



Anti-money laundering
and counter-terrorist
financing measures

The Bahamas

Mutual Evaluation Report

July 2017



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EXECUTIVE SUMMARY

This report provides a summary of the AML/CFT measures in place in The Bahamas as at the date of the on-site visit (November 30 to December 11, 2015). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of The Bahamas' AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

- The Bahamas is still completing its ML/TF National Risk Assessment (NRA) and has yet to develop documented national AML/CFT policies. There is a reasonable understanding of ML/TF risks among competent authorities in the Bahamas on account of the NRA exercise, there is a need for this understanding to be placed within the context of The Bahamas as an international financial centre and for it to be shared with relevant stakeholders. Measures also need to be taken to mitigate ML/TF risks. A good foundation for national coordination and co-operation at national level has been established through the Task Force
- The Financial Intelligence Unit (FIU) is a well-structured and resourced unit. While the financial intelligence disseminated by the FIU is generally of good quality, the law enforcement authority (LEA) indicated that some of it required additional work in the furtherance of ML investigations. The focus of investigations and prosecutions on predicate offences has resulted in no ML convictions for the last four years and one ML case that was before the court at the time of the on-site visit..
- The Bahamas has assessed its TF risks as low. There have been no TF investigations, prosecutions, confiscations or convictions. The legislative framework for targeted financing sanctions (TFS) and proliferation financing is deficient.
- Financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) are overall well aware of their regulatory AML/CFT obligations. As a result of this, they apply quite strong customer due diligence (CDD) procedures as well as other mitigating measures in a highly rule-based manner. However, a large number of unverified facilities in the domestic banking sector still exists.
- FIs that are not part of a large international group did not demonstrate sufficient awareness of their specific inherent ML/TF risks. They had not performed an institutional ML/TF risk assessment to define the specific risks with regard to their operations, environment, products etc. It is essential that such institutions, as well as their supervisors, pay more attention to conducting periodic ML/TF risk assessments..
- The number of suspicious transactions reports (STRs) filed by financial institutions is limited, taking into consideration the substantial size of the financial sector in The Bahamas and the substantial presence in The Bahamas of inherent higher risk activities such as private banking and trust. More emphasis should be put on guidance reporting and on the feedback provided to reported STRs.
- The FIs and DNFBPs supervisory regimes are comprehensive and well developed. Supervisory powers are in general adequate and co-ordination among supervisory regulators works well. The FIs and DNFBP supervisors generally promote clear understanding of AML/CFT obligations. However, the application of sanctions is too limited. A risk-based approach for the credit unions and the

securities industry should be implemented. Also, the proactive outreaches to the sectors could be enhanced.

- A variety of legal persons can be created in The Bahamas. The Registrar General maintains the national company register. Beneficiary ownership (BO) information is required to be maintained by FIs and registered agents. No sanctions have been imposed on legal persons.
- The Bahamas has a well-functioning system for international co-operation which provides constructive mutual legal assistance (MLA) and extradition. International co-operation is facilitated through agreements, memoranda of understanding (MOUs) and asset-sharing protocols. The time to respond to requests can be improved.

Risks and General Situation

1. The Bahamas is exposed to a wide range of money laundering and terrorist financing threats and vulnerabilities. As an international financial centre The Bahamas is vulnerable to financial flows associated with foreign threats. Domestic threats include fraud, drug trafficking originating from South America, armed robbery, firearm offences, burglary and murder. Vulnerabilities are in the products and services offered in the financial sector in particular private banking, client relationships with legal persons and trust services. Additionally, specific sectors are attractive either for the nature of the transactions or the limited nature of regulation. These include the international securities sector, dealers in precious metals and precious stones, money transmission services and attorneys. The risk of TF appears low since The Bahamas has no history of terrorist activity. The country is also stable and homogenous with no alienated or oppressed groups.

Overall Level of Effectiveness and Technical Compliance

2. The Bahamas' main strengths with regard to technical compliance are in the areas of international co-operation, preventive measures for FIs and DNFBPs and criminalization of money laundering and terrorist financing. The legislative framework for the supervisory regime is well developed although there is need to improve sanctions. The main deficiencies in technical compliance are in targeted financial sanctions for terrorist financing and financing of proliferation, understanding and assessing national ML/TF risks and developing AML/CFT national strategies and transparency and beneficial ownership of legal persons and arrangements.

3. The Bahamas is most effective in supervision and preventive measures reflecting the robust AML/CFT supervisory regime and the level of compliance of FIs and DNFBPs. Significant weaknesses in effectiveness are in the areas of ML/TF confiscations, investigations, prosecutions and convictions, the identification of national ML/TF risks and development of appropriate AML/CFT strategies and proliferation financing financial sanctions

Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)

4. The draft NRA has not adequately identified and assessed the ML/TF risks, and has limited utility in its current form for setting national AML/CFT policy. Given that the NRA process is yet to be concluded, identified ML/TF risks are yet to be addressed by national policies and activities. Furthermore, the draft NRA report does not contain an action plan that would indicate the necessary measures to mitigate ML/TF

risks. The results of the draft NRA are not yet known to FIs and DNFBPs. Whilst a draft AML/CFT strategy document was developed in 2008 there is no formal documented national AML/CFT strategy at present.

5. Competent authorities develop policies and cooperate through a long established Task Force as noted in the 2007 MER of The Bahamas. No supporting evidence regarding the designation of this body was provided to the assessors. While the names of other bodies were given, such as National Anti-Money Laundering Steering Committee (NAMLC) and the National Anti-Money Laundering Group (NAMLG), the authorities indicated that NAMLG was subsumed into the Task Force, making it one policy making body. The separation between policy level and operational level of cooperation was unclear. At the operational level, there is clear cooperation and coordination among the relevant agencies involved in border protection as well as among financial supervisors through the Group of Financial Services Regulators (GFSR) However, outside of the NRA exercise, there is little evidence of broader coordination and cooperation in matters related to mitigation of identified ML/TF risks.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)

6. The Bahamas FIU appears to be a well-structured and resourced unit. Whilst the FIU indicated that it uses operational and strategic analysis it also advised that it was developing a new policy on such. The financial intelligence disseminated by the FIU to the LEA seems of limited use in the furtherance of ML investigations. The FIU has co-operated domestically with other competent authorities in The Bahamas and internationally with foreign FIUs.

7. The LEA enjoys a favorable working relationship with the FIU and the Office of the Director of Public Prosecutions (ODPP). The ODPP plays a pivotal role in matters being pursued by the LEA and is relied upon heavily by the LEA. The Bahamas in practice places emphasis on investigating predicate offences rather than ML. This has evolved due to advice from the ODPP to the LEA regarding the best possible prosecutorial outcome during the investigative phase of matters. Recently, as a result of a parallel ML investigation the Business and Technology Crimes Section (BTCS) has the only ML case currently before the court. The LEA lack the capacity to effectively pursue ML. The staff roster does not have the specialised human resources necessary to properly conduct ML investigations nor are current staff adequately trained in ML investigation

8. The authorities prefer the confiscation/forfeiture of criminal proceeds from predicate offences as opposed to ML. There have been no ML convictions in The Bahamas during the four years prior to the onsite visit and thus no confiscation of ML proceeds similarly there has been no prosecution for TF and thus no confiscation of terrorist property and or funds. In the absence of a completed NRA or formally documented national AML/CFT policies the assessors are unable to evaluate whether the confiscation results are consistent with the country's ML/TF risks. With a limited cross-border declaration system in place, there has been some confiscation of cash and bearer negotiable instruments (BNIs).

Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9-11; R.5-8)

9. The Bahamas has assessed its TF risks through its draft NRA and the draft National Strategy for the prevention of Money Laundering and Financing of Terrorism. However, there is no formal updated national policy regarding CFT. Other than the submission of two STRs to the FIU there has been no indication of TF in The Bahamas. There have been no TF investigations or convictions in The Bahamas. The

LEA is adequately trained in CFT and has sufficient human resource or skills necessary for investigating TF noting that The Bahamas has a low risk of TF. The Bahamas is unable to demonstrate an effective system to address and mitigate TF risks.

10. While the authorities' assessment of the risk of TF in The Bahamas is low, the jurisdiction does not have an effective system for TFS due to deficiencies in the legislative framework. Deficiencies noted include lack of a mechanism and unclear procedures for designation domestically; lack of a timely freezing mechanism and delisting procedures under the International Obligations (Economic and Ancillary Measures) Act (IOEAMA) legislation. There have been no cases of freezing terrorist property or deprivation of assets and instrumentalities related to TF activities. The Bahamas is unable to show effective implementation of United Nations Security Council Resolutions (UNSCRs) applicable to TFS. While there is legislation for the registration and regulation of non-profit organisations (NPOs) the supervision regime of the Registrar General's Office is basic. NPOs do not have a clear understanding of their vulnerability to TF and no guidance has been provided for the sector.

11. The Bahamas does not have an effective system for targeted financial sanctions related to proliferation financing. Deficiencies in the legislative framework include freezing not occurring without delay and no procedure for de-listing. There have been no identification of assets and funds held by designated persons and prohibitions relating to proliferation. Many interviewed FIs and DNFBPs were not aware or had minimal knowledge of proliferation and the vast majority did not understand their obligations in relation to proliferation. Neither guidance nor training has been made available to FIs and DNFBPs regarding proliferation financing. Monitoring for compliance in relation to proliferation by competent authorities is generic.

Preventive Measures (Chapter 5 - I04; R.9-23)

12. The Bahamas exhibits some characteristics of an effective system. In general, FIs in The Bahamas have extensive AML/CFT policies and procedures in place. They demonstrated a strong commitment to implement these policies and procedures. Specific requirements such as politically exposed persons (PEPs), new technologies, correspondent banking, tipping off and record keeping are adequately implemented and adhered to. Also, the FIs demonstrated a sufficient general awareness of their role as gatekeepers. CDD is carried out typically in a robust way. This includes the identification and verification of beneficial owners, on-going monitoring and enhanced due diligence (EDD) for higher risk customers such as PEPs. This altogether seriously limits the possibilities for criminals and terrorists to enter the Bahamian financial system through these financial institutions.

13. FIs that are not part of a large international group did not demonstrate sufficient awareness of their specific inherent ML/TF risks. They had not performed an institutional ML/TF risk assessment to define the specific risks with regard to their operations, environment, products etc Also, there was uncertainty over the distinction between inherent risks and controls. This limits their effectiveness. FIs who are part of a large international group, demonstrated sufficient knowledge of their specific inherent ML/TF risks. Typically, specific ML/TF risks assessment were being conducted by these FIs. With regard to TFS, FIs are not aware of the course of action to be taken when designated persons or entities on TFS lists are detected. There is a large number of unverified facilities in the domestic banking sector that still exist from prior to the enactment of AML/CFT obligations.

14. DNFBPs in The Bahamas have extensive AML/CFT policies and procedures in place. Most DNFBPs have a good understanding of the ML/TF risks that their clients pose, but less of an understanding

of other areas of risk, such as those associated with country/geography, products, services, transactions and delivery channels. However, their understanding is in the absence of updated national ML/TF risks identified by the jurisdiction that are yet to be communicated. DNFBPs' understanding of TF and PF risks appear to be low. Overall, there is the need for training with respect to the updated FATF standards and the obligations they impose; and for the application of group wide internal controls and procedures. CDD measures appear to be fairly robust for DNFBPs.

Supervision (Chapter 6 - IO3; R.26-28, R. 34-35)

15. The Bahamas exhibits some characteristics of an effective system. Licensing and registration requirements implemented by The Bahamas to a large extent adequately limits the possibility for criminals and their associates from entering the financial sector. Also, the financial supervisors collaborate together well on AML/CFT issues, for example by exchanging relevant information and conducting joint onsite visits. However, the CC faces challenges in the registration of lawyers, accountants and real estate agents, and would greatly benefit from additional resources and the imposition of administrative penalties for non-compliance with registration requirement.

16. The financial supervisors use a risk-based-approach, based on a comprehensive assessment of all types of different risks, including ML/TF-risk for the majority of the financial sectors with the exception of the credit unions, the securities industry and Gaming Board (GB) licensees where a rule-based approach is still the common practice. However, more emphasis should be put on the ML/TF risk in the existing risk assessments. DNFBP supervisors need to incorporate updated ML/TF risk information in guidance and provide information on ways to mitigate those risks.

17. Onsite examinations by financial and DNFBP supervisors include ML/TF issues, but need to be more risk-sensitive, and with a view to mitigating AML/CFT risks. The Central Bank of The Bahamas (CBB) onsite inspections as mentioned are thorough, with typically a supervisory team on the ground for several weeks and with enough time available to inspect(also AML/CFT issues. Additionally, the conclusions to onsites are clearly communicated to the FIs. Furthermore, the financial supervisors appear to be well-respected by their licensees and the supervisory findings and concerns are in general considered by them to be relevant and pertinent. Typically, FIs carry out proper follow-up on the findings and improvements are achieved and effected because of supervisory oversight. In general a clear understanding of the AML/CFT obligations is communicated by the financial supervisors through for example guidelines, websites and annual meetings. However, the proactive outreach to the financial sectors on AML/CFT issues could be enhanced. The remedial actions taken by the financial supervisors are highly characterized by a 'one size fits all' approach. The number of sanctions imposed by financial and DNFBP supervisors is low; administrative fines for AML/CFT breaches are rarely used.

Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)

18. The Bahamas is able to incorporate companies, partnerships, foundations and executive entities. There is certain information required upon the formation of these and in some instances updates required to ensure transparency, the number of inactive entities indicates that there is some level of ML/TF risk with

legal persons and arrangements within The Bahamas. Basic and beneficial ownership information is maintained by the Registrar General in The Bahamas. Although there have been sanctions applied to legal persons The Bahamas is unable to demonstrate whether sanctions are effective, proportionate and dissuasive. Generally there is a good level of exchange and cooperation domestically and internationally with the competent authorities. Competent authorities within The Bahamas understand the vulnerability posed with legal persons/arrangements being misused for ML/TF.

International Cooperation (Chapter 8 - IO2; R. 36-40)

19. The Bahamas cooperates with international counterparts and is also able to provide MLA but not without some delay. The Bahamas is able to demonstrate that the jurisdiction is using the extradition process in place by extraditing both nationals and non-nationals. The extradition is, at times, with major delay as a result of due process and at times other constitutional challenges. The Bahamas is able to effectively provide and seek international cooperation with other jurisdictions through agreements, MOUs and asset sharing protocols with other jurisdictions.

Priority Actions

- The Bahamas should complete the NRA process, analysing the threats and vulnerabilities within the context of the jurisdiction as an international financial centre and identify priority actions and allocate resources to mitigate ML/TF risks, based on the NRA.
- The ODPP and the LEAs should actively seek to conduct ML investigations.
- The authorities need to pursue the confiscation/forfeiture of criminal proceeds from ML offences equally as with predicate offences.
- During its review process the FIU should continue to seek to improve the quality of its product to ensure that it remains relevant and meets the needs of the LEA, in furthering its investigations. An analysis of the responses provided in the feedback form, which is sent along with the STR may help in this regard.
- There should be greater emphasis placed on identifying TF. Further, focus should be placed on ensuring the capacity and framework is present should the need arise to investigate and prosecute TF
- Establish in legislation, mechanisms for domestic designation, freezing without delay, delisting and unfreezing procedures in accordance with UNSCR 1267 and UNSCR 1373 and successor resolutions.
- Financial and DNFBP supervisors should have available and more often apply a wide range of sanctions including administrative fines.
- The Registrar General should analyse, monitor and verify basic information submitted for registration of legal persons.

- The Bahamas should put in place measures commensurate with the risk to identify and pursue the proceeds of foreign tax evasion.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings

IO.1 Risk, policy and coordination	IO.2 International cooperation	IO.3 Supervision	IO.4 Preventive measures	IO.5 Legal persons and arrangements	IO.6 Financial intelligence
Low.	Mod.	Mod.	Mod.	Mod.	Mod.
IO.7 ML investigation & prosecution	IO.8 Confiscation	IO.9 TF investigation & prosecution	IO.10 TF preventive measures & financial sanctions	IO.11 PF financial sanctions	
Low.	Low.	Low.	Low.	Low.	

Technical Compliance Ratings

AML/CFT Policies and coordination

R.1	R.2
PC	PC

Money laundering and confiscation

R.3	R.4
C	C

Terrorist financing and financing of proliferation

R.5	R.6	R.7	R.8
LC	NC	PC	PC

Preventive measures

R.9	R.10	R.11	R.12	R.13	R.14
C	PC	LC	PC	C	C
R.15	R.16	R.17	R.18	R.19	R.20
PC	LC	PC	PC	PC	C
R.21	R.22	R.23			
C	PC	PC			

Transparency and beneficial ownership of legal persons and arrangements

R.24	R.25
PC	PC

Powers and responsibilities of competent authorities and other institutional measures

R.26	R.27	R.28	R.29	R.30	R.31
PC	PC	PC	C	PC	LC
R.32	R.33	R.34	R.35		
PC	PC	LC	PC		

International cooperation

R.36	R.37	R.38	R.39	R.40
LC	LC	LC	LC	LC

MUTUAL EVALUATION REPORT

Preface

This report summarises the AML/CFT measures in place in The Bahamas as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country from November 30 to December 11, 2015.

The evaluation was conducted by an assessment team consisting of Mr. Roger Hernandez, Mission Leader, (CFATF Secretariat); Ms. Ana Folgar, Co-Mission Leader/Observer (CFATF Secretariat); Ms. Erica Edwards, Legal Expert (Anguilla); Mr. David Specker, Financial Expert (Kingdom of the Netherlands); Mr. Francis Arana, Financial Expert (Cayman Islands) and Mr. Wendell Lucas, Law Enforcement Expert (Trinidad and Tobago). Support from the CFATF Secretariat was provided by Ms. Dawne Spicer, Mrs. Diana Firth, and Mr. Jefferson Clarke. The report was reviewed by Ms. Alicia Williams (Guyana); Ms. Allene Gumbs (Virgin Islands); Ms. Kellie Bailey (Belize); Mr. Lindsay Chan of the APG Secretariat and the FATF Secretariat.

The Bahamas previously underwent a FATF Mutual Evaluation in 2006, conducted according to the 2004 FATF Methodology. The 2007 evaluation and follow-up reports to November 2015 have been published and are available at cfatf@cfatf.org.

That Mutual Evaluation concluded that the country was compliant with thirteen (13) Recommendations; largely compliant with nine (9); partially compliant with twenty-four (24) and non-compliant with three (3). The Bahamas was rated compliant or largely compliant with eight (8) of the sixteen (16) Core and Key Recommendations. The Bahamas exited at the November 2015 Plenary on the basis of having achieved a level of compliance at least equivalent to an 'LC' in all the Core and Key Recommendations that were rated PC/NC.

CHAPTER 1. ML/TF RISKS AND CONTEXT

1. The Bahamas is an archipelago consisting of more than 700 low-lying islands, cays, and islets in the north-western Atlantic Ocean. It extends 50 miles east of Florida to 50 miles northeast of Cuba. Other immediate neighbours include the Turks and Caicos Islands and Haiti. The Bahamas encompasses roughly 5,380 square miles of land sprawled over 100,000 square miles of ocean. The mid-year population was estimated at 368,390 in 2013, with roughly 70 percent of the population living in New Providence, where the capital, Nassau, is located. Another 15 percent of the population lives on Grand Bahama.

2. The total nominal gross domestic product (GDP) for The Bahamas in 2013 was US\$8.43 billion, with per capita GDP at US\$23,671. The official currency is Bahamian dollars and is exchanged at par with the US dollar. US dollars is widely accepted in The Bahamas, which is heavily dependent on tourism and offshore financial services. Tourism accounts for approximately 60 percent of GDP while financial services for about 15 percent. The Bahamas has no income tax, corporate tax, or capital gains tax; and roughly half of government's revenue is derived from customs and excise duties.

3. The Bahamas gained independence from the United Kingdom in 1973. Queen Elizabeth II is the nominal head of state and is represented by an appointed Governor General. The Bahamas has a bicameral Parliament which consists of the Senate with 16 seats and the House of Assembly with 38 seats. Members of Parliament serve 5-year terms. The general control and direction of government is vested in the Cabinet, which is headed by an elected Prime Minister as the chief executive officer. Cabinet is made up of at least eight other members of Parliament, including the Attorney General.

4. The Bahamian legal system is based on English common law, with a judiciary that is independent of executive control. It consists of a magistracy, the Supreme Court and the Court of Appeals. Final appeals can be made to the Privy Council in the United Kingdom.

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML Risks

5. The Bahamas is exposed to a wide range of money laundering and terrorist financing threats and vulnerabilities. Its archipelagic nature and geographic location makes it vulnerable to drug trafficking originating from South America and human smuggling. As an international financial centre, The Bahamas is vulnerable to financial flows associated with foreign threats, including tax evasion.

6. At the time of the on-site The Bahamas was conducting its first NRA using the World Bank model. Preliminary results from the ML/TF NRA indicate that domestic threats include fraud, drug trafficking originating from South America, arms trafficking originating from North America, human trafficking, armed robbery, firearm offences, burglary, and murder. Money laundering of foreign origin is dominated by fraud. The major threats are fraud and drug trafficking as follows

- **Fraud:** Poses a threat to the jurisdiction in particular internet fraud. It is noted that "fraud in general" is the most prevalent ML predicate offence committed in The Bahamas. Domestic fraud cases investigated by the Royal Bahamas Police Force (RBPF) have included fraud by false pretences, stealing by reason of employment, possession of forged documents, counterfeit currency, and forgeries. Transnational fraud activities are also impacting The Bahamas; these include phishing

schemes, mystery shopper fraud, credit card skimming, and fake identification and credit card usage. The Authorities acknowledged the inherent ML threat from foreign fraud, mainly through the private banking, trust companies, and securities sectors (mainly investment funds).

- **Drug trafficking:** Due to its geographical make-up, the jurisdiction is a transit point for the trafficking of drugs. In its draft NRA, the Authorities noted, (as referenced in a 2014 US International Narcotics Control Strategy Report) that “drug traffickers take advantage of the larger number of international business companies (IBCs) and offshore banks registered in The Bahamas to launder significant sums of money, despite the strict know-your-customer(KYC) and transaction reporting requirements.” It was noted that there are 12-15 significant drug trafficking organizations currently operating in The Bahamas.

7. Nationally, enforcement agencies appear to work closely with each other, particularly those involved in border protection. Interagency cooperation and coordination among supervisors appear to be less robust and is reflected in the varying degree to which their respective guidance notes are updated. Sectoral assessments in the draft NRA revealed the following areas of ML/TF vulnerabilities:

- **Private banking:** The area of private banking is characterized by the personalised management of a wide variety of financial services and products to high net-worth individuals. Given The Bahamas’ architecture, large size of assets, high volume of cross-border transactions, presence of high risk and PEP clients and complexity in managing such wealth, the area is high-risk for ML/TF..
- **Client relationships with legal persons:** Trust, Asset Management and Corporate Service Providers are important in The Bahamas’ economy as financial intermediaries as they provide a link between FIs and customers. The use of legal persons and legal arrangements is more vulnerable, thus making this area within the international offshore banks at high risk for ML/TF.
- **Trust services:** Trust companies are required to be licensed in The Bahamas and are regulated by the CBB. The integration of trust and corporate services with private banking and wealth management services offered to high net worth clients coupled with the high volume of cross-border transactions and the use of non-face-to-face product delivery channels makes trust services a high risk for ML/TF.
- **Securities:** While the domestic securities sector risk is low, the international sector is characterized by high volumes of large cross border transactions. The majority of transactions in the securities market involve the use of international intermediaries and the layering of illicit funds already within the international markets which makes the risk to ML/TF relatively high.
- **Dealers in precious metals and precious stones:** This sector which is highly cash intensive can attract criminals to launder money due to the high value items sold which can provide a way for criminals to place large amounts of illicit funds into the financial system. Criminals can also have an avenue to disguise the origin of funds. There was no supervision of this sector at the time of the onsite, however, the Authorities are in the process of developing a supervisory framework to regulate this sector and have assigned supervisory responsibilities to the Inspector of Financial Corporate Services (IFCS). The inherent risks for ML remains high. Only after the supervisory framework is in place and data is collected can a thorough assessment of the risks be conducted.
- **Money transmission service providers:** There are only two money transmission licensees, with twelve agents. Inward and outward remittances total \$1.M annually. The cash intensive nature of

the money transmission sector, and the industry's ability to process a large number of transactions cheaply and speedily attracts potential money launderers. This sector has a large number of customers, particularly foreign. Funds are remitted overseas through banks, licensed money transfer businesses (MTBs) and their agents. There is a slight risk that informal overseas networks receiving these funds may not have adequate AML/CFT measures in place. The draft ML/TF NRA noted that common control weaknesses include money transmission service providers failure to conduct comprehensive CDD and to establish the source of funds from customers. However, the draft NRA report also noted that service providers do not have a large proportion of clients from high-risk groups, such as PEPs, and that transaction values tended to be small.

- **Attorneys:** Attorneys are key gatekeepers for international financial services in The Bahamas. Products and services they offer include those that are regulated under the Financial Corporate Service Providers Act (FCSPA) and the Banks and Trust Companies Regulation Act (BCTRA); as well as conveyancing, maritime and aviation matters. In real estate transactions, attorneys receive, hold and transfer client funds. Only attorneys that provide services under section 3(1)(k) of the Financial Transactions Reporting Act (FTRA) that receive funds to settle real estate transactions are required to register with the Compliance Commission (CC), comply with provisions of the FTRA and other AML/CFT legislation. The other activities that attorneys can carry out which categorise them as DNFBPs are supervised by the Inspector of Financial Corporate Services (IFCS). There are a number of attorneys not registered with the CC. However, the larger law firms are among the 178 firms (398 individuals) registered with the CC.

Overview of TF Risks

8. The threat of terrorism in The Bahamas is low. While the threat of TF is also low, there are some vulnerabilities to The Bahamas as a major international financial centre, given deficiencies in the regulatory and supervisory frameworks, particularly with respect to TFS for TF. There is also the need for greater coordination among relevant competent authorities in this area, and for communication with FIs and DNFBPs.

Country's risk assessment & Scoping of Higher Risk Issues

9. In 2014 NAMLG was established and the Inspector of the Compliance Commission at that time was appointed as coordinator for the purpose of conducting the national ML/TF NRA. The NAMLG comprised of representatives of supervisors, the FIU, legal, and other relevant government agencies as well as representatives from relevant private sector associations. At the time of the on-site visit the NRA was still in process, however a preliminary report was provided to the assessors at the end of the on-site visit.

10. In determining which risks to prioritise, the assessment team reviewed materials submitted by The Bahamas, as well as open source documents. The assessment team also took into consideration the fact that The Bahamas had not completed its NRA exercise. The assessment team determined the following to be relevant to The Bahamas:

Threats

- i. Criminal Activities:* Due to its geographical characteristics¹, The Bahamas is a major transit country for illegal drugs, particularly shipments to the US and Europe. The Bahamas is also used for illicit trafficking of arms from North America, smuggling of tobacco products², and smuggling of illegal migrants into the US. The latter is mitigated by the fact that The Bahamas is considered a Tier 1 Country regarding human trafficking, which means that they fully comply with the Trafficking Victims Protection Act Minimum Standards.³ Further, according to the United States Department of State's INSCR⁴ which was published in March 2015, drug smuggling in The Bahamas is enabled and accompanied by organized crime and gang activity. The FIU has determined the top predicate offences to be fraud, illegal gambling, drug related offences, corruption⁵ and stealing which could also suggest break-ins and robbery as main predicate offences.⁶ With respect to corruption, a Commission of the Anti-Corruption Mechanism of the Organization of American States report was completed as a result of an onsite visit undertaken in September 2014. With regard to illegal gambling and web shops, it is important to note that the activity was regulated by the enactment of new legislation in November 2014. However, given the recent passage, implementation will have to

See: <https://www.cia.gov/library/publications/the-world-factbook/geos/bf.html>, consulted September 3rd, 2015.

² See: <http://caribbeannewsnow.com/topstory-Bahamas-cracks-down-on-tobacco-smuggling-14248.html>, <http://www.caribbeannewsnow.com/headline-Tobacco-smuggling-linked-to-organised-crime,-Bahamas-workshop-told-16810.html>, <http://www.thenassauguardian.com/bahamas-business/40-bahamas-business/44852-international-tobacco-firms-call-for-equal-treatment>, <http://www.tribune242.com/news/2014/jul/09/manufacturer-denies-untoward-behaviour-cigarette-s/>, consulted October 7th, 2015.

³ <http://www.state.gov/j/tip/rls/tiprpt/2015/index.htm>

⁴ <http://www.state.gov/document/organization/239560.pdf>

⁵ See Private Sector Assessment of The Bahamas, Private Sector Report, October 10th, 2014, Inter-American Development Bank.

⁶ <http://www.cruiselawnews.com/2015/05/articles/crime/8th-violent-crime-warning-for-the-bahamas-in-16-months>, consulted September 10th, 2015.

be assessed. The quantum of small arms and ammunition confiscations, indicate that the level of firearms trafficking and its associated proceeds is an increasing threat in The Bahamas.⁷

Vulnerabilities

- i. DNFBPs:*** As indicated by the Authorities, lawyers, real estate brokers and developers have a lower level of compliance in comparison with accountants with regard to understanding their AML/CFT obligations and registration with the CC which suggests some vulnerability in the AML/CFT regime.
- ii. IBCs:*** The possibility of IBCs and off-shore banks registered in The Bahamas being used to launder money in spite of strict KYC and transaction reporting requirements suggests vulnerability.⁸
- iii. Free Trade Zone:*** The existence of a Free Trade Zone (FTZ), as indicated by The Bahamas' government websites, coupled with lack of information regarding regulation or supervision of the FTZ raised initial concern about measures in place to prevent AML/CFT particularly given the vulnerabilities of FTZ for misuse⁹. However, during the onsite visit, the assessment team learned that the FTZ serves mainly as a transshipment facility for goods and that very stringent measures are in place for the screening of containers, particularly for biological, chemical and nuclear hazards. Bahamian Customs agents work very closely with US Customs and Border Protection onsite. There are also some manufacturers in the FTZ mainly manufacturing pharmaceuticals, medical and dental equipment, as well as Styrofoam.
- iv. Prosecutions:*** The policy to prosecute predicate offences rather than the offence of ML as indicated by the Authorities may hinder The Bahamas' ability to develop AML jurisprudence, including investigative capabilities, cause sub-optimal use of existing legislation, and the ability of the Courts to deal with these cases. This may also have an impact on The Bahamas' ability to confiscate the proceeds and instrumentalities of crime. This is an area that will require further attention

Materiality

11. The Bahamas' economy is based on tourism and financial services. The financial sector provides all the financial services of FIs as defined by the FATF and all types of DNFBPs are represented. As a percentage of total GDP, financial services represent roughly 15.0 percent and employs over 6,500 persons, or about four percent of the employed labour force. Total assets of the banking industry amounted to BSD\$279.2 billion in 2014, or roughly 44 times the country's GDP with 95.9 percent of assets offshore and 3.4 percent onshore. The international banks held 69.1 percent of banking assets with an asset base of

⁷ See: [Guns seized in The Bahamas 2013: http://www.thenassauguardian.com/index.php?option=com_content&view=article&id=43999:over-400-guns-seized-this-year-police-say&catid=3:news&Itemid=27](http://www.thenassauguardian.com/index.php?option=com_content&view=article&id=43999:over-400-guns-seized-this-year-police-say&catid=3:news&Itemid=27), consulted September 2nd, 2015.
[Guns seized in The Bahamas 2012 \(405 seized 99% of which originated in Florida\) Importation of illegal firearms is a major challenge for the Bahamas http://www.tribune242.com/news/2013/apr/18/us-gun-checks-would-have-helped-bahamas/](http://www.tribune242.com/news/2013/apr/18/us-gun-checks-would-have-helped-bahamas/), consulted September 2nd, 2015.

⁸ <http://www.state.gov/j/inl/rls/nrcrpt/2015/vol2/239056.htm> consulted November 9, 2015

⁹ See FATF's report on Money Laundering Vulnerabilities of Free Trade Zones, 2010 at: <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf>, consulted September 3rd, 2015.

BSD\$192.8 billion. Offshore banking activities are carried out mainly by subsidiaries and branches of international banks; and include group treasury activities, trust services and wealth management. Domestic banking is segmented from international banking due to exchange controls. Investment fund administration represent another major component of the jurisdiction's international financial business, with BSD\$134.6 billion under administration. The economy is still substantially cash-based. As an international business and financial centre with an open economy, The Bahamas is exposed to risks of regional and international ML/TF.

Structural Elements

12. Most structural elements are in place for an effective AML/CFT system. The Bahamas is politically stable and has demonstrated a high-level commitment in addressing ML/TF issues. The country has stable institutions which are accountable and operate with integrity. While rule of law is effective and the judiciary is capable and independent, there is a backlog of cases which has resulted in extended trial periods.

Background and other Contextual Factors

13. The AML/CFT regime for the banks, securities and insurance sectors is more developed than those for the DNFBPs. The legal and institutional framework is comprehensive. As an international financial centre, off-shore banks account for a significant portion of the financial sector. The Bahamas is the 24th least corrupt nation out of 175 countries according to the 2014 Corruption Perceptions Index reported by Transparency International.

Overview of AML/CFT strategy

14. There is no formal documented AML/CFT strategy. The functions of the Task Force (AML/CFT Policy body headed by the Attorney General) set up to coordinate ML/TF activities include among other things protecting the reputation of The Bahamas as a reputable international financial centre, preventing the criminal misuse of the banking system, anticipating and implementing effective counter measures to new/emerging trends in ML/TF and assisting relevant authorities in other countries in implementing their ML/TF obligations.

Overview of the legal & institutional framework

15. The responsibility for the implementation of AML/CFT policy in The Bahamas is divided between several Ministries and agencies as outlined below:

- **Ministry of Finance:** responsible for oversight of the financial services industry.
- **Office of Attorney General (OAG):** responsible for the International Legal Cooperation Unit (ILCU) which deals with mutual legal assistance and international co-operation, the

Department of the Director of Public Prosecutions which undertakes criminal prosecutions and the Registrar General which among other functions registers and certifies legal entities.

- **Financial Intelligence Unit:** an independent and autonomous body. It is responsible for receiving, analyzing, obtaining and disseminating information as it relates to or may relate to offences under the Proceeds of crime Act (POC) and the Anti_Terrorism Act (ATA).
- **The Royal Bahamas Police Force:** The primary law enforcement authority for ML/TF investigations. It has powers to access all necessary documents and information for use in investigations, prosecutions and related actions.
- **Central Bank of The Bahamas (CBB):** supervises banks, trust companies, non-bank money transmission businesses and credit unions for compliance with ML/TF requirements. CBB employs a risk-based supervisory framework in executing its duties.
- **Securities Commission of The Bahamas (SCB):** responsible for regulations of the securities industry and the financial and corporate service providers (FCSPs).
- **Insurance Commission of The Bahamas (ICB):** responsible for the regulation of the domestic and external insurance industry.
- **Compliance Commission (CC):** responsible for regulating DNFBPs.
- **Gaming Board (GB) :** responsible for licensing casino operators, casino employees, gaming house operators and gaming house employees. The Gaming Board is under the purview of the Ministry of Tourism

Overview of the financial sector and DNFBPs

16. The Bahamas comprises both onshore and offshore FIs which includes banks, trust companies, money service businesses, credit unions, insurance companies, securities firms and investment fund administrators. Foreign exchange activities may only be conducted by authorized banks. The types and numbers of financial institutions authorized to conduct financial activities and operations in The Bahamas are:

Table 1: Types and numbers of financial institutions in The Bahamas

Type	Number
Banks	252
Life Insurers	16 (12 domestic, 4 external)
Securities firms	146
Investment fund administrators	67
Investment funds	849
Money remitters (non-bank)	2

17. The size of the financial system in The Bahamas is approximately BSD\$281.2 billion about 32.1 times the GDP. The banking sector represents BSD\$279.2 billion, with 95.9 percent of the assets offshore and 4.1 percent onshore. International banks, in the aggregate, hold 69.1 percent of bank assets and

collectively had an asset base of BSD\$192.8 billion. The onshore banking sector is comprised of 8 commercial banks, all licensed by the CBB. Five of these commercial banks are foreign-owned; of which four are subsidiaries of Canadian banks and one a branch of a U.S. bank, with the remaining domestically owned. The size of the investment funds industry is BSD\$ 134.6 billion (net asset value per 31 December 2014). The securities industry is small, domestic, and relatively illiquid; with an aggregate value of BSD \$ 108 billion.

18. The Bahamas has an advanced intermediary insurance market which is made up approximately of 800 agents, sub-agents, brokers, salespersons and external insurance managers and brokers. Gross premiums tallied BSD\$425 million for life insurers and BSD\$347.5 million as at year end December 2014. External insurers' reported gross premiums of BSD\$135.5 million for the same period. The domestic and external insurance sector operate alongside each other but are not allowed to mix due to the foreign exchange controls. External insurers presently dominate the captive insurance business.

19. The DNFBP sector is comprised of 3 casinos catering to foreign visitors, 8 gaming houses catering to residents, 1,160 lawyers, 441 accountants, 46 dealers of precious metals and stones, 329 real estate brokers, 105 private trust companies and 310 financial corporate service providers (FCSPs).

Overview of preventive measures

20. The main legal basis of AML/CFT obligations for the FIs and DNFBPs and enforceable instruments through which they are applied, are as follows:

- The Proceeds of Crime Act, 2000, Ch. 93, (as amended);
- The Anti-Terrorism Act, 2004, Act No. 25 of 2004, (as amended);
- The Financial Transactions Reporting Act, 2000, Ch. 368, (as amended);
- The Financial Transactions Reporting Regulations, 2000, Ch. 368, (as amended);
- The Financial Transactions Reporting (Wire Transfers) Regulations, 2015;
- The Financial Intelligence Unit Act, 2000, Ch. 367, (as amended);
- The Financial Intelligence (Transactions Reporting) Regulations, 2001, Ch. 367, (as amended);
- The Central Bank of The Bahamas Guidelines for Licensees on the prevention of money laundering & countering the financing of terrorism (as revised);
- The Insurance Commission of The Bahamas AML/CFT-Guidelines for insurance companies (as revised);
- The Securities Industry (AML/CFT) Rules, 2015.
- The Anti Money Laundering & Anti-Terrorism Financing Handbook and Code of Practice each for lawyers, accountants, real estate brokers, FCSPs and credit unions (as revised)

Overview of legal persons and arrangements

21. A variety of legal persons can be formed and incorporated in The Bahamas. A breakdown of the types and the numbers is presented in the table below:

Table 2: Types and numbers of legal persons in The Bahamas

Types of legal persons	No registered	No active
International business company	173,907	34,977
Regular (local) company	57,060	38,705
Executive entity	53	48
Exempted limited partnership	312	209
Foundations	694	384
Investment Condominium	5	0
Limited duration company	212	72
Non-profit company	1,212	1,092
Segregated accounts company	131	112

22. As can be seen in the table above the most common form of legal person in The Bahamas is the IBC with 173,907 registered and 34,977 being active. This reflects The Bahamas' reputation as a company formation centre. FIs and lawyers can provide trust formation and management services including express trusts etc.

Overview of supervisory arrangements

23. The Bahamas has three financial sector supervisors: the CBB which licenses and supervises banks, non-bank money transmission businesses, trust companies, and credit unions; the SCB which regulates the securities and investment funds industry and FCSPs; and the ICB which regulates and supervises the insurance industry. DNFBPs are supervised by the CC and the GB.

24. The CBB operates under the Central Bank of The Bahamas Act, Ch 351(CBBA) which provides it with the powers, financing and other resources necessary to carry out its duties assigned by this legislation. Prudential supervision of banks and trust companies, credit unions, non-bank money transmission businesses and the requisite powers to do so are elaborated in the BTCRA. The CBB also supervises since 2015, credit unions. Under the BTCRA, the CBB can conduct onsite and offsite inspection of licensees and also impose a variety of sanctions for relevant breaches. The CBB is required under the BTCRA to conduct onsite and offsite inspections of licensees to ensure their compliance with the provisions of the BTCRA and the FTRA.

25. The powers and functions of the SCB are set out in the Securities Industry Act (SIA). The SCB is responsible for formulating principles for regulation, maintaining surveillance over industry participants and providing for the growth of the investment fund, securities and capital markets. Specific provisions relating to the regulation of the investment funds industry are found in the Investment Funds Act (IFA). The SCB was appointed IFCS on 1st January 2008 with the responsibility for administering the FCSPA. AML/CFT responsibilities, previously outsourced to the CC, were transferred to the SCB in April of 2011. The functions and duties of the Inspector are set out in section 11 of the FCSPA. Under the SIA the SCB has the power to conduct on-site and off-site inspections and is responsible for the AML/CFT supervision of its licensees and registrants.

26. The ICB is the primary prudential and market conduct regulator of all insurance activity in and through The Bahamas. The ICB operates under the Insurance Act 2005 (IA) and provides ongoing monitoring and control of all insurers, agents, brokers, salespersons, underwriting managers and external insurers. Its purpose is to ensure a sound and stable insurance marketplace and consumer confidence in the insurance industry. The mandate of the ICB includes compliance with FTRA and AML/CFT-legislation. The ICB has the power to conduct on-site and off-site inspections and can impose sanctions for relevant breaches.

27. The CC is responsible for supervising DNFBPs not otherwise supervised by a financial regulator, with the exception of casinos and other licensees of the GB and dealers of precious metals and precious stones which are supervised by the IFCS . Entities supervised by the CC include lawyers, accountants, real estate brokers and designated government agencies. The powers and responsibilities of the CC are outlined in the FTRA and include ensuring compliance of its supervised entities with the requirements of the FTRA and other AML/CFT obligations. The licensing or registration of the DNFBPs supervised by the CC is handled by the relevant professional bodies.

28. The GB supervises casinos and gaming houses. The GB operates under the Gaming legislations of The Bahamas namely the Gaming Act 2014 (GA), Gaming Regulations 2014 (GR), Gaming House Operator Regulations 2014 (GHOR) and Gaming Rules 2015 (GRU) and is responsible for ensuring compliance of casinos and gaming houses with AML/CFT requirements. The GB has the power to conduct on-site and off-site inspections and can impose sanctions for relevant breaches.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

The draft NRA has not adequately identified and assessed the ML/TF risks, and has limited utility in its current form for setting national AML/CFT policy. Given that the NRA process is yet to be concluded, identified ML/TF risks are yet to be addressed by national policies and activities. Whilst a draft AML/CFT strategy document was developed in 2008 there is no formal documented national AML/CFT strategy at present.

The Bahamas has established a good foundation for national coordination at the policy level through the Task Force. Cooperation and coordination could be strengthened through the formalisation of this body, such as through legislation. While the authorities indicated that there was a NAMLC to coordinate the NRA, there seem to be no clear separation between the policy-making body (Task Force) and the body responsible for domestic cooperation and coordination at the operational level (NAMLC).

Recommended Actions

- The Bahamas should complete the NRA process, analysing the threats and vulnerabilities within the context of the jurisdiction as an international financial centre.
- Results of the NRA should be made available to FIs and DNFBPs so that they may be aware of the ML/TF risks.
- The Bahamas should identify priority actions and allocate resources to mitigate ML/TF risks, based on the NRA.
- The Bahamas should improve cooperation and coordination by:
 - formally designating a body responsible for national ML/TF policy; and
 - having mechanisms in place for the relevant authorities to cooperate and coordinate with each other, particularly at the operational level

The relevant Immediate Outcome considered and assessed in this chapter is IO1. The recommendations relevant for the assessment of effectiveness under this section are R1-2.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/TF risks

29. The first ML/TF NRA was launched in late 2014 by NAMLC under the ambit of the Task Force, using the World Bank Methodology that contained the following modules: National Threats, National Vulnerabilities, Banking Sector Vulnerabilities, Securities Sector Vulnerabilities, Insurance Sector Vulnerabilities, Other Financial Institutions Vulnerabilities, Designated Non-Financial Businesses and Professions Sector Vulnerabilities, and Financial Inclusion. The Task force decided not to complete the Financial Inclusion module, but instead focus on the ML/TF threats and vulnerabilities.

30. Working groups were formed with participation of relevant enforcement and supervisory agencies, and input was sought from experts within the private sector. Also, questionnaires were sent to FIs and DNFBPs to collect additional information and statistics to complement existing data. Responses to the questionnaires were poor, and there were significant challenges in the collection and compilation of data from the relevant competent authorities. A draft copy of the ML/TF NRA was provided to the assessment team on the last day of the on-site visit.

31. Major domestic threats identified included fraud and drug trafficking. The NRA failed to fully discuss the inherent external threats that the jurisdiction faces as an international financial centre, such as tax evasion, the layering and/or integration of external funds derived from drug trafficking overseas, and securities fraud. The draft report indicated that the FIU did receive in the last fifteen years, two TF related STRs that were found to be unsubstantiated, and that there was no evidence of any non-profit organisations or charities being used for terrorist activities. There was no discussion with respect to national vulnerabilities. No indications of the overall vulnerabilities were given for or within the financial and DNFBP sectors for comparative purposes. However, the banking and securities sectors appear to be more vulnerable, based on the number of foreign ML information requests received by the FIU. The draft NRA report also acknowledged the inherent vulnerabilities of trust companies and FCSPs, particularly given their use of IBCs and the challenges of establishing beneficial ownership within a multi-jurisdictional context.

32. Competent authorities have a reasonable understanding of ML/TF risk as a result of the NRA process. However, this understanding needs to be placed within the context of The Bahamas as an international financial centre and shared with relevant stakeholders, particularly FIs and DNFBPs.

National policies and activities to address identified ML/TF risks

33. The Bahamas provided to the assessment team a draft of its first AML/CFT Strategy document (2007) which was completed by the FIU. The draft strategy outlined the following broad outcomes, which the authorities hoped to achieve:

- Better coordination of activities by financial services regulators and other agencies of the central government;
- Conservation of scarce resources namely time, equipment and personnel in both public and private sectors;
- Enhanced supervision and regulatory oversight of the financial services industry;
- Safeguarding of jurisdictional reputation; and
- Better communication between regulators and the industry responsiveness by regulators to industry's needs/concerns.

34. The authorities indicated that the draft AML/CFT strategy had never been finalised and needed to be revised and updated. No formal documented national AML/CFT strategy currently exists.

Exemptions, enhanced and simplified measures

35. No exemptions, or enhanced or simplified measures have been instituted as a result of the draft ML/TF NRA.

36. Low risk clients are specified in guidance as : 1) a government agency (national or local), 2) a Bahamian resident whose transactions are fully serviced by salary deductions or a financing arrangement through a prudentially regulated Bahamian FIs, 3) a regulated FI in The Bahamas, 4) a foreign FI from a

jurisdiction appearing in the First Schedule of the FTRA, 5) a foreign FI from any jurisdiction that is regulated and subject to a licencing process similar to that of Financial and DNFBP regulators in the Bahamas, 6) a publicly traded company or mutual fund listed on The Bahamas Stock Exchange or any stock exchange listed in the schedule to the Financial Transactions Reporting Regulations (FTRR), 7) regulated investment funds located in a country specified in in the First Schedule to the FTRA, and 8) a facility holder of a Bahamian dollar facility. Low risk transactions generally include transactions at or below the BSD\$15,000.00 threshold, but guidance provides warnings for FIs and DNFBPs to guard against those who may be structuring. Simplified due diligence means that the obligation to obtain the full complement of documentary evidence is relaxed.

37. High risk clients are described in guidance to include 1) financial intermediaries that are not subject to regulation that include licencing requirements, 2) intermediary arrangements where the real or beneficial owner of the funds is not the facility holder, 3) persons not ordinarily resident in The Bahamas, 4) persons resident or maintaining trading operations in locations known for organised crime, 5) persons resident or maintaining trading operations in locations known as drug producing/transshipment locations, 6) persons resident or maintaining trading operations in locations experiencing political instability, 7) persons resident or maintaining trading operations in locations designated by their relevant national authorities as high intensity financial crime areas, 8) persons from jurisdictions where the AML regulatory framework does not meet the standards provided for under Bahamian law, and 9) politically exposed persons (PEPs). High-risk products or transactions include a) cash transactions above \$15,000, non-face-to-face transactions, b) products that allow customers to easily receive cash back, and c) products or services which easily allow customers to move high value items from one jurisdiction to another. High risk clients require a higher degree of CDD, including the establishment of an approvals hierarchy when establishing the relationship, developing a profile and ascertaining expected activity by the client, and a higher degree of on-going monitoring.

Objectives and activities of competent authorities

38. During the 3rd round CFATF Mutual Evaluation Report for the Bahamas (November 2007) it was noted that the AML/CFT strategy involved the GFSR, which met on a monthly basis to coordinate policy regulation for the financial sector. Its main objective was to facilitate the sharing of information between domestic and foreign regulators. The Bahamas established a National ML/TF Task Force (Task Force) shortly thereafter to coordinate ML/TF activities and implement the provisions of international ML/TF standards. The main objectives of the Task Force are as follows:

- protect the reputation of The Bahamas as both a responsible and reputable international financial centre;
- prevent the use of the banking system for criminal purposes;
- prevent de-stabilization of the domestic economy while promoting legitimate economic activity;
- anticipate and implement effective counter measures to new/emerging trends in money laundering, terrorism financing and related activities; and
- assist relevant authorities in other countries in implementing their ML/TF obligations.

39. The following are the main ministries, agencies, and authorities responsible for formulating and implementing The Bahamas' AML/CTF policies:

- i. **Office of the Attorney General (OAG) and Ministry of Legal Affairs** – has overall policy responsibility for AML/CFT. Falling under this ministry is the Office of the Director of Public

Prosecution ODP) which has responsibility for the prosecution of criminal offenses. Also under the OAG is the ILCU which deals with mutual legal assistance and international co-operation. The Registrar General's Department (Companies Registry) also falls under the OAG and has responsibilities for the registration of companies.

- ii. **Group of Financial Services Regulators (GFSR)** – includes the Central Bank of The Bahamas (CBB), the Insurance Commission of The Bahamas (ICB), the Securities Commission of The Bahamas (SCB); and the Compliance Commission (CC); all of which fall under the responsibility of the Ministry of Finance.
- iii. **Gaming Board (GB)** - has the responsibility for licensing casino operators, casino employees, gaming house operators and gaming house employees and is under the purview of the Ministry of Tourism.
- iv. **Financial Intelligence Unit (FIU)** - responsible for the receipt, analysis and dissemination of Suspicious Transaction Reports (STRs), and falls under the Ministry of Finance.
- v. **Royal Bahamas Police Force (RBPF)** – includes the Drug Enforcement Unit (DEU), which is the main unit responsible for investigating STRs and is comprised of the Tracing and Forfeiture/Money Laundering Investigation Section (TF/MLIS) and the Commercial Crime Section (CCS). The RBPF falls under the Ministry of National Security.
- vi. **Royal Bahamas Defence Force (RBDF)** - is the naval force of the Bahamas which works with other agencies in support of border protection. The RBDF falls under the Ministry of National Security.
- vii. **Customs Department (Customs)** – falls under the Ministry of Finance with responsibility for all imports into and exports out of 32 ports of entry within the archipelagic jurisdiction.
- viii. **Immigration Department (Immigration)** - falls under the Ministry of Foreign Affairs and Immigration; and has the following border protection responsibilities of immigration, emigration, naturalization, citizenship, and work and residency permits.

40. Competent authorities have not had the opportunity to calibrate their objectives and activities in line with national AML/CFT policies and with ML/TF risks identified. The objectives and activities of some competent authorities are aligned with the known ML/TF risks. This is particularly true for the relevant enforcement agencies involved in drug interdiction and border protection. However, competent authorities should focus more on external ML/TF threats. When conducting risk profiles for its licensees and registrants, financial supervisors could focus more on assessing ML/TF risks in isolation instead of comingling ML/TF risks with prudential risks. Mechanisms also need to be in place to counter the risks related to TF and PF.

National coordination and cooperation

41. The Bahamas has established a good foundation for national coordination at the policy level through the Task Force. Cooperation and coordination could be strengthened through the formalisation of this body, such as through legislation. In so doing, the functions and the composition of that body would be known to all relevant agencies, FIs and DNFBPs. Furthermore, while the authorities indicated that there was a NAMLC to coordinate the ML/TF NRA, there seem to be no clear separation between policy-making body (Task Force) and the body responsible for domestic cooperation and coordination at the operational level (NAMLC). Another group referenced by the Authorities was NAMLG. The appointment of the Coordinator of NAMLG was formally approved by Cabinet in 2013. Accordingly NAMLG was given formal sanction as the policy body responsible for domestic cooperation and coordination of AML/CFT strategy

and began in 2014 to update the draft AML/CFT strategy document of 2007. NAMLG's relation to the Task Force and NAMLC was not made clear. However, the authorities indicated that in January, 2015, the NAMLG Coordinator resigned his post and the responsibility for NAMLG fell to the Office of the Attorney-General. The Attorney-General collapsed NAMLG into the Task Force, making it one policy making body for national AML/CFT cooperation and coordination. There are various MOUs and protocols that exist to facilitate the interagency cooperation and coordination among local regulators. The Joint Protocol between CBB and SCB, for examination of joint licensees and the GFSR forum are examples of such cooperation and coordination. These have been in place for the past several years.

Private sector's awareness of risks

42. While the ML/TF NRA process involved select members from the private sector, the broader private sector is not yet aware of the results of the NRA. Up to the time of the onsite visit, there were no briefings, guidance, or consultation. However, financial institutions and DNFbps were aware of the NRA process as they were sent survey questionnaires during the data-gathering phase. There has been outreach to the private sector over the years, particularly by financial supervisors, focussed primarily on technical compliance and regulatory expectations rather than awareness of identified ML/TF risks.

Overall Conclusion on Immediate Outcome 1

43. The draft NRA has not adequately identified and assessed the ML/TF risks, and has limited utility in its current form for setting national AML/CFT policy. Given that the NRA process is yet to be concluded, identified ML/TF risks are yet to be addressed by national policies and activities. The draft NRA report does not fully discuss inherent external threats or national vulnerabilities. Furthermore, the draft NRA report does not contain an action plan that would indicate the necessary measures to mitigate ML/TF risks. The results of the draft NRA are not yet known to FIs and DNFbps. Whilst a draft AML/CFT strategy document was developed in 2008 there is no formal documented national AML/CFT strategy at present. Financial supervisors conflate prudential risks with ML/TF risks in profiling their licensees. The Bahamas' understanding of ML/TF risks needs to be placed within the context of the jurisdiction as an international financial centre and shared with relevant stakeholders, particularly FIs and DNFbps.

44. Competent authorities develop policies and cooperate through a long established Task Force as noted in the 2007 MER for The Bahamas. No supporting evidence regarding the designation of this body was provided to the assessors. While the names of other bodies were given, such as NAMLC and NAMLG, the authorities indicated that NAMLG was subsumed into the Task Force, making it one policy making body. The separation between policy level and operational level of cooperation was unclear. At the operational level, there is clear cooperation and coordination among the relevant agencies involved in border protection as well as among financial supervisors through the GFSR. However, there is little evidence of broader coordination and cooperation in matters related to the mitigation of identified ML/TF risks.

45. **The Bahamas has a low level of effectiveness for IO.1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

The Bahamas FIU appears to be a well-structured and resourced unit. The FIU carries out operational and strategic analysis. While the financial intelligence disseminated by the FIU is generally of good quality, the LEA indicated that some of it required additional work in the furtherance of ML investigations. The FIU has co-operated domestically with other competent authorities in The Bahamas and internationally with foreign FIUs.

The Bahamas in practice places emphasis on investigating predicate offences rather than ML. This has evolved due to advice from the ODPP to the LEA regarding the best possible prosecutorial outcome during the investigative phase of matters. The LEA lack the capacity to effectively pursue ML and do not have the specialised human resources necessary to properly conduct ML investigations. Current staff is not adequately trained in ML investigation.

The authorities prefer the confiscation/forfeiture of criminal proceeds from predicate offences as opposed to ML. There have been no ML convictions in The Bahamas and thus no confiscation of ML proceeds nor have there been any confiscation of terrorist property and or funds. In the absence of a completed NRA or formally documented national AML/CFT policies the assessors are unable to evaluate whether the confiscation results are consistent with the country's ML/TF risks. With no cross-border declaration system in place, there has been no confiscation of cash and BNIs due to false declaration.

Recommended Actions

IO. 6

- During its review process The FIU should continue to seek to improve the quality of its product to ensure that it remains relevant and meets the need of the LEA, in furthering its investigations. An analysis of the responses provided in the feedback form, which is sent along with the STR may help in this regard.
-
- The continued development of policies to treat with operational and strategic analysis is required. This would achieve a range of value to the FIU's financial intelligence products and build its capacity in the process. A lot more focus has to be concentrated on the ML/TF risk.
- It is suggested that workshops be conducted between the FIU, Customs, LEAs and other local authorities with a view to strengthening the relationship between the entities. This would also assist in the development of a framework for those entities to send and the FIU to receive feedback on the quality of the intelligence reports disseminated to those entities The resulting factor being that the LEA and other local authorities are able to use the product in the furtherance of their investigations into ML and TF.

- The FIU should provide more feedback to FIs and DNFBPs.
- Also a diligent look at TF is required, from an FIU perspective. Training in this area would be useful.
- Efforts should be made to develop other secure means of exchange of information with the LEAs.

IO. 7

- The LEAs with advice from the ODPP should actively seek to conduct ML investigations.
- Staff of the LEAs should be provided with continuing training to conduct ML investigations.
- Members of the judiciary and the ODPP should be trained in AML law and prosecutions.
- The LEAs should be provided with staff with relevant expertise to conduct ML investigations i.e. forensic accountants, financial analysts, certified investigators etc.
- Consideration should be given towards amending the POCA in order to make it less onerous for matters to be successfully prosecuted.
- The Bahamas should put in place measures commensurate with the risk to identify and pursue the proceeds of foreign tax evasion.

IO.8

The authorities need to pursue the confiscation/forfeiture of criminal proceeds from ML offences equally as with predicate offences.

The T&F/MLIS needs to aggressively identify and trace the proceeds and instrumentalities of crime or assets of equivalent value in fulfilment of its remit.

A national policy on AML/CFT confiscation measures consistent with national ML/TF risks should be developed to ensure compliance with the FATF standard.

The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R29-32.

Immediate Outcome 6 (Financial intelligence ML/TF)

Use of financial intelligence and other information

46. The FIU of the Bahamas was established by legislation pursuant to section 3 of the Financial Intelligence Unit Act Chapter 367(FIUA). The unit has made considerable strides as an organization in building its capacity. The FIU is presently staffed by a compliment of (23) twenty three staff members, inclusive of nine (9) Analysts, four (4) IT officers, a Legal Counsel and an Accountant, who are appointed by the Minister of Finance. The office was well equipped and had an up to date IT system with adequate storage space and filing system to secure its intelligence reports. Access to certain areas in the FIU was controlled through the use of an access card. The servers were secured in a specific area to which access was controlled. At the FIU all users are issued their own credentials which are required to log into their respective PCs. All PCs and servers are protected by primary firewall and antivirus software, there is also a secondary machine that provided additional firewall and proxy protection. All servers are backed up regularly on

magnetic tape. All electronic data is stored on servers in the server room. The server room is secured by a double lock door and security bars. This room is accessed only by the IT Manager and/or his designate in his absence..

47. The FIU is an independent and autonomous body and is considered to be a quasi-governmental agency with responsibility to the Ministry of Finance. The Minister of Finance derives his authority from section 5 of the FIUA, which empowers him to give the FIU directions of a general nature in writing as to the policies to be followed by the FIU in the performance of its functions as it appears to be requisite in the public interest. The Minister's power is however limited and does not interfere with the operational independence and autonomy of the FIU. The FIU has asserted that there has been no interference by the Minister, and that the Director is responsible for the overall operation of the FIU.

48. The main sources of information used in the analytical process are the STRs, United States Customs declaration forms, CBB information regarding foreign currency, investigations of the ICB and the LEA. Analysts are required to gather supporting documentation, check various public and private databases, such as the Customs, National Insurance Board, the Companies Registry and request additional documents and information as appropriate. The FIU can also access relevant information through production orders to governmental agencies, such agencies being: -

1. Office of the Attorney General
2. Immigration Department
3. National Insurance Board
4. Business Licence Department
5. Port Department
6. Supervisory Authorities (CBB, SCB, ICB, CC and the GB)
7. Registrar General's Department (Civil Registry)
8. Passport Office
9. Auditor General

49. The Bahamas has indicated that significant efforts have been made to improve the analytical capacity of the FIU to analyze STR's from reporting FIs. Analysts are required to gather supporting documentation, check various public and private databases, and request additional documents and information as appropriate. It also indicated that the FIU employs the use of operational and strategic analysis. In its policy and procedure manual, amended September 25th, 2015 mention is made of the fact that during the analytical process a determination is made using a risk based approach on the need to conduct operational and or strategic analysis. Further to this the assessors were advised that a new policy to improve operational and strategic analysis was being developed by the FIU. The FIU indicated that based on the operational analysis done on STRs received from FIs and DNFBPs the FIU has identified and listed the following AML/CFT predicate offences during the period 2011-2013:-

1. Fraud

2. Drug Trafficking
3. Money Laundering
4. Illegal Gambling
5. Corruption
6. Regulatory Matters
7. Revenue Fraud
8. Suspected Proceeds of Crime
9. Insider Dealing
10. Stealing
11. Human Trafficking
12. Terrorism

50. The major consumer of the FIU product is the RBPF. Within the RBPF intelligence reports are disseminated to two major departments namely the Tracing Forfeiture and Money Laundering Investigations Squad and the Business and Technology Unit. The LEA has indicated that while for the most part the quality of the intelligence reports received from the FIU is good, sometimes the information received is inaccurate. This does not directly preclude the furtherance of investigations into ML and other associated predicate offences. The LEA often has to return to the FIU for more information, which is readily provided in most instances, save for circumstances outside the control of the FIU. There is no mechanism for the FIU to evaluate its product, except for correspondence which is sent to the LEA. The FIU has however indicated that it has regular meetings with the LEA in an effort to aid the investigative process. Based on the draft NRA the authorities identified TF as a low risk, accordingly there is little emphasis being placed on TF. The FIU indicated that two reports concerning TF were received in 2011; they were analyzed and closed. Further the FIU has not seen any evidence of TF. However the assessors are of the view that financial intelligence should play a greater role in identifying TF for investigations notwithstanding the low risk.

51. During the period under review 2011 to 2014, the LEA had direct access to a wide range of financial intelligence which were obtained from various sources, namely: public databases (Business Licence Department, Road Traffic Department, Department of Inland Revenue, Registrar General Department, etc), non-public databases (Insurance companies, Trusts, securities, real estates, Web Shops, etc), Bahamas Customs, FIU, arrests, complaints filed by FIs, corporate entities, private citizens and regulated sources. Section 35(1) of the Proceeds of Crime Act (POCA) permits the LEA to apply for a production order which is served on FIs directing them to provide the requested information. As such the BTCS used the financial intelligence in its investigation to trace the criminal proceeds derived from fraud and other financial crime offences. From 2011 to 2014 the financial intelligence received was used in the furtherance of criminal charges relative to the predicate offence of fraud and not ML.

52. Generally there seems to be an ineffective application of financial intelligence and other relevant information in the development of evidence with regards to ML offences, and other associated predicate offences, and TF by the LEA. This may be symptomatic of an investigative deficiency, or a deficiency in the financial intelligence. During the period under review a total of two hundred and twenty STRs were disseminated to the LEA, notwithstanding this only a total of forty-five production orders were applied for by the LEA, and an even more negligible number of fifteen search warrants. It is uncertain as to whether those investigative tools were used in relation to the investigations into ML and other associated predicated offences. As regards TF the FIU indicated that there was no merit in STRs filed on TF and thus they were both closed. Effectiveness is not being demonstrated with respect to the analysis and dissemination of financial intelligence. The intelligence is not being used by the LEA to further investigations in ML .

53. The assessors are of the view that law enforcement places major emphasis on drug trafficking investigations, while little emphasis is placed on ML and TF. The assessors are of the view that greater emphasis by the LEA is needed to ensure that financial intelligence is used to target ML and TF investigations,

54. The FIU receives all its STRs from FIs and DNFBPs. No reports are received by the FIU on currency and bearer negotiable instruments. The FIU however indicated that the quality of the STRs are sometimes not satisfactory and believes that some FIs can provide a better quality product. The FIU has provided guidance to FIs and DNFBPs on this issue at relevant industry seminars and conferences. This should be coupled with the fact that the majority of interviewed reporting entities indicated that there was nominal feedback from the FIU on STRs filed save for an acknowledgement of receipt of the STRs. There is an apparent lack of enthusiasm by reporting entities to file STRs as they are unaware of the outcome and therefore may question the utility of the exercise. This may in no small measure be contributing to the fluctuation in STRs received by the FIU during the period 2011-2014. It may also be contributing to the small number of STRs which are being filed in The Bahamas.

STRs received and requested by competent authorities

Table 3: No of STR's closed and disseminated by the FIU 2011-2014

	2011	2012	2013	2014	Total
Open	0	11	40	71	122
Closed	86	110	164	105	465
Sent to Police	97	46	66	29	238
Total	183	167	270	205	825

55. The FIU indicated that the time frame for the dissemination of information may take at best 1-2 months. In some instances it has taken longer. The figures provided by the FIU demonstrated a decline in disseminated reports to the LEA, while a consistently high number of STRs are closed. No reason was advanced for this. Further the figures supplied at table 3 is at variance with table 4 below, since the number of STR's to be analysed do not reconcile with the numbers opened, closed, or sent to the police. The FIU attributes this to table 3 and 4 being provided to the assessors at different points in time. The figures may suggest that the quality of STRs being filed by FIs are less than adequate, a factor previously explored or that the FIU is short on analytical staff and therefore employs a more stringent method of sifting of the filed STRs. Presently there is a backlog of STRs at the FIU. There is sometimes a delay in the analysis of STRs due to the quality of STRs sent by some FIs. The FIU believes the quality can be improved; and in particular the insurance and securities sectors can do better. According to the FIU these FIs report the least number of STRs. The FIU has sent guidelines and public notices to FIs and DNFBPs.

56. The assessors were informed that the FIU has used both operational and strategic analysis, to assist the CBB and other regulatory bodies, including SCB and ICB. During the on-site, the FIU provided information to support this initiative. In addition, the FIU has also provided information to other supervisory authorities to assist in their fitness and propriety test. Further through its analysis it looked at general criminality and the number of reports received to make a determination as to the number one threat.

Table 4: Nature of Criminality suspected by the FIU

	2011	2012	2013	2014	Total
Terrorism					0
Revenue Fraud					0
Insider Dealing					0
Shop Breaking					0
Human Trafficking					0
Extortion					0
Regulatory Matters	1				1
Arms Trafficking			1		1
Corruption			2	1	3
Illegal Gambling			13		13
Drugs	2	4	5	4	15
Unknown/Undetermined	26	14	8	3	51
Fraud	28	14	6	8	56
Other	36	16	8	1	61
No Criminality Suspected	53	54	58	53	218
Being Analyzed	37	65	169	135	406
Total	183	167	270	205	825

57. As indicated in the above table, fraud is the most prevalent predicate offence reported through STRs and this provides a basis for considering it a high AML/CFT risk at a national level. The following offences in descending order are drugs and illegal gambling.

Cooperation and exchange of information/financial intelligence

58. The assessor found that there was a commitment by the FIU to co-operate with other competent authorities and exchanges information and financial intelligence. The FIU has formal arrangements namely MOUs with The Bahamas Customs dating back to 2009, allowing for it to access the Customs data-base. There is also co-operation with the RBPF; this is facilitated through members of the RBPF being seconded to the FIU. This no doubt greatly enhances intelligence sharing and development. This arrangement is based on section 3 (2) of the FIUA which provides for the FIU to consist of police officers appointed by the Commissioner of Police on the recommendation of the Director of the FIU.

59. The FIU co-operated with the banking sector with regard to an online fraud hacking of the banking sector. This information was used by the banks to strengthen their security system and publish notices to their customers.

60. The exchange of information between the FIU and the LEA is done strictly through a hand delivery system. The Bahamas FIU has been a member of the Egmont Group of FIUs since 2001 and has been using the Egmont secure website to share information with foreign FIUs. During the period 2011 – 2014 the FIU requested information from and received requests from foreign FIUs relating to AML/CFT as indicated in the table below.

Table 5: Information requests sent and received by the FIU from 2011 - 2014

Year	Requests sent	Requests received
2011	104	89
2012	69	67
2013	56	77
2014	58	47

61. During the listed period the FIU signed MOUs with other countries for the sharing of information, namely;- Republic of Macedonia, Republic of South Africa and Russia.

Overall Conclusion on Immediate Outcome 6

62. The Bahamas FIU appears to be a well-structured and resourced unit. The FIU can make arrangements for information exchange with domestic competent authorities and foreign counterparts. The FIU is an independent body and has its own distinct structure and core functions. The FIU has its own operational resources, including financial budget and can enter into contractual arrangements in keeping with its core functions as outline in Section 4 of the FIUA. The FIU conducts operational and strategic analysis, it also advised that it was developing a new policy on such. While the financial intelligence disseminated by the FIU is generally of good quality, the LEA indicated that some of it required additional work in the furtherance of ML investigation. Figures provided by the FIU show that there has been a decline in the dissemination of reports to the LEAs from 97 in 2011 to 29 in 2014. The FIU also indicated during the onsite that there was a backlog of STRs. This is also evident from the figures provided by the FIU which shows that there was double the amount of STRs being analysed than disseminated. This may be attributed to insufficient analytic staff. The FIU has co-operated domestically with other competent authorities in The Bahamas and internationally with foreign FIUs.

63. **Overall, The Bahamas has achieved a moderate level of effectiveness for IO.6.**

Immediate Outcome 7 (ML investigation and prosecution)

ML identification and investigation

64. The Bahamas predicates its ML investigations and prosecutions on a coordinated approach between the LEA and the ODPP. The T&FMLS and the BTCS are the agencies with responsibility for the investigation and prosecution of ML.

65. The T&FMLS was established under the authority of the Commissioner of Police and became operational in June 1993. Its major goal was the identification of money based offenders, tracing their ill-gotten gain and applying the law with the aim to seize and forfeit valuable assets, thereby taking the profit out of criminal conduct. It is responsible for targeting individuals concerned in criminal conduct or money laundering. The BTCS has as its remit the responsibility for the investigation of all financial crimes. These crimes are inclusive of fraud, stealing by reason of employment, stealing by reason of service, counterfeit

currency and forged documents. Based on the RBPF Standing Orders, (Section G5) the T&FMLS has the responsibility for the investigation of ML. While the BTCS does not have this as its remit it is the unit responsible for the lone ML case presently before the court. The matter resulted in a conviction post onsite.

66. While the units are staffed collectively by thirteen officers there has been no ML conviction for the period under review. Two of the officers have some limited exposure to financial crime investigations. Additionally there are also legislative and institutional challenges which collectively contribute to what can be considered an extremely low degree of effectiveness.

67. The LEA lacks the capacity to effectively pursue ML. The LEA does not have on its staff roster any specialized human resources, any financial analyst, accountant, forensic accountant, attorney or certified financial investigators to properly analyse and investigate intelligence reports. This makes it extremely difficult to identify and investigate ML promptly and effectively. The authorities have indicated that these skill sets are sourced when required and legal advice is obtained from the ODPP.

68. The LEA enjoys a favourable working relationship with the FIU and the ODPP. The ODPP plays a pivotal role in the advancement of matters being pursued by the LEA both at the investigative and prosecution stages, and is relied upon heavily by the LEA. At the investigative phase the ODPP provides advice as to the type of charge with the best possible prosecutorial outcome that can be laid based on the details of individual cases. The FIU relationship has been fostered by the fact that members of the FIU are also police officers. There still remain challenges, such as the quality of the financial intelligence product being disseminated by the FIU to the LEA. (see IO.6)

69. The ODPP and the LEA cooperate during investigations and prosecutions of criminal predicate offences, however very little emphasis is placed on ML cases. The authorities are of the view that POCA provides a tool for the LEA to obtain the proceeds of crime and it was more prudent to proceed with forfeiture than to charge for ML. The view seems premised on the assumption that forfeiture and confiscation is a far greater deterrent than prosecution of ML. The above view influences investigations conducted by the LEA. This together with the ODPP's advice as to the charge best suited to the facts of cases results in little emphasis being placed on ML cases. There were ten specialized prosecutors to deal with financial crime. ML investigations are not being pursued by the Authorities and therefore the need to apply other criminal justice measures doesn't arise.

Table 6: Investigations conducted by LEA from 2011 - 2014

Types of matters	2011	2012	2013	2014	Total
Corruption	3	2	5	2	12
Fraud	4	10	15	17	46
Drugs	24	0	7	4	35
Money Laundering	0	0	9	1	10
Illegal Gambling	25	12	7	6	50
Undetermined	44	13	21	10	88
Proceeds of Crime	3	8	15	16	42
Total	103	45	79	56	283

70. As is evident from the above table 6 there have been only ten ML investigations during the period 2013 to 2014. The only specified offence with less investigations is corruption. This reflects the limited priority given to the investigation of ML as opposed to other predicate crimes.

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

71. The Bahamas does not have a national AML/CFT policy, which is informed by their assessed ML/TF risks. During the onsite The Bahamas indicated that the country's first NRA was still being completed. While the LEA personnel asserted that they were aware of the ML risk and understood the implication to the country; this was not manifested in investigations and prosecutions for ML. Focus is placed on the predicate crimes such as drug trafficking and fraud which are considered the highest risk rather than ML. LEA officials listed the following concerns, which negated pursuing ML:-

- Inadequate staffing to effectively investigate and prosecute ML
- Current work volumes encourage the investigation of predicate offences rather than the laundering of criminal proceeds
- Investigators lack adequate training in ML investigations
- Emerging technology
- Criminal proceeds in fraud matters are laundered out of the jurisdiction
- No effort is made to pursue ML in instances where fraud matters are terminated when the accused opts to pay the victim.
- The average length of time before a criminal matter is adjudicated in the court is 3-5 years.

72. Parallel ML investigations were not considered before, as the focus is on prosecution of the predicate offences only. However, parallel investigations are now being conducted by the BTCS as part of a new police initiative to combat ML. This clearly is a step in the right direction, as the BTCS is the LEA that presently has the only ML case before the courts of The Bahamas. This arose out of a major fraud offence.

Types of ML cases pursued

73. As previously indicated the policy to focus on investigating predicate offences rather than ML has resulted in only one ML case being presently before the court. This case resulted from a major fraud offence. Given that The Bahamas is a substantial off-shore financial centre with a large number of international business companies this is inadequate.

74. With regard to tax crimes The Bahamas has not specifically, by way of nomenclature, identified foreign direct tax evasion as a predicate offence for ML. This was attributed to the country not having any direct tax regime. This raises the question as to how The Bahamas deals with foreign tax evasion. However the authorities concluded that such offences were considered as fraud and thus were covered under the

country's legislative frame work as set out in the POCA, the Penal Code and the Criminal Justice (International Cooperation) Act (CJICA).

75. . While the legislative framework is technically compliant, there has been no instance of ML investigations, prosecutions or convictions involving the predicate offence of foreign tax evasion. In the context of the high risk of foreign tax evasion for The Bahamas as identified in the draft NRA, this indicates a lack of effective implementation. It is recommended that The Bahamas put in place measures commensurate with the risk to identify and pursue the proceeds of foreign tax evasion.

Effectiveness, proportionality and dissuasiveness of sanctions

76. There have been no ML convictions in The Bahamas for the previous four years. Hence there is no evidence to assess the effectiveness proportionality and dissuasiveness of sanctions.

Overall Conclusion on Immediate Outcome 7

77. The LEA enjoys a favourable working relationship with the FIU and the ODPP. The ODPP plays a pivotal role in matters being pursued by the LEA and is relied upon heavily by the LEA. The Bahamas in practice places emphasis on investigating predicate offences rather than ML. This has evolved due to advice from the ODPP to the LEAs during the investigative phase of matters. Recently, as a result of a parallel ML investigation the BTCS has the only ML case currently before the court. The LEAs lack the capacity to effectively pursue ML. The staff roster does not possess the specialised human resources necessary to properly conduct ML investigations nor are current staff adequately trained in ML investigation. While the LEA indicated that they recognised that training was critical and important, they also openly admitted that there had been a lull in training at the department. The Bahamas has not displayed characteristics of an effective system.

78. **The Bahamas has achieved a low level of effectiveness for IO.7.**

Immediate Outcome 8 (Confiscation)

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

79. The Bahamas has a robust legislative framework that deals with confiscation, and has successfully been able to undertake confiscation action in relation to matters under POCA.

Table 7: Number of confiscations for period 2011 - 2014

Type of matters	2011	2012	2013	2014	Total	Total Confiscated BSD
Proceeds of crime	3	8	15	16	42	\$2,077,403.00

Cash			1		1	\$348,928.00
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80. Notwithstanding the above table, in 2014 the BTCS which is responsible for fraud and other financial investigations reported that it received a total of 379 complaints from victims who reported total losses of \$5.1 million. Forty five percent (45%) of the sum which amounted to \$2.2 million was related to fraud. This was a decrease from the previous year which saw fifty six percent (56%) or \$4.5 million related to fraud. Despite the significant amount related to fraud the LEA advised that approximately 60 percent of this sum relates to fraud committed by foreign perpetrators and the proceeds laundered to other jurisdictions. According to the LEA measures were taken to trace and seize proceeds laundered to other jurisdictions through Interpol. During the period under review the BTCS has had numerous successes in apprehending and charging criminal offenders with domestic cases of fraud. For the period 2011-2013, 508 domestic criminal matters were prosecuted, however 176 was discharged due to nonappearance of complainants, 50 were withdrawn by complainants who were compensated by the accused, 139 are pending outcome of trial, 112 matters resulted in convictions, where the convicted was fined and ordered to pay restitution.

81. Prior to 2015 the policy in The Bahamas was that upon conviction the accused were ordered to pay a fine and or restitution. As a result of policy changes enumerated in paragraph 73, a fraud matter was completed in the Supreme Court which resulted in \$53000.00BDS being confiscated to the crown. The precedent paved the way forward for the LEA to conduct a parallel ML case before the court.

82. There has been no freezing and confiscation cases of terrorist property. The Bahamas has reported that there is no evidence of terrorist activity in the country. Two STRs on terrorism were filed with the FIU but were closed following analysis.

83. The Anti-Terrorism Unit of the RBPF is mandated to investigate all forms of threats of terrorism in The Bahamas. The T&F/MLIS and the BTCS are responsible for investigating financial crime including TF.. Notwithstanding legislation dealing with terrorist financing there have been no reported cases of such.

84. The Bahamas in practice prefers the confiscation/forfeiture of criminal proceeds from predicate offences as opposed to ML. The authorities are of the view that prosecuting the offender for predicate offences and seeking to confiscate their proceeds is the most effective approach. The Authorities indicated that a further 15 proceeds of crime matters from previous years were completed during the period under review and the sum ofBSD \$881,086.00 was forfeited.

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

85. . At the time of the onsite The Bahamas had a declaration system for passengers departing to the United States under the Preclearance Agreement Act. During the period 2011 to 2014 there were forty-two (42) breaches of the Preclearance Agreement Act where a total of BSD \$949, 378 was confiscated.

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

86. The draft NRA identified fraud and drug trafficking as the country’s highest risk. Based on the information gleaned during the onsite the assessors formed the opinion that the value of confiscation is not commensurate with the country’s risk. Some effort is being made to confiscate the proceeds of fraud. The

authorities advised that the victims refuse to give evidence in these matters once they have been compensated for their loss and as such the matters are discontinued. Statistics provided by the DEU indicated that a total of BSD\$5,244,109.82 in cash and instrumentalities including vehicles and vessels were seized arising out of drug seizures however no statistics were provided in respect to how much if any was confiscated. During the onsite the assessors formed the opinion that the value of confiscation is not commensurate with the country's risk.

Overall Conclusion on Immediate Outcome 8

87. The authorities prefer the confiscation/forfeiture of criminal proceeds from predicate offences as opposed to ML. There have been no ML convictions in The Bahamas and thus no confiscation of ML proceeds nor have there been any confiscation of terrorist property and or funds. In the absence of a completed NRA or formally documented national AML/CFT policies the assessors are unable to evaluate whether the confiscation results are consistent with the country's ML/TF risks. With a limited cross-border declaration system in place, there has been confiscation of cash and bearer negotiable instruments (BNIs). However based on an analysis of the information provided the assessors formed the opinion that the value of confiscation was not commensurate with the risk. Going forward it is anticipated that there would be greater frequency of confiscation of the proceeds of crime in The Bahamas, given the change in policy.

88. **The Bahamas has achieved a low level of effectiveness for IO.8**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

The Bahamas has assessed its TF risks in the draft NRA and the draft National Strategy for the Prevention of Money Laundering and the Financing of Terrorism 2010. There have been no TF investigations or convictions in The Bahamas. The Bahamas is unable to demonstrate an effective system to address and mitigate TF risks.

The Bahamas does not have an effective system for TFS due to deficiencies in the legislative framework. There have been no cases of freezing terrorist property or deprivation of assets and instrumentalities related to TF activities. As such The Bahamas is unable to show effective implementation of UNSCRs applicable to TFS. While there is legislation for the registration and regulation of NPOs the measures are not effective for preventing the abuse of NPOs by terrorists.

The Bahamas does not have an effective system for targeted financial sanctions related to proliferation financing. Deficiencies in the legislative framework include freezing not occurring without delay and no procedure for de-listing. There have been no identification of assets and funds held by designated persons and prohibitions relating to proliferation. Many interviewed FIs and DNFBPs were not aware or had minimal knowledge of proliferation and the vast majority did not understand their obligations in relation to proliferation. Monitoring for compliance in relation to proliferation by competent authorities is generic.

Recommended Actions

IO. 9

- The Bahamas should finalise its draft NRA and national AML/CFT policies and strategies in line with the NRA should be developed.
- There should be greater emphasis placed on identifying TF. Further, focus on ensuring the capacity and framework is present should the need arise to investigate and prosecute TF.
- More training should be provided to the staff of the LEAs.

IO. 10

- Establish in legislation, mechanisms for domestic designation, freezing without delay, delisting and unfreezing procedures in accordance with UNSCR 1267 and UNSCR 1373 and successor resolutions.
- Implement measures for the timely dissemination of UN lists to FIs and DNFBPs.
- Guidelines on obligations relating to UNSCR 1267 and 1373 should be issued to FIs and DNFBPs.
-

IO.11

- All aspects of UNSCR 1718/2006 and UNSCR 1737/2006 should be implemented.

- Legislative provisions should be put in place to require freezing without delay for TFS in relation to proliferation financing and delisting procedures pursuant to UNSCR 1730.
- Measures for monitoring and ensuring compliance of all DNFBPs with proliferation financing obligations should be put in place.
- Guidelines should be developed and training extended so that FIs and DNFBPs are aware of their obligations regarding TFS in relation to proliferation financing.
- FIs and DNFBPs need to be monitored more stringently to ensure compliance with obligations for TFS in relation to proliferation financing.

The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

Immediate Outcome 9 (TF investigation and prosecution)

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

89. The draft National Strategy for the Prevention of Money Laundering and the Financing of Terrorism which contains analysis of The Bahamas' ML/TF risks was first formulated by FIU in 2008 and updated in 2010. The document was not formalized. The draft NRA does not give a full analysis on risks and vulnerabilities related to TF. Instead, TF is briefly mentioned in each sub-category in the draft NRA. The offshore banking sector is rated at a moderate level of risk for TF. While the authorities indicate that there are stringent measures in place for monitoring the banking institutions, the assessors view the offshore banking system as vulnerable to TF in particular in the creation of legal persons such as IBCs which are a significant part of the services offered by company service providers in The Bahamas. NPOs have not been given a rating in relation to TF. FIs that were interviewed understand their obligations in relation to TF risk. DNFBPs do not understand the obligation; there has been limited outreach to DNFBPs in relation to this. The Bahamas has not assessed DNFBPs risk in this area and guidance has not been issued.

90. The Bahamas has a legislative framework for criminalizing TF. The only reported terrorist indication was the filing of two STRs on TF with the FIU. The reports were closed once analysts assessed them as not meriting further investigation. To date there have been no investigations or prosecutions in TF. Effectiveness of implementation of the legal framework has not been demonstrated by The Bahamas. as no information was provided in relation to the procedures the LEA have in place should TF cases arise.

TF identification and investigation

91. The Anti-Terrorism Unit of the RBPF is mandated to collect, collate, analyse and disseminate all information relevant to terrorism and investigate all forms of threats of terrorism in The Bahamas. The unit is also responsible for responding to explosive related incidents and bomb threats. When formed in June 2007 originally as Explosives Technicians Unit, the unit comprised of an Assistant Superintendent, 8 officers, 2 technicians and 6 investigators. The staffing for the unit currently is the same. The T&F/MLIS and the BTCS are responsible for investigating financial crime including TF. Currently there is one person in the BTCS trained in TF. The LEA has indicated that to date no reports of TF have been received by them from the FIU, FIs or public reflecting their assessment of the low risk of TF in The Bahamas. As such there have been no TF investigations, prosecutions or convictions in The Bahamas.

92. No evidence was provided to show any formal policy, procedure or mechanism to identify and investigate TF cases. The authorities advise that while TF is not prioritized by the LEAs, any occurrence will be dealt with accordingly. The departments responsible for TF investigations are also responsible for investigating other crimes and their normal duties. Noting that the TF risk in The Bahamas is low, the assessors are of the view that staffing for the departments responsible for TF investigations is adequate.

93. The LEA lacks experience in relation to TF investigation. However the LEA responsible for TF is knowledgeable. Officers of the Anti-Terrorism Unit have attended a number of workshops and seminars relating to terrorism. The T&F/MLIS has received training in TF investigation and interviewing. The authorities have also indicated that the lead investigator of BTCS has received training in Anti-Terrorism Assistance Interdicting Terrorist Activity. The investigative procedures of the T&F/MLIS appear to be reactive upon the receipt of a SAR of same nature and not independent of same. At the time of the onsite no TF cases had been identified and no investigations undertaken.

94. The FIU indicated that there were two reports received in relation to TF. When analysed the reports were unfounded and were closed. Furthermore, FIU indicated that two international requests were received in relation to TF and information was provided. These requests were as a result of assistance from foreign FIUs. The Bahamas indicates that all tools available were used in providing information for these requests, including databases of foreign and local LEAs.

95. The DPP is mandated to conduct prosecutions pertaining to TF charges. However, there have been no prosecutions in relation to terrorist financing. TF has been an area covered in the DPP's weekly departmental training sessions.

TF investigation integrated with -and supportive of- national strategies

96. The Bahamas has no formal updated national strategy in relation to counter-terrorism as the National Strategy for Prevention of Money Laundering and the Financing of Terrorism originally drafted in 2008 was last updated in 2010. Furthermore no TF investigations have occurred. Consequently the assessors are unable to evaluate whether investigations are integrated or supportive of national strategies.

Effectiveness, proportionality and dissuasiveness of sanctions

97. Section 5(1) of the Anti-Terrorism Act (ATA) establishes that a person guilty of committing an offence criminalized under the ATA, is liable on conviction on information to imprisonment for a term of 25 years. Under Section 6 of the ATA, legal entities are liable on conviction on information to a fine of \$2,000,000.

98. There have been no prosecutions in relation to TF. As such the effectiveness, proportionality and dissuasiveness of the sanctions have not been tested.

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

99. There are no other criminal justice measures used in The Bahamas to disrupt the terrorist financing activities.

Overall Conclusion on Immediate Outcome 9

100. The Bahamas has assessed its TF risks through its draft NRA and the draft National Strategy for the Prevention of Money Laundering and Financing of Terrorism. However, there is no formal updated national policy regarding CFT. Other than the submission of two STRs to the FIU, the authorities submitted that there has been no indication of TF in the Bahamas. There have been no TF investigations or convictions in The Bahamas. The LEA is adequately trained in CFT and has sufficient human resource or skills necessary for investigating TF noting that The Bahamas has a low risk of TF. The Bahamas did not provide information that would lead the Assessor to determine the capacity of LEAs and the judiciary in responding to terrorism or TF if the need arose. The Bahamas has not demonstrated an effective system to address and mitigate TF risks.

101. **The Bahamas has achieved a low level of effectiveness for IO.9**

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

102. The Bahamas implements TFS through the IOEMA and ATA legislations. Based on the legislation the jurisdiction's legal framework is limited in addressing the UNSCRs that deal with TFS. There are deficiencies noted in the legislation including lack of a mechanism and unclear procedures for designation domestically; and lack of a timely freezing mechanism and delisting procedures. As a result of these deficiencies The Bahamas does not have an effective system. There have been no cases of freezing terrorist property and as such The Bahamas is unable to show effective implementation of UNSCRs applicable to TFS.

103. The Assessor refers to paragraph 142 of the report for an analysis of the implementation of TFS by FIs .

104. The OAG is responsible for updating and disseminating UN sanctions lists to competent authorities who in turn are responsible for disseminating same to FIs and DNFBPs. The dissemination and updating of information is not timely and there is no standard set in relation to competent authorities informing FIs and DNFBPs. Most competent authorities notify via a notice posted on their websites. Reporting entities are not notified proactively of any changes. A perusal of some of the websites for competent authorities indicates that they are not user friendly. Most of the competent authorities have not issued guidelines in relation to their reporting entities obligations to UNSCR 1267 and 1373.

105. There is no specific mechanism provided for unfreezing and delisting. Section 4(9) of the ATA provides a mechanism where the AG reviews if the criteria for designation remains valid and where the AG can revoke designations. The authorities have indicated that the Ministry of Foreign Affairs is responsible for communicating with the UN. The AG being the Focal Point will petition to Court and once the Order is granted, communicate with the Ministry of Foreign Affairs who will then notify the UN. Once the UN has agreed to the request, the Order would then become effective. Additionally the IOEMA legislation has no procedures for delisting.

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

106. NPOs, as of 2014, are regulated through the Companies (Non-Profit Organisations) Regulations 2014 (C(NPO)R). As at the date of the onsite, the authorities had not registered all NPOs and those registered were not fully regulated by the competent authority. To date, there are 1,122 NPOs registered with the Registrar General's Office in The Bahamas. Under the C(NPO)R the Registrar General's Office is responsible for supervision of NPOs. At the time of the on-site the supervisory regime as implemented by the Registrar General's Office consisted mainly of checking requirements necessary for initial registration of NPOs and requirements to satisfy requests for certificates of good standing (COGS). COGS are required to maintain a bank account, for requesting a business licence and basically for transacting any business within the country. The number of COGS requested by NPOs from 2014 to December 2015 could not be provided and only nine NPOs were registered after 2014.

107. To combat the vulnerabilities within the NPO sector to TF, The Bahamas is currently revising its legislation to impose greater penalties for non-compliance with the C(NPO)R. Furthermore, the authorities have indicated that there is domestic cooperation and co-ordination between the RGD, regulators (CBB, SCB, and RBPF/FIU) and NPOs for sharing of information relative to any NPO.

108. In the draft NRA, the Authorities indicated that they intend on meeting with relevant NPO stakeholders to coordinate TF examinations, follow ups and reporting of same to the Registrar General.

109. NPOs do not have a clear understanding of their vulnerability to TF. There has been no guidance provided for this sector. There is evidence that the CBB has published guidelines on its website for Licensees when dealing with NPOs. The authorities indicate that the risk of TF to NPOs is limited because of exchange controls within the financial sector in The Bahamas, however, the lack of an effective system in place to regulate NPOs makes those NPOs with activities abroad at high risk for TF.

Deprivation of TF assets and instrumentalities

110. The Bahamas has established a legislative framework with the ATA and the IOEAMA for depriving terrorists, terrorist organisations and terrorist financiers of assets and instrumentalities related to TF activities. As already noted in the first section, deficiencies in the framework have resulted in The Bahamas not having an effective system. While there has been confiscation in relation to ML in The Bahamas, there have been no instances relating to TF and as such effectiveness cannot be measured.

Consistency of measures with overall TF risk profile

111. The Bahamas in its draft NRA has a low risk of TF. The measures for TFS are basic. There are some aspects of the UNSCRs that have not been implemented in The Bahamas' legislation. Limited regulation of the NPOs makes this sector vulnerable to TF. Given the deficiencies in the legal framework and the limited regulation of the NPOs measures at present are not consistent with overall TF risks. The Authorities have informed that to combat and to heighten the awareness of the risks, the Registrar General's Office intends on organising a symposium for NPOs.

Overall Conclusion on Immediate Outcome 10

112. The Bahamas has assessed its TF risks as noted in its draft NRA. The Bahamas does not have an effective system for TFS due to deficiencies in the legislative framework. Deficiencies noted include lack of a mechanism and unclear procedures for designation domestically; and lack of a timely freezing mechanism and delisting procedures under IOEAMA legislation. There have been no cases of freezing terrorist property or deprivation of assets and instrumentalities related to TF activities. The Bahamas is unable to show effective implementation of UNSCRs applicable to TFS. While there is legislation for the registration and regulation of NPOs, the supervision regime of the Registrar General's Office is basic. NPOs do not have a clear understanding of their vulnerability to TF and no guidance has been provided for the sector.

113. **The Bahamas has achieved a low level of effectiveness for IO.10**

Immediate Outcome 11 (PF financial sanctions)

Implementation of targeted financial sanctions related to proliferation financing without delay

114. The Bahamas implements targeted financial sanctions related to proliferation through the framework of IOEAMA. Only some aspects of UNSCR 1718/2006 and UNSCR 1737/2006 are covered under IOEAMA. The Orders, issued by the Governor General apply freezing and other measures to funds, assets and economic resources held in Bahamian FIs by the persons or entities listed in the Orders or designation by the UN Sanctions Committee or any person acting on their behalf. Deficiencies noted include freezing not occurring without delay and no procedure for de-listing. There have been no cases under this legislation relating to proliferation and as such The Bahamas is unable to demonstrate effective implementation.

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

115. Due in part to the minimal knowledge among FIs and DNFBPs regarding proliferation financing obligations no persons and entities designated under the relevant UN resolutions have been identified within The Bahamas, no assets frozen and no sanctions applied.

FIs and DNFBPs' understanding of and compliance with obligations

116. Many of the interviewed FIs and DNFBPs in The Bahamas either had no knowledge or minimal knowledge of proliferation. The vast majority did not understand their obligations in relation to proliferation. There is no evidence provided to indicate that FIs and DNFBPs have been provided with guidance or have received training in this area. There is no evidence to indicate that FIs and DNFBPs comply with their obligations in relation to proliferation.

Competent authorities ensuring and monitoring compliance

117. Designations are made by competent authorities primarily through notices issued on competent authorities' websites. These notices are not issued in a timely manner. Furthermore, there is a delay between

when designations are made and when FIs and DNFBPs receive the notification via website. The competent authorities monitor FIs and DNFBPs in relation to obligations on ML/TF. The monitoring specific to proliferation appears to be generic. With regard to DNFBPs, only the GB has measures and procedures in place to monitor compliance with proliferation obligations. Most institutions in The Bahamas implement mechanisms to monitor customer relations (e.g. : World Check, Office of Foreign Assets Control (OFAC), UN and HM Treasury) which in turn is monitored by the competent authorities as a means of dealing with proliferation.

Overall Conclusion on Immediate Outcome 11

118. The Bahamas does not have an effective system for targeted financial sanctions related to proliferation financing. Deficiencies in the legislative framework include freezing not occurring without delay and no procedure for de-listing. There has been no identification of assets and funds held by designated persons and prohibitions relating to proliferation. Many interviewed FIs and DNFBPs were not aware or had minimal knowledge of proliferation and the vast majority did not understand their obligations in relation to proliferation. Neither guidance nor training has been made available to FIs and DNFBPs regarding proliferation financing. Monitoring for compliance in relation to proliferation by competent authorities is generic.

119. **The Bahamas has achieved a low level of effectiveness for IO.11**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

FIs' and DNFBPs' understanding of ML/TF risks is CDD-focussed in the absence of a completed NRA process or a common understanding of national threats and vulnerabilities. Institutional risks (products, services, transactions or delivery channels) are less well understood as these are not required in AML/CFT Guidelines, except for those issued by the CBB in December 2015. Interviewed FIs, typically those that are not part of a large international group, demonstrated limited understanding of their specific inherent ML/TF risks. FIs that were part of a large international group showed a better awareness of ML/TF risks and conducted periodic ML/TF risk assessments to (re)define these risks.

FIs and DNFBPs are overall well aware of their regulatory AML/CFT obligations as outlined in legislations and AML/CFT Guidelines. As a result of this, they apply quite strong CDD procedures as well as other mitigating measures in a highly rule-based manner. However, a number of deficiencies were noted. Assessment and mitigation of risks are constrained by the absence of enhanced procedures in AML/CFT Guidelines issued by the CC relating to new technologies, targeted financial sanctions relating to TF, and higher-risk countries identified by the FATF. There is less of an understanding among DNFBPs on TFS relating to TF. Furthermore DNFBPs do not apply group-wide programmes against ML/TF.

There is still a large number of unverified facilities of banks in the domestic banking sector in The Bahamas, although the number is decreasing. FIs and DNFBPs rely on the small size of the society in identifying domestic PEPs. This general way of determining domestic PEPs is vulnerable. There is some confusion among Bahamian FIs and DNFBPs regarding applicable procedures after identifying designated persons or entities on TFS lists. Wire transfer requirements in The Bahamas have only recently been brought largely in line with the current FATF standards with the Financial Transactions Reporting (Wire Transfers) Regulations, 2015 together with the updated CBB AML/CFT Guidelines of 11 December 2015.

The overall amount of STRs filed by Bahamian FIs and DNFBPs is low, taking into consideration the substantial size of the financial sector in The Bahamas and the substantial presence of inherent higher risk activities such as private banking and trust.

Recommended Actions

Bahamian FIs and DNFBPs that have not done so as yet, should start conducting periodic ML/TF risk assessments that focus on establishing their specific inherent ML/TF risks (e.g. entity's operations, environment, products) or run the risk of their existing risk assessments being challenged by the supervisors. Supervisors should give guidance and discuss the importance and quality of ML/TF risk assessments at an institutional level in their supervisory contacts with the FIs and DNFBPs.

The Bahamas should regularly provide enhanced feedback and guidance (e.g. typologies, good practices) to the FIs and DNFBPs with regard to reporting STRs and the quality and usefulness of the filed STRs.

Financial supervisors should communicate regularly with FIs and DNFBPs regarding the applicable procedures for the reporting of 'hits' on the TFS list. This is to ensure that FIs and DNFBPs act in accordance with these procedures.

FIs that still have unverified facilities, should prioritize the authentication of these facilities. Supervisors should put emphasis on this and enforce compliance, taking into consideration that this was already brought to the attention of the FIs since 2004.

The relevant Immediate Outcome considered and assessed in this chapter is I04. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

Immediate Outcome 4 (Preventive Measures)

Understanding of ML/TF risks and AML/CTF obligations and application of risk mitigation measures

i. Financial Institutions

120. FIs that are part of a large international group demonstrated sufficient knowledge regarding their specific inherent ML/TF risks. These institutions account for approximately 69 percent of total bank assets in The Bahamas. Typically, specific ML/TF risks assessments were being conducted by these FIs. The rest of the interviewed FIs typically those that are not part of a large international group demonstrated limited understanding of their specific inherent ML/TF-risks. When queried about their inherent ML/TF risks (e.g. entity's operations, environment, products) by the assessment team, these institutions tended to focus on the risk assessments conducted to ascertain the ML/TF risks of individual customers (mainly done to divide customers into different categories such as 'high/low' risk) or discussed their AML/CFT controls instead. As a result, such FIs demonstrated only a generic knowledge of the inherent ML/TF risks and found it difficult to explain the *specific* inherent ML/TF risks and scenarios their institution is facing (e.g. entity's operations, environment, products), as well as to explain subsequently their risk-based-approach that should have been built on this. DNFBPs' understanding of ML/TF, likewise, is limited to client risk, and not the institutional risks. Discussions with DNFBPs confirmed this, but this is also observed in AML/CFT guidelines as well as examination forms used by the CC or accountants that carry out on-site inspections on behalf of the CC.

121. Small local FIs (e.g. credit unions and domestic banks) indicated that their ML/TF risks were limited as a result of the following factors (1) their focus is on the domestic side of the market: (2) Bahamian society is very small and (3) criminals are not interested in the local currency. No documented risk assessment or any other evaluation that could substantiate such statements was done. The issue of fraud appeared not to be of significant concern to most FIs. This contrasts with the fact that at a national level as indicated in the draft NRA, fraud is deemed to be one of the more important inherent ML/TF risks recognized.

122. With regard to conducting an institutional ML/TF risk assessment, there appears to be a lack of understanding by FIs as to what such an assessment should entail and why this should be considered as a valuable and necessary first step to identify their specific inherent ML/TF risks. Current requirements do not oblige financial institutions to conduct any sort of periodic assessment of their inherent ML/TF risks, except

for the licensees of the CBB. This obligation was only introduced for the licensees of the CBB in the amended CBB AML/CFT Guidelines of 11 December 2015 on the last day of the onsite visit. Also, the interviews conducted and documentation provided (e.g. letters regarding onsite visits) made clear to the assessment team that the assessing of the specific inherent ML/TF risks is not an issue that is typically discussed by the financial supervisors with their licensees and registrants.

123. . Typically FIs that were part of a large international group demonstrated a sufficient awareness of their specific inherent ML/TF risks. They also tend to have a requirement in their group policies to conduct a periodic assessment of their inherent ML/TF risks at an institutional level. Also, during the onsite one of the MSBs showed a sufficient understanding of their specific inherent ML/TF risks.

124. The Bahamian FIs are aware of the regulatory AML/CFT-obligations terms of controls (e.g. regarding CDD, training of staff and tipping off). This appears to be the case for both large and small FIs and irrespective of the financial sector in which they operate. Many financial institutions explicitly and convincingly expressed their commitment to their AML/CFT responsibilities. They also could give clear examples to substantiate that statement; a strong culture of compliance seems to be established and ongoing within The Bahamian FIs. For that matter, specific reference was made by some FIs to the lack of compliance with the AML/CFT standards in The Bahamas in the beginning of this decade and the significant positive changes that have occurred since that time. In general, AML/CFT training programmes are in place with the FIs (on-line and/or face-to-face) and staff members are obligated to participate in these. In many cases, the training programmes were concluded with some kind of mandatory testing.

125. In addition to the abovementioned, with regards to the different financial sectors the assessment team specifically concludes the following.

126. *Banks:* As indicated above, typically banks that do not form part of a large international group, demonstrated limited awareness of their specific inherent ML/TF risks during the onsite. Risks that were mentioned by them were typically generic and mainly about customers from certain foreign jurisdictions and large transactions. One Bahamian bank that focuses on the domestic market pointed out that the risks are with international customers. Another bank specifically mentioned the so-called web-shops as being a concern, although this bank did not conduct business with such shops anymore. A few of these banks also confused, at least during the onsite, their specific inherent risks with their AML/CFT controls. Banks that typically form part of a large international financial group (with a domestic or offshore focus) were better in explaining their inherent ML/TF risks and expressed for example their specific concerns regarding funds derived from drug trafficking combined with the Bahamian cash-based society and/or the ML/TF risks that derived from their specific portfolio. TF and fraud were in general considered to be of less concern. However, with regard to fraud the assessment team found this conspicuous, since fraud is determined at a national level as one of the important risks the country is facing. All Bahamian banks seem to have a strong commitment to their controls and procedures in place to limit ML/TF risks and fulfil such obligations (such as CDD and training) quite well.

127. *Trust companies:* The trust companies in The Bahamas overall showed sufficient understanding of their role as gatekeepers. They acknowledge the high ML risk that may be attached with conducting trust activities. Trust companies take their AML/CFT responsibility seriously and are strongly committed to their AML/CFT controls and procedures. As a result, customers are sufficiently scrutinized before on-boarding and different mitigating measures are applied during the relationship. AML/CFT policies and procedures are elaborate and include relevant requirements. Monitoring systems are in place to detect suspicious activities of customers. Institutional ML/TF risk assessments are performed by trust companies that are part of a large international group as required in group policies.. As already indicated other trust companies showed

insufficient awareness during the onsite of their specific inherent ML/TF risks and the potential ML/TF-scenarios.

128. *Insurance companies:* The insurance companies interviewed during the onsite, deemed the ML/TF risks to be limited in their sector. Annuity products would face the highest ML/TF risks according to the insurance sector. In terms of awareness, the assessment team noted that the potential ML risks related to live insurance policies was not explicitly brought forward, since it is internationally acknowledged as one of the highest ML risk product in the insurance industry. The domestic market and the fact that most insurance companies have established thresholds for cash payment of premiums are considered to be strong risk mitigating circumstances. ML/TF measures appeared to be consistently applied on all customers and altogether the insurance companies made a risk averse impression on the assessment team. However and further to the abovementioned, the awareness of the insurance companies for the ML/TF risks could be enhanced.

129. *Securities firms:* Although the securities firms showed a general awareness of the ML/TF risks in their industry, they found it difficult to explain their specific inherent ML/TF risks and the risks related to the different types of securities transactions. The securities firms interviewed, considered the ML/TF risks in the Bahamian financial sector to be mainly with the banking sector rather than with the securities sector. This view contrasts with the fact that at a national level the international part of the securities business is according to The Bahamas characterized by high volumes of large cross border transactions and as such is vulnerable for ML. The majority of transactions in the securities market involves the use of international intermediaries. This together with the risk of the layering of illicit funds already within the international markets makes, according to The Bahamas, the risk of ML relatively high. The assessment team noticed during the onsite that securities firms that also hold a banking license i.e. joint licensees focus highly on the banking side when it comes to ML/TF risks. The absence of cash transactions and long-standing relationships with customers is deemed to be critical for the conclusion that the ML/TF risks in the securities sector are limited. The AML/CFT controls appear to be well-established and compliance with the requirements is consistently monitored by the securities firms. The substantial size of the sector does not give the assessment team prima facie confidence that the ML risks are as limited as perceived by the securities firms, not only because of the sectoral assessment by The Bahamas as mentioned above. The institutions' reliance on the assumption that long-standing relationships limit the risk of ML/TF could result in complacency with regard to the changing behaviour of well-known customers and hence lead to a higher risk instead.

130. *Credit unions:* Overall, the credit unions interviewed believed that due to the domestic focus of their activities, their ML/TF risks are negligible. Risk assessments are typically not performed and discussion of potential ML/TF risks was minimal although reference was made on one occasion to customers that are self-employed as being considered higher risk. The credit unions are of the view that their ML/TF risks are limited due to the nature of their business and the fact that the majority of their clients are salaried workers. Further the ML/TF risks are not as significant as other financial sectors. These assumptions do not give the assessment team confidence that the credit unions are sufficiently aware and pay enough attention to their specific ML/TF-risks. The domestic focus and the lack of international components are minimizing the risks indeed, but nevertheless further assessment is needed to make sure that the ML/TF risks are not underestimated.

131. *Money remitters:* There are currently two independent money remitters registered in The Bahamas. They have a good knowledge of the relevant institution specific ML risks and scenarios, particularly with respect to human trafficking from Haiti to The Bahamas. Also, there was sufficient awareness of TF risks, although there have been no suspicions and/or related STRs filed so far. The risks appear to be well-

controlled and different mitigating measures are in place, such as enhanced transaction monitoring and lower thresholds for certain corridors.

ii. *DNFBPs*

132. DNFBPs have a good understanding of ML/TF risks that customers/clients pose, but less of an understanding of other areas of risk (country or geographic; and products, services, transactions or delivery channels). Guidance provided to DNFBPs, most of which were last updated in 2009, also point to an emphasis on high risk clients. In some instances, such as in the case of lawyers, guidance define high risk products and services as a) large cash transactions over \$15,000, b) non-face-to-face transactions, c) products which allow customers to easily receive cash back, and d) products and services that easily allow customers to move cash from one jurisdiction to the other. The *"Suspicious Transactions Guidelines Relating to the Prevention of Money Laundering and the Financing of Terrorism"* issued by the FIU on 19th March of 2007, provides some typologies and sanitised cases regarding suspicious activities applicable to DNFBPs. The ML/TF NRA was still in draft form at the time of the onsite visit, and there was not a common understanding of national ML/TF threats and vulnerabilities among DNFBPs. It is important to note the absence of enhanced procedures in AML/CFT Guidelines issued by the CC relating to new technologies, targeted financial sanctions relating to TF, and higher-risk countries identified by the FATF. These impact both DNFBPs' understanding of risks and measures to mitigate them. Risks associated with TF appear not to be well understood. Awareness of ML/TF risks by some DNFBPs is also influenced by how recent they have been brought under AML/CFT supervision. Overall, however, there will be the need for training, in line with the revised FATF standards, in the area of ML/TF risk once the results of the ML/TF NRA are released.

133. The following additional observations were made with respect to DNFBPs:

- *Casinos:* The three casinos catering to tourists are generally aware of the higher risk they pose from a cross-border context. They have strict CDD requirements and funds are channelled through the banking system thereby adding a layer of protection. Casinos in The Bahamas cater mainly to the North American market, where banks also have strict CDD requirements, particularly proceeds from winners. Casinos have also been under AML/CFT supervision by the GB for in excess of forty (40) years, compared to gaming houses (also referred to as "Web Shops") that cater to locals. Eight gaming houses were only brought into supervision on provisional licenses with the passage of revised legislation in November of 2014. Both casinos and gaming houses are of the view that their AML/CFT risks are minimal on account of strict CDD measures.
- *Lawyers:* Although a majority of attorneys do not comply with AML/CFT measures since they do not perform the designated activities and have concerns regarding legal professional privilege, they are aware of their obligations as outlined in the Handbook and Code of Practice for Lawyers, issued by the CC in July 2009. They are of the general view that they are not at high risk of ML/TF since very few members of the Bar Association accept funds. For those that do accept funds, they are of the view that sufficient safeguards exist. Banks through which funds are channelled also conduct CDD, and funds remitted out of the country are subject to exchange controls.
- *Accountants:* Accountants appear to have a greater understanding of AML/CFT in general as compared to other DNFBPs. This includes a general understanding of AML/CFT risks, which is attributed to the fact that accountants conduct AML/CFT on-site inspections on behalf of the CC. The "Big 4" audit firms are aware of AML/CFT standards and the risk-based approach. Generally however,

understanding of risk continue to focus on customer/client risks, as outlined in the Handbook & Code of Practice for Accountants.

- *Dealers of Precious Metals and Precious Stones:* Having only recently been brought under AML/CFT regulation with the passage of an amendment to the FTRA in November 2014, dealers in precious metals and precious stones are not fully aware of their AML/CFT risks as effective supervision has not been instituted. However, companies that operate in multiple jurisdictions are more aware of AML/CFT risks, particularly protocols for the responsible sourcing of gold and diamonds. This sector does not appear to pose any significant AML/CFT risks.
- *Real Estate Brokers:* Real estate brokers were generally of the view that ML/TF risks within this sector is low, owing to the fact that there are robust CDD requirements, strict exchange control reporting requirements to the CBB, and annual audit requirements that they are subject to. Some comfort is taken that funds are channelled through local banks. However, the relative inherent vulnerability of the segment of the real estate sector catering to high net worth foreign individuals compared with the segment catering to locals through mortgages, needs to be recognised.
- *FCSPs:* FCSPs are aware of the ML/TF obligations under the relevant AML/CFT laws and regulations, and adhere to very strict CDD requirements as laid out in the Handbook and Code of Practice for Financial and Corporate Services Providers, issued by the CC in 2009. Their understanding of ML/TF risk is focussed on clients. FCSPs reported that tax evasion is a threat, and despite knowing their clients fairly well, on-going monitoring is a challenge in that FCSPs see only a part of their clients' activities or business.

Application of enhanced or specific CDD and record keeping requirements

134. In general, the Bahamian FIs and DNFBPs apply quite strong CDD-procedures on their customers. However, there are still some technical deficiencies that need to be addressed by The Bahamas to become more effective. Beneficial ownership requirements are being implemented in different sectors, particularly in the higher risk offshore company formation and casino sectors. Enhanced due diligence is performed on high-risk customers. During the interviews many FIs indicated they had review cycles in place where files of high-risk customers are reviewed more often in many cases on an annual basis as opposed to files of lower risk customers being reviewed for example only once every few years. Comprehensive and relevant procedures, in accordance with the applicable legislation, are sufficiently incorporated in the policies and procedures of the FIs.

135. FIs and DNFBPs are well aware of the requirements with regard to identifying and verifying beneficial owners and do so in the manner prescribed by law. From the discussions with the FIs and the DNFBPs it was clear that the identification and verification of beneficial owners is typically done by requiring supportive documentation from the customer (such as shareholders registers and a valid identity document such as a passport). If the information appears to be insufficient, the facility is not opened and services are not rendered. Also, the financial institutions are sufficiently aware of the specific requirements for PEPs, such as senior management approval and enhanced due diligence. PEPs are typically considered to be high risk by the institutions and EDD is then applied in practice through more frequent reviews and objective background investigations performed by independent specialised firms. Identifying foreign PEPs is mainly done by the use of sophisticated screenings systems; the ICB specifically indicated that it encourages insurance companies to introduce and use such systems. For domestic local PEPs, institutions heavily rely on their knowledge of the relatively small community of The Bahamas, which makes it easy for them to determine new domestic PEPs. The assessment team considers this latter way of determining domestic PEPs as vulnerable.

136. There is a large number of unverified accounts in the domestic banking sector. These are Bahamian dollar accounts valued under BSD\$15,000. A significant amount of these accounts are post 2000 accounts which have been verified but for which CDD documents need to be updated, such as Government issued identification. The banks have been asked to identify those accounts which merely require updating and report this number to the CBB. The issue of authorization of these facilities should be addressed with priority by the banks (and the responsible supervisor). As indicated in the table below the value of unverified facilities in 2014 totalled BSD\$183.9 million which accounted for approximately 0.06 percent of banking sector assets of BSD\$279.2 billion.. It is noted however, that although the number is decreasing. All banks have not been able to verify the identity of all customers. By Notice of 17 February 2004, the CBB required its licensees to submit a list of details regarding all unverified accounts and implement a risk rating framework. According to the interviewed banks, the high-risk customers files tend to be updated, while the rest of the files are updated only when their non-current status is discovered. There was not a strong dedication or sense of urgency to address this issue on the part of the involved banks.

Table 8: Report on Unverified Facilities

Report on Unverified Facilities¹		
	No. of Unverified Facilities	Value of Unverified Facilities (\$000s)
2012	40,279	155,501
2013	39,648	155,270
*2014	21,777	183,982
¹ Data includes both active and inactive (dormant) facilities		
* Data includes additional 2 reporting entities than originally reported		

137. Record keeping appears to be adequately applied in The Bahamas by both FIs and DNFBPs. FIs and DNFBPs are aware of the requirements on recordkeeping and the prescribed period of five years. Relevant procedures are found in the policies and procedures of the FIs and DNFBPs. In the case of casinos and gaming houses, these are prescribed in regulation. Some FIs indicated they apply a higher standard by having extended the retention period to seven years.

138. CDD and enhanced due diligence procedures performed by DNFBPs, particularly with respect to the on-boarding of clients, appear to be fairly robust. DNFBPs appear to follow guidelines issued by their supervisors, and supervisors confirmed a high degree of compliance with CDD requirements, including PEP handling and recordkeeping processes and procedures. . It appears that DNFBPs adhere to the requirement to keep records for at least five years.

Application of other measures

139. FIs indicated they are typically operating as a respondent institution for other, mostly large US banks rather than providing correspondent banking services themselves.. As a respondent institution, they are often scrutinized by these other banks, particularly on their customer acceptance procedures. In the circumstance banks have a correspondent bank abroad, the requirements appear to be known and adhered to.

140. Increased measures for new technologies has only recently been adopted in CBB ML/TF Guidelines of December 2015, and are not yet in place for other FIs and DNFBPs. FIs and DNFBPs are generally aware of the obligation that new technologies need to be scrutinized for ML/TF risks before they can be safely introduced. Despite the deficiencies in technical compliance, FIs and DNFBPs generally appear to be cautious in adopting new technologies. Also, senior management approval or approval from headquarters abroad is typically required. A bank that is part of a large (international) group advised that before introducing debit cards, a year was spent on drafting a risk assessment and discussing the potential risks, including the ML/TF risks and the specific risk of fraud regarding debit cards. The parent company abroad required such a risk assessment before signing-off at headquarters for the introduction of the debit cards.

141. From a technical point of view, wire transfer requirements in The Bahamas have only recently been brought in line with the current FATF standards with the Financial Transactions Reporting (Wire Transfers) Regulations, 2015 together with the updated CBB AML/CFT Guidelines of 11 December 2015. However, banks indicated that they already include all the relevant information on the originator and beneficiary with wire transfers. Consequently, they have acted in compliance with the FATF standards before the introduction of the amended CBB AML/CFT Guidelines, particularly branches and subsidiaries of large international banks.. Furthermore, correspondent banks are reluctant to accept wire transfers with incomplete information.

142. For TFS, FIs heavily rely on automated checks performed by using digital screening systems. During the onsite it became clear to the assessment team that there appears to be some uncertainty on the part of FIs on how to proceed when a 'hit' is detected. Some FIs indicated they would only file an STR. Representatives of the CBB indicated that the FIU was responsible for further actions following reported 'hits' on the TFS lists. However, the AML/CFT Guidelines states that 'hits' should be escalated to both the CBB and the FIU. One FI advised it would also most likely terminate the relationship with the customer directly. While this is understandable, it may not be the way forward in specific circumstances. More and active communication from the financial supervisors is needed regarding this, to make sure that FIs act in accordance with the applicable procedures when a 'hit' on the targeted financial sanctions lists is detected, which can be a crucial moment in the prevention of ML/TF.

143. FIs include high risk countries in their risk assessment of individual customers. Reliance is placed on the FATF list, as well as some other public sources. Most FIs compile from these sources their own list, which they use to determine which countries they should avoid doing business with or those which require EDD.. DNFBPs could improve their understanding and application of measures with respect to targeted financial sanctions related to TF, and higher risk countries identified by the FATF if these were incorporated into guidance.

144. The assessment team was advised that in the last year, the CBB had filed five STRs with the FIU as a result of on-site examinations of the suspicious reporting systems of licensees. Given the abovementioned findings and context, the assessment team deems it necessary that more guidance should be provided to the FIs, with regard to what could be potential suspicious transactions to report as an STR (typologies, good practices). The Bahamian FIU is of the opinion that the quality of the STRs filed is in general adequate, with the banks filing the highest quality of STRs. However, the FIU also indicated that the quality of the STRs are sometimes not satisfactory and believes that some FIs can provide a better quality product. The majority of the FIs indicated that they do not get any feedback on their STRs from the FIU, besides a general confirmation that the STR had been received. The assessment team is of the opinion that giving such feedback is essential to motivate the FIs to report better quality STRs, as well as enable FIs to better understand the relevance of the STRs they filed.

Reporting obligations and tipping off

145. There is some concern about the effectiveness of STR reporting by FIs and DNFBPs. The overall number of STRs filed by FIs and DNFBPs is low given the substantial size of the financial sector in The Bahamas as well as the substantial presence of higher risk activities such as private banking, trust, company service providers and real estate owned by foreigners. The banking sector appears to be responsible for the majority of STRs filed. The reporting by other FIs and the DNFBP sector however is very limited. While statistics provided by the FIU indicated that no STRs were filed by licensees of the Gaming Board between 2013 and 2014, a casino reported filing an STR with the FIU and the Gaming Board in 2014. The low level of STR reporting by licensees of the Gaming Board is partly due to the fact that AML/CFT obligations have only recently been applied to gaming houses. While casinos contend that they follow very strict CDD requirements, it must be noted that CDD thresholds for occasional cash transactions in casinos range from BSD\$5,000 (single wager) to BSD\$15,000 in the Financial Transactions Reporting (Gaming) Regulations, 2014 (FTR(G)R). These are in excess of the USD/EUR \$3,000 required for casinos in the FATF standards.

Table 9: Breakdown of STRs submitted to the FIU for the period 2013 - 2014

Type of Institution	2013	2014
Company Service Providers	1	4
Credit Unions	1	1
Domestic Banks	13	23
Domestic/offshore Banks	182	103
Offshore banks	45	56
Fund managers	1	1
Lawyers	2	1
Real Estate Agents/Brokers	0	1
Stockbrokers	5	5
Trust Companies	7	10
Financial Advisor	1	0
Local Regulator	5	0
Money Remittance Service	2	0
Totals	270	205

146. With regard to tipping-off, the interviewed FIs and DNFBPs demonstrated sufficient awareness of their obligations as well as the related offences and penalties under the FTRA and POCA. The FIU also provides instruction on “tipping off” in its training programmes.

Internal controls and legal/regulatory requirements impending implementation

147. FIs are aware of the requirements regarding having internal AML/CFT-controls in place. They have established adequate AML/CFT-programs and policies and procedures. FIs and DNFBPs are also subject to internal and external audits that look at internal AML/CFT controls. Banks that form part of an international financial group, tend to have minimum AML/CFT group standards which they also have to adhere to. Such standards are according to these institutions quite similar to the Bahamian requirements in terms of strictness.

148. DNFBPs have internal policies, procedures and controls in place to ensure compliance with AML/CFT requirements, except for dealers of precious metals and precious stones that are yet to be brought under supervision. DNFBPs are also subject to external audit/inspection through which internal AML/CFT controls are verified. However, DNFBPs do not apply group-wide programmes against ML/TF.

149. No Bahamian legislation impedes implementing or obeying group AML/CFT standards. Compliance functions have been adequately established within FIs. Independent audits are generally conducted as well, including audits on AML/CFT, and audit departments and annual audit plans are typically in place.. Banks that form part of an international financial group tend to be occasionally visited by auditors from their parent company, as part of the larger group audit program which offers another layer of AML/CFT quality assurance..

Overall conclusions on Immediate Outcome 4

150. The Bahamas exhibits some characteristics of an effective system. In general, FIs in The Bahamas have extensive AML/CFT-policies and procedures in place. They demonstrated a strong commitment to implement these policies and procedures. Specific requirements such as for CDD, correspondent banking, tipping off, record keeping and internal controls are adequately implemented and adhered to. CDD is carried out typically in a robust way. This includes the identification and verification of beneficial owners, ongoing monitoring and EDD for higher risk customers such as PEPs. Also, the FIs demonstrated a sufficient general awareness of their role as gatekeepers. This altogether seriously limits the possibilities for criminals and terrorists to enter the Bahamian financial system through these FIs

151. FIs that are not part of a large international group did not demonstrate sufficient awareness of their specific inherent ML/TF-risk. They had not performed an institutional ML/TF risk assessment to define the specific risks with regard to their operations, environment, products etc. Also, there was uncertainty over the distinction between inherent risks and controls. Consequently, there is a risk that the measures/controls in place are not necessarily tailored towards these institutions’ specific inherent ML/TF risks but rather are based on a highly rule based approach. This limits their effectiveness. FIs that are part of a large international group, demonstrated sufficient knowledge regarding their specific inherent ML/TF risks. These institutions account for approximately 69 percent of total bank assets in The Bahamas. Typically, specific ML/TF risks

assessments were being conducted by these FIs. DNFBPs' understanding of ML/TF, is limited to client risk, and not the institutional risks. FIs and DNFBPs that haven't conducted a ML/TF risk assessment need to do so. Supervisors should guide and monitor them through onsite inspections. Furthermore, given the low number of STRs, FIs and DNFBPs should be provided with clear guidance and, preferably, typologies and good reporting practices. This also includes the FIU giving clear feedback to the FIs and DNFBPs on the STRs, to ensure that FIs and DNFBPs are aware of the specific follow-up and relevance of their STRs. Additionally, more guidance appears to be needed on the course of action FIs and DNFBPs should take when designated persons or entities on TFS lists are detected. Furthermore, it is necessary that the number of unverified facilities that still exist should be authenticated as soon as possible to reduce the ML/TF-risks.

152. Most DNFBPs have a good understanding of the ML/TF risks that their clients pose, but less of an understanding of other areas of risk, such as those associated with country/geography; and products, services, transactions and delivery channels. Their understanding is in the absence of updated ML/TF risks identified at the national level. DNFBPs' understanding of TF risks appear to be low. Overall, there is the need for training with respect to the updated FATF standards and the obligations they impose; and for the application of group wide internal controls and procedures. CDD measures appear to be fairly robust for DNFBPs, however understanding of beneficial ownership appear to be inclined toward natural persons with equity interest, and less toward persons who control the customer.

153. **The Bahamas has achieved a moderate level of effectiveness for IO.4**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

Licensing and registration requirements implemented by The Bahamas adequately prevent criminals and their associates from entering the financial sector..

The number of relevant persons not registered with the CC for the purpose of AML/CFT supervision weakens that DNFBP supervisor's ability to effectively supervise DNFBPs for AML/CFT purposes. Dealers of precious metals & stones and gaming houses have only recent been brought under the regulatory framework, with supervision still to be implemented.

The CBB and ICB have established a risk-based approach for most of their licensees. These comprehensive risk-based approaches are mainly driven by prudential/systemic issues rather than by ML/TF issues. For the credit unions (CBB) and the securities industry (SCB) a risk-based-approach has yet to be developed. Financial supervisors analyse ML/TF risks at an institutional level (products, services, transactions or delivery channels). The CC and GB have assessed and identified the ML/TF risks of DNFBPs through the draft NRA. First steps in analysing sectoral and group ML/TF-risks have been made recently in the draft NRA.

The remedial actions taken by the CBB, ICB and SCB are characterized by a 'one size fits all' approach, typically consisting of allowing the FI a certain timetable to address breaches. The number of sanctions imposed by the CBB, ICB and SCB is low. Other forms of sanctions such as administrative penalties are not available

Coordination between the financial supervisors appears to function adequately.

The financial supervisors in general have positive effect on the compliance of the FIs that are regularly inspected. However, there is no indication of the effect that financial supervisors have on the institutions that are not (regularly) inspected, nor the effect of imposing sanctions.

The financial supervisors promote a clear understanding of the AML/CFT obligations by publishing guidelines. Besides this activity, the proactive outreaches to the financial sector on ML/TF issues are quite limited. AML/CFT Guidelines for the CBB licensees were recently updated to require FIs to assess their institutional risks (products, services, transactions and delivery channels). This is absent from other financial and DNFBP supervisors. Guidelines issued by the CC do not contain requirements for to

new technologies, targeted financial sanctions relating to TF, and higher-risk countries identified by the FATF

Recommended Actions

- The NRA should be completed so financial and DNFBP supervisors can identify and understand the ML/TF risks of the types of the FIs and DNFBPs and of the financial and DNFBP sectors as a whole. All supervisors should build further on the initial work done in the draft NRA on group and sectoral ML/TF risks as part of their respective supervisory regime. This will allow for a more effective allocation of resources and attention to relevant FIs and DNFBPs, groups and sectors.
- Both the SCB and CBB should make sure that an AML/CFT risk-based approach is introduced as soon as possible for the licensees of the SCB and the credit unions respectively.
- The current risk profiling of FIs and DNFBPs by supervisors should be AML/CFT focussed and not co-mingled with prudential risks.
- Financial and DNFBP supervisors should have available and apply a wide range of formal measures (both remedial and punitive), including administrative fines. The imposition of sanctions should become an essential part of the supervisory toolkit. Sanctions should be more often considered and imposed with a view to specific and general deterrence.
- Financial and DNFBP supervisors should consider and apply different remedial actions in proportion to the severity of AML/CFT breaches as part of their practical supervisory toolkit.
- AML/CFT guidelines should be developed for dealers of precious metals and precious stones. Existing Guidelines for DNFBPs supervised by the CC should be updated to include requirements for new technologies, targeted financial sanctions relating to TF, and higher-risk countries identified by the FATF.
- Administrative penalties should be considered for failure to register with the CC. The CC could benefit from additional resources in order to enforce DNFBP registration obligations.
-
- The financial and DNFBP supervisors should enhance their promotion of a clear understanding of AML/CFT obligations and ML/TF risks by proactively establishing other forms of communication that specifically focus on AML/CFT topics (such as the sharing of typologies/good and bad practices and organizing AML/CFT seminars).

The relevant Immediate Outcome considered and assessed in this chapter is IO3. The recommendations relevant for the assessment of effectiveness under this section are R26-28 and R.34 and 35.

Immediate Outcome 3 (Supervision)

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

154. Licensing and registration requirements implemented by The Bahamas to a large extent adequately prevent criminals and their associates from entering the financial sector. FIs in The Bahamas are all subject to some form of licensing or registration.. Licensing or registration procedures are thorough and entail a fit and proper test of management, direct and indirect shareholders (with thresholds varying from 5 to 10 percent) and senior management. Such tests on fitness and propriety include, for example, the production by the applicant of a notarized confidential statement about honesty, integrity and reputation, two original character references to assess the applicant’s honesty, integrity and reputation and a police certificate. They also involve a search conducted by the supervisor relevant information in digital databanks and using search engines on the internet. The requirements appear to be consistently applied in practice by the financial supervisors. In relevant cases, contact has been sought by the supervisors with other Bahamian and foreign authorities, for example in a situation where the parent company of the applicant is located in another country. Subsequent changes in significant shareholding, directors and management of FIs are subject to similar procedures by the relevant supervisors to assess fit and proper status. Besides the licensing or registration of financial institutions, the CBB also approves money laundering reporting officers (MLROs) and the SCB approves both MLROs and compliance officers withfit and proper tests. Over the last five years, no licenses or registrations have been denied or revoked by any of the financial supervisors because of ML/TF issues. Two rejections of banks and trust applications were made. In one instance this was on the basis that individuals did not possess adequate financial resources to fund the proposal. In the second instance this was because the proposed business activity did not fall within the scope of the banking and trust regulation.

155. The CBB rejected 29 applications for MLRO’s since 2011 as indicated in the table below.

Table 10: Breakdown of MLRO Applications Processed by the CBB for the period 2011 to 2015

MLRO Applications	2011	2012	2013	2014	2015	Totals
Approvals	21	31	45	33	7	137
Rejections	7	6	5	0	11	29
Totals	28	37	50	33	18	166
% Rejections	25%	16%	10%	0%	61%	17%

156. The above demonstrates a framework that limits the possibility for criminals and associates from entering the financial sector. The financial supervisors the CBB, ICB and SCB approve shareholders, directors and senior management of banks, trust companies, insurance companies and securities firms and can remove them if found to be unfit.

157. There appears to be less emphasis put by the FIs supervisors on detecting and preventing unauthorized business. Three cases were presented to the assessment team. On two occasions entities conducted money remittance without being licensed. Further to that, cease and desist orders were issued by the CBB. In one case an investment fund operated without a licence. This resulted in a settlement agreement in the amount of BSD\$250,000 on the basis of the institution’s failure to be licensed while operating in The Bahamas. In terms of informing and warning the public, the CBB first issued a warning letter to the public in October 2011 and renewed it on 21 October 2015, stipulating that entities need to be licensed or registered in order to lawfully operate as a money remitter or as an agent of a money remitter and advising that members of the public should inform the CBB regarding suspicions of any unlicensed money remitter.

158. The CC registration procedure requires both “active” and “inactive” constituents to register with the CC. Individuals register as sole practitioners or under their firms. An “active” constituent conducts business relevant to a DNFBP category while an “inactive” one does not. The registration of “inactive” individuals has proven a challenging task as the majority determine that there is no need to register since they do not perform the activities to be classified as DNFBPs. During the CC’s annual consultative meetings with the Bahamas Chartered Accountants and the Bahamas Real Estate Association both industry groups confirmed that only a small number of their licensees conduct the business to be classified as DNFBPs. The largest sector that engages in activities that require onsite examinations is the lawyers. An informal survey conducted during the NRA determined that a small group of law firms conduct most of the business. The bulk of these firms are registered and meet their obligations with the CC. An assessment of firms to determine further information regarding which firms transact the majority of business is to be done. For unregistered DNFBPs the CC is uncertain about the number that carry out relevant business.

Table 11: DNFBP’s Registered with the Compliance Commission as at May 2015

		(1) Active ¹⁰	(2) Inactive ¹¹	(3) Unregistered ¹²	(1)+(3) Total Constituents	(1)+(2)+(3) Total in Category
Accountants	Individuals	18	264	159	177	441
	Firms	6	218	n/a	6	224
Attorneys	Individuals	398	173	589	987	1,160
	Firms	178	135	n/a	178	313
Real Estate Brokers/Developers	Individuals	64	179	186	250	429
	Firms	35	175	n/a	35	210
Grand Total	Individuals	480	616	934	1,414	2,030
	Firms	219	528	n/a	219	747

159. At the beginning of each calendar year the CC liaises with the relevant professional bodies to secure the names of all new licensees of these bodies. However registration of accountants, attorneys and real estate brokers/developers by the CC for AML/CFT purposes continues to be a challenge despite 1) training and other outreach initiatives by the CC, 2) publicly available information on the Government’s website, and 3) published AML/CFT guidelines. Table 11 above reveals the number of unregistered DNFBPs in

¹⁰ “Active” registrants are all constituents that were licensed by their respective licensing bodies and have submitted an active registration form to the CC confirming that they provide the services indicated in section 3 of the FTRA.

¹¹ “Inactive” constituents refer to those that are licensed by their respective licensing bodies and have submitted an inactive registration form to the CC confirming that they do not provide the services named in Section 3 of the FTRA.

¹² “Unregistered” Constituents are those licensed professionals that have not registered with the CC.

comparison to total constituents that would potentially be subject to onsite inspection as a result of their activities. Unregistered individuals as a percentage of Total Constituents were as follows: accountants (89.8%), attorneys (59.7%), and real estate brokers/developers (74.4%)

160. On account of a court challenge in 2003, the CC was asked by the OAG to suspend on-site examinations of law firms and the financial and corporate service activities of law firms. This policy decision was reversed in August of 2006, when the OAG advised that the suspension of mandatory on-site examination of lawyers was withdrawn. The CC subsequently launched a training and awareness campaign for lawyers. However, the campaign resulted in only a modest increase in registrations. Consideration should be given to imposing administrative penalties for failure to register with the CC. The CC conducted 15 training programmes for industry groups in the last three years.

161. The number of unregistered individuals weakens the CC's ability to effectively supervise DNFBPs for AML/CFT purposes. Consideration should be given to explicitly require registration with the CC with dissuasive penalties for failure to comply.

162. DNFBPs are generally subject to adequate fit and proper controls by relevant statutory membership bodies such as the Bahamas Bar Association, the Bahamas Institute of Chartered Accountants, and the Bahamas Real Estate Association for accreditation. There is no measure for assessing the ownership or management of the firms operating in the respective fields. The presumption is that the ownership and management of these firms will be accredited members themselves and as such already subjected to fit and proper assessment. However, the lack of this requirement is a vulnerability that should be addressed. Dealers of precious metals and precious stones (added to the FTRA in July 2014) have no such statutory membership grouping. With the recent oversight of gaming houses, the Gaming Board recently issued eight provisional licenses, and disqualified one applicant who was then ordered by court to cease and desist.

Risk identification and mitigating risks through supervision or monitoring compliance

163. As from 2011, the CBB adopted a comprehensive supervisory risk-based approach for banks and trust companies to determine relevant risks at an institutional level. The ML/TF risk is considered in this framework as one of the 'business' risks. According to the CBB, the risk assessment seeks to achieve an accurate evaluation of individual licensees' risks, controls, managerial strength and financial condition, on an ongoing basis, in order to facilitate a timely response to emerging problems. Each risk is scored on both inherent and control factors by the offsite unit of the CBB. To collect the necessary input, the CBB heavily relies on the internal self-assessments of the institution (internal audit and compliance reviews), as well as results of previous onsite inspections and periodic meetings with the FI. Scoring is on a five-point scale and both the inherent risks and controls are scored separately. On the basis of this scoring a prioritization can be made for potential follow-up actions. The selection of the banks and trust companies for a risk assessment is determined by the impact, based on four proxy metrics: (1) number of Bahamian dollar deposits; (2) employees; (3) expenditures; and (4) fiduciary assets. Since the introduction of the risk-based approach in 2010, all domestic systematically important banks have gone through such a risk assessment, as well as significant international off-shore banks and trust companies. The potential risk of the activities of a FI whereby from an AML/CFT perspective for example the fact that a FI focuses on wealth management and/or high-net-worth individuals and/or offshore activities may be relevant do not determine prioritization. In total 65% of banks and trust companies has been assessed. The CBB indicated that all other banks and trust companies went through a simplified version of the risk assessment. Mitigation plans are drafted for the

supervision of the FI further to the risk assessment. The risk assessment schedule for licensees is between 18 months and 2 years. FIs considered to be high risk get a full risk assessment during this cycle, while FIs that are low risk will get a baseline monitoring of the statutory supervisory requirements. As to date, the CBB rated the ML/TF inherent risks of the 66 assessed FIs as follows: 2 as low, 7 as medium low, 41 as medium and 16 as high. Regarding the ML/TF controls in place, the CBB assessed 13 financial institutions as deficient, 33 as needing improvements and 20 where the controls were considered to be sufficient.

164. Based on the risk assessments conducted, onsite inspections or other follow-up actions may be conducted by the CBB. The AML/CFT onsite inspections are typically included as a part of a full scope inspection (also including prudential issues), or, in some cases, as stand-alone inspections. ML/TF inspections will entail the review of client files and the AML/CFT policies and procedures, as well as interviewing staff members. The onsite inspections of the CBB are conducted with a team of multiple persons (up to 8), who will be typically onsite for a period of 1-3 weeks.

Table 12: CBB Onsite Inspections from 2009 to 2014

Year	CBB onsite inspections (banks and trust companies)	CBB onsite inspections <i>only</i> focusing on AML/CFT (banks and trust companies)
2009	44	12
2010	26	22
2011	37	24
2012	29	16
2013	30	9
2014	33	14
TOTAL	199	97

165. Conclusions of an onsite inspection will be communicated to the FI in a formal report “Report of Examination”, in which the areas of concern and detected breaches are clearly highlighted. Statistics on the ML/TF breaches detected could not be provided by the CBB. However, during the onsite, a few examples of sanitized “reports of examination” were provided to the assessment team in which breaches of the AML/CFT requirements were mentioned, such as insufficient evidence of the confirmation of the source of wealth of clients.

166. Although the CBB risk-based framework altogether makes a solid impression, the emphasis in the risk-based-framework lies on many different types of risks, of which ML/TF risk is just one. ML/TF risk may be dwarfed or overwhelmed by the other risks that are taken into consideration. The higher risk activities from a ML/TF point of view such as wealth management do not determine the prioritization in the risk-based framework. Furthermore, the CBB does not establish ML/TF risks between the sectors and groups supervised. For example, the difference in ML/TF risk between FIs focusing on onshore activities versus offshore activities forms no part of a risk assessment at a higher than institutional level, although in the draft NRA there appears to be a good start in establishing such a differentiation. No risk-based approach has been introduced yet by the CBB for credit unions under the supervision of the CBB since June 2015., which are currently inspected by the CBB in a rule-based manner on an annual basis.

167. The SCB is currently in the process of creating a supervisory risk-based approach, which should be implemented in the second quarter of 2016. Until that date, supervision consists of principal institutions being inspected onsite every five to seven years irrespective of the risks. While the focus of inspections is prudential, AML/CFT issues are included. Examiners verify that the appointed MLRO of the registrant is consistent with the SCB's records and registered with the FIU. AML/CFT manuals are reviewed and random transactions may be assessed to ensure compliance with the AML/CFT policies and procedures. From 2011 to 2014, a total number of 74 onsite inspections were conducted during which some time was spent on ML/TF. During these inspections 18 breaches of ML/TF requirements were detected in 2012, 4 in 2013 and 5 in 2014. The Securities Industry (Anti-Money Laundering and Countering the Financing of Terrorism) Rules, 2015 (made effective on 4th December 2015) is likely to enhance the SCB's capability to identify and maintain an understanding of risks as well as conduct more risk-sensitive AML/CFT monitoring in the securities sector.

168. The ICB has incorporated a supervisory risk-based approach which is both applicable to insurers and intermediaries. According to the ICB, the risk-based approach is based on the proportionality principle, taking into account the nature, size and complexity of the insurer. A risk rating and direction for rating is assigned to licensees according to their risk profile. The supervisory approach focuses on prudential issues, but there is also attention paid to AML/CFT. The latter is taken into account as being part of the 'legal and regulatory' risk. Input for the supervisory framework is mainly derived from earlier supervisory actions such as onsite inspections and foremost a mandatory annual audit of the insurer conducted by an external auditor approved by the ICB. ML/TF risk has to be taken into consideration by the external auditor as part of the 'legal and regulatory' risk. This standardized report of the auditor includes ML/TF relevant topics such as the risk-based customer verification procedures and records, the suspicious transaction reporting and training and staff awareness procedures. Subsequently, the risk is determined by the ICB using a risk matrix. The ICB does not establish ML/TF risks between different groups of insurers.

169. Following on the risk assessment, the ICB may decide to take further actions such as conducting an onsite inspection. The number of AML/CFT onsite inspections conducted by the ICB are:

Table 13: ICB Onsite Inspections from 2012 to 2014

Year	AML/CFT onsite inspections
2012	10
2013	10
2014	9

170. As a result of these onsite inspections in 2012, 6 insurers were considered "good" or "acceptable" in terms of compliance with AML/CFT requirements, 2 were considered "poor" and 2 "very poor". In 2013 these figures were exactly the same, while in 2014, 7 insurers were considered to be "good" or "acceptable", 1 "poor" and 1 "very poor". However these ratings were seemingly contradicted by the fact that the ICB informed the assessment team that no AML/CFT breaches were detected in the period 2012-2015.

171. Coordination between the financial supervisors appears to function adequately. Such coordination is done through bilateral contacts as well as through the multilateral GFSR. There are no impediments to the financial supervisors sharing information among each other and different MOUs between the financial supervisors are in place. The above mentioned GFSR meets infrequently and there hasn't been a meeting during the last year. However, other initiatives to collaborate have taken place in 2015, such as joint inspections performed by the CBB and SCB and the establishment of an information sharing platform between CBB, ICB and SCB regarding a particular FI. Coordination between the financial supervisors and law enforcement agencies is still limited. There is a need to increase this to potentially benefit from possibilities here, for example with an eye to mutual investigations, the follow-up of severe AML/CFT breaches by FI and pursuing unauthorized business.

Table 14: Compliance Commission Examination Statistics for 2014

Type of Examination	Accountant	Law Firms	Real Estate Brokers / Developers	Grand Total	
				# Firms Required to Submit	# of Examinations
Number of Firms required to Submit	6	178	35	219	n/a
On-site Examinations (Conducted by Accountants)	3	22	1		26
Off-site examinations	-	1	-		1
Follow-up On-site	-	-	-		-
Follow-up Off-site	1	6	2		9
Total	4	29	3		36

172. DNFBPs supervised by the CC and financial supervisors are required to have internal reviews, testing and auditing of AML/CFT policies, procedures and controls. DNFBP supervisors also rely on on-site and off-site inspections. In the case of the CC, routine on-site examinations are carried out by accounting firms duly authorised by the CC. These on-site inspections cover a review of documented policies and procedures; the extent to which these are in line with the relevant laws, regulations and guidelines; and the extent to which these policies and procedures are implemented in practice. Specific areas of focus include CDD & ongoing monitoring, record-keeping, MLRO and compliance function requirements, internal reporting procedures, suspicious activity reporting, and staff education & training.

173. Of the 26 on-site examinations of DNFBPs on behalf of the CC, roughly one-third of the results were considered by the CC to be acceptable or good, while two-thirds were considered to be poor or very poor. The main areas for improvement identified in those inspections were 1) documented risk-based policies and procedures 2) suspicious activity reporting, and 3) staff training and awareness.

174. The GB has the powers to inspect the premises of its licensees at any time and obtain data or information related to gaming. In practice, the GB reported that its inspectors have dedicated office spaces at the casinos, while gaming houses are monitored electronically at the GB's headquarters. Focus is placed

on the internal movement of money, as well as the interaction between licensees and their patrons. The operations of casinos is subject to an annual audit by the GB, which includes a review of AML/CFT requirements. GB licensees are required to implement procedures that are designed to detect and prevent transactions that may be associated with money laundering, fraud and other criminal activities. This is assessed by the GB in three phases. Firstly, the GB assesses proposed internal controls prior to the issuance of a license to commence any gaming operations. Thereafter, once approval is granted to a Casino or Gaming House Operator, there can be no amendment, implementation of new or revised policies, standards or procedures without the prior written approval of the Board as per Section 83(2) of the GA. Secondly, after licensing there is on-site and remote supervision to ensure that licensees are operating within the approved internal control procedures and the onus is also placed on the licensee in accordance with Section 83(5) of the GA to conduct its operations in accordance with its approved internal controls and to monitor compliance by its employees of the said processes. Thirdly, as already indicated annual audits are carried out along with periodic audits that are done by the GB throughout the year. These measures allow for the GB to test the approved internal controls for any procedural or technical weaknesses

175. The IFCS at the SCB was assigned responsibility for supervising dealers of precious metals and precious stones in 2014. However, the supervisory framework for this sector was still under development at the time of the on-site visit.

176. Of the 311 FCSPs licensed by the IFSC at the end of 2014, a total of 179 on-site examinations were carried out during the course of that year with 172 conducted by public accountants duly authorised by the Inspector and seven conducted by the Inspector. This compares with 49 examination conducted by public accountants in 2013, along with one follow-up examination conducted by the Inspector. Onsite examinations are focussed on CDD, record-keeping, suspicious transactions reporting, MLRO assignment, and internal procedures for staff training and the prevention & detection of money laundering.

177. Given that the ML/TF NRA process is still underway, supervision of DNFBPs has not been geared toward fully identifying and maintaining an understanding of ML/TF risks as a whole, or between the different DNFBP sectors. While there are generally stringent measures in place for monitoring DNFBPs, through onsite inspections by audit firms on behalf of the CC, these are not undertaken with a view to mitigating risks or on a risk-sensitive basis.

Remedial actions and effective, proportionate, and dissuasive sanctions

178. The remedial actions taken by the financial supervisors are characterized by a 'one size fits all' approach irrespective of the severity of the identified breach. In almost all cases, the financial supervisors address detected AML/CFT-breaches by reporting these in a formal report to the FI. The FI is given a timetable to remedy the detected breaches. In the case the timetable is not met, a second timetable is usually established without any further consequences. According to the financial supervisors, FIs tend to comply within the set timetable. Other remedial actions taken were limited to two directives imposed by the CBB in 2011 and one in 2012 also for breaches of AML/CFT-requirements, as well as a supervisory intervention by the CBB in 2014 and 2015 that included a freeze on new business based on both prudential and ML concerns. There is need for the financial and DNFBP supervisors to consider the application of remedial actions proportionate to the severity of the AML/CFT breach part of their practical supervisory toolkit.

179. The number of sanctions imposed by the financial and DNFBP supervisors is low. This is conspicuous in the context of the number of FIs and DNFBPs under supervision, the number of breaches detected and the /level of compliance with the AML/CFT requirements as indicated in the ratings from on-

site inspections noted above.. Administrative penalties and other non-criminal sanctions are rarely used. Over the last five years, the CBB did not impose any civil or administrative sanction for non-compliance with the AML/CFT legislation and guidelines. It is noted that the possibilities for the CBB to take administrative actions are sometimes limited, as well as that the maximum penalty in some cases does not exceed BSD\$ 2,000 which at first sight can hardly be considered a dissuasive penalty in the banking and trust sector. In 2015 a new penalties regime was introduced with the enactment of the Banks and Trust Companies Regulation (Amendment) Act, 2015. The finalization and publication of the Banks and Trust Companies (Administrative Monetary Penalties) Regulations was brought into effect on 5 September 2016. As a result, the CBB is empowered to impose administrative monetary penalties for any breaches of the BTCRA and regulations made under it, as well as any failure to comply with a Direction or an Order of the CBB. The SCB imposed over the last four years two sanctions both in 2015 that were ML/TF related for failure to file prescribed documents, for a total amount of BSD\$ 5,200. One administrative penalty for the amount of BSD\$250,000 was imposed by the SCB for the failure to obtain a license. The ICB did not impose any ML/TF sanction on its licensees nor referred any ML/TF issue to the law enforcement agencies. During the onsite, the ICB indicated that over the last year their focus was not on sanctioning and that they aim to change that for the coming years. No civil or administrative sanctions were imposed on DNFBPs over the last four years for AML/CFT breaches.

180. The CC reported that numerous registrants have been issued notices of breaches and have received remedial action plans. However, no information was provided regarding the number of breaches identified, remedial actions mandated, or sanctions applied. Neither was information regarding breaches and sanctions provided by the Inspector, in the case of FCSPs. The GB reported that, while there had been sanctions and fines for violations in the past, no sanctions have been applied in the past four years on account of strict adherence to relevant laws and regulations on the part of licensees.

181. In summary, although breaches are detected by the financial supervisors, during the onsite it became clear to the assessment team that sanctions are hardly ever considered and imposed by the financial supervisors. In some cases the reason for not imposing sanctions was not apparent. For example, a sanitized report of an inspection was provided to the assessment team in which the CBB in September 2014 gave a FI for the third time an extension of a deadline for resolving serious breaches of the legislative AML/CFT requirements, dating back to 2006. On five different occasions, a FI did not report suspicious transactions. These transactions were later reported by the CBB further to an onsite inspection. The CBB indicated that in all these cases they did not consider sanctioning. The sanctions that were imposed by the financial supervisors over the last few years were not dissuasive, as the total amount of BSD\$5,200 was imposed by the SCB for two ML breaches. The assessment team is of the view that imposing sanctions does not seem to be a part of the culture and practical toolkit of the financial supervisors. Hence, the deterrence of applied sanctions is not achieved. The assessment team is not convinced that effective, proportionate and dissuasive sanctions are applied in practice by the Bahamian financial supervisors.

Impact of supervisory actions on compliance

182. Licensees and registrants considered the inspections by the financial supervisors that included ML/TF components in-depth and competent. The findings were considered precise and relevant. Most of the FIs that the assessment team interviewed were subject to an onsite inspection recently. FIs asserted their willingness to co-operate in providing proper follow-up to the findings of the financial supervisors. Taking this into consideration, the assessment team has the impression that the supervisors are effecting the compliance of these financial institutions. However, and as explained above, no effect has been demonstrated by imposing sanctions. The low number of sanctions imposed even for cases of non-compliance that would

seem to warrant a sanction, is a major limitation to the impact on the FI's compliance. Furthermore, the financial supervisors did not demonstrate to the assessment team their effect on the compliance of FIs that are not regularly inspected.

183. The Bahamas has had one of the widest coverage of DNFBP supervision within the region, particularly with the CC being established in 2001. However, the challenge of registering the relevant DNFBPs remain, and is impeding the CC's ability to take supervisory action and encourage compliance. Furthermore the lack of administrative penalties is likely impeding supervisors' efforts to implement appropriate action on compliance. The CC could benefit from additional human resources for reviewing on-site inspections conducted by accountants, for prescribing remedial action by registrants and ensuring follow-through, as well as for enforcement action should administrative penalties be prescribed.

Promoting a clear understanding of AML/CTF obligations and ML/TF risks

184. Financial and DNFBP supervisors generally promote clear understanding of the AML/CFT obligations by publishing guidelines. These guidelines are detailed but, with the exception of the CBB's, are in need of updating to place greater emphases on ML/TF risks. Also, additional relevant information is provided online on the websites of the financial supervisors. However, no guidelines have been published for GB licensees or for dealers of precious metals and precious stones. Communication between FIs and DNFBPs and the supervisors is open and allows for discussing matters and questions. The SCB does outreach to the sector by annual industry briefings, during which AML/CFT issues may be discussed. Besides these activities, proactive outreach to the financial and DNFBP sectors on ML/TF issues is quite limited. For example, no updated typologies on ML/TF risks or good and bad practices are shared with the financial sectors to create a better awareness of their ML/TF risks. The quarterly letter of the CBB dealt with ML/TF relevant issues for the last time in December 2013. The CBB has periodic meetings with its licensees or registrants and organized in the past on an ad hoc basis 'round table meetings', during which AML/CFT issues could be discussed, but these meeting no longer take place. The SCB has annual industry briefings which may also include AML/CFT topics. During seminars organized by other organizations such as The Bahamas Association of Compliance Officers at which AML/CFT issues were also discussed, representatives of the financial supervisors may be present, but do not have an initiating role. Typically, the financial and DNFBP supervisors could enhance their promotion of a clear understanding of AML/CFT obligations and ML/TF risks. This for example, could be accomplished by meetings that specifically focus on AML/CFT topics such as the sharing of typologies and good practices. In the recently conducted NRA, the CBB has indicated it will re-start the abovementioned round table meetings with the banking and trust sector to discuss ML/TF issues, to ensure that they better align their risk management processes to mitigate AML/CFT risks. This appears to be a good example of how to enhance the abovementioned promotion.

Overall conclusions on Immediate Outcome 3

185. The Bahamas exhibits some characteristics of an effective system. Licensing and registration requirements implemented by The Bahamas to a large extent adequately limits the possibility for criminals and their associates from entering the financial sector. Also, the financial supervisors collaborate together well on AML/CFT issues, for example by exchanging relevant information and conducting joint onsite visits. However, the CC faces challenges in the registration of lawyers, accountants and real estate agents, and would greatly benefit from additional resources and the imposition of administrative penalties for non-compliance with registration requirements.

186. The financial supervisors use a risk-based approach, based on a comprehensive assessment of all types of different risks, including ML/TF risk for the majority of the financial sectors with the exception of the credit unions, the securities industry and GB licensees where a rule based approach is still the common practice. However, more emphasis should be put on the ML/TF risk in the existing risk assessments. DNFBP supervisors need to incorporate updated ML/TF risk information in guidance and provide information on ways to mitigate those risks.

187. Onsites examinations by financial and DNFBP supervisors include ML/TF issues but need to be more risk-sensitive, and with a view to mitigating AML/CFT risks. The CBB onsite inspections as mentioned are thorough, with typically a supervisory team on the ground for several weeks and with enough time available to inspect also AML/CFT issues. Additionally, the conclusions to onsite are clearly communicated to the FIs. Furthermore, the financial supervisors appear to be well-respected by their licensees and the supervisory findings and concerns are in general considered by them to be relevant and pertinent. Typically, FIs carry out proper follow-up on the findings and improvements are achieved and effected because of supervisory oversight. In general a clear understanding of the AML/CFT obligations is communicated by the financial supervisors through for example guidelines, websites and annual meetings. However, the proactive outreach to the financial sectors on AML/CFT issues could be enhanced. The remedial actions taken by the financial supervisors are highly characterized by a 'one size fits all' approach.

188. The number of sanctions imposed by financial and DNFBP supervisors is low; administrative fines for AML/CFT breaches are rarely used.

189. **The Bahamas has achieved a moderate level of effectiveness for IO. 3**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

The Bahamas is able to create a range of legal entities. Basic information is required upon formation and updates in some instances for transparency.. Basic ownership information is maintained by the Registrar General in The Bahamas. Beneficial ownership information is maintained by FIs and DNFBPs and is easily and timely accessible. There have been no sanctions applied to legal persons and as such The Bahamas is unable to demonstrate whether sanctions are effective, proportionate and dissuasive.

Generally there is a good level of exchange and cooperation domestically and internationally with competent authorities. There are some competent authorities within The Bahamas that understand the vulnerability posed by legal persons/arrangements being misused for ML/TF. The Bahamas has identified and assessed some risks associated with trusts and IBCs in the draft NRA. The assessment was limited and focused on risks posed to relevant FIs dealing with these entities..

Recommended Actions

- Competent authorities should continue to monitor FIs and DNFBPs compliance with the requirements for beneficial ownership of account holders.
- Competent authorities should ensure that trustees and trust companies comply with trust information requirements.
- The Registrar General should apply appropriate sanctions for breaches of the relevant company formation legislation .
- The Registrar General should analyse, monitor and verify basic information submitted for registration of legal persons.

The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant for the assessment of effectiveness under this section are R24 & 25.¹³

Immediate Outcome 5 (Legal Persons and Arrangements)

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

190. Companies, partnerships, foundations and executive entities may be created in The Bahamas. A breakdown of the types and numbers of legal persons is provided in the table below.

Table 15: Breakdown of types and number of companies in The Bahamas

¹³ The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

Type of legal person	Total active companies as of December 8 2015	Total Companies on Register as of December 8, 2015
B – International Business Company	35,700	175,400
C – Regular (Local) Company	39,190	57,577
EE – Executive Entity	67	71
ELP – Exempted Limited Partnership	213	317
F – Foundations	395	722
IC – Investment Condominium	22	22
LDC – Limited Duration Companies	69	212
NP – Non Profit Company	1,093	1,122
SAC – Segregated Accounts Company	123	143
BN – Business Names	51,262	51,524
Totals	128,134	287,110

191. General companies under the Companies Act (CA) must file basic information on the name, address of registered office, copies of Memorandum and Articles of Association with the Registrar. Annual returns detail the names, address and occupations of company's shareholders, names of directors with stipulation as to whether 60% of shares are Bahamian owned. Up-to-date registers of shareholders are required to be kept at the company's registered office.

192. Foreign companies are to be registered with the Registrar and a notice is gazetted and a statement filed with the Registrar detailing certain information. These companies are required to have a registered office in The Bahamas which must be filed with the Registrar as a requirement for registration.

193. Authorities indicated that the Compliance section of the RGD which was established in October 2015 has responsibility for ensuring that all legal persons created in The Bahamas comply with their respective legislation, inclusive of monitoring and supervising same. Furthermore, the authorities indicated that steps are being taken to evaluate the various legal persons with a view to striking off those companies as required by legislation from the register.

194. IBCs governed by the International Business Corporations Act (IBCA) are required to file basic information on name, name of registered agent and the address of its registered office, a copy of Memorandum and Articles, a register of its directors and officers with the Registrar. A register of its shareholders is required to be kept at the registered office. The disparity with the number of active companies and registered companies is due to the fact that IBCs must remain on the register for at least 5 years after being struck off as they can apply to the Court to be reinstated in accordance with section 166(4) IBC Amendment Act 2010.

195. Ordinary and authorized purpose trusts are allowed in The Bahamas (Trustee Act chapter 176 and Purpose Trust Act, chapter 176A). Trusts are not required to be registered in The Bahamas. Trust companies are required to obtain information in relation to beneficial ownership of legal arrangements. Individuals acting as trustees are required to conduct CDD on all trusts. FIs are required to obtain and retain information on trustees, settlors and beneficiaries of trusts, which is accessible to competent authorities. Trust companies are subject to onsite examinations and risk assessments wherein compliance with the statutory KYC rules are tested and verified. Gaps are noted and are listed in formal recommendations for the licensees to address and resolve. It was noted that in 2014 and 2015 respectively, 12 and 9 examinations focused on ML/TF were conducted on trust company licensees by the onsite examination unit of the CB. The competent authorities noted that there has been a very high level of compliance across the onsite examinations.

196. The Bahamas allows the use of nominee shareholders through a licensed bank or trust company or licensed FCSP. The nominees are required to obtain and keep identity verification information in relation to the customers. In relation to non-residents, Regulation 14 of the Exchange Control Regulations 1956 provides guidelines on identity verification. The CBB ensures compliance with the requirement at the onsite examinations and the IFCS does the same for FCSPs. The SCB indicates that when FCSPs provide nominee shareholder services, the FCSP is required to register with the Registrar and file a statement containing basic information on the entity. During the onsite inspection the Inspector will review supporting documents to ensure that nominee shareholder information is duly filed with the appropriate authority. Nominee directors are prohibited in The Bahamas.

197. Foundations under the Foundations Act, chapter 369D are required to register with the Registrar General and file basic information in relation to the name, purpose and objects, name and address of secretary/agent, address of registered office and a list of names and addresses of the foundation's first officers. As of 8th December 2015, there were 395 active foundations out of a total 722 registered. Inactive foundations have been struck from the register.

198. Executive Entities under the Executive Entities Act 2011 are required to register with the Registrar and file a statement containing basic information on the entity. This information includes name, purpose, name and address of executive entity agent. It is not required that the Registrar be provided with the identity of founders, members of the executive council or officers. The entity has the discretion to file a copy of the Charter of Articles. Executive entity agents are required to maintain custody of the Charter and Articles, along with all amendments, which must be readily available for production to the Registrar upon notice to do so.

199. Basic information on ownership of legal persons is maintained in a centralized registration system by the Registrar General. The information is publicly available. The Registrar General maintains basic information for the following: companies, segregated accounts companies, foundations, executive entities, limited liability partnerships (LLP), and exempted limited partnerships (ELP). LLPs must register with the RGD and file a memorandum of co-partnership containing, inter alia, name of firm under which partnership business will be conducted, location of firm, general nature of firm's business, name of all general and special partners of the firm, and their respective places of residence and the amount of capital stock contributed by each partner. ELPs must register with the RGD and file information on the partnership's name, the nature of its business, the address of the registered office, the names and addresses of its general partners. A Certificate of Registration is issued by the RGD. Only licensed bank or trust company or a licensed FCSP may act as a registered office for an ELP and provide partners for an ELP. General partnerships are not required to be registered in The Bahamas.

200. The information maintained by the Registrar General is limited to information on legal owners and not ultimate BO of the legal persons. Authorities have informed that in addition to the duties mentioned in paragraph 188 above, the Compliance section of the RGD while monitoring and supervising those active legal persons will impose more stringent sanctions as provided for in the legislation governing the various legal persons. .

201. The Bahamas has no public registry of beneficial owners. Registered agents are required to keep information in relation to beneficial owners which are accessible to competent authorities through various forms. The IFCS can immediately access information from registered agents. In the case of requests for information for individual trustees, the CBB would send a direct inquiry to all their licensees to locate the trustee. Foreign requests for trust information would go through the OAG as laid out under IO2. Based on interviews with registered agents and the RGD, it was noted that registered agents comply with the requirements to compile beneficial ownership information. Competent authorities carry out onsite examinations to verify and test compliance with the KYC Rules of the FTRA and FTRR which mandate that licensees and registrants verify beneficial ownership of all clients.

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

202. The Bahamas has identified and assessed some risks associated with trusts and IBCs in the draft NRA. The assessment was limited and focused on risks posed to relevant FIs dealing with these entities.

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

203. There is exchange of beneficial ownership information between competent authorities in The Bahamas. Additionally, there is exchange of information and co-operation with the competent authorities and international counterparts.

204. The competent authorities can access basic ownership information on companies, partnerships, foundations and executive entities incorporated and registered in The Bahamas from the Registrar General. The information is available online. Beneficial ownership can be accessed from licensees and registrants pursuant to the International Tax Cooperation Act, The Evidence (Proceedings in other Jurisdictions) Act 2000, and CJICA. LEAs can access beneficial ownership information through the use of production orders or warrants to registrants and licensees. The FIU has access to beneficial ownership information through production orders issued under the FIUA.

205. The OAG and regulators have direct access to the Registry's computer system. LEAs are provided access if required for a particular matter and FIU can only access the system through the OAG. While the above measures allow for access, the information need not be adequate, accurate or current since as previously noted above there is little analysis or monitoring and no verification in relation to the basic information kept by the Registrar General.

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

206. Basic and beneficial ownership information on all types of legal persons created or registered by The Bahamas is available to competent authorities in a timely manner through a combination of mechanisms created by The Bahamas' legal persons formation laws, AML/CFT laws and its laws regulating FIs. As already indicated trusts are not required to be registered in The Bahamas. However, trust companies are required to obtain information in relation to beneficial ownership of legal arrangements. FIs and DNFBPs are required to obtain and retain information on trustees, settlors and beneficiaries of trusts, which is accessible to competent authorities under AML/CFT legislation. As such, competent authorities in particular supervisory bodies have access to information maintained by their relevant supervised entities. The LEA and the FIU can also access information on legal arrangements from the FIs and DNFBPs through a production order under the appropriate authority. The LEA and FIU advised that there were no problems in accessing information requested under appropriate authority from FIs and DNFBPs. The response to information requests can occur on the same day or a few days later.

207. In relation to the FIU, the Authorities indicated that the FIU has never experience difficulty in obtaining such information which routinely accompanies STRs received from the reporting entity. Due to the response of FIs and DNFBPs the FIU has never had to avail itself of disciplinary actions. Based on the information provided and the interviews, the basic and beneficial ownership information obtained is accurate, current and provided in a timely manner. See paragraph 227 in relation to international cooperation of FIU, which notes that there has been no complaints from other jurisdictions relating to the international cooperation provided by The Bahamas. The Authorities have indicated that LEAs are able to access basic and beneficial ownership of legal arrangements. Similarly to the FIU the LEAs have not experienced any problems in accessing basic and beneficial ownership information held by FIs and DNFBPs.

Effectiveness, proportionality and dissuasiveness of sanctions

208. There are a range of sanctions available in relation to persons who do not comply with the information requirements. Under section 286 of the CA, contravention of a company's disclosure, filing and record-keeping obligations may be subject to a civil penalty of \$20 for each day or part thereof during which the contravention continues. Any natural person acting on behalf of the company can also be subject to the same penalty. Section 180 of the IBCA imposes a penalty of \$10,000 or imprisonment for two years for failure to keep a share register. Failure to submit required information on time can result in the IBC being struck off the register. FIs and DNFBPs can be fined for breaches of identification obligations regarding legal entities in guidelines or codes of practice a maximum fine of \$10,000 on summary conviction and on conviction on information for the first offence, a maximum fine of \$50,000 or for a second or subsequent offence, a maximum fine of \$100,000. The CBB has indicated that it has levied various sanctions including cease and desist orders, directives, mandating operational reviews at licensee cost and revocations. The SCB has indicated that sanctions have been levied while the ICB has indicated that there was no need to issue sanctions as there is full compliance by licensees. It should be noted with regard to the RGD that if a company fails to file its basic information the company cannot obtain a certificate of good standing (COGS) from the RGD. The COGS is a requirement for conducting financial business and the annual renewal of the company's business licence. Consequently, this acts as an incentive for legal persons to comply with the requirements in the CA to update their basic information. Although there has been sanctions levied, the assessors are unable to determine if the sanctions were effective, proportional and dissuasive.

Competent authorities' ability to identify, assess and understand vulnerabilities and extent to which legal persons created in country can be, or are being misused for ML/TF

209. Competent authorities in The Bahamas understand the vulnerabilities of legal persons/arrangements being misused for ML/TF. The draft NRA has assessed the vulnerabilities of legal persons and legal arrangements. The FIU has conducted a risk analysis of STRs received in relation to the misuse of legal persons/arrangements.

210. The CC has indicated that guidance and measures regarding ML/TF risks for legal persons/legal arrangements is documented in the Codes of Practice. Paragraph 14.6.2 of the Codes of Practice indicate that typologies have shown that trusts are a popular vehicle for money laundering. Furthermore, the Codes provide guidance for FIs on high and low risk customers and the procedures that should be in place to mitigate risk.

211. The GB has recognized the vulnerability with legal persons who are license holders or DNFBPs misusing same for ML/TF. As such, licenses issued under the GA, are contingent on the ongoing suitability for licensing of persons to whom or which they are issued as per Section 22(2) of the GA. The GB's licensing and re-licensing process follows a three year cycle. In the 1st year of licensing, a full probity investigation is conducted. In the following 2 consecutive years; a "limited probity investigation" is conducted to determine ongoing suitability for re-licensing. Thereafter, a full probity investigation is performed in respect of the application for renewal of the license after every three years. The ICB conducts onsite examinations which allow them to test compliance of licensees against the FTRA and FTRR KYC rules. The ICB has indicated that beneficial ownership information is accessible because there is ongoing supervision and monitoring of all licensees and reporting requirements by licensees.

212. The SCB has drafted AML/CFT Rules as a method of mitigating risk in relation to legal persons/arrangements being used for ML/TF. The CBB has implemented measures to mitigate the risks in relation to legal persons being used for ML/TF. These measures include AML/CFT Guidelines specific to CDD which FIs must observe when engaging with legal persons. These measures are checked during on-site examinations.

Overall conclusions on Immediate Outcome 5

213. The Bahamas is able to incorporate companies, partnerships, foundations and executive entities. There is certain information required upon the formation of these and in some instances updates required to ensure transparency. Some basic ownership information is maintained by the Registrar General in The Bahamas. Beneficial ownership information is maintained by FIs and DNFBPs and is easily and timely accessible. Although there have been sanctions applied to legal persons The Bahamas is unable to demonstrate whether sanctions are effective, proportionate and dissuasive. Generally there is a good level of exchange and cooperation domestically and internationally with the competent authorities. Competent authorities within The Bahamas understand the vulnerability posed with legal persons/arrangements being misused for ML/TF.

214. **The Bahamas has achieved a moderate level of effectiveness for IO. 5**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

The Bahamas cooperates with international counterparts and is also able to provide mutual legal assistance (MLA) but not without delay. The Bahamas uses the extradition process to extradite both nationals and non-nationals. Extradition requests are not generally fulfilled in a timely manner because of due process. The Bahamas is able to effectively provide and seek international cooperation with other jurisdictions through agreements, MOUs and asset sharing protocols.

Recommended Actions

Processes for the timely prioritisation and execution of mutual legal assistance requests should be implemented.

The case management system for extradition should be formalised and clear processes for timely execution of extradition developed.

The case management system for extradition and MLA should be improved to capture (i) number of requests; (ii) nature of requests; (iii) whether requests were granted or refused; (iv) type of crime to which the requests relate; and (v) how much time was required to respond to the requests.

The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

Providing constructive and timely MLA and extradition

215. The ILCU formed in 2000 in the OAG, is responsible for providing MLA to foreign jurisdictions. The ILCU is made up of seven attorneys and three administrative staff. The ILCU has a system in place for matters relating to MLA. The request is received and recorded in a manual. Upon receipt of the request, an acknowledgement is sent to the requesting country. Once the documents are prepared by the legal officer assigned, the request is then submitted through the Assistant Director of Legal Affairs, to the Director of Legal Affairs and then on to the Attorney General to approve. Once approved, the documents are processed and an ex parte application is made before the Supreme Court. Once an order is received, it is served on relevant parties. Financial institutions generally comply with the order within 2 weeks of receipt. Extensions may be granted upon request.

216. As of 2009, The Bahamas had not refused MLA to another country. Although, in some circumstances requests may appear to be not timely, The Authorities have indicated that the delay is usually due to the different set of circumstances presented by each Letter of Request. In some cases the requests made by the Requesting country are deficient and require further and more detailed particulars to prepare documents for court. Furthermore, the requesting jurisdiction may in certain circumstances make supplemental requests during which time the request remains open. Dialogue between the requesting country and The Bahamas is continuous until the request is satisfied so the file can be closed. There is no indication

that priority is given to requests from high-risk countries or requests involving high-risk offences. The prioritization of requests by The Bahamas appears to be one made by the requesting country.

Example of A Mutual Legal Assistance Request from Canada

In 2012 the OAG ILCU received a letter of request from Canada to obtain banking and commercial documents from a financial institution. The matter emanated from a fraudulent scheme, and involved breach of trust, forgery and money laundering. The court documents were filed in the Supreme Court, the application was heard and the Order granted. The financial institution requested an extension of two weeks for the production of the documentation. The DOJ Canada advised that one of the defendant's names was missing from the Order which had been sought from the Supreme Court.

In March 2013 a Second Supplemental Request was received by the ILCU from the DOJ Canada requesting registration of a restraint Order, to execute and serve a restraint order, and personal service of a restraint order on financial institutions and individuals. The restraint orders were served and the respective affidavits of service were prepared and forwarded to DOJ Canada.

In May 5, 2013 OAG received an urgent amended Third Supplemental Request from the DOJ Canada requesting production of documents from a company in The Bahamas. Application was made by OAG to the Supreme Court and the same were produced by the company and transmitted to DOJ Canada.

In December 2013 the ILCU received a Fourth Supplemental Letter of Request from the DOJ Canada seeking to have a Canadian restraint order served, registered and executed for enforcement within The Bahamas. An amended Fourth Supplemental Letter of Request was submitted by DOJ Canada in January 2015 seeking a restraint order.

In October 2014, the ILCU received a Fifth Supplemental Letter of Request in this matter from DOJ Canada, seeking a restraint order for accounts located at a financial institution in The Bahamas and production of documentation. Application was made by OAG to the Supreme Court, the respective accounts were restrained and the documentation was produced and transmitted to DOJ Canada.

The matter is currently ongoing.

217. The Bahamas has no issue with keeping information confidential in relation to MLA. Documents are kept in a secure location within the ILCU. Further, once documents are filed in the Court, these documents are kept sealed and the applications and related filings in such matters are ex parte. It was noted that there was an instance where information from a requesting country was obtained by the press in The Bahamas, however, the matter was dealt with by the requesting country as the matter had become publicly known in the requesting country.

218. The table below shows the MLA requests received by The Bahamas for the period 2011-2015 from Canada, UK and USA, treaty partners with The Bahamas.

Table 16: MLA requests received by The Bahamas for the period 2011-2015 from Canada, UK and USA.

Year	Canada	UK	USA
2011	1 (1 closed)	0	4 (4 closed)
2012	5 (2 open) (3 closed)	0	1 (1 closed)
2013	1 (1 open)	0	3 (1 open) (2 closed)
2014	0	0	0
2015	1 (1 closed)	1 (1 open)	1 (1 open)

219. While there are still open MLA requests, the authorities have indicated that in most instances where the requests are still open it would be at the behest of the requesting country that the file remains open.

220. No requesting jurisdiction complained about the timeliness of cooperation rendered by The Bahamas. Most of the requests for assistance relate to the investigation into more than one offence, money laundering and fraud being the most prevalent offences. See table 17 for a breakdown of the nature of offences for requests received from USA, Canada and UK during the relevant period. The Bahamas has not refused any of the requests for MLA received during this time period.

Table 17: Type/Nature of Offences of MLA Requests Received from USA, Canada and U.K.

TYPE OF OFFENCE	2011	2012	2013	2014	2015
Money Laundering	3	5	2	0	1
Fraud	4	5	3	0	0
Drug Trafficking	1	1	1	0	3

Mutual Legal Assistance from USA

In 2012 the OAG ILCU received a letter of request from the US Department of Justice (USDOJ) requesting bank records from two financial institutions within The Bahamas. The matter involved conspiracy to commit fraud, ML and tax evasion. The relevant court documents were filed in the Supreme Court, the

matter was heard and the Order granted. The ILCU received the documents from the first financial institution and forwarded them via courier to the USDOJ. The second financial institution requested an extension for production of the documents; the extension was agreed to. Subsequently the documents were received from the financial institution and forwarded via courier to the USDOJ. The USDOJ advised that the assistance granted by The Bahamas was beneficial in the conviction of subjects in the US.

221. . Extraditions are dealt with by the ODPP within the OAG in The Bahamas. There is a case management system but this system is not a formal one. The case management system seems to be an ad hoc one and is not very effective. Requests can be prioritized once urgency is determined. Generally there is collaboration with the ODPP, Ministry of Foreign Affairs and the police to ensure that the extradition requests are fulfilled. Extradition requests are not generally fulfilled in a timely manner.

222. The Bahamas is able to prosecute nationals in instances where extradition is unavailable. There have been instances where persons have waived the extradition committal proceedings and have voluntarily returned to the country requesting extradition to face trial. There were no statistics provided to demonstrate timeliness in relation to this category of persons. There are vulnerabilities with the present system as extradition is not always executed expeditiously as the person being extradited at times may use the judicial system to his/her advantage. Examples of this are as follows:

The Superintendent of Her Majesty's Foxhill Prison and The Government of the United States of America v. Victor Kozeny [2012] UKPC 10: judgement delivered in 2012 by Privy Council for a request in 2005.

Gordon Newbold et al v. The Commissioner of Police et al [2014] UKPC 12: judgment delivered in 2014 by Privy Council for an extradition request that occurred 9 years prior.

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

223. The Bahamas has made a number of MLA requests to other jurisdictions, all of which were ML cases. For example, the DEU in 2014 sent nine requests for co-operation to the US. There is no evidence to indicate that these requests were made in a timely manner. As such, The Bahamas has not demonstrated effectiveness in relation to MLA requests made.

Seeking and providing other forms of international cooperation for AML/CTF purposes

224. The Bahamas is able to effectively provide and seek international cooperation with other jurisdictions. The FIU is a member of Egmont and the financial services regulators have entered into MOUs with foreign counterparts to facilitate the exchange of information.

225. In addition to the various MOUs, the CBB has established supervisory contacts with the home regulators of its foreign-based licensees such as Prudential Regulation Authority, The Swiss Federal Banking Commission, The Bank of Spain, The Federal Reserve Bank, among others. During the period 2011 – 2015,

the CBB received 84 requests for information and 15 requests from foreign regulators for onsite examinations. None of these requests were denied. The CBB provided statistics in relation to international cooperation specific in relation to the offshore banking sector. For the relevant period all requests received were completed.

226. Although, the statistics provided by the jurisdiction do not indicate details such as timeliness and quality of feedback provided and the number of times supervisors sought assistance from foreign counterparts, the jurisdiction has indicated that the CBB has not requested nor has been asked to provide feedback in relation to assistance provided. Although the assessor notes that there have been instances where requests have taken weeks so that timeliness is an issue in some instances, the jurisdiction has indicated that these instances have been where the CBB has had to request the information from other regulators or entities. Where however, the information is accessible from the CBB, the responses are provided within a few days. No adverse information was provided in relation to quality of feedback provided by the jurisdiction in relation to requests.

227. The SCB has a system in place to deal with foreign requests from the request being acknowledged to providing the information immediately or as soon as practicable upon receipt of same from relevant registrants. There are methods in place to deal with urgent requests. Within the last 4 years, 92 requests were received by the SCB with 6 being unable to be facilitated by the SCB because of legal challenges.

228. To date the FIU has signed 18 MOUs with foreign FIUs to assist with information sharing and cooperation for AML/CFT purposes. During the period 2011 to 2014, the FIU sent a total of 287 requests to foreign FIUs for information on AML/CFT. The majority of requests were sent to the US who The Bahamas works closely with. The FIU also seeks information from Interpol in relation to analyzing STRs. During the period 2011 to 2014, 85 requests were made to Interpol. The Bahamas' FIU is able to provide information through use of spontaneous disclosure/reports where the information relates to offences for AML/CFT purposes. These requests are only denied if the information requested does not relate to a predicate offence related to ML/TF.

Example of spontaneous disclosure by the FIU:

On June 4th 2015, the FIU received a STR from a FI in The Bahamas which resulted in the FIU making a spontaneous report to a foreign FIU in the Americas region. During the analysis of the report it was discovered that the subject of the report was indicted in his jurisdiction's district court for his alleged involvement in the FIFA football scandal. In addition to the spontaneous report made by FIU Bahamas the foreign jurisdiction was advised to proceed by MLAT in order to obtain additional financial information and certified records about the subject's accounts to use in a court of law as evidence in judicial proceedings.

229. The Bahamas has a number of agreements with jurisdictions, regionally and internationally. As such, The Bahamas is able to provide and seek other forms of international cooperation with these jurisdictions. An example of such agreement in place is with Turks and Caicos. Operation Bahamas, Turks and Caicos (OPBAT) is a combined Coast Guard, Turk and Caicos Islands Police, the Drug Enforcement Administration (DEA) and Government of The Bahamas partnership to combat drug smuggling through interception at sea and conducting investigations..

230. The ILCU of the OAG is able to provide other forms of international cooperation to countries through the Criminal Justice (International Cooperation) Act. The ILCU of OAG has provided international cooperation to several non-treaty countries over the relevant period. Some of the countries include Cayman Islands, Italy, Switzerland, Spain, Russia, Peru, Argentina, Portugal, Tunisia and The Netherlands.

231. The table below shows the number of requests received from various jurisdictions, the number of active requests and the number of closed requests. The requests were all dealt with through the CJICA in The Bahamas.

Table 18: Number of requests received, active and closed for the period 2011 to 2015

Year	Received	Open	Closed
2011	46	5	41
2012	17	3	14
2013	12	7	5
2014	19	10	9
2015	13	12	1

232. The assessors note that during the period under review, there has not been a year that The Bahamas has fulfilled requests received. The Bahamas has indicated that this is as a result of due process challenges and other constitutional challenges or other matters relating to the request by the requesting country. The Bahamas is able to share assets with foreign counterparts. There have been a number of successful cases where the jurisdiction has shared assets held in The Bahamas, mainly with their US counterparts. Although there is no formal agreement with the US and asset sharing is determined on a case-by-case basis, to date there has been no refusals in relation to asset sharing.

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

233. Although there is no public registry of beneficial owners or trust within The Bahamas, the jurisdiction is able to provide basic and beneficial ownership information in relation to legal persons/arrangements to its international counterparts. The table below shows the annual breakdown of requests made to the SCB and the FIU concerning beneficial ownership.¹⁴

Table 19: Annual breakdown of requests made concerning beneficial ownership from 2011 to 2014

Competent Authority	2011	2012	2013	2014
FIU	104	69	56	58

¹⁴ Statistics do not include beneficial ownership where the beneficial owners are known to SCB, are not regulated or the relevant due diligence /KYC information has been received and the fit and proper test has been completed

SCB	14	5	11	17
TOTAL	118	74	67	75

234. The FIU has received requests for and provided information on basic beneficial ownership of legal persons and arrangements to foreign FIUs through spontaneous reports. The CBB has not received foreign requests in relation to beneficial ownership.

Overall conclusions on Immediate Outcome 2

235. The Bahamas cooperates with international counterparts and is also able to provide mutual legal assistance (MLA) but not without some delay. The Bahamas is able to demonstrate that the jurisdiction is using the extradition process in place by extraditing both nationals and non-nationals. The extradition is, at times, with major delay as a result of due process and at times other constitutional challenges.. The Bahamas is able to effectively provide and seek international cooperation with other jurisdictions through agreements, MOUs and asset sharing protocols with other jurisdictions.

236. **The Bahamas has achieved a moderate level of effectiveness for IO. 2**

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerological order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.
2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in November 2007. This report is available from cfatf@cfatf.org.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

3. This recommendation was issued in February 2012 and is being evaluated for the first time during this mutual evaluation.
4. *Criterion 1.1* – The Bahamas began its first NRA in October 2014 with an anticipated completion date of September 2015. This NRA has not been completed yet, although a first draft was presented to the assessment team. The NRA process is based on the World Bank Methodology. Fraud and drug trafficking were identified as the significant threats. However, the scope of analysis regarding national threats and vulnerabilities was limited, particularly within the context of The Bahamas as an international financial centre. There were significant challenges in the collection and analysis of relevant statistics. The draft report did not contain information on the comparative levels of vulnerability among the financial and DNFBP sectors. Neither was there an analysis of the national vulnerabilities. A previous draft “National Strategy for the Prevention of Money Laundering and the Financing of Terrorism”, produced by the FIU in 2008, contained summary discussion of the threats/vulnerabilities at the time. The Strategy lacked focus on The Bahamas as an international financial center, as well as any analysis on the national vulnerabilities or relative levels of sector vulnerabilities. It also lacked comprehensive data and information to assess ML/TF risks.
5. *Criterion 1.2* – In 2014 the Task Force (AML/CFT Policy body headed by the Attorney General) authorised the establishment of the NAMLG and appointed a national coordinator for the purpose of conducting the national ML/TF NRA. NAMLG is comprised of representatives of NAMLC (which is comprised of supervisors, the FIU, legal, and other relevant government agencies) as well as representatives from relevant private sector associations. NAMLG met every two weeks over the period and was joined by private sector representatives on occasions that required their input. The national coordinator for NAMLG resigned in January of 2015, and NAMLG was subsumed into the Task Force as a single body for national AML/CFT cooperation and coordination. While the Attorney General is the *de facto* focal point for AML/CFT issues in the Bahamas, no documented evidence was provided with respect to the clear designation of an authority or mechanism to assess risk.
6. *Criterion 1.3* – The ML/TF NRA is yet to be completed. It is the intention of The Bahamas to conduct risk assessment on a regular basis every two to three years to ensure continuing compliance. No comprehensive risk assessment has been completed to date showing national vulnerabilities or the relative vulnerabilities of the sectors.
7. *Criterion 1.4* – The members of the NAMLC in addressing the NRA will have access to the results. The members include all domestic regulatory authorities in the financial services sector together with the Attorney General’s Office, the Ministry of Finance, the FIU, the RBPF, Customs and the Bar Association. Additionally, members of the Attorney General’s Task Force which include a number of the foregoing

agencies in monitoring the NRA have similar access. There is no indication as to if and how information on the results of the risk assessment will be provided to self-regulatory bodies (SRBs), financial institutions (FIs) and DNFBPs.

8. *Criterion 1.5* – Since the process of identifying and assessing risk is still underway, The Bahamas has not yet applied the risk-based approach to allocating resources or to implementing measures to prevent or mitigate ML/TF. No evidence was provided that the draft “National Strategy for the Prevention of Money Laundering and the Financing of Terrorism”, produced by the FIU in 2008, led to prioritisation, planning or resourcing among competent authorities.

9. *Criterion 1.6* – The Bahamas has not applied any exemptions from the AML/CFT framework with respect to financial and DNFBP activities as defined in the FATF standards.

10. *Criterion 1.7* – Higher risks have not been clearly identified by the Bahamas in the current NRA process. As a result, financial institutions and DNFBPs have not been required to take enhanced measures or to incorporate the information in their own risk assessments.

11. *Criterion 1.8* – Simplified CDD measures are permitted in the relevant guidelines, codes of practice and rules for identified low risk situations on the basis of the 2003 FATF Recommendations. These low risk situations are not based on a national assessment of risk.

12. *Criterion 1.9* – The CBB, the SCB, the ICB, the CC and the GB are the competent authorities for AML/CFT supervision for FIs and DNFBPs. They have inspection and monitoring powers as well as sanctioning capabilities. However, with the exception of the new CBB guidelines, there is no requirement for other FIs and DNFBPs to comply with criteria 1.10 and 1.11, or mechanisms for monitoring such requirements. Overall supervision will not ensure compliance of FIs and DNFBPs with R. 1.

13. *Criterion 1.10* – This criterion is met for licensees of the CBB through sections 24.1 and 24.2 of the Guidelines. Other FIs and DNFBPs are required through the FCSP Handbook, the SI Rules the Insurance Commission of The Bahamas Anti-Money Laundering and Combatting the Financing of Terrorism Guidelines (IC AML/CFT Guidelines) and the CC Codes of Practices; to develop a risk-rating framework to assess potential risk on the basis of customer type, relationship, product and/or transaction for customer acceptance and on-going monitoring policies and procedures. The focus of the above requirements is the development of procedures for assessing the potential risk of individual customers and not on other risks (namely countries and geographic areas; and products services, transactions or delivery channels). There is no explicit requirement for FIs and DNFBPs to identify, assess and understand their overall ML/TF risks to include the obligations of this criterion. Furthermore, there are no mechanisms for financial institutions and DNFBPs to provide risk assessment information to competent authorities and SRBs.

14. *Criterion 1.11* – CBB AML/CFT Guidelines (section 28) requires that licensees a) have AML/CFT policies, controls and procedures, which are approved by senior management, to enable them to manage and mitigate the risks identified; b) to monitor the implementation of controls and enhance them if necessary; but not to manage and mitigate the risks where higher risks are identified. For other FIs and FCSPs, the Credit Union Code of Practice (CUCOP), the SI Rules, the IC AML/CFT Guidelines and the FCSP Handbook require senior management to approve the risk-rating framework designed to assess potential customer risk. With regard to DNFBPs other than FCSPs, senior management approval of risk-based policies, controls and procedures is not covered in the relevant Codes of Practices. As previously indicated the focus of the framework is the individual customer. There is no requirement for other FIs or DNFBPs to

have policies, controls and procedures which are approved by senior management to manage and mitigate risks identified by the country, the FIs or DNFBNs.

15. *Criterion 1.12* – As already indicated in criterion 1.8 simplified CDD measures are permitted in the relevant guidelines, codes of practice and rules for identified low risk situations on the basis of the 2003 FATF Recommendations. Criterion 1.9 is not met while 1.10 and 1.11 have been partially met as noted above.

Weighting and Conclusion

16. The main criterion to identify and assess ML/TF risks of the country is awaiting the completion of a NRA. The assessment of risk in the draft NRA report is not within the context of The Bahamas as an international financial center and national vulnerabilities have not been identified. While there are basic requirements for FIs and DNFBNs to implement a risk-based approach this is at the customer level and is unable to take into account AML/CFT risk at a national level. Additionally there are no requirements for risk assessments at an institutional level and the supervisory AML/CFT regime is unable to monitor such. **Recommendation 1 is rated partially compliant.**

Recommendation 2 - National Cooperation and Coordination

17. This Recommendation (previously R.31), was rated ‘C’ in the 3rd MER. Recommendation 2 has new specific requirements to have national policies which are informed by risks and the element of cooperation, exchange of information and domestic cooperation with regard to financing of proliferation. The 2007 MER indicated that a Task Force was established to facilitate operational cooperation between the respective regulatory and law enforcement agencies and in the development of AML/CFT policies. The task force was comprised of relevant ministers and the governor of the Central Bank. The task force was also comprised of senior officials from the relevant government ministries and departments, FI and DNFBN supervisors, and the FIU.

18. *Criterion 2.1.* – The FIU produced a draft “National Strategy for the Prevention of Money Laundering and the Financing of Terrorism” document in 2008 in which fraud was identified as the major threat, along with drug trafficking and corruption. Priority goals were identified at that time. At the time of the on-site visit, the authorities acknowledged the need for an update. The Task Force, which has commissioned the NRA, has outlined five broad AML/CFT objectives. However, national AML/CFT policies have not yet been informed by risks identified as the NRA process is still underway. Neither was evidence provided of AML/CFT policies being reviewed.

19. *Criterion 2.2* – The country indicated that all domestic regulatory authorities (as described under 1.4 above) are represented in the NAMLC and that all AML/CFT matters including the development of a NRA are monitored by this Task Force. However, there is need for clarity with respect to the various groupings, namely NAMLC, NAMLG and the Task Force. Furthermore, Authorities need to provide a copy of the formal designation of the relevant body, or any statutory document available where it has been designated as the mechanism responsible for AML/CFT issues.

20. *Criterion 2.3* – The NAMLC provides for national cooperation and coordination from a policy and operational point of view. However, as previously indicated, there is need for a) clarity with respect to the composition and roles of the various national bodies (namely Task force, NAMLC, and NAMLG) and b) a

distinction between policymaking and operational roles of these groups. Since 2002, domestic regulators such as CBB, the SCB, the ICB, the IFCS and the CC, have been parties to an MOU and meet regularly under the ambit of the GFSR to discuss matters of mutual interest, such as cross regulatory boundaries and policy issues. Additionally, each of these regulators has the ability to cooperate and exchange information domestically under the CBBA, SIA, IA, FCSPA, and FTRA. The GA also contains provisions for the Gaming Board to cooperate with local regulatory authorities, together with the FIUA which would cover other DNFBPs (Casinos) and cooperation with law enforcement authorities generally. The FIU may participate in GFSR Meetings and Task Force Meetings, where concerns about issues relative to the AML/CFT framework are also discussed. Through this medium the FIU is able to cooperate with other authorities. There appears to be good coordination among relevant agencies involved in border protection. However, for AML/CFT purposes, no information was presented on sharing agreements, or mechanisms for the Police or Customs to share information. Mechanisms for cooperation on terrorism financing, particularly targeted financial sanctions, are not well developed.

21. *Criterion 2.4.* – There are currently no provisions to cooperate and coordinate domestically, specifically with regard to the financing or proliferation of weapons of mass destruction. Authorities made reference to the IOEAMA, however these measures do not refer to cooperation and coordination in the combating of proliferation financing.

Weighting and Conclusion

22. While The Bahamas has mechanisms for its Authorities to cooperate and coordinate domestically, national policies are not informed by risk. The Bahamas also has no policies or mechanisms in place to cooperate and coordinate with regard to combating the financing of the proliferation of weapons of mass destruction. **Recommendation 2 is rated partially compliant.**

Recommendation 3 - Money laundering offence

23. R. 3 was formerly R.1 and 2. These recommendations were previously rated ‘PC’ and ‘C’ respectively, with the main deficiencies being the partial coverage of chemical precursors and the fact that the predicate offences for ML were limited and did not cover the range of offences in the designated category of offences. These were solved through numerous amendments to several pieces of legislation including the Penal Code (see paragraph 9 of 7th FUR). The main change for this Recommendation affects countries which follow the list approach to predicate offences, due to the addition of tax crimes to the list of designated categories of offences. The Bahamas follows a list approach.

24. *Criterion 3.1* – ML has been criminalized based on Art. 3(1)(b) & (c) of the Vienna Convention and Art. 6(1) of the Palermo Convention through the Precursor Chemicals Act, in conjunction with section 29(d) of the Dangerous Drugs Act (DDA), as well as sections 40, 41 and 42 of the POCA. Section 83 of the Penal Code makes provisions for attempting to commit an offence. Section 86 of the Penal Code makes provisions for abetting and conspiring to commit an offence.

25. *Criterion 3.2* – Predicate offences for ML are contained in section 3 of the POCA and cover (1) offences under the Prevention of Bribery Act (PBA), (2) any of the ML offences under POCA, an offence under the Anti-Terrorism Act (ATA), (3) an offence which may be tried on information in The Bahamas other than a drug trafficking offence, (4) an offence committed anywhere that, if it had occurred in The Bahamas, would constitute an offence in The Bahamas, as set out in the POCA Schedule, (5) an offence under the GA, 2014 and (6) an offence under the Travellers Currency Declaration Bill. With regard to

numbers (3) and (4), a “triable” offence is a serious offence as per article 32 of the Constitution of The Commonwealth of The Bahamas (see paragraph 137, 3rd Round MER). The Bahamian law contained equivalent offences to most of FATF designated category of offences, except for human trafficking, participation in an organized criminal group and racketeering. It was also noted at the time, that some of the offences available in existing legislation such as the Firearms Act (i.e. illicit arms trafficking) would not comply with the criterion of being a triable offence, to be a predicate offence. The first deficiency was solved by the issuance of the Trafficking in Persons (Prevention and Suppression) Act, 2008 (Act no. 27 of 2008 to address the issue of human smuggling and human trafficking), also by the Penal Code (Amendment) Act 2014, which included participation in an organized criminal group and racketeering as offences. The deficiency with regard to the Firearms Act was resolved with the Firearms (Amendment) Act of 2014. With regard to tax crimes, The Bahamas has a value added tax regime with specified offences for not complying with payment obligations. There are penal provisions under the Customs Management Act, National Insurance Act and the Penal Code for non-compliance with due payments and fraud. While there is no direct tax except for real property tax the authorities have asserted that foreign direct tax evasion is a predicate offence for money laundering since it will be treated as fraud under sections 348 and 17 of the Penal Code. Section 348 of the Penal Code states that whoever defrauds any person by any false pretence shall be liable to imprisonment for five years. Section 17 defines an intent to defraud as an intent to cause, by means of such forgery, falsification or other unlawful act, any gain capable of being measured in money, or the possibility of any such gain, to any person at the expense or to the loss of any other person. The broad nature of the definition of intent to defraud will include behavior encompassed under direct tax evasion and the definition of person includes both natural persons and corporate entities or governments. The sanction in section 348 makes fraud an offence triable on information and therefore a predicate offence for money laundering according to section 3 of the POCA. Additionally as indicated under R.37 the CJICA provides for mutual legal assistance with tax matters. There is no restriction to provide assistance in fiscal matters by virtue of the deletion of subsection (8) of section 6 of the CJICA by the 2009 amendment of the Act.

26. *Criterion 3.3* – The Bahamas does not use a threshold approach, but rather a semi-list approach as detailed under criterion 3.2, which includes all “triable” and therefore all serious offences under national law.

27. *Criterion 3.4* – The ML offence extends to all assets that represent proceeds of a criminal conduct through section 3 of the POCA.

28. *Criterion 3.5* – Sections 40 – 42 of POCA refers to property being that of criminal conduct. These sections do not require a person to be convicted of a predicate offence before proving property is the proceeds of criminal conduct.

29. *Criterion 3.6* – This criterion is addressed in the list of offences covered at section 3 of the POCA as explained under 3.2 above.

30. *Criterion 3.7* – Based on The Bahamas’s definition of the offence of ML, a person who commits the predicate offence will also be captured once the person engages in activities noted in sections 40 - 42 of the POCA.

31. *Criterion 3.8* – Pursuant to section 40 (2) of the POCA, the ML offences require the *mens rea* of ‘knows or has reasonable grounds to believe’ which incorporates the ability to prove ML from objective factual circumstances.

32. *Criterion 3.9* – Sections 40-45 of the POCA include ML penalties ranging from BSD\$50,000 to BSD\$100,000 or an unlimited fine that is at the discretion of the judge, and three (3), five (5), ten (10) to twenty (20) years of imprisonment for the various offences. Penalties appear proportionate to penalties provided for in the POCA and other legislation. The amounts can also be considered dissuasive for individuals and given the possibility of an unlimited fine, even for legal persons, since this allows the court which would set the fine, to consider the best option applicable or the most dissuasive option for each case.

33. *Criterion 3.10* – Section 54 of the POCA states that a “body corporate” may also be guilty of an offence and these are punished under the POCA by a fine as set out in section 45(1). Section 45(3) allows for assets to be forfeited to the Crown. There is also a specific provision in the International Business Companies Act (IBCA) which enables the Registrar to strike a company off the Company’s Register that was incorporated for criminal purposes. Sanctions applicable to body corporate are proportionate and dissuasive.

34. *Criterion 3.11* – Authorities indicated that appropriate ancillary offences are provided for under the POCA at section 41(1) in conjunction with the Penal Code and common law. Section 41(1) deals with entering into or otherwise being involved in arrangements which facilitate proceeds of crime being retained or controlled by or on behalf of a person who has committed criminal conduct. It also criminalizes arrangements, which are used to ensure that funds are placed at the disposal of the person who committed the criminal conduct or which are used to acquire property for the benefit of such persons. These provisions would therefore cover the facilitating, aiding, abetting and conspiring to commit money laundering. Section 86 of Penal Code makes provisions for abatement and conspiracy to commit an offence. Section 83 of the Penal Code makes provisions relating to attempt to commit offences.

Weighting and Conclusion

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

Recommendation 4 - Confiscation and provisional measures

36. *Criterion 4.1* – (a) Sections 9 and 10 of the POCA inherently provide measures which allow for the mandatory confiscation, at the time of sentencing for a conviction for drug trafficking or any relevant offence, of any property representing a person’s proceeds from drug trafficking or property obtained from the commission of a relevant offence once the Court determines that such a person has benefited from the drug trafficking or relevant offence. Relevant offence as defined in POCA comprise offences listed in the schedule attached to the Act and include all predicate offences. (b) Section 33(1)(a) & 33(2)(a) of the DDA collectively enables a Court to forfeit any property which has been used in the commission of, or in connection with, an offence under the said DDA. The POCA, at sections 10(2) - 10(5)(b), provides for the forfeiture of any money, aircraft or vessel or other thing including premises used in the commission of or in connection with an offence under the said POCA. Section 10(5)(b) also includes any money or other property received or possessed by any person as a result of an offence under the POCA. The Section provides for the confiscation of instrumentalities in relation to money laundering, and also “relevant offences”. (c) At section 47 of the POCA, cash and any other personal property which represents any person’s proceeds from criminal conduct or intended to be used in any criminal conduct may be forfeited. Criminal conduct includes offences under the ATA. Section 10 of the ATA provides for the forfeiture of funds of any person convicted of terrorism or terrorist financing under the ATA. Funds have been defined to include assets of every kind. Under the Interpretation and General Clauses Act person is defined to include any public body and any body

of persons, corporate or unincorporated and will apply irrespective that the word “person” occurs in a provision creating or relating to an offence or recovery of any fine or compensation. This provision allows for section 10 of the ATA to be applicable to terrorist organisations. (d) Section 3 of the POCA Amendment 2014 provides for such persons to redeem the forfeited property on conditions, including payment of value or a portion of the value.

37. *Criterion 4.2* – (a) Section 35 of the POCA provides information gathering powers by permitting production orders to be obtained in relation to material which can help determine whether a person has benefited from criminal conduct or the whereabouts of any criminal proceeds. (b) Section 26 of the POCA provides for the Court to issue a restraint order in relation to all realizable property held by a defendant. Such an order has the effect of preventing such a person from dealing with any realisable property. At section 26(4)(b) an application for a restraint order shall be made ex-parte to a Judge in chambers. At section 4(2)(c) of the FIU Act provisions are available for the freezing of a person’s bank account for a period not exceeding five days if such a request relates to ML or an offence under the ATA. Drug trafficking offences are not captured and the provision precludes all property except bank accounts. The measures at section 4(2)(c) of the FIU Act are however not applicable to property subject to confiscation. Section 4(2)(b) of the FIU Act provides for the FIU on receipt of a STR or disclosure from a foreign FIU to order a person to refrain from completing a transaction for three days. (c) Provisions for the voiding of contracts are found at section 13 of the POCA. Here the court, before which a defendant was convicted, may set aside any conveyance or transfer of property, that occurred after the seizure of such property or the service of notice on the persons affected, by an order, under section 26(4) of the POCA, which is concerned with restraint orders. (d) Outside of what obtains in POCA and other pieces of legislation Section 5 of the Listening Devices Act also provides some investigative measures.

38. *Criterion 4.3* – Measures providing protection for the rights of bona fide third parties are found at section 15 of the POCA. Here a person may apply to the Courts if that person asserts any interest in property that is subject to confiscation. The Court is then required to make an order declaring the nature, extent and value of such a person’s interest.

39. *Criterion 4.4* – (a) The measures for managing and disposing of property frozen, seized or confiscated are centred on sections 26 and 52 of the POCA. At 26(6)(a) measures enable the appointment of a receiver to take possession of realizable property and also to manage or otherwise deal with any property that is the subject of a restraint order. At section 26(8) of the POCA realizable property which is seized pursuant to a restraint order can be dealt with as the Court directs. It is not clear whether the action available under section 26 of the POCA allows for the disposal of frozen and seized realizable property. Section 52 of the POCA creates a confiscated assets fund out of which the Minister of Finance may authorise payments for several purposes. This enables the disposal of confiscated property but no measures detailing the mechanism for managing this fund has been articulated. Section 53 of the POCA provides some guidance in respect of the financial administration of the fund.

Weighting and Conclusion

40. **Recommendation 4 is rated compliant.**

Recommendation 5 - Terrorist financing offence

41. During the 3rd Round, R. 5 (formerly SR II) was rated 'LC'. One of the deficiencies was that the offence of TF did not extend to all of the offences listed in the Annex to the UN Convention on the Financing of Terrorism and the other was that the TF offence did not cover all the types of conduct set out in Art. 2(5)(c) of the indicated Convention. The changes to Rec. 5 are limited to introducing an explicit reference to the Terrorist Financing Convention in the text of the Recommendation.

42. *Criterion 5.1.* – Section 5 of the ATA criminalises TF on the basis of Article 2 (1) (a) and (b) of the International Convention for the Suppression of the Financing of the Terrorist. Section 2 (a) and (b) of ATA incorporates the interpretation of “funds” according to Art. 1 of the Terrorist Convention. Section 83 of the Penal Code makes provisions for attempting to commit an offence.

43. *Criterion 5.2.* – Section 5 (1) (a) and (b) (i) (ii) and 5 (2) of the ATA extends the TF offences according to this criterion and Art 2 of the Terrorist Financing Convention, to the commission of a terrorist act and to the offences defined in the Treaties listed in the First Schedule of ATA. Section 5 of the ATA refers to a “person”. Under the Interpretation and General Clauses Act person is defined to include any public body and any body of persons, corporate or unincorporated and will apply irrespective that the word “person” occurs in a provision creating or relating to an offence or recovery of any fine or compensation. The provision allows for section 5 of the ATA to be applicable to terrorist organisations.

44. *Criterion 5.3.* – Section 2 (a) and (b) of the ATA defines “funds” to include assets of every kind whether tangible or intangible, movable or immovable however acquired and legal documents or instruments in any form; including electronic or digital, evidencing title to or interest in such assets. The source of the funds is irrelevant since all funds however acquired are included.

45. *Criterion 5.4.* – Pursuant to section 5(2) of the ATA it is not necessary to prove that the funds or financial services were used to carry out the TF offence or be linked to a specific terrorist act.

46. *Criterion 5.5.* – There does not appear to be an express provision in the ATA which requires the intentional element and knowledge of the offence of TF to be inferred from objective factual circumstances. As noted at paragraph 169 of the 3rd round MER, the mental elements of the TF offence relate to the intention that the funds are to be used or the knowledge that they are to be used in full or in part to carry out a terrorist act”, although it does not include that it might be inferred from objective factual circumstances. Additionally, the Authorities noted at that time that while it had not ‘been tested in Court, it was expected that the Court would make inferences relating to the mental state of the accused based on inferences, which consider the objective circumstances of the case, as has been done for ML cases’. The Authorities have advised that the Penal Code which is applicable to all persons who commit summary or indictable offences as per sections 8 and 9 provides for intentional inferences for these offences under section 12.

47. *Criterion 5.6.* – Sections 3(1) and 5(1) of the ATA includes offences carried out by a terrorist organisation. Section 5(1) of the ATA establishes that a person guilty of committing an offence criminalized under the ATA, is liable on conviction on information to imprisonment for a term of 25 years. This sanction of imprisonment is dissuasive and proportionate with the penalty for ML on conviction on information to imprisonment for twenty years. There is no fine for TF for a natural person under the ATA. However, section 119(2) of the Penal Code gives the court discretion to impose an unlimited fine for an indictable offence, in addition to any other punishment to which the person is liable. This is proportionate with the penalty for ML of an unlimited fine or both (fine and imprisonment) or on summary conviction to imprisonment for five years or a fine of BSD\$100,000.

48. *Criterion 5.7.* – Only one criminal penalty of a fine of BSD\$2,000,000 is applicable on conviction on indictment to legal persons for TF under section 6 of the ATA. This does not preclude any criminal liability that may have been incurred in the commission of the offence or any civil or administrative sanction imposed. Any civil or administrative sanction can be imposed under Section 6 (b) of the ATA. It is noted that the penalty for legal persons for ML offences is an unlimited fine to be determined at the discretion of the court. While the TF penalty can be considered dissuasive it is not proportionate.

49. *Criterion 5.8.* - Under section 3 of the ATA as amended, a person or a terrorist entity who: (a) commits the offence by any means, directly or indirectly, unlawfully and wilfully; (b) participates as an accomplice in the offence of terrorism or the financing of terrorism; (c) organizes or directs others to commit the offence of terrorism or the financing of the terrorism; (d) contributes to the commission of the offence of terrorism or the financing of terrorism by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist acts or the financing of terrorism with the knowledge of the intention of the group to commit the terrorist acts or financing of terrorism commits an offence. Section 83 of the Penal Code makes provisions for attempting to commit an offence.

50. *Criterion 5.9.* – This criterion is met under section 3 of POCA and its schedule.

51. *Criterion 5.10.* – Sections 3 (1) and 5 (1) of the ATA as amended set out the offence of terrorism as an offence constituted by a person or a terrorist entity inside or outside The Bahamas. Section 5 (1) also sets out not only that an offence occurred, but also an act that may occur.

Weighting and Conclusion

52. The ATA criminalizes TF in accordance with the International Convention for Suppression of Financing of Terrorist and funds in accordance with the Terrorist Convention. The TF offence covers both legitimate and illegitimate sources of funds. The conduct of attempting to commit the offence is covered through the Penal Code. It is not necessary to prove that funds were used to carry out the TF offence. The intentional element and knowledge of the offence of TF can be inferred from objective factual circumstance. The sanctions for TF for legal persons are not proportionate, compared with sanctions for ML
Recommendation 5 is rated largely compliant.

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

53. R. 6 (formerly SR. III) was rated ‘PC’ in the 3rd MER. As explained in the 3rd MER, The Bahamas has two major statutory instruments that are used in the fight against terrorism and TF, the IOEAMA and the ATA. The primary legislation dealing with the freezing of terrorist funds is acknowledged to be the ATA. The main deficiencies were the lack of coverage of provisions contained in UNSCR 1267, the inability to freeze “without delay” and the fact that any requests from foreign jurisdictions were subject to a reciprocity requirement. There was also a need to extend the maximum period in which the Court can grant a freezing order, and to insert a new grounds for refusal of extradition. The reciprocity requirement was removed in the ATA (See paragraph 33 of the 1st/2nd FUR) and the extension of freezing periods was included in the Anti-Terrorism (Amendment) Act, (No. 1 of 2014). Other items remained outstanding (see 6th FUR; seems UNSCR 1267 not fully met although other matters were addressed as per 7th FUR).

54. *Criterion 6.1* – (a) The Authorities referenced section 3 of IOEAMA, however this does not identify a competent authority as having responsibility over UNSCR 1267/1989 or 1988 Committee designations. IOEAMA just makes references to the Governor General being the authority to execute Orders under IOEAMA. Section 4 of the ATA was also cited, and this section enables the Attorney General to make an application to a Judge of the Supreme Court, for an order to be issued in respect of entities included in the UNSCR lists, as well as those entities which the Attorney General has reasonable grounds to believe have knowingly committed or participated in the commission of a terrorism offence, or is knowingly acting on behalf of, at the direction of, or in association with such entity. However, there is no indication that designations are made to or how communication is established with the relevant UN Committee. (b) Targets for designation can be identified through the Attorney General, following section 4 of the ATA. (c) Designations made under section 4 of the ATA are made using evidentiary standard of proof of reasonable grounds. (d) No information was presented on the procedure and standard forms of listing being used for designations. (e) There are no measures that allow for the proposed names, or a statement of case, with regard to proposing names to the 1267/1989 Committee.

55. *Criterion 6.2* – (a) As noted previously, the Attorney General is the designated authority for making an application to a Judge to designate an entity which would result in eventual freezing and can give effect to both requests of its own, and from other countries, through section 6 of the CJICA. Sections 9 and 17 of the ATA also allow the receipt of requests from appropriate authorities from another State. (b) Targets from designation can be identified through the Attorney General following section 4 of the ATA. (c) Requests from other countries would be treated under the same criteria of evidentiary standards of proof indicated under 6.1(c), ‘reasonable grounds’. (d) As indicated, standard of proof used refers to ‘reasonable grounds’ and is not dependent on a criminal proceeding. Section 4 of the ATA only requires that entities are listed, are charged or are about to be charged of a TF offence. (e)

56. *Criterion 6.3* – (a) The sole mechanism to collect or solicit information to identify persons and entities that based on reasonable grounds or a reasonable basis to suspect, do meet the criteria for designation, is through the Attorney General, pursuant to section 4(2) of the ATA. This section indicates that the Attorney General shall make such investigations as he considers necessary before applications. (b) The Attorney General as competent authority can operate ex parte with regard to designations.

57. *Criterion 6.4* – Timeliness of designations is not discussed in any of the mechanisms described under IOEAMA or under the ATA. Specifically there is no indication that freezing occurs ‘without delay’ which following R.6 means within hours after a designation is made.

58. *Criterion 6.5* – (a) Section 9 of the ATA allows a freezing order to be made for all (natural and legal persons) to freeze funds or other assets of designated entities through the ATA. However there is no indication this occurs without delay as required by R.6. (b) The definition of “funds” in section 2 of the ATA is in keeping with the TF Convention. Additionally, section 9(1) of the ATA refers to a freezing order freezing the funds “in the possession or under the control of a person”. Orders under IOEAMA instead, do refer to the concept of funds or assets more clearly, as “owned or controlled, directly or indirectly”. (c) Some Orders under IOEAMA meet to a certain extent the requirement of R.6, in that they contain general prohibitions against making funds and other assets available to designated persons and entities. (d) There is no mechanism to communicate or to provide guidance to FIs or DNFBPs immediately on designations and obligations relating to freezing mechanisms. The CBB notifies its licensees via its website but there is no indication of timeliness of notifying FIs. (e) Authorities indicate that guidance as to reporting of any assets or funds identified in accordance with the Order are included in the Orders. A check of the Orders online have indicated that there is a section of the Order that requests information from FIs. (f) The rights of third parties are protected to a certain extent, since they have an opportunity or a right to a hearing in Court

pursuant to section 9(3) and 9(7) of the ATA, where it is indicated that a freezing order granted by the Court shall not prejudice the rights of any third party acting in good faith.

59. *Criterion 6.6* – (a) The ATA does not provide any specific procedures for the submission of de-listing requests to the relevant UN Sanctions Committees. There is a mechanism (section 4(9) of the ATA) by which the Attorney General reviews if the criteria for designation remains valid and can revoke designations, however there is no indication of how petitions to be de-listed would be informed to the relevant UN Committees. There are no measures for revocation or de-listing procedures under IOEAMA Orders and according to paras. 240 and 241 of the 3rd MER they do not seem to provide for an un-freezing mechanism. (b) Procedures are as similarly noted above. (c) As indicated under 6.6 (a), there is a possibility for an order to be reviewed and revoked however, this does not occur upon request. (d) Procedures to facilitate review by the 1988 Committee including those of the Focal Point mechanism under UNSCR 1730 have not been established. (e) There are no procedures with regard to de-listing petitions through the office of the UN's Ombudsman nor are designated entities or persons informed of the possibility of accessing the Ombudsman. (f) There are no publicly known mechanisms to deal with false positives. (g) There are no mechanisms to communicate de-listings to FIs and DNFBPs.

60. *Criterion 6.7*–Section 9(4) of the ATA provides for the payment of debts incurred in good faith prior to the making of the freezing order; payment of monies for reasonable subsistence (this concept is not defined) of the person and his family; or the payments of costs regarding criminal proceedings. It however does not refer to due notification being given to the UN Security Council 1267 Committee as required (UNSCR 1452 1(a)), nor does it provide for Extraordinary Expenses. IOEAMA orders likewise, do not comply with UNSCR requirements.

Weighting and Conclusion

61. Measures which allow The Bahamas to propose designations of persons or entities to the 1267/1989 Committee or the 1988 Committee of the UN are limited. There are elements of the procedures for designation, access to funds and de-listing that are not present. The freezing of funds or other assets as specified by criterion 6.5, is deficient and there is no indication in any instance, that freezing occurs without delay. **Recommendation 6 is rated non compliant.**

Recommendation 7 – Targeted financial sanctions related to proliferation

62. This Recommendation is entirely new, so there is no previous rating or country information to include.

63. *Criterion 7.1.* – Two Orders were issued under the IOEMA implementing targeted financial sanctions (TFS) with regard to Iran and North Korea. These Orders were the International Obligations (Economic and Ancillary Measures)(Democratic People's Republic of Korea) Order 2008 with an amendment in 2010 (DPRK Order) and the International Obligations (Economic and Ancillary Measures)(Iran) Order 2008 with an amendment in 2010 (Iran Order). These Orders were to implement in the case of the DPRK Order, UNSCRs 1718(2006) and 1874(2009) and with regard to the Iran Order, UNSCRs 1737(2006), 1747(2007), 1803(2008) and 1929(2010). Both require that no funds, other financial assets and economic resources in banks and FIs licensed in The Bahamas should be made available to a person or entity designated by the UN as listed in attached schedules to the orders. As such the above prohibition is only applicable to banks and FIs and does not include all persons in The Bahamas and any

Bahamian outside The Bahamas as required in the UNSCRs. Additionally neither order specifies that sanctions must be applied “without delay”. However the orders became applicable as soon as they were gazetted.

64. *Criterion 7.2.* – (a) Specific requirements to freeze as set out in paragraph 3 of both Orders are only applicable to banks and FIs and do not extend to all natural and legal persons within The Bahamas as required by criterion 7.1. Additionally there is no requirement that freezing action take place without delay and without prior notice. (b) The freezing obligation only covers funds, other financial assets and economic resources owned or controlled directly or indirectly by persons or entities designated by the UN or any persons or entity acting on behalf of, or at the direction of a person or entity designated by the UN. Funds or other assets jointly owned or controlled or derived or generated by funds or other assets are not covered as required. (c) As indicated only banks and FIs are prohibited from providing funds, other financial assets and economic resources to designated persons. The requirement does not extend to all nationals or residents in The Bahamas. There are no mechanisms to ensure that all nationals or any person or entity within The Bahamas comply with the Orders under the IOEAMA. (d) Only the CBB notifies its licensed FIs with regard to Orders under IOEAMA through its website. The communication through CBB is not immediate since notices on the Orders were issued at least one month after the Orders were gazetted. (e) The CBB required its licensees to report positive findings regarding any assets frozen under both Orders. There are no provisions for other FIs or DNFbps to report on freezing actions. (f) Neither the IOEAMA nor the Orders have measures to protect the rights of bona fide third parties acting in good faith.

65. *Criterion 7.3.* – Apart from the notices issued by the CBB there are no specific measures in place for monitoring compliance by FIs and DNFbps with the provisions of the Orders. Pursuant to section 6 of the IOEMA failure to comply with an order under the IOEMA is an offence liable on summary conviction to a fine not exceeding BSD\$10,000 or a term of imprisonment not exceeding more than one year or to both.

66. *Criterion 7.4.* – (a) There are no measures to enable listed persons and entities to submit a de-listing request pursuant to UNSCR 1730. (b) There are no publicly known procedures to unfreeze funds or other assets of persons or entities with the same or similar names as designated persons or entities inadvertently affected by a freezing mechanism.. (c) Paragraph 4 of both Orders allows for accessing funds, other financial assets and economic resources on the basis of satisfying paragraph 13 of UNSCR 1737(2006) for the Iran Order and paragraph 9 of UNSCR 1718(2006) for the DPRK Order. (d) There are no specific mechanisms for communicating de-listings and unfreezings to FIs or DNFbps.

67. *Criterion 7.5* – (a) There are no measures in the IOEAMA or both Orders providing for the requirements of this sub-criterion. (b) Paragraph 4 of the Iran Order provides for making payments due under contract enter into prior to the listing of any person or entity by the UN after notifying the relevant UN Committee pursuant to paragraph 15 of the UNSCR 1737(2006).The requirements of this sub-criterion are met.

Weighting and Conclusion

68. The Bahamas has opted primarily for the general framework within IOEAMA and Orders derived from the Act, for enforcing targeted financial sanctions as required by Recommendation 7 and for combating the financing of the proliferation of weapons of mass destruction, however this does not cover all the requirements of the UNSCRs. Clarity on a direct and “without delay” freezing obligation is needed, along with a definition of funds, extent of freezing obligations, protection of the rights of bona fides third parties, measures regarding DNFbps and de-listing procedures.. **Recommendation 7 is rated partially compliant.**

Recommendation 8 – Non-profit organisations

69. This Recommendation which was formerly SR. VIII was rated ‘PC’ in the 3rd MER, with the main deficiencies being the lack of information on the size and types of NPO activity in The Bahamas; no evidence of adequacy of the laws, and guidance not being enforceable for FIs and DNFBPs when related to this and other matters. Specific regulations were introduced for NPOs as per the 7th FUR, addressing the majority of the deficiencies. No substantial changes have been introduced to the revised SR. VIII now R.8.

70. *Criterion 8.1.* – The Bahamas conducted a review of its NPO sector and issued the Companies (Non-Profit Organisations) Regulations 2014 (NPO Regulations). The Registrar General’s Department (RGD) was made the registration, supervision and enforcement authority for NPOs with responsibility for the administration of the NPO Regulations. Regulation 3(1)(d) of the NPO Regulations states that one of the functions of the RGD is to undertake periodic reviews of the non-profit organizations sector in The Bahamas for the purpose of identifying the features and types of non-profit organizations that are at risk of being used for terrorist financing. This complies with sub-criteria (b) and (c).

71. *Criterion 8.2.* – Regulation 3 (1)(e) of the said NPO Regulations establishes the obligation of undertaking outreach to NPOs.

72. *Criterion 8.3.* – Regulation 3(2)(b) requires the RGD to have measures to promote transparency, accountability, integrity and public confidence in the administration and management of NPOs and the raising of awareness.

73. *Criterion 8.4* – The Bahamas applies the same standards to all NPOs, no thresholds or differentiation on the basis of significance between NPOs are applied. (a) Regulation 4(2) of the NPO Regulations requires the RGD to obtain information on the name and address in The Bahamas of the NPO, the purpose, objectives and activities of the NPO and the identity of the persons who own, control, or direct the NPO. Names of the senior officers, directors and trustees are required to be recorded by the NPO under regulation 12(1). The information maintained by the RGD is available to the public on payment of a nominal fee. Under regulation 13 the RGD may, by written notice, require a registered NPO to produce the records that the NPO is required by law to keep. This sub-criterion is met. (b) Regulations 12(1)(b) of the NPO Regulations requires NPOs to keep financial records that show and explain their transactions. There is no requirement for NPOs to issue financial statements that provide detailed breakdowns of income and expenditure. This sub-criterion is not met. (c) There is no requirement to establish maintain and implement specific controls that guarantee that funds are being accounted for and are spent according to a NPO’s purpose and objectives, though as seen in (b) above, financial records are kept which have to be detailed enough to show that funds are being used consistent with purposes, objectives and activities . This sub-criterion is partly met. (d) NPOs are required to be registered by the RGD by Regulation 5 of the NPO Regulations. This sub-criterion is met. (e) NPOs do not follow a “know your beneficiaries and associated NPOs” rule. This sub-criterion is not met. (f) NPOs are required by Regulation 12 of the NPO Regulations, to keep records of the items detailed under 8.4(a) above, at least for five years. As noted for 8.4(b) there is no requirement for annual financial statements. Regulation 12(1)(i) requires keeping records of all transactions within and outside The Bahamas, thus covering both domestic and international transactions. There is no stipulated requirement that the above records should be available to competent authorities upon appropriate authority, however, section 13 of the NPO Regulations does indicate that the Registrar may, by

written notice, require a registered NPO to produce the records that the NPO is required by law to keep. This sub-criterion is partly met.

74. *Criterion 8.5* – The RGD monitors compliance with registration requirements and effectiveness of Regulations following regulation 1 of the NPO Regulations. The RGD may also require under regulation 13 that the NPO produces records required to be kept under the NPO Regulations. There are sanctions which vary from a fine which cannot exceed BSD\$10,000 or the revocation of the registration as an NPO; hence, there are two types of sanctions. The fine is also applicable to any officer or employee of the NPO. While the revocation of registration can be considered dissuasive, the fine of up to \$10,000 may not be for a large NPO.

75. *Criterion 8.6* – Criteria (a), (b) and (c) are not met. Regulations 1 and 13 of the NPO Regulations allow the NPO Registrar to act as supervisory authority and compel NPOs to produce records. However, there is no indication of domestic cooperation, coordination and information sharing among authorities or organizations that hold relevant information on NPOs, nor are there mechanisms to ensure relevant information is promptly shared with competent authorities to take preventive actions against NPOs being used as a front for fundraising for a terrorist organization or being exploited as a conduit for TF. This is also applicable for escaping asset freezing measures, concealing or obscuring the clandestine diversion of funds intended for legitimate purposes but redirected for terrorists to terrorist organizations.

76. *Criterion 8.7* – Under the Mutual Legal Assistance (Criminal Matters) Act, Chapter 98 (MACMA) the Competent Authority is defined as the Attorney General, and also under the CJICA Chapter 105. Authorities indicate therefore that any international requests regarding NPOs would be communicated to the Registrar through the Attorney General. For such requests a Procedures Manual is available. Specific provisions within the regulations that allow the Registrar to share information and a point of contact are still required.

Weighting and Conclusion

77. The Bahamas has established a legal base for registering and obtaining information with regard to NPOs. Further development of relevant regulations and guidance, the establishment of appropriate point of contact for international cooperation, and other measures are still needed. Sanctions are not sufficiently dissuasive. **Recommendation 8 is rated partially compliant.**

Recommendation 9 – Financial institution secrecy laws

78. This Recommendation formerly R. 4 was rated ‘LC’ in the 3rd MER due to the SCB not having the power to access information records and documents for purposes other than investigations under the SIA and the CBB not being able to share information with the CC and the IFCS. These deficiencies were addressed by amendments to the SIA and provisions in the BTCRA and the CBBA..

79. *Criterion 9.1* – As indicated in the 3rd MER (paras. 552 – 589) the supervisory authorities and the FIU have powers under their individual governing statutes to access information necessary for their functions and to also share information with domestic and foreign regulators except for the deficiencies identified above. These deficiencies were addressed by sections 45 to 47 of the SIA 2011 which empowers the SCB to access information and records of entities under the SIA to ascertain compliance with the FTRA. Additionally, section 19(6) of the BTCRA and section 38(9) of the CBBA authorize the CBB to share

information with local regulatory bodies. With regard to the sharing of information between FIs as required by Recs. 13, 16 or 17 there are effective gateways as noted in paragraph 562 of the 3rd MER.

Weighting and Conclusion

80. **Recommendation 9 is rated compliant.**

Recommendation 10 – Customer due diligence

81. This Recommendation (formerly R. 5) was rated ‘PC’ in the 3rd MER due to lack of a requirement for CDD measures for wire transfers, no requirement for FIs to determine beneficial owners or to consider making a STR when CDD cannot be completed, verification requirements for legal persons and legal arrangements were discretionary, requirements to understand the ownership and control structures of legal persons and legal arrangements and ensure that CDD documents, data or information is up-to-date and perform EDD for high risk customers were only applicable to banks and trust companies. These deficiencies were addressed by enactment of the Financial Transactions Reporting (Wire Transfers) Regulations 2009 (FTR(WT)R 2009) in 2009, amendments to the Financial Transactions Reporting Regulations (FTRR) in 2009 and the FTRA and revisions in the CBB AML/CFT Guidelines and the CC’s Codes of Practice. The main changes to this Recommendation have been clarification in the requirement to verify beneficial ownership and specific measures for beneficiaries of life insurance policies.

82. *Criterion 10.1* – While there is no specific prohibition against anonymous accounts or accounts in fictitious names, sections 6(1) to (3) of the FTRA require FIs to verify the identity of each and every customer seeking to establish a business relationship.

83. *Criterion 10.2* – Criterion 10.2 (a) is met by sections 6(1) and (2) of the FTRA. (b) Section 7(1) of the FTRA requires CDD measures for those occasional transactions where “the amount of cash involved in the transaction exceeds the prescribed amount”. The prescribed amount is BSD\$15,000 per reg. 2 of the FTRR. The section limits CDD measures only to occasional cash transactions over BSD\$15,000 (including linked transactions) rather than to any occasional transactions over BSD\$15,000. With regard to criterion 10.2 (c) the requirements of the FTR(WT)R 2015 provides for obtaining both originator and beneficiary information. See Rec. 16. (d) Section 10A(1) of the FTRA requires CDD of any transaction where there is suspicion that the proceeds of criminal conduct is involved. Proceeds of criminal conduct as defined includes ML/TF. Section 6(4) of the FTRA requires CDD measures when there are doubts about the veracity of previously obtained customer identification data thereby complying with criterion 10.2(e).

84. *Criterion 10.3* – Section 11(1) of the FTRA requires FIs to identify and verify a customer’s identity using reliable, independent source documents, data or information.

85. *Criterion 10.4* – The requirement for FIs to verify any person purporting to act on behalf of the customer is so authorised and identify and verify the identity of that person are set out in reg. 4(1)(b) and (c), reg. 5(1)(c) and (d) and reg. 6(2) of the FTRR.

86. *Criterion 10.5* – Reg. 7 of the FTRR requires FIs to verify the identities of the BOs of their facilities. In the case of corporate entities, the obligation is limited to BOs who have a controlling interest. BOs are not defined in the FTRR and it appears to limit the obligation for verification to BOs with controlling interest whereas the FATF definition refers to natural persons that ultimately own or control a customer.

Reg. 4(3) of the FTRR requires the identification of the natural persons who either possess a controlling interest or control the management of a corporate entity. Reg 5(a) of the FTRR requires the identification of all partners or beneficial owners of a partnership or other unincorporated business.

87. Paragraph 77 (iv) of the CBB AML/CFT Guidelines details requirements with regard to corporate entities including defining controlling interest to be 10% and more that meet the criterion. Similar requirements are set out in rule 10 of the Securities Industry (AML/CFT) Rules (SI Rules). Paragraph 16.1.3(f) of the AML/ATF Handbook and Code of Practice for Credit Unions (CUCOP) stipulates the identification of beneficial owners with 10% controlling interest for credit unions. Additionally paragraph 16.3.3 requires credit unions to determine the natural persons who control the management of the corporate entity and its ownership structure. The same requirements are stipulated in paragraph 14.7 of the ICB AML/CFT Guidelines.

88. *Criterion 10.6* – FIs are required to obtain information on the purpose and nature of a business relationship with individuals under reg. 3(1)(d) of the FTRR. However, similar obligations with regard to corporate entities, partnerships and other unincorporated businesses as set out in regs. 4(2)(d) and (e) and regs. 5(2)(a) and (b) of the FTRR are discretionary rather than mandatory as required. However it is noted that paragraph 41 of the CBB AML/CFT Guidelines requires licensees before commencing a business relationship to record the purpose and reason of the relationship. Rules 6 and 7 of the SI Rules have similar obligations for entities regulated under the SI. Paragraphs 16.3.1(g) and 16.4.1(f) of the CUCOP stipulate mandatory requirements for credit unions to obtain information on the purpose and nature of business relationships with corporate entities, partnerships and other unincorporated businesses. For insurance companies, the abovementioned requirement can be found in paragraph 14.7.1(g) of the ICB AML/CFT Guidelines.

89. *Criterion 10.7* – Reg. 9(2) of the FTRR requires FIs to monitor facilities for consistency with stated account purposes. While the above provision is general, details as to the type of monitoring is set out in paragraphs 175–184 of the CBB AML/CFT Guidelines and include monitoring to note significant changes or inconsistencies against the original stated purposes of the account. The areas listed for monitoring would cover business and risk profile and source of funds. Paragraph 45 of the CBB AML/CFT Guidelines requires that descriptive due diligence information be kept up-to-date as opportunities arise. Paragraphs 35 and 36 of the CBB AML/CFT Guidelines provides for increased reviews for higher risk categories. Requirements of the criterion are set out in paragraphs 17.1 and 17.4 of the CUCOP for credit unions. The requirements for institutions in the securities industry are set out in Regs. 67(3) and 69 of the Securities Industry Regulations (SIR) and rules 5, 7, 20 and 28 of the SI Rules. These rules do not include all the specifics of the criterion, such as updating CDD information by reviews of existing records particularly for higher risk categories of customers. Regarding insurance companies, paragraph 16.4 of the ICB AML/CFT Guidelines states that having regard to the size, volume of financial services business and complexity of such business, insurance companies should ensure that documents, data or information collected under the due diligence process is kept up-to-date and relevant, through periodic reviews of existing records, particularly for high risk clients. However, there is no requirement that transactions need to be scrutinized throughout the course of the relationship to ensure that the transactions being conducted are consistent with the insurance companies' knowledge of the customer, business and risk profile (although it is noted that paragraph 16.3 includes the requirement to examine large and/or unusual patterns of transactions).

90. *Criterion 10.8* – Regs. 4(2)(d) and 5(2)(a) of the FTRR require information on the nature of the businesses of corporate entities, partnerships and unincorporated customers. Additionally, reg. 4(2)(g) of the FTRR require information on the structure of corporate entities. However, these requirements are discretionary rather mandatory. Paragraphs 81 and 82 of the CBB AML/CFT Guidelines require

understanding of the ownership and control structure of companies, while paragraph 95 requires information on the general nature and purpose and identification of persons who exercise effective control and beneficiaries of legal structures and fiduciary arrangements. Rule 6 of the SI Rules requires that information on the nature of a customer's business be obtained. Rules 10 and 11 require information on the nature of the business and control and ownership structure of corporate entities, partnerships and unincorporated businesses. With regard to other legal structures and fiduciary arrangements rule 13 requires information on the general nature and purpose, all persons in control, all persons providing funds or assets and all beneficiaries. Paragraphs 14.7.1, 14.7.3 and 14.8 of the ICB AML/CFT Guidelines require licensees to obtain from corporate entities all incorporation documents including the company structure, as a part of the verification process. Corporate entities must state the purpose and intended nature of the business relationship. With regard to partnerships and unincorporated entities insurance licensees are required to obtain information on nature and purpose, verify partners and beneficiary owners and obtain relevant establishing agreements. In relation to trusts, the functions of the trustee must be ascertained, a certified copy of an extract of the trust deed setting out the powers and duties of the trustee and the identity of all parties to the trust including the settlor and any beneficiaries. For credit unions, section 16.3.1 CUCOP states that it is a mandatory requirement to verify the purpose and intended nature of the business relationship. In addition credit unions should also take reasonable measures to determine the natural persons who control the management of a corporate entity and its ownership structure. With regard to partnerships and unincorporated entities credit unions are required to obtain information on nature and purpose and verify partners and beneficiary owners and obtain relevant establishing agreements. There are no requirements for legal arrangements.

91. *Criterion 10.9* – The criterion requirements of 10.9(a) for corporate entities are included in reg. 4(1)(a) and (d) of the FTRR and for partnerships and unincorporated businesses in reg. 5(1)(b) of the FTRR. With regard to subcriterion 10.9(b), obtaining this information for corporate entities is not mandatory pursuant to reg. (4)(2) of the FTRR. For partnerships and other unincorporated businesses, there is no requirement in the FTRR regarding senior management. Information regarding the powers that regulate and bind are required to be obtained pursuant to reg. (5)(1) of the FTRR. With regard to subcriterion 10.9(c), the requirements for information on location of registered office and principal place of business in the FTRR are discretionary. These requirements are also “strongly recommended” in paragraph 78 of the CBB AML/CFT Guidelines. For insurance companies there are references made to the relevant information of the criterion in paragraph 14.7.2 of the ICB AML/CFT-guidelines. However, as stated the insurance company may also rely on this information to support verification of a corporate entity and hence it is not mandatory. The same is the case for the credit unions in the CUCOP. Regarding the securities sector, rules 10,11,13,14 and 16 of the SI Rules deal with legal persons and legal arrangements. With regard to 10.9(a) and (b) only corporate customers, partnerships and unincorporated businesses and foundations are required to submit documents ascertaining these requirements There are no requirements for 10(c). With regard to legal arrangements there are no specific measures except for the SI Rules for the requirements of 10.9.

92. *Criterion 10.10* – The requirement of criterion 10.10(a) with regard to corporate entities is set out in reg. 4(3) of the FTRR. A requirement for the verification of BOs for partnerships and unincorporated businesses is also set out in reg. 5(1)(a) of the FTRR. BO is not defined in the FTRR and the existence of the above separate measures raises concern as to the specific meaning of the term in the FTRR. Similar requirements are stipulated in rule 10 of the SI Rules. Further details on the above measures are provided in paragraph 77(v) of the CBB AML/CFT Guidelines with regard to corporate entities by requiring the identification of each natural person holding an interest of ten percent or more. Similarly rule 10(d) of the SI Rules and paragraph 14.7.1(f) of the ICB AML/CFT Guidelines require information on all natural persons with a beneficial interest of 10 percent or more in a corporate entity. Additionally, the measures outlined in criteria 10.10(b) and (c) with regard to corporate entities are set out in FTRR reg. 4(3) which requires FIs to

verify the identity of natural persons who not only possess a controlling interest in the corporate entity but who also control its management. These are further detailed in accordance with 10.10(b) and (c) in paragraph 77(iv) of the CBB AML/CFT Guidelines.

93. *Criterion 10.11* – In addition to a general requirement to verify the identities of the BOs of all customers (reg. 7A of the FTRR) FIs are required to identify the settlor and the person exercising effective control over a trust (reg. 6(2) of the FTRR). There are no explicit legislative requirements to identify trustees or protectors if any or for other types of legal arrangements. Section 10(a) and (b) of the FTRA creates an exemption from the verification of the identity of a beneficiary of a trust who does not have a vested interest in the trust. Paragraphs 95 to 102 of the CBB AML/CFT Guidelines outline requirements for trusts in accordance with reg. 7A and reg. 6(2) of the FTRR together with identification of trustees and any other person exercising ultimate effective control, details on ways of exercising effective control over a trust and guidance on identification of beneficiaries including verification of the identity of beneficiaries prior to making a payment or when a beneficiary exercises a vested interest in a trust. Similar requirements are outlined in rule 13 of the SI Rules. Paragraph 14.12 of the ICB Guidelines also sets out similar requirements on the verification requirements in case of trusts. None of the requirements include identification of protectors. With regard to other types of legal arrangements there is a general requirement to identify all persons on whose behalf the account applicant is acting.

94. *Criterion 10.12* – Paragraph 13.1 of the ICB AML/CFT Guidelines requires life insurance companies to obtain sufficient information concerning the beneficiary to be able to establish the identity of the beneficiary at the time of payout or when the beneficiary intends to exercise vested rights. Verification procedures of the identity of the beneficiary or beneficiaries should be followed as soon as the beneficiary is identified or designated, and at the time of payout.

95. *Criterion 10.13* – Determining the risk profile of a beneficiary of a life insurance policy is included in the ICB AML/CFT Guidelines (13.5.3-2). However, no reference is made to EDD and no requirement is imposed for enhanced measures to identify and verify the identity of the beneficial owner of the beneficiary which is a legal person or a legal arrangement at the time of the payout.

96. *Criterion 10.14* – Section 6(2) of the FTRA requires the verification of the identity of a customer before the opening of any account facility. A similar requirement is set out for occasional transactions in section 7 of the FTRA while also allowing for verification of identity to be conducted as soon as practicable in instances of discovered structuring.

97. *Criterion 10.15* – Customers are not permitted to open accounts until verification of identity (section 6(2) of the FTRA). This criterion is not applicable.

98. *Criterion 10.16* – Section 6(6) of the FTRA requires FIs to verify the identity of any facility holder in existence prior to December 2000 and where any facility had not been verified by 1st April 2004 to notify their supervisory authorities which should issue directions regarding determination of such facilities. The provision in being prescriptive with regard to all customers is more stringent than the criterion requirement which stipulates implementation on the basis of materiality and risk. Paragraph 171 of the CBB AML/CFT Guidelines required licensees to complete the above exercise by June 30, 2006 and terminate or suspend those business relationships for which they could not complete verification of identification.

99. *Criterion 10.17* – Paragraph 36 of the CBB AML/CFT Guidelines, paragraph 15.5.6 of the CUCOP and rule 25(1) of the SI Rules require their respective entities to perform EDD where the ML/TF risks are higher. Paragraphs 13.1 to 13.5.3 and 14.4 of the ICB AML/CFT Guidelines set out risk mitigation measures

based on assessment of the ML/TF risks. These measures are to be documented in a companies' enhanced due diligence procedures for high risk clients.

100. *Criterion 10.18* – Simplified CDD measures are only applicable in specific situations where the customer is a FI or a foreign FI located in a jurisdiction subject to equivalent or higher AML/CFT obligations and regulated by a body with equivalent regulatory and supervisory responsibilities to supervisory bodies in The Bahamas. Reg. 5A of the FTRR exempts the obtaining of documentary evidence for verification of the identity of a list of customers mirroring the FATF list of low risk customers from the previous methodology. Section 10A of the FTRA requires FIs to verify the identity of any person performing any transaction or proposed transaction where there is a suspicion that funds involved are proceeds of criminal conduct. The above measures only allow for simplified CDD measure on a prescriptive basis rather than on a risk assessment based on analysis of risk by the country and the FI .

101. *Criterion 10.19* – There are penalties for failure of FIs to comply with CDD measures. Paragraph 171 of the CBB AML/CFT Guidelines required termination or suspension of business relationships established prior to December 2000 if verification of identity of customers could not be completed by June 30, 2006. Paragraph 44 of the CBB AML/CFT Guidelines sets out three actions for FIs to consider when unable to complete relevant CDD measures for prospective customers.. These actions include not starting or continuing the business relationship or performing the transaction and consider making a report to the FIU. This is copied in rule 7 of the SI Rules. Paragraph 16.4.3-3 of the CUCOP only requires credit union to file STRs when unable to comply with CDD measures. Paragraph 14.2.3 of the ICB AML/CFT Guidelines requires insurance companies to suspend or terminate a business relationship if they are unable to complete CDD. The requirement does not cover commencing a business relationship or transaction or include considering submitting a report to the FIU.

102. *Criterion 10.20* – There are no legislative provisions or guidelines for the requirements of criterion 10.20. While section 14 of the FTRA and section 43 of the POCA mandate the reporting of STRs of proposed transactions as soon as practicable after forming the suspicion, section 10A of the FTRA requires verification of identity in the same instance. As such there is no exemption from the requirement to conduct CDD if such exercise will or is likely to tip-off the customer.

Weighting and Conclusion

103. Requirements have been put in place for CDD measures for all customers, timing of verification and existing customers. However, CDD measures are limited only to occasional cash transactions over BSD\$15,000 (including linked transactions) rather than to any occasional transactions over BSD\$15,000. Ongoing due diligence measures for entities under the ICB and SCB do not include all requirements of criterion 10.7. There are no measures for the specific requirements of criterion 10.9 except for SI Rules for legal arrangements. There are no enhanced measures to identify and verify the identity of the beneficial owner of the beneficiary of a life insurance policy at the time of the payout. Identification requirements for persons in legal arrangements other than trusts do not include all requirements of sub-criterion 10.11(b). There are no requirements for the identification of protectors for trusts. Simplified CDD measures are not based on risk assessment including analysis of risk by the country and the FI. Measures for credit unions and insurance companies do not include all requirements of criterion 10.19 and there are no exemptions to conduct CDD if likely to lead to tipping-off. . **Recommendation 10 is rated partially compliant.**

Recommendation 11 – Record-keeping

104. This Recommendation (formerly R. 10) was rated ‘PC’ in the 3rd MER due to the termination of the obligation to retain transaction records on the liquidation or dissolution of corporate FIs and inclusion of the start of proceedings to recover debts payable on insolvency as a definition of termination of an account. These deficiencies were addressed by amending section 27 of the FTRA. The only change in this Recommendation is an additional requirement for records of any analysis undertaken of the account.

105. *Criterion 11.1* – FIs are required by section 23 of the FTRA to retain all necessary records on all transactions for at least five years after the completion of the transactions. FIs in the FTRA include both FIs and DNFBPs as defined in The Bahamas.

106. *Criterion 11.2* – Sections 24(1) and (4) of the FTRA requires FIs to retain records of CDD measures for a period of not less than five years after a person ceases to be a facility holder. With regard to account files, business correspondence and the results of any analysis undertaken, paragraphs 206 to 208.1 of the CBB AML/CFT Guidelines require the retention of account files and business correspondence connected with transactions for a period of five years after the completion of the transaction rather than five years after the termination of the account.. Paragraph 209 requires the results of any analysis to be kept for five years after the termination of the account. Paragraphs 18.6.2 and 18.6.3 of the CUCOP and paragraph 17 of the ICB Guidelines have requirements similar to those for account files and business correspondence connected with transactions in the CBB AML/CFT Guidelines. There are no requirements regarding any analysis other than those required for any ongoing investigations. Rule 31 of the SI Rules requires the retention of all account files, business correspondence and results of any analysis undertaken to be kept for seven year after the termination of any facility.

107. *Criterion 11.3* – Sections 23(1) and (2) of the FTRA require FIs to retain transaction records that are reasonably necessary to enable the transaction to be readily reconstructed by the FIU and stipulates the type of information such records should contain.

108. *Criterion 11.4* – Section 26 of the FTRA provides that CDD information and transaction records are kept either in written form or so to enable them to be readily accessible to competent authorities . Regulation 11 of the FTRR further provides that the above records may be stored on computer disk or in other electronic form.

Weighting and Conclusion

109. The requirements for retention of transaction records and CDD information, the details of transactions and availability of records have been met. The deficiencies are the CBB and the ICB requiring the retention of account files and business correspondence for five years after the completion of relevant transactions rather than five year after termination of the business relationship. The ICB does not require the retention of the results of any analysis of an account. **Recommendation 11 is rated largely compliant.**

Recommendation 12 – Politically exposed persons

110. The Bahamas was rated ‘PC’ for R.12 (formerly R.6) in its 3rd MER. The two deficiencies identified at the time were the lack of enforceable PEP requirements applicable to entities other than banks and trust companies; and the lack of a requirement for senior management approval for the continuation of a business

relationship where a person either became a PEP or was discovered to be a PEP subsequent to the establishment of a business relationship. Recommendation 6 now includes two new categories of PEPs; domestic and international organization PEPs. The level of due diligence that should be applied to these two categories is dependent on where a high risk exists in the business relationship.

111. *Criterion 12.1* – Criterion 12.1 [(a) to (d)] is met for banks, trust companies and non-bank money transmission business that are CBB licensees by paragraph 160(i) of the CBB AML/CFT Guidelines. The requirements for securities firms under SI AML/CFT Rules and registrants and licensees under the IFA do not comply with the obligations of criterion 12.1. With respect to licensees of the ICB, paragraph 13.3 of the ICB AML/CFT Guidelines only stipulates that insurance companies should consider whether a customer is a PEP in developing a risk profile and take reasonable measures to determine whether beneficiaries of insurance products are PEPs. With respect to credit unions, section 15.5.6 of the CUCOP sets out requirements for PEPs. There is no requirement for a credit union to put a risk management system in place to determine whether a customer or beneficial owner is a PEP. Larger credit unions are required to have senior management approval to establish or continue a relationship where the PEP became high risk subsequent to establishing the business relationship. This measure does not capture ‘smaller’ credit unions. There are no provisions for credit unions to establish the source of wealth and the source of funds of PEPs. Credit unions are required to conduct enhanced ongoing monitoring of relationships with foreign PEPs.

112. *Criterion 12.2* – Criterion 12.2 has been met for licensees of the CBB by paragraph 161 of CBB AML/CFT Guidelines. However, there are no provisions for licensees and registrants of the SCB with respect to criterion 12.2. With regard to criterion 12.2 (a) for licensees of the ICB no distinction is made between foreign or domestic PEPs. There are also no provisions to determine if a person is entrusted with a prominent function by an international organization. For credit unions domestic PEPs and international PEPs are defined and credit unions are required to adopt measures of criteria 12.1 (b) and (d) for high risk domestic and international PEPs. There are no provisions for the licensees of the ICB to adopt measures in criterion 12.1 (b) to (d) for high risk domestic and international organisation PEPs.

113. *Criterion 12.3* – At paragraph 159 of the CBB AML/CFT Guidelines banks, trust companies and non-bank money transmission businesses PEPs are defined to include family members and close associates. Credit unions at paragraph 15.5.7-3 of the CUCOP are required to apply their PEP obligations on family members and close associates of PEPs. Paragraph 13.3 of the ICB AML/CFT Guidelines obliges licensees to be aware of the reputational and/or legal risks associated with PEPs and related parties such as family members or close associates of all types of PEP. However, it does not oblige licensees to apply the relevant requirements of criteria 12.1 and 12.2 to family members or close associates. There are no provisions for licensees and registrants of the SCB with respect to criterion 12.3.

114. *Criterion 12.4* - Paragraph 13.3 of the ICB AML/CFT guidelines requires with regard to life insurance policies and other investment related insurance policies, insurance companies to take reasonable measures to determine whether the beneficiaries and/or, where required the beneficial owner of the beneficiary, are PEPs. This should occur, at the latest, at the time of the payout. Where higher risks are identified, insurance companies are required to inform senior management before the payout of policy proceeds, to conduct enhanced security on the whole business relationship with the policyholder, and to consider a suspicious transaction report.

Weighting and Conclusion

115. The requirements of licensees of the CBB comply with criteria 12.1 to 12.3.. The requirements of the licensees and registrants under the SCB do not comply with criteria 12.1 to 12.3. Only minimal guidance is provided for licensees of the ICB in relation to criteria 12.1 to 12.3. However the requirements of criterion 12.4 are met by the ICB AML/Guidelines. Only larger credit unions are captured and only in so far as the requirement to obtain the approval from the MLRO and senior management before establishing and continuing the business relationship is concerned. Credit unions are not required to establish source of wealth and source of funds of PEPs.. **Recommendation 12 is rated partially compliant.**

Recommendation 13 – Correspondent banking

116. The Recommendation (formerly R. 7) was rated 'NC' in the 3rd MER since there were no requirements to determine the reputation of a respondent and the quality of supervision or for senior management approval for new correspondent relationships or to document respective AML/CFT responsibilities. Additionally, assessment of a respondent's controls was limited to identification procedures and there were no requirements regarding "payable-through accounts". The deficiencies were addressed by revisions to the CBB AML/CFT Guidelines and the adoption of these guidelines by the SC. This Recommendation incorporates requirements on FIs in relation to shell banks (former R. 18).

117. *Criterion 13.1* – Paragraphs 150 to 153 of the CBB AML/CFT Guidelines detail the requirements of criterion 13.1.

118. *Criterion 13.2* – The requirement of 13.2 (a) is met by sections 11(3) and 11(4) of the FTRA while 13.2(b) is set out in paragraph 157 of the CBB AML/CFT Guidelines. Insurance companies and security companies in The Bahamas are not allowed to offer banking services and do not offer payable through accounts.

119. *Criterion 13.3* – Paragraph 154 of the CBB AML/CFT Guidelines sets out the requirements of the criterion for licensees of the CBB. Similar requirements have not been imposed on other FIs, since they are not allowed to offer banking services.

Weighting and Conclusion

120. **Recommendation 13 is rated compliant.**

Recommendation 14 – Money or value transfer services

121. This Recommendation formerly SR. VI was rated 'LC' in the 3rd MER, due to no requirement for money value transfer operators to maintain a current list of their agents available to the designated authority. The new element in this Recommendation is the requirement to actively identify and sanction unlicensed or unregistered money value transfer services (MVTs) providers.

122. *Criterion 14.1* – Money transmission business (MTB) can only be carried out by licensed banks and trust companies, money transmission service providers (MTSP) or registered money transmission agents (MTA) who are persons carrying on MTB on behalf of MTSP. Section 3A of the BTCRA requires MTSPs to be licensed and MTAs to be registered by the CBB.

123. *Criterion 14.2* – The CBB issued a Notice on 21st October, 2011 advising the general public that MTSPs and MTAs have to be licensed or registered respectively. The notice also alerted the public to the penalty for conducting an MTB without the requisite licence or registration, namely, that every person who contravenes section 3A of the BTCRA shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding five years or to both fine and imprisonment and in the case of a continuing offence to a fine not exceeding \$2,500 for each day during which the offence continues (section 3(7) of the BTCRA). While the above notice provides for members of the public to ask questions and should increase the possibility of public reporting of unlicensed or unregistered MTSPs and MTAs, there is no indication that members of the public were advised to report such entities to the Authorities. On 21 October 2015 the CBB issued a new notice on unlicensed MTBs advising that members of the public should inform the CBB regarding suspicions of an unlicensed MTB.

124. *Criterion 14.3* – MTSPs and MTAs are defined as FIs under section 3(1)(j)(v) of the FTRA and as such are subject to all AML/CFT laws and other requirements. Reg. 8(a) and (b) of the Banks and Trust Companies (Money Transmission Business) Regulations also require MTSPs and MTAs to comply with the FTRA and identification measures of the FTRR. MTSPs and MTAs as licensees and registrants of the CBB are also subject to the CBB AML/CFT Guidelines and under the supervision of the CBB for monitoring compliance with AML/CFT requirements.

125. *Criterion 14.4* – Section 3A of the BTCRA require MTSPs to be licensed and MTAs to be registered by the CBB.

126. *Criterion 14.5* – In the amended CBB AML/CFT-Guidelines of 11 December 2015 each money transmission business is responsible for including its agents in its AML/CFT-programme and must monitor its agents for compliance with this programme.

Weighting and Conclusion

127. **Recommendation 14 is rated compliant.**

Recommendation 15 – New technologies

128. This Recommendation (formerly R. 8) was rated ‘PC’ in the 3rd MER. For the 3rd Evaluation, there were no provisions for FIs to have in place or take such measures to prevent the misuse of technological developments, no legislative provisions for non-face-to-face transactions, The Bahamas did not include ongoing CDD requirements, and the requirements in the CBB AML/CFT Guidelines were extended only to non-resident customers and were only enforceable for banks and trust companies. The deficiencies were solved by the amendment of the Code for the accounting profession, industry specific codes and the CBB’s AML/CFT Guidelines. R.15 focuses on preventing risks associated with all new or developing technologies and new products and business practices and sets out a new obligation for countries to identify and assess the risks.

129. *Criterion 15.1* – There has been no assessment of risks by The Bahamas with respect to the development of new products and new business practices. The requirements of criterion 15.1 are met for CBB licensees by paragraph 115.1 of the CBB’s AML/CFT Guidelines, and for credit unions under paragraph 15.4.4-2 of the CUCOP. Paragraph 13.6 of the AML/CFT Guidelines of the ICB require that insurance licensees assess the inherent risks of new products and new business practices including new

delivery mechanisms when dealing with new or developing technologies for both new and pre-existing products. There are no provisions for licensees and registrants of the SCB that are in line with criterion 15.1.

130. *Criterion 15.2* – This criterion is met by paragraph 115.1 of the CBB AML/CFT Guidelines for banks, trust companies and non-bank money transmission business; and by paragraph 15.4.4-2 of the CUCOP for credit unions. Rule 18 of the SI Rules calls for regulated persons to exercise additional care in relation to the provision of “technological developments”. However, the Rule does not require persons to assess associated risks prior to launch or use of such products, or for persons to take measures to manage and mitigate the risks. Paragraph 13.6 of the ICB AML/CFT Guidelines also require assessment of risks prior to the launch or use new products, practices and technologies and to take appropriate measures to manage and mitigate risks.

Weighting and Conclusion

131. There are no specific provisions licensees and registrants of the SCB to assess ML/TF risks of new business practices, including new delivery mechanisms or the use of new or developing technologies for both new and pre-existing products. Additionally there are no measures SCB licensees and registrants to assess associated risks prior to launch or use of new products, or to take measures to manage and mitigate the risks. Adequate guidance should be provided to the insurance, securities, and investment fund industries. **Recommendation 15 is rated partially compliant.**

Recommendation 16 – Wire transfers

132. This Recommendation (formerly SR.VII) was rated ‘NC’ in the 3rd MER since there were no measures to cover domestic, cross-border, and non-routine wire transfers, obligations for intermediary and beneficial financial institutions handling wire transfers and measures to effectively monitor compliance. The deficiencies were addressed by the enactment of the FTR(WT)R 2009 in January 2009 which was replaced in 2015. The Recommendation includes new requirements for transfers below the threshold and for ordering, intermediary and beneficiary FIs and links to R. 6 and R. 20.

133. *Criterion 16.1* – FIs under Reg. 4 of the FTR(WT)R 2015 are required to implement originator and beneficiary information obligations for all cross-border transfers of BSD\$1,000 or more in accordance with criterion 16.1.

134. *Criterion 16.2* – The obligations for batch file transfers with regard to required and accurate originator and full beneficiary information together with the originator’s account number or unique reference number for FIs in accordance with criterion 16.2 have been included in reg. 5 of the FTR(WT)R 2015.

135. *Criterion 16.3* – FIs are required under reg.7 of the FTR(WT)R to ensure that all cross-border wire transfers under BSD\$1,000 are accompanied by the required originator and beneficiary information in line with the requirements of criterion 16.3.

136. *Criterion 16.4* – Section 10A of the FTRA requires a financial institution to verify the identity of any person that conducts any transaction (whether as a facility holder or not) through a financial institution where the financial institution knows, suspects or has reasonable grounds to suspect that the transaction or proposed transaction involves proceeds of criminal conduct as defined in POCA or any offence under

POCA or an attempt to avoid the enforcement of any provisions of POCA. Offences under POCA include those under the ATA.

137. *Criterion 16.5* - With regard to domestic wire transfers under reg. 6 of the FTR(WT)R 2015 FIs do not have to ensure that originator information accompany the wire transfer once the originating FI can supply the information to any requesting intermediary or beneficial FI within three days of such request. The IBTC can access any and all information of licensees to carry out his functions. Law enforcement can obtain information on clients' transactions via Court Orders or the FIU can do so via production orders subsequent to receiving an STR.

138. *Criterion 16.6* – Reg. 6 of the FTR(WT)R 2015 includes the requirements of criterion 16.6 for domestic wire transfers and includes the originator's account number or unique transaction identifier which allows for the tracing back to the originator or the beneficiary.. Additionally, as indicated in relation to criterion 16.5, the IBTC, law enforcement and the FIU can access information necessary for their functions.

139. *Criterion 16.7* – The FIs' obligations of section 23 of the FTRA which are in accordance with the requirements of Rec. 11 include information on all parties to all transactions thereby covering originator and beneficiary information on wire transfers.

140. *Criterion 16.8* – The requirements of regs. 3, 4 and 6 of the FTR(WT)R 2015 are obligations FIs must comply with to perform wire transfers \$1000 and over in accordance with criteria 16.1 to 16.2 and 16.4 to 16.7. Furthermore, there are obligations concerning wire transfers under \$1000 in accordance with criteria 16.3. Reg. 9 of the FTR(WR)R requires that when an originating FI has any suspicion of money laundering or terrorism financing, the originating FI shall not execute the wire transfer.

141. *Criterion 16.9* – Reg. 10(1) of the FTR(WT)R 2015 requires intermediary FIs to ensure that originator and beneficiary information received with a funds transfer is kept with the transfer.

142. *Criterion 16.10* – Reg. 10(2) of the FTR(WT)R 2015 requires intermediary FIs in cases where technical limitations prevent the information received with a funds transfer remaining with the transfer, to retain for five years, records of all originator and beneficiary information.

143. *Criterion 16.11* – Reg 11 of the FTR(WT)R 2015 requires intermediary FIs to take reasonable measures consistent with straight-through processing to identify cross-border wire transfers that lack required originator or beneficiary information.

144. *Criterion 16.12* – Reg 12 of the FTR(WT)R requires intermediary FIs to have risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer lacking required originator or beneficiary information and the appropriate follow-up action.

145. *Criterion 16.13* – Reg. 13 of the FTR(WT)R of 2015 requires beneficiary FIs to take reasonable measures to identify cross-border transfers that lack required originator or beneficiary information.

146. *Criterion 16.14* – Section 14 of the FTR(WT)R 2015 requires that a beneficiary FI shall, before paying out funds in cash or cash equivalent to a beneficiary in The Bahamas with respect to a cross-border wire transfer of BSD\$1,000 or more, verify the beneficiary's identity in accordance with section 11(1) of the Act and the FTRA. Section 24 of the FTRA requires that such information should be kept for a minimum of five years in accordance with Recommendation 11..

147. *Criterion 16.15* – The requirement as set out for intermediary FIs under criterion 16.12 is also applicable for beneficiary FIs under reg. 15(1) of the FTR(WR)R 2015.

148. *Criterion 16.16* – Section 3(1)(j)(v) of the FTRA defines “financial institution” to include MVTS providers, thereby making them subject to the requirements of the FTRA and the FTR(WT)R 2015 which sets out all of the requirements of Recommendation 16 as detailed above.

149. *Criterion 16.17* - MVTS qualify as ‘financial institution’ in the FTR(WT)R 2015. Section 18 of the FTR(WT)R 2015 requires FIs that control both the originating and the beneficiary side of a wire transfer to take into account all the information from both the originating FI and the beneficiary FI in order to determine whether a suspicious transaction report has to be filed; and where applicable, file a suspicious transaction report in any country affected by the suspicious wire transfer, and make relevant transaction information available to the appropriate authorities.

150. *Criterion 16.18* – Section 4 of the ATA enables the Attorney General to make an application to a Judge to designate an entity on the UNSCR lists which would result in eventual freezing. Section 9 of the ATA allows a freezing order to be made for all (natural and legal persons) to freeze funds or other assets of designated entities through the ATA. Paragraph 195.4.1 – 195.4.3 of the CBB AML/CFT Guidelines require FIs to monitor wire transfers with regard to designated entities and suspend or reject such wire transfers. The CBB AML/CFT Guidelines is only applicable to CBB licensees.

Weighting and Conclusion

151. With the new FTR(WR)R 2015 that came into force in December 2015 all criteria are met except for prohibition on conducting transactions with persons and entities in relation to UNSCRs 1267 and 1373 for FIs other than the licensees of the CBB. **Recommendation 16 is rated largely compliant.**

Recommendation 17 – Reliance on third parties

152. This Recommendation (formerly R. 9) was rated ‘PC’ in the 3rd MER due to no obligations for FIs to immediately obtain necessary CDD information from third parties nor to satisfy themselves that third parties were regulated and supervised and had CDD measures in place in accordance with Recs. 5 and 10. These deficiencies were dealt by revisions in the CBB AML/CFT Guidelines and adoption by the SC of the CBB AML/CFT Guidelines. The new requirements of the Recommendation include a clear delineation of ultimate responsibility remaining with the FI and a more flexible approach to intra-group reliance.

153. *Criterion 17.1* – Requirements regarding reliance on third parties are set out in paragraphs 128 to 131 of the CBB AML/CFT Guidelines. Eligible introducers include regulated domestic FIs and regulated foreign FIs located in countries listed in the First Schedule of the FTRA or in countries with equivalent or higher AML/CFT standards than The Bahamas. Paragraphs 130 and 131 of the CBB AML/CFT Guidelines outline obligations which comply with criterion 17.1. Similar requirements are set out in rules 22 and 23 of the SI Rules. except for a specific indication that the ultimate responsibility for CDD measures should remain with the licensee or registrant relying on the introducer. With regard to credit unions, eligible introducers are limited to domestic regulated FIs and all requirements of the criterion are included in paragraphs 16.5.3 and 16.5.4 of the CUCOP. Regarding insurance companies , paragraph 15.10.2-1(b) of the ICB Guidelines about “permissible eligible introductions where a facility is being established” requires information which identifies the introduced customer and any beneficiaries or relevant beneficial owners and the purpose and

intended nature of the business relationship. Additionally a letter from the eligible introducer must be obtained providing an undertaking to supply to the insurance company upon request without delay, copies of such necessary verification evidence and documentation of the customer.. There is no specific requirement that the insurance company satisfy itself that the introducer is regulated and supervised or has measures in place for compliance with CDD are record-keeping requirements in line with Recommendation 10 and 11. Additionally, there is no specific requirement that the ultimate responsibility for CDD measures should remain with the insurance company.

154. *Criterion 17.2* – Eligible introducers can be based in countries listed in the First Schedule of the FTRA or in countries with equivalent or higher AML/CFT standards of regulation than The Bahamas. The list consists of countries that are generally regarded as sufficiently applying the FATF Recommendations and having AML/CFT legislative and regulatory frameworks of comparable stringency to that of The Bahamas. There is no indication that information on the level of country risk is taken into account in determining countries in which third parties can be based.

155. *Criterion 17.3* – While FIs can rely on third parties belonging to the same financial group with an AML/CFT group policy consistent at least with Bahamian law the requirements as set out above are still applicable.

Weighting and Conclusion

156. All licensees of the CBB comply with the requirements of criterion 17.1 Licensees and registrants under the SCB do not have any requirement that the ultimate responsibility for CDD measures should remain with them. There is no specific requirement that insurance companies satisfy themselves that the introducer is regulated and supervised or has measures in place for compliance with CDD and record-keeping requirements in line with Recommendation 10 and 11. Additionally, there is no specific requirement that the ultimate responsibility for CDD measures should remain with the insurance company. There is no indication that information on the level of country risk is taken into account in determining countries in which third parties can be based **Recommendation 17 is rated partially compliant.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

157. Recommendation 18 is a combination of (formerly R. 15 and 22). Former R. 15 was rated ‘PC’ in the 3rd MER due to no requirements for an adequately resourced and independent audit function or screening procedures for hiring employees, the requirement for procedures for detection of unusual and suspicious transactions did not extend to all FIs and the compliance officer and other appropriate staff not having access to information that may assist in making an STR. R. 22 was rated ‘PC’ as the majority of the requirements were only applicable to banks and trust companies. Deficiencies of R. 15 were addressed by revisions in the CBB AML/CFT Guidelines, the adoption by the SCB of the revised CBB AML/CFT Guidelines and the issuance of industry specific guidelines for the insurance sector. The shortfalls of R. 22 were dealt with by the SCB adopting the revised CBB AML/CFT Guidelines and the issuance of industry specific guidelines for the insurance sector. No new requirements have been included in R. 18.

158. *Criterion 18.1* – The only legislative provisions relating to criterion 18.1 are regs. 5 and 6 of Financial Intelligence (Transactions Reporting) Regulations, 2001 (FITRR) which require FIs to have compliance management arrangements including appointment of a senior officer as compliance officer and an ongoing employee training programme. Paragraph 24 of the CBB AML/CFT Guidelines requires

licensees to have policies, procedures and controls to deter criminals from using their facilities for ML/TF. Paragraphs 28 and 29 of the CBB AML/CFT Guideline include requirements of criteria 18.1 (b) and (d). Paragraphs 13.1.1, 14, 19.5, 20 and 21 of the CUCOP incorporates all requirements of the criterion except for the audit function being specifically independent. Rules 3, 4 and 32 of the SI Rules include the requirements of the criterion except for screening procedures for hiring employees and an independent audit function.. For insurance companies, the requirements are incorporated in Section V, VIII and IX of the ICB AML/CFT Guidelines, as well as in Section 207(1)(e) of the IA, and Section 45(1)(e) of the EIA. .

159. *Criterion 18.2* – Paragraphs 29(2) and (3) of the revised CBB AML/CFT Guidelines include some of the elements of this criterion. FIs under the supervision of the CBB with a branch or subsidiary in a host country or jurisdiction have to develop an AML/CFT group policy that complies with the requirements of The Bahamas’s AML/CFT legislation and the revised AML/CFT-Guidelines. These FIs need to put in place adequate safeguards to protect the confidentiality and use of any information that is shared, and to the extent permitted by the laws of the countries or jurisdictions where their branches and subsidiaries are located develop group policies and procedures to share information required for CDD purposes and ML/TF risk management.. No similar provisions are found in the legislation and guidelines covering credit unions, insurance companies and securities firms.

160. *Criterion 18.3* – The only requirement of this criterion is included in the “Scope” section of the CBB AML/CFT Guidelines which requires that financial group policy be followed by all overseas branches, subsidiaries and associates to ensure that AML/CFT standards and practices are consistent with Bahamian requirements or with host country standards if more rigorous. The IBTC has issued a notice to the four licensees that have branches or subsidiaries in foreign jurisdictions reminding them of their obligation to ensure that their overseas branches and subsidiaries comply with The Bahamas’ AML/CFT standards, where these are more rigorous than those of the host country. There is no requirement for financial groups to apply appropriate additional measures to mitigate ML/TF risks where the host country does not permit proper implementation of AML/CFT measures and to inform their home supervisors. Paragraphs 14.9.2 and 14.9.3 of the ICB AML/CFT Guidelines includes the requirements of criterion 18.3. No similar provisions exist for credit unions and securities firms.

Weighting and Conclusion

161. The requirements of criterion 18.1 are met with deficiencies. Insurance companies are required to comply with the requirements of criterion 18.3. Credit unions, insurance companies and securities entities do not have provisions in line with the requirements of criterion 18.2. Credit unions and securities entities are not required to comply with criterion 18.3. **Recommendation 18 is rated partially compliant.**

Recommendation 19 – Higher-risk countries

162. This Recommendation (formerly R 21) was rated ‘PC in the 3rd MER and the level of compliance was improved with regard to the documentation of written findings of the examinations of transactions with persons from or in countries that do not or insufficiently apply the FATF Standards by entities regulated by the CBB, SC and most of those regulated by the CC. The Guidelines were amended to require CBB’s licensees to be aware of higher risk jurisdictions. R. 19 requires the application of EDD where there is a risk to transactions and business relationships from countries so identified by the FATF. Countries are required to inform FIs of possible AML/CFT weaknesses in other countries.

163. *Criterion 19.1* - FIs (including banks, trust companies, money transmission business and credit unions), are required to apply EDD on a risk sensitive basis for customers, business relationships or transactions under paragraph 139 of CBB AML/CFT Guidelines. Based on sections 6(1), (2) and (3), of the FTRA, FIs should verify the identification of a person who becomes a facility holder before starting the commercial relationship and also verify their identity when there are two or more facility holders. This obligation of the FI is extended to natural and legal persons and legal arrangements. Under paragraph 166 of the CBB AML/CFT Guidelines, all licensees are encouraged to consult publicly available information to ensure that they are aware of countries / territories which may pose a higher risk. However, it does not clearly indicate that the referred EDD should be applied, proportionate to the risks, to countries for which this is called for by the FATF. While rule 25(1) of the SI Rules requires EDD for higher risk customers, business relationships and transactions there is no reference to higher risk countries. The ICB AML/CFT Guidelines also contains requirements similar to that of paragraph 166 of the CBB Guidelines.

164. *Criterion 19.2 – (a)* At a country level, there are no specific provisions to apply countermeasures proportionate to the risks when called to do so by the FATF or independent of any call by the FATF. The CBB AML/CFT Guidelines sets out examples of countermeasures that could be undertaken by licensees when dealing with high-risk countries. Paragraph 167 of the CBB AML/CFT Guidelines requires that caution should be exercised when accepting certified documentation from person who are in high risk countries.

165. *Criterion 19.3 –* Paragraphs 166 and 167 of the CBB AML/CFT Guidelines establish the EDD measures that licensees should apply to high risk countries including countries associated with predicate crimes and that pose higher risk potential to licensees. The Guidelines specify countries that are associated with predicate crimes such as drug trafficking, fraud and corruption; but not countries with weaknesses in relation to TF. Licensees are encouraged to consult publicly available information to ensure that they are aware of countries/territories that may pose a higher risk. Caution is required in respect of the acceptance of certified documentation from individuals and entities located in high-risk countries, and an investigation of the background and purpose of transactions is required when there appears to have no economic or visible lawful purpose. There is no legal basis for the application of this criterion by the insurance industry or investment fund industry.

Weighting and Conclusion

166. While FIs are required to apply EDD on a risk sensitive basis there is no specific obligation that the referred EDD should be applied, proportionate to the risk from countries for which this is called for by the FATF. There are no provisions for applying countermeasures proportionate to the risks to countries for which this is called for by the FATF and independently of any call by the FATF. There are no measures to advise entities under the SCB and the ICB of concerns about weaknesses in the AML/CFT systems of other countries. **Recommendation 19 is rated partially compliant.**

Recommendation 20 – Reporting of suspicious transaction

167. This Recommendation (formerly R.13 and SR.IV) was rated ‘PC’ and ‘C’ respectively in the 3rd. MER. For Rec. 13 the factor underlying the rating was that the statistics on STRs suggested that only the banking sector was effectively implementing STR measures. SR IV was fully met since FTRA requires the submission of STRs to the FIU including ML and TF. The FIU conducted trainings and workshops where various sectors attended, which resulted in a significant increase in the number of STRs received. The FIU

continued working with the banking and non-banking sector to assist institutions with implementing and maintaining an effective STR regime. No new measures have been included in R.20.

168. *Criterion 20.1* – Section 14(1)(b) of the FTRA sets out that where FIs know, suspect or have reasonable grounds to suspect that the transaction or proposed transaction involves proceeds of criminal conduct or any offence as defined in the POCA or any offence under the POCA or an attempt to avoid the enforcement of any provision of the POCA; the FI shall, as soon as practicable, report the transaction or proposed transaction to the FIU. Additionally, under the POCA Schedule; all the offences established in the ATA are subject to the provisions of the POCA.

169. *Criterion 20.2* – The Schedule to the POCA includes offences under the ATA as predicate offences. While there are no provisions in the ATA requiring the reporting of attempted suspicious transactions, the mandatory reporting obligation under section 14 (1)(b) of the FTRA that requires the reporting of proposed transactions is applicable also to the ATA, since offences under the ATA are predicate offences under the POCA. Section 14 (1)(b) of the FTRA does not set a limit on the amount of the transactions.

Weighting and Conclusion

170. **Recommendation 20 is rated compliant.**

Recommendation 21 – Tipping-off and confidentiality

171. The Bahamas was rated ‘C’ for R.21 (formerly R.14) in its 3rd MER. There are no significant changes to this Recommendation for the Fourth Round.

172. *Criterion 21.1* – According to section 8(2) of the FIUA, no civil or criminal liability action may be brought nor professional sanction taken against any person or against directors or employees of a financial entity who in good faith transmits information or submits reports to the FIU.

173. *Criterion 21.2* – Prohibition against the disclosure of information can be found at section 44(1) of the POCA. Here it is an offence for a person to disclose to any other person information which is likely to prejudice an investigation or proposed investigation into ML. Additionally, section 44(2) of the POCA creates an offence whereby a person who knows or suspects that a disclosure has been made to a police officer or an appropriate person, pursuant to sections 41, 42 and 43 of the POCA, and that person discloses information which is likely to prejudice any investigation conducted as a result of that disclosure. The above provision would include reporting to the FIU since section 43 of the POCA requires reporting to the FIU suspicions of ML related to the proceeds of the offence of drug trafficking or any relevant offence. Under section 18(1) of the FTRA, a FI is prohibited from disclosing the existence of an STR, except to a) the FI’s supervisory authority; b) the FIU; c) the Commissioner of Police or a member of the Police who is authorised by the commissioner; d) an officer, employee or agent of the FI for any purpose connected with the performance of that person’s duties; e) a counsel and attorney, for the purpose of obtaining legal advice or representation in relation to the matter; f) the CBB. Additionally, sections 20(4) and (5) of the FTRA, makes it an offence for any person to disclose that a STR has been made or that reporting of an STR is being considered thereby imposing criminal liability on directors, officers and employees of FIs for disclosing such a matter.

Weighting and Conclusion

174. **Recommendation 21 is rated complaint.**

Recommendation 22 – DNFBPs: Customer due diligence

175. Recommendation 22 (formerly R. 12) was rated ‘PC’ in the 3rd MER. Deficiencies included the lack of a requirement to undertake CDD measures on occasional transactions that are wire transfers as required by the Interpretative Note to SR VII; no requirement to verify that any persons purporting to act on behalf of legal persons or legal arrangements is so authorized, and to identify and verify the identity of that person; no requirement to take reasonable measures to determine natural persons who ultimately own or control legal persons or legal arrangements; lack of enforceability of some requirements to understand ownership and control of structure of legal persons and arrangements and of keeping CDD information updated, as well as to perform enhanced due diligence for high risk categories. There was also no requirement to consider making an STR when unable to complete CDD or to obtain senior management approval for the continuation of a relationship with a client identified as a PEP. Other deficiencies included lack of enforceability of record keeping requirements and of the requirement to examine the background and purpose of complex transactions, in some sectors. All deficiencies for this Recommendation during the Third Round were deemed resolved through the issuance of the FTRR in 2009 and the issuance of AML/CFT Codes applicable to Accountants, Lawyers and Real Estate.

176. Of the different categories of DNFBPs envisioned by the FATF Recommendations, only dealers in precious metals and stones were not covered by AML/CFT legislation given that the Authorities conducted a review and determined they represented a negligible risk. They were however brought into the AML/CFT framework through an amendment to the FTRA (see paragraph 13 of the 7th FUR). The essential requirements for DNFBPs remained unchanged in the revised Standards, but there are provisions absent in law that are not adequately addressed in guidance for DNFBPs.

177. *Criterion 22.1(R.10)* – As noted all categories of DNFBPs have been brought under the AML/CFT regime of The Bahamas. As such, all DNFBPs have been defined as FIs under the FTRA thereby subjecting them to all the requirements of the FTRA and other AML/CFT laws and statutes. In addition, all categories of DNFBPs except for casinos and dealers of precious metals and dealers of precious stones have been issued an AML/CFT Handbook and Code of Practice (AML/CFT Code) setting out good industry practices and covering AML/CFT issues not dealt with in legislation. The lack of guidelines for dealers of precious metals and stones is not based on the risk, but rather the recent assignment of supervisory responsibility for this sub-sector to the Inspector of FCSP (SCB) with the 2014 amendment to the FTRA. Casinos are also subject to the Gaming Regulations (GR), the Gaming House Operators Regulations (GHOR) and the Financial Transactions Reporting (Gaming) Regulations, 2014 (FTRGR). Sub-criterion 10.1 is met by section 6(1) and 6(3) of the FTRA. Sub-criterion 10.2(a) is met by sections 6(1) and 6(2) of the FTRA. Sub-criterion 10.2(b) is mostly met due to the fact that \$15,000 threshold in reg. 2 of the FTRA applies only to occasional cash transactions, rather than all occasional transactions. The schedule to the Financial Transactions Reporting (Gaming) Regulations, 2014 has CDD thresholds for occasional transactions ranging from \$5,000 to \$15,000. These are not in line with the \$3,000 threshold specified for casinos. Sub-criterion 10.2(c) is mostly met by the FTR(WT)R, particularly for originator information and beneficiary information. However, there are no requirements except for licensees of the CBB for its application to targeted financial sanctions under UNSCRs 1267 and 1373. Sub-criterion 10.2(d) is met by section 10A (1) of the FTRA. Sub-criterion 10.2(e) is met by section 6(4) of the FTRA. Requirements of criterion 10.3 are met through sections 6, 7 and 11 of the FTRA, as well as regulations 3, 4 and 5 of the FTRR which allow for independent sources of verification. With regard to verifying that a person is authorized to act on behalf of a customer (Criterion 10.4), this is found primarily in FTRA section 7 (5) as well as regulations 4(1), 5(1), and 6(2) of

the FTRR. With regard to criterion 10.5, the requirement to identify the beneficial owner is met by regulations 7A and 4(3) of the FTRR.

178. With regard to criterion 10.6 information on the purpose and nature of a business relationship with individuals is required under reg. 3(1)(d) of the FTRR. However, similar obligations with regard to corporate entities, partnerships and other unincorporated businesses as set out in regs. 4(2)(d) and (e) and regs. 5(2)(a) and (b) of the FTRR are discretionary. The above requirements are set out for real estate brokers, accountants, lawyers and FCSPs in their respective AML/CFT Codes. (Paragraphs 14.3 and 14.4 of the accountants and lawyers AML/CFT Codes and paragraphs 13.3 and 13.4 of the real estate brokers and FCSPs AML/CFT Codes) There are no similar requirements for casinos. Criterion 10.7 provisions are partly met for casinos and gaming houses by section 159 of the GRs and regulation 9(2) of the FTRR. However, there are no provisions for ensuring that documents, data and information collected under CDD are kept up-to-date, although there are provisions to keep the risk assessment of the patron up-to-date. Requirements for this criterion are set out in paragraphs 15.1 and 15.4 of the AML/CFT Codes for real estate brokers and FCSPs and paragraphs 16.1 and 16.4 of the AML/CFT Codes for lawyers and accountants.

179. Provisions regarding 10.8 are found in regulations 4-6 of the FTRR as well as the equivalent provisions in the AML/CFT Codes (paragraphs 13.3.3 of the AML/CFT Codes for real estate brokers and FCSPs and paragraphs 14.3.3 of the AML/CFT Codes for accountants and lawyers). Measures required by 10.9 are met through regulations 4-6 of the FTRR as well as equivalent provisions regarding identification of corporate entities in the AML/CFT Codes (paragraphs 13 and 14). Further the DNFBP “may” rather than must require the address of the registered office under sub-section 4(2)(b) of the FTRR. Requirements for 10.10 are found in regulations 4-6 of the FTRR and respective paragraphs in the Codes (paragraph 13 for Real Estate and FCSP Handbook and Code and paragraph 14 in the Codes for Accountants and Lawyers). Requirements for criterion 10.11 (largely met) are found in regulations 6(2) and 7A of the FTRR. While there is a general requirement to verify the identities of BOs of all customers and to identify the settlor and the person exercising effective control over a trust there is no specific legislative requirement to identify trustees or protectors if any.

180. Requirements for criteria 10.12 and 10.13 (CDD for beneficiaries of life insurance policies) are not applicable for DNFBPs. Requirements for 10.14 are met as per sections 6 (2) and 7 of the FTRA. Regarding 10.15, the authorities indicated that pursuant to section 6 (2) of the FTRA, opening of accounts is not permitted before identification is completed so risk management procedures addressing this are therefore not needed. As such this sub-criterion is not applicable.

181. Criterion 10.16 is met by section 6 (6) of the FTRA as set out in the analysis for R.10 in this report and is applicable to all DNFBPs. With regard to 10.17 the FTRA does not contain specific provisions but the AML/CFT Codes (paragraph 12 for Real Estate and the FCSPs paragraph 13 for the AML/CFT Codes for Accountants and Lawyers) do contain a paragraph on categorization of risks and EDD that must be applied to high and low risk categories. The analysis as set out in R.10 regarding 10.18 is also applicable for DNFBPs. With regard to 10.19 (a) and (b), there are no provisions stipulating requirements when DNFBPs are unable to comply with relevant CDD measures. In relation to 10.20 there are no measures for exemption from the requirement to conduct CDD if such exercise will or is likely to tip-off the customer and instead file a STR..

182. *Criterion 22.2(R.11)* – Record keeping requirements are included in the FTRA Part IV and FTRR and are applicable to both FIs and DNFBPs. As such the analysis under Recommendation 11 dealing with 11.1, 11.3 and 11.4 is also relevant for DNFBPs. Additionally, the AML/CFT Code for Real Estate Brokers and the AML/CFT Code for FCSPs contain specific procedures in paragraph 16. Accountants and Lawyers

also have provisions in paragraph 17. These provisions require the retention of account files and business correspondence connected with the facility for a period of five years after the completion of the transaction rather than five years after the termination of the account. There are no requirements regarding any analysis other than those needed for any ongoing investigations.

183. *Criterion 22.3(R.12) –12.1 – 12.4-* With regard to casinos there are minimal requirements concerning PEPs as set out in regulation 150(2)(b) of the Gaming Regulations and regulation 3(2)(a) of the FTRR. Other than determining that a patron or any beneficial owner or underlying person is a PEP and the patron's source of funds the only other requirement is regular review of the initial risk assessment done on the patron. Requirements such as senior management approval, source of wealth and enhanced monitoring are absent, as well as requirements for 12.2 and 12.3. Similar requirements for PEPs are set out in the AML/CFT Codes for Real Estate Brokers and the AML/CFT Code for FCSPs at paragraph 12 and the AML/CFT Codes for Lawyers and Accountants at paragraph 13. There is no definition of PEPs which are listed as high risk and are subject to requirements for high risk customers. These include for larger DNFBPs senior management approval for establishing or continuing a relationship and enhanced monitoring. There are no provisions dealing with domestic PEPs, international organisation PEPs or family members or close associates of all types of PEPs. .

184. *Criterion 22.4(R.15) –* Criterion 15.1 is dealt to a certain extent, through paragraph 12.4.5.2 of the AML/CFT Code for FCSPs, paragraph 12.3.4.5 of the AML/CFT Code for Real Estate Brokers, and 13.3.4.5 of the AML/CFT Codes for Accountants and Lawyers, which require that necessary measures be implemented to prevent the misuse of technological developments to facilitate ML and TF. There is no requirement to identify and address ML/TF risks derived from technological developments or new delivery mechanisms and business practices. The measures do not include specifically doing a risk assessment and taking appropriate measures to manage and mitigate the risk. There are no requirements for casinos regarding Recommendation 15. (Criterion 15.2).

185. *Criterion 22.5(R.17) –* With regard to sub-criterion 17.1 (a) Paragraph 15 of AML/CFT Codes requires DNFBPs to obtain from the introducer a letter with information which identifies the introduced customer and any beneficiaries or relevant beneficial owners and the purpose and intended nature of the business relationship. The ultimate responsibility for CDD measures remains with the DNFBP.. Sub-criterion 17.1 (b) this provision is met as there are requirements to obtain from the introducer an undertaking that specific copies of CDD documentation will be provided for verification upon request and without delay in the cited paragraph of the AML/CFT Codes. Sub-criterion 17.1 (c) Third party reliance is limited to a number of eligible introducers all of which are required to be regulated either by the supervisory authorities in The Bahamas or foreign agencies equivalent to these .authorities in The Bahamas. Paragraph 15 of the Codes of Practice requires that the relevant DNFBP be satisfied that the eligible introducer is supervised and regulated as required. With regard to sub-criterion 17.2 as already indicated the criterion for eligible introducers is regulation and supervision by reputable supervisory authorities rather than assessment of country risk. The situation as set out in Recommendation 17 for criterion 17.3 is also applicable for DNFBPs. In the case of the AML/CFT Code for FCSPs, provisions for third party reliance are exactly the same as described above. There are no requirements for casinos regarding third party reliance.

Weighting and Conclusion

186. Overall there is a CDD framework for DNFBPs that requires identification and verification of the customer and other parties where relevant. This include measures to identify the beneficial owner. CDD and record keeping requirements for DNFBPs are largely in place. Risk analysis is required to determine

whether a client is a PEP, but there are no direct provisions to put in place risk management systems to determine whether a customer or a beneficial owner is a PEP and to conduct ongoing monitoring of that relationship. The EDD provisions are generally in keeping with the Standard. There is no information that pertains to the beneficiaries of life insurance and other investment related insurance policies. Since verification is required prior to establishing a business relationship there is no need for measures for the timing of verification and dealing with existing customers. No requirement to identify and address ML/TF risks derived from technological developments or new delivery mechanisms and business practices. The measures do not include specifically doing a risk assessment and taking appropriate measures to manage and mitigate the risk. With respect to reliance on third parties, there are no provisions in CC Codes to have information on the level of country risk or for groupwide CCD requirements and mitigation measures, **Recommendation 22 is rated partially compliant.**

Recommendation 23 – DNFBPs: Other measures

187. Recommendation 23 (formerly R. 16) was rated ‘PC’ in the 3rd MER. The main deficiencies identified were: the ineffective implementation of suspicious transaction reporting requirements; access to information that could be relevant in filing an STR was only available to the compliance officer and not to other appropriate staff; no requirements for screening procedures for hiring new employees; no requirement for the maintenance of an independent audit function to test compliance; policies and procedures for the detection of unusual transactions and STRs were only enforceable on banks and trust companies and special attention to business relationships with high risk countries was only applicable to banks and trust companies. These deficiencies related to R. 13, 15 and 21. Deficiencies that affected FIs also affected DNFBPs. The STR issues were addressed by continuous AML/CFT training to ensure effective implementation of the reporting requirements by FIs, while the revision of the CBB AML/CFT Guidelines and the development of Codes of Practice addressed the deficiencies relating to internal controls and higher risk countries. There are no outstanding issues. The new requirements for R. 16 include issues on the cooperation between SROs and the FIU with regard to lawyers, notaries, other independent legal professionals and accountants.

188. *Criterion 23.1(R.20) – Criterion 20.1-* Pursuant to section 3 of the FTRA, gaming houses and casinos licensed under the Gaming Act 2014, lawyers, accountants, dealers in precious metals and precious stones, TCSPs and real estate brokers are classified as FIs. As such, section 14 of the FTRA provides that FIs must report suspicious transactions to the FIU. Additionally, section 43 of the POCA provides for persons to make disclosures on suspicions of ML, while section 7 of the ATA requires reports on suspicion of the use of funds or financial services for offences under the ATA to be reported to the COP. *Criterion 20.2 –* Section 14 of the FTRA refers to ‘proposed transactions’, which could be construed to mean ‘attempted transactions’. There is no direct reference to attempted transactions at section 7 of the ATA, where a person is required to file a report to the COP, where the person has reasonable grounds to suspect that the funds/financial services are related to or are to be used to facilitate an offence under the ATA. However, the mandatory reporting requirement under section 14 of the FTRA which includes TF offences requires reporting of attempted transactions. (See. Para. 666 of the 3rd round MER).

189. *Criterion 23.2(R.18) – Criterion 18.1:* (a) Section 5(e) of the FITRR requires FIs to identify and appoint a senior officer as a compliance officer who is responsible for ensuring that the regulated institution is in full compliance with the law of The Bahamas. Sections 5(a)-(d) of the FITRR requires the identification and appointment of a Money Laundering Reporting Officer (MLRO) and sets out the functions of the MLRO in a FI’s internal reporting procedures. Additionally, sections 18.5-18.6 of the CC AML/CFT Codes provide a mandatory requirement to appoint a MLRO and a Compliance Officer. (b) The CC AML/CFT Codes and the FCSP AML/CFT Code deal with Know Your Employee (KYE) at section 19 and 18 respectively and

include screening procedures when hiring employees. (c) Section 6 of the FITRR provides for training procedures which should be provided by FIs to staff ‘from time to time and in any case at least once per year.’ (d) While section 12 of the CC AML/CFT Codes and section 11 of the FCSP AML/CFT Code provide for internal auditing of AML/CFT systems the requirement does not specify that the audit be independent.. *Criterion 18.2:* (a-c) – There are no financial group measures pertaining to lawyers, dealers in precious stones and metals and TCSPs. *Criterion 18.3:* There are no specific measures provided for foreign branches and majority-owned subsidiaries of the DNFbps covered by this Recommendation.

190. *Criterion 23.3(R.19)* – For *Criterion 19.1*, Section 6 of the FTRA and section 13 of the CC AML/CFT Codes provide for CDD (identification and verification). The CC AML/CFT Codes also require FIs to comply using a RBA and requires EDD for high risk clients.. There is no requirement to apply EDD to customers from countries where this is called for by the FATF. *Criterion 19.2* – There are no programs for countermeasures cited or noted for (i) when called upon to do so by the FATF or (ii) independent of any call by the FATF. With regard to *Criterion 19.3*, there are no measures that address the issue of advising the DNFbps of weaknesses in the AML/CFT systems of other countries.

191. *Criterion 23.4(R.21) – Criterion 21.1* – Section 16 of the FTRA protects “any person” who submits a STR to the FIU from civil, criminal or disciplinary proceedings with regard to the disclosure of the information in the STR. The words ‘any person’, will include any corporate body such as DNFbps as set out in section 2 of the Interpretation and General Clauses Act along with directors, officers and employees of DNFbps. *Criterion 21.2* Pursuant to section 18 of the FTRA FIs are prohibited from disclosing the making or contemplation of making of an STR to anyone other than those noted at section 18(1), (a)-(f) of the FTRA. Sections 20(4) and (5) of the FTRA, makes it an offence for any person to disclose that a STR has been made or that reporting of an STR is being considered thereby imposing criminal liability on directors, officers and employees of FIs for disclosing such a matter.

Weighting and Conclusion

192. Suspicious transaction reporting and tipping-off and confidentiality requirements have been met. There are no measures for financial group-wide programmes for ML/TF or for foreign branches and majority-owned subsidiaries of DNFbps. The requirements of R.19 have not been implemented for DNFbps. **Recommendation 23 is rated partially complaint.**

Weighting and Conclusion

Recommendation 24 – Transparency and beneficial ownership of legal persons

193. Recommendation 24 (formerly R. 33) was rated ‘LC’ in the 3rd MER. The assessors found that there was no legal requirement to determine the natural person who ultimately controlled the legal person. At the time of the 3rd round evaluation, the assessors noted at paragraph 1078 that the perceived risk of money laundering or terrorist financing in the domestic sector is low relative to the much larger and significant offshore sector. Based on information provided in the follow-up process, The Bahamas indicated that the deficiency was addressed by an amendment to the FTRR, which was brought into force in January 2009. At the time of this writing, this amendment to the FTRR is still outstanding and cannot be verified as being adequately addressed.

194. Recommendation 24 has been expanded to include requirements pertaining: to the information to be maintained in the Companies' registry, shareholders or members register, the information held in the register and Registry to be accurate and updated on a timely basis, mechanisms to ensure that BO information is obtained; cooperation with competent authorities in determining the BO, maintenance of records for a specified period after the business has ended, powers of law enforcement to obtain timely access to BO information, nominee shares and nominee directors, bearer shares and bearer share warrants, proportionate and dissuasive sanctions, international cooperation with regard to basic and BO information and monitoring of the quality of assistance received in response to requests for basic and BO information.

195. *Criterion 24.1* – As indicated by the authorities the types of legal persons that can be formed in The Bahamas include regular (local) companies, international business companies (IBCs), executive entities, exempted limited partnerships, foundations, investment condominiums, limited duration companies, non-profit companies and segregated accounts companies. Companies may be created under one of two statutes – either the Companies Act (CA) or the International Business Corporations Act (IBCA). Incorporation under either statute may be with or without limited liability and includes non-profit companies. Under the IBCA, limited duration companies may also be incorporated. The governing statute for segregated accounts companies is the Segregated Accounts Companies Act (SACA). A segregated accounts company (SAC) must be either a company incorporated under the CA or the IBCA. The remaining types of companies executive entities, exempted limited partnerships and foundations are governed by individual statutes. Investment condominiums are required to be licensed as an investment fund governed by the IFA under the regulation of the SCB. As such they are covered by the requirements under Rec. 26. Processes for the formation of the various types of companies and the recording of basic information are set out in the relevant statutes. All types of legal persons are required to register with the Registrar General's Department (RGD) which provides information on commencing the process on its website. Beneficial ownership information is available through the AML/CFT obligations of FIs and DNFBPs. Information on the process for the obtaining and recording of beneficial ownership information is not publicly available.

196. *Criterion 24.2* – The assessment of the ML/TF risks associated with all types of legal persons that can be created has not been completed.

197. *Criterion 24.3* – The RGD is required under the relevant statutes to maintain appropriate registers for all types of companies. The requirements for the registration of companies under the CA are contained in sections 10(1), 16, 17(2) and 80(4). The sections provide for the filing of Articles of Incorporation with the RGD, submission of the address of the registered office and a list of directors and managers containing names, addresses and occupations and the issuance of a Certificate of Incorporation. Similar measures are also contained in the IBCA at sections 15(1) and 37 and 44 for the registration by the RGD of the Memorandum and Articles of Association which includes the name of the company and the address of the registered office; the requirement for a registered company to have a registered office in The Bahamas and the filing of the register of directors and officers with the RGD. Executive entities are required to submit to the RGD, name, date of the Charter or any Articles, purpose, and name and address of the executive entity agent. Foundations are required to submit name, address of registered office, date of the Charter or any Articles, purposes and objects, and name and address of secretary/foundation agent and first officers of the foundation. The Charter or Articles of executive entities and foundations can but need not be submitted to the RGD. Exempted limited partnerships are required to submit name, general nature of the business, address of registered office, name and address of general partner and in the case of a corporate general partner a certificate of incorporation and certificate of good standing. While the registration requirements under the CA and the IBCA meet the criterion, the other requirements lack information on basic regulating powers. All of the registers kept by the RGD can be viewed by the public for a nominal fee during official hours.

198. *Criterion 24.4* – The requirement to maintain a register of shareholders is dealt with at section 56(1) of the CA, which provides that a company registered under the Act is required to maintain a register of shareholders at its registered office. The information to be kept in the register of shareholders includes the names, addresses and occupations of the members of the company; including the shares held by each member if relevant; the date on which any person became and ceased to be a member. Section 56(2) allows for inspection of the register of members by members of the company or the public subject to any restrictions that may be imposed. Pursuant to section 58, the list of shareholders and the number of shares held has to be forwarded to the Registrar. Additionally, section 59(1) requires every incorporated company to submit to the Registrar a declaration as to whether 60% or more of a company's shares are beneficially owned by Bahamians. The names and other information of these shareholders is not available for public inspection. The information set out in criterion 24.3 is required to be maintained by the company under section 18 of the CA. The IBCA at section 29(1) also requires the maintenance of share registers at the registered office containing information on the names and addresses of the members of the company; including the shares held by each member if relevant and the date on which any person became and ceased to be a member. Section 67 of the IBCA requires retention of records containing information set out in criterion 24.3. Each executive entity is required to retain at its registered office, the Charter and Articles and names and addresses of the founder, officers and executive entity members. Foundations are required to keep at their registered office the Charter and Articles and names and addresses of the founder, foundation council or any other governing body or supervisory person. General partners are required to maintain at the registered office of the exempted limited partnership a register of the name, address and amount and date of the contributions of each partner. The information set out in criterion 24.3 is required to be retained by executive entities, foundations and exempted limited partnerships.

199. *Criterion 24.5* – As noted earlier, section 80(4) of the CA requires each company to keep a register of directors and managers with the names and addresses and occupation where relevant at the registered office of the company. A copy is to be sent to the Registrar. Section 56(1) requires companies to maintain a register of shareholders. Similar measures are provided for at sections 44(4) and 29(1) of the IBCA. There is no indication that there is a requirement to keep the information accurate and updated on a timely basis. Further, the IBCA at section 44(8) requires that notice of a change in the directors and officers of an IBC must be filed with the Registrar of Companies within twelve months of such change. This notice is not timely. Similarly with regard to executive entities, foundations and exempted limited partnerships there is no mechanism to ensure that information in criterion 24.3 and 24.3 is accurate and updated on a timely basis.

200. *Criterion 24.6* – This criterion requires the use of one or more mechanisms to ensure that information on the BO of a company is obtained by the company and available at a specified location or can be otherwise determined in a timely manner. The RGD's registries record some basic information but are not required to keep BO information. The Bahamas requires companies to keep information on the name, address and number of shares where relevant on directors and members of a corporation. However, there is no specific requirement to obtain BO information. The main mechanism for the collection of BO information is FIs and DNFBPs through the requirements of R.10 and R.22 as set out in this report. FIs and DNFBPs are required to identify all natural persons who have 10 percent controlling interest or more in a corporate entity and all natural persons who control the ownership structure. All IBCs are required to have a licensed FCSP as their registered agent who under the FCSP AML/CFT Code will be required to keep BO as stipulated above. Executive entities and foundations are required to have either an FCSP or trust company under the BTCRA as registered agents and as such the BO information requirements in the CBB AML/CFT Guidelines and the FCSP AML/CFT Code will be applicable. Exempted limited partnerships are not required to maintain information on beneficial ownership, however such information will have to be maintained by the FIs with which they conduct business. As set out in R 9 and 31 LEAs have adequate powers to access information from FIs and DNFBPs.

201. *Criterion 24.7* – There are requirements to maintain information on registered shareholders (registered shareholders – section 56 of the CA; section 29 of the IBCA). The Authorities have also noted requirements for approval to transfer shares under the SIA/IFA and the FCPA. There is however no direct requirement that BO information is kept as accurate and up-to-date as possible. As mentioned in 24.6, legal entities are not required to obtain BO information. FIs under the supervision of the CBB, SCB and the ICB are required to ensure that CDD information which includes BO is up-to-date.. [See: Paragraph 45 of the CBB AML/CFT Guidelines; Rules 10; 18 (4) & (5); 19; 20 and 28 SI (AML/CFT) Rules paragraph 16.4 of the ICB AML/CFT Guidelines.]. Paragraph 15.4 of the FCSP AML/CFT Code requires FCSPs to ensure that documents and data collected during the due diligence process is kept up-to-date and relevant through periodic reviews. This will include BO information and covers all IBCs. Paragraph 15.4 of the AML/CFT Codes for Real Estate Brokers and paragraph 16.4 of the AML/CFT Codes for Accountants and Lawyers also have the same requirements. The remaining legal persons will come under the AML/CFT requirements of the FIs and the DNFBPs.

202. *Criterion 24.8* – While companies under the CA are obliged to have a registered office there is no specific requirement for a resident natural person to be authorised to provide all basic and BO information to competent authorities. Under section 37-39 of the IBCA, 2000 an IBC must ensure that it has a registered office and a registered agent domiciled in the Bahamas. The registered agent must be a licensed FCSP. The name and address of the registered agent must be submitted to the Registrar who maintains a register of all such agents. FCSPs are required to keep BO information which can be accessed by competent authorities. Similarly, executive entities and foundations must have either FCSPs or trust companies as agents which are required to keep BO information accessible to competent authorities. Exempted limited partnerships are required to have a registered office in The Bahamas for service of process, all notices and communications.

203. *Criterion 24.9* – There is no requirement to keep information on BO by all persons/authorities/entities for five years after the date on which a company is dissolved or otherwise ceases to exist. However sections 24(1) and (4) of the FTRA requires FIs and DNFBPs to retain records of CDD measures which would include BO information for a period of not less than five years after a person ceases to be a facility holder.

204. *Criterion 24.10* – Authorities cited the powers of the CBB (section 35(2)(c) of the CBBA), the SCB (sections 43, 45 and 50 of the SIA, section 51(1) of the IFA and section 11.4(a)(b) of the FCSPA) and the IC (sections 69, 70, and 72 of the IA and sections 41,42 and 43 of the EIA) to obtain any information for an investigation. The FIU has the ability to obtain adequate, accurate and current basic and beneficial ownership information on legal persons and arrangements. The FIU can obtain such information pursuant to s.4 (2) (d) FIUA. .

205. *Criterion 24.11* – The Bahamas does not prohibit bearer shares or bearer share warrants. Section 48 of the CA provides for the issue of share warrants (including bearer certificates and coupons), subject to the prior approval of the Controller of Exchange pursuant to regulation 10 of the Exchange Control Regulation. As a matter of practice, since December 31st 2000 the Controller of the Exchange ceased to grant exchange control approval for the issue of bearer shares. Additionally, section 196(3) of the IBCA required the recall of all bearer shares issued by IBCs within 6 months of the Act coming into force on 31 December, 2000 and prescribed that recalled bearer shares were to be replaced with new share certificates, which form part of a register maintained by the registered agent. Any bearer share not recalled and replaced

within the prescribed six month period were rendered 'null and void with no effect in law' once the six month period expired.

206. *Criterion 24.12* – While there are no specific provisions dealing with nominee shareholders or directors in the CA section 74 does permit proxy voting for companies with capital. With regard to IBCs, section 2 of the FCSPA allows for FCSPs to provide nominee shareholders for IBCs. While nominee shareholders of IBCs need to be licensed there is no requirement to record their nominee status in company registers. There are no measures for nominee directors of IBCs nor for nominee shareholders and directors of any other legal entities. Regulation 14 of the Exchange Control regulations 1956 deals with granting approval for nominee shareholdings in companies concerning non-residents and does not have any of the requirements of the criterion. .

207. *Criterion 24.13* – Under section 286 of the CA, contravention of a company's disclosure, filing and record-keeping obligations may be subject to a civil penalty of \$20 for each day or part thereof during which the contravention continues. Any natural person acting on behalf of the company can also be subject to the same penalty. Section 180 of the IBCA imposes a penalty of \$10,000 or imprisonment for two years for failure to keep a share register. Failure to submit required information on time can result in the IBC being struck off the register. FIs and DNFBPs can be fined for breaches of identification obligations regarding legal entities in guidelines or codes of practice a maximum fine of \$10,000 on summary conviction and on conviction on information for the first offence, a maximum fine of \$50,000 or for a second or subsequent offence, a maximum fine of \$100,000. These penalties are not applicable to officers, directors and employees of FIs and DNFBPs. As such penalties under the CA are not proportionate or dissuasive, those of the IBCA are not proportionate and those for FIs and DNFBPs are not applicable to officers, directors and employees of FIs and DNFBPs.

208. *Criterion 24.14* – The CBB has powers to obtain information from FIs and to share that information with an overseas regulatory authority under specified conditions. Additionally, pursuant to section 19(5) of the BTCRA the CBB subject to section 14(2) provisions may provide information on the BO, directors, officers and operations of a licensee. The sharing is intended to facilitate group supervision. Measures for sharing information are also contained in the FTRR, the SIA/IFA, the FCSPA and IA and the EIA. It should be noted that these measures allow for the receipt and sharing of information. The information held in the company registry is in the public domain. The Authorities have indicated that beneficial ownership information is accessible and can be provided for the purpose of international co-operation for assisting overseas regulatory authorities (section 37 of SIA). Section 4 (2) (f) and (g) of the FIUA speak to the FIU's ability to provide information and the Unit has on occasion provided information to the outlined agencies pursuant to this legislation. Section 74 of the IA, empowers the ICB to assist overseas regulatory authorities for the purpose of international cooperation regarding the sharing and exchange of information. Sections 45(3) to (9) of the FTRA, outlines the CC's ability to exchange information with domestic and overseas regulators. This does not include indirect information requests with non-counterparts.

209. *Criterion 24.15* – While the Authorities have noted mechanisms to address instances where information provided is deemed inadequate there are no specific measures or process in place to monitor the quality of assistance received from other countries with regard to basic and BO information.

Weighting and Conclusion

210. The Bahamas has some mechanisms in place that would allow information on the BO of legal persons to be obtained in particular BO information maintained by FCSPs for all IBCs. However, the

Registrar General is not required to collect BO information and legal entities are not obliged to retain the same. There are no measures for nominee directors of IBCs nor for nominee shareholders and directors of any other legal entities. There is no requirement for BO information to be kept five years after the company is dissolved or ceases to exist. There are no specific measures or process in place to monitor the quality of assistance received from other countries with regard to basic and BO information **Recommendation 24 is rated partially compliant.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

211. This Recommendation (formerly R. 34) was rated ‘LC’ in the 3rd MER. The main deficiencies included the inability to obtain and access information on the beneficial ownership and control of legal arrangements for which lawyers provide trust services. There was also no requirement for FIs to make efforts to determine natural persons who ultimately control legal arrangements. As seen under R.10, measures regarding beneficial ownership have improved, however some deficiencies remain. The situation remains unchanged in that trusts through FIs would be examined and overseen by the CBB and under related applicable provisions. R. 25, now includes obligations for all the countries whether they recognise trust law or not. Trustees should provide information to the FIs or DNFBPs regarding its establishment as a trustee, and guarantee that such information can be accessed by competent authorities in a timely manner. It should be noted that The Bahamas as a common law country allows for the establishment of common law trusts with no general registration requirements and no obligation that all trustees have to be licensed individuals under the AML/CFT legislative framework. There is a Trustee Act 1998 which stipulates the duties of the parties to a trust and does not include any AML/CFT requirements.

212. *Criterion 25.1 (a)* – The Bahamas requires professional trustees to obtain information on the identity of the trustee, the settlor, the beneficiary and any other natural person exercising ultimate effective control over the trust (paragraphs 94-102 of the CBB AML/CFT Guidelines, paragraph 14.12 of the ICB AML/CFT Guidelines, rule 13 of the SI Rules, paragraph 13.6 of the AML/CFT Codes for FCSPs and real estate brokers, paragraph 14.6 of the AML/CFT Codes for accountants and lawyers). FIs and DNFBPs under the supervision of the CBB, SCB, ICB,CC and the IFCS are required to ensure that CDD information which includes BO is up-to-date.(paragraph 46 of the CBB AML/CFT Guidelines, rule 7(3) of the SI Rules, paragraph 16.4 of the ICB AML/CFT Guidelines and the AML/CFT Codes for lawyers and accountants and paragraph 15.1 of the AML/CFT Codes for real estate brokers and FCSPs) (b)Only the CBB AML/CFT Guidelines has a requirement for trustees to obtain information on regulated agents or service providers to the trust such as investment advisers, managers, accountants and tax advisers (para 97). (c) FIs and DNFBPs would be considered professional trustees and are required to keep records for at least five years after termination of a business relationship .

213. *Criterion 25.2* – FIs are required by the FTRA and FTRR (section 10A and regulation 9, respectively) to re-examine previously identified clients when it is suspected that a transaction involves criminal conduct or when there are material changes in the facility holder or customer’s profile. The CBB AML/CFT Guidelines requires that CDD be reverified when there are reasons to suspect the identity of the customer and as already indicated ensure that such information is kept accurate and up-to-date as opportunities arise. Similar requirements are set out in rule 7(3) of the SI Rules. Paragraph 16.4 of the ICB AML/CFT Guidelines requires insurance companies to ensure that documents, data or information collected under the due diligence process is kept up-to-date and relevant, through periodic reviews of existing records. Similar requirements are set out in the AML/CFT Codes for lawyers, accountants, real estate brokers and FCSPs.

214. *Criterion 25.3* – CDD requirements under the FTRR and the relevant AML/CFT Guidelines require FIs and DNFBPs to take reasonable measures to identify when a person is acting on behalf of others and to obtain information on the identity of the trustee, settlor, the beneficiary and any other natural person exercising ultimate effective control over the trust. The CBB AML/CFT Guidelines in paragraph 99 requires that trustees should disclose their status to FIs when forming a business relationship or carrying out occasional transactions. Similar requirements are set out in AML/CFT Codes for DNFBPs (paragraphs 14.6.3 of the AML/CFT Codes for lawyers and accountants and paragraph 13.6.3 of the AML/CFT Codes for FCSPs and real estate brokers. There are no similar requirements for licensees of the SCB..

215. *Criterion 25.4* – There is no statutory bar in The Bahamas to trustees providing information to competent authorities relating to trusts Similarly there is no bar with regard to trustees providing information on beneficial ownership and assets of the trust to FIs or DNFBPs.

216. *Criterion 25.5*- As indicated in criteria 27.3 and 28.4 the supervisory authorities the CBB, SCB, ICB, CC and the IFCS have powers to access information held by their respective FIs and DNFBPs which would include all data on trustee accounts. With regard to the LEA the RBPF, section 35 of the POCA allows for the application of production orders relating to investigations into drug trafficking offences, or relevant offences which includes all predicate offences. Production orders obtained for FIs are for all financial documents, inclusive of transaction records, identification data obtained through the CDD process and all other supplemental documents maintained by the FI on behalf of the client. Additionally under section 4(2)(d) of the FIUA the FIU can require the production of such information excluding information subject to legal professional privilege that the FIU considers relevant to fulfill its functions. While the above measures would allow for access to all documents held by professional trustees, access to documents held by trustees outside the AML/CFT regime will fall under the general powers of the RBPF to access such documents with appropriate authorization However, trustees under the Trustee Amendment Act 2013 are only required to maintain accounting records.

217. *Criterion 25.6*- Information on trusts can be exchanged with foreign counterparts based on measures outlined under criteria 37.1 and 40.9. Section 35(3) of the CBBA provides for obtaining information from entities supervised (but not limited to) by the CBB to assist an overseas regulatory authority. (c) Under Section 43 SIA, the SCB has powers to obtain information for investigation which includes obtaining information from other domestic authorities. The ICB has the legal authority and power to obtain and exchange information with local and international authorities when the information is deemed to be necessary for the supervision of insurance entities, or when another regulator considers the information to be necessary for any purpose which will result in the protection of insurers and insurance industry. (Section 74 of the IA).

218. *Criterion 25.7*- (a) – (b) Trustees who fall under AML/CFT identification and record-keeping requirements are liable for breaches under the FTRA and the FI(TR)R and subject to sanctions as set out in the write-up for criterion 35.1. With regard to trustees outside the AML/CFT regime, section 92A of the Trustee Amendment Act requires the trustee to maintain reliable accounting records. Failure to keep such records is liable on summary conviction to a fine not exceeding BSD\$2,000..

219. *Criterion 25.8* – The Bahamas has what could be considered proportionate and dissuasive administrative and criminal sanctions for failing to grant competent authorities timely access to information regarding the trust referred to in criterion 25.1, to the extent this information is available. Section 35(14) of the CBBA creates an offence of failing to provide information and establishes a maximum fine of BSD\$100,000 and a fine of BSD\$10,000 for every day for which the offence is continued after conviction. Section 13 (6) of the BTCRA creates an offence of failing to provide the Inspector with information and

establishes a maximum fine of \$100,000 and/or a term of imprisonment for a maximum of five years and a fine of \$2,000 for every day for which the offence continues.

Weighting and Conclusion

220. There is a direct obligation for trustees in The Bahamas to obtain and hold information on BO. There are no powers for law enforcement authorities to access BO and other information on trusts. Some competent authorities can use investigative powers to obtain information on behalf of foreign authorities though, for the most part, they are able to share information they already possess. **Recommendation 25 is rated partially compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

221. This recommendation (formerly R.23) was rated ‘PC’ in the 3rd MER due to inadequacies in staffing of competent authorities except for the CBB, licensees and registrants under the External Insurance Act (EIA) and the Inspector of Financial and Corporate Service (IFCS) not subject to fit and proper tests and the SCB having no system where exemption of investment funds is granted on the basis of proven CDD. Staffing inadequacies in the SCB were dealt with by increased human resources while those of the CC were addressed by increased collaboration with SRBs and transfer of supervisory responsibilities to other regulatory bodies. The other deficiencies were addressed by provisions in the EIA and the Insurance Act (IA) and amendments to guidelines. The outstanding issue was the requirement for the Director of Societies to be responsible for ensuring that licensees and registrants comply with the FTRA which was to be implemented with the enactment of the Cooperative Credit Union Bill. There has been no substantive change in the Recommendation except for the inclusion of the prohibition of shell banks.

222. *Criterion 26.1* – The Office of the Inspector of Banks and Trust Companies (IBTC) is the supervisory authority responsible for banks, trust companies, credit unions and money transmission services. Section 13 of the BTCRA makes the IBTC responsible for ensuring that banks and trust companies are complying with the FTRA. With regard to money remitters, the Banks and Trust Companies (Money Transmission Businesses) Regulations, in regulation 8(a) and (b) provide that MTVS are subject to the provisions of the FTRA and FTRR. However, the CBB AML/CFT Guidelines incorporates all AML/CFT obligations applicable to FIs under the relevant statutes which is explicitly mentioned in the scope paragraph as legislation FIs including money remitters should adhere to. The CBB AML/CFT Guidelines is one of the key documents that forms the basis for the IBTC’s AML/CFT supervision regime. Section 88(2) of The Bahamas Co-operative Credit Unions Act 2015 (BCCUA) requires the IBTC to ensure that credit unions are complying with the BCCUA, the FTRA, the ATA and any other relevant law. This law became enforceable as per June 1, 2015.

223. The SCB is the supervisory authority for regulated persons under the SIA and the IFA. Section 12(2) of the SIA requires the SC to ensure that the FTRA and any other law or regulation administered by the SC is being complied with. The ICB is the regulator for the insurance industry. Sections 8(1) of the IA and 45 of the EIA require the IC to ensure compliance with the FTRA and any other AML laws not including the ATA. Similarly to the CBB, the ICB AML/CFT Guidelines incorporates all AML/CFT obligations applicable to FIs (including the ATA) as legislation FIs should adhere to. The ICB Guidelines is also a key document for ensuring compliance with AML/CFT obligations by the ICB.

224. *Criterion 26.2* – Sections 3(1) and (2) of the BTCRA requires banks and trust companies operating in and from within The Bahamas to be licensed. Non-bank money transmission providers and their agents are required to be licensed and registered respectively (section 3A and 3B of the BTCRA). Credit unions are required to be registered pursuant to section 8(1) of the BCCUA.. Marketplaces, clearing facilities, persons conducting securities business are required by sections 58 and 69 of the SIA to be registered while investment funds and investment funds administrators are required to be licensed by sections 3 and 32(2) of the Investment Funds Act (IFA). Section 23 of the IA requires registration of insurance companies in The Bahamas and section 4 of the EIA requires licensing of companies conducting external insurance business. While there is no legislative prohibition against shell banks, the licensing requirements effectively prevents the establishment of shell banks.

225. *Criterion 26.3* – Licensing criteria for the CBB in considering applications under the BTCRA are set out in section 4 of the BCTRA and the Banks and Trust Companies (Licence Application) Regulations and include assessing the fitness and propriety of direct/indirect shareholders (5% or more of voting rights), directors and senior management. Licensees, their shareholders, controllers, directors and senior management are subject to annual review by the Bank Supervision Department of the CBB. An amendment to the BCTRA provides for the CBB to object to an existing controller who has ceased to be a fit and proper person. The CBB can require the substitution of a director or officer of a licensee (section 18(1) (d) of the BCTRA). Section 6 (1) of the BCTRA provides for the prior approval by the CBB of changes to the direct shareholding of licensees. Indirect shareholding is not covered. Similar fit and proper requirements for directors and senior managers of credit unions have been included in the BCCUA and The Bahamas Co-operative Credit Union Regulations 2015. The licensing and registering requirements and process of the SCB as set out in regs. 3, 22, 38, 52, 53, 58, 61 and 62 of the Securities Industry Regulations (SIR) and sections 15 and 33(2) of the IFA incorporate fit and proper assessment of directors, significant security holders, and senior managers of applicants. Regs. 34, 52(2) and 58(1) of the SIR and section 44 of the IFA provide for prior approval by the SCB for subsequent changes in significant shareholders, directors and management of applicants. Section 30(1) of the IA requires all insurance companies to notify the Commission of any material change that takes place. Section 30(4) of the IA requires Commission approval before any change in beneficial ownership can take place. Beneficial ownership is defined as natural persons who hold ten percent or more interest in an insurer. There is no similar provision for approval of change in a management position. There are measures for assessing fitness and propriety by the CBB, SCB and ICB. However, there is a minor deficiency in the ongoing fit and proper assessment of management by the ICB.

226. *Criterion 26.4* – The banking supervisory framework under the CBB is well-developed. All licensed banks and trust companies are subject to ongoing supervision and monitoring using off-site and on-site procedures. On-site inspection is determined by the perceived level of risk. In the Banking sector, the IMF found in its April 2013 Financial Sector Assessment Program (FSAP) that compliance with the Basel Core Principles for Effective Banking Supervision is good. To the extent there are shortcomings, they relate to the need for additional guidance that is warranted in some risk areas, not including AML/CFT. With regard to International Organisation of Securities Commissions (IOSCO) Principles, provisions of the SIA, the SIR and the IFA incorporate the relevant Principles for the operation of investment funds. Compliance with the IOSCO Principles was considered by the IMF in 2012 to be generally high, although some weaknesses needed to be resolved. These were not specifically related to AML/CFT. Supervision consisted of a mix of off-site review and periodic and “for cause” on-site inspections. On-site inspections were found to be comprehensive, tailored to match the business models of particular categories of licensees and require the exercise of judgment by examiners. Regarding the IAIS Principles, the IMF stated in its April 2013 FSAP that insurance supervision in The Bahamas significantly improved in the past few years, fostered by the enactment of insurance legislation in 2009 and the creation of the ICB with a highly qualified staff and the power and independence to properly supervise the industry. Risk-based supervision (RBS) was then

still in its initial stages and essential onsite and offsite supervisory tools for proper supervision needed development. Money transfer providers are defined as FIs under section 3(1)(j)(v) of the FTRA and are subject to all AML/CFT laws and other requirements. As licensees and registrants of the CBB they are also subject to the CBB AML/CFT Guidelines and under the supervision of the CBB for monitoring compliance with AML/CFT requirements.

227. *Criterion 26.5* – The CBB is utilising a risk-based framework for banks and trust companies to determine risk rating and frequency of on-site inspection of all licensees. For credit unions there is no RBA. Risk-assessments can be complete or simplified based on the significance of the licensees and are conducted using information on areas of mainly prudential-concern, AML/CFT is considered to be a component of ‘regulatory risk’. Risk scores are assigned to licensees per their risk profile. There is no indication if ML/TF risks in the country are considered. With regard to credit unions the enacted BCCUA allows for the CBB to assess a credit union risk profile. A risk-based supervisory regime is to be developed by the CBB for credit unions. The SCB conducts on-site examinations on a rotational basis with AML/CFT being an essential component of routine examinations for licensees and registrants under the SIA and the IFA. The SCB is developing standards to implement a risk-based inspection regime. There is no risk-based framework in place. The ICB RBA is based on the reports of the insurance companies’ external auditor. Subsequently, the ICB will score the institution on specific questions; this includes scoring on AML/CFT-related issues such as poor record keeping procedures and inadequate AML staff training. Next steps will be decided using the “Ladder of Supervisory Intervention Guide”. It is not clear whether the ML/TF risks and policies, internal controls and procedures associated with the institution or group and/or the ML/TF risk present in the country and/or the characteristics of the insurance company or the group are taken into consideration.

228. *Criterion 26.6* – The CBB risk profile of licensees will integrate the results of on-site examinations with off-site financial analysis. The CBB is in the process of implementing a process for reassessing a licensee’s risk profile to determine direction of risks taking into account internal and external factors. This updating will be ongoing until a new risk assessment is scheduled. With regard to the licensees and registrants under the SIA and the IFA, the SCB has identified the development of a risk based supervisory program for its 2014/2015 strategic plan. The ICB points out that they use a risk matrix to assess, among others, legal and regulatory risk, including AML/CFT-requirements. However, unclear is how this fits into a periodic review of the risk profile of an insurance company. Only the CBB has plans to review risk profiles.

Weighting and Conclusion

229. The CBB, SCB and ICB are responsible for regulating and supervising their respective FIs. FIs and non-bank money transmission providers are licensed and generally subject to fit and proper assessments. However there is no provision for the approval of the ICB for changes in management positions in insurance companies. The CBB utilises a risk-based supervisory framework for banks and trust companies and will be developing one for credit unions. The SCB is developing standards to implement a risk-based inspection regime. While the ICB has a risk-based approach it is not clear that it incorporates all aspects of ML/TF risks. **Recommendation 26 is rated partially compliant.**

Recommendation 27 – Powers of supervisors

230. This Recommendation (formerly R. 29) was rated ‘PC’ in the 3rd MER because of the inadequate powers of the SCB, the Director of Societies and the ICB to access and compel information, inadequate powers of enforcement and sanctions of the SCB under the SIA and no off-site programme in the CC’s

ongoing AML/CFT supervision. The deficiencies were addressed by the enactment of the SIA 2011 and the SI Rules and provisions in the Cooperative Societies Act (CSA) and the IA. The CC also began an off-site programme in August 2008. There is no revision to the Recommendation other than that supervisors should have powers to supervise and monitor compliance.

231. *Criterion 27.1* – Section 13 of the BTCRA requires the IBTC to review licensees of the CBB through off-site supervision and on-site examination to ensure compliance with the FTRA. As indicated with regard to criterion 26.1 the CBB AML/CFT Guidelines incorporates all AML/CFT obligations applicable to FIs and is one of the key documents that forms the basis for the IBTC's AML/CFT supervision regime. Section 88(2) of the BCCUA requires the IBTC to review credit unions through off-site supervision and on-site examination to ensure compliance with the FTRA, the ATA and any other relevant law. Section 12(2) of the SIA requires the SCB to ensure compliance of any regulated persons under the SIA with the FTRA and any other law administered by the SCB. Section 70 of the IA requires the ICB to ensure compliance of licensees with the FTRA, while section 45 of the EIA refers to only to AML laws. Sections 8(1)(e) and 207(1)(e) of the IA, and section 45(2)(a) of the EIA, require all licensees to comply with the FTRA and all AML/CFT laws and obligations. Similarly to the CBB, the ICB AML/CFT Guidelines incorporates all AML/CFT obligations applicable to FIs under the relevant statutes as legislation FIs should adhere to and is also a key document for ensuring compliance with AML/CFT obligations by the ICB

232. *Criterion 27.2* – The IBTC has the power to conduct on-site inspections of banks and trust companies (section 13 of the BTCRA). Similar provisions for credit unions are in section 88(2) of the BCCUA. Other supervisory authorities have similar powers for their relevant entities – the SCB under section 45 of the SIA, the ICB under section 69 of the IA and section 41(b) of the EIA. The power to conduct on-site inspections pursuant to Section 41(b) includes ensuring compliance with all provisions in the EIA including the AML requirements as set out in Section 45.

233. *Criterion 27.3* – Section 13(3) of the BTCRA allows the IBTC to have access and compel production of any information from banks and, trust companies. Section 88(3) of the BCCUA is similar for credit unions. Similar powers concerning their respective regulated entities are set out in sections 45 and 46 of the SIA for the SCB, and section 70(1) of the IA and 41(1)(c) of the EIA for the ICB.

234. *Criterion 27.4* – Criminal penalties for breaches of the provisions of individual AML/CFT statutes are stipulated in the respective laws. The offenders can be referred by the supervisory authorities to law enforcement. These sanctions are assessed under Rec. 35 in this report. Additionally, reg. 8 of the FITRR provides that failure to comply with the AML/CFT Guidelines issued by a supervisory authority is an offence which on summary conviction attracts a maximum fine of \$10,000 and on conviction on information, attracts a maximum fine of \$50,000 for a first offence and a maximum fine of \$100,000 for a second offence. Sanctions for AML/CFT breaches that are applicable by supervisory authorities are similar to but not as extensive as prudential sanctions. Section 18(1) of the BTCRA provides for the CBB to revoke the licence of a licensee for contravening the BTCRA or any other law. The CBB can also impose, amend or vary conditions on a licensee and require removal of any director or officer of a licensee. The SC does not have power to impose sanctions for AML/CFT breaches under the SIA. Section 8(2) of the IA allows for the IC to impose any condition, limitation or restriction on registrants, amend or revoke any registration or authorisation, or impose or restrain any action of a registrant for AML/CFT breaches. Sections 236, 237 and 238 of the IA specify the penalties for the contravention of any provision of the IA. A company may, on summary conviction be fined a sum not exceeding \$10,000.00. An individual may, on summary conviction, be fined a sum not exceeding \$5,000.00. In addition, administrative penalties and financial sanctions are listed in the Appendix section of the ICB AML/CFT Ladder of Supervisory Intervention guide.

Weighting and Conclusion

235. Supervisory authorities are authorised to carry out on-site inspections with regard to AML/CFT. The ability to impose sanctions for AML/CFT breaches is limited in some form for all supervisory authorities. **Recommendation 27 is rated partially compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

236. Recommendation 28 (formerly R.24) was rated ‘PC’ in the 3rd MER. The deficiencies noted by the Examiners were that non-compliance with the FTRA was not a ground for revocation of a license under the Lotteries and Gaming Act (LGA) and sanctions were not proportionate nor dissuasive. There was no formal system to obtain information on changes to beneficial owners of casinos. At the end of the 3rd Round follow-up, there were no updates with regard to the revocation of a license which does not comply with the FTRA and the issue of proportionate and dissuasive sanctions, consequently these issues are still outstanding.

237. *Criterion 28.1* – (a) The Gaming Act 2014 (GA 2014) at section 23(1) (a) sets out the kind of licenses that can be issued including “Gaming Licenses” and includes gaming house operators, for which provisional licenses have been granted. According to section 39(2) (a) a gaming license authorizes the operation of a casino. (b) Section 24 (b) (iii) sets out the requirements to qualify for a gaming license, which covers casinos. The requirements are to “have proven expertise in the management and operation of casinos in a regulated environment, or demonstrable access to such expertise”. Criteria for disqualification of a gaming licence are listed in section 26(2) and include not being a fit and proper person, a member of the Gaming Board or family member of such person, removal from an office of trust on the basis of misconduct relating to fraud or misappropriation of money and conviction in the previous ten years of contravention of the GA or similar law in The Bahamas or elsewhere or any offence of which corruption or dishonesty is an element. Additionally a person may not hold a financial interest of five percent or more in the holder of a gaming licence if he meets any of the above criteria. Section 51 of the GA, sets out the requirement to submit to the Gaming Board an application for approval when there is a procurement of financial interest of 5% or more in any license holder or 30% or more in the holder of a junket operator or a supplier license. The criteria for disqualification noted above are also applied in these cases. Under section 51 of the GA, the above requirements will include beneficial owners. As per section 48, anyone who has direct control over gaming operations including executive directors, managers, supervisors, pit bosses and clerks, inspectors and surveillance personnel of the holder of a gaming licence are required to obtain an annual key employee licence. The same disqualification criteria mentioned above are also required to be used by the Gaming Board in approving a key employee licence. (c) Casinos and gaming houses are supervised as per section 3 of the GA by the Gaming Board. Sections 9 to 10 of the GA provides supervisory powers including inspections and access to all relevant information to regulate gaming house activity, while licensees of the Gaming Board are defined as “financial institutions” through the FTRA Amendment 2014 for the purpose of AML/CFT supervision.

238. *Criterion 28.2* – Under section 43(a) of the FTRA, the CC has the function of maintaining a general review of FIs in relation to the conduct of financial transactions and to ensure compliance with the provisions of the Act. Section 45 limits this function to real estate agents, lawyers and other independent legal professionals, and accountants. Section 39(1) establishes the CC for the purpose of ensuring the provisions of the FTRA. The CC has issued AML/CFT Codes to real estate agents ,lawyers and acciuntants incorporating all relevant AML/CFT obligations for these entities. Section 11(3) of the Financial Corporate Service Providers Act (FSCPA) gives the Inspector of Financial and Corporate Services (IFCS) the function of monitoring the compliance of licensees with the FSCPA, the FTRA and any other law. While dealers in

precious metals and dealers in precious stones have been included in the AML/CFT regime and the FCSPs Inspector (SCB) has been formally designated as their AML/CFT supervisor, the supervisory regime was still under development at the time of the onsite visit.

239. *Criterion 28.3* – As per section 43(a) of the FTRA, the CC has implemented a supervisory AML/CFT regime for real estate agents, lawyers and accountants. Similarly the IFCS monitors licensees of the FCSPA and dealers in precious metals and dealers in precious stones for AML/CFT compliance. There are no other categories of DNFBPs in The Bahamas.

240. *Criterion 28.4* – (a) Section 43 and 44 of the FTRA establishes that the CC has the power to conduct on-site examinations, and also access requisite records and request any information necessary for performing its functions under the FTRA. Section 11(3) of the FCSPA provides the IFCS with similar powers. (b) With regard to measures preventing criminals from being professionally accredited, or holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function in a DNFBP supervised by the CC, the CC does not licence or regulate the business activities of the DNFBPs for which it has AML/CFT supervisory responsibility. The licensing of the DNFBPs falling under the CC's supervision are done by the statutory authority charged with this responsibility. The statutory bodies are the Bahamas Bar Association for lawyers, the Bahamas Institute of Chartered Accountants for accountants and The Bahamas Real Estate Association for real estate brokers and developers. There is no similar association for dealers in precious metals and dealers in precious stones which are supervised by the IFCS. There are general statutory provisions to prevent criminals or their associates from being professionally accredited as follows: Sections 10-13 of the Legal Profession Act Ch. 64 for lawyers stipulate grounds for admission which include academic qualifications, good character, no disqualification or suspension from practice in The Bahamas or any other country; Sections 9 – 13 Public Accountants Act Ch. 364 for accountants include age, academic qualification, good character and member in good standing of an approved institute and Sections 13-15 of the Real Estate (Brokers and Salesman) Act, Ch. 171 for real estate brokers and developers comprise age, academic qualification or member of a professional real estate body outside of The Bahamas and must not be an undischarged bankrupt. Effective implementation of the above criteria will be based on the efficacy of the accreditation procedures of the individual statutory authority. There are no measures with regard to assessing the ownership or management of legal, accounting and real estate entities to prevent criminals or their associates from holding significant or controlling interest or holding a management function in these entities.. With regard to financial corporate service providers, the licensing regime under sections 3 and 4 of the FCSPA requires the IFCS to evaluate the professional reputation and experience of an applicant, the relevant qualifications and whether an applicant is fit and proper. Additionally, each officer, director or manager of the applicant has to be assessed as to whether they are fit and proper. While the IFCS under section 10 of the FSCPA has power of approval over the issuing, transferring or disposal of shares and appointment of directors of licensees there is no requirement for approval to be based on a fit and proper assessment. There are no provisions to prevent the criminals from holding significant or controlling interest in remaining DNFBPs such as dealers in precious metals and dealers in precious stones. (c) Sections 12, 20, 30, 47(2) of the FTRA, Regulation 8 of the FITRR, section 40 of the POCA and sections 6 and 7 of the ATA establish the sanctions for FIs which are applicable also for DNFBPs. In consequence, the analysis for R. 35 will be applicable to this criterion.

241. *Criterion 28.5* – Paragraph 9.6.1-2 of each of the CC AML/CFT Codes for accountants, lawyers and real estate brokers and paragraph 8.6.1-2 of the FCSP AML/CFT Code establishes that the CC and the IFCS determine on a risk-sensitive basis, when a supervised DNFBP will undergo an on-site examination. There is no reference to frequency and intensity of supervision being based on the DNFBPs' understanding of the ML/TF risks or taking into account the characteristics of the DNFBPs. Risk is determined on whether there is sound enforcement of adequate AML/CFT policies and procedures. (b) Assessment of the adequacy

of the AML/CFT internal controls, policies and procedures does not include taking into account the ML/TF risk profile of the DNFBPs and the discretion allowed under the RBA. The Gaming Board does not supervise on a risk sensitive basis.

Weighting and Conclusion

242. Casinos are required to be licensed. The FCSPs Inspector (SCB) is yet to implement a supervisory regime for dealers in precious metals and dealers in precious stones. Neither the relevant licensing authority or the CC has powers to prevent criminals and their associates from holding significant controlling interests or hold management function in their supervised entities. There are no provisions to prevent criminals from holding significant or controlling interest in dealers in precious metals and dealers in precious stones. There are minimal measures for the CC and the IFCS to supervise FCSPs on a risk-sensitive basis. There are no requirements for the Gaming Board to supervise casinos on a risk-sensitive basis. There is a general lack of administrative penalties at the CC and the GB. **Recommendation 28 is rated partially compliant.**

Recommendation 29 - Financial intelligence units

243. The Bahamas was rated 'C' for R.29 (formerly R.26) in its 3rd MER. Since The Bahamas' 3rd round MER, changes to the FATF Standards now require several additional measures to be in place. Issues that arise, based on the new measures, are whether the FIU: (i) conducts operational and strategic analyses; (ii) has access to the widest possible range of information; (iii) has the ability to disseminate information spontaneously; (iv) information is protected by: (a) rules for security and confidentiality; (b) levels of staff security clearance; and (c) limiting access to the FIU's facilities; (v) has the operational independence and autonomy: (a) to freely carry out its functions; (b) to independently engage in the exchange of information; (c) has distinct and core functions if it is located within the existing structure of another authority; (d) is able to individually and routinely deploy its resources as it freely determines; and (vi) has applied for Egmont membership.

244. *Criterion 29.1* – The FIU was established pursuant to section 3 of the FIUA. According to section 4(1) of the FIUA, the functions of the FIU include acting as the agency responsible for receiving and analyzing, obtaining and disseminating information relating to the proceeds of offences under the POCA and the ATA. It thus includes offences under the Gaming Act, the Travelers Currency Declaration Act (not yet in force), Prevention of Bribery Act, offences which may be tried of information in The Bahamas and offences committed anywhere, that would constitute an offence had it been committed in The Bahamas.

245. *Criterion 29.2* – (a) The FIU receives STRs filed by FIs pursuant to section 14 of the FTRA (b) No other information is required by national legislation so this sub-criterion is not applicable.

246. *Criterion 29.3* – (a) Section 4(2)(a) of the FIUA notes that the FIU shall receive all disclosures of information such as are required to be made pursuant to POCA which are relevant to its functions including information from foreign FIUs. Additionally s. 4(2)(d) provides that the FIU may require the production of such information excluding information subject to legal professional privilege that the FIU considers relevant to fulfill its functions. Finally under s.5 (d) FI(TR) R the MLRO is required to disclose to the FIU the information or other matter contained in the report where the MLRO knows, suspects or has reasonable grounds to suspect a person is engaged in money laundering. (b) the FIU has access to RBPF, Customs data base and other departments such as the National Insurance Board, the RGD and Immigration Department; the FIU also has access to the Egmont secure web, by virtue of being a member of Egmont.

247. *Criterion 29.4 – (a)/(b)* The FIU conducts operational and strategic analysis based on information received from reporting entities via STRs. As noted in the policies and procedures document concerning analysis of STRs, the Unit takes a risk- based approach in determining the need to conduct operational and/or strategic analysis on the information that is provided in the STR. The FIU has conducted strategic analysis of reports and was able to provide a report to CBB on the high incidences of fraud within the jurisdiction. Additionally, based on the information gathered through the strategic analysis, the Unit was able to issue a public notice advising the public to be aware of various types of fraud that had been detected by the Unit. The Unit has individuals within the analytical department that have attended the strategic analysis course and therefore designated to conduct both operational and strategic analysis.

248. *Criterion 29.5 – Section 4(2)(f) and (g)* of the FIUA, which deals with the provision of information, subject to such conditions as may be determined by the FIU Director permits the FIU to spontaneously disseminate information and results of its analysis to relevant competent authorities.. As it relates to “upon request” a procedure is set out in the FIU Policy and Procedure Manual. Evidence of spontaneous disclosure dating back to the first year (2011) of the review period was submitted.

249. *Criterion 29.6 – (a)* The FIU submitted a Policy and Procedures Manual which outlines the SOPs and rules for dealing with matters outlined in the criterion. The manual created in 2006 was amended in September 2015. Access to the Data/Communication Centre is strictly controlled with only the Manager Information Technology or his designate having ready access. **(b)** The FIU staff members have the necessary clearance levels, as outline in its Policy and Procedures Manual pg. 29 subject-Access Keys to Office. There are posted signs at the FIU reminding staff members of their responsibilities in handling and disseminating sensitive and confidential information, however this is notably absent in the manual. **(c)** Standard Instructions are listed in the FIU’s Policy and Procedure Manual pg. 55 under the rubric Security of Data Centre. According to the manual the IT system and server room can only be accessed by the IT Manager and a designated assistant.

250. *Criterion 29.7 – (a)* Section 3(1) of the FIUA, in addition to establishing the FIU, endowed it with the power to do all things necessary for the purpose of its functions which include the analysis, obtaining of and disseminating information as prescribed under section 4(1) of the FIUA. **(b)** Section 4(2) (h) includes entering into any arrangement with a foreign FIU desirable for carrying out the Bahamas’ FIU’s functions. Evidence of a similar position with domestic competent authorities were provided by way of MOUs with domestic authorities. **(c)** The FIU is an independent and autonomous body as established by the FIUA. The FIU is considered to be a quasi-governmental agency and the responsible Ministry for the FIU is the Ministry of Finance. The Minister of Finance however appoints the Director, Counsel and Attorney and a public Accountant. **(d)** The FIU was established by the FIUA Section 3(1). Section 5 of the FIUA gives the Minister the power to direct the FIU in writing as to the policies to be followed by the FIU in the performance of its functions as appear to the Minister to be requisite in the public interest and the FIU shall give effect to those directions. The Minister’s power is however limited and does not interfere with the operational independence and autonomy of the FIU.

251. *Criterion 29.8 –* The Bahamas FIU is a member of the Egmont Group since 2001.

Weighting and Conclusion

252. **Recommendation 29 is rated compliant.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

253. The Bahamas was rated ‘C’ for R. 30 (formerly R. 27). Recommendation 30 requires that there should be a LEA responsible for ML/TF investigations in a national context. Countries should designate a competent authority to identify, trace and initiate actions to freeze and seize property subject to confiscation.

254. *Criterion 30.1* – The T&F/MLIS of the Drug Enforcement Unit, RBPF is the primary agency in The Bahamas for the investigation of all ML and other matters that come under the POCA. By virtue of Section G5 RBPF Standing Orders, the T&F/MLIS was established by authority of the Commissioner of Police and took effect June 1993. The section however pre-dates the POCA and the FIUA. With the enactment of the ATA, section 7 of which mandates the COP to investigate TF in The Bahamas, the T&F/MLIS also assumed responsibility to investigate TF.

255. *Criteria 30.2* – Whilst Law enforcement investigators of ML/TF predicate offences are reportedly authorized to pursue the investigation of any offence, parallel financial investigation are not conducted and routinely cases are referred to the BTCS. The BTCS commenced a new policy in 2015 to do parallel investigations with fraud matters, so as to charge for ML. However, no policy document authorizing such action was provided to the assessment team.

256. *Criteria 30.3* – The T&F/MLIS is the competent authority designated to identify and trace property that is or may be subject to confiscation, or which is suspected to be the proceeds of crime. By virtue of Section G5 RBPF Standing Orders the T&F/MLIS was established by authority of the Commissioner of Police and took effect June 1993. Section 26(4) (a) of the POCA permits the Office of AG or police to apply to the Court for a restraint order and the authorities have reported that the T&F/MLIS routinely collaborates with the Office of the AG. The FIU whilst acting upon a request, is authorized pursuant to section 4(2)(c) of the FIUA to freeze a bank account for a period of five days but only where the FIU is satisfied that such bank account relates to an offence under the POCA or the ATA.

257. *Criterion 30.4* – There are no other competent authorities outside of the LEAs and the Office of the AG exercising functions covered by this recommendation.

258. *Criterion 30.5* – There are no anti-corruption enforcement authorities designated to investigate ML/TF offences arising from, or related to, corruption offences.

Weighting and Conclusion

259. By virtue of the RBPF Standing Orders, the T&F/MLIS is the LEA responsible for the investigation of ML associated predicate offences and TF whilst the BTCS also has responsibility for ML investigations. The T&F/MLIS is the entity designated to identify and trace property that is or may be subject to confiscation, or which is suspected to be the proceeds of crime. There is no documented authorization to conduct parallel investigations. **Recommendation 30 is rated partially compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

260. The Bahamas was rated ‘C’ for R. 31 (formerly R. 28). R. 31 expand the powers of LEAs and Investigative Authorities (IAs). Competent authorities should have mechanisms in place to identify whether

natural or legal persons hold or control accounts and be able to require information from the FIU when conducting relevant investigations.

261. *Criterion 31.1* – (a) Section 35 of the POCA allows for the application of production orders relating to investigations into drug trafficking offences, or relevant offences. Relevant offence means an offence described in the schedule and includes offences under the Bribery Act, POCA the ATA, and offences tried on indictment other than drug trafficking. Production orders obtained for FIs are for all financial documents, inclusive of transaction records, identification data obtained through the CDD process and all other supplemental documents maintained by the FI on behalf of the client. Section 35 (5) (b) of the POCA is relevant in this regard. The term “Person” used in the POCA is defined in Section 3 of the Interpretation and General Clauses Act, (Chapter 2 Statute Law of The Bahamas), to include any public body and any body of persons, corporate or un-incorporate. (b) Section 43 of the Police Service Act provides for the searching of persons while measures permitting searches to be conducted on premises can be found at sections 35(2) and 37 of the POCA. (c) The taking of witness statements by competent investigative authorities is provided for under section 58 subsection (2) of the Criminal Procedure Code and section 66 of the Evidence Act. (d) Measures permitting the seizure and obtaining of evidence are provided for in section 37(5) of POCA.

262. *Criterion 31.2* – (a) There are no written measures permitting the use of undercover operations by competent authorities investigating ML and TF. However common law permits police to undertake undercover operations once there is proper conduct in doing so. The Queen v Sang (1980) AC. The authorities advise that there are procedures allowing for undercover operations on the basis of a request from a country. (b) The Commissioner of Police may authorize the use of a listening device in the conduct of an investigation into an offence either for the purpose of obtaining evidence or identifying the offender. There are no measures for intercepting communications outside listening devices. (c) Section 16 of the Computer Misuse Act, Chapter 107A designates the High Tech Unit with responsibility for investigating all matters where the computer is either the tool and or the target.. (d) There are no measures permitting the use of controlled deliveries.

263. *Criterion 31.3* – (a) Section 35(5) of POCA makes provision for the application of production orders which are applicable to this criterion. (b) Section 35(1) (c) of POCA allows for the identification of assets without prior notification to the owner.

264. *Criterion 31.4* – The Director of the FIU is empowered to provide the Commissioner of Police with information relating to the commission of an offence specified under the second schedule of the FIUA. Offences here are in relation to the POCA and ATA. The schedule of the POCA expands the offences that are covered. This information sharing mechanism can be found at section 4(2)(f) of the FIUA and is included among the functions prescribed for the FIU, therefore the converse of this measure will enable the T&F/MLIS to ask the FIU for relevant information.

Weighting and Conclusion

265. Production orders can be obtained for the investigation of associated predicate (relevant) offences to ML or in the use of prosecutions. There are no measures permitting the use of controlled deliveries. The interception of communications is limited to listening devices. **Recommendation 31 is rated largely compliant.**

Recommendation 32 – Cash Couriers

266. The Bahamas' was rated 'PC' for R. 32 (formerly SR. IX) on the 3rd MER. The two recommendations by the Assessors were for the Government to amend the existing legislation to have a more rigorous system for cross border disclosure and declaration, which meets the requirements of SR. IX and for the implementation of a system to collect, collate and analyze declarations of cross border transportation of cash or negotiable instruments. The new requirements for the 4th Round are in criteria 32.2 and 32.10 and are related to the declaration of currency or BNIs and the existence of safeguards which ensure the proper use of information collected through the declaration/disclosure system. At the time of the on-site the Travelers Currency Declaration Act, 2015 (TCDA) was to be brought into force by June 2016. The system in place as described in the 3rd Round MER included the Customs Management Act (CMA) and the Preclearance Agreement Act. (PAA). The PAA covers persons departing The Bahamas to enter the United States. These passengers account for 90 percent of departures from The Bahamas.

267. *Criterion 32.1* – Section 3 of the PAA requires a person leaving The Bahamas for entry into the United States on a pre-cleared flight to declare to an officer of the United States any thing carried with him. The requirement only covers 90 percent of departures and does not include mail and cargo.

268. *Criterion 32.2* – The forms administered under section 3 of the PAA clearly require the declaration of any sum of money equal to or exceeding US\$10,000 or its equivalent in cash or bearer instruments. The requirement is only applicable to 90 percent of departures.

269. *Criterion 32.3* – As noted above at the time of the on-site The Bahamas had in place a written declaration system for travelers entering the United States. Consequently this criterion dealing with requirements for a disclosure system is not applicable.

270. *Criterion 32.4* – Section 3 of the PAA requires persons to answer such questions as an officer of the United States may put to him with respect to his baggage. This will allow for questions arising from discovery of a false declaration of currency or BNIs or failure to declare same.

271. *Criterion 32.5* – Sanctions applicable for false declarations under subsection 3(3) of the PAA include upon summary conviction a fine of not more than BSD\$2,000 or imprisonment of not more than two(2) years or both and forfeiture of the related currency. The listed penalties are not proportionate and dissuasive. .

272. *Criterion 32.6* – The Authorities have reported that the FIU is connected to the Customs Department's database and is therefore able to access information on cross border transportation incidents. A verbal account of this access to the Customs database was given by the authorities, however no policy document, MOU, or other measures were provided to substantiate this.

273. *Criterion 32.7* – While the authorities indicated that measures to ensure adequate co-ordination among Customs, Immigration and other related authorities on issues related to the implementation of Recommendation 32, include meetings between relevant officials of Customs Department, Immigration Department and the Attorney General's Task Force, no documentation was provided to prove this.

274. *Criterion 32.8* – (a) & (b) Section 46 of the POCA provides for the seizure and detention of cash if a police officer has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of criminal conduct or is intended by any person for use in any criminal conduct. Cash is defined as "coins or bank-notes in any currency and negotiable instruments." Criminal Conduct includes offences

under the ATA. Cash seized under this provision may be detained for an initial period of ninety-six (96) hours whilst its origin is being investigated or consideration is given to instituting criminal proceedings against any person for an offence with which the cash is connected.

275. *Criterion 32.9 – (a) – (c)* The declaration system as outlined in PAA does not include measures for international co-operation and assistance in accordance with Rs. 36 to 40.

276. *Criterion 32.10* – Even though the Authorities have reported that there are safeguards in place to ensure the proper use of information collected to avoid restricting trade payments between countries for goods and services or the freedom of capital movements, no measures were provided to attest to this.

277. *Criterion 32.11* – Information on sanctions applicable for persons carrying out cross-border transportation of currency or BNIs related to ML/TF or predicate offences are not specified in the PAA. However, subsection 3(3) of the PAA does provide for forfeiture of related currency for false declarations.

Weighting and Conclusion

278. Some of the requirements that are necessary in order to put the measures in place for this Recommendation are contained in the PAA. While the PAA only covers travelers departing The Bahamas to the United States these account for 90 percent of departing travelers from The Bahamas.. There are issues with the applicable penalties, requirements do not cover mail or cargo, and the coordination of efforts between Customs and Immigration with regard to this Recommendation. **Recommendation 32 is rated partially compliant.**

Recommendation 33 - Statistics

279. This Recommendation (formerly R. 32) was rated ‘PC’ in the 3rd MER; while the requirements for the Fourth Round and language of the Recommendation remained essentially the same, they are very relevant for assessing effectiveness.. The Assessors noted in the 3rd MER, that there was a lack of information regarding the tracing and forfeiture of assets, no information on terrorism or terrorism financing, or reports filed on international wire transfers and cross border declarations. Additionally information was not being used in decision making. Improvements were made as per the December 2014 7th FUR, however Recommendation 32 was still outstanding.

280. *Criteria 33.1* – Regarding (a), section 10 of the FIUA requires the FIU to provide an annual report to the Minister on the work of the FIU and maintain statistics on the number of STRs received and disseminated. Statistics are also kept by the T&F/MLIS with regard to STRs disseminated by the FIU to it and item (c), though it can be argued that statistics are not necessarily comprehensive as further explained. The T&F/MLIS statistics on STRs, for example, fail to provide a breakdown of all included entities (numbers seem a bit low), and it only makes reference to STRs being disseminated to the Business & Technology Unit. With regard to information items (b) and (d), data is not comparable, since no historic information was presented on ML/FT investigations or mutual legal assistance. .

Weighting and Conclusion

281. The Bahamas maintains statistics on matters relevant to its AML/CFT system, however these are not comprehensive. **Recommendation 33 is rated partially compliant.**

Recommendation 34 – Guidance and feedback

282. This Recommendation (formerly R. 25) was rated ‘LC’ in the 3rd MER, as a result of no information on current typologies being presented in the FIU’s Annual Report. The Assessors recommended that the FIU Guidelines for casino operators be updated to preserve relevance to the existing legal and regulatory framework and that the revised Codes of Practice for DNFBPs should be finalized as soon as possible. In complying with the recommendations, the FIU issued its ‘Suspicious Transactions Guidelines relating to the Prevention of Money Laundering and the Financing of Terrorism (March 2007), which replaced the FIU’s 2000 Guidelines. The Authorities issued Codes of Practice for Lawyers, Accountants, Real Estate Brokers and Casinos. Dealers in precious metals and precious stones have only recently been added to The Bahamas’ AML/CFT framework by the 2014 amendment to the FTRA. (Sections 2 and 3 of the FTRA as amended).

283. *Criteria 34.1* – The competent authorities of The Bahamas AML/CFT framework have issued guidelines to deal with AML/CFT compliance including the filing of STRs as follows: The CBB AML/CFT Guidelines provide for Internal controls, policies and procedures, risk rating of customers, identification and verification of customers, record-keeping, 3rd party reliance, simplified and enhanced due diligence, MTBs, MLRO, electronic payment transfers and the education and training of staff, which includes identifying and reporting STRs. The CC has issued the AML Handbook for financial and corporate service providers, which provides guidance on the implementation of an AML/CFT framework with similar provisions as the Guidelines for the CBB as noted earlier. Additionally, the CC has issued separate AML Handbook and Code of Practice for accountants, lawyers and real estate brokers. Dealers of precious metals and precious stones which are supervised by the IFCS have not been issued with guidance.. The ICB has also issued AML/CFT Guidelines for insurance companies, which also provide guidance for the implementation of The Bahamas’ AML/CFT framework and includes measures for detecting and reporting STRs. As noted above, the FIU has issued its own guidelines to all FIs on suspicious transactions, which includes reporting procedures for suspicious transactions. The SCB issued the SI (AML/CFT) Rules which includes guidance on risk rating, verification of customer identity, record keeping and staff training but not on measures for detecting and reporting STRs. The GB has not issued any guidelines to its licensees. It is important for guidelines to be issued, particularly with respect to detecting and reporting suspicious activities. .

Weighting and Conclusion

284. Most of the supervisory and competent authorities have issued guidelines, which provide instructions on the implementation of The Bahamas’ AML/CFT framework. There is no guidance for licensees of the GB. **Recommendation 34 is rated largely compliant.**

Recommendation 35 – Sanctions

285. This Recommendation (formerly R. 17) was rated ‘PC’ in the 3rd MER and the main deficiencies were that FCSPs, insurance companies and cooperatives had limited sanctions against natural and legal persons. Also, that they had no powers to sanction directors and senior managers of their licensees under their relevant statutes. This was dealt with by the issuance of the SIA 2011 and the SIR in 2012. These

introduced a range of powers based on the protection of public interest (see paragraph 18 of the 6th FUR). No changes in the current Standard (from previous R.17).

286. *Criterion 35.1* — With regard to R. 6, most of the criterion have not been met. For those criterion that have been met or partially met, the sanctions for failing to comply go from a fine of maximum BSD\$10,000 (section 6 IOEAMA) or imprisonment of (1)one year, or both. The fine is considered low for corporate bodies. There are no sanctions under the ATA regarding designations or listings. For R. 8, NPO Regulations contain sanctions which vary from a fine of up to BSD\$10,000 or the revocation of the registration as an NPO. While the latter can be considered dissuasive, the fine of up to \$10,000 may not be for a large NPO, though NPOs generally, can't be considered to have a large income. With regard to R.9 The Bahamas has no FI secrecy laws which inhibit the implementation of the FATF Recommendations.

287. The sanctions for R. 10 are contained in a variety of instruments. The FTRA contains criminal penalties for breach of its provisions. Related to CDD, section 12 of the FTRA imposes a BSD\$20,000 fine for individuals and up to BSD\$100,000 for corporates. The FI (TR) R (section 8 and also section 47 of the FTRA for AML/CFT Codes violations) also have sanctions for the failure to comply with identity verification requirements which range from BSD\$10,000 to BSD\$100,000 depending on the seriousness of the offence, whether it's a first time offence or there is re-occurrence. These are also applicable to breaches within the Regulations and within the AML/CFT Codes or Guidelines issued which have an impact on the ability to sanction for the lack of compliance with Recommendations 10, 11-23 depending on obligations contained in each of the said AML/CFT Codes and Guidelines.

288. Sanctions for failing to comply with R. 11 are contained primarily in section 30 of the FTRA and regulations 4 and 8 of the FI (TR) R. Sanctions for failing with Recommendation 12 are not specified except for the mentioned FI (TR) R sanctions in the case of AML/CFT Codes which contain (see analysis under R.22) provisions regarding PEPs. With regard to R.13, any breaches would be dealt with under the CBB AML/CFT Guidelines and CBB powers which will be discussed generally along with other regulators' powers, further below. In the case of R. 14, unlicensed MVTS, section 3A of the BTCRA indicates a penalty of a fine not exceeding BSD\$100,000 or imprisonment for a term not exceeding five years or to both fine and imprisonment and in the case of a continuing offence to a fine not exceeding BSD\$2,500 for each day during which the offence continues (section 3(7) of the BTCRA). R.15 does not have specific sanctions, although the sanctions specified under the FI (TR) R apply to R.15 provisions contained in Codes and Guidelines.

289. With regard to obligations under R.16, the FTR (WT) R of 2015 establish in section 13 a fine of BSD\$2,000 for failure to comply with its requirements which is not dissuasive. With regard to R.17, the FI (TR) R sanctions would apply with respect to AML/CFT Codes and Guidelines as well as those in the FTRA and FTRR for failure to comply with R.10, to a certain extent. Failures re third party reliance would also be guided by sanctioning by the CBB. No other sanctions have been specified.

290. With regard to R. 18, requirements of some of the criteria are set out in the FI(TR)R the CBB AML/CFT Guidelines, the ICB AML/CFT Guidelines and the CUCOP. Under regulation 8 of the FI(TR)R a financial institution not complying with the FI(TR)R or any guidelines, codes of practice or other instructions issued by a relevant authority can be fined a maximum fine of BSD\$10,000 on summary conviction and on conviction on information for the first offence, a maximum fine of BSD\$50,000 or for a second or subsequent offence, a maximum fine of BSD\$100,000. Provisions for some of the requirements of R. 19 are set out in the CBB AML/CFT Guidelines. Failure to comply will be subject to the penalties under regulation 8 of the FI(TR)R. In the case of R. 20, there are several provisions to deal with failure to report an STR or incomplete reports: section 20 of the FTRA and section 7 of the ATA. With regard to R.21,

tipping-off is an offence under POCA for which the penalty could include upon summary conviction three (3) years imprisonment or a fine of BSD\$50,000 or both, or upon conviction on information to ten years imprisonment or an unlimited fine or both, which are considered to be sufficiently proportionate and dissuasive.

291. There are specific sanctions for breaches in compliance with R.22 (see also analysis under R.22), namely the FI (TR) R sanctions regarding enforceability of Codes and Guidelines and provisions contained therein to cover client identification and verification, record keeping, PEPs and other obligations, as well as sanctions under the FTRA and the FTRR. In addition to sanctions available under the FI (TR) R, FTRA, FTRR and other instruments described above, the CBB (section 18 of the BTCRA several sections within the BCCUA), the SC (section 12 (2) of the SIA), the IC (sections 8, 237 and 238 of the IA), Gaming Board (section 9 of the GA as well as sections 75-77), IFCS (section 18A (1) of the FCSPA), and the CC (primarily section 43 of the FTRA) all have powers to restrict or revoke licenses, among other forms of sanction, for non-compliance with applicable law and regulations, whether this may be AML/CFT related or not (in some cases, a specific reference is made to obligations under the FTRA and FTRR). In principle, this is acceptable from a technical compliance point of view. There is a high dependence on criminal penalties, and very little in the form of civil and administrative sanctions, particularly for supervisors.

292. *Criterion 35.2* – Sanctions applicable to directors and senior managers are only provided for some FIs and DNFBPs: The FTRA (sections 48-49), The SIA (section 133) which refers to sanctions against a “person” including a body corporate or corporate entity, the IA (section 238) which allows for removal of directors or senior managers and the FCSPA (section 18A (1)) which allows for penalties against a “licensee” defined as a license holder under the Act. Section 49 of the FTRA, which applies to the wide cross-section of FIs and DNFBPs, makes directors and officers also liable where the body corporate is convicted of an offence. It does not provide for sanctions to apply directly to directors and senior managers in the absence of a conviction of the body corporate.

Weighting and Conclusion

293. The Bahamas’ AML/CFT sanctions regime, specially pertaining to the FTRA, FI (TR) R, and FTRR are, by and large, proportionate but pertain mainly to criminal sanctions. Very little use is made of civil and administrative penalties. Another issue for consideration is the non-dissuasiveness of the sanctions especially with regard to the fines for entities which in some instances are only \$2,000. Additionally sanctions applicable to directors and senior management are contingent upon the conviction of the body corporate. It is also a deficiency that not all obligations required under Recommendations 6-23 are fully incorporated into law, or other enforceable means and (a) are not subject to sanctions and (b) nor have these been imposed. **Recommendation 35 is rated partially compliant.**

Recommendation 36 – International instruments

294. Recommendation 36 (formerly R. 35 and SR. I). R.35 and SR.I were both rated ‘PC’ in the 3rd MER. R. 36 incorporates an explicit requirement for countries to become party and implement the United Nations Convention against Corruption. For R. 35, the deficiencies were that section 42(2) of the POCA did not comply with the Vienna Convention requirements, the ATA did not extend to all Conventions and Protocols named in the Terrorist Financing Convention, the Palermo Convention was not ratified and section 9(4) of the ATA did not constitute appropriate grounds for refusing a request for freezing from a foreign State under the ATA. With regard to SR. I the deficiencies included the fact that the ATA did not implement

the requirements of UNSCRs 1267 and 1373 particularly as they relate to the freezing of the funds or assets of terrorists and did not deal with the prohibition on the movement of aircraft owned, leased or operated by the Taliban. The amendment to the First Schedule of the ATA, incorporated all the Conventions in the Annex to the TF Convention. The Palermo Convention was ratified on September 26th, 2008. The Penal Code (Amendment) Act addressed, amongst other offences, the criminalization of a person's participation in an organized criminal group as required by the Palermo Convention. The Anti-Terrorism (Amendment) Act removed the requirement for reciprocity under section 9(4). Accordingly, all the issues for Rec. 35 were addressed. Regarding SR. I the amendment to the Anti-Terrorism Order incorporated into the ATA all the Conventions referred to in the Annex of the Terrorist Financing Convention.

295. *Criterion 36.1* – The Bahamas has ratified the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) on 30th of January 1989, the 2000 UN Convention against Transnational Organized Crime (Palermo Convention) on 26th of September 2008, the 1999 UN Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention) on 31st of December 2004. The United Nations Convention against Corruption (Merida Convention) was acceded to on 10th of January of 2008.

296. *Criterion 36.2* – Articles 3 and 6 of The Terrorist Financing Convention are outstanding. .

Weighting and Conclusion

297. The Bahamas has ratified all the Conventions and has enacted domestic legislation in order to implement the UN Conventions. The Vienna Convention, Palermo Convention and Terrorist Financing Convention were implemented since the 3rd Round. For the 4th Round, the Articles that have been noted for the Merida Convention are important to ensure the strongest regime against corruption and allow for the widest international cooperation. **Recommendation 36 is rated largely compliant.**

Recommendation 37 - Mutual legal assistance

298. Recommendation 37 (formerly R. 36) was rated 'C' in the 3rd MER. R. 37, now requires that countries have an adequate legal basis to provide cooperation and that they have all the needed mechanisms to enhance cooperation. Countries are likewise required to provide non-coercive assistance regardless of dual criminality provisions. The FATF Standard also clarifies that the requesting country should make its best efforts to provide complete factual and legal information, addressing any request for urgency.

299. *Criterion 37.1* – The Bahamas has a legal basis for providing a range of mutual legal assistance (MLA) through its Mutual Legal Assistance (Criminal Matters) Act (MACMA), its Mutual Legal Assistance Treaties (MLATS) with the United States of America, Canada and The United Kingdom and the CJICA. Authorities indicated that the United Kingdom MLAT is focused on matters involving drug trafficking and confiscation of proceeds of drug trafficking and since the MACMA is subject to the conditions of the treaties in its Schedule, assistance would not seem to cover all offences. Under the CJICA, MLA can be provided with regard to a) any offence committed under the law of the country or jurisdiction in question, or where there are reasonable grounds to believe that such an offence has been committed, or b) where proceedings in respect of offence under (a) above have been instituted in that country or that an investigation into that offence is being carried on in that country. This seems broad enough to cover ML, associated predicate offences and TF. The ATA also makes reference to the CJICA to deal with freezing requests from foreign

jurisdictions. Mutual legal assistance is facilitated within the shortest time possible where there are no deficiencies in the requests that prohibit the execution of such requests in a timely manner.

300. *Criterion 37.2* – Under MACMA and CJICA, the Attorney General (AG) is the competent authority and central authority for MLA requests. The Attorney General’s Office established the ILCU in July 2000. There is a case management system within the ILCU which starts from receipt of the MLA until final resolution and is documented in the Procedures Manual for the International Cooperation Unit. There is no indication in relation to timely prioritization of MLA requests.

301. *Criterion 37.3* – There are no prohibitions or unreasonable conditions for MLA.

302. *Criterion 37.4-* (a) There is no basis to refuse MLA requests if they include fiscal matters. . (b) Secrecy or confidentiality are not reasons to refuse a request.

303. *Criterion 37.5-* Section 12 of the MACMA contains provisions for preserving confidentiality and proper use of information, however, no equivalent provisions are found in the CJICA.

304. *Criterion 37.6* – There is no requirement for dual criminality when rendering MLA.

305. *Criterion 37.7-* Dual criminality is not a requirement for MLA.

306. *Criterion 37.8* – No provisions in the CJICA to confirm if investigative techniques under R.31 are covered. The MACMA does cover some investigative powers as follows: (a) Authorities indicated that section 2 of the MACMA enables the AG to use compulsory measures for the production of records held by FIs or other persons and for the seizure and obtaining of evidence. This would include the ability to take testimony or statements of persons; providing documents, records and articles of evidence, executing searches and seizure requests, transferring persons for testimonial purposes; serving documents; locating persons; exchanging information pertaining to the investigation, prosecution, and suppression of offences; immobilizing forfeitable assets and any other matter mutually agreed upon. This seems broad enough. There is no indication that financial records are specifically included. Direct requests can be made pursuant to section 6 of CJICA. Furthermore, direct requests from foreign judicial or law enforcement authorities to a domestic counterpart are allowed under section 4(2) of the FIUA. (b) It would seem that ‘any matter mutually agreed upon’ provides a broad enough basis to include the possibility of a ‘broad range of other powers and investigative techniques.’

Weighting and Conclusion

307. The Bahamas is able to provide MLA based on MACMA, MLATS and CJICA provisions, although there appears to be no clear process for timely prioritization of requests. While MACMA contains provisions for confidentiality and proper use of information, there does not seem to be similar provision in CJICA. Dual criminality is not a requirement for MLA and there are broad investigative techniques available to competent authorities. **Recommendation 37 is rated largely compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

308. The Bahamas was rated ‘LC’ for R.38 in its 3rd MER with the lone deficiency being in relation to limited assistance under the ATA on the grounds of reciprocity. The new FATF requirements are at 38.2,

38.3 (b) and 38.4. The analysis of 38.4 is required in so far as this criterion is now a direct obligation whereas in the 2004 methodology the obligation was only due for consideration. The issues are (i) whether measures exist for providing assistance to requests for non-conviction based confiscation; (ii) whether measures exist for managing and disposing of property frozen, seized and confiscated; and (iii) whether measures exist for managing and sharing confiscated proceeds with other countries.

309. *Criterion 38.1* – (a) & (b) Section 26 of the POCA makes provision for the AG to apply to the Supreme Court to restrain property on behalf of a foreign country. Section 26(1) covers realizable property by providing for the restraint of such in order to prevent any person from dealing in such property. There are no measures to take expeditious action to identify property at the request of foreign countries. (c) & (d) Section 9 of the CJICA empowers the AG by order to provide for the enforcement in The Bahamas of any order which is made by a Court in a designated country outside The Bahamas for the forfeiture and destruction or other disposal of anything in respect of which an offence has been committed or which was used in connection with the commission of the offence. Paragraph 10 of the Criminal Justice (International Cooperation) (Enforcement of Overseas Forfeiture Orders) Order (CJ(IC) (EOFO) O) provides for an application to be made by or on behalf of the government of a designated country to the Supreme Court to register the external forfeiture order. (e) According to section 4(3) of the POCA realizable property includes any property held by the defendant. and at section 11(2)(b) of the Second Schedule to the POCA the court may make a charging order on realizable property for securing payment of an amount equal to the value of the property charged.

310. *Criterion 38.2* – Section 49 of the POCA provides for the registration of external confiscation orders, as well as for non-criminal confiscation orders. Section 50(1)(b) of the POCA provides for the registration of a confiscation order in circumstances where an affected person did not appear in the proceedings even though he was sufficiently notified. In the circumstances where a defendant has either absconded or died, section 21 provides confiscation measures but they cannot be used pursuant to a request from a foreign country. However, sections 49 and 50 of the Proceeds of Crime Act, in conjunction with the Proceeds of Crime (Designated Countries and Territories) Order, provide the conditions which do not exclude the provision of assistance, or the facilitation of a request from a foreign country, in the circumstances of the death or the absconding of a defendant. These provisions are sufficiently wide to cover the issue raised.

311. *Criterion 38.3* – (a) Section 49 allows for the enforcement of external confiscation orders. The Minister with responsibility for the Police may by order direct in relation to a country outside the Bahamas that POCA shall apply to external confiscation orders. Section 52 of the POCA established the Confiscated Assets Fund and prescribes how the fund is to be financed. The Minister of Finance is responsible for preparing a yearly statement of accounts and ensuring proper accounting and record keeping of the Fund. This is backed up by the Auditor General who has an examination responsibility. Confiscated and forfeited property, money seized pursuant to section 33 of the DDA or money paid to the Government of The Bahamas by a foreign jurisdiction in respect of confiscated assets may be allocated in a variety of ways according to section 52(3) of the POCA.

312. *Criterion 38.4* – The Authorities report that The Bahamas routinely shares confiscated assets, both on a case-by-case basis (in the absence of asset sharing agreements) and also on the basis of asset sharing agreements, which may be entered into. Section 52 (3) (b) of the POCA empowers the Minister of Finance in this regard.

Weighting and Conclusion

313. There is a direct obligation to share confiscated property. There are no measures which allow authorities to take expeditious action to identify property at the request of foreign countries. Non-conviction based confiscation orders can be provided in circumstances where the defendant has absconded. The Bahamas is relying on general provisions to achieve this specific measure. Section 52 (3) (b) of the POCA empowers the Minister responsible for the Police in The Bahamas to co-ordinate their seizure and confiscation actions with foreign countries. **Recommendation 38 is rated largely compliant.**

Recommendation 39 – Extradition

314. This Recommendation was rated ‘C’ in the 3rd MER. The revised FATF Standards require an adequate legal framework for extradition with no unreasonable or unduly restrictive conditions when assessing and rendering extradition requests. There should be a clear and efficient process to facilitate the execution of extradition requests, and the progress should be monitored by a case management system.

315. *Criterion 39.1* – In relation to (a) section 5 of the Extradition Act (EA) provides for any offence which a person is accused of or has been convicted of in an approve State to be an extraditable offence. (b) The Authorities have indicated that there is a case management system in place where the requests are logged manually and electronically and thereafter, the requests are assigned to a legal officer. At the weekly department meetings all matters are reviewed. The electronic database is update on a monthly basis and reviewed by the ODPP, DLA and OAG. The assigned legal officer is responsible for timely progress of all requests until matters are finalized. There is no indication of time to determine if the requests are executed in a timely manner. There is no indication of prioritization of extradition requests. (c) The Bahamas has no unreasonable or unduly restrictive conditions on the execution of extradition requests.

316. *Criterion 39.2* – (a) Under Section 6 of the EA, persons found in The Bahamas accused of an extraditable offence in any approved State or who is alleged to be unlawfully at large after conviction of such an offence in any such State, may be arrested and returned to that State. The Section refers to persons found in The Bahamas which appears to include individuals who are foreign nationals and nationals of The Bahamas. (b) Not relevant due to the fact that The Bahamas can extradite its own nationals.

317. *Criterion 39.3* – Under Section 5 of the EA, extradition can be executed in the case of an offence against the law of a designated Commonwealth State and in the case of an offence against the law of a Treaty State. In both cases the extradition should be satisfied regardless of the category of offence chosen by the countries or terminology of the offence.

318. *Criterion 39.4* – Section 17 of the EA allows for extradition of consenting persons who waive formal extradition proceedings. Pursuant to section 17(2), upon written consent to be extradited, i.e., after being informed of his right to extradition proceedings, “the magistrate shall commit [the fugitive] to await his extradition.”

Weighting and Conclusion

319. Extradition orders can be executed in The Bahamas. The law allows for the extradition of its own nationals. There are no unreasonable or undue restrictions and extradition orders can be satisfied regardless of the category of offence placed by the countries or terminology. There is no indication of time to determine if the requests are executed in a timely manner. There is no information relating to prioritization of extradition requests. **Recommendation 39 is rated largely compliant.**

Recommendation 40 – Other forms of international cooperation

320. This Recommendation was rated ‘LC’ in the 3rd MER. The main deficiencies related to the inability of the Registrar of Insurance to request information and this seems as an outstanding 3rd MER deficiency. Also, the SC was unable to conduct enquiries on behalf of foreign counterparts which was resolved.

321. *Criterion 40.1 –(Mostly met)* Legislation allows for a wide range of international cooperation in relation to ML, associated predicate offences and terrorist financing. Exchanges of information can be spontaneous and upon request. Some of the competent authorities (CBB, SCB, ICB, CC, IFCS) can provide international cooperation and share information upon request pursuant to the CBBA, BTCRA, SIA, IA, FCSPA, FTRA and Multilateral IOSCO MOU (for the SCB). FTRA provisions allow for the CC to discretionally share information. The ICB, SCB and FIU have powers in relation to sharing information spontaneously. The Police cooperate with foreign counterparts. There is no indication as to this being the case for Customs.

322. *Criterion 40.2 –* (a) The Bahamas has a legal basis to provide cooperation as explained under 40.1. In the case of the Police, cooperation with foreign counterparts is based on the common law. (c) Provisions for protecting information in statutes such as FTRA have been indicated however, mechanisms or channels for facilitating transmission and execution of requests have not been set out. It is noted that the CC in its CC Operating Procedures Manual (CCOPM) has processes to facilitate transmission and execution of requests. (d) The authorities indicated that all requests are treated as urgent and a database is maintained by the CBB. The CBB has issued a notice on its website advising that responses would be forthcoming within 5 days of receipt of a request for information. The above mentioned CC’s procedures and the CBB notice provides for prioritization and timely execution. Competent authorities have processes for safeguarding received information.

323. *Criterion 40.3 –* The FIU and Police do not need bilateral or multilateral arrangements to cooperate with foreign counterparts. Financial supervisors cooperate through bilateral and multilateral MOUs. Only the CBB and the SCB seem to have agreements with a wide range of foreign counterparts. The ICB has established six MOUs with foreign CAs.

324. *Criterion 40.4 –* The Bahamas indicated that there are no impediments to requesting competent authorities such as the CBB providing feedback on received assistance, however The Bahamas has neither requested nor received requests for feedback.

325. *Criterion 40.5 –* (a) There are no prohibitions or unduly restrictive conditions in The Bahamas on the sharing of information or assistance because of tax matters. (b) Secrecy laws do not prevent authorities from receiving and sharing information via specified legal avenues. Though secrecy and legal privilege may be mentioned in some provisions, these are waived, provided appropriate conditions are met and this is line with provisions generally contained in laws of other jurisdictions and international agreements. (c) Having an enquiry, investigation or proceeding in the requested country is not a ground for refusal of assistance. In the case of the CBB an ongoing inquiry, investigation or proceeding is not a ground for refusing a request for co-operation as per section 38(3) and (7) of the CBBA and section 19(1) BTCRA. The SCB may deny a request for assistance where the rendering of assistance would be contrary to the public interest or the interest of the investing public (see s. 36 (1)(f) SIA). Nothing in ss. 36 & 37 prohibits the assistance to a requesting

authority on the grounds of investigation or proceedings being underway etc. No other citations were provided for other competent authorities or indications as to how other forms of international cooperation may be affected (or not) by ongoing investigations, inquiries or proceedings. (d) There are no restrictions on the type and nature or status of requests, however, most authorities reviewing a request would have to be satisfied the requesting authority is a similar regulator in the requesting country.

326. *Criterion 40.6-* There are measures to prevent information from being distributed without further authorization in the FIUA, CBBA, SIA, FTRA, FCSPA and CCOPM. The Police are able to treat information received from overseas counterparts under *caveat*. Further protections exist under the Data Protection Act.

327. *Criterion 40.7 –* Provisions in the CBBA, SIA, IA and FTRA which impose confidentiality measures on employees, directors of the CBB, the SCB, ICB or CC cover requests for cooperation and exchange of information. Similar measures have also been indicated in the CCOPM. The above CAs are able to refuse providing information if requesting CA cannot protect the information effectively. The Police maintains appropriate confidentiality for requests for cooperation and information exchanged. Further protections exist under the Data Protection Act.

328. *Criterion 40.8 –* Competent authorities are able to conduct inquiries domestically on behalf of foreign counterparts and to exchange the resulting information.

329. *Criterion 40.9 –* The FIU has a legal basis for providing cooperation on any offence under POCA which includes ML and all predicate offences and the ATA and signing agreements with foreign FIUs (MOUs) (section 4(2)(g) of the FIUA). Authorities indicated that fifteen MOUs have been signed.

330. *Criterion 40.10 –* The FIU has provided feedback and receives feedback from foreign counterparts.

331. *Criterion 40.11-* (a) Sections 4(2)(h) and (g) of the FIUA refer to the ability to sign agreements for the exchange of information and allow for exchanging information regarding the commission of an offence. However, this is not as detailed as to confirm all information obtained or obtainable by the FIU can, in fact, be exchanged. (b) No indications as to other types of information or if information can be shared based on reciprocity.

332. *Criterion 40.12 –* Financial supervisors (CBB, SCB, IFCS, CC and ICB) have a legal basis to cooperate with their foreign counterparts under the CBBA section 35(1), 19(5) of the BTCRA, part III of the SIA and FTRA (section 45(8)). Section 74 of the IA also provides for the requirements of 40.12.

333. *Criterion 40.13 –* Financial supervisors as noted above, are able to share information that is domestically available to them, including customer information under certain circumstances.

334. *Criterion 40.14 –* (a) - (c) In all instances, supervisors have broad provisions as indicated in 40.12 that would allow them to share information contemplated under criterion 40.14.

335. *Criterion 40.15 –* Financial supervisors are able to conduct enquiries on behalf of foreign counterparts. However, only the CBB has provisions to allow foreign counterparts to conduct enquiries themselves, regarding a bank or trust company with a subsidiary in The Bahamas (section 14 (1) of the BTCRA).

336. *Criterion 40.16-* The condition to have prior authorization before dissemination of information exchange or use of information for supervisory and non-supervisory purposes is covered in most of the provisions that allow financial supervisors to exchange information. In the case of the CBB there is mention of the information provided being used strictly for supervisory purposes. Section 36(d) of the SIA requires prior approval of the SCB before a requesting regulatory authority can disseminate information to a third party and section 10A refers to a general confidentiality obligation.

337. *Criterion 40.17 –* The Bahamas' FIU is able to exchange information domestically with the RBPF, a foreign FIU or a foreign law enforcement authority under section 4 of the FIUA. The Bahamas is a member of INTERPOL and the Egmont Group of FIUs and uses its channels for the exchange of information. In addition, The Bahamas is a party to the Comprehensive Maritime Agreement (CMA), which is a bilateral agreement with the United States of America and allows cooperation and the sharing of information in counter narcotics and migrant interdiction operations in and around The Bahamas territorial waters. The CMA also allows the use of ship riders and expedited boarding approval and procedures. The Bahamas is also a party to the Operation Bahamas, Turks and Caicos (OPBAT), which is a TRIPART Memorandum of Understanding between the United Kingdom (including Turks and Caicos Islands), The Bahamas and the United States regarding their combined efforts to restrict the illicit traffic of narcotics. This is a multi-agency operation between the United States Coast Guard, The RBPF, The Royal Bahamas Defence Force and the Police Force of the Turks and Caicos Islands. OPBAT is said to be designed to stop the flow of illegal drugs from South America through the Caribbean, including The Bahamas and Turks and Caicos and ultimately the United States. OPBAT also targets Bahamian drug trafficking organisations and includes efforts to reduce domestic demand for drugs. Customs Authorities are not mentioned among authorities that are able to cooperate.

338. *Criterion 40.18 –* As already indicated The Bahamas is a member of INTERPOL and cooperates with foreign law enforcement counterparts on this basis. Additionally the terms of the TRIPART Memorandum of Understanding between the United Kingdom (including Turks and Caicos Islands), The Bahamas and the United States provides for the parties to assist each other according to the extent authorized by law in all necessary enquiries, investigations or legal proceedings in connection with terms of the Memorandum which is designed to eliminate the illicit trafficking of narcotic drugs. This provision allows for the conduct of inquiries on behalf of counterparts in the United States and the Turks and Caicos Islands.

339. *Criterion 40.19 –* Both the CMA and OPBAT allow for joint operations with regard to patrols by the parties of the agreements within their respective jurisdictions' waters to interdict narcotic and migrant smuggling. While the OPBAT specifically allows for assistance in enquiries and investigations, there is no specific provision for joint investigations in either the OPBAT or the CMA.. .

340. *Criterion 40.20 – Competent authorities are able to exchange information indirectly with non-counterparts, when the requested information is channeled through relevant domestic or foreign counterparts.*The CBB may by Order designate as a regulatory function, functions carried out by non-banking overseas regulatory authorities relating to companies or financial services, for the purpose of sharing information with non-banking overseas regulators to enable them to exercise their regulatory functions, including the conduct of civil and administrative investigations or proceedings to enforce laws, regulations and rules administered by those authorities (section 2 of the CBBA). The definition of overseas regulatory authority is therefore broad enough to allow for information exchange between counterparts that would traditionally be seen as non-counterparts. Similar provisions are available in the SIA and FTRA.

Weighting and Conclusion

341. The Bahamas has a wide variety of international cooperation agreements and MOUs, as well as some forms of informal cooperation, including using networks such as INTERPOL. Cooperation between non-counterparts is permitted. With respect to the ability of the FIU to share information, sections 4(2)(h) and (g) of the FIUA refer to the ability to sign agreements for the exchange of information and allow for exchanging information regarding the commission of an offence. However, the assessors could not confirm if all information obtained or obtainable by the FIU can, in fact, be exchanged. Further, there was no indication as to other types of information, or if information could be shared based on reciprocity. **Recommendation 40 is rated largely compliant.**

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> The process of identifying and assessing ML/TF risks through a national risk assessment is still underway. No evidence of the designation of an authority or mechanism to coordinate actions to assess risks was provided to the examination team. Measures have not been taken as yet to mitigate the ML/TF risks. Not all supervisors require or ensure that financial institutions and DNFBPs implement their obligations under the Recommendation 1. Not all financial institutions and DNFBPs are assessing and mitigating their risks
2. National cooperation and coordination	PC	<ul style="list-style-type: none"> National AML/CFT policies have not yet been informed by risks identified as the NRA process is still underway. No clarity with respect to the designation of an authority or the coordination or other mechanism that is responsible for AML/CFT policies. No clarity with respect to the roles and composition of the various groupings, namely NAMLC, NAMLG and the Task Force; and the need to differentiate them by level (policy or operational). There is no cooperation and coordination to combat financing of proliferation of weapons of mass destruction.
3. Money laundering offence	C	
4. Confiscation and provisional measures	C	
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> The fine for the offence under the ATA is not proportionate to the penalty for ML
6. Targeted financial sanctions related to terrorism & TF	NC	<ul style="list-style-type: none"> No competent authority has been specifically identified with the responsibility over UNSCR 1267/1989 or 1988 Committee designations No indication as to how designations are made or communicated to the relevant UN committee No indication that requests for freezing to another country will have as much identifying and specific information as possible supporting designations pursuant to UNSCR 1373 No indication that freezing occurs “without delay”

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> • No mechanism to communicate or provide guidance to FIs or DNFBPs immediately on designations and obligations relating to freezing mechanisms • Procedure for delisting and unfreezing assets and funds of persons and entities who no longer meet the criteria for designation is limited to the Attorney General reviewing if the criteria for designation remains valid and revoking designations. • No due notification to UN Security Council 1267 Committee regarding access to frozen funds and assets as required by UNSCR 1452
7. Targeted financial sanctions related to proliferation	PC	<ul style="list-style-type: none"> • Freezing obligations in IOEAMA derived Orders are only applicable to banks and FIs in The Bahamas. • Freezing obligations in IOEAMA derived Orders are not required to be done without delay • Definition of funds in the IOEAMA Orders do not include all aspects of UNSCR requirement. • Provisions to report on freezing actions limited to one time on licensees of CBB rather than ongoing for all FIs and DNFBPs. • No protection of the rights of bona fides third parties • No measures for monitoring and ensuring compliance of FIs and DNFBPs • No de-listing measures in accordance with UNSCR 1730 • No specific mechanisms for communicating de-listings and freezing to FIs and DNFBPs
8. Non-profit organisations	PC	<ul style="list-style-type: none"> • No capacity to obtain timely information on activities of NPOs • No requirement that NPOs make publicly available information on purposes and objectives and the identity of persons who own, control and direct their activities • No requirement for NPOs to establish maintain and implement specific controls that guarantee that funds are being accounted for and spent according to NPOs purpose and objectives. • NPOs do not follow a “know your beneficiaries and associated NPOs rule” • Sanction fine is not dissuasive • No indication of domestic co-operation coordination and information sharing among authorities or organisations that hold relevant information on NPOs. • No appropriate point of contact for international co-operation

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
9. Financial institution secrecy laws	C	
10. Customer due diligence	PC	<p>CDD measures limited only to occasional cash transactions over BSD\$15,000 (including linked transactions) rather than to any occasional transactions over BSD\$15,000.</p> <ul style="list-style-type: none"> • Ongoing due diligence measures for entities under the ICB and the SCB do not include all requirements of criterion 10.7 • No measures for the specific requirements of criterion 10.9 except for SI Rules for legal arrangements. • No requirement for enhanced measures to identify and verify the identity of the beneficial owner of the beneficiary of a life insurance policy at the time of payout. • No requirements for the identification of protectors of trusts. • Identification requirements for persons in legal arrangements other than trusts do not include all requirements of sub-criterion 10.11(b) • Simplified CDD measures are not based on risk assessment including analysis of risk by the country and the FI. • Measures for credit unions and insurance companies do not include all requirements of criterion 10.19 • No exemptions to conduct CDD if likely to lead to tipping-off
11. Record keeping	LC	<ul style="list-style-type: none"> • Licensees of CBB and ICB are required to keep account files and business correspondence for five years after the completion of relevant transactions rather than five years after termination of the business relationship. • Licensees of the ICB are not required to retain the results of any analysis undertaken of an account.
12. Politically exposed persons	PC	<ul style="list-style-type: none"> • Licensees and registrants of the SCB are not subject to the requirements of criteria 12.1 to 12.3 • Very limited requirements on PEPs issued to ICB licensees. • Small credit unions have no requirements for PEPs and larger credit unions are not required to comply with criteria 12.1(a) and 12.1 (c). •
13. Correspondent banking	C	

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
14. Money or value transfer services	C	
15. New technologies	PC	<ul style="list-style-type: none"> • No specific provisions for licensees and registrants of the SCB to assess ML/TF risks of new business practices, including new delivery mechanisms or the use of new or developing technologies for both new and pre-existing products. • No measures for SCB licensees and registrant to assess associated risks prior to launch or use of new products, or to take measures to manage and mitigate the risks.
16. Wire transfers	LC	<ul style="list-style-type: none"> • FIs other than the CBB licencees are not required to take freezing actions and comply with prohibitions on conducting transactions with designated persons and entities in line with UNSCRs 1267 and 1371 with regard to wire transfers
17. Reliance on third parties	PC	<ul style="list-style-type: none"> • Licensees and registrants of the SCB and the ICB are not required to ensure that the ultimate responsibility for CDD measures in third party situations remains with the FI • No specific requirement that insurance companies satisfy themselves that the introducer is regulated and supervised or has measures in place for compliance with CDD and record-keeping requirements in line with Recommendation 10 and 11. • No indication that country risk is taken into account in the selection of countries where eligible introducers can be based
18. Internal controls and foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> • Credit unions, insurance companies and securities entities do not have provisions in line with criterion 18.2. <p>No measures for credit unions and securities entities to comply with criterion 18.3</p> <ul style="list-style-type: none"> •
19. Higher-risk countries	PC	<ul style="list-style-type: none"> • No specific obligation that EDD should be applied proportionate to the risks from countries for which this is called for by the FATF. • No provisions for applying countermeasures proportionate to the risks from countries for which this is called for by the FATF and independently of any call by the FATF. <p>No measures to advise entities under the SCB and the ICB of concerns about weaknesses in the AML/CFT systems of other countries.</p>

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
20. Reporting of suspicious transaction	C	
21. Tipping-off and confidentiality	C	<ul style="list-style-type: none"> •
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> • . • The CDD threshold for Gaming House under the Financial Transaction Reporting (Gaming Regulations) 2014 is above \$3,000. • No distinctions are made regarding the various categories of PEPs • No requirement to identify and address ML/TF risks derived from technological developments or new delivery mechanisms and business practices or to do a risk assessment and take appropriate measures to manage and mitigate the risk. <p>With respect to reliance on third parties, there are no provisions in the CC AML/CFT Codes to have information on the level of country risk or for group-wide CDD requirements and mitigation measures.</p>
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> • There are no measures for financial group-wide programmes for ML/TF or foreign branches and majority-owned subsidiaries of DNFBPs • The requirements of R.19 have not been implemented for DNFBPs.
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> • No requirement for beneficial ownership information for registration of legal persons • No assessment of ML/TF risks associated with types of legal persons that can be created. • No requirement for registers required to be maintained by companies to be accurate and updated on a timely basis • • No requirement for companies to authorise a natural person to provide BO information to and co-operate with competent authorities • No requirement for persons/authorities/entities to keep information on BO for five years after the date on which a company is dissolved or otherwise ceases to exist • Only the FIU has powers to obtain timely access to BO information held by relevant parties

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> • No specific penalties to deal with the requirements of R.24 • Only the CBB, SCB and ICB can provide international cooperation on shareholder and BO information. • No specific measures or process in place to monitor the quality of assistance received from other countries regarding basic and BO information.
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> • No requirement that beneficiary information for legal arrangements be accurate and current. • No requirement to verify the identity of any natural person exercising control over a trust • No requirement for trustees to obtain information on regulated agents or service providers to the trust • No requirement that information kept in compliance with this recommendation is updated on a timely basis • Law enforcement authorities do not have powers necessary to obtain timely access to information held by trustees and other parties
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> • No provision for approval of the ICB for changes in the management of insurance entities • No risk-based supervision of credit unions • SCB has not implemented risk-based supervision • ICB risk-based supervision does not include consideration of ML/TF risks of financial groups or country
27. Powers of supervisors	PC	<ul style="list-style-type: none"> • The CBB cannot impose supervisory sanctions for AML/CFT breaches on credit unions • The SCB does not have power to impose supervisory sanctions for AML/CFT breaches under the SIA
28. Regulation and supervision of DNFbps	PC	<ul style="list-style-type: none"> • Neither the relevant licensing authority nor the CC has powers to prevent criminals and their associates from holding significant controlling interests in its supervised entities • There are no fit and proper measures for assessing shareholders or beneficial owners of financial corporate service providers. • There are no provisions for administrative penalties by the CC or the Gaming Board

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> There are no provisions to prevent the criminals from holding significant or controlling interest in other DNFBPs such as dealers in precious stones and dealers in precious metals .
29. Financial intelligence units	C	<ul style="list-style-type: none">
30. Responsibilities of law enforcement and investigative authorities	PC	<ul style="list-style-type: none"> No designated authority to investigate terrorist financing No measures authorising pursuit of parallel financial investigations
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> No measures for use of controlled deliveries Interception of communications is limited to listening devices
32. Cash couriers	PC	<ul style="list-style-type: none"> Declaration system does not cover mail or cargo.. Penalties applicable under the PAA are not proportionate and dissuasive No measures for international cooperation and assistance .
33. Statistics	PC	<ul style="list-style-type: none"> The Bahamas does not maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of the AML/CFT systems, namely: <ul style="list-style-type: none"> ML/TF investigations, prosecutions and convictions; Property frozen; seized and confiscated; and Mutual legal assistance and other forms of cooperation made and received. Updated FIU Annual Reports for recent years are not accessible on the Bahamas Government's website.
34. Guidance and feedback	LC	<ul style="list-style-type: none"> IFCS and the GB have not issued guidance to registrants and licensees
35. Sanctions	PC	<ul style="list-style-type: none"> There is a high dependence on criminal penalties (fines and imprisonment) for some offences. Sanctions applicable to directors and senior managers do not cover all FIs and DNFBPs Some penalties for entities are not dissuasive There is very little in the form of civil and administrative sanctions, particularly for supervisors to cover the broad range of preventative measures
36. International instruments	LC	<ul style="list-style-type: none"> Articles 3 and 6 of the Terrorist Financing Convention has not been implemented
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> No clear process for the timely prioritisation of MLA requests No provisions for confidentiality and proper use of information in the CJICA
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> No measures to allow authorities to take expeditious action to identify property at the request of foreign countries

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
39. Extradition	LC	<ul style="list-style-type: none"> • No clear processes for timely execution of extradition requests
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> • FIU can only share information regarding the commission of an offence rather than all information it can access in accordance with R.29 • Customs is not able to share domestically available information with foreign counterparts. •

Glossary of Acronyms

ATA – Anti-Terrorism Act
BCCUA – The Bahamas Co-operative Credit Unions Act 2015
BFSB – Bahamas Financial Services Board
BNIs – Bearer Negotiable Instruments
BTCRA – Banks and Trust Companies Regulation Act
BTCS – Business and Technology Crimes Section
CA – Company Act
CBB – Central Bank of The Bahamas
CBBA – Central Bank of The Bahamas Act
CC – Compliance Commission of The Bahamas
CD – Customs Department
CCOPM – Compliance Commission Operating Procedures Manual
CJICA – Criminal Justice (International Cooperation) Act
CJ(IC) (EOFO) O - Criminal Justice (International Cooperation) (Enforcement of Overseas Forfeiture Orders) Order
COGS – Certificate of Good Standing
CUCOP – Credit Union Code of Practice
DDA – Dangerous Drugs Act
DEU – Drug Enforcement Unit
DEA – Drug Enforcement Administration
ODPP – Office of the Director of Public Prosecutions
EA – Extradition Act
EIA – External Insurance Act
FCSPA – Financial Corporate Service Providers Act
FIU – Financial Intelligence Unit
FIUA – Financial Intelligence Unit Act
FI (TR) R – Financial Intelligence (Transaction Reporting) Regulations
FTRA – Financial Transaction Reporting Act
FTRR – Financial Transactions Reporting Regulations
FTR (WT) R 2015 – Financial Transactions Reporting (Wire Transfers) Regulations 2015
GA – Gaming Act
GB – Gaming Board
GFSR – Group of Financial Services Regulators
IA – Insurance Act
IBC – International Business Company
IBCA – International Business Corporations Act
IBTC – Inspector of Banks and Trust Companies
ICB - Insurance Commission of The Bahamas
IFCS – Inspector of Financial and Corporate Services
IOEAMA – International Obligations (Economic and Ancillary Measures) Act
ILCU – International Legal Cooperation Unit
LGA – Lotteries and Gaming Act
MACMA – Mutual Legal Assistance (Criminal Matters) Act
MLA – Mutual legal assistance
MLATS – Mutual legal assistance treaties
MLRO – Money Laundering Reporting Officer
MTB – Money Transmission Business
MTSP – Money Transmission Service Provider

NAMLG - National Anti-Money Laundering Group
NAMLC – National Anti-Money Laundering Steering Committee
NRA – National Risk Assessment
OAG – Office of the Attorney General
OPBAT – Operation Bahamas Turk and Caicos
PAA – Preclearance Agreement Act
POCA – Proceeds of Crime Act
RBPF – Royal Bahamas Police Force
RGD – Registrar General Department
SCB - Securities Commission of The Bahamas
SIA – Securities Industry Act
SIR – Securities Industry Regulations
SI Rules – Securities Industry (AML/CFT) Rules
SACA – Segregated Accounts Company Act
T &F/MLS – Tracing and Forfeiture/Money Laundering Investigations Squad
TFS – Targeted Financial Sanctions
UNSCR – United Nations Security Council Resolution



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Anti-money laundering and counter-terrorist financing measures – The Bahamas *Mutual Evaluation Report*

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in The Bahamas as at the date of the on-site visit November 30 – December 11, 2015. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of The Bahamas' AML/CTF system, and provides recommendations on how the system could be strengthened.