CARIBBEAN FINANCIAL
ACTION TASK FORCE

Third Follow-Up Report

Bermuda

May 30, 2013

BERMUDA: THIRD FOLLOW-UP REPORT

I. INTRODUCTION

1. This report is the third follow-up report by Bermuda to the Caribbean Financial Action Task Force (CFATF) plenary on the actions taken to implement the recommended actions listed in the third round Detailed Assessment Report (DAR) which was adopted by the CFATF Council of Ministers in November of 2007 in Costa Rica.

2. Bermuda received ratings of PC or NC on eight (8) of the sixteen (16) Core and Key Recommendations as follows:

Table 1: Ratings for Core and Key Recommendations

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

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

Table 2: 'Other' Recommendations rated as PC and NC

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

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

Table 3: Size and integration of Bermuda's financial sector as at September 2012

		Banks	Other Credit Institutions*	Investment Funds	Insurance	TOTAL
Number of institutions	Total #	4	1*	872	950	
Assets	US$	$23.6b	$9,227,530	$159.51b	$524,692,056,726	
Deposits	Total: US$	$20.0b	$2,338,919			
	% Non-resident	% of deposits				
International Links	% Foreign-owned:	% of assets	% of assets	% of assets	% of assets	% of assets
	#Subsidiaries abroad					

Bank statistics as of Q3 2012.

*Last audited financial statements for BIU Members credit Union was in 2007.

Investment Funds as of BMA annual report year ended 2011.

Insurance statistics as of BMA annual report year ended 2011 for end of year 2010.

Table 4: Definition of abbreviations used in this follow-up report

ABBREVIATION	DEFINITION
POCA	Proceeds of Crime Act 1997
RA	Revenue Act 1898
IA	Insurance Act of 1978
T(RTB)A	Trusts (Regulation of Trust Business) Act 2001
CSP Act	Corporate Service Provider Business Act 2012
SEA	
IBA	Investment Business Act 2003
AML/ATF Regulations	Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008
CSP	Corporate Service Providers
BMA	Bermuda Monetary Authority
AML/AFT	Anti-money laundering /Anti -terrorism financing
BDCA	Banks and Deposit Companies Act 1999,
R(A)A 3	Revenue Amendment Act 2012:3
R(A)A 16	Revenue Amendment Acts 2012:16

II. SUMMARY OF PROGRESS MADE BY BERMUDA

5. Since Bermuda's second follow-up report of May 2011, the jurisdiction has enacted amendments to the Proceeds of Crime Act 1997 (POCA); the Revenue Act 1898 (RA), the Insurance Act of 1978 (IA), the Banks and Deposit Companies Act 1999 (BDCA), the Investment Business Act 2003 (IBA), and the Trusts (Regulation of Trust Business) Act 2001 T(RTB)A. Bermuda has also enacted new legislation in the form of the Corporate Service Provider Business Act 2012 (CSP Act). The CSP Act became law on January 1, 2013, and is intended to regulate corporate service provider business and also for protecting the interests of clients and potential clients of persons carrying on corporate service provider business. The CSP Act requires CSPs to be licensed with, and supervised by the BMA. This action ensures that a prudential and AML/ATF regime for CSPs, under the aegis of the BMA, similar to that which was already in place for the trust industry, will not only enhance the efficiency of the corporate formation process but is also consistent with international best practice standards for the sector.

6. By way of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Designation Order 2012, Bermuda, in August 2012, established a new supervisory authority in the form of the Barristers and Accountants Anti-Money Laundering and Anti-Terrorist Financing Board (the Board) for legal and accountancy service businesses i.e. "Regulated professional firms". Therefore "independent professionals" i.e. persons carrying on legal and accountancy service business have now been brought under the scope of the AML/ATF Regulations and are therefore "relevant persons" pursuant to pursuant to **r. 2(1) and 4(b)** of the said AML/ATF Regulations. Also, during 2012, the Minister of Minister of Justice approved the Guidance Notes for the Accounting and Legal Sectors

7. As already described in the 1st follow-up report, Bermuda has implemented measures in many specific areas to address some of the gaps identified in its Detailed Assessment Report with respect to the Key, Core and other Recommendations and Special Recommendations. These measures have had the effect of significantly closing the gaps discerned in the MER. The measures detailed below were however taken since the 1st follow-up report.

Core Recommendations

8. Relative to **Recommendation 5** Bermuda's first follow-up report (Bermuda_1st_Follow-up_Report) had noted, "*As it relates to not allowing exemptions or reduced CDD measures where there is suspicion of ML/TF, the 2008 regulations do not explicitly provide for this recommendation.* Even though Bermuda had put forward that provisions under Regs. 6(3) and 11 "Satisfies this requirement" it was concluded that, "*Reg. 6(3) allows FIs to determine the CDD measures they consider appropriate whilst Reg. 11 (1) (b) provides for the application of Enhanced CDD in circumstances where activities by their very nature pose a risk or are susceptible to ML or TF*". This gap remains open and as such Recommendation 5 remains ***outstanding.***

9. For **Recommendation 13**, the comments in the second follow-up report, "*Bermuda third round MEVAL examiners had recommended an amendment to the ATFA to cater for FT-related SARs for funds linked to terrorist organizations. Although the ATFA 2004 predates the third round Mutual Evaluation Report, for which this Follow-up report is being produced, Bermuda has relied on section 9 of that Act to satisfy the aforementioned recommendation. In the absence of the recommended amendment therefore this Recommendation still remain outstanding".* As an update for this period, Bermuda has reported that the Legislative Working Group of their NAMLC is in the process of finalising a consultation paper which includes the required amendments. It is expected that these will be enacted by August 2013. This Recommendation remains ***outstanding.***

10. For **Special Recommendation II** the Bermuda's first follow-up report (Bermuda_1st_Follow-up_Report) had noted that, "*Bermuda still has not included all the acts covered by the nine conventions referred to in the SFT Conventions. The amended provision for the ATFA to include a reference to the financing of terrorist organisations is still in draft form".* The amendments to cure this deficiency are the subject of the same consultation paper noted at Recommendation 13 above. In light of the fact that this gap is still open, this Special Recommendation remains ***outstanding.***

11. The recommended action required to cure the deficiency for **Special Recommendation IV** is identical to that of Recommendation 13. The amendments to cure this deficiency are the subject of the same consultation paper noted at Recommendation 13 and Special Recommendation II above. In light of the fact that this gap is still open, this Special Recommendation remains ***outstanding.***

Key Recommendations

12. With regards to **Recommendation 3,** the first follow-up report (Bermuda_1st_Follow-up_Report) had noted the apparent shortcoming at **s.48A** of the POCA amendment of 2008. Specifically the report noted that, "*in circumstances where the instrumentalities involved are related to non-drug trafficking predicate offences, forfeiture would be unlikely".* This conclusion in relation to the assessors recommendation that Bermuda, "*Explicitly provide in legislation for the confiscation of property which constitutes instrumentalities intended for use in the commission of ML or other non-drug trafficking predicate offenses*". The continuing existence of this open gap leaves this Recommendation ***outstanding.***

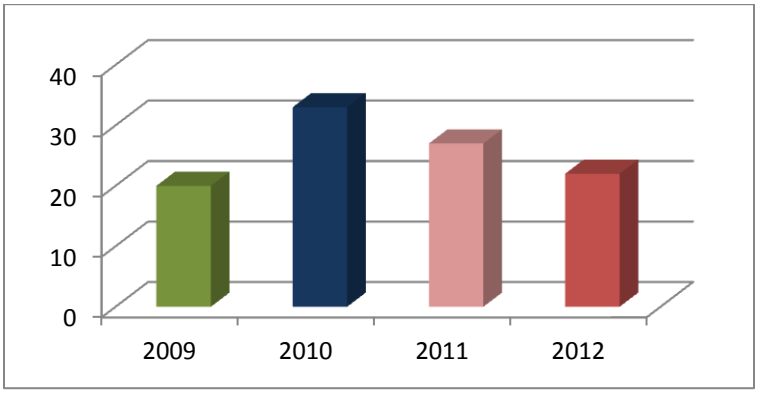
13. As for **Recommendation 23** both of Bermuda's previous follow-up reports noted that amongst the outstanding Examiners recommendations for this Recommendation, *"enforcing ongoing fit and proper criteria; reviewing the licensing procedures to ensure full requirements for ultimate beneficiaries of proposed licensees are established in accordance with the applicant documentation; conducting a systematic review to ascertain whether other financial activities covered by FATF Recommendations is taking place in or from within Bermuda on a regular commercial basis*". The situation for this follow-up report remains the same.

14. In order to boost the enforcement powers of the BMA, in 2012 Bermuda amended the IA, the BDCA, the IBA and the T(RTB)A and introduced a uniform set of enforcement powers, and associated procedures for these Acts. Additional powers include:

- The power to impose civil penalties of up to $500k for breaches of the relevant Act
- The power to prohibit an individual from preforming specific activities in respect of entities regulated under each Act
- The power to seek injunctions to restrain or compel conduct.
- The power to publish a statement where the Authority considers an Institution has breached an obligation under the relevant Act.
- The Various Acts also contain an express provision allowing the Authority to publish Decisions made in relation to enforcement activity

15. Recommendation 23 was rated NC by the assessor and nine (9) summary factors were noted, seven (7) of which were related to implementation issues. Bermuda has provided the following information to demonstrate that the measures for this Rec is being implemented:

Chart 1: Onsite Inspections Conducted



16. Between 2010 and October 2012 Bermuda 'looked at' 90 separate regulated entities in 82 on-site visits. Here it is noted that an entity can carry multiple licences. In 2012 the BMA carried out 38 desk-based reviews for the trust, investment business and fund administration industries and 179 desk-based reviews for non-licensed persons.

17. It can be seen that in light of three (3) action oriented recommendations made by the assessors, Bermuda has so far not provided any information to demonstrate that these recommendations are in fact being implemented. **Recommendation 23** remains ***outstanding.***

18. The status **Recommendation 35** and **Special Recommendation I** are exactly as they were during the onsite. Here Bermuda is reporting that a report is "currently" being prepared on the implementation of the provisions of the related Conventions. That report was to have been presented to the NAMLC in April of 2013 following which a request will be made to the UK authorities. These Recommendations continue to remain ***outstanding.***

Other Recommendations

19. The status of **Recommendation 9** remains as was noted in the first follow-up report (Bermuda_1st_Follow-up_Report) in that the assessors' recommendations relating to EC 9.1 and 9.4 have not been addressed. This Recommendation is ***outstanding.***

20. The status of **Recommendation 11** remains as was noted in the first follow-up report (Bermuda_1st_Follow-up_Report). Bermuda has however reported that even though the Jurisdiction is of the opinion that the existing provisions of Regs. 7, 15 and 16 adequately address the noted deficiencies they have already begun work on amending the POCA to give effect to the necessary changes. This process is expected to be completed prior to end of 2013. This Recommendation remains ***outstanding.***

21. For **Recommendation 12**, Bermuda was rated as NC and the assessors made six (6) recommendations to cure the deficiencies they noted in the MER. The analyses of Bermuda's action to close these gaps are discussed below:

i) *Amend POCA and the POC Regulations 1998 to require lawyers, accountants, company service providers, dealers in precious metals and stones, including jewelers, and real estate agents to implement AML/CFT programs covering: (a)CDD, (b) record-keeping, (c) internal reporting programs (to include reporting by an MLRO to the FIU), and (d) training.* – Paragraph 6 of this report has already noted the fact that the Board was appointed as supervisory authority for lawyers and accountants whilst the first follow-up report had noted that the POCA amendment of 1997 subjected these said lawyers and accountants to the same CDD obligations as financial institutions. Even though Bermuda has reported that, *"Under the SEA Amendment Act, the FIA was designated as the regulatory body for Regulated Non-Financial Businesses and Professions (which was intended to include all DNFBPs not supervised by the BMA or the Bar/ICAB Supervisory Board)",* it is not clear whether company service providers and dealers in precious metals and stones, including jewelers are captured by the obligations towards (a) CDD, (b) record-keeping, (c) internal reporting programs (to include reporting by an MLRO to the FIU), and (d) training. This gap is still ***open.***

ii) *In the case of lawyers and accountants, the AML/CFT program obligation should apply either when they plan for or when they carry out for their client the transactions enumerated in Rec. 12. Consideration should be given to extending the AML/CFT program obligations for accountants to all of their activities.* Here the transactions detailed at Rec. 12 are clearly subsumed under **r.2** of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008. The second point noted here for Bermuda to consider extending the AML/CFT program obligations to all activities conducted by accountants has not been taken on board. This gap is ***open.***

iii) *Given evidence that local drug dealers have made investments in the local property market, and the requirements of C 12.1, the AML/CFT program requirements for real estate dealers should cover all real estate transactions, not just those carried out in cash. Consideration should be given to requiring that all real estate transactions be settled by bank transfer.* This deficiency is dependent on the national risk assessment which Bermuda is reportedly undertaking. This gap is ***open.***

iv) *Any SRO arrangements established for monitoring and oversight of AML/CFT program compliance should include adequate powers for the designated supervisor to review the policies and procedures and records of supervised parties as well as powers to effectively*

enforce compliance. These powers are in fact included under the obligations of **s.5** of the SEA. This gap is ***closed.***

v) *All high value dealers, specifically dealers in precious metals and precious stones, including jewelers, engaging in cash transactions with customers of $15,000 or more should be subject to the AML/CFT preventive measures regime.* Not yet taken on board by Bermuda. This gap is ***open.***

vi) *An awareness campaign should be undertaken to familiarize DNFBPs with their responsibilities and obligations under any new AML/CFT laws or regulations.* Bermuda has reported that the BMA, the Bar/ICAB Board and the FIA have ongoing awareness sessions with their supervisees. This gap is ***closed.***

22. Some deficiencies continue to exist for Recommendation 12, consequently this Recommendation remains ***outstanding.***

23. The status of **Recommendation 14** is as was noted in the first follow-up report. This Recommendation is ***outstanding.***

24. **Recommendation 15** is as was noted in the first and second follow-up reports. Bermuda is however considering amendments to be enacted "*as soon as practicable in 2013*". This Recommendation is ***outstanding.***

25. For **Recommendation 16** it is still unclear whether all DNFBPs have been brought under the preventive measures regime called for in the Regs and which DNFBPs are still not covered.

26. Relative to **Recommendation 17** paragraph 14 is relevant. However the comments noted in both the first and second follow-up reports are still relevant in that Bermuda is of the opinion that relevant penalties are at appropriate levels. This Recommendation is ***outstanding.***

27. **Recommendation 21** is as was noted in the first and second follow-up report. However Bermuda is proposing to amend its Enhanced Due Diligence obligations to give effect to the examiners recommendations. This Recommendation is ***outstanding.***

28. As regards **Recommendation 24**, the assessors made three (3) recommendations to close the gaps they noted in the MER. For the first recommendation the relevant issue is the need for Bermuda to ensure that, having brought the lawyers, accountants, CSPs, real estate agents jewellers and high value dealers under the AML/CFT regime they were required to then ensure that these entities are effectively supervised and there were adequate powers for the supervisors to monitor and sanction, and adequate resources to carry out the supervisory functions. Bermuda has put in place the relevant legislative supervisory framework with the appropriate powers endowed onto the supervisory authorities even though all DNFBPs have not as yet been brought under AML/CFT supervision. No information was provided on the resources, including technical resources and skill etc. that are available to these supervisory authorities to effectively perform their functions. As well, no data was provided to demonstrate that any supervisory functions were actually being carried out. This gap is ***open.***

29. The second recommendation that "*the scope of activities of professional lawyers and accountants that is subject to AML/CFT obligations and to supervision conforms to the requirements of Rec. 24*", this has been achieved through the enactment of **r.2** of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008. This gap is ***closed.***

30. The third recommendation relative to updated guidance being issued to relevant DNFBPs has only been partially adhered to through the Bar/ICAB Board's Guidance Notes which were approved by the Minister and issued to the sector in 2012. It is unclear whether any other Guidance has been issued. This gap is ***open.*** Based on all of the, above Recommendation 24 remains ***outstanding***

31. For **Recommendation 25**, the first follow-up is relevant here. The outstanding issue is in relation to the guidance for financial institutions and DNFBPs on industry specific typologies and additional preventative measures. Bermuda has not provided any such guidance. This is particularly interesting in light of the fact the Bermuda reported at Recommendation 32 that the FIA, through its access to the FCU's data on investigations has produced useful "*trends and typologies*". This Recommendation remains ***outstanding.***

32. At **Recommendation 29,** the outstanding recommendation is in relation to the assessors' recommendation that Bermuda, "*Specify clear powers in the Credit Union Act that the BMA, under delegated authority, can supervise and inspect these FIs, including for compliance with AML/CFT obligations*". Bermuda has indicated that "*as Credit Unions are captured as "deposit-taking business" pursuant to section 4 of the Banks and Deposit Companies Act 1999,* they are already supervised by the BMA and the required powers for effective monitoring and enforcement of compliance with by deposit taking institutions with the AML/CFT obligations. This Recommendation remains ***outstanding.***

33. As an update to the ongoing implementation of **Recommendation 30** Bermuda has reported that the Ministry of Finance has provided additional funding from the consolidated fund for UK training of for members of the FCU. The FIA has taken part in the Strategic Analysis Course provided by Egmont and it is anticipated that a staff member will be trained to deliver the said training to the FCU during 2013. The FIA has also provided training to the Association of Bermuda Compliance Officers and the Society for Trusts and Estates Practitioners.

34. As for **Recommendation 31**, the comment in the first follow-up report about the amendment to the POCA 2007, which enabled the NAMLC to act as the national coordinator for the country's AML policy, not mentioning CFT is still relevant. This recommendation remains ***outstanding.***

35. Relative to **Recommendation 32** the assessors had recommended that, "*Statistics should be maintained on amounts of restrained property compared with amounts ultimately confiscated and the types of crimes related to these actions".* Bermuda has not provided any data to demonstrate that statistics are being maintained in accordance with this recommendation but has reported that, *"For the period 2011-2012 there were 7 confiscation orders and 5 forfeiture orders, and this further evidences the effectiveness of the legislation.* This gap remains ***open.*** Whilst neither of the other two (2) recommendations of the assessors has as yet been taken on board, Bermuda has also reported having had 13 money laundering convictions, up to January 2013, with sentences ranging from between 3-8 years imprisonment. This Recommendation remains ***outstanding***

36. For **Special Recommendation VI**, the comment of the second follow-up report is relevant here. The assessors had however indicated that "*There is no basis for evaluating effective implementation*". Bermuda has to date not provided any information to demonstrate that the provisions are being effectively implemented. This Special Recommendation remains ***outstanding.***

37. The assessors' recommendations for **Special Recommendation VIII** continue to be in abeyance. Bermuda has however reported, that in July 2012, the then Cabinet approved the relevant amendments, but with the change of political administration the responsibilities for charities was moved to another Ministry which is now in the process of issuing a new Cabinet Note. This Special Recommendation remains ***outstanding.***

38. The two (2) previous follow-up reports had both noted the action by Bermuda which resulted in the closure of the majority of deficiencies for **Special Recommendation IX**. In continuance of its efforts to close all the gaps, on June 1, 2012 Bermuda enacted the R(A)A 3 and R(A)A 16 to amend the RA. These laws were enacted to specifically address the recommendation that "*Consideration should be given to (1) amending the relevant laws to provide the Customs Department with explicit legal authority to seize, detain, and confiscate currency in the event of a false declaration"*- At **s.86 (3)** of the RA, which is concerned with penalties for false customs declaration, if a person makes a false declaration to a customs officer, such a person is liable to a fine or a term of imprisonment and the article in relation to which the false declaration relates is liable to forfeiture. At **s.2** of **R(A)A 2012:16** the RA has been amended to include a new definition for uncustomed goods which says that such goods means, "Goods currency or negotiable instruments, the importation or exportation of which is restricted or prohibited by any Act"**. S.82** of R(A)A 16 has endowed any customs officer with the power to search any ship for uncustomed goods, whilst **s.96** of the R(A)A 3 endows customs officers, upon suspicion, to search any person, and anything that person has under his control, for uncustomed goods.

III Conclusion

39. Since the 2nd follow-up report, Bermuda has enacted a number of legislative amendments which have had some positive effect on the implementation Recommendations 16 and 23 and SRIX. Notwithstanding, all of the eight (8) Core and Key Recommendations rated as PC & NC at the time of the onsite are still outstanding together with XYZ of the Other Recommendations.

40. The 2007 CFATF Process and Procedures (As amended) encourages Members to expeditiously seek removal from the follow-up process within three (3) years of the adoption of the MER, however five (5) years and six (6) months have elapsed since the Council of Ministers adopted Bermuda's DAR, in Costa Rica, and placed the Jurisdiction in Regular follow-up with the normal first step that Bermuda report back to the Plenary two (2) years later, with the expectation that significant progress would have been made by then.

41. The November 2012 plenary ~~meeting~~ mandated all countries in Regular follow-up to achieve substantial progress on reforms of ~~all~~ outstanding recommendations and in their Mutual Evaluation Reports, and in any case to fully comply with the Core and Key Recommendations with regard to necessary legislative reforms and to ensure consistent progress in other implementation matters and report back to the CFATF ICRG in November 2013. Substantial progress has already been made on the implementation of the Recommendations. Although Bermuda has not fully addressed all aspects of the Key and Core Recommendations the gaps have been identified and steps are now being taken to achieve compliance with the recommended action by November 2013. Bermuda has further indicated that it is expected that other complementation matters will be largely addressed by the above mentioned date.

42. Bermuda has provided an action plan to demonstrate how it intends to address the outstanding recommendations in their mutual evaluation report with the intention to apply for removal from Regular Follow-up at the November 2013 plenary. Therefore it is recommended that Bermuda report to the November 2013 plenary at which time it is expected that, in accordance with their Action Plan, Bermuda will have met the criteria for removal from Regular Follow-up.

CFATF Secretariat
May 30, 2013

Appendix 1

Factors or elements that could be relevant to whether Bermuda has effectively implemented individual Recommendations

Laws and Regulations (R.1, 3, SRII & III)

Data and other information on prosecutions, convictions, penalties, freezing/seizing and confiscation etc (especially those required under R.32);

Level of resources dedicated to the ML/TF related investigations and prosecutions;
Any sanctions applied in relation to failure to properly implement obligations in relation to SR.III

Authorities (R.26 & 27 and SR.IX)
Review of the ML and FT system, taking into consideration results, in relation to the FIA:

(a) processing of STR, number received vs. numbers referred for investigations; ML/TF investigations initiated, etc; details of ongoing training to stakeholders relative to the manner of reporting; efforts taken to ensure widespread awareness of specified STR reporting form;

(b) in relation to SRIX The Customs Traveler Declaration Notice 2010" (BR 39/2010), number of reports made and value of the amounts seized/confiscated and the number of operations aimed at identifying/targeting illicit cash couriers;

Customer Due Diligence, Record Keeping, and Internal Controls *(R.4-11, 15, 18, 21-22, SR VI & VII for financial institutions, R.12 for DNFBPs)*

1. Number, nature and outcomes of interventions at financial institutions and DNFBPs, and outcomes of meetings with financial institutions and DNFBPs
2. Compliance failures identified by the regulatory examination programme (a lack of supervisory action is not per se indicative of whether the Recommendations have been effectively implemented or not)

Suspicious Transactions Reporting (R.13 & SRIV for financial institutions, R.16 for persons engaged in other business activity

1. Quantity of STR – Data and other information on STRs, including appropriate breakdowns
2. Quality of STR (number of STRs used in investigations, result of supervision programmes of the FIA etc.)

Supervision and oversight (R.17, 23, 25 & 29 and SR VI for financial institutions and R.24 for* and *persons engaged in other business activity)

1. Results.

    - in relation to R.17 and SR.VI - the number of cases where sanctions have been applied (taking into account the number of supervisory compliance checks), the nature of the failings and the type of sanctions applied (to check the appropriateness/proportionality of the sanctions imposed)

    - in relation to R.23 & 29 and the operations of the AML/ATF Unit - the number of on-site supervisory inspections that covered AML/CFT issues; the frequency and duration of inspections; the types and range of institutions inspected having regard to ML/TF risks; the nature of the on-site inspection, the use of other supervisory techniques; and the results in terms of compliance by financial institutions

    - in relation to R.23 data to demonstrate - enforcement of ongoing fit and proper criteria; reviewing of the licensing procedures to ensure full requirements for ultimate beneficiaries of proposed licensees are established in accordance with the applicant documentation

2. Structural issues.

    - In relation to R.23 and SR VI: general organisation of the AML/ATF Unit; adequacy of resources (financial, staff, technical, etc. especially in relation to the "Unit's" responsibility for registering /licensing under SR VI) and adequate capacity/expertise (including staff background, training and professional standards)

3. Guidance (R.25).

    - Specificity of guidance to particular types of financial institutions and persons engaged in other business activity

4. Awareness raising. (Rec. 25, SRVI and SRVIII)

    - Number of awareness raising campaigns and seminars conducted.

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

Bermuda (as at 28 February 2013)

Forty Recommendations	Rating	Summary of factors underlying rating[1]	Recommended Actions	Undertaken Actions
Legal systems				
1.ML offence	LC	• While criminalization of ML and is generally comprehensive, the effectiveness of the legal framework is difficult to gauge given that there has only been one prosecution for ML in the last five years, and limited numbers of investigations.		The effectiveness of the legal framework was demonstrated in a ML prosecution under s. 44 of POCA in 2009. The guilty verdict on all 11 Counts reaffirms the efficacy of the anti-ML provisions as well as the skills of the law enforcement, and prosecuting teams which worked on this matter over a 3 year period. Since that time, there have been an additional 3 convictions for money laundering; 1 in the Magistrates' Court, and 2 in the Supreme Court. As of 31 January 2013 there have been a total of 13 convictions for money laundering in Bermuda; two convictions have been in the Magistrates Court and 11 convictions in the Supreme Court. Thus, there have been a further 9 convictions for money laundering during the period 1 February 2011to 31 January 2013. Additionally, there are currently 7 individuals charged with offences of Money Laundering before the Supreme Court and Magistrate's Court in Bermuda.
2.ML offence – mental element and corporate liability	LC	• Fines under POCA with respect to summary convictions and certain convictions on indictment are much too low. • The effectiveness of the legal framework is difficult to gauge given that there has only been one prosecution for ML in the last five years, and limited numbers of investigations.	i) Fines under POCA with respect to summary convictions and certain convictions on indictment should be substantially increased. ii) Additional investigations and prosecutions are necessary in order to maintain an effective AML/CFT framework, particularly given that there has only been one prosecution of ML in the last	i) We do not agree with this recommendation. Summary offences are limited in the level of fines that would be applicable .With regard to the levels of fines for conviction on indictment it is our view that the current levels are appropriate. ii) The effectiveness of the legal framework was demonstrated in ML prosecution under s. 44 of POCA in 2009 (see Rec.1 above). There have been a number of confiscation orders as well as forfeitures. Further, the Bermuda authorities

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

			five years and limited numbers of ML investigations.	have been directly responsible for successful convictions in 5 cases in the United States, while two subjects have been convicted of money laundering offences in the UK. In addition, three persons have been charged with money laundering offences in the Caribbean and are awaiting trial. Other investigations are ongoing locally and there is close cooperation between the DPP and the BPS in this regard. Since Bermuda's first Follow-up Report (1 March 2009), there have been an additional 3 convictions for money laundering: 1 in the Magistrates' Court and 2 in the Supreme Court. Further, currently (as at 31 January 2011) there are 6 persons charged and pending trial for money laundering offences. This demonstrates willingness by both the Bermuda Police Service and Department of Public Prosecutions to investigate and prosecute complex money laundering cases. As of 31 January 2013 there have been a total of 13 convictions for money laundering in Bermuda; two convictions have been in the Magistrates Court and 11 convictions in the Supreme Court. The sentences for these offences have ranged from 3 years to 8 years imprisonment, and demonstrate the ability of the BPS and the DPP to investigate and prosecute these offences. There has been 1 not guilty verdict for money laundering during the period 1 February 2011 to 31 January 2013 in regards to a husband and wife who were however convicted of providing false and misleading information to the Bermuda Monetary Authority Additionally, as noted above, there are currently 7 individuals charged with offences of Money Laundering before the Supreme Court and Magistrate's Court in Bermuda.
3. Confiscation and provisional measures	PC	• The legislation does not provide for the confiscation of instrumentalities of ML, FT or other predicate offenses. • The legal basis for applying the broadest scope of realizable property of an offender convicted for ML is not clearly stated and should be made explicit in legislation. • While there is a new provision for voiding	i) Explicitly provide in legislation for the confiscation of property which constitutes instrumentalities intended for use in the commission of ML or other non-drug trafficking predicate offenses.	i) Provisions made under POCA Amend. 2008, clause 7, s. 48A satisfy this recommendation. UPDATE: For the period 2011-2012 there were 7 confiscation orders and 5 forfeiture orders, and this further evidences the effectiveness of the legislation.

		contracts, it does not provide the authorities with the means to prevent actions to hinder the recovery of property subject to confiscation. • The implementation of the legal framework for provisional measures and confiscation shows a relatively low total of seizures, confiscations and forfeiture, which may be due to the insufficient resources available to law enforcement and prosecutorial services. • Implementation of provisional measures and confiscation is difficult to assess, since statistics are lacking with regard to amounts of restrained property compared with amounts ultimately confiscated and the types of crimes related to these actions. Also lacking is information on the recovery rates of the amounts subject to confiscation orders, and the amounts actually recovered.	ii) Explicitly provide in legislation that, for the purposes of confiscation of the benefits of ML offenses, the proceeds that are the basis of the offense may include any payments received by the defendant at any time in connection with the ML offense carried out by him or by another person. iii) With respect to the voiding of contracts, explicitly provide the authorities with the means to prevent actions to hinder the recovery of property subject to confiscation.	ii) Provisions made under POCA Amend. 2008, clause 7, s. 48A (3) satisfy this recommendation. iii) Section 10 of the POCA Amend. Act 2007 satisfies this recommendation.
Preventive measures				
4. Secrecy laws consistent with the Recommendations	C			
5.Customer due diligence	NC	• The AML Regime for FIs (in particular the POC Regulations) does not cover CFT. • The lack of enforceability of the Guidance Notes limits the effectiveness of implementation of all the applicable provisions under Rec. 5. • Inadequate coverage in the Regulations of the insurance sector, securities/investments, money remittance, and payments management sectors. • CDD requirements are limited to customer identification and verification, and do not extend to the full range CDD under FATF. • CDD is required when there is suspicion of ML only in cases of one-off transactions. • CDD for wire transfers is only required when the transaction is US$10,000 or more, far exceeding the US$1,000 FATF threshold. • No CDD requirements when in doubt of adequacy of previously obtained customer identification information. • Good practice recommendations in Guidance Notes, e.g. G42 and G44 on simplified measures for non-face-to-face business, are not justified and weaken implementation of the AML Regulations and FATF requirements. • Good practice recommendations in Guidance Notes 129, 130, 139, 140 and 140 with respect to insurance and investment services weaken	i) Extend the regulatory regime for FIs to explicitly cover CFT issues. ii) Establish in the Regulations or in other enforceable instrument (Other Enforceable Means) all of the applicable requirements under FATF Recommendations 5–8. The current Regulations are limited and the Guidance Notes are not enforceable. iii) Extend the CDD requirements beyond customer identification. iv) Require CDD in all cases (business relationships and one-off transactions) where there is knowledge or suspicion of ML/FT and not only in cases of one-off transactions. Also, clarify that the threshold for one-off transactions does not apply when there is suspicion. This requirement should also include reporting of suspicion when an FI cannot obtain the required identification/CDD information under Rec. 5.15 and 5.16. v) Reduce the minimum CDD threshold for wire	i) Provisions made under Regs. 6 and 11 satisfy this recommendation. ii) Provisions made under Regs. Part 2, regulations 5 -14 satisfy this recommendation. iii) Provisions made under the Regs, Part 2, regulations 7, 9, 11, 12 and 13 satisfy this recommendation. iv) Provisions made under Regs. 6 and 9 satisfy this recommendation. v) Part 4 – Wire Transfers of the Regulations

		implementation of the CDD requirements. • Good practice recommendations in Guidance Notes 131, 132 and 133 for investment services weaken compliance with the CDD requirements. • No requirements for FIs to obtain information on the purpose and intended nature of the business relationships. • FIs are not required to update and conduct ongoing CDD/monitoring nor enhanced CDD for higher risk customers, business relationships or transactions. • The exemptions/reductions in customer identification in the Guidance Notes are not justified on the basis of low risk, are not limited to clients from countries that have effectively implemented the FATF Recommendations, and are too broad, and should not apply when there is suspicion of ML/FT. • No requirement to update information for clients in existence when the POCA and Regulations were introduced, and in practice this is a key challenge for FIs.	transfers to the equivalent of US/BD$1,000. (See recommendation on recordkeeping under section 3.5.3. vi) Extend the CDD requirements to cases where there is doubt as to the veracity or adequacy of previously obtained information. See recommendation below on the need to update information for "grandfathered accounts". vii) Reg. 4(4) could more explicitly establish the requirement to identify and obtain CDD information on underlying beneficiaries, including for legal persons and arrangements. This would make the Guidance Notes more consistent with the Regulations. viii) Review the customer identification exemptions provided for in the Guidance Notes for consistency with the Regulations and FATF Rec. 5, 8, and 9. ix) Review the wording of Guidance Notes 129, 130, 139, 140 and 140 on exemptions from identification to ensure that they do not create a practical limitation of CDD in the insurance and investment services sectors. Similar review is required for GNs 131, 132 and 133 for investment services. This should also be reviewed in the context of timing of verification for purposes of Rec. 5.13 and 5.14. x) CDD requirements that include the purpose and nature of business relationships (and significant one-off transactions) should be established. xi) Require FIs to conduct enhanced monitoring for higher risk business and regular updating of customer profile information, to conduct enhanced CDD for higher risk customers, business relationships and transactions. xii) Require FIs to conduct enhanced CDD for higher risk customers, business relationships or transactions in either in the POCA, Regulations or other enforceable means.	makes provisions relating to electronic funds (wire transfers) and satisfies this recommendation. (The updated Regulations came into force in March 2010). In particular, this issue is addressed in Regulation 23 (4). vi) Provisions made under Reg. 6 satisfy this recommendation. vii) Provisions made under Regs. 5(b) and 6(4)(b) satisfy this recommendation. viii) Provisions made under Regs. 8(3), 8(4), 8(5) and Reg. 10 satisfy this recommendation. ix) Provisions made under Regs. 10(4), 10(6) and Reg. 8 satisfy this recommendation. x) Provisions made under Regs. 5(c) and 6(3) satisfy this recommendation. xi) Provisions made under Regs. 11(1), 11(2), and 11(3) satisfy this recommendation. xii) Provisions made under Regs. 11 satisfy this recommendation. xiii) Provisions made under Regs. 10 satisfy this

			xiii)	Review the exemptions/simplifications provided for in the Regulations and (non-mandatory) Guidance Notes to ensure that they are justified on the basis of proven (documented) low risk. Where applicable, such lower exemptions/simplifications should be allowed only where customer information is publicly available or when there are otherwise adequate checks and controls in the system, especially when the clients are not other regulated FIs.	provision.
			xiv)	Where simplified CDD is allowed, there should be provisions to limit these two cases where non-resident customers that are from countries that have effectively implemented the FATF Recommendations.	xiv) Provisions made under Regs. 10(2)(b) and 10(4) satisfy this recommendation.
			xv)	As a general rule, do not allow exemptions or reduced CDD measures when there is suspicion of ML/FT.	xv) Provisions made under Reg. 6(3) and Reg. 11 satisfies this requirement.
			xvi)	Remove the general exemption in Guidance Note 50 on the timing for verification when payment is to be made from "other account" as this could be interpreted, e.g. from an account held by any non-FI business or unregulated person.	xvi) The Guidance Notes issued in 1998 are no longer applicable and reference should be made to the new guidance notes. Paragraphs 46-50 of the old guidance notes refer to the "Timing and Duration of Verification." At the time these GNs were issued, the POC regulations did not require verification of identity and as you are aware, the GN are not OEMs. The new regulations require the verification of identity and therefore the 'general exemption' (I believe it should have said paragraph 48) is no longer applicable. S. 8 of the regulations addresses the 'Timing of Verification' which must be completed prior to establishing a business relationship or conducting an occasional transaction. S.8 provides three exceptions to this rule, as provided for in the FATF recommendation. Therefore the timing of verification has been legislated for and the old GN are not applicable. Paragraphs 5.16 - 5.19 of the new GNs refer.
			xvii)	Require FIs to expedite the conduct of CDD and update client documentation for clients in existence when the Regulations were issued, the so called "grandfathered" customers. The Regulations were issues in 1998 (about 9.5 years ago) and the slow progress in updating	xvii) Para 5.37 – 40 of the GN address the issue of dealing with 'grandfathered' accounts.

				such information creates a significant vulnerability across the industry.	
6.Politically exposed persons	NC	• No requirements for FIs to conduct enhanced CDD for PEPs.		Require FIs to conduct enhanced CDD for PEPs.	Provisions made under Regs. 11(4), 11(5), 11(6), 11(7) and the Schedule, section 2 of Regs. satisfy this recommendation.
7.Correspondent banking	NC	• No requirements for FIs to conduct enhanced CDD with respect to correspondent banking and similar relationships.		Require FIs to conduct enhanced CDD with respect to correspondent banking and similar relationships.	Provisions made under Regs. 11(3) satisfy this recommendation.
8.New technologies & non face-to-face business	NC	• No requirements for FIs to implement measures to prevent misuse of technological developments that could facilitate ML/FT.		Require FIs to address risks associated with non-face to face business relationships or transactions, and to implement measures to prevent misuse of technological developments that could facilitate ML/FT.	Provisions made under Regs. 9, 11(2), 11(3), 12, and 13 satisfy this recommendation.
9.Third parties and introducers	NC	• No requirement for FIs to immediately obtain CDD information from third parties. • No requirement for FIs to satisfy themselves that CDD documentation has been obtained by third parties and that such documentation can be made available to FIs promptly on request. • Agreements obtained by FIs from introducers/intermediaries in other countries do not generally assure that secrecy and confidentiality restrictions will not be an impediment to access to CDD information when requested. • Insufficient information available to the industry with respect to adequacy of regulation and supervision of other FIs, and on implementation of FATF Recommendations by countries to justify reliance on third parties. • Need to specify, as seems to be the practice that ultimate responsibility for CDD lies with the Bermudian FIs.	i) ii) iii) iv)	Require FIs to immediately obtain CDD information from acceptable third parties when relying on their CDD. When allowing FIs to rely on CDD conducted by third parties, require them to satisfy themselves that the requisite CDD documentation has been obtained by such third parties, and that it will be made available to the FIs promptly on request. Periodically review the adequacy of the basis on which FIs rely on the CDD of other third parties whether in Bermuda or in other countries, with respect to their supervision for AML/CFT purposes, and implementation of the FATF Recommendations by countries where the third parties are located. Make it explicit that where reliance on others for certain aspects of CDD is allowed, that the ultimate responsibility lies with the FI.	i) Provisions made under Reg. 14 satisfy this recommendation. ii) Provisions made under Regs. 14, 15(6), (7) satisfy this recommendation. iii) Provisions made under Reg. 14 satisfy this recommendation. iv) Provisions made under Reg. 14 satisfy this recommendation.
10.Record keeping	LC	• Weak recordkeeping requirement in the financial regulatory laws, and expand good practice recommendations in the Guidance 154 Notes, G97 (securities only) and G98 (wire transfers).	i) ii)	Include in all the Schedules for minimum licensing criteria of the financial regulatory laws a recordkeeping requirement to comply with the AML/CFT legislation, not only for purposes of the regulatory laws. Consider rewording Reg. 5(4) to make it more consistent with Guidance Note 95 to state that the retention period in cases of an investigation would be longer than the minimum five-year	i) The record keeping provisions at s.15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 meet the requirements of FATF recommendation 10. Guidance Notes Chapter 8 paragraphs 8.1 – 8.28 refer. ii) Regulation 5(2) of the OLD regulations refers to keeping records for the minimum retention period (five years) if they would assist in the investigation of money laundering. The NEW

			period specified. Also clarify what constitutes the "outcome of the investigation" and whether it would include, e.g. the prosecution, trial, conviction or confiscation procedures. iii) Revise the Guidance Notes (G97) to ensure that the retention of transaction records are not limited to details of securities and investments transacted, and that they apply to non-securities related business, e.g. banking and insurance transactions.	regulations - S.15(5) makes specific reference to keeping records, in the case of an institution being notified those records may be relevant to an investigation, "pending the outcome of the investigation." S.15(5) of the NEW regulations makes no reference to the 5 year retention period in these circumstances. Therefore the situation has been rectified as required. iii) Provisions made under Reg. 15(2) satisfy this recommendation.
11.Unusual transactions	NC	• No requirement to pay special attention, examine and record information on complex, unusually large, or unusual patterns of transactions that have no apparent economic or lawful purpose. • Inadequate systems in some FIs, e.g. do not aggregate customer accounts for purposes of monitoring for unusual and suspicious transactions throughout the FI or on a group-wide basis. I	Introduce in law, regulations or OEMs a requirement to monitor, examine and record information on complex, unusually large, or unusual patterns of transactions that have no apparent economic or lawful purpose.	It is our view that provisions in Regs. 7, 15 and 16 adequately address the FATF requirements. However, for the avoidance of doubt, we proposed to make the amendments along the lines of the wording indicated below to Regs. 7 and 15, (the wording of the proposed amendments is shown in RED). Work on the project to amend the POCA Regulations has already commenced and it is anticipated that the amendments will be enacted prior to year end (December 2013). **Ongoing monitoring** 7 (1) A relevant person must conduct ongoing monitoring of a business relationship. (2) "Ongoing monitoring" of a business relationship means— (a) scrutiny of transactions undertaken throughout the course of the relationship (including complex, unusually large, or unusual patterns of transactions which have no apparent economic or visible lawful purpose, and where necessary, the source of funds) to ensure that the transactions are consistent with the relevant person's knowledge of the customer, his business and risk profile; and (b) so far as practicable keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date. **Record-keeping** 15 (1) A relevant person must keep the records specified in paragraph (2) for at least the period specified in paragraph (3).

				(2) The records are (a) a copy of, or the references to, the evidence of the customer's identity obtained pursuant to regulation 6, 11, 13(4) or 14; (b) the supporting evidence and records (consisting of the original documents or copies admissible in court proceedings) in respect of the transactions identified and scrutinized in regulation 16(2)(a), business relationships and occasional transactions which are the subject of customer due diligence. (3) The period is five years beginning on the date on which the business relationship ends, or, in the case of an occasional transaction, five years beginning on the date on which the transaction is completed.
12.DNFBP – R.5, 6, 8-11	NC	• Except for trust providers, the other relevant DNFBPs are not subject to CDD, recordkeeping and oversight arrangements for AML/CFT.	vii) Amend POCA and the POC Regulations 1998 to require lawyers, accountants, company service providers, dealers in precious metals and stones, including jewelers, and real estate agents to implement AML/CFT programs covering: (a)CDD, (b) record-keeping, (c) internal reporting programs (to include reporting by an MLRO to the FIU), and (d) training.	i) Lawyers and accountants are brought into scope under POCA Amend. 2008, ATFA Amend. 2008 and Regs. Parts 2 and 3. The SEA Amendment Act 2010 established the complete framework for the supervision of DFNBP's. A new SRO (Bar/ICAB Supervisory Board) has been set up to supervise lawyers and ICAB Accountants. This Board has now been appointed and are progressing their plan so that they can formally be designated by the Minister. UPDATE: The Barrister and Accountants AML/ATF Board was designated as the supervisory authority for Lawyers and ICAB Accountants by the Minister of Justice in August 2012 (pursuant to s. 4 of SEA) and these independent professionals are now within scope for AML/CFT supervision. Under the SEA Amendment Act, the FIA was designated as the regulatory body for Regulated Non-Financial Businesses and Professions (which was intended to include all DNFBPs not supervised by the BMA or the Bar/ICAB Supervisory Board). The BMA became the supervisory authority, as defined in the SEA Act, for corporate service providers when the Corporate Service Providers

				Act 2012 came into effect on 1 January 2013. It is intended that Orders will be enacted within this year to bring other specified DNFBPs under the supervision of the FIA.
			viii) In the case of lawyers and accountants, the AML/CFT program obligation should apply either when they plan for or when they carry out for their client the transactions enumerated in Rec. 12. Consideration should be given to extending the AML/CFT program obligations for accountants to all of their activities.	ii) Provisions made under POCA and Reg. 2 satisfies the relevant requirements under Recommendation 12. Extending the AML/CFT program obligations for accountants to all of their activities is not a FATF requirement and it is our considered view that such a change is not required at this time.
			ix) Given evidence that local drug dealers have made investments in the local property market, and the requirements of C 12.1, the AML/CFT program requirements for real estate dealers should cover all real estate transactions, not just those carried out in cash. Consideration should be given to requiring that all real estate transactions be settled by bank transfer.	iii) Bermuda is currently undertaking a national assessment of risks and vulnerabilities and it is expected that this recommendation will be reviewed once the results of this review are determined.
			x) Any SRO arrangements established for monitoring and oversight of AML/CFT program compliance should include adequate powers for the designated supervisor to review the policies and procedures and records of supervised parties as well as powers to effectively enforce compliance.	iv) Section 5 of the SEA Act also addresses the general duties of supervisory authorities. The SEA Act was amended in July 2010. In particular, the amendment Act expanded the supervisory framework to a designated SRO. It gives the full range of powers required to monitor and enforce compliance. Therefore this recommendation is now satisfied.
			xi) All high value dealers, specifically dealers in precious metals and precious stones, including jewelers, engaging in cash transactions with customers of $15,000 or more should be subject to the AML/CFT preventive measures regime.	v) High value dealers to be brought in scope during a future phase. As noted in i) above, it is intended that Orders will be enacted within this year to bring other specified DNFBPs under the supervision of the FIA.
			xii) An awareness campaign should be undertaken to familiarize DNFBPs with their responsibilities and obligations under any new AML/CFT laws or regulations.	vi) An awareness campaign for the financial institutions (which includes TSP's) and lawyers and accountants was carried out in 4th quarter 2008. Since then, there have been ongoing sessions held with the Trust sector to reinforce the AML/ATF requirements and strengthen compliance. In addition, the BMA has recently embarked on an outreach program to Corporate Service Providers in relation to s their AML/CFT obligations. The Bar/ICAB Board has held a number of informational sessions with the entities that they are responsible for supervising.

				Further, the FIA has commenced discussions with companies in other DNFBP sectors regarding the AML/ATF framework and in relation to the filing of SARs.
13.Suspicious transaction reporting	PC	• POCA does not provide an explicit requirement for filing SARs for attempted transactions. • No requirement to file FT-related SARs for funds linked to terrorist organizations. • No FT-related SARs have been filed. • Since the vast majority of SARs have been filed by banks even though they make up a small part of the financial sector, it appears that other sectors may be underreporting.	i) Amend ATFA to require FT-related SARs for funds linked to terrorist organizations.	i) Section 7(b) of ATFA notes that a person commits an offense if "he knows or suspects that it will or may be used for the purposes of terrorism" and then Section 9 requires that a person has a responsibility to report a belief or suspicion relating to, among other things, matters addressed in section 7. This therefore creates an obligation to file SAR's for funds linked to terrorist organisations. UPDATE: The NAMLC Legislative Working Group is finalising a consultation paper which includes recommendations to amend sections 4 and 5 of ATFA to include terrorist organisations. Once these amendments are in force the requirement to file a SAR regarding funds linked to a TF organisation would be encompassed by section 9 of ATFA. It is anticipated that these amendments will be enacted by August 2013.
			ii) Enhance training for identification of FT-related transactions	ii) The previous regulations and guidance notes did not address FT related matters. Therefore, there was previously no formal requirement for training on FT related transactions. The new regulations, apply to FT as well as ML matters. Training on FT related transactions is now a requirement (Reg 18) and failure to do so can result in a criminal or civil penalty. Additionally, the FIA confirms that entities are filing SARs on Terrorist Financing (TF) with the FIA. Four (4) SARs have been filed and disclosed. One with the former FIU/BPS and the others with the current FIA. Additionally, Go-AML software used by the FIA allows them to track filings on terrorist financing made by reporting entities and a UN Terrorist list has been built in the system to red flag such reports of interest. FIA staff have attended International Conferences/Seminars/Workshops on terrorist financing. Further, the FIA does cover AML/CFT in their training module to reporting entities (or FI's). Work is in progress in developing a specific TF module for the various

				entities. Funding and scheduling constraints have to date prevented the FIA from delivering this module.
14.Protection & no tipping-off	PC	• Protections for those who file SARs are limited to SARs based on ML and do not cover those who are required to file SARs based on FT. • There is also no explicit protection from criminal liability resulting from a SAR filing. • Tipping-off offenses do not explicitly cover the fact of a SAR filing and the contents therein, and tipping-off generally relating to SARs is only an offense if likely to prejudice a possible investigation.	i) Amend ATFA and POCA to provide explicit protection for those who are required file SARs based on FT. ii) Amend POCA to provide explicit protection from criminal liability resulting from a SAR filing. iii) Amend POCA to provide for tipping-off offense that explicitly covers the fact of or any information about a SAR filing and the contents therein. iv) Amend POCA to limit the scope of the exemption from tipping off by lawyers in a manner consistent with R.14 and R.16.	i) Provisions under the Anti-Terrorism (Financial and Other Measures) Act 2004, Schedule 1, Part 1(2) satisfy this recommendation. ii) Provisions made under POCA Amend. 2008, clause 6, section 46 satisfy this recommendation. iii) Matter being reviewed. NAMLC's Legislative Working Group is currently reviewing this matter and will make recommendations to the Minister in the coming months. iv) Matter being reviewed. NAMLC's Legislative Working Group is currently reviewing this matter and will make recommendations to the Minister in the coming months.
15.Internal controls, compliance & audit	PC	• Limited obligations in the AML/CFT Regulations for FIs to formulate and implement AML/CFT policies, compliance and controls. Only covers procedures with limited application. • There is no requirement in the Regulations that the reporting officer be designated at the management level but in practice this generally appears to be the case. • Limited scope of the compliance management function to suspicious activity reporting activities. • No requirements for maintaining an independent and adequately resourced internal audit function in the Regulations. • Limited coverage in the Regulations of training obligations to "relevant employees". • No obligation in the AML Regulations for employee screening and limited coverage in the various regulatory laws	i) Extend the procedures requirements to the full range CDD and recordkeeping requirements, and also require the formulation of AML/CFT policies, compliance and controls. Also consider specifying, in all cases, that the control systems requirements contained in the financial regulatory laws apply to AML/CFT. ii) Expand the role of the AML/CFT compliance function beyond suspicious activity reporting and include a requirement for an independent internal audit function that covers AML/CFT. iii) Extend the training requirements beyond those "relevant employees" defined in the Regulations to others who can play a role in implementing and monitoring compliance with institutional and legal AML/CFT requirements. iv) Include employee screening requirements in the AML Regulations to complement the fit and proper requirements for senior officials of FIs contained in the financial regulatory laws.	i) Provisions under Regs. 5, 6, 7, 11 and 16 satisfy this recommendation. ii) Provision made under Reg. 16 expands the role of the AML/CFT compliance function beyond suspicious activity reporting. The requirement for an independent internal audit function that covers AML/CFT has been included n the revised Guidance Notes (sections 3.15-3.22). iii) & iv) The following amendments to Reg 18 are being considered for implementation as soon as practicable in 2013. Amendments are noted in RED: Hiring and Training etc. 18 (1) A relevant person must take appropriate measures so that all relevant employees of his are (a) screened prior to hiring to ensure high standards; (b) made aware of the law relating to money laundering and terrorist financing; and (c) regularly given training in how to recognise

				and deal with transactions which may be related to money laundering or terrorist financing. 2) For the purposes of this paragraph, an employee is a relevant employee if - (a) at any time in the course of his duties, he has, or may have access to any information which may be relevant in determining whether any person is engaged in money laundering or terrorist financing; or (b) he can play a role in implementing and monitoring compliance with institutional and legal anti-money laundering and anti-terrorist financing requirements.
16.DNFBP – R.13-15 & 21	NC	• All DNFBPs are subject to general requirements to report suspicious activities although few SARs have been filed by DNFBs and none by lawyers. • With the exception of trust service providers, however, none of the other relevant DNFBPs are subject to oversight with respect to reporting obligations and the regime is not effectively implemented.	i) Amend POCA to ensure that SAR reporting requirement conforms to the applicable FATF Recs., including requirements for legal professionals. ii) The authorities should take additional measures, including but not limited to the issuance of regulations and guidance, to ensure that DNFBP, including lawyers, file SARs when appropriate. iii) Revise relevant legislation with respect to tipping off by lawyers, in order to protect the confidentiality of SAR information. iv) As recommended in 5.2 above, bring all DNFBPs under the preventive measures regime called for in POC Regulations 1998. Mandatory measures should include requirements to have effective systems and controls to monitor transactions for suspicions and to ensure that suspicious activities are reported. v) Any AML/CFT supervisory regime introduced for DNFBPs (TSBs are already covered) should include powers for the supervisor to ensure effective implementation of SAR reporting requirements.	i) Provision already made under POCA s.46(3)(6). ii) The requirement to file SAR's is in POCA section 46 and ATFA section 9 and Schedule 1. This is reinforced through Reg 17 and the Guidance Notes – Chapter 6. iii) Provisions made under POCA s. 47(3) and ATFA Amend. 2008, clause 5, s. 10A satisfy this recommendation. iv) Provisions under Regs. 7, 15, 16, 17, and 18 require that lawyers and accountants have effective systems and controls to monitor transactions for suspicions and to ensure that suspicious activities are reported. UPDATE: The legislative framework requiring FIs and DNFBPs to have the required systems and controls is in place. To date TSPs, CSPs, lawyers and accountants have been brought into scope under the regime. v) Provisions under the SEA Act give supervisory authorities the full range of powers required for effective supervision. As noted previously, in relation to DNFBPs, the sectors already in scope are TSPs, CSPs, lawyers and accountants.

17.Sanctions	PC	• Although BMA has a wide range of sanctions powers, according to officials, formal sanctions have never been imposed on a FI for a violation or deficiency relating to AML/CFT requirements. • Two key sanctions are missing from the sanctions regime: civil money fines and conservatorship powers. • The administrative money penalties which may be imposed by Customs are much too low for ML or FT offenses involving the movement of cash or negotiable instruments. • Fines under POCA with respect to summary convictions and certain convictions on indictment are much too low.	i) Enact legislation for civil money penalties and conservatorship powers to be applied by the BMA. ii) Fines under POCA with respect to summary convictions and certain convictions on indictment should be raised.	i) Chapter 4 of the SEA Act 2008 implements civil money penalties to be applied by the BMA. Conservatorship powers are only mentioned by way of "examples of types of sanctions include…" followed by a list of examples including conservatorship. It is not an FATF requirement that all the examples given be legislated. In 2010 the Authority imposed a civil penalty of $100,000 against an entity for significant and substantial failures in AML compliance. Consideration is currently being given to the imposition of civil penalties on other Institutions. There is no power to take any form of conservatorship over an Institution's operations because of AML breaches, however it is possible to remove or restrict an Institutions licence or registration should the circumstances justify it. In one instance in 2009, the Authority issued a notice proposing such an action; however the Institution voluntarily closed until it could develop policies and procedures to meet its obligations, and the Authority did not proceed with the proposed action. ii) We do not agree with this recommendation. Summary offences are limited in the level of fines that would be applicable. With regard to the levels of fines for convictions on indictment, it is our view that these are at appropriate levels.
18.Shell banks	LC	• No prohibition against the establishment and dealing with shell banks.	Consider incorporating an explicit prohibition on the licensing of shell banks or requiring in the licensing criteria that licensees maintain a significant presence and mind and management in Bermuda, consistent with the Basel Paper on shell and parallel banks.	Provisions under Reg. 13 satisfy this recommendation.
19.Other forms of reporting	C			
20.Other NFBP & secure transaction techniques	C			
21.Special attention for higher risk countries	NC	• No requirement to pay special attention, examine and record business relationships/transactions with persons from or in countries which do not sufficiently apply the FATF Recommendations. • No system to ascertain and inform FIs about which countries do not or insufficiently apply the FATF Recommendations, or to apply	Require FIs to pay special attention, examine and record business relationships/transactions with persons from or in countries which do not sufficiently apply the FATF Recommendations, and implement a system identify such countries	The Regulations 2008 do not include specific provisions covering this point. However, Regulation 11(1) (b) is applicable to this circumstance, the application of enhanced CDD in any situation which by its nature can present a higher risk of ML or TF. Paragraph 3.13 of the Guidance Notes addresses this point and encourages institutions to make appropriate

		countermeasures against such countries.		use of international findings such as FATF assessments where countries have been found to be materially deficient. Paragraph 5.131 also addresses this point where the location of the customer may present a higher risk of ML or TF. Also the Minister of Justice issues an advisory after each FATF plenary providing the information in the FATF public statement and the List of Countries with strategic deficiencies. This advisory warns industry to note the risks related to each jurisdiction and to take these risks into account in their business processes and procedures. Rec 19 in the Revised FATF Standards reflect a stronger position on the requirement to pay special attention to persons or countries that do not sufficiently apply the FATF Recs. Therefore, it is proposed that the following proposed amendment will be enacted prior to year end (December 2013) to enhance the current regime and satisfy the Revised Standard. Proposed Amendments are noted in RED: **Enhanced customer due diligence** 11 (1) A relevant person must apply on a risk-sensitive basis enhanced customer due diligence measures— (a) in accordance with paragraphs (2) to (4); (b) where the country from which the customer is from is identified by FATF as a high risk; and (c) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing. (2) Where the customer has not been physically present for identification purposes, a relevant person must take specific and adequate measures to compensate for the higher risk, for example by applying one or more of the following measures— (a) ensuring that the customer's identity is established by additional documents, data or information; (b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by an AML/ATF

				regulated financial institution (or equivalent institution) which is subject to equivalent Regulations; (c) ensuring that the first payment is carried out through an account opened in the customer's name with a banking institution. (3) A banking institution (the "correspondent") which has or proposes to have a correspondent banking relationship with a respondent institution (the "respondent") from a country or territory other than Bermuda must — (a) gather sufficient information about the respondent to understand fully the nature of its business; (b) determine from publicly-available information the reputation of the respondent and the quality of its supervision; (c) assess the respondent's controls relating to anti-money laundering control and anti-terrorism financing controls; (d) obtain approval from senior management before establishing a new correspondent banking relationship; (e) document the respective responsibilities of the respondent and correspondent; (f) be satisfied that, in respect of those of the respondent's customers who have direct access to accounts of the correspondent, the respondent— (i) has verified the identity of, and performs ongoing due diligence on, such customers; and (ii) is able upon request to provide relevant customer due diligence data to the correspondent. (4) A relevant person who proposes to have a business relationship or carry out an occasional transaction with a politically exposed person must (a) have approval from senior management for establishing a business relationship with that person; (b) take adequate measures to establish the source of wealth and source of funds which are involved in the business relationship or occasional transaction; and

				(c) where the business relationship is entered into, conduct enhanced ongoing monitoring of the business relationship.
22.Foreign branches & subsidiaries	NC	• No provisions in the AML Regulations for AML/CFT applying measures to overseas branches and subsidiaries. • No requirements on FIs to inform the Bermudian authorities when their overseas operations cannot observe appropriate AML/CFT measures	i) Include in the Regulations an obligation for FIs to implement AML/CFT measures in overseas branches and subsidiaries. ii) Require FIs to inform the Bermudian authorities when their overseas operations cannot observe appropriate AML/CFT measures.	i) Provisions made under Reg. 12 satisfy this recommendation. ii) Provisions made under Reg. 12(2) satisfy this recommendation.

23.Regulation, supervision and monitoring	NC	• Inadequate AML supervision of FIs, particularly for the non-banking sectors, and no CFT supervision. • Onsite (AML) supervision only commenced in 2007 for the insurance sector and mutual fund administrators are still to be licensed and supervised for AML/CFT. • Limited scope of AML onsite inspections procedures both in terms of institutions and review areas. • The AML Regulations do not assign AML/CFT supervisory, enforcement and sanctioning authority to the BMA. • Insufficient consolidated AML/CFT supervision to include group-wide compliance, especially in the non-banking sectors, and insufficient use of the work of external auditors in the area of systems and controls. • Insufficient AML/CFT staff capacity and training. • Need for enhanced implementation of licensing criteria and procedures for new and existing licensees, and to take account of group-wide fit and proper concerns. • Until December 2006/January 2007, there as no framework for licensing or registering money services business, and licensing/supervision of money services firms is still to be implemented. • Bermuda has not conducted a review to ascertain whether other FIs covered by the FATF Recommendations not currently subject to the AML regime should be licensed or registered, e.g. financial leasing on a commercial scale.	i) Develop and implement both an offsite and onsite supervision program for AML/CFT that is risk-based, and prioritizing for full scope inspections those sectors and institutions that present a higher degree of ML/FT risk, including in the insurance sector. ii) Expand the scope of onsite reviews including a focus on the adequacy of formal policies and the demonstrated commitment of the Board of Directors and senior management. iii) Enhance the onsite inspections program by focusing on particular areas of potential high risk activities and business relationships especially with respect to wire transfers, CDD on ultimate beneficiary clients, and controls and compliance involving reliance on intermediaries or introducers of business. iv) Develop and implement a framework for conducting consolidated supervision for	i, ii, iii) The SEA Act section 3 gives the Bermuda Monetary Authority the duty to effectively monitor financial institution's compliance with the Regs. and to enforce compliance with their provisions In order to carry out its functions under the Act, the Authority has created and staffed a dedicated anti-money laundering and anti-terrorist financing unit ("the AML/ATF Unit") to carry out the functions of the supervisory authority, which includes both an on-site and off-site monitoring program. This unit was fully staffed by August 2009. Onsite inspections are regulatory inspections conducted by the Authority at the premises of the institution, which require BMA officers to examine the books, records and controls of an institution and to hold discussions with its senior management on the financial institution's AML compliance framework. The on-site reviews include a review of AML/ATF policies and procedures and an evaluation of the commitment and involvement of senior management. In 2009 the Authority conducted 20 on-site inspections. In 2010 the Authority conducted 33 on-site inspections. In 2011 the Authority conducted 27 on-site inspections. In 2012 the Authority conducted 22 onsite inspections. 82 AML/ATF on-sites were held between January 2010 and October 2012. Of the 82 on-sites, 90 separate licenses were looked at (as some Banks carry multiple licenses). Additionally, in 2012 the Authority carried out 38 desk-based reviews for the trust, investment business and fund administration industries and 179 desk-based reviews for non-licensed persons. The number of visits to any institution is determined by the Authority's risk assessment of the institution and its record of compliance. Financial institutions whose business presents an inherently high risk to money laundering or terrorist finance are subject to routine visits more frequently. iv) The Insurance Act 1978 has been amended to

			AML/CFT compliance beyond banking, paying urgent attention to FIs that are parent and operating holding companies with significant operations overseas. Supervision should particularly focus on the existence and adequacy of applications for group-wide risk management, compliance and audit functions.	allow for Group supervision in a limited sense, following extensive consultation with the insurance sector. Group-wide evaluations of AML compliance are being conducted, where appropriate, and recommendations addressing the obligations of different group members are made following on-site inspections. There are only a small number of Groups with multiple AML obligations in Bermuda, so this has not been a common event.
			v) Enhance the review of the sufficiency and quality of SAR reporting systems, and take fuller account of the work of external auditors in their review of the AML/CFT control environment.	v) The onsite program was amended in January 2010 to broaden the tests for Internal reporting procedures to ensure institutions' employees are aware of who the MLRO is, the process each company has established for reporting and their responsibilities in reporting any suspicious activity directly to the MLRO. The independence of the MLRO position is established by reviewing the companies' organisational charts, job description and documentation showing unlimited access to information to enable the position to be effectively executed. A review of the company's internal reporting log and the number of SARS reported is requested to ensure the reporting process has been effective.
			vi) Review the effectiveness of the overall supervisory process for purposes of applying enforcement action for AML/CFT related breaches and concerns.	vi) The SEA Act empowers the BMA to impose civil monetary fines where a financial institution is found to be in breach of the regulations. The Bill provides for a maximum fine of $500,000 and the amount levied would be, in each particular instance, consistent with the principle that the fine must be appropriate, i.e. "effective, proportionate and dissuasive". Recent amendments in 2012 made to the Insurance Act 1978, the Banks and Deposit Companies Act 1999, the Investment Business Act 2003 and the Trusts (Regulation of Trust Business) Act 2001 introduced a uniform set of enforcement powers, and associated procedures for these Acts. Additional powers include: • The power to impose civil penalties of up to $500k for breaches of the relevant Act • The power to prohibit an individual from preforming specific activities in respect of entities regulated under each Act • The power to seek injunctions to restrain or

				compel conduct. • The power to publish a statement where the Authority considers an Institution has breached an obligation under the relevant Act. • The Various Acts also contain an express provision allowing the Authority to publish Decisions made in relation to enforcement activity Similar amendments are being developed for the Investment Funds Act 2006. The new powers augment the existing range of powers available for enforcement purposes and the BMA has taken steps to issue a comprehensive Statement of Principles dealing with the use of the powers for enforcement under all of the Acts. In addition, the Corporate Service Providers Act 2012 brought corporate service providers within the AML regulatory regime. In 2010 the Authority imposed a civil penalty of $100,000 against an entity, for significant and substantial failures in AML compliance. Consideration is currently being given to the imposition of civil penalties on other Institutions. In one instance in 2009, the Authority issued a notice proposing to withdraw a licence following AML breaches because of the perceived risk of money laundering, however the Institution voluntarily closed until it could develop policies and procedures to meet its obligations and the Authority did not proceed with the process.
			vii) Review and where necessary strengthen licensing practices in a consistent manner that reflects concerns not only of the applicant, but of other members of the group, including enforcement of the ongoing need for fit and proper criteria under the minimum licensing requirements.	vii) The Bermuda Monetary Authority's (the "Authority") licensing process evaluates and reviews amongst other things; that the business to be carried on by the proposed licensee falls within the provisions of relevant Bermuda law; that the licensee will have the requisite systems, procedures and policies in place to conduct the business to be carried on; and that persons proposing to manage and direct such business are fit and proper to act as controllers and officers of the proposed licensee in accordance with established Bermuda law requirements. The licensing process includes the review and evaluation of any issues which may have an

				impact on the licensee and other members of a group; and discussions are held with relevant overseas supervisory authorities in this regard. In addition, the process also requires a copy of proposed AML/ATF policies to be submitted and evaluated for adequacy prior to the issuance of a license by the Authority
			viii) Review licensing procedures to ensure that the full requirements for ultimate beneficiaries of proposed licensees are established in accordance with the application documentation requirements. Also, conduct a review of application documentation review procedures to ensure that signed applicant declaration forms relating to competence and probity, are consistent with the type of license being sought.	viii) The BMA periodically reviews its licensing and application procedures and amends as required.
			ix) Expedite the licensing/registration process for money services firm(s) and the provisions under Section 20AA of the BMA Act and the Regulations thereunder, to ascertain the adequacy of or need for provisions relating to agents/subagents of such licensees, as well as certain aspects of their operations to give practical implementation to issues such as minimum holding period of client money	ix) The licensing and registration process is in place to allow the BMA to grant a license to an institution to carry on money service business. As of August 2008 two financial institutions have been granted a license under the Money Service Business Regulations 2007. Institutions licensed under the MSB Regulations are subject to the same AML/ATF framework as other financial institutions in Bermuda. The current MSB license holders do not have any agents or sub agents and in respect of the money service business do not 'hold' client money.
			x) Conduct a systemic review to ascertain whether other financial activities covered by the FATF Recommendation is taking place in or from within Bermuda on a regular commercial basis	x) The Authority has commenced a risk assessment which involves a systemic review. The Authority is currently collecting data to gain a detailed view of the various components of the Bermuda economy. This information, when fully collated, will be used in identifying specific AML vulnerabilities in the differing parts of the economy. UPDATE: The Authority has, as part of the national risk assessment initiative, commenced to assemble data on supervisory activities and financial information on regulated entities. This project is ongoing but will continue to better inform the Authority about the details of the regulated sector and assist in effective resource allocation for supervisory and oversight purposes. Staff were trained on the World Bank Risk

				Assessment Tool in January 2013.

24. DNFBP - regulation, supervision and monitoring	NC	• With the exception of trust service providers, no competent authority has been designated with responsibility for monitoring and ensuring compliance with AML/CFT requirements of other relevant DNFBPs.	i)	When lawyers, accountants, company service providers, real estate agents, jewelers and high value dealers are brought under the AML/CFT preventive regime, ensure that effective supervisory arrangements are established for each sector, including adequate powers for the supervisors to monitor and sanction, and adequate resources to carry out the supervisory function.	i) The supervisory framework has now been established through the SEA Amendment Act 2010. An SRO has been established for the supervision of lawyers and ICAB accountants and the FIA has been designated as the regulatory authority for all other DNBP's. Both bodies have full powers to effectively monitor and enforce compliance. UPDATE: As noted above the legislative framework requiring FIs and DNFBPs to have the required systems and controls is in place. To date TSPs, CSPs, lawyers and accountants have been brought into scope under the regime. TSPs, CSPs, Further, as noted in Rec. 12(i) above, it is intended that Orders will be enacted within this year to bring other specified DNFBPs under the supervision of the FIA.
			ii)	Ensure that the scope of activities of professional lawyers and accountants that is subject to AML/CFT obligations and to supervision conforms to the requirements of Rec. 24.	ii) Professional lawyers and accountants are brought into scope of the Regulations through Reg 4. The scope of activities covered is detailed under the definition of "independent professional in Reg 2(1) . UPDATE: The Barrister and Accountants AML/ATF Board was designated as the supervisory authority for Lawyers and ICAB Accountants by the Minister of Justice in August 2012 (pursuant to s. 4 of SEA) and these independent professionals are now within scope for AML/CFT supervision. In particular, section 5 of the SEA Act addresses the general duties of supervisory authorities. The SEA Act was amended in July 2010, and the amendment Act expanded the supervisory framework to a designated SRO. Thus, the Act gives the full range of powers to the Bar/ICAB Board required to monitor and enforce compliance.
			iii)	Updated guidance should be issued relevant to all DNFBPs.	iii) The GN for AML/ATF regulated financial institutions applies to TSPs and CSPs. Once designated, other supervisory authorities will be responsible for issuing guidance for other DNFBP's. Further, the Bar/ICAB Board is in the process of finalising guidance notes with respect to their professions. UPDATE:

				The Bar/ICAB Board's Guidance Notes were approved by the Minister and issued to the sector in 2012.

25. Guidelines & Feedback	PC	• The Guidance Notes do not provide adequate descriptions of FT techniques, do not cover CFT, are outdated, and are limited in scope. • Among DNFBPs, only trust service providers are covered by the Guidance Notes. • No procedures are in place for providing feedback to FIUs.	i) Review/update the Guidance Notes for completeness and relevance to the current needs of industry, and remove inappropriate exemptions or simplifications in customer due diligence. ii) Develop guidance for FIs and DNFBP relating to latest industry-specific typologies and additional preventative measures. iii) Formalize procedures for providing feedback on SARs.	i, ii) The Regs. have incorporated and expanded upon many of the requirements that were previously in Guidance. These regulations have been made pursuant to section 49(3) of POCA and section 12A of ATFA and revoke the previous regulations. The Bermuda Monetary Authority, as supervisor of financial institutions, has now finalised new guidance to assist with compliance with the revised regulations and various sections of the Proceeds of Crime Act 1997 and the Anti-Terrorism (Financial and Other Measures) Act 2004. The new GN replaces the previous guidance and, along with the Regs. address the issue at point one. Further, in 2012 GNs were issued by the Bar/ICAB Board for lawyers and accountants and by the BMA for the Trust sector. Further, Industry specific guidance for the CSP and Investment Funds sectors are currently being developed. iii) The FIA has a formalized procedure for providing feedback to FIs and other legislated authorities in place to direct how the feedback is to be sent in relation to SAR reporting. Quarterly meetings take place with FIs to provide them with feedback on both general and specific issues that arise. These meetings now occur on a bi-annual basis wherein the FIs are provided with a written report outlining feedback that is specific to their institution along with a review of their relevant industry sector and the overall country review.
Institutional and other measures				
26.The FIU	LC	• The FIU has limited specialized financial analysis capacity. • There is no specific legal provision establishing and empowering the FIU as national centre for receiving and processing SARs and other relevant information concerning suspected ML or FT activities.	Ensure that the new FIA is established and becomes operational, and provide sufficient staffing levels at the existing Police FIU to enable an increased number of ML/FT-related investigations.	The new FIA is now operational and has adequate staff in posts to deal with the number of SARs currently being generated by FIs and other entities. An MOU is in place between the FIA and BPS that allows for the presence of a Police Liaison Officer at the FIA. This assisted in the transition from the FIU to the FIA and also enhances the day to day continuity between the two bodies. An MOU is in place with the FIA and HM

				Customs which allows for the full-time presence of a Customs Liaison Officer at the FIA. This serves to enhance the day to day continuity between the two bodies. Since the IMF assessment of May 2007, the Bermuda Police Service, which was already conducting ongoing money laundering investigations, has undertaken a number of additional money laundering cases. Additionally, since the FIA became operational in November 2008 there have been 13 convictions for money laundering in Bermuda. In respect of these convictions, 6 are a directly related to disclosures, and the other convictions have been supported by SAR information. Currently there are a number of AML related matters before the courts or the subject of ongoing investigation.
27.Law Enforcement Authorities	LC	• Very low number of prosecutions reflects the low priority given to ML and FT by the Police Service.	i) The authorities should make greater efforts to follow up on signs and traces of ML and to initiate non-SAR triggered investigations. ii) Investigating and prosecuting ML/FT cases should be made a priority by law enforcement authorities, with sufficient resources allocated reflecting that priority.	i) The Police FIU has commenced a number of non-SAR triggered investigations. In recent months, two very large ML enquiries have been generated from within the Bermuda Police Service, and subsequently supported with SAR information. ii) The commitment to ML/FT matters was demonstrated in the recent ML prosecution under s.44 POCA. The guilty verdict on all 11 counts reaffirms the efficacy of the anti-ML provisions as well as the skills of the law enforcement and prosecuting teams which worked on this matter over the past 3 years. There have been a number of confiscation orders as well as forfeitures. Further, the Bermuda authorities have been directly responsible for the successful conviction on 5 cases in the United States, while two persons are currently subject to money laundering charges in the Caribbean. Other investigations are currently ongoing. We would note that the current BPS Strategic Plan outlines the high priority which the Services afford ML and FT. It states, in particular: Maintaining capability to match the threat of serious and series offenders who commit crimes

				in Bermuda and internationally; Maintaining capability to investigate all major crime committed in Bermuda; Increasing capability to maximize the benefits o the Proceeds of Crime Act the Confiscated Assets Trust Fund and other statutory provisions, and becoming a centre of excellence for financial investigation. Further, to date there have been an additional 3 convictions for money laundering: 1 in the Magistrates' Court and 2 in the Supreme Court; and 6 persons are currently charged with money laundering offences before the courts and their trials are pending. As stated previously (see Recs. 1 and 2) the BPS has brought 14 money laundering cases before Bermuda's courts. The convictions in 13 of these cases are testimony to the hard work and commitment of the organisation to investigate these matters. Further, in addition to convictions locally, the BPS have provided direct assistance to overseas counterparts in several other money laundering prosecutions. The stated success has been achieved in a climate where the BPS has had to employ additional resources to investigate the upswing of gun and gang activity. The BPS objectives have focussed on guns, gang violence and drugs, and to this end the financial links between these activities have been the focus of the FCU. Of the 6 convictions for ML in 2012, 4 are believed to be related to these predicate activities. In addition the new s.50 amendment to the POCA has resulted in an increase in cash seizures, forfeitures and confiscations. In 2012 35 cash seizures were made and were a direct result of POCA's s.50 amendment.
28.Powers of competent authorities	**C**			
29.Supervisors	PC	• No explicit mandate in the POCA and AML Regulations to a supervisory body to monitor, enforce and sanction for compliance with AML (no CFT application), and unclear application of powers in the regulatory laws to supervise for compliance. • Need to include clear AML/CFT enforcement	i) For purposes of consistency with other sectors, consider extending the definition of covered financial institutions and supervisory powers under the BMA Act to the insurance sector. ii) Establish an explicit mandate for the BMA to	i) Provisions under SEA Act satisfy this recommendation. ii) This has been addressed through the SEA Act.

		and sanctioning powers in the BMA Act and regulatory laws. • The Credit Union Act should provide clear and adequate powers for the BMA to supervise/conduct onsite inspections that can include AML/CFT compliance. • The Banks and Deposit Companies Act does not extend prudent conduct/licensing requirements to compliance with other laws/AML/CFT laws.		monitor, enforce and sanction for compliance with the AML/CFT obligations of FIs and review the adequacy of the proposed Bill to amend the POCA/BMA Act to ensure that it provides a clear and complete mandate to the BMA in all these areas.	
			iii)	Specify clear powers in the Credit Union Act that the BMA, under delegated authority, can supervise and inspect these FIs, including for compliance with AML/CFT obligations.	iii) The SEA Act along with the AML/ATF regulations meets the criteria for compliance with this recommendation. Credit unions are subject to all AML/ATF requirements the same as any other AML regulated financial institution (see section 2(1)(a) of the SEA Act)., as Credit Unions are captured as "deposit-taking business" pursuant to section 4 of the Banks and Deposit Companies Act 1999. The BMA now has a duty to monitor credit unions for compliance with the regulations which includes the power to conduct on-site examinations to test for compliance.
			iv)	Extend in the Bank and Deposit Companies Act, prudent conduct/minimum licensing criteria to compliance with other laws so as to cover AML/CFT legislation.	iv) This has been addressed through Section 6 of the SEA Act.
			v)	Include in the legislation a specific power for the BMA to enforce compliance with the AML/CFT requirements, including for the application of administrative measures and sanctions, as exist in the financial regulatory laws.	v) Provisions made under the SEA Act satisfy this recommendation.
			vi)	Consider clarifying in the proposed Bill to amend the BMA Act that the scope of BMA's AML/CFT supervision includes a monitoring function as well as enforcement and sanctions powers under the regulatory laws.	vi) Provisions made under the SEA Act satisfy this recommendation.
30.Resources, integrity and training	PC	• The existing FIU does not have sufficient qualified personnel to take on its current responsibilities, and to provide continuity in the transition to the new FIA. • The existing FIU does not have a liaison officer named to facilitate the transition from the existing FIU to the FIA, nor does it have adequate staff available to train their successors. • The DPP's office has too many open positions and inadequate efforts have been	i)	Enhance training for BMA staff to facilitate the identification of deficiencies relating to AML/CFT requirements for FIs, including, but not limited to internal controls, CDD, SARs filings, recordkeeping, MLRO qualifications and operations. Increased specialization and focus on AML/CFT supervision, if the insurance and investment business/mutual fund sectors may be given priority.	i, ii) With the commencement of the SEA Act 2008, the Authority was charged with the duty to effectively monitor financial institution's compliance with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (the "Regulations") and to enforce compliance with their provisions. In order to carry out this duty the Authority established a dedicated anti-money laundering and anti-terrorist financing unit ("the AML/ATF Unit") comprised of a

		made to retain professional staff, regardless whether they are Bermudian or non-Bermudian, staff or contract employees. • There is an inadequate prioritization of investigations and prosecutions of AML/CFT cases by the Police Commissioner, AG and DPP. • Training is inadequate at all agencies and at all levels not only in AML/CFT issues including typologies, analysis and international standards, but also in fundamentals such as investigating and prosecuting white collar crime cases, managing complex cases, and criminal procedure. • The FIU is not adequately funded, staffed and provided with technical resources, particularly in terms of technical expertise such as forensic accounting. • The number of positions allocated to the FIU is insufficient, and the fact that police officers assigned to the unit are routinely called on for other police duties further limits available resources. • The funding allocated to the FIU annually for training purposes is insufficient • Staff levels and training of financial supervisors are not adequate for the AML supervision of a financial sector of the size, scope, sophistication and cross-border operations such as that of Bermuda. • Enhance training for BMA staff to facilitate the identification of deficiencies relating to • AML/CFT requirements for FIs, including, but not limited to internal controls, CDD, SARs filings, recordkeeping, MLRO qualifications and operations. • The BMA should enhance its staff capacity to undertake more comprehensive AML/CFT supervision, especially for the insurance and investment business/mutual fund sectors, and to conduct effective consolidated supervision.	ii) The BMA should enhance its staff capacity to undertake more comprehensive AML/CFT supervision, including for the conduct of effective consolidated supervision whether as home or host supervisor. iii) Ensure continuation of the experience and skill in financial investigations in the Commercial Crime Department. iv) A liaison officer should be named and existing FIU staff should train their successors in order to facilitate the transition from the FIU to the FIA.	team of experienced officers assigned to AML/ATF duties. The appointment of a dedicated unit, which works independently of and with the regulatory units, enhances both staff capacity and training capabilities to carry out AML/CFT supervision. In 2009 the Authority conducted some external presentations dealing with AML obligations. In 2010 the Authority conducted a further 6 external presentations. A further 8 outreach presentations are planned for the 2011 year. In addition, in 2010 the AML Team conducted 2 separate week long internal training programmes to develop competencies in supervisory staff to review and evaluate AML compliance during supervisory on-sites. In 2011 a further training seminar will be presented. iii) The Financial Crime Unit has been established as a new department under the Asst. Commissioner of Police Serious Crimes. All officers in the Unit are experienced Detectives, fully trained in financial investigations. Most of the officers have already completed a money laundering or compliance qualification and the remaining are currently involved in related programs. In addition the Unit has a fully trained analyst. Since Bermuda's first Follow-up Report, 7 officers in the FCU now hold Certification as Anti-Money Laundering Specialists with the ACAMS organization. The other officers are in the process of accreditation. Two Sergeants in the Office hold Advanced Diplomas in Compliance with International Compliance Association (ICA). UPDATE: The Ministry of Finance has given the FCU a grant from the Confiscated Assets Fund to ensure that all officers within the FCU are trained in the United Kingdom in Financial Investigation and Confiscation. iv) Two officers from the former FIU have been seconded to the FIA to assist in the transition. Following the completion of the transition a MOU was signed with the FIA and BPS that allowed for the full-time presence of a Police

					Liaison Officer at the FIA to facilitate direct communication and networking between the two agencies.
			v)	The number of open positions in the DPP's office should be remedied, and efforts made to retain professional staff.	v) The Specialist Section within the Office of DPP is fully staffed. The specialist section is tasked with the management and conduct of hearings and the provision of advice in respect to the proceeds of crime, mutual legal assistance and extradition. The section is also specifically tasked with all AML/CFT advice and hearings. The staff compliment of the section includes 1 Senior Legal Counsel Crown Counsel, 1 Crown Counsel, and 2 Crown Counsel – Junior Grade. Training in the department of public prosecutions is on-going in the area of AML/CFT.
			vi)	Sufficient resources should be made available for training of DPP, Customs and Police staff.	vi) See above and below.
			vii)	Efforts should be made to attract qualified personnel to the FIU, and to provide continuity in the transition to the new FIA	vii) The FIA is appropriately staffed and two officers from the former FIU are assisting in the transition.
			viii)	Training should be increased at all agencies and at all levels not only in AML/CFT issues including typologies, analysis and international standards, but also in fundamentals such as investigating and prosecuting white collar crime cases, managing complex cases, and criminal procedure. Assessor training courses offered by CFATF, the IMF and the World Bank should be considered as a means of developing AML/CFT expertise.	viii) Training needs in the FIA and other law enforcement agencies have been addressed through FINTRAC and other authorities on Analytical and Intelligence Training. Additional training courses have been undertaken. Training is ongoing at the FIA. FIA staff have participated in training in the following areas: Tactical Analysis, Financial Intelligence Analysis, Compliance, and Terrorist Financing. Staff continue to attend and actively participate in Conferences, Seminars and Workshops provided by FATF, CFATF, Egmont, other FIUs. Training has occurred locally and internationally involving law enforcement, regulators and foreign FIU staff. Funding for annual training has been budgeted and provided to the FIA. The FIA has also taken part in the Strategic Analysis Course provided by the Egmont Group. It is anticipated that a staff member will be qualified to deliver the SAC Training from June, 2013. All analysts (which includes both

				the Police Liaison Officer and Customs Liaison Officer working at the FIA) of the FIA have taken part in the Tactical Analysis Course also developed by the Egmont Group. The FIA has a member of its analytical team that is qualified to deliver this Tactical Analysis Course. It is anticipated that this course will be delivered to members of the FCU during 2013. The FIA continues to enhance its skills and products by providing local training and presentations to FI's and other organizations upon request. Training has also been provided to the Association of Bermuda Compliance Officers and the Society for Trusts and Estates Practitioners. In respect of training in the DPP Office, since 2009, the members of the Specialist Section continue to train through hands on involvement in Money Laundering prosecutions, Restraint and Confiscation of Criminal Proceeds. Members of the Specialist Section have also attended relevant training in AML/CFT and Fraud overseas. The Specialist Section has also trained other counsel in the Office of DPP in relation to applications for forfeiture of the proceeds of crime and complex case management. As noted previously, training at the BMA is also ongoing.
			ix) The FIA should be adequately funded, staffed and provided with technical resources, particularly in terms of technical expertise such as forensic accounting.	ix) The FIA is adequately funded, structured, staffed and is provided with technical and other resources to fully and effectively perform its mandated function. The FIA has acquired the United Nation's goAML software solution which allows for all reporting entities to file suspicious activity reports (SARs) on-line through a secured environment. The system receives stores, collates and provides feedback on all filed SARs. This has allowed for an effective and efficient disclosure process that has already shown an increase in workflow and disclosures made to law enforcement, foreign FIUs and other authorities

			x) Ensure that the new administrative Financial Intelligence Unit (FIA), is established and becomes operational and provide sufficient staffing levels at the existing Police FIU to enable an increased number of ML/FT-related investigations.	x) The new FIA has been established and is fully functional. Staffing and resource levels are reviewed on a regular basis to ensure that the FIA can effectively carry out its duties.
31.National co-operation	PC	• The policy development and coordination functions of NAMLC are not sufficiently robust to keep up with a heavy agenda of unfinished initiatives. • Coordination and cooperation among agencies is ad hoc and inconsistent.	i) A national AML/CFT coordinator should be appointed and the policy development role of NAMLC should be energized. ii) Systematic mechanisms should be put in place for coordination among and between all AML/CFT agencies and departments. These mechanisms could include assigned duties to individuals for coordination, regularly scheduled meetings and distribution of contact lists.	i) POCA Amendment 2008, clause 8, s. 49 addresses this recommendation. Additionally, the Office of the National Money Laundering Committee has been established and is tasked with progressing Government's (and NAMLC's) AML/CFT initiatives. ii) Coordination among agencies has been further enhanced with regular meetings established between relevant agencies. Further there are arrangements for seconding of staff between agencies and some of the agencies have signed MOU's with each other to ensure maximum cooperation and coordination.
32.Statistics	PC	• Inadequate statistics for offsite and onsite preparation e.g. risk factors, non-resident business. • Although there are several gaps, a useful Range of statistics is maintained on SARs, ML and FT investigations, and confiscations. • Little use is made of available statistics and information to review the effectiveness of AML/CFT systems on a regular basis. • Information on mutual legal assistance, international requests for co-operation, and extradition is incomplete. No data is available on formal requests to the FIU for assistance or whether such assistance was granted. Some data is available on supervisory examinations.	i) Additional statistics should be maintained on amounts of restrained property compared with amounts ultimately confiscated and the types of crimes related to these actions. ii) Also needed is information on the recovery rates of the amounts subject to confiscation orders, and the amounts actually recovered. iii) Statistical systems should be updated and maintained in line with the recommendations in R.32.	i), ii) A record is now kept in the DPP of all cases with current restraint orders in effect; pending confiscation matters with flags on the relevant timelines; as well as orders made for confiscation and forfeiture.. iii) Performance data in relation to FCU's investigations is regularly reported on and FIA statistics are shared with reporting agencies and other appropriate authorities on a quarterly basis. This allows the FIA to produce useful trends and typologies for publication. These trends and typologies are shared with the FIs during their bi-annual feedback meetings in addition to being provided to NAMLC for publication on a quarterly basis.
33.Legal persons – beneficial owners	C			

34.Legal arrangements – beneficial owners	C			
International Co-operation				
35.Conventions	PC	• The SFT and Palermo Conventions have not been extended to Bermuda.	Request that the UK extend the SFT and Palermo Conventions to Bermuda.	As part of the process of getting these Conventions extended to Bermuda, a report is currently being prepared by the Office of NAMLC on the implementation of the provisions of these conventions in domestic legislation. Once the report is presented to the NAMLC in April 2013, it is expected that the necessary steps will be taken to request the UK government extend the Conventions to Bermuda.
36.Mutual legal assistance (MLA)	LC	• There are no specific procedures facilitating expeditious action be taken or establishing precise timelines for response to MLA requests.		The Attorney Generals Chambers has implemented a policy establishing precise timelines to address requests for Mutual Legal Assistance. Further, the BPS continues to assist the Attorney General's Chambers in these matters and is able to turn around MLA requests in an appropriate time frame. The Attorney General's Chambers, in conjunction with the Department of Statistics, developed a computer database program to electronically capture statistical information on MLA Requests.
37.Dual criminality	C			
38.MLA on confiscation and freezing	LC	• There are no specific procedures facilitating expeditious action or establishing precise timelines for responding to MLA by foreign countries with respect to identifying, freezing, seizing or confiscating proceeds of crime or instrumentalities of ML, FT or other predicate offenses. • In addition, there is not statutory provision for external confiscation requests relating to instrumentalities. • There are no arrangements for coordinating seizure and confiscation actions with other countries.	Amend relevant statute to provide for external confiscation requests relating to instrumentalities used in a commission of an ML, FT or other predicate offense.	The Attorney General's Chambers, in conjunction with the Ministry of Legal Affairs and the Department of Public Prosecutions established a Treaties Working Group, and are in the process of making recommendations to Cabinet to request the UK authorities extend a number of treaties with foreign jurisdictions to Bermuda. This exercise will also involve amending relevant domestic legislation, which will include a provision for mutual legal assistance in respect of external confiscation requests for proceeds and instrumentalities of crime and terrorist funds. It is anticipated that these amendments will be enacted prior to year end (December 2013).
39.Extradition	LC	• Concerns regarding undue delays due to the undefined structure of the request process	Review resources available at AGC and Police/FIU to ensure that MLA requests are acted upon in as efficient a manner as possible.	The AGC and the FIA have addressed matters pertaining to resources necessary to ensure that MLA requests are acted upon most efficiently (see also response for Rec. 36). The Attorney General's Chambers and the Department of Public Prosecutions have established processes in place for both initiating and receiving extradition requests.
40.Other forms of co-operation	C			
Nine Special Recommendations				

SR.I Implement UN instruments	PC	• The SFT Convention has not been extended to Bermuda, but Bermuda has implemented UNSCRs 1267, 1373 and successor resolutions by UN Order 2001 and the Al-Qaida and Taliban (UN Measures) (Overseas Territories) Order 2002, both UK Statutory Instruments that apply to its Overseas territories, including Bermuda.		Request that the UK extend the SFT and Palermo Conventions to Bermuda.	As noted under Rec 35, this matter is currently being progressed.
SR.II Criminalise terrorist financing	PC	• The definition of terrorism does not have a reference to the acts covered by the nine conventions referred to in the SFT Convention, and it does not contain a reference to acts taken against international organizations. • There is no reference in the relevant legislation to the financing of terrorist organizations. • There is no reference in the relevant legislation to extra-territorial offenses relating to terrorist organizations.	i) ii) iii) iv)	Amend the ATFA's definition of terrorism to include the acts covered by the nine conventions referred to in the SFT Convention. Amend ATFA to include acts taken against international organizations. Amend the ATFA to include a reference to the financing of terrorist organizations. Amend the ATFA to cover extra-territorial acts relating to terrorist organizations.	i) Provisions under Clause 3 of ATFA Amend. 2008 satisfy this recommendation. ii) Provisions under Clause 3 of ATFA Amend. 2008 satisfy this recommendation iii) It is anticipated that ATFA will be amended to include reference to the financing of terrorist organizations in the near future. UPDATE: The NAMLC Legislative Working Group is finalising a consultation paper which includes recommendations to amend sections 4 and 5 of ATFA to include terrorist organisations. iv) Provisions made under ATFA Amend 2008, Part. IV, s. 17 satisfy this recommendation.
SR.III Freeze and confiscate terrorist assets	LC	• No specific guidance has been issued to the regulated sector concerning its affirmative obligation to implement measures with respect to the UNSCR list. • There are no specific procedures for delisting or unfreezing.	i) ii)	Guidance should be issued to the regulated sector concerning affirmative obligations to freeze assets of persons listed by the UNSCR 1267 Committee and the EU. These affirmative obligations should include incorporating the information into their AML/CFT compliance programs, and reporting to authorities on any transactions that may be connected to terrorist financing. Procedures for delisting requests and the unfreezing of funds should be developed and published.	i) The new GN para 5.304 – 312 provide guidance on freezing of assets and the UN and EU obligations. ii) The Office of NAMLC is working in conjunction with Government House and the UK Foreign and Commonwealth Office to address this issue.
SR.IV Suspicious transaction reporting	PC	• Current law does not require SARs for funds linked to terrorist organizations. • No FT-related SARs have been filed.		Amend ATFA to require FT-related SARs for funds liked to terrorist organizations.	Section 7 (b) of ATFA notes that a person commits an offense if "he knows or suspects that it will or may be used for the purposes of terrorism" and then Section 9 requires that a person has a responsibility to report a belief

				or suspicion relating to, among others, matters addressed in section 7. This would certainly create therefore, a requirement to file SAR's for funds linked to terrorist organisations. The Order designating the FI's required to file SAR's came in to effect on November 15, 2008 thus making the obligation on FI's explicit. All legislative requirements relating to filing of SAR's related to FT are now in place. UPDATE: However, for the avoidance of doubt, we propose to make the amendments to ATFA, and as noted in Rec. 13, NAMLC's Legislative Working Group is finalising a consultation paper which includes recommendations to amend sections 4 and 5 of ATFA to include terrorist organisations. Once these amendments are in force the requirement to file a SAR regarding funds linked to a TF organisation would be encompassed by section 9 of ATFA. It is anticipated that these amendments will be enacted by August 2013.
SR.V International co-operation	C			
SR VI AML requirements for money/value transfer services	PC	• Laws and regulations have been put in place but licenses have not yet been granted and effective implementation has not yet been tested.	Licensed money transfer services should be required to maintain a list of their agents and to make this list available to the authorities. Since the new legal regime for money service business is untested, there is no basis for evaluating effective implementation.	As of August 2008 two financial institutions have been granted a license under the Money There are 2 licensed money service businesses currently operating in Bermuda. Both are subject to the same AML obligations as other financial institutions in Bermuda. The relevant regulations do not make any provision for the utilisation of agents in the operation of a money service business and neither business operates utilising the services of agents
SR VII Wire transfer rules	NC	• No recordkeeping requirements for full originator information. • The threshold for CDD and full originator recordkeeping requirement is US$10,000, significantly above the FATF level of $1,000. • No provisions for originator information to be included and retained in domestic wire transfers. • No provisions that require intermediary and	i) Reduce the minimum recordkeeping threshold to the equivalent of US$1,000, and specify that full originator information should be obtained and retained for the minimum period in accordance with SRVII. ii) Ensure that the Regulations, Guidance Notes, examination procedures and general oversight of FIs includes compliance with wire transfer	i) Regulations 23 and 26 specifically address this recommendation. ii) New Regulations -and Guidance Notes were issued in March 2010 which meets the FATF requirement. In particular, Regs21 – 32 are

		beneficiary FIs in a wire transfer payment chain to transmit originator information. • No requirements for risk-based procedures for wire transfers not accompanied by complete originator information. Neither the Regulations nor the Guidance Notes (Appendix E) include the lack of such information wire transfers as a basis for deciding if a transaction is suspicious. • No systems to review and sanction for compliance with wire transfer requirements under SRVII		requirements as set out under all the essential criteria of SRVII. iii) Include lack of complete originator information as a basis for determining whether a suspicious activity report is filed with the FIU.	part of a new Part IV which deal with SR VII. iii) Reg. 28 specifically addresses this recommendation.
SR.VIII Non-profit organisations	PC	• The authorities have not undertaken a review of laws and regulations related to non-profit organizations to ensure that they cannot be misused for financing terrorism. Recordkeeping requirements and investigative procedures are not consistent with FATF standards.	i) ii) iii)	The authorities should undertake a review of laws and regulations related to non-profit organizations to ensure that they cannot be misused for financing of terrorism. Recordkeeping requirement should be established in line with C. SR VIII 3.4. The authorities should implement measures to ensure that they can effectively investigate and gather information on NPOs, as called for in C. SR VIII.4	i.),ii),iii) A draft framework to ensure that FATF requirements relating to NPO's are appropriately met is currently being considered. In July 2012 Cabinet approved amendments to the legislation to include supervision of charitable sector, adequate know your beneficiaries provisions, sharing of information provisions, investigative provisions and monitoring provisions. As a result of the recent change in Government, the responsibility for charities has moved from the Ministry of Government Estates and Information Services to the Ministry of Home Affairs. The Ministry is in the process of issuing a further Cabinet Memorandum and it is expected that this initiative will be progressed further this year as the newly elected Government committed to amending the Charities Act 1978 in last month's Throne Speech.
SR.IX Cross Border Declaration & Disclosure	NC	• Although seizures of cash by customs officers occur on a limited basis, currently no disclosure or declaration system for either incoming transportation of currency (as proposed) or outgoing transportation of currency is in place. • The scale of civil and criminal money fines is not sufficiently dissuasive. • Domestic cooperation on customs issues is insufficient. • Information-sharing between Customs and other law enforcement authorities is inadequate. • There was no consideration given to a	i) ii) iii)	Adopt the declaration system now being considered by the authorities; Cover outgoing transportation of currency by the declaration system, and not just incoming as currently planned; Amend relevant laws to substantially increase the scale of civil money fines	i) The Collector of Customs, in exercise of the powers conferred by section 16 of the Revenue Act 1898 (RA) has issued "The Customs Traveler Declaration Notice 2010" (BR 39/2010). In this Notice the Collector requires, among other things, that every person arriving at Bermuda or leaving Bermuda must declare when they have currency in excess of $10,000. ii) The Customs Traveler Declaration Notice 2010 covers both incoming and outgoing transportation of currency. iii) The Revenue Act 1898 has been amended so that in the new section 86(2), the fine for the indictable offence of a false declaration has

		procedure to notify other customs agencies of search and detention reports relating to precious metals other than gold, as well as to precious stones		and criminal penalties for customs violations;		been upgraded from the level 5 amount ($30,000) to the level 7 amount ($100,000). The term of imprisonment has likewise been increased from 2 years to 10 years in order to correlate with the increase in the level of the fine.
			iv)	Enhance domestic cooperation on customs issues;	iv)	Domestic cooperation has been enhanced through NAMLC and Bermuda Law Enforcement Review Group; and there is ongoing dialogue between relevant agencies, as required. In 2010, the BPS FCU assisted in training HMC staff and BPS personnel in the area of cash seizures and bulk currency smuggling. Additionally, an MOU is in place with the FIA and HM Customs which allows for the full-time presence of a Customs Liaison Officer at the FIA. This serves to enhance the day to day continuity between the two bodies.
			v)	Ensure sufficient information-sharing between Customs and other law enforcement authorities;	v)	Periodic meetings are held between the relevant agencies and there is a MOU in place that allows for formal transmission of appropriate information. Customs routinely informs the Police Financial Crime Unit (FCU) and the Financial Intelligence Agency (FIA) of all currency seizures and receives feedback regarding suspects from the FIA.
			vi)	Amend the Revenue Act to provide clear legal authority, as now exists in POCA, to charge directors and officers who have connived with the corporation with an offense.	vi)	Bermuda has amended the Revenue Act of 1989 so that where a body corporate has been proved guilty of committing an offence under the said Revenue Act, any director, officer, person or the body corporate who committed the act, consented or connived shall be guilty of the offence held liable and punished accordingly.
			vii)	In addition, consideration should be given to (1) amending the relevant laws to provide the Customs Department with explicit legal authority to seize, detain, and confiscate currency in the event of a false declaration and (2) developing a	vii)	(1) Section 16 of the Revenue Act 1898 has been amended to expand the Collector's power to require persons to make customs declarations to include the making of customs declarations respecting currency and negotiable instruments. In addition the new Revenue Act section 86(3) provides that any article (including currency) is liable to

				procedure to notify other customs agencies of search and detention reports relating to precious metals other than gold, as well as to precious stones.	forfeiture if that article is not declared or are falsely declared. Effective June 1st 2012 two separate but linked Revenue Amendment Acts (2012:3 and 2012:16) significantly enhanced customs powers to search goods and persons. As a result all customs summary powers of search are now exercisable in respect of any cash, the importation or exportation of which, is restricted or prohibited by or under any Act. Such searches can now be made at any time (not just at the time of arrival/importation); in a customs area (or outside a customs area in cases of hot pursuit); or on board any vessel or aircraft being lawfully boarded by customs. Customs powers to search under a Magistrate's warrant have been similarly enhanced to allow for search of any place suspected of containing cash (s.97 RA 1898). These changes affected the following sections of the Revenue Act 1898: S. 2 – Interpretation (refer to definition of "uncustomed goods", which has been amended and now includes currency and negotiable instruments) S. 82 – Powers of customs officers to board any ship, secure hatches, mark goods S. 96 – Search of person suspected of carrying uncustomed goods S. 97 – Grant of search warrant for smuggled goods S. 98 – Power of search It is worth noting that the authority for police officers to exercise customs search powers has been preserved (refer to definition of "customs officer" in RA S.2). (2) Procedure already exists, information is presently sent to WCO CEN database, and CCLEC RILO database.