



First Biennial Report

Virgin Islands

November, 2012

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VIRGIN ISLANDS – FIRST BIENNIAL REPORT

I. Introduction

1. This report is the first biennial report by Virgin Islands to the Caribbean Financial Action Task Force (CFATF) Plenary since it was removed from regular follow-up in January 2011. It was noted in the last follow-up report that the Virgin Islands had implemented measures resulting in a level of compliance equivalent to LC in Recs. 5 and 23, the only Recommendations among the sixteen key and core Recommendation that were rated PC in the third mutual evaluation report (MER) of the Virgin Islands. Additionally, only Recs. 9, 17, 24 and SRVIII still had outstanding recommended actions which resulted in a PC level of compliance. The following report by the Virgin Islands present actions which have been undertaken to address outstanding issues under Recs. 9, 17, 24 and SRVIII. Annex 1 with implementation statistics is also attached.

II. Report by Virgin Islands of implemented measures

Recommendation 9 – rating PC

R. 9 (Deficiency 1): No requirement for a financial institution to immediately obtain from all third parties necessary information concerning certain elements of the customer due diligence (CDD) process itemized in criteria 5.3 to 5.6

Recommendations and Comments

- Financial institutions relying upon a third party should be required to immediately obtain from the third party the necessary information concerning certain elements of the CDD process itemized in criteria 5.3 to 5.6

Actions Taken

2. The Anti-money Laundering and Terrorist Financing Code of Practice (AMLTFCOP) makes it a requirement for all financial institutions relying on third party introducers to satisfy themselves that the relevant CDD process has been engaged and all relevant information is maintained and can be provided immediately upon request. The Virgin Islands considers that the intent of this aspect of Recommendation 9 is to ensure the availability of CDD information whenever it is required and not necessarily that it should be obtained upfront in each case of introduced business. The AMLTFCOP does place the ultimate responsibility for verifying CDD information on the financial institution. Similarly, when CDD information is required or requested for law enforcement, mutual legal assistance or other purpose, it is the responsibility of the financial institution to obtain and provide the information on an expeditious basis. This system is regularly monitored to ensure compliance by financial institutions and has been shown to work effectively.

Recommendation 17 – rating PC

R. 17 (Deficiency 1): Sanctions imposed in the Anti-money Laundering Regulations 2008 (AMLR) and the AMLTFCOP are not dissuasive.

Recommendations and Comments

- Review sanctions imposed in the AMLR and the AMLTFCOP with a view to making them dissuasive.

Actions Taken

3. The Proceeds of Criminal Conduct Act (PCCA) has been amended to increase the penalties for :

- Contravening provisions of the AMLTFCOP; (section 27 amended to provide a penalty fine of \$150,000 or term of imprisonment not exceeding two years or both. The Financial Services Commission (FSC) can impose administrative penalty fines of up to \$100,000 for breaches of the AMLTFCOP);
- Assisting another to retain the benefit of criminal conduct: (section 28 amended to provide penalty (a) on summary conviction – imprisonment not exceeding 2 years or a fine not exceeding \$250,000 or both, and (b) on conviction on indictment – imprisonment not exceeding 14 years or a fine not exceeding \$500,000 or both);
- The acquisition, possession or use of proceeds of criminal conduct: (section 29 amended to provide penalty, same as section 28);
- Concealing or transferring proceeds of criminal conduct: (section 30 amended to provide penalty, same as section 28);
- Failing to report suspicious transactions: (section 30A amended to provide a penalty (a) on summary conviction – imprisonment not exceeding three years or a fine not exceeding \$150,000 or both, and (b) on conviction on indictment – imprisonment not exceeding 5 years or a fine not exceeding \$500,000 or both);
- Tipping-off: (section 31 amended to provide a penalty (a) on summary conviction – imprisonment not exceeding 2 years or a fine not exceeding \$250,000, or both, and (b) on conviction on indictment – imprisonment not exceeding 5 years or fine not exceeding \$500,000, or both); and
- Making a disclosure that would likely prejudice an investigation upon knowing that or suspecting that the investigation is taking place once an order has been made or applied for: (section 36 amended to provide a penalty on summary conviction – imprisonment not exceeding 2 years or a fine not exceeding \$150,000).

4. It should be noted that the breaches outlined in Schedule 4 of the AMLTFCOP are not money laundering offences; they relate to breaches for non-compliance with procedural matters. Nevertheless, the administrative penalties outlined in Schedule 4 of the AMLTFCOP have also been increased. As noted above, maximum administrative penalties have been increased to \$100,000 (from the previous \$4,000).

5. Additionally, the AMLR have also been amended. The penalties as outlined in regulation 17 are: on summary conviction, a fine not exceeding \$100,000; and on conviction on indictment, a fine not exceeding \$150,000.

6. The amendments to the AMLTFCOP and AMLR have been effected pursuant to the Proceeds of Criminal Conduct (Amendment) Act, 2012 which was enacted in July 2012.

Recommendation 24 – rating PC

R. 24 (Deficiency 1): While designated non-financial businesses and professions (DNFBPs) like real estate agents, lawyers, other independent legal advisers, accountants, dealers in precious metals and stones were covered by the AML/CFT regime, there were no effective systems for monitoring and ensuring compliance with AML/CFT requirements.

Recommendations and Comments

- Effective systems for monitoring and ensuring compliance with AML/CFT requirements by real estate agents, lawyers, other independent legal advisers, accountants, and dealers in precious metals and stones should be implemented.

7. The Financial Investigation Agency is the agency responsible for monitoring and supervising the DNFBP sector. Currently the FIA is in the process of establishing a Compliance Inspection Unit which will be responsible for carrying out these activities in relation to the DNFBPs.

8. To determine the level of understanding within the sector in relation to their AML/CFT obligations two questionnaires were prepared by the Joint Anti-money Laundering and Terrorist Financing Advisory Committee (JALTFAC) and distributed by the FIA to the various entities within the DNFBP sector. The first was an AML/CFT Questionnaire for Legal Practitioners, Accountants and Notaries Public used to gather information to determine whether those organisations qualify to be monitored and supervised for AML/CFT compliance. The second was a pre-inspection type questionnaire which was distributed to all entities within the DNFBP sector. Approximately 80% of the sector have completed and returned the questionnaires which will be used to gauge the current level of compliance prior to the FIA beginning its formal monitoring and supervision.

9. A draft Public Accountants Act which sets the framework for self-regulation of all accountants in the Territory is currently being finalised. This Bill will require all persons who qualify as accountants to register and be supervised by the BVI Association of Professional Accountants. Disciplinary Regulations have also been drafted for consideration. Once the draft Bill is finalised it will be submitted to Cabinet for consideration and approval before being forwarded to the House of Assembly for passage.

10. The Legal Profession Bill which sets the framework for self-regulation of members of the legal profession was submitted to the House of Assembly for consideration on 29th June where it received its first Reading. The Bill now awaits its second and third Readings and final passage.

11. While admittedly necessary action for ensuring full monitoring and compliance with AML/CFT requirements is a process itself, that process has begun and the aim is to bring the regime to full realisation by June 2013.

R. 24 (Deficiency 2): Deficiencies identified regarding sanctions and sufficient resources for the FSC are also applicable to the supervision of trust and company service providers.

Recommendations and Comments

- Deficiencies identified regarding sanctions and sufficient resources for the FSC should be remedied.

Actions Taken

12. Deficiencies regarding sanctions have been addressed under Rec. 17. With respect to the lack of sufficient resources within the FSC, it should be noted that 41 additional persons have been added to the FSC staff since the mutual evaluation in 2008. The majority of these, 24, were added to the regulatory Divisions to improve and enhance the FSC's supervisory coverage. There is now a fully resourced and functional Compliance Inspection Unit headed by a Compliance Inspection Coordinator. Thus the enhancement of the FSC's staff complement, along with the establishment of a dedicated Compliance Inspection Unit has allowed for an increase in on-site inspections of the FSC's licensees.

13. In addition, with the completion of the initial round of inspections of all licensees, the FSC is now able to properly apply the risk-based approach after appropriately categorising licensees accordingly to the risk they pose. This enables a more effective use of the compliance inspection process by concentrating more resources on licensees that are assessed as medium to high risk.

Special Recommendation VIII – rating PC

SR. VIII (Deficiency 1): No evidence of review of the adequacy of laws and regulations that related to NPOs or of periodic reassessments of the sector's potential vulnerabilities to terrorist activities.

Recommendations and Comments

- The authorities should review the adequacy of the laws that relate to non-profit organizations (NPOs) and conduct periodic reassessments of the sector's potential vulnerabilities to terrorist activities.

Actions Taken

14. A Committee to review the existing NPO legislation was formed in 2011 and has worked to draft a new NPO Bill which will require every NPO in the Territory to be registered. Applications for registration will be received by a Registrar and decided upon by a Board established for that purpose. The legislation includes, amongst other things, provisions for submission of annual accounts as well as outlines the obligations of the Board and the registered NPOs. The Committee held several public meetings with the NPO sector to sensitise them on AML/CFT risks associated with NPOs and receive feedback on the contents of the Bill before submitting it to Cabinet for approval. The Bill was finalized and submitted to the House of Assembly. The Bill was enacted on October 12, 2012 as the Non-profit Organisation Act 2012.

SR. VIII (Deficiency 2): No supervisory programme in place to identify AML/CFT noncompliance and violations by NPOs.

Recommendations and Comments

- A supervisory programme for NPOs should be developed to identify non-compliance and violations.

Actions Taken

15. With the development of the new NPO legislation the supervision of these entities in respect of AML/CFT matters will lie with the FIA, with the Director of the FIA also serving as a member of the Registration Board. The legislation provides the framework for supervision and monitoring of these entities and reinforces compliance by these entities with the requirements of the AMLTFCOP. It also provides for penalties (both administrative and criminal) to be imposed for non-compliance with specific sections of the Act. Penalties imposed under the AMLTFCOP will also apply to these entities.

SR. VIII (Deficiency 3): No outreach to NPOs to protect the sector from terrorist financing abuse.

Recommendations and Comments

- The authorities should undertake an outreach programme to the NPO sector with a view to protecting the sector from terrorist financing abuse.

Actions Taken

16. In the process of developing the new NPO legislation, the Committee established therewith has had several meetings with the NPO sector (which were all well-attended) to sensitise them on the rationale for their inclusion in the regime on AML/CFT supervision, the fact that the NPO sector poses risks regarding AML/CFT vulnerabilities and the required steps to achieve compliance. There is now greater awareness within the NPO section of the importance of AML/CFT compliance. In addition, the new NPO law also makes provision for the Board to perform ongoing outreach to the NPO sector to promote, among other things, an understanding of the role of NPOs in the Virgin Islands. Under the new NPO law the Board is charged with conducting the necessary outreach on an ongoing basis to keep the NPO sector up-to-date with local and international requirements in relation to its AML/CFT obligations and vulnerabilities.

Annex 1. Virgin Islands Implementation Statistics

Table 1: STRs received by the FIA with a breakdown of the type of financial institutions, DNFBPs and other business.

Types of reporting institutions	2010	2011
Banking Business	42	49
Trust Business	134	79
Insurance Business	1	1
Insolvency Services	0	0
Designated Non-Financial Business		
(a) Money Transmission	0	0
(b) Real Estate	0	0
(c) Money Broking or Financial Leasing	0	0
(d) Dealing in Precious Metals or Precious Stones	0	0
(e) Buying and Selling Boats and/or Vehicles	0	0
Other		
(i) Regulator	14	22
(ii) Law Enforcement	0	1
Total STRs	191	152

Table 2: Breakdown of STRs analysed and disseminated & Spontaneous Referrals made by the FIA to foreign authorities

Outcome of STRS	2010	2011	As of June 9, 2012
Analysed	191	152	59
Disseminated to existing investigations	12	13	2
Disseminated for investigations	54	41	39
Spontaneous Disseminations	66	54	

Table 3: Other formal requests for assistance made or received by the FIA including whether the request was granted or refused

Requests for assistance	2010	2011
Requests Made	17	16
Granted	12	16
Refused	Nil	Nil

Requests Received	627	671
Granted	558	671
Refused	Nil	Nil

Table 4: STRS on cross-border transportation of currency and bearer negotiable instruments (BNI)

Type of transactions	2010	2011
Currency transactions above threshold	39	73
Cross-border transportation of currency or BNI	0	0
International Wire Transactions	0	0
Other	152	79
Total STRs	191	152

Table 5: ML and TF investigations, production and search warrants

	2010	2011
Investigations	22	78
Production orders	6	21
Search Warrants	0	15
Persons charged with ML	0	7

Table 6: ML and TF charges and convictions

	2009	2010	2011
Summary charges (by person)		2	5
Indictable charges filed (by person)	1	3	2
Summary convictions (by persons)		2	pending
Indictable convictions	1	2	pending

Table 7: Amount of property frozen, seized and confiscated related to ML, FT and criminal proceeds

	2010	2011
Cash seizures and detention	\$98,708.	\$757,548
Confiscation and forfeiture	\$14,546.	\$88,675.

Table 8: Number of detentions and forfeitures 2010-2011

	2010	2011	Total
Drug Trafficking	0	1	1
Failure to declare currency and BNI	2	2	4
Total	2	3	5

No property was frozen in relation to persons or entities pursuant to or under the United Nations Security Council Resolutions.

Table 9: Mutual legal assistance requests made or received relating to ML, predicate offences and FT

MLAT Requests for assistance	2010	2011
Made	0	0
Granted	0	0
Refused	0	0
Received	57	100
Granted	25	55
Refused	1	4
Pending	31	41

There was only one extradition request in 2010 and two in 2011.

Table 10: On-site examinations conducted by supervisors relating to AML/CFT

Type of institution	2010	2011
Banks	0	1
Trust Companies	5	13
Money Services	0	0
Insurance	0	14
Investment Business	0	6
Total	5	33

Table 11: Sanctions applied due to on-site inspections relating to AML/CFT

	2010	2011
On-site inspection cases before EC	49	21
Administrative Penalty		
- Initial Notice	4	-
- Final Notice	-	-
- Late Payment Penalty	-	-
- Waived Penalty	1	-
Annual/Biannual Review	-	-
Appoint Examiner	1	-
Corrective Action Plan	26	2
Directive	-	-
Focused On-site inspection	-	1

Follow Up Inspection	11	-
No Action Warranted	5	1
Noted for Information	12	17
Referral to Licensing & Supervisory Committee	-	-
Warning Letter	17	1
Total Compliance Actions	77	22

Table 12: Formal requests for assistance received by supervisors relating to or including AML/CFT including whether the request was granted or refused

Formal requests received by the FSC	2010	2011
Received	96	112
Granted	96	112
Refused	0	0

There were no formal requests made by the FSC relating to or including AML/CFT during 2010 and 2011.