FINAL

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

November 21st , 2008

Turks & Caicos Islands

The Turks and Caicos Islands is a member of the Caribbean Financial Action Task Force (CFATF), which conducted this evaluation.
The report was adopted by the CFATF Council of Ministers on November 21, 2008.

TABLE OF CONTENTS

PREFACE – information and methodology used for the evaluation of the Turks & Caicos Islands

1. The Evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Turks & Caicos Islands was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by Turks & Caicos, and information obtained by the Evaluation Team during its on-site visit to Turks & Caicos Islands from September 24th to October 5th 2007, and subsequently. During the on-site visit the Evaluation Team met with officials and representatives of relevant Turks & Caicos Islands government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The Turks & Caicos Islands had its first CFATF Mutual Evaluation in May 1998 and the second round Mutual Evaluation in August 2002. This Report is the result of the third Round Mutual Evaluation of the Turks & Caicos Islands as conducted in the period stated herein above. The Examination Team consisted of Ms. Sharda Sinanan Bollers, Legal expert (St. Vincent & the Grenadines), Mr. Glenford Malone, Financial Expert (British Virgin Islands) Ms. Selina Neuman, Financial Expert, (Netherlands Antilles) and Mr. Stephen Thompson, Law Enforcement Expert, (The Bahamas). The Team was led by Ms. Dawne Spicer, Legal Advisor, CFATF Secretariat. The Experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems. The Team would like to express its gratitude to the Government of the Turks & Caicos Islands.

3. This Report provides a summary of the AML/CFT measures in place in the Turks & Caicos Islands as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out the Turks & Caicos Islands' levels of compliance with the FATF 40+9 Recommendations (see Table 1).

[1] As updated June 2006.

Executive Summary

1. BACKGROUND INFORMATION

1. The Mutual Evaluation Report of the Turks and Caicos Islands (the TCI) summarises the anti-money laundering/combating the financing of terrorism (AML/CFT) measures in place in the Turks and Caicos Islands at the time of the on-site visit (September 24-October 5 2007). The Report also sets out the Turks and Caicos Islands' level of compliance with the FATF 40 + 9 Recommendations, which are contained in Table 1 of the Report.

2. The Turks and Caicos Islands consist of over forty (40) different islands, six (6) inhabited islands and two (2) privately developed islands; Parrot Cay and Pine Cay. The TCI is an overseas territory of the United Kingdom, and is a stable parliamentary democracy. Whilst tourism provides the main revenue, the country is also a major financial services centre, has a fishing industry as well as the world's only conch farm exporting over 1 million conchs a year. The economy of the TCI has maintained high momentum growth following a thrust into international tourism in the early 1980s. The current economic growth is led by developments that are taking place within the tourism, and related construction and real estate sectors.

3. The institutional framework for AML/CFT in the TCI comprises the Ministry of Finance; the Money Laundering Reporting Authority (MLRA) which comprises the Attorney General, as chairman, the Collector of Customs, the Managing Director of the Financial Services Commission, the Commissioner of Police and the Head of Financial Crimes Unit. The Financial Services Commission (FSC) which was established in 2001 under the Financial Services Commission Ordinance (FSCO) is also an important part of the framework as it comprises the Supervisor of Banks, Investments and Mutual Funds, the Superintendent of Trust & Company Management, the Registrar of Insurance and the Registrar of Cooperatives. The FSC licences and regulates the various financial institutions of the TCI financial sector. The Financial Intelligence Unit (FIU) of The Turks and Caicos Islands is responsible for the receipt, analysis and dissemination of Suspicious Transaction Reports (STRs). Under the Proceeds of Crime Ordinance, the Attorney General is also designated as the Civil Recovery Authority and is the only person who may institute civil recovery proceeding. The Chief Magistrate is the competent authority in relation to mutual legal assistance requests under the Mutual Legal Assistance Ordinance.

4. The geographic characteristics of The Turks and Caicos Islands have in the past attracted drug traffickers as an inviting route for US-bound cocaine and marijuana, and the Islands remain of interest to drug traffickers. There have however been considerable joint efforts between The Turks and Caicos Islands, The Bahamas and the United States of America which have helped to restrict drug trafficking. In addition to drug trafficking, burglary, theft, wounding and common assault are some of the more prevalent crimes. To date, there has been no evidence of terrorism or the financing of terrorism in the TCI.

5. In the TCI, priority has been placed on the suppression of money laundering and the financing of terrorism through the extension of the powers of the Money Laundering Reporting Authority (MLRA) in the new Proceeds of Crime Ordinance. The Government of the TCI has also placed emphasis on the establishment of the FIU, which has applied for Egmont membership[2].

2. Legal System and Related Institutional Measures

[2] The Turks and Caicos Islands FCU received Egmont Membership in May 2008 during the 16th Egmont Group Plenary.

6. The TCI is a British Dependent Territory thus requiring international matters to be dealt with by the United Kingdom on its behalf. Accordingly, the United Kingdom has ratified the 1988 United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) on its behalf. However, the 2000 UN Convention Against Transnational Organized Crime (Palermo Convention) has not been ratified. Money Laundering and money laundering offences are defined by section 2(1) of the Proceeds of Crime Ordinance (the POCO). Money laundering is criminalized in the TCI by sections 117, 118 and 119 of the POCO. These sections substantively criminalise money laundering in keeping with Article 3(1) (b)&(c) of the Vienna Convention and Article 6(1) of the Palermo Convention. The sections also provide exemptions to guilt in the form of defences to the money laundering offences. In particular, the defence pursuant to section 119(2) of the POCO gives the defendant wide latitude for the acquisition, possession etc. of criminal property if he can show that he acquired it for adequate consideration. The law does not place a limit on the value of criminal property which can be the subject of the offence of money laundering or which may represent proceeds of crime. In the TCI a person does not have to be convicted of the predicate offence to be charged with ML and provision has been made in law for civil forfeiture. It is to be noted that the summary offence penalties for ML are considered lenient. Further, the efficacy of the implementation of the AML/CFT regime has not been testeed based on a very low incidence of ML prosecutions.

7. With regard to the FATF Designated Category of predicate offences there is no equivalent in the TCI which covers participation in an organised criminal group, racketeering, piracy and insider trading and market manipulation. While it is noted that there is no local stock exchange, this does not detract from the need for criminalization of insider trading and market manipulation. The TCI employs a threshold approach whereby all indictable offences or offences triable either way, would constitute predicate offences under the POCO. ML offences also extend to conduct that occurred outside the TCI. With regard to ancillary offences, conspiracy and attempt to commit the offence, aiding and abetting, facilitating, counselling and procuring the commission of the offence, are included under the definition of money laundering and money laundering offences in the POCO. Tipping-off is also an offence under section 123 of the POCO. The ML offences are applicable to 'persons,' which under the Interpretation Act includes both natural and legal persons. The mental element for offences under section 118 of the POCO is 'knows or suspects', for offences under sections 117 and 119, there is no stated mens rea but this is stipulated in section 115 by the definition of criminal property. With regard to the subjective element, the Authorities further state that an objective standard is to be applied, as the test is whether the ordinary person 'would have known or suspected,' and that the use of the word 'suspects' gives latitude in prosecuting.

8. Terrorism is criminalized in the TCI pursuant to three Orders (the Anti-Terrorism Order, the Terrorism Order and the Al Qa'ida Order) which have been extended to the TCI by the United Kingdom. The principal offences of terrorism and the financing of terrorism are contained in sections 6-9 of the Anti-Terrorism Order. Financing of terrorism is substantively criminalized in keeping with Article 2 of the Terrorism Financing Convention. There is no differentiation in the terms of the law between an individual terrorist, a terrorist group or a terrorist organization. The offence of directing terrorism does not exist. Under the Anti-Terrorism Order, 'funds' is not defined as it pertains to the financing of terrorism. 'Funds' is however given a very wide definition in the Terrorism UN Order and the Al Qa'ida Order. All the terrorism offences are indictable offences under the three Orders and are therefore predicate offences for ML. The mens rea requirement varies under the three orders however the Anti-Terrorism Order explicitly provides for the intentional element of the offences to be inferred from objective factual circumstances. Criminal liability for terrorist financing extends to both natural and legal persons. Penalties for the financing of terrorism at the summary level are lenient.

9. The POCO is the governing law with regard to the forfeiture, freezing and seizing of the proceeds of crime. As mentioned earlier, the POCO also makes provision for civil forfeiture and the protection of bona fide third parties. The Anti-Terrorism Order includes provision for forfeiture. Legislative provision in relation to the freezing of funds used for terrorist financing is to be found in the Terrorism Order and the Al Q'aida Order. The power to freeze the funds is vested in the Governor. The POCO has adequate provisions for the freezing and /or seizing of property so as to prevent any dealing, transfer or disposal of property subject to confiscation and also to forfeiture. It should be noted that forfeiture or confiscation of instrumentalities intended for use in or used in ML/FT offences is not clearly covered by the POCO. The Turks and Caicos Islands can give effect to actions initiated under the freezing mechanisms of other jurisdictions by reason of part 11, schedule 2 of the Anti Terrorism Order, which allows for the enforcement of external (freezing) Orders made in designated countries. While there is clearly a system for freezing of funds, there are no measures that would ensure that the process is done 'without delay' as required. Additionally, the CFT regime has not been effectively implemented.

10. The MLRA established by section 108(1) of POCO) is the Financial Intelligence Unit (FIU) for the TCI. The functions of the FIU were delegated to the Financial Crimes Unit (FCU) of the Royal Turks and Caicos Islands Police Force under the supervision of the MLRA. The FCU is therefore the national centre for receiving, analysing, and disseminating disclosures of STRs and other relevant information concerning suspected ML or FT activities. SARs/STRs, must first be filed with the Money Laundering Reporting Officer (MLRO) of each reporting entity. The MLRO determines whether the information should be passed on to the FCU. Training on the filing of STRs was provided to the reporting entities however, most of the persons interviewed reported that they were not given any guidance on the procedures for reporting STRs particularly with regard to suggested timeframes for such reporting. There is also no organized protocol for feedback to reporting entities. The FSCO permits the FCU to cooperate with foreign regulatory authorities or persons in or out the Islands who have functions that relate to the prevention or detection of crime. The Commissioner of Police has an input in the FCU with regard to staff recruitment and budgeting and it was felt that this involvement limited the autonomy of the FCU. Additionally, the FCU does not release any periodic reports on statistics, typologies or trends in the sector or information pertaining to the activities of the FCU. The FCU is not yet a member of Egmont.

11. The FCU in the TCI is a hybrid unit Force with responsibility for the investigation of all crimes of a financial nature including Money Laundering and Financing of Terrorism matters. There is a wide range of powers and provisions with regard to investigations and these include powers to be able to compel the production of, search persons or premises for, and seize and obtain information held or maintained by a regulated person(s). Senior police officers are permitted to apply for production and monitoring orders. There appears to be no specific provision for the taking of witness's statements for use in ML or FT investigations. The Police Force is adequately staffed and maintains operational independence. Staff of the Police service has received both regional and international training in general policing and ML and FT matters.

12. With regard to detecting and deterring the cross border movement of cash or other negotiable instruments related to ML and the FT, the TCI's Customs Department has a declaration system in place (section 100 of the Customs Ordinance) for persons entering and leaving the Islands to advise whether they have in their possession cash in excess of ten thousand dollars (US $10,000). Where there is a failure to report and amounts exceeding the limit are found, the matter is referred to the Investigations Unit of the Financial Crimes Unit. There are punitive measures available under the Customs Ordinance for failure to declare cash. Pursuant to the Anti-Terrorism Order, a Police or Customs Officer can seize cash that is suspected of being terrorist funds.

3 Preventive Measures - Financial Institutions

13. The financial regulatory structure of the Turks and Caicos Islands includes laws, regulations and codes. The Anti-Money Laundering and Prevention of Financing of Terrorism Code (the Code) provides for the adoption by a regulated person of a risk based approach to internal controls against money laundering and terrorist financing. The Examiners have determined that the Code is not 'other enforceable means' based on the criteria established by the FATF. Thus while it has been determined that the Code is a document containing enforceable requirements and that it has been issued by a competent authority namely the FSC, the Examiners have concluded that the lack of sufficient evidence that sanctions have been imposed in the past by TCI competent authorities coupled with the lack of a regime for administrative penalties means that the sanctions are not effective, proportionate or dissuasive. Thus a minor breach of the Code will result in a disproportionate sanctions being applied.

14. There are CDD measures for financial institutions; however, there are some limitations in CDD measures in that a number of requirements such as those with regard to occasional transactions that are wire transfers are not contained in law or regulation as required. There is no requirement for financial institutions to conduct ongoing due diligence on existing customers or enhanced due diligence for higher risk customers, business relationships or transactions. Further, the scope of the AML/CFT legislation in the TCI does not cover financial institutions that engage in mortgage lending. With regard to PEPs, there is no requirement for senior management approval to be obtained when a customer or beneficial owner is subsequently found to be or subsequently becomes a PEP. Further, financial institutions are not required to obtain approval from senior management before establishing new correspondent relationships. The other limitations exist where the measures are provided for in the guidelines but the guidelines lack enforceability. The requirements for introduced businesses are also limited by the deficiency in the guidelines and also because there is no requirement for financial institutions to satisfy themselves that third parties are regulated and supervised in accordance with Rec. 23, 24 and 25 and have measures in place to comply with the CDD requirements of Rec. 5 and 10.

15. Legislative measures generally allows for broad disclosure of information through the FSCO. There are no restrictions on the sharing of information between financial institutions where this is required under Rec. 7 and Rec. 9. While information regarding wire transfers is kept, there is no legislation, regulation or other enforceable means to ensure compliance. This does not, however, inhibit the TCI Authorities from sharing the information that is available.

16. Pursuant to regulation 7 of the AMLR, persons carrying on relevant business in the TCI are required to keep for at least the relevant retention period evidence on the identity, of the record of activities, and any actions taken to recover monies of the applicant for business or beneficial owner. Relevant authorities in the TCI (a police officer or the Reporting Authority) can authorise financial institutions to maintain records for a time in excess of the six years where the documents are relevant to an investigation. There are however 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 the account or business relationship or for longer if requested by the proper competent authority.

17. There is no requirement for financial institutions to examine the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. Accordingly, there is no requirement to keep findings of such transactions for competent authorities and auditors for the required time period. With regard to paying attention to transactions from high risk countries, there are no measures that require

competent authorities to ensure that financial institutions are notified about AML/CFT weaknesses in other countries that do not or insufficiently apply the FATF Recommendations and make those findings available to competent authorities or auditors. There are no provisions for countermeasures against countries that insufficiently apply the Recommendations. With regard to wire transfers, there are no measures in place to cover domestic, cross-border and non-routine wire transfers. There are no requirements for intermediary and beneficial financial institutions handling wire transfers. As stated previously there are no effective measures in place for monitoring compliance with SR VII.

18. Regulation 8 of the AMLR addresses the issue of internal reporting procedures. The Code also provides for regulated persons when carrying out CDD to 'monitor customer activity to identify, during the course of a continuing relationship, unusual, complex or high risk activity or transactions.' The Code also provides that records on these types of transactions be kept for a period of six years. However, as noted earlier the Code is not considered to be 'other enforceable means' with regard to compliance with the FATF 40 + 9 Recs. With regard to paying special attention to transactions from some countries, the majority of financial institutions do not observe the level of compliance of the foreign jurisdiction when establishing international business relationships. For both Rec. 11 and 21, the Examiners found that there was no effective implementation of the AML/CFT regime as a result of the recent enactment of the AMLR and the Code.

19. Regulation 8 of the AMLR sets out the requirements for relevant businesses to establish and maintain internal controls and procedures with regard to the disclosing of STRs in the TCI. The Head of the Financial Crimes Unit has the responsibility for receiving and analyzing all STRS and the Examiners were informed that during the period 2005 to 2007 forty-two (42) STRs were filed with the FCU. The Examiners found that there was insufficient guidance for the reporting of STRs and that the broad time frame given by the POCO for the reporting of STRs has been interpreted by the industry to mean exceeding long time frames ranging from 24 to 30 days. TCI has proper protection for persons making disclosure of STRs and 'tipping-off' is prohibited by section 123 of the POCO.

20. The TCI Authorities have not considered the feasibility and utility of implementing a system of threshold reporting by financial institutions. With regard to the issuance of guidelines and the provision of feedback, the FCU is not currently issuing any reports on statistics, trends and typologies related to ML and FT to the regulated entities. Except for the Trust and Company Service Providers, there is no effective AML/CFT framework in place for DNFBPs and as a result there are currently no STRs being filed by DNFBPs. Additionally, the lack of training in the DNFBP sector is a major shortcoming and the guidance provided to DNFBPs with regard to the new AML/CFT legislation is insufficient. With regard to STR reporting of terrorist financing matters, the awareness amongst financial institutions for the misuse of TCI's financial system for the financing of terrorism is low thereby affecting the effectiveness of the CFT regime.

21. There are eight (8) licensed banks in the TCI; of this number three (3) are subsidiaries of foreign banks; one a branch and the others are stand alone entities. Currently, the minimum standards in relation to AML/CFT in the home countries of banks operating in the jurisdiction is equivalent to or higher than that of the TCI. There are however currently no provisions in place pertaining to the compliance with AML/CFT rules and regulations by subsidiaries of TCI financial institutions' in foreign jurisdictions.

22. The TCI does not permit banks to be licensed without a physical presence in the jurisdiction. In addition to the provisions of section 6(3) of the Banking Ordinance which states that a licence

would not be granted to any entity that has a principal office outside the Islands unless it maintains a principle office in the Islands, physical presence is further ensured by the requirement to have amongst other things a legible name sign for the entity. Further, the TCI's licensing procedures requires that, amongst other things that an applicant for licensing as a banking institution must provide evidence of physical presence or the intended establishment of physical presence in the TCI. This physical presence requires that sufficient mind and management reside in the TCI.

23. In the TCI, the FSC is the sole regulatory authority entrusted with the regulation and supervision of the financial services industry. Although the FSC was recently entrusted with the supervision of the MVT companies, there is not yet a department/division within the FSC that is responsible for the supervision of this industry. The staff of the FSC regularly receive training in regulatory as well as AML/CFT matters both locally and internationally. Written reports of findings resulting from on-site examinations of banking and insurance companies have not been issued to the respective companies. Additionally, the report of findings relative to on-site examinations of the trust and company service providers industry have not been issued consistently resulting in a backlog.

24. The Money Transmitters Ordinance (MTO) provides for the licensing and regulation of Money Service Providers and related businesses. However, money service providers have not yet been licensed within the TCI and the AML/CFT legislative framework applicable to them has not been effectively implemented.

4. Preventive Measures – Designated Non-Financial Businesses and Professions

25. Regulation 3 of the AMLR includes the following activities in the definition of relevant business activity: dealing in precious metals or precious stones (cash transactions over $15,000), dealing in goods of any description (other than the previous category) where the transaction involves a total cash payment of $50,000; acting as a real estate agent; accountancy or audit services; legal services that involve real estate transaction and casinos where there are cash payments of $3,000 or more. As a result, these DNFBP activities are covered by the TCI's AML/CFT regime. However, no contact has been established with the dealers in precious metals and stones to direct them as to their AML/CFT responsibilities and the Authorities still have to determine who will supervise this sector. There is also a lack of information to the real estate sector which is not regulated for AML/CFT measures. With regard to legal practitioners, accounting and auditing, no implementation plan has been developed for regulatory oversight. The gaming industry also lacks the implementation of an AML/CFT compliance supervisory regime. In general, there is a lack of implementation of the AML/CFT legislative framework for DNFBPs.

26. To date, (i.e. time of the onsite) no STRs have been filed with the FCU by any category of DNFBP except for trust and company service providers. There has also been no training for DNFBPs on the filing of STRs and DNFBPs have not implemented an internal framework for compliance with AML/CFT rules and regulations. The TCI Authorities have not appointed oversight body(ies) that is /are responsible for monitoring compliance with AML/CFT rules and regulations by DNFBPs except for trust and company service providers that fall under the supervision of the FSC. There is no implementation plan in place addressing the relevant issues pertaining to the effective implementation of an AML/CFT oversight regime for the gaming industry. Further, 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. Other than the Code which provides general instructions to the regulated sector, DNFBPs have not been provided with specific guidelines as it pertains to AML/CFT compliance.

27. During the onsite, the Examiners did not observe any evidence of considerations that might have been made with regard to other non-financial businesses and professions that might impose a large ML/FT risk to the jurisdiction. The TCI Authorities have not considered or taken adequate steps to ensure that the money laundering risk associated with large volumes of cash at the casinos are reduced. It should be noted that the TCI has encouraged reduced reliance on cash. It has encouraged the development of systems for the use of credit cards and automated banking machines.

5. Legal Persons and Arrangements & Non-Profit Organisations

28. The Company Management (Licensing) Ordinance (CMLO) governs the licensing and regulation of persons who provide corporate services business including the formation of companies and provision of a registered office. Companies and legal persons conducting the business of company agent or company management, forming limited partnerships and providing the registered office for limited partnerships are subject to the requirements of the AMLR in regard to identification documents for beneficial owners of their client companies. Pursuant to section 32A(a) of the Companies Ordinance, bearer shares are required to be held in the Islands by inter alia , licensed Company Manager/Agent or where there is none by the secretary of the company. Alternatively, the shares may be held with an accountant, attorney, licensed bank or licensed trustee. Information must be kept by the licensed company manager on the location of the bearer shares, its ownership and its beneficial ownership.

29. There is no evidence that any training occurred on matters relative to legal persons including the revised procedure for reporting of suspicious transactions. Additionally, the deficiencies noted in Rec. 5 with regard to beneficial ownership apply equally to Rec. 33.

30. There is no central registration for trusts. The provision of trustee services is a regulated activity in the TCI and a licensee holding such a license is subject to the requirements of the FSCO in relation to provision and access to information. Specifically, section 23 of the FSCO gives the FSC the powers to request information from a licensee or a former licensee as well as any person believed to be in possession of such information. It is an offence under section 7 of the Trust and Licensing Ordinance (TLO) to refuse to furnish information, make false statements or furnish false statements. Persons in the TCI associated with legal arrangements do not appear to be aware of the revised protocol for reporting suspicious transactions and there is no evidence that the FCU held training sessions on matters relative to legal arrangements. Further, the deficiencies noted with regard to beneficial ownership at Rec. 5 apply to trustee services.

31. The TCI is currently reviewing the current practical administrative framework in relation to NPOs in order to determine the feasibility of implementing legislation to prevent the abuse of these organisations from terrorist financing. At present, NPOs are required in accordance with the Companies Act to register with the Companies Registrar upon establishment. As of October 1, 2007, there were eight (8) NPOs in the TCI that had filed with the Companies Registrar. That figure has remained stable for the past four years. 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. 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. NPOs have not been provided with any AML/CFT training and the FCU has not provided any guidance to NPOs regarding the reporting of suspicious transactions

6. National and International Co-operation

32. The main forum for national cooperation and coordination in the TCI in its fight against money laundering and the financing of terrorism is through the medium of the MLRA. The MLRA is a national body with statutorily constituted members such as the Attorney General, the Comptroller of Customs, the Managing Director of the FSC, the Commissioner of Police and the Head of the FCU. A Memorandum of Understanding (MOU) has been executed between the RTCIPF and the TCI Customs Department which sets out a 'procedures protocol' designed to coordinate and facilitate the processing of drug trafficking and money being imported or exported from the TCI. Another MOU, SPICE has been executed to facilitate greater cooperation between the RCTIPF, the Immigration Department and the Customs Department. However, 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.

33. The TCI is a British Overseas Territory and as such international affairs are matters for the United Kingdom on behalf of the TCI. The TCI therefore does not have any power to enter into any Convention by its own initiative. Accordingly, the UK has ratified on behalf of the TCI the 1988 Vienna Convention. The Terrorist Financing Convention and the Palermo Convention have not been extended to the TCI by the UK. However, the two Conventions have been implemented in the TCI by various Orders in Council which were made in the UK and have legislative effect in the TCI. The Terrorist Financing Convention has not been fully implemented.

34. There are several legislative enactments which allow the TCI to provide mutual legal assistance and international cooperation in AML/CFT investigations, prosecutions and related proceedings. The 'Magistrate' is the designated Central Authority in the TCI for the purposes of the Mutual Legal Assistance (USA) Ordinance (MLAO). Accordingly, the Chief Magistrate has the responsibility of receiving and executing all requests for assistance pursuant to the MLAO. Mutual legal assistance will not be provided by the TCI once tax or fiscal matters are involved which do not fall within certain exemptions. The Examiners had difficulty in assessing the effectiveness of the TCI cooperation system due to the lack of statistical details. There are no administrative arrangements in place for coordinating actions relating to seizure and confiscation actions with other countries, neither are there any arrangements in place in relation to the sharing of the assets resulting from such coordinated efforts. Additionally, there are no formal procedures which have been established to ensure mutual legal assistance is given in a timely manner. Dual criminality does not present any burdens to the provision of mutual legal assistance. Extradition proceedings are clearly permitted in relation to terrorist acts and the financing of terrorism and the TCI is permitted to extradite its own nationals.

35. The main gateways for other forms of international cooperation are regulatory cooperation and cooperation between the FCU and foreign financial intelligence units. Cooperation through diplomatic channels such as from Attorney General to Attorney General is also undertaken. The current legislative authority for regulatory cooperation is the FSCO. The FCU has received a total of 21 requests for international cooperation including spontaneous request since the start of 1995 to date. No requests made to the FCI have been refused and they have all been dealt with. There are 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. Due to a lack of statistical details, the Examiners were unable to ascertain whether assistance by certain competent authorities including the AG's Chambers and the FSC was given in a rapid, constructive and effective manner.

7. Resources and Statistics

36. Law enforcement agencies operate with clear monetary and manpower constraints. There is also insufficient staff at the FSC to execute the additional tasks pursuant to the legislative changes, specifically the enactment of the MTO. Additionally, the AML/CFT training for staff of the competent authorities with few exceptions has not been adequate. There has been no training for Judges, Magistrates and court personnel.

37. The TCI does not review the effectiveness of its systems for combating ML and FT on a regular basis. Comprehensive statistics are not maintained by all competent authorities and no data was provided to the Examiners with regard to AML/CFT on-site examinations of financial institutions and, where appropriate, any relevant sanctions.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on the Turks & Caicos Islands

1. The beautiful by nature Turks and Caicos Islands (the TCI) are situated just 75 minutes or 575 south east of Miami and cover 193 square miles of the Atlantic Ocean. The Turks and Caicos Islands enjoys excellent air services from the US, Canada, Europe and the Caribbean, as well as reliable domestic services throughout the island chain. Transportation along with the fact that the Turks and Caicos Islands has the third largest coral reef system in the world, together with some of the best tropical beaches has led to the development of a very stable and profitable tourism industry over the last two decades.

2. Whilst tourism provides the main revenue, the country is also a major financial services centre, has a fishing industry as well as the world's only conch farm exporting over 1 million conchs a year.

3. The Turks and Caicos consist of over forty (40) different islands, six (6) inhabited islands and two (2) privately developed islands; Parrot Cay and Pine Cay. Several other private islands are under development, including Ambergris Cay and West Caicos. The Islands are diverse, from the main tourist centre of Providenciales to the more tranquil islands of North Caicos and Middle Caicos, to the historic island of Salt Cay, to the capital island Grand Turk and the fishing capital South Caicos.

4. Providenciales or "Provo" is the most well known of the Turks and Caicos Islands and is at the heart of economic activity, with a wide range of legal, accountancy firms as well as world class hotels, restaurants, retail outlets, golf, tennis and other sports facilities.

Tourism Sector

5. Grace Bay is the location for most of the tourism infrastructure. However the national parks, secluded beaches, marinas, typical Caribbean settlements offer alternative tourism and other business opportunities. Tourists who come to the island can enjoy a wide variety of water sport activities including diving, windsurfing, kayaking, sailing, deep sea fishing, bone fishing and snorkelling. Provo is home to galleries, restaurants, retail outlets, a hydroponics plant and the Caicos conch farm which succeeds as both an internationally acclaimed mariculture enterprise and a popular attraction.

6. The demand from the tourism industry for auxiliary services is on the increase from activities such as sports, retail, shipping, agriculture, and light manufacturing related businesses. In addition demand is growing in the investment/financial services sector in particular for those visitors wishing to purchase their own private piece of paradise and seeking banking, surveying, accountancy and real estate services.

The Economy

7. The economy of the Turks and Caicos Islands has maintained high momentum growth following a take-off laid on the foundation of the thrust into international tourism in the early 1980s. The

current economic growth is led by the developments that are taking place within the tourism, and related construction and real estate sectors.

8. The TCI economy continues to expand for the period 2000 to 2005. The economy started with a 7.29% growth in 2000, the economy recorded a strong growth in 2005 as the GVA in constant basic prices rose by 12.01% toUS$413.0M while GDP in constant market prices inched by 13.9% to US$479.9M. The increase in GDP was mainly reflective of the up-swing growth of tourism activities coupled with socio-economic projects pursued for the development of the major Islands in the TCI. The hotel and restaurants industry remained the major contributor to economic performance accounting for about one-third of GDP.

Table 1

GVA AND GDP IN CURRENT AND CONSTANT (2000) PRICES: 2000-2005

INDICATORS	2000	2001	2002	2003	2004	2005[p]
CURRENT PRICES						
GVA in Basic Prices (US$ Millions)	284.4	320.1	322.6	357.9	424.9	490.8
Growth Rate (%)		*12.56*	*0.78*	*10.96*	*18.72*	*15.49*
GDP in Market Prices (US$ Millions)	319.4	358.7	366.7	409.8	485.6	570.3
Growth Rate (%)		*12.30*	*2.22*	*11.74*	*18.51*	*17.44*
CONSTANT (2000) PRICES						
GVA in Basic Prices (US$ Millions)	284.4	305.1	304.3	330.4	368.7	413.0
Growth Rate (%)		*7.29*	*(0.27)*	*8.58*	*11.6*	*12.01*
GDP in Market Prices (US$ Millions)	319.4	341.9	345.9	378.2	421.3	479.9
Growth Rate (%)		*7.04*	*1.16*	*9.34*	*11.40*	*13.90*

Note:-preliminary

Table 2

MAJOR CONTRIBUTORS TO GDP IN CURRENT AND CONSTANT (2000) MARKET PRICES: 2000-2005

(In Percent)

INDUSTRY	PERCENT CONTRIBUTION TO GDP (%)					
	2000	2001	2002	2003	2004	2005[p]
CURRENT PRICES						
Hotels & Restaurants	34.8	37.1	34.3	34.3	31.7	31.5
Real Estate, Renting & Business Activities	13.3	12.7	13.3	12.2	10.8	10.0
Transport, Storage & Communication	11.9	11.3	11.8	10.8	11.0	10.5
Financial Intermediation	9.4	8.8	8.6	7.6	9.8	10.5
Construction	8.2	7.9	7.4	8.6	10.9	13.1
All Other Sectors	22.4	22.2	24.6	26.5	25.9	24.4
CONSTANT (2000) PRICES						
Hotels & Restaurants	34.8	35.4	32.7	32.3	30.8	31.8
Real Estate, Renting & Business Activities	13.3	13.1	13.3	12.5	11.5	10.7
Transport, Storage & Communication	11.9	11.7	11.9	11.1	11.6	10.9

Financial Intermediation	9.4	9.1	9.6	9.8	10.9	11.5
Construction	8.2	8.1	7.5	7.7	8.9	9.8
All Other Sectors	22.4	22.6	24.8	26.7	26.4	25.2

Note: p- preliminary

Table 3
TOP EXPANDING SECTORS GROWTH RATE OF GVA IN CURRENT AND CONSTANT (2000) BASIC PRICES: 2001-2005
(In Percent)

INDUSTRY	ANNUAL GROWTH RATE OF GVA (%)				
	2001	2002	2003	2004	2005[p]
CURRENT PRICES					
Construction/Mining & Quarrying	8.47	(5.13)	29.14	49.43	39.30
Financial Intermediation	5.47	(1.77)	(2.10)	52.74	23.35
Education	15.80	8.38	0.51	15.19	19.26
Hotels & Restaurants	20.15	(6.91)	11.02	9.50	15.00
Public Administration & Defence; Compulsory Social Security	20.54	7.42	16.96	21.82	14.62
CONSTANT (2000) PRICES					
Construction/Mining & Quarrying	6.64	(7.63)	11.23	28.17	24.63
Financial Intermediation	3.36	4.76	10.77	24.41	18.82
Education	10.29	8.38	0.51	3.15	18.71
Hotels & Restaurants	9.24	(7.43)	6.61	6.48	15.52
Public Administration & Defence; Compulsory Social Security	14.05	7.31	17.22	9.25	12.18

Note: p- preliminary

Financial Services

9. In 2001, the Financial Services Commission Ordinance was passed establishing the FSC and changing the status of the Department of Financial Services to an independent statutory body tasked with, among other things, the examination of a more conducive regulatory framework for the financial services industry.

Judicial Framework

10. The Turks and Caicos Islands is an overseas territory of the United Kingdom, and is a stable parliamentary democracy. Prior to the new Constitution which came into effect on August 9th 2006, the Chief Justice and the Judges of the Supreme Court of the Turks and Caicos Islands were appointed by the Governor acting in his discretion. This ensured that appointments to the Judiciary were free from influence and preserved the independence and the impartiality of the Judges.

11. The Governor being the Queen's representative, appointed by the British Government and as such when acting pursuant to the provisions of the Constitution would be doing so on Her Majesty's behalf (section 49 of the Constitution). The 1988 Constitution also ensured security of tenure of

the Judges of the Supreme Court (section 50(2)(3)).These constitutional provisions ensured that the judiciary was independent and impartial and was separate and free from control of the executive arm of government, however there was some criticism of the appointments being done in this way by one individual and the position has now been strengthened.

12. The Turks and Caicos Islands now enjoys a new Constitution which came into force in 2006 and under its provisions dealing with the appointment of and the independence and impartiality of the judiciary was strengthened as outlined in the following paragraphs.

13. Since August 9th, 2006 the Constitution has provided for the establishment of a Judicial Services Commission for the Turks and Caicos Islands (section 8 of the Constitution). The current Judicial Service Commission comprises a former Chief Justice of the Eastern Caribbean Supreme Court, the Chief Justice of the Commonwealth of The Bahamas and a former Chief Justice of Jamaica; all distinguished jurists from the wider Caribbean community.

14. Judicial appointments are made by the Governor acting in accordance with the advice of the Judicial Services Commission unless the Governor is instructed by Her Majesty though the Secretary of State to do otherwise. The professional requirements to be a Judge in the Islands are very high. The person must have at least ten years standing as:

    - A barrister or solicitor of the United Kingdom, of any other part of the Commonwealth or Ireland;
    - A member of the Faculty of Advocate or a Writer to the Signet of Scotland; or
    - An attorney of the Supreme Court admitted under the Legal Profession Ordinance or under any law for the time being in force in the Islands making like provision.

15. Security of tenure is given to Judges of the Supreme Court under section 74 of the Constitution. The effect of an independent Judicial Services Commission is to clearly demonstrate the independence of the Judiciary and to ensure that the Court system in the Turks and Caicos Islands are, and are seen to be fair and impartial tribunals.

16. Under the Constitution power to institute and undertake criminal proceedings against any person before any court in respect of any offences against any law in the Islands is vested in the Attorney General to the exclusion of any other person or authority and it is expressly stated that the Attorney General in the exercise of his powers shall not be subject to the direction or control of any other person or authority. It should be noted that the Attorney General is appointed by the Governor acting in his discretion under section 85 of the Constitution, which preserves the independence of that office.

17. Prosecutors acting for the Attorney General are Crown Law Officers and like all other attorneys admitted to practice in the Islands are governed by the provisions of the Legal Profession Ordinance and are thereby required to comply with the Code of Professional Conduct made there under (see. section 16(5)). All attorneys are required to have business licences and practicing certificates on an annual basis.

18. All these systems and safeguards are in place to ensure that there is transparency and good governance.

19. The Turks and Caicos Islands' compliance with international AML/CFT standards is reflected in the United Kingdom's ratification of relevant international and bilateral treaties on its behalf and the promulgation of domestic legislation such as the following:

- The Control of Drugs Ordinance, 1976 (as amended)
- The Control of Drugs (Trafficking) Ordinance, 1988 (as amended)
- The Proceeds of Crime Ordinance, 1998
- The Proceeds of Crime Regulations
- Proceed of Crime Ordinance, 2007
- Anti-Money Laundering Regulations 2007
- Criminal Justice (International Cooperation) (Ordinance)
- Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002
- Anti-Money Laundering and Prevention of Terrorist Financing

  Code, 2007
- Terrorism (United Nations Measures) (Overseas Territories) Order, 2001
- Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order, 2002
- Financial Services Commission Ordinance, 2007
- Customs Ordinance (Cap. 135)
- Police Force Ordinance
- The General Orders of he Turks and Caicos Islands Public Service – 1998 Edition (General Orders)
- Banking Ordinance
- Confidential Relationship Ordinance
- Company Management (Licensing) Ordinance
- Trustees (Licensing) Ordinance
- Trust Ordinance
- Insurance Ordinance
- Mutual Funds Ordinance

- Investment Dealers (Licensing) Ordinance
- Money Transmitters Ordinance
- Casinos Ordinance
- Mutual Legal Assistance Ordinance
- Proceeds of Crime (Designated Countries and Territories) Order, 2001
- Extradition (Overseas Territories) Order, 2002
- Overseas Regulatory Authority (Assistance) Ordinance
- Evidence (Proceedings in Other Jurisdictions) (Turks and Caicos Islands) Order, 1987

20. The United Kingdom has a Mutual Legal Assistance Treaty with the United States on behalf of the Turks and Caicos Islands which relates to cooperation in drug-trafficking matters.

21. The comprehensive overhaul of the AML regulatory regime which took place in 2001/2002 introduced a more robust system for the regulation of financial services. Changes made in 1999 to 2000 under the Proceeds of Crime Regulations including the imposition of statutory obligations for mandatory know your customers (KYC) requirements in respect of customers and beneficial owners that seek financial services. More detailed requirements have now been introduced by the recent Anti-Money Laundering Regulations, 2007. All these ongoing improvements demonstrate and cultivate a proper culture of AML/CFT compliance shared and reinforced by Government, financial institutions, designated non-financial businesses and professions, industry trade groups and self-regulatory organisations.

22. The Integrity in Public Office Bill 2007 is awaiting its second reading in the House of Assembly and provides a comprehensive framework of laws to combat corruption. In addition, there are Standing Committees established under the Constitution charged with responsibility for monitoring the conduct of business of the Government for which responsibility has been assigned to a Minister or Ministers (See. Section 61). Each standing Committee shall have power:

> (a) to summon any Minister, or any public officer of a department of government for which a Minister is responsible to appear before it;
>
> (b) subject to any law or Standing Orders, to require any person so summoned to answer questions and provide information about the conduct of business of the Government by the Minister or department concerned; and
>
> (c) to report upon its activities in the House of Assembly

23. There are also General Orders applicable to civil servants which govern their conduct in relation to contracts with the Government and other activities which would lead to conflicts of interest.

1.2 General Situation of Money Laundering and Financing of Terrorism

The Money Laundering Situation

24. The Financial Intelligence Unit (FIU) of The Turks and Caicos Islands is responsible for the receipt, analysis and dissemination of Suspicious Transaction Reports (STRs). Where the FIU believes that an investigation is needed into the contents of any STR, they are the primary investigation unit with the Royal Turks and Caicos Islands Police Force for investigating STRs, which relate to criminal conduct and money laundering as defined in the Proceeds of Crime Ordinance 1998 and under the new Proceeds of Crime Ordinance 2007. The Unit s also responsible for investigating large cash seizures, local drug traffickers or other serious crime offenders to determine whether they have benefited from their criminal conduct. Investigations are also done based on requests for law enforcement assistance from local and international law enforcement agencies. Police officers are governed by their Code of Conduct and are subject to internal disciplinary proceedings in addition to the application of the law in general.

25. The prevalent crime in the Turks and Caicos Islands is robbery. There is also some fraud.

26. During 2006, twelve (12) money laundering investigations were carried out, ten (10) of which are under active investigation and two pending court appearance. The last conviction for money laundering was in 2002 and one (1) acquittal in 2002. There were no ML convictions in 2003, 2004, and 2005 as there were no charges laid or prosecutions undertaken during these years.

27. The statistics are covered by the FISS, to date there have been no investigations where property has been frozen or seized, (except the US$23,000 currently covered by a restraint order and the three (3) parcels of land seized during a joint investigation with the United States of America; valued at approximately US$1.5 million.). Two (2) motor vehicles were forfeited in two (2) separate matters under the Drug Trafficking legislation during 2006. One (1) confiscation Order has been obtained during 2007 following a successful conviction in 2006, for certain relevant offences: forgery, uttering forged documents and obtaining property by deception. A Confiscation hearing was undertaken before the Supreme Court pursuant to the provisions of the POCO 1998 (section 4) and the convict was found to have benefited from criminal conduct to the extent of $15, 518.00. His motor vehicle was confiscated and ordered to be sold. Funds recovered went into the Consolidated Fund, the motor vehicles forfeited in the two (2) drug cases were not converted for deposit. The Asset Forfeiture Fund has only recently been established pursuant to the POCO, hence there have been no funds deposited therein at present.

The Drug Situation

28. The geographic characteristics of The Turks and Caicos Islands have in the past attracted drug traffickers as an inviting route for US-bound cocaine and marijuana, and although considerable joint efforts between The Turks and Caicos Islands, The Bahamas and the United States of America have helped to restrict drug trafficking, the Islands remain of interest to drug traffickers. Tran-shipment of drugs through The Bahamas continues to have a negative impact through local drug use and associated criminal activity.

29. Additionally, there is a Trilateral Agreement (Operation Bahamas, Turks and Caicos Islands) (OPBAT), with the governments of The Bahamas, the United States of America and the United Kingdom (on behalf of the Islands) to assist with drug interdiction efforts in this Region. The OPBAT bases are located on four (4) of the larger islands in The Bahamas. The arrangement has been extremely successful to the extent that it is believed that the local usage of drugs is on a downward trend because of the OPBAT programme. Additionally, most of the major drug traffickers have been incarcerated either in The Bahamas, the United States, Jamaica or Cuba.

OPBAT has also targeted drug organizations in the Region, which has resulted in a noticeable shift in transshipment patterns.

30. Drug trafficking is seen to have a negative impact on the general economy and the Government of the Turks and Caicos Islands continues to reiterate its priority commitment to completely eliminating the Islands as a trans-shipment and drop off point for drug trafficking. As a result there have not been any recent charges or convictions for drug trafficking in the Islands since the last Assessment and it is not seen as a major problem in the Islands.

31. In its efforts to attain its goal of eliminating drugs offences from the Islands and lessening their impact on the local economy, the Turks and Caicos Islands Government has adopted a policy of educating the citizens and residents about the dangers of drug use. Also, the Government has introduced a Bill in the House of Assembly to establish the National Drug Council as an independent statutory body as a successor to the Drug Unit in the Ministry of Home Affairs. Additionally, the long-standing policy of close co-operation between the United States' Drug Enforcement Administration (DEA) and the Turks and Caicos law enforcement agencies continue in place. The policy of close collaboration between agencies is the formation of the SPICE (Special Police Immigration and Customs Enforcement). There is currently in place a MOU between the Police, Customs and Immigration Departments which established and set the framework for the formation and collaboration the SPICE Unit. The SPICE Unit was established formally in October, 2005.

32. Burglary, theft, wounding and drug possession/drug trafficking and common assault are some of the more prevalent crimes.

Financing of Terrorism Situation

33. To date, there has been no evidence of terrorism or the financing of terrorism in the Turks and Caicos Islands. The Anti Terrorism Order 2002 provides for the offences of financing of terrorism and terrorism. In addition several Orders have been made by the UK on behalf of the Islands to designate persons suspected of terrorism. The primary Orders are as follows -

- Terrorism (United Nation Measures) (Overseas Territories) Order 2001
- Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002
- Anti – Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002

1.3 Overview of the Financial Sector and DNFBP

34. The Financial Services Commission licenses and regulates the entities shown below.

Table 4: Number of regulated financial institutions in the TCI

Type of financial institution	No. of licensees
Banks	**8**
Credit Card Services	**1**
Professional Trustees	**19**
Company Managers / Agents	**41**
Insurance Agents	**10**
Money Remitters	**7**
Investment Dealers	**3**
Investment Advisors	**1**
Mutual Funds	**3**
Mutual Fund Administrators	**3**

35. In relation to the number of exempt company formations/ registration, these are outlined below:

Table 5: Number of companies

Year	No. Registered	Total No.
2007 (to 31st July)	1109	14,756
2006	2003	13,661
2005	1810	11,689

36. In relation to DNFBP's one of the six categories is in fact regulated by the Financial Services Commission. These are trust and company services providers. Information in relation to that category is capture in Table 5 above.

37. The table below sets out information in relation to the remaining categories.

Table 6: Number of DNFBP's

Category of DNFBP	Number
Casinos	**1**
Real Estate Agents	**67**
Jewellers	**10**
Lawyers	**35**
Accountants and other professionals	**26**
Notaries and Justice of the Peace	**130**

38. Table 7: Types of Financial Institutions based on FATF 40 Glossary

Type of Financial Activity (See glossary of the 40 Recommendations)	Type of Financial Institution that is authorized to perform this activity
1. Acceptance of deposits and other repayable funds from the public (including private banking)	National (domestic) Banks and Overseas Banks, Credit Card Companies,
2. Lending (including consumer credit: mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting)	Domestic Banks, Non Bank Financial Institutions
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	Not Applicable
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	Money Transfer Businesses
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	National (domestic) Banks and Overseas Banks, Credit Card Companies
6. Financial guarantees and commitments	Domestic Banks, Overseas Banks,
7. Trading in: a) money market instruments (cheques, bills, CDs, derivatives, etc.); b) foreign exchange; c) exchange, interest rate and index instruments; d) transferable securities; e) commodity futures trading	Domestic Banks, Overseas Banks, Investment Dealers
8. Participation in securities issues and the provision of financial services related to such issues	Investment Dealers
9. Individual and collective portfolio management	Domestic Banks Mutual Funds, Mutual Funds Administrators
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Domestic Banks
11. Otherwise investing, administering or managing funds or money on behalf of other persons	Investment Dealers, Trusts, Mutual Funds, Mutual Funds Administrators
12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers)	Insurance (International and Domestic)
13. Domestic and Currency Changing	Domestic Banks

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

39. The main types of legal persons and arrangements used in the Turks and Caicos Islands are listed below. These legal persons are used to hold and own property, hold bank accounts, and own shares. These are:
    - Companies
    - Partnerships
    - Trust Companies
    - Trusts

Companies

40. The Companies Ordinance [Cap 122] (and its amendments) provides the legal mandate in relation to the incorporation of companies including exempt companies and limited life companies. The Ordinance consists of provisions relevant to the functioning of the companies in relation to its constitution, distribution of capital and the liability of its members, the management and administration, winding up and liquidation. The Ordinance also contains provisions in relation the removal of defunct companies.

41. To incorporate a company, one or more persons may subscribe to the Memorandum and Articles of Association, comply with the other requirements of the Ordinance and send the information to the Registrar. Part II of the Ordinance provides that the Memorandum of Association must establish the name of the company, liability of its members, classes and amount of issue share capital, location of its registered office, the director(s) and secretary.

42. Where the liability of a company is limited by shares, no subscriber shall take less than one share.

43. These are delivered to the Registrar in triplicate. One copy is retained for the Registry's records and the other are returned along with a Certificate of Incorporation.

44. There is required to be kept, a register of companies which shall contains particulars in relation to the company which may include but are not limited to, any of the particulars in section 25(3) of the Ordinance.

45. The Ordinance also sets restrictions on the certain names that may not be used to incorporate a company.

46. Companies are required to keep at its registered office a register of its members and other particulars in relation to its members and to file an annual list of members and the shares held by each of them with the Registrar. This annual list along with the other particulars required to be filed annually with the Registrar is called the annual return.

47. Construction is currently a booming industry, particularly as it relates to condominium sales. Companies are the main vehicles used to hold and own property.

Partnerships

48. Partnerships are governed by the Limited Partnership Ordinance [Cap126]. A limited partnership may be formed by one or more each of general and limited partners. The total number of partners shall not exceed 100. The Ordinance allows as body corporate to be a general or a limited partner.

49. It is stipulated that one or more of the limited partners of the firm must be resident, domiciled, established, incorporated or registered in or pursuant to the laws of the Turks and Caicos Islands. With regard to the general partners one of more general partners shall, if it is an individual be resident in the Islands, if it is a company be incorporated under the Companies Ordinance, if is it a partnership have at least one of its partners so resident, incorporated or registered.

50. A limited partner is not to take part in the management of the business. To be registered, the limited partnerships must file with the Registrar of Companies a statement signed by one or more of the general partners stipulating:

- the firm name;
- the general nature of the firm's business;
- the address in the Turks and Caicos Islands of its registered office;
- the term, if any, for which the limited partnership is entered into or, if for an unlimited duration, a statement to that effect and the date of its commencement;
- the full name and address of each general partner specifying each of them as a general partner.

51. The limited partnership is also required to keep a register of its members and to file annual returns.

Trust Companies

52. The Trustees (Licensing) Ordinance governs the licensing of professional trustees and provides that no person being a company may act as a professional trustee unless it is a licensed trustee. A professional trustee may only be deemed a trustee if it was so appointed by an express appointment in an instrument, appointed pursuant to a power in an instrument, appointed by an Order of the Court or by an instrument where the person declares himself a trustee or holding property for the benefit of any person or for any purpose which is not for the exclusive benefit of the trustee.
53. A person may be licensed by making an application to the Financial Services Commission (FSC). Once a licence is granted notice to that effect shall be published in the Gazette. A licence may be issued to a person or a company. In both cases they must satisfy the FSC that they are fit and proper to hold a licence. In the case of a company, it must also have a manager who is resident in the Islands with sufficient knowledge and practical experience in the work of a corporate trustee or who is a company which itself has such a manager.

54. The Articles of Association of a licensee must expressly prohibit bearer shares. The application must be accompanied by biographical information on the directors, officers, shareholders and any other beneficial owners of the company. A licensee must also keep accounts and file annual returns with the FSC.

Trusts

55. A trust is established when a settlor vests property in a trustee to hold for the benefit of a person (the beneficiary) or for a purpose which is not only for the benefit of the trustee or for the benefit of or person and for a purpose which is not only for the benefit of the settlor.

56. A trust can come into existence by an oral declaration, or an instrument in writing (for example by a trust declaration or by a will) or arising from conduct. However a unit trust cannot be created except by a written instrument.

57. Any property may be held or vested in the trustee upon trust and any property may be added as trust property.

58. The Ordinance specifies who may be a beneficiary of a trust and states that the settlor or trustees are not precluded from being beneficiaries of the trust. The trust will be deemed invalid if it purports to do or confer any power which contravenes any of the laws of the Islands. The Court may also declare the trust invalid in certain circumstances.

59. A trust must have at least two trustees except where the sole trustee is a corporation. The Ordinance also provides for the resignation and removal of a trustee. The duties and powers of trustees are also established by the Ordinance.

60. The Ordinance provides for the establishment of protective trusts whereby the interest of a beneficiary is liable to termination.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

61. Priority has been placed on the suppression of money laundering and the financing of terrorism through the extension of the powers of the Money Laundering Reporting Authority (MLRA) in the new Proceeds of Crime Ordinance. Whilst the Reporting Authority is established as the Financial Intelligence Unit for the country, its day to day management and operation and certain of its functions are delegated to the Head of the Financial Crimes Unit (FCU) of the Royal Turks and Caicos Islands Police. The suppression of these offences, particularly drugs and terrorism offences is a main priority of the government given the potential devastating effects it has had and can have on the country, socially, politically and economically. There is a great concern that the proceeds of criminal activities are re-invested into more criminal activities creating a vicious cycle of activities which are harmful to the continued and future prosperity of the Islands.

62. Drug trafficking was historically a significant player in money laundering activities in the Islands. Whilst it continues to be a major factor, other criminal activities are increasing making inroads as the fuel of money laundering activities in the Islands including those activities listed above.

63. The Government has placed emphasis on the establishment of an FIU given the capacity of the Islands, which is able to meet and satisfy the requirements of the Egmont Group[3]. To this end the FCU has been established as the functional FIU for the Islands. The FCU maintains full operational autonomy and is vested with the power to receive, analyse and disseminate Suspicious Transactions and Activity Reports. Significant resources have been dedicated to the FCU to this effect.

64. The FCU continually reviews its staff levels against its mandate to ensure that it can efficiently combat money laundering and terrorist financing.

65. The Government has also sought to extend the powers of various bodies in relation to combating money laundering and terrorist financing under the new Proceeds of Crime Ordinance. This legislation repeals and replaces the Control of Drugs (Trafficking) Ordinance [Cap. 35] and the Proceeds of Crime Ordinance 1998.

66. In the legislation, the powers of the Court and prosecutorial authorities has been extended in relation to the making of confiscation and forfeiture orders once a person has been convicted of an indictable offence and it can been proven that he has benefited from his criminal conduct. The aim is to recover from the person convicted, the Court's calculation of the financial benefit that he has obtained from his criminal conduct

67. The Court is now empowered to make a restraint order to protect property held by a person where the Court considers there are reasonable grounds to believe that a person has benefited from his criminal conduct and other specific criteria are satisfied.

68. The legislation also introduces the recovery in the Islands in civil proceedings before the Supreme Court of property which has been obtained through unlawful conduct or property which represents property obtained through unlawful conduct. Here it is not necessary that a person be first convicted of an offence. Only the Civil Recovery Authority (the Hon. Attorney General) may bring proceedings for a recovery order. However the legislation also provides for the search and seizure of cash which is reasonably suspected of having been obtained through unlawful conduct or of being intended for use in such conduct, and for the forfeiture of such cash in proceedings before the Magistrate's Court.

69. The Court is empowered to make a number of orders designed to assist in the investigation of a criminal recovery investigation, a civil recovery investigation or a money laundering investigation. These include:

a) an order for the production of material [a production order];

(b) a search and seizure warrant;

(c) a customer information order; and

(d) an account monitoring order.

70. The legislation further provides in relation to the MLRA that it can disclose information disclosed to it to a law enforcement agency in the Islands and, where permitted by the clause, to a foreign financial intelligence unit.

71. In addition to the principle money laundering offences (which already existed) of (a) concealing, disguising, converting, transferring or removing from the Islands criminal property; (b) entering

[3] The FCU has applied for but at the time of the Evaluation had not yet received membership in the Egmont Group.

into or becoming concerned in an arrangement which a person knows or suspects facilitates, by whatever means, the acquisition, retention, use or control of criminal property by or on behalf of another person and acquiring, using or having possession of criminal property, the legislation also includes some new offences.

72. The new offences are failing to disclose by money laundering reporting officers, as well as other offences for failing to disclose by others. The offences of prejudicing an investigation and tipping off now include more extensive provision in that it not only criminalises an unauthorised disclosure but it also penalizes the falsification, concealment, destruction or disposal of documents which are relevant to an investigation.

73. In order to facilitate further international cooperation, the legislation enables the Attorney General to apply to the Court for restraint orders on behalf of overseas authorities and the enforcement of external [overseas] confiscation orders in the Islands.

74. The Government has recognised the need to ensure that monies obtained through an order of the Court be maintained in a central location and to that end has established a National Forfeiture Fund into which must be paid (a) all money recovered under a confiscation order or under a forfeiture order made under the Anti-terrorism Order, (b) all money recovered under a recovery order, (c) all cash forfeited under the Ordinance or under the Anti-terrorism Order, and (d) all money paid to the Government by a foreign jurisdiction in respect of confiscated or forfeited assets. The Fund is administered by the Reporting Authority and the Reporting Authority is obliged to prepare financial statements that must be audited.

75. The Government is also completing the development of a ten (10) year plan, which is intended to create a diversified economy. It is expected that this plan would see the continued growth of the tourism sector but also see the financial services sector as playing a more important role. It is the intention of the Government to foster reliable and trustworthy growth in niche areas of the financial services sector.

b. The institutional framework for combating money laundering and terrorist financing

76. The Ministry of Finance is responsible for the financial affairs of the Turks and Caicos Islands and therefore works closely with the Financial Services Commission (FSC) to ensure the implementation of regulatory measures in relation to the financial services industry. The Hon. Minister of Finance is the prime sponsor for the passage of any regulatory and AML/CFT bills that the FSC seeks to have implemented.

77. The Money Laundering Reporting Authority (MLRA) comprises the Attorney General, as chairman, the Collector of Customs, the Managing Director of the Financial Services Commission, the Commissioner of Police and the Head of Financial Crime Unit. The MLRA replaced the Reporting Authority provided for in the Proceeds of Crime Ordinance, 1998.

78. The Reporting Authority is responsible for receiving (and, where permitted by this or any other Ordinance, requesting), analysing and disseminating disclosures made under this Ordinance or under the Anti-terrorism Order or disclosures of financial information required or permitted by any enactment for the purposes of combating money laundering or the financing of terrorism. Subject to the direction and control of the members of the Reporting Authority, the clause delegates the day to day management and operations of the Authority and the carrying out of certain specified functions of the Reporting Authority, to the Head of the Financial Crime Unit.

79. Under the Proceeds of Crime Ordinance the MLRA has responsibility for issuing a code and

guidelines in relation to the obligations under the Ordinance, the Regulations, the code and guidelines.

80. The Hon. Attorney General has responsibility for initiating criminal proceedings and the prosecution of all criminal offences in the Islands. Under the Proceeds of Crime Ordinance, the Attorney General is also designated as the Civil Recovery Authority and is the only person who may institute civil recovery proceeding.

81. The Chief Magistrate is the competent authority in relation to mutual legal assistance requests under the Mutual Legal Assistance Ordinance. This Ordinance relates only to requests between the United States and the Turks and Caicos Islands. The competent authority is assisted by the Hon. Attorney General in performing his functions under the Ordinance.

82. The Supervisory Authority visits casinos and money remitters to assess compliance with the requirements of the Money Laundering & Financing of Terrorism Guidelines which are issued and amended from time to time.

83. To this end virtually all requests for assistance in relation to AML/CFT matters are submitted to the Hon. Attorney General to exercise his powers to obtain production orders for service on financial institutions to protect and restrict the movement of the proceeds of crime, as well as to institute proceeding for confiscation and forfeiture of property obtained from criminal conduct. These powers now also extend to instituting civil recovery proceedings. In relation to specified instances the Police can compel the production of documents and restrain cash under the Proceeds of Crime Ordinance 2007.

84. Similar powers and functions have also been granted as above in relation to terrorist financing. However to date there has been no investigations relevant to the financing of terrorism and therefore no implementation of any of the measures in relation to making disclosures, obtaining a confiscation or forfeiture order or making an application in relation to civil recovery of terrorist cash.

85. The regulator of financial institutions is the Financial Services Commission (FSC). The FSC is the regulator for banks, trust companies, company managers and agents, insurance agents, money transmitters, mutual funds and mutual fund administrators, investment dealers and investment advisors. The FSC also has responsibility for the Companies Registry and the Trademarks and Patents Registry. The Government's intention having made the FSC the overall regulator for most financial institutions as opposed to separate regulatory bodies is to ensure consistency in the style of regulation and to have one central body with responsibility for supervision and regulation so as to avoid overlapping of roles and duties.

86. In the performance of its functions, the FSC conducts both onsite as well as offsite regulatory supervision. In addition to assessing compliance with AML/CFT measures, the FSC also monitors compliance with international best practices from standard setting bodies such as BIS, IAIS, OGBS, and IOSCO etc.

87. Over the past two (2) years the FSC has examined a large portion of its regulated entities ensuring that the required internal policies, procedures and controls to counter money laundering exist and are being implemented. Out of this remedial measures have been imposed and it has attempted to follow up on outstanding compliance issues.

88. The FSC also periodically conducts training seminars and workshops with financial institutions with a view to ensuring that financial institutions can identify the constituents of a suspicious activity or suspicious transaction, thereby fostering a more intelligent assessment of what should be the subject of an internal disclosure as well as reporting to the FCU. The benefit of such training has already become apparent in the increased number of disclosures of suspicious activity or transactions being reported over past statistics.

89. A prominent focus has been placed on optimizing the relationship between key authorities to ensure that there is timely and efficient exchange of information between them. This is to ensure that collectively the Islands are able to generate more realistic typologies of the current money laundering environment that exists in the Islands so as to better aid and develop counter measures to prevent money laundering.

90. The relationships between all relevant authorities including the Financial Services Commission, Police, Customs, Immigration and the Attorney General's Chambers, has been cooperative and greater cooperation and support is being vigorously promoted.

c. Approach concerning risk

91. Overview of policies and procedures: The Financial Services Commission (FSC) has adopted a risk based approach to AML/CFT measures as has been advanced by international standard setters such as the FATF and the IMF and World Bank. Regulation 4 of the Anti-Money Laundering Regulations requires that financial institutions adopt a risk based approach to their internal controls and procedures. Further guidance and requirements are also established in the Anti-Money Laundering and prevention of Terrorist Financing Code (the Code). The regulated person must therefore ensure that such controls provide for the assessment by the regulated person of the risk that any business relationship or one–off transaction will involve money laundering or terrorist financing and shall be appropriate to the circumstances, in relation to the degree of risk assessed.

92. Certain business types have inherent risks and given the range of regulated activities and the differences between clients of regulated entities and their clients businesses, it was incumbent upon the FSC to ensure that systems were put in place to effectively manage these risks. The diversity within the industry makes a prescriptive, and of necessity inflexible, approach to the measures required to prevent money laundering and combat terrorist financing impracticable. This approach recognises that the money laundering and terrorist financing threat to a regulated person is dependent upon a number of factors, including its customers, the jurisdictions in which it operates the products it offers and its delivery channels.

93. The regulated person under this regime can now differentiate between customers according to the particular risk of the business. The regulated person can further design their internal systems and controls in a way that fits their circumstances as opposed to covering all possible circumstances. The risk based approach serves to assess the threat of the business being used for money laundering or terrorist financing.

94. Having regard to the requirement for regulated persons to establish internal controls and procedure along a risk based approach, the FSC, in keeping with its mandate under the Financial Services Commission Ordinance, conducts compliance visits to ensure compliance with inter alia, the AML /CFT laws, regulations and code. The regulations also require that records of the internal controls and systems be maintained which would included the documented evidence of the development of a risk assessment regime.

d. Progress since the last mutual evaluation

95. In response to the recommendations made by the Assessment Team during the second round of the TCI Mutual Evaluation, numerous steps were taken to implement those recommendations.

96. The Anti-Money Laundering & prevention of the Financing of Terrorism Code (the Code) specifically provides for financial institutions to pay attention to unusual large transactions and unusual patterns of transactions which have no apparent economic or visible lawful purpose. The Code instituted a requirement that a regulated person cannot permit products where the customers name is not identified or where fictitious names are used. The Code also provides an obligation through requirement 8 to renew identification of the client or the beneficial owner periodically according to the risk assessed to that client or customer and in any event not less than once in every five years. The Code requires that a regulated person keep records of transactions or the business relationship for a period of years from the end of the relationship or transaction with customers and transactions connected with jurisdictions which do not or insufficiently apply the FATF Recommendations. Screening procedures for employees must form part of the financial institutions internal controls and high standards are required to be maintained by employees.

97. The Proceeds of Crime Ordinance 2007 at section 120 requires a financial institution or a person to report any transaction or proposed transaction which it knows or suspects or has reasonable grounds to suspect involves money laundering. A National Forfeiture Fund has also been established under section 145 of the 2007 Ordinance. In the making of disclosures financial institutions are required to comply with any instructions of the Money Laundering Reporting Authority.

98. The Money Transmitters Services Bill has also been introduced in Parliament and should be passed in law very shortly. This will bring money transmitters into the ambit of the supervisory and regulatory framework.

99. Casinos, real estate brokers, and those services of attorneys and accountants that involve payment of cash have been brought into the AML regime by the Anti-Money Laundering Regulations at regulation 3.

100. The FSC has undertaken periodic educational awareness programmes across the industry as well as with specific industry sectors in order to develop a culture of reporting suspicious transactions. Staffing issues in relations to the law enforcement continues to be advanced to adequately meet the needs of the Police Force. The Financial Crimes Unit has been created and tasked with responsibility for financial investigation as well as a specific designated responsibility as the functioning FIU of the Islands. Police have received specialise training in AML/CFT issues, narcotics, financial investigations, forensic, finger printing etc.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis

Recommendation 1

101. The Turks and Caicos Islands is a British Overseas Territory and as such international affairs are matters for the United Kingdom on behalf of the Turks and Caicos Islands. The UK Government ratified the 1988 UN Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances on June 28, 1991 and extended it to the Turks and Caicos Islands on February 8, 1995 ("the Vienna Convention"). The 2000 UN Convention against Trans-national Organized Crime ("the Palermo Convention") has been ratified by the UK but has not been extended to the Turks and Caicos Islands in the same way. It was implemented in the Turks and Caicos Islands by various Orders in Council which were made in the UK and have legislative effect in the Turks and Caicos Islands. The international obligations created under the Vienna Convention have been implemented by local legislation, primarily the Control of Drugs Ordinance, Cap.34, the Control of Drugs (Trafficking) Ordinance, Cap.35 and the Proceeds of Crime Ordinance 2007 (POCO).

102. The TCI has had a framework of anti-money laundering legislation in place since 1998 when the Control of Drugs (Trafficking) Ordinance was enacted. The Proceeds of Crime Ordinance 1998, which criminalized money laundering prior to the POCO, was assented to on September 11th 1998, however came into force on January 14th 2000. The TCI's anti money laundering legislative framework was extensively reviewed in 2006 and the POCO came into force on October 1st 2007. The POCO consolidates pre-existing provisions, which were previously to be found in a patchwork of different Ordinances, and also updates and reforms the law relating to money laundering. The POCO is supported by the Anti-Money Laundering Regulations 2007 (AMLR) and the Anti-Money Laundering and Prevention of Terrorist Financing Code 2007 (the Code).

103. The POCO, in summary, is designed to –

a) criminalise money laundering;

b) provide for the confiscation of the proceeds of criminal conduct;

c) enable the civil recovery of property which represents, or is obtained through, unlawful conduct;

d) provide the Reporting Authority with clear functions and enhance its powers;

e) require persons in the financial sector to report knowledge or suspicions concerning money laundering to the Reporting Authority;

f) give the Supreme Court the power to make a number of orders to assist the police in their investigations into money laundering;

g) establish a National Forfeiture Fund.

104. The POCO, the AMLR and the Code impose obligations on the regulated financial sector to put in place and implement procedures to prevent money laundering. The POCO and the AMLR also apply to, and impose obligations on, certain other 'relevant' businesses specified in the AMLR (this includes dealers in high value goods, dealers in precious metals and stones, estate agents, casinos, accountants and lawyers (the latter when undertaking certain transactions on behalf of clients)). The Code applies to regulated persons, i.e. persons who are licensed and regulated by the Financial Services Commission (the FSC) and to Designated Non Financial Business and Professions (DNFBPs) (See. Discussion in section 3 of the Report on the enforceability of the Code).

105. Money Laundering and a money laundering offence are defined by section 2(1) of the POCO. Money laundering is criminalized in The Turks and Caicos Islands by sections 117, 118 and 119 of the POCO (please see Annex 3 of the Report for full text), which sections outline the three (3) principal money laundering offences. These are:

- Concealing, disguising, converting, transferring and removing criminal property from the Islands (section 117);
- Entering into or becoming concerned in an arrangement which facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person (section 118);
- Acquisition, use and possession of criminal property (section 119).

106. These sections substantively criminalise money laundering in keeping with Article 3(1) (b)&(c) of the Vienna Convention and Article 6(1) of the Palermo Convention . All of the precursor chemicals as required by Article 3 (c)(ii) of the Convention are however not fully covered in the laws of the Turks and Caicos Islands and there is no precursor chemical legislation.

107. Section 118, the 'arrangement' section, provides for an important component in the activity of money laundering, that is, facilitating the offence. The offence of facilitating money laundering is adequately addressed under section 118 of the POCO; however the definition of money laundering and money laundering offences excludes an offence constituted under section 118. The TCI Authorities have confirmed that this was due to inadvertence and have indicated that a Bill[4] has been drafted to address this and other technical errors.

108. The POCO also criminalizes secondary or related money laundering offences such as failure to disclose knowledge or suspicion of money laundering to the Reporting Authority (sections 120, 121, 122) and prejudicing an investigation or 'tipping off'(section 123).

109. The POCO seeks to repeal, amend or save certain provisions of pre-existing law relating to anti money laundering however the exact scope of what is being repealed, amended or saved is unclear when one looks at sections 150 and 151 of the POCO and the respective Schedules referred to therein. The TCI Authorities have accepted that the transitional provisions are unclear due to technical problems whereby a number of section numbers were omitted from Schedule 5[5].

[4] The TCI have further indicated that this Bill is expected to be placed before the legislature during the week commencing February 11th 2008.

[5] The TCI Authorities have endeavoured to clarify same by an Order made under section 152 of the POCO.

110. In addition, the POCO, in its first Schedule (Schedule 1), outlines the offences of directing terrorism[6], people trafficking and arms trafficking however the exact scope or the elements of some of these offences is undefined in the law of the Turks and Caicos Islands.

111. The efficacy of the system of authorization for disclosures under subparagraphs (a) of sections 117(2), 118(2) and 119(2) depends heavily on the effectiveness of the MLRA in its role of effecting the appropriate consent. This is so in relation to all three defences. The Examiners cannot be satisfied that adequate systems exist for the MLRA to properly administer the system of authorized disclosure and to exercise this function with the diligence it requires so that no money launderer is able to escape liability by reason of this defence. This is so notwithstanding that there are statutory considerations, which apply to an authorized disclosure with respect to the timing of the disclosure and the requirement that the defendant must have a 'good reason'. Outside of these considerations, there are no guidelines from the MLRA as to what it would consider in giving consent to the disclosure, for example what would constitute 'good reason' for failure to make the disclosure before the prohibited act was committed.

112. Of note is that the defence outlined in Section 119 (2) (c) provides the defendant to the money laundering offence of acquisition, use or possession of criminal property with the opportunity to escape liability merely if he can show that he obtained the property in question for adequate consideration. This defence gives a wide latitude to the defendant in escaping liability particularly as it appears that the considerations outlined in section 119 (3) may be easily circumvented by the defendant.

113. The common denominator in sections 117, 118 and 119 of the POCO is that the acts of the offender must relate to 'criminal property'. Thus in order to constitute the offence of money laundering under sections 117, 118 and 119, the property in question must be 'criminal property'. Property is broadly defined in section 3 (please see Annex 3 of the Report) of the POCO and extends to any type of property, including an interest in property, wherever situated. 'Criminal property' is likewise defined in the POCO, by section 115.

114. In the POCO section 115 inter alia states :

"115. (1) Property is criminal property if:

(a) it constitutes a person's benefit from criminal conduct or it represents such a benefit, in whole or part and whether directly or indirectly, and

(b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(2) For the purposes of subsection (1), it is immaterial –

(a) who carried out the conduct;

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[6] The TCI Authorities have since indicated that 'directing terrorism' will be amended in the month of February 2008 to read a 'terrorism offence'.

(b) who benefited from it

(c) whether the conduct occurred before or after the passing of this Ordinance.

(3) A person benefits from conduct if he obtains property as a result of or in connection with the conduct."

115. The definition of 'criminal conduct' is therefore central to the meaning of criminal property and is in turn is defined by the POCO, at section 5. Criminal conduct constitutes conduct which is an offence in the Islands, or which would constitute an offence in the Islands if it had occurred in the Islands. Based on this definition of criminal conduct, money laundering offences clearly encompass offences which occur both in and outside the Turks and Caicos Islands. Consequently, proceeds of crime derived from money laundering offences and predicate offences occurring in and out of the Turks and Caicos Islands are captured under the POCO.

116. The law does not place a limit on the value of criminal property which can be the subject of the offence of money laundering or which may represent the proceeds of crime.

117. Money laundering offences are independent offences in the Turks and Caicos Islands and it is not necessary for a person to be convicted of a predicate offence for the offence of money laundering to be instituted or proven.

118. Further, civil forfeiture, that is forfeiture of property and cash without the need for a criminal conviction, has been enacted in the Turks and Caicos Islands pursuant to the provisions of Part III of the POCO. It is referred to as 'Civil Recovery' and this facility was not available under POCO 1998. Section 59 allows the Attorney General as the Civil Recovery Authority, or a Police Officer, to recover property and cash obtained through unlawful conduct, in civil proceedings. The provisions of section 59 (2) specify that proceedings need not have commenced in relation to an offence relating to the property that is to be the subject matter of the civil recovery proceedings.

119. Sections 60 and 61 of the POCO further defines unlawful conduct and section 60 states *inter alia* that a court will consider on the balance of probabilities whether it is proved that the alleged unlawful conduct occurred or whether it is proved that any person intended to use any cash in the unlawful conduct.

120. The predicate offences for money laundering cover all serious offences, that is, all indictable offences, as well as offences triable either way. This is because money laundering is predicated under the POCO on a person's benefit from criminal conduct (previously defined above) and criminal conduct constitutes an offence in the Islands or would have constituted an offence in the Islands if it had occurred in the Islands. 'Offence' is defined under section 2(1) of the POCO as an offence which is triable on indictment, inclusive of any offence which the Magistrate may also have the power to try summarily. The latter provision would thus encompass all 'hybrid' offences, that is, offences triable either way.

121. The following table illustrates Turks and Caicos' position with respect to criminalisation of the FATF 20 Designated Category of Offences:

Table 8: Designated Category of Offences

FATF 20 DESIGNATED CATEGORY OF OFFENCES	TURKS & CAICOS ISLANDS EQUIVALENT LEGISLATION
Participation in an organized criminal group and racketeering	Common Law
Terrorism including Terrorist Financing	Anti-Terrorism (Overseas Territories) (Financial and Other Measures) Order 2002, Terrorism (United Nation Measures) (Overseas Territories) Order 2001, Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002
Piracy	Common Law
Insider trading, market manipulation	N/A no stock exchange
Trafficking in human beings and migrant smuggling.	
Sexual exploitation including sexual exploitation of children	Offences against the Person Ordinance Cap 28
Illicit Trafficking in Narcotic Drugs and Psychotropic substances	Criminal Justice (International Cooperation) Ordinance, Control of Drugs (Trafficking) Ordinance
Illicit Arms Trafficking	
Illicit trafficking in stolen and other goods	Theft Ordinance Cap. 30
Corruption and Bribery	Elections Ordinance Cap 5; Common Law
Fraud	Theft Ordinance Cap. 30
Counterfeiting currency	Currency Ordinance [Cap 155]
Counterfeiting and Piracy of products	N/A No Copyright Laws & Registration of Copyrights
Environmental crime	Physical Planning Ordinance Cap. 73; Fisheries Protection Ordinance Cap. 104; Plant Protection Ordinance Cap 83
Murder, Grievous bodily injury	Offences Against the Person Ordinance Cap. 28
Kidnapping, illegal restraint and hostage taking	Common Law
Robbery or theft	Theft Ordinance Cap. 30
Smuggling	Customs Ordinance Cap 156, International Co-
Extortion	Theft Ordinance Cap. 30
Forgery	4 Victoria Chapter 31 of The Laws of the Bahamas as applied to the Turks & Caicos Islands.

122. The legislative framework in th

e Turks and Caicos Islands caters for the large majority of the FATF designated offences. It is noted however that certain offences are not captured or not fully captured by the Islands' law, such as participation in an organised crime and racketeering, corruption, piracy and insider trading and market manipulation. It is noted that in the absence of specific legislation, common law provisions may apply, for example conspiracy to commit a predicate offence may address the offences of participation in an organised crime or racketeering however it is important for the law to reflect the full range of these offences as designated. While it is noted that there is no local stock exchange, this does not distract from the need for criminalization of insider trading and market manipulation.

123. The Turks and Caicos Islands employs a threshold approach whereby all indictable offences or offences triable either way, would constitute predicate offences under the POCO. Section 5 of the POCO establishes that the underlying predicate offences for money laundering would be 'an offence' in the Turks and Caicos Islands or conduct which would constitute an offence had it occurred in the Turks and Caicos Islands. Offence is defined by section 2(1) of the POCO (as stated above) and such definition includes all indictable and offences which are triable either way. Thus all serious offences are clearly predicate offences for money laundering in the Turks and Caicos Islands.

124. By reason of section 5 and the definition of 'offence' in section 2(1) of the POCO, predicate offences for money laundering in the Turks and Caicos Islands extend to conduct which occurs in another country, which if committed in Turks and Caicos Islands would constitute an offence in Turks and Caicos (See. Discussion above).

125. Money laundering offences include persons committing predicate offences. Section 115 (2) of the POCO usefully provides that it is immaterial who carried out the conduct and who benefited from it.

126. Appropriate ancillary offences to money laundering, such as conspiracy and attempt to commit the offence, aiding and abetting, facilitating, counselling and procuring the commission of the offence, are included under the definition of money laundering and money laundering offences under section 2 and in section 143 in relation to an overseas money laundering offence. Of note is that section 118, which sets out one of the principal money laundering offences, itself expressly, criminalises the ancillary offence of facilitating – that is, entering into or becoming concerned in, an arrangement which one knows or suspects facilitates money laundering by another person.

Additional Elements

127. Under the POCO, the predicate offences are referable to acts that constitute offences under Turks and Caicos Islands law, wherever they occur. There is no requirement that the acts should constitute an offence in the actual country where the act was committed.

128. Therefore in view of section 5 and the definition of 'offence' aforementioned the key criteria would be the activity would have been an offence had it occurred in the Islands.

Recommendation 2

129. Under the POCO, the offence of money laundering applies to 'a person'. The word "person" is not defined in the POCO and so it falls to be defined under the Interpretation Ordinance, Cap. 3.

Section 3 (interpretation of terms applicable generally) of the Interpretation Ordinance widely defines person as including any corporation, either aggregate or sole, and any club, society, association, or other body, of one or more persons."

130. The offence of money laundering therefore covers all natural and legal persons who knowingly engage in money laundering activity or engage in such activity suspecting such activity is money laundering. This is as a consequence of the mens rea element contained in the definition of criminal property – knowing or suspecting that the property is criminal conduct.

131. Since it is immaterial who carried out the conduct and who benefited from it, money laundering offences embrace the perpetrator of the actual money laundering offence and/or predicate offence.

132. The TCI Authorities state that the intentional element of the offences of money laundering is permitted by sections 117(3), 118(1) and 119(3) of the POCO (Annex 3 of the Report).

133. Section 118(1) outlines the mens rea requirement for the offence contained therein as 'knows or suspects'. This is also the mental element required by section 115, in its definition of criminal property. The mens rea requirement for the offences at sections 117 and 119 are not outlined in those said sections, save that under 119(3), there is a mens rea requirement of knowing or suspecting relative to determining culpability with respect to inadequate consideration. The TCI authorities assert that the requisite mens rea element pertaining to the offences in sections 117 and 119 are stipulated in section 115 by the definition of criminal property.

134. The TCI Authorities also state that the intentional element of the offences of money laundering may be inferred from objective factual circumstances as a result of the words 'knows or suspects'. The Authorities further state that an objective standard is to be applied, as the test is whether the ordinary person 'would have known or suspected,' and that the use of the word 'suspects' gives latitude in prosecuting.

135. The Examiners accept that the English common law would be applicable in permitting the mens rea of 'knows or suspects' from factual objective circumstances, and thus that this would be sufficient for fulfilling the requirements of Article 6 (1)(f) of the Palermo Convention. The Examiners also accept that the mens rea for the offences under sections 117 and 119 are decided by reference to the definition of criminal property in section 115. As a matter of comment or observation on the issue of mens rea, the Examiners are of the view that it is desirable for proof of mens rea as envisioned by Article 6(1)(f), to be stipulated by law notwithstanding the facility of resorting to the common law for an interpretation. This is so because decided precedent may change or be vague or different cases may contain different interpretations which may be put forward to the court, and have an impact on the court deciding the case before it.

136. As stated previously, criminal liability for money laundering extends to legal as well as natural persons. Legal persons or corporations may also be subject to civil and administrative liability and sanctions pursuant to section 33 of the FSCO.

137. Criminal liability thus does not preclude other forms of sanctions for legal persons, and specifically the law does not exclude the possibility of parallel civil or administrative proceedings. There have however been no instances of parallel proceedings in the Turks and Caicos Islands with regard to either legal or natural persons.

138. Both natural and legal persons are penalized in the same way for committing money laundering offences. Sanctions for the money laundering offences under sections 117, 118 and 119 of the POCO are likewise the same, namely:

a) on summary conviction to imprisonment for a term not exceeding twelve months or a fine not exceeding $40,000 or both; or

b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine without limit or to both.

139. The secondary offences pursuant to sections 120,121,122 and 123 of the POCO all also carry the same penalty, which is:

- on summary conviction to imprisonment for a term not exceeding twelve months or a fine not exceeding $20,000. or both, or
- on conviction on indictment, to imprisonment for a term not exceeding five years or a fine without limit or to both.

140. The ancillary offences to money laundering carry the same penalties as the substantive offences.

141. The penalties for the three (3) principal money laundering offences upon conviction after summary trial appear to be somewhat lenient. TCI Authorities are of the view that this is unproblematic as the authorities have the option to proceed indictably, depending on the circumstances of the case, and further state that in any event, most money laundering cases would be tried before the Supreme Court on indictment.

142. The facilities of civil recovery of property and cash as well as confiscation upon conviction are effective and dissuasive sanctions for money laundering. Confiscation is permissible upon conviction of a money laundering offence or a predicate offence, once an application for confiscation is made by the prosecutor, or the Court in its discretion, considers confiscation to be appropriate, and the Court determines that the defendant has benefited from either his general or particular criminal conduct. Confiscation existed under POCO 1998 and was utilized in the one money laundering conviction which took place in 2002. A confiscation hearing before the Supreme Court resulted in a confiscation order being made against the convict, whereby his motor vehicle was confiscated and ordered to be sold.

143. This conviction was of a Turks and Caicos Islands national, who was indicted before the Supreme court on the following charges, namely:

- theft of a chose in action (US$365,000.00) (one (1) count);
- forgery (two (2) counts); and
- concealing property which is the proceeds of criminal conduct, contrary to section 30(1)(a) of the Proceeds of Crime Ordinance 2000.

144. The accused was found guilty on all counts and sentenced to four (4) years on each count to run concurrently. An official request to the United States for Treaty Assistance was instrumental in the success of the prosecution.

145. The Court of Appeal however reduced the sentence in this case to three (3) years on each count on the ground that the greater portion of the money was recovered and restitution of the remainder had been made.

146. Since this conviction in 2002, there have been no money laundering convictions in the Turks and Caicos Islands. This is because there were no prosecutions or charges laid until 2006, when two (2) separate charges of money laundering were laid. These two (2) cases are pending before the Supreme Court.

147. TCI prosecuting authorities ascribe the lack of prosecution during the period 2003- 2005 to the fact that no completed investigations or case files requiring prosecution were brought to them

during this period. The FCU explains the lack of money laundering prosecutions during this period, as being attributable to a less robust enforcement environment than that which exists at present and less awareness of the anti money laundering offences and systems.

148. No money laundering charges have ever involved legal persons or corporations.

Statistics

149. Comprehensive data and statistics are maintained by the FCU in respect of Suspicious Activity Reports (SARs) and money laundering investigations. During 2006 – 2007, twelve (12) money laundering investigations were carried out, 10 of which are under active investigation and two are pending court appearance. The two (2) pending cases each involve a charge laid pursuant to section 28(1)(a) of the POCO 2000 i.e. assisting another to retain the benefit of criminal conduct.

150. The FCU also maintains comprehensive statistics on the number of money laundering charges, convictions and acquittals, the number of production and restraint orders obtained, as well as the number of forfeitures and confiscations.

151. The table below outlines statistics provided by the FCU for the years 2004 – 2007:

Table 9: Statistics maintained by the FCU (pursuant to the POCO 1998)

CATEGORY	***2004***	***2005***	***2006***	***2007***
Forfeitures	0	-	1	2
Confiscations	-	-	-	1
Production Orders	-	2	6	7
M/L Conviction	-	-	-	0
M/L Acquittal	-	-	-	0
M/L Investigations	-	4	7	12
STR's	5	5	21	25
M/L Charges	0	0	0	10
Restraint Orders	-	-	2	1

The Attorney General's Chambers (Criminal Division) also keeps a record of all cases prosecuted including money laundering cases, and their outcome. As previously stated, the last conviction for money laundering was in 2002 and there was also one acquittal in 2002. Details on the conviction have been given above. The reason given for the acquittal on the charge of money laundering was the popularity of the Accused in the community. The jury is said to have acquitted the defendant as they did not want him to go to prison, especially since it was felt that the person who did the actual crime was on the run at the time.

Additional Elements

152. Statistics are maintained using the Overseas Territories Regional Criminal Intelligence System (OTRCIS) however comprehensive statistical recordings in the current subject were not maintained until 2005, with an improved Bespoke database coming online at the beginning of 2006. The funding for this software and training for its use was provided by the British Government.

153. Criminal sanction statistics are maintained by the Financial Crime Unit (FCU) using the Financial Investigation Support System (FISS) and OTRCIS. The OTRCIS-CIM (Overseas Territories Regional Criminal Intelligence System – Criminal Information Management links all of the British Overseas Territories for the purpose of sharing intelligence and data storage and retrieval.

154. The Attorney General's Chambers and the FCU each maintain a record of money laundering charges and the outcome of such prosecutions. The last conviction for fraud and money laundering was in June 2002.

2.1.2 Recommendations and Comments

155. 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.

156. The 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.

157. The penalty for the primary money laundering offences (sections 117, 118 and 119 of the POCO) 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

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	**PC**	• **The exact scope of what the POCO repeals, amends and saves, is ambiguous.** • **Schedule I of the POCO refers to offences which are not defined in the laws of the Turks and Caicos Islands, namely: directing terrorism, people trafficking, and arms trafficking.** • **The FATF 20 Designated Categories of Offences are not fully reflected in the laws of the Turks and Caicos Islands.** • **All the precursor chemicals required under Article 3 (c)(ii) of the Vienna Convention are not covered by TCI law and there is no precursor chemical legislation.** • **The effectiveness of TCI's legal framework is difficult to assess since there have no money laundering convictions since 2002.** • **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.
R.2	**LC**	• **The penalties for money laundering upon summary conviction are lenient and therefore not dissuasive sanctions.** • **The efficacy of implementation of the anti money laundering regime is uncertain, particularly in view of the very low incidence of money laundering prosecutions.**

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

Special Recommendation II

158. Terrorist Financing is criminalized in the Turks and Caicos Islands on the basis of:

- The Terrorism (United Nations Measures) (Overseas Territories) Order 2001 ('the Terrorism UN Order');
- The Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 ('the Anti-Terrorism Order'); and
- The Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 ('the Al-Qa'ida Order')

159. The Anti-Terrorism Order was made in the United Kingdom (UK) and came into force on 1st August 2002 in the UK and was extended to the Turks and Caicos Islands. It makes provisions for certain British overseas territories including the Turks and Caicos Islands, corresponding to various provisions of the UK Terrorism Act 2000 and the UK Anti-Terrorism, Crime and Security Act 2001, which deal with the financing of terrorism and related matters. It is the governing law in the Turks and Caicos Islands in relation to combating the financing of terrorism (CFT).

160. The Terrorism UN Order has implemented S/RES 1267 (1999) and its successor Resolutions. It entered into force on the 10th October 2001 in the UK and was extended to the Turks and Caicos Islands.

161. The Al-Qa'ida Order gives effect to S/RES 1390 and came into force on the 25th January 2002 in the UK and was also extended to the Turks and Caicos Islands.

162. The principal offences relating to terrorism and the financing of terrorism are set out in sections 6 –9 of the Anti-Terrorism Order. These are:

- **Fund raising (**section 6**):** which comprises three different categories of acts, namely –

  (i) inviting another to provide money or other property, intending that it should be used , or having reasonable cause to suspect that it may be used for the purposes of terrorism;

  (ii) receiving money or other property, intending that it should be used having reasonable cause to suspect that it may be used for the purposes of terrorism;

(iii) providing money or other property, knowing or having reasonable cause to suspect that it may be used for the purposes of terrorism.

- **Use and Possession (**section 7**) –** using money or other property for the purposes of terrorism and possessing money or other property, intending that it should be used or having reasonable cause to suspect that it may be used for the purposes of terrorism.
- **Funding arrangements** (section 8) – entering into or becoming concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, knowing or having reasonable cause to suspect that it will or may be used for the purposes of terrorism.
- **Money laundering (**section 9) – entering into or becoming concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property by concealment, by removal from jurisdiction, by transfer to nominees, or in any other way.

163. The Terrorism UN Order also sets out two main terrorism financing offences, namely – the collection of funds for the purposes of terrorism (section 3) and making funds available, in effect for the purposes of terrorism (section 4). The collection of funds under section 3 of this Order is criminalized in identical terms as that set out in section 6 of the Anti-Terrorism Order (fund raising as referred to above). 'Making funds available' refers to the making of funds or financial or related services available directly or indirectly to or for the benefit of a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism. This offence also extends to a person controlled or 'owned directly or indirectly' or a person acting on behalf of or at the direction of the 'person' (the main perpetrator) as described. The making available of such funds in the circumstances outlined, is permitted under the authority of a licence granted by the Governor.

164. The Al Qa'ida Order also outlines a terrorist financing offence as it criminalizes the making of funds available to or for the benefit of a 'listed person', as defined by the Order, in effect Usama bin Laden and Associates.

165. Liability for the offences aforementioned revolves around the offending actions being inextricably linked to the 'purposes of terrorism' (sections 6, 7, and 8 of the Anti-Terrorism Order), 'acts of terrorism' (section 4, the Terrorism UN Order), and 'terrorist property.' The meaning of terrorism is therefore critical in order to determine the exact scope of the application of these offences.

166. Under both the Anti-Terrorism Order and the Terrorism UN Order, terrorism means:

the use or threat of action which involves serious violence against a person, serious damage to property, endangers a person's life, other than that of the person committing the action, creates a serious risk to the health or safety of the public or a section of the public or is designed seriously to interfere with or seriously disrupt an electronic system, and

the use or threat (as described above) is designed to influence the government or intimidate the public or a section of the public and

the use or threat is made for the purpose of advancing a political, religious or ideological cause.

167. The above three (3) elements are all required to constitute or fulfil the meaning of terrorism.

168. Terrorist property is defined by section 5 of the Anti-Terrorism Order as money or other property which is likely to be used for the purposes of terrorism, proceeds of the commission of acts of terrorism, and proceeds of terrorism. Thus the meaning of terrorism is also essential for the application and scope of terrorist property. Likewise 'acts of terrorism' under the Terrorism UN Order depend on the definition of terrorism for its application.

169. Financing of terrorism is therefore substantively criminalized in keeping with Article 2 of the Terrorism Financing Convention since terrorist financing offences in the Turks and Caicos Islands extend to any person who wilfully provides or collects funds by any means, directly (sections 6, 7 and 9 of the Anti-Terrorism Order) or indirectly (section 8 of the Anti-Terrorism Order and section 4 of the Terrorism UN Order), with the unlawful intention that the funds should be used or in the knowledge that they are to be used in full or in part for the purposes of terrorism.

170. It is noted that to fall within the ambit of the 'purposes of terrorism', terrorists acts must include the conduct or actions spelt out in the definition of terrorism – serious violence against a person, serious damage against a property, endangering a person's life, creating serious risks to the health and safely of the public or a section of the public or designed seriously to interfere with or seriously to disrupt an electronic system. These acts must also fulfil the purposive requirement: to influence the government or to intimidate the public or a section of the public, and to advance a political, religious, or ideological cause.

171. The purposive elements, particularly since they are to be taken conjunctively, extend unnecessarily beyond the scope of Article 2 of the Terrorism Financing Convention. The Convention is satisfied by the purpose of intimidating a population or compelling a government or an international organization to do or to abstain from doing any act, and this is in turn satisfied by the first limb of the purposive requirements of the definition of terrorism (aforementioned - influencing the government or intimidating the public or a section of the public). It is noted that a less onerous burden is provided by section 4 (3) of the Anti-Terrorism Order, which discards the requirement of influencing the government or intimidating the public or a section of the public, once firearms or explosives are involved in the use or the threat of the action as defined. This however does not lessen the burden of fulfilling the purposive elements on the whole when no firearms or explosives are used.

172. It is arguable whether the action or threat of action which fulfils the purposive elements but which does not constitute 'serious' damage to property, and which however may still be desirable to be penalized, can in fact attract liability.

173. The perpetrator of the terrorist financing offences is 'a person'. There is no differentiation in the terms of the law between an individual terrorist, a terrorist group or a terrorist organization. The TCI Authorities assert that these different entities are all subsumed by the use of the word 'person'. This is because a person as defined under the Interpretation Ordinance includes any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons. Thus the entity who is the perpetrator of terrorist financing as well as the entity who receives the benefit, for example, of terrorist financing, may interchangeably either or both be an individual terrorist or terrorist organization.

174. Under the Anti-Terrorism Order, the term 'funds' is not contained in the wording of the sections criminalizing the financing of terrorism and thus is not defined. 'Funds' are in fact given very wide definition in the Terrorism UN Order and the Al Qa'ida Order in keeping with all of the elements of the term as defined in Article 1 (1) of the Terrorism Financing Convention.

175. For the purposes of the Anti-Terrorism Order, the term 'funds' would be represented by 'money or other property'. Money is not defined however property is defined by section 3 (1) as including 'property wherever situated and whether real or personal, heritable or moveable, and things in action and other intangible or incorporeal property.' This definition provides a very

wide, if general, definition of what constitutes property. Money would clearly be included. While it may have been desirable to specify certain types of property in more detail, for example, negotiable instruments (as itemized by the Terrorism Financing Convention) or that the property could be legitimately or illegitimately derived, the definition of property as stated, in essence conforms with the requirements of the Terrorism Financing Convention. 'Proceeds' in relation to the money laundering offence is likewise very widely defined (section 5).

176. There is no restriction created by any provision of the Anti-Terrorism Order, the Terrorism UN Order or the Al Qa'ida Order, which requires proof that the funds, money or property were actually used to carry out or attempt a terrorist act(s) or be linked to a specific terrorist act(s). Section 5 of the Anti-Terrorism Order broadly defines terrorist property as money or other property 'which is likely to be used' for the purposes of terrorism. In addition, sections 6, 7 and 8 of that Order all make reference to money or property, which 'may be used' for the purposes of terrorism. Similar terms of 'may be used for the purposes of terrorism' are employed in section 3 of the Terrorism UN Order with respect to the offence of collecting funds. The making available of funds further to section 4 of the Terrorism UN Order and section 7 of the Al Qa'ida Order, do not require that funds were actually used for the purposes of terrorism since it is sufficient for the funds to be made available to a specifically described or designated person.

177. Based on the foregoing, in the Turks and Caicos Islands it is not necessary to prove that funds were actually used to carry out or attempt a terrorist act(s) or linked to a specific terrorist act(s).

178. The Anti-Terrorism Order 2002 does not specifically provide for the offence of 'attempting.' However, section 7(2) and (3) of the Criminal Law Ordinance, Cap. 22 provides for persons to be charged with the offence of attempting to commit an offence. These provisions are as follows:

> *"(2)* Where, on a person's trial for any offence except treason or murder, the court find him not guilty of the offence specifically charged but the allegations in the charge amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the court of trial, the court may find him guilty of that other offence, or of an offence of which he could be found guilty if charged with that other offence.
>
> (3) For the purposes of subsection (2) of this section any allegation of an offence shall be taken as including an allegation of attempting to commit that offence; and where a person is charged with attempting to commit an offence or with any assault or other act preliminary to an offence, but not with the complete offence then (subject to the discretion of the Court to stay the proceedings with a view to the preferment of a charge for the completed offence) he may be convicted of the offence charged notwithstanding that he is shown to be guilty of the completed offence."

179. In addition, section 45 of the Interpretation Ordinance, provides that "a provision which constitutes an offence shall, unless the contrary intention appears, be deemed to provide also that an attempt to commit such offence shall be an offence against such provision, punishable as if the offence itself has been committed."

180. Attempting to commit the terrorism financing offences would therefore be covered by the above stated law.

181. Additionally, persons who aid or abet terrorism offences, including the financing of terrorism offences, would be captured by general criminal law provisions of the Criminal Procedure Ordinance, Cap 22. In section 5(5) of that Ordinance it states that "Any person who aids, abets, counsels, or procures the commission of any offence, whether an offence at common law or by any enactment, may be tried, prosecuted and punished as the principal offender and may be convicted whether or not the principal offender has been previously convicted or is or is not amendable to justice. Any number of accessories or abettors at different times to any offence, and any number of receivers at different times of property stolen at one time, may be charged with substantive offences in the same information, and may be tried together notwithstanding that the principal offender is not included in such information or is not in custody or amenable to justice."

182. Predicate offences for money laundering are widely construed under the POCO to include all 'offences', which in turn is defined by the Interpretation Ordinance to include all indictable offences or offences triable either way. All offences created under the Anti Terrorism Order, the Terrorism UN Order and the Al Qa'ida Order would thus be predicate offences for money laundering.

183. Of note is that 'directing terrorism' is listed in Schedule 1 of the POCO. Though organizing or directing terrorism is in effect required to be criminalized by virtue of Article 2 (5) of the Terrorism Financing Convention, directing terrorism is however undefined in the law of the Turks and Caicos Islands. Thus it is not known what would constitute the elements of this offence, or its penalty. The full scope of this scheduled offence requires clarification.[7]

184. Article 18, Part IV of the Anti-Terrorism Order 2002 ensures that terrorism financing offences apply regardless of whether the person alleged is in the Turks and Caicos or not. It provides that if –

(a) a person does anything outside the Turks and Caicos Islands, and

(b) his action would have constituted the commission of an offence under any of articles 6 to 9 if it had been done in the Turks and Caicos Islands, he shall be guilty of the offence

185. Terrorist financing offences apply in the Turks and Caicos Islands regardless of whether the person alleged to have committed the offence or offences is in the Islands or in a different country in which the terrorist/terrorist organization is located or the terrorist act occurred or will occur. This extra territorial component of terrorist financing offences is provided for by:

- Article 18, Part IV of the Anti-Terrorism Order which provides that if a person does anything outside the Turks and Caicos Islands, and his action would have constituted the commission of an offence under any of articles 6 to 9 if it had been done in the Turks and Caicos Islands, he shall be guilty of the offence, and by

- Articles 4 (4) of the Anti Terrorism Order and article 2 (d) of the Terrorism UN Order whereby the definition of terrorism is extended to include action outside of territory, persons or property wherever situated, a public of a country outside of

[7] The TCI authorities have since indicated that 'directing terrorism' will be amended to 'a terrorism offence.'

the Turks and Caicos Islands and a government other than the Government of the Turks and Caicos Islands.

186. As outlined above, section 5 of the POCO captures the offence of financing of terrorism. Therefore the same provisions outlined above in relation to Recommendation 2 would also apply to the financing of terrorism.

187. The mens rea element for the terrorist financing offences under the Anti-Terrorism Order explicitly allow for the intentional element of the offences to be inferred from objective factual circumstances. This is because the requisite mens rea is 'knows or has reasonable cause to suspect.'

188. Under the Terrorism UN Order the mental element required for the collection of funds (article 4) is an intention that funds should be used or knowledge that funds may be used for the purposes of terrorism. The present mens rea required for this offence as stated in this article does not specify that the intentional element of the offence would be inferred from objective factual circumstances; however when this is taken in conjunction with the English common law position on this issue, the requisite mens rea is satisfied.

189. The mens rea requirement is silent for the offence of making funds available under article 4 of the Terrorism UN Order and under article 7 of the Al Qa'ida Order. The mens rea position with respect to these two (2) articles needs to be addressed.

190. Though appropriate mens rea elements govern the offences set out in the Anti Terrorism Order, the same does not apply to the Terrorism UN Order and the Al Qa'ida Order. The TCI Authorities should consider amending the description of the mens rea requirements for the offences in the latter Orders, so that it is consistent with that set out in the Anti Terrorism Order.

191. Criminal liability for terrorist financing extends to both natural and legal persons by reason of the definition of 'a person' (under the Interpretation Ordinance), the use of which appears in all of the terrorist financing offences.

192. There appears to be no legislated or jurisprudential restriction which precludes parallel criminal, civil or administrative proceedings for terrorist financing offences.

193. Terrorist financing offences which may proceed indictably are effectively penalized as sanctions at this level are appropriately dissuasive. The same does not hold for sanctions for terrorist financing offences which may proceed summarily. The maximum penalty on indictment under the Anti-Terrorism Order is imprisonment for fourteen (14) years or a fine or both and under the Terrorism UN Order and Al Qa'ida Order seven (7) years or a fine or both. The maximum penalty pursuant to all of the Orders aforementioned at the summary level is imprisonment for a term not exceeding six (6) months or to a fine not exceeding $5,000 or both.

194. These sanctions are lenient in view of the nature and seriousness of these offences and the need for deterrence of potential offenders.

Recommendation 32 (terrorist financing investigation/prosecution data)

195. To date the MLRA/FCU has not received any suspicious transaction reports from any financial institution in the Turks and Caicos Islands, or from any other source that would indicate the occurrence of terrorism or of terrorism financing in the Turks and Caicos Islands. Therefore there have been no investigations, prosecutions or convictions in the Turks and Caicos Islands for the

said offences. Additionally there have been no international requests made relating to terrorism or the financing of terrorism.

196. No statistics pertaining to terrorism or terrorist financing are therefore available however, had there been statistics available, these would be covered by the Financial Investigation Support System (the FISS), which is maintained by the FCU. The FISS, came on line in February 2006 and the 2005 statistics and enquiries (not pertaining to terrorism or terrorism financing) were later entered on the system. It is a locally based, secure, fire walled and password protected, stand alone system, designed for the storage and retrieval of statistical and management information. It is also used to securely store SAR/STR information.

197. Prior to the advent and use of the FISS, the FCU kept statistics on all matters pertaining to its investigations and to prosecutions, using the more traditional methods of filing and Excel spreadsheets/programmes.

Additional Elements

198. There have been no criminal sanctions applied in relation to FT offences as there has been no financing of terrorism investigations or convictions. As noted above, statistics relevant to terrorism and terrorist financing offences, once they exist, would be recorded by the FCU in the FISS.

2.2.2 Recommendations and Comments

199. The TCI authorities should review the penalty for terrorism and terrorist financing offences at the summary level, to determine whether it accords with the spirit and intent of anti terrorism legislation and indeed if these sanctions are in fact effective punishment and hence sufficiently dissuasive.

200. Directing terrorism as an offence should be defined in the laws of the Turks and Caicos Islands.

201. 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.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**PC**	• **Penalties for terrorist financing offences at the summary level are lenient.** • **The elements of directing terrorism as required by Article 2 (5) of the Terrorist Financing Convention, are undefined in the laws of the TCI'.** • **Inconsistent mens rea requirements for terrorism offences.** • **The effectiveness of the CFT regime is difficult to assess in the absence of any STRs or investigations on FT.**

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

Recommendation 3

202. The POCO is the governing law is relation to confiscation, freezing and seizing of the proceeds of crime. It provides for both confiscation on the basis of a criminal conviction for an offence or a series of offences as set out in Part II of the Ordinance as well as recovery on the basis of civil proceedings as set out in Part III of the Ordinance. The POCO also allows for the obtaining of restraint orders to freeze or preserve the assets of the defendant where a money laundering investigation has been initiated or money laundering proceedings are instituted.

203. Pursuant to section 13 of the POCO 2007, confiscation of proceeds of crime is permissible upon conviction of a person for any offence triable on indictment (including either way offences), provided the Court is satisfied that the person benefited from the criminal conduct. This legislative provision also existed under POCO 1998. A confiscation order can also be made where the person is committed to the Court by the Magistrate's Court in respect of an offence(s).

204. Since criminal conduct refers to any indictable or hybrid offence, confiscation would be available following the conviction of FT offences.

205. Confiscation orders apply to the payment of sums by the defendant based on the Courts assessment of the benefit received by the defendant from his actions.

206. The forfeiture of instrumentalities or property used in the commission of the offence (called recoverable property) is available in respect of drug-trafficking offences pursuant to section 66 and those provisions following it in the POCO which provides that the Court may make a forfeiture order and set out the procedure.

207. Section 13 allows the court to make a confiscation order if the defendant is convicted of an offence(s) or if he is committed to the court by the Magistrate's Court in respect of an offence(s) 'or is convicted of an offence that constitutes conduct forming part of a course of criminal activity, as defined by section 15(2) of the POCO'

208. Section13(2) further provides that where the defendant is convicted of an offence(s) in Schedule 1 of the Ordinance (drug trafficking offence, money laundering offence, directing terrorism, people trafficking or arms trafficking),the Court may order a confiscation order if it determines that he benefited from his general criminal conduct. Where the defendant is convicted of any other offence(s) other than those in Schedule 1, the Court may grant a confiscation order if it determines that he benefited from his particular criminal conduct relevant to that offence(s).

209. The recoverable amount is an amount equalled to the defendant's benefit from the conduct concerned. In determining the value of the defendant's benefit account is taken of the total value of the total of the values, at the time the confiscation order is made, of all the realisable property then held by the defendant less the total amount payable pursuant to obligations which then have priority; and the total of the values, at the time the confiscation order is made, of all tainted gifts.

210. Realisable property is defined by section 6(1) and includes –

"(a) any property held by the defendant; and

(b) any property held by the recipient of a tainted gift."

211. Offences under the Anti-Terrorism Order 2002 would be predicate offences for the purposes of the POCO where they are indictable offences. Forfeiture is available under section 103 of the

POCO and under article 6 of the Anti-Terrorism Order 2002 once it had been detained as recoverable cash or terrorist cash respectively. The Court may seek to forfeit all funds in the defendant's possession or under his control or that has been detained. The onus falls on the convicted person to prove that the funds are not related to terrorism or terrorism financing.

212. The Authorities also have extensive powers under the POCO to restrain and impose a charge on recoverable property, which is defined as property obtained through unlawful conduct (section 62). The Court may also appoint a receiver for the purpose of realizing this property for the purpose of satisfying a confiscation order. As a consequence, the law in fact provides for confiscatory measures to be taken against property of a corresponding value.

213. The POCO in Part III of the Ordinance also provides for Civil Recovery of property and cash. Section 59(1) allows for civil recovery of property which is, or represents, property obtained through unlawful conduct and provides –

(1) This Part has effect for the purposes of –

(a) enabling the Civil Recovery Authority to recover property which is, or represents, property obtained through unlawful conduct, in civil proceedings before the court; and

(b) enabling cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before the Magistrate's Court."

214. In section 2 of the POCO, the interpretation section, "Cash" and "Civil Recovery Authority" is defined as follows –

"Cash" includes –

(a) notes and coins in any currency;

(b) postal orders;

(c) cheques of any kind, including travellers' cheques;

(d) bankers' drafts;

(e) bearer bonds and bearer shares; and

(f) any kind of prescribed monetary instrument;

"Civil Recovery Authority" means the Attorney General"

215. The authorities further state that according to the Anti Terrorism Order 2002, all indictable offences would be predicate offences for the purposes of the POCO. Forfeiture is described and available under section 103 of the POCO and under article 6 of the Anti Terrorism Order 2002 once cash has been detained as recoverable cash or terrorist cash.

216. Provisions for the confiscation, freezing and seizing of the proceeds of crime thus appear to be adequately addressed in the laws of the Turks and Caicos Islands, save that no legislative enactment was found which allows instrumentalities intended for use in or used in ML/FT offences to be forfeited or confiscated, where there is no benefit from criminal conduct or where the property has not been obtained through lawful conduct.

217. The TCI authorities state that section 13(3) of the POCO applies to instrumentalities of predicate offences (other than drug trafficking) whereby the Court has the power to order recoverable amounts to be forfeited. The recoverable amount is an amount equalled to the defendant's benefit from the conduct concerned and would include gifts. There however appears to be no specific provisions in the law for forfeiture or confiscation of instrumentalities intended for use or used in the commission of ML/FT offences, other than instrumentalities which relate to drug trafficking offences.

218. In relation to confiscation orders made on the conviction of a defendant see comments on sections above.

219. Section 61 of the POCO allows property derived directly or indirectly from the proceeds of crime, in the Ordinance referred to as 'unlawful conduct', to be subject to civil recovery. It provides –

(1) A person obtains property through unlawful conduct, whether his own conduct or another person's conduct, if he obtains property by or in return for the conduct.

(2) In deciding whether any property was obtained through unlawful conduct –

(a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the conduct; and

(b) it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct."

220. The POCO has adequate provisions for the freezing and /or seizing of property so as to prevent any dealing, transfer or disposal of property subject to confiscation and also to forfeiture.

221. Ancillary provisions exist in the POCO in section 43 for restraint orders to be made to "prohibit any person specified in the order from dealing with any realisable property held by him, subject to such conditions and exceptions as may be specified in the order."

The section further provides in 43(3) that the restraint order may apply –

"(a) to all realisable property held by the person specified in the order, whether the property is described in the order or not; and

(b) to realisable property transferred to the person specified in the order after the order is made."

And in section 43(6) states that 'Where the court has made a restraint order, a police officer may, for the purpose of preventing any property to which the order applies being removed from the Islands, seize the property."

222. Section 58 of the POCO allows restraint orders to be enforceable abroad.

223. In relation to forfeiture and civil recovery proceedings, the law (section 71(1) of the POCO) provides for the making of an interim receiving order for the detention, custody or preservation of property subject to those proceedings. In addition cash may be seized and detained by a police officer pursuant to sections 99 and 100, if he has reasonable grounds for suspecting that the cash is recoverable cash or part of recoverable cash. A police officer by definition in section 2(1) of the POCO, includes a customs officer and this is significant for the monitoring and control of cross border transfer or movement of cash.

224. Restraint orders made pursuant to section 43 of the POCO may be made without prior notice. Section 44(1) provides that –

> A restraint order –
>
> (a) may be made on an ex parte application to a judge in chambers; and
>
> shall provide for notice to be given to persons affected by the order."

225. In civil recovery proceedings, section 72(3) of the POCO states that –

> "An application for an interim receiving order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the Authority to obtain a recovery order in respect of any property."

226. Ex parte applications are also permitted when cash is initially detained pursuant to a police officer's powers to seize and detail under section 100 of the POCO.

227. Thus, the POCO allows for initial applications to freeze or detain property to be made ex parte or without prior notice. This is not inconsistent with the fundamental principles of domestic law in the Turks and Caicos Islands. Indeed though initial applications are made ex parte, notice must be given to the parties affected of all such freezing or seizure (detention) orders, once made.

228. Provisions for identifying and tracing property which is or which may become subject to confiscation or is suspected of being the proceeds of crime are usefully contained in the POCO. Power is given in relation to tracing property (section 63) and mixed property (section 64) once such property is recoverable property (section 62).

229. Pursuant to section 62, property obtained through unlawful conduct is recoverable property. Unlawful conduct is defined by section 60 as a criminal offence in the TCI or in another country where the conduct which occurs has been criminalized. Section 61 further specifically defines 'property obtained through unlawful conduct' as being property obtained by one's own unlawful conduct or another person's conduct, if the property is obtained by or in return for the conduct. Clear guidance is given by this section as to what factors are to be considered in determining what property is obtained through unlawful conduct. Importantly the said section gives the TCI authorities the facility of not having to prove that the conduct in question was of a particular kind, once it can be shown that the property was obtained through conduct of 'one of a number of kinds,' each of which would have been unlawful conduct.

230. Section 62 makes further provision for the recovery of unlawful property which has been disposed of since it was obtained through unlawful conduct and outlines the circumstances by which the disposed property can be followed. Section 63 provides the facility of tracing property which would have been converted or transferred to another person who is in effect not a bona fide purchaser without notice, and section 64 allows for property to be traced even if it has been

commingled with other property, once it can be shown that the portion of the mixed property represents the property obtained through unlawful conduct.

231. Production Orders are also available to assist investigators to identify and trace property which is or may become subject to confiscation or is suspected of being the proceeds of crime.

232. The competent authorities in the TCI are therefore given adequate powers to identify and trace property that is, or may become subject to confiscation or is suspected of being the proceeds of crime. Pursuant to section 62, property obtained through unlawful conduct is recoverable property and includes (a) the person who through the conduct obtained the property; or a person into whose hands it may, by virtue of this subsection, be followed."

233. Production Orders are also available to assist investigations to identify and trace property which is or may become subject to confiscation or is suspected of being the proceeds of crime.

234. The protection of the rights of bona fide third parties in civil recovery proceedings are provided for in sections 66 and 91 and 92 of the POCO.

235. Section 66 outlines exceptions to what may be recovered in civil recovery proceedings and these exceptions serve to protect third parties who would have obtained property in good faith. Further to this section, once it is shown that the third party obtained the property in good faith, for value and without notice that the property in question was recoverable property, then that property ceases to be recoverable property.

236. Exemptions to what is recoverable property is also outlined in sections 91 and 92 of the POCO. Under section 91 any person who claims that any property or part of that property alleged to be recoverable property belongs to him, may apply to the Court for a declaration to that effect. The said section allows the court to make such a declaration in related to the contested property if it appears to the Court that:

the applicant was deprived of the property he claims or of property which it represents, by unlawful conduct;

- the property the applicant was deprived of was not recoverable immediately before he was deprived of it; and
- the property he claims belongs to him.

237. Section 92 gives the TCI authorities the power to make regulations which prescribe certain descriptions and circumstances where a recovery order will not be taken against certain persons.

238. No such regulations have been made however this provision together with the provisions outlined above, clearly serve to protect the rights of third parties under civil recovery proceedings, thus are in keeping with the Palermo Convention.

239. An additional form of general protection to third parties' rights is provided through section 93 of the POCO whereby compensation can also be made to third parties in certain circumstances including if the Court decides in the course of the proceedings that the property in issue is not recoverable property or if proceedings have been discontinued, or if the applicant has suffered loss as a result of an interim receiving order.

240. In criminal proceedings, it appears that the usual practice is for the Court's discretion to be exercised for third parties rights to be heard and determined at confiscation hearings. While section 43(3) of the POCO makes appropriate provisions for expenses (reasonable legal and living

expenses) for the defendant or third party, there appears to be no specific provision which caters for the protection of the rights of third parties in the making of a confiscation order.

241. Such a lack of legislative provision fails to accord with the Palermo Convention which specifically requires the rights of third parties to be protected in confiscation proceedings.

242. Section 63 of the POCO in effect provides for the voiding of contracts, whether contractual or otherwise, where the persons knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

Additional Elements

243. Civil recovery or civil forfeiture is available under the POCO.

244. The Attorney General is the Civil Recovery Authority in the TCI and has the power to recover property which is or represents property and cash, obtained through unlawful conduct, through civil proceedings in Court. Of note is that a conviction for a criminal offence is not required for this power to be exercised.

245. Using the facility of civil recovery , the property of organizations which are purely criminal in nature, that is, whose principal function is to perform or assist in the performance of illegal activities, can clearly be forfeited.

246. There is however no legislative enactment which obligates or requires an offender to demonstrate the lawful origin of the property, when that property is subject to confiscation.

Statistics

247. The statistics are maintained through the use of the FISS. To date there have been no local investigations where property has been frozen or seized. A car and an earth mover were however seized in 2003 following an international operation with the USA into drug trafficking. This was as a result of a drug trafficker agreeing the property was the proceeds of drug trafficking as part of a plea bargaining agreement which included this voluntary confiscation.

248. Two motor vehicles were forfeited under the drug trafficking legislation during 2006. One confiscation Order has been obtained during 2007 and the property confiscated was also a motor vehicle.

249. Land valued at U.S. $1.5 million was seized in 2006 following an international operation with the USA into drug trafficking. This was also as a result of a drug trafficker agreeing the property was the proceeds of drug trafficking as part of a plea bargaining agreement. This matter is presently with the Attorney General's Chambers for legal issues to be determined relating to the transfer of title of the land from a shell company to the Asset Forfeiture Fund.

250. Additionally, in 2006 US $26,000 was frozen by way of a formal Restraint Order under the POCO 1998, pursuant to a fraud complaint. This case is pending and involves an individual who has been charged with fraud and another person who was charged with money laundering.

251. The Customs Department is also able to record transactions and statistics on OTRCIS. There is now an intelligence officer responsible for update of statistics.

252. As stated above (OTRCIS-CIM (Overseas Territories Regional Criminal Intelligence System – Criminal Information Management) links all of the British Overseas Territories for the purpose of sharing intelligence and data storage and retrieval)

Additional Elements

253. Statistics would be maintained using the FISS, and the joint intelligence system OTRCIS.

254. The Customs Department has made three (3) detections for 2006 for the predicate offence of fraudulent or non-declaration.

2.3.2 Recommendations and Comments

255. 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.

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	**LC**	• **Forfeiture or confiscation of instrumentalities intended for use in or used in ML/FT offences are not clearly covered by the POCO.**

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and Analysis

Special Recommendation III

256. The applicable law relating to the freezing of funds used for terrorist financing is contained in:

- The Terrorism (United Nations Measures) (Overseas Territories) Order 2001 ('the Terrorism UN Order 2001') and
- The Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 ('the Al-Qa'ida UN Order 2002').

257. The Terrorism UN Order 2001 implemented S/RES/1267(1999) and its successor resolutions so that the Order prohibits fundraising for terrorism purposes and restricts the making available of funds and financial services to terrorists, and provides powers to freeze accounts of suspected terrorists, pursuant to a decision of the Security Council of the United Nations in its resolution 1373 of 28th September 2001.

258. Article 4 makes it an offence for any person to make available funds directly or indirectly for, to or for the benefit a person involved in acts of terrorism or owned or controlled directly or indirectly by such a person or acting on behalf or at the directions of such a person.

259. Powers to freeze funds under both Orders are vested in the Governor. Under article 5 of the Terrorism UN Order and article 8 of the Al Qa'ida Order, this power of the Governor and the procedure for exercising his power to freeze funds used for terrorist financing, are outlined in almost identical terms, save that the Governor's powers under the Al Qa'ida Order applies specifically to a listed person. The Governor's powers under the Terrorism UN Order has wider application as it refers to any person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism, is controlled or owned directly or indirectly by the aforementioned person or acts on behalf of or at the direction of that person. A person falling under the scope of the Terrorism UN Order would include both natural and legal persons.

260. Under both Orders the Governor's powers may be exercised once he has reasonable grounds for suspecting that the person by, for or on behalf of whom funds are held, is or may be a listed person or a person as described above for the purposes of the Terrorism UN Order. This is therefore an important prerequisite for the exercise of the Governor's powers.

261. Once these conditions are satisfied in the discretion of the Governor, the Governor may by notice direct that the funds in question are not to be made available to any person, except under the authority of a licence granted by him (article 5 (1) of the Terrorism UN Order and article 8 (1) of the Al Qa'ida Order).

262. The various procedural steps for the freezing of funds by the Governor are evident on the face of the legislation. With the exception of the provision which requires the recipient on the direction of the Governor to send the Governor's notice or direction 'without delay' to the person whose funds they are, or for or on whose behalf they are held, and the provision which requires the Governor to be provided with notice of any application to set aside his direction, seven (7) days prior to the date of the hearing of the application, no time frames are outlined which expressly provide for the Governor's powers to be exercised without delay.

263. It is however clear that no prior notice is required by the Governor to the person whose funds are being frozen.

264. The Governor's powers to freeze as outlined in these Orders have not been exercised as no circumstances have existed in the Turks and Caicos Islands, which required its exercise.

265. These provisions serve to allow funds to be frozen where they constitute funds held by or for a person or listed person, involved in acts of terrorism, or funds owned or controlled, directly or indirectly by such person or listed person or on their behalf, and so serves to ensure that such funds are not made available either directly or indirectly for a person as described, or listed person's benefit by a national of the Turks and Caicos Islands or by any other person within the Islands.

266. The law applies to the freezing of 'funds 'and not 'funds and other assets' in keeping with the terms of the Terrorist Financing Convention. However, the definition of funds in both the Terrorism UN Order and the Al Qa'ida Order is sufficiently wide to cover 'other assets.'

267. Powers to freeze funds and assets of suspected terrorist pursuant to the UN Security Council Resolution 1373 are contained in the Terrorism UN Order (article 5). Power is given to the Governor to freeze funds of persons, including other persons acting on their behalf, who commit, attempt to commit, participate in or facilitate the commission of acts of terrorism, and who thus have the authority to designate in this way by his direction, persons who or entities which should have their funds or other assets frozen.

268. While there is no requirement for prior notice to be given by the Governor before he directs the freezing of assets, there are also no mechanisms in place to ensure that the Governor would in every case act 'without delay' once the requisite reasonable grounds for acting are satisfied (as outlined above).

269. The Governor of the Turks and Caicos Islands has indicated his commitment to ensure that should the situation arise, freezing would be done without any delay and the Examiners accept that the Governor would act promptly or without delay. However, a more formal mechanism is needed which requires the Governor to act immediately or forthwith to freeze funds once the reasonable grounds test is satisfied.

270. The determination of what constitutes reasonable grounds is solely within the discretion of the Governor thus this allows for a quick decision to be taken by the Governor. At the same time, in determining reasonable grounds, the Examiners have found that no national legal principles or considerations have been formulated.

271. Though no terrorism or terrorist financing activities have been observed in the Turks and Caicos Islands, it is clear that a mechanism is needed whereby the Governor or the Turks and Caicos Authorities or a designated authority, are regularly updated of persons who have been identified as terrorists by other countries, and which requires that the Turks and Caicos authorities act upon such notification by providing or circulating lists to the relevant entities and financial institutions in the Turks and Caicos Islands.

272. The Turks and Caicos Islands can give effect to actions initiated under the freezing mechanisms of other jurisdictions by reason of part 11, schedule 2 of the Anti Terrorism Order, which allows for the enforcement of external (freezing) Orders made in designated countries. The Governor may by Order make provision for the purpose of enabling the enforcement of external orders (section 11, part 11, schedule 2). The caveat however is that such Order must be made in the UK or any territory to which the Anti Terrorism Order extends (Anguilla, the Falklands, Montserrat, St. Helena and Dependencies, the Virgin Islands) or any other British Overseas Territory.

273. No countries have as yet been designated by the Order of the Governor in relation to terrorism financing offences, as countries from which external orders will be considered, however, the Governor's designation appears to be limited by the definition of an external order. In any event the TCI Authorities indicate that there is no need for the Governor to designate countries by Order since the UK has responsibility for international relations and foreign affairs of the TCI as one of its overseas territories and therefore these Orders are made and extended by the UK to the TCI.

274. According to law, once an Order is made by a designated country, the Governor 'may' make provision for the purpose of enforcement of the Order. The Governor's powers to enforce orders in this way are therefore discretionary. In practice however the TCI Authorities indicate that the Governor has no such discretion as the UK decides whether orders will be enforced. The TCI authorities therefore do not consider it necessary for written guidelines to be established as to what considerations would apply in determining whether or not an Order would be made, in these circumstances.

275. The wide definition of funds taken in conjunction with the provisions of article 5 of the Terrorism UN Order and section 8 of the Al Qa'ida serve to allow for the Turks and Caicos Islands to freeze funds or 'other assets' (undefined but covered by the definition of funds), wholly or jointly owned or controlled, directly or indirectly by designated persons (as in the Al Qa'ida Order), terrorists, those who finance terrorism and terrorism organizations. It has been previously noted that terrorist organizations are covered by the definition of a person under the Interpretation Ordinance.

276. Actions taken under the freezing mechanisms are communicated to the financial sector and the public at large through notices published in the Official Gazette and by notices issued by the Financial Services Commission.

277. An Official Government Gazette usually takes a week to be published however in exceptional cases publication can take place in one day. Subscriptions are necessary for receipt of these Gazettes. There has been no occasion in the past four (4) years which required publication in the Official Gazette of freezing matters, neither has there been any cause for notices to be issued by the FSC during this time.

278. It is uncertain as to what exact procedure prevails in the Turks and Caicos Islands with respect to the circulation of lists of suspected terrorists compiled by international organizations or bodies such as the UN and the OFAC. It remains unclear to the Examiners as to where responsibility lies for the circulation of these lists to the financial sector. This is because there are no clear administrative directions as to who has responsibility for the circulation of lists of suspected or named terrorists 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. The majority of the financial institutions interviewed had either never seen such lists, stated that no such lists were ever circulated to them by the Turks and Caicos Islands' Authorities or stated that they made their own arrangements to obtain such lists.

279. Authorization to make guidelines for financial institutions and other persons or entities that may be holding targeted funds or other assets with respect to their obligations in taking action under freezing mechanisms is contained in sections 42 and 43 of the FSCO.

280. No Guidelines have been issued by the FSC, either with the advent of the new legislation or under the old FSCO.

281. Though an Anti Money Laundering and Prevention of Terrorism Financing Code was issued by the Reporting Authority to provide guidelines to the financial sector, obligations placed on the financial sector by reason of freezing mechanisms have not been addressed.

282. The procedure for the freezing and unfreezing of funds is clearly set out in section 5 of the Terrorism UN Order and section 8 of the Al Qa'ida Order, which both allow the Governor to direct freezing of funds and revoke such direction, thus 'unfreezing' funds. Though there are no statutory or formal guidelines governing the time frames for such actions, the section allows for a quick mechanism of notices for the freezing of funds and an equally quick method of unfreezing those funds, once prompt action is taken by the Governor. The Article requires the unfreezing of funds to be done without undue delay. There are therefore adequate provisions in the law of the Turks and Caicos Islands which address the freezing of funds used for terrorist financing however, administrative systems, which implement the CFT legislative framework, are by and large lacking.

283. Application for the setting aside of the freezing direction of the Governor is also provided by the stated legislation through a process of litigation at the Supreme Court (sections 5 (7) and (8) of the Terrorism UN Order and article 5 (7) and (8) of the Al Qa'ida Order).

284. With respect to the delisting of persons and entities and indeed the initial listing, the Turks and Caicos Islands' Authorities state that the Turks and Caicos Islands is not responsible for these international arrangements, as indicated persons are listed by the UK and the effect thereof is applied in the Islands through various Orders in Council. The Authorities further state that the delisting process would be similarly done and then extended to the Islands.

285. Delisting of persons who have been listed appears to have never been carried out in the Turks and Caicos Islands.

286. Persons who are inadvertently affected by the direction of the Governor to freeze funds would have to fulfil the requirements of article 5 (7) and (8) of the Terrorism UN Order and article 8 (7)

and (8) of the Al Qa'ida Order to have the Governor's direction set aside so that the funds in question are unfrozen. These provisions allow 'any person by, for, or on behalf of whom those funds are held' to make an application to have the Governor's direction set aside. Once the person inadvertently affected falls within this description of a person, then that person would have a right to apply to the Court. There appears to be no provision which applies directly to persons inadvertently affected by the freezing direction of the Governor other than this provision.

287. It is unclear as to how timely such a procedure would be as a Court process is involved.

288. There are no procedures for authorizing access to funds or other assets that have been frozen relating to terrorist funds except for the provision which allows for the setting aside of the Governor's direction as outlined above. This provision however does not capture the concept of having access to frozen funds, particularly funds which have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.

289. Though no funds have been frozen, no outline of specific expenses or schedule of authorised expenses has been formulated.

290. Appropriate procedures exist in the Turks and Caicos Islands whereby a person or entity whose funds or assets have been frozen can challenge that measure with a view to having it reviewed by a court of law. This is provided by:

- Article 5 (7) and (8) of the Terrorism UN Order and article 8 (7) and (8) of the Al Qa'ida Order in relation to the Governor's direction to freeze, and by
- Section 6 (2) of Schedule 11 of the Anti Terrorism Order in relation to restraint orders, which provides for their discharge or variation by the Supreme Court on the application of a person affected by it.

291. The elements outlined in Recommendation 3 above in relation to the freezing, seizing and confiscation of the proceeds of crime also apply to the freezing, seizing and confiscation of terrorist related funds or other assets. No other or additional circumstances other than the contexts already described hereinabove under this Special Recommendation III have been identified in the laws of the TCI.

292. Protection of the rights of bona fide third parties is in fact consistent with article 8 of the Terrorist Financing Convention. Third parties can challenge freezing actions and apply to the Governor to have assets or funds 'unfrozen' as discussed hereinabove.

293. Examination of financial institutions by regulators would require the regulators, as part of their assessment of the risk exposure of the financial institution, to assess whether the terrorist financing measures are being complied with. Noteworthy is the requirement under section 34(3) of the PTA for financial institutions to file quarterly reports indicating whether or not they are in possession of terrorist property. Failure to report carries a penalty of five (5) years' imprisonment.

294. Article 10(1) provides a general duty of disclosure in non-regulated and public sectors "where a person –

(a) believes or suspects that another person has committed an offence under any of articles 6 to 9, and

(b) bases his belief or suspicion on information which comes to his attention in the course of a trade, profession, business or employment."

It is further provided in subparagraph (9) that –

"(9) A person guilty of an offence under this article shall be liable -

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, to a fine or to both,

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both."

295. Article 11 makes provisions making disclosures to constables whilst article 13 further makes provision in relation to cooperation with the police and provides that person does not commit an offence under articles 6 – 9 acting with the express consent of a constable or makes a disclosure to a constable.

296. Article 14 provides that 'A person guilty of an offence under any of articles 6 to 9 shall be 1iable :

(a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both."

297. For the regulated and public sectors, persons are obligated to make disclosures. Failure to make disclosures is an offence where he –

Firstly,

"(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

that another person has committed an offence under any of articles 6 to 9."

Secondly where ,

"the information or other matter -

(a) on which his knowledge or suspicion is based, or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of a business in the regulated sector."

Additional Elements

298. According to the TCI Authorities, efforts at implementation are ongoing. Details of these efforts were requested by the Examiners but were however not received at the time of the writing of this Report.

299. Under the Anti-Terrorism Order 2002 the Court is empowered to freeze funds or other assets based on information creating reasonable grounds to suspect or believe that such funds or other assets are terrorist-related.

300. As previously mentioned, the designation process is done in the UK on behalf of the Territories. The process for financial institutions to communicate information concerning frozen assets is set out in schedule 4 to the Anti-Terrorism Order 2002.

301. As previously mentioned, listing and de-listing is done by the UK on behalf of the Turks and Caicos Islands. For example, the Anti-Terrorism Order 2002 repealed the Afghanistan Orders made just after the attacks of 9/11 in the US.

302. The confidential treatment of information concerning frozen terrorist funds is enshrined in the POCO and the Financial Services Commission Ordinance.

303. Pursuant to section 43 of the POCO there are provisions to allow for the expenses to be met. It provides as follows –

'(1) If any paragraph in section 42(1) is satisfied, the court may, on the application of the prosecutor, by order, prohibit any person specified in the order from dealing with any realisable property held by him, subject to such conditions and exceptions as may be specified in the order.

(2) Without prejudice to the generality of subsection (1), a restraint order may make such provision as the court thinks fit for –

(a) reasonable living expenses and reasonable legal expenses; or

(b) enabling any person to carry on any trade, business, profession or occupation."

Recommendation 32 (terrorist financing data)

304. Statistics are maintained on the OTRCIS system but comprehensive statistical recording in the current subject were not maintained until 2005 with an improved bespoke database coming online at the beginning of 2006.

305. Criminal Sanction statistics are maintained on the FCU Financial Investigation Support System (FISS) and OTRCIS.

306. To date their have been no investigations with FT indicators.

2.4.2 Recommendations and Comments

307. 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.

308. Clear administrative guidelines as to who has responsibility for the circulation of lists of suspected or named terrorists 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.

309. 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.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**LC**	• **Ineffective implementation of a strong CFT regime:** • **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** • **No clear procedures for the communication of lists of suspected terrorists to the financial sector.**

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and Analysis

Recommendation 26

310. The Money Laundering Reporting Authority (the MLRA) established by section 108(1) of the Proceeds of Crime Ordinance, 2007 (the POCO) is the Financial Intelligence Unit (FIU) for the Turks & Caicos Islands and as such is the national centre for receiving, analysing, and disseminating disclosures of STRs and other relevant information concerning suspected ML or FT activities.

311. The functions of the FIU have been delegated to the Financial Crimes Unit (FCU) of the Royal Turks and Caicos Islands Police Force and are outlined in section 109(5) of the POCO which came into effect on 1st October, 2007. The day to day management of the MLRA include the receipt, analysis and dissemination of disclosures. The TCI Authorities reported that since the FCU was already engaged in investigating financial crimes, it was best poised to perform the tasks of an FIU.

312. When the FCU receives an STR, the Head of the Unit discusses it with the Chief Analyst and a complete analysis is conducted to determine whether the funds involved represent the proceeds of crime. The analysts' findings determine whether the matter is further investigated or held for intelligence purposes. The Examiners obtained statistics on forty-two (42) STRs during the period 2005 to 2007. These are explained in more details under Recommendation 32 at paragraphs 364-367 on page 66 of this Report.

313. The Unit is staffed solely by police officers but currently has one person from the audit office on extended attachment.

314. The POCO section 111 sets out provisions which allow the MLRA to issue a code and other guidance. That section states –

111.(1) The Reporting Authority shall issue a Code setting out –

(a) measures, not inconsistent with this Ordinance, the Anti-Money Laundering Regulations or the Anti-Terrorism Order, for the prevention of the use of the financial system for money laundering and the financing of terrorism;

(b) the features of a transaction that may give rise to suspicion that the transaction is or may be relevant to the enforcement of this Ordinance or the Anti-Terrorism Order;

(c) the procedures for reporting a suspicious transaction to the Reporting Authority;

(d) the Reporting Authority's procedures in connection with disclosures made to it.

(2) The Reporting Authority may issue guidance concerning compliance with the requirements of this Ordinance, the Anti-Money Laundering Regulations and the Code and concerning such other matters as it considers relevant to its functions.

315. Section 6 of the Anti-Money Laundering and Prevention of Terrorist Financing Code (the Code) deals with reporting suspicious activity and transactions. Paragraph 6.1 outlines the obligations on regulated financial businesses to make Suspicious Activity Reports (SARs) and Suspicious Transaction Reports (STR's) where they know or suspect or have reasonable grounds for knowing or suspecting that a person is engaged in money laundering or terrorist financing.

316. Paragraph 6.5 of the Code provides that STR and SAR reports should be made to the Money Laundering Reporting Officer (MLRO), which regulated businesses, are required to appoint and establish in accordance with regulation 8 of the Anti-Money Laundering Regulations 2007 (AMLR).

317. The person/employees should make a report as soon as practicable after the information or other matter which would constitute the report has come to light. The report must be made to the MLRO or to the Reporting Authority (paragraph 6.6 of the Code). The MLRO would then make a

determination as to whether information or other matter contained in the report gives rise to grounds for knowledge or suspicion of money laundering. If he does, then he must disclose that information or matter to the Reporting Authority (Paragraph 6.7).

318. The Examiners were informed that until February, 2006 there was no central location for the reporting of STRs The destinations varied from the Police and the Attorney-General's Chambers to the Financial Services Commission while some reporting businesses simply were not aware of the process at all. The Examiners learned that the FSC provided guidance to reporting institutions regarding the process for reporting STRs, a function which the FCU was mandated to perform. While this is a positive step, this protocol which only came into effect during 2006, has not been sufficiently widespread. It appears that, apart from a seminar held by the FSC in conjunction with the U. S. Department of the Treasury, Office of Technical Assistance 18th- 21st July 2006, there was no formal dissemination of the revised procedure for reporting STRs.

319. Despite the training facilitated by the FSC in conjunction with the U.S. Department of the Treasury, most of the persons interviewed reported that they were not given any guidance on the procedures for reporting STRs particularly with regard to suggested timeframes for such reporting. Additionally, it was reported that there was no formal channel of communication by the FSC and FCU on this requirement. Unfortunately, many of the reporting businesses interviewed opined that generally the dissemination of such information occurred infrequently and, in most cases, by informal means.

320. The Examiners have obtained a copy of the form used for reporting suspicion, which seems adequate. However, there does not appear to be any organized protocol for providing feedback to reporting parties.

321. The Financial Services Commission Ordinance 2007 (FSCO) allows the Board of the Financial Services Commission (FSC) to issue a Code (section 42) for the conduct required of licences and the FSC to issue Guidelines (section 43) in respect of procedures to be followed and the conduct expected of licensees in the operation of their licensed businesses and with respect to any other matter concerning this Ordinance. However, the Codes do not meet the definition of 'other enforceable means.'

322. The FCU has access to financial, administrative and law enforcement information that it requires to properly undertake its functions.

323. Under the POCO section 109(2)(b) the FIU "(b) may, by written notice, require any person to provide the Reporting Authority with information, other than information that is privileged material, for the purpose of clarifying or amplifying information disclosed to the Reporting Authority;"

And further in section 110 of the POCO it provides that:

(1) The Reporting Authority may disclose any information disclosed to it to any law enforcement agency in the Islands.

324. Section 23 of the FSCO also allows the FSC to issue notices to licensees, former licensees, a person the CS believes to be carrying on, or to have at any time carried on, unauthorised financial services business, or any persons connected with such persons or in possession of the documents, requesting the provision of information or documents.

325. Further, section 28 of the FSCO stipulates a duty on the FSC to cooperate with foreign regulatory authorities or persons in or outside the Islands that have functions in relation to the prevention or detection of financial crime. This includes sharing of information which the FSC is not prevented from disclosing.

326. Section 109 (2) of the POCO gives authority to the FCU to obtain additional information from reporting parties to properly undertake its functions.

327. Specifically, section 109 provides that:

> (1) The Reporting Authority is the financial intelligence unit for the Islands and, as such, is responsible for receiving (and, where permitted by this or any other Ordinance, requesting), analysing and disseminating –
>
> (a) disclosures made under this Ordinance or, in accordance with subsection (3), under the Anti-Terrorism Order; or
>
> (b) disclosures of financial information required or permitted by any enactment for the purposes of combating money laundering or the financing of terrorism."

328. Although the Head of the FCU has been authorized by the MLRA to oversee the day-to-day operations of the Unit, the FCU does not appear to enjoy full operational independence and autonomy. During the on-site, it was revealed that the Commissioner of Police plays an integral role in critical aspects of the Unit including the recruitment of staff, budget allocation etc. Thus, the possibility exists for delays regarding timely access to funds since the FCU is a hybrid within the TCI Police Force and only one (1) of six (6) Departments accessing funds from its overall budget.

329. The Examiners were concerned about the overall condition of the building which houses the FCU. Although the main entrance door to the FCU is barricaded, there was no security checkpoint nor reception area. The Team was able to travel to the third floor unimpeded. The building seemed deserted. This raises concerns regarding the overall security for the personnel, equipment and the confidentiality of documents (electronic and hardcopies) of the Unit.

330. Criminal sanction statistics are maintained on the FCU's Financial Investigation Support System (FISS) and OTRCIS. (OTRCIS-CIM (Overseas Territories Regional Criminal Intelligence System – Criminal Information Management) which links all of the British Overseas Territories for the purpose of sharing intelligence and data storage and retrieval).

331. It is a locally based secure, fire walled and password protected stand alone system designed for the storage and retrieval of statistical and management information. It is also used to securely store SAR information. Information held by the FCU appears to be secured from an electronic perspective. Nevertheless, the security concerns raised earlier remain relevant.

332. In terms of feedback, there appears to be no formal system of communication between the FCU and regulated businesses. The TCI Regulatory Authorities, to a large extent, use informal methods of communication.

333. The FCU does not produce any stand alone reports, but contributes to a monthly internal report produced by the TCI Police. These monthly internal reports contain information pertaining to the

numbers of STRs filed. The FCU does not satisfy the requirement to produce reports that include statistics, typologies, and trends as well as information regarding its activities.

334. The FCU has applied for membership in the Egmont Group and in that regard a unit inspection was carried out by Egmont in January 2007. It is expected that the FCU's application will be heard and the TCI Authorities believe that the FCU ~~it~~ may be accepted as a member~~s~~ in the May 2008 Egmont plenary in Korea.

335. The Examiners are satisfied that section 110 (2) empowers the FCU to share information with other FIUs for ML cases. The TCI Authorities reported that, even in the absence of formalised MOUs, this has not prevented them from assisting law enforcement officials in other jurisdictions in money laundering investigations on an informal basis. This raises concern about the FCU's adherence to Egmont Group's Statement of Purpose for FIUs. However, the FCU reported its willingness to enter into formal arrangements (MOUs) regarding information-sharing protocol.

336. Section 110(2) of the POCO provides that the MLRA, having regard to the purpose for which the disclosure is to be made and the interests of third parties, may, subject to such conditions as it may impose, disclose to a foreign financial intelligence unit information disclosed to it, in order to

(a) report the possible commission of an offence;
(b) initiate a criminal investigation respecting the matter disclosed;
(c) assist with any investigation or criminal proceedings respecting the matter disclosed; or
(d) generally, give effect to the purposes of this Ordinance.

337. Where certain countries require formal Memoranda of Understanding (MOUs) to be signed the FCU has agreed to take on these measures. It is expected that the FCU will sign MOUs with some countries at the CFATF plenary in late 2007.

Recommendation 30

Resources

338. During the time of the on-site, the FCU was one (1) of six (6) Departments within the Royal TCI Police Force.

339. The Examiners were not provided with the budgetary information for the FCU which is reported to be a part of the overall TCI Police budget. As a consequence, the Examiners were unable to determine whether the financial resource allocation for the FCU is adequate.

340. The FCU has a staff compliment of six (6); five of whom were currently with the Unit at the time of the Evaluation and one (1) member who was expected to arrive shortly. The FCU appears to be adequately staffed to meet the current demands in the Islands. Its functions currently form part of the overall policing plan for which staff levels and corporate identity are currently being reviewed. While the policing plan appears to be progressive, it remains to be seen how the FCU will benefit.

341. The FCU is equipped with a fairly comprehensive database along with up-to-date computer systems. The Unit also has a vehicle assigned to it. In terms of its present facility, the Examiners conclude that the FCU could benefit from an expansion of the current set-up. A more professional layout of the office can enhance public perception of and confidence in the Unit. The

Commissioner of Police seems to appreciate the important role the Unit plays. However, in the absence of reviewing the actual allocation, for training, and the FCU's future growth and development, this could not be substantiated

342. While the FCU is not a stand alone agency, it does have some operational autonomy from the Police Force since the Head of the Unit seems to have a reasonable amount of freedom over the daily operation of the Unit. The Examiners did not observe anything which suggests that the Unit cannot be free from undue influence or interference.

343. All officers within the FCU, are governed by the Police Force Ordinance (PFO). Section 49 of the PFO sets out the consequences for breach of confidentiality.

344. Section 49 of the PFO states that 'Any police officer shall be guilty of a breach of discipline if he commits any of the offences specified in the disciplinary code contained in any regulations made under this Ordinance' The Customs and Immigration Officers assigned to the FCU are governed by the General Orders developed for the entire Public Service. Such officers do not appear to be subject to the same degree of disciplinary action for breach of confidentiality as can be meted out to Police Officers.

345. Section 51 of the Code sets out the measures for dealing with breach of discipline and stipulates:

> **"***(*1) Subject to the provisions of subsections (2), (3) and (4), any inspector, non-commissioned officer or constable who commits a breach of discipline shall, on conviction by the Commissioner of Police, or a police officer of or above the rank of inspector authorised in writing by the Commissioner of Police to try breach of discipline offences, be punished for each offence by such officer by any one or any combination of the following punishments—
>
> (a) dismissal;
>
> (b) required to resign;
>
> (c) reduction in rank (in case of a sub-officer) or reduction in seniority or both;
>
> (d) a fine of up to seven days' pay;
>
> (e) withholding of increment;
>
> (f) deferment of increment;
>
> (g) severe reprimand;
>
> (h) extra duties, parades or extra fatigue duties;
>
> (i) reprimand;
>
> (j) admonishment."

346. Generally, staff of the Police Force are selected on their level of skill and integrity in competency based interview situations. The Head of the FCU plays an indirect role in the recruitment process for the FCU. While he may be consulted, the final determination as to who are selected rests with the Commissioner of Police.

347. The FCU has exposed its staff to relevant and recognised training in the United Kingdom, Canada, Jamaica and Trinidad. However, most of the training appears to have been focussed on basic policing matters, with insufficient emphasis on anti-money laundering (AML) and combating the financing of terrorism (CFT).

348. The Training received included: Basic Financial Investigations, Advance Financial Investigations, Techniques of Financial Investigations, Computer Forensics, I2 Analyst Notebook and M/L CFT seminars and workshops

349. Senior officers within the Unit regularly attend international conferences where current trends and typologies in CFT and ML are discussed and reported upon. However, the Examiners were not able to determine how much of this training is disseminated to other stakeholders such as other Regulatory Agencies and reporting businesses.

350. The FCU-also has full access to the United Kingdom Asset Recovery Agency database.

351. The Head of the Unit has been a specialist in the field of M/L CFT since 1992 in the UK and other international locations and one member of staff has spent time attached to a specialist money laundering unit in the United Kingdom.

352. The members of staff of the Unit consist of five (5) police officers as follows: a detective/assistant superintendent who heads the Unit and is responsible for training/mentoring and policy, a detective inspector who is deputy head of the Unit and responsible for supervision/multi-agency co-operation and press liaison work, a detective sergeant who is responsible for domestic fraud, divisional liaison work and international co-operation, a detective sergeant who is responsible for financial investigation, intelligence including financial intelligence, confiscation, international co-operation and divisional support/training and a detective constable who is responsible for domestic fraud. Please see the organisational diagram attached to this report.

353. The Detective in charge has the following additional training –

- Terrorist Financing, Money Laundering & HICFA, US Virgin Islands, 2005

354. The detective inspector/deputy head has the following additional training –

- Senor CID;
- Major Incident Room, Cayman Islands;
- Sergeant's General Duties, Barbados;
- Prosecutions, Barbados;
- Basic Financial Investigations, Jamaica;
- Fraud/Financial Investigation attachment, Trinidad;
- Junior Command training, Jamaica;
- Financial Investigation Techniques, Jamaica;
- Media Relations, Miami, Fl, USA
- Homicide Investigations, Jacksonville, Florida.

355. The first detective sergeant has the following additional training –

- Anti-money laundering and Forfeiture Seminar, 1 week, 1997
- Junior CID, Barbados, 2 weeks, May 1998;
- Basic Financial Investigations, Jamaica, 2 weeks, April 2002;

- Senior Financial Investigations, Jamaica, 2 weeks, May 2004;
- Financial Investigations, Jamaica, 2 weeks, March 2005;
- Intelligence Sharing, Naples, Fl. USA, 2007;
- Degree in Criminal Justice/Counter Fraud in progress, Plymouth Univ., UK

356. The second detective sergeant has the following additional training –
    - Junior CID, Barbados, 3 weeks, May 2001;
    - 12 Analyst Notebook, Cambridge UK, 1 week, October 2002;
    - Basic Financial Investigations, Jamaica, 2 weeks, November 2004;
    - Senior CID, Turks and Caicos Islands, 2 weeks, November 2004;
    - Basic Computer Forensics, Canada, 3 weeks, October/November 2005;
    - Techniques of Financial Investigations, Jamaica, 2 weeks, November 2006;
    - Attachment to an FIU, West Mercia Const., UK, 1 week, February 2006;
    - Law and Finance Degree in progress at Univ. of Buckingham, UK.

357. The detective constable has the following additional training –
    - Basic Financial Investigations
    - Homicide Investigations, 2005
    - Techniques in Financial Investigations, Jamaica, 2007;
    - Business Accounting with the University of Minnesota, USA

358. With regard to IT training, all staff have received basic training, the second detective sergeant is the Unit's expert having received *i*2 analyst software training, access database training and computer forensic analysis.

Recommendation 32(FIU)

Statistics

359. In 2005, there were five (5) SARs which were all from banks.

360. In 2006 the FCU received twenty-one (21) SARs, an increase of over 400% on 2005.

    Of these, seventeen (17) were from the banking industry three (3) were from investment specialists and one (1) was from the legal profession. Of these SARs eleven (11) are still under active investigation. All were analysed and where necessary disseminated to other agencies or jurisdictions.

361. In 2006 all SARs were investigated, seven (7) are still being investigated and the rest were disseminated to appropriate levels and filed 'Not For Action'.

362. In 2007, there have been fourteen (14) SARs from banks and two (2) from money transmission agents. The FCU are dealing with a total of 56 AML / fraud related enquiries in the year-to-date. Five (5) of these have resulted in arrests.

363. The TCI Authorities provided some statistical data relative to the on-site examinations conducted by the FSC. However, the information only related to 2007 with no data provided for the previous four (4) years. Additionally, there was no analysis of the examinations to determine levels of compliance with AML/CFT requirements. The Examiners were advised that very little feedback was provided to examined institutions. In light of the above, the Examiners were unable to ascertain the effectiveness and efficiency of the AML/CFT systems.

Additional Elements

364. See statistics above with regard to Recommendation 32

2.5.2 Recommendations and Comments

365. The Head of the FCU should be afforded more operational independence particularly with regard to matters such as staff recruitment and budget management.

366. The FCU should provide guidance to relevant parties on the revised procedures for reporting STRs.

367. The FCU should provide feedback to reporting parties in a formalised and timely manner.

368. 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.

369. The security of the building which houses the FCU should be addressed as a matter of urgency.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to rating
R.26	**PC**	• **The FCU does not appear to have full operational independence and autonomy;** • **The FCU has not provided sufficient guidance to financial institutions and other reporting parties regarding the reporting of STRs.** • **The FCU has not provided feedback to reporting parties in a formalised and timely manner.** • **The FCU does not release periodic reports which include statistics on STRs, trends and typologies within the sector and an update on its activities.** • **The building which houses the FCU does not appear to be properly secured.**

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27 & 28)

2.6.1 Description and Analysis

Recommendation 27

370. The MLRA which is the FIU for the TCI is established by section 109 (1) of the POCO. The MLRA delegated the responsibility of the FIU to the FCU which is a hybrid unit within the Police Force with responsibility for the investigation of all crimes of a financial nature including Money Laundering and Financing of Terrorism matters.

371. There are circumstances under which Police in the TCI may waive the right to arrest persons suspected of criminal behaviour. With regard to waiving the arrest of suspected persons, this is an operational policing issue, whereby police investigating cases may postpone or waive the arrest of suspected persons. The police may also waive the seizure of money. In both cases this is allowed for the purpose of identifying the persons involved in those activities or for the purpose of gathering evidence. This is a common practice for police officers in the discharge of their duties. Moreover, in certain cases it might be more expedient to delay or postpone an arrest where to proceed may abort an opportunity to collect valuable intelligence. It is applied where necessary and in reality it takes place in every investigation. The TCI Authorities use the strength of the Police Force Ordinance for its use of this procedure.

Additional Elements

372. The Examiners were advised that the investigative techniques employed by law enforcement authorities are varied based on the circumstances of the matter. Some matters are localised while others involve other jurisdictions and may be conducted covertly etc. These measures include technical as well as traditional policing methods.

373. The TCI appears to have either in its employ or access to specialists in financial investigations and should be poised to meet the current challenges.

374. Law Enforcement Authorities in the TCI do cooperate with appropriate competent authorities in other countries, to the extent permissible by law. The Examiners were informed that the TCI Authorities assisted several jurisdictions, primarily the United States and the United Kingdom in the provision of intelligence for investigative purposes. They claimed to also have participated in several joint undercover operations.

375. The Examiners were not able to ascertain that there was any specific review with regard to ML/FT techniques and trends by law enforcement authorities, the FIU and other competent authorities on a regular or interagency basis. However, minutes of meetings that were provided to the Examiners showed that the MLRA did discuss ML/FT issues at times. It is unclear as to whether any report/analysis is disseminated to staff of the relevant agencies.

Recommendation 28

376. The POCO in Part IV of that Ordinance sets out a wide range of powers and provisions in relation to investigations. These include powers to be able to compel the production of, search persons or premises for, and seize and obtain information held or maintained by a regulated person(s).

377. Sections 127 – 130 extends general police powers in relation to obtaining production orders for persons to produce, obtain or give access to information and material where the person who is the subject of the order is the subject matter of a criminal recovery or money laundering investigation or where property specified in the application is subject to a civil recovery investigation.

378. Section 128 of the POCO provides for competent authorities conducting investigations to obtain production orders to secure information maintained by financial institutions and other businesses or persons.

379. On making the order a Judge must be satisfied that there are reasonable grounds for suspecting; in a criminal recovery investigation that the subject of the investigation has benefited from his criminal conduct; in a civil recovery investigation that the subject property of the investigation is recoverable property; in a money laundering investigation that the subject of the investigation has committed a money laundering offence.

380. Senior police officer may also apply to a Judge pursuant to provisions in sections 131 & 132, for a search and seizure warrant where the person who is the subject of the order is the subject matter of a criminal recovery or money laundering investigation or where property specified in the application is subject to a civil recovery investigation.

381. Sections 131 & 132 of the POCO allow competent authorities to obtain search and seizure warrants for premises and persons in specified circumstances.

382. Senior police officers may also apply to a Judge for a customer information order pursuant to the provisions in sections 133 – 137. Such orders compel regulated persons to produce information in relation to their customer in the circumstances established by those sections.

383. Sections 138 – 141 allows senior police officers to apply for account monitoring orders against a regulated person, to monitor the accounts of a specified customer or accounts, who may be the subject matter of a criminal recovery investigation, money laundering investigation, or who appears to hold property that is subject to a civil recovery investigation.

384. Table 8 outlines the statistical data provided by the FCU relative to, inter alia, the issuance of Orders

385. Section 43 of the Police Force Ordinance (PFO) also gives them this power and provides:

> **"**Every Superior Officer and any inspector authorised by the Commissioner of Police shall for the purpose of investigating an offence against police discipline be vested with all the powers of a Magistrate for summoning and enforcing the attendance and examination of witnesses and calling for any documents."

386. The TCI legislation does not appear to cover the taking of witness' statements for use in money laundering and terrorist financing investigations. The Examiners submit that section 43 of the PFO does not relate to the taking of witness statements for use in investigations in ML, TF and other underlying predicate offences, but is specifically crafted to cover breaches of the PFO.

Recommendation 30 (Law enforcement and prosecution authorities only)

387. The Police Force is headed by a Commissioner of Police of 32 years experience in the Force. The Police Force is adequately staffed with a current compliment of 209 senior officers and ten (10) junior officers. The Force is headquartered in Grand Turk and has nine (9) divisional stations with at least one station being located on all the major inhabited Islands of the Turks and Caicos Islands.

388. The Force is well structured and has two divisions. 'A' Division consists of Grand Turk, Salt Cay and South Caicos and 'B' Division consists of Providenciales, North Caicos and Middle Caicos. The Police Force has six (6) Departments and one unit namely; Criminal Investigation Department (CID), Financial Crimes Unit of the CID, Drug Squad, Traffic, Beat and Patrol, Marine Branch and the Air wing. Each Department performs specialised functions pertinent to that area and officers within the various Departments receive specialised training and the Department is given resources relevant to their expertise and the proper performance of their duties as appropriate.

389. The Examiners have not been able to ascertain accessibility of necessary funds by each Department within the Police Force.

390. The Police Force is free from political interference with no direct reporting to any member of the political electorate and maintains operational independence.

391. With regard to the composition of the Police Force sections 7 & 8 of the PFO provides as follows:

> **"7.** The Force shall consist of a Commissioner of Police, and such Superior Police Officers, inspectors, non-commissioned officers and constables as may from time to time be authorised by the Legislative Council and appointed to the Force.
>
> **8.**The Commissioner of Police shall, subject to the direction and control of the Governor, have the command, superintendence, direction and control of the Force and shall further be responsible to the Governor for the proper performance of his duties and the proper expenditure and use of all public funds and property appropriated for the service of the Force."

392. Section 14 further provides:

> **"14**. (1) The Commissioner of Police and any other Superior Police Officer shall be appointed by the Governor, acting in his discretion.
>
> (2) Inspectors shall be appointed by the Governor, acting in his discretion.
>
> (3) Subject to the provisions of this Ordinance and of any Police Regulations and Standing Orders of the Force made thereunder, the Commissioner of Police may from time to time appoint fit and proper persons to be non-commissioned officers and constables.
>
> (4) References in the foregoing provisions of this section to appointments shall be deemed to include references to appointments on promotion."

393. The members of the Police Force are governed by the PFO, its Disciplinary Regulations and Standing Orders.

394. Under section 70 of the PFO, the Governor may make regulations for to give effect to the Ordinance. In section 71 the Commissioner of Police may make Standing Orders inter alia for the general control and discipline of Officers.

395. In addition section 49 of the PFO states that **"**Any police officer shall be guilty of a breach of discipline if he commits any of the offences specified in the disciplinary code contained in any regulations made under this Ordinance."

396. In this regard paragraph 6 of the Police Disciplinary Code provides that it is an offence against the disciplinary code if :

> **"6.** Breach of confidence, that is to say, if a police officer—
>
> (a) divulges any matter which it is his duty to keep secret or confidential; or
>
> (b) gives notice, directly or indirectly, to any person against whom any criminal warrant or summons has been or is about to be issued, except in the lawful execution of such criminal warrant or service of such summons; or
>
> (c) without proper authority, communicates to the public press or to any unauthorised person, any matter connected with the Police; or
>
> (d) without proper authority, shows any person outside the Police Force any book or written or printed documents the property of the Government, which is not intended for publication to unauthorised persons; or
>
> (e) makes any anonymous communication to the Government or civil authority or the Commissioner of Police or any superior officer; or
>
> (f) canvasses any member of the Government or civil authority with regard to any matter concerning the Police; or
>
> (g) signs or circulates any petition or statement with regard to any matter concerning the Police, except through the proper channel of correspondence to the Commissioner of Police or Government or in accordance with the constitution of the Police Association; or
>
> (h) calls or attends any unauthorised meeting to discuss any matter concerning the Police; or
>
> (i) submits any petition or canvasses any police officer in respect of promotion, discipline, transfers or appointment within the Police other than in accordance with the provisions of Standing Orders."

397. Sections 50 and 51 further provides in relation to dealing with breaches of discipline that:

> **"50.** Any Superior Police Officer who commits a breach of discipline or other misconduct for which a senior Government Officer could suffer disciplinary action shall be dealt with in accordance with Colonial Regulations and the General Orders of the Government where the latter have been applied to senior Government Officers.
>
> **51.** (1) Subject to the provisions of subsections (2), (3) and (4), any inspector, non-commissioned officer or constable who commits a breach of discipline shall, on conviction by the Commissioner of Police, or a police officer of or above the rank of inspector authorised in writing by the Commissioner of Police to try breach of discipline offences, be punished for each offence by such officer by any one or any combination of the following punishments—
>
> (a) dismissal;
>
> (b) required to resign;
>
> (c) reduction in rank (in case of a sub-officer) or reduction in seniority or both;

(d) a fine of up to seven days' pay;

(e) withholding of increment;

(f) deferment of increment;

(g) severe reprimand;

(h) extra duties, parades or extra fatigue duties;

(i) reprimand;

(j) admonishment."

398. Staff members have been provided with relevant and recognised training both regionally and internationally in the areas listed below:

Table 10: Training

Course Name	Number trained		
	2005	2006	2007
CID User			1
Advance Coxswain Course			1
Major Incident Room			1
Intelligence Sharing			1
Dental			1
Firearms			1
Strategic Intelligence Analysis			1
Techniques of Financial Investigation		1	1
Police Applicant background Checks			2
Engineering Management			1
Homicide Investigation			1
Narcotics Investigation		2	1
Junior Command		1	
At-Scene Traffic Crash	2	2	
Public Information		1	
Instructional Design		1	
International Commander		1	
Scenes of Crime		1	
Crime Scene Photography	2		
Property & Evidence Room	1		
Crisis Response /Anti Kidnapping	1		
Coast Guard	1		
Other AML /CFT Conferences	1	2	3
Other		1	

399. Senior officers regularly attend international conferences where current trends and typologies in CFT and ML are discussed and reported upon.

400. Of the training courses outlined in the Table above, there appears to be insufficient emphasis on ML/ FT- the sessions appear to be focussed on general policing techniques.

Additional Elements

401. To date, there has been no special training or educational programmes provided for Judges and Courts concerning ML and FT offences. However, negotiations are currently taking place for this to be done by a special training expert on the subject from the UK. The Examiners were advised that all parties concerned agree that there is an urgent need to address the current training schedule.

2.6.2 Recommendations and Comments

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**C**	**This Recommendation is fully observed**
R.28	**C**	**This Recommendation is fully observed**

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

Special Recommendation IX

E.C. IX.1 and E.C.IX.2

402. The Customs Ordinance [Cap 156] and its amendments legally establish the Customs Department and gives officers power to carry out their functions.

403. The Customs Department in the TCI has a declaration system in place for persons entering and leaving the Islands to advise whether they have in their possession cash in excess of ten thousand dollars (US $10,000). This threshold has been established under section 100 of the Customs Ordinance. This amount is in keeping with the FATF established threshold of EUR/US 15,000.

404. The declaration system works as follows: All passengers (maritime and aviation) arriving into the Turks and Caicos Islands are required to complete and sign a written declaration part of which incorporates the requirement for the declarations of all amounts of $10,000.00 or more to be made to the proper officer.

405. If correctly declared, the officer will question the individual to establish the provenance of the funds (an internal customs department aide memoiré provides general guidance on the nature and type of questions to be asked). If funds in excess of US$10,000 are not declared but found during examination, the matter is immediately referred to the Investigation Unit/Financial Crimes Unit (FCU) for investigation

406. Sections 100 (3) and (4) provide that customs officers have the authority to request and obtain further information from the carrier on goods in their luggage or possession and also provides a punitive measures for failure to make a declaration.

> "(3) Any person entering or leaving the Islands shall answer such questions as the proper officer may put to him with respect to his baggage and anything contained therein or carried with him, and shall, if required by the proper officer, produce that baggage and any such thing for examination at such place as the Collector may direct.

(4) Any person failing to make any declaration or declare or produce any baggage or thing or answer any question as required under this section shall be guilty of an offence and liable on conviction to a fine not exceeding $10,000 or three times the value of the thing not declared or the baggage or thing not produced, as the case may be, whichever is the greater."

407. Where the officer is satisfied, the individual is allowed to proceed, and details are passed to the Intelligence Unit. However, if the Officer is not satisfied, the Investigation Unit/Financial Crimes Unit (FCU) begins an investigation which may lead to detention.

408. A joint service MOU between Customs and Police is in place to progress and investigate suspect funds. The awareness of staff has been sufficiently raised regarding the movement of cash; whereas previously only non-declared cash was being sought, declared cash is now being challenged. Several detections have been made since the inception of the MOU and these have been progressed past initial interception through to completion of enquiries.

409. The same interception procedures apply for cash and goods going outside the Islands as described above.

410. Sections 99 and 100(1) of the Customs Ordinance respectively also allows for seizure and detention of cash and provides:

"99. A police officer may seize cash if he has reasonable grounds for suspecting that –

(a) it is recoverable cash; or
(b) part of the cash is recoverable cash and it is not reasonably practicable to seize only that part.

100. (1) While a police officer who has seized cash under section continues to have reasonable grounds for his suspicion, the cash seized under that section may be detained initially for a period of 48 hours."

411. This detention period may be extended to a maximum of two (2) years from the date of the first order.

412. Similar powers are also given in the Anti-Terrorism Order 2002. In schedule 3 of the Order it is provided in paragraphs 2 and 3(1) that with regard to the seizure of cash an Authorised Officer who is a Customs Officer or Police Officer may seize cash if he has reasonable grounds for suspecting that it is terrorist funds. Additionally, an Authorised Officer can also seize only part of the cash where he has reasonable grounds to believe that it involves terrorist funds.

413. With regard to the detention of seized cash, section 3(1) provides that "while the authorised officer continues to have reasonable grounds for his suspicion, cash seized under this Schedule may be detained initially for a period of 48 hours" and (b) Customs Ordinance section 100 – gives power to detain cash in excess of $10,000 in cases of non-declaration.

414. In some cases the information of the bearer is obtained and cash is retained until investigations are completed. This information is uploaded and maintained on the OTRCIS-CIM (Overseas Territories Regional Criminal Intelligence System – Criminal Information Management) which links all of the British Overseas Territories for the purpose of sharing intelligence and data storage and retrieval.

415. Information obtained through the cross border process is available to other authorities (FCU, Police and Immigration) through the OTRCIS intelligence system. Once detection is made and investigations have commenced in conjunction with the FCU or Immigration Department, access to that information may be given.

416. There is also an MOU between Customs and Police (including the FCU) so that they are notified each time there is a seizure and documentation is retained so that representations can be made to the Courts. However, the Examiners were not provided with any evidence that the SPICE MOU had been used. Therefore its implementation could not be tested and remains uncertain.

417. All information gathered by the Customs Department **i**ncluding the cash retained is made available to the Police /FCU for further investigation.

418. There is a cash detection report form which has been newly implemented to record the information on OTRCIS system. The FCU periodically accesses this information with a view to determining whether the subject individuals are of any interest to them.

419. As previously stated, there is currently in place a MOU between the Police, Customs and Immigration Departments to provide cooperation on combating crime against society, commercial enterprise and the environment. The MOU establishes and sets the framework for the formation and collaboration of the Special Police Immigration and Customs Enforcement (SPICE) Unit. The SPICE Unit was formally established in October, 2005.

420. The Examiners agree that the SPICE MOU is a good agreement for effecting cooperation among local Police, Customs and Immigration Officers. Authorities. However, it has been reported that most of the time and resources of officers involved with the Unit have been used to deal with matters related to illegal immigrants to the extent that they are overwhelmed at times. The Examiners were unable to determine whether any restraint of cash or any negotiable instruments resulted from the combined efforts of the SPICE Unit.

421. As stated previously, the OTRCIS system facilitates cooperation between the British Overseas Territory Citizen (BOTC's). There are also other non formal measures. Further, the CJICO allows coordination between competent authorities within the Turks and Caicos Islands and other regional international authorities on issues relating to drug trafficking.

422. In relation to the Immigration Department, no formal MOUs with other regional/international immigration bodies are currently in place. However cooperation is done on a department to department basis. The Examiners view this as a shortcoming as the Immigration Department can benefit from the establishment of MOUs with their counterparts abroad.

423. There are also annual regional immigration conferences where directors and senior immigration officials meet and inter alia discuss Regional trends and possible collaborative and cooperative efforts.

424. Senior officials of Customs and Immigration also attend the annual OTRCIS conference which is a grouping of British Overseas Territories law enforcement agencies and at that meeting cooperative efforts and strategies are discussed.

425. Sections 99 and 100(1) of the new POCO provides for the seizure and detention of cash by a police officer where he has reasonable grounds for suspecting inter alia, that the cash was obtained through unlawful conduct or intended by any person for use in unlawful conduct.

426. A police officer may apply to a Magistrate for a forfeiture order under section 103 of the POCO against any cash detained under section 100. This order may be granted subject to the rights of

third parties. Victims and other owners may by virtue of section 106, also apply for the release of any cash that was detained pursuant to section 100. The Magistrate's Court may order the cash to which the application relates to be released to the applicant or to the person from whom it was seized.

427. It is also provided in article 15, of the Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, (Anti-Terrorism Order 2002) where a person has been convicted of an offence under articles 6 to 9 that the Court may make a forfeiture order under that article and as further provided for in Schedule 2. Paragraph 5 of schedule 2 allows a restraint order to be made on application to the Court.

428. A constable may seize property subject to a restraint order under paragraph 7 of the order. Paragraph 11 also allows the Governor to enable external orders (from designated countries) to be enforced within the Islands.

429. It is further provided in article 16, of the Anti-Terrorism Order 2002 that cash intended to be used for the purposes of terrorism or which is or represents, property obtained through terrorism be forfeited in civil proceedings before a Magistrate's Court. Paragraph 2 of schedule 3 to the Anti-Terrorism Order 2002 provides that a police, immigration or customs officer may seize any cash (or part of cash) on the basis reasonable suspicions for suspecting that the cash is terrorist cash.

430. The Anti-Terrorism Order 2002 furthers provides in paragraph 3 of schedule 3 that cash may be detained initially for 48 hours without an order of a Magistrate. Where it is required to be detained longer than 48 hours an order must be obtained from a Magistrate for a further period that does not exceed three (3) months. Further orders for detention may also be applied for provided the total period does not exceed two (2) years from the date of the first order.

431. Where cash is being detained pursuant to paragraph 3, a police, immigration or customs officer may apply under paragraph 6 to have the whole or any part of the cash to be forfeited on the grounds that it is terrorist cash. Paragraph 6 also makes provision for the Court to consider the rights of third parties. The rights of other victims are also considered under paragraph 9.

432. In the POCO section 59 allows cash which is or represents property obtained though unlawful conduct, or is intended to be used in unlawful conduct (which would include drug trafficking), to be forfeited in civil proceedings whether or not any proceedings have been bought for an offence in connection with the property. This power may be exercised by the civil recovery authority who may apply o the court for a recovery order (section 71) or an interim receiving order (section 72).

433. It is further provided in sections 99 and 100 of the POCO for the seizure and detention of cash by a police officer where he has reasonable grounds for suspecting inter alia, that the cash was obtained through unlawful conduct or intended by any person for use in unlawful conduct.

434. Notice is also required to be given under section 100(5) of the POCO to all persons who will be affected by the detention order.

435. Similar provisions for seizure, detention and forfeiture of terrorist cash also exists in the Anti-Terrorism Order 2002. See paragraphs immediately above which outline these provisions.

436. The Anti-Terrorism Order 2002 applies across the board and therefore would also apply where there is a physical cross-border transportation of currency or bearer negotiable instruments.

437. Article 15 of the Anti-Terrorism Order 2002 provides generally that the Court by which a person is convicted of an offence under any of articles 6 to 9 (that is Fundraising, use and possession, funding arrangements, or money laundering) may make a forfeiture order. Further provisions in relation to forfeiture orders made under article 15 are set out in schedule 2 to the Anti-Terrorism Order 2002.

438. Paragraph 5 of schedule 2 also allows the Court to make restraint orders where criminal investigations has been started or proceedings have been instituted (but not concluded), for any offences under articles 6 to 9 if it appears that a forfeiture order may be made in proceedings for any offence.

439. Such restraint orders prohibits a person to whom notice is given from dealing with property (including removing the property from the territory) in respect of which a forfeiture order has been or could be made. These orders may be made ex parte.

440. It is also provided in article 16, of the Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, (Anti-Terrorism Order 2002) that cash intended to be used for the purposes of terrorism or which is or represents, property obtained through terrorism be forfeited in civil proceedings before a Magistrate's Court. As noted previously, paragraph 2 of schedule 3 to the Anti-Terrorism Order 2002 provides that a police, immigration or customs officer may seize any cash (or part of cash) on the basis reasonable suspicions for suspecting that the cash is terrorist cash.

441. There is no legislative provision in the TCI for notifying authorities in other countries when there is an unusual movement of gold, precious metals or precious stones. This would fall under regular investigative procedures. After questioning, follow-up is done with the appropriate authorities from the country of origin and country of destination where appropriate.

442. The Customs Department's use of the OTRCIS system is password protected with different levels of accessibility. These access levels restrict the type of data various personnel can view and edit. At the lowest level officers are only allowed to input and read data. At the highest level the person is able to input, manage and edit the data.

443. The Examiners have been informed by the Customs Officials that there is a direct correlation between an Officer's rank and the amount and types of information he can access. Certain sensitive information may only be accessed by Senior Officers or persons to whom they give specific clearance. In most cases information input by other authorities cannot be viewed by anyone outside that authority unless permission has been given on the system. Authors can set the parameters around what information is allowed to be viewed by others.

Additional Elements

444. The Authorities in the TCI have not yet implemented measures on Best Practices relative to Cross Border Declaration and Cooperation.

445. Statistics are maintained in the OTRCIS system and are available to other competent authorities. The OTRCIS links all of the British Overseas Territories for the purpose of sharing intelligence and data storage and retrieval. Thus the system facilitates cooperation between the British Overseas Territory Citizen (BOTC's).

Recommendation 30 (Customs authorities)

446. The Customs Department is resourced through allocations in the TCI government's national budget. The Department falls under the Ministry of Finance and has reporting lines to that

Minister. The current staff compliment entails 8 Senior Managers, 14 Middle Officers and 62 Junior Officers. The Department has established offices in Grand Turk, Providenciales, North Caicos and South Caicos. However, services are also provided and officers are sent to other islands and cays as needed.

447. The Customs Department has a continuous recruitment programme exercised on a needs basis to obtain additional staff. Staff members are trained both internally and regionally at workshops and conferences.

448. The Immigration Department falls under the Ministry of Home Affairs and therefore has reporting lines to the Minister responsible for Home Affairs. The Immigration Department has a total of nineteen (19) Senior Officers including the Director and 54 Junior Officers. The Department has established offices in Grand Turk, Providenciales, North Caicos and South Caicos.

449. The TCI is currently experiencing a serious problem with regard to illegal immigrants and this problem noted above in the discussion of the SPICE Unit has placed a tremendous strain on the human and physical resources of the Immigration Department. The Examiners are therefore not convinced that the Immigration Department is adequately resourced given its ongoing challenge with illegal immigrants.

450. The Examiners have reviewed the General Orders and training schedules relative to Customs and Immigration Officers and, coupled with discussion held with several of their Senior Officers; surmise that that these Officers are properly skilled.

451. The General Orders of the Turks and Caicos Islands Public Service – 1998 Edition sets out general provisions in relation to confidentiality, integrity and maintaining professional standards.

452. The provisions are set in various paragraphs of the General orders as follows:

> "3.3.15 Save in the course of his or her official duties, no Officer may, …disclose the contents of any documents, papers or written information which may come into his or her possession in his or her official capacity, or make private copies of any such documents or papers. ..
>
> 3.3.30 The Letter of Appointment includes rules of conduct and performance to which an Officer must adhere…

453. Officers who, under the disciplinary procedure, are found to have committed gross misconduct or gross negligence are liable for dismissal without further warning. Gross misconduct would include divulging confidential or secret information concerning public business or any other matters of which an Officer has knowledge.

454. Officers within the Customs Department have been exposed to extensive training during the past four (4) years. However, it is noteworthy that the training, in most cases, did not have AML/CFT components. However, the TCI authorities have committed themselves to a continuous review of their overall training needs.

455. The most recent AML/CFT training for the Customs Department was conducted in 2007. The training needs of the Department are being continually reviewed to determine the areas in which it is most needed.

456. For the Immigration Department officers are usually trained annually at REDTRAC seminars and workshops. Officers also attend regional and international seminars in these areas as well as receive local training which is ongoing with the police. Officers also receive training from the

Attorney General's Chambers in relation to investigation of AML/CFT predicate offences which fall under their purview.

Recommendation 32

457. A mechanism to file reports on cross border transportation of currency is in place. Since the inception of the MOU, four (4) cases (with cash totalling US$124,000) have been referred for further investigation and/or passed to the FCU. Two additional cases with amounts below $10,000 have been recorded for intelligence purposes.

2.7.2 Recommendations and Comments

458. The Immigration Department should seek to establish MOUs with Immigration Departments in other jurisdictions.

459. The TCI Authorities should notify other countries when there is an unusual movement of gold, precious metals or precious stones from their jurisdictions

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**NC**	• **The recently enacted POCO has had no time to be effectively implemented.** • **The Immigration Department has not established any MOUs with its counterparts abroad.** • **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.**

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

460. The Anti-money Laundering Regulations 2007 (AMLR) as supplemented by The Anti-Money Laundering and Prevention of Terrorism Financing Code (the Code) provides for the adoption by a regulated person of a risk based approach to internal controls against money laundering and terrorist financing. Section 8(2)(b) of the AMLR provides that internal control and reporting procedures -

(b) shall provide for the assessment by the person carrying on the relevant business of the risk that any business relationship or one-off transaction will involve money laundering and shall be appropriate to the circumstances, having regard to the degree of risk so assessed.

461. The Financial Services Commission (FSC) is responsible for the regulation and supervision of the financial services sector in the Turks and Caicos Islands. The FSC was established under the Financial Services Commission Ordinance 2001 and was continued and preserved under the Financial Services Commission Ordinance 2007 (FSCO). The FSC has regulatory oversight for Banking (Domestic and Offshore), Insurance, Mutual Funds, Investment Dealers & Advisors, Trusts, and Company Management services. Each sector is governed by its own legislation, but the AML/CFT legislation enacted in the TCI is applicable to all regulated financial sectors.

462. The applicable legislation of Crime Ordinance 2007 (POCO), The Anti-Money Laundering Regulations 2007 (AMLR), The Anti-Terrorism (Financial and other Measures) (Overseas Territories) Order 2002 (Anti-Terrorism Order 2002), Terrorism (United Nations) (Overseas Territories Order 2001 (Terrorism UN Order 2001), The Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 (Al-Qa'ida UN Order 2002) and The Anti-Money Laundering and Prevention of Terrorism Financing Code (the Code) issued by the Money Laundering Reporting Authority in 2007.

463. The Banking Ordinance (BO) 1979 and its amendments govern the operations of banks. The Confidential Relationships Ordinance (CRO) 1979 and its amendments are also applicable in the area of secrecy and disclosure although those provisions do not apply to banks.

464. The Company Management (Licensing) Ordinance 1999(CMLO) and the Trustees Licensing Ordinance (TLO) set out the licensing and supervisory framework which governs Corporate Services Providers and Professional Trustees respectively. The Trust Ordinance 1992 (TO) makes provision for formation and administration of trusts.

465. The AMLR establishes preventive measures that all financial institutions must implement, inclusive of customer identification, record keeping, internal reporting and employee training. Failure to adhere to these requirements is an offence under the regulations. The Code expands the provisions in the POCO.

466. The Banking Ordinance makes provisions for the FSC to conduct examinations including those to test for compliance with the AML/CFT laws of the country. It also covers the sharing of information with other competent authorities on a reciprocal basis. The CRO which prohibits the divulgence of information by the financial institution unless with the express authority of the customer, makes an exemption for information to be supplied to the FSC in the conduct of its function as bank regulator. The CMLO makes allowance for examinations to be conducted into the affair of licensees. Information may be shared with Overseas Regulatory Authorities for the purposes of discharging its regulatory duties. Confidentiality of information is also covered by the CMLO and stipulates non-disclosure of information on a licensee or applicant except where it is necessary to perform its regulatory functions and in pursuance of a Court order. Under the TLO there are similar powers to conduct examinations into the affairs of licensees and the sharing of information with Overseas Regulatory Authorities. The prohibition on disclosing information on a licensee or applicant by the FSC except where necessary to perform its regulatory functions and in pursuance of a Court order is repeated in the TLO.

467. The Insurance Ordinance and its amendments provides for the licensing and regulation of insurance businesses. It grants regulatory powers of inspection and investigation of licensees. The Mutual Funds Ordinance 1998 and its amendment make provision for the licensing and regulation of mutual funds administrators and managers as well as for the licensing, recognition and registration of mutual funds. The Ordinance also grants power to conduct examinations. The Investment Dealers (Licensing) Ordinance 2001 provides for the licensing and regulation of Investment Dealers and Advisors and other provisions in relation to the administration and conduct of their business. It grants regulatory powers of inspection and investigation of licensees.

The Money Transmitters Ordinance requires the licensing of Money Services Business and regulates the operation of such business.

468. The AMLR as supplemented by The Anti-Money Laundering and Prevention of Terrorism Financing Code (the Code) covers the financial services sector, and give guidance on the ongoing or one-off transaction relationships with clients.

469. The AMLR applies to relevant businesses as defined by regulation 3. This includes generally;

(a) banking business;

(b) acting as a professional trustee;

(c) the business of company agent and the business of company management;

(d) insurance business;

(e) acting as an insurance intermediary or an insurance manager;

(f) acting as a mutual funds administrator or manager;

(g) being a promoter in respect of a mutual fund;

(h) acting as an investment dealer;

(i) money services business;

(j) the business of—

(i) trading in investments on one's own account;

(ii) providing advice on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings;

(iii) money broking;

(iv) the safekeeping and administration of securities;

(v) forming limited partnerships,

(vi) providing the registered office for limited partnerships,

(vii) lending, or

(viii) financial leasing;

(k) the activity of dealing in precious metals or precious stones by way of business, whenever a transaction involves accepting a total cash payment of US$15,000 or more, or the equivalent in any currency;

(l) the activity of dealing in goods of any description (other than precious metals or precious stones) by way of business whenever a transaction involves accepting a total cash payment of US$50,000 or more, or the equivalent in another currency;

(m) the business of acting as a real estate agent;

(n) the provision by way of business of accountancy or audit services;

(o) the provision by way of legal services which involves participation in a financial or real estate transaction (whether by assisting in the planning or execution of any such transaction or otherwise by acting for, or on behalf of, a client in any such transaction);

(p) operating a casino by way of business, whenever a transaction involves accepting a total cash payment of US$3,000 or more, or the equivalent in another currency.

470. During the interviews with financial institutions the Examiners understood that there was a type of financial services business referred to as "mortgage lending" which is carried on within the TCI by institutions other than banks. The Examiners understood that this is a form of lending. However, the Team was unable to find any legislation which would specifically cover such activity and it is not covered in the Banking Ordinance. The issue was raised with the FSC and the Examiners were informed that it is a practice that the FSC is aware of and that the FSC is actively taking measures to ascertain who is carrying on the activities within the TCI. It should also be noted that one financial institution had indicated that they were indeed licensed to conduct mortgage lending. The AMLR requires that identification procedures should be established and maintained by all relevant business and should comply with both the AMLR and the Code ((regulation 4 of the AMLR). Satisfactory evidence of identity must be obtained before the business relationship can proceed. Relevant businesses should adopt a risk based approach in determining the identification requirement appropriate to individual circumstances but should always consider the greater risk of money laundering.

471. Regulation 5 of the AMLR allows an exception to the requirement for identification procedures in the case of introduced business. For regulation 5 of the AMLR to apply, the introducer must be a regulated person either within the Islands or a foreign regulated person (as defined by regulation 3 of the AMLR). However this exception will not apply where the introducer or person carrying relevant business knows or suspects that the transaction involves money laundering.

472. Another exception to the requirement for identification exists where the applicant for business is himself a regulated person or is a foreign regulated person. Again, this exception will not apply where the person handling the transaction on behalf of the person carrying on relevant business to whom an application for business is made knows or suspects that the applicant is engaged in money laundering (regulation 6(1) of the AMLR).

473. In regulation 6(2) of the AMLR identification is not required of an applicant for business in a one off transaction where the amount paid to or by the applicant for business is less than US$10,000 or its equivalent in any other currency excepting where there are reasonable grounds for believing, at any time, that the transaction is linked to one or more transactions which together amounts to US$25,000 or more or where the person handling the transaction on behalf of a person carrying on relevant business knows or suspects that the transaction involves money laundering.

474. Regulation 7 of the AMLR requires a person carrying out relevant business to keep for at least the minimum retention period identification records, transactions records, registers, records of training given to employees and any other records required by the Code.

475. Regulation 8 of the AMLR requires a person carrying on a relevant financial business to seek the approval of the FSC to appoint a money laundering reporting officer (MLRO) and to establish and maintain internal reporting procedures. These procedures must provide for the making of disclosures to the MLRO where an employee knows or suspects another person of being involved

in money laundering and for a determination being made by the MLRO as whether there are grounds for knowledge or suspicion of money laundering on the basis of the information provided. The internal reporting procedures must permit the MLRO to have reasonable access to any information which may assist him in the consideration of the report as well as the ability to disclose the report to the MLRA where he decides that the information does give rise to knowledge or suspicion of money laundering.

476. Regulation 8(2) of the AMLR also calls for the internal controls and procedures to be established on a risk based approach.

477. Regulation 9 of the AMLR requires that relevant businesses institute training programmes for all their employees to ensure awareness of the POCO, the AMLR, the Code and other relevant guidance issued by the MLRA or other supervisory authority. All employees must be trained in how to recognised and handle transactions where it appears that the transaction involves money laundering. New employees must particularly undergo training as soon as practicable after their appointment.

478. Regulation 10 of the AMLR sets out offences in relation to contraventions of regulation 4(identification procedures to be established and maintained), regulation 7 (record keeping), regulation 8 (internal control and reporting procedures), and regulation 9 (training procedures).

479. The Anti-money Laundering and Prevention of Terrorist Financing Code was issued by the MLRA pursuant to section 111(1) of the POCO. The Code works conjunctively with the POCO and the AMLR to govern the regulated financial sector for the prevention of money laundering and the combating of terrorist financing.

Enforceability of the AML/CFT Code

Powers of the FSC

480. Section 33(1)(a)(ii) of the FSCO gives the FSC the power to take enforcement action against a licensee, ie any person or entity regulated by the FSC if, in the opinion of the FSC, the licensee has contravened or is in contravention of the Anti-Money Laundering Regulations or of such Ordinances or Codes relating to money laundering or the financing of terrorism as may be prescribed for the purposes of section 4(1)(d). The Financial Services Commission (Prescribed Instruments) Regulations, 2007 prescribe the Code for the purposes of section 4(1)(d) of the FSCO.

481. Where the FSC is entitled to take enforcement action against a licensee, it may exercise any one or more of the following powers under section 33 (2) of the FSCO:

(a) revoke or suspend the licensee's licence;
(b) issue a directive;
(c) appoint an examiner to conduct an investigation;
(d) require the licensee to appoint a qualified person to advise the licensee on the proper conduct of its business and affairs and to provide the Commission with a report on any aspect of its business;
(e) apply to the Court for a protection order;
(f) where the licensee is a company, petition the Court for its winding up; and
(g) impose a financial penalty on the licensee.

482. The Examiners have been informed by TCI Authorities that the FSC performs onsite inspections on regulated entities which include a component of AML/CFT and where breaches of AML/CFT legislation have been discovered the FSC has required corrective measures be taken. TCI Authorities have indicated that at all times such corrective measures had been taken by the financial institution and therefore the need to invoke its enforcement powers had not arisen for AML/CFT breaches.

483. The TCI Authorities have further informed the Examiners that, whilst the FSCO grants the FSC the power to impose a financial penalty for breach of AML/CFT matters, all financial penalties previously imposed on financial institutions were imposed through the relevant Ordnance under which such entity was licensed (i.e., an insurance company through the Insurance Ordinance). The enforcement powers under the FSC Ordinance have to date not been directly used or tested. Furthermore, the Examiners noted that there was no developed regime in place for the FSC to impose a financial penalty on a financial institution as part of its enforcement powers and in relation to breaches of AML/CFT measures. Hence, measures currently available to the FSC in terms of its enforcement powers are not considered proportionate without a developed mechanism for imposition of financial penalties for breach of AML.CFT measures as required by the FATF Methodology. The Examiners have been informed by the TCI Authorities that regulations are currently being developed which will cover the imposition of financial penalties as prescribed under the FSC Ordnance and will include those for AML/CFT breaches.

Contents of the Code

484. The Examiners have noted that under section 10 (1) of the AMLR a breach of the Code results in a breach of the AMLR. Therefore, a breach of the Code which results in a breach of the AMLR would carry with it penalties under the AMLR and not the Code. For example, regulation 4(1) of the AMLR provides that a person carrying on a relevant financial business [which includes a DNFBP] shall establish and maintain identification procedures that comply with these regulations and the Code. A breach of the identification procedures in the Code therefore can result in a breach of regulation 4(1) which is an offence under regulation 10(1) of the AMLR and is subject on summary conviction to a fine of up to $25,000.

485. With regard to the Code itself, Section 2.4 of the Code states that: 'in order to clearly distinguish between requirements of the Code, statutory requirements and guidance, all Code requirements are set out in a numbered "requirements box".

486. Further section 2.9 of the Code provides that:

"Where guidance is provided in this Code, a regulated person has some discretion as to how to apply the requirements of the PCO (*referred to as the POCO in this Report*), the AMLR and this Code, given the particular circumstances of its business, products, services, transactions and customers. However, a regulated person should consider very carefully whether a departure from

the guidance is justified. Regulation 11(2) of the AMLR provides: "…. in determining whether a person has complied with these Regulations, the Court may take account of any guidance issued by the Reporting Authority" Therefore, if a regulated person is not able to fully justify a departure from the guidance in this Code, the Court may find that the regulated person has committed an offence under the AMLR. If a regulated person chooses not to follow the guidance provided in this Code, it must be able to demonstrate that it has, nevertheless, complied with the statutory requirements and the requirements of this Code"

487. The provisions of section 2.9 of the Code, prima facie, would seem to allow a financial institution in the TCI wide latitude to apply the contents which are considered guidance (those not in requirement boxes) of the Code. However, such wide latitude is only in respect of the guidance issued within the Code and not the requirements.

The Code as "other enforceable means"

488. Guidance has been provided by the FATF in relation to how examiners are to determine whether a document can be considered other enforceable means. Generally, such guidance sets out three basic criteria that must be considered: 1) There must be a document or mechanism containing enforceable requirements regarding the obligations set out in the FATF Recommendations (does the document contain language which speaks to mandatory requirements); 2) The document must be issued by a competent authority; and 3) There must be sanctions for non-compliance with the document that are effective, proportionate and dissuasive (additionally, the nature of how the sanctions can be applied and whether there is evidence of the application of effective and dissuasive sanctions should also be considered). Examiners have concluded that the Code satisfies criteria one and two in relation to the nature of the document and the issuer of the document. However, examiners have concluded that the lack of sufficient evidence that sanctions have been imposed in the past by TCI competent authorities (i.e., the FSC under the FSC Ordnance) and the lack of a regime for the imposition of financial penalties (i.e., administrative penalties) means that sanctions are not effective, proportionate and dissuasive. Specifically, this means that a relatively minor breach of the Code will result in disproportionate sanctions being applied. Based on the above, the Examiners have concluded that the Code is not other enforceable means as defined under the FATF Methodology in relation to regulated financial institutions (i.e., those financial institutions in the TCI that are directly subject to a licensing regime by the FSC) and in relation to other financial institutions (i.e., DNFBPs).

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

Recommendation 5

Anonymous Accounts and Accounts with Fictitious Names

489. In the Code, paragraph 4.15 provides that; "Anonymous accounts or accounts operated using fictitious names would obviously present a very significant money laundering or terrorist financing risk. It is therefore a requirement of the Code that a regulated person does not permit products where the customer's name is not identified or where an obviously fictitious name is

used." The Examiners were unable to identify a requirement in the POCO and AMLR which prohibits financial institutions from keeping anonymous accounts or accounts with fictitious names. The Code does not contain any procedure for enforcement of non-compliance.

490. The Examination Team did not find any financial institution that maintained anonymous accounts or accounts with fictitious names. Financial Institutions in the TCI such as the major banks appear to have a concrete understanding of the concept of anonymous accounts and do not permit them. Whilst the Examiners did not find any instances of financial institutions that have anonymous accounts, it appears that there is limited knowledge of the concept outside of banking institutions.

Account Opening/CDD Requirements

491. Procedures for the identification of customers are set out in regulation 4 of the AMLR. Regulation 4 of the AMLR provides as follows –

(1) Subject to regulations 5 and 6, a person carrying on a relevant business shall establish and maintain identification procedures that comply with these Regulations and the Code.

(2) Identification procedures shall—

(a) as soon as reasonably practicable after contact is first made between that person and an applicant for business, require—

(i) the applicant to produce satisfactory evidence of his identity, or

(ii) the person carrying on relevant business to take certain specified measures designed to obtain satisfactory evidence of the applicant's identity; and

(b) require that where satisfactory evidence of identity is not obtained, the business relationship or the one-off transaction does not proceed any further until it is obtained, unless and to the extent that the Reporting Authority or a senior police officer direct otherwise.

(3) Identification procedures—

(a) shall provide for the assessment by the person carrying on the relevant business of the risk that any business relationship or one-off transaction will involve money laundering and shall be appropriate to the circumstances, having regard to the degree of risk assessed;

(b) without limiting paragraph (a), shall take into account the greater risk of money laundering which arises when the applicant for business is not physically present when being identified; and

(c) shall require a determination to be made as to whether the applicant acts, or appears to act, for another person.

(4) Where the applicant acts, or appears to act, for another person, identification procedures shall require that reasonable measures are taken for the purposes of establishing the

identity of that other person and that where satisfactory evidence of identity of that other person is not obtained, the business relationship or the one-off transaction does not proceed any further until it is obtained, unless and to the extent that the Reporting Authority or a senior police officer direct otherwise.

(5) For the purposes of this regulation, satisfactory evidence of identity is evidence which is reasonably capable of establishing and, to the satisfaction of the person who obtains the evidence, does establish, that the applicant for business is the person he claims to be.

(6) Without limiting this regulation, the evidence of identity obtained under identification procedures shall include evidence of—

(a) the true full name of the applicant, together with any other names used by the applicant; and

(b) the physical address of the applicant.

"Identification procedures shall require that where, while the business relationship or one-off transaction continues, the applicant for business appears to be acting for any other third party in respect of that business, the satisfactory evidence of the identity of that other third party will be obtained."

492. Regulation 5 allows an exception to the requirement for identification procedures to be in place in respect of the need to obtain satisfactory evidence of identity in the case of introduced business. For regulation 5 to apply the introducer must be a regulated person either within the Islands or a foreign regulated person. However this exception will not apply where the introducer or person carrying relevant business knows or suspects that the transaction involves money laundering. A further stipulation must be met in order for the relevant business to be exempted from the requirement to obtain identification evidence. This is set out in regulation 5(2) as follows –

"(2) Subject to sub-regulation (3), where this sub-regulation applies, a written assurance from the introducer that evidence of the identity of the applicant for business has been obtained and recorded in accordance with identification procedures maintained by the introducer which comply with these Regulations or which comply with regulations equivalent to these Regulations may be accepted by the person carrying on relevant business concerned as satisfactory evidence of the identity of the applicant."

493. Under regulation 6 of the AMLR there are exemptions to the requirement to conduct identification procedures where the applicant for business is a regulated person or a foreign regulated person. As previously stated, identification procedures are not applicable to an applicant for business in a one off transaction where the amount paid to or by the applicant for business is less that $10,000 unless linked to more than one transaction that is $25,000 or more or where the person knows or suspects that the transaction involves money laundering.

494. The Code provides extensive guidance in section 4 on Customer Due Diligence (CDD). Please however note the apparent discretionary nature of the Code's guidance as discussed earlier in this section of the Report. It demonstrates that given that the AMLR requires identification procedures to comply with the Code a failure to establish and maintain identification requirements that comply with the Code is a breach of the AMLR. It also gives guidance on identification

procedures and what documents may be necessary to establish satisfactory identification and how to verify that identification

495. The Code requires at paragraph 4.29 that identification evidence be obtained and verified at the outset of a customer relationship; when there is a change in the identification information of a customer; when there is a change in the beneficial ownership or control of a customer; and when there is a change in the third parties (or beneficial ownership or control of third parties) on whose behalf an applicant or customer acts.

496. As previously stated the Code cannot be defined as law, regulation or other enforceable means. Therefore, the applicability of the requirements of the Code is voluntary and carries no penalties except in instances where a breach of the Code would also be a breach of the AMLR. (See earlier discussion). The requirement to conduct CDD measures on customers who carrying occasional transactions that are wire transfer are not covered by the AMLR and the Code as prescribed by SR VII and the Interpretive Notes thereof. Additionally, the AMLR and the Code do not provide for the conduct of CDD measures where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

Required CDD Measures

497. Regulation 4 of the AMLR requires relevant businesses to establish and maintain identification procedures, including procedures to establish satisfactory evidence of identity. This is supplemented by section 4 of the Code which makes reference to verification of identity and the use of identity data sources for verification of identity.

498. Additionally, identification measures are set out in requirements 11–14 of the Code. Requirement 11 of the Code states a regulated person must undertake identification and verification procedures with respect to an individual where:

- The individual is the applicant for business or joint application for business;
- The individual is the beneficial owner or controller of an applicant for business; or
- The applicant is acting on behalf of the individual.

499. A regulated person must in every case, obtain the following information with respect to an individual:

- Full legal name, any former names and any other names used
- Gender
- Principal residential address
- Date of birth.

500. Requirement 12 of the Code states that a regulated person must, in every case, verify the following aspects of an individual's identity:

- Full legal name; and
- Principal residential address.

501. Requirement 13 of the Code states that a regulated person undertakes identification and verification procedures with respect to a legal entity where:

- The legal entity is an applicant for business in its own right;
- The legal entity is a beneficial owner or controller of an applicant for business; or
- The legal entity is a third party (underlying customer) on whose behalf an applicant for business is acting.

502. Requirement 14 of the Code states that a regulated person must, in every case, obtain the following information with respect to a legal entity:

- Full name of entity
- Official registration or other identification number
- The date and place of incorporation, registration or formation
- Address or registered office in country of incorporation and mailing address, if different
- Principal place of business
- Identification information with respect to each director of the entity and with respect to each individual who is the ultimate beneficial owner of 25% or more of the entity.

503. The Code also makes provisions in requirements 11 and 12 for a regulated person to verify a person's identity where the regulated person determines from its risk assessment that the individual, the product or the delivery channel presents a higher level of risk.

Legal Persons

504. The AMLR regulation 4(3) and (7) requires reasonable measures to be taken for the purpose of establishing identity in cases where the applicant is acting for another person or for a third party. It also provides that where satisfactory evidence of identity of the third party is not obtained the business relationship or the one-off transaction should not proceed until the information is provided and verified. However, the AMLR allows for the transaction or business relationship to proceed where the Reporting Authority or a senior police officer directs.

505. The Code also contains provisions in requirements 15-18 in relation to legal persons and legal arrangements. Particularly, a regulated person should take reasonable measures to verify the beneficial owners and controllers of a legal entity and any changes in beneficial ownership and control and require supporting document where a trust is used (i.e. Full name of the trust, date and country of establishment, nature and purpose of the trust (e.g., discretionary, testamentary, bare), identification information with respect to each trustee, and identification information with respect to any protectors).

Identification of Beneficial Ownership

506. Paragraphs 4.65 to 4.71 of the Code provide guidance in relation to non face-to-face identification and verification procedures. It requires that in the case of a non face-to-face application, where identity is verified electronically, or a copy of documents are relied upon, a regulated person should apply an additional verification check to manage the risk of identity fraud.

507. Within requirement 19 of the Code a regulated person does not accept a document as certified by an appropriate person unless:

- The certifier is independent of the individual, trust or legal body for which the certification is being provided, and is subject to professional rules of conduct, which provide comfort as to the integrity of the certifier;
- The certifier has certified that:
  - He has seen the original documentation verifying identity and/or residential address;
  - The copy of the document (which he certifies) is a complete and accurate copy of that original; and
  - Where the document is to be used to verify identity of an individual and contains a photograph, the photograph contained in the document certified bears a true likeness to the individual requesting certification,
  - The certifier has signed and dated the copy document, and provided adequate information so that he may be contacted in the event of a query;

508. Requirement 19 of the Code also provides that in circumstances where the suitable certifier is located in a higher risk jurisdiction, or where the regulated person has some doubts as to the veracity of the information or documentation provided by the applicant, the regulated person must take steps to check that the suitable certifier is real.

509. Regulation 4(3)(c) of the AMLR provides that identification procedures must require a determination to be made as to whether the applicant acts, or appears to act, for another person Regulation 4(4) of the AMLR provides "where the applicant acts, or appears to act, for another person, identification procedures shall require that reasonable measures are taken for the purposes of establishing the identity of that other person .....". Requirements 11, 13 and 14 of the Code details what a financial institution in the TCI should undertake in relation to the issue of obtaining and verifying identification where the customer is or appears to be acting on behalf of another person. Therefore, financial institutions are required by the AMLR to obtain and verify identification where the customer is or appears to be acting on behalf of another person.

510. Where customers are legal persons or legal arrangements, requirements 13-19 the Code has regard to the measures necessary to understand the ownership and control structure of the customer (requirements 13 and 14). The requirements of the Code also have regard to determining the natural persons that ultimately own or control the customer (requirements 14 and 16). Similar requirements also apply in the case of a trust (see requirements 17 and 18).

511. Paragraph 4.49 of the Code also provides that "where the applicant for business is a legal entity, a regulated person should ensure that it fully understands the legal form, structure and ownership of the legal entity and should obtain sufficient additional information on the nature of he entity's business, and the reasons for seeking the product or service.'

512. There is no requirement in law or regulation to identify the beneficial owner or take reasonable measures to verify the identity of the beneficial owner, as required by the FATF standards. The Code covers measures necessary to the understanding of the ownership and control structure of a legal person. However, there is no requirement in law or regulation to determine who are the natural persons that ultimately own or control the customer, including those persons who exercise

ultimate effective control over a legal person or arrangement (for example, for companies – identifying the natural persons with a controlling interest and the natural persons who comprise the mind and management of company; and for trusts, identifying the settlor, the trustee or person exercising effective control over the trust, and the beneficiaries).

Purpose and Intended Nature of Business Relationship

513. Regulation 4(3) of the AMLR requires that a risk based approach be adopted. In paragraph 4.6 of the Code it states that the objective of the risk-based approach is to enable a regulated person to know who its customers are, what they do, and whether or not they are likely to be engaged in criminal activity. In this regard relevant businesses are required to adhere to regulation 6 of the AMLR which allows a financial institution in the TCI to exempt regulated persons and foreign regulated persons or clients in relation to a one-off transaction from the requirement of submitting evidence of identity. However, TCI authorities have yet to provide guidance to financial institutions on the risk-based approach and how it should be implemented save for that contained in the Code. Examiners found no evidence that financial institutions were actively or systematically applying such risk based approach outside of the banking sector which was largely a development of international standards and best practice in the banking industry.

514. Paragraph 4.9 of the Code provides inter alia that "The principle objective is to obtain sufficiently information to identify a pattern of expected activities and to identify unusual, complex or high risk activities and transactions that may indicate money laundering or terrorist financing. Regulated persons should consider the following as an essential part of the relationship information collected:

- The purpose and intended nature of the relationship
- The type, volume and value of the expected activity
- The source of funds
- Details of any existing relationships with the regulated person
- The reason for using a business based in the TCI"

515. During interviews the Examiners found that many financial institutions apply a risk weighting to customers. Primarily, it was observed that the banking sector, due to local branches' connection to their foreign parent group, had in place robust risk systems for their customers who were set down within their procedures. Other sectors did the same, however this was done on a smaller scale and was more informal.

Ongoing Due Diligence

516. Regulation 4 of the AMLR requires that relevant business shall establish and maintain identification procedures that comply with the Regulations and the Code. Specifically, the Code provides at requirement 23 that a regulated person establish and maintain systems and controls to

enable them to monitor customer relationships with a view to detecting transactions or activity that may indicate money laundering or terrorist financing, particularly unexplained unusual, complex or high risk activity or transactions.

Risk/Enhanced Due Diligence

517. Paragraph 4.11 of the Code also provides that when sufficient due diligence information has been obtained; the regulated person should carry out a customer risk assessment. This should include elements such as customer risk, product risk, delivery risk and country risk.

518. Paragraph 4.19 further provides that "A regulated person may demonstrate an effective process to an initial customer risk assessment by taking into account:

- The customer due diligence information obtained and the evaluation of that information; and

- Inconsistencies between the customer due diligence information obtained, for example, between specific information concerning source of funds or source of wealth, and the nature of transactions"

519. The Code makes provisions for financial institutions in the TCI to maintain customer due diligence information on customers and when such information should be updated. Specifically, requirement 8 provides in that a regulated person should review and update customer due diligence information at least annually where that customer is assessed as presenting a higher risk and not less that once every five years where the customer is assessed as posing a normal or low risk. Similarly, the Code in requirement 9 provides for the regulated person to conduct enhanced due diligence where the customer if judged to be of higher risk and where the customer is a politically exposed person. However, the Examiners were unable to assess the methods by which risk maybe determined or that these methods are equally applied across the spectrum of regulated persons.

520. The AMLR and other legislation does not explicitly address the issue of enhanced due diligence, and there is no general requirement to take additional steps when there is a higher risk scenario. Thus, situations which emerge as higher risk, or specific higher risk transactions, are potentially not addressed adequately by all financial sector firms.

521. The AMLR and the Code allows financial institutions to apply reduced CDD in two specific circumstances: 1) in regards to introduced business and 2) when the applicant for business is a regulated or foreign regulated person. Regulation 4 paragraph (3)(a) of the AMLR makes reference to identification procedures that are commensurate with the risk that any business relationship or one-off transaction presents to the relevant financial services business. Paragraph (3)(b) provides for non face-to-face customers and the heightened risks that such customers present, while paragraph (3)(c) speaks to third party customers.

522. The AMLR also requires relevant financial services businesses to place reliance on the introducer's identification of its client where the introduced business is a regulated person or a foreign regulated person. This is supplemented by the Code which provides at requirement 20 that "a regulated person must satisfy itself that the introducer, whether a regulated person or foreign regulated person, has a business relationship with an applicant or customer which requires it to obtain and verify his identity before relying on the introducer exemption in regulation 5 of the AMLR.

523. In regulation 2 "foreign regulated person" is defined as follows :"foreign regulated person" means a person—

(a) that is incorporated in, or if it is not a corporate body, has its principal place of business in, a jurisdiction outside the Islands (its "home jurisdiction"),

(b) that carries on business outside the Islands that, if carried on in the Islands, would fall within a category of business specified in paragraphs (a) to (i) of regulation 3(1),

(c) that, in respect of the business referred to in paragraph (b)

(i) is subject to legal requirements in its home jurisdiction for the prevention of money laundering that are consistent with the requirements of the FATF Recommendations, for the time being, for that business, and

(ii) is supervised for compliance with those legal requirements by a foreign regulatory authority;"

524. However, it should be noted that pursuant to requirement 21, regulated person must not rely on the introduced business exemption in regulation 5 of the AMLR, where the introduced business is another regulated person or foreign regulated person unless:

- It has reasonable grounds for believing that the introducer is a regulated person or foreign regulated person

- It has reasonable grounds for believing that the introducer has a business relationship with an applicant or customer which requires it to obtain and verify his identity

- Where the introducer is a foreign regulated person, it has reasonable grounds for believing that the introducer meets the criteria for a foreign regulated person as specified in the AMLR."

525. Another exception that may require reduced due diligence is set out in regulation 6 of the AMLR. Here the person is not required to obtain evidence of the identity of an applicant for business where he has reasonable grounds for believing that the applicant is a regulated person or a foreign regulated person. In this regard, the Code provides at requirement 22 that where a regulated person seeks to rely on this exemption, it must obtain and retain documentation establishing that the applicant for business is either a regulated person or a foreign regulated person.

526. In regulation 5 of the AMLR reduced due diligence may be applied in the case of introducers, where the introducer is a foreign regulated person. Also in regulation 6 reduced measures may be applied, inter alia, where the applicant for business is a foreign regulated person.

(a) that is incorporated in, or if it is not a corporate body, has its principal place of business in, a jurisdiction outside the Islands (its "home jurisdiction"),

(b) that carries on business outside the Islands that, if carried on in the Islands, would fall within a category of business specified in paragraphs (a) to (i) of regulation 3(1),

(c) that, in respect of the business referred to in paragraph (b)

(i) is subject to legal requirements in its home jurisdiction for the prevention of money laundering that are consistent with the requirements of the FATF Recommendations, for the time being, for that business, and

(ii) is supervised for compliance with those legal requirements by a foreign regulatory authority;"

527. Therefore where reduced measures are applied to customers residing in another country they must be foreign regulated persons who are required to comply with and implement the FATF Recommendations. However, the Examiners found no evidence that financial institutions had implemented the requirement or indeed were aware of the requirement. Additionally, there was no awareness of the methods by which TCI financial institutions can and should use to ensure the continued status of these entities. Without guidance from the TCI Authorities a gap in the AML/CFT regime may exist, thereby allowing businesses to emanate from jurisdictions that may not be applying proper standards with regard to AML/CFT.

528. Interviews with financial institutions revealed that there was little awareness of the requirement to apportion a greater level of risk to clients from countries which may not be in compliance with and have effectively implemented the FAFT recommendations. The Examination Team found that financial institutions typically apportioned risk to clients however the country of origin of the client was only taken into consideration when that client might be from a jurisdiction that the respective institution determines to be of high risk. Competent authorities in the TCI such as the FSC have not issued any guidance to financial institutions on this matter.

Guidelines on the Risk-Based Approach

529. As discussed above, regulation 4 of the AMLR provides that relevant business shall establish and maintain identification procedures that comply with the Regulations and the Code. Furthermore, the Code provides guidance on applying CDD measures on a risk sensitive basis. Section 43 of the Financial Services Commission Ordinance 2007 also gives the FSC power to issue guidelines. No evidence was found that any guidelines have been issued at the time of the evaluation. The lack of guidance is a contributing factor to TCI's financial institutions' lack of understanding with regard to the development of risk based approach and the methods under which reduced due diligence can be undertaken.

Timing of Identification

530. Regulation 4 of the AMLR requires identification procedures to be conducted as soon as reasonably practicable after contact is first made between the person and an applicant for business. Additionally, the Code sets out the process under which identity should be verified.

531. Regulation 4 further provides in subsection 3 for a risk based approach to obtaining due diligence information and that where satisfactory evidence of identification can not be obtained the transaction or business relationship should not proceed until it is obtained.

Failure to Satisfactory Complete CDD

532. Regulation 4 of the AMLR provides a risk based approached in respect of measures which financial institutions in the TCI may follow in instances where the required CDD measures have not been completed or are unsatisfactory. Additionally, it deals with failure to comply with CDD procedures. The Code at requirement 24 provides that:

- Where an applicant for business or customer fails to supply adequate customer due diligence information, or adequate documentation verifying identity (including the identity of any beneficial owners and controllers), consideration should be given to making a suspicious activity report.

- Internal reporting procedures encompass the reporting of attempted transactions and business that has been turned away.

- Staff must make internal suspicious activity reports containing all relevant information in writing to the MLRO as soon as it is reasonably practicable. After the information comes to their attention.

- Suspicious activity reports include as full a statement as possible of the information giving rise to knowledge or reasonable grounds for suspicion of money laundering or terrorist financing activity and full details of the customer.

- Reports are not filtered out by supervisory staff or managers such that they do not reach the MLRO (or designated person).

- Reports are acknowledged by the MLRO (or designated person).

- A regulated person must establish and maintain arrangements for disciplining any member of staff who fails, without reasonable excuse, to make an internal suspicious activity report where he or she has knowledge or reasonable grounds for suspicion of money laundering or terrorist financing."

533. However, as previously stated the TCI Authorities have not issued any guidance in relation to the risk-based approach and this has contributed to financial institutions in the TCI lack of understanding of how to implement the criteria and thereby affect the effectiveness of the AML/CFT regime in the TCI.

Existing Customers

534. Regulation 12 of the AMLR makes provision for pre-existing business relationships formed by relevant businesses. It provides in regulation 12(3) that "notwithstanding regulations 4 and 5, a regulated person is not required to maintain procedures for obtaining evidence as to the identity of a person with whom a pre-existing business relationship has been formed except as required by the Code".

Recommendation 6

535. Provisions relating to Politically Exposed Persons (PEPs) and other high risk clients are set out in the Code. Requirement 9 of the Code makes provisions for financial institutions the TCI to conduct enhanced due diligence procedures. The Code is applicable to all regulated persons although the Code cannot be considered as other enforceable means.

536. Paragraph's 4.25 to 4.28 of the Code specifically deals with PEP's. Paragraphs 4.25 provide that PEP's and members of their families and close associates, present a higher risk to a regulated person because their position makes them vulnerable to corruption.

537. Requirement 10 of the Code makes the following provisions that a TCI financial institution should have in place in relation to PEP's:

- Appropriate risk-based procedures to determine whether an applicant for business or a customer is a PEP

- Obtain appropriate senior management approval for establishing or maintaining business relationships with such customers;

- Take reasonable measures to establish the source of wealth and source of funds of such customers; and

- Conduct enhanced ongoing monitoring of the business relationship.

538. Requirement 10 of the Code also provides that senior management approval is required for establishing business relationships with a PEP. However, the Code is not enforceable on regulated persons.

539. It appears to the Examiners, that financial institutions such as banks and to a limited extent company service providers are aware of the requirement and are currently implementing the requirement to seek senior management approval to start a relationship with someone who is a PEP. Financial institutions such as insurance companies, company managers and investment firms are not applying such criteria. The Code makes reference to the requirement to seek senior management approval to continue the relationship with a customer who is or is subsequently found to be a PEP or who subsequently becomes a PEP. Except for the banking sector there was little evidence that TCI financial institutions are actively implementing procedures with regard to PEPs. This creates a gap in the effectiveness of the TCIs' AML/CFT regime.

540. Additionally, section 4.28 of the Code provides that "new and existing customers may not initially meet the definition of a PEP. The financial business should, as far as practicable, be alert to public information relating to possible changes in the status of its customers with regard to political exposure." The effect of the section appears to allow financial institutions in the TCI to not apply enhanced measures to monitor their existing customers and to ensure that there is a robust mechanism and policy in place to ensure the detection of someone who becomes a PEP. Relying on publicly available information alone is insufficient.

541. Requirement 10 of the Code also states that financial institutions are required to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs.

542. Financial institutions within the TCI appear to have limited knowledge of the requirements as they relate to PEPs or indeed the definition of a PEP. Financial institutions such as the major banks and other institutions which have a direct linkage (i.e., through ownership or member of a group) appear to have a better understanding and apply the requirements of enhanced due diligence to PEPs. It does not appear that institutions such as insurance companies, trust companies are aware of the requirements.

Additional Elements

543. The Code distinguishes between domestic and foreign PEPs. Particularly, paragraph 4.25 provides inter alia –"for the purposes of this Code, PEP's are natural persons who are, or who have been, entrusted with prominent public functions in a jurisdiction other than the TCI, and their immediate family members, or persons known to be close associates, of such persons." Therefore, the requirements of Rec.6 are currently applied only to a foreign person who meets the definition.

544. The UK has ratified The United Nations Convention against Corruption however it has not been extended to the Turks and Caicos Islands and is therefore not enforceable under TCI laws.

Recommendation 7

545. There is no legal framework in the TCI which specifically deals with the issue of correspondent banking relationship. Examiners understood that there was no correspondent banking relationship in the TCI whereby the TCI bank is the correspondent bank and all TCI banks that are currently licensed would qualify as respondent institutions. Examiners were informed that a draft Code is currently being developed to deal with correspondent banking relationship in the TCI.[8]

Recommendation 8

546. Provisions relating to risks evolving from non-face-to-face business and transactions are set out in the Code. Primarily, paragraph's 4.65 to 4.84 of the Code provide guidance in relation to non face-to-face identification and verification procedures.

547. Paragraph 4.68 states that where an applicant approaches a regulated person remotely (by post, telephone or over the internet), the regulated person should carry out non face-to-face verification, either electronically or by reference to documents. Furthermore, as previously stated, the Code provides that in the case of a non face to face application, where identity is verified electronically, or copy documents are relied upon, a regulated person should apply an additional verification check to manage the risk of identity fraud.

548. The Code contains information as it relates to the CDD measures required where a financial institution conducts business in a non-face-to-face manner. However, the Code is not other enforceable means. The Examiners were informed during interviews that financial institutions such as banks and company services providers require CDD documentations for all customers.

[8] Subsequent to the visit and the two month allowable window in which the Examination Team could factor recent legislative changes into the report, TCI Authorities issued a "Correspondent Banking and Payment Service Providers Code" in January 2008. This Code covers correspondent banking relationships and wire transfers.

549. Interviews with the private sector revealed that there has been relatively little communication from TCI's competent authorities such as the FSC and the FCU on matters relating to trends and typologies in money laundering and the financing of terrorism. Interviewees expressed the desire to receive such information and felt that such information would be beneficial to their respective institution. Additionally, no guidance was given on the use of technological developments or other trends in money laundering and terrorist financing. The lack of guidance and distribution of information provides a gap in the TCI's AML/CFT regime.

3.2.2 Recommendations and Comments

550. 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.

551. Legislation should be enacted or amended to prohibit financial institutions from keeping anonymous accounts or accounts with fictitious names.

552. 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.

553. Legislation should be enacted or amended to require that financial institutions conduct CDD on legal persons or legal arrangements.

554. 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 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.

555. 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.

556. The FSC should consider issuance of guidance with regard to financial institution's handling of relationships with PEPs.

557. TCI may wish to consider expanding the definition of a PEP to include persons in the TCI.

558. TCI Authorities should consider issuing more guidance to financial intuitions on matters relating to AML/CFT.

559. 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.

560. TCI Authorities should consider bringing the business of mortgage lending under a licensing regime which will make it subject to AML/CFT requirements.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**NC**	• **There are no requirements in the POCO and AMLR which prohibit financial institutions from keeping anonymous accounts or accounts with fictitious names.** • **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.** • **No requirement for financial institutions to conduct CDD on legal persons or legal arrangements.** • **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.** • **No requirement for financial institutions to verify the legal status of the legal person or legal arrangement.** • **No requirement for financial institution perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.** • **No requirement for financial institutions to conduct ongoing due diligence on existing customers.** • **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.** • **No requirement to terminate the business relationship if proper CDD cannot be conducted.** • **No requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date.** • **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.** • **The scope of AML/CFT legislation in the TCI does not cover financial institutions that engage in mortgage lending.** • **No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.**
R.6	**NC**	• **No requirements concerning PEPs are applicable to regulated**

		persons at present. • **No requirement for senior management approval of a relationship with a customer who is found to be a PEP.** • **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.** • **Little awareness of the requirements in relation to the performance of enhanced CDD measures on high risk customers who are PEPs.** • **No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.**
R.7	**NC**	• **No requirement to determine the reputation of a respondent and the quality of supervision.** • **No provision to obtain senior management approval before establishing new correspondent relationships.** • **No provision to document respective AML/CFT responsibilities in correspondent relationships.** • **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.** • **No requirement for the financial institution to be satisfied that the respondent institution can provide reliable customer identification data upon request.** • **No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.**
R.8	**PC**	• **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.**

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

Recommendation 9

561. The AMLR allows for "introducers to perform elements of the CDD process and stipulates the terms under which this may be done. The provisions in the AMLR are supplemented by the Code.

562. Regulation 5 of the AMLR makes provision for reduced due diligence information to be required where the applicant for business is by way of an introducer and based on various circumstances as set out previously. Specifically, this can be done where the applicant for business is introduced by a regulated person or a foreign regulated person. Under the provisions of regulation 5 introducers are required to be regulated person or foreign regulated persons and should have measures in place to comply with the FATF recommendations including the CDD requirements.

(1) Sub-regulation (2) applies where an applicant for business is introduced to a person carrying on a relevant business by a third party ("the introducer") who is—

(a) a regulated person; or

(b) a foreign regulated person;

unless any person handling the transaction on behalf of the person carrying on relevant business knows or suspects that the transaction involves money laundering.

(2) Subject to sub-regulation (3), where this sub-regulation applies, a written assurance from the introducer that evidence of the identity of the applicant for business has been obtained and recorded in accordance with identification procedures maintained by the introducer which comply with these Regulations or which comply with regulations equivalent to these Regulations may be accepted by the person carrying on relevant business concerned as satisfactory evidence of the identity of the applicant.

(3) For the avoidance of doubt, this regulation does not limit the responsibility of the person carrying on relevant business for obtaining and verifying the identity of an applicant for business."

563. Regulated persons and foreign regulated persons are defined by Regulation 2 of the AMLR and are required to maintain the same standards for the prevention of money laundering as are consistent with CDD requirements criteria 5.3 to 5.6. Specifically, "foreign regulated person" means a person—

(a) that is incorporated in, or if it is not a corporate body, has its principal place of business in, a jurisdiction outside the Islands (its "home jurisdiction"),

(b) that carries on business outside the Islands that, if carried on in the Islands, would fall within a category of business specified in paragraphs (a) to (i) of regulation 3(1),

(c) that, in respect of the business referred to in paragraph (b)

564. The Examination team found no evidence that TCI financial institutions are actively ascertaining the regulated status of a foreign regulated person who is an introducer by receiving documentary evidence. Therefore, TCI requires financial institutions to be subject to introducer requirements but does not require TCI institution to ascertain the introducer's compliance by receipt of documentary evidence of such compliance. It should be noted that the use of introducers by TCI financial institutions appears to be very limited.

565. In addition to the above, paragraph 4.76 of the Code states that "regulation 5 does not limit the responsibility of the person carrying on relevant business from obtaining and verifying the identity of an applicant for business."

566. In the Code it is also provided in paragraph 4.77 that where the introducing service provider has no obligation to obtain and verify the identity of the applicant or customer, the regulated person to whom the applicant or customer is introduced cannot rely on any assurance of the introducer, even if it has actually obtained and verified the person's identity.

567. Paragraphs 4.76 and 4.79 of the Code provide guidance to TCI financial institutions on their responsibility for customer identification and verification. The Code provides that notwithstanding the provisions of regulation 5, a financial institution in the TCI does not delegate ultimate responsibility for customer identification and verification.

3.3.2 Recommendations and Comments

568. 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.

569. 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.

570. In practice, financial institutions which utilise the introducer concept seem to carefully consider relationships with their introducers. 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.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**PC**	• **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.** • **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.**

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

Recommendation 4

Financial Services Commission

571. The Financial Services Commission Ordinance 2007 (FSCSO) provides at section 23 that the Financial Services Commission (FSC) may by notice (hereinafter referred to as a section 23 notice) require a person to provide specified information or specified documents. Section 24 allows the person to apply to the Court to have the notice set aside. Once notice is given of the intention to apply for the FSC's notice to be set aside or the application is served on the FSC, it cannot disclose any information or documents provided that relate to the application unless permitted by the Court or where necessary to protect or preserve assets or where necessary to prevent the commission of an offence whether such offence is within or outside the Islands (section 25(3) and (4) of the FSCO).

572. Section 27 allows a Magistrate to issue a search warrant where he is satisfied of one of three conditions. The first condition is that a person inter alia failed to comply with a notice given by the FSC under section 23.

573. The second condition is that a section 23 notice could be issued and there are documents or information on the premises specified in the warrant, and if a section 23 notice was to be issued it would not be complied with or the documents or information to which the notice related would be removed or destroyed. The third condition is that an offence has been or may be committed under the FSCSO.

574. Section 28 provides for cooperation and sharing of information by the FSC with foreign regulatory authorities or any persons, in or outside of the Islands whose functions involve the prevention or detection of financial crime. This provision is augmented by section 29 which sets out further provisions in relation to assistance and considerations that may be taken into account in deciding whether to grant assistance and what assistance is appropriate.

575. Section 30 makes it an offence for a person to fail to comply with a section 23 notice, purport to comply with a section 23 notice but knowingly provides false or misleading information or recklessly provides false or misleading information, or to destroy, mutilate, deface, hide, or remove a document for the purpose of obstructing or frustrating compliance with a section 23 notice.

576. Under section 50 a person is required to disclose information or documents pursuant to a section 23 notice if such information or document is not subject to legal professional privilege in legal proceedings in the circumstances set out in that section. Section 50 specifically provides that:

> " (1) A person shall not be required to disclose information or produce, or permit the inspection of, a document under section 23 if he would be entitled to refuse to disclose the information or to produce, or permit the inspection of, the document on the grounds of legal professional privilege in legal proceedings.
>
> (2) For the purposes of this section, information or a document comes to an attorney in privileged circumstances if it is communicated or given to him—

(a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;

(b) by, or by the representative of, a person seeking legal advice from the adviser; or

(c) by any person—

(i) in contemplation of, or in connection with, legal proceedings, and

(ii) for the purposes of those proceedings.

(3) Information or a document shall not be treated as coming to an attorney in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(4) Notwithstanding subsection (1), an attorney may be required, pursuant to a power under this Part, to provide the name and address of his client."

577. There are no restrictions on the sharing of information between financial institutions where this is required by R.7 (correspondent banking) and R.9 (third parties and introduced business). Regarding wire transfers, Examiners have been informed by Authorities in the TCI that information required to be maintained by SRVII is kept. However, there is specifically no legislation, regulation or other enforceable means document to ensure compliance. This does not inhibit the Authorities in the TCI from sharing information that is available.

3.4.2 Recommendations and Comments

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	**This Recommendation is fully observed.**

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Recommendation 10

578. Under regulation 7 of the AMLR a person carrying on a relevant business within the TCI is required to keep, for at least the minimum retention period the:

- Evidence of the identity of the applicant for business or the beneficial owner on whose behalf the applicant is acting.
- A record of the activities carried out in the course of the business relationship or of the one-off transaction.
- A record of the action taken to recover monies due and payable to the person carrying on relevant financial business, in the event of insolvency of the applicant.

579. TCI financial institutions are further required under the AMLR to maintain records for a period of six (6) years from the last occurring of the following events: the ending of the business relationship between the person carrying on relevant business and the other person and the carrying out of the last transaction between the person carrying on relevant business and the other person.

580. Under regulation 7 of the AMLR relevant authorities in the TCI (a police officer or the Reporting Authority) can authorise a financial institution to maintain records for a time in excess of the six (6) years where the documents may be relevant to an investigation.

581. Additionally, the Code provides details as to the type and nature of documentation required to be maintained by financial institutions in the TCI as well as how such documents are to be maintained. However, given that the Examination Team found that the Code could not be considered law, regulation or other enforceable means the contents of the Code in relation to record keeping are only enforceable where a breach of the record keeping sections of the Code results in a breach of the AMLR.

582. There is no specific requirement in the AMLR for financial institutions in the TCI to maintain records of the identification data, account files and business correspondence for at least five (5) years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority). The requirement to maintain adequate records is not clearly set down in law or regulations, the Examiners found that during interviews with financial institutions there was a general consensus that there were no requirements to maintain records for a prescribed duration. However, financial institutions due to their size indicated that they maintained records for a period in excess of the five (5) year requirement stated in the recommendation. Therefore, records are maintained on a voluntary basis.

583. Further, the powers available to TCI Authorities such as the FSC require that financial institutions in the TCI provide them with accurate and timely information. Such information is required to be submitted in legible and useable form within a reasonable timeframe as required by regulation 7 of the AMLR.

Special Recommendation VII

584. The Examiners were informed that in accordance with international best practices all banks operating in the jurisdiction are required to retain an original or a microfilm, other copy or electronic record of a wire transfer. Such a record should include:-

- The name and address of the originator
- The amount of the wire transfer
- The execution date of the wire transfer
- Any payment instructions
- The identity of the beneficiary's bank
- Account number of the beneficiary
- Any other specific identifier of the beneficiary

585. In addition to the above a bank is required, if carrying out wire transfers for non-customers, to retain-

- For wire transfers made in person, verification of identification and a record of the information and the type of verification used.
- When the bank has knowledge that the person placing the wire transfer is not the originator, a record of the originator's passport or other national identification number or a notation in the record of the lack thereof.
- When the wire transfer is not made in person, a record of the name and address of the person placing the wire transfer, as well as the person's passport or other national identification number or a notation in the record of the lack thereof, and a copy or record of the method of payment (i.e. check or credit card transaction) for the wire transfer.

586. Although the Examiners were able to ascertain during interviews that the required information in relation to SR VII is maintained by banking institutions, the Examiners were unable to find any provisions in law or regulations (or any other enforceable means) which would lead the Examiners to conclude that financial institutions in the TCI are required to maintain information in respect of the requirement of SR VII. The Examiners were informed that a draft Code is currently being developed to deal with wire transfers and cross-border transfers in the TCI.[9]

3.5.2 Recommendations and Comments

587. With regard to Recommendation 10, TCI is not compliant with one the criterion of the recommendation as there are no provisions in law or regulations with regard to the maintenance of identification data, account files and business correspondence as required by the recommendation. Additionally, as discussed previously, the Code is not other enforceable means and therefore is voluntary. However, the other criteria of the recommendation are met by virtue of the record keeping requirement s set out in the AMLR. 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.

588. With regard to SR VII, TCI is not compliant with any of criterion of the recommendation. Whilst the Code provides guidance identification procedures, it does not specifically deal with wire transfers and the Code is not enforceable or mandatory on TCI financial institutions. Furthermore, the AMLR does not deal with the matter of wire transfers. 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 insinuations and the implementation of effective, proportionate and dissuasive sanctions for non compliance with SR VII. Appropriate legislation should be enacted as soon as possible.

[9] Subsequent to the visit and the two month allowable window in which the examination team count factor recent legislative changes into the report, TCI authorities issue a "Correspondent Banking and Payment Service Providers Code" in January 2008. This code covered correspondent banking relationships and wire transfers.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**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).**
SR.VII	**NC**	• **There are no measures in place to cover domestic, cross-border and non-routine wire transfers.** • **There are no requirements for intermediary and beneficial financial institutions handling wire transfers.** • **There are no measures in place to effectively monitor compliance with the requirements of SR VII.**

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11

589. Regulation 8 of the AMLR addresses the issue of internal reporting and reporting procedures. In addition, under section 8(2a) of the AMLR, reference is made to the Code, requiring that internal control and reporting procedures addressed under regulation 8 of the AMLR, comply with the requirements contained in the Code.

590. The Code provides in paragraph 5.2 as follows: "In addition to carrying out customer due diligence, therefore, a regulated person should therefore monitor customer activity to identify, during the course of a continuing relationship, unusual, complex or high risk activity or transactions. If such activity or transactions cannot be explained they may involve money laundering or terrorist financing. Monitoring customer activity and transactions throughout a relationship helps give grater assurance that the regulated person is not being used for the purpose of financial crime."

591. Requirement 23 of the Code provides that regulated persons establish and maintain systems and controls to enable them to monitor customer relationships with a view to detecting transactions or activity that may indicate money laundering or terrorist financing, particularly unexplained unusual, complex or high risk activity or transactions. Therefore, the contents of the Code do not meet the requirements of the criteria.

592. Although the requirements contained in the Code under both section 5.2 and requirement 23, to a certain extent satisfy the condition of the criterion, as already noted the Code is not considered to be 'other enforceable means'.

593. Neither regulation 8 nor any of the sections of the Code referred to address the issues of size and purpose of the unusual transactions ("unusual large transactions, or patterns of transactions, that have no apparent or visible economic or lawful purpose").

594. Paragraph 5.3 of the Code provides that "The essentials of any monitoring system and controls are that:

- *They flag up transactions and/or activities for further examination;*
- *These reports are reviewed promptly by the right person(s); and*
- *Appropriate action is taken on the findings of any further examination*

595. Furthermore, requirement 33 of the Code provides that a regulated person must keep for a period of six (6) years from the date the business relationship ends, or, if in relation to a one-off transaction, for six (6) years from the date that the transaction on was completed records concerning

- Complex transactions;
- Unusual large transactions; and
- Unusual patterns of transactions
- Customers and transactions connected with jurisdictions which do not or insufficiently apply the FATF Recommendations

In any of the above, where the transaction has no apparent economic or visible lawful purpose

- Customers and transactions which are the subject of international countermeasures.

596. However, it should be reiterated that the Code is not considered 'other enforceable means' for the purpose of establishing TCI's compliance with the FATF 40 and 9 Special Recommendations.

597. In addition, the Code does not require that the findings resulting from a scrutiny of the complex, unusually larger transaction or patters of transaction and customers and transaction connected with jurisdictions which do not or insufficiently apply the FATF Recommendations be set forth in writing. Only the transaction record that meets the described criteria should be set forth in writing.

598. By virtue of regulation 7(1)(b) and (e) relevant businesses shall keep for the minimum retention period:

(b) transaction records complying with sub-regulation (4);
(e) such other records as may be required by the Code.

599. Sub-regulation (4) and (5)(b) then provides that "A person carrying on relevant business shall keep a record of each transaction that it carries out in the course of its relevant business containing sufficient details to enable an investigation into suspected money laundering to be undertaken.

(b) in the case of a record kept under sub-regulation (4), the period of 6 years from the date upon which the transaction was completed."

600. It is also provided in paragraph 8.13 of the Code that regulated persons should keep records of unusual complex and higher risk transactions.

601. Although the Code at requirement 33 in this regard does address the requirement to keep records of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose for at least 6 years, the content of the Code is not be considered for the determination of TCI's level of compliance with the relevant recommendation as other 'enforceable means'.

Recommendation 21

602. Paragraph 4.18 of the Code provides that "Jurisdictions falling into one or more of the following categories should be considered as higher risk jurisdictions:

- Jurisdictions that have inadequate safeguards in place against money laundering or terrorist financing;

- Jurisdictions that have high levels of organised crime; those that have strong links with terrorist activities; and those that are vulnerable to corruption.

In assessing which jurisdictions may present a higher risk, regard should be had to objective data published by the IMF, FATF, US Department of State (International Narcotics Control Strategy Report), Office of Foreign Assets Control ("OFAC") and Transparency International (Corruption Perception Index)."

603. In addition, Paragraph 4.24 of the Code and requirement 9 makes provisions for enhanced due diligence. Requirement 9 states inter alia that "Where a regulated person assesses a relationship or transaction as presenting a higher risk, the regulated person must perform enhanced due diligence."

604. The FSC has expressed that mechanisms for advisories and notices will also be a feature of their website which will soon be on stream.

605. Although, the Code does address the requirement under recommendation 21, it should be observed that as indicated previously the Code is not considered to be 'other enforceable means' for the purpose of assessing a country's compliance with the FATF recommendations.

606. With regard to the effective implementation of this recommendation, the Examiners observed during interviews with regulated financial institutions that a majority of financial institutions were not aware of the requirements in this respect, and consequently, have not implemented systems to address this requirement. Two (2) of the interviewed banking institutions reported that they are required by their head offices to observe a list of higher risk countries with which financial transactions are not allowed.

607. The FSC, if required, can issue guidance under section 43 of the FSCO as well as notices when issues concerning weaknesses in the AML/CFT systems of other countries have been identified. Currently, the FSC has not made use of its powers in this regard and consequently, has not issued any explicit alert list with regard to any jurisdiction.

608. As discussed previously, the Examiners noted that in practice a number of financial institutions are effectively applying a list of higher risk jurisdictions as part of their country risk management policy. However, this was not being done by the majority of financial institutions interviewed. It is mainly banking institutions and moreover subsidiaries of foreign banks that apply referenced alert lists as part of their foreign based head offices' risk management policy.

609. Through a proper implementation of Recommendation 21, countries provide financial institutions within their jurisdictions with guidance in the application of country risk management. Even though, the Code provides for requirements that must be observed with regard to country risk management when assessing customer risk, it does not provide for any guidance on the documenting of findings resulting from the scrutiny of transactions originating from a country that does not or insufficiently apply the FATF standards. Additionally, the non-mandatory nature

of the Code and its guidance as discussed previously does not enhance TCI's compliance with this Recommendation.

3.6.2 Recommendations and Comments

610. 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).

611. Furthermore, 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.

612. 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.

613. 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.

614. It is not a conclusive requirement to issue a blacklist containing countries that do not or 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.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**NC**	• **No requirements for special attention to be paid to characteristics of size and purpose of transactions.** • **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.** • **No minimum record retention period applies for the findings resulting from a closer investigation of unusual transaction patterns.** • **No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.**
R.21	**NC**	• **The majority of financial institutions do not observe the level of compliance of the foreign jurisdiction when establishing international business relationships.** • **No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.**

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Recommendation 13& Special Recommendation IV

615. Section 8 of the AMLR, sets out the requirement for a relevant business to establish and maintain internal controls and procedures including procedures in relation to the making and disclosing of Suspicious Transaction Reports (STR's) or Suspicious Activity Reports (SAR's) as well as the appointment of the Money Laundering Reporting Officer (MLRO). As stated in R1 above, certain offenses specifically directing terrorism, people trafficking, and arms trafficking are not covered.

616. The MLRO, and where such is not appointed, the relevant employee, after researching an unusual transaction or activity and a suspicion is established, should file a STR or SAR with the MLRA. As discussed in section 2 of this Report, pursuant to section 109(5) of the POCO the responsibility for receiving and analyzing all STR's has been delegated to the Head of Financial Crimes Unit (the FCU). The Examiners were informed that forty-two (42) STRs were filed during the period 2005 to 2007. More details are provided under Recommendation 32.

617. In discussions with the interviewees the Examiners observed that some financial institutions were aware of their obligation to file STR's with the, FCU.

618. The POCO sets out the requirements to file an STR. However, no guidance has been given as to a timeframe when such STRs should be filed. The Examiners noted that the majority of financial institutions interviewed keep an internal deadline for the reporting of STR's that ranges from twenty-four (24) hours up to thirty (30) days for one financial institution. The difference could be due to lack of understanding or interpretation of the POCO's requirements and/or the need for further training and sensitisation by the TCI Authorities on the matter.

619. From the interviews conducted the Examiners conclude that not all relevant businesses are aware that a standardized form for the reporting of STR's was issued by the FCU.

620. Representatives of two (2) financial institution expressed their awareness of the standardized form for reporting but informed the Examiners that they use their own form to report STR's, because the amount of space for providing supporting information on the relevant transaction is not sufficient (on the proscribed form) to cover the detail of information that is likely to be provided in an STR.

621. The Examiners found that there was conflicting responses from TCI financial institutions as to the correct and appropriate format and mechanism for filing a STR. Answers varied from STR's being faxed, others being hand delivered and others being emailed, or phoned in and thereafter faxed. Such conflicting comments are an indication that financial institutions in the TCI are not aware of the format for filing STRs and therefore require further training and sensitisation on the matter.

622. In section 120(1) of the POCO it is provided that "Where a person

(a) knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering; and

(b) the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a regulated business;

he shall disclose the information or other matter as soon as is practicable after it comes to him to the relevant Money Laundering Reporting Officer or to the Reporting Authority.

623. Article 10 of the Anti-Terrorism (Financial and Other Measure) (Overseas Territories) Order 2002 (Anti-Terrorism Order 2002) provides for disclosures to be made to a constable where there are reasonable grounds for believing or suspecting that another person has committed an offence under any of articles 6 to 9.

624. Article 11 also allows disclosures to be made to a constable where inter alia there is a suspicion or belief that any money or other property is terrorist property or is derived from terrorist property.

625. A constable does not necessarily have to be a member of the FCU.

626. Under section 109(3) of the POCO, disclosures made to a constable under the Anti-Terrorism Order 2002 shall be immediately passed to the MLRA, which as mentioned is in fact the FCU.

627. The Examiners observed that the awareness within the financial industry with regard to the TCI financial system being misused for terrorist financing purposes is low.

628. Pursuant to regulation 7 of the AMLR, no limitations as to the amount of transactions are imposed for the transaction to classify as an unusual transaction.

629. Furthermore, the definition of money laundering in the POCO includes ancillary offences such as attempts and therefore all suspicious transactions including attempts are required to be reported. See. Discussion in section 2 of this Report.

630. Although the Code is not considered to be 'other enforceable means" for the purpose of the FATF Methodology application, it should be observed that the requirement to report 'attempted transactions' are also covered in requirement 24 of the Code.

631. Neither the POCO nor the AMLR impose any restrictions on the reporting of STR's when the suspicion involves tax matters.

Additional Elements

632. Reference is made to abovementioned requirements for the filing of STR's, and the scope of the POCO, covering all money laundering offences, without making a distinction between domestic and international money laundering offences.

633. According to the analysis provided previously, suspicious transaction reporting requirements for Terrorist Financing related suspicions, apply to regulated businesses through the Anti-Terrorist Order 2002.

634. Additionally, the suspicious transaction reporting requirements for Terrorist Financing related suspicions under the Anti-Terrorist Order 2002, complemented by section 109 (3) of the POCO provide for a direct system of reporting.

Recommendation 14

635. Part IV of the POCO provides for money laundering offences including the making of disclosures to the MLRA. Section 125 of the POCO, prescribes the grounds on which a disclosure is considered a protected disclosure. Section 125 (2) of the POCO states: "A protected disclosure, which for these purposes includes an authorised disclosure, shall not be treated as a breach of any

enactment, rule of law or agreement restricting the disclosure of information and shall not give rise to civil proceedings."

636. The Examiners conclude that since the protected disclosure can not be treated as a breach of any enactment, rule of law or agreement nor can it result in any civil proceedings, that all relevant persons being directors, officers and employees are appropriately protected from both criminal and civil liability whenever filing a protected disclosure as defined in article 125 of the POCO.

637. In effect the interviewed financial institutions all considered that they are legally protected from criminal or civil liability when filing STRs.

638. One trust and company service provider however expressed a concern that the legislation might be weak to a certain extent, with regard the protection of directors, officers and employees filing STRs.

639. Tipping off is prohibited by section 123 of the POCO. Reference is made to Annex 3 of this Report for the legislative provisions that address the subject of tipping off.

640. Under section 124 there is no tipping off inter alia where a person discloses information to a professional legal advisor for the purpose of obtaining legal advice or where the legal advisor makes disclosure of information to give legal advice to his client or to any person for the purposes of legal proceedings.

Additional Elements

641. Section 113(1) of the POCO provides that **"**no person, including a member, alternate member, employee or agent of the Reporting Authority shall disclose any information or matter that he acquires as a result of his connection with the Reporting Authority except as required or permitted –

(a) by this Ordinance or any other enactment; or

(b) an Order of the Supreme Court.

(2)Subsection (1) does not apply to a person who discloses any information or matter with the authority of, and on behalf of, the Reporting Authority.

(3) A person who contravenes subsection (1) is guilty of an offence."

642. Although the POCO does cover the confidentiality requirement related to STRs, it does not ensure that personal details of staff of financial institutions filing a STR, will be kept confidential. Personal information on persons filing a STR, might be disclosed in connection to the situations defined in section 113 (1)a or (1)b of the POCO.

Recommendation 19

643. The TCI does not have a system in place to report transactions over a fixed threshold. In line with provisions contained in the POCO, the AMLR and the Code all transactions regardless of their size that are considered suspicious should be reported to the FCU.

644. Based on the interviews, the Examiners observed that the proposal for a reporting requirement for cash transactions above a certain threshold as a countermeasure for the detection and deterrence of ML and TF was not supported by a majority of the interviewees. Only one interviewee felt that the introduction of such a threshold might provide the FCU with more intelligence information and thereby increase their ability to intercept illicit activities.

645. The Examiners were unable to determine beyond any doubt whether the TCI economy is a cash-based economy and thereby assess the risks involved. In statistical terms 50% of interviewees consider the economy to be a cash-based economy and 50% of interviewees did not share this opinion.

646. Although it is not a conclusive requirement under recommendation 19, that countries must introduce a reporting requirement for all cash transaction exceeding a certain threshold, it does require countries to consider the need for introducing it. During the Assessment the Examiners were not provided with evidence that supports the fact that the relevant authorities have considered the implementation of referenced threshold and the reason why this consideration has resulted in not implementing a threshold.

Recommendation 25

647. As previously discussed, the POCO governs the MLRA and sets out its functions in Part IV of the Ordinance particularly in section 109.

648. Section 109(2)(e) and (f) gives the MLRA the following powers:

> "e) may provide such feedback to persons who have disclosed information to the Reporting Authority as it considers appropriate;
>
> (f) shall collect, compile and publish annually in such manner and form as the Reporting Authority determines, statistical information relating to disclosures made to the Reporting Authority and any dissemination of such disclosures by the Reporting Authority;"

649. The Examiners felt that the implementation of this legal provision was lacking. All interviewees across all industries agreed that in those instances when they had filed a STR, the FCU was very diligent in acknowledging receipt of the STR. However, the general observation was that after that no further guidance was given on how to proceed with the relevant business relationship.

650. The interviewees expressed across industries that they were not provided with trends and typologies or any other form of reports from the FCU that might increase their awareness of developments in ML and TF, and assist the relevant industries with the detection and deterrence of ML and TF practices.

Recommendation 32

Statistics

651. The Examiners were informed by one interviewee that the institution had a hit when screening its clients against the OFAC list. The relevant person appearing on the OFAC list has been reported to the FCU, according to the institution. The FSC was however not aware that there were any 'hits' with regard to this list. The Examiners were unable to establish the outcome of this suspicious activity reporting.

652. The statistics would be covered by the FISS which the Financial Investigation Support System which came on line in February 2006. To date the FISS has not issued any statistics to the public (regulated entities) in this regard.

3.7.2 Recommendations and Comments

653. 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.

654. 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.

655. The Examiners are of the opinion that the legislation is broadly formulated, thereby providing for the relevant protections of persons filing a STR. To a certain degree there might be some improvement possibilities to provide for more specific coverage. Reference is made to the discussion on Rec. 14 above. It should be noted that the Examiners' observation does not affect the rating of TCI with regard to its compliance with Rec. 14.

656. 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.

657. The FCU should provide more feedback to regulated entities in order to increase their capacity to detect and deter ML and TF practices.

658. 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.

659. Guidelines should be issued, training should be provided and assistance should be given to the relevant DNFBPs to establish compliance with the new applicable AML/CFT requirements.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**PC**	• **The guidance provided for the effective execution of the suspicious transaction reporting requirement is not considered sufficient.** • **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).** • **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.** • **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.
R.14	**C**	**▪ This Recommendation is fully observed.**
R.19	**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.**
R.25	**NC**	**• The FCU is currently not issuing reports on statistics, trends and typologies related to ML and TF to regulated entities.** **• 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.** **• 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.** **• The guidance provided so far to DNFBPs with regard to the introduction of the new AML/CFT requirements is insufficient.** **• No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.**
SR.IV	**PC**	**• 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.**

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Recommendation 15

660. The AMLR sets out the requirement for relevant businesses to establish and maintain internal controls and procedures including procedures in relation to the making and disclosing of STRs/ SARs as well as the appointment of the MLRO. The Code also augments these provisions and deals with internal controls and the making of disclosure reports. Anti-Terrorism (Financial and Other Measure) (Overseas Territories) Order 2002 (Anti-Terrorism Order 2002) provides measure in relation to the prevention of the financing of terrorism. The FSCO provides for the supervision and regulation of Financial Services business including the appointment and function of a Compliance Officer.

661. Regulation 4 requires relevant financial businesses to establish and maintain identification procedures. Record keeping procedures are required by regulation 7 and internal control and reporting procedures by regulation 8. There is also the requirement to train employees in these procedures in order to increase the potential of the relevant financial business to detect money laundering (ML) in regulation 9.

662. Although, as indicated previously the Code is not considered 'other enforceable means' in part due to its discretionary provisions, it should be observed that the Code in section 3 deals with internal controls and sets out guidance in paragraphs 3.1 to 3.20. In this respect it also establishes requirements which regulated persons must adhere to including requirement 2, 3 and 4.

663. In relation to communicating the internal procedures and policies to staff, requirement 27 provides that a regulated person must provide employees with adequate training in the recognition and handling of transactions at appropriate frequencies. The training provided must:

- be tailored to the business and relevant to the employees to whom it is delivered, including particular vulnerabilities of the regulated person
- explain the risk-based approach to the prevention and detection of money laundering and terrorist financing
- highlight to employees the importance of the contribution that they can individually make to the prevention and detection of money laundering and terrorist financing

664. The Examiners noted that during the interviews held with the regulated financial industry i.e. the banking industry, insurance industry, mutual funds industry, and trust and company service providers' industry that the these financial institutions have all drawn up compliance manuals that address the minimum requirements for combating ML.

665. However, it seems that the aspect of TF is not sufficiently covered. The Examiners observed that the majority of financial institutions do not or insufficiently screen for possible TF links. This is the result of the fact that the procedures for these screenings are not in place.

666. The recently enacted Code does address the issue of TF, and might be an effective initiative towards improvement of the Examiners' observations related to CFT. However, at the time of the mutual evaluation the Code had not been effectively implemented yet, since it was just recently enacted.

667. There is a requirement under regulation 8(1)(a) of the Code to designate a MLRO who could also be the Compliance Officer (CO).

668. Continuing on section 8 of the AMLR, the Code in requirement 5 states that a regulated person must:

- Appoint the MLRO to a sufficient level of seniority within its business:
- Ensure that the MLRO has sufficient time to properly undertake his duties as MLRO [although it is not a requirement that this is his only function within the business; although in a larger business this may be appropriate];
- Provide the MLRO with sufficient resources, [including staff resources, where appropriate] to properly undertake his duties as MLRO;
- Enable the MLRO to have direct access to the board of directors with respect to matters concerning the prevention of money laundering and terrorist financing;
- Notify the Commission in writing within 14 days of an individual ceasing to be its MLRO or MLCO.

669. The FSCO also makes provision for the appointment of a Compliance Officer.

670. In general, the Examiners found that compliance with this requirement is properly observed amongst FSC regulated entities.

671. However, the Examiners also observed that for a number of FSC supervised entities, the respective entities were so small that the CO/MLRO function is executed by the managing director.

672. An effective implementation of the CO/MLRO function is achieved only when this function is independent from management. However, the Examiners also acknowledge that when the entity only consists of two (2) individuals that are both managing directors of the entity it is impossible to establish independence from the management function.

673. Regulation 8(1)(b)(i) of the AMLR requires employees to report without delay any knowledge or suspicion of ML to the MLRO.

674. Financial Institutions are also obligated under regulation 8 of the AMLR to allow the MLRO to have access to information which may be of assistance to him.

675. The Examiners observed that this requirement was also effectively executed by the FSC supervised entities. Requirements in this regards are included in the entities' procedures manuals and a number of compliance officers accompanied managing directors of the interviewed entities during the mutual evaluation.

676. Paragraph 1.3 of the AMLG (as amended January 2004) requires financial institutions to instruct their internal and external auditors to review their AML/CFT systems and to submit an annual report to the Supervisory Authority.

677. The Examiners have not been provided with written proof of referenced instructions to the supervised institutions. In addition, it is not included in the 'Schedule of Guidelines/Written Instructions issued 2003 to 2007' which was provided by the FSC to the Examiners.

678. According to the majority of supervised entities, the external auditor does perform a AML/CFT review during its annual financial review and those findings are included in the management letter to the respective entity.

679. This information was verified by two (2) external auditors, but both of them indicated that they were required based on their professional certification to perform a limited scope AML/CFT review. This review does not produce any statements related to the audited company's compliance with AML/CFT rules and regulations but should provide comfort with regard to the soundness of the financials of the referenced company. The auditors were not aware of a FSC requirement to review regulated entities' compliance with AML/CFT rules and regulations.

680. Through the Money Laundering Regulations 1999 and the Guidance Notes for the Financial System in the Turks and Caicos Islands that were issued in September 1999 entities supervised by the FSC have been required to have their employees trained on issues pertaining to the detection and deterrence of ML. CFT is not addressed in the referenced provisions.

681. Under the new AMLR, relevant businesses are not required to implement training procedures, addressing CFT issues either. Only the Code provides instructions in this regard. Reference is made to the content of regulation 9 of the AMLR and requirement 25 of the Code.

682. In general, financial institutions are aware of their obligations to have their employees trained in the area of combating ML. However, the majority of them do not have a structural training programme in place for their employees.

683. Referenced entities have not been required by the FSC to maintain training records for their employees and consequently, the verification of compliance with the training requirement by the FSC is not possible.

684. The AMLR provides that relevant businesses should implement training procedures for their staff. Regulation 9 of the AMLR provides that

> (1) a person carrying on relevant business shall take appropriate measures for the purpose of making all relevant employees aware of—
>
> (a) the Ordinance, these Regulations, the Code, any guidance issued by the Reporting Authority and any relevant supervisory or regulatory directions or guidance which apply to that person; and
>
> (b) the procedures it maintains in compliance with the duties imposed under these Regulations.
>
> (2) A person carrying on relevant business shall provide all relevant employees with appropriate training in the recognition and handling of transactions carried out by or on behalf of any person who is, or appears to be, engaged in money laundering.
>
> (3) Training under this regulation shall, in addition, be given to all new relevant employees as soon as practicable after their appointment.
>
> (4) For the purposes of this regulation, an employee is a relevant employee if, at any time in the course of his duties, he has, or may have, access to any information which may be relevant in determining whether any person is engaged in money laundering.
>
> (5) No person shall carry on relevant business unless he is in compliance with this regulation.
>
> (6) The training procedures required to be maintained under this regulation shall comply with any requirements contained in the Code.

685. Requirement 25 of the Code states that:

- The training provided to relevant employees by a regulated person must include training equivalent to that specified in the AMLR with respect to the prevention and detection of terrorist financing.
- A regulated person must provide appropriate basic AML and CFT awareness training to staff who are not relevant employees [see further under training and awareness below].
- A regulated person must establish and maintain procedures that monitor and test the effectiveness of its employees' AML and CFT awareness and the training provided to them.

686. Requirement 26 of the Code provides that regulated persons vet the competence and probity of relevant employees at the time of their recruitment and their competence and probity is subject to ongoing monitoring.

687. Once again note should be taken of the lack of enforceability of the Code and the fact that it refers exclusively to relevant employees, whereas Rec. 15 does not make a distinction in the type of employee that should be screened by the financial institution upon hiring.

688. From the information gathered during our interviews, it seems that the screening of personnel is mainly done informally ("everyone knows everyone"). The majority of institutions do not have a formal screening procedure in place.

Recommendation 22

689. There are eight (8) licensed banks in the Turks and Caicos Islands. Of this number three (3) are subsidiaries of foreign banks; one (1) a branch and the others are stand alone entities. There is currently a review of the Banking Ordinance underway and this matter is being considered in conjunction with that review.

690. Section 10 (3) of the new Banking Ordinance states that "no local financial institution shall open a place of business elsewhere than in the Islands without the prior approval of the Financial Services Commission"

691. Section 10 (4) states that 'no local financial institution shall close a place of business outside the Islands without given at least sixty days notification to the Financial Services Commission"

692. Although, the new Banking Ordinance provides for some degree of control over subsidiaries' activities outside of the TCI, this legislation can not be considered for the purpose of determining TCI's compliance with this recommendation, since the legislations has not yet been enacted.

693. Paragraph 4.18 of the Code provides: "Jurisdictions falling into one or more of the following categories should be considered as higher risk jurisdictions.

- Jurisdictions that have inadequate safeguards in place against money laundering or terrorist financing;

- Jurisdictions that have high levels of organised crime; those that have strong links with terrorist activities; and those that are vulnerable to corruption.

694. Currently the minimum standards relating to AML/CFT in the home countries of banks operating in the jurisdiction is equivalent or higher than that of the TCI. Where discrepancies arise this is usually addressed by the host supervisor in communication with the local bank.

Additional Elements

695. Banks and insurance companies in the Turks and Caicos Islands are subject to the core principles and therefore are required to consistently apply CDD. See also, comments above.

3.8.2 Recommendations and Comments

696. The FCS should screen the Policy Manuals of all supervised financial institutions, to ensure compliance with CFT.

697. The FSC should play a more active role in creating awareness amongst financial institutions with regard to the issue of CFT.

698. 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.

699. TCI should take appropriate action to implement the recently enacted AMLR requirement to keep employees training records.

700. The TCI should amend its requirement for screening relevant personnel upon hiring, to the screening of all employees to fully comply with essential criterion 15.4.

701. Financial institutions should be required to have their screening policy for new personnel formalized and documented for review by the FSC.

702. 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.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• **Applicable requirements for the implementation of an internal control framework do not address the issue of CFT.** • **Policy manuals of entities supervised by the FSC do not include CFT.** • **No requirements in place for the appointment of an independent audit function to test compliance with procedures, policies and controls on AML/CFT.** • **No effective implementation of the AMLR requirement to keep training records of employees.** • **No requirement to have financial institutions put in place screening procedures to ensure that high standards apply when hiring new employees.**
R.22	**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.**

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Recommendation 18

703. The Turks and Caicos Islands does not permit banks to be licensed without a physical presence in the jurisdiction. Reference is made to the Banking Ordinance under section 6 (3):
"A license shall not be granted to any company having its head office outside the Islands unless it maintains a principal office in the Islands and designates in writing to the Governor the names and addresses of two or more persons resident in the Islands who are its authorised agents and who shall accept on behalf of the company services of process and any notices required to be served on it."

704. Company agents are in this regard also regulated within the TCI and fall under the supervision of the FSC.

705. The physical presence is furthermore, ensured through the provision at section 6 (6) of the Banking Ordinance to have amongst others things a legible name sign.

706. Requirement 7 of the Code provides –"that that a regulated person must not maintain a correspondent relationship with

- a shell bank; or
- with any bank, unless it is satisfied that the bank is subject to an acceptable level of regulation."

707. As previously indicated in this Report, the FSC is responsible for the licensing of all banking institutions in the TCI. Banking institutions in the TCI are subject to the Banking Ordinance and the established policies and procedures for licensing. Effectively, these licensing procedures require that, amongst, other things that an applicant for licensing as a banking institution must provide evidence of physical presence or the intended establishment of physical presence in the TCI. This physical presence requires that sufficient mind and management reside within the TCI. Consequently, the definition of shell banks as contained in the methodology has been accounted for and therefore prohibited.

3.9.2 Recommendations and Comments

708. TCI is advised to take appropriate action to ensure that the measures in the Code pertaining to shell banks can be properly enforced.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**PC**	• **Although the Code appropriately addresses shell banks it cannot be properly enforced.**

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

3.10.1 Description and Analysis

Recommendation 23& 30 –Authorities/SROs roles and duties & Structure and resources

709. The FSCO provides for the functions and powers of the FSC and for the supervision and regulation by the FSC of Financial Services Business licensed under various Ordinances.

710. Professional trustees are required to be licensed and thereby regulated under the Trustees Licensing Ordinance (TLO). The TLO sets out the regulatory regime for trustees and underscores the role of the regulators. Formations, administration etc. of trusts are governed by the Trust Ordinance (TO).

711. The Company Management Licensing Ordinance (CMLO) governs the licensing and regulation of Company Service Providers.

712. All persons carrying on Insurance Business are required to be licensed and regulated under the Insurance Ordinance 1998 (IO). This includes insurance companies, intermediaries and insurance managers.

713. The Investment Dealers (Licensing) Ordinance (IDLO) makes provision for the licensing of Investment Dealers as well as for the regulation and supervision of the same.

714. AML oversight in accordance with the POCO and the AMLR forms a part of onsite examinations of all regulated financial businesses to ensure that licensees are aware of and implement the FATF recommendations.

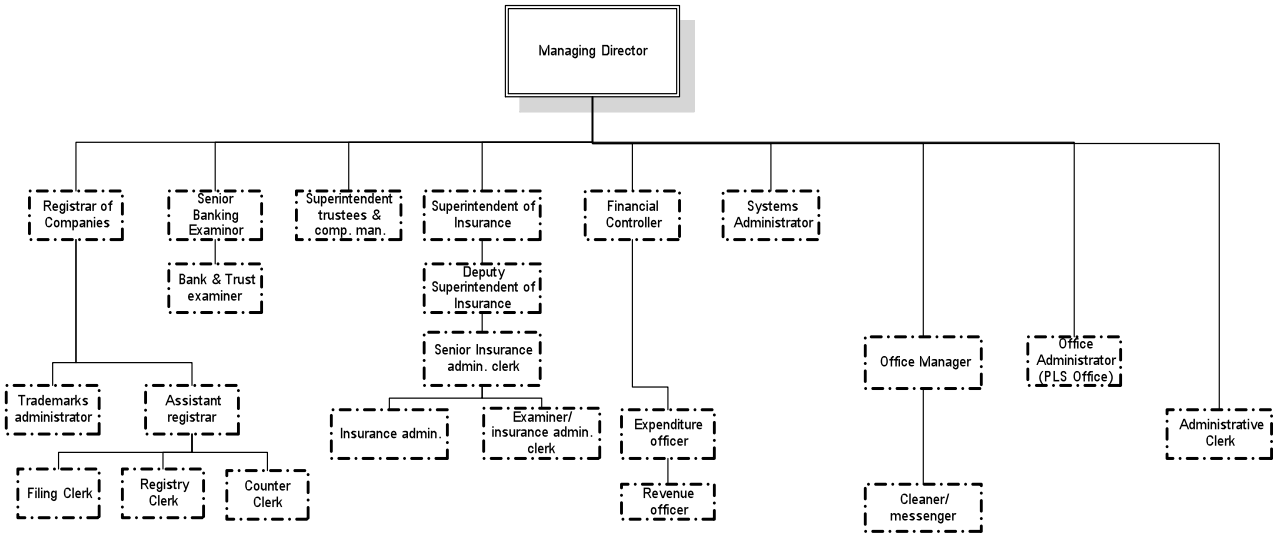
715. Section 4 of the FSCO provides for the functions of the FSC.

716. AML/CFT measures apply to all relevant business or relevant persons as defined by the POCO and specifically by the AMLR in regulation 3 which covers all regulated entities licensed and supervised by the FSC under the FSCO and any other regulatory Ordinance.

717. The FSC is the sole regulatory authority entrusted with regulation and supervision of the financial services industry.

718. Section 31 of the FCSO requires regulated persons to establish and maintain compliance systems and controls and to appoint a compliance officer to oversee these functions. Section 32 gives the Commission power to conduct onsite visits for the purposes of the supervision of financial services and assessing compliance with AML/CFT measures under the laws of the Islands. As provided in section 33, the FSC can also take enforcement actions against financial institutions that are not in compliance with applicable rules and regulations, including those in place for AML/CFT purposes.

719. The FSC is headed by a Managing Director who is the chief executive officer of the FSC and appointed under section 11 of the FSCO. He is subject to the general direction of the board of the FSC appointed under section 5 of the FCSO. Senior employees (including Superintendents) are appointed by the Board under section 6(2)(d) whilst the managing director appoints all other employees – section 11(4)(c). Reference is made to the following organizational chart of the FSC.



720. Although, the FSC was recently entrusted with the supervision of MVT companies, there is not yet a department responsible for the supervision of this industry.

721. The Examiners have been informed of training efforts by FSC employees, relative to acquiring skills to execute the effective supervision of MVT companies. In this regard we were informed that the managing director and one insurance administrator have been trained.

722. The Examiners have been informed that the managing director is the one acting as superintendent of Banks as well as Mutual Funds.

723. The managing director of the FSC has both an executive role and a supervisory role with regard to him also being the Director of the other regulatory Divisions. Specifically, the managing director is involved in the day to day functioning of the FSC including conducting onsite examinations. Whilst the general size of the financial services industry in the TCI might be the reason for such extended responsibilities, the dual roles may also produce a conflict of interest and limit the efficiency and effectiveness of the FSC.

724. The funds of the Commission are as set out in section 16 of the FSCO. By virtue of section 17(6) a portion of the funds received by the FSC under section 16 are paid into the Commission's bank account for the use and functioning of the FSC.

725. The Examiners have been informed that legislation was recently passed in which provision was made for twenty-five percent (25%) of the revenues generated from fee collection from the financial services industry to go directly to the FSC. The remainder of the funds will go into a reserve fund, which can be used in case the FSC has higher expenses in a budget period. The FSC itself maintains the reserve fund. The role of the Minister of Finance in the whole budgetary process is very limited.

726. The members of the staff of the FSC regularly receive training in regulatory as well as AML/CFT matters both locally and internationally.

727. Employees of the FSC are required to sign a confidentiality agreement before they commence working at the Commission. Banking supervisors are prohibited under the Confidentiality provisions (section 28) of the existing Banking Ordinance from disclosing any information relating to the application by a person under the provisions of this Ordinance, or the affairs of a licensee which have been acquired in the performance of his duties. The exception would be if the officer is lawfully required to do so by any Court of competent jurisdiction in the Islands.

728. The Managing Director is an accountant with a Bachelors of Science Degree in Accounting and Management and a CPA. He also has over twenty-five (25) years experience in accounting and audit functions.

729. The Superintendent of Insurance has received training in AML/CFT issues at various seminars hosted by OGIS, CALP and CAIR, some of which have included IMF presenters. He has also done presentations on the role of the Insurance Supervisor at seminars of the Caribbean Ant-Money Laundering Programme (CALP).

730. The Superintendent of Trusts & Company Management is an attorney-at-law and holds a Diploma (with merit) in Compliance from the International Compliance Association. She also regularly attends other training by the IMF and other bodies on AML/CFT issues and regulation of Trust and Corporate Service Providers.

731. The Banking Examiner has had training in AML/CFT Examinations at banks conducted by the Federal Reserve Board and by the IMF/FIRST for Trust Companies.

Recommendation 29& 17 –Authorities powers and Sanctions

732. As previously indicated the FSCO provides the FSC with the appropriate legislative power to monitor financial institutions compliance with AML/CFT requirements. The FSCO not only empowers the FSC to conduct examinations, but also issue documents such as the Code, guidelines and other instructions to financial institutions. Furthermore, there are enforcement actions that can be applied by the FSC in case of non-compliance by financial institutions. In the following sections these powers and possible limitations in this respect are addressed.

733. The FSCO, section 32 allows the FSC to conduct compliance visits on licensee, former licensees and subsidiaries or holding companies or a licensee or former licensee. Compliance visits may be undertaken for the purposes of the supervision of financial services business carried on in or from within the Islands. Compliance visits may also be for the purposes of monitoring and assessing a person's compliance or in the case of a subsidiary, its compliance with obligations under the AMLR or any other law, regulation, code or guide relating to money laundering or the financing of terrorism.

734. The FSC did not provide the Examiners with statistics on the number of on-site inspections conducted in the past four (4) years. The number of on-site inspections conducted in 2007 was however provided by the FSC.

735. As follows a breakdown by type of financial institutions examined by the FSC in 2007.

Table 11: Examinations of Financial Institutions

Type of entity	*# of regulated Entities*	*# of on-site inspections*
Banks	8	8
Trust Companies	19	11
Credit Card Operation	1	1
Domestic Insurance Companies	18	4
Insurance Agents	10	2
Investment Dealers	3	2
Investment Advisors	1	1
Mutual Funds	3	1
Mutual Funds Administrators	3	1
Company managers	41	25
	107	***56***

736. In general an on-site examination should produce a report of findings. However, the Examiners noted that the FSC has a large backlog relative to the issuance of report of findings resulting from the on-site examinations carried out.

737. For the Trust and Company service providers' sector a total of four (4) on-site inspection reports of findings have been issued in 2005. In 2006 and 2007, respectively eleven (11) and eighteen (18) reports of findings have been issued after an on-site inspection.

738. Relative to Banking on-site inspections and Insurance on-site inspections, no reports of findings have been issued. All findings have been communicated verbally according to the FSC.

739. With regard to follow-up on findings the Examiners did not receive any evidence of what the level of compliance was with instructions provided after an on-site inspection.

740. Section 32(2) of the FSCO sets out the purposes for which a compliance visit may be undertaken and states:

"(2) The Commission may, for a purpose or purposes specified in subsection (3) –

(a) inspect the premises and the business, whether in or outside the Islands, including the procedures, systems and controls, of a person to whom this section applies;

(b) inspect the assets, including cash, belonging to or in the possession or control of a person to whom this section applies;

(c) examine and make copies of documents belonging to or in the possession or control of a person to whom this section applies that, in the opinion of the Commission, relate to the carrying on of financial services business by that person; and

(d) seek information and explanations from the officers, employees, agents and representatives of a person to whom this section applies, whether verbally or in writing, and whether in preparation for, during or after a compliance visit."

741. Furthermore, Section 33 allows the Commission to take enforcement actions against licensees including the revocation or suspicion of licence (section 34), and issuing directives (section37), when a supervised institutions is non-complaint for varying reasons.

742. The provisions of section 32 are not predicated on the need to first obtain a court order

743. Included in the enforcement actions that can be taken pursuant to section 33 of the FSCO is the imposition of a financial penalty. However, the regulatory regime for imposing a fine as stated earlier in section 3 of this Report has not yet been enacted. Part VII of the FSCO makes reference to the AMLR and the Code for the applicable amounts. However, neither the AMLR nor the Code addresses the amount of fines, in case of a sanction. The AMLR only refers to the non-compliance with a number of sections that constitutes and offence. However, the content of what sanction is applied in case of the offence is not addressed.

744. The POCO and AMLR sets out specific sanctions in relation to money laundering. The FSCO also establishes other sanctions in relation to breaches or non compliance with that Ordinance and any other regulatory ordinance as well as in relation to money laundering.

745. As discussed in section 2 of this Report, corporations could be found guilty of the offences relating to money laundering and be punished under the POCO.

746. The POCO also provides for civil recovery and sanctions in Part III of the Ordinance, such as seizure, detention and forfeiture of cash.

747. Sanctions also exist under regulation 10 of the AMLR, which establishes that contravention of specified provisions of the AMLR is an offence. However, as indicated previously, the sanctions applicable to the offence committed is not specified, nor is there any referral to other legislation made in this regard.

748. In relation to terrorist financing the Anti-Terrorism Order also provides at article 14 that the Court may impose penalties for offences committed in relation to articles 6 – 9. Under article 16 and Schedule 2 the Court may impose sanctions for criminal forfeiture of money or property. Civil forfeiture of terrorist cash is provided for under Article 16 and Schedule 3.

749. The FSCO also provides enforcement sanctions and empowers the FSC to implement these measures, inter alia, in relation to AML/CFT compliance under section 33 as outlined above.

750. However, in the case of financial sanctions, this can only be imposed based on the sector specific Ordinances which do not address specific contravention of AML/CFT requirements. In addition, these financial sanctions are all imposed through summary convictions, requiring the intervention of the Court.

751. The FSC indicated to the Examiners that in practice financial sanctions are applied without Court interventions and that these sanctions are complied with by the respective financial institutions.

752. It should also be noted that due to the lack of follow up on deficiencies observed during on-site examinations, the FSC might have not applied enforcement actions where they may have been required.

753. The Examiners conclude that the financial sanctions regime is deficient relative to its effectiveness and dissuasiveness.

754. With regard to the proportionality of sanctions, the Examiners are of the opinion that the applicable sanctions are proportionate considering the nature of the offences.

755. The FCSO also provides in section 41 that the Commission may –

" (1) Where the Commission is of the opinion that a person to which this section applies does not satisfy its fit and proper criteria, it may require the licensee to remove that person and, if it considers it appropriate, to replace him with another person acceptable to the Commission.

(2) This section applies to

(a) a director of a licensee;

(b) a key employee of a licensee;

(c) the compliance officer of a licensee; or

(d) a person undertaking any function that may be specified by the regulations for the purpose of this subsection."

756. The dissuasiveness of applicable sanctions is considered medium to high. The main deficiency in this regard is the consistency by relevant authorities in the follow up on noted deficiencies and the imposition of sanctions to the relevant entities.

757. The FSC has imposed a total of six (6) sanctions to supervised entities between the period of 2003 through 2007. In four (4) of these instances the enforcement action imposed was applied to the insurance industry. The sanctions against the insurance company included the suspension from writing new business, the imposition of a monetary penalty for the failure to submit annual audited accounts by the stated deadline, and cease and desist from writing new business in breach of the approved business plan. With regard to a trust company there was also a cease and desist and for an investment dealer there was the imposition of a monetary penalty for failure to adhere to the approved business plan.

758. In relation to criminal sanctions under Part II of the POCO and sanctions under the AMLR, these are applied by the Court. Civil Sanctions under the POCO may be exercised in certain instances by the civil recovery authority, a police officer, a Magistrate or the Court.

759. Criminal sanctions under articles 14, 16 and Schedule 3 of the Anti-terrorist Order 2002 must be exercised by the Court. Whilst civil forfeiture of terrorist cash may be exercised by a police officer, in relation to seizure and detention and a court in relation to forfeiture.

760. Section 54 of the FSCO provides that criminal sanctions liable on summary conviction also apply to: directors and senior management who: "… with intent to deceive or for any purpose of this Ordinance or a financial services Ordinance, provides any information, makes any representation or submits any return that he knows to be false or materially misleading or does not believe to be true commits an offence."

761. As indicated previously, section 41 of the FSCO also provides for the Commission to remove directors, key personnel, compliance officers or any person undertaking any function that may be specified by the regulations, where they do not comply with the FSC's fit and proper requirements.

Recommendation 23* –*Market entry

762. Where the FSC is of the view that such a person fails to meet the fit and proper criteria – it may require the licensee to remove that person and if it considers it appropriate, replace him with another person who is acceptable to the Commission.

763. Fit and proper requirements for directors and officers are provided for in section10A of the BO, which also provides for the Commission to request the financial institution to replace any director or officer that does not meet the requirement.

764. The TLO at section 11 stipulates that a licensee must be a person or company who is "fit and proper" to be issued a licence. The same holds for the CMLO, which at section 6 applies the same fit and proper test.

765. Section13A of the IO requires that directors, officers or auditors be fit and proper persons and provides a power to request replacement if they are not. This is also a ground for suspension of a licence.

766. During interview with the FSC, the Examiners were informed of some of the screenings the "fit and proper" testing comprises, such as contacting other regulators and screening for police records. The FSC must be satisfied inter alia of the, adequacy of the licensee's capital, integrity, solvency, qualifications and experience of the directors and officers of the licensee.

767. Core Principles are applied for banking institutions and insurance companies; in this regard Examiners conclude that the "fit and proper" procedures for these specific industries also comply with international standards addressed in reference "Core Principles".

768. The Money Transmitters Ordinance 2007 makes provision for the licensing of money service providers and for supervisory oversight to be conducted by the FSC.

769. The MTO has not been effectively implemented as yet. No licenses have been granted, nor has the applicable sector been approached by the FSC for a timeframe for compliance with the recently enacted legislative requirements for the relevant sector.

770. Mutual Funds and Investment advisors and dealers are also required to be licensed and regulated by the FSC in accordance the Mutual Funds Ordinance (MFO) and Investment Dealers (Licensing) Ordinance (IDLO) respectively.

771. Mutual Funds are licensed in accordance with sections 6 and 8 of the Ordinance. Mutual Fund Administrators are licensed under sections 12 and 13. The FSC must be satisfied inter alia, that applicants (including Directors, beneficial owners, shareholders and directors) are fit and proper to hold a licence, properly capitalised and any other condition which may be stipulated on their licence. Section 14 sets out more specific conditions of the Funds Administrator's Licence.

772. Licenses are granted under the IDLO in accordance with section 4 which sets out the application procedure and section 7 which speaks to the actual granting of the licence. A similar fit and proper test as that in the case of Mutual funds is also applied to Investment Licenses. Specific obligations of Investment Licensees are set out in section 12.

773. Both Ordinances make provision for surrender and revocation of licences and for supervisory oversight by the FSC including monitoring and examination of the activities of licensees to ensure compliance with the Ordinance. Therefore compliance and enforcement provisions in sections 32 and 33 of the FSCO also apply to these businesses as well as the fit and proper requirements in section 41.

774. These businesses are also subject to supervisory oversight by the FSC and to AML controls under the POCO and AMLR. These are included in the definition of "relevant business" in the interpretation section of the AMLR.

Recommendation 23& 32 –Ongoing supervision and monitoring

775. Banks are subject to the Basle Core principles and insurance companies to IAIS principles. Regulatory measures are being put in place to ensure that these principles are being upheld. All the regulated financial institutions or relevant business are covered by the AMLR in section 3 including banks and insurance managers and intermediaries thus ensuring that they remain in the AML/CFT compliance remit.

776. Both onsite and offsite supervision is conducted by the FSC with the body having a specific remit in relation to both supervisory and AML/CFT compliance visits under section 32 of the FSCO.

777. Money remitters are subject to supervisory oversight by the FSC under the Money Transmitters Ordinance. Pursuant to section 5 a person wishing to establish such a business must apply to the Commission for a licence. Money Value Transmitters (MVT) are also required to establish compliance procedures and internal controls under section 31 of the FSCO. MVT's are subject to compliance visits under section and enforcement measures under section 33.

778. They are also subject to AML controls under the AMLR and the Code. These are included in the definition of "relevant business" in regulation 3 of the AMLR.

779. However, as indicated previously, the effective implementation of the MTO had not taken place at the time of the Mission.

780. The financial institutions falling within the definition of relevant business under regulation 3(1) (excluding DNFBP's) are regulated businesses and therefore are required to be licensed and subject to supervisory and AML/CFT oversight by the FSC under the FSCO.

781. These businesses are also subject to supervisory oversight by the FSC, to AML controls under the AMLR and to CFT controls under the Anti-Terrorism Order.

Statistics

782. All licensed entities are subject to supervisory and AML/CFT compliance visits under the FSCO section 32. Onsite visits are documented in the way of official reports on the findings and recommendations of the examination team.

783. However, as indicated before, the effectiveness of the system to issue written reports of findings and follow up on these reports is limited, considering the apparent large backlog in the issuance of written reports of findings.

784. Licensees are also subject to follow up visits where remedial action has been taken to correct deficiencies in their compliance regime and internal controls and systems. However, since the report of findings is not issued in writing, the Examiners consider the effectiveness of this follow up procedure to be lacking.

<u>Recommendation 25</u> –Guidelines (Guidance for financial institutions other than on STRs)

785. The MLRA has under section 111 issued the Anti-Money Laundering and Prevention of Terrorism Code. Regulation 10 makes contravention of specific regulations an offence including regulations 4(1), 7(1), and 8(2) which mandates financial institutions to comply with the requirements of the Code.

786. The FSC has under section 43 issued guidelines to Company Managers on the conduct of business and compliance with KYC and CDD measures.

787. The Examiners were informed that the FSC has issued a number of verbal instructions to the regulated entities. In the past four (4) years only three (3) written instructions have been provided to regulated entities by the FSC.

788. Furthermore, the FSC has not been distributing list/information on terrorist financers and terrorist financing organizations in order to alert entities for screening of their client base against the relevant information.

789. As discussed at the beginning of section 3 of this Report, there is guidance provided in the Code. This guidance and the Code itself appear to be discretionary and not mandatory.

3.10.2 Recommendations and Comments

790. 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.

791. 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.

792. The TCI should include in the AMLR the sanctions applicable to an offence under AMLR section 10(1).

793. 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.

794. The TCI should consider the relevance of including collective investment schemes "Core Principles" in their supervisory framework.

795. 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 MVT's.

796. The TCI Authorities are advised to take appropriate actions relative to the enforceability of the Code, in order for it to be considered 'other enforceable means' under the FATF methodology.

797. 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.

798. 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 them be required to assess their client base against the relevant information.

799. 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.

800. The FSC should provide follow up to deficiencies identified and keep statistics on the outcome of these follow up actions.

801. 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.

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**PC**	• **The sanctions in the legislative framework are not effective or dissuasive.** • **Financial sanctions can not be applied by the supervisory without a Court order.** • **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.**
R.23	**PC**	• **The integrity component to the "fit and proper" testing of relevant persons is not clearly specified by the FSC.** • **There was no evidence that Collective investment Schemes' Core Principles (IOSCO) apply for Mutual Funds in TCI.** • **The recently enacted legislative framework providing for the licensing and supervision of MVT is not yet effective.**
R.25	**NC**	• **The FSC has not issued any guidance relative to trends and typologies in ML/FT.** • **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.** • **No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.**
R.29	**PC**	• **Written reports of findings resulting from on-site examinations of banking and insurance companies have not been issued to the respective companies.** • **The report of findings relative to on-site examinations of the trust and company service providers industry have not been issued consistently**

		(backlog). • **The FSC is limited in its potential to give follow up to deficiencies identified during on-site inspections** • **The FSC does not provide for sufficient written instruction to regulated entities** • **The FSC does not have the authority to impose financial sanctions independently (summary of convictions required)**

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

Special Recommendation VI

802. The Money Transmitters Ordinance (MTO) provides for the licensing and regulation of Money Service Providers and related businesses.

803. Under the MTO the FSC assumed responsibility for the licensing (section 5 of the MTO), regulation and supervision (section 4 of the FSCO) of Money Service Providers. The FSC also maintains a listing of the names and addresses of MVTs.

804. As previously stated, the FSC is responsible for compliance of all regulated entities as empowered by section 32 of the FSCO to take enforcement measures in relation to non-compliance under section 33.

805. However, the effective implementation of the MVO has not been realized as yet, as the legislation has just recently been enacted.

806. The Examiners interviewed only the largest money service provider in TCI, which is a subsidiary of an international money service provider Corporation. As a result of the latter fact, the Examiners noted that the interviewed money service provider does have an AML/CFT framework already in place.

807. However, it remains unclear what the level of compliance with AML/CFT rules and regulations is amongst other industry practitioners that are not members of worldwide active money service provider Corporations. There is no available information on this matter.

808. Taking the above-mentioned into consideration and the fact that no introductory meeting or presentation has been performed by the FSC to money service providers in anticipation of the enactment of the legislation[10], the Examiners do not expect that the effective implementation the MTO will occur shortly.

809. Furthermore, the Examiners do not consider the FSC to be adequately resourced to effectively take up the responsibility of licensing, regulating and supervising this industry.

810. By virtue of section 33 of the FSCO the FSC must ensure compliance of all licensees including MVTs, with regulatory and supervisory laws, regulations, codes and guidelines as well as ensure

[10] The Money Transfer Ordinance was enacted following the onsite visit by the Mutual Evaluation Team, but within the two (2) month requirement.

compliance with all AML/CFT laws, regulations, codes and guidelines and are mandated to conduct onsite compliance visits to verify compliance with these measures.

811. MVTs are included in the list of relevant businesses in regulation 3 of the AMLR and therefore are subject to the full range of AML/CFT measures.

812. Section 16 imposes a requirement that MVTs seek prior approval from the FSC before opening inside or outside the Islands, a branch, a subsidiary, agent or representative office. Therefore information on branches must be submitted to the FSC.

813. Sanctions are covered by the FSCO which empowers the Commission to take certain enforcement measures against licensees. Reference is made to section 3.10 of this Report for further comments on the effectiveness of the enforcement framework of the TCI.

Additional Elements

814. MVTs are subject to the full range of AML/CFT measures under the POCO, AMLR and Code by virtue of the inclusion of MVT in the definition of relevant business under Regulation 3 of the AMLR. See discussion above. Onsite supervisory as well as AML/CFT compliance can also be undertaken by the FSC under section 32 of the FSCO.

3.11.2 Recommendations and Comments

815. The FSC should establish contact with the money service providers' industry, to start the licensing process of the relevant companies.

816. 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.

817. 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.

818. 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.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**PC**	• **Money service providers have not yet been licensed within the TCI.** • **The AML/CFT legislative framework applicable to money service providers has not been effectively implemented.** • **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.**

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12)
(Applying R.5, 6, and 8 to 11)

4.1.1 Description and Analysis

819. The AMLR provides for DNFBP's to be included in the AML/CFT regime by the inclusion of DNFBPs in the definition of relevant business in regulation 3.

820. The following activities, categorized under rec. 12 of the FATF as DNFBP activities, have recently been included in the definition of relevant business under regulation 3 of the AMLR:

a) The activity of dealing in precious metals or precious stones by way of business, whenever a transaction involves accepting a total cash payment of $15,000 or more, or the equivalent in any currency;

b) The activity of dealing in goods of any description (other than precious metals or precious stones) by way of business whenever a transaction involves accepting a total cash payment of $50,000 or the equivalent in any currency;

c) The business of acting as a real estate agent;

d) The provision by way of business of accountancy or audit services;

e) The provision by way of legal services which involves participation in a financial or real estate transaction (whether by assisting in the planning or execution of any such transaction or otherwise by acting for, or on behalf of, a client in any such transaction); and

f) Operating a casino by way of business, whenever a transaction involves accepting a total cash payment of $3,000 or more, or the equivalent in another currency.

821. Trust and company service providers, categorized under the FATF 40 + 9 Recommendations as DNFBPs, are also included in the definition of relevant businesses. However, trust and company service providers in the TCI have been subject to an AML/CFT regulatory framework for a number of years now, whereas it has been just recently that the abovementioned DNFBP's were included in the new AML/CFT legislation. Trust and company service providers have been subject to supervision by the FSC since 2003. Therefore, this group of DNFBPs should be considered comparable to financial institutions and the analysis and recommendations addressed in the previous sections of this report related to financial institutions apply also for trust and company service providers.

822. In this section of the Report, the Examiners will therefore, not discuss any issues pertaining to trust and company service providers, but reference is made in this respect to section 3 of the report. The DNFBPs that will be discussed are solely the abovementioned that have been recently included in TCI legislation as relevant businesses and consequently, are now subject to AML/CFT rules and regulations.

823. Regulations 4 and 7 of the AMLR provide for the requirements relative to identification of customers and record retention procedures to be established and maintained by relevant businesses, thereby including the above-mentioned DNFBP's.

824. The Code provides for additional identification evidence requirements, including verification requirements. However, verification requirements are required under rec. 5.3 of the FATF to be set out in legislation. The Code is not a legislative document.

825. Some of the requirements under Recommendation 5 are allowed to be set out in documents considered to be 'other enforceable means' under the FATF methodology. However, while the Code does address the relevant requirements, as indicated previously in this Report, the Code is not considered to be 'other enforceable means".

826. Therefore, the Examiners refer to section 3 of this report for a more in-depth analysis of the legislative compliance with recommendation 5, 6 and 8 through 11.

827. The difference between DNFBPs and financial institutions in this respect is based on the actual implementation of the supervisory, licensing and AML/CFT compliance framework in place or to be set in place for DNFBPs compared to other financial institutions.

828. The Examiners have observed that the initiatives for the implementation of an AML/CFT framework for DNFBPs, varies across the relevant industries. As follows each relevant industry will be reviewed separately for their actual voluntary compliance and the expected transition period for the implementation of the AML/CFT legislative amendments.

Dealers in precious metals or precious stones by way of business, whenever a transaction involves accepting a total cash payment of $15,000 or more, or the equivalent in any currency

829. No framework for compliance with applicable AML/CFT rules and regulations has been developed as yet for this group of DNFBPs. The relevant market players have not been contacted to inform them of the recently enacted AML/CFT legislative changes and the implication these change have for them.

830. During the interviews, TCI Authorities were unable to provide the Examiners with a clear approach for the guaranteed compliance by dealers in precious metals or precious stones with applicable AML/CFT rules and regulations.

831. From the information gathered during the Assessment, the Examiners conclude that currently there is no voluntary compliance with AML/CFT regulations within this industry.

832. Due to the lack of a plan of approach, the Examiners do not expect effective implementation of the legislative changes to occur shortly.

Dealers in goods of any description by way of business whenever a transaction involves accepting a total cash payment of $50,000 or the equivalent in any currency

833. The targeted group of DNFBPs is fairly broadly defined and there is no clear definition of the targeted risk that the TCI authorities aim to mitigate with the inclusion of this group of DNFBPs under the AML/CFT legislative framework.

834. Consequently, no target group has been contacted in this regard to provide information on the legislative AML/CFT changes.

835. The effectiveness of such a measure to counter the risks of ML and FT is doubtful.

The business of acting as a real estate agent

836. Industry practitioners, through the Real Estate Brokers' Association, (REBA) have been informed on a limited scale of the relevant changes in the AML/CFT legislation.

837. However, there is still uncertainty within the industry as to how these changes will be effectively implemented and monitoring of compliance will be effectuated for the sector.

838. In this regard, an option would be to have the REBA license and regulate the sector.

839. The TCI REBA was enacted by a 2004 Ordinance. There are nineteen (19) TCI real estate brokers and 104 TCI real estate agents affiliated to the Association. Affiliation to the organization is currently not mandatory, in order to be recognised as a TCI real estate agent or broker.

840. The Association is currently working with the TCI Authorities to implement a licensing requirement for real estate agents and brokers in the TCI, through the REBA. It is proposed that one of the licensing requirements would be the successful completion of a training programme. That training programme would then include an AML CFT component to increase awareness of and compliance with the AML/CFT framework in the TCI and the implications of applicable rules and regulations for this sector.

841. Overall the real estate sector is currently not in compliance with applicable AML/CFT rules and regulations. Specifically, the Examiners conclude that the identification procedures discussed with the sector's representatives do not comply with applicable laws.

The provision by way of business of accountancy or audit services

842. There is no formal AML/CFT framework for the monitoring of compliance with applicable rules and regulations in place for this group of DNFBPs.

843. TCI Authorities have not formulated a plan of approach on how to deal with this implementation issue either.

844. Although no formal regulation has been in place, the Examiners through interviews observed a high level of awareness amongst practitioners in the accounting and auditing industry with regard to AML/CFT matters.

845. This awareness is the result of the certification standards that certified accountants need to observe. We therefore expect that the transition period for the implementation of a more formal AML/CFT compliance framework within this sector will be short.

846. TCI authorities will be responsible though, to address the issue of oversight of this industry.

The provision by way of legal services which involves participation in a financial or real estate transaction

847. Although a relatively high level of awareness on the subject has been observed amongst interviewed lawyers, the formal framework for the supervision of this sector still needs to be implemented.

848. It remains unclear how the latter will be realized, as with regard to this specific group of DNFBPs the issue of client privilege might impose some constraints for supervision.

849. In light of the above, the Bar Association might provide some support in the implementation of an AML/CFT compliance regime amongst legal service providers.

850. All lawyers are required to be a member of the Bar Association. The Bar Council has expressed the possibility of using the Bar Association as a channel through which training is provided to the

sector, in order to increase awareness of and promote a compliance regime for AML/CFT rules and regulations.

851. The only constraint in this regard, remains the industry oversight to determine the extent of compliance with AML/CFT rules and regulations. The Bar Council does not consider the Bar Association to be the appropriate oversight entity for this industry.

852. During interviews the Examiners were informed that it is a legal requirement that law firms segregate their corporate activities into separate entities. This segregation of activities might support the implementation of the AML/CFT oversight regime, without conflicting with client privileges issues that legal practitioners experience in their line of business.

853. As stated in section 3.1 of the report, the activity of mortgage lending is currently carried out in the TCI but is not covered under the AML/CFT regime. The FSC informed the Examiners that they believed that the activity is generally carried out by lawyers and/or law firms. However, due to client confidentiality claims made by the lawyers the FSC have been unable to inspect their files. The Examiners were unable to verify this and were informed by the FSC that this was not the case. The POCO, AMLR and the Code does not make provisions for a competent authority in the TCI (i.e., FSC, FCU etc.) to be responsible for ensuring compliance by DNFBPs including lawyers with the TCI's AML/CFT regime. Therefore, the fact that the TCI Authorities (the FSC) have been unable to ascertain lawyers' compliance with the Banking Ordnance cast doubts on whether there can be effective implementation of the AML/CFT regime on lawyers and in turn all DNFBPs.

Operating a casino by way of business

854. There is currently only one casino operating in the TCI. Additionally, TCI also permits gaming machines at bars and there is and electronic gaming parlour.

855. The Gaming Inspectorate performs the oversight over the gaming industry. The oversight comprises of the licensing of casinos and operators of gaming machines, and is mainly aimed at monitoring that fraudulent activities are not committed by the respective gaming businesses.

856. The Examiners have observed that there is no compliance with AML/CFT rules and regulations within the gaming industry.

857. The awareness of the vulnerabilities of the industry to be used as a means to launder money is very low. There seems to be a large turnaround of cash with regard to specifically the casino, and to a certain extent also with regard to the gaming machines and electronic gaming parlour, since playing and payout of gains are all in cash.

858. The casino has encountered some constraints relative to encountering a local bank that is willing to establish a credit card payment facility at the casino's premises. As long as this situation persists, the turnover of cash in the casino will remain high with all its related risk consequences.

859. Although the Gaming Inspectorate expects to be playing an eminent role in the execution of the AML/CFT compliance oversight, it is expected that the FCU will take a lead role in the introductory phase of the AML/CFT framework. The FCU will be responsible for promoting awareness on AML/CFT issues within the industry and train the respective market players with regard to compliance with AML/CFT rules and regulations.

860. It is also expected that the FCU will train the respective gaming inspectors, in the execution of proper AML/CFT oversight, in order for the latter to take over the task from the FCU.

861. However, documented evidence of these commitments for training is not available.

862. Furthermore, there is no plan of approach for the implementation of the new AML/CFT legislative amendments for the gaming sector. The gaming industry has not been formally informed of the changes and their consequences for the gaming industry.

863. Considering the level of awareness, training and formal commitments for implementation of an AML/CFT framework, the Examiners expect the transition period for the implementation of the new AML/CFT legislative framework to take a relatively long period of time.

4.1.2 Recommendations and Comments

864. 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 Recommendations 5, 6 and 8 through 11 of the FATF. TCI is advised to develop an implementation plan to address the effective implementation of its new AML/CFT legislative regime for DNFBPs. In this process the TCI Authorities should address the following:

a) 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;

b) Define the major risk area targeted under the group of DNFBPs categorized as "dealers in goods of any description involving a cash payment of $50,000 or the equivalent in any currency";

c) 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"

d) 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;

e) Determine who will be responsible for the regulatory oversight of the relevant DNFBPs;

f) 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 DNFBPs, 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;

g) TCI should consider the use of the Bar Association as a channel for the training of industry practitioners;

865. 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.

866. 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.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating

R.12	**NC**	• **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.** • **No contact has been established with dealers in precious metals or precious stones to inform them of the AML/CFT legislative changes and the consequences thereof for the relevant industry.** • **TCI Authorities have not determined yet who will be responsible for the compliance oversight of the dealers in precious metals and precious stones.** • **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.** • **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.** • **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.** • **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.** • **The gaming industry lacks the implementation of an AML/CFT compliance supervisory regime.** • **The role of the Gaming Inspectorate and the FCU in the implementation of the AML/CFT framework is not clearly defined.**

4.2 Suspicious transaction reporting (R.16)

(Applying R.13 to 15 & 21)

4.2.1 Description and Analysis

867. Section 109 of the POCO establishes that STRs should be reported to the MLRA whose function to receive STRs has been delegated to the FCU. Section 120 mandates the circumstances in which STRs should be reported.

868. Regulation 3 of the AMLR identifies the persons/entities covered by this requirement (relevant businesses).

869. Regulation 8 covers the appointment of a MLRO by all persons who are affected under this criteria (including DNFBPs), who will be responsible for liaising with the FCU concerning reporting and subsequent dispensation of reported matters.

870. As indicated under section 4.1 of this Report, DNFBPs are subject to the same AML/CFT legislative framework as financial institutions. Consequently, the legislative suspicious

transaction reporting requirements that apply to financial institutions, apply also to DNFBPs and correspondingly the deficiencies identified under section 3 of this Report.

871. The level of compliance with the FATF recommendations is however partly determined by the level of effective implementation of the applicable legislative framework. In this regard the Examiners refer to section 4.1 of this Report, where the level of implementation of the overall AML/CFT framework for DNFBPs is addressed.

872. The Examiners have observed that the respective DNFBPs have not filed any STRs with the FCU. Although, this is not a proof beyond any doubt of the non-compliance with reporting obligations by DNFBPs, it should serve as grounds for further consideration by the TCI authorities.

873. Section 125 of the POCO gives a general protection from civil suits when disclosures have been made pursuant to that Ordinance.

874. Section 123 of the POCO makes it an offence for a person to do any thing which he knows or suspects will prejudice an investigations and amounts to tipping off or alerting the person being investigated.

875. For additional details in this respect the Examiners refer to section 3 of this Report where the legislative framework addressing recommendation 14, 15 and 21 of the FATF is addressed in more detail. As previously mentioned the same AML/CFT legislative system applicable for financial institutions, also applies to DNFBPs as the latter are also defined as relevant businesses under the AMLR. The implementation of this legislative framework however, is in a lesser developed stage for DNFBPs compared to financial institutions, since the legal framework for DNFBPs has only recently been enacted.

Additional Elements

876. The provisions addressed under the additional criteria 16.5 and 16.6, are complied with in the AML/CFT legislative framework of TCI.

877. Accountants including auditors are subject to reporting requirements by the inclusion of this group of DNFBPs under the definition of relevant businesses in the AMLR.

878. Furthermore, TCI legislation does not make a distinction between local and domestic money laundering predicate offences.

4.2.2 Recommendations and Comments

879. TCI should ensure an effective implementation of the recently enacted AML/CFT legislative framework for DNFBPs, including the requirement for the filing of STRs.

880. TCI Authorities should consider training for DNFBPs on the filing of STRs to promote a compliant regime within the relevant industries.

881. The relevant supervisory authorities per category of DNFBPs should issue guidelines and instructions on the drawing up and maintaining of internal frameworks for compliance with AML/CFT rules and regulations.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating

R.16	**NC**	• **There is a lack of implementation of the AML/CFT legislative framework for DNFBPs** • **To date no STRs have been filed with the FCU by any category of DNFBP, except for Trust and company service providers.** • **No training of DNFBPs on the filing of STRs.** • **DNFBPs have not implemented an internal framework for the compliance with AML/CFT rules and regulations.**

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

Recommendation 24

882. Casinos are required to be licensed in order to operate within the TCI under the Casinos Ordinance by the Business Licensing Unit of the TCI Government.

883. The Gaming Inspectorate is the entity responsible for the assessment of licensing requests under the Casinos Ordinance. The Gaming inspectorate after assessing the request advises the Business Licensing Unit of the TCI Government as to whether to issue the license to the respective requesting entity.

884. TCI has only one (1) casino that had only been operating for three (3) months at the time of the Examiners on-site visit.

885. Casinos fall within the AML/CFT regulatory regime and are subject to the full measure of those requirements by virtue of the definition of relevant business contained in regulation 3 of AMLR.

886. However, as previously discussed, this AML/CFT regulatory regime has not been effectively implemented as yet.

887. The introductory process of the AML/CFT regulatory regime has not been formalized. The supervisory regime beyond the introductory stage is clearly a responsibility of the Gaming Inspectorate. However, in order to be able to execute this duty effectively training in the area of AML/CFT should be provided to the gaming inspectors.

888. Section 11 of the Casinos Ordinance outlines persons who are disqualified from holding a licence. It states that licences shall not be granted to individuals or in the case of a company officers or directors, where they have been convicted of an offence within or outside the Islands involving fraud, dishonesty, or has been convicted of crime punishable by imprisonment for a term longer than six months where the option of receiving a fine was not available.

889. In line herewith, the Gaming Inspectorate performs due diligence on the owners of the casino and their directors. Furthermore, all employees of the casino are investigated. However, the procedures for assessment of relevant individuals are not formally outlined. It involves in any case a request of police records for the owners and directors of the casino.

890. For the gaming machines, a license is only provided when the requesting entity has also an approved license for the selling of liquor. Persons that have been granted a license to sell liquor are also screened by TCI Authorities. This screening result and as a consequence the liquor license provides some form of rationale for the granting of the gaming license to operate a gaming machine at the respective establishment.

891. Casinos are subject to oversight by the Gaming Inspectorate under the Gaming Ordinance. However, this oversight does not entail an AML/CFT compliance oversight. It is the aim to incorporate an AML/CFT oversight component in the overall supervisory tasks of the Gaming Inspectorate.

892. The Casinos Ordinance makes provision for the Inspector to access relevant information as needed. The Ordinance does not contain any provisions for the Minister to disclosure information to overseas regulators and does not provide for gateways for the provision of information to domestic regulators. There is no provision that allows for information sharing for purposes of consolidated supervision with other domestic regulators such as the FSC.

893. Trust and company service providers are subject to supervision by the FSC, whose role and functions have been discussed in section 3 of this Report.

894. The remaining DNFBPs are currently not subject to supervision of compliance with AML/CFT requirements. An implementation plan is yet to be drawn up to determine who will be responsible for the compliance oversight of the different categories of DNFBP's. Reference is in this respect made to section 4.1 of this Report.

895. Throughout the sector specific licensing ordinances, and in the POCO and AMLR sanction for non compliance with AML/CFT rules and regulations apply. In this regard some deficiencies have been observed relative to the application of sanctions for financial institutions.

896. The legislative limitations of the sanctioning system applicable in case of non-compliance with AML/CFT rules and regulations discussed for financial institutions in section 3 of this Report also applies to DNFBP's.

897. With regard to DNFBP's an additional problem arises, considering that there is no oversight for determination of compliance level, and consequently, no sanctions are effectively applied either.

Recommendation 25

898. The Code applies to DNFBPs in respect to AML/CFT compliance requirements. However, the Code is not considered 'other enforceable means'.

899. In addition the Code is a general document that has been issued for all relevant businesses, including financial institutions and DNFBPs.

900. Consideration should be given to issue sector specific guidelines that deal with the relevant issues pertaining to the specific sectors and disregard where a certain risk is not eminent in a certain industry.

4.3.2 Recommendations and Comments

901. TCI should draw up an implementation plan, for the AML/CFT supervisory regime for casinos. This plan should address the following:

a) Who is responsible for the training of gaming inspectors in the area of AML/CFT compliance oversight;

b) Who is responsible for informing the relevant sector of the AML/CFT changes and the respective implications for the relevant sector;

c) Who is responsible for training of the gaming industry in the introductory phase;

d) What are the tools required for an effective oversight of the industry's compliance with AML/CFT laws and regulations;

e) Where necessary resources should be sought to appropriately equip the Gaming Inspectorate for the effective AML/CFT oversight tasks.

902. 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.

903. 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.

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

905. 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.

906. The Gaming Inspectorate should possess the ability to disclose information to overseas regulators and to share information with domestic regulators.

907. 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.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**NC**	• **No implementation plan in place addressing the relevant issues pertaining to the effective implementation of an AML/CFT oversight regime for the gaming industry.** • **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.** • **TCI authorities have not appointed oversight body(ies) that is/are responsible for monitoring compliance with AML/CFT rules and regulations by DNFBPs (except for trust and company service providers that fall under the supervision of the FSC).** • **The Gaming Inspectorate does not have the ability to disclose information to overseas regulators and to domestic regulators.** • **No effective implementation of the enforcement regime for DNFBPs.**
R.25	**NC**	• **Other than the Code that provides general instructions to the regulated sector, DNFBP's have not been provided with specific guidelines that**

		address the respective industries' challenges in the implementation of an AML/CFT compliance regime

4.4 Other non-financial businesses and professions Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

908. TCI has recently made some substantial changes to its AML/CFT legislative regime. One of the major changes as previously noted is the inclusion of DNFBPs in their definition of relevant business. To which the whole scope of AML/CFT laws and regulations in the TCI applies.

909. These changes have been made in compliance with international applicable standards. However, the Examiners have not observed any evidence of considerations that might have been made with regard to other non-financial businesses and professions that might impose a large ML/FT risk to the jurisdiction.

910. The Examiners noted during interviews that in a number of instances, market players referred to the large amount of construction activity going on in the TCI and the payment of construction workers in cash.

911. This circulation of a large amount of cash in the construction industry might impose some degree of risk for ML/FT to the TCI.

912. The TCI has encouraged reduced reliance on cash. It has encouraged the development of systems for the use of credit cards and automated banking services.

913. However, as indicated before the Examiners have been informed of some constraints in the use of credit cards by the casino. Consequently, the casino has a large turnover of cash which might result in an increased risk for ML and TF.

914. It is required that licensees seek approval for the introduction of new products from the FSC. The FSC must be satisfied that secure automated transfer systems have been established and that there are proper controls for these systems before approval is given.

915. The United States dollar is the legal tender of the Islands and therefore the highest denomination bank note is $100.

4.4.2 Recommendations and Comments

916. 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 asses the risk of ML and FT in the construction industry, considering the amount of cash turnover in this industry.

917. 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.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**PC**	• **TCI has not considered the risk of other non-financial businesses and professions being misused for the purpose of ML/FT.** • **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.**

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

918. The Company Management (Licensing) Ordinance (CMLO) governs the licensing and regulation of persons who provide corporate services business including the formation of companies and provision of a registered office. The Companies Ordinance (CO) makes provision for the establishment of the Companies Registry, registration of companies and other provisions in relation to the conduct of companies. Partnerships are governed by the Limited Partnership Ordinance [Cap126].

919. Companies and legal persons conducting the business of company agent or company management, forming limited partnerships and providing the registered office for limited partnerships are subject to the requirements of the AMLR in regard to identification documents for beneficial owners of their client companies. These companies would also be captured by the CMLO Guidelines and Code of Conduct.

920. Persons or business wishing to provide corporate services as Company Managers or Company Agents are required to be licensed by the FSC. This licensing process subjects the directors, officer and beneficial owners of the company to know your customer procedures.

921. The Companies Registry has a system of central registration for the incorporation of all companies. This information is publicly available by the payment of a search fee. Changes in the ownership are kept up to date through the filing of annual returns and notices of such changes as required by the CO. Information on directors, shareholders and the secretary is maintained at the Registry for Ordinary companies only. Companies are also required to keep registers of its members, directors and officers pursuant to sections 38, 39 and 53 of the CO. A register of members is required to be kept at the registered office of a company (section 42). The register is treated as *prima facie* evidence of the things contained in it.

922. Information on the beneficial ownership of companies and legal persons can be shared with other authorities pursuant to the Overseas Regulatory Authority Ordinance as well as section 22 of the CMLO.

923. Under the CO section 32A (a) bearer shares are required to be held in the Islands by inter alia, licensed Company Manager/Agent or where there is none by the secretary of the company. Alternatively the shares may be held with an accountant, attorney, licensed bank or licensed trustee.

924. Information must be kept by the licensed company manager on the location of the bearer shares, its ownership and its beneficial ownership.

925. Bearer shares are not to be kept outside the Islands except where the company manager produces a certificate to the Registrar issued by a similar authority (with laws similar to those in the Islands) as the FSC (section 32E) that indicates that the custodian of the bearer shares is licensed and under the supervision of that authority.

926. Where the provisions of 32E are not followed the company agent or manager is subject to criminal sanctions and the company which issued the bearer shares is subject to administrative sanctions.

927. As indicated previously, there is no requirement under law for financial institutions to carryout all relevant CDD measures as prescribed by Recommendation 5 on legal persons or legal arrangements. Therefore, company services providers are not legislatively required to verify the legal status of the legal person or legal arrangement. It should be noted that the Examiners found that the information was however generally maintained by financial institutions. Additionally, competent authorities such as the FCU and FSC have indicated that this information has been readily available upon request.

928. Regulation 14(1) of the Banking Regulations prohibits bearer shares for licensees. The prohibition on bearer shares is also captured in the procedures for vetting an application for licence.

929. Similar prohibitions are also captured by regulation 11 of the Insurance Regulations; section 6 of the Company Management (Licensing) Ordinance; section 16 of the Mutual Funds Ordinance; and section 11 of the Trustees Licensing Ordinance

930. The person holding the shares must keep a record of the location of the shares, its ownership and beneficial ownership – section 32B of the CO.

931. Where bearer shares are kept outside the Islands the licensed Company Manager/Agent must present to the Registrar a certificate issued by an overseas regulatory authority stating that the custodian of the bearer shares is licensed and supervised by that authority and notify the Registrar when the custodian commences and ceases to hold the bearer shares. The Examination Team found no evidence that this section has been utilised. Additionally, the Examination Team found no established guidelines or procedures that the FSC would use should the situation arise.

932. It is also prescribed by section 32E of the CO that the custodian should be subject to similar laws corresponding to the POCO and the AMLR.

933. For non-compliance with section 32E of the CO, the company manager/agent is liable on summary conviction to a fine of $20,000 and on conviction on indictment to a fine of $20,000 or a period which does not exceed twelve (12) months or to both such fine and imprisonment and the company is struck off the register.

934. The FSC has indicated that the use of bearer shares is now rare within the TCI. Interviews and feedback from financial institutions revealed that the use of bearer shares by newly incorporated companies has become rare and that the restrictions placed on the use of bearer shares has effectively meant that they are unattractive to potential clients.

Additional Elements

935. The Registry maintains a database of all companies registered. The information is public information and includes information on the registered office, directors, shareholders and subscribers. As previously stated, this information is maintained by the registry with regard to ordinary companies only and the information can be accessed for a search fee.

5.1.2 Recommendations and Comments

936. 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.

937. 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.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• **There is no evidence that any training occurred on matters relative to legal persons including the revised procedure for reporting of suspicious transactions.** • **The deficiencies identified in Rec. 5 with regard to beneficial ownership apply equally to Rec. 33.**

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

938. There is no central registration for trusts. The provision of Trustee services is a regulated activity in the TCI and a licensee holding such a licence is subject to the requirements of the FSCO in relation to provision and access to information. Section 23 of the FSCO gives the FSC the powers to request information from a licensee or a former licensee as well as any person believed to be in possession of the information.

939. Furthermore, as a part of onsite supervisory oversight supervisors may request this information and require that record of changes be kept and made available on request. They are given a right of reasonable access to any asset, property or publication of a licensee. The FSC informed examiners that copies of trust deeds and settlements should be kept by all licensed trustees and may be requested by supervisors during regulatory visits. However, the deficiencies indentified with regard to beneficial ownership at R5 applies to trustee services. Therefore, the requirement to maintain information on the settler, beneficiaries and protector are not applicable to financial institutions in the TCI as the Code is not enforceable.

940. It is an offence under section 7 of the TLO to refuse to furnish information, make false statements or furnish false statements. On summary conviction a person may be liable to a fine of $20,000 or a term of imprisonment of one year or to both. On conviction on indictment a person may be liable to a fine of $20,000 or a term of imprisonment of two years or to both.

5.2.2 Recommendations and Comments

941. TCI Authorities such as the FSC or FCU should ensure that all persons associated with legal arrangements are made aware of the requirements of the POCO and the Code regarding the reporting of suspicious transactions.

942. TCI Authorities such as the FSC or FCU should review its training programmme to include AML/ CFT training on matters relative to legal arrangements.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**PC**	• **Persons associated with legal arrangements do not appear to be aware of the revised protocol for reporting suspicious transactions.** • **There is no evidence that the FCU held training sessions on matters relative to legal arrangements.** • **The deficiencies indentified with regard to beneficial ownership at R5 apply to trustee services.**

5.3 Non profit organisations (SR.VIII)

5.3.1 Description and Analysis

943. The TCI is currently reviewing the current practical administrative framework in relation to Non-profit organisations (NPOs) in order to determine the feasibility of implementing legislation to prevent the abuse of these organisations from terrorist financing. The Examination Team was unable to find evidence of such consideration.

944. Currently, non-profit organizations are pursuant to the Companies Act required to register with the Companies Registrar upon establishment.

945. The information provided to the Companies Registrar upon registration is the 'name' of the non-profit organization, the date of incorporation and the objects of the companies. Names of ultimate beneficiaries are not required to be filed with the Companies Registrar. NPOs are not required to maintain information pertaining to their activities or on the persons who control and direct those activities. There is also no requirement to make this information available to the public.

946. As per October 1, 2007, there were eight (8) non-profit organizations in the TCI that had filed with the Companies Registrar. This figure has remained stable for the past four (4) years. NPOs in the TCI are not required to maintain information on domestic and international transactions for a period of at least five (5) years. Nor are they required to provide this information to the relevant law enforcement authorities.

947. The FSC has not issued any guidance notes to regulated entities on the risks of NPOs being used for FT reasons. Consequently no additional scrutiny or awareness for these types of structures is effective in the TCI and there are no applicable sanctions. As a result of the shortcomings discussed, the Examination Team believes that the TCI is unable to adequately investigate and gather information on NPOs.

948. There is no specific point of contact for NPOs with regard to international cooperation.

949. The Turks and Caicos are currently considering the implementation of these measures.

5.3.2 Recommendations and Comments

950. 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.

951. 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.

952. 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.

953. The TCI Authorities should ensure that there are sanctions in place against NPOs that do not comply with AML/CFT oversight measures.

954. 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 FCU.

955. The FCU should ensure that all NPOs are made aware of the revised procedures for reporting suspicious transactions.

956. The FCU should revise its training programme to include AML/ CFT training for NPOs.

957. A specific point of contact should be established with regard to international request for information on NPOs.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**NC**	• **TCI Authorities have not addressed the non-profit organizations that can be used for FT purposed in their legislative framework.** • **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.** • **There are no sanctions against non-profit organisations for failure to comply with AML/CFT measures.** • **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.** • **No measures to ensure that NPOs can be effectively investigated and that required information can be gathered.**

		• **Regulatory bodies have not issued any guidance notes to regulated entities to increase awareness for the relevant risks of non-profit organizations as FT vehicles.** • **The FCU has not provided any guidance to NPOs regarding the reporting of suspicious transactions.** • **There has not been any training for NPOs** • **There is no point of contact with regard to obtaining international requests for information on NPOs.**

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31 and 32)

6.1.1 Description and Analysis

Recommendation 31

958. The main forum for national co-operation and coordination in the TCI in its fight against money laundering and financing of terrorism offences is through the median of the MLRA. The MLRA is a national body with statutorily constituted members such as the Attorney General, the Comptroller of Customs, the Managing Director of the FSC, the Commissioner of Police, and the Head of the FCU.

959. By its very composition, the MLRA brings together the various relevant authorities in the TCI who are in the forefront of the fight against money laundering and terrorist financing. It thus provides the facility for coordination of efforts, local cooperation and significant policy making. The policy makers in the TCI with respect to combating money laundering and terrorist financing are in effect the MLRA and the Attorney General who is the Chairperson of MLRA. Policy is therefore formulated at a national level with input from the members of the MLRA.

960. The MLRA existed under POCO 2000; however the Examiners have been unable to ascertain exactly when it was established though this information had been requested. At the time of the writing of this Report, this information was unavailable.

961. The main difference propelled by the new legislation is that the functions of the MLRA are now statutorily defined. The MLRA has the very important role of being the financial intelligence unit for the TCI. This responsibility has however been delegated to the FCU via section 109(5) of the POCO. Prior to the POCO, the FCU also carried out this delegated responsibility but as a result of an administrative decision of the MLRA.

962. There has not been any scheduled time frame for the frequency of meetings, nor any proposed schedule for future meetings, though the authorities indicate that a decision was taken to have meetings regularly. When meetings were held, it was reported that all members of the MLRA were in attendance. During the past year, it was reported that the MLRA had two (2) or three (3) meetings.

963. It was reported that the main function of the MLRA for the past four (4) years and particularly for the last two and a half (2 ½) years, was to ensure compliance with the FATF Forty + Nine Recommendations. A major objective of the MLRA was thus to sensitize the regulated sector as to their obligations under AML/CFT law, especially on the importance of filing SARs. The MLRA also focused on establishing procedures to be followed for the filing of SARs, and also on addressing security and confidentiality issues regarding such filing.

964. The MLRA indicated that these objectives were achieved by certain members of the MLRA being tasked with responsibility for AML/CFT training or awareness raising of the regulated sector. For example, the Managing Director of the FSC and the Head of the FCU were given a pivotal role in the educative process of the regulated sector.

965. Other than the Money Laundering Guidance Notes issued in September 1999 by the MLRA in conjunction with the FSC, pursuant to POCO 1998, there had been no further written policy issued by the MLRA, directed to members of the regulated sector, until the Anti Money Laundering and Terrorist Financing Code issued by the MLRA, pursuant to the POCO.

966. Local cooperation and coordination amongst competent authorities both in and outside of the MLRA appear to be adequate. Operationally, there appears to be good cooperation amongst the law enforcement agencies, the FCU and the FSC. The FCU is part of the Royal Turks and Caicos Police Force (RTCIPF), and thus has direct interaction with other law enforcement agencies. However, operational standards for all the various units appear to be on a very informal basis, which may be an issue of concern for the future. Of note is that a Memorandum of Understanding (MOU) has been executed between the RTCIPF and the TCI Customs Department which sets out a 'procedures protocol' designed to co-ordinate and facilitate the processing of drug trafficking and money being imported or exported from the TCI. Another MOU, SPICE, has been executed to facilitate greater cooperation between the RTCIPF, the Immigration Department and the Customs Department. The FSC is permitted to cooperate with other competent authorities in and out of the TCI, pursuant to section 28 of the FSCO, whose functions relate to the prevention and detection of financial crime. The said section also allows the FSC to cooperate with foreign regulatory authorities.

967. The FSC has indicated that they have provided assistance to overseas regulatory bodies, to the extent that the FSC has shown its commitment to present as a witness in a foreign court for a case related to activities in the TCI.

Additional Elements

968. The financial sector has formed an association comprising of members of all the various financial sectors. There is open dialogue between competent authorities and the Financial Industry Association (FIA). Whenever authorities propose any changes to legislation and/or policies the FIA is invited to be involved in the proposed changes even before it has reached the consultative stage where it is put before the entire industry.

969. During interviews with financial institutions the Examination Team was informed that there was some consultation on draft legislation and various matters relating to AML/CFT. However, financial institutions indicated that such consultation could be more robust and that they would welcome more guidance from the FSC and the FCU on matters relating to AML/CFT. At the time of the writing of this Report, no further details about the FIA had been provided though requested.

Recommendation 32

970. The Chairman of the MLRA reports that the effect of what the MLRA does is to review the effectiveness of the AML/CFT regimes for deficiencies. There is however no set procedure or guidance as to how such a review is carried out other than the submission by the Authorities that effectiveness is measured by the number of SARs received. Accordingly the Chair of the MLRA indicated that the increase in the number of SARs being reported for the past two (2) years is indicative of satisfactory feedback from the industry that there has been improvement in how the AML/CFT regimes are being applied and are working. The MLRA was unable to report whether the increase in number of SARs received were commensurately qualitative reports and not merely a numerical increase, however the MLRA assumes that in the absence of any indication that quality was lacking, that the quality was satisfactory. The FCU however was able to confirm that the increase in the number of SARs was not merely a quantitative increase but also a qualitative one.

971. No written policies, results or reports have been issued as a consequence of such reviews undertaken by the MLRA. Minutes of the MLRA Meetings do not refer to a 'review' as an agenda item, however the TCI authorities assert that such a review is done as noted above, as part of the overall effect of the Meeting.

972. During the on-site, the Examiners were not able to confirm that there were regular reviews of the effectiveness of the AML/ CFT systems. No documentation of such reviews was made available to the Examination Team.

Recommendation 30 –Resources (Policy makers)

973. The MLRA is the main body responsible for policy making with respect to ML and FT matters. (Please refer to discussion above) The composition of the MLRA is statutorily outlined as the intent of the POCO legislation was to bring together the various relevant authorities in the TCI who are in the forefront of the fight against money laundering and terrorist financing. This intent has been fulfilled as the MLRA in fact has adequate and relevant representation by the heads of competent bodies in the TCI. The MLRA provides an appropriate forum for co-ordination of AML/CFT efforts by the domestic agencies in the TCI. It is adequately structured and has sufficient operational independence to be able to carry out its functions effectively.

974. The Authorities indicate that the FCU has operational autonomy despite being part of the RTCIPF, and specifically has no interference from senior high ranking officers. However the FCU as one of six (6) units in the RTCIPF has no separate budget and by extension no identified annual budget for training of staff and the regulated sector. Funding of the FCU and for particular projects such as training, conferences, and financial investigations which have cost implications, is provided on a request basis. The FCU indicates that no requests for financial expenditure have been refused including those involving expensive financial investigations and meetings in the international fora.

975. The FCU is adequately staffed and is provided with sufficient technical resources to fully carry out its functions at present in view of the small numbers of SARs received and the number of investigations which have been undertaken. However should the number of SARs and

investigations continue to increase, this would no doubt place considerable strain on the resources of the FCU.

976. The input of the FCU as a result of its assigned functions is critical for policy making at the national level through the median of the MLRA. The FCU is given the opportunity to contribute to such policy making by being represented in the MLRA.

977. The Attorney General as Chairman of the MLRA and as the country's Attorney General, has a significant role to play with respect to the implementation of the TCI's AML/CFT regime.

978. The Attorney General is indeed a key figure in TCI's AML/CFT regime. In addition to the substantive duties of his post as Attorney General, the Attorney General's responsibilities include but is not restricted to the following:

- Chairman, MLRA (as noted above);
- designated Civil Recovery Authority;
- Director of Public Prosecutions;
- competent authority under the CJICO;
- receiving a copy of all requests made pursuant to the MLAO; and
- receiving and processing international requests for assistance from all countries other than the US, and all international requests which fall outside of drug trafficking matters.

979. His support staff, particularly his Senior Crown Counsel (Civil Division) and Principal Crown Counsel (Criminal Division) appear to be suitably qualified, competent and experienced. His support staff also includes another Queen's Counsel, who like the Attorney General, has significant regional and international experience.

980. As observed above, the post of Attorney General and Director of Public Prosecutions is a fused one under the nomenclature of Attorney General. The Attorney General thus has responsibility and oversight of all prosecutions and his role in the AML/CFT regime becomes even more significant, with respect to prosecutions of AML/CFT offences when these arise and for implementing important policy in relation to such prosecutions.

981. The Attorney General's Chambers has a criminal and civil division, and the criminal side is headed by a highly experienced and competent Principal Crown Counsel (PCC) who was formerly a Magistrate in another jurisdiction. This PCC reports to the Attorney General however while the final decision to prosecute rests with the Attorney General, the PCC appears to have a high degree of autonomy in making the decision of whether to prosecute or not. The PCC reports that the Attorney General has never opposed her recommendations to prosecute, once those recommendations are supported by valid reasons. The PCC states that she is able to exercise independent judgement in all prosecutions particularly as she is not a 'Belonger'.

982. There are presently three (3) Senior Crown Counsel and three (3) Crown Counsel responsible for prosecution of all criminal matters in the TCI. The advent of paper committals in 2002-2003 have led to an increasing volume of work for prosecutors in the TCI hence there is a need for more staff or prosecutors in order to address this increased workload.

983. In addition, in view of the many significant hats worn by the Attorney General and the fact that the position of Deputy Attorney General is at present vacant, there appears to be a risk that the

Attorney General may become overburdened by his many responsibilities, particularly in the quest to more effectively implement TCI's AML/CFT regime brought about by the advent of the new AML legislation.

984. As previously stated, the Attorney General is a Queen's Counsel with extensive experience, having worked as Attorney General in different jurisdictions; His staff appear to be suitably qualified and experienced.

985. The Chief Magistrate applies very high professional standards to his duties under the MLAO and is appropriately skilled and qualified to carry out his functions.

986. The Head of the FCU is a former detective from the UK. The staff of the FCU are very carefully selected for recruitment to that Unit. Potential staff members are mostly recruited rather than posts being advertised. Staff are required to sign confidentiality agreements.

987. Lawyers at the Attorney General's Chambers have received some exposure to AML /CFT training as tabled below:

Table 12: Training received by attorneys in the Attorney General's Chambers

TCI Attorney General's Chambers AML/ CFT Training	
Senior Crown Counsel (Criminal)	ACAMS Annual International Money Laundering Conference 2002 in the USA
Senior Crown Counsel (Civil/Criminal)	Caribbean Anti-Money Laundering Programme Work Shop and Seminar for Prosecutors in Trinidad 2003
Principal Crown Counsel Criminal	Caribbean Anti-Money Laundering Programme Work Shop and Seminar for Prosecutors in Trinidad 2003
Two (2) Crown Counsel Criminal	Caribbean Anti-Money Laundering Programme Work Shop and Seminar for Prosecutors in Trinidad 2003
Crown Counsel Civil	Caribbean Anti-Money Laundering Programme Work Shop and Seminar for Prosecutors in Trinidad 2004
All attorneys in the Criminal Division and two (2) other Crown Counsel	Anti-Money Laundering Work Shop and Seminar for Police Officers and Attorneys in the Attorney Generals in TCI 2004
Principal Crown Counsel (Commercial)	Eighth Biennial Regional Central Bank Legal Seminar Understanding the Legal Risks, Immunities and Responsibilities of the Financial Regulator May 23-25 2006 Grand Cayman

Principal Crown Counsel (Commercial)	CFATF Mutual Evaluation Programme: Process and Procedures Workshop May 2ND 2007 St. Vincent and the Grenadines
Crown Counsel (Criminal/Finance)	All CFATF Plenaries and training opportunities indicated to the Ministry of Finance by the CFATF over the past three (3) years.

988. There is still however the need for further AML/CFT training of staff at the Attorney General's Chambers, since training already received has been somewhat limited for the majority of lawyers.

989. The staff of the FCU have received adequate and relevant training for combating ML and FT. One staff member who is charged with responsibility over the FIU functions of the FCU, has received exemplary AML/CFT training and is a qualified financial analyst.

Additional Elements

990. The TCI Authorities indicate that the Judges and Magistrates have had some measure of exposure to AML/CFT training. Neither the MLRA nor the FSC claim responsibility for ensuring that such training is done. The Chief Magistrate states that he would welcome AML/CFT training as he has had no such exposure.

991. The Principal Crown Counsel in charge of prosecution indicates that she has confidence in the Courts to properly adjudicate upon ML and FT offences, and confiscation matters.

6.1.2 Recommendations and Comments

992. 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.

993. The MLRA should develop and implement policies and activities to combat ML/FT on 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.

994. 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.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**PC**	**• 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.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Recommendation 35

995. The Turks and Caicos Islands is a British Overseas Territory and as such international affairs are matters for the United Kingdom on behalf of the TCI (as noted in section 2 above). The TCI therefore does not have the power to enter into any Convention by its own initiative. The UK Government ratified the 1988 UN Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances on June 28, 1991 and extended it to the Turks and Caicos Islands on February 8, 1995 ("the Vienna Convention"). The 1999 United Nations International Convention for the Suppression of the Financing of Terrorism Convention ('the Terrorism Financing Convention') has been ratified by the UK but has not been extended to the TCI Likewise, the 2000 UN Convention against Trans-national Organized Crime (the Palermo Convention) has been ratified by the UK but has not been extended to the TCI. These two Conventions have been implemented in the TCI by various Orders in Council which were made in the UK and have legislative effect in the TCI.

996. The provisions of the Vienna Convention have been implemented in the TCI by local legislation, primarily the Control of Drugs Ordinance, Cap.34, the Control of Drugs (Trafficking) Ordinance, Cap.35, the Criminal (International Cooperation) Ordinance, the Mutual Legal Assistance (U.S.A.) Ordinance and the Proceeds of Crime Ordinance 2007.

997. The Anti-Terrorism Order 2002 criminalises the provision of fundraising and receiving money or property for terrorism or use in a terrorist activity, use and possession of money or property for the purposes of terrorism, involvement in funding arrangements for the purposes of terrorism or a terrorist activity, and retaining and controlling terrorist money or property by concealing, removal or transferring it.

998. The Terrorism (United Nations Measures) (Overseas Territories) Order 2001 ('the Terrorism UN Order') implemented S/RES/1267(1999) and its successor Resolutions, so that the Order prohibits fundraising for terrorism purposes, restricts the making available of funds and financial services to terrorists, and provides powers to freeze accounts of suspected terrorists pursuant to a decision of the Security Council of the United Nations in its Resolution 1373 of 28th September 2001.

999. Article 3 of the Anti-Terrorism Order makes it an offence for any person to collect funds which is intended to be used or knowing that it may be used for the purposes of terrorism.

1000. While article 4 of the Anti-Terrorism Order makes it an offence for any person to make available funds directly or indirectly for to or for the benefit a person involved in acts of terrorism or owned or controlled directly or indirectly by such a person or acting on behalf or at the directions of such a person.

1001. The Governor may direct that funds be frozen under article 5 of the Order where they constitute funds held by or for a person, involved in acts of terrorism, or owned or controlled directly or indirectly by such a person, or acting on behalf or at the directions of such a person. These funds may not be made available to any person except by licence of the Governor.

1002. The Terrorism UN Order implements UNSCR 1267(1999) and its successor resolutions and UNSCR 1373(2001). (See section 2 of the Report above).

1003. The Examiners considered that the state of TCIs' compliance with the requirements of the Vienna, Palermo and the Terrorist Financing Conventions could be summarized by reference to the following table:

Table 13: Compliance with the Conventions required by SR 1

Treaty	**Articles**	**Turks &Caicos Islands Situation**
Vienna Convention (1988)	3 (Offences and Sanctions)	This treaty has been ratified. The relevant pieces of legislation are the Control of Drugs Act, the Control of Drugs (Trafficking) Ordinance, the Proceeds of Crime Ordinance, 1998, the Criminal Justice (International Cooperation) Ordinance and the Proceeds of Crime Act, 2007.
	4 (Jurisdiction)	
	5 (Confiscation)	Proceeds of Crime Ordinance, 1998, Proceeds of Crime Ordinance, 2007, Anti-Money Laundering Regulations, 2007 and the Anti-Money Laundering and Prevention of Terrorist Financing Code, 2007
	6 (Extradition)	Extradition (Overseas Territories) Order, 2002, and the U.K. Extradition Act, 1989.
	7 (Mutual Legal Assistance)	Mutual Legal Assistance (USA) Ordinance; the Criminal Justice (International Cooperation) Ordinance and the Proceeds of Crime (Designated Countries and Territories) Order, 2001.
	8 (Transfer of Proceedings)	Done in Practice.
	9 (Other forms of co-operation and training)	Financial Services Commission Ordinance, 2007
	10 (International Co-operation and Assistance for Transit states)	Criminal Justice (International Cooperation) Ordinance and the Proceeds of Crime (Designated Countries and Territories) Order, 2001.
	11 (Controlled Delivery)	
	15 (Commercial carriers)	Control of Drugs Trafficking Ordinance.

	17 (Illicit Traffic at sea)	Criminal Justice (International Cooperation) Ordinance.
	19 (Use of mail)	Control of Drugs Trafficking Ordinance.
Palermo Convention	5 (Criminalization of participation in an organized criminal group)	The Convention has not been ratified. Common law.
	6 (Criminalization of laundering of the Proceeds of Crime)	Proceeds of Crime Ordinance, 1998, Proceeds of Crime Ordinance, 2007, Anti-Money Laundering Regulations, 2007 and the Anti-Money Laundering and Prevention of Terrorist Financing Code, 2007
	7 (Measures to combat money laundering)	. Proceeds of Crime Ordinance, 1998, Proceeds of Crime Ordinance, 2007, Anti-Money Laundering Regulations, 2007 and the Anti-Money Laundering and Prevention of Terrorist Financing Code, 2007.
	8 (Criminalization of corruption)	. Common law.
	9 (Measures against corruption)	. Commission of Inquiry Ordinance.
	10 (Liability of Legal persons)	. Proceeds of Crime Ordinance, 1998, Proceeds of Crime Ordinance, 2007, Anti-Money Laundering Regulations, 2007 and the Anti-Money Laundering and Prevention of Terrorist Financing Code, 2007. Also the Interpretation Ordinance.
	11 (Prosecution Adjudication and sanction)	. Proceeds of Crime Ordinance, 1998, Proceeds of Crime Ordinance, 2007, Anti-Money Laundering Regulations, 2007 and the Anti-Money Laundering and Prevention of Terrorist Financing Code, 2007
	12 (Confiscation and Seizure)	Proceeds of Crime Ordinance, 1998 and the Proceeds of Crime Ordinance, 2007.
	13 (International Co-operation for the purposes of confiscation)	Proceeds of Crime (Designated Countries and Territories) Order, 2001.

	14 (Disposal of confiscated proceeds of crime or property)	Financial Services Commission Ordinance, 2007
	15 (Jurisdiction)	
	16 (Extradition)	Extradition (Overseas Territories) Order, 2002, and the U.K. Extradition Act, 1989.
	17 (Transfer of sentenced persons)	See. Extradition Procedures.
	18 (Mutual Legal Assistance)	Mutual Legal Assistance (USA) Ordinance; the Criminal Justice (International Cooperation) Ordinance and the Proceeds of Crime (Designated Countries and Territories) Order, 2001.
	19 (Joint Investigations)	Mutual Legal Assistance (USA) Ordinance; the Criminal Justice (International Cooperation) Ordinance and the Proceeds of Crime Ordinance, 2007.
	20 (Special Investigative Techniques)	Not specifically covered. However, would fall within the broad provisions of Mutual Legal Assistance (USA) Ordinance; Proceeds of Crime Ordinance, 1998 and the Proceeds of Crime Ordinance, 2007.
	21 (Transfer of Criminal Proceedings)	
	22 (Establishment of criminal record)	Practiced.
	23 (Criminalization of obstruction of justice)	Criminal Law Ordinance.
	24 (Protection of witnesses)	Mutual Legal Assistance (USA) Ordinance and the Constitution.
	25 (Assistance and protection of victims)	The Constitution.
	26 (Measures to enhance cooperation with law enforcement authorities)	Financial Services Commission Ordinance, 2007; the Proceeds of Crime Ordinance, 1998the Proceeds of Crime Ordinance, 2007, the Anti-Money Laundering and Prevention of Terrorist Financing Code, 2007 and the Proceeds of Crime (Designated Countries and Territories) Order, 2001.

	27 (Law Enforcement cooperation)	Proceeds of Crime Ordinance, 2007.
	28 (Collection, exchange and analysis of information on the nature of organised crime)	No specific provisions but may be included in the general provisions of the Proceeds of Crime Ordinance, 2007, the Financial Services Commission Ordinance, 2007 and the Mutual Legal Assistance (USA) Ordinance.
	29 (Training and technical assistance)	Practices.
	30 (Other measures)	
	31 (Prevention)	Financial Services Commission Ordinance, 2007, the Money Transmitters Services Ordinance, 2007 and the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001.
	34 (Implementation of the Convention)	Various legislative means as outlined herein.
Terrorist Financing Convention	2 (Offences)	This Convention has not been ratified .Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002; the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 and the Extradition (Terrorist Bombings) Order, 2002.
	4 (Criminalization)	.Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002; the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 and the Extradition (Terrorist Bombings) Order, 2002.
	5 (Liability of legal persons)	Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002; the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 and the Extradition (Terrorist Bombings) Order, 2002.
	6 (Justification for commission of offence)	Anti-Terrorism (Financial and Other Measures) (Overseas

		Territories) Order, 2002; the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 and the Extradition (Terrorist Bombings) Order, 2002.
	7 (Jurisdiction)	
	8 (Measures for identification, detection, freezing and seizure of funds)	Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002; the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 and the Al-Qaida and Taliban (United Nations Measures) (Overseas Territories) Order, 2002.
	9 (Investigations & the rights of the accused).	The Constitution; the Criminal Law Ordinance; the Magistrates Courts Ordinance, the Evidence Ordinance, the Evidence Ordinance, 2001 and the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001
	10 (Extradition of nationals)	Extradition (Overseas Territories) Order, 2002, and the U.K. Extradition Act, 1989; Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 and the Extradition (Terrorist Bombings) Order, 2002.
	11 (Offences which are extraditable)	Extradition (Overseas Territories) Order, 2002, and the U.K. Extradition Act, 1989; and the Extradition (Terrorist Bombings) Order, 2002.
	12 (Assistance to other states)	Extradition (Overseas Territories) Order, 2002, and the U.K. Extradition Act, 1989; and the Extradition (Terrorist Bombings) Order, 2002; Mutual Legal Assistance (USA) Ordinance; the Proceeds of Crime (Designated Countries and Territories) Order, 2001 and eh Terrorism (United Nations Measures) (Overseas Territories) Order, 2001.
	13 (Refusal to assist in the case of a fiscal offence)	No specific provision found.

		Common law.
	14 (Refusal to assist in the case of a political offence)	No specific provision found. Common law.
	15 (No obligation if belief that prosecution based on race, nationality, political opinions, etc.)	No specific provision found. Common law.
	16 (Transfer of prisoners)	See. Extradition procedures.
	17 (Guarantee of fair treatment of persons in custody)	The Constitution.
	18 (Measures to prohibit persons from encouraging, organising the commission of offences and STRs, record keeping and CDD measures by financial institutions and other institutions carrying out financial transactions) and facilitating information exchange between agencies)	Financial Services Commission Ordinance, 2007, the Money Transmitters Services Ordinance, 2007; the Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002 and the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001.

Additional Elements

1014. Other than the Vienna Convention, no other International Conventions, including the Palermo Convention, the Terrorism Financing Convention and the1990 Council of Europe Convention, have been signed or ratified on TCIs' behalf by the UK Government. Provisions of the Palermo Convention and the Terrorism Financing Conventions have however been enacted by domestic legislation and legislation made in the UK and extended to the Islands.

6.2.2 Recommendations and Comments

1015. The point is well taken by the Examiners that the TCI is dependant upon the UK Government for all international arrangements. The Examiners however suggest that the 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.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	• **The Palermo Convention and the Terrorism Financing Convention have not by extension been ratified on behalf of the TCI.** • **Not all relevant aspects of the Conventions have been implemented.**
SR.I	**PC**	• **The Terrorist Financing Convention has not been ratified or fully implemented.**

6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 Description and Analysis

Recommendation 36 and SR. V

1016. The legislative enactments in the TCI which allow for mutual legal assistance and international co-operation in AML/CFT investigations, prosecutions and related proceedings are:

- The Mutual Legal Assistance (U.S.A) Ordinance (the MLAO);
- The Criminal Justice (International Cooperation) Ordinance (CJICO) (as amended);
- The Overseas Judgements (Reciprocal Enforcement) Ordinance;
- The Proceeds of Crime Ordinance 1998 (Designated Countries and Territories) Order 2001;
- The Evidence (Proceedings in Other Jurisdictions) (Turks and Caicos)Order 1987, and
- The Proceeds of Crime Ordinance 2007 ('the POCO').

1017. The MLAO gives effect to a bilateral treaty made between the United States and the UK Government in relation improving the effectiveness of the prosecution and suppression of crime through cooperation and provision of mutual legal assistance in criminal matters.

1018. The MLAO sets out the local provisions that have been enacted to give effect to the Treaty as well as the Treaty itself, which in article 1(2) sets out wide parameters of assistance. These include:

(a) taking the testimony or statement of persons;

(b) providing documents, records, and articles of evidence;

(c) serving documents;

(d) locating persons;

(e) transferring persons in custody for testimony;

(f) executing requests for searches and seizures;

(g) immobilizing criminally obtained assets;

(h) assistance in proceedings related to forfeiture, restitution and collection of fines; and

(i) any other steps deemed appropriate by both Central Authorities.

1019. The MLAO makes provision for compelling witnesses to testify or produce any document in his possession or under this control – section 7 and Article 8. The parties may provide authenticated copies of government records and documents – section 8 and Article 9. A person in lawful custody provided he so consents, may be transferred to and from a requesting country to the other country for the purposes of being a witness in a matter – section 11 and Article 11. Service of documents is also provided for in section 14 and article 13. Assistance in relation to search and seizure is set out in article 14.

1020. The CJICO as amended, further implements the terms of the Vienna Convention and provides for international cooperation specifically relating to drug trafficking matters. In relation to drug trafficking offences, and international cooperation outside of the MLAO, the CJICO enables authorities within the Islands to cooperate with other countries which request assistance. Section 3 of the CJICO allows for the government or an authority in another country to request that a summons, other process or documents be served within the Islands.

1021. Similarly section 4 of the CJICO allows for summons, other process and documents from within the Islands to be served outside of the Islands. Sections 5 and 6 allow evidence obtained overseas to be used within the Islands and evidence from within the Islands to be used overseas, respectively.

1022. Under section 9 of the CJICO, a Magistrate may issue a warrant to a police officer to enter premises, search and detain any evidence found there in furtherance of an overseas request.

1023. Forfeiture orders from designated countries may be enforced within the Islands under the requirements set out in section 10 of the CJICO.

1024. The Overseas Judgements (Reciprocal Enforcement) Ordinance, Cap 46, Ordinance 3 of 1985, makes provision for the enforcement in the TCI, of judgements given in 'overseas countries' which accord reciprocal treatment to judgements given in the Islands, for facilitating the enforcement in such countries of judgements given in the Islands. An 'overseas country' is defined (section 2 (1)) in the Ordinance to mean any country or territory outside the Islands, and 'judgement' is defined (ibid) as a judgement or order given or made by a court in any civil proceedings or a judgement or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party. The Ordinance thus has very wide application to other countries and judgements.

1025. The Proceeds of Crime Ordinance 1998 (Designated Countries and Territories) Order 2001, Legal Notice 9 of 2001, was made by the Governor pursuant to the provisions of section 35 of the POCO 1998. This Ordinance serves to designate and list certain countries and territories outside of the Turks and Caicos Islands whose confiscation orders, referred to in the POCO 1998 and in the Order itself as ' external confiscation orders,' will be enforced by the Supreme Court of the Islands under section 36 of the POCO 1998. It establishes procedures for the receipt, evaluation and enforcement of external confiscation orders and sets down procedures for the court to calculate how assets which are confiscated overseas are valued in satisfying or partially satisfying a confiscation order made in the Islands.

1026. Designated countries to which the Order applies are listed in Schedule 1 of the Order. This is an extensive list giving the Order very wide application. The present status of this Order however appears to be dubious as it does not appear to have been saved or provided for by the POCO 2007, which seeks to repeal the POCO1998.

1027. The Evidence (Proceedings in Other Jurisdictions) (Turks and Caicos) Order 1987 allows the TCI to provide assistance to other countries in obtaining evidence in both civil and criminal proceedings, and also in international proceedings.

1028. The Order applies to a Court or tribunal ('the requesting Court') exercising jurisdiction in a country or territory outside the Turks and Caicos Islands. The Supreme Court is authorised under the Order to provide the assistance required once satisfied that the application is made pursuant to a request made by or on behalf of a Court outside the Islands.

1029. With respect to civil proceedings, the evidence required must relate to proceedings which have been instituted or which is contemplated by the requesting Court (Section 1). The Supreme Court has the power under section 2 to provide for obtaining (any) evidence in the TCI as may appear appropriate for the purpose of giving effect to the Request.

1030. An Order may be made by the Supreme Court which specifically makes provision for :

- examination of witnesses (orally or in writing);
- production of documents ;
- inspection, photographing, preservation, custody or detention of property;
- taking of samples of property and the carrying out of any experiments on or with any property;
- medical examination of any person; and
- taking of samples of blood from any person.

1031. These provisions do not apply to criminal proceedings of a political character, that is, assistance would not be rendered on such a basis.

1032. In relation to evidence required for international proceedings**,** the Governor may by Order direct that the provisions aforementioned (sections 1-3) shall have effect in relation to international proceedings of any description specified in the Order. "International proceedings" means- proceedings before the International Court of Justice or any other court, tribunal, commission, body or authority, which in pursuance of any international agreement or of any resolution of the General Assembly of the United Nation exercises any jurisdiction or performs any function of a judicial nature or by way of inquiry or is appointed (whether permanently or temporarily) for the purpose of exercising any jurisdiction or performing any such functions.

1033. This Order thus provides a wide range of assistance to other countries with respect to both criminal and civil proceedings and also to international proceedings, as defined.

1034. The POCO (sections 143, 144 as amplified by schedule 4) allows the Attorney General to enforce external requests and orders including restraint and confiscation orders, of an overseas authority. Article 4 outlines in great detail the scope and application of the Attorney's General's powers and the procedure for enforcement of these requests and orders.

1035. The 'Magistrate' is the designated Mutual Legal Assistance Authority or the Central Authority in the TCI, for the purposes of the MLAO, and thus the Chief Magistrate has the responsibility of receiving and executing all requests for assistance pursuant to the MLAO. Section 5 of the MLAO imposes an obligation on the Chief Magistrate to immediately notify the Attorney General of the receipt of the request (section 5). Article 5 of the MLAO also stipulates that the Central Authority 'shall promptly' execute any request (Art. 5(1)) and 'shall promptly' inform the central authority of the Requesting Party of the outcome of the execution of the request. These are the only legislative provisions regarding the timeliness of the execution of requests under the MLAO. The Chief Magistrate has however set administrative time limits for the execution of requests in order to get requests processed in a timely and prompt manner. The Chief Magistrate stated that he has imposed a time frame of twenty-eight (28) days for the execution of requests, and that it in fact takes this said time on average for requests to be executed, which time may be longer or shorter depending on the particulars of the request.

1036. The current Chief Magistrate was appointed in July 2004 and reports that nine (9) requests have been dealt with since 2004. Owing to a recent fire at the Grand Turk Courthouse the Chief Magistrate was unable to locate any files that may have been held prior to that time. Further details of these requests were provided by the Chief Magistrate as follows:

Table 14: Requests for Mutual Legal Assistance

Number of Requests	Date Request Received	Date of Order of Compliance	Date Order Complied	Supplemental Orders
1	22 March 2004[11]	14 May 2004	21 May 2004	21 May 2004 complied with 28 June 2004
2	05 April 2004[12]	14 May 2004	21 May 2005	
3	06 April 2004 [13]	21 April 2004. The requesting entity asks that the matter be put in abeyance.		
4	15 April 2004[14]	15 April 2004	21 May 2004	Sept 2004 complied with March 4 2005
5	29 April 2004[15]	26 May 2004. On the 18 of May compliance date extended to 9 June 2006. 28 June to 23 Sept. bank warned of non-compliance and threatened with penalties.	30 Sept 2004	25 Nov 2004 complied with 24 January 2005.
6	14 July 2004[16]	27 August 2004	09 Sept 2004	
7	24 Sept 2004[17]	20 Oct 2004. Request withdrawn after requesting party accepts that request relates to tax matter.		
8	16 June 2005[18]	26 July 2005. Original request was deemed to broad and requesting Party was asked to re-evaluate on 6 June 2005.	25 July 2005	04 Nov 2005. Complied with on 05 Dec. 2005.
9	25 Oct 2005[19]	30 Nov 2005	30 Nov 2005	23 Feb 2006. Request for witness to attend trial was complied with. (No date provided by Authorities)

1037. The execution time for the above requests ranged on average from 3- 6 months however this period was indeed longer or shorter depending on the nature of the requests and whether supplemental requests were made. It is noted too that in a few instances, the execution time took

[11] Seeks documents and witness with regard to the offences of mail fraud, wire fraud and money laundering.

[12] Seek documents with regard to the offences of securities fraud, mail fraud and money laundering

[13] Seek documents with regard to the offences of attempt and conspiracy, continuing criminal enterprise and the laundering of monetary instruments.

[14] Seeks Government records and documents.

[15] Seeks documents with regard to the offences of wire fraud, securities fraud, conspiracy to launder money and money laundering.

[16] Seeks large volume of document with regard to the offences of conspiracy, fraud and false statements.

[17] Seeks witness to attend trial for conspiracy to defraud and filing false tax returns.

[18] Seeks large volume of documents from a bank with regard to the offences of bribery of a foreign public officer, money laundering and fraud.

[19] Seeks information from the FSC with regard to the offences of intent to defraud, forgery and corruption of record.

as short as three – four weeks. In one matter (Request 7 above), assistance by the TCI was not permissible on the basis that the subject of the request was purely tax related.

1038. It is noted that all of the above requests would have been received from the United States Department of Justice (USDOJ). The Chief Magistrate indicated that other requests from other countries may have been dealt with at Attorney General or police level without any consultation with him, once such matters fell outside the scope of the MLAO.

1039. The timeliness and effectiveness of TCI's response to international requests in general cannot be properly assessed in the absence of all statistical data representing the details of such requests. With the exception of the number of requests made and executed pursuant to the MLAO, and the number of requests received by the FCU, no other statistic has been received pertaining to international requests. Further details pertaining to these requests were not received by the Examiners.

1040. The US Customs and Immigration Authority have reported excellent cooperation received from the Turks and Caicos Islands.

1041. The Governor is responsible for receiving and executing requests made pursuant to the CJICO. Other than the legislative provision that the Commissioner of Police must serve 'forthwith' any process or document directed to him by the Governor to be served (section 3 (5)), there are no other stipulated time frames or written standard operating procedures for the rendering of assistance pursuant to the CJICO.

1042. No information was obtained at the time of the Evaluation as to requests made pursuant to the CJICO or received at the time of the writing of this Report, though requested.

1043. No time frames accompanying the various procedural steps for the rendering of assistance are provided in the Overseas Judgements (Reciprocal Enforcement) Ordinance, the Proceeds of Crime Ordinance 1998 (Designated Countries and Territories) Order 2001, the Evidence (Proceedings in Other Jurisdictions) (Turks and Caicos) Order 1987, and the POCO. No formal administrative guidelines were provided to the Examiners stipulating standard operating procedures regarding the timeliness or otherwise, of requests made pursuant to these provisions.

1044. No external confiscation orders have been enforced in the TCI pursuant to any of the above stated provisions.

1045. The Attorney General also receives and executes requests made to him through diplomatic channels and from Attorney General to Attorney General, and the Attorney General indicated that all requests received by him in this manner are executed promptly with his oversight and direction. No statistics were obtained at the time of the Evaluation as to the number of such requests made and the time frame in which such requests were executed.

1046. Although it is difficult to assess the effectiveness and timeliness of requests received and executed by the TCI due to the lack of statistical detail. It should be noted however that the countries who responded to the pre-Evaluation request for information on their international cooperation with the TCI and actually had made requests to the TCI all responded that the level of cooperation was good.

1047. Limitations on the assistance which may be given by the TCI and limitations on the use of any assistance or information obtained pursuant to the MLAO, are set out in articles 3 and 7 respectively of that Ordinance.

1048. The TCI is prohibited from providing assistance on matters relating to regulation, imposition, calculation and collection of taxes (article 3(1)) save in matters involving the criminal offences of :

- wilfully or dishonestly obtaining money, property or valuable securities from other persons by means of false or fraudulent pretences or statements, whether oral or written, regarding or affecting benefits available in connection with the laws and regulations relating to income or other taxes; and

- wilfully or dishonestly making false statements, whether oral or written, to government tax authorities (e.g., wilfully or dishonestly submitting a false income tax return) with respect to any tax matter arising from the unlawful proceeds of any criminal offence covered by any other provision of this definition, except sub paragraph (f), or wilfully or dishonestly failing to make a report to government tax authorities as required by law in respect of, or to pay the tax due on, any such unlawful proceeds.

1049. Thus the prohibition on the provision of assistance when it comes to tax information is not absolute and is allowed when the above offences are involved.

1050. In keeping with article 7 of the MLAO, information may generally only be used in a manner as agreed to by the central authorities of both parties. A wide scope of assistance is however permissible under the MLAO as information or evidence obtained pursuant to the MLAO may be used for investigation, prosecution or suppression of the offences stated in the request by the Requesting Party without the prior consent of the Requested Party (article 7 (1)). There is thus no requirement for a criminal conviction or for judicial proceedings to have commenced, in order for assistance to be given. Assistance may also be given in civil and administrative proceedings in accordance with article 7 (4) (c). Specifically, article 7(4) provides that:

> **4.** Except as may be permitted under paragraph 1, any information or evidence obtained under this Treaty which has been made public in the territory of the Requesting Party in a proceeding forming part of the prosecution of a criminal described in the request may be used only for the following additional purposes:
>
> "(a) where a trial results in a conviction for any criminal offence within the scope of this Treaty, for any purpose against the person(s) convicted;
>
> (b) whether or not a trial results in the conviction of any person, in the prosecution of any person for any criminal offence within the scope of this Treaty; and
>
> (c) in civil or administrative proceedings, only if and to the extent that such proceedings relate to—
>
> (i) the recovery of the unlawful proceeds of a criminal offence within the scope of this Treaty from a person who has knowingly received them;

(ii) the collection of tax or enforcement of tax penalties resulting from the knowing receipt of the unlawful proceeds of a criminal offence within the scope of this Treaty; or

(iii) the recovery in rem of the unlawful proceeds or instrumentalities of a criminal offence within the scope of this Treaty."

1051. Assistance provided pursuant to the MLAO is thus not subjected to unduly restrictive conditions.

1052. Dual criminality is required pursuant to the CJICO however there is no requirement that proceedings must be instituted before assistance is provided, as assistance may be given further to a criminal investigation.

1053. Reciprocity is required by Overseas Judgements (Reciprocal Enforcement Ordinance before judgements may be enforced in the TCI. Since there are other avenues for the enforcement of orders or judgements of other countries, particularly for the enforcement of external confiscation and restraint orders, this does not pose a practical obstacle to the rendering of assistance by the TCI.

1054. The Evidence (Proceedings in Other Jurisdictions) (Turks and Caicos) Order 1987, and the POCO, requires the institution of criminal proceedings in the overseas jurisdiction, before assistance is given. Civil proceedings however need not be instituted before assistance is rendered.

1055. The Proceeds of Crime Ordinance 1998 (Designated Countries and Territories) Order 2001, is not subjected to restrictive conditions.

1056. The POCO outlines the conditions to be satisfied before external orders are enforced in the TCI, in its schedule 4. In effect there must be proof that proceedings have been commenced and no appeal is outstanding for external orders to be enforced pursuant to the POCO in the TCI. These two previous conditions apply in general with respect to the enforcement of all external orders in the TCI, and are reasonable prerequisites for the enforcement of judgements or orders of other countries.

1057. Requests for assistance are by way of the Central Authority in both countries under the MLAO. The request is shared with the Attorney General pursuant to section 5, and the Central Authority, in this case the Chief Magistrate, in furtherance of the request then makes an official order requesting the information sought to be produced by the relevant person(s)/ agency/department responsible for the type of information or assistance required. It is stipulated by the Chief Magistrate in his request that the assistance should be provided within a certain time frame, usually seven (7) days, or a longer or shorter period depending on the nature of the request. The Chief Magistrate is thereafter provided with details of the requested assistance for forwarding to the Requesting Party.

1058. As a result of the legislative stipulation that requests should be executed promptly, and the time frames which the Chief Magistrate has imposed acting upon such stipulation, it appears that the procedure for the execution of requests pursuant to the MLAO, allows for processing of such requests to be carried out in a timely manner, without undue delay.

1059. It appears that a similar process is undertaken by the Attorney General in the execution of requests, however at the time of the evaluation, while the Examiners were informed that all requests were processed promptly and as soon as received, the number of requests received and executed and the time frames involved in the processing of such requests were not conveyed, though requested save that provided by the Chief Magistrate

1060. The provisions of the CJICO have not been utilized as no requests have been made pursuant to this Ordinance.

1061. No time frames for the actual execution of any international requests were provided by the TCI Authorities.

1062. Though certain legislated provisions permit the rendering of international legal assistance by the TCI, and though there appears to be a strong commitment by the TCI Authorities to comply with international requests for assistance, there is a paucity of accompanying administrative guidelines to ensure that international assistance is given in a prompt and efficient manner, without undue delays. The Chief Magistrate appears to be the only competent authority that has set time frames for the execution of requests. It is desirable for time frames relative to each procedural step, and other administrative details with respect to the execution of international requests, to be established and formalised in written guidelines or standard operating procedures. In this way effectiveness would not depend solely on the commitment and efficiency of the entity or persons responsible for executing a request but on formal systems which can monitor and support such efficiency.

1063. Mutual legal assistance would not be rendered in matters which relate directly or indirectly to the regulation, including the imposition, calculation and calculation of taxes, except for any matter falling within sub-paragraphs 3(d) and (e) of article 19 of the MLAO (See. Rec. 36 above for the full text of the exceptions). Thus there are in fact restrictions on the rendering of assistance with regard to fiscal matters.

1064. The TCI Authorities responsible for the execution of requests all assert that requests for assistance would not be refused on the sole ground that the request also contains fiscal or tax matters. The Authorities agree that if a request seeks information on criminal, administrative or civil matters and also seeks fiscal or tax information, then only the part seeking the fiscal or tax information will be refused. If the request solely seeks fiscal or tax information, then the request would be refused. If the tax or fiscal information sought falls within the exceptions outlined by sub-paragraphs 3*(d)* and *(e)* of article 19 of the MLAO, the request would not be refused.

1065. The Chief Magistrate states that there has only been one instance when a request which was based purely on tax matters, was denied. The Attorney General reports that the TCI is considering entering into tax information sharing agreements with other countries.

1066. The MLAO does not place any limitations on assistance which may be provided, on the grounds of secrecy or confidentiality requirements of financial institutions and DNFBPs. This is reinforced by section 10 of the MLAO which provides that a person who divulges any confidential information or gives any testimony in conformity with the request shall be deemed not to commit any offence under the Confidential Relationships Ordinance or under any other Ordinance for the time being in force in the Islands, by reason only of such disclosure or the giving of such testimony.

1067. The CJICO is silent on the issue of any such restrictions and thus it may be inferred that no such restrictions apply to the rendering of assistance pursuant to the CJICO.

1068. The Overseas Judgements (Reciprocal Enforcement) Ordinance, the Proceeds of Crime Ordinance 1998 (Designated Countries and Territories) Order 2001, the Evidence (Proceedings in Other Jurisdictions) (Turks and Caicos) Order 1987, and the Proceeds of Crime Ordinance 2007 ('the POCO') are not restricted in its application by secrecy or confidentiality requirements with respect to the rendering of international assistance.

1069. The MLAO expressly provides powers for the Central Authority to compel witnesses to testify or to produce documents or evidence (section 7), the taking of witness statements (article 8) and search of persons and premises and seizure of records (article 14)

1070. The CJICO allows for the service of a summons, other process and documents (section 3), the compelling of prisoners to give evidence abroad (section 7), and the search of premises and seizure of evidence (section 9). There is however no specific provisions in the CJICO for the taking of witness statements and production of documents. It appears that the only provision for witness statements and the production of documents is vested in the court when the court exercises its powers to secure the attendance of a witness, as in any other criminal proceedings. Section 2 makes a discretionary provision for the taking of evidence on oath, while section3 (6) states that the giving of evidence includes the production of documents. This appears to be a very circuitous route for addressing these two areas of the taking of witness statements and the production of documents.

1071. The Evidence (Proceedings in Other Jurisdictions) (Turks and Caicos) Order 1987 provide for the taking of witness statements and the production of documents in relation to both criminal and civil proceedings. In civil proceedings, the Supreme Court has the overriding power under section 2, to provide for obtaining (any) evidence in the TCI as may appear appropriate for the purpose of giving effect to the request. This is therefore wide enough to cover the searching of persons and premises and the seizure of records. This provision is however not extended to criminal proceedings. The Supreme Court has the power under section 2 to provide for obtaining (any) evidence in the TCI as may appear appropriate for the purpose of giving effect to the request.

1072. There are no formal mechanisms in place for determining the best venue for the prosecution of defendants in cases which may be subject to prosecution in more than one country. The Attorney General reports that the situation has never arisen where such a determination was necessary, and further states that if it were to arise, he would be responsible, in his capacity as Director of Public Prosecutions, for making the decision regarding the best venue for prosecution.

1073. The Attorney General advises that the main consideration would be the country's ability to mount the prosecution. For example, if the case is a very complicated one spanning several jurisdictions and involving specialist witnesses, one would consider whether in the circumstances, a smaller jurisdiction should undertake that onerous responsibility. However the Attorney General further advises that if the defendant is a citizen of the TCI, then it may be regarded as an obligation for the prosecution to proceed in the TCI. The Attorney General maintains that this decision would be a discretionary one on his part which would depend on the circumstances of the particular case.

Additional Elements

1074. Requests for assistance can also be made and are in fact made directly to the FCU by another foreign financial intelligence unit, to the Royal Turks and Caicos Police Force by other foreign law enforcement agencies, to the FSC by foreign regulatory bodies, and from Attorney General to Attorney General. The legislative bases for the rendering of assistance by the FCU to its counterparts abroad is the POCO and for rendering assistance between regulators is the FSC Act.

1075. Once the information is required for Court purposes however, the FCU would have no jurisdiction to execute such a request unless a formal request is submitted to the Attorney General or the Supreme Court, and the terms of the request are sent to the FCU to be executed.

1076. Compelling the production of documents, searching persons and premises and seizing records and the taking of formal witness statements would all require channelling through another source (as described) rather than directly to the FCU.

Special Recommendation. V

1077. There are currently no specific laws or MLATs governing international cooperation in relation to CFT matters. Notwithstanding, the definition of "criminal conduct" in the POCO is sufficiently wide to also cover criminal conduct resulting from FT matters. Therefore assistance in FT matters is available under the MLAO utilizing all of the provisions aforementioned in Rec. 36 however it is noted that such assistance pertains only to the USA under the MLAO. Similarly, since the financing of terrorism is in fact criminalized, the Evidence (Proceedings in Other Jurisdictions) (Turks and Caicos) Order 1987 would apply to FT offences in relation to assistance which can be provided in criminal proceedings.

1078. Schedule 2, part 2 of the Anti Terrorism Order makes provisions for the enforcement in the TCI of external orders.

1079. There have been no instances of any request made to the TCI which have pertained to terrorism or terrorism financing. The TCI Authorities have given the assurance that such requests if made will be processed promptly. There are however no formal mechanisms in place to govern the timeliness of responses to such requests once made.

1080. In the absence of dual criminality, assistance would not be given by TCI if there is no known TF offence in the TCI. If a similar TF offence exists then assistance would be given in the absence of dual criminality, depending on the circumstances. If the request for assistance relates to purely tax matters, assistance would not be provided by TCI whether or not there is dual criminality, as to do so would be illegal.

1081. The Terrorism (United Nations)(Overseas Territories) Order 2002 provides for the seizing, freezing, unfreezing and confiscation to be done without delay (Article 5).

Additional Elements

1082. To date there has been no request for cooperation in relation to financing of terrorism matters. There is no legal restriction which prohibits cooperation on these matters.

Recommendation 37 and SR. V

1083. The MLAO specifically identifies the criminal offences, civil or administrative proceedings which shall be the subject of mutual legal assistance. Dual criminality requirements are therefore inapplicable under the MLAO. The TCI authorities consider the underlying offence and in practice, dual criminality, when requests for exchange of information are received under the MLAO.

1084. The Criminal Justice (International Cooperation) Ordinance (CJICO) as amended provides for international cooperation in relation to drug trafficking matters. Implementation of the provisions of the CJICO is based on there being reciprocal offences existing in the islands and the country seeking assistance or for which assistance is being sought. Under the CJICO, cooperation is presupposed on both countries having corresponding drug trafficking offences. Dual criminality is therefore required under the CJICO.

1085. As noted previously, the CJICO is applicable to drug trafficking offences only. Where matters fall outside the realm of drug trafficking, assistance will be given by the TCI on the basis of dual criminality as a matter of policy as indicated by the Attorney General.

1086. In the absence of dual criminality, assistance would not be given by TCI if there is no known offence in the TCI. If a similar offence exists then assistance would be given in the absence of dual criminality, depending on the circumstances. If the request for assistance relates to purely tax matters, assistance would not be provided by TCI whether or not there is dual criminality, unless the request is from the USA and one of the exceptions permitted by the MLAO applies.

1087. The Attorney General states that requests for assistance to Turks and Caicos Islands would not be refused if the offences described are substantively the same in the Islands. The primary consideration would thus be one of substance rather than of form of the offence.

1088. Dual criminality is however not specifically required under the Evidence (Proceedings in other Jurisdiction s)(Turks and Caicos Islands) Order 1987 in order for assistance to be rendered by the TCI.

1089. Dual criminality is generally required, both by practice and by law, in the TCI for the rendering of mutual legal assistance. The exception appears to be the Evidence (Proceedings in other Jurisdiction s)(Turks and Caicos Islands) Order 1987 which is silent on the issue. However it is likely that the dual criminality requirement may still prevail under this Order by reason of the Order's application to 'criminal' and 'civil' proceedings and the interpretation of same.

1090. Under the CJICO cooperation is based on both countries having corresponding drug trafficking offences. There is no definition of "corresponding" in the CJICO and therefore the ordinary meaning of the word would apply, which suggests that the major aspects of the criminal conduct should be similar. Though dual criminality is required, technical differences therefore should not pose an impediment to the provision of mutual legal assistance under the CJICO.

1091. Under the Extradition (Overseas Territories) Order 2002, section 2(1)(a) assistance may be rendered to the UK Ireland, designated Commonwealth countries or British Overseas Territories where the conduct in the requesting country is an offence punishable by imprisonment of twelve (12) months or more and which "however described" is also punishable by the laws of the TCI. Thus there would be no legal or practical impediment to rendering assistance where the

substantive conduct underlying the offence is criminalised by both countries. Technical differences in the form of the offence would not hinder the rendering of assistance as it is not the description of the offence but the actual conduct which would be considered.

1092. This is in effect the position stated with respect to mutual legal assistance requests, by the TCIs' Authorities, that is, in determining whether assistance would be provided, the actual conduct underlying the offence would be considered and not merely its technical description. Thus a wide range of mutual legal assistance may be provided by the TCI in relation to AML and CFT matters. Though either reciprocity or dual criminality will be required in most cases, this does not appear to hinder co-operation in practice.

Recommendation 38 and SR. V

1093. The POCO allows the Attorney General to enforce external orders, including external restraint and confiscation orders (sections 143, 144 and Schedule 4). External Orders apply to property which is found or believed to have been obtained 'as a result of or in connection with criminal conduct'. This very wide application therefore permits assistance to be given in the enforcement of foreign orders which seek to freeze, seize or confiscate laundered property, proceeds from, instrumentalities used in or instrumentalities intended for use in, the commission of any money laundering, financing of terrorism or other predicate offences.

1094. The Proceeds of Crime (Designated Countries and Territories) Order 2001, (POCDCTO) amended the POCO 1998 to designate countries and territories outside the Islands whose confiscation orders, referred to in the POCO 1998 and in the Order as "external confiscation orders," would be enforced by the Supreme Court in the Islands. It also establishes procedures for the receipt, evaluation and enforcement of external confiscation orders. The POCDCTO thus provides another legal avenue for the enforcement of external confiscation orders; however the Supreme Court is the responsible entity for enforcement under the POCDCTO.

1095. The Overseas Judgements (Reciprocal Enforcement) Ordinance restricts the type of orders which are enforceable in relation to criminal proceedings to orders for the payment of a sum of money in respect of compensation or damages to an injured party, thus this Ordinance cannot be utilized to enforce freezing, seizing or confiscation orders. Powers for enforcement of such Orders are effectively provided by the above stated legislation (the POCO and the POCDCTO). The caveat is the status of the POCDCTO, which requires clarification as to it application, since its saving under the POCO has not been ascertained with certainty.

1096. Where the request relates to property of corresponding value, it appears that once that property is specified in the external order, then assistance would still be given (section 143 (a) of the POCO).

1097. There are no formal arrangements or procedures in place in the TCI for the coordination of seizure and confiscation actions with other countries. Under the MLAO, the parties are allowed to take 'any other steps deemed appropriate by both Central Authorities' (Article 1 (2)(i)) and can consult each other to enable the most effective use of the Treaty. In this way, an arrangement may be mutually agreed by both parties for the coordination of seizure and confiscation actions, however it is noted that no such arrangements have been established.

1098. An Asset Forfeiture Fund has recently been established pursuant to section 145 of the POCO. The use of this Fund is statutorily outlined under section 145(3) of the POCO in keeping with

Recommendation 38. There have not been any funds deposited into the Asset Forfeiture Fund as it has only been very recently established with the advent of the new AML legislation.

1099. Confiscated funds were formerly deposited into the Consolidated Fund of the TCI. Such funds were not separated for use in any specific purpose such as matters related to anti money laundering, counter financing of terrorism , law enforcement, rehabilitation or to meet the costs of the MLRA.

1100. There are no formal provisions in the TCI which authorize the sharing of assets with other countries when confiscation is directly or indirectly a result of coordinated effort. There are also no mechanisms in place which place an obligation on the respective countries to consider the sharing of assets in this circumstance. It was however reported to the Examiners that it is the practice of the TCI to consider the sharing of assets between countries when confiscation is as a result of coordinated efforts.

1101. There have been no instances of asset sharing as a result of coordinated efforts relating to confiscation, in the TCI.

Additional Elements

1102. Foreign non criminal orders are not enforceable under the POCO or the POCDCTO as property and proceeds must relate to criminal conduct. It however appears that a foreign civil forfeiture Order will be enforceable in the Islands since the property in issue would be obtained through unlawful conduct. Additionally there are no restrictions under the Overseas Judgements (Reciprocal Enforcement) Ordinance pertaining to civil proceedings, so no apparent restriction on the enforcement on what may be a 'civil confiscation order', if such an order is made. A foreign civil forfeiture, once it also satisfies the other conditions required by this Order, should thus fall within the scope of this Order.

Special Recommendation. V

1103. Please see discussion on SR.V above. The same considerations would apply with respect to the FT offences.

Additional Elements

1104. Article 15 as supplemented by schedule 2 of the Anti-Terrorism Order 2002 provides for criminal forfeiture of the terrorist property and cash. Paragraph 11 of the schedule empowers the Governor to enforce external confiscation orders from designated countries. An application may be made to have the external order registered in the Supreme Court. An external forfeiture order registered in the Supreme Court will have the same powers in relation to a domestic forfeiture order the same applies in respect to an external restraint order registered in schedule 2.

Recommendation 30 – Resources (Central Authority for receiving/sending mutual legal assistance requests0

1105. As stated earlier, the Chief Magistrate is the Central Authority for receiving and sending mutual legal assistance requests pursuant to the MLAO. The Attorney General carries out this function as Central Authority pursuant to the CIJICO and the Attorney General is also responsible for the receipt and sending of any requests for international cooperation made through diplomatic channels.

1106. Both the Chief Magistrate and the Attorney General are able to exercise these functions with operational independence and autonomy. Though the Chief Magistrate is obliged by law to share all requests received pursuant to the MLAO, with the Attorney General, the Chief Magistrate exercises his sole discretion in keeping with the provisions of the MLAO, in making the decision as to whether or not assistance would be rendered by the TCI in relation to the specific request.

1107. Both the Attorney General and the Chief Magistrate are able to maintain very high standards of professionalism and efficiency by reason of their respective backgrounds, experience and training. The Attorney General is a Queen's Counsel and has previously been an Attorney General in more than one overseas jurisdiction. The Chief Magistrate has considerable experience as a Magistrate in the TCI and abroad.

1108. While both the Attorney General and the Chief Magistrate are suitably qualified and equipped to carry out their various duties, the Chief Magistrate has received no AML/CFT training and states that he would welcome such training. Magistrates and Judges on the whole have not received any AML /CFT training. Such training would be especially useful when the Court is called upon to deal with certain court processes under the AML/CFT legislation and to enforce certain orders further to international requests for assistance.

1109. The Attorney General has been exposed to AML/CFT initiatives.

Recommendation 32

Statistics

1110. The Chief Magistrate maintains statistics on all requests received, denied and executed pursuant to the MLAO. Nine (9) requests for international co-operation under the MLAO have been dealt with since the beginning of 2004. The Chief Magistrate reports that he has only ever refused one (1) request for assistance and the reason for the refusal was that the request was based on purely tax matters not falling within the exceptions allowed by the MLAO. Further details of the requests have been provided by the Chief Magistrate at section 6.3.of this Report.

1111. The Attorney General maintains statistics on all international requests received by him and executed, however no statistics were obtained by the Examiners at the time of the writing of this Report.

1112. The FCU and the FSC are responsible for maintaining statistics on all requests for international co-operation made directly to their agencies. The FSC had not provided statistics on these requests, inclusive of details on the response time and the requesting party, at the time of the writing of this Report.

Additional Elements

1113. Fifty-six (56) requests for co-operation from other law enforcement agencies within the TCI have been received and dealt with since the beginning of 2005. None have been refused.

1114. Further details as to the above requests were requested but were not received at the time of writing of this Report. It is important to ascertain to whom these requests were made, whether it was to the FCU, whether they were formal or informal requests, whether spontaneous or in writing, and the nature of these requests.

6.3.2 Recommendations and Comments

1115. 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.

1116. 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 efficiency of the entity or persons responsible for executing a request but on formal systems which can monitor and support such efficiency.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**PC**	• **Mutual legal assistance will not be provided by the TCI once tax or fiscal matters are involved which do not fall within certain exemptions.** • **The effectiveness of implementation is difficult to assess due to the lack of statistical details.** • **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.**
R.37	**C**	**This Recommendation is fully observed.**
R.38	**PC**	• **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.** • **The effectiveness of implementation cannot be ascertained.**
SR.V	**LC**	• **There are no formal administrative procedures which have been established to ensure mutual legal assistance is given in a timely manner.** • **Deficiencies noted with regard to Recs. 36 and 38 are also applicable to this Recommendation.**

6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

Recommendation 39 and SR. V

1117. The Extradition (Overseas Territories) Order 2002 (the Extradition Order) was extended to the Turks and Caicos Islands by the United Kingdom (UK) and came into operation on 16th August 2002. The Extradition Order extends specific sections of the UK Extradition Act 1989 to the Islands and facilitates extradition between the United Kingdom, Ireland, Commonwealth countries and British Overseas Territories. The Order also provides for the repatriation of persons unlawfully at large.

1118. Article 2(1) of the Extradition Order stipulates the sections of the UK Extradition Act 1989(the Act), which apply to the Islands. These sections are set out in Schedule 2 of the Order. In section 2(1) of the Act, extradition includes any conduct which "*would constitute an offence punishable with imprisonment for a term of 12 months, or any greater punishment."* This therefore includes the money laundering offences under the POCO.

1119. The procedures applicable for extradition are laid out in the Extradition Order. A person can only be extradited pursuant to an order from the Governor. The order from the Governor is only issued after a number of procedural steps have been complied with.

1120. The extradition request must be made to the Governor by the Government of the UK, designated commonwealth country or the Governor of a British overseas territory or the Government of Ireland (section 7). Specific documents must also be submitted along with the request which set out the grounds or makes the case on which the extradition is based. The Governor may then issue an authority to proceed once satisfied that an order for the return of the person should be made in accordance with the Act. Such authority shall specify the offence or offences under the law of the requesting country which appears to the Governor to be the equivalent conduct in the TCI.

1121. By virtue of section 8, a Magistrate may issue a warrant for the arrest of a person either on a receipt of an authority to proceed or in the absence of that authority, issue a provisional warrant upon information that the person is or believed to be in or on his way to the TCI. The Magistrate must also be satisfied that on the basis of the evidence presented to him that there is just cause to issue a warrant for the accused or convicted person and that the crime constitutes an extradition crime. However where a provisional warrant is issued the Magistrate must give notice of that fact to the Governor who may cancel the warrant or if the person has been arrested, discharge the warrant.

1122. A person arrested pursuant to a warrant should be brought as soon as practicable to a Court for committal (section 9). Where the committal is made on the basis of a warrant issued by a Magistrate who received an authority to proceed from the Governor, the Court of committal after hearing representations in support of the extradition request and being satisfied:

(a) where that person is accused of the offence, that the evidence would be sufficient to warrant his trial if the extradition crime had taken place within the jurisdiction of the court;

(b) where that person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large, the court, unless his committal is prohibited by any other provision of this Act, shall commit him to custody or on bail -

(i) to await the Governor's decision as to his return; and

(ii) if the Governor decides that he shall be returned, to await his return."

If the court of committal is not so satisfied or if the committal is prohibited by a provision of the Act then the court shall discharge the person.

1123. Where the Court refuses to make a committal order, the Requesting Country may "question the proceeding on the ground that it is wrong in law by applying to the Court to state a case for the opinion of a superior Court" of the Turks and Caicos Islands (Section 10).

1124. The Court of committal shall then inform the person of his right to make an application for habeas corpus and shall also give notice of the committal to the Governor, in accordance with section 11. This section also stipulates that the person shall not be returned until the expiration of the period of fifteen (15) days beginning with the day on which the order for his committal is made; or if an application for habeas corpus is made in his case, so long as proceedings on that application are pending.

1125. Section 12 sets out the provisions for the Governor to issue a warrant for the return of the person to the requesting country after that person has been committed.

1126. Under section 16 provision is made for the person to apply to a Superior Court in the TCI for his discharge if he remains in the Islands longer than fifteen (15) days from the date of committal or after any pending applications have been decided.

1127. The procedural steps for extradition are thus clearly outlined in the law of the Turks and Caicos Islands.

1128. The TCI is permitted to extradite its own nationals and there is no limitation on extradition powers on the ground that the nationality of subject is a 'Belonger' or a Turks and Caicos Islands citizen.

1129. This is provided by Section 7 (1) of the Extradition Order whereby the Governor may issue an order pursuant to "a request (in this Act referred to as an "extradition request") for the surrender of a person under this Act made to the Governor by or on behalf of the Government of the United Kingdom, or the Government of a designated Commonwealth country or the Governor of a British overseas territory or the Government of Ireland."

1130. Additionally, section 7(2) provides that an extradition request shall also provide information on the person whose return is requested, the offence for which the person was accused or convicted. Where a person has been accused of an offence, a warrant for his arrest in the requesting country

shall also be furnished and where there has been a conviction then a certificate of the conviction should be provided.

1131. There is therefore no distinction between TCI's own nationals and nationals of other countries with regard to extradition. The primary requirement is that the offence or offences on which the extradition is based is an extraditable crime. Thus a request for extradition would not be refused on the sole ground that the subject involved is a TCI national.

1132. The extradition procedure outlined above, sets time frames at every stage to ensure that there is no undue delay in extradition proceedings. The consequences of failing to abide by these time frames are dire as they include the facility of the subject being able to apply for a discharge.

1133. In addition, the subject of an extradition request may waive his rights which then permit the Magistrate to make a committal order with his consent pursuant to section 14(2) of the Extradition Order. This process of voluntarily surrender considerably shortens the period for completion of the extradition process.

1134. There have been no extradition requests made to or from the TCI in the past four (4) years. Extradition requests would be received by the UK Government and forwarded by the British Embassy in Washington to the TCI. Responsibility for the execution of these requests rests with the Attorney General, who would make the decision as to whether or not assistance would be rendered, in consultation with the UK Government. The main consideration affecting the decision whether or not assistance would be given is whether there is dual criminality regarding the offence(s) allegedly perpetrated.

1135. The appropriate legislative framework exists in the TCI law which allows for effective extradition of its nationals and nationals of other countries. Procedural guidelines and timeframes are set out in the legislation which allow for effective implementation of the law relating to extradition.

Additional Elements

1136. Extradition requests are not transmitted directly to the Islands. As noted above, they are received by the UK Government and then transmitted through the intermediary of the British Embassy in Washington. There is therefore no simplified procedure for direct transmission or extradition requests to the Islands. This indirect process may invariably cause delay in the receipt and processing of the extradition request.

1137. The procedures for extradition may only de done in accordance with the provisions of the Act set out above.

1138. The subject of an extradition request can however also voluntarily surrender (section 14(2)), hence proceedings would be simplified and the request easier to expedite.

Recommendation 37 and SR. V

1139. Section 2 (1) of the Extradition Order provides:

"- (1) In this Act "extradition crime" means -

(a) conduct in the territory of the United Kingdom, Ireland, a designated Commonwealth country or a British overseas territory which, if it occurred in the relevant listed territory, would constitute an offence punishable with imprisonment for a term of 12 months, or any greater punishment, and which, however described in the law of the United Kingdom, Ireland, Commonwealth country or British overseas territory, is so punishable under that law;

(b) an extra-territorial offence against the law of the United Kingdom, Ireland, a designated Commonwealth country or a British overseas territory which is punishable under that law with imprisonment for a term of 12 months, or any greater punishment, and which satisfies -

(i) the condition specified in subsection (2) below; or

(ii) all the conditions specified in subsection (3) below."

1140. Extradition is by this section, based on both countries having similar offences. Dual criminality is thus required in the Turks and Caicos Islands in order for assistance to be rendered. However as previously stated, the Attorney General indicates that the substance rather than the form of the offence would be taken into account in deciding whether the request will be executed. Once the offence is substantively the same in the TCI, no matter how it may be technically described, assistance would not be refused.

1141. The inclusion of the words 'however described' in section 2(1)(a) of the Extradition Order (see Rec. 37 above) adequately overcomes any legal or practical impediments brought about by technicalities or differences in form rather than substance of the offence in issue.

1142. In section 2 of the Act, extraditable crimes are defined by a threshold approach so that all crimes that carry a term of imprisonment of twelve (12) months imprisonment or greater are extraditable. All terrorism and financing of terrorism offences would immediately gain coverage under the Extradition Order, by reason of the penalties stipulated for such offences in the Anti-Terrorism (Financial and Other Measures)(Overseas Territories) Order 2002, the Terrorism (United Nations Measures) (Overseas Territories) Order 2001 and the Al Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002.

1143. Extradition proceedings are thus clearly permitted in relation to terrorist acts and the financing of terrorism.

Additional Elements

1144. The procedures for extradition may only de done in accordance with the provisions of the Order set out above in discussion on Rec. 39and with specific references to the Order in section 7. The subject of an Extradition Request can however waive his rights and thus voluntarily surrender to committal, hence proceedings would be simplified in this way, and the Request easier and quicker to expedite.

6.4.2 Recommendations and Comments

1145. 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. This recommendation does not affect the rating of Recommendation 39.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.37	**C**	**This Recommendation is fully observed.**
R.39	**C**	**This Recommendation is fully observed.**
SR.V	**LC**	**See reasons given in section 6.3 of the Report**

6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

1146. The main gateways for other forms of international co-operation are regulatory co-operation and co-operation between the FCU and foreign financial intelligence units. Co-operation through diplomatic channels from Attorney General to Attorney General and between local and foreign law enforcement agencies, including but not restricted to the RTCIPF and Interpol, are also undertaken. Such co-operation is both formal and informal and is permissible directly between local and foreign counterparts

1147. The present legislative authority for regulatory co-operation is the Financial Services Commission Ordinance, (FSCO). The FSCO repealed and replaced the Overseas Regulatory Authority (Assistance) Ordinance, (ORAAO). These Ordinances specifically facilitate wide co-operation with overseas regulatory authorities and are not unduly restrictive in their application, save that cooperation will only be rendered in furtherance of the foreign regulator's functions.

1148. Section 28 of the FSCO allows co-operation by the FSC with foreign regulatory authorities including the sharing of documents and information. Section 28(2) of the FSCO restricts the application of cooperation where the requested documents or information sought is not for the purposes of its regulatory functions. Section 29 further allows the FSC on the written request of an overseas regulatory authority, to issue a notice for the production of documents and information, to apply to have a person examined under oath, to appoint examiners to investigate a matter and to disclose any information or provide any documents in its possession. However, it should be noted that the FSC has not entered into any form of formal MOU with other supervisory authorities in this regard. This might have a limiting effect in other countries' ability to exchange information with the FSC, and consequently the limitations made in the FSCO (29) might apply.

1149. The legislative basis for the exchange of information between the FCU and foreign financial intelligence units is the POCO. The FCU under the auspices of the MLRA may receive (section 109(2)) and also disclose (section 110(2)) information from/to foreign intelligence units in order to assist with a criminal investigation or proceedings or to initiate a criminal investigation or to disseminate pertinent information such as the possible commission of an offence.

1150. The TCI can also co-operate internationally with respect to the enforcement of overseas or external judgements and orders. Such co-operation is authorised by the POCO and the Proceeds of Crime Ordinance 1998 (Designated Countries and Territories) Order 2001. The latter Ordinance provides for the enforcement of the external confiscation orders of countries designated by the Governor by virtue of that Ordinance. The status of this Ordinance in view of the repeal of POCO 1998 requires clarification, as already noted earlier in this Report. Sections 142 and 143 and Schedule 4 of the POCO empowers the Attorney General to enforce external orders on behalf of an overseas authority. Such external orders include confiscation and restraint orders.

1151. The competent authorities in the TCI have overall expressed their commitment to promptly execute requests, once made to them. However though guidance is given on who receives and who has responsibility for execution of requests, there are little or no legislative stipulations, other formal guidelines or written standard operating procedures, governing the actual processing or execution of requests and specifically the timeliness of such execution under, the FSCO or the POCO. It should be noted that there were also no timelines provided under the recently repealed ORAAO. The FSC states that it ensures that assistance is provided in a rapid, constructive and effective manner having regard to the nature of the request and the steps needed to be undertaken in order to procure the information requested. The same has been reported with respect to cooperation by the MLRA/FCU under the POCO and by the Attorney General. Though requests were made by the examiners for the number of international requests for information or assistance during the past four (4) years received and processed by the FSC, Attorney General, the FCU, and the response time for the execution of such requests, with the exception of information from the FCU (and the Chief Magistrate as reported under Recommendation 36 above), such information had not been received at the time of the writing of this Report.

1152. The Managing Director of the FSC states that the procedure for the exchange of information between his organisation and foreign regulators is a very informal one and this essentially takes the form of requests being made orally.

1153. Sections 109 and 110 of the POCO (as referred to above) facilitates exchanges of information between the FCU and other FIUs. Requests for assistance are made directly to the FCU and though the FCU can enter into a written or formal arrangement with another country in order to facilitate this exchange of information, it is not necessary for any formal arrangement to be in place in order for the FCU to provide the assistance sought. Thus while the FCU can embark into a Memorandum of Understanding (MOU) with another country, a MOU is not a prerequisite for the exchange of information. No MOUs have been executed by the FIU internationally or other bilateral or multilateral agreements.

1154. As previously noted, the FCU is not a member of the Egmont Group of International FIUs. It has however applied for membership and is expecting to attain such membership at the next Egmont Group Annual Plenary in June 2008. If successful, the FCU will then be able to exchange information with all Egmont members using the Egmont Secure Website. In the absence of Egmont membership, the FIU is still able to cooperate with other foreign FIUs under the provisions of the POCO aforementioned. Of note however is that some FIUs in the Egmont Group do not exchange information without the existence of a MOU or do not exchange information with non- Egmont members. Until the FCU becomes a member of the Egmont Group, exchange of information may be one-sided with the FIUs which have the stated restrictions.

1155. Prior to 2007 and the advent of the POCO, the FCU did not legally comply with the Egmont definition of a FIU.

1156. As noted above, sections 142 and 143 and schedule 4 of the POCO provide for cooperation with an overseas authority including the making of restraint and confiscation orders on the application of the Attorney General. It also allows for the seizure of property by a Police or Customs Officer pursuant to a restraint order requested by an overseas authority. The Attorney General is also empowered to enforce judgements or external orders pursuant to these provisions. Though these provisions have not been utilized by the TCI, the Attorney General reports that he has been executing international requests for assistance made to him through diplomatic channels and from other Attorneys General. At the time of the writing of this Report as already alluded to above, statistics on the number of such requests processed in the past four (4) years had not been received by the Examiners.

1157. Exchange of information is possible both spontaneously and upon request in the TCI, in relation to money laundering as well as underlying predicate offences.

1158. The FSCO allows cooperation on a spontaneous basis (section 28) and on written request (section 29). The FSC is empowered to make such exchanges in relation to both the money laundering offence and the underlying predicate offences, provided that the information is required in the exercise of the overseas regulatory authorities' regulatory functions.

1159. The FCU and the law enforcement agencies all report that requests are processed when made in writing or spontaneously. Requests to the Attorney General are usually in writing.

1160. The TCIs' Authorities appear to share a common position with respect to spontaneous request, that is, in practice spontaneous requests will be granted depending on who makes it and what the requests seek. If the entity receiving the request is required to do or produce any items, including documents, the requesting party is asked to put the request in writing. If however the information sought is available as intelligence or is public information, then spontaneous requests will be complied with immediately. The TCI Authorities have indicated that there are no obstacles in practice to a prompt and efficient exchange of information and no unreasonable delays in responding to requests in general as requests are processed as soon as they are received.

1161. The FSC and the FCU are given legislative authority to conduct enquiries on behalf of their foreign counterparts, as noted above. Other than powers to enforce external or overseas orders, and matters which fall within the scope of mutual legal assistance such as under the Evidence (Proceedings in Other Jurisdictions)(Turks and Caicos Islands)Order 1987 and other legislation discussed in Rec. 36 above, all other forms of co-operation between competent authorities in and out of the TCI are on an informal basis way. This however does not restrict the rendering of assistance when requests are made from foreign counterpart agencies, for example there is no MOU between the RTCIPF and Interpol, however international co-operation between these two entities is clearly permitted.

1162. The FCU can provide a wide range of assistance to its foreign counterparts. Section 110 of the POCO gives the FIU overriding powers in relation to assisting a foreign FIU to generally give effect to the purpose of the POCO. Under authorisation of this somewhat all-embracing section 110 of POCO, the FCU is permitted to conduct inquiries and assist with investigations. The FCU is as a result permitted to search its own database (FISS), which also maintains information relating to suspicious activity reports, and search other databases such as OTRIS and that belonging to the law enforcement agencies. The FCU would have indirect access to information from public and administrative databases and both direct and indirect access to commercially available databases.

1163. The FCU forms part of the RTCIPF and is authorised as noted above, to conduct investigations on behalf of its foreign counterparts. Though there is no formal mechanism in place for mutual assistance in the conducting of investigations between the other law enforcement agencies and their foreign counterparts, there is no restriction on the provision of such assistance by the RTCIPF, the Customs Department and the Immigration Department in the TCI. The law enforcement agencies report that such assistance is given as a matter of course in practice.

1164. Any request for assistance in the conduct of investigations received by the authorities in the TCI would itself be executed by the authority receiving it depending on the nature of the request or the request would be channelled to another competent agency for execution, again depending on the specific nature of assistance being sought.

1165. Reciprocity is not required by the FCU before it renders assistance or in order for assistance to be rendered. The only stipulation made by the FCU is that the information must not be disseminated to a third party without consent and that it should be used for intelligence purposes only. These are not unduly restrictive conditions, but rather usual conditions imposed regarding the exchange of information between financial intelligence units.

1166. Reciprocity appears to be required under the FSCO. In deciding whether to render assistance under the FSCO the FSC should have regard to whether the authority requesting assistance is likely to render assistance to the FSC should a request be made of that requesting authority; there is a parallel law in the TCI to any breach of law on which a request for assistance may be based; the matters and seriousness of the matter on which the request is based and whether the requested information could be obtained by some other means; and whether it is the public interest to provide the information.

1167. There has been no guidance given on how 'likely to render assistance 'is to be measured and no information was forthcoming on this aspect from the FSC, though this was requested by the Examiners. Taken as a whole, the considerations outlined above appear somewhat onerous particularly since they are to be applied conjunctively.

1168. The MLAO prohibits the rendering of assistance when the request seeks fiscal or tax information falling outside of the exceptions allowed by the MLAO. There are no such restrictions in relation to tax or fiscal matters under the FSCO in relation to the ability of the FSC to cooperate, provided the conditions set out above are fulfilled and the assistance sought relates to the foreign regulatory authorities' regulatory functions. Once the request relates to a criminal offence or investigation, the FCU will be able to provide assistance notwithstanding that tax or fiscal matters are also involved. Both the Attorney General and the Chief Magistrate affirm that requests for assistance would not be refused on the sole ground that it also involves tax or fiscal matters. Once the Request seeks other types of assistance which is legal or permissible, those parts of the request will be executed.

1169. Requests for cooperation are not refused on the grounds of laws that impose secrecy or confidentiality requirements upon financial institutions and DNFBPs. No such laws or requirements prohibit assistance from being given once criminal investigations or proceedings are involved, including in circumstances of legal or professional privilege.

1170. Controls and safeguards on the use of information provided from a foreign entity have been established for the FSC, through section 29(6) of the FSCO. No other safeguards on the use of information obtained as a result of international requests have been set out, save that information provided to the FCU as a result of requests would stipulate that the information provided is not to be disseminate without prior consent of the sender of the information.

Additional Elements

1171. There are no mechanisms in place which allow for the exchange of information with non-counterparts. The POCO in section 110 similarly speaks to foreign FIU, so too does the FSCO in relation to foreign regulatory authorities. In practice if a request from a non–counterpart is sent to a domestic agency, then that agency would direct the request to the relevant counterpart institution for execution of the request.

1172. The requesting party must disclose the purpose of the request and on whose behalf it is being made to the requested authority in the TCI. This is both as a matter of practice or as matter of law. The purpose of the request is a necessary consideration to be taken into account when deciding whether to grant assistance under the POCO or FSCO.

1173. The FIU can clearly obtain information from other competent authorities or persons in the TCI in order to comply with the terms of a request by a foreign FIU. This is because section 110 of the POCO permits the FIU to initiate and assist in the investigation, as well as to act to generally give effect to the provisions of the Ordinance.

1174. The obligations under Special Recommendation V are fulfilled with respect to the provision of international cooperation in relation to combating the financing of terrorism. The same qualification as pertains specifically to regulatory assistance applies , that is, the assistance would be provided if the assistance requested is in furtherance of the overseas regulatory authority's functions.

Additional Elements

1175. The answers provided with regard to Recommendation 40 above as it pertains to the sharing of information with non-counterparts and making requests to other competent authorities apply identically to matters relating to terrorism financing.

Recommendation 32

Statistics

1176. The FCU has received a total of 21 requests for international co-operation including spontaneous requests since the beginning of 2005 to date. No requests made to the FCU have been refused and have all been dealt with.

1177. The Chief Magistrate maintains statistics on all requests received and executed. Please see the details of those statistics in section 6.3 of this Report.

1178. Statistics on the number of requests for international co-operation dealt with by the Attorney General and by the FSC were not received, though requested, at the time of writing of this Report.

Additional Elements

1179. Formal requests made or received by law enforcement authorities in the TCI relating to ML and FT would be channelled to the FCU for execution.

6.5.2 Recommendations and Comments

1180. 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.

1181. The FSC should consider entering into MOU's with other foreign supervisory authority to ensure that the exchange of information to combat ML/FT can effectively be executed with other foreign jurisdictions.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**PC**	• **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** • **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.** • **Considerations which apply under the FSCO before regulatory assistance is given are onerous when taken conjunctively.**
SR.V	**LC**	**See reasons given in section 6.3 of this Report.**

7. OTHER ISSUES

7.1 Resources and statistics

Assessors should use this section as follows. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report will contain only the box showing the rating and the factors underlying the rating, and the factors should clearly state the nature of the deficiency, and should cross refer to the relevant section and paragraph in the report where this is described.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and

		underlying overall rating
R.30	**NC**	• **AML/CFT related training is lacking at the Gaming Inspectorate.** • **Funding for the Gaming Inspectorate is dependent upon government funds (Ministry of Finance)** • **The FSC is not properly structured. The current structure imposes a risk for conflict of interest.** • **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.** • **AML/CFT training for staff of competent authorities with few exceptions has 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.** • **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.**
R.32	**PC**	• **The TCI does not review the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis.** • **Comprehensive statistics are not maintained by all competent authorities.** • **No data had been provided regarding AML/ CFT on-site examinations of financial institutions and, where appropriate, sanctions relative thereto.**

7.2 Other relevant AML/CFT measures or issues

Assessors may use this section to set out information on any additional measures or issues that are relevant to the AML/CFT system in the country being evaluated, and which are not covered elsewhere in this report.

7.3 General framework for AML/CFT system (see also section 1.1)

Assessors may use this section to comment on any aspect of the general legal and institutional framework within which the AML/CFT measures are set, and particularly with respect to any structural elements set out in section 1.1, where they believe that these elements of the general framework significantly impair or inhibit the effectiveness of the AML/CFT system.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA).

Forty Recommendations	Rating	Summary of factors underlying rating[20]
Legal systems		
1. ML offence	**PC**	**The exact scope of what the POCO appeals, amends and saves is ambiguous.** **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.** **The FATF 20 Designated Categories of Offences are not fully reflected in the laws of the TCI.** **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.** **The effectiveness of TCI's legal framework is difficult to assess since there have no money laundering convictions since 2002.** **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**

1. [20] These factors are only required to be set out when the rating is less than Compliant.

		obtained for adequate consideration.
2. ML offence – mental element and corporate liability	**LC**	**The penalties for money laundering upon summary conviction are lenient and therefore are not dissuasive sanctions.** **The efficacy of implementation of the anti-money laundering regime is uncertain, particularly in view of the very low incidence of ML prosecutions.**
3. Confiscation and provisional measures	**LC**	**Forfeiture or confiscation of instrumentalities intended for use in or used in ML/FT offences are not clearly covered by the POCO.**
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	**This Recommendation is fully observed.**
5. Customer due diligence	**NC**	**There are no requirements in the POCO and AMLR which prohibit financial institutions from keeping anonymous accounts or accounts with fictitious names.** **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.** **No requirement for financial institutions to conduct CDD on legal persons or legal arrangements.** **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.** **No requirement for financial institutions to verify the legal status of the legal person or legal arrangement.** **No requirement for financial institution perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.** **No requirement for financial institutions to conduct ongoing due diligence on existing**

		customers. **No requirement for financial institutions to perform enhanced due diligence on high risk customers.** **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.** **No requirement to terminate the business relationship if proper CDD cannot be conducted.** **No requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date.** **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.** **The scope of AML/CFT legislation in the TCI does not cover financial institutions that engage in mortgage lending.** **No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.**
6. Politically exposed persons	**NC**	**No requirements concerning PEPs are applicable to regulated persons at present.** **No requirement for senior management approval of a relationship with a customer who is found to be a PEP.** **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.** **Little awareness of the requirements in relation to the performance of enhanced CDD measures on high risk customers who are PEPs.**

		No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.
7. Correspondent banking	**NC**	**No requirement to determine the reputation of a respondent and the quality of supervision.** **No provision to obtain senior management approval before establishing new correspondent relationships.** **No provision to document respective AML/CFT responsibilities in correspondent relationships.** **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.** **No requirement for the financial institution to be satisfied that the respondent institution can provide reliable customer identification data upon request.** **No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.**
8. New technologies & non face-to-face business	**PC**	**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.**
9. Third parties and introducers	**PC**	**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.** **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.
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).**
11. Unusual transactions	**NC**	**No requirements for special attention to be paid to characteristics of size and purpose of transactions.** **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.** **No minimum record retention period applies for the findings resulting from a closer investigation of unusual transaction patterns.** **No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.**
12. DNFBP – R.5, 6, 8-11	**NC**	**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.** **No contact has been established with dealers in precious metals or precious stones to inform them of the AML/CFT**

		legislative changes and the consequences thereof for the relevant industry. **TCI Authorities have not determined yet who will be responsible for the compliance oversight of the dealers in precious metals and precious stones.** **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.** **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.** **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.** **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.** **The gaming industry lacks the implementation of an AML/CFT compliance supervisory regime.** **The role of the Gaming Inspectorate and the FCU in the implementation of the AML/CFT framework is not clearly defined.**
13. Suspicious transaction reporting	**PC**	**The guidance provided for the effective execution of the suspicious transaction reporting requirement**

		is not considered sufficient **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).** **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.** **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.**
14. Protection & no tipping-off	**C**	**This Recommendation is fully observed.**
15. Internal controls, compliance & audit	**PC**	**Applicable requirements for the implementation of an internal control framework do not address the issue of CFT.** **Policy manuals of entities supervised by the FSC do not include CFT.** **No requirements in place for the appointment of an independent audit function to test compliance with procedures, policies and controls on AML/CFT.** **No effective implementation of the AMLR requirement to keep training records of employees.** **No requirement to have financial institutions put in place screening procedures to ensure that high standards apply when hiring new employees.**
16. DNFBP – R.13-15 & 21	**NC**	**There is a lack of implementation of the**

		AML/CFT legislative framework for DNFBPs **To date no STRs have been filed with the FCU by any category of DNFBP, except for Trust and company service providers.** **No training of DNFBPs on the filing of STRs.** **DNFBPs have not implemented an internal framework for the compliance with AML/CFT rules and regulations.**
17. Sanctions	**PC**	**The sanctions in the legislative framework are not effective or dissuasive.** **Financial sanctions can not be applied by the supervisory without a court order.** **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.**
18. Shell banks	**PC**	**Although the Code appropriately addresses shell banks it cannot be properly enforced.**
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.**
20. Other NFBP & secure transaction techniques	**PC**	**TCI has not considered the risk of other non-financial businesses and professions being misused for the purpose of ML/ FT.** **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.**
21. Special attention for higher risk countries	**NC**	**The majority of financial institutions do not observe the level of compliance of the foreign jurisdiction when establishing international business relationships.** **No effective implementation of AML/CFT**

		regime as a result of recent enactment of legislation (AMLR and Code) and guidance.
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.**
23. Regulation, supervision and monitoring	**PC**	**The integrity component to the "fit and proper" testing of relevant persons is not clearly specified by the FSC.** **There was no evidence that Collective investment Schemes' Core Principles (IOSCO) apply for Mutual Funds in TCI.** **The recently enacted legislative framework providing for the licensing and supervision of MVT is not yet effective.**
24. DNFBP - regulation, supervision and monitoring	**NC**	**No implementation plan in place addressing the relevant issues pertaining to the effective implementation of an AML/CFT oversight regime for the gaming industry.** **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.** **TCI authorities have not appointed oversight body(ies) that is/are responsible for monitoring compliance with AML/CFT rules and regulations by DNFBPs (except for trust and company service providers that fall under the supervision of the FSC).** **No effective implementation of the enforcement regime for DNFBPs.** **The Gaming Inspectorate does not have the ability to disclose information to overseas regulators and to domestic regulators.**

25. Guidelines & Feedback	**NC**	**The FSC has not issued any guidance relative to trends and typologies in ML/FT.** **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.** **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.** **The FCU is currently not issuing reports on statistics, trends and typologies related to ML and TF to regulated entities** **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.** **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.** **The guidance provided so far to DNFBPs with regard to the introduction of the new AML/CFT requirements is insufficient.** **No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.**
Institutional and other measures		
26. The FIU	**PC**	**The FCU does not appear to have full operational independence and autonomy.** **The FCU has not provided sufficient guidance to financial institutions and other**

		reporting parties regarding the reporting of STRs. **The FCU has not provided feedback to reporting parties in a formalized and timely manner.** **The FCU does not release periodic reports which include statistics on STRS, trends and typologies within the sector and an update of its activities.** **The building which houses the FCU does not appear to be properly secured.**
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 have not been issued to the respective companies.** **The report of findings relative to on-site examinations of the trust and company service providers industry have not been issued consistently (backlog).** **The FSC is limited in its potential to give follow up to deficiencies identified during on-site inspections.** **The FSC does not provide for sufficient written instruction to regulated entities.** **The FSC does not have the authority to impose financial sanctions independently (summary of convictions required)**
30. Resources, integrity and training	**NC**	**AML/CFT related training is lacking at the Gaming Inspectorate** **Funding for the Gaming Inspectorate is dependent upon government funds (Ministry of Finance)** **The FSC is not properly structured. The current structure imposes a risk for conflict of interest.**

		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. **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.** **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.** **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.**
31. National co-operation	**PC**	**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.**
32. Statistics	**PC**	**The TCI does not review the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis.** **Comprehensive statistics are not maintained by all competent authorities** **No data had been provided regarding AML/ CFT on-site examinations of financial institutions and, where appropriate, sanctions relative thereto.**
33. Legal persons – beneficial owners	**PC**	**There is no evidence that any training occurred on matters relative to legal persons including the revised procedure for reporting of suspicious transactions.**

		The deficiencies identified in Rec. 5 with regard to beneficial ownership apply equally to Rec. 33.
34. Legal arrangements – beneficial owners	**PC**	**Persons associated with Legal Arrangements do not appear to be aware of the revised protocol for reporting suspicious transactions.** **There is no evidence that the FCU held training sessions on matters relative to Legal Arrangements.** **The deficiencies indentified with regard to beneficial ownership at R5 apply to trustee services.**
International Co-operation		
35. Conventions	**PC**	**The Palermo Convention and the Terrorism Financing Convention have not by extension been ratified on behalf of the TCI.** **Not all relevant aspects of the Conventions have been implemented.**
36. Mutual legal assistance (MLA)	**PC**	**Mutual legal assistance will not be provided by the TCI once tax or fiscal matters are involved which do not fall within certain exemptions.** **The effectiveness of implementation is difficult to assess due to the lack of statistical details.** **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.**
37. Dual criminality	**C**	**This Recommendation is fully observed.**
38. MLA on confiscation and freezing	**PC**	**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.**

		The effectiveness of implementation cannot be ascertained.
39. Extradition	**C**	**This Recommendation is fully observed.**
40. Other forms of co-operation	**PC**	**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** **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.** **Considerations which apply under the FSCO before regulatory assistance is given are onerous when taken conjunctively.**
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	**PC**	**The Terrorist Financing Convention has not been ratified or fully implemented.**
SR.II Criminalise terrorist financing	**PC**	**Penalties for terrorist financing offences at the summary level are lenient.** **The elements of directing terrorism as required by Article 2(5) of the Terrorist Financing Convention, are undefined in the laws of the TCI.** **Inconsistent mens rea requirements for terrorism offences.** **The effectiveness of the CFT regime is difficult to assess in the absence of any STRs or investigations on FT.**
SR.III Freeze and confiscate terrorist assets	**LC**	**Ineffective implementation of a strong CFT regime:** **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** **no clear procedures for the communication of lists of suspected terrorists to the financial sector.**
SR.IV Suspicious transaction reporting	**PC**	**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.**
SR.V International co-operation	**LC**	**There are no formal administrative procedures which have been established to ensure mutual legal assistance is given in a timely manner.** **Deficiencies noted with regard to Recs. 36 and 38 are also applicable to this Recommendation.**
SR VI AML requirements for money/value transfer services	**PC**	**Money service providers have not yet been licensed within the TCI.** **The AML/CFT legislative framework applicable to money service providers has not been effectively implemented.** **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.**
SR VII Wire transfer rules	**NC**	**There are no measures in place to cover domestic, cross-border and non-routine wire transfers.** **There are no requirements for intermediary and beneficial financial institutions handling wire transfers.** **There are no measures in place to effectively monitor compliance with the requirements of SR VII.**
SR.VIII Non-profit organisations	**NC**	**TCI Authorities have not addressed the non-profit organizations that can be used**

		for FT purposed in their legislative framework. **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.** **There are no sanctions against non-profit organisations for failure to comply with AML/CFT measures.** **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.** **No measures to ensure that NPOs can be effectively investigated and that required information can be gathered.** **Regulatory bodies have not issued any guidance notes to regulated entities to increase awareness for the relevant risks of non-profit organizations as FT vehicles.** **The FCU has not provided any guidance to NPOs regarding the reporting of suspicious transactions.** **There has not been any training for NPOs.** **There is no point of contact with regard to obtaining international requests for information on NPOs.**
SR.IX Cross Border Declaration & Disclosure	**NC**	**The recently enacted POCO has had no time to be effectively implemented.** **The Immigration Department has not established any MOUs with its counterparts abroad.** **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.

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• **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.** • **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**
2.2 Criminalisation of Terrorist Financing (SR.II)	• **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 Islands.** • **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.**

	•
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• **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.**
2.4 Freezing of funds used for terrorist financing (SR.III)	• **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.**
2.5 The Financial Intelligence Unit and its functions (R.26)	• **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.**
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	
2.7 Cross Border Declaration & Disclosure (SR IX)	• **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
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• **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 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. • **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.** • **TCI authorities should consider issuing more guidance to financial intuitions on matters relating to AML/CFT.** • **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.**
3.3 Third parties and introduced business (R.9)	• **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.**

3.4 Financial institution secrecy or confidentiality (R.4)	• **The Gaming Inspectorate should possess the ability to disclose information to overseas regulators and to share information with domestic regulators.**
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• **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.** • **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 insinuations and the implementation of effective, proportionate and dissuasive sanctions for non compliance with SR VII. Appropriate legislation should be enacted as soon as possible.**
3.6 Monitoring of transactions and relationships (R.11 & 21)	• **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.** • **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 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.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• **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.** • **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.** • **The FCU should provide more feedback to regulated entities in order to increase their capacity to detect and deter ML and TC 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.**
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• **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, to the screening of all employees to fully comply with essential criterion 15.4.** • **Financial institutions should be required to have their screening policy for new personnel formalized and documented for review by the FSC.** • **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.**
3.9 Shell banks (R.18)	• **TCI is advised to take appropriate action to ensure that the measures in the Code pertaining to shell banks can be properly enforced.**
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	• **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 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** • **The TCI authorities are advised to take appropriate actions relative to the enforceability of the Code, in order for it to be considered 'other enforceable means' under the FATF methodology.** • **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 them 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 the outcome of these follow up actions.** • **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.**
3.11 Money value transfer services (SR.VI)	• **The FSC should establish contact with the money service providers' industry, to start the licensing process of the relevant companies.** • **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.**
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• **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".** • **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.**
4.2 Suspicious transaction reporting (R.16)	• **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.**
4.3 Regulation, supervision and monitoring (R.24-25)	• **TCI should draw up an implementation plan, for the AML/CFT supervisory regime for casinos. This plan should address the following:** o **Who is responsible for the training of gaming inspectors in the area of AML/CFT compliance oversight;** o **Who is responsible for informing the relevant sector of the AML/CFT changes and the respective implications for the relevant sector;** o **Who is responsible for training of the gaming industry in the introductory phase;** o **What are the tools required for an effective oversight of the industry's compliance with AML/CFT laws and regulations;** o **Where necessary resources should be sought to appropriately equip the Gaming Inspectorate for the effective AML/CFT**

	oversight tasks. • **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.** • **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 to section 3 where recommendations have been made relative to the AML/CFT non-compliance sanctioning/enforcement regime in place.** • **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**.
4.4 Other non-financial businesses and professions (R.20)	• **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 asses 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.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• **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.**
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	• **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 programmme to include AML/ CFT training on matters relative to Legal Arrangements.**
5.3 Non-profit organisations (SR.VIII)	• **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 FCU.** • **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.**
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• **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 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.** • **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.**
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• **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.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• **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.** • **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 efficiency of the entity or persons responsible for executing a request but on formal systems which can monitor and support such efficiency.**
6.4 Extradition (R.39, 37 & SR.V)	• **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.**
6.5 Other Forms of Co-operation (R.40 & SR.V)	• **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.**
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country Comments

ANNEXES

Annex 1: List of abbreviations
Annex 2: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.
Annex 3: Copies of key laws, regulations and other measures
Annex 4: List of all laws, regulations and other material received

Annex 1

LIST OF ABBREVIATIONS

AML	Anti-Money Laundering
AMLR	Anti-Money Laundering Regulations, 2007
BO	Banking Ordinance
CALP	Caribbean Anti-Money Laundering Programme
CAIR	Caribbean Association of Insurance Regulators
CDD	Customer Due Diligence
CFT	Counter Financing of Terrorism
CFTAF	Caribbean Financial Action Task Force
CO	Company Ordinance
CMLO	Company Management (Licensing) Ordinance, 1999
CRO	Confidential Relationships Ordinance, 1979
DNFBP'S	Designated Non Financial Businesses & Professions
FATF	Financial Action Task Force
FCU	Financial Crimes Unit
FISS	Financial Intelligence Support System
FIU	Financial Intelligence Unit
FSRB'S	FATF Styled Regional Bodies
FSC	Financial Services Commission
FSCO	Financial Services Commission Ordinance, 2007
FT	Financing of Terrorism
IAIS	International Association of Insurance Supervisors
IDLO	Investment Dealers (Licensing) Ordinance
IO	Insurance Ordinance
IMF	International Monetary Fund
KYC	Know Your Customer
ML	Money Laundering
MLAT	Mutual Legal Assistance Treaty
MLRA	Money Laundering Reporting Authority
MLRO	Money Laundering Reporting Officer
MTO	Money Transmitters Ordinance
MVT	Money Value Transmitters
OGIS	Offshore Group of Insurance Supervisors
OTRCIS	Overseas Territories Regional Criminal Intelligence System
PFO	Police Force Ordinance
RTCIPF	Royal Turks and Caicos Islands Police Force
REBA	Real Estate Brokers Association
STR	Suspicious Transaction Report
SAR	Suspicious Activities Report
S/RES	Security Council Resolution
TCI	Turks and Caicos Islands
TO	Trustee Ordinance, 1992
TLO	Trustee Licensing Ordinance
UK	United Kingdom

Annex 2

Details of all bodies met on the Mission – Ministries, other government authorities or bodies, private sector representatives and others

Ministries

Ministry of Legal Affairs
Office of the Attorney General

(Ministry of National Security)
Commissioner of Police
Comptroller of Customs
Director, Immigration

Ministry of Finance
Minister of Finance
Permanent Secretary

2 Operational Agencies

Financial Crimes Unit
- Head, FCU
- Financial Intelligence Unit

3 Financial Sector – Government

Financial Services Commission (FSC)
- Managing Director (Supervisor of Banks, Investments and Mutual Trusts)
- Superintendent Trust & Company Management
- Registrar of Insurance
- Registrar of Cooperatives

4. Financial Sector – Associations and Private Sector entities

- Bankers Association
- Bordier Bank
- Temple
- Western Union
- Belize Bank
- Scotiabank
- TCBC (Turks & Caicos Banking Company)
- First Caribbean International Bank
- KPMG (Insurance & Auditors).
- Hallmark Trust

- Empower
- CSC Insurance
- TCI Bank
- PWC (Price Waterhouse Coopers)
- Casino (Casablanca)
- John Jones Company Manager
- TCI First Insurance Company

5. DNFBPs – Government and SROs

- Gaming Inspector
- Real Estate Brokers
- Bar Council

Annex 3

Legislation

Sections 117-119 of the Proceeds of Crime Ordinance, 2007

"117. (1) Subject to subsection (2), a person is guilty of an offence if he –

(a) conceals criminal property;

(b) disguises criminal property;

(c) converts criminal property;

(d) transfers criminal property;

(e) removes criminal property from the Islands.

(2) A person is not guilty of an offence under subsection (1) if –

(a) he makes an authorised disclosure and, if the disclosure is made before he does the act specified in subsection (1), he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so; or

(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Ordinance or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it."

Section 118 stipulates that "a person is guilty of an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates, by whatever means, the acquisition, retention, use or control of criminal property by or on behalf of another person."

Section 119 provides

"119. (1) Subject to subsection (2), a person is guilty of an offence if he –

(a) acquires criminal property;

(b) uses criminal property; or

(c) has possession of criminal property.

(2) A person is not guilty of an offence under subsection (1) if –

(a) he makes an authorised disclosure and, if the disclosure is made before he does the act specified in subsection (1), he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) he acquired or used or had possession of the property for adequate consideration;

(d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Ordinance or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) For the purposes of this section –

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession of the property;

(c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

Tipping-off Offence – Section 123 of the POCO.

Section 123 of the POCO states that

(1) subject to section 124, a person is guilty of an offence if –

(a) he knows or suspects that the Reporting Authority, a police officer, the Civil Recovery Authority or any other authorised person is acting, or is proposing to act, in connection with–

(i) a criminal recovery investigation,

(ii) a civil recovery investigation, or

(iii) a money laundering investigation; and

(b) he –

(i) makes a disclosure that is likely to prejudice that investigation, or proposed investigation, or

(ii) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

(2) Subject to section 124, a person is guilty of an offence if –

(a) he knows or suspects that an authorised or protected disclosure has been made; and

(b) he makes a disclosure which is likely to prejudice any investigation which might be conducted following that disclosure.

(3) A person guilty of an offence under this section shall be liable -

(a) on summary conviction, to imprisonment for a term not exceeding twelve months or a fine not exceeding $20,000 or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine without limit or to both.

Definition of property in the POCO – Section 3(1)

Property is broadly defined in section 3(1) of the POCO as –

"3. (1) In this Ordinance, property means property of every kind, whether situated in the Islands or elsewhere, and includes :

(a) money;

(b) all forms of real or personal and heritable or moveable property; and

(c) things in action and other intangible or incorporeal property.

Further, section 3(2) of the POCO makes the following provisions with regard to property: The following provisions apply with respect to property –

(a) property is held by a person if he holds an interest in it;

(b) property is obtained by a person if he obtains an interest in it;

(c) property is transferred by one person to another if the first person transfers or grants an interest in it to the other person;

(d) references to property held by a person include references to property vested in his trustee in bankruptcy or, in the case of a company, its liquidator and references to an interest held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested;

(e) references to an interest, in relation to land in the Islands are to any legal estate or equitable interest or power; and

(f) references to an interest, in relation to property other than land, include references to a right, including a right to possession."

Annex 4

List of all Laws, Regulations and other Material received

1. Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002
2. Anti – Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002
3. Anti – Money Laundering and Prevention of Terrorist Financing Code 2007
4. Anti-Money Laundering Regulations
5. Banking Ordinance
6. Casinos Ordinance
7. Company Management (Licensing) Ordinance
8. Confidential Relationships Ordinance
9. Criminal Justice (International Cooperation) Ordinance
10. Customs Ordinance [Cap 135]
11. Extradition (Overseas Territories) Order 2002
12. Financial Services Commission Ordinance 2007
13. Insurance Ordinance
14. Investment Dealers (Licensing) Ordinance
15. Immigration Ordinance
16. Money Transmitters Ordinance
17. Mutual Funds Ordinance
18. Mutual Legal Assistance Ordinance
19. Overseas Regulatory Authority (Assistance) Ordinance
20. Police Force Ordinance [Cap 142]
21. Proceeds of Crime Ordinance 2007
22. Proceeds of Crime (Designated Countries and Territories) Order 2001
23. Terrorism (United Nation Measures) (Overseas Territories) Order 2001
24. The General Orders of the Turks and Caicos Islands Public Service – 1998 Edition
25. Trustees (Licensing) Ordinance
26. Trust Ordinance