AML/CFT supervision.</p>

	<ul style="list-style-type: none"> <li>• Training is inadequate at all agencies and at all levels not only in AML/CFT issues including typologies, analysis and international standards, but also in fundamentals such as investigating and prosecuting white collar crime cases, managing complex cases, and criminal procedure.</li> <li>• The FIU is not adequately funded, staffed and provided with technical resources, particularly in terms of technical expertise such as forensic accounting.</li> <li>• The number of positions allocated to the FIU is insufficient, and the fact that police officers assigned to the unit are routinely called on for other police duties further limits available resources.</li> <li>• The funding allocated to the FIU annually for training purposes is insufficient</li> <li>• Staff levels and training of financial supervisors are not adequate for the AML supervision of a financial sector of the size, scope, sophistication and cross-border operations such as that of Bermuda.</li> <li>• Enhance training for BMA staff to facilitate the identification of deficiencies relating to</li> <li>• AML/CFT requirements for FIs, including, but not limited to internal controls, CDD, SARs filings, recordkeeping, MLRO qualifications and operations.</li> <li>• The BMA should enhance its staff capacity to undertake more comprehensive AML/CFT supervision, especially for the insurance and investment business/mutual fund sectors, and to conduct effective consolidated supervision.</li> </ul>	<p>iii) Ensure continuation of the experience and skill in financial investigations in the Commercial Crime Department.</p> <p>iv) A liaison officer should be named and existing FIU staff should train their successors in order to facilitate the transition from the FIU to the FIA.</p> <p>v) The number of open positions in the DPP's office should be remedied, and efforts made to retain professional staff.</p> <p>vi) Sufficient resources should be made available for training of DPP, Customs and Police staff.</p> <p>vii) Efforts should be made to attract qualified personnel to the FIU, and to provide continuity in the transition to the new FIA</p> <p>viii) Training should be increased at all agencies and at all levels not only in AML/CFT issues including typologies, analysis and international standards, but also in fundamentals such as investigating and prosecuting white collar crime cases, managing complex cases, and criminal procedure. Assessor training courses offered by CFATF, the IMF and the World Bank should be considered as a means of developing AML/CFT expertise.</p> <p>ix) The FIA should be adequately funded, staffed and provided with technical resources, particularly in terms of technical expertise such as forensic accounting.</p> <p>x) Ensure that the new administrative Financial Intelligence Unit (FIA), is established and becomes operational and provide sufficient staffing levels at the existing Police FIU to enable an increased number of ML/FT-</p>	<p>The Financial Crime Unit has been established, as a new department under the Asst. Commissioner of Police Serious Crimes. All officers in the Unit are experienced Detectives, fully trained in financial investigations. Most of the officers have already completed a money laundering or compliance qualification and the remaining are currently involved in related programs. In addition the Unit has a fully trained analyst.</p> <p>iv) Two officers from the former FIU have been seconded to the FIA to assist in the transition..</p> <p>v) The number of open positions has been addressed with a net increase in 1 Deputy Director and one Crown Counsel. Further, since September 2007 no counsel at any level has left the department.</p> <p>vi) See below</p> <p>vii) The FIA is appropriately staffed and two officers from the former FIU are assisting in the transition</p> <p>vi and viii) Training needs in the FIA and other law enforcement agencies have been addressed through FINTRAC and other authorities on Analytical and Intelligence Training. Additional training courses have been undertaken.</p> <p>viii) Training needs have been reviewed at all agencies and additional training has already been undertaken.</p> <p>In the DPP training of an additional Counsel in</p>
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			related investigations.	<p>ML prosecutions, Restraint and Confiscation of criminal proceeds has commenced by hands-on involvement in such matters. Plans are also being formulated for further on the job training in White Collar Crime and complex case management for all Counsel.</p> <p>ix. Appropriate arrangements for funding, staffing and other resources have been made</p> <p>x) <del>The new FIA is operational and the Police continue to review resource requirements</del> The new FIA has been established and is fully functional.</p>
31. National co-operation	PC	<ul style="list-style-type: none"> <li>The policy development and coordination functions of NAMLC are not sufficiently robust to keep up with a heavy agenda of unfinished initiatives.</li> <li>Coordination and cooperation among agencies is ad hoc and inconsistent.</li> </ul>	<p>i) A national AML/CFT coordinator should be appointed and the policy development role of NAMLC should be energized.</p> <p>ii) Systematic mechanisms should be put in place for coordination among and between all AML/CFT agencies and departments. These mechanisms could include assigned duties to individuals for coordination, regularly scheduled meetings and distribution of contact lists.</p>	<p>i) POCA Amendment 2008, clause 8, s. 49 addresses this recommendation.</p> <p>ii) Coordination among agencies has been further enhanced with regular meetings established between relevant agencies</p>
32. Statistics	PC	<ul style="list-style-type: none"> <li>Inadequate statistics for offsite and onsite preparation e.g. risk factors, non-resident business.</li> <li>Although there are several gaps, a useful Range of statistics is maintained on SARs, ML and FT investigations, and confiscations.</li> <li>Little use is made of available statistics and information to review the effectiveness of AML/CFT systems on a regular basis.</li> <li>Information on mutual legal assistance, international requests for co-operation, and extradition is incomplete. No data is available on formal requests to the FIU for assistance or whether such assistance was granted. Some data is available on supervisory examinations.</li> </ul>	<p>i) Additional statistics should be maintained on amounts of restrained property compared with amounts ultimately confiscated and the types of crimes related to these actions.</p> <p>ii) Also needed is information on the recovery rates of the amounts subject to confiscation orders, and the amounts actually recovered.</p> <p>iii) Statistical systems should be updated and maintained in line with the recommendations in R.32.</p>	<p>i), ii) A record is now kept in the DPP of all cases with current restraint orders in effect; pending confiscation matters with flags on the relevant timelines; as well as orders made for confiscation and forfeiture.</p> <p>iii) Performance data in relation to FCU's investigations is regularly reported on and FIA statistics are available within that agency.</p>
33. Legal persons – beneficial owners	C			

34. Legal arrangements – beneficial owners	C			
<b>International Co-operation</b>				
35. Conventions	PC	<ul style="list-style-type: none"> <li>The SFT and Palermo Conventions have not been extended to Bermuda.</li> </ul>	Request that the UK extend the SFT and Palermo Conventions to Bermuda.	Matter under review.
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> <li>There are no specific procedures facilitating expeditious action be taken or establishing precise timelines for response to MLA requests.</li> </ul>		
37. Dual criminality	C			
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> <li>There are no specific procedures facilitating expeditious action or establishing precise timelines for responding to MLA by foreign countries with respect to identifying, freezing, seizing or confiscating proceeds of crime or instrumentalities of ML, FT or other predicate offenses.</li> <li>In addition, there is not statutory provision for external confiscation requests relating to instrumentalities.</li> <li>There are no arrangements for coordinating seizure and confiscation actions with other countries.</li> </ul>	Amend relevant statute to provide for external confiscation requests relating to instrumentalities used in a commission of an ML, FT or other predicate offense.	
39. Extradition	LC	<ul style="list-style-type: none"> <li>Concerns regarding undue delays due to the undefined structure of the request process</li> </ul>	Review resources available at AGC and Police/FIU to ensure that MLA requests are acted upon in as efficient a manner as possible.	The AGC and the FIA are progressing matters pertaining to resources necessary to ensure that MLA requests are acted upon most efficiently.
40. Other forms of co-operation	C			
<b>Nine Special Recommendations</b>				
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> <li>The SFT Convention has not been extended to Bermuda, but Bermuda has implemented UNSCRs 1267, 1373 and successor resolutions by UN Order 2001 and the Al-Qaida and Taliban (UN Measures) (Overseas Territories) Order 2002, both UK Statutory Instruments that apply to its Overseas territories, including Bermuda.</li> </ul>	Request that the UK extend the SFT and Palermo Conventions to Bermuda.	Matter under review.
SR.II Criminalise terrorist financing	PC	<ul style="list-style-type: none"> <li>The definition of terrorism does not have a reference to the acts covered by the nine</li> </ul>	i) Amend the ATFA's definition of terrorism to include the acts covered by the nine	i) Provisions under Clause 3 of ATFA Amend. 2008 satisfy this recommendation.

		<p>conventions referred to in the SFT Convention, and it does not contain a reference to acts taken against international organizations.</p> <ul style="list-style-type: none"> <li>• There is no reference in the relevant legislation to the financing of terrorist organizations.</li> <li>• There is no reference in the relevant legislation to extra-territorial offenses relating to terrorist organizations.</li> </ul>	<p>conventions referred to in the SFT Convention.</p> <p>ii) Amend ATFA to include acts taken against international organizations.</p> <p>iii) Amend the ATFA to include a reference to the financing of terrorist organizations.</p> <p>iv) Amend the ATFA to cover extra-territorial acts relating to terrorist organizations.</p>	<p>ii) Provisions under Clause 3 of ATFA Amend. 2008 satisfy this recommendation.</p> <p>iii) Amended provision has been drafted and will be enacted accordingly.</p> <p>iv) Provisions made under ATFA Amend 2008, Part. IV, s. 17 satisfies this recommendation.</p>
SR.III Freeze and confiscate terrorist assets	LC	<ul style="list-style-type: none"> <li>• No specific guidance has been issued to the regulated sector concerning its affirmative obligation to implement measures with respect to the UNSCR list.</li> <li>• There are no specific procedures for delisting or unfreezing.</li> </ul>	<p>i) Guidance should be issued to the regulated sector concerning affirmative obligations to freeze assets of persons listed by the UNSCR 1267 Committee and the EU. These affirmative obligations should include incorporating the information into their AML/CFT compliance programs, and reporting to authorities on any transactions that may be connected to terrorist financing.</p> <p>ii) Procedures for delisting requests and the unfreezing of funds should be developed and published.</p>	<p>i. The new GN para 5.304 – 312 provide guidance on freezing of assets and the UN and EU obligations.</p>
SR.IV Suspicious transaction reporting	PC	<ul style="list-style-type: none"> <li>• Current law does not require SARs for funds linked to terrorist organizations.</li> <li>• No FT-related SARs have been filed.</li> </ul>	<p>Amend ATFA to require FT-related SARs for funds linked to terrorist organizations.</p>	<p>Section 7 (b) of ATFA notes that a person commits an offense if “he knows or suspects that it will or may be used for the purposes of terrorism” and then Section 9 requires that a person has a responsibility to report a belief or suspicion relating to, among others, matters addressed in section 7. This would certainly create therefore, a requirement to file SAR’s for funds linked to terrorist organisations.</p> <p>The Order designating the FI’s required to file SAR’s came in to effect on November 15, 2008 thus making the obligation on FI’s explicit.</p> <p>All legislative requirements relating to filing of SAR’s related to FT are now in place.</p>
SR.V International co-operation	C			



SR VI AML requirements for money/value transfer services	PC	<ul style="list-style-type: none"> <li>Laws and regulations have been put in place but licenses have not yet been granted and effective implementation has not yet been tested.</li> </ul>	Licensed money transfer services should be required to maintain a list of their agents and to make this list available to the authorities. Since the new legal regime for money service business is untested, there is no basis for evaluating effective implementation.	As of August 2008 two financial institutions have been granted a license under the Money Service Business Regulations 2007. Institutions licensed under the MSB Regulations are subject to the same AML/ATF framework as other financial institutions in Bermuda. None of the MSB's has agents or subagents.
SR VII Wire transfer rules	NC	<ul style="list-style-type: none"> <li>No recordkeeping requirements for full originator information.</li> <li>The threshold for CDD and full originator recordkeeping requirement is US\$10,000, significantly above the FATF level of \$1,000.</li> <li>No provisions for originator information to be included and retained in domestic wire transfers.</li> <li>No provisions that require intermediary and beneficiary FIs in a wire transfer payment chain to transmit originator information.</li> <li>No requirements for risk-based procedures for wire transfers not accompanied by complete originator information. Neither the Regulations nor the Guidance Notes (Appendix E) include the lack of such information wire transfers as a basis for deciding if a transaction is suspicious.</li> <li>No systems to review and sanction for compliance with wire transfer requirements under SRVII</li> </ul>	<p>i) Reduce the minimum recordkeeping threshold to the equivalent of US\$1,000, and specify that full originator information should be obtained and retained for the minimum period in accordance with SRVII.</p> <p>ii) Ensure that the Regulations, Guidance Notes, examination procedures and general oversight of FIs includes compliance with wire transfer requirements as set out under all the essential criteria of SRVII.</p> <p>iii) Include lack of complete originator information as a basis for determining whether a suspicious activity report is filed with the FIU.</p>	<p>Draft Regulations and Guidance Notes have been prepared which would meet the FATF requirement. These are being submitted for industry consultation with a view to commencement. in Q2 2009</p> <p>i) See above.</p> <p>ii) See above.</p>
SR.VIII Non-profit organisations	PC	<ul style="list-style-type: none"> <li>The authorities have not undertaken a review of laws and regulations related to non-profit organizations to ensure that they cannot be misused for financing terrorism. Recordkeeping requirements and investigative procedures are not consistent with FATF standards.</li> </ul>	<p>i) The authorities should undertake a review of laws and regulations related to non-profit organizations to ensure that they cannot be misused for financing of terrorism.</p> <p>ii) Recordkeeping requirement should be established in line with C. SR VIII 3.4.</p> <p>iii) The authorities should implement measures to ensure that they can effectively investigate and gather information on NPOs, as called for in C. SR VIII.4</p>	i.),ii), iii) A draft framework to ensure that FATF requirements relating to NPOs are appropriately met is currently being finalised
SR.IX Cross Border Declaration & Disclosure	NC	<ul style="list-style-type: none"> <li>Although seizures of cash by customs officers occur on a limited basis, currently no disclosure or declaration system</li> </ul>	i) Adopt the declaration system now being considered by the authorities;	i) A redesigned Customs Traveller Declaration form ("CTD form") gives effect to the declaration system that was under

		<p>for either incoming transportation of currency (as proposed) or outgoing transportation of currency is in place.</p> <ul style="list-style-type: none"> <li>• The scale of civil and criminal money fines is not sufficiently dissuasive.</li> <li>• Domestic cooperation on customs issues is insufficient.</li> <li>• Information-sharing between Customs and other law enforcement authorities is inadequate.</li> <li>• There was no consideration given to a procedure to notify other customs agencies of search and detention reports relating to precious metals other than gold, as well as to precious stones</li> </ul>	<p>ii) Cover outgoing transportation of currency by the declaration system, and not just incoming as currently planned;</p> <p>iii) Amend relevant laws to substantially increase the scale of civil money fines and criminal penalties for customs violations;</p> <p>iv) Enhance domestic cooperation on customs issues;</p> <p>v) Ensure sufficient information-sharing between Customs and other law enforcement authorities;</p> <p>vi) Amend the Revenue Act to provide clear legal authority, as now exists in POCA, to charge directors and officers who have connived with the corporation with an offense.</p> <p>vii) In addition, consideration should be given to (1) amending the relevant laws to provide the Customs Department with explicit legal authority to seize, detain,</p>	<p>consideration by the authorities, and is now in circulation. Previous versions of the CTD form are no longer accepted by Customs.</p> <p>ii) The draft CTD Notice covers both incoming and outgoing transportation of currency.</p> <p>iii) The Revenue Act 1898 has been amended so that in the new section 86(2), the fine for the indictable offence of a false declaration has been upgraded from the level 5 amount (\$30,000) to the level 7 amount (\$100,000). The term of imprisonment has likewise been increased from 2 years to 10 years in order to correlate with the increase in the level of the fine.</p> <p>iv) Domestic cooperation has been enhanced through NAMLC and Bermuda Law Enforcement Review Group; and there is ongoing dialogue between relevant agencies, as required.</p> <p>v) Periodic meetings are held between the relevant agencies and there is a MOU in place that allows for formal transmission of appropriate information.</p> <p>vi) Bermuda has amended the Revenue Act of 1989 so that where a body corporate has been proved guilty of committing an offence under the said Revenue Act, any director, officer, person or the body corporate who committed the act, consented or connived shall be guilty of the offence held liable and punished accordingly.</p> <p>vii) (1) Section 16 of the Revenue Act 1898 has been amended to expand the Collector's power to require persons to make customs declarations to include the making of customs declarations respecting currency and negotiable instruments. In addition the new Revenue Act section 86(3) provides that any article (including currency) is liable to</p>
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			and confiscate currency in the event of a false declaration and (2) developing a procedure to notify other customs agencies of search and detention reports relating to precious metals other than gold, as well as to precious stones.	forfeiture if that article is not declared or are falsely declared.  (2) Procedure already exists, information is presently sent to WCO CEN database, and CCLEC RILO database.
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### Guide to Abbreviations used in Matrix and Explanatory Notes

Abbreviation	Legislation	Explanatory Note
POCA	Proceeds of Crime Act 1997	
ATFA	Anti-Terrorism (Financial and Other Measures) Act 2004	
FIA Act	Financial Intelligence Agency Act 2007	Commenced 15 <sup>th</sup> November 2008
POCA Amend. Act 2007	Proceeds of Crime Amendment Act 2007	Commenced 15 <sup>th</sup> November 2008
POCA Amend. Act 2008	Proceeds of Crime Amendment Act 2008	Commenced 15 <sup>th</sup> November 2008
ATFA Amend. Act 2008	Anti-Terrorism (Financial and other Measures ) Amendment Act 2008	Commenced 15 <sup>th</sup> November 2008
Regs. or Reg.	Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008	Approved in September 2008 and commenced on 1 <sup>st</sup> January 2009
SEA Act	Anti-Money Laundering and Anti-Terrorist Financing (Supervision and Enforcement) Bill	Commenced on 1 <sup>st</sup> January 2009
	Revised Guidance Notes	Revised guidance notes for Financial Institutions are now finalised