



Fifth Follow-Up Report

Turks & Caicos Islands

November 7, 2011

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TURKS & CAICOS ISLANDS: FIFTH FOLLOW-UP REPORT

I. Introduction

1. This report represents an analysis of the Turks and Caicos Islands' report back to the CFATF Plenary concerning the progress that it has made with regard to correcting the deficiencies that were identified in its third round Mutual Evaluation Report. The third round Mutual Evaluation Report of the Turks and Caicos Islands was adopted by the CFATF Council of Ministers in October 2008 in St. Kitts & Nevis. The Turks and Caicos Islands presented its fourth follow-up report at the May Plenary in Honduras, at which time it was determined that the Turks & Caicos Islands would be required to report at the November 2011 Plenary. Based on the review of actions taken by the Turks & Caicos Islands since its last follow-up report to meet the outstanding recommendations made by the Examiners, a recommendation would be made as to whether the Turks & Caicos Islands would remain on expedited follow-up or be placed on regular follow-up.
2. The Turks & Caicos Islands received ratings of PC or NC on twelve (12) of the sixteen (16) Core and Key Recommendations as follows:

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

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

| Partially Compliant (PC) | Non-Compliant (NC) |
|---|--|
| R. 9 (Third parties and Introducers) | R. 6 (Politically Exposed Persons) |
| R. 15 (Internal controls, compliance & audit) | R. 7 (Correspondent banking) |
| R. 16 (DNFBP-R. 13-15 & 21) | R. 8 (New technologies & non face-to-face business) |
| R. 17 (Sanctions) | R. 11 (Unusual transactions) |
| R. 18 (Shell banks) | R. 12 (DNFBPs – R. ,6,8-11) |
| R. 20 (Other NFBP & secure transaction techniques) | R. 19 (Other forms of reporting) |
| R. 29 (Supervisors) | R. 21 (Special attention for higher risk countries) |
| R. 31 (National cooperation) | R. 22 (Foreign branches & subsidiaries) |
| R. 32 (Statistics) | R. 24 (DNFBP-regulation, supervision and monitoring) |
| R. 33 (Legal persons – beneficial owners ⁰) | R. 25 (Guidelines and feedback) |
| R. 34 (Legal arrangements – beneficial owners) | R. 30 (Resources) |
| R. 38 (Mutual legal assistance on confiscation and freezing) | SR. VII (Wire transfer rules) |
| SR. VI (AML requirements for money and value transfer services) | SR. VIII (Non-profit organizations ⁰) |
| | SR. IX (Cash couriers ⁰) |

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

Size and integration of the jurisdiction’s financial sector

| | | Banks | Other Credit Institutions ^{1*} | Securities | Insurance | TOTAL |
|-------------------------------|----------------------|-----------------|---|----------------|-------------|-------------|
| Number of institutions | Total # | 8 | N/A | 6 | 5,291 | 5305 |
| Assets | US\$ | 1,727,729 | N/A | 58,759,242 | N/A | 60,486,971 |
| Deposits | Total: US\$ | 899,581,000 | N/A | 58,759,242 | N/A | 59,764,658 |
| | % Non-resident | 30% of deposits | N/A | N/A | N/A | - |
| International Links | % Foreign-owned: | 84% of assets | % of assets | n/a% of assets | % of assets | % of assets |
| | #Subsidiaries abroad | 5 | N/A | 0 | 0 | 5 |

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

5. Since the fourth follow-up report, (FUR) the Anti-Money Laundering and Prevention of Terrorist Financing Code, 2011 (AML/PTF Code) came into force on May 6, 2011. As noted in the previous FUR, the new Code will cover deficiencies noted in Recommendations 6, 7, 8, 11, 13, 15, and 18. The Turks and Caicos Islands also made amendments to the Companies Ordinance (Companies (Amendment) Ordinance, 2011) and the Limited Partnerships Ordinance (Limited Partnerships (Amendment) Ordinance, 2011). These amendments positively impacted record-keeping requirements. The various amendments to the Anti-Money Laundering and Prevention of Terrorist Financing Regulations, 2010; and sections of the POCO, noted in the previous FUR are still pending

Core Recommendations²

Recommendation 5

6. The Examiners’ recommendation pertaining to requiring that financial institutions undertake CDD measures when carrying out occasional transactions that are wire transfers is still not met. The Authorities have noted that amendments to the AML/PTF Regulations have been drafted and approved by the Advisory Council and will be debated before the Consultative Forum (which is TCI’s version of a parliamentary assembly under the current Constitutional arrangements) at their next meeting which is set for November 9, 2011. It is expected that the amendments will be in force by the end of November 2011. With regard to outstanding deficiencies for E.C. 5.5.2(b) and E.C. 5.4(b), the AML/PTF Regulations is still to be amended to require the determination of

¹ Savings and loans institutions, credit unions, financial cooperatives and any other depository and non-depository credit institutions are not regulated in the TCI and the TCI Authorities report that they are not aware of such institutions operating in the TCI.

² Recommendation 1 has been fully met and since there are no new updates, it will not be reflected in this Follow-Up Report.

the natural person who ultimately owns or controls customers that are legal persons and also legal arrangements and to require the verification of the legal status of the legal person or legal arrangement. The amendments to the AML/PFT are expected to be in force by the end of November 2011 as noted above. With regard to a sensitization campaign to make financial institutions aware of the benefits and requirement to perform relevant CDD, The AML/PTF Code at page 24 provides in the form of Guidance; information as to the need for CDD and also a detailed definition of CDD. The FSC will also be hosting a seminar on the new AML/PTF Code 2011 on November 17, 2011. Based on the current review of compliance with R. 5, there are three³ of the Examiners' recommendations that are outstanding, one is partially met and the other has not been met.

Recommendation 10

7. Based on the provisions of Regulations 18 and 19 of the AML/PTF Regulations, the Examiners' recommendation was met. However, the Authorities have noted additional updates to the implementation of R. 10, which are contained in the AML/PFT Code. Specifically, Part VII of the Code at page 82 provides for the keeping of records documenting financial businesses' policies, systems and controls to prevent and detect money laundering for a period of at least five (5) years. Additionally, guidance is provided on pages 83-84 of the Code with regard to record-keeping. With regard to accounting records, the Companies (Amendment) Ordinance, 2011 and the Limited Partnerships (Amendment) Ordinance, 2011 amended Section 57 of the Companies Ordinance and Section 10 of the Limited Partnerships Ordinance respectively. These amendments have expanded the record-keeping obligations in respect of companies and limited partnerships and create an offence for failure to maintain such records. The amendments came into force on July 29th, 2011.

Recommendation 13

8. Section 29(1)(e) of the AML/PTF Code provides for the timely filing of SARs. It requires the MLRO to disclose information that is contained in a report 'as soon as is reasonably practicable and in any event, within twenty-four hours.' Further, Section 30(1)(c) requires employees to make internal suspicious activity reports to the MLRO as soon as it is reasonably practicable and in any event within twenty-four (24) hours after the information comes to their attention. Additionally, the Code contains Guidance on the requirements of the POCO and the TF legislation and the obligation to disclose knowledge or suspicion of ML and the timing of such reporting. These measures satisfy the Examiners' recommendation that there be guidelines issued with regard to STRs and also with regard to having timely filing to ensure 'prompt reporting behaviour' The issue with regard to the standardization of the STR form and guidance on instructions for filing have been met. The Authorities have indicated that no specific guidance has been provided to the regulated sector with regard to the reporting of unusual transactions. Based on the above the Examiners' recommendations have been substantially complied with except for the guidance on unusual transactions as noted.

Special Recommendations II and IV

³ The three recommendations are contained in two bullet points; the first and the fourth.

9. There has been no update with regard to meeting the recommendations made by the Examiners with regard to SR. II. Based on the amendments to the matrix made by the TCI Authorities it appears that a new Terrorism Offences Bill will not be drafted to replace the piecemeal CFT provisions. Accordingly, the Examiners' recommendations for SR. II remain outstanding. With regard to SR. IV, Section 29 of the AML/PTF Code provides for the reporting of STRs where 'the MLRO knows, suspects or has reasonable grounds to suspect that another person is engaged in or attempted to engage in money laundering or terrorist financing regardless of the amount of the transaction'. While this requirement meets the requirement with regard to the reporting of attempted transactions; the supervisory authorities should ensure that it is clear at the operational level in financial institutions that attempted transactions should be reported and not have that determination made once a report reaches the level of the MLRO. In that regard, Section 30 of the Code requires that financial businesses establish internal reporting procedures that include the reporting of all suspicious transactions, including attempted transactions regardless of the amount of the transaction and business that has been refused. The relevant supervisory authority should ensure that these measures are implemented. The Examiners' recommendation with regard to the reporting of STRs including suspicion of terrorist organisations or those who finance terrorism has not been met.

Key Recommendations

Recommendation 23

10. With regard to the outstanding issue pertaining to the inclusion of collective investment schemes 'Core Principles' in the FSC's supervisory framework, there has been no indication that the investment schemes have been included in the supervisory framework as indicated in the previous FUR. Accordingly, this recommendation remains outstanding. With regard to membership in IOSCO, the TCI Authorities now hope that their membership will be considered soon since it was not considered in IOSCO's July 2011 meeting.

Recommendation 26

11. As noted in the previous report, the issue with regard to the produce and periodically release of its own monthly reports containing statistics on STRs, trends and typologies and updates on its activities by the FCU has not been met. Although it was noted in the previous FUR that the MLRA at its January 2011 meeting had directed the FCU to produce and periodically release these reports containing the information noted, the Authorities in the current matrix have now indicated that the matter will be reviewed further at the MLRA meeting scheduled for September 2011. The Authorities noted that the issue was raised with the new Commissioner of Police at the MLRA meeting in September 2011 who advised that as there is a new Head of the FCU he would discuss the need for regular reporting and ensure that reporting is done. An update on this matter is expected at the MLRA meeting set for December 2011.

Recommendation 35

12. The situation remains the same, in that the Palermo and Financing of Terrorism Conventions have not been ratified by the United Kingdom on behalf of the Turks and Caicos Islands. Accordingly, the Examiners' recommendation has still not been met.

Recommendation 36

13. The Examiners' recommendation has been previously met. The TCI Authorities have indicated that an additional Tax Information Exchange Agreements (TIEA) were signed with the Netherlands on May 1, 2011 and the TIEA with France came into force on July 14, 2011.

Recommendation 40

14. The situation with regard to Recommendation 40 remains the same as was stated in the two previous FURs. No additional indication has been given with regard to the stipulation of specific standard operating procedures for dealing with the execution of request received is still under review. As to the Examiners recommendation that the FSC consider entering into MOUs with other foreign supervisory authorities so as to facilitate the effective exchange of ML/FT information, the Authorities have noted in their updated matrix that the FSC has now entered into five (5) MOUs with foreign supervisory authorities including Canada, Panama, the Cayman Islands, Jamaica and a multinational MOU with several regional jurisdictions. www.tcifsc.tc. The Bahamas, Trinidad and Tobago, and Barbados are now signatories to the multinational MOU. In June 2011, an MOU was signed with the Office of the Superintendent of Financial Institutions (OSFI) in Canada. The FSC is also in negotiations with the Insurance Commission of The Bahamas and the FSC of Barbados.

Special Recommendation I

15. There has been no change in the status of this Recommendation. In the previous FURs, the Authorities has noted their intention to draft stand-alone legislation on CFT matters that the Bill on Terrorism would contain provision in line with the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism. Based on the foregoing, the Examiners' recommendation for the full implementation of the UNSCRs remains outstanding.

Other Recommendations⁴

Recommendations 6 and 7

16. The provisions of Sections 13(2) and (3) of the AML/PTF Code meet the Examiners' recommendation with regard to financial institutions being required to obtain 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. Guidance for dealing with PEPs is also provided at pages 36 to 38 of the Code. All of the Examiners recommendations have been met with regard to R. 6. With regard to R. 7, Sections 42 and 43 of the AML/PTF Code provide full

⁴ Recommendation 19 has been fully met and since there is no update, the recommendation has not been presented in this Report.

AML/CFT measures with regard to correspondent banking relationships. Guidance on correspondent banks is also provided at pages 86-87 of the AML/PTF Code. The Examiners' recommendation has been fully met with regard to R. 7 since the new measures include all the deficiencies noted at the time of the Evaluation. Regulation 16 of the AML/PTFR has been amended to extend the provision to all financial institutions. The amendments have been approved by the Advisory Council and will be debated before the Consultative Forum at its next meeting set for November 9, 2011. It is expected that the amendments will be in force by the end of November 2011.

Recommendation 8

17. The Examiners' recommendation pertaining to measures to prevent the misuse of technological developments is contained at Section 6 (2) of the AML/PTF Code. Specifically, it provides that '[a] financial business shall establish, maintain and implement systems and controls and take such other measures, as it considers appropriate to guard against the use of technological developments in money laundering or terrorist financing.' This provision meets the Examiners' recommendation. The Authorities have also noted that Section 24 of the Code addresses the issue of non-face-to-face business. The Examiners' recommendation pertaining to the inclusion of mortgage lending under a licensing regime thereby making it subject to AML/CFT requirements has not been addressed.

Recommendations 9

18. Section 27 of the AML/PTF Code provides in relevant part that adequate information must be obtained in writing from the introducer or intermediary with regard to the application of CDD that were relied on and also for financial businesses relying on an introducer or intermediary to immediately obtain in writing information pertaining to identification and verification of the ultimate beneficial owner (person or entity). The provision of Section 27 of the Code corrects the deficiency that was previously noted in Regulation 14⁵ of the AML/PTFR. Based on a review of Section 27 of the Code, it appears that financial businesses are required to assure themselves (by obtaining in writing) that the third party is regulated and supervised in accordance with Recs. 23, 24 and 29 and that there are measures in place that to comply with the CDD requirements of Recs. 5 and 10. The outstanding recommendations have now been met and TCI now fully complies with the Examiners' recommendations for R. 9.

Recommendation 11

19. The outstanding requirements pertaining to E.C. 11.2 and E.C. 11.3) have now been met. Section 28 of the AML/PTF Code provides that a written record be kept of the conclusions of a financial business as it pertains to complex transactions, unusual large transactions and unusual patterns of transactions (all considered 'as presenting a higher risk'). With regard to record retention, Section 37 of the Code provides that 'records

⁵ In the third follow-up report for TCI, the analysis of Regulation 14 of the Anti-Money Laundering Prevention of Terrorism Financing Regulations noted that in Reg. 14(2)(c) 'the intermediary or introducer will provide the information in the record upon request of the financial business and not immediately and up front at the start of the relationship.'

concerning reviews of and the conclusion reached in respect of complex transactions, unusual large transactions and unusual patterns of transactions' be kept for a period of five years from the date the business relationship ends or from the date that an occasional transaction was completed. Recommendation 11 has been fully complied with by TCI.

Recommendation 12

20. Based on the Examiners' recommendation that have not been previously addressed, the Authorities have noted that training for the Bar Association on DNFBPs is being planned. There has been no amendment to Regulation 24 of the AML/PFT Regulations and thus the issue with regard to having a structure that will separate lawyers DNFBP duties relative to financial or real estate transactions from their other legal duties has not been met. The recommendations with regard to the role and functions of the Gaming Inspectorate have been addressed in the amendments to the AML/PTF Regulations 2010, which as noted previously have been drafted and approved by the Advisory Council and will be debated before the Consultative Forum at their next meeting set for November 9, 2011. It is expected that the amendments will be in force by the end of November 2011. Given the status of the amendments however, the recommendations are still outstanding

Recommendation 15

21. With regard to the outstanding recommendations, the Authorities have noted that the FSC will be preparing compliance guidelines which will include information on how the audits would be conducted to test compliance with AML/CFT procedures, policies and controls. Sections 6 and 30 of the Code deal with internal reporting procedures and provides that financial businesses 'shall maintain an adequately independent audit function to test compliance (including sample testing) with their policies, systems and control..' This requirement meets E.C. 15.2. Compliance with screening procedures for all employees remains outstanding (E.C. 15.4). The Examiners' recommendations have been partially met.

Recommendation 16

22. In the previous FUR, the Authorities had indicated that the FSC as the supervisor for DNFBPs would have conducted training by the end of July 2011 with regard to the filing of STRs in an effort to promote a compliant regime within the relevant industries. However, the Authorities have indicated that this training did not occur and they were unable to indicate a future date at the writing of this report. Accordingly, the recommendation remains not met. With regard to the issuance of guidelines for each category of DNFBP, the Authorities have indicated that the FSC is still expected to do this. The previous date for this measure (end of April 2011) was not met. Based on the aforementioned, only one of the Examiners' recommendations has been met while the other two have not been met.

Recommendation 17

23. As noted in the previous FUR, the TCI Authorities enacted the Financial Services (Financial Penalties) Regulations, 2010, which is intended to allow the FSC to impose administrative penalties. They have noted however that although several disciplinary actions have been taken under the Regulations since its enactment, those actions has been

dissuasive and resulted in compliance without the relevant financial institutions having to be fined, except in one case. The Authorities have provided statistics with regard to enforcement action that has been taken from 2010 to present, which have been attached as Annex 1 to this report. The Examiners' recommendation with regard to the inclusion of a sanction applicable to an offence under Section 10(1) of the AMLR has been addressed through the enactment of the new AML/PFT Regulations 2010, which now provides for sanctions for offences under the Regulations to a maximum penalty of \$50,000.

Recommendation 18

24. Part 8 of the AML/PTF Code deals with correspondent banks and requires that correspondent banks not enter into or maintain any relationships with any respondent bank that is a shell bank or any respondent bank that provides correspondent banking services to shell banks. These measures along with Regulation 16 of the AML/CFT Regulations cover the prohibition of banking relationships with shell bank either as a respondent or correspondent bank. However, the outstanding issue remains its applicability to all financial institutions and not just to banks. In the latter regard, the Authorities have noted that Regulation 16 and part 8 of the Code will be amended to extend the application of the measures to all financial institutions. The Examiners' recommendations are met but with only regard to banks and not financial institutions as defined by the FATF.

Recommendation 20

25. There has been no conclusion by the sub-committee with regard assessing the risk of the construction industry being misused for ML and FT purposes. This recommendation remains outstanding.

Recommendation 21

26. The MLRA is still currently giving consideration to appropriate counter measures that should be applied against countries that do not or insufficiently apply the FATF Recommendations. There has been no update with regard to the FSC's consideration of a country risk assessment regime. The recently enacted AML/PTF Code does require countries to conduct and document a risk assessment for the purpose of assessing the ML/FT risk that it faces; determining how best to manage the risk and for designing, establishing, maintaining and implementing AML/CFT policies, systems and controls that are appropriate for the risks that the financial business will face. Accordingly, the Examiners' recommendations still remain partially met.

Recommendation 22

27. Although previously met through the provisions of Regulation 10 of the AML/CFT Regulations, 2010, the Authorities have noted that Section 6 of the AML/PTF Code requires that the policies, systems and controls that are established and maintained by a financial business shall be documented and shall 'provide for the monitoring of compliance by branches and subsidiaries of the financial business both within and outside the TCI'.

Recommendation 24

28. With regard to the documented plan that the MLRA requested to be produced for the AML/CFT supervisory regime for casinos, the Authorities have now stated that it is to be considered at the MLRA's meeting in September 2011 and that the Gaming Inspectorate has been invited to attend the meeting. The Examiners' recommendations remain outstanding in this with regard to the implementation plan for casinos; the formalization of the due diligence for granting of a gaming licence; disclosure of information by the Gaming Inspectorate to overseas regulators and to share information with domestic regulators; and the enforcement of sanctions. Recommendation 24 has not been substantially complied with.

Recommendation 25

29. The sector specific guidelines were considered by the MLRA at its meeting in September 2011 and it was agreed at that time that the FATF sector specific guidelines are to be used as models or adopted for each sector. This is an area which continues to be under review by the MLRA. Not further action has been indicated with regard to R. 25 and accordingly, the Examiners' recommendation pertaining to the aforementioned, the issuance of trends and typologies, consideration of the issuance of lists or information on terrorist, terrorist organisations to regulated entities; the establishment of written instructions to regulated entities and the issuance of sector specific guidelines has not been met. There is a substantial lack of compliance with R. 25 as it pertains to implementation measures.

Recommendation 29

30. The TCI Authorities have not provided an update with regard to R. 29 and accordingly, the Examiners' recommendations remain partially met as noted in the previous FUR.

Recommendation 30

31. In the current matrix, the Authorities have noted that the need for an action plan with regard to the Gaming Inspectorate will be addressed at the MLRA meeting scheduled for September 2011. As noted above in the discussion of R.24, the Gaming Inspectorate has been invited to that meeting. The Authorities subsequently indicated that the 'matter was the subject of lengthy and useful discussions at the meeting of the MLRA in September with the attendance of the Gaming Inspector and the Permanent Secretary, Finance and a sub-committee was formed including the Permanent Secretary, Finance and the Head of the Gaming Inspector to review and implement the recommendations and make regular reports to the MLRA. The Permanent Secretary, Finance agreed to include reform to the Gaming Inspectorate on the working plan of the Ministry of Finance to ensure that the necessary resources are available. An update is expected at the next meeting of the MLRA set for December 2011'. The Examiners' recommendation with regard to staffing for law enforcement agencies has still not been addressed and there has been no training with regard to the Gaming Inspectorate. The TCI Authorities have indicated that the FSC's Bank and Trust Department (which also has oversight for money remitters) and

the Head of Insurance and the Officer responsible for domestic insurance have been relocated to Providenciales, and that this move should insure that there is adequate oversight and supervision of the relevant industries. Judges and magistrates have not received any training since 2009. The Examiners' recommendations have been substantially met.

Recommendation 31

32. With regard to the development of policies and activities to combat ML/FT by the MLRA there has been no further update on its status and accordingly the Examiners' recommendation in that regard remains not met. It has also been noted by the Authorities that the MLRA and the FSC intend to conduct AML training before the end of 2011. There is overall substantial compliance with Rec. 31.

Recommendation 32

33. The Authorities had previously noted in its matrix that a system for more comprehensive statistics had been introduced and that this is reflected in the MLRA's Annual Report. The 2011 Annual Report is currently in draft and should be considered by the MLRA at its September 2011 meeting before it is published. The TCI Authorities subsequently noted that work on the report is ongoing and it is planned to have the report completed for adoption by the MLRA at its next meeting, which is set for December 2011. As noted in previous follow-up reports, while this is positive progress with regard to the maintenance of statistics, it does not address the issue of comprehensive statistics not being maintained by all competent authorities or the review of these statistics to determine the effectiveness of the AML/CFT systems. Accordingly, the Examiners' noted deficiencies remain partially addressed.

Recommendation 33

34. In the fourth FUR, the MLRA had issued the FSC's paper on bearer shares for industry comment. At present the public consultation has ended and the results will be considered by the MLRA at its meeting in September 2011. The MLRA will decide on a way forward, which will then be reflected in relevant legislation. The Authorities have since noted that the issue was discussed at the September meeting of the MLRA and it was decided to table the paper produced by the FSC on the public and industry consultations to the MLRA meeting planned for December 2011. The Examiners' recommendations remain outstanding.

Recommendations 34

35. There has been no update for this Recommendation. Accordingly, the status remains the same as in the previous FUR and so the Examiners' recommendations have not been met.

Recommendation 38

36. There has been no update for this Recommendation. Accordingly, the status remains the same as in the previous FUR. The Examiners' recommendation has not been met.

Special Recommendation VI

37. The process of assessment of the current level of compliance with AML/CFT rules and regulations made by the MSPs has been started by the FSC. The FSC is also developing a plan to improve the current level of compliance. With regard to the development of guidelines, issuance of instructions and the provision of training to guide MSPs in the effective execution of their responsibilities under the legislation, the Authorities have noted that training has been provided in September 2010. No indication has been given with regard to the development of guidelines and instruction for the MSP sector. There is still only partial compliance with SR. VI.

Special Recommendation VII

38. Part 9 of the AML/PTF Code deals with wire transfers. Specifically, with regard to the Examiners' recommendations it provides a comprehensive legislative framework to deal with domestic cross-border transfers, for intermediary and beneficial financial institutions handling wire transfers. The relevant sections provide that originator information accompany all wire transfers. The Authorities have agreed that there are presently no provisions which deal with the highlighted issues and that the MLRA will have to consider this issue. Compliance with the Examiners' recommendation remains partially outstanding.

Special Recommendation VIII

39. There has been no update for this Special Recommendation; accordingly, compliance with the Examiners' recommendations remains outstanding.

Special Recommendation IX

40. Compliance with the Examiners' recommendations for SR.IX is awaiting implementation by the Immigration and Customs Departments. The Authorities in the most current matrix have indicated that there would be further consideration of the MLRA's recommendations to the Immigration and Customs Departments at its meeting in September 2011. The Turks and Caicos has subsequently noted that the TCI Customs have established links to notify other countries when there is an unusual movement of gold, precious metals or precious stones from their jurisdiction. Formal links exist among the Overseas Territories through the Overseas Territories Regional Crime and Intelligence System ("OTRCIS") and consideration is also being taken to establishing formal arrangements (via MOUs) with other regional departments. Based on the more recent information provided, the Examiners' recommendations have been partially met for SR. IX.

III. Conclusion

41. The Turks and Caicos Islands have made some progress with regard to attaining compliance with the outstanding Examiners' recommendations based on the recent enactment of the Anti-Money Laundering and Prevention of Terrorist Financing Code, 2011. With regard to the Core Recommendations, as noted previously Recommendations 1 and 10 have been fully met, Rec. 13 has been substantially met, Rec. 5 has been partially met and Special Recommendations II and IV have not been met. For the Key Recommendations the TCI has fully met Rec. 36. There remain outstanding deficiencies with regard to Recs. 23, 26, 40 and SR. I. With regard to the non-Core or Key

Recommendations, there is now full compliance with Recs.6, 7, 9, 11, 19 and 22. There remain outstanding deficiencies with Recs.8, 12, 15, 16, 17, 18, 20, 21, 24, 25, 29, 30, 31, 32, 33, 34, and 38, SR.s VI, VII, VIII and IX.

42. Based on the assessment, seven of the Core and Key Recommendations are still either partially met or not met, while the majority of the other outstanding recommendations are partially met. It is suggested that TCI attempts to deal with some of the longer outstanding deficiencies especially where it relates to implementation as soon as possible so that it could move to either regular or biennial follow-up. The TCI has new legislation and guidelines that are expected to be enacted and implemented in the near future and that is also expected to enhance its level of compliance with the outstanding recommendations. It is recommended that the Turks and Caicos Islands report back to Plenary in May 2012.

ANNEX 1 FSC Enforcement Actions May 1, 2011 to September 30, 2011

| Number | Type of Licence | Enforcement Action Taken | Date Commenced | Date to Complete | Status |
|--------|--------------------|---------------------------------------|----------------|------------------|-----------------|
| 1. | Investment Advisor | Notice of Intention to Revoke Licence | 12-May-11 | 31-May-11 | Licence Revoked |
| 2. | Insurance -PORC | Notice of Intention to Revoke Licence | 22-Jun-11 | 7-Jul-11 | Licence Revoked |
| 3. | Insurance -PORC | Notice of Intention to Revoke Licence | 22-Jun-11 | 7-Jul-11 | Licence Revoked |
| 4. | Insurance -PORC | Notice of Intention to Revoke Licence | 22-Jun-11 | 7-Jul-11 | Licence Revoked |
| 5. | Insurance -PORC | Notice of Intention to Revoke Licence | 22-Jun-11 | 7-Jul-11 | Licence Revoked |
| 6. | Insurance -PORC | Notice of Intention to Revoke Licence | 22-Jun-11 | 7-Jul-11 | Licence Revoked |
| 7. | Insurance -PORC | Notice of Intention to Revoke Licence | 22-Jun-11 | 7-Jul-11 | Licence Revoked |
| 8. | Insurance -PORC | Notice of Intention to Revoke Licence | 22-Jun-11 | 7-Jul-11 | Licence Revoked |
| 9. | Insurance -PORC | Notice of Intention to Revoke Licence | 22-Jun-11 | 7-Jul-11 | Licence Revoked |
| 10. | Insurance -PORC | Notice of Intention to Revoke Licence | 22-Jun-11 | 7-Jul-11 | Licence Revoked |

Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

| | | | | | |
|-----|--------------------------------------|---|-----------|-----------|--|
| 11. | Insurance -PORC | Notice of Intention to Revoke Licence | 22-Jun-11 | 7-Jul-11 | Licence Revoked |
| 12. | Insurance -PORC | Notice of Intention to Revoke Licence | 22-Jun-11 | 7-Jul-11 | Licence Revoked |
| 13. | Insurance -PORC | Notice of Intention to Revoke Licence | 22-Jun-11 | 7-Jul-11 | Licence Revoked |
| 14. | Insurance | Notice of Intention to take Disciplinary Action | 22-Jun-11 | 22-Jul-11 | Licence Revoked |
| 15. | Insurance | Notice of Intention to take Disciplinary Action | 22-Jun-11 | 22-Jul-11 | Licence Revoked |
| 16. | Insurance | Notice of Intention to take Disciplinary Action | 22-Jun-11 | 22-Jul-11 | Licence Revoked |
| 17. | Insurance | Notice of Intention to take Disciplinary Action | 22-Jun-11 | 22-Jul-11 | Licence Revoked |
| 18. | Insurance | Notice of Intention to take Disciplinary Action | 22-Jun-11 | 22-Jul-11 | Licence Revoked |
| 19. | Insurance | Notice of Intention to take Disciplinary Action | 22-Jun-11 | 22-Jul-11 | Requirements met/ deficiencies corrected |
| 20. | Insurance | Notice of Intention to take Disciplinary Action | 22-Jun-11 | 22-Jul-11 | Requirements met/ deficiencies corrected |
| 21. | Restricted Mutual Fund Administrator | Notice of Intended Disciplinary Action | 1-Jul-11 | 29-Jul-11 | Requirements met/ deficiencies corrected |
| 22. | None | Notice of Intended Legal Action for commission of Offence under Investment Dealers (Licensing) Ordinance - Conducting Financial Services Business without a licence | 1-Jul-11 | n/a | Company Struck |

Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| 23. | Company Management | Notice of Intention to Revoke Licence | 1-Jul-00 | 15-Jul-11 | Licence Revoked |
| 24. | Insurance -PORC | Notice of Intention to Revoke Licence | 2-Mar-11 | 16-Mar-11 | Licence Revoked |
| 25. | Insurance -PORC | Notice of Intention to Revoke Licence | 2-Mar-11 | 16-Mar-11 | Licence Revoked |
| 26. | Insurance -PORC | Notice of Intention to Revoke Licence | 2-Mar-11 | 16-Mar-11 | Licence Revoked |
| 27. | Insurance -PORC | Notice of Intention to Revoke Licence | 2-Mar-11 | 16-Mar-11 | Licence Revoked |
| 28. | Insurance -PORC | Notice of Intention to Revoke Licence | 2-Mar-11 | 16-Mar-11 | Licence Revoked |
| 29. | Trust | Notice of Intention to Take Disciplinary Action | 14-Jul-11 | 12-Aug-11 | Penalty Notice issued |
| 30. | Investment Dealer | Surrender of Licence | 28-Jul-11 | n/a | Licence Surrendered |
| 31. | Trustee | Penalty Notice | 12-Aug-11 | 29-Sep-11 | Penalty Paid |
| 32. | Trustee | Notice of Intention to Revoke Licence | 3-Sep-11 | 20-Sep-11 | Licence Revoked |
| 33. | Company Agent | Notice of Intention to Take Disciplinary Action | 3-Sep-11 | 1-Oct-11 | Ongoing |
| 34. | Company Manager | Notice of Intention to Take Disciplinary Action | 3-Sep-11 | 1-Oct-11 | Requirements met/ deficiencies corrected |
| 35. | Company Manager | Notice of Intention to Take Disciplinary Action | 3-Sep-11 | 1-Oct-11 | Ongoing |

Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| 36. | Company Manager | Notice of Intention to Take Disciplinary Action | 3-Sep-11 | 1-Oct-11 | Requirements met/ deficiencies corrected |
| 37. | Company Manager | Notice of Intention to Take Disciplinary Action - Non Submission of documents and/ or particulars to renew licence | 3-Sep-11 | 1-Oct-11 | Ongoing |
| 38. | Company Manager | Notice of Intention to Take Disciplinary Action - Non Submission of documents and/ or particulars to renew licence | 3-Sep-11 | 1-Oct-11 | Ongoing |
| 39. | Company Manager | Notice of Intention to Take Disciplinary Action - Non Submission of documents and/ or particulars to renew licence | 3-Sep-11 | 1-Oct-11 | Requirements met/ deficiencies corrected |
| 40. | Company Manager | Notice of Intention to Take Disciplinary Action - Non Submission of documents and/ or particulars to renew licence | 3-Sep-11 | 1-Oct-11 | Ongoing |
| 41. | Company Manager | Notice of Intention to Take Disciplinary Action - Non Submission of documents and/ or particulars to renew licence | 3-Sep-11 | 1-Oct-11 | Requirements met/ deficiencies corrected |
| 42. | Company Manager | Notice of Intention to Take Disciplinary Action - Non Submission of documents and/ or particulars to renew licence | 3-Sep-11 | 1-Oct-11 | Ongoing |
| 43. | Company Manager | Notice of Intention to Take Disciplinary Action - Non Submission of documents and/ or particulars to renew licence | 3-Sep-11 | 1-Oct-11 | Ongoing |

Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| 44. | Company Manager | Notice of Intention to Take Disciplinary Action - Non Submission of documents and/ or particulars to renew licence | 3-Sep-11 | 1-Oct-11 | Requirements met/ deficiencies corrected |
| 45. | Company Agent | Notice of Intention to Take Disciplinary Action - Non Submission of documents and/ or particulars to renew licence | 3-Sep-11 | 1-Oct-11 | Ongoing |
| 46. | Company Manager | Notice of Intention to Take Disciplinary Action - Non Submission of documents and/ or particulars to renew licence | 3-Sep-11 | 1-Oct-11 | Requirements met/ deficiencies corrected |
| 47. | Insurance | Notice of Intention to Take Disciplinary Action - Non Submission of annual returns | 14-Sep-11 | 12-Oct-11 | Notice Withdrawn |
| 48. | Insurance | Notice of Intention to Take Disciplinary Action - Non Submission of annual returns | 14-Sep-11 | 12-Oct-11 | Penalty Notice issued |
| 49. | Insurance | Notice of Intention to Take Disciplinary Action - Non Submission of annual returns | 14-Sep-11 | 12-Oct-11 | Notice Withdrawn |
| 50. | Insurance | Notice of Intention to Take Disciplinary Action - Non Submission of annual returns | 14-Sep-11 | 12-Oct-11 | Notice Withdrawn |
| 51. | Insurance | Notice of Intention to Take Disciplinary Action - Non Submission of annual returns | 14-Sep-11 | 12-Oct-11 | Penalty Notice Issued |
| 52. | Insurance | Notice of Intention to Take Disciplinary Action - Non Submission of annual returns | 14-Sep-11 | 12-Oct-11 | Notice withdrawn |

Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| 53. | Insurance | Notice of Intention to Take Disciplinary Action - Non Submission of annual returns | 14-Sep-11 | 12-Oct-11 | Penalty Notice Issued |
| 54. | Insurance | Notice of Intention to Take Disciplinary Action - Non Submission of annual returns | 14-Sep-11 | 12-Oct-11 | Penalty Notice Issued |
| 55. | Insurance | Notice of Intention to Take Disciplinary Action - Non Submission of annual returns | 14-Sep-11 | 12-Oct-11 | Penalty Notice Issued |

| Legal systems | | | | |
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| 1. ML offense | PC | <p>The exact scope of what the POCO appeals, amends and saves is ambiguous.</p> <p>Schedule 1 of the POCO refers to offences which are not defined in the laws of the TCI, namely directing terrorism, people trafficking and arms trafficking.</p> <p>The FATF 20 Designated Categories of Offences are not fully reflected in the laws of the TCI.</p> <p>All the precursor chemicals under Article 3 (c)(ii) of the Vienna Convention are not covered by TCI law and there is no precursor chemical legislation.</p> <p>The effectiveness of TCI's legal framework is difficult to assess since there have no money laundering convictions since 2002.</p> <p>The defence to the ML offence at section 119(2) of the POCO provides a criminal with the opportunity to escape liability merely by showing that the property was obtained for adequate consideration.</p> | <ul style="list-style-type: none"> The POCO should clearly reflect what it is intended to save, repeal or amend and consolidate of the pre-existing law in relation to anti money laundering, as sections 150 and 151 of the POCO do not effectively achieve this. Omissions contained in Schedules 5 and 6 of the POCO should also be addressed in order to fully reflect what the POCO seeks to do. In addition, the enabling provisions for the offences of directing terrorism, arms trafficking and human trafficking listed in Schedule 1 should be clearly defined. TCI should fully comply with Article 3(1)(c) in relation to the precursor chemicals requirements. The FATF 20 Designated Offences should also be fully incorporated in the laws of the Islands. | <p>New Regulations converting the Code into regulations have been prepared and made. The Proceeds of Crime (Amendment) Ordinance 2009 and Proceeds of Crime (Amendment) Ordinance 2010 came into force on December 8, 2009 and May 24, 2010 respectively. The omissions in Schedules 5 and 6 have been addressed. What is intended to be saved, repealed and amended are all now clearly indicated.</p> <p>In essence the Control of Drugs Trafficking Ordinance and former Proceeds of Crime Ordinance are repealed.</p> <p>However, transitional provisions keep them in force in respect of matters falling under the former legislation.</p> <p>The offences of “drug trafficking offence” and “money laundering offence” have been defined in the amendments to section 2.</p> <p>Section 119(2) is amended to require that, in addition to obtaining adequate consideration, the defendant must show that he did not know or suspect that the property was criminal property.</p> <p>The MLRA at its meeting held on January 21, 2011 decided to have specific legislation drafted to cover all of the required areas relating to CFT in one place. An EU funded Law Reform Project underway in the TCI is tasked with this work. That project is to be completed within 15 months from November 2010.</p> |
| 2. ML offense– mental element and corporate liability | LC | <p>The penalties for money laundering upon summary conviction are lenient and therefore are not dissuasive sanctions.</p> <p>The efficacy of implementation of the anti-money laundering regime is uncertain, particularly in view of the very low incidence of ML prosecutions.</p> | <ul style="list-style-type: none"> The penalty for the primary money laundering offences (sections 117, 118 and 119) upon summary conviction should be sufficiently dissuasive, so as not to limit prosecution of money laundering at the magisterial level to the most trivial of cases | <p>The Proceeds of Crime (Amendment) Ordinance 2010 amends the penalties under sections 117 to 119 by raising the penalties from twelve months imprisonment to two years minimum and the fines from \$40,000 to \$200,000.</p> |
| 3. Confiscation and provisional measures | LC | <p>Forfeiture or confiscation of instrumentalities intended for use in or used in ML/FT offences are not clearly covered by the POCO.</p> | <ul style="list-style-type: none"> The POCO should be amended to provide for the confiscation and/or forfeiture of instrumentalities intended for use in or used in ML/FT offences. | <p>The Proceeds of Crime (Amendment) Ordinance 2010 amends Part III of POCO to provide for the recovery of instrumentalities intended for use in or in connection with <u>unlawful conduct</u> through civil forfeiture. It includes new sections on freezing orders.</p> <p>In particular, section 59 now contains as an additional</p> |

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| | | | | <p>objective of the civil forfeiture regime, the recovery of property which is, or represents “property that has been used in, or in connection with, or is intended to be used in, or in connection with, unlawful conduct”. A new definition of tainted property is also included.</p> <p>There are a number of sections that amend various sections in PART III to give effect to the recovery of tainted property.</p> |
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| Preventive measures | | | | |
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| 4. Secrecy laws consistent with the Recommendations | C | This Recommendation is fully observed. | | |
| 5. Customer due diligence | NC | <p>There are no requirements in the POCO and AMLR which prohibit financial institutions from keeping anonymous accounts or accounts with fictitious names.</p> <p>No requirement for the conduct of CDD measures where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.</p> <p>No requirement for financial institutions to conduct CDD on legal persons or legal arrangements.</p> <p>No requirement for financial institutions to verify that any person purporting to act on behalf of a customer who is a legal person is so authorized, and identify and verify the identity of that person.</p> <p>No requirement for financial institutions to verify the legal status of the legal person or legal arrangement.</p> <p>No requirement for financial institution perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.</p> <p>No requirement for financial institutions to conduct ongoing due diligence on existing customers.</p> <p>No requirement for financial institutions to perform enhanced due diligence on high risk customers.</p> <p>No requirement for financial institutions to undertake CDD measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII.</p> <p>No requirement to terminate the business relationship if proper CDD cannot be conducted.</p> <p>No requirement for financial institutions to ensure that</p> | <ul style="list-style-type: none"> • Legislation should be enacted or amended to require that financial institutions: undertake CDD measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII; verify that any person purporting to act on behalf of legal persons or legal arrangements is so authorised and identify and verify the identity of that person; take reasonable measures to determine the natural persons that ultimately own or control legal persons or legal arrangements. • Legislation should be enacted or amended to prohibit financial institutions from keeping anonymous accounts or accounts with fictitious names. • Legislation should be enacted or amended to require that financial institutions conduct CDD measures whereby the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. • Legislation should be enacted or amended to require that financial institutions conduct CDD on legal persons or legal arrangements. • There seemed to be a high level of dependence on personal relationships between financial institutions and clients which results in CDD measures not being carried out. During interviews with financial institutions these institutions 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 | <p>Section 111 of POCO has been amended and provides for the issuance by the Reporting Authority of Codes and Guidance.</p> <p>The new section 111(5) provides that a Code issued under section 111 is subsidiary legislation and has full legislative effect.</p> <p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations were enacted on July 29, 2010. Part II deals with Customer Due Diligence. Regulation 11 requires a financial business to conduct CDD. Any person that contravenes that regulation may be liable to a fine up to \$50,000.00. The Regulations also provides for enhanced due diligence.</p> <p>Regulation 16 deals with shell banks and anonymous numbered accounts. It provides for a penalty of up to \$100,000.00 if a financial business sets up or maintains an anonymous account.</p> <p>Schedule 2 of the Regulations contains the meaning of financial business. Included are persons engaged in lending, including consumer credit and mortgage credit, accountants, auditors, legal professionals, and financial/investment advisors.</p> <p>The Anti-Money Laundering and Prevention of Terrorist Financing Code 2011 came into force on 6 May 2011.</p> <p>Part III of the Code deals with Customer Due Diligence and a summary of the principal requirements with respect to customer due diligence is set out on pages 25 to 27 of the Code and comprehensively addresses the recommendations of the Assessors.</p> <p>The AML/PTF Regulations are to be amended to provide for specific provisions for occasional transactions that are wire transfers and to ensure that the requirements of EC 5.2 apply to all financial institutions and not just Money Service Businesses.</p> <p>The AML/PTF Regulations (regulation 5) are to be</p> |

Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| | <p>documents, data or information collected under the CDD process is kept up to date.</p> <p>Lack of guidance on matters such as PEPs, risk based approach and reduced CDD impacts on the effectiveness of the TCI's AML/CFT regime.</p> <p>The scope of AML/CFT legislation in the TCI does not cover financial institutions that engage in mortgage lending.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p> | <p>scenarios may open the TCI to a higher risk of financial institutions being used for money laundering and financing of terrorism. Therefore, TCI authorities should develop a sensitization campaign whereby financial institutions are made aware of the benefits and requirement to do relevant CDD.</p> <p>ds</p> | <p>amended to require the determination of the natural person who ultimately owns or controls customers that are legal persons or legal arrangements. (EC 5.5.2(b)) and to require the verification the legal status of the legal person or legal arrangement (EC 5.4(b))</p> <p>These amendments are expected to be made by the end of September 2011.</p> |
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Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| <p>6. Politically exposed persons</p> | <p>NC</p> | <p>No requirements concerning PEPs are applicable to regulated persons at present.</p> <p>No requirement for senior management approval of a relationship with a customer who is found to be a PEP.</p> <p>No requirement for senior management approval to continue a relationship with a customer who is subsequently found to be a PEP or who subsequently becomes a PEP.</p> <p>Little awareness of the requirements in relation to the performance of enhanced CDD measures on high risk customers who are PEPs.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p> | <ul style="list-style-type: none"> Financial institutions should be required to seek senior management approval for a relationship with a customer who is found to be a PEP and to continue a relationship with a customer who is subsequently found to be a PEP or who subsequently becomes a PEP. The FSC should consider issuance of guidance with regard to financial institution’s handling of relationships with PEPs. | <p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations contain provisions relating to PEPs. PEPs are defined in regulation 6. Regulation 13 requires enhanced due diligence and ongoing monitoring on PEPs and imposes a fine of up to \$50,000.00 if that regulation is contravened</p> <p>The Financial Services Commission issued guidance in relation PEPs in August 2009.</p> <p>The Anti Money Laundering and Prevention of Terrorist Financing Code address the requirements of E.C 6.2 in section 13(1) and (3). Approval by senior management of a financial institution is required for the continuation of the financial institution’s 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.</p> <p>AML/PTF Regulation 13(2)(d) also requires enhanced CDD for PEPs.</p> |
| <p>7. Correspondent banking</p> | <p>NC</p> | <p>No requirement to determine the reputation of a respondent and the quality of supervision.</p> <p>No provision to obtain senior management approval before establishing new correspondent relationships.</p> <p>No provision to document respective AML/CFT responsibilities in correspondent relationships.</p> <p>No requirement for financial institutions with correspondent relationships involving “payable-through accounts” to be satisfied that the respondent financial institution has performed all normal CDD obligations on its customers that have access to the accounts.</p> <p>No requirement for the financial institution to be satisfied that the respondent institution can provide reliable customer identification data upon request.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p> | <ul style="list-style-type: none"> TCI authorities should consider issuing more guidance to financial intuitions on matters relating to AML/CFT. | <p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations provide that no bank operating in or from the islands shall enter into or continue a correspondent banking relationship with a shell bank or a bank that is known to permit its accounts to be used by a shell bank.</p> <p>Regulation 16 provides for a fine of up to \$100,000.00 if a bank acts in contravention to the regulation.</p> <p>With regard to Rec. 7, Sections 42 and 43 of the Code, deals will correspondent banking. Regulation 16 will be amended to extend it to all financial institutions before the end of September 2011 in accordance with a decision taken by the MLRA in its meeting in December 2010.</p> |

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Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| <p>8. New technologies & non face-to-face business</p> | <p>NC</p> | <p>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.</p> | <ul style="list-style-type: none"> Financial institutions should have in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes. TCI authorities should consider bringing the business of mortgage lending under a licensing regime which will make it subject to AML/CFT requirements. | <p>Regulation 13 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations requires enhanced due diligence and ongoing monitoring where the customer has not been physically present for identification</p> <p>Section 6(2) of the Code covers EC. 8.1 which requires that financial institutions should have measures in place to deal with the misuse of technological developments</p> <p>Section 24 of the Code covers EC 8.2 which requires that policies and procedures be in place to address any specific risks associated with non-face to face business relationships or transactions</p> |
| <p>9. Third parties and introducers</p> | <p>PC</p> | <p>No requirement for all financial institutions relying on a third party to immediately obtain from the third party the necessary information concerning elements of the CDD process covering identification and verification of customers and beneficial owners and the purpose and intended nature of the business relationship.</p> <p>No provision requiring financial institutions to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendations 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendations 5 and 10.</p> | <ul style="list-style-type: none"> Financial institutions relying on a third party should be required to immediately obtain from the third party the necessary information concerning elements of the CDD process covering identification and verification of customers and beneficial owners and the purpose and intended nature of the business relationship. Financial institutions should be required to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendations 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendations 5 and 10. Financial institutions relying on third parties should be ultimately responsible for customer identification and verification. TCI authorities should make more explicit requirements for financial institutions to immediately obtain from the third party all the necessary information concerning certain elements of the CDD process and for financial institutions to accept introducers pursuant to its assessment of AML/CFT adequacy. | <p>Regulation 14 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations provides that a financial institution may only rely on introducers and intermediaries who are a regulated person or a foreign regulated person. The regulation requires introducers and intermediaries to have carried out CDD and to maintain records of that information which would be available upon request from the financial business or the Commission. It also provides that the financial business will be liable for any failure to apply CDD measures by the introducer or intermediary.</p> <p>Regulation 14 of the AML/PFT Regulations will be amended to include the specific wording of EC 9.1 that Financial institutions relying upon a third party should be required to immediately obtain from the third party the necessary information concerning certain elements of the CDD process (verifying the customers identity and the ultimate beneficial owner, who is a natural person). This is also reflected in section 27 of the Code</p> |
| <p>10. Record keeping</p> | <p>PC</p> | <p>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</p> | <ul style="list-style-type: none"> It is recommended that the TCI review its legislative and regulatory provisions to take consideration of all requirements of Recommendation 10 particularly as it | <p>Regulations 18 and 19 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations require records to be kept for at least five years. These records include CDD, account files and transaction records</p> |

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| | | <p>relationship (or longer if requested by a competent authority in specific cases upon proper authority).</p> | <p>pertains to the retention of records and that appropriate legislation should be enacted as soon as possible.</p> | <p>sufficient to enable a reconstruction of the individual transactions.</p> <p>Failure to comply with that regulation will result in a fine up to \$100,000.00.</p> <p>Part VII of the Code comprehensively deals with the Assessors' recommendations with regard to Record Keeping and the Guidance on pages 83 and 84 of the Code describe the obligations of financial businesses in respect of Record Keeping.</p> <p>Additionally, in respect of accounting records the Companies (Amendment) Ordinance 2011 and the Limited Partnerships (Amendment) Ordinance 2011 amended section 57 of the Companies Ordinance and section 10 of the Limited Partnerships Ordinance respectively to expand the record keeping obligations in respect of companies and Limited Partnerships and to create an offence for failure to maintain such records. The fine imposed in each case is an amount not exceeding \$50,000. Both amendments came into force on 29th July 2011.</p> |
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Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| <p>11. Unusual transactions</p> | <p>NC</p> | <p>No requirements for special attention to be paid to characteristics of size and purpose of transactions.</p> <p>No requirement to put findings in writing that result from a closer investigation of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.</p> <p>No minimum record retention period applies for the findings resulting from a closer investigation of unusual transaction patterns.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p> | <ul style="list-style-type: none"> • TCI authorities should expand the scope of attention for unusual transaction patterns to include characteristics of size and purpose as addressed in Rec. 11 (essential criterion 11.1). • Financial institutions should be required to set forth in writing any findings related to a closer examination of the background and purpose of unusual transaction patterns. • The record retention policy addressed under section 7 of the AMLR should be expanded to provide for the retention of records related to a closer investigation of the background and purpose of unusual transactions. | <p>Regulation 17 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations requires financial businesses to establish, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing which provide for identification and scrutiny of complex or unusually large transactions and other activities.</p> <p>The Code addresses these requirements. Section 28 of the Code requires financial businesses to keep a written record of transactions including unusual transactions. Section 37 requires a financial business to maintain records concerning reviews of and the conclusions reached in respect of such records for a period of at least five years.</p> |
| <p>12. DNFBP–R.5, 6, 8-11</p> | <p>NC</p> | <p>For the majority of the DNFBPs that have not been subjected to the TCI AML/CFT legislative framework, it remains unclear how TCI authorities will ensure proper compliance with recommendation 5, 6 and 8 through 11 of the FATF. Except for trust and company service providers which are considered financial institutions, effective implementation of Rec. 12 lacks for all remaining groups of DNFBP’s.</p> <p>No contact has been established with dealers in precious metals or precious stones to inform them of the AML/CFT legislative changes and the consequences thereof for the relevant industry.</p> <p>TCI Authorities have not determined yet who will be responsible for the compliance oversight of the dealers in precious metals and precious stones.</p> <p>TCI Authorities have not defined the targeted risk that it aims to manage with the inclusion of dealers in goods of any description involving a cash payment of \$50,000 or the equivalent in any currency, under the definition of relevant businesses, and consequently, TCI authorities are unable to develop an implementation plan for this specific group of</p> | <ul style="list-style-type: none"> • Contact the relevant new businesses and professions that have been subjected to AML/CFT rules and regulations due to the recently enacted legislation and inform them of the consequences of these changes for their respective industries. • Define the major risk area targeted under the group of DNFBP’s categorized as “dealers in goods of any description involving a cash payment of \$50,000 or the equivalent in any currency”. • 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 | <p>The POCO has been amended to include provisions for a Non Regulated Financial Business Supervisor. These businesses are now required to be registered with the NRFB Supervisor. The NRFB Supervisor has the power to take enforcement action against a non-regulated financial business, issue directives and take disciplinary action.</p> <p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations also contain provisions relating to non-regulated financial businesses in Part V. The POCO provides that the Commission is the NRFB (DNRFB) Supervisor. The FSC has issued notices to all NRFBs other than casinos requiring them to register their beneficial ownership, place of business, types of business and other details with the FSC on or before 1st January 2011.</p> <p>AML/PTF Regulation 24 will be amended to reflect that the NRFB Supervisor should keep a register of each category of DNFBPs</p> <p>Training for the Bar Association on DNFBPs is being planned.</p> <p>The role and functions of the Gaming Inspectorate was tabled for discussion at the January 2011 meeting of the MLRA and it was decided to list it for further discussion at the next meeting of the MLRA scheduled for September</p> |

Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| | <p>DNFBPs.</p> <p>There is a lack of information to the real estate industry, about the AML/CFT changes in the legislation and its implications for the sector.</p> <p>The TCI real estate sector is currently not regulated, thereby imposing a constraint to the effective implementation of an AML/CFT oversight regime for the relevant sector.</p> <p>No implementation plan has been developed yet for the regulatory oversight of the legal practitioners' industry or the accounting/auditing industry relative to their compliance with AML/CFT rules and regulations.</p> <p>The gaming industry lacks the implementation of an AML/CFT compliance supervisory regime.</p> <p>The role of the Gaming Inspectorate and the FCU in the implementation of the AML/CFT framework is not clearly defined.</p> | <p>market participants in order to be able to monitor compliance by these market players with applicable AML/CFT rules and regulations;</p> <ul style="list-style-type: none"> • 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. | <p>2011, at which time Gaming Inspectorate officials will be in attendance.</p> <p>Section 148M of POCO will be amended (also sections 2, 111,116, 120, 121,148F and 148Q) to reflect the correct name of the Regulations.</p> |
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Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| <p>13. Suspicious transaction reporting</p> | <p>PC</p> | <p>The guidance provided for the effective execution of the suspicious transaction reporting requirement is not considered sufficient</p> <p>The broad time frame given by the POCO has been interpreted by the industry to be time periods that seem quite long. (24 to 30 days).</p> <p>The awareness amongst financial institutions for the misuse of TCI's financial system for the financing of terrorist is low thereby affecting the effectiveness of the CFT regime.</p> <p>The deficiencies identified within R 1 as it pertains to predicate offences not defined in the TCI laws; specifically directing terrorism, people trafficking and arms trafficking are also applicable here.</p> | <ul style="list-style-type: none"> • TCI Authorities should provide for more guidance in the process of reporting unusual transactions. In this regard, standardized STR-forms that meet the requirements of the industry should be issued. Furthermore, the means through which STRs should be filed with the FCU should be standardized. • TCI Authorities should consider issuing guidelines on the filing of STRs which includes information on the requirement for timely filing to ensure a prompt reporting behaviour. | <p>The standardized reporting form has been improved.</p> <p>This was published at a presentation to the industry by way of a two-hour presentation, including power point, copies of which were distributed.</p> <p>A revised form has since been circulated with guidance notes attached.</p> <p>Part 5 of the Code contains requirements for the timely filing of SARs, including a prescribed timeframe (within 24 hours) (See section 120 in the POCO)</p> |
| <p>14. Protection & no tipping-off</p> | <p>C</p> | <p>This Recommendation is fully observed.</p> | | |
| <p>15. Internal controls, compliance & audit</p> | <p>PC</p> | <p>Applicable requirements for the implementation of an internal control framework do not address the issue of CFT.</p> <p>Policy manuals of entities supervised by the FSC do not include CFT.</p> <p>No requirements in place for the appointment of an independent audit function to test compliance with procedures, policies and controls on AML/CFT.</p> <p>No effective implementation of the AMLR requirement to keep training records of employees.</p> <p>No requirement to have financial institutions put in place screening procedures to ensure that high standards apply when hiring new employees.</p> | <ul style="list-style-type: none"> • The FCS should screen the Policy Manuals of all supervised financial institutions, to ensure compliance with CFT. • The FSC should play a more active role in creating awareness amongst financial institutions with regard to the issue of CFT. • The TCI should provide guidance for financial institutions on the implementation of an independent audit function to test compliance with AML/CFT procedures, policies and controls. • TCI should take appropriate action to implement the recently enacted AMLR requirement to keep employees training records. • The TCI should amend its requirement for screening relevant personnel upon hiring, to the screening of all employees to fully comply with essential criterion 15.4. • Financial institutions should be required to | <p>The FSC screens policy manuals both at the point where an entity applies for licensing and also during onsite examinations.</p> <p>The FSC has included a review of training logs as a part of its onsite inspection regime.</p> <p>The FSC is to do compliance guidelines, which is to include provisions on how the audits are to be conducted.</p> <p>Sections 6 and 30 of the Code deal with internal reporting procedures and includes a provision in similar terms to EC 15.2.</p> <p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations now provide that a financial business must maintain policies regarding the screening of employees and internal controls. Contravention the regulation may result in the financial business being fined up to \$50,000.00.</p> |

Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| | | | have their screening policy for new personnel formalized and documented for review by the FSC. | |
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Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| <p>16. DNFBP–R.13-15 & 21</p> | <p>NC</p> | <p>There is a lack of implementation of the AML/CFT legislative framework for DNFBPs</p> <p>To date no STRs have been filed with the FCU by any category of DNFBP, except for Trust and company service providers.</p> <p>No training of DNFBPs on the filing of STRs.</p> <p>DNFBPs have not implemented an internal framework for the compliance with AML/CFT rules and regulations.</p> | <ul style="list-style-type: none"> • TCI should ensure an effective implementation of the recently enacted AML/CFT legislative framework for DNFBPs, including the requirement for the filing of STRs. • TCI Authorities should consider training for DNFBPs on the filing of STR's to promote a compliant regime within the relevant industries. • The relevant supervisory authorities per category of DNFBP should issue guidelines and instructions on the drawing up and maintaining of internal frameworks for compliance with AML/CFT rules and regulations. | <p>The FCU has met with and advised stakeholders in this area of the requirements for filing STR's.</p> <p>The NRFB Supervisor is to conduct training, by the end of July 2011, for DNFBPs on the filing of STRs to promote a compliant regime within the relevant industries.</p> <p>The NRFB Supervisor is to issue guidelines for each category of DNFBP.</p> |
| <p>17. Sanctions</p> | <p>PC</p> | <p>The sanctions in the legislative framework are not effective or dissuasive.</p> <p>Financial sanctions can not be applied by the supervisory without a court order.</p> <p>The sanctions applicable in case of non-compliance with provisions of the AMLR in respect of regulation 10 are not defined in the respective legislation.</p> | <ul style="list-style-type: none"> • The TCI supervisory authority should promote an effective implementation of enforcement actions in order to increase the dissuasiveness of the existing sanctions framework. This can be improved amongst other methods through improvement of the follow up provided by the supervisory authority relative to outstanding issues with regard to the compliance with AML/CFT rules and regulations by financial institutions. • The TCI Authorities should make appropriate adjustments to its legislative framework to provide for the FSC to impose financial sanctions without court order in case of non-compliance with AML/CFT rules or regulations. • The TCI should include in the AMLR the sanctions applicable to an offence under AMLR section 10(1). | <p>The FSC has taken enforcement action against several licensed entities since the last follow-up report and has had regulations drafted and made in relation to Administrative Penalties. The Financial Services (Financial Penalties) Regulations came into operation on October 29, 2010.</p> <p>Since its enactment the FSC has undertaken several disciplinary actions under the Regulations, which have been dissuasive and resulted in compliance without the relevant financial institutions having to be fined, save in one case.</p> |
| <p>18. Shell banks</p> | <p>PC</p> | <p>Although the Code appropriately addresses shell banks it cannot be properly enforced.</p> | <ul style="list-style-type: none"> • Financial institutions should not be permitted to enter into, or continue, correspondent banking relationships with shell banks. | <p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations provide that no bank operating in or from the islands shall enter into or continue a correspondent banking relationship with a shell bank or a bank that is known to permit its accounts to be used by a shell bank.</p> |

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| | | | <ul style="list-style-type: none"> Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. | <p>Regulation 16 deals with shell banks and provides for a fine up to \$100,000.00 if a bank acts in contravention to the regulation.</p> <p>Regulation 16 prohibits banks from carrying on business with a shell bank. Regulation 16 and Part 8 of the Code are to be amended to extend their application to all financial institutions.</p> |
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Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| 19. Other forms of reporting | NC | It appears that the TCI Authorities have not considered the feasibility and utility of implementing a system where financial institutions are required to report all transactions above a fixed threshold. | <ul style="list-style-type: none"> We advise that the TCI consider the implementation of a system where all (cash) transactions above a fixed threshold are required to be reported to the FCU. In this regard TCI should include as part of their considerations the possible increase of STRs filed, the size of this increase compared to resources available for analyzing the information and the effectiveness of the additional intelligence in the process of intercepting illicit activities. | TCI Authorities considered and decided against the use of a system where all (cash) transactions above a fixed threshold require reporting to the FCU. |
| 20. Other NFBP & secure transaction techniques | PC | <p>TCI has not considered the risk of other non-financial businesses and professions being misused for the purpose of ML/ FT.</p> <p>TCI Authorities have not considered or taken adequate steps to ensure that the money laundering risk associated with the large volumes of cash at the casinos are reduced.</p> | <ul style="list-style-type: none"> TCI should consider if there are other non-financial businesses and professions that are at risk of being misused for ML or FT. In this regard, TCI should specifically assess the risk of ML and FT in the construction industry, considering the amount of cash turnover in this industry. TCI Authorities should consider taking an intermediary role in the process of establishing proper communications between local banks and the casino, in order to assure that credit card facilities for casino clients are available at the casinos place of business in order to reduce the amount of cash in circulation in the casino. | <p>POCO has been amended to include a regime for a Non Regulated Financial Businesses and a Non Regulated Financial Business Supervisor and actions have been taken to register NREBs since January 1st 2011.</p> <p>The MLRA, at its meeting in December 2010 decided to have a sub-committee assess the risk of the construction industry being misused for ML and FT purposes and prepare a paper for consideration of the MLRA.</p> <p>Credit card facilities are now available in casinos.</p> |
| 21. Special attention for higher risk countries | NC | <p>The majority of financial institutions do not observe the level of compliance of the foreign jurisdiction when establishing international business relationships.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p> | <ul style="list-style-type: none"> The FSC should promote an effective implementation of a country risk management regime with regard to AML/CFT. In this regard, the FSC should promote an effective implementation of provisions 4.18 and 4.23 of the Code amongst licensed institutions. It is not a conclusive requirement to issue a blacklist containing countries that do not or 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 | <p>The FSC is considering these matters and moving towards issuing a list of countries which do not sufficiently meet the FATF standards</p> <p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations require enhanced CDD and enhanced ongoing monitoring on a risk-sensitive basis when the financial business proposes to have a business relationship with a person connected with a country that does not apply or insufficiently applies the FATF recommendations.</p> <p>The Money Laundering Reporting Authority is presently giving consideration to appropriate counter measures to be</p> |

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| | | | <p>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.</p> | <p>applied against countries who do not or insufficiently apply the FATF recommendations</p> |
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Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| <p>22. Foreign branches & subsidiaries</p> | <p>NC</p> | <p>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.</p> | <ul style="list-style-type: none"> Although, the TCI does not have any local financial institution, with foreign branches and/or subsidiaries, TCI should consider including regulations pertaining to possible TCI financial institutions' subsidiaries in foreign jurisdictions. Particularly in light of the envisioned growth of the financial services industry. | <p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations contain provisions for the application of the Regulations outside of the Islands. Specifically Regulation 10 provides that a branch or subsidiary of relevant financial business located in or incorporated in a country outside the Islands shall comply with the regulations and Code, to the extent that the laws of that country permit.</p> <p>Section 6 of the Code requires all branches and subsidiaries to be compliant with the established policies systems and controls.</p> |
| <p>23. Regulation, supervision and monitoring</p> | <p>PC</p> | <p>The integrity component to the “fit and proper” testing of relevant persons is not clearly specified by the FSC.</p> <p>There was no evidence that Collective investment Schemes' Core Principles (IOSCO) apply for Mutual Funds in TCI.</p> <p>The recently enacted legislative framework providing for the licensing and supervision of MVT is not yet effective.</p> | <ul style="list-style-type: none"> The FSC should develop clear procedures for the assessment of integrity of relevant persons, as part of its execution of the “fit and proper” testing requirement. The TCI should consider the relevance of including collective investment schemes “Core Principles” in their supervisory framework. The TCI should develop an approach and set clear terms for the effective implementation of the recently enacted MTO. In this regard, the TCI should consider its resources and where required take action to support an effective implementation of a supervisory regime for MVTs | <p>The FSC has issued fit and proper guidelines to the industry which covers these matters.</p> <p>The FSC is currently considering including these principles in its supervisory framework.</p> <p>The MTO is now effective with an established licensing regime which continues to grow.</p> <p>The FSC will be including collective investment schemes ‘Core Principles’ in their supervisory framework. The FSC is also actively working on its membership into IOSCO, which the TCI hopes will be considered soon by IOSCO</p> |
| <p>24. DNFBP - regulation, supervision and monitoring</p> | <p>NC</p> | <p>No implementation plan in place addressing the relevant issues pertaining to the effective implementation of an AML/CFT oversight regime for the gaming industry.</p> <p>The due diligence performed on entities requesting a gaming license is not formally established, nor is it clear that all key personnel are subjected to scrutiny for the purpose of granting a gaming license.</p> <p>TCI authorities have not appointed oversight body(ies) that is/are responsible for monitoring compliance with</p> | <ul style="list-style-type: none"> TCI should draw up an implementation plan, for the AML/CFT supervisory regime for casinos. This plan should address the following: <ul style="list-style-type: none"> Who is responsible for the training of gaming inspectors in the area of AML/CFT compliance oversight; Who is responsible for informing the relevant sector of the AML/CFT changes and the respective implications for the | <p>This is to being considered by the MLRA at its meeting scheduled for September 2011.</p> <p>Casinos are now covered in the definition of financial business in the Anti-Money Laundering and Prevention of Terrorist Financing Regulations.</p> <p>POCO and Anti-Money Laundering and Prevention of Terrorist Financing Regulations now include a regime for non-financial business persons.</p> <p>The MLRA has requested that a documented plan be produced for the AML/CFT supervisory regime for casinos which should include training of gaming inspectors,</p> |

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| | <p>AML/CFT rules and regulations by DNFBPs (except for trust and company service providers that fall under the supervision of the FSC).</p> <p>No effective implementation of the enforcement regime for DNFBPs.</p> <p>The Gaming Inspectorate does not have the ability to disclose information to overseas regulators and to domestic regulators.</p> | <p>relevant sector;</p> <ul style="list-style-type: none"> ○ Who is responsible for training of the gaming industry in the introductory phase; ○ What are the tools required for an effective oversight of the industry's compliance with AML/CFT laws and regulations; ○ Where necessary resources should be sought to appropriately equip the Gaming Inspectorate for the effective AML/CFT oversight tasks. <ul style="list-style-type: none"> • The due diligence process performed for the granting of a Gaming license should be formalized and TCI Authorities should determine the risk areas within gaming establishments and require that key personnel responsible for these risk areas be assessed by the Gaming Inspectorate. • The Gaming Inspectorate should possess the ability to disclose information to overseas regulators and to share information with domestic regulators. • TCI Authorities should appoint an oversight body for each of the category of DNFBPs (same oversight body might also supervise more than one category of DNEBP) 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. | <p>resources for the gaming inspectorate and oversight of the industry, cooperation with international authorities. The Gaming Inspectorate is invited to attend the meeting of the MLRA scheduled for September 2011.</p> |
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| <p>25. Guidelines & Feedback</p> | <p>NC</p> | <p>The FSC has not issued any guidance relative to trends and typologies in ML/FT.</p> <p>The FSC has not promoted the issuance of lists containing names of terrorists and terrorist organizations to provide for FT screening of clientele by financial institutions.</p> <p>Other than the Code that provides general instructions to regulated sector, DNFBP's have not been provided with specific guidelines that address the respective industries' challenges in the implementation of an AML/CFT compliant regime.</p> <p>The FCU is currently not issuing reports on statistics, trends and typologies related to ML and TF to regulated entities</p> <p>Except for the Trust and Company Service Providers there is no effective AML/CFT framework in place for DNFBPs, consequently, STRs are currently not being filed by DNFBPs.</p> <p>Lack of training of the DNFBP sector is a major shortcoming in the process of implementing the new legislative framework that addresses the AML/CFT requirements for DNFBPs.</p> <p>The guidance provided so far to DNFBPs with regard to the introduction of the new AML/CFT requirements is insufficient.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p> | <ul style="list-style-type: none"> • The FCU should provide more feedback to regulated entities in order to increase their capacity to detect and deter ML and 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. • The FSC should consider issuing trend and typologies relative to ML/FT schemes in order to increase awareness amongst industry practitioners and thereby increase their ability to effectively identify ML/FT activities. • The FSC should provide for more guidance in the combating of the financing of terrorist. In this regard, the FSC should consider issuing lists/ information on terrorists and terrorist organization to regulated entities. The regulated entities will then be required to assess their client base against the relevant information. • The FSC should make the appropriate adjustments in its structure, in order to increase productivity in the issuance of report of findings resulting from on-site examinations. • The FSC should provide follow up to deficiencies identified and keep statistics on the outcome of these follow up actions. • The FSC should establish instructions | <p>Typologies and risk trends are published on a regular basis in the local press – copies of which were supplied to evaluation team.</p> <p>The industry is small and in practical terms the head of the FCU liaises directly with compliance officers.</p> <p>Typologies and risk issues are also published on the FCU website – as pointed out to the evaluation team.</p> <p>Statistics were published by the MLRA and FCU in MLRA Annual Report for 2009 in compliance with the POCO.</p> <p>The FSC has recently undergone an organizational review. The final report has already been approved by the FSC Directors and the FSC has commenced implementation of the report on a phase basis. Over the last year, the staff compliment in mid to senior level positions has increased by over 5 persons.</p> <p>The FSC has improved its onsite procedures to provide follow-up on deficiencies and continued monitoring.</p> <p>A new Part VIII has been added to POCO which provides for supervision and enforcement. The following new sections are relevant:</p> <p>Section 148F(2) provides for the appointment of a NFRB Supervisor (i.e. Supervisor for non-regulated financial businesses). This will be the new DNFBP Supervisor.</p> <p>Section 148F(3) sets out the responsibilities of the supervisory authority (i.e. monitoring compliance and taking enforcement action).</p> <p>Section 148H provides for the registration of non-regulated financial businesses.</p> <p>Section 148I enables the NFRB Supervisor to undertake compliance visits.</p> |
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| | | | <p>provided to regulated entities in general in writing in order to increase transparency of policy, enforceability and structural compliance with these instructions.</p> <ul style="list-style-type: none"> • TCI Authorities (oversight bodies) should consider issuing sector specific guidelines that deal with the relevant issues pertaining to the specific sectors and disregard requirements that are not applicable considering the structure of the industry and/or the risks that the relevant industry activities impose. • TCI Authorities and specifically the regulatory body for the specific industries once appointed should issue specific guidelines that address the respective DNFbps industries' challenges in the implementation of an AML/CFT compliant regime. | <p>Sections 148J to 148P set out the various types of enforcement action that can be taken by the NRFB Supervisor against non-regulated financial businesses. This includes disciplinary action, which is the imposition of an administrative penalty.</p> <p>Section 148 Q provides the NRFB Supervisor with the power to require information and the production of documents.</p> <p>The new sections 148F to 148Q therefore establish a strong enforcement regime with respect DNFbps.</p> <p>MLRA has directed that sector specific guidelines for financial institutions and DNFbps be completed by the end of April 2011. This will be further considered at the MLRA's meeting set for September 2011.</p> <p>MLRA with the assistance of FCU will ensure that adequate feedback is given to on STRs, typologies and trends.</p> |
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Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| 26. The FIU | PC | <p>The FCU does not appear to have full operational independence and autonomy.</p> <p>The FCU has not provided sufficient guidance to financial institutions and other reporting parties regarding the reporting of STRs.</p> <p>The FCU has not provided feedback to reporting parties in a formalized and timely manner. The FCU does not release periodic reports which include statistics on STRS, trends and typologies within the sector and an update of its activities.</p> <p>The building which houses the FCU does not appear to be properly secured.</p> | <ul style="list-style-type: none"> • The Head of the FCU should be afforded more operational independence particularly with regard to matters such as staff recruitment and budget management. • The FCU should provide guidance to relevant parties on the revised procedures for reporting STRs. • The FCU should provide feedback to reporting parties in a formalised and timely manner. • The FCU should produce and periodically release its own monthly reports which should contain statistics on STRs, trends and typologies within the sector and an update on its activities. • The security of the building which houses the FCU should be addressed as a matter of urgency. | <p>These matters are under review; however, the head of the FCU has full operational independence when dealing with SAR's. The head of the FCU carries out all staff recruitment.</p> <p>Typologies and risk trends are published on a regular basis in the local press – copies of which were supplied to the evaluation team.</p> <p>Every SAR is responded to with a strategy within most cases 24 hours. Successful out comes of investigations are also reported.</p> <p>The industry is small and in practical terms the head of the FCU liaises directly with compliance officers.</p> <p>Typologies and risk issues are also published on the FCU website – as pointed out to the evaluation team.</p> <p>Statistics were published by the FCU in the annual report for the last calendar year and new statistics are now being prepared.</p> <p>While TCI is a low risk crime country the FCU is situated on the top floor of a converted hotel which otherwise houses the police. In addition to the steel door in place at the entrance to the office. Further steel doors have been erected at both ends of the corridor housing the unit. Unwanted visitors would now need explosives to enter.</p> <p>The MLRA at its meeting in January 2011 directed the FCU to 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. This matter will be reviewed further at the MLRA meeting scheduled for September 2011.</p> |
| 27. Law enforcement authorities | C | This Recommendation is fully observed. | | |
| 28. Powers of competent authorities | C | This Recommendation is fully observed. | | |

Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| <p>29. Supervisors</p> | <p>PC</p> | <p>Written reports of findings resulting from on-site examinations of banking and insurance companies have not been issued to the respective companies.</p> <p>The report of findings relative to on-site examinations of the trust and company service providers industry have not been issued consistently (backlog).</p> <p>The FSC is limited in its potential to give follow up to deficiencies identified during on-site inspections.</p> <p>The FSC does not provide for sufficient written instruction to regulated entities.</p> <p>The FSC does not have the authority to impose financial sanctions independently (summary of convictions required)</p> | <ul style="list-style-type: none"> • The Registrar of Insurance and the Registrar of Co-operative Societies should have adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with AML/CFT requirement. | <p>POCO and Anti-Money Laundering and Prevention of Terrorist Financing Regulations now empowers the NFBB Supervisor to impose administrative sanctions on NFBPs.</p> <p>The Financial Services (Financial Penalties) Regulations came into operation on October 29, 2010. The regulations inter alia, provide the FSC with the authority to impose financial sanctions independently.</p> |
| <p>30. Resources, integrity and training</p> | <p>NC</p> | <p>AML/CFT related training is lacking at the Gaming Inspectorate</p> <p>Funding for the Gaming Inspectorate is dependent upon government funds (Ministry of Finance)</p> <p>The FSC is not properly structured. The current structure imposes a risk for conflict of interest.</p> <p>Insufficient staff at the FSC to execute additional tasks pursuant to legislative changes, reference is in this regard made to the enactment of the MTO.</p> <p>The FCU lacks full operational independence and autonomy as it is one (1) of six (6) Departments within the overall TCI Police Force and does not have its own budget allocation.</p> <p>AML/CFT training for staff of competent authorities with few exceptions have not been adequate. AML/CFT training has not been provided to the judges, magistracy and court personnel. Only recently have staff of most of the competent authorities been</p> | | <p>The MLRA has recognized the need for an action plan with regard to the Gaming Inspectorate. In keeping with this Senior Officials from the Gaming Inspectorate have been invited to attend the next meeting of the MLRA scheduled for September 2011.</p> <p>As a result of a process of organizational review, the FSC has reviewed existing posts, and created new posts. Some of these have been filled and it is anticipated that others will be filled shortly.</p> <p>This matter is under review, but the head of the FIU has full operational independence when dealing with SAR's. The head of the FCU carries out all staff recruitment.</p> <p>Judges and Magistrate underwent AML/CFT training during the latter part of 2009.</p> <p>There is serious strain on the local economy in keeping with the worldwide economic downturn. However, the MLRA is reviewing the situation in order to make appropriate recommendations to the Governor.</p> <p>The FSC's Bank and Trust Department (which also has oversight for money transmitters) and the Head of Insurance and the officer responsible for domestic</p> |

Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| | <p>sufficiently trained in ML/FT matters.</p> <p>Law enforcement agencies operate with clear monetary and manpower constraints. The Immigration Department in particular suffers from severe staffing constraints exacerbated by onerous illegal immigrants' issues.</p> | | <p>insurance have been relocated to Providenciales which should ensure that there is adequate oversight and supervision of the relevant industries.</p> |
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Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| 31. National cooperation | PC | <p>Implementation and coordination of local cooperation and efforts by the various units i.e. MLRA, SPICE or of the MOU involving Customs and Police are limited and must be strengthened.</p> | <ul style="list-style-type: none"> • The MLRA should play a more active role in local cooperation and coordination and should aim to have a set minimum number of meetings each year, for example, once every quarter. • The MLRA should develop and implement policies and activities to combat ML/FT on 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. | <p>These matters will be tabled for consideration of the MLRA. The MLRA meets frequently and has decided to meet, at a minimum, once every quarter.</p> <p>The MLRA and FSC have conducted AML training in May and September 2010 for the industry and plan to hold further training before the end of 2011.</p> <p>The MLRA has now invited the Deputy Attorney General, having overall oversight of the various departments of the Chambers as well as Principal Crown Counsel working in the Civil and Criminal sections of the Chambers, Senior Crown Counsel, Civil as well as the Principal Legislative Drafter.</p> <p>The MLRA is developing and seeking to implement policies and activities to combat ML/FT on an ongoing basis.</p> |
| 32. Statistics | PC | <p>The TCI does not review the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis.</p> <p>Comprehensive statistics are not maintained by all competent authorities</p> <p>No data had been provided regarding AML/ CFT on-site examinations of financial institutions and, where appropriate, sanctions relative thereto.</p> | | <p>The TCI has instituted a system for more comprehensive statistics. This has been reflected in the MLRA Annual Report for 2010. The 2011 Report is in draft and should be considered by the MLRA at its meeting in September 2011 before it is published.</p> |
| 33. Legal persons–beneficial owners | PC | <p>There is no evidence that any training occurred on matters relative to legal persons including the revised procedure for reporting of suspicious transactions.</p> | <ul style="list-style-type: none"> • The TCI Authorities should develop guidelines that financial institutions must follow in the event that issued bearer shares in a company for which they represent are | <p>The FSC produced a paper on bearer shares including considerations on whether they should be prohibited or whether greater restrictions should be placed on them. The MLRA reviewed that paper and directed that the paper be</p> |

Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| | | <p>The deficiencies identified in Rec. 5 with regard to beneficial ownership apply equally to Rec. 33.</p> | <p>held outside the TCI.</p> <ul style="list-style-type: none"> • 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. | <p>circulated among the industry for comment.</p> <p>The public consultation is now concluded and the results will be considered by the MLRA at its meeting in September 2011 at which time a decision will be taken as to the way forward which will then be reflected in the relevant legislation</p> |
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Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| <p>34. Legal arrangements – beneficial owners</p> | <p>PC</p> | <p>Persons associated with Legal Arrangements do not appear to be aware of the revised protocol for reporting suspicious transactions.</p> <p>There is no evidence that the FCU held training sessions on matters relative to Legal Arrangements.</p> <p>The deficiencies identified with regard to beneficial ownership at R5 apply to trustee services.</p> | <ul style="list-style-type: none"> • The FCU should ensure that all persons associated with Legal Arrangements are made aware of the requirements of POCO and the MLRA Codes regarding the reporting of suspicious transactions. • The FCU should review its training programme to include AML/ CFT training on matters relative to Legal Arrangements. | <p>Training was arranged in London UK in September 2009 and again in February 2010 for the Judiciary, Prosecutors and key law enforcement officials.</p> <p>While the FCU is a law enforcement unit and there is some doubt that this falls with their area of responsibility, staff from the FCU have recently given presentations to the money remitters industry and the insurance industry.</p> <p>Now in planning stage for formalized presentation within the remaining industry.</p> <p>The FCU has been directed by the MLRA to ensure that all persons associated with Legal Arrangements are made aware of the requirements of the POCO and the MLRA Codes regarding the reporting of suspicious transactions.</p> <p>The FCU is to review its training programme to include AML/CFT training on matters relative to Legal Arrangements.</p> |
| <p>International Cooperation</p> | | | | |
| <p>35. Conventions</p> | <p>PC</p> | <p>The Palermo Convention and the Terrorism Financing Convention have not by extension been ratified on behalf of the TCI.</p> <p>Not all relevant aspects of the Conventions have been implemented.</p> | <ul style="list-style-type: none"> • TCI should recommend or propose ratification of the Palermo Convention and the Financing of Terrorism Convention on its behalf to the UK Government; particularly as the TCI has enabling legislation under these Conventions already in place and the UK Government has already ratified the said Conventions on its own behalf. | <p>These matters were considered by the MLRA. and a decision taken to recommend that a request be made to the UK Foreign Office to have these conventions extended to the TCI.</p> <p>The MLRA is to follow-up on its request to the UK FCO for the ratification of the Palermo Convention and the Financing of Terrorism Convention on behalf of the TCI.</p> |
| <p>36. Mutual legal assistance (MLA)</p> | <p>PC</p> | <p>Mutual legal assistance will not be provided by the TCI once tax or fiscal matters are involved which do not fall within certain exemptions.</p> <p>The effectiveness of implementation is difficult to assess due to the lack of statistical details.</p> <p>There are no formal administrative procedures except those implemented by the Chief Magistrate further to the MLAO, which would work towards ensuring that assistance would be given in a timely manner.</p> | <ul style="list-style-type: none"> • The TCI should consider rendering mutual legal assistance for requests which deal solely or for those portions of the request which deal partially, with tax or fiscal matters. | <p>TCI has signed sixteen Tax Exchange Information Agreements to date and are in active negotiations with a number of other OECD countries to sign additional TIEAs before the end of the year. An implementation Ordinance was made and brought into force in December 2009. In 2010, Orders giving effect to all of the TIEAs signed by the end of December 2010 were made and letters informing TIEA partner countries that all internal procedures had been completed.</p> |

Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| 37. Dual criminality | C | This Recommendation is fully observed. | | |
| 38. MLA on confiscation and freezing | PC | <p>There are no administrative arrangements in place for coordinating actions relating to seizure and confiscation actions with other countries, neither are any arrangements in place in relation to the sharing of the assets resulting from such coordinated efforts.</p> <p>The effectiveness of implementation cannot be ascertained.</p> | <ul style="list-style-type: none"> The TCI Authorities should establish administrative guidelines to accompany legislated provisions which permit the rendering of international assistance by the TCI, so as to ensure that international assistance is given in a prompt and efficient manner. Time frames relative to each procedural step, and other administrative details with respect to the execution of international requests, should be formalised in written guidelines or standard operating procedures. Effectiveness should not depend solely on the commitment and efficiency of the entity or persons responsible for executing a request but on formal systems which can monitor and support such efficiency. | <p>These matters will be tabled for consideration of the MLRA.</p> <p>Law Reform is currently on-going in the country. The MLRA has directed that the mutual legal assistance legislation to be reviewed and if necessary new legislation or amendments will be made.</p> |
| 39. Extradition | C | The Recommendation is fully observed | <ul style="list-style-type: none"> The TCI authorities should seek to have extradition requests transmitted directly from the UK Government to the TCI so as to ensure prompt and early attention to such requests. | These matters will be tabled for consideration of the MLRA. |
| 40. Other forms of co-operation | PC | <p>No MOUs in place between the FSC and other similar bodies or by the FCU with FIUs which require MOUs for the exchange of information</p> <p>It cannot be ascertained whether assistance by certain competent authorities including the Attorney General's Chambers and the FSC ,was given in a rapid, constructive and effective manner due to lack of statistical detail.</p> <p>Considerations which apply under the FSCO before regulatory assistance is given are onerous when taken conjunctively.</p> | <ul style="list-style-type: none"> The TCI Authorities should stipulate specific standard operating procedures inclusive of targeted time frames with regard to the execution of requests for assistance received by foreign competent authorities. The FSC should consider entering into MOUs with other foreign supervisory authority to ensure that the exchange of information to combat ML/FT can effectively be executed with other foreign jurisdictions. | <p>The FSC Ordinance 2007 adequately allows for the exchange of information with foreign regulators. In 2009 the FSC dealt with four requests. These were handled expeditiously and no problems were encountered. The FSC is currently well advanced in negotiating MOU's with a number of jurisdictions.</p> <p>The FSC has now entered into five MOUs with foreign supervisory authorities including Canada, Panama, the Cayman Islands, Jamaica and a multinational MOU with several regional jurisdictions. The MOUs are posted on the FSC's website.</p> <p>The 2009 Tax Information Exchange Ordinance (as amended) also provides a regime for the exchange of information between competent authorities for tax matters.</p> |
| 9 Special Recommendation | | | | |

Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| SR.I Implement UN instruments | PC | The Terrorist Financing Convention has not been ratified or fully implemented. | <ul style="list-style-type: none"> All the provisions of the United Security Council Resolutions should be fully implemented, for example, authorising access to frozen funds for the purpose of meeting the defendant's basic expenses and certain fees in accordance with UNSCR 1452. | <p>The MLRA has already agreed to request the extension of relevant sections of the UK Terrorist Financing Act and that was done by the UK Order in Council.</p> <p>A draft stand alone legislation on CFT is to be produced. In that Bill on Terrorism, provisions in line with the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism will be included.</p> |
| SR.II Criminalize terrorist financing | PC | <p>Penalties for terrorist financing offences at the summary level are lenient.</p> <p>The elements of directing terrorism as required by Article 2(5) of the Terrorist Financing Convention, are undefined in the laws of the TCI.</p> <p>Inconsistent mens rea requirements for terrorism offences.</p> <p>The effectiveness of the CFT regime is difficult to assess in the absence of any STRs or investigations on FT.</p> | <ul style="list-style-type: none"> The TCI Authorities should review the penalty for terrorism and terrorist financing offences at the summary level to determine whether it accords the spirit and intent of the anti-terrorism legislation and indeed if these sanctions are in fact effective punishment and hence sufficiently dissuasive. Directing terrorism as an offence should be defined in the laws of the Turks and Caicos 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. | <p>The Counter-Terrorism (Terrorist Financing, Money Laundering and Certain Other Activities: Financial Restrictions) (Turks and Caicos Islands) Order 2010 came into force on March 18, 2010 and it includes provisions on CDD, reporting, enforcement, inspection, and offences.</p> |
| SR.III Freeze and confiscate terrorist assets | LC | <p>Ineffective implementation of a strong CFT regime:</p> <ul style="list-style-type: none"> no formal or administrative provisions to ensure that freezing of funds and assets will be carried out without delay; no procedures which apply directly to persons inadvertently affected by freezing orders; no procedures for authorizing access to frozen funds for incidental costs or expenses; and no clear procedures for the communication of lists of suspected terrorists to the financial sector. <p>De-listing procedures are not publicly known.</p> | <ul style="list-style-type: none"> The TCI should establish administrative systems, which complement the CFT legislative framework, such as standard operating procedures which outline time frames for certain processes to take place. Clear administrative guidelines as to who has responsibility for the lists of suspected or named terrorist and whether such lists are in fact circulated in the TCI in order to alert financial institutions of suspected terrorist whose accounts they may be holding, should be implemented. The TCI should also provide for authorizing | <p>The Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011 which came into force on March 31, 2011 and extended Part 1 of the UK Terrorist Asset-Freezing etc. Act 2010 and Part 1 of Schedule 2 to that Act to the Turks and Caicos Islands. Under sections 2 and 6 of the Act as modified by the Order the Governor is responsible for designating persons connected to terrorist activities and provides a regime for notification of designations under sections 4 and 7. Access to frozen funds and assets may be done by the issue of a license issued by the Governor under section 17. Section 27 provides a procedure whereby any person affected by a decision pursuant to the Act (other than a designation) may seek redress.</p> |

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| | | | <p>access to frozen funds and assets for the payment of incidental expenses when a freezing order is made and a person inadvertently affected by a freezing order should have a clear process of redress.</p> | <p>The TCI Authorities will keep this matter under review but are of the view that the POCO amply covers the freezing of funds for any criminal conduct. The Proceeds of Crime (Amendment) Ordinance 2010 amends Part III of POCO to provide for the recovery of instrumentalities intended for use in or in connection with <u>unlawful conduct</u> through civil forfeiture. It includes new sections on freezing orders</p> <p>A draft stand-alone legislation on CFT is to be produced. The consideration is being given to having such a provision covered in the new legislation.</p> |
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Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| <p>SR.IV Suspicious transaction reporting</p> | <p>PC</p> | <p>The awareness amongst financial institutions for the misuse of TCI's financial system for the financing of terrorist is low thereby affecting the effectiveness of the CFT regime.</p> | <ul style="list-style-type: none"> • The reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organisations or those who finance terrorism. • The obligation to make a STR related to terrorism should include attempted transactions. | <p>These matters are for ongoing consideration of the MLRA. However, the MLRA has already agreed to request the extension of relevant sections of the UK Terrorist Financing Act.</p> <p>Counter-Terrorism (Terrorist Financing, Money Laundering and Certain Other Activities: Financial Restrictions) (Turks and Caicos Islands) Order 2010 came into force on March 18, 2010 and it includes provisions on reporting.</p> <p>Section 29 of the Code provides for the reporting of STR's where there are reasonable grounds for suspecting that a person is engaged or attempted to engage in terrorist financing.</p> <p>The new Terrorism Offences Bill is to include provisions to require the reporting of STRs with regard to terrorism and the financing of terrorism and suspicion of terrorist organisations or those who finance terrorism and to include an obligation to make a STR related to terrorism cover attempted transactions.</p> |
| <p>SR.V International cooperation</p> | <p>LC</p> | <p>There are no formal administrative procedures which have been established to ensure mutual legal assistance is given in a timely manner.</p> <p>Deficiencies noted with regard to Recs. 36 and 38 are also applicable to this Recommendation.</p> | | <p>These matters will be tabled for consideration of the MLRA.</p> <p>A draft stand-alone legislation on CFT is to be produced. These issues are being considered for inclusion in the Bill.</p> |
| <p>SR.VI AML requirements for money and value transfer services</p> | <p>PC</p> | <p>Money service providers have not yet been licensed within the TCI.</p> <p>The AML/CFT legislative framework applicable to money service providers has not been effectively implemented.</p> <p>The deficiencies noted with regard to Rec. 5 as it pertains to customer identification such as lack of proper beneficial ownership requirements; Rec. 6 PEPs and Recs. 11 and 21 transaction monitoring also apply to money service providers.</p> | <ul style="list-style-type: none"> • The FSC should 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 | <p>The licensing of money service providers has commenced. New applications for their business areas are also being received.</p> <p>A unit within the FSC's Banking Department has been created and is responsible for the effective implementation of money service providers under the legislative framework.</p> <p>POCO and Anti-Money Laundering and Prevention of Terrorist Financing Regulations now include a regulatory regime for NFBPs and a NFBP Supervisor.</p> <p>FSC has started the process of assessing the current level of compliance with AML/CFT rules and regulations by the</p> |

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| | | | <p>legislative framework.</p> <ul style="list-style-type: none"> In order to execute the abovementioned, the FSC should appropriately resource a department within the Commission that is responsible for the effective execution of the MTO. | <p>MSP's and is developing a plan to improve the current compliance level.</p> <p>The FSC has provided training to guide MSP's into the effective execution of their responsibilities under the recently enacted AML/CFT legislative framework. This is training was conducted in September 2010</p> |
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Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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

Turks_and_Caicos-Islands_5th_follow_up_Rpt_Eng_(final)

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| | | <p>There has not been any training for NPOs.</p> <p>There is no point of contact with regard to obtaining international requests for information on NPOs.</p> | <p>reporting suspicious transactions.</p> <ul style="list-style-type: none"> • The FCU should revise its training programme to include AML/ CFT training for NPOs. • A specific point of contact should be established with regard to international request for information on NPOs. | <p>All known NPO's are aware of their responsibilities.</p> |
| SR.IX Cash Couriers | NC | <p>The recently enacted POCO has had no time to be effectively implemented.</p> <p>The Immigration Department has not established any MOUs with its counterparts abroad.</p> <p>There are no provisions for Authorities in the TCI to notify other countries when there is unusual movement of gold, precious metal and precious stones from their jurisdictions.</p> | <ul style="list-style-type: none"> • The Immigration Department should seek to establish MOUs with Immigration Departments in other jurisdictions. • The TCI Authorities should notify other countries when there is an unusual movement of gold, precious metals or precious stones from their jurisdictions | <p>These matters are under review by the relevant Department.</p> <p>The MLRA at its January 2011 meeting recommended that the Immigration Department should seek to establish MOUs with Immigration Departments in other jurisdictions and that the Customs Department should notify other countries when there is an unusual movement of gold, previous metals or previous stones from their jurisdictions. This will be considered further by the MLRA at its meeting in September 2011.</p> |