



Second Follow-Up Report

Bermuda

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BERMUDA: SECOND FOLLOW-UP REPORT

I. INTRODUCTION

1. This report is the second follow-up report by Bermuda to the Caribbean Financial Action Task Force (CFATF) plenary on the actions taken to implement the recommended actions listed in the third round Mutual Evaluation Report (MER) which was adopted by the CFATF Council of Ministers in November of 2007 in Costa Rica. In accordance with present procedures the following is a report on measures taken by Bermuda to deal with the recommended actions in those Financial Action Task Force (FATF) Recommendations rated partially compliant (PC) or non-compliant (NC).
2. Bermuda received ratings of PC or NC on eight (8) of the sixteen (16) Core and Key Recommendations as follows:

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

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

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

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

Size and Integration of the jurisdiction's financial sector

N.B:- Some of the insurance companies may have included figures for their world-wide business in their December 08 returns. Bermuda is in the process of identifying Bermuda-specific assets and liabilities. Total number of insurance companies registered is 19 plus one underwriter.

Only 14 of these companies submitted the 2008 Statutory Returns.
The Total Column includes figures as at June 2010.

As at 30 September 2010		Banks	Other Credit Institutions*	Securities	Insurance (note 1)	TOTAL
Number of institutions	Total #	4	2	938: investment funds 42 Licensed Fund Administrators 32 Licensed Trusts 55 Invest business Total : 1,067	Class 1- 289, Class and LT- 3 Class 2-337 Class 2 & LT- 5 Class 3- 288 Class 3 & LT-45 Class 3A- 116 Class 3A & LT- 24 Class 3B- 14 Class 3B & LT- 4 Class 4- 26 Class 4& LT- 9 Long Term- 104 Special Purpose Insurers-11 Total : 1,275	2,348
	US\$	\$16.813bn	\$258mn	Invest funds Navs \$183bn Invest business Assets under Management \$144bn (Dec '09) No information on Trusts	Total Assets- \$482bn	
Deposits	Total: US\$	\$13.974bn	\$241mn	No deposits	No deposits	\$14.215bn
	% Non-resident	5.3% of deposits (based on non resident retail data as at Sept '09)	1% of deposits (based on non resident retail data as at Sept '09)	N/A	N/A	
International Links	% Foreign-owned:	78% of assets	0% of assets	Not available	Not available	% of assets
	#Subsidiaries abroad	6 (bank subsidiaries only)	0	Not available	Not available	

Note 1: total assets amount is based on the December 31, 2009 numbers aggregated for all the companies that submitted their statutory filings. There are a number of Companies that still haven't submitted their information.

II. SUMMARY OF PROGRESS MADE BY BERMUDA

5. The major legislative changes in Bermuda's second follow-up report include amendments to: the Anti-Terrorism (Financial and Other Measures) Act 2004; Proceeds of Crime Act 1997 (as amended); Proceeds of Crime Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (as amended); Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008; and Proceeds of Crime Regulations (Supervision and Enforcement) Act 2010, which is now called Proceeds of Crime Anti-Money Laundering and Anti-Terrorist Financing (Supervision & Enforcement)Act. All of these amendments were adopted post March 2009.
6. As already described in the 1st follow-up report, Bermuda has implemented measures in many specific areas to address some of the gaps identified in its Mutual Evaluation Report with respect to the Key, Core and other Recommendations and Special Recommendations. These measures have had the effect of significantly closing the gaps discerned in the MER. The measures detailed below were however taken since the 1st follow-up report.

Core and Key Recommendations

7. Relative to **Recommendation 5**, the updated Regulations, which came into force in March of 2010, has sought to address the Examiners recommendation that the CDD threshold for wire transfers be reduced to the equivalent of US/BD\$1,000, by mandating at Regulation 23 (4) that the payment service providers verify information on the payee only where the amount exceeds \$1000. The Bermudan authorities have reported that they have received two (2) Suspicious Activity Reports (SARs) on terrorist financing.
8. With respect to **Recommendation 13** the Examiners recommendation that an amendment to the ATFA to cater for FT-related SARs for funds linked to terrorist organizations has still not been taken on board by Bermuda. Notwithstanding, Bermuda has demonstrated implementation of the existing provisions through the filing of two (2) SARs by its reporting entities, related to terrorist financing. Additionally, in order to enhance its ability to track and detect SARs related to terrorist financing, the FIA has deployed software application that has the ability to red flag such reports, based on specific parameters defined, by the FIA.
9. It was noted in Bermuda's 1st follow-up report that amongst the outstanding Examiners recommendations for **Recommendation 23** were: 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. It was also noted in Bermuda's 1st follow-up report that the jurisdiction had established a dedicated anti-money laundering and anti-terrorist financing unit ("the AML/ATF Unit") to carry out the functions of the supervisory authority, which includes both an on-site and off-site monitoring program. Since 2009 the AML/CFT Unit has conducted a total of forty-six (46) inspections. Those inspections had their genesis in the determination, by the Bermuda Monetary Authority's (BMA), of the risk of those institutions and their record of AML compliance. This action by the BMA ensured that the examiners recommendation to 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 has been fully complied with by Bermuda.

10. Bermuda's 3rd round MEVAL Examiners had recommended that the jurisdiction 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 significant operations overseas. Supervision should particularly focus on the existence and adequacy of applications for group-wide risk management, compliance and audit functions. In pursuance of this, Bermuda has amended the Insurance Act of 1978 to allow for Group supervision in a limited sense. On the implementation side, the BMA has been conducting Group-wide evaluations for AML compliance where appropriate. It must be noted however that because there are only a small number of Groups with multiple AML obligations in Bermuda, this level of supervision has not been regularly warranted.
11. As regard the need to 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, there was a 2010 amendment to the BMA's onsite program. As part of the program, during an onsite inspection, inspectors are required to review the company's internal reporting log against the number of SARs reported to determine whether the reporting process has been effective.
12. The recommended review of the effectiveness of the overall supervisory process for applying enforcement action for AML/CFT related breaches and concerns was conducted. As a result, a number of changes were made to the program. Further, the SEA Act, as previously noted, empowers the BMA to impose civil monetary fines, up to a maximum of \$500,000 where a financial institution is found to be in breach of the regulations. As part of Bermuda's efforts at bolstering its sanctions regime, the 2010 amendment to the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, now called the Proceeds of Crime Anti-Money Laundering and Anti-Terrorist Financing (Supervision & Enforcement) Act, (SEA) empowers the FIA, as the legislated Supervisory Authority for DNFBPs not otherwise regulated, to issue directives for failure to comply with AML/CFT requirements or fit and proper tests in cases where the tests are required to be met. Additionally, the FIA can impose civil penalties (s.20) which include penalties for breaches of specific regulations or for failure to comply with directives. The SEA Act also now empowers a designated professional body to impose a penalty of such amount not exceeding \$250,000, as it considers appropriate on a regulated professional firm that fails to comply with a directive or with any requirement of the Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) Regulations. Bermuda has indicated that in implementation of these provisions by the BMA, a civil penalty of \$100,000 was imposed on an entity, for significant and substantial failures in AML compliance whilst consideration is currently being given to the imposition of civil penalties on other Institutions.
13. The Examiners had recommended that Bermuda 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. Bermuda has reported that BMAs licensing processes ensures that this recommendation is always carried out prior to the issuance of a license by the Authority.

14. Finally, for the recommendation by the Examiners that Bermuda 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, the BMA is currently collecting data to gain a detailed view of the various components of the Bermuda economy. On the completion of this exercise Bermuda intends to use the collated information in identifying AML susceptible areas of the economy.
15. No progress has been report with regards to **Recommendation 35** and Special **Recommendation I**.

Other Recommendations

16. No action has been taken with respect to **Recommendation 11** consequently the status is as it was since the 1st follow-up report remains.
17. Relative to **Recommendation 12**, the 2010 amendment to the SEA Act expanded the supervisory framework to other competent authorities effectively ensuring that where Self Regulatory Organisations (SRO) arrangements were established for the purpose of monitoring and overseeing of AML/CFT programs, that the full range of powers required to monitor and enforce compliance are available to such SROs. The Examiners recommendation relative to high value dealers specifically dealers in precious metals and precious stones, including jewelers, engaging in cash transactions with customers of \$15,000 still remain outstanding.
18. The outstanding elements noted in the 1st follow-up report for **Recommendation 14** have not as yet been addressed by Bermuda.
19. As regards **Recommendation 15**, the examiners had recommended that Bermuda extend the training requirements beyond those “relevant employees” defined in the Regulations to others who can play a role in implementing and monitoring compliance with institutional and legal AML/CFT requirements. Bermuda is contending that the definition of relevant employee includes an employee who “has or may have access to any information which may be relevant in determining whether any person is engaged in money laundering or terrorist financing” and consequently this definition is wide enough to satisfy the FATF requirement which merely refers to “an ongoing employee training programme”. It does not appear accurate however to conclude that the relevant employee definition at Regulation 18 of the AML/ATF Regulations subsumes the categories of employees envisaged by the Examiners and noted above.
20. No action affecting **Recommendation 16** was denoted by Bermuda.
21. Relative to **Recommendation 17** and as was noted at paragraph 12 of this report, the BMA, in 2010, imposed a civil penalty in the amount of \$100,000 on an entity for significant and substantial failures in AML compliance. The imposition of this sanction speaks directly to the Examiners recommendation that legislation be enacted enabling the BMA to apply civil money penalties. Bermuda has indicated that it is not in agreement with the other recommendation under sanctions requiring the certain penalties to be increased as they are of the view that the penalties are already at appropriate levels.

22. For **Recommendation 21**, the Examiners had recommended that financial institutions should be required 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 to identify such countries.. The Minister of Justice, subsequent to each FATF plenary issues advisories highlighting the FATF's public statements and its published list of countries with strategic deficiencies. These advisories warn industry to note the risks related to each jurisdiction and to take these risks into account in their business processes and procedures.
23. As regards **Recommendation 24**, Bermuda has continued in its efforts to fully close the gaps discerned by the Examiners by establishing the supervisory framework for barristers and accountants. Part VA of the SEA Amendment Act 2010 established a joint Board of the Bermuda Bar Association and the Institute of Chartered Accountants of Bermuda (ICAB) under the name of the Barristers and Accountants AML/ATF Board. This board, which was designated as an SRO by the Minister of Justice, has the full powers and duties for AML monitoring and supervision. This SRO is currently in the process of finalising guidelines for the respective professions.
24. For **Recommendation 25**, the FIA has reportedly formalised procedures for providing SAR feedback to reporting entities. These procedures are supplemented by quarterly meetings which the FIA holds specifically for providing general and case specific feedback to reporting entities.
25. In 2010 the dedicated AML/ATF Unit of the BMA, which is charged with the responsibility of monitoring financial institutions compliance with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, conducted two (2) week long in house training programmes aimed at developing competencies in supervisory staff to review and evaluate AML compliance during supervisory on-sites inspections. More of this training is planned for 2011. Since the 1st follow-up report seven (7) Officers of the Financial Crime Unit (FCU) have attained ACAMS accreditation as anti-money laundering specialists whilst two (2) other officers are still in the process of completing this certification. Two (2) officers also hold Advanced Diplomas in AML compliance from the International Compliance Association (ICA).
26. Following the transition from the previous FIU to the FIA, an MOU was signed between the Bermuda Police Service and the FIA to facilitate having a fulltime presence of a Police Liaison Officer to facilitate direct communication between the two (2) entities.
27. All vacancies at the Office of the DPP has been filled and the section now includes one (1) Senior Legal Counsel Crown Counsel, one (1) Crown Counsel, and two (2) Crown Counsels – Junior Grade. AML/CFT training is reportedly ongoing.
28. FIA officers have received training in Tactical Analysis, Financial Intelligence Analysis, Compliance, and Terrorist Financing. Training has occurred locally and internationally involving law enforcement, regulators and foreign FIU staff. Funding for annual training has been budgeted and provided to the FIA. The FIA continues to enhance its skills and products by providing local training and presentations to FI's and other organizations upon request.

29. As was noted earlier in this report the FIA has acquired the United Nation's goAML software solution which allows for all reporting entities to file suspicious activity reports (SARs) on-line through a secured environment. The system receives stores, collates and provides feedback on all filed SARs.
30. As for **Recommendation 31**, the Office of the National Money Laundering Committee (NAMLC) has been established and is tasked with progressing Bermuda's AML/CFT initiatives.
31. Relative to **Special Recommendation VI**, There are two (2) Money Service Businesses operating in Bermuda and neither of them utilizes the services of agents because the relevant regulations make no provisions for this. Consequently, the Examiners recommendations that licensed money transfer services should be required to maintain a list of their agents and to make this list available to the authorities is muted.
32. The 1st follow-up report had noted that wire transfer regulations and guidance notes had been drafted and circulated among industry stakeholders for consultation. Following on this, Bermuda, pursuant to section 49(3) of the Proceeds of Crime Act 1997 and section 12A of the Anti-Terrorism (Financial and Other Measures) Act 2004, issued Part 4 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, intending to cure the deficiencies noted for **Special Recommendation VII**. These regulations are relevant to all regulated financial institutions engaged in wire transfer business.. At paragraph 6 under Regulation 23 of Part 4, there is now a pre-condition for making payments. Accordingly, before undertaking one-off payments in excess of \$1,000 on the instructions of non-account holding customers, the Payment Service Provider (PSP) of the Payer is required verify the identity and address (or evidence of a permitted alternative to address, such as date and place of birth, if quoting that information on the transfer instead of address). For non-account based transfers of \$1,000 and under, PSPs are not required by the regulations to verify the Payer's identity except when several transactions, which appear to be linked, are carried out, and together exceed \$1,000. Paragraph 8 of Regulation 23 however notes further that even in cases where Regulations do not require verification, the customer identification information still has to be obtained and it may be advisable for the PSP to verify the identity of the Payer in all cases. Evidence of verification is required to be kept for five (5) years. Paragraph 10.1 of Regulation 23, under "Information Requirements: Complete payer information", mandates that where the destination PSP is located in a jurisdiction outside Bermuda, complete originator information on the Payer must accompany all wire transfers. The complete Payer information includes name, address and account number.
33. The Examiners recommendation to include lack of complete originator information as a basis for determining whether a suspicious activity report is filed with the FIU (FIA) is now covered by virtue of paragraph 20 of Part 4 of the Guidance Notes which asks Payee PSPs to consider whether incomplete or meaningless information on a funds transfer constitutes grounds for suspicion, which would be reportable to its reporting officer, for possible disclosure to the FIA. The effect of these provisions ensures that the Examiners recommendations are now fully taken on board.
34. With regards to **Special Recommendation VIII**, it was noted in the 1st follow-up report that approval of the Bermudan Cabinet was being sought for legislative amendments to address the deficiencies identified in relation NPOs. Bermuda has

further reported that drafting instructions have been sent to the Parliamentary Council whilst the NAMLC has met with the Ministry of Public Information to assist with this initiative. The absence of concrete action therefore leaves this Special Recommendation outstanding.

35. For **Special Recommendation IX**, the 1st follow-up report noted that Bermuda had redesigned the Customs Traveller Declaration form(CTD form) to give effect to a declaration system for 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. Following on this, Bermuda's Collector of Customs, in exercise of the powers conferred by section 16 of the Revenue Act 1898 has issued "The Customs Traveler Declaration Notice 2010" (BR 39/2010). In this Notice the Collector requires, among other things, that every person arriving at Bermuda or leaving Bermuda must declare when they have currency in excess of \$10,000. As a means to further enhancing domestic cooperation on customs issues Bermuda has reported that an MOU is in place with the FIA and HM Customs which allows for the full-time presence of a Customs Liaison Officer at the FIA.

III Conclusion

36. Since the 1st follow-up report, Bermuda has enacted a number of legislative amendments aimed at further bolstering its efforts at closing the gaps in its 3rd round MER. These legislative changes are significant and have had positive effect on the Core, Key and other Recommendation. Of significance is the fact that the FIA is now empowered to impose civil penalties on its supervisees, once designated, for regulatory AML breaches and the fact that a breach of a directive by the FIA can result in criminal proceedings being instituted. The imposition of sanctions by the BMA is also an indication that the new legislation is being implemented. The establishment of a SRO, with full regulatory and supervisory powers for the joint AML/ATF supervision of lawyers and accountants who are members of the ICAB is also significant. Bermuda should now be given the opportunity to demonstrate that the new provisions, particularly for the Core and Key Recommendations are effectively implemented.
37. Given all of the above, it is recommended that Bermuda remain on regular follow-up and report back to Plenary in May 2013.

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

Bermuda (as at 31 January 2011)

Forty Recommendations	Rating	Summary of factors underlying rating ¹	Recommended Actions	Undertaken Actions
Legal systems				
1.ML offence	LC	<ul style="list-style-type: none"> While criminalization of ML and 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. 		<p>The effectiveness of the legal framework was demonstrated in a ML prosecution under s. 44 of POCA in 2009. 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 a 3 year period.</p> <p>Since that time, there have been an additional 3 convictions for money laundering; 1 in the Magistrates' Court, and 2 in the Supreme Court.</p>
2.ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> Fines under POCA with respect to summary convictions and certain convictions on indictment are much too low. 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. 	<p>i) Fines under POCA with respect to summary convictions and certain convictions on indictment should be substantially increased.</p> <p>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.</p>	<p>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..</p> <p>ii) The effectiveness of the legal framework was demonstrated in ML prosecution under s. 44 of POCA in 2009 (see Rec.1 above). There have been a number of confiscation orders as well as forfeitures. Further, the Bermuda authorities have been directly responsible for successful convictions in 5 cases in the United States, while two subjects have been convicted of money laundering offences in the UK. In addition, three persons have been charged with money laundering offences in the Caribbean and are awaiting trial. Other investigations are ongoing locally and there is close cooperation between the DPP and the BPS in this regard.</p> <p>Since Bermuda's first Follow-up Report (1 March 2009), there have been an additional 3 convictions for money laundering: 1 in the Magistrates' Court and 2 in the Supreme Court. Further, currently (as at 31 January 2011) there are 6 persons charged and pending trial for money laundering offences. This demonstrates</p>

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

				willingness by both the Bermuda Police Service and Department of Public Prosecutions to investigate and prosecute complex money laundering cases.
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> The legislation does not provide for the confiscation of instrumentalities of ML, FT or other predicate offenses. 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 explicit in legislation. 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. 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. 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. 	<ul style="list-style-type: none"> 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. 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. 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. 	<ul style="list-style-type: none"> i) Provisions made under POCA Amend. 2008, clause 7, s. 48A satisfy this recommendation. ii) Provisions made under POCA Amend. 2008, clause 7, s. 48A (3) satisfy this recommendation. iii) Section 10 of the POCA Amend. Act 2007 satisfies this recommendation.
Preventive measures				
4. Secrecy laws consistent with the Recommendations	C			
5. Customer due diligence	NC	<ul style="list-style-type: none"> The AML Regime for FIs (in particular the POC Regulations) does not cover CFT. The lack of enforceability of the Guidance Notes limits the effectiveness of implementation of all the applicable provisions under Rec. 5. 	<ul style="list-style-type: none"> i) Extend the regulatory regime for FIs to explicitly cover CFT issues. 	<ul style="list-style-type: none"> i) Provisions made under Regs. 6 and 11 satisfy this recommendation.

	<ul style="list-style-type: none"> • Inadequate coverage in the Regulations of the insurance sector, securities/investments, money remittance, and payments management sectors. • CDD requirements are limited to customer identification and verification, and do not extend to the full range CDD under FATF. • CDD is required when there is suspicion of ML only in cases of one-off transactions. • CDD for wire transfers is only required when the transaction is US\$10,000 or more, far exceeding the US\$1,000 FATF threshold. • No CDD requirements when in doubt of adequacy of previously obtained customer identification information. • Good practice recommendations in Guidance Notes, e.g. G42 and G44 on simplified measures for non-face-to-face business, are not justified and weaken implementation of the AML Regulations and FATF requirements. • 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. • Good practice recommendations in Guidance Notes 131, 132 and 133 for investment services weaken compliance with the CDD requirements. • No requirements for FIs to obtain information on the purpose and intended nature of the business relationships. • FIs are not required to update and conduct ongoing CDD/monitoring nor enhanced CDD for higher risk customers, business relationships or transactions. • 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. • 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. 	<ul style="list-style-type: none"> 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. iii) Extend the CDD requirements beyond customer identification. iv) Require CDD in all cases (business relationships and one-off transactions) where there is knowledge or suspicion of ML/FT and not only in cases of one-off transactions. Also, clarify that the threshold for one-off transactions does not apply when there is suspicion. This requirement should also include reporting of suspicion when an FI cannot obtain the required identification/CDD information under Rec. 5.15 and 5.16. 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. 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”. 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. viii) Review the customer identification exemptions provided for in the Guidance Notes for consistency with the Regulations and FATF Rec. 5, 8, and 9. ix) Review the wording of Guidance Notes 129, 130, 139, 140 and 140 on exemptions from identification to ensure that they do not create 	<ul style="list-style-type: none"> ii) Provisions made under Regs. Part 2, regulations 5 -14 satisfy this recommendation. iii) Provisions made under the Regs, Part 2, regulations 7, 9, 11, 12 and 13 satisfy this recommendation. iv) Provisions made under Regs. 6 and 9 satisfy this recommendation. v) Part 4 – Wire Transfers of the Regulations makes provisions relating to electronic funds (wire transfers) and satisfies this recommendation. (The updated Regulations came into force in March 2010). In particular, this issue is addressed in Regulation 23 (4). vi) Provisions made under Reg. 6 satisfy this recommendation. vii) Provisions made under Regs. 5(b) and 6(4)(b) satisfy this recommendation. viii) Provisions made under Regs. 8(3), 8(4), 8(5) and Reg. 10 satisfy this recommendation. ix) Provisions made under Regs. 10(4), 10(6) and Reg. 8 satisfy this recommendation.
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			<p>a practical limitation of CDD in the insurance and investment services sectors. Similar review is required for GNs 131, 132 and 133 for investment services. This should also be reviewed in the context of timing of verification for purposes of Rec. 5.13 and 5.14.</p> <p>x) CDD requirements that include the purpose and nature of business relationships (and significant one-off transactions) should be established.</p> <p>xi) Require FIs to conduct enhanced monitoring for higher risk business and regular updating of customer profile information, to conduct enhanced CDD for higher risk customers, business relationships and transactions.</p> <p>xii) Require FIs to conduct enhanced CDD for higher risk customers, business relationships or transactions in either in the POCA, Regulations or other enforceable means.</p> <p>xiii) Review the exemptions/simplifications provided for in the Regulations and (non-mandatory) Guidance Notes to ensure that they are justified on the basis of proven (documented) low risk. Where applicable, such lower exemptions/simplifications should be allowed only where customer information is publicly available or when there are otherwise adequate checks and controls in the system, especially when the clients are not other regulated FIs.</p> <p>xiv) Where simplified CDD is allowed, there should be provisions to limit these two cases where non-resident customers that are from countries that have effectively implemented the FATF Recommendations.</p> <p>xv) As a general rule, do not allow exemptions or reduced CDD measures when there is suspicion of ML/FT.</p> <p>xvi) Remove the general exemption in Guidance Note 50 on the timing for verification when payment is to be made from “other account” as</p>	<p>x) Provisions made under Regs. 5(c) and 6(3) satisfy this recommendation.</p> <p>xi) Provisions made under Regs. 11(1), 11(2), and 11(3) satisfy this recommendation.</p> <p>xii) Provisions made under Regs. 11 satisfy this recommendation.</p> <p>xiii) Provisions made under Regs. 10 satisfy this provision.</p> <p>xiv) Provisions made under Regs. 10(2)(b) and 10(4) satisfy this recommendation.</p> <p>xv) Provisions made under Reg. 6(3) and Reg. 11 satisfies this requirement.</p> <p>xvi) The Guidance Notes issued in 1998 are no</p>
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			<p>this could be interpreted, e.g. from an account held by any non-FI business or unregulated person.</p> <p>xvii) Require FIs to expedite the conduct of CDD and update client documentation for clients in existence when the Regulations were issued, the so called “grandfathered” customers. The Regulations were issued in 1998 (about 9.5 years ago) and the slow progress in updating such information creates a significant vulnerability across the industry.</p>	<p>longer applicable and reference should be made to the new guidance notes. Paragraphs 46-50 of the old guidance notes refer to the "Timing and Duration of Verification." At the time these GNs were issued, the POC regulations did not require verification of identity and as you are aware, the GN are not OEMs. The new regulations require the verification of identity and therefore the 'general exemption' (I believe it should have said paragraph 48) is no longer applicable. S. 8 of the regulations addresses the 'Timing of Verification' which must be completed prior to establishing a business relationship or conducting an occasional transaction. S.8 provides three exceptions to this rule, as provided for in the FATF recommendation. Therefore 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"> No requirements for FIs to conduct enhanced CDD for PEPs. 	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"> No requirements for FIs to conduct enhanced CDD with respect to correspondent banking and similar relationships. 	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"> No requirements for FIs to implement measures to prevent misuse of technological developments that could facilitate ML/FT. 	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"> No requirement for FIs to immediately obtain CDD information from third parties. No requirement for FIs to satisfy themselves that CDD documentation has been obtained 	i) Require FIs to immediately obtain CDD information from acceptable third parties when relying on their CDD.	i) Provisions made under Regs. 14 satisfy this recommendation.

		<p>by third parties and that such documentation can be made available to FIs promptly on request.</p> <ul style="list-style-type: none"> • 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. • Insufficient information available to the industry with respect to adequacy of regulation and supervision of other FIs, and on implementation of FATF Recommendations by countries to justify reliance on third parties. • Need to specify, as seems to be the practice that ultimate responsibility for CDD lies with the Bermudian FIs. 	<p>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.</p> <p>iii) Periodically review the adequacy of the basis on which FIs rely on the CDD of other third parties whether in Bermuda or in other countries, with respect to their supervision for AML/CFT purposes, and implementation of the FATF Recommendations by countries where the third parties are located.</p> <p>iv) Make it explicit that where reliance on others for certain aspects of CDD is allowed, that the ultimate responsibility lies with the FI.</p>	<p>ii) Provisions made under Regs. 14, 15(6), (7) satisfy this recommendation.</p> <p>iii) Provisions made under Regs. 14 satisfy this recommendation.</p> <p>iv) Provisions made under Regs. 14 satisfy this recommendation.</p>
10. Record keeping	LC	<ul style="list-style-type: none"> • 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). 	<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>i) The record keeping provisions at s.15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 meet the requirements of FATF recommendation 10. Guidance Notes Chapter 8 paragraphs 8.1 – 8.28 refer.</p> <p>ii) Regulation 5(2) of the OLD regulations refers to keeping records for the minimum retention period (five years) if they would assist in the 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>iii) Provisions made under Regs. 15(2) satisfy this recommendation.</p>
11. Unusual transactions	NC	<ul style="list-style-type: none"> • No requirement to pay special attention, 	Introduce in law, regulations or OEMs a	Provisions made under Regs. 16 satisfy this

		<p>examine and record information on complex, unusually large, or unusual patterns of transactions that have no apparent economic or lawful purpose.</p> <ul style="list-style-type: none"> 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 	<p>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>recommendation.</p>
12.DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> Except for trust providers, the other relevant DNFBPs are not subject to CDD, recordkeeping and oversight arrangements for AML/CFT. 	<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 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</p>	<p>i) Lawyers and accountants are brought into scope under POCA Amend. 2008, ATFA Amend. 2008 and Regs. Parts 2 and 3. The SEA Amendment Act 2010 established the complete framework for the supervision of DNFBP's. A new SRO (Bar/ICAB Supervisory Board) has been set up to supervise lawyers and ICAB Accountants. This Board has now been appointed and are progressing their plan so that they can formally be designated by the Minister. The FIA has been designated as the regulatory body for all other DNFBP's. It is intended that the legislative changes to bring other DNFBP's into scope will be enacted in the first half of the year.</p> <p>ii) Provisions made under POCA and Reg. 2 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. The SEA Act was amended in July 2010. The amendment Act expanded the supervisory</p>

			<p>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>framework to other competent authorities and a designated SRO. It gives the full range of powers required to monitor and enforce compliance. Therefore this recommendation is now satisfied.</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 4th quarter 2008.</p>
13.Suspicious transaction reporting	PC	<ul style="list-style-type: none"> POCA does not provide an explicit requirement for filing SARs for attempted transactions. No requirement to file FT-related SARs for funds linked to terrorist organizations. No FT-related SARs have been filed. Since the vast majority of SARs have been filed by banks even though they make up a small part of the financial sector, it appears that other sectors may be underreporting. 	<p>i) Amend ATFA to require FT-related SARs for funds linked to terrorist organizations.</p> <p>ii) Enhance training for identification of FT-related transactions</p>	<p>i) 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 linked to terrorist organisations.</p> <p>ii) The previous regulations and guidance notes did not address FT related matters. Therefore, there was previously no formal requirement for training on FT related transactions. The new regulations, apply to FT as well as ML matters. Training on FT related transactions is now a requirement (Reg 18) and failure to do so can result in a criminal or civil penalty. Additionally, the FIA confirms that entities are filing SARs on Terrorist Financing (TF) with the FIA. Two (2) SARs have been filed and disclosed. One with the former FIU/BPS and the second with the current FIA. Additionally, Go-AML software used by the FIA allows them to track filings on terrorist financing made by reporting entities and a UN Terrorist list has been built in the system to red flag such reports of interest.</p>

				FIA staff have attended International Conferences/Seminars/Workshops on terrorist financing. Further, the FIA does cover AML/CFT in their training module to reporting entities (or FI's). Work is in progress in developing a specific TF module for the various entities. It is anticipated this will be delivered in early 2011.
T14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> • 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. • There is also no explicit protection from criminal liability resulting from a SAR filing. • 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. 	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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"> • 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. • 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. • Limited scope of the compliance management function to suspicious activity reporting activities. • No requirements for maintaining an independent and adequately resourced internal audit function in the Regulations. • Limited coverage in the Regulations of training obligations to "relevant employees". • No obligation in the AML Regulations for 	<ul style="list-style-type: none"> i) Extend the procedures requirements to the full range CDD and recordkeeping requirements, and also require the formulation of AML/CFT policies, compliance and controls. Also consider specifying, in all cases, that the control systems requirements contained in the financial regulatory laws apply to AML/CFT. ii) Expand the role of the AML/CFT compliance function beyond suspicious activity reporting and include a requirement for an independent internal audit function that covers AML/CFT. iii) Extend the training requirements beyond those "relevant employees" defined in the Regulations to others who can play a role in implementing and monitoring compliance with institutional and legal AML/CFT requirements. 	<ul style="list-style-type: none"> 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 has been included in the revised Guidance Notes (sections 3.15-3.22). iii) The record keeping provisions of Regulation 18 include a definition of "relevant employee" which includes an employee who "has or may have access to any information which may be relevant in determining whether any person is engaged in money laundering or terrorist

		employee screening and limited coverage in the various regulatory laws	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>financing”. This definition is wide enough to include those identified in the above recommendation and exceeds the requirements of FATF Rec. 15 which simply states: “b) An ongoing employee training programme.”</p> <p>iv) On site reviews have not identified any cases where the fitness and propriety of individual employees, for the positions held, became an issue.</p>
16.DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> All DNFBPs are subject to general requirements to report suspicious activities although few SARs have been filed by DNFBs and none by lawyers. 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. 	<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 DNFBP’s to be addressed in later phase.</p>
17.Sanctions	PC	<ul style="list-style-type: none"> 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. Two key sanctions are missing from the sanctions regime: civil money fines and conservatorship powers. 	i) Enact legislation for civil money penalties and conservatorship powers to be applied by the BMA.	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

		<ul style="list-style-type: none"> The administrative money penalties which may be imposed by Customs are much too low for ML or FT offenses involving the movement of cash or negotiable instruments. Fines under POCA with respect to summary convictions and certain convictions on indictment are much too low. 	<p>ii) Fines under POCA with respect to summary convictions and certain convictions on indictment should be raised.</p>	<p>legislated.</p> <p>In 2010 the Authority imposed a civil penalty of \$100,000 against an entity for significant and substantial failures in AML compliance. Consideration is currently being given to the imposition of civil penalties on other Institutions.</p> <p>There is no power to take any form of conservatorship over an Institution's operations because of AML breaches, however it is possible to remove or restrict an Institutions licence or registration should the circumstances justify it. In one instance in 2009, the Authority issued a notice proposing such an action; however the Institution voluntarily closed until it could develop policies and procedures to meet its obligations, and the Authority did not proceed with the proposed action.</p> <p>ii) 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"> No prohibition against the establishment and dealing with shell banks. 	Consider incorporating an explicit prohibition on the licensing of shell banks or requiring in the licensing criteria that licensees maintain a significant presence and mind and management in Bermuda, consistent with the Basel Paper on shell and parallel banks.	Provisions under Reg. 13 satisfy this recommendation.
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"> 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. No system to ascertain and inform FIs about which countries do not or insufficiently apply the FATF Recommendations, or to apply 	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	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

		countermeasures against such countries.		<p>use of international findings such as FATF assessments where countries have been found to be materially deficient. Paragraph 5.131 also addresses this point where the location of the customer may present a higher risk of ML or TF.</p> <p>The Minister of Justice issues an advisory after each FATF plenary providing the information in the FATF public statement and the List of Countries with strategic deficiencies. This advisory warns industry to note the risks related to each jurisdiction and to take these risks into account in their business processes and procedures.</p>
22.Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> No provisions in the AML Regulations for AML/CFT applying measures to overseas branches and subsidiaries. No requirements on FIs to inform the Bermudian authorities when their overseas operations cannot observe appropriate AML/CFT measures 	<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"> • Inadequate AML supervision of FIs, particularly for the non-banking sectors, and no CFT supervision. • Onsite (AML) supervision only commenced in 2007 for the insurance sector and mutual fund administrators are still to be licensed and supervised for AML/CFT. • Limited scope of AML onsite inspections procedures both in terms of institutions and review areas. • The AML Regulations do not assign AML/CFT supervisory, enforcement and sanctioning authority to the BMA. • 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. • Insufficient AML/CFT staff capacity and training. • 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. • 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. • 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. 	<p>i) Develop and implement both an offsite and onsite supervision program for AML/CFT that is risk-based, and prioritizing for full scope inspections those sectors and institutions that present a higher degree of ML/FT risk, including in the insurance sector.</p> <p>ii) Expand the scope of onsite reviews including a focus on the adequacy of formal policies and the demonstrated commitment of the Board of Directors and senior management.</p> <p>iii) Enhance the onsite inspections program by focusing on particular areas of potential high risk activities and business relationships especially with respect to wire transfers, CDD on ultimate beneficiary clients, and controls and compliance involving reliance on intermediaries or introducers of business.</p> <p>iv) Develop and implement a framework for conducting consolidated supervision for AML/CFT compliance beyond banking, paying urgent attention to FIs that are parent and operating holding companies with significant operations overseas. Supervision should particularly focus on the existence and adequacy of applications for group-wide risk management, compliance and audit functions.</p>	<p>i, ii, iii)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 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 includes both an on-site and off-site monitoring program. This unit was fully staffed by August 2009. Onsite inspections are regulatory inspections conducted by the Authority at the premises of the institution, which require BMA officers to examine the books, records and controls of an institution and to hold discussions with its senior management on the financial institution's AML compliance framework. The on-site reviews include a review of AML/ATF policies and procedures and an evaluation of the commitment and involvement of senior management.</p> <p>In 2009 the Authority conducted 20 on-site inspections. In 2010 the authority conducted 26 on-site inspections.</p> <p>The number of visits to any institution is determined by the Authority's risk assessment of the institution and its record of compliance. Financial institutions whose business presents an inherently high risk to money laundering or terrorist finance are subject to routine visits more frequently.</p> <p>iv) The Insurance Act 1978 has been amended to allow for Group supervision in a limited sense, following extensive consultation with the insurance sector. Group-wide evaluations of AML compliance are being conducted, where appropriate, and recommendations addressing the obligations of different group members are made following on-site inspections. There are only a small number of Groups with multiple</p>
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			<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>AML obligations in Bermuda, so this has not been a common event.</p> <p>v) The onsite program was amended in January 2010 to broaden the tests for Internal reporting procedures to ensure institutions' employees are aware of who the MLRO is, the process each company has established for reporting and their responsibilities in reporting any suspicious activity directly to the MLRO. The independence of the MLRO position is established by reviewing the companies' organisational charts, job description and documentation showing unlimited access to information to enable the position to be effectively executed. A review of the company's internal reporting log and the number of SARS reported is requested to ensure the reporting process has been effective.</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>Following the receipt of the Examiners recommendations the Bermuda Monetary Authority reviewed the manner in which AML issues were evaluated by the Authority. A dedicated team focussed exclusively on AML supervision was assembled and an AML specific on-site review protocol developed, which has now been in operation since 2009, with focus on those sectors that are identified as higher risk for AML. Over 60 AML specific on-site reviews have been conducted. In addition detailed training was provided to the Supervisory units of the authority so that AML issues could be included in their on-site reviews. One consequence of that process is that it identifies the extent, if any, of failures in compliance by an Institution and enables the</p>
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			<p>vii) Review and where necessary strengthen licensing practices in a consistent manner that reflects concerns not only of the applicant, but of other members of the group, including enforcement of the ongoing need for fit and proper criteria under the minimum licensing requirements.</p>	<p>Authority to evaluate the extent of the failure in determining whether to take Enforcement action. In one instance in 2009, the Authority issued a notice proposing to withdraw a licence following AML breaches because of the perceived risk of money laundering, however the Institution voluntarily closed until it could develop policies and procedures to meet its obligations and the Authority did not proceed with the process. However, in another case a penalty of \$100,000 was imposed and penalties are under consideration in a small number of other cases. This year there will be a further review carried out of the preparedness of the institutions, the effectiveness of the supervisory programme and the impact of the enforcement actions that were taken to address breaches</p> <p>vii) The Bermuda Monetary Authority's (the "Authority") licensing process evaluates and reviews amongst other things; that the business to be carried on by the proposed licensee falls within the provisions of relevant Bermuda law; that the licensee will have the requisite systems, procedures and policies in place to conduct the business to be carried on; and that persons proposing to manage and direct such business are fit and proper to act as controllers and officers of the proposed licensee in accordance with established Bermuda law requirements. The licensing process includes the review and evaluation of any issues which may have an impact on the licensee and other members of a group; and discussions are held with relevant overseas supervisory authorities in this regard. In addition, the process also requires a copy of proposed AML/ATF policies to be submitted and evaluated for adequacy prior to the issuance of a license by the Authority</p> <p>viii) The BMA periodically reviews its licensing and application procedures and amends as required.</p>
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			<p>viii) Review licensing procedures to ensure that the full requirements for ultimate beneficiaries of proposed licensees are established in accordance with the application documentation requirements. Also, conduct a review of application documentation review procedures to ensure that signed applicant declaration forms relating to competence and probity, are consistent with the type of license being sought.</p> <p>ix) Expedite the licensing/registration process for money services firm(s) and the provisions under Section 20AA of the BMA Act and the Regulations thereunder, to ascertain the adequacy of or need for provisions relating to agents/subagents of such licensees, as well as certain aspects of their operations to give practical implementation to issues such as 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) The Authority has commenced a risk assessment which involves a systemic review. The Authority is currently collecting data to gain a detailed view of the various components of the Bermuda economy. This information, when fully collated, will be used in identifying specific AML vulnerabilities in the differing parts of the economy.</p>
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24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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. 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. iii) Updated guidance should be issued relevant to all DNFBPs. 	<ul style="list-style-type: none"> i) The supervisory framework has now been established through the SEA Amendment Act 2010. An SRO has been established for the supervision of lawyers and ICAB accountants and the FIA has been designated as the regulatory authority for all other DNBP's. Both bodies have full powers to effectively monitor and enforce compliance. However, the entities to be supervised by the FIA have still to be designated. ii) Professional lawyers and accountants are brought into scope of the Regulations through Reg 4. 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. Further, the Bar/ICAB Board is in the process of finalising guidance notes with respect to their professions.
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25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> The Guidance Notes do not provide adequate descriptions of FT techniques, do not cover CFT, are outdated, and are limited in scope. Among DNFBPs, only trust service providers are covered by the Guidance Notes. No procedures are in place for providing feedback to FIUs. 	<p>i) Review/update the Guidance Notes for completeness and relevance to the current needs of industry, and remove inappropriate exemptions or simplifications in customer due diligence.</p> <p>ii) Develop guidance for FIs and DNFBP relating to latest industry-specific typologies and additional preventative measures.</p> <p>iii) Formalize procedures for providing feedback on SARs.</p>	<p>i, ii) The Regs. have incorporated and expanded upon many of the requirements that were previously in Guidance.</p> <p>These regulations have been made pursuant to section 49(3) of POCA and section 12A of ATFA and revoke the previous regulations.</p> <p>The Bermuda Monetary Authority, as supervisor of financial institutions, has now finalised new guidance to assist with compliance with the revised regulations and various sections of the Proceeds of Crime Act 1997 and the Anti-Terrorism (Financial and Other Measures) Act 2004. The new GN replaces the previous guidance and, along with the Regs. address the issue at point one.</p> <p>iii) The FIA has a formalized procedure for providing feedback to FIs and other legislated authorities in place to direct how the feedback is to be sent in relation to SAR reporting. Quarterly meetings take place with FIs to provide them with feedback on both general and specific issues that arise.</p>
Institutional and other measures				
26.The FIU	LC	<ul style="list-style-type: none"> The FIU has limited specialized financial analysis capacity. 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. 	Ensure that the new FIA is established and becomes operational, and provide sufficient staffing levels at the existing Police FIU to enable an increased number of ML/FT-related investigations.	<p>The new FIA is now operational and has adequate staff in posts to deal with the number of SARs currently being generated by FIs and other entities.</p> <p>An MOU is in place between the FIA and BPS that allows for the presence of a Police Liaison Officer at the FIA. This assisted in the transition from the FIU to the FIA and also enhances the day to day continuity between the two bodies.</p> <p>An MOU is in place with the FIA and HM Customs which allows for the full-time presence of a Customs Liaison Officer at the FIA. This serves to enhance the day to day continuity between the two bodies.</p> <p>Since the IMF assessment of May 2007,the</p>

				Bermuda Police Service, which was already conducting ongoing money laundering investigations, has undertaken a number of additional money laundering cases.
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> Very low number of prosecutions reflects the low priority given to ML and FT by the Police Service. 	<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 FCU has commenced a number of non-SAR triggered investigations. In recent months, two very large ML enquiries have been generated from within the Bermuda Police Service, and subsequently supported with SAR information.</p> <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 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> <p>Further, to date there have been an additional 3 convictions for money laundering: 1 in the Magistrates' Court and 2 in the Supreme Court; and 6 persons are currently charged with money</p>

				laundrying offences before the courts and their trials are pending.
28.Powers of competent authorities	C			
29.Supervisors	PC	<ul style="list-style-type: none"> 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. Need to include clear AML/CFT enforcement and sanctioning powers in the BMA Act and regulatory laws. The Credit Union Act should provide clear and adequate powers for the BMA to supervise/conduct onsite inspections that can include AML/CFT compliance. The Banks and Deposit Companies Act does not extend prudent conduct/licensing requirements to compliance with other laws/AML/CFT laws. 	<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 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</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 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 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>

			AML/CFT supervision includes a monitoring function as well as enforcement and sanctions powers under the regulatory laws.	
30.Resources, integrity and training	PC	<ul style="list-style-type: none"> 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. 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. 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. There is an inadequate prioritization of investigations and prosecutions of AML/CFT cases by the Police Commissioner, AG and DPP. 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. The FIU is not adequately funded, staffed and provided with technical resources, particularly in terms of technical expertise such as forensic accounting. 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. The funding allocated to the FIU annually for training purposes is insufficient 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. 	<p>i) Enhance training for BMA staff to facilitate the identification of deficiencies relating to AML/CFT requirements for FIs, including, but not limited to internal controls, CDD, SARs filings, recordkeeping, MLRO qualifications and operations. Increased specialization and focus on AML/CFT supervision, if the insurance and investment business/mutual fund sectors may be given priority.</p> <p>ii) The BMA should enhance its staff capacity to undertake more comprehensive AML/CFT supervision, including for the conduct of effective consolidated supervision whether as home or host supervisor.</p> <p>iii) Ensure continuation of the experience and skill in financial investigations in the Commercial Crime Department.</p>	<p>i, ii) With the commencement of the SEA Act 2008, the Authority was 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 established a dedicated anti-money laundering and anti-terrorist financing unit ("the AML/ATF Unit") comprised of a team of experienced officers assigned to AML/ATF duties.</p> <p>The appointment of a dedicated unit, which works independently of and with the regulatory units, enhances both staff capacity and training capabilities to carry out AML/CFT supervision. In 2009 the Authority conducted some external presentations dealing with AML obligations. In 2010 the Authority conducted a further 6 external presentations. A further 8 outreach presentations are planned for the 2011 year. In addition, in 2010 the AML Team conducted 2 separate week long internal training programmes to develop competencies in supervisory staff to review and evaluate AML compliance during supervisory on-sites. In 2011 a further training seminar will be presented.</p> <p>iii) 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>Since Bermuda's first Follow-up Report, 7 officers in the FCU now hold Certification as</p>

		<ul style="list-style-type: none"> 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. 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. 	<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</p>	<p>Anti-Money Laundering Specialists with the ACAMS organization. The other officers are in the process of accreditation. Two Sergeants in the Office hold Advanced Diplomas in Compliance with International Compliance Association (ICA)</p> <p>iv) Two officers from the former FIU have been seconded to the FIA to assist in the transition. Following the completion of the transition a MOU was signed with the FIA and BPS that allowed for the full-time presence of a Police Liaison Officer at the FIA to facilitate direct communication and networking between the two agencies.</p> <p>v) The Specialist Section within the Office of DPP is fully staffed. The specialist section is tasked with the management and conduct of hearings and the provision of advice in respect to the proceeds of crime, mutual legal assistance and extradition. The section is also specifically tasked with all AML/CFT advice and hearings. The staff compliment of the section includes 1 Senior Legal Counsel Crown Counsel, 1 Crown Counsel, and 2 Crown Counsel – Junior Grade.</p> <p>Training in the department of public prosecutions is on-going in the area of AML/CFT.</p> <p>vi) See above and below.</p> <p>vii) The FIA is appropriately staffed and two officers from the former FIU are assisting in the transition.</p> <p>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. Training is ongoing at the FIA. FIA staff have participated in training in the following areas: Tactical Analysis, Financial Intelligence</p>
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			<p>should be considered as a means of developing AML/CFT expertise.</p>	<p>Analysis, Compliance, and Terrorist Financing. Staff continue to attend and actively participate in Conferences, Seminars and Workshops provided by FATF, CFATF, Egmont, other FIUs. Training has occurred locally and internationally involving law enforcement, regulators and foreign FIU staff. Funding for annual training has been budgeted and provided to the FIA.</p> <p>The FIA continues to enhance its skills and products by providing local training and presentations to FI's and other organizations upon request.</p> <p>In respect of training in the DPP Office, since 2009, the members of the Specialist Section continue to train through hands on involvement in Money Laundering prosecutions, Restraint and Confiscation of Criminal Proceeds. Members of the Specialist Section have also attended relevant training in AML/CFT and Fraud overseas. The Specialist Section has also trained other counsel in the Office of DPP in relation to applications for forfeiture of the proceeds of crime and complex case management.</p> <p>As noted previously, training at the BMA is also ongoing.</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>ix) The FIA is adequately funded, structured, staffed and is provided with technical and other resources to fully and effectively perform its mandated function.</p> <p>The FIA has acquired the United Nation's goAML software solution which allows for all reporting entities to file suspicious activity reports (SARs) on-line through a secured environment. The system receives stores, collates and provides feedback on all filed SARs. This has allowed for an effective and efficient disclosure process that has already</p>

			x)	Ensure that the new administrative Financial Intelligence Unit (FIA), is established and becomes operational and provide sufficient staffing levels at the existing Police FIU to enable an increased number of ML/FT-related investigations.	shown an increase in workflow and disclosures made to law enforcement, foreign FIUs and other authorities x) The new FIA has been established and is fully functional. Staffing and resource levels are reviewed on a regular basis to ensure that the FIA can effectively carry out its duties.
31.National co-operation	PC	<ul style="list-style-type: none"> The policy development and coordination functions of NAMLC are not sufficiently robust to keep up with a heavy agenda of unfinished initiatives. Coordination and cooperation among agencies is ad hoc and inconsistent. 	i)	A national AML/CFT coordinator should be appointed and the policy development role of NAMLC should be energized.	i) POCA Amendment 2008, clause 8, s. 49 addresses this recommendation. Additionally, the Office of the National Money Laundering Committee has been established and is tasked with progressing Government's (and NAMLC's) AML/CFT initiatives.
			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.	ii) Coordination among agencies has been further enhanced with regular meetings established between relevant agencies. Further there are arrangements for seconding of staff between agencies and some of the agencies have signed MOU's with each other to ensure maximum cooperation and coordination.
32.Statistics	PC	<ul style="list-style-type: none"> Inadequate statistics for offsite and onsite preparation e.g. risk factors, non-resident business. Although there are several gaps, a useful Range of statistics is maintained on SARs, ML and FT investigations, and confiscations. Little use is made of available statistics and information to review the effectiveness of AML/CFT systems on a regular basis. 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. 	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.	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..
			ii)	Also needed is information on the recovery rates of the amounts subject to confiscation orders, and the amounts actually recovered.	
			iii)	Statistical systems should be updated and maintained in line with the recommendations in R.32.	iii) Performance data in relation to FCU's investigations is regularly reported on and FIA statistics are shared with reporting agencies and other appropriate authorities on a quarterly basis. This allows the FIA to produce useful trends and typologies for publication.

33. Legal persons – beneficial owners	C			
34. Legal arrangements – beneficial owners	C			
International Co-operation				
35. Conventions	PC	<ul style="list-style-type: none"> The SFT and Palermo Conventions have not been extended to Bermuda. 	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"> There are no specific procedures facilitating expeditious action be taken or establishing precise timelines for response to MLA requests. 		The Attorney General's Chambers has implemented a policy establishing precise timelines to address requests for Mutual Legal Assistance. Further, the BPS continues to assist the Attorney General's Chambers in these matters and is able to turn around MLA requests in an appropriate time frame.
37. Dual criminality	C			
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> 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. In addition, there is not statutory provision for external confiscation requests relating to instrumentalities. There are no arrangements for coordinating seizure and confiscation actions with other countries. 	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"> Concerns regarding undue delays due to the undefined structure of the request process 	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 FCU have addressed matters pertaining to resources necessary to ensure that MLA requests are acted upon most efficiently (see also response for Rec. 36).
40. Other forms of co-operation	C			
Nine Special Recommendations				
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> 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 	Request that the UK extend the SFT and Palermo Conventions to Bermuda.	Matter under review.

		Instruments that apply to its Overseas territories, including Bermuda.		
SR.II Criminalise terrorist financing	PC	<ul style="list-style-type: none"> The definition of terrorism does not have a reference to the acts covered by the nine conventions referred to in the SFT Convention, and it does not contain a reference to acts taken against international organizations. There is no reference in the relevant legislation to the financing of terrorist organizations. There is no reference in the relevant legislation to extra-territorial offenses relating to terrorist organizations. 	i) Amend the ATFA's definition of terrorism to include the acts covered by the nine conventions referred to in the SFT Convention. ii) Amend ATFA to include acts taken against international organizations. iii) Amend the ATFA to include a reference to the financing of terrorist organizations. iv) Amend the ATFA to cover extra-territorial acts relating to terrorist organizations.	i) Provisions under Clause 3 of ATFA Amend. 2008 satisfy this recommendation. ii) Provisions under Clause 3 of ATFA Amend. 2008 satisfy this recommendation iii) <i>It is anticipated that ATFA will be amended to include reference to the financing of terrorist organizations in the near future.</i> iv) Provisions made under ATFA Amend 2008, Part. IV, s. 17 satisfy this recommendation.
SR.III Freeze and confiscate terrorist assets	LC	<ul style="list-style-type: none"> No specific guidance has been issued to the regulated sector concerning its affirmative obligation to implement measures with respect to the UNSCR list. There are no specific procedures for delisting or unfreezing. 	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. ii) Procedures for delisting requests and the unfreezing of funds should be developed and published.	i) The new GN para 5.304 – 312 provide guidance on freezing of assets and the UN and EU obligations.
SR.IV Suspicious transaction reporting	PC	<ul style="list-style-type: none"> Current law does not require SARs for funds linked to terrorist organizations. No FT-related SARs have been filed. 	Amend ATFA to require FT-related SARs for funds linked to terrorist organizations.	<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</p>

				explicit. All legislative requirements relating to filing of SAR's related to FT are now in place.
SR.V International co-operation	C			
SR VI AML requirements for money/value transfer services	PC	<ul style="list-style-type: none"> Laws and regulations have been put in place but licenses have not yet been granted and effective implementation has not yet been tested. 	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 There are 2 licensed money service businesses currently operating in Bermuda. Both are subject to the same AML obligations as other financial institutions in Bermuda. The relevant regulations do not make any provision for the utilisation of agents in the operation of a money service business and neither business operates utilising the services of agents
SR VII Wire transfer rules	NC	<ul style="list-style-type: none"> No recordkeeping requirements for full originator information. The threshold for CDD and full originator recordkeeping requirement is US\$10,000, significantly above the FATF level of \$1,000. No provisions for originator information to be included and retained in domestic wire transfers. No provisions that require intermediary and beneficiary FIs in a wire transfer payment chain to transmit originator information. 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. No systems to review and sanction for compliance with wire transfer requirements under SRVII 	<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>i) Regulations 23 and 26 specifically address this recommendation.</p> <p>ii) New Regulations -and Guidance Notes were issued in March 2010 which meets the FATF requirement. In particular, Regs21 – 32 are part of a new Part IV which deal with SR VII.</p> <p>iii) Reg. 28 specifically addresses this recommendation.</p>
SR.VIII Non-profit organisations	PC	<ul style="list-style-type: none"> 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. 	<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</p>	<p>i.),ii),iii) A draft framework to ensure that FATF requirements relating to NPO's are appropriately met is currently being considered.</p> <p>Drafting instructions have been sent to Parliamentary Counsel and the Office of NAMLC has met with the Ministry of Public Information Services to assist in this initiative.</p>

			to ensure that they can effectively investigate and gather information on NPOs, as called for in C. SR VIII.4	
SR.IX Cross Border Declaration & Disclosure	NC	<ul style="list-style-type: none"> Although seizures of cash by customs officers occur on a limited basis, currently no disclosure or declaration system for either incoming transportation of currency (as proposed) or outgoing transportation of currency is in place. The scale of civil and criminal money fines is not sufficiently dissuasive. Domestic cooperation on customs issues is insufficient. Information-sharing between Customs and other law enforcement authorities is inadequate. 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 	<p>i) Adopt the declaration system now being considered by the authorities;</p> <p>ii) Cover outgoing transportation of currency by the declaration system, and not just incoming as currently planned;</p> <p>iii) Amend relevant laws to substantially increase the scale of civil money fines and criminal penalties for customs violations;</p> <p>iv) Enhance domestic cooperation on customs issues;</p> <p>v) Ensure sufficient information-sharing between Customs and other law</p>	<p>i) The Collector of Customs, in exercise of the powers conferred by section 16 of the Revenue Act 1898 has issued “The Customs Traveler Declaration Notice 2010” (BR 39/2010). In this Notice the Collector requires, among other things, that every person arriving at Bermuda or leaving Bermuda must declare when they have currency in excess of \$10,000.</p> <p>ii) The Customs Traveler Declaration Notice 2010 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>In 2010, the BPS FCU assisted in training HMC staff and BPS personnel in the area of cash seizures and bulk currency smuggling. Additionally, an MOU is in place with the FIA and HM Customs which allows for the full-time presence of a Customs Liaison Officer at the FIA. This serves to enhance the day to day continuity between the two bodies.</p> <p>v) Periodic meetings are held between the relevant agencies and there is a MOU in place that allows for formal transmission of</p>

			<p>enforcement authorities;</p> <p>vi) Amend the Revenue Act to provide clear legal authority, as now exists in POCA, to charge directors and officers who have connived with the corporation with an offense.</p> <p>vii) In addition, consideration should be given to (1) amending the relevant laws to provide the Customs Department with explicit legal authority to seize, detain, and confiscate currency in the event of a false declaration and (2) developing a procedure to notify other customs agencies of search and detention reports relating to precious metals other than gold, as well as to precious stones.</p>	<p>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 respecting currency and negotiable instruments. In addition the new Revenue Act section 86(3) provides that any article (including currency) is liable to forfeiture if that article is not declared or are falsely declared.</p> <p>(2) Procedure already exists, information is presently sent to WCO CEN database, and CCLEC RILO database.</p>
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Guide to Abbreviations used in Matrix and Explanatory Notes

Abbreviation	Legislation	Explanatory Note
POCA	Proceeds of Crime Act 1997 (as amended)	
ATFA	Anti-Terrorism (Financial and Other Measures) Act 2004 (as amended)	
FIA Act	Financial Intelligence Agency Act 2007 as amended in 2008 and subsequently	Commenced 15 th November 2008
POCA Amend. Act 2007	Proceeds of Crime Amendment Act 2007	Commenced 15 th November 2008 (amended POCA)
POCA Amend. Act 2008	Proceeds of Crime Amendment Act 2008	Commenced 15 th November 2008 (amended POCA and POCA Amend. Act 2007)
ATFA Amend. Act 2008	Anti-Terrorism (Financial and other Measures) Amendment Act 2008	Commenced 15 th November 2008 (amends ATFA)
Regs. or Reg.	Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (includes subsequent amendments)	Commenced on 1 st January 2009 Amended by BR 2/ 2010 to include Part IV
SEA Act	Proceeds of Crime Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (as amended)	Proceeds of Crime Regulations (Supervision and Enforcement) Act commenced on 1 st January 2009 Name changed in August 2010
ATFA Amendment Act 2009	Anti-Terrorism (Financial and other Measures) Amendment Act 2009	Commenced 15 th January, 2010 (amended ATFA, POCA and SEA)
SEA Amendment Act 2010	Proceeds of Crime Regulations (Supervision and Enforcement) Amendment Act	Commenced on 25 th August 2010 (amended SEA, FIA and other non AML/ATF legislation)
GN	Revised Guidance Notes (includes subsequent amendments)	Revised guidance notes for Financial Institutions Originally approved by Minister in 2009