



CARIBBEAN FINANCIAL
ACTION TASK FORCE

Third Follow-Up Report

Turks & Caicos Islands

October 25, 2010

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TURKS & CAICOS ISLANDS: THIRD FOLLOW-UP REPORT

I. Introduction

1. This report represents an analysis of the Turks and Caicos Islands' report back to the CFATF Plenary concerning the progress that it has made with regard to correcting the deficiencies that were identified in its third round Mutual Evaluation Report. The third round Mutual Evaluation Report of the Turks and Caicos Islands was adopted by the CFATF Council of Ministers in October 2008 in St. Kitts & Nevis. The Turks and Caicos Islands presented a follow-up report at the May Plenary in Dominican Republic at which time it was determined that the Turks & Caicos Islands would be required to report at the 2010 November Plenary. Based on the review of actions taken by the Turks & Caicos Islands since its last follow-up report to meet the outstanding recommendations made by the Examiners, a recommendation would be made as to whether the Turks & Caicos Islands would remain on expedited follow-up or be placed on regular follow-up.
2. The Turks & Caicos Islands received ratings of PC or NC on twelve (12) of the sixteen (16) Core and Key Recommendations as follows:

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

3. With regard to the other non- core or key Recommendations, Turks and Caicos Islands was rated partially compliant or non-compliant, as indicated below.

Partially Compliant (PC)	Non-Compliant (NC)
R. 9 (Third parties and Introducers)	R. 6 (Politically Exposed Persons)
R. 15 (Internal controls, compliance & audit)	R. 7 (Correspondent banking)
R. 16 (DNFBP-R. 13-15 & 21)	R. 8 (New technologies & non face-to-face business)
R. 17 (Sanctions)	R. 11 (Unusual transactions)
R. 18 (Shell banks)	R. 12 (DNFBPs – R. ,6,8-11)
R. 20 (Other NFBP & secure transaction techniques)	R. 19 (Other forms of reporting)
R. 29 (Supervisors)	R. 21 (Special attention for higher risk countries)
R. 31 (National cooperation)	R. 22 (Foreign branches & subsidiaries)
R. 32 (Statistics)	R. 24 (DNFBP-regulation, supervision and monitoring)
R. 33 (Legal persons – beneficial owners)	R. 25 (Guidelines and feedback)
R. 34 (Legal arrangements – beneficial owners)	R. 30 (Resources)
R. 38 (Mutual legal assistance on confiscation and freezing)	SR. VII (Wire transfer rules)
SR. VI (AML requirements for money and value transfer services)	SR. VIII (Non-profit organizations)
	SR. IX (Cash couriers)

4. The following table is indented to assist in providing an insight into the level of risk in the main financial sectors in the Turks & Caicos Islands.

Size and integration of the jurisdiction's financial sector

		Banks	Other Credit Institutions*	Securities	Insurance	TOTAL
Number of institutions	Total #	9		6	Not Available	
Assets	US\$	1,666,729,000		393,290,518	n/a	
Deposits	Total: US\$	899,581,000		n/a	n/a	
	% Non-resident	30% of deposits				
International Links	% Foreign-owned:	84% of assets	% of assets	n/a% of assets	% of assets	% of assets
	#Subsidiaries abroad	0		0	0	

* Please include savings and loans institutions, credit unions, financial cooperatives and any other depository and non-depository credit institutions that may not be already included in the first column.

* If any of these categories are not regulated, please indicate so in a footnote and provide an estimate of the figures

II. Summary of progress made by the Turks & Caicos Islands

2. At the time of the Mutual Evaluation of the Turks and Caicos Islands, the Examiners identified some deficiencies with the then recently enacted Proceeds of Crime Ordinance (POCO) and suggested that amendments be made to address these issues. Amendments or enactment of legislation was also suggested for deficiencies noted in Recs. 5, 6, and the development and issuance of guidance notes by the Financial Services Commission (FSC) for its constituents. The Turks and Caicos Islands converted the Code into regulations and accordingly the Proceeds of Crime (Amendment) Ordinance, 2009 and the Proceeds of Crime (Amendment) Ordinance, 2010 were enacted and came into force on December 8, 2009 and May 24, 2010 respectively. The Control of Drugs Trafficking Ordinance and the former Proceeds of Crime Ordinance were repealed; however transitional provisions keep them in force to deal with matters that were brought under them. The Counter-Terrorism (Terrorist Financing, Money Laundering and Certain Other Activities: Financial Restrictions) (Turks and Caicos Islands) Order, 2010 (2010 Order) also came into force on March 18, 2010. This Order was extended to the Turks and Caicos Islands by the United Kingdom. The Financial Services ((Financial Penalties) Regulations, 2010 have been signed and published and will be in effect from October 29, 2010. A new AML/CFT Code has been drafted and is expected to be enacted shortly.

Core Recommendations

Recommendation 1

3. As stated above, the amended POCO now clearly repeals the previous legislation thereby removing the previous ambiguity as to what legislation was in force and effect. Further, the omissions (Section numbers) in Schedules 5 and 6 of the POCO have been inserted. With regard to the Examiners recommendation that the enabling provisions for the

offences of ‘directing terrorism’, ‘people trafficking’ and ‘arms trafficking’ (Schedule 1 to the POCO), the offences have been deleted and the remaining offences (drug trafficking and money laundering) have been defined in amendments to Section 2 of the POCO. Section 119(2), which the Examiners found provided criminals with the opportunity to escape liability by merely showing that the property was obtained for adequate consideration has been amended to require the defendant to also show that he did not know or suspect that the property was criminal property. It should be noted that the amendments to the POCO (Sections 117-119 and Part III) also address the recommendations made by the Examiners with regard to Recs. 2 and 3, which were both rated LC.

Recommendation 5

4. With regard to the Examiners’ recommendation that measures be enacted that require financial institutions¹ to undertake CDD when carrying out occasional transactions that are wire transfers, Part II of the Anti-Money Laundering and Prevention of Terrorism Regulations, 2010(AML/PTFR) provides for CDD measures which are applicable to ‘business relationships’ and ‘occasional transactions’ (definitions provided at Regulations 2 and 4 respectively). There are however no specific provisions for occasional transactions that are wire transfers. Regulation 4(2)(a) does refer to a specified amount of \$1,000 for transactions carried out in the course of money service business. However, E.C. 5.2 is intended to be applicable to all financial institutions and not just MSBs. Accordingly, the Examiners recommendation has not been met.
5. The Examiners’ recommendations pertaining to financial businesses verifying the identity and authority of persons acting on behalf of legal persons or legal arrangements and verification of the beneficial owner has only been partially met through Regulation 5 of the AML/PTFR. Regulation 5 provides for financial businesses to verify any person acting on behalf of customer who is a legal person is authorized to do so and identify and verify that person and to conduct CDD on legal persons and legal arrangements. There is still however no requirement pertaining to the determination of the natural person who ultimately owns or controls customers that are legal persons or legal arrangements. (E.C. 5.5.2(b)). Additionally, there is no requirement to verify the legal status of the legal person or legal arrangement. (E.C. 5.4(b)).
6. Regulation 11(1) of the AML/PFTR requires financial businesses to perform CDD before the financial business establishes a business relationship or carries out an occasional transaction; where they have doubts about the veracity or adequacy of previously obtained customer identification data, where there is a suspicion of ML or TF and at other appropriate times as determined on a risk sensitive basis. Pursuant to Regulation 16(2) of the AML/PFTR a financial business “shall not set up or maintain a numbered account, an anonymous account or a name in which it knows, or has reasonable grounds to suspect, is fictitious.” This requirement meets the Examiners’ recommendation with regard to anonymous accounts. With regard to the sensitization campaign, the FSC held an AML seminar in May 2010 on the new provisions of the POCO and the Regulations. Another such seminar was held in September 2010 for Money Transmitters, while a similar seminar is expected to be held in November 2010 for Trustees. The new POCO and

¹ The AML/PTFR refers to financial business which is defined at Regulation 2 to include all the businesses and activities listed in Schedule 2 of the Regulations. Accordingly, the report will use the term financial business(es) instead of financial institutions when referring to the TCI legislation.

Regulations have also been posted on the FSCs website and are also available on the TCI Government website since August 2010. Additional training in CDD with regard to PEPs was also provided to relevant stakeholders.

Recommendation 10

7. Regulations 18 and 19 of the AML/PTFR provide for record keeping requirements that comply with FATF Recommendation 10. Accordingly, the Examiners' recommendation has been met.

Recommendation 13

8. As noted in the Second Follow-Up Report, the TCI Authorities revised the Suspicious Activity Reporting form and distributed it with attached guidance notes on August 10, 2009. There were also further meetings with industry representatives (August 14, 2009), which included the handling of Suspicious Activity Reports (SARs). The FSC seminars held in May and September 2010 addressed the issue of the timely filing of SARs specifically confirming to the industry that a SAR should be filed without delay and within twenty-four (24) hours. As discussed previously, a review of the Guidance shows that the provision for filing states as follows: 'A SAR should be made as soon as the knowledge or suspicion that criminal proceeds exist has arisen, especially if consent may be required, or at the earliest opportunity thereafter'. This does not appear to narrow the Examiners concerns that the time frame given by the POCO was too broad; with the industry interpreting it to mean time periods that ranged from 24 to 30 days at the time of the Evaluation. The recent seminars should result in timelier filing. The Authorities have stated that consideration may be given to amending the Guidance Notes to clarify the expectation that the SAR reporting should be made as soon as possible and within twenty-four (24) hours. The Examiners' recommendation has been substantially met. The Authorities have not indicated whether any guidance was given with regard to the reporting of unusual transactions.

Special Recommendation II

9. There have been no amendments to the summary penalties for terrorism and terrorist financing offences and no indications that any review has been done in this regard as recommended by the Examiners. Additionally, the Examiners' recommendation that "directing terrorism" be defined as an offence has not been addressed. There also has been no amendment to the mens rea with regard to the offences in the Terrorism UN Order and the AL Qa'ida Order to make them consistent with the description set out in the Anti-Terrorism Order. While this is an issue that only the United Kingdom can address, the TCI Authorities are giving consideration to creating a Prevention of Terrorism Ordinance. It is to be noted that the newly enacted 2010 Order 'sets out new powers for the Governor of the Turks and Caicos Islands to direct persons operating in the financial sector to take certain action in respect of business with persons in a non-EEA country of money laundering, terrorist financing or proliferation concern,' however there are no measures in the Order that address the recommendations that were made by the Examiners.

Special Recommendation IV

10. The Examiners recommended that the reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organisations or those who finance them and that the obligation to make a STR related to terrorism should include attempted transactions. Toward this end, the TCI has decided to request the extension of the relevant sections of the UK Terrorist Financing Act to the TCI by Order in Council. As noted before this measure would provide the legal framework that would allow the Examiners' recommendation to be addressed. The Money Laundering Reporting Authority (MLRA) has agreed to request the extension of the UK Terrorist Financing Act to the TCI and the request has actually been made. The Authorities have also noted that the newly enacted 2010 Order includes provisions on reporting, however the reporting is based on a 'direction' issued by the Governor and not on STRs. Accordingly, the Examiners' recommendations pertaining to SR IV have not been met.

Key Recommendations

Recommendations 23

11. As noted in the Second Follow-Up the TCI has met the Examiners' recommendations under this Rec. as it pertains to the 'fit and proper' testing requirement and the implementation of the MTO. The FSC is still currently considering the inclusion of collective investment schemes 'Core Principles' in their supervisory framework and accordingly that recommendation remains outstanding. It should also be noted that the FSC has completed the application process to become a member of IOSCO.

Recommendation 26

12. The TCI Authorities have published and issued a 2009-2010 Annual Report containing trends and typologies. The recommendation that the FIU issue monthly reports containing statistics on STRs, trends and typologies has not been addressed, however, the Authorities have indicated that monthly reports will be provided by the FIU to the MLRA. The issue regarding the Head of the FIU having independence with regard to budget matters is the only matter outstanding for this Recommendation. In that regard however, a meeting was held last month between the Commissioner of Police (COP), his Deputy, the Attorney General, his Deputy and the FSC at which the COP confirmed that he had decided that a separate independent body should be created. Follow-up meetings will be held to compose recommendations to the Governor as to the model to be used, budgeting etc.

Recommendation 35

13. The situation remains the same as stated in the previous report in that the matter was considered by the MLRA and that a request is to be made to the UK Foreign and Commonwealth Office to have the Conventions extended to the TCI. Accordingly, the Examiners' recommendation has not been met.

Recommendation 36

14. The Examiners' recommendation has been previously met with regard to the rendering of mutual legal assistance for requests dealing with taxes. To date, the TCI has fifteen (15) signed Tax Information Exchange Agreements (TIEA).

Recommendation 40

15. The situation with regard to Recommendation 40 remains the same as was stated in the previous Follow-Up Report. The stipulation of specific standard operating procedures for dealing with the execution of request received is still under review. As to the Examiners recommendation that the FSC consider entering into MOUs with other foreign supervisory authorities so as to facilitate the effective exchange of ML/FT information, the Authorities have noted in their updated matrix that the Financial Services Commission Ordinance (FSCO) adequately allows for the exchange of information. However, the FSC is in the process of negotiating MOUs with several Caribbean jurisdictions. Accordingly, the Examiners' recommendation has been met. It is expected that the TCI Authorities will provide an update of the MOUs that have been entered into.

Special Recommendation I

16. There have been no changes from the previous report. The Examiners' recommendation for the full implementation of the UNSCRs remains outstanding.

Other Recommendations

Recommendations 6 and 7

17. With regard to meeting the Examiners' recommendation as they pertain to PEPs, the Authorities have noted that the AML/PTFR provides for PEPs at Regulations 6 and 13 of the AML/PTFR. Regulation 6 provides a comprehensive definition of PEPs while Regulation 13 provides definitions of 'enhanced due diligence' and 'enhanced ongoing monitoring' and states the circumstances under which a financial business shall apply enhanced due diligence and undertake enhanced ongoing monitoring. Those circumstances include where the business relationship or occasional transaction is with a PEP and also where a PEP belongs to a certain category of persons e.g. beneficial owner of the customer of third party for whom a customer is acting (Regulation 13(d) and (e)). The measures however do not specifically address the requirements of E.C. 6.2 and so do not meet the Examiners' recommendations with regard to approval of a financial institution's relationship with a PEP. With regard to Rec. 7, Regulation 16 of the AML/PTFR provides that banks are not to enter into or continue a correspondent relationship with a shell bank or have any dealings with a bank that is known to permit its accounts to be used by shell banks. While this goes towards limited compliance with the Rec.7 other issues remain outstanding. The Authorities have indicated that these outstanding issues will be addressed in the new AML/CFT Code. Accordingly, the Examiners' recommendations have not been met with regard to Recs. 6 and 7.

Recommendation 8

18. With regard to Rec. 8, the Examiners recommended that financial institutions should have measures in place to deal with the misuse of technological developments and that the business of mortgage lending should be brought under a license regime which would

make it subject to the AML/CFT regime. In the current matrix the TCI Authorities have identified Regulation 13 of the AML/PTFR as being relevant to meet the Examiners' recommendation(s). However, this citation is not relevant to the issues raised by the Examiners. Based on the aforementioned, none of the recommendations have been met for this Recommendation.

Recommendations 9

19. Regulation 14 of the AML/PTFR provides for reliance on introducers and intermediaries. The Examiners' first recommendation has not been met because Regulation 14(2)(c) requires that the intermediary or introducer will provide the information in the record upon request of the financial business and not immediately and up front at the start of the relationship. The second recommendation is partially met by Regulation 14(1)(a) in that the definition of a 'foreign regulated person' includes a provision that requires a framework that is consistent with the FATF Recommendations (See. Reg. 8(1)(c)(i)). However, there is no provision to ensure that there is compliance with the CDD requirements set out in FATF Recs. 5 and 10. Regulation 14(3) provides that the financial business remains ultimately liable for any failure to apply the measures as required by E.C. 9.5. There appears to be an overlap in the Examiners' fourth recommendation with the first and part of the second recommendation; both of which have not been met. Accordingly, the fourth recommendation remains outstanding. It should be noted that Regulation 14 makes provision for compliance with E.C. 9.2.

Recommendations 11

20. Regulation 17(2)(a) of the AML/PTFR expands the scope of attention for unusual transaction patterns to include characteristics of size and purpose as noted in E.C 11.1 and meets the recommendation made by the Examiners. With regard to the two other recommendations made by the Examiners, they are not met by either Regulation 17 or 18 of the AML/PTFR and consequently remain outstanding.

Recommendations 12

21. As noted in the previous Follow-Up Report, the TCI Authorities have sensitized the relevant new businesses and professions about their AML/CFT obligations under the recently enacted legislation. Regulation 23 provides that the FSC is the supervisory authority for Non-Regulated Financial Businesses (NRFBs). Accordingly, the Examiners' recommendation pertaining to a determination of the supervisory authority for the precious metals and stones sector, the market participants, and other relevant DNFBPs have been addressed. The amendment to the POCO and the newly enacted AML/PTFR no longer contain the ambiguous DNFBP category² referred to by the Examiners. The entire DNFBP sector essentially comprises any financial businesses that are not regulated persons. Accordingly, the Examiners' recommendation is moot. The Authorities have not given any indication as to whether any action has been taken with regard to maintaining a structure that would separate lawyers DNFBP duties relative to financial or real estate transactions from their other legal duties. There has also been no indication as to whether consideration has been given to using the Bar Association as a channel for

² 'Dealers in goods of any description involving a cash payment of \$50,000 or the equivalent in any currency.'

training of industry practitioners. The recommendations pertaining to the Gaming Inspectorate have not been met.

22. It should be noted that the amended POCO and AML/PTFR provide the FSC with many supervisory powers over the NRFBs. These powers include the registration of businesses falling within this category; the maintenance of the register; the monitoring of the sector for AML/CFT compliance; the issuance of directives and the application of administrative penalties. The effective implementation of these and other measures pertaining to the NRFBs cannot be determined since the legislation has only been recently passed and it is expected that the TCI Authorities will provide the relevant implementation information going forward.

Recommendation 15

23. As noted in the previous report, the Examiners' first recommendation pertaining to the screening of policy manuals has been met. Based on the updated matrix, only one additional recommendation has now been met. This recommendation pertains to the formalization of financial institutions' screening policy for new personnel. Regulation 17(1)(d) requires that financial businesses establish, maintain and implement risk sensitive policies, systems etc. to prevent ML and TF including policies, systems and controls relating to the screening of employees. An updated status of the other recommendations has not been addressed in the most recent matrix and so it is assumed that their status has not changed. Accordingly, those recommendations have not been met.

Recommendations 16

24. With regard to Rec. 16, the regulation of DNFBPs is the responsibility of the FSC pursuant to Regulation 23 as noted above for Rec. 12. With regard to training for DNFBPs on the filing of STRs, the FCU has met with and advised DNFBPs of the requirements for filing STRs. The recommendation that the relevant supervisory authority per category of DNFBP should issue guidelines has not been addressed and consequently has not been met. The AML/CFT regime for DNFBPs in the TCI is new and it is hoped that full implementation will occur quickly. At this time however two of the Examiners' recommendations remain outstanding.

Recommendation 17

25. In addition to the implementation action being taken by the FSC against several entities, regulations have been drafted in relation to administrative penalties. The Authorities have stated that the regulations (Financial Services (Financial Penalties) Regulations, 2010) have been approved by the Advisory Council and have been signed by the Governor and published. They will come into force on October 29, 2010. This will satisfy the Examiners' recommendation that the FSC be provided with the power to impose financial sanctions without court order in the case of non-compliance with AML/CFT rules or regulations. The following table shows the enforcement action taken by the FSC for 2010.

FSC Enforcement Action 2010

No.	Division	Action taken	Status of Action
1.	Insurance	Revocation of Insurance Sub-Agent Licence	Completed
2.	Insurance	Cease and Desist	Ongoing
3.	Insurance	Cease & Desist	Ongoing
4.	Insurance	Cease & Desist	Completed
5.	Insurance	Cease & Desist	Ongoing
6.	Insurance	Cease & Desist	Completed
7.	Insurance	Cease & Desist	Completed
8.	Bank & Trust	Revocation of Bank Licence	Completed
9.	Bank & Trust	Revocation of Licence	Completed
10.	Company Management	Revocation of Licence	Completed
11.	Company Management	Revocation of Licence	Completed
12.	Investment Dealer	Imposition of penalty Fines for non-filing of audited financial statements	Completed
13.	Mutual Fund	Revocation of Licence	Completed
14.	Mutual Fund	Revocation of Licence	Completed
15.	Mutual Fund	Revocation of Licence	Completed

Recommendation 18

- 26.** Pursuant to Regulations 16(1)(a) and (b) of the AML/PTFR, ‘a bank that carries on a banking business in or from within the Islands shall not enter into or continue a correspondent banking relationship with a shell bank and shall take appropriate measures to ensure that it does not enter into, or continue, a correspondent banking relationship with a bank that is known to permit its accounts to be used by a shell bank.’ While the general requirements meet the recommendations made by the Examiners (E.C. 18.2 & 18.3), they are only applicable to banks and not financial institutions as required by the FATF Recommendations. The Examiners’ recommendations have therefore only been partially met since the provisions need to be extended to all financial institutions.

Recommendation 20

27. The TCI Authorities have through amendments to the POCO and the AML/PTF brought DNFBPs under a regulatory. As previously noted, the FSC has been tasked with the oversight of this sector, which is called the Non Regulated Financial Businesses (NRFB). The Examiners' recommendation that consideration be given to assessing the ML and FT risk in the construction industry has not been addressed, however the Authorities have indicated that the issue will be put on the agenda of the upcoming meeting of MLRA. As noted in the previous report casinos in the TCI have been given access to credit card facilities.

Recommendation 21

28. The FSC is still considering the Examiners' recommendation that the FSC should promote an effective implementation of a country risk management regime with regard to AML/CFT and in that regard promote an effective implementation of provisions 4.18 and 4.23 of the Code amongst licensed institutions. Regulation 13(2)(b) of the AML/PTFR requires a financial business on a risk sensitive basis to apply enhanced due diligence where a financial business proposes to have a business relationship with a person connected to a country that does not apply or insufficiently applies the FATF Recommendations. However there are still no measures with regard to counter measures for countries who do not or insufficiently apply the FATF Recommendations. The Examiners' recommendations have been partially met.

Recommendations 22

29. Pursuant to Regulation 10 of the AML/PFTR, a relevant financial business that has a branch or subsidiary in a foreign jurisdiction must comply with the Regulations and Code to the extent that the laws of the country permit. The Examiners' recommendation has been met.

Recommendation 24

30. As noted above in discussions on Recs. 12 and 16, a regulatory regime for DNFBPs has been established in law through the POCO and the AML/PTR. Based on Regulation 23 the FSC is the supervisory authority for NRFB in the TCI. An implementation plan has however not been established The Examiners' recommendations have therefore not been met.

Recommendation 25

31. With regard to contacting and working with the relevant DNFBPs towards implementation of the AML/CFT framework, Part VII of the POCO now provides for the supervision of DNFBPs and provides the supervisory organisation with enforcement and other powers in this regard. As noted previously, the FSC is the supervisory authority for the NRFB sector. (See. Discussion above at Rec. 12). With regard to the issuance of guidelines to the DNFBPs, no guidelines have been issued as yet since the new supervisory regime has only been recently enacted. The Examiners' recommendation is therefore not met. No action has been taken by the FSC with regard to the issuance of trends and typologies to increase awareness amongst industry practitioners or providing lists or other information on terrorist and terrorist organisations to the regulated entities. Accordingly, this recommendation has not been met.

32. As noted in the previous report, the FSC's restructuring has begun, it should be noted that the staff compliment has been increased over the last year by five (5) persons in mid to senior level positions. The FSC is currently advertising for three (3) additional posts. . The Examiners' recommendation has been previously met. The other recommendations pertaining to the establishment of written instructions to regulated entities and the issuance of sector specific guidelines have not been met. The majority of the Examiners' recommendations remain outstanding for Rec. 25.

Recommendation 29

33. With regard to Rec. 29, the Examiners recommended that the Registrar of Insurance and the Registrar of Co-operatives³ be given adequate powers of enforcement and sanction against financial institutions their directors and senior management for failure to comply with AML/CFT requirements, the Financial Services (Financial Penalties) Regulations, 2010 address this issue. (See above at Rec. 17). As noted in the previous matrix and report, the FSC has prepared draft regulations which provide for financial penalties and fines. The regulations will inter alia provide the FSC with the authority to impose financial sanctions independently. The draft regulations have been distributed for consultation and it is now expected that they will be enacted before October 31, 2010. Given the status of the corrective legislation, the Examiners' recommendation has not been met.

Recommendation 30

34. As a result of the economic downturn, the issue of law enforcement agencies staffing constraints has not been addressed. With regard to the structure of the FSC as noted above the FSC as a result of an organizational review has created new posts and hired five (5) new staff within the last year. There has still been no AML/CFT training for the Gaming Inspectorate and the Examiners' recommendation has therefore not been met.

Recommendation 31

35. The MLRA continues to meet at least once every quarter. In response to the Examiners' recommendation that the MLRA should develop and implement policies and activities to combat ML/FT; including the assessment of the effectiveness of operational systems, the TCI Authorities have noted that they and the FSC have conducted AML training in May 2010 for the industry with further training scheduled for September 2010 and onwards. There is however no update given with any arrangements have been made to formalize the joint meetings with law enforcement in an effort to develop policies and activities to combat ML/FT and also monitor adherence. Accordingly, this recommendation has only been partially met. With regard to the recommendation that the Principal Crown Counsel attend the meetings of the MLRA, the updated matrix notes that the MLRLA has now invited the Deputy Attorney General (responsible for overall oversight of all departments), the Principal Crown Counsel (Criminal/Civil) and Senior Crown Counsel (Commercial/Civil) to the meetings. Accordingly, the Examiners' recommendation has been met.

³ The current title to the posts noted as Registrar of Insurance and Registrar of Cooperatives is 'Head of Insurance.'

Recommendation 32

36. The Authorities have noted in its current matrix that a system for more comprehensive statistics has been introduced and that this is reflected in the MLRA's Annual Report for 2009. While this is positive progress with regard to the maintenance of statistics, it does not address the issue of comprehensive statistics not being maintained by all competent authorities or the review of these statistics to determine the effectiveness of the AML/CFT systems. Accordingly, the Examiners' noted deficiencies have only been partially addressed.

Recommendations 33

37. The TCI Authorities have not provided any updates with regard to this Recommendation and accordingly, the Examiners' recommendation that guidelines in relation to the issuance of bearer shares be developed, and that procedures should be developed to deal with instances where bearer shares are held by an institution outside the TCI have not been met. The FCU had noted previously that they had planned to host a seminar in September 2009 with regard to ensuring that all legal persons are made aware of the POCO and Code requirements for reporting suspicious transactions.

Recommendations 34

38. In its updated matrix, the TCI Authorities have noted that training was arranged in February 2010 in London, UK for the Judiciary, Prosecutors and key law enforcement officials. While this is commendable it is unclear as to how this addresses the recommendations made by the Examiners with regard to the FCU ensuring that all persons associated with Legal Arrangements be made aware of the POCO and the MLRA Codes regarding the reporting of suspicious transactions. The new matrix also notes that training has been given by the FCU, and raises the issue as to whether the FCU's training programme including information on Legal Arrangements. However, it should be noted that the FCU's remit at the time of the Mutual Evaluation included AML/CFT training and so unless another agency is responsible for AML/CFT training then it is within the scope of the FCU's responsibilities. It appears therefore that the Examiners' recommendation with regard to training on matters relative to Legal Arrangements has not been met. As noted in the previous matrix, the FCU is now in the planning stage for formalized presentations in the remaining industries.

Recommendations 38

39. With regard to Rec. 38 and the development of administrative guidelines to deal with the rendering of international cooperation in a timely manner and the stipulation of specific standard operating procedures for dealing with the execution of request received, the Examiners' recommendation will be tabled for consideration by the MLRA. There has been no additional update from the previous matrix. The Examiners' recommendation has not been met.

Special Recommendations VI

40. As noted in the previous Follow-Up Report, the issue of guidelines for the money remittance sector has not been addressed and accordingly the recommendation remains outstanding in that regard. As stated previously, the POCO and the AML/PTFR now provide a regulatory framework for money remitters and other similar sectors; classified by the TCI as Non Regulated Financial Businesses (NRFB) and supervised by the FSC.

Special Recommendations VII

41. In the updated matrix, the TCI Authorities notes the inclusion of a regulatory regime for Non Regulated Financial Businesses (NRFBs) in the POCO and the AML/PTFR, however a review of the relevant sections does not indicate any reference to cross-border or non-routine wire transfer provisions. The Authorities have however stated that these issues will be addressed in the new Code. Accordingly, the Examiners' recommendations have still not been met.

Special Recommendations VIII and IX

42. Section 148S of the POCO provides for the Governor to prescribe a person or body (which could be the FSC) as the Supervisory Authority for NPOs. The NPO Supervisor has powers of supervision and enforcement and will also be able to disclose information to the Reporting Authority and law enforcement authorities. Accordingly, compliance with the Examiners' recommendations will have to wait until this Section is implemented and a determination made as to whether the measures that are implemented cover the recommendations made by the Examiners. Similarly, the Examiners' recommendations with regard to SR IX are still under review by the relevant Departments. Accordingly, none of the recommendations for SR. VIII or IX have been met.

III. Conclusion

43. The Turks and Caicos Islands as noted above has recently amended the POCO and enacted new regulations to deal with ML and FT (the AML/PTFR). The new enactments have resulted in several of the Examiners' recommendations being met either completely or to a lesser degree. With regard to the Core Recommendations, Recommendations 1 and 10 have been fully met, Rec. 5 has been substantially met, Rec. 13 has been partially met and Special Recommendations II and IV have not been met. For the Key Recommendations the TCI has fully met Rec. 36 and substantially met Recs. 23 and 26, while Rec. 40 and SR. I have not been met. Most of the other Recommendations have either been partially met or not met. The exceptions are Rec. 22 which has been fully met and Rec. 30 and SR. VI which have been substantially met.
44. Based on the assessment, the majority of the Core and Key Recommendations are still either partially met or have not been met and that most of the other recommendation are still substantially outstanding, it is recommended that the TCI report back to Plenary in May 2011.

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Legal systems				
1. ML offense	PC	<p>The exact scope of what the POCO appeals, amends and saves is ambiguous.</p> <p>Schedule 1 of the POCO refers to offences which are not defined in the laws of the TCI, namely directing terrorism, people trafficking and arms trafficking.</p> <p>The FATF 20 Designated Categories of Offences are not fully reflected in the laws of the TCI.</p> <p>All the precursor chemicals under Article 3 (c)(ii) of the Vienna Convention are not covered by TCI law and there is no precursor chemical legislation.</p> <p>The effectiveness of TCI's legal framework is difficult to assess since there have no money laundering convictions since 2002.</p> <p>The defence to the ML offence at section 119(2) of the POCO provides a criminal with the opportunity to escape liability merely by showing that the property was obtained for adequate consideration.</p>	<ul style="list-style-type: none"> The POCO should clearly reflect what it is intended to save, repeal or amend and consolidate of the pre-existing law in relation to anti money laundering, as sections 150 and 151 of the POCO do not effectively achieve this. Omissions contained in Schedules 5 and 6 of the POCO should also be addressed in order to fully reflect what the POCO seeks to do. In addition, the enabling provisions for the offences of directing terrorism, arms trafficking and human trafficking listed in Schedule 1 should be clearly defined. TCI should fully comply with Article 3(1)(c) in relation to the precursor chemicals requirements. The FATF 20 Designated Offences should also be fully incorporated in the laws of the Islands. 	<p>New Regulations converting the Code into regulations have been prepared and made. The Proceeds of Crime (Amendment) Ordinance 2009 and Proceeds of Crime (Amendment) Ordinance 2010 came into force on December 8, 2009 and May 24, 2010 respectively. The omissions in Schedules 5 and 6 have been addressed. What is intended to be saved, repealed and amended are all now clearly indicated.</p> <p>In essence the Control of Drugs Trafficking Ordinance and former Proceeds of Crime Ordinance are repealed.</p> <p>However, transitional provisions keep them in force in respect of matters falling under the former legislation.</p> <p>The offences of "directing terrorism", "people trafficking" and "arms trafficking" have been deleted from the Schedule. The remaining offences "drug trafficking offence" and "money laundering offence" have been defined in the amendments to section 2.</p> <p>Section 119(2) is amended to require that, in addition to obtaining adequate consideration, the defendant must show that he did not know or suspect that the property was criminal property.</p>
2. ML offense— mental element and corporate liability	LC	<p>The penalties for money laundering upon summary conviction are lenient and therefore are not dissuasive sanctions.</p> <p>The efficacy of implementation of the anti-money laundering regime is uncertain, particularly in view of the very low incidence of ML prosecutions.</p>	<ul style="list-style-type: none"> The penalty for the primary money laundering offences (sections 117, 118 and 119) upon summary conviction should be sufficiently dissuasive, so as not to limit prosecution of money laundering at the magisterial level to the most trivial of cases 	<p>The Proceeds of Crime (Amendment) Ordinance 2010 amends the penalties under sections 117 to 119 by raising the penalties from twelve months imprisonment to two years minimum and the fines from \$40,000 to \$200,000.</p>
3. Confiscation and provisional measures	LC	<p>Forfeiture or confiscation of instrumentalities intended for use in or used in ML/FT offences are not clearly covered by the POCO.</p>	<ul style="list-style-type: none"> The POCO should be amended to provide for the confiscation and/or forfeiture of instrumentalities intended for use in or used in ML/FT offences. 	<p>The Proceeds of Crime (Amendment) Ordinance 2010 amends Part III of POCO to provide for the recovery of instrumentalities intended for use in or in connection with <u>unlawful conduct</u> through civil forfeiture. It includes new sections on freezing orders.</p> <p>In particular, section 59 now contains as an additional objective of the civil forfeiture regime, the recovery of</p>

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				<p>property which is, or represents “property that has been used in, or in connection with, or is intended to be used in, or in connection with, unlawful conduct”. A new definition of tainted property is also included.</p> <p>There are a number of sections that amend various sections in PART III to give effect to the recovery of tainted property.</p>

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Preventive measures				
4. Secrecy laws consistent with the Recommendations	C	This Recommendation is fully observed.		
5. Customer due diligence	NC	<p>There are no requirements in the POCO and AMLR which prohibit financial institutions from keeping anonymous accounts or accounts with fictitious names.</p> <p>No requirement for the conduct of CDD measures where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.</p> <p>No requirement for financial institutions to conduct CDD on legal persons or legal arrangements.</p> <p>No requirement for financial institutions to verify that any person purporting to act on behalf of a customer who is a legal person is so authorized, and identify and verify the identity of that person.</p> <p>No requirement for financial institutions to verify the legal status of the legal person or legal arrangement.</p> <p>No requirement for financial institution perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.</p> <p>No requirement for financial institutions to conduct ongoing due diligence on existing customers.</p> <p>No requirement for financial institutions to perform enhanced due diligence on high risk customers.</p> <p>No requirement for financial institutions to undertake CDD measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII.</p>	<ul style="list-style-type: none"> Legislation should be enacted or amended to require that financial institutions: undertake CDD measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII; verify that any person purporting to act on behalf of legal persons or legal arrangements is so authorised and identify and verify the identity of that person; take reasonable measures to determine the natural persons that ultimately own or control legal persons or legal arrangements. Legislation should be enacted or amended to prohibit financial institutions from keeping anonymous accounts or accounts with fictitious names. Legislation should be enacted or amended to require that financial institutions conduct CDD measures whereby the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. Legislation should be enacted or amended to require that financial institutions conduct CDD on legal persons or legal arrangements. There seemed to be a high level of dependence on personal relationships between financial institutions and clients which results in CDD measures not being carried out. During interviews with financial institutions these institutions 	<p>Section 111 of POCO has been amended and provides for the issuance by the Reporting Authority of Codes and Guidance.</p> <p>The new section 111(5) provides that a Code issued under section 111 is subsidiary legislation and has full legislative effect.</p> <p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations were enacted on July 29, 2010. Part II deals with Customer Due Diligence. Regulation 11 requires a financial business to conduct CDD. Any person that contravenes that regulation may be liable to a fine up to \$50,000.00. The Regulations also provides for enhanced due diligence.</p> <p>Regulation 16 deals with shell banks and anonymous numbered accounts. It provides for a penalty of up to \$100,000.00 if a financial business sets up or maintains an anonymous account.</p> <p>Schedule 2 of the Regulations contains the meaning of financial business. Included are persons engaged in lending, including consumer credit and mortgage credit, accountants, auditors, legal professionals, and financial/investment advisors.</p>

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		<p>No requirement to terminate the business relationship if proper CDD cannot be conducted.</p> <p>No requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date.</p> <p>Lack of guidance on matters such as PEPs, risk based approach and reduced CDD impacts on the effectiveness of the TCI's AML/CFT regime.</p> <p>The scope of AML/CFT legislation in the TCI does not cover financial institutions that engage in mortgage lending.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p>	<p>typically indicated that the reason for limited or no CDD measures is a result of the small size of the local industry and the fact that everyone knows each other. Such scenarios may open the TCI to a higher risk of financial institutions being used for money laundering and financing of terrorism. Therefore, TCI authorities should develop a sensitization campaign whereby financial institutions are made aware of the benefits and requirement to do relevant CDD.</p>	

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6. Politically exposed persons	NC	<p>No requirements concerning PEPs are applicable to regulated persons at present.</p> <p>No requirement for senior management approval of a relationship with a customer who is found to be a PEP.</p> <p>No requirement for senior management approval to continue a relationship with a customer who is subsequently found to be a PEP or who subsequently becomes a PEP.</p> <p>Little awareness of the requirements in relation to the performance of enhanced CDD measures on high risk customers who are PEPs.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p>	<ul style="list-style-type: none"> Financial institutions should be required to seek senior management approval for a relationship with a customer who is found to be a PEP and to continue a relationship with a customer who is subsequently found to be a PEP or who subsequently becomes a PEP. The FSC should consider issuance of guidance with regard to financial institution's handling of relationships with PEPs. 	<p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations contain provisions relating to PEPs. PEPs are defined in regulation 6. Regulation 13 requires enhanced due diligence and ongoing monitoring on PEPs and imposes a fine of up to \$50,000.00 if that regulation is contravened.</p> <p>The Financial Services Commission issued guidance in relation to PEP's in August 2009.</p>
7. Correspondent banking	NC	<p>No requirement to determine the reputation of a respondent and the quality of supervision.</p> <p>No provision to obtain senior management approval before establishing new correspondent relationships.</p> <p>No provision to document respective AML/CFT responsibilities in correspondent relationships.</p> <p>No requirement for financial institutions with correspondent relationships involving "payable-through accounts" to be satisfied that the respondent financial institution has performed all normal CDD obligations on its customers that have access to the accounts.</p> <p>No requirement for the financial institution to be satisfied that the respondent institution can provide reliable customer identification data upon request.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p>	<ul style="list-style-type: none"> TCI authorities should consider issuing more guidance to financial intuitions on matters relating to AML/CFT. 	<p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations provide that no bank operating in or from the islands shall enter into or continue a correspondent banking relationship with a shell bank or a bank that is known to permit its accounts to be used by a shell bank.</p> <p>Regulation 16 provides for a fine of up to \$100,000.00 if a bank acts in contravention to the regulation.</p>

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8. New technologies & non face-to-face business	NC	No provision for financial institutions to have in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.	<ul style="list-style-type: none"> Financial institutions should have in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes. TCI authorities should consider bringing the business of mortgage lending under a licensing regime which will make it subject to AML/CFT requirements. 	Regulation 13 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations requires enhanced due diligence and ongoing monitoring where the customer has not been physically present for identification
9. Third parties and introducers	PC	<p>No requirement for all financial institutions relying on a third party to immediately obtain from the third party the necessary information concerning elements of the CDD process covering identification and verification of customers and beneficial owners and the purpose and intended nature of the business relationship.</p> <p>No provision requiring financial institutions to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendations 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendations 5 and 10.</p>	<ul style="list-style-type: none"> Financial institutions relying on a third party should be required to immediately obtain from the third party the necessary information concerning elements of the CDD process covering identification and verification of customers and beneficial owners and the purpose and intended nature of the business relationship. Financial institutions should be required to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendations 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendations 5 and 10. Financial institutions relying on third parties should be ultimately responsible for customer identification and verification. TCI authorities should make more explicit requirements for financial institutions to immediately obtain from the third party all the necessary information concerning certain elements of the CDD process and for financial institutions to accept introducers pursuant to its assessment of AML/CFT adequacy. 	Regulation 14 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations provides that a financial institution may only rely on introducers and intermediaries who are a regulated person or a foreign regulated person. The regulation requires introducers and intermediaries to have carried out CDD and to maintain records of that information which would be available upon request from the financial business or the Commission. It also provides that the financial business will be liable for any failure to apply CDD measures by the introducer or intermediary.

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10. Record keeping	PC	There are no requirements for financial institutions to maintain records of the identification data, account files and business correspondence for at least five years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority).	<ul style="list-style-type: none"> It is recommended that the TCI review its legislative and regulatory provisions to take consideration of all requirements of Recommendation 10 particularly as it pertains to the retention of records and that appropriate legislation should be enacted as soon as possible. 	<p>Regulations 18 and 19 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations requires records to be kept for at least five years. These records include CDD, account files and transaction records sufficient to enable a reconstruction of the individual transactions.</p> <p>Failure to comply with that regulation will result in a fine up to \$100,000.00.</p>
11. Unusual transactions	NC	<p>No requirements for special attention to be paid to characteristics of size and purpose of transactions.</p> <p>No requirement to put findings in writing that result from a closer investigation of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.</p> <p>No minimum record retention period applies for the findings resulting from a closer investigation of unusual transaction patterns.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p>	<ul style="list-style-type: none"> TCI authorities should expand the scope of attention for unusual transaction patterns to include characteristics of size and purpose as addressed in Rec. 11 (essential criterion 11.1). Financial institutions should be required to set forth in writing any findings related to a closer examination of the background and purpose of unusual transaction patterns. The record retention policy addressed under section 7 of the AMLR should be expanded to provide for the retention of records related to a closer investigation of the background and purpose of unusual transactions. 	<p>Regulation 17 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations requires financial businesses to establish, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing which provide for identification and scrutiny of complex or unusually large transactions and other activities.</p>
12. DNFBP–R.5, 6, 8-11	NC	<p>For the majority of the DNFBPs that have not been subjected to the TCI AML/CFT legislative framework, it remains unclear how TCI authorities will ensure proper compliance with recommendation 5, 6 and 8 through 11 of the FATF. Except for trust and company service providers which are considered financial institutions, effective implementation of Rec. 12 lacks for all remaining groups of DNFBP's.</p> <p>No contact has been established with dealers in precious metals or precious stones to inform them of the AML/CFT legislative changes and the</p>	<ul style="list-style-type: none"> Contact the relevant new businesses and professions that have been subjected to AML/CFT rules and regulations due to the recently enacted legislation and inform them of the consequences of these changes for their respective industries. Define the major risk area targeted under the group of DNFBP's categorized as "dealers in goods of any description involving a cash payment of \$50,000 or the equivalent in any currency". 	<p>The POCO has been amended to include provisions for a Non Regulated Financial Business Supervisor. These businesses are now required to be registered with the NRFB Supervisor. The NRFB Supervisor has the power to take enforcement action against a non-regulated financial business, issue directives and take disciplinary action.</p> <p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations also contain provisions relating to non-regulated financial businesses in Part V. It provides that the Commission is the NRFB Supervisor.</p>

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		<p>consequences thereof for the relevant industry.</p> <p>TCI Authorities have not determined yet who will be responsible for the compliance oversight of the dealers in precious metals and precious stones.</p> <p>TCI Authorities have not defined the targeted risk that it aims to manage with the inclusion of dealers in goods of any description involving a cash payment of \$50,000 or the equivalent in any currency, under the definition of relevant businesses, and consequently, TCI authorities are unable to develop an implementation plan for this specific group of DNFBPs.</p> <p>There is a lack of information to the real estate industry, about the AML/CFT changes in the legislation and its implications for the sector.</p> <p>The TCI real estate sector is currently not regulated, thereby imposing a constraint to the effective implementation of an AML/CFT oversight regime for the relevant sector.</p> <p>No implementation plan has been developed yet for the regulatory oversight of the legal practitioners' industry or the accounting/auditing industry relative to their compliance with AML/CFT rules and regulations.</p> <p>The gaming industry lacks the implementation of an AML/CFT compliance supervisory regime.</p> <p>The role of the Gaming Inspectorate and the FCU in the implementation of the AML/CFT framework is not clearly defined.</p>	<ul style="list-style-type: none"> • Determine who will be responsible for the oversight of the precious metals and precious stones industry and the industry labelled as "dealers in goods of any description involving a cash payment of \$50,000 or the equivalent in any currency" • Where not regulated, TCI should regulate market participants in order to be able to monitor compliance by these market players with applicable AML/CFT rules and regulations; • Determine who will be responsible for the regulatory oversight of the relevant DNFBP's; • In light of client privileges issues that might arise relative to the implementation of an oversight regime for legal advisers, it is advisable that a structure be maintained for these DNFBP's, where their duties relative to financial or real estate transactions on behalf of their clients is legally and physically separated from their other legal proceedings assistance duties. • TCI should consider the use of the Bar Association as a channel for the training of industry practitioners. • TCI should define the role of respectively, the Gaming Inspectorate and the FCU, in the implementation of the AML/CFT framework, in order to avoid inefficiencies. • Adequate training should be provided to gaming inspectors and their role and legal authority in the implementation and oversight of the AML/CFT framework for the gaming industry should be clearly defined. 	

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13. Suspicious transaction reporting	PC	<p>The guidance provided for the effective execution of the suspicious transaction reporting requirement is not considered sufficient</p> <p>The broad time frame given by the POCO has been interpreted by the industry to be time periods that seem quite long. (24 to 30 days).</p> <p>The awareness amongst financial institutions for the misuse of TCI's financial system for the financing of terrorist is low thereby affecting the effectiveness of the CFT regime.</p> <p>The deficiencies identified within R 1 as it pertains to predicate offences not defined in the TCI laws; specifically directing terrorism, people trafficking and arms trafficking are also applicable here.</p>	<ul style="list-style-type: none"> TCI Authorities should provide for more guidance in the process of reporting unusual transactions. In this regard, standardized STR-forms that meet the requirements of the industry should be issued. Furthermore, the means through which STRs should be filed with the FCU should be standardized. TCI Authorities should consider issuing guidelines on the filing of STRs which includes information on the requirement for timely filing to ensure a prompt reporting behaviour. 	<p>The standardized reporting form has been improved.</p> <p>This was published at a presentation to the industry by way of a two-hour presentation, including power point, copies of which were distributed.</p> <p>A revised form has since been circulated with guidance notes attached.</p>
14. Protection & no tipping-off	C	This Recommendation is fully observed.		
15. Internal controls, compliance & audit	PC	<p>Applicable requirements for the implementation of an internal control framework do not address the issue of CFT.</p> <p>Policy manuals of entities supervised by the FSC do not include CFT.</p> <p>No requirements in place for the appointment of an independent audit function to test compliance with procedures, policies and controls on AML/CFT.</p> <p>No effective implementation of the AMLR requirement to keep training records of employees.</p> <p>No requirement to have financial institutions put in place screening procedures to ensure that high standards apply when hiring new employees.</p>	<ul style="list-style-type: none"> The FCS should screen the Policy Manuals of all supervised financial institutions, to ensure compliance with CFT. The FSC should play a more active role in creating awareness amongst financial institutions with regard to the issue of CFT. The TCI should provide guidance for financial institutions on the implementation of an independent audit function to test compliance with AML/CFT procedures, policies and controls. TCI should take appropriate action to implement the recently enacted AMLR requirement to keep employees training records. The TCI should amend its requirement for screening relevant personnel upon hiring. 	<p>The FSC screens policy manuals both at the point where an entity applies for licensing and also during onsite examinations.</p> <p>The FSC has included a review of training logs as a part of its onsite inspection regime.</p>

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			<p>to the screening of all employees to fully comply with essential criterion 15.4.</p> <ul style="list-style-type: none"> Financial institutions should be required to have their screening policy for new personnel formalized and documented for review by the FSC. 	<p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations now provide that a financial business must maintain policies regarding the screening of employees and internal controls. Contravention the regulation may result in the financial business being fined up to \$50,000.00.</p>

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16. DNFBP–R.13-15 & 21	NC	<p>There is a lack of implementation of the AML/CFT legislative framework for DNFBPs</p> <p>To date no STRs have been filed with the FCU by any category of DNFBP, except for Trust and company service providers.</p> <p>No training of DNFBPs on the filing of STRs.</p> <p>DNFBPs have not implemented an internal framework for the compliance with AML/CFT rules and regulations.</p>	<ul style="list-style-type: none"> • TCI should ensure an effective implementation of the recently enacted AML/CFT legislative framework for DNFBPs, including the requirement for the filing of STRs. • TCI Authorities should consider training for DNFBPs on the filing of STR's to promote a compliant regime within the relevant industries. • The relevant supervisory authorities per category of DNFBP should issue guidelines and instructions on the drawing up and maintaining of internal frameworks for compliance with AML/CFT rules and regulations. 	The FCU has met with and advised stakeholders in this area of the requirements for filing STR's.
17. Sanctions	PC	<p>The sanctions in the legislative framework are not effective or dissuasive.</p> <p>Financial sanctions can not be applied by the supervisory without a court order.</p> <p>The sanctions applicable in case of non-compliance with provisions of the AMLR in respect of regulation 10 are not defined in the respective legislation.</p>	<ul style="list-style-type: none"> • The TCI supervisory authority should promote an effective implementation of enforcement actions in order to increase the dissuasiveness of the existing sanctions framework. This can be improved amongst other methods through improvement of the follow up provided by the supervisory authority relative to outstanding issues with regard to the compliance with AML/CFT rules and regulations by financial institutions. • The TCI Authorities should make appropriate adjustments to its legislative framework to provide for the FSC to impose financial sanctions without court order in case of non-compliance with AML/CFT rules or regulations. • The TCI should include in the AMLR the sanctions applicable to an offence under AMLR section 10(1). 	The FSC has taken enforcement action against several licensed entities since the last follow-up report and has had regulations drafted in relation to Administrative Penalties. The draft regulations are currently out for consultation. It is anticipated that the regulations will be in operation before 31 st October, 2010.
18. Shell banks	PC	Although the Code appropriately addresses shell banks	<ul style="list-style-type: none"> • Financial institutions should not be 	The Anti-Money Laundering and Prevention of

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		it cannot be properly enforced.	<p>permitted to enter into, or continue, correspondent banking relationships with shell banks.</p> <ul style="list-style-type: none"> Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. 	<p>Terrorist Financing Regulations provides that no bank operating in or from the islands shall enter into or continue a correspondent banking relationship with a shell bank or a bank that is known to permit its accounts to be used by a shell bank.</p> <p>Regulation 16 deals with shell banks and provides for a fine up to \$100,000.00 if a bank acts in contravention to the regulation.</p>

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19. Other forms of reporting	NC	It appears that the TCI Authorities have not considered the feasibility and utility of implementing a system where financial institutions are required to report all transactions above a fixed threshold.	<ul style="list-style-type: none"> We advise that the TCI consider the implementation of a system where all (cash) transactions above a fixed threshold are required to be reported to the FCU. In this regard TCI should include as part of their considerations the possible increase of STRs filed, the size of this increase compared to resources available for analyzing the information and the effectiveness of the additional intelligence in the process of intercepting illicit activities. 	TCI Authorities considered and decided against the use of a system where all (cash) transactions above a fixed threshold require reporting to the FCU.
20. Other NFBP & secure transaction techniques	PC	<p>TCI has not considered the risk of other non-financial businesses and professions being misused for the purpose of ML/FT.</p> <p>TCI Authorities have not considered or taken adequate steps to ensure that the money laundering risk associated with the large volumes of cash at the casinos are reduced.</p>	<ul style="list-style-type: none"> TCI should consider if there are other non-financial businesses and professions that are at risk of being misused for ML or FT. In this regard, TCI should specifically assess the risk of ML and FT in the construction industry, considering the amount of cash turnover in this industry. TCI Authorities should consider taking an intermediary role in the process of establishing proper communications between local banks and the casino, in order to assure that credit card facilities for casino clients are available at the casinos place of business in order to reduce the amount of cash in circulation in the casino. 	<p>POCO has been amended to include a regime for a Non Regulated Financial Businesses and a Non Regulated Financial Business Supervisor.</p> <p>Credit card facilities are now available in casinos.</p>
21. Special attention for higher risk countries	NC	<p>The majority of financial institutions do not observe the level of compliance of the foreign jurisdiction when establishing international business relationships.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p>	<ul style="list-style-type: none"> The FSC should promote an effective implementation of a country risk management regime with regard to AML/CFT. In this regard, the FSC should promote an effective implementation of provisions 4.18 and 4.23 of the Code amongst licensed institutions. It is not a conclusive requirement to issue a blacklist containing countries that do not or 	<p>The FSC is considering these matters and moving towards issuing a list of countries which do not sufficiently meet the FATF standards</p> <p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations requires enhanced CDD and enhanced ongoing monitoring on a risk-sensitive basis when the financial business proposes to have a business relationship with a person connected with a country that does not apply or insufficiently</p>

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			insufficiently apply the FATF standards. However, if a particular jurisdiction continues to impose a high risk for ML or TF on the financial services industry of the TCI, the FSC should consider applying its powers under the FSCO to issue additional guidance on the subject. In this respect, the FSC might consider for example issuing a list of countries that do not or insufficiently apply the FATF standards and for which transactions originating from these countries should be subject to a higher degree of scrutiny.	applies the FATF recommendations.

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22. Foreign branches & subsidiaries	NC	There are currently no provisions in place pertaining to the regulation of compliance with AML/CFT rules and regulations by TCI financial institutions' subsidiaries in foreign jurisdictions.	<ul style="list-style-type: none"> Although, the TCI does not have any local financial institution, with foreign branches and/or subsidiaries, TCI should consider including regulations pertaining to possible TCI financial institutions' subsidiaries in foreign jurisdictions. Particularly in light of the envisioned growth of the financial services industry. 	The Anti-Money Laundering and Prevention of Terrorist Financing Regulations contain provisions for the application of the Regulations outside of the islands. Specifically Regulation 10 provides that a branch or subsidiary of relevant financial business located in or incorporated in a country outside the islands shall to comply with the regulations and Code, to the extent that the laws of that country permit.
23. Regulation, supervision and monitoring	PC	<p>The integrity component to the "fit and proper" testing of relevant persons is not clearly specified by the FSC.</p> <p>There was no evidence that Collective investment Schemes' Core Principles (IOSCO) apply for Mutual Funds in TCI.</p> <p>The recently enacted legislative framework providing for the licensing and supervision of MVT is not yet effective.</p>	<ul style="list-style-type: none"> The FSC should develop clear procedures for the assessment of integrity of relevant persons, as part of its execution of the "fit and proper" testing requirement. The TCI should consider the relevance of including collective investment schemes "Core Principles" in their supervisory framework. The TCI should develop an approach and set clear terms for the effective implementation of the recently enacted MTO. In this regard, the TCI should consider its resources and where required take action to support an effective implementation of a supervisory regime for MVTs 	<p>The FSC has issued fit and proper guidelines to the industry which covers these matters.</p> <p>The FSC is currently considering including these principles in its supervisory framework.</p> <p>The MTO is now effective with an established licensing regime which continues to grow.</p>
24. DNFBP - regulation, supervision and monitoring	NC	<p>No implementation plan in place addressing the relevant issues pertaining to the effective implementation of an AML/CFT oversight regime for the gaming industry.</p> <p>The due diligence performed on entities requesting a gaming license is not formally established, nor is it clear that all key personnel are subjected to scrutiny for the purpose of granting a gaming license.</p> <p>TCI authorities have not appointed oversight body(ies) that is/are responsible for monitoring compliance with AML/CFT rules and regulations by DNFBPs (except</p>	<ul style="list-style-type: none"> TCI should draw up an implementation plan, for the AML/CFT supervisory regime for casinos. This plan should address the following: <ul style="list-style-type: none"> Who is responsible for the training of gaming inspectors in the area of AML/CFT compliance oversight; Who is responsible for informing the relevant sector of the AML/CFT changes and the respective implications for the 	<p>This is being considered by the MLRA.</p> <p>Casinos are now covered in the definition of financial business in the Anti-Money Laundering and Prevention of Terrorist Financing Regulations.</p> <p>POCO and Anti-Money Laundering and Prevention of Terrorist Financing Regulations now include a regime for non-financial business persons.</p>

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		<p>for trust and company service providers that fall under the supervision of the FSC).</p> <p>No effective implementation of the enforcement regime for DNFBPs.</p> <p>The Gaming Inspectorate does not have the ability to disclose information to overseas regulators and to domestic regulators.</p>	<p>relevant sector;</p> <ul style="list-style-type: none"> ○ Who is responsible for training of the gaming industry in the introductory phase; ○ What are the tools required for an effective oversight of the industry's compliance with AML/CFT laws and regulations; ○ Where necessary resources should be sought to appropriately equip the Gaming Inspectorate for the effective AML/CFT oversight tasks. <ul style="list-style-type: none"> • The due diligence process performed for the granting of a Gaming license should be formalized and TCI Authorities should determine the risk areas within gaming establishments and require that key personnel responsible for these risk areas be assessed by the Gaming Inspectorate. • The Gaming Inspectorate should possess the ability to disclose information to overseas regulators and to share information with domestic regulators. • TCI Authorities should appoint an oversight body for each of the category of DNFBPs (same oversight body might also supervise more than one category of DNFBP) in order to determine effective compliance by regulated entities with applicable AML/CFT laws and regulations. • Continuing on the effective compliance with laws and regulations, the oversight bodies have the responsibility to enforce sanctions where situations of non-compliance with AML/CFT laws are observed. In this regard, reference is made 	

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			to section 3 where recommendations have been made relative to the AML/CFT non- compliance sanctioning/enforcement regime in place.	

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25. Guidelines & Feedback	NC	<p>The FSC has not issued any guidance relative to trends and typologies in ML/FT.</p> <p>The FSC has not promoted the issuance of lists containing names of terrorists and terrorist organizations to provide for FT screening of clientele by financial institutions.</p> <p>Other than the Code that provides general instructions to regulated sector, DNFBP's have not been provided with specific guidelines that address the respective industries' challenges in the implementation of an AML/CFT compliant regime.</p> <p>The FCU is currently not issuing reports on statistics, trends and typologies related to ML and TF to regulated entities</p> <p>Except for the Trust and Company Service Providers there is no effective AML/CFT framework in place for DNFBPs, consequently, STRs are currently not being filed by DNFBPs.</p> <p>Lack of training of the DNFBP sector is a major shortcoming in the process of implementing the new legislative framework that addresses the AML/CFT requirements for DNFBPs.</p> <p>The guidance provided so far to DNFBPs with regard to the introduction of the new AML/CFT requirements is insufficient.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p>	<ul style="list-style-type: none"> The FCU should provide more feedback to regulated entities in order to increase their capacity to detect and deter ML and TF practices. TCI Authorities should consider contacting and working together with the relevant DNFBP's that have recently been included in the AMLR towards the implementation of a framework for compliance with the established AML/CFT rules and regulations, including the reporting of STRs. Guidelines should be issued, trainings should be provided and assistance should be given to the relevant DNFBPs to establish compliance with the new applicable AML/CFT requirements. The FSC should consider issuing trend and typologies relative to ML/FT schemes in order to increase awareness amongst industry practitioners and thereby increase their ability to effectively identify ML/FT activities. The FSC should provide for more guidance in the combating of the financing of terrorist. In this regard, the FSC should consider issuing lists/ information on terrorists and terrorist organization to regulated entities. The regulated entities will then be required to assess their client base against the relevant information. The FSC should make the appropriate adjustments in its structure, in order to increase productivity in the issuance of report of findings resulting from on-site examinations. The FSC should provide follow up to deficiencies identified and keep statistics on 	<p>Typologies and risk trends are published on a regular basis in the local press – copies of which were supplied to evaluation team.</p> <p>The industry is small and in practical terms the head of the FCU liaises directly with compliance officers.</p> <p>Typologies and risk issues are also published on the FCU website – as pointed out to the evaluation team.</p> <p>Statistics were published by the MLRA and FCU in MLRA Annual Report for 2009 in compliance with the POCO.</p> <p>The FSC has recently undergone an organizational review. The final report has already been approved by the FSC Directors and the FSC has commenced implementation of the report on a phase basis. Over the last year, the staff compliment in mid to senior level positions has increased by over 5 persons. The FSC is currently advertising for 3 additional posts.</p> <p>The FSC has improved its onsite procedures to provide follow-up on deficiencies and continued monitoring.</p> <p>A new Part VIII has been added to POCO which provides for supervision and enforcement. The following new sections are relevant:</p> <p>Section 148F(2) provides for the appointment of a NFRB Supervisor (ie Supervisor for non-regulated financial businesses). This will be the new DNFBP Supervisor.</p> <p>Section 148F(3) sets out the responsibilities of the supervisory authority (ie monitoring compliance and taking enforcement action).</p> <p>Section 148H provides for the registration of non-</p>

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			<p>the outcome of these follow up actions.</p> <ul style="list-style-type: none"> • The FSC should establish instructions provided to regulated entities in general in writing in order to increase transparency of policy, enforceability and structural compliance with these instructions. • TCI Authorities (oversight bodies) should consider issuing sector specific guidelines that deal with the relevant issues pertaining to the specific sectors and disregard requirements that are not applicable considering the structure of the industry and/or the risks that the relevant industry activities impose. • TCI Authorities and specifically the regulatory body for the specific industries once appointed should issue specific guidelines that address the respective DNFBPs industries' challenges in the implementation of an AML/CFT compliant regime. 	<p>regulated financial businesses.</p> <p>Section 148I enables the NRFB Supervisor to undertake compliance visits.</p> <p>Sections 148J to 148P set out the various types of enforcement action that can be taken by the NRFB Supervisor against non-regulated financial businesses. This includes disciplinary action, which is the imposition of an administrative penalty.</p> <p>Section 148 Q provides the NRFB Supervisor with the power to require information and the production of documents.</p> <p>The new sections 148F to 148Q therefore establish a strong enforcement regime with respect DNFBPs.</p>

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Institutional and other measures				
26. The FIU	PC	<p>The FCU does not appear to have full operational independence and autonomy.</p> <p>The FCU has not provided sufficient guidance to financial institutions and other reporting parties regarding the reporting of STRs.</p> <p>The FCU has not provided feedback to reporting parties in a formalized and timely manner.</p> <p>The FCU does not release periodic reports which include statistics on STRs, trends and typologies within the sector and an update of its activities.</p> <p>The building which houses the FCU does not appear to be properly secured.</p>	<ul style="list-style-type: none"> The Head of the FCU should be afforded more operational independence particularly with regard to matters such as staff recruitment and budget management. The FCU should provide guidance to relevant parties on the revised procedures for reporting STRs. The FCU should provide feedback to reporting parties in a formalised and timely manner. The FCU should produce and periodically release its own monthly reports which should contain statistics on STRs, trends and typologies within the sector and an update on its activities. The security of the building which houses the FCU should be addressed as a matter of urgency. 	<p>These matters are under review; however, the head of the FCU has full operational independence when dealing with SAR's. The head of the FCU carries out all staff recruitment.</p> <p>Typologies and risk trends are published on a regular basis in the local press – copies of which were supplied to the evaluation team.</p> <p>Every SAR is responded to with a strategy within most cases 24 hours. Successful outcomes of investigations are also reported.</p> <p>The industry is small and in practical terms the head of the FCU liaises directly with compliance officers.</p> <p>Typologies and risk issues are also published on the FCU website – as pointed out to the evaluation team.</p> <p>Statistics were published by the FCU in April 2009 in compliance with the POCO and the annual report for the last calendar year is now being prepared.</p> <p>While TCI is a low risk crime country the FCU is situated on the top floor of a converted hotel which otherwise houses the police. In addition to the steel door in place at the entrance to the office. Further steel doors have been erected at both ends of the corridor housing the unit. Unwanted visitors would now need explosives to enter.</p>
27. Law enforcement authorities	C	This Recommendation is fully observed.		
28. Powers of competent authorities	C	This Recommendation is fully observed.		
29. Supervisors	PC	Written reports of findings resulting from on-site examinations of banking and insurance companies	<ul style="list-style-type: none"> The Registrar of Insurance and the Registrar of Co-operative Societies should have 	POCO and Anti-Money Laundering and Prevention of Terrorist Financing Regulations now empowers the

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		<p>have not been issued to the respective companies.</p> <p>The report of findings relative to on-site examinations of the trust and company service providers industry have not been issued consistently (backlog).</p> <p>The FSC is limited in its potential to give follow up to deficiencies identified during on-site inspections.</p> <p>The FSC does not provide for sufficient written instruction to regulated entities.</p> <p>The FSC does not have the authority to impose financial sanctions independently (summary of convictions required)</p>	<p>adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with AML/CFT requirement.</p>	<p>NFBP Supervisor to impose administrative sanctions on NFBPs.</p> <p>The FSC currently has draft regulations in relation to administrative penalties and fines have been prepared and are out for consultation and review. The regulations will inter alia, provide the FSC with the authority to impose financial sanctions independently. It is anticipated that this will be in operation before 31st October, 2010.</p>

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30. Resources, integrity and training	NC	<p>AML/CFT related training is lacking at the Gaming Inspectorate</p> <p>Funding for the Gaming Inspectorate is dependent upon government funds (Ministry of Finance)</p> <p>The FSC is not properly structured. The current structure imposes a risk for conflict of interest.</p> <p>Insufficient staff at the FSC to execute additional tasks pursuant to legislative changes, reference is in this regard made to the enactment of the MTO.</p> <p>The FCU lacks full operational independence and autonomy as it is one (1) of six (6) Departments within the overall TCI Police Force and does not have its own budget allocation.</p> <p>AML/CFT training for staff of competent authorities with few exceptions have not been adequate. AML/CFT training has not been provided to the judges, magistracy and court personnel. Only recently have staff of most of the competent authorities been sufficiently trained in ML/FT matters.</p> <p>Law enforcement agencies operate with clear monetary and manpower constraints. The Immigration Department in particular suffers from severe staffing constraints exacerbated by onerous illegal immigrants' issues.</p>		<p>These matters will be tabled for consideration of the MLRA.</p> <p>As a result of a process of organizational review, the FSC has reviewed existing posts, and created new posts. Some of these have been filled and it is anticipated that others will be filled shortly.</p> <p>This matter is under review, but the head of the FIU has full operational independence when dealing with SAR's. The head of the FCU carries out all staff recruitment.</p> <p>Judges and Magistrate underwent AML/CFT training during the latter part of 2009.</p> <p>There is serious strain on the local economy in keeping with the worldwide economic downturn. However, the MLRA is reviewing the situation in order to make appropriate recommendations to the Governor.</p>
31. National cooperation	PC	<p>Implementation and coordination of local cooperation and efforts by the various units i.e. MLRA, SPICE or of the MOU involving Customs and Police are limited and must be strengthened.</p>	<ul style="list-style-type: none"> The MLRA should play a more active role in local cooperation and coordination and should aim to have a set minimum number of meetings each year, for example, once every quarter. The MLRA should develop and implement policies and activities to combat ML/FT on 	<p>These matters will be tabled for consideration of the MLRA. The MLRA meets frequently and does at a minimum meet at least once every quarter.</p> <p>The MLRA and FSC has conducted AML training in May 2010 for the industry and plans to hold further</p>

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			<p>a regular basis. It is even more desirable for the MLRA to be able to monitor adherence to such policies and to be able to assess the effectiveness of operational systems which have been implemented further to the AML/CFT legislation.</p> <ul style="list-style-type: none"> • Since the Attorney General's Chambers has two distinct departments, the criminal and the civil side, it would be useful for the Principal Crown Counsel as Chief Prosecuting Counsel, to be a part of the MLRA or at the very least to attend some meetings when policy is being formulated or reviews undertaken. The members of the MLRA can agree to appoint persons to assist in the performance of its functions pursuant to section 108(5) of the POCO, and this therefore facilitates the attendance of other persons in the discretion of the MLRA. 	<p>training in September, 2010 and throughout the remainder of the year.</p> <p>The MLRA has now invited the Deputy Attorney General, having overall oversight of the various departments of the Chambers as well as Principal Crown Counsel (Criminal/Civil) and Senior Crown Counsel (Commercial/Civil) to the meetings both of whom together work across the Civil and Criminal sides of the Chambers.</p>

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32. Statistics	PC	<p>The TCI does not review the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis.</p> <p>Comprehensive statistics are not maintained by all competent authorities</p> <p>No data had been provided regarding AML/ CFT on-site examinations of financial institutions and, where appropriate, sanctions relative thereto.</p>		The TCI has instituted a system for more comprehensive statistics. This has been reflected in the MLRA Annual Report for 2009.
33. Legal persons– beneficial owners	PC	<p>There is no evidence that any training occurred on matters relative to legal persons including the revised procedure for reporting of suspicious transactions.</p> <p>The deficiencies identified in Rec. 5 with regard to beneficial ownership apply equally to Rec. 33.</p>	<ul style="list-style-type: none"> The TCI Authorities should develop guidelines that financial institutions must follow in the event that issued bearer shares in a company for which they represent are held outside the TCI. The FSC should develop procedures to deal with instances where bearer shares are held by an institution outside the TCI and where the TCI licensed Company Manager or Company Agent is required to submit a certificate issued by an authority as prescribe in 32E of the Companies Ordinance. The FCU should ensure that all legal persons are made aware of the requirements of the POCO and the Code regarding the procedure for reporting suspicious transactions. 	
34. Legal arrangements – beneficial owners	PC	<p>Persons associated with Legal Arrangements do not appear to be aware of the revised protocol for reporting suspicious transactions.</p> <p>There is no evidence that the FCU held training sessions on matters relative to Legal Arrangements.</p> <p>The deficiencies indentified with regard to beneficial ownership at R5 apply to trustee services.</p>	<ul style="list-style-type: none"> The FCU should ensure that all persons associated with Legal Arrangements are made aware of the requirements of POCO and the MLRA Codes regarding the reporting of suspicious transactions. The FCU should review its training programme to include AML/ CFT training on matters relative to Legal Arrangements. 	<p>Training was arranged in London UK in September 2009 and again in February 2010 for the Judiciary, Prosecutors and key law enforcement officials.</p> <p>While the FCU is a law enforcement unit and there is some doubt that this falls with their area of responsibility, staff from the FCU have recently given presentations to the money remitters industry and the insurance industry.</p>

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				Now in planning stage for formalized presentation within the remaining industry.
International Cooperation				
35. Conventions	PC	<p>The Palermo Convention and the Terrorism Financing Convention have not by extension been ratified on behalf of the TCI.</p> <p>Not all relevant aspects of the Conventions have been implemented.</p>	<ul style="list-style-type: none"> TCI should recommend or propose ratification of the Palermo Convention and the Financing of Terrorism Convention on its behalf to the UK Government; particularly as the TCI has enabling legislation under these Conventions already in place and the UK Government has already ratified the said Conventions on its own behalf. 	These matters were considered by the MLRA. A request is to be made to the UK Foreign Office to have these conventions extended to the TCI.
36. Mutual legal assistance (MLA)	PC	<p>Mutual legal assistance will not be provided by the TCI once tax or fiscal matters are involved which do not fall within certain exemptions.</p> <p>The effectiveness of implementation is difficult to assess due to the lack of statistical details.</p> <p>There are no formal administrative procedures except those implemented by the Chief Magistrate further to the MLAO, which would work towards ensuring that assistance would be given in a timely manner.</p>	<ul style="list-style-type: none"> The TCI should consider rendering mutual legal assistance for requests which deal solely or for those portions of the request which deal partially, with tax or fiscal matters. 	TCI authorities signed fifteen Tax Exchange Information Agreements to date and are in active negotiations with a number of other OECD countries to sign additional TIEAs before the end of the year. An implementation Ordinance was prepared and brought into force in December 2009.
37. Dual criminality	C	This Recommendation is fully observed.		
38. MLA on confiscation and freezing	PC	<p>There are no administrative arrangements in place for coordinating actions relating to seizure and confiscation actions with other countries, neither are any arrangements in place in relation to the sharing of the assets resulting from such coordinated efforts.</p> <p>The effectiveness of implementation cannot be ascertained.</p>	<ul style="list-style-type: none"> The TCI Authorities should establish administrative guidelines to accompany legislated provisions which permit the rendering of international assistance by the TCI, so as to ensure that international assistance is given in a prompt and efficient manner. Time frames relative to each procedural step, and other administrative details with respect to the execution of international requests, should be formalised in written guidelines or standard operating procedures. Effectiveness should not depend solely on the commitment and 	These matters will be tabled for consideration of the MLRA.

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			efficiency of the entity or persons responsible for executing a request but on formal systems which can monitor and support such efficiency.	

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39. Extradition	C	The Recommendation is fully observed	<ul style="list-style-type: none"> The TCI authorities should seek to have extradition requests transmitted directly from the UK Government to the TCI so as to ensure prompt and early attention to such requests. 	These matters will be tabled for consideration of the MLRA.
40. Other forms of co-operation	PC	<p>No MOUs in place between the FSC and other similar bodies or by the FCU with FIUs which require MOUs for the exchange of information</p> <p>It cannot be ascertained whether assistance by certain competent authorities including the Attorney General's Chambers and the FSC ,was given in a rapid, constructive and effective manner due to lack of statistical detail.</p> <p>Considerations which apply under the FSCO before regulatory assistance is given are onerous when taken conjunctively.</p>	<ul style="list-style-type: none"> The TCI Authorities should stipulate specific standard operating procedures inclusive of targeted time frames with regard to the execution of requests for assistance received by foreign competent authorities. The FSC should consider entering into MOUs with other foreign supervisory authority to ensure that the exchange of information to combat ML/FT can effectively be executed with other foreign jurisdictions. 	<p>These matters are under review, but the FCU has not refused any request for the signing of MOU's with countries that require them.</p> <p>The FSC Ordinance 2007 adequately allows for the exchange of information with foreign regulators. In 2009 the FSC dealt with four requests. These were handled expeditiously and no problems were encountered. The FSC is currently negotiating MOU's with a number of jurisdictions.</p>
9 Special Recommendations				
SR.I Implement UN instruments	PC	The Terrorist Financing Convention has not been ratified or fully implemented.	<ul style="list-style-type: none"> All the provisions of the United Security Council Resolutions should be fully implemented, for example, authorising access to frozen funds for the purpose of meeting the defendant's basic expenses and certain fees in accordance with UNSCR 1452. 	These matters will be tabled for consideration of the MLRA. However, the MLRA has already agreed to request the extension of relevant sections of the UK Terrorist Financing Act and that was done by the UK Order in Council.
SR.II Criminalize terrorist financing	PC	<p>Penalties for terrorist financing offences at the summary level are lenient.</p> <p>The elements of directing terrorism as required by Article 2(5) of the Terrorist Financing Convention, are undefined in the laws of the TCI.</p> <p>Inconsistent mens rea requirements for terrorism offences.</p>	<ul style="list-style-type: none"> The TCI Authorities should review the penalty for terrorism and terrorist financing offences at the summary level to determine whether it accords the spirit and intent of the anti-terrorism legislation and indeed if these sanctions are in fact effective punishment and hence sufficiently dissuasive. Directing terrorism as an offence should be defined in the laws of the Turks and Caicos 	Counter-Terrorism (Terrorist Financing, Money Laundering and Certain Other Activities: Financial Restrictions) (Turks and Caicos Islands) Order 2010 came into force on March 18, 2010 and it includes provisions on CDD, reporting, enforcement, inspection, and offences.

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		The effectiveness of the CFT regime is difficult to assess in the absence of any STRs or investigations on FT.	<p>Islands.</p> <ul style="list-style-type: none"> The TCI Authorities should consider amending the mens rea requirement for the offences in the Terrorism UN Order and the Al Qa'ida Order so that they are consistent with the description set out in the Anti-Terrorism Order. 	

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SR.III Freeze and confiscate terrorist assets	LC	<p>Ineffective implementation of a strong CFT regime:</p> <ul style="list-style-type: none"> no formal or administrative provisions to ensure that freezing of funds and assets will be carried out without delay; no procedures which apply directly to persons inadvertently affected by freezing orders; no procedures for authorizing access to frozen funds for incidental costs or expenses; and <p>no clear procedures for the communication of lists of suspected terrorists to the financial sector.</p> <p>De-listing procedures are not publicly known.</p>	<ul style="list-style-type: none"> • The TCI should establish administrative systems, which complement the CFT legislative framework, such as standard operating procedures which outline time frames for certain processes to take place. • Clear administrative guidelines as to who has responsibility for the lists of suspected or named terrorist and whether such lists are in fact circulated in the TCI in order to alert financial institutions of suspected terrorist whose accounts they may be holding, should be implemented. • The TCI should also provide for authorizing access to frozen funds and assets for the payment of incidental expenses when a freezing order is made and a person inadvertently affected by a freezing order should have a clear process of redress. 	<p>The TCI Authorities will keep this matter under review but are of the view that the POCO amply covers the freezing of funds for any criminal conduct.</p> <p>Counter-Terrorism (Terrorist Financing, Money Laundering and Certain Other Activities: Financial Restrictions) (Turks and Caicos Islands) Order 2010 came into force on March 18, 2010.</p> <p>The Proceeds of Crime (Amendment) Ordinance 2010 amends Part III of POCO to provide for the recovery of instrumentalities intended for use in or in connection with unlawful conduct through civil forfeiture. It includes news sections on freezing orders</p>
SR.IV Suspicious transaction reporting	PC	<p>The awareness amongst financial institutions for the misuse of TCI's financial system for the financing of terrorist is low thereby affecting the effectiveness of the CFT regime.</p>	<ul style="list-style-type: none"> • The reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organisations or those who finance terrorism. • The obligation to make a STR related to terrorism should include attempted transactions. 	<p>These matters will be tabled for consideration of the MLRA. However, the MLRA has already agreed to request the extension of relevant sections of the UK Terrorist Financing Act.</p> <p>Counter-Terrorism (Terrorist Financing, Money Laundering and Certain Other Activities: Financial Restrictions) (Turks and Caicos Islands) Order 2010 came into force on March 18, 2010 and it includes provisions on reporting.</p>
SR.V International cooperation	LC	<p>There are no formal administrative procedures which have been established to ensure mutual legal assistance is given in a timely manner.</p> <p>Deficiencies noted with regard to Recs. 36 and 38 are also applicable to this Recommendation.</p>		<p>These matters will be tabled for consideration of the MLRA.</p>
SR.VI AML requirements for money and value transfer services	PC	<p>Money service providers have not yet been licensed within the TCI.</p> <p>The AML/CFT legislative framework applicable to money service providers has not been effectively</p>	<ul style="list-style-type: none"> • The FSC should establish contact with the money service providers' industry, to start the licensing process of the relevant companies. 	<p>The licensing of money service providers has commenced. New applications for their business area are also being received.</p>

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		<p>implemented.</p> <p>The deficiencies noted with regard to Rec. 5 as it pertains to customer identification such as lack of proper beneficial ownership requirements; Rec. 6 PEPs and Recs. 11 and 21 transaction monitoring also apply to money service providers.</p>	<ul style="list-style-type: none"> • The FSC should assess the current level of compliance with AML/CFT rules and regulations by the money service provider and develop a plan to improve the current compliance level. • The FSC should develop guidelines, issue instructions and provide for training to guide money service providers into the effective execution of their responsibilities under the recently enacted AML/CFT legislative framework. • In order to execute the abovementioned, the FSC should appropriately resource a department within the Commission that is responsible for the effective execution of the MTO. 	<p>A unit within the FSC's Banking Department has been created and is responsible for the effective implementation of money service providers under the legislative framework.</p> <p>POCO and Anti-Money Laundering and Prevention of Terrorist Financing Regulations now include a regulatory regime for NFBPs and a NFBP Supervisor.</p>

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Annex S

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
SR.VII Wire transfer rules	NC	<p>There are no measures in place to cover domestic, cross-border and non-routine wire transfers.</p> <p>There are no requirements for intermediary and beneficial financial institutions handling wire transfers.</p> <p>There are no measures in place to effectively monitor compliance with the requirements of SR VII.</p>	<ul style="list-style-type: none"> It is recommended that the TCI review its legislative and regulatory provisions to take consideration of all requirements of the recommendation particularly domestic, cross-border and non-routine wire transfers. Additionally, TCI should review its legislative and regulator framework to ensure that there is monitoring of compliance by financial institutions and the implementation of effective, proportionate and dissuasive sanctions for non compliance with SR VII. Appropriate legislation should be enacted as soon as possible. 	POCO and Anti-Money Laundering and Prevention of Terrorist Financing Regulations now includes a regulatory regime for NFBPs and a NFBP Supervisor.
SR.VIII Nonprofit organizations	NC	<p>TCI Authorities have not addressed the non-profit organizations that can be used for FT purposed in their legislative framework.</p> <p>There is no requirement for NPOs to maintain information on the nature of their activities or on the persons who control or direct their activities and to make this information available to the public.</p> <p>There are no sanctions against non-profit organisations for failure to comply with AML/CFT measures.</p> <p>There is no requirement for NPOs to maintain relevant information on domestic and international financial transactions for at least five (5) years and make such information available to the law enforcement authorities.</p> <p>No measures to ensure that NPOs can be effectively investigated and that required information can be gathered.</p> <p>Regulatory bodies have not issued any guidance notes to regulated entities to increase awareness for the relevant risks of non-profit organizations as FT</p>	<ul style="list-style-type: none"> TCI should consider the review of their legislative framework to provide for laws and regulations that relate to counter arrest the possible abuse of NPOs for the financing of terrorism. The TCI Authorities should ensure that regulatory bodies make their regulated entities vigilant of the risks for abuse of non-profit organizations for the purpose of financing terrorism. NPOs in the TCI should be required to maintain information on the purpose and objectives of their stated activities and on the persons who own or control or direct those activities and make such information available to the public. The TCI Authorities should ensure that there are sanctions in place against NPOs that do not comply with AML/CFT oversight measures. NPOs should be required to maintain the relevant required information on domestic and international financial transactions for a minimum period of five (5) years and make such information available to the relevant law enforcement authorities such as the 	A new section 148S has been added to POCO which provides for the appointment of an NPO Supervisor.

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
Turks and Caicos Islands**

Annex S

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
		<p>vehicles.</p> <p>The FCU has not provided any guidance to NPOs regarding the reporting of suspicious transactions.</p> <p>There has not been any training for NPOs.</p> <p>There is no point of contact with regard to obtaining international requests for information on NPOs.</p>	<p>FCU.</p> <ul style="list-style-type: none"> The FCU should ensure that all NPOs are made aware of the revised procedures for reporting suspicious transactions. The FCU should revise its training programme to include AML/ CFT training for NPOs. A specific point of contact should be established with regard to international request for information on NPOs. 	<p>All known NPO's are aware of their responsibilities.</p>
SR.IX Cash Couriers	NC	<p>The recently enacted POCO has had no time to be effectively implemented.</p> <p>The Immigration Department has not established any MOUs with its counterparts abroad.</p> <p>There are no provisions for Authorities in the TCI to notify other countries when there is unusual movement of gold, precious metal and precious stones from their jurisdictions.</p>	<ul style="list-style-type: none"> The Immigration Department should seek to establish MOUs with Immigration Departments in other jurisdictions. The TCI Authorities should notify other countries when there is an unusual movement of gold, precious metals or precious stones from their jurisdictions 	<p>These matters are under review by the relevant Department.</p>