



Thirteenth Follow-Up Report

Turks & Caicos Islands

June 17, 2016

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TURKS AND CAICOS ISLANDS: THIRTEENTH FOLLOW-UP REPORT: UPDATE AND FULL ANALYSIS

I. INTRODUCTION

1. The third round Mutual Evaluation Report of the Turks & Caicos Islands (TCI) was adopted by the CFATF Council of Ministers in October 2008 in St. Kitts & Nevis. The Turks and Caicos Islands' first follow-up report (FUR) was tabled in November 2009 at which time they were placed in expedited follow-up and required to report back to the May 2010 Plenary. At the May 2010 Plenary (2nd FUR) the Turks and Caicos Islands remained in expedited follow-up due to the fact that most of the Core and Key Recommendations remained outstanding and was there for required to report at the November 2010 Plenary (3rd FUR). Based on the limited progress made, the Turks and Caicos Islands was left in expedited follow-up and was required to report back at the May 2011 Plenary (4th FUR). At the presentation of the 4th FUR, it was decided that TCI would remain on expedited follow-up and report back to the November 2011 Plenary (5th FUR) since seven of the Core and Key Recommendations were still either partially met or not met, while a majority of the other Recommendations were only partially met. The Turks and Caicos Islands remained in expedited follow-up and reported to the May 2012 Plenary in the form of an update report since the follow-up matrix had been submitted too late to prepare a FUR. The 6th FUR was prepared post Plenary and approved via the round robin process.
2. At the November 2012 Plenary (7th FUR), the TCI remained in expedited follow-up. For the presentation of the 8th FUR it was recommended that TCI remain in expedited but that Plenary should give consideration to placing the TCI in enhanced follow-up if substantial progress had not been made in addressing the Core and Key Recommendations that remained outstanding. The November 2013 Plenary (9th FUR) agreed with the recommendation to place the Turks and Caicos Islands in the first stage of enhanced follow-up, which required a letter to be written by the CFATF Chair to a high ranking TCI official. TCI was required to report back to the May 2014 Plenary (10th FUR) at which time TCI remained in the first stage of enhanced and was required to report to the November 2014 Plenary (11th FUR) at which time the good progress made by the TCI was recognized and Plenary agreed for TCI to return to regular (expedited) follow-up and report to the May 2015 Plenary. Shortly after the November 2014 Plenary, (December 3, 2014), TCI applied to exit the third round follow-up process on the basis the only outstanding matter pertained to R. 35 (extension of the Palermo and Terrorist Financing Conventions to the TCI), which were being addressed and for which most of the underlying requirements of the Conventions had already been met. TCI however did not submit an exit matrix for the May 2015 Plenary and no FUR was presented at that meeting. For the November 2015 Plenary (12th FUR), TCI submitted an exit report matrix, however on reviewing a few of the Recommendations a determination was made that the Turks and Caicos should submit their exit report at the May 2016 Plenary. The Turks and Caicos Islands have now submitted the relevant exit report matrix for this Plenary.
3. This report is based on the follow-up removal procedure as stated in the CFATF Mutual Evaluation Procedures (amended to 2012) and as further explained by the decision of the Miami Plenary (May 2014)¹. The report contains a detailed description of the measures taken by the Turks and Caicos Islands to address deficiencies in their Core and Key Recommendations that were rated partially

¹ See, CFATF-plen-XXXIX-aiii-annex-i-updated.

compliant (PC) or non-compliant (NC) in the mutual evaluation report. A brief description and analysis of the non-Core and Key recommendations rated PC/NC is also being presented.

4. The Turks and Caicos Islands was rated PC or NC on the following Recommendations:

| Core Recommendations ² rated partially compliant (PC) |
|---|
| R. 1 (ML Offence) R. 10 (Record Keeping) R.13 (Suspicious transaction reports) SR. II (TF Offence) SR. IV (Terrorist financing suspicious transaction reports) |
| Core Recommendation rated NC |
| R. 5 (Customer due diligence) |
| Key Recommendations ³ rated PC |
| R. 23 (Regulation, supervision and monitoring) R. 26 (The FIU) R. 35 (Conventions) R. 36 (Mutual Legal Assistance) R. 40 (Other forms of international cooperation) SR. I (Implement UN instruments) |
| Other Recommendations rated PC |
| R. 9 (Third parties and introducers) R. 15 (Internal controls, compliance & audit) R. 16 (DNFBPs – R. 13-15 and 21) R. 17 (Sanctions) R. 18 (Shell banks) R. 20 (Other non-financial businesses and professions and secure techniques) R. 29 (Supervisors) R. 31 (National cooperation) R. 32 (Statistics) R. 33 (Legal persons – beneficial owners) R. 34 (Legal arrangements – beneficial owners) R. 38 (Mutual legal assistance on confiscation and freezing) SR. VI (AML requirements for MVTs) |
| Other Recommendations rated non-compliant (NC) |
| R. 6 (Politically Exposed Persons) R. 7 (Correspondent banking) R. 8 (New technologies & non face-to-face business) R. 11 (Unusual transactions) R.12 (DNFBPs – R. 6, 8-11) R. 19 (Other forms of reporting) R. 21 (Special attention for higher risk countries) R. 22 (Foreign branches & subsidiaries) R. 24 (DNFBP-regulation, supervision and monitoring) R. 25 (Guidelines and feedback) R. 30 (Resources) SR. VII (Wire transfers) |

² The FATF Core Recommendations are: R.1, R.5, R. 10, R. 13 and SR. II and SR. IV.

³ The FATF Key Recommendations are R. 3, R. 4, R. 23, R. 26, R.35, R.36, R. 40, SR. I, SR. III and SR. V.

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| SR. VIII (Non-profit organisations) |
| SR. IX (Cross border declaration & disclosure) |
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5. The review of the Turks and Caicos Islands' progress towards exiting the follow-up process is a desk-based review and as such is not as detailed and thorough as a mutual evaluation report. The analysis focuses on the Recommendations that were rated PC/NC and as such only part of the AML/CFT system is being reviewed. The analysis consists of looking at the main laws, regulations, guidelines and other materials to verify technical compliance with the FATF Recommendations. The level of effectiveness is taken into account through consideration of data provided by the Turks and Caicos Islands. The conclusions in this report do not prejudge the results of any future assessments as they are based on information that was not verified through an onsite process.

II. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY

Core Recommendations:

5. **Recommendation 1:** At the time of the mutual evaluation, the Proceeds of Crime Ordinance (POCO) had been recently enacted and the Examiners' found that there were errors that adversely affected its implementation. The enactment and bringing into force of the Proceeds of Crime (Amendment) Ordinance, 2009 and the Proceeds of Crime (Amendment) Ordinance, 2010, the Trafficking in Persons (Prevention) Ordinance, 2016, the Proceeds of Crime (Amendment) Ordinance, 2016, the Control of Drugs (Amendment) Ordinance, 2016 and the Prevention of Terrorism (Amendment) Ordinance, 2016 addressed the deficiencies noted by the Examiners so that R. 1 has been brought to a level that is comparable at a minimum to an LC.
6. **Recommendation 5:** Amendments to the Anti-Money Laundering and Prevention of Financing of Terrorism Regulations 2010 (AML/PFT Regulations) and the AML/CFT Code, primarily addressed the Examiners' deficiencies so that R. 5 has been brought to a level that is comparable at a minimum to an LC.
7. **Recommendation 10:** The deficiencies identified with regard to R.10 were addressed by amendments to AML/PFT Regulations; the AML/PFT Code, the Companies (Amendment) Ordinance, 2011 and the Limited Partnerships (Amendment) Ordinance, 2011. The Companies and Partnership Ordinances specifically expanded the record keeping obligations for companies and limited partnerships. These amendments addressed the Examiners' deficiencies so that R. 10 has been brought to a level that is comparable at a minimum to an LC.
8. **Recommendation 13:** The deficiencies that were noted by the Examiners have been addressed by amendments to the AML/PFT Regulations and forms providing guidance on the reporting of suspicious transactions, which were placed on the FSC and FIU websites. These measures, raised the Recommendation to a compliance level comparable at a minimum to an LC.
9. **Special Recommendation II:** The SR.II deficiencies pertained to the penalties for the TF offence at the summary level, the offence of directing terrorism was undefined and there was inconsistent mens

rea. The enactment of the Prevention of Terrorism Ordinance, 2014 (PTO) addressed these deficiencies and raised the level of compliance with SR. II to one comparable to LC at a minimum.

10. **Special Recommendation IV:** The SR.IV deficiencies were also addressed by the enactment of the Prevention of Terrorism Ordinance, 2014 and also by its subsequent amendment (Prevention of Terrorism (Amendment) Ordinance, 2016). These measures, raised the level of compliance with SR. IV to one comparable to LC at a minimum.

Key Recommendations:

11. **Recommendation 23:** The implementation of the Money Transmitters Ordinance and the consideration given to the inclusion of collective investment schemes ‘Core Principles’ in TCI’s supervisory framework resulted in bringing this Recommendation to a level comparable at a minimum to an LC.
12. **Recommendation 26:** The main deficiency for R. 26 pertained to the lack of operational independence of the FCU. This was addressed through the enactment of the Financial Intelligence Agency Ordinance, 2014. (FIAO). Other deficiencies were addressed through the publication of reports on the activities of the FIU (trends and typologies), the provision of feedback on filed STRs and training and guidance on the filing of STRs. These measures have addressed the deficiencies sufficiently to raise R. 26 to a level of compliance that is comparable to LC at a minimum.
13. **Recommendation 35:** The deficiencies pertaining to R. 35 were based on the lack of ratification of the Palermo and Terrorist Financing Conventions by the United Kingdom on behalf of the Turks and Caicos Islands. The enactment of the Prevention of Terrorism Ordinance, 2014 facilitated the extension of the Palermo Convention to the Turks and Caicos Islands in August 2015. This was a significant step to compliance with R. 38. The UK FCO is still however completing the review with regard to the extension of the Convention for the Suppression of the Financing of Terrorism. TCI have addressed the deficiencies sufficiently to raise R. 35 to a level of compliance that is comparable to LC at a minimum.
14. **Recommendation 36:** The signing of seventeen Tax Information Exchange Agreements (TIEAs); the enactment of the Tax Information Exchange (Amendment) Ordinance, 2014, the extension of the Convention on Mutual Legal Assistance Treaty on Tax Matters in 2013 and the 2014 amendment to the Financial Services Commission Ordinance have addressed the deficiencies sufficiently to raise R. 36 to a level of compliance that is comparable to LC at a minimum.
15. **Recommendation 40:** The publication of a Handbook setting out guidelines which stipulate standard operating procedures for the processing of requests for assistance received from foreign competent authorities and the negotiation of MOUs with several Caribbean jurisdictions addressed the deficiencies sufficiently to raise R. 40 to a level of compliance that is comparable to LC at a minimum.
16. **Special Recommendation I:** The enactment of the PTO addressed the deficiencies sufficiently to raise R. 26 to a level of compliance that is comparable to LC at a minimum.

Other Recommendations:

17. Turks and Caicos Islands has also made progress in addressing the deficiencies in its non-core and key Recommendations that were rated PC/NC. The Turks and Caicos' application for removal from the follow-up process is based on its compliance with the Core and Key Recommendations that were rated PC/NC. Accordingly, this report will not provide a detailed analysis of the other Recommendations. A brief overview of the progress made with these other Recommendations is included in section VI of this report for information purposes only.

CONCLUSIONS:

18. This report provides an analysis of Turks and Caicos Islands' Core and Key Recommendations that were rated PC/NC in its 2008 Mutual Evaluation Report. The analysis indicates that the Turks and Caicos Islands has addressed the deficiencies noted in the Core and Key Recommendations rated PC/NC (R.1, 5, 10, 13, 23, 26, 35, 36, 40 and SR.I, II, IV) to a level that is comparable to at least an LC. It is therefore recommended to Plenary that the Turks and Caicos Islands should be allowed to exit the third round follow-up process.

III. OVERVIEW OF TURKS AND CAICOS ISLANDS' PROGRESS

Overview of the main changes since the adoption of the Mutual Evaluation Report (MER)

19. Since the adoption of the MER in 2008, the Turks and Caicos Islands have focused on enacting, amending and implementing legislation that would strengthen its AML/CFT framework and address the deficiencies noted by the Examiners in the MER. Enactments of the Trafficking in Persons (Prevention) Ordinance, 2016; Prevention of Terrorism Ordinance, 2014, the Financial Intelligence Agency Ordinance, 2014, the Anti-Money Laundering and Prevention of Terrorist Financing Code, 2011, (AML/PTF Code); Partnership Ordinance, 2011; the Financial Services (Financial Penalties) Regulations, 2010; the Counter-Terrorism (Terrorist Financing, Money Laundering and Certain Other Activities: Financial Restrictions)(Turks and Caicos Islands) Order, 2010, which was extended to the TCI by the UK; the repeal of the Control of Drugs Trafficking Ordinance and the former Proceeds of Crime Ordinance; and the making of the Tax Information (Exchange and Mutual Administrative Assistance) (Convention on Mutual Administrative Assistance in Tax Matters) Order, 2014. There were amendments of several pieces of legislation with the primary pieces being the Proceed of Crime (Amendment) Ordinance of 2009, 2010, the Financial Services Commission (Amendment) Ordinance, 2014; the Companies (Amendment) Ordinance, 2012; the Anti-Money Laundering and Prevention of Terrorism Regulations, 2010 (AML/PFT Regulations). The most recent enactments include, the Control of Drugs (Amendment) Ordinance, 2016; the Prevention of Terrorism (Amendment) Ordinance, 2016; the Proceeds of Crime (Amendment) Ordinance, 2016; the Financial Intelligence Agency (Amendment) Ordinance, 2016 and the Law Revision (Miscellaneous Amendments) Ordinance, 2016.
20. With regard to implementation, TCI has commenced twenty-five (25) ML investigations, resulting in eleven (11) prosecutions and one (1) conviction, the remaining prosecutions are ongoing or were completed in 2016. The investigation and prosecutions has resulted in several restraint orders in relation to both property and money; one (1) confiscation of approximately US\$10,000,000 and three (3) civil recovery forfeitures of real property. Additionally, through legal assistance requests, three (3) restraint orders under the POCO have been made since 2011. Prosecution having now been completed,

one order relation to US\$594,346 has been discharged. The remaining restraint orders are in respect of the amount of US\$12, 000,000. See. Annexes 1and 3.

21. Throughout 2015 in respect of supervising compliance with the AML/PTF Regulations 2010 the FSC had supervisory responsibility for:
 - 96 licensed financial institutions.
 - 82 registered Designated Non-Financial Businesses and Professions (DNFBPs) in the Commission's capacity as the appointed DNFBP Supervisor.
 - 141 Non Profit Organisations in the Commission's capacity as the appointed NPO Supervisor.
22. The FSC undertook risk based supervision by way of both onsite examinations and offsite surveillance. All three licensed MSBs were examined between March and June 2015. The FSC commenced examination of targeted licensees in the Company Management (Corporate Service Providers) Sector. Eight on site examinations were undertaken in 2015.
23. The TCI continues on its sensitization campaign to make financial institutions aware of the benefits of meeting AML/CFT requirements. Since 2011, the FSC has regularly held AML/CFT training for industry practitioners. The 2011 training focused on the requirements of the then new code and establishing a compliance manual. A Compliance Workshop is scheduled to be held on October 24, 2012. An AML Seminar was also held on April 25, 2013 and was attended by persons from across the various regulated sectors. Both Training exercises addressed issues relating to establishing relevant AML systems and procedures and in particular an AML Manual that should be developed by each licensee on a risk sensitive basis. In October 2013 a full day seminar was jointly hosted by the FSC and KPMG. Throughout 2014 the FSC and the FIU undertook targeted training with the Bar Association, the Realtors Association and MSBs on relevant AML topics. In March 2015 the TCI hosted a joint AML/PTF training with CFATF and in September 2015 the FSC Collaborated with the first TCI Compliance Association training event. The FIA has also conducted an AML training with the staff at one of the local banks at the request of their Money Laundering Reporting officer.

The Legal and Regulatory Framework

24. The Turks and Caicos Islands' AML/CFT legal and regulatory framework is based on several pieces of legislation (including regulations and guidelines) that have been enacted by the House of Assembly. The pieces of legislation at the forefront of the Framework is the POCO, the PTO, the Financial Intelligence Agency Ordinance and the Financial Services Commission Ordinance. . The relevant laws and guidelines will be discussed in detail in section IV of the report.

IV. DETAILED ANALYSIS OF COMPLIANCE WITH THE CORE RECOMMENDATIONS

RECOMMENDATION 1 – PC

R.1 (Deficiency 1): The exact scope of what the POCO repeals, amends and saves is ambiguous.

25. The ambiguous scope of the repeals that were contained in the POCO at Schedules 5 and 6 were corrected by the enactment of the Proceeds of Crime (Amendment) Ordinance, 2009 (sections 3 and 4) and the Proceeds of Crime (Amendment) Ordinance, 2010 (section 93). The amendments now make it clear what the correct section references are and the various parts of the legislation that has been repealed. Specifically, the Control of Drugs Trafficking Ordinance and the former Proceeds of Crime Ordinance were repealed with transactional provisions being kept in force with regard to matters falling under the former legislation. The deficiency has been fully addressed.

R.1 (Deficiency 2): 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.

26. In addressing this deficiency, the Trafficking In Persons (Prevention) Ordinance, 2016 was assented to on January 30, 2016 and came into force on April 1, 2016. The legislation as stated in its purpose gives ‘effect to the UN Protocol to prevent, suppress and punish trafficking in persons; especially women and children, supplementing the UN Convention against Transnational Organised Crime, 2000...’ In order to ensure effective implementation of the legislation, two (2) Immigration Officials and a Senior Crown Counsel from the Attorney General’s Chambers attended a course in the UK that allows for a Professional Certificate in Tackling Human Trafficking. The penalties for trafficking in persons and directing, conspiring, inciting etc. the commission of trafficking is a fine without limit or a term of imprisonment of ten (10) years of both. Where the trafficked person is a child, the penalty is imprisonment for life. These offences are indictable offences and as such are predicates to ML. The offences of drug trafficking and money laundering were also defined at section 2 of the POCO.
27. With regard to the offence of arms trafficking, the Proceeds of Crime (Amendment) Ordinance, 2016 at section 3 amends section 2 of the principal Ordinance to insert the definition of ‘arms trafficking offence.’ The definition states that arms trafficking is an offence pursuant to section 27 of the Firearms Ordinance and section 34 or 40 of the Customs Ordinance. The ancillary offences (attempt, conspiracy, aiding abetting etc.) to arms trafficking are also included in the definition. The penalties for the offence are contained in the Customs Ordinance and provide for fines and/or imprisonment on indictment. The offence of directing terrorism has been addressed by the enactment of the Prevention of Terrorism (Amendment) Ordinance, 2016. Section 2 of the principal Ordinance is amended to define a terrorists organisation and it includes an entity, group or organisation that (c) organises or directs others to commit act of terrorism or the financing of terrorism. Based on the enactment of the various pieces of aforementioned legislation, the deficiency has been full addressed.

R.1 (Deficiency 3): The FATF 20 Designated Categories of Offences are not fully reflected in the law of the TCI.

28. Based on the enactment of the legislation noted at Deficiency 2 above, the offences of directing terrorism, trafficking in persons and arms trafficking are now reflected in the laws of TCI. Accordingly, the deficiency has been fully addressed.

R.1 (Deficiency 4): 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.

29. With regard to precursor chemicals, the TCI has enacted the Control of Drugs (Amendment) Ordinance, 2016, which at section 13B provides for the offence of the ‘possession of equipment for the production of drugs etc.’ Specifically, the section make a person liable for possessing without lawful authority any equipment, material or substance listed in Table 1 and Table 2 of the Ordinance.

The Tables are contained at Schedule 2A of the Ordinance and contain all the precursor chemicals required under Article 3(c)(ii) of the Vienna Convention. The deficiency has been fully addressed.

R.1 (Deficiency 5): The effectiveness of TCI's legal framework is difficult to assess since there have no money laundering convictions since 2002.

30. Since the onsite, the TCI has had twenty-five (25) ML investigations, eleven (11) prosecutions and 1 convictions, the remaining prosecutions are on-going or were completed in 2016. The investigations and prosecutions has resulted in several restraint orders in relation to both property and money; one (1) confiscation of approximately US\$10,000,000 and three (3) civil recovery forfeitures of real property. Additionally, through legal assistance requests 3 restraint orders under POCO have been since 2011. Prosecution having now been completed, one order relating to US\$594,346 has been discharged. The remaining restraint order are in respect of the amount of \$12,000,000. The deficiency has been addressed and continues to be addressed.

R.1 (Deficiency 6): 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.

31. Section 119(2) of the POCO was amended to require in addition to obtaining adequate consideration, the need for the defendant to show that he did not know or suspect that the property was criminal property. This amendment addresses the deficiency.

RECOMMENDATION 1 - OVERALL CONCLUSION

32. As a result of the enactment of the Trafficking in Persons (Prevention) Ordinance, 2016; the Proceeds of Crime (Amendment) Ordinance, 2016 and the Control of Drugs (Amendment) Ordinance, 2016, the outstanding deficiencies noted by the Examiners have been addressed at least to a level comparable at a minimum with an LC.

RECOMMENDATION 5 – NC

R.5 (Deficiency 1): There are no requirements in the POCO and AMLR which prohibit financial institutions from keeping anonymous accounts or accounts with fictitious names.

33. Pursuant to Regulation 16(2) of the AML/PFTR, a financial business 'shall not set up or maintain a numbered account, an anonymous account or a name in which it knows, or has reasonable grounds to suspect, is fictitious.' This requirement full satisfies the deficiency.

R.5 (Deficiency 2): 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.

34. Pursuant to Regulation 11(1) of the AML/PFTR, a financial business must perform CDD before the financial business establishes a business relationship or carries out an occasional transaction; where there are doubts about the veracity or adequacy of previously obtained customer identification data,

where there is a suspicion of ML or TF and at other appropriate times as determined on a risk sensitive basis. The deficiency has been addressed.

R.5 (Deficiency 3): No requirement for financial institutions to conduct CDD on legal persons or legal arrangements.

35. Regulation 3 and 5 of the AML/PTFR were amended in 2010 so that the beneficial owner of a legal person or arrangement is defined and the requirement for CDD measures for those entities are presented. Additionally, section 11 of the AML/CFT Code also makes provision for CDD for legal arrangements, while section 19 of the Code deals with identification requirements for trusts and trustees.

R.5 (Deficiency 4): 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.

36. Pursuant to regulation 5(2)(a) of the AML/PFTR, CDD measures include ‘where the customer is not an individual, measures for verifying that any person purporting to act on behalf of the customer is authorised to do so, and also identifying that person and verifying the identity of that person. The measures specified in the Regulations address the deficiency.

R.5 (Deficiency 5): No requirement for financial institutions to verify the legal status of the legal person or legal arrangement.

37. Regulation 5 of the AML/PTFR, requires that a determination be made of the natural person who ultimately owns or controls customers that are legal persons or legal arrangements and to verify the legal status of the legal person or legal arrangement. The deficiency has been addressed.

R.5 (Deficiency 6): No requirement for financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

38. Regulation 11(4)(a) of the AML/PTFR, 2010 requires financial businesses to assess the risk that any business relationship or one off transaction involves or will involve ML/TF; depending on the type of customer, business relationship, product or transaction. Further, regulation provides for EDD and ongoing monitoring where the risk of ML/TF is higher. The deficiency has been addressed.

R.5 (Deficiency 7): No requirement for financial institutions to conduct ongoing due diligence on existing customers.

39. In accordance with regulation 11(3) of the AML/PTFR, 2010 ‘a financial business shall conduct ongoing monitoring of a business relationship.’ The deficiency has been fully addressed.

R.5 (Deficiency 8): No requirement for financial institutions to perform enhanced due diligence on high risk customers.

40. Pursuant to Regulations 11(4)(a) and 13, of the AML/PFTR, 2010 financial institutions are required to perform enhanced due diligence (EDD) for higher risk categories of customer, business relationship or transaction. The deficiency has been fully addressed.

R.5 (Deficiency 9): 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.

41. The AML/PTF(Amendment) Regulations, 2011 amended the definition of occasional transaction at regulation 4(2) to include wire transfer transactions, or linked transactions of US\$1,000 or more. Regulation 5(f) of the AML/PTFR includes that CDD measures are measures for obtaining information on the purpose and intended nature of the business relationship or occasional transaction. Accordingly, the requirements for CDD are applicable to occasional wire transfer transactions. The deficiency has been addressed.

R.5 (Deficiency 10): No requirement to terminate business relationship if proper CDD cannot be conducted.

42. Regulation 12 of the AML/PTFR, 2010 provides for the termination of business relationship with a customer where CDD cannot be done before the establishment of a business relationship; where a financial business (in circumstances noted in regulation 11(5) and (6) is unable to complete the verification of identity of a customer, third party or beneficial owner after the establishment of the business relationship and where a financial business is unable to undertake ongoing monitoring with respect to a business relationship. The deficiency has been fully addressed.

R.5 (Deficiency 11): No requirement for financial institutions to ensure that document, data or information collected under the CDD process is kept up-to-date.

43. As noted previously, regulation 11(3) of the AML/PTFR requires financial businesses to conduct ongoing monitoring of a business relationship. Regulation 5(5)(b) of the AML/PTFR, 2010 defines ongoing monitoring of a business relationship as including ‘keeping the documents, data or information obtained for the purpose of applying customer due diligence up-to-date and relevant by undertaking reviews of existing records. The deficiency has been fully addressed.

R.5 (Deficiency 12): 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.

44. Guidance was issued by the FSC and made available and continues to be available on the TCI FSC website including:
- August 2009 PEPs
 - August 2009 Fit and Proper Guidelines
 - Jan 2015 Appointment of Money Laundering Compliance officer, Money Laundering Reporting Officer, Compliance officer.

Sector Specific Guidance had also been introduced for DNFBPs in 2014 (Legal Professionals, Real Estate Agents, Accountants and High Value Dealers.

45. The Authorities are of the view that the measures contained in the AML/PTF Code provided sufficient guidance with regard to CDD and the other matters noted. A review of the AML/PFT Code and

regulations show that they are very comprehensive with regard to the AML/CFT obligations of financial businesses. The deficiency has been addressed.

R.5 (Deficiency 13): The scope of the AML/CFT legislation in the TCI does not cover financial institutions that engage in mortgage lending.

46. The AML/PTFR provides for the AML/CFT measures that financial businesses must comply with as noted in regulation 9, which states that ‘these Regulations apply to all financial businesses. Financial businesses are defined at regulation 2 of the AML/PTFR as the meaning assigned in Schedule 2. At Schedule 2, section 1(d)(i), a financial business includes a person who conducts a ‘lending, including consumer, credit, mortgage, credit, factoring, with or without recourse...’ Accordingly, mortgage lending is covered as an activity that a financial business can conduct. The deficiency has been fully addressed.

R.5 (Deficiency 14): No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.

47. The TCI Authorities continue to have ongoing sensitization campaigns to make financial institutions aware of the benefits of complying with the AML/CFT requirements. Compliance workshops and other training seminars have been held on an ongoing basis to provide guidance to regulated entities with regard to AML/CFT issues. The deficiency has been addressed.

RECOMMENDATION 5 - OVERALL CONCLUSION

48. The enactment of the AML/PTFR, 2010 and its subsequent amendment has comprehensively addressed the deficiencies that were noted for R. 5 at the time of the mutual evaluation. As a result the deficiencies noted by the Examiners have been addressed at least to a level comparable at a minimum with an LC.

RECOMMENDATION 10 – PC

R.10 (Deficiency 1): There are no requirements for financial institutions to maintain records of the identification data, account files and business correspondence for at least five years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority).

49. Pursuant to regulation 18(1) of the AML/PTFR financial businesses are required to keep records specified in sub-section 2 of the regulation in a manner that allows it to be made available on a timely basis, when lawfully required and for a specified period. Regulation 18(2) specifies the records to be kept to include the following: a copy of the evidence of identity, supporting documents, data or information obtained with regard to the business relationship as part of the CDD process, details relating to each transaction carried out by the financial business in the course of any business relationship or occasional transaction, all account files and all business correspondence relating to a business relationship or occasional transaction. Regulation 19 specifies the period for which these documents and other data etc. should be kept as being five (5) years. The start time of the five year period is provided at regulation 19(1)(a) and (b) and depends on the category of record. The deficiency has been fully addressed.

RECOMMENDATION 10 - OVERALL CONCLUSION

50. Regulations 18 and 19 of the AML/PTFR provide the requirements that are needed for financial businesses to comply with this R. 10 deficiency. The deficiencies noted by the Examiners have been addressed at least to a level comparable at a minimum with an LC.

RECOMMENDATION 13 – PC

R.13 (Deficiency 1): The guidance provided for the effective execution of the suspicious transaction reporting requirement is not considered sufficient.

51. In addressing this deficiency, the TCI Authorities revised the Suspicious Activity Reporting (SAR) form and distributed the form with attached guidance notes to all stakeholders in August of 2009. In 2013, the forms and attached guidance notes were placed on both the FSC and FIA⁴ websites so that all stakeholders could have access to the forms and the associated guidance. Subsequent to these measures there was an increase in the number of reports being made to the FIA. It should also be noted that the AML/PFT Code contains guidance on the requirements of the POCO and the TF legislation and the obligation to disclose knowledge or suspicion of ML/TF and the timing of such reporting. The deficiency has been addressed.

R.13 (Deficiency 2): The broad time frame given by the POCO has been interpreted by the industry to be time periods that seem quite long (24-30 days).

52. In addressing this deficiency, the AML/PTF Code, 2011 at section 29(e) that a financial business shall establish and maintain reporting procedures and ‘provide for the information or other matter contained in a report to be disclosed as soon as is reasonably practicable and in any event, within twenty-four hours by the MLRO to the Reporting Authority in writing, where the MLRO knows or suspects or has reasonable grounds to know or suspect that another person is engaged in or attempted to engage in money laundering or terrorist financing regardless of the amount of the transaction.’ This measure has restricted the broad time frame for reporting that was given in the POCO. The deficiency has been fully addressed.

R.13 (Deficiency 3): 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.

53. The TCI Financial Services Commission holds training session per annum on AML/PTF and to which all regulated financial businesses (licensees) are invited and all DNFBPs.

⁴ <http://www.tcipolice.tc/index.php/financial-intelligence-unit>.

54. The Commission has also provided speakers to other locally held training which are jointly sponsored by the Commission. For example – March 2015 Joint AML/PTF training with CFATF and September 2015 with the first TCI Compliance Association training event.
55. TCIFSC also undertakes targeting training to specific sectors through their associations:
- Turks and Caicos Islands Realty Association.
 - The TCI Bar Association. (joint training with the FIA)
 - Money Service Business (joint training with the FIA)
56. Financial institutions awareness of the misuse of TCI's financial system for the financing of terrorism has been addressed through the training of stakeholders. The deficiency has been addressed.

R.13 (Deficiency 4): 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.

57. The correction of this deficiency was discussed at R. 1 deficiency #. 2 above where it was noted that the enactment of legislation created the offences of directing terrorism, trafficking in persons and arms trafficking are now reflected in the laws of TCI. Accordingly, this deficiency has been addressed.

RECOMMENDATION 13 - OVERALL CONCLUSION

58. The measures taken to revise the SAR forms along with the guidance notes provided and the guidance in the AML/PTF Code, 2010 dealt with the issue of suspicious transaction reporting. The AML/PTF Code specifically addressed the deficiency of uncertainty as to the time to file STRs/SARs, while training seminars and workshops on TF addressed the issue of sensitization of TF issues in the TCI. Based on the aforementioned, the deficiencies for R. 13 have been addressed to a level that is at a minimum comparable to an LC.

SPECIAL RECOMMENDATION II – PC

SR.II (Deficiency 1): Penalties for terrorist financing offences at the summary level are lenient.

59. The enactment of the Prevention of Terrorism Ordinance, 2014 (PTO) resulted in the inclusion of the offence of TF at section 9 of the Ordinance. Conviction for the offence of TF only occurs on indictment and carries a penalty of a fine or a term of imprisonment of fourteen (14) years or both. The amount of the fine has not been specified. The deficiency has been fully addressed.

SR.II (Deficiency 2): The elements of directing terrorism as required by Article 2(5) of the Terrorist Financing Convention are undefined in the laws of the TCI.

60. As noted above in the discussions on R. 1, the offence of directing terrorism has been addressed by the enactment of the Prevention of Terrorism (Amendment) Ordinance, 2016. Section 2 of the principal Ordinance is amended to define a terrorists organisation as an entity, group or organisation

that (c) organises or directs others to commit act of terrorism or the financing of terrorism. This deficiency has been addressed.

SR.II (Deficiency 3): Inconsistent mens rea requirements for terrorism offences.

61. The deficiency with regard to the mens rea arose because the Examiners determined that the mens rea requirement for the offences in the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 (the UN Terrorism Order) and the Al Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order, 2002 (the Al Qa'ida Order) were not consistent with the description of mens rea in the Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002 (the Anti-Terrorism Order). With the enactment of the PTO, 2014 the application of the mens rea and the Orders are now compatible. The outstanding deficiency has been addressed.

SR.II (Deficiency 4): The effectiveness of the CFT regime is difficult to assess in the absence of any STRs or investigations on FT.

62. Since the mutual evaluation, as a result of sensitization of the sectors, there has been no STRs with regard to TF. The deficiency has been addressed.

SPECIAL RECOMMENDATION II - OVERALL CONCLUSION

63. The enactment and implementation of the PTO resulted in the outstanding deficiencies being addressed at least to a level comparable at a minimum with an LC.

SPECIAL RECOMMENDATION IV – PC

SR.IV (Deficiency 1): 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.

64. This deficiency is identical to R. 13-Deficiency 3, which is considered to be addressed based on the training workshops and conferences that have been provided to the financial institutions on the misuse of TCI's financial system for the financing of terrorism. Accordingly, the deficiency has been addressed.

SPECIAL RECOMMENDATION IV - OVERALL CONCLUSION

65. This Special Recommendation mirrored the deficiency noted for R. 13-Deficiency 3 as it pertained to the lack of awareness by the financial institutions of the misuse of the financial system for the purposes of TF. The deficiency was addressed by training as referenced in *Annex 2*. The deficiency found by the Examiners has been addressed at least to a level comparable with an LC.

V. DETAILED ANALYSIS OF COMPLIANCE WITH THE KEY RECOMMENDATIONS

RECOMMENDATION 23 – PC

R. 23 (Deficiency 1): The integrity component to the ‘fit and proper’ testing of relevant persons is not clearly specified by the FSC.

66. In addressing this deficiency, the Financial Services Commission (FSC) issued Guidelines on ‘The Fit and Proper Test’ pursuant to section 43 of the Financial Services Commission Ordinance, 2007 (FSCO). At paragraph 4 of the Guidelines, it is noted that the fit and proper standard is applied as appropriate to individuals who are beneficial owners and controllers, directors, senior officers, key employees (including compliance officers), auditors and actuaries. Paragraph 8, states that in determining whether a person is fit and proper, the Commission will take into account the person’s competence and ability, relevant work experience, track record, appropriate knowledge, qualifications and skills. The second part of the fit and proper test is contained at paragraph 9, and relates to character and as such includes ‘key elements such as the probity, honesty, integrity and reputation of the individual concerned.’ The Guidelines also provides fit and proper tests for ‘Owners and Controllers’ and the ‘Board of Directors.’ The appendix to the Guidelines provides a list of relevant factors that can be considered with regard to ‘fitness’ and ‘probity.’ The deficiency has been fully addressed.

R. 23 (Deficiency 2): There was no evidence that Collective Investment Schemes’ Core Principles (IOSCO) apply for Mutual Funds in TCI.

67. With regard to dealing with this deficiency, the FSC has as of the end of March 2016 become an ordinary member of IOSCO. Additionally, new securities legislation was circulated to the industry for comments. The deficiency has been addressed to a satisfactory degree.

R. 23 (Deficiency 3): The recently enacted legislative framework providing for the licensing and supervision of MVT is not yet effective.

68. The Turks and Caicos Islands fully implemented the Money Transmitters Ordinance (MTO), which resulted in the licensing of four (4) money service businesses (MSBs). At present there are three (3) MSBs in TCI; with one agent who had ceased trading recently resuming business. The fourth voluntarily surrendered its licence. The MSBs annual cycle of examinations commenced in 2015. All three MSBs were examined onsite between March and June 2015. It should also be noted that the formal reporting for MSBs was introduced in September 2010, with mandatory reporting being introduced towards the end of the last quarter of 2010. MSBs are required to report on and complete financial returns and supplemental reports which show inter alia, the largest transactions, the number of transactions and the value of transactions for each month in a quarter both for funds received and funds sent. Additionally, there are two additional filings which require information on all single and aggregate transactions above US\$5,000 in any one month for funds sent as well as for those received. The deficiency has been fully addressed.

RECOMMENDATION 23 - OVERALL CONCLUSION

69. The deficiencies for R. 23 were addressed in main part by the implementation of the MTO and the establishment of Guidelines by the FSC with regard to ‘fit and proper’ measures. The issue of mutual funds have been addressed to a certain degree with the FSC becoming an ordinary member of IOSCO. The legislative process regarding updating standards to make the IOSCO core principles applicable is

ongoing. However, given the ongoing work and progress made with IOSCO membership this is a minor deficiency. R. 23 has been addressed at least to a level that is comparable with LC.

RECOMMENDATION 26 – PC

R. 26 (Deficiency 1): The FCU does not appear to have full operational independence and autonomy.

70. The enactment of the Financial Intelligence Agency Ordinance, 2014 (FIAO) established the Financial Intelligence Agency (FIA) as a body corporate. The FIA is now governed by a Board of Directors, with the Director and Deputy Director and senior officer of the FIA being appointed by the Board. (Sections 20 and 22 of the FIAO). The Chairperson of the Anti-Money Laundering Committee, the Commissioner of Police and the Director of Public Prosecutions are required to be ex-officio members of the Board. Pursuant to section 22, the Director shall also appoint such officers and employees as may be necessary for the proper discharge of the functions of the Agency. The terms and conditions of the staff of the FIA are however to be determined by the Board. With regard to the funding of the FIA, it will be funded by allocations from the House of Assembly and the National Forfeiture Fund. Based on the FIAO, there appears to be a structure that provides full operational independence and autonomy. The deficiency has been fully addressed.

R. 26 (Deficiency 2): The FCU has not provided sufficient guidance to financial institutions and other reporting parties regarding the reporting of STRs.

71. This deficiency deals with the same issue raised in R. 13 – Deficiency # 1, where it was noted that the FIA (formerly the FCU) has issued and updated guidance and forms in relation to both Suspicious Transaction Reports and Terrorist Property Reporting. The forms and guidance can be found on the FIA's website. . In conjunction with the FSC, the FIA has provided training as set out in Annex 2. The deficiency has been fully addressed.

R. 26 (Deficiency 3): The FCU has not provided feedback to reporting parties in a formalized and timely manner.

72. TCI indicated that this deficiency was addressed by the provision of feedback in writing to every SAR within a twenty-four (24) hour period in most cases. The Authorities also noted that the jurisdiction was small and so the Head of the FIA also took the opportunity to liaise directly with compliance officers. Additionally, successful outcomes of investigations were also reported. The deficiency has been adequately addressed.

R. 26 (Deficiency 4): The FCU does not release periodic reports which include statistics on STRs, trends and typologies within the sector and an update of its activities.

73. The FIA's website has a link to trends and typologies. Statistics have been published in the FIA's Annual Reports for the period 2011-2015. The FIA publishes typologies, risks and trends on a regular basis in the local press. The publication is in the form of a notice which is sent to the press or posted on the FIA's website. *See Annex 5.* The deficiency has been fully addressed.

R. 26 (Deficiency 5): The building which houses the FCU does not appear to be properly secured.

74. The FIA is currently situated in a secure building with electronic security monitoring. Immediately following the mutual evaluation, the TCI did upgrade the building (steel doors) that they were previously occupied in an effort to comply with the deficiency. The deficiency has been fully addressed.

RECOMMENDATION 26 - OVERALL CONCLUSION

75. The deficiencies with regard to R. 26 were met as a result of the enactment of the FIAO in 2014 especially as it pertained to the autonomy of the FIA (Previously called the FCU) and the implementation of guidelines and updated forms with regard to the reporting of STRs and the publication of annual reports on the work of the FIA with regard to trends and typologies. *See Annex 2 for information on STR training.*

RECOMMENDATION 35 – PC

R. 35 (Deficiency 1): The Palermo Convention and the Terrorist Financing Convention have not by extension been ratified on behalf of the TCI.

76. The United Kingdom extended the Palermo Convention to the Turks and Caicos Islands in August 2015. The link to the Depository Notification is <https://treaties.un.org/doc/Publication/CN/2015/CN.446.2015-Eng.pdf>. With regard to the United Nations Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention), it has not yet been extended to the TCI. The TCI has been advised however that the UK Home Office has not yet completed their review. The TCI in the interim did enact the PTO, which does accommodate and refer in Schedule 1 to the Terrorist Financing Convention. The deficiency has been satisfactorily addressed.

R. 35 (Deficiency 2): Not all relevant aspects of the Conventions have been implemented.

77. The enactment of the PCO, the PTO and its subsequent amendments have addressed the relevant aspects of the Conventions to the extent that the Palermo Convention has been extended to the TCI and the extension of the Terrorist Financing Convention is now being reviewed. Additionally, with regard to the Vienna Convention, the PCO and its amendments have also addressed outstanding requirements as noted above in the discussion on R. 1. The deficiency has been addressed.

RECOMMENDATION 35 - OVERALL CONCLUSION

78. The TCI Government has taken all the necessary measures that it can to have the ratification of the Palermo and Terrorist Financing Conventions extended to it by the UK. These measures have resulted in the extension of ratification of the Palermo Convention and the review of extension of ratification for the Terrorist Financing Convention. Additionally, the implementation of domestic legislation in the form of the PCO and the PTO has resulted in compliance with the relevant aspects of the Conventions. Accordingly, R. 35 has been complied with at least to a level that is comparable with LC.

RECOMMENDATION 36 – PC

R. 36 (Deficiency 1): Mutual legal assistance will not be provided by the TCI once tax or fiscal matters are involved, which do not fall within certain exemptions.

79. The TCI addressed this deficiency by negotiating and signing Tax Information Exchange Agreements (TIEAs), to facilitate the exchange of information on tax matters that are not covered by the Mutual Legal Assistance Treaties (MLATs). To date, the TCI has signed seventeen (17) TIEAs and continue to negotiate with OECD countries to sign additional TIEAs. To ensure the proper implementation of the TIEAs, the TCI has enacted an implementation ordinance, the Tax Information Exchange Ordinance, 2009. The TCI has also established an Exchange of Information Unit within the Ministry of Finance. This Unit ensures that TCI meets all of its tax treaty obligations. The TCI accepted the European Union Directive on the Taxation of Savings Income and enacted relevant legislation in 2005. However, in 2012, the TCI formally transitioned from the withholding tax arrangement under the Directive to the automatic exchange of information arrangement. TCI issued guidance to the industry in this regard in 2013. With the advent of the US Foreign Account Tax Compliance Act (FATCA), the TCI engaged in consultations with all stakeholders and with the US Government. The consultations with the US Government resulted in a FATCA Inter-Governmental Agreement and a TIEA. The TCI intends to conclude similar agreements with the UK.
80. In 2013, the Convention on Mutual Administrative Assistance in Tax Matters was extended to the TCI and the Tax Information (Exchange and Mutual Administrative Assistance) Ordinance (TIEO) was enacted which amended the Tax Information Exchange Ordinance. The TIEO allows information to be exchanged between the TCI and countries with whom it has a TIEA, with subsequent amendments to the TIEO providing for automatic and spontaneous exchange of information. The deficiency has been fully addressed.

R. 36 (Deficiency 2): The effectiveness of implementation is difficult to assess due to the lack of statistical data.

81. Since the mutual evaluation, the TCI has addressed the issue of lack of statistical data on mutual legal assistance. At the time of the onsite, some statistical information had been lost due to a fire. However, since then statistics have been kept. Please see attached *Annex 3* with relevant statistics. The deficiency has been addressed.

R. 36 (Deficiency 3): 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.

82. At the time of the onsite, the Examiners had noted that Article 5 of the MLAO stipulated that the Central Authority (who was the Chief Magistrate at the time) ‘shall promptly’ execute any request and ‘shall promptly’ inform the central authority of the Requesting Party of the outcome of the request. (See. Para. 1035 of the 3rd round MER). The Chief Magistrate however had imposed a time frame of twenty-eight (28) days for the execution of requests. The Examiners felt that there should be a more formalized procedure to ensure that assistance was given in a timely manner. In that regard, TCI has instituted a procedure where requests received by the Magistrates are processed immediately with any required applications to be made to the court being done within the first 7 days of receipt. The Chief Magistrate advises the requesting competent authorities of each step that takes place. Upon execution of the request the requesting competent authority is advised and any documents prepared/produced are sent to the requesting competent authority. The deficiency has been addressed

RECOMMENDATION 36 - OVERALL CONCLUSION

83. The deficiencies identified by the Examiners with regard to R. 36 have been addressed by the extensive signing of TIEAs, the enactment of implementation legislation and continued engagement with OECD countries with regard to the exchange of tax information. The TCI has also kept statistics with regard to its mutual legal assistance and have put measures in place to ensure that assistance is provided in a timely manner. All the measures taken have resulted in compliance with R. 36 at least to a level that is comparable with LC. *See Annex 1 for MLA statistics.*

RECOMMENDATION 40 – PC

R. 40 (Deficiency 1): 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.

84. In addition to the FSCO, 2007 which provides for the exchange of information with foreign counterparts (section 28), TCI negotiated MOUs with several foreign supervisory authorities including Canada, Panama, Jamaica and the Cayman Islands. A multinational MOU has also been negotiated with several jurisdictions. See FSC website (www.tcifsc.tc) for MOUs. Pursuant to section 31 of the FIAO, the FIA (previously called the FCU) can in connection with its functions ‘enter into an arrangement for cooperation with bodies or persons in the Islands, a foreign financial intelligence authority or foreign law enforcement authority...’ In this regard the FIA has entered into MOUs with Australia, Canada, Trinidad and Tobago, Jamaica, Japan, St. Martin, South Africa and St. Vincent and the Grenadines. The deficiency has been fully addressed.

R. 40 (Deficiency 2): 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 data.

85. Requests received by the Attorney General’s Chambers have all be legal assistance requests. The FIA regularly received agency to agency requests as seen in *Annex 4*. Based on the presentation of statistics noted at *Annex 4*, the TCI has been able to provide requested information in a rapid, constructive and effective manner. The deficiency has been adequately addressed.

R. 40 (Deficiency 3): Considerations which apply under the FSCO before the regulatory assistance is given are onerous when taken conjunctively.

86. The Examiners felt that sections 28 and 29 of the FSCO while allowing the exchange of information could result in the limitations that would affect the ability to give assistance. (See. Para. 1148 of the 3rd round MER). The Financial Services Commission (Amendment) Ordinance, 2014 made the provision of regulatory assistance less onerous through the amendment to section 29 of the FSCO to allow the FSC to provide information to a foreign regulatory authority with information in its control or possession without a request from the foreign regulatory authority. Additionally, the FSCO in order to facilitate the exchange of information has entered into several MOUs with its regulatory counterparts in other jurisdictions as noted above in the discussion of Deficiency #1. The deficiency has been addressed.

RECOMMENDATION 40 - OVERALL CONCLUSION

87. As a result of the successful negotiation of MOUs with regulatory and law enforcement counterparts, and amendments to the FSCO, TCI has been able to address the deficiencies that were noted by the Examiners with regard to R. 40 to a level that is comparable to at least an LC.

SPECIAL RECOMMENDATION I – PC

SR. I (Deficiency 1): The Terrorist Financing Convention has not been fully ratified or implemented.

88. While there is a lack of ratification, which as noted above is being sought from the United Kingdom, the enactment of the Prevention of Terrorism Ordinance (PTO) provides for the criminalization of terrorism and terrorist financing (Sections 3, 4 and 9-12). These measures are in keeping with the Terrorist Financing Convention. Specifically, Parts I-VI of the PTO cover the measures required by SRs. I-V. (See. Attached matrix). The TCI Authorities have taken all the steps necessary to obtain ratification on their behalf from the UK and have criminalized the relevant offences. The deficiency has been satisfactorily addressed given the circumstances.

SPECIAL RECOMMENDATION I - OVERALL CONCLUSION

89. The Turks and Caicos Islands Authorities have taken all the steps possible to date to obtain the extension of the ratification of the Terrorist Financing Convention to their jurisdiction. The enactment of the PTO means that the offences and measures of the Convention have been incorporated in domestic law. The matter is currently with the UK Home Office for their finalization. SR. 1 has been addressed and is at least to a level that is comparable with LC.

VI. OVERVIEW OF MEASURES TAKEN IN RELATION TO OTHER RECOMMENDATIONS RATED PC/NC

90. The Turks and Caicos Islands has taken the following measures to address the other Recommendations that were rated PC/NC. The information in this section is presented for information purposes only and is not to be taken into consideration for TCI's application to exit the follow-up process.

PREVENTATIVE MEASURES - FINANCIAL INSTITUTIONS

Recommendations 15, 17, 18, 29 and SR. VI were all rated PC, while Recommendations 6-8, 11, 19, 21, 22, 25 and SR. VII were all rated NC.

91. TCI has made progress on R. 15, through the FSC's screening of entities compliance manuals and a review of financial institutions risk assessments during onsite. The AML/PTF Code provides for employee screening measures both at the time of hiring and on an ongoing basis and also provides for penalties where a financial business does not maintain policies with regard to the screening of employees; guidelines on internal control and audit have been issued and are available on the FSC's website. R. 15 still has outstanding deficiencies with regard to the keeping of employee training records and the extent to which policy manuals of entities supervised by the FSC contain a reference to CFT. The deficiencies noted with regard to R. 17 were addressed through the implementation of a

vigorous enforcement programme, which has resulted in enforcement actions that led to penalties and the revocation of licences in some instances. With regard to R. 18, all deficiencies were addressed through the enactment of the AML/PTF Regulations which in relevant part (Reg. 16) prohibits all financial institutions operating in TCI from entering into a correspondent banking relationship with a shell bank or a bank that allows its accounts to be used by a shell bank. The issue of the Registrar of Insurance (now called the Head of Insurance) and the Registrar of Cooperative Societies having powers of enforcement and sanction against financial institutions has only been partially addressed with the level of compliance with the issues noted by the Examiners at paras. 747 and 750 still being unclear. For SR. VI, the deficiencies were addressed through the creation of a Unit within the FSC to deal with MSPs; the completion of a licensing process for MSPs; training for MSPs on their AML/CFT responsibilities and a programme of onsite review of MSPs.

92. TCI achieved compliance with R. 6 through the enactment of the AML/PTF Regulations. Regulation 13 requires that EDD and ongoing monitoring be done on PEPs. Additionally, the FSC issued guidance on PEPs in 2009. The AML/PTF Regulations at regulation 16 dealt with the issue of correspondent banks and extends the measure to all financial institutions that deal with correspondent banks. The AML/PTF Code also provides measures to be taken when dealing with correspondent banks at section 42 and 43. TCI addressed R. 8 deficiencies through the AML/PTF Code and Regulations. Section 6(2) of the Code requires financial businesses to have measures in place to deal with the misuse of technological developments, while section 24 of the Code requires that procedures are in place to deal with non-face-to-face business relationships and transactions. With regard to third parties and introducers (R. 9), the deficiencies were met through regulation 14 of the AML/PTF Regulations and section 27 of the AML/PTF Code. Regulation 17 of the AML/PTF Regulations (the establishment, maintenance and implementation of risk sensitive policies) and section 28 of the AML/PTF Code (requires financial businesses to keep a written record of unusual transactions) addressed the deficiencies for R. 11. R. 19 required the TCI Authorities to consider the use of a cash transaction threshold for reporting STRs. TCI considered this approach, but decided against its use. The deficiencies with regard to special attention to higher risk countries (R. 21) were addressed through regulation 10 of the AML/PTFR which requires a branch or subsidiary of relevant financial businesses located or incorporated abroad shall comply with the Regulations and Code to the extent permitted by the country, while section 6 of the AML/PTF Code requires all branches and subsidiaries to be compliant with the established policies, systems and controls. R. 25 deficiencies were addressed through the enactment of the FIAO and provision of compliance training workshops and seminars by the FIA (previously called the FCU) and the FSC. Additionally, typologies and risk issues are published on the FIA's website and are also contained in the FIA's annual reports. Quarterly reports on trends and typologies are provided to the MLRA. With regard to SR. VII, TCI the enactment of the Financial Services (Financial Penalties) Regulations, 2010 allows the FSC to take enforcement action and issue administrative penalties against licensed entities. TCI also indicated that since June 2015, the FSC has begun a process of reviewing whether licensees have adequate controls in place with regard to wire transfer instructions on both inward and outward transfers.

DNFBPs AND OTHER NON-FINANCIAL BUSINESSES

Recommendation 20 was rated PC, while R. 12, 16, 24 and 25 were rated NC.

93. All the deficiencies noted by the Examiners with regard to R. 20 were addressed through the amendment of the POCO to include a regime for a Non-Regulated Financial Business and a Non-Regulated. Additionally, the MLRA established a committee to assess the risk of the construction industry being misused for ML/TF, which concluded that there was a likelihood of a risk and so agreed to further consider the issue when doing work on TCI's risk assessment. TCI has also undertaken a

review of the regulatory framework for Gaming, with new Gaming legislation expected in August/September 2016.

94. With regard to R. 12, the main issue that remains outstanding is the Gaming legislation, which as noted above will be dealt with shortly; however it does mean that there is no gaming framework. Additionally, the separation of the work of legal advisors when they act as real estate agents has not been addressed. It should be noted that the training of Gaming Inspectors with regard to their AML/CFT role has been undertaken. For R. 16, TCI has a high level of compliance with the deficiencies with the work for sensitizing DNFBPs to the filing of STRs ongoing through training by the FSC who is the identified NRFB supervisor and also the FIA. Additionally, the guidelines for 'High Value Dealers' has been finalized and published. While there has been some progress with R. 24, in terms of the inclusion of 'casinos' in the definition of 'financial business' in the AML/PTFR and as noted earlier in the report there is a dedicated unit within the FSC that deals with DNFBPs, compliance with this Recommendation is hampered by the lack of a gaming regime. The status of compliance with R. 25 has been discussed above.

LEGAL SYSTEM & RELATED INSTITUTIONAL MEASURES

Special Recommendation IX was rated NC.

95. Special Recommendations IX has been substantially met by TCI, with the MLRA recommending in January 2011 that the Immigration Department should seek to establish MOUs with similar departments in other jurisdictions as recommended by the Examiners. The MLRA is still reviewing whether the Customs Department should notify other countries when there is an unusual movement of gold, precious metals or precious stones from the TCI as recommended by the Examiners. Implementation issues are therefore outstanding.

LEGAL PERSONS AND ARRANGEMENTS

Recommendations 33 and 34 were rated PC, while Special Recommendation VIII was rated NC.

96. With regard to R. 33, TCI has taken significant measures with regard to bearer shares; the most important being the enactment of the Abolition of Bearer Shares Ordinance, 2013, (ABSO) which came into effect on January 1, 2014. The ABSO provided a transitional period of six months during which time, persons holding bearer shares had to convert them to registered shares, with bearer shares that were not converted by the deadline being declared null and void. There is still an issue with regard to guidelines for financial businesses to deal with bearer shares that are held outside the TCI. For R. 34, compliance is ongoing with issues relating to awareness of the POCO and MLRA requirements on STRs for persons associated with legal arrangements only partially met. Additionally, the review of the FIA's training programme to include AML/CFT matters pertaining to legal arrangements was not addressed. The Authorities noted that the concept of BO and the need to identify the UBO was generally well understood by practitioners. This conclusion was derived from recent onsite examinations.
97. For SR. VIII, TCI has made progress with the registration of NPOs and training of NPOs has been undertaken by the FIA and the FSC. The outstanding deficiency relates to the absence of enforcement action by the NPO Supervisor, since Part V of the Non-Profit Organisations Regulations, 2014 (NPOR) has not been brought into force.

NATIONAL AND INTERNATIONAL COOPERATION

Recommendations 31, 32 and 38 were rated PC.

98. With regard to R. 31, TCI has fully complied with the deficiencies that were noted by the Examiners, however it should be noted that implementation is ongoing. Measures such as quarterly meetings of the MLRA; training seminars conducted by the MLRA and the FSC; participation by the Attorney General's Chambers and the Office of the Director of Public Prosecutions (ODPP) in the MLRA meetings and ongoing consultation between the national agencies and the regulated sectors have resulted in the high level of compliance. For R. 32, TCI has introduced a system of more comprehensive statistics as seen in the MLRA's annual report. Additionally, the Attorney General's Chambers and the ODPP have created databases, which provide statistics on prosecutions, convictions, property frozen, seized and confiscated, legal assistance and legal requests. Statistics are also maintained on the enforcement actions taken by the FSC. The review of these statistics on an ongoing basis to determine the level of effectiveness of TCI's AML/CFT regime was not clear. Mutual legal assistance on confiscation and freezing has been addressed through legislative measures (the Proceeds of Crime (Amendment) Ordinance, 2010) that provide for the recovery of instrumentalities that are intended for use in connection with unlawful conduct through civil forfeiture (tainted property); international cooperation and the enforcement of external requests and orders. The PTO also provides for the forfeiture of terrorist property, which includes the making of restraint and enforcement orders. The TCI has also had significant seizures in major cases, working in those instances with the Governments of Taiwan and Jamaica.

ANNEX 1

2009-2015 Money Laundering Statistics

| DATA COLLECTION PERIOD: 2009-2015 | |
|---|-------------------------------|
| Number of cases reported to law enforcement | 25 |
| Number of cases prosecuted | 11 |
| Number of completed prosecutions | 2 |
| Number of on-going prosecutions | 9 |
| Number of convictions (cases) | 1 |
| Number of person convicted | 1 |
| Number of Cases resulting in confiscations | 1 |
| Amount of proceeds confiscated | Approximately \$10,000,000.00 |
| Number of Cases resulting in restraint orders | 4 |
| Number of civil recovery forfeitures | 3 |

**ANNEX 2:
Training**

| Date | Event | Audience | Number of participants | Summary of Event/ Purpose |
|-----------------------|--|--|-------------------------------|---|
| 2011 | Specific Training for a local bank | Persons of the financial institution | 18 | |
| 2011 | AML Training Seminars | All regulated entities | 60 | |
| April 25, 2013 | Financial Services Commission AML Conference | Accounting, Banking, Attorneys & Law Firms, Government Agencies, Real Estate, Trust & Company Services Providers | 90 | International Regulations, POCO requirements, AML Risks and Red flags, Developing an AML policy Manual and training, Compliance Officer appointment Guidelines & STR/SAR reporting |
| April 2013 | Newsprint Editorial in the TCI Sun newspaper and Caribbean News Online Network | National | N/A | Anti-Money Laundering Awareness |
| May 2013 | PTV8- On your Mind talk Show | National | N/A | Speakers from the FSC and the FIU took part in this public awareness exercise. Requirements and responsibilities of individuals and regulated entities |

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| | | | | relating to money laundering and terrorist financing were discussed. |
| October 23, 2013 | KPMG Anti-Money Laundering Compliance in Practice | Accounting, Banking, Attorneys & Law Firms, Government Agencies, Real Estate, Trust & Company Service Providers. | 160 | AML/CFT awareness, Compliance and Regulations |
| November 15, 2013 | Captive Insurance Conference | Insurance Companies, Law Firms | 80 | Captive Insurance in the Turks and Caicos Islands, Regulations & AML Awareness. |
| May 3, 2013 | AML/CFT awareness and SAR/STR reporting | NCS EMoney Services Staff | 09 | Anti-Money Laundering and Suspicious Activity Reporting |
| June 21, 2014 | Bar Association Seminar – Beaches Resort Provo | Attorneys and Law Firms | 41 + 4 presenters | Reasons for AML/PFT framework (AG's Office), Myths and Realities of Money Laundering, Obligations and Vulnerabilities of Legal Sector, Writing a Compliance Program (FSC), suspicious Activity Reporting (FIA) |
| July 10, 2014 | NCS E-money Services AML/PTF and regulatory Awareness | Money Service Business staff (all levels) | 11 + 3 presenters | This was a collaborative effort with the Financial Services Commission. A background on money laundering, description of what ML and terrorist financing is, legal responsibilities and penalties, Suspicious Activity Reporting and preparation of guidance manuals were discussed. |

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|---------------------------|---|--|-------------------|---|
| March 23-24, 2015 | 10 th CFATF AML/CFT Compliance Conference hosted in collaboration with the AG's Chambers and the FIA | Public and Private Sector | 71 + 9 presenters | To bring awareness to private and public sector person to the FATF requirements on the AML/CFT. The conference attracted participants from throughout the region including Anguilla, The Bahamas, Belize, Curacao, St. Kitts & Nevis and Trinidad and Tobago |
| September 24, 2015 | 1 st Compliance Association of the Turks and Caicos (CATC) Workshop | MLROs, MLCOs, Cos – Private and Public sector stakeholders | 51 + 9 presenters | The CATC is a local non-profit organisation whose primary objective is to foster a strong culture of compliance within the country by providing relevant training. Presentations were made on the role of MLROs, legal, professional responsibilities, the FIA also presented on its role and presented a Case study. |

ANNEX 3**NUMBER AND NATURE OF LEGAL ASSISTANCE REQUESTS PROCESSED BY ATTORNEY GENERAL'S CHAMBERS**

| REQUESTS RECEIVED YEAR 2016 | | | | | | | |
|--------------------------------------|------------------------|------------------------|-------------------------------|-------------------------|---------------------------------|-----------------------|--|
| COUNTRY | NO. OF REQUESTS | RESTRAINT ORDER | VALUE OF ASSETS IN TCI | PRODUCTION ORDER | INSTRUCTING LOCAL AGENCY | DIRECT REQUEST | NOTES |
| USA | 0 | - | - | - | - | - | |
| CANADA | 0 | - | - | - | - | - | |
| NETHERLANDS | 1 | - | - | - | - | Yes | Request made pursuant to Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances for the taking of evidence; request is in furtherance of the request made in 2010; in process |
| OTHERS | 2 | - | - | - | - | Yes | request for information on two separate matters from Bahamas and Jamaica; in process |
| REQUESTS RECEIVED YEAR 2015 | | | | | | | |
| COUNTRY | NO. OF REQUESTS | RESTRAINT ORDER | VALUE OF ASSETS IN TCI | PRODUCTION ORDER | INSTRUCTING LOCAL AGENCY | DIRECT REQUEST | NOTES |
| USA | 1 | YES | \$1,000,000 | NO | CHIEF MAGISTRATE | NO | Application made under the POCO |
| CANADA | 0 | - | - | - | - | - | |
| NETHERLANDS | 0 | - | - | - | - | - | |
| OTHERS | 0 | - | - | - | - | - | |

REQUESTS RECEIVED | YEAR 2014

| COUNTRY | NO. OF REQUESTS | RESTRAINT ORDER | VALUE OF ASSETS IN TCI | PRODUCTION ORDER | INSTRUCTING LOCAL AGENCY | DIRECT REQUEST | NOTES |
|-------------|-----------------|-----------------|------------------------|------------------|--------------------------|----------------|---|
| USA | 0 | - | - | - | - | - | |
| CANADA | 1 | NO | - | YES | FCU | NOT INITIALLY | Application made under the Evidence (Proceedings in Other Jurisdiction) Order |
| NETHERLANDS | 0 | - | - | - | - | - | |
| OTHERS | 0 | - | - | - | - | - | |

REQUESTS RECEIVED | YEAR 2013

| COUNTRY | NO. OF REQUESTS | RESTRAINT ORDER | VALUE OF ASSETS IN TCI | PRODUCTION ORDER | INSTRUCTING LOCAL AGENCY | DIRECT REQUEST | NOTES |
|-------------|-----------------|-----------------|------------------------|------------------|--------------------------|----------------|---|
| USA | 1 | YES | \$11,000,000 | NO | CHIEF MAGISTRATE | NO | Application made under the POCO |
| CANADA | 0 | - | - | - | | - | |
| NETHERLANDS | 0 | - | - | - | - | - | |
| OTHERS | 1 | NO | - | NO | - | YES | Request for information relating to foreign subject involved in local prosecution |

REQUESTS RECEIVED | YEAR 2012

Post-Plenary Final

| COUNTRY | NO. OF REQUESTS | RESTRAINT ORDER | VALUE OF ASSETS IN TCI | PRODUCTION ORDER | INSTRUCTING LOCAL AGENCY | DIRECT REQUEST | NOTES |
|-------------------------------|-----------------|-----------------|------------------------|------------------|--------------------------|----------------|---------------------------------|
| USA | 1 | YES | \$600,000 | NO | CHIEF MAGISTRATE | NO | Application made under the POCO |
| CANADA | 0 | - | - | - | | - | |
| NETHERLANDS | 0 | - | - | - | - | - | |
| OTHERS | 0 | - | - | - | - | - | |
| | | | | | | | |
| REQUESTS RECEIVED YEAR 2011 | | | | | | | |
| COUNTRY | NO. OF REQUESTS | RESTRAINT ORDER | VALUE OF ASSETS IN TCI | PRODUCTION ORDER | INSTRUCTING LOCAL AGENCY | DIRECT REQUEST | NOTES |
| USA | 0 | - | - | - | - | - | |
| CANADA | 0 | - | - | - | - | - | |
| NETHERLANDS | 0 | - | - | - | - | - | |
| OTHERS | 0 | - | - | - | - | - | |
| | | | | | | | |
| REQUESTS RECEIVED YEAR 2010 | | | | | | | |
| COUNTRY | NO. OF REQUESTS | RESTRAINT ORDER | VALUE OF ASSETS IN TCI | PRODUCTION ORDER | INSTRUCTING LOCAL AGENCY | DIRECT REQUEST | NOTES |
| USA | 0 | - | - | - | - | - | |

Post-Plenary Final

| | | | | | | | |
|--------------------|---|-----------|---|-----------|------------|------------------|---|
| CANADA | 0 | - | - | - | - | - | |
| NETHERLANDS | 1 | NO | - | NO | FIU | NOT INITIALLY | Request made pursuant to Hague Convention; information and documents provided |
| OTHERS | 0 | - | - | - | - | - | |

ANNEX 4

FIA Requests

2011

| Jurisdiction | Incoming | Outgoing |
|----------------------|-----------------|-----------------|
| Albania | 1 | 0 |
| Argentina | 3 | 0 |
| Bahamas | 1 | 4 |
| Bahrain | 1 | 0 |
| Cayman Islands | 3 | 1 |
| Croatia | 1 | 0 |
| Cyprus | 0 | 1 |
| Curacao | 0 | 1 |
| Denmark | 1 | 0 |
| Egypt | 1 | 0 |
| Gibraltar | 0 | 1 |
| Greece | 1 | 0 |
| Jersey | 1 | 0 |
| Kazakhstan | 1 | 0 |
| Latvia | 1 | 0 |
| Lithuania | 1 | 0 |
| Montenegro | 1 | 0 |
| Moldova | 1 | 0 |
| Norway | 1 | 0 |
| Romania | 2 | 0 |
| San Marino | 1 | 0 |
| Slovakia | 2 | 0 |
| United Arab Emirates | 2 | 0 |
| United Kingdom | 1 | 1 |

Post-Plenary Final

| | | |
|--------------------------|-----------|-----------|
| United States of America | 7 | 1 |
| Venezuela | 1 | 2 |
| TOTAL | 40 | 12 |

2012

| Jurisdiction | Incoming | Outgoing |
|--------------------------|-----------------|-----------------|
| Argentina | 1 | 0 |
| Belize | 1 | 0 |
| Bermuda | 1 | 0 |
| Canada | 3 | 1 |
| Germany | 1 | 0 |
| Hong Kong | 1 | 0 |
| Kazakhstan | 1 | 0 |
| Kuwait | 1 | 0 |
| Malaysia | 1 | 0 |
| Philippines | 1 | 0 |
| Switzerland | 1 | 0 |
| United Kingdom | 0 | 2 |
| United States of America | 9 | 1 |
| TOTAL | 22 | 4 |

2013

| Jurisdiction | Incoming | Outgoing |
|---------------------|-----------------|-----------------|
| Anguilla | 1 | 0 |
| Argentina | 1 | 0 |
| Bahamas | 1 | 0 |
| Canada | 7 | 5 |
| Guernsey | 1 | 0 |
| Indonesia | 1 | 0 |
| Jersey | 1 | 0 |

Post-Plenary Final

| | | |
|--------------------------|-----------|----------|
| Latvia | 1 | 0 |
| Lebanon | 1 | 0 |
| Moldova | 7 | 0 |
| Syria | 1 | 0 |
| Ukraine | 2 | 0 |
| United Kingdom | 2 | 0 |
| United States of America | 9 | 4 |
| TOTAL | 35 | 9 |

| <u>2014</u> <u>FIA Incoming and Outgoing Requests by Country</u> | | |
|---|-------------------------|-------------------------|
| Country | Incoming Request | Outgoing Request |
| Argentina | 1 | 0 |
| Bahamas | 0 | 1 |
| Bahrain | 1 | 0 |
| Barbados | 0 | 1 |
| Bermuda | 1 | 1 |
| Canada | 1 | 0 |
| Cayman Islands | 1 | 0 |
| Greece | 1 | 0 |
| Hong Kong | 0 | 1 |
| Jersey | 1 | 0 |
| Malaysia | 0 | 1 |
| Mauritius | 1 | 0 |
| Nigeria | 1 | 0 |
| Philippines | 0 | 1 |
| Sri Lanka | 1 | 0 |
| ST. Kitts and Nevis | 0 | 1 |
| United States America | 5 | 1 |
| Total International Requests | 15 | 08 |
| TCI/Local | 12 | 22 |
| Total Requests | 27 | 30 |

| <u>2015</u> <u>FIA Incoming and Outgoing Requests by Country</u> | | |
|---|-------------------------|-------------------------|
| Jurisdiction | Incoming Request | Outgoing Request |
| Canada | 2 | 3 |
| Cayman Islands | 1 | 1 |
| Guatemala | 2 | 0 |
| Hong Kong | 0 | 1 |
| Moldova | 1 | 0 |
| New Zealand | 2 | 0 |
| Panama | 0 | 1 |
| Philippines | 1 | 0 |
| Taiwan | 1 | 0 |
| Trinidad and Tobago | 0 | 1 |
| Turkey | 1 | 0 |
| United Kingdom | 1 | 0 |
| United States of America | 1 | 3 |
| Total International Requests | 13 | 10 |
| TCI/Local | 13 | 20 |
| Total Requests | 26 | 30 |

ANNEX 5
FIA STRs DISCLOSED 2012-2015

| Reporting Entities | 2012 | 2013 | 2014 | 2015 |
|--------------------------------|-------------|-------------|-------------|-------------|
| Banking Sector | 11 | 25 | 26 | 12 |
| MSBs | 2 | 2 | 4 | 21 |
| Insurance Company | 2 | 3 | 2 | - |
| Mutual Fund | - | - | - | - |
| Investment Dealers | - | - | - | - |
| Attorneys-at-law | 6 | 7 | 6 | 3 |
| CSPs | 0 | 12 | 3 | 2 |
| Trust Companies | 2 | 2 | 4 | 2 |
| Accountants | - | - | - | - |
| Real Estate | - | - | - | - |
| Casinos | - | - | - | - |
| High Value Dealer | - | - | - | - |
| TOTAL REPORTS DISCLOSED | 23 | 51 | 47 | 40 |

Table 1-Source: FIA-TCI

Disposition of Reports disclosed and revisited

| ACTION TAKEN | 2015 | 2014 | 2013 |
|--|-------------|-------------|-------------|
| Number of SARs/STRs Received | 40 | 47 | 51 |
| Ongoing Analysis | 9 | 4 | 8 |
| SARs/STRs filed as intelligence | 31 | 43 | 43 |
| SARs/STRs resulting in disseminations | 9 | 2 | 3 |

Table 2- Source: FIA TCI

Table 4- Breakdown of Reports by Monetary Value

| Actual Transactions | 2015 | | 2014 | |
|------------------------------|---------------------|---------------------------|---------------------|---------------------------|
| Category of Reporting Entity | No. of Transactions | Value of Transactions USD | No. of Transactions | Value of Transactions USD |
| Banking Sector | 4 | 3,106,169.00 | 10 | 17,736,427.89 |
| MSBs | 17 | 200,618.84 | 4 | 60,205.55 |
| Trust | 1 | 28,000.00 | 1 | 500,000.00 |
| Attorneys-at-law/Law firms | 0 | 0 | 1 | 145,000.00 |
| Total | 22 | 3,334,787.84 | 16 | 18,441,633.44 |
| Attempted Transactions | 2015 | | 2014 | |
| Category of Reporting Entity | No. of Transactions | Value of Transactions USD | No. of Transactions | Value of Transactions USD |
| Banking Sector | 3 | 391,560.00 | 8 | 50,635,445.00 |
| CSP | 0 | 0 | 1 | 98,000.00 |
| Trust | 0 | 0 | 1 | 9,000.00 |
| Attorneys-at-law/Law firms | 1 | 65,000.00 | 1 | 187,900.00 |
| Total | 4 | 456,560.00 | 11 | 50,930,345.00 |

Table 4- Source: FIA-TCI

**Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
TURKS AND CAICOS ISLANDS**

MATRIX

| FATF 40+9 | Rating | Recommended Actions | Actions Undertaken by Turks and Caicos Islands | Remaining Actions to be Taken (if any) |
|----------------------|--|--|---|---|
| Legal Systems | | | | |
| 1. ML offense | PC (1 st - 11 th FUR) | <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.</p> <p>Remaining amendments to the POCO call for the enabling provisions for the offences of directing terrorism, arms trafficking and human trafficking listed in Schedule 1 to be clearly defined A draft Human Trafficking (prevention of) Bill produced by an EU funded law review project undertaken in the Islands has been produced and is under consideration as part of the Legislative Agenda for the 2013-2014 financial year. All other recommendations have been fully observed.</p> <p>A number of existing legislation was amended as part of the law review and reform exercise and some new laws drafted. These include:</p> <ul style="list-style-type: none"> Amendment to the Confidential Relationships Ordinance to tighten the AML/CFT requirements for disclosure is not a breach of confidentiality under that Ordinance; | <p>The Trafficking In Persons (Prevention) Ordinance 2016 was assented to on January 30, 2016 and came into force April 1, 2016.</p> <p>During the week of March 14-18, 2016, two Immigration Officials and a Senior Crown Counsel from the Attorney General’s Chambers attended course in the UK hosted by the International Centre for Parliamentary Studies which allows for a Professional Certificate in Tackling Human Trafficking, upon completion of the four day-long course and subsequent written tasks. The course offers a comprehensive analysis of the tools to counter human trafficking with subjects discussed including:</p> <ul style="list-style-type: none"> The economics of human trafficking |

Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
TURKS AND CAICOS ISLANDS

| | | | | |
|--|--|--|---|---|
| | | | <ul style="list-style-type: none"> • Amendments to the Proceeds of Crime Ordinance to address the remaining concerns; and • Amendments to the Tax Exchange of Information Ordinance to clarify the remit of the Competent Authority to be able to request and provide information in accordance with the TIEAs. <p>A first draft of the Terrorism Bill 2013 was circulated to members of the MLRA and the Judiciary in August 2013 for consideration. It is hoped that this Bill will be considered by Cabinet in October and the House of Assembly in November 2013</p> <ul style="list-style-type: none"> • Part 2 of the Bill deals with offences relating to membership in or support of a proscribed organization (listed in Schedule 1) which is concerned with terrorism. • Part 3 of the Bill makes it an offence to use or possess property or engage in fundraising for the purposes of terrorism and to money launder terrorist property. It also provides a procedure for forfeiture of terrorist property (Schedule 3) which includes the making of restraint orders and enforcement of order made in the United Kingdom and its Overseas Territories and external orders made in other countries • Part 4 is concern with investigating terrorism and includes powers to search premises, cordon an area, the ability to obtain orders production of materials, orders for explanations to be given, and orders to/against a financial institution to provide customer information or for an account monitoring. It also provides that non-disclosure of information relating to terrorism, tipping off and interference with material would be offences. • Part 5 of the Bill deals with the power to search, arrest, detain and stop and search. It also provides for the exercise of these powers at ports (Schedule 7). The treatment of persons detained is in Schedule 8 which covers, places of detention, the right to legal advice, identification, fingerprinting and the taking of intimate samples. It also provides a procedure for the review of the detention • Part 6 of the Bill covers further terrorist offences such as weapons training, directing terrorism, possession for terrorist purposes, and collection of information and inciting terrorism overseas. <ul style="list-style-type: none"> • The MLRA at its January 17, 2014 meeting mandated that a second draft of the Terrorism Bill be prepared by early February. • The MLRA at its February 21, 2014 meeting received second draft of the Terrorism Bill and set up a subcommittee to review and finalise the Bill. • The sub-committee met February 28 and will complete its work by March 5, 2014. A Cabinet Paper is then to be prepared for presentation to Cabinet at its March 12, 2014 and to be laid before the next of House Assembly meeting currently scheduled for the end of March. It is anticipated that the second reading and the remaining stages of the Bill in the House of Assembly would be completed by the end of April 2014. • The Prevention of Terrorism Ordinance (No. 9 of 2014) was passed in the House of Assembly on May 22nd 2014 and is expected to come into effect shortly. | <ul style="list-style-type: none"> • The crux of the trafficking issue and policy impacts • The immigration/asylum debate and impact on policy • Gender and human trafficking • Public awareness campaigns • Supporting victims of human trafficking <p>The TCI is planning to amend the existing laws to incorporate provisions relating to arms trafficking. It is planned that the amendments be added to the Government's legislative agenda for the first quarter of 2016. On March 18, 2016, the Cabinet approved the bills for submission to the next sitting of the House of Assembly scheduled for April 18, 2016.</p> <p>The Control of Drugs (Amendment) Ordinance, 2016; the Prevention of Terrorism (Amendment) Ordinance, 2016; the Proceeds of Crime (Amendment) Ordinance, 2016; the Financial Intelligence Agency (Amendment) Ordinance, 2016 and the Law Revision (Miscellaneous Amendments) Ordinance, 2016 were</p> |
|--|--|--|---|---|

Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
TURKS AND CAICOS ISLANDS

| | | | | enacted into law on May 10, 2016 |
|--|---|---|---|-------------------------------------|
| 2. ML offense—mental element and corporate liability | LC | <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 | 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. | None |
| 3. Confiscation and provisional measures | LC C (9 th FUR) | <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 Ordinance, in Part III now provides for the recovery of instrumentalities intended for use in or in connection with unlawful conduct through civil forfeiture. It includes new sections on freezing orders.</p> <p>In particular, section 59 now contains as an additional objective of the civil forfeiture regime, the recovery of 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 provisions that amend various sections in PART III to give effect to the recovery of tainted property.</p> <p>A first draft of the Terrorism Bill 2013 was circulated to members of the MLRA and the Judiciary in August 2013 for consideration. Part 3 of the Bill makes it an offence to use or possess property or engage in fundraising for the purposes of terrorism and to money launder terrorist property. It also provides a procedure for forfeiture of terrorist property (Schedule 2) which includes the making of restraint orders and enforcement of order made in the United Kingdom and its Overseas Territories and external orders made in other countries.</p> <p>The Prevention of Terrorism Ordinance (No. 9 of 2014) was passed in the House of Assembly on May 22nd 2014 and came into force on October 17, 2014.</p> | None |
| Preventive measures | | | | |
| 4. Secrecy laws consistent with the Recommendations | C | | | |

Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
TURKS AND CAICOS ISLANDS

| | | | | |
|---------------------------|---|--|---|------|
| 5. Customer due diligence | NC C (9 th FUR) | <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 | <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 were amended on 1st December 2011 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) were amended on 1st December 2011 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>Regulation, now provides that customer due diligence measures include measures for determining who the natural persons that ultimately own or control the customer are, where the customer is not an individual.</p> <p>The TCI continues on its sensitization campaign to make financial institutions aware of the benefits of meeting AML/CFT requirements. The FSC held AML/CFT training in November 2011 for industry practitioner, which focused on the requirements of the new code and establishing a compliance manual. During the November 2011 training, the FIU hosted a session. The FIU also conducted a two-hour of AML training with the staff at one of the local banks at the request of their Money Laundering Reporting officer.</p> <p>A Compliance Workshop was held on October 24, 2012.</p> | None |
|---------------------------|---|--|---|------|

Matrix with Ratings and Follow-Up Action Plan 3rd Round Mutual Evaluation
TURKS AND CAICOS ISLANDS

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| | | <p>CDD on legal persons or legal arrangements.</p> <ul style="list-style-type: none"> There seemed to be a high level of dependence on personal relationships between financial institutions and clients which results in CDD measures not being carried out. During interviews with financial institutions these institutions typically indicated that the reason for limited or no CDD measures is a result of the small size of the local industry and the fact that everyone knows each other. Such scenarios may open the TCI to a higher risk of financial institutions being used for money laundering and financing of terrorism. Therefore, TCI authorities should develop a sensitization campaign whereby financial institutions are made aware of the benefits and requirement to do relevant CDD. | <p>An AML Seminar was also held on April 25, 2013 and was attended by over 60 persons from across the various regulated sectors. Both Training exercises addressed issues relating to establishing relevant AML systems and procedures and in particular an AML Manual that should be developed by each licensee on a risk sensitive basis.</p> <p>The FIA often times with the assistance of the FSC has engaged in other efforts to bring awareness to AML/CFT issues including advertisement in newspapers; appearing on talk shows and engaging with sector specific firms such as attorneys and money transmitters.</p> <p>On the recommendation of the FIU the MLRA at its meeting held on 23rd July 2012 agreed that it would be useful to issue guidance in accordance with section 111(2) of the Proceeds of Crime Ordinance along the lines of the guidance issued by the Trinidad and Tobago FIU in 2011 (Customer Due Diligence Guide No. 1 of 2011).</p> <p>Following a review of these guidelines by the FSC, it was decided that Customer Due Diligence guidance was already covered in the Code in terms consistent with the established international standard. At the AML seminar held with the industry on April 25th 2013 the FSC highlighted those provisions. Therefore, separate CDD guidance is not needed.</p> <p>The TCI reviewed the definitions of legal person and legal arrangements in the FATF Methodology (2004). The methodology defines those terms as follows;</p> <p><i>“Legal arrangements refers to express trusts or other similar legal arrangements. Examples of other similar arrangements (for AML/CFT purposes) include fiducie, treuhand and fideicomiso. Legal persons refers to bodies corporate, foundations, anstalt, partnerships, or associations, or any similar bodies that can establish a permanent customer relationship with a financial institution or otherwise own property.”</i></p> <p>The provisions within the TCI’s laws are not inconsistent with these definitions.</p> <p>In the Anti-Money Laundering and Prevention of Terrorist Financing Regulations 2010 (AML/PTF Regulations); Regulation 3 states:</p> <p><i>Meaning of “beneficial owner”</i></p> <p>3. (1) Subject to sub-regulation (3), each of the following is a beneficial owner of a legal person, a partnership or an arrangement—</p> <p>(a) an individual who is an ultimate beneficial owner of the legal person, partnership or arrangement, whether or not the individual is the only beneficial owner; and</p> <p>(b) an individual who exercises ultimate control over the management of the legal person, partnership or arrangement, whether alone or jointly with any other person or persons.</p> <p>(2) For the purposes of sub-regulation (1), it is immaterial whether an individual’s ultimate ownership or control of a legal person, partnership or arrangement is direct or indirect.</p> <p>(3) An individual is deemed not be the beneficial owner of a body corporate, the securities of which are listed on a recognized exchange.</p> <p>(4) In this regulation, an “arrangement” includes a trust.</p> <p>The regulations continues in its reference to legal arrangements in regulation 5 where it states:</p> |
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| | | <p><i>Meaning of “occasional transaction”</i> <i>Meaning of “customer due diligence measures” and “ongoing monitoring”</i> 5. (1) “Customer due diligence measures” are measures for— (a) identifying a customer; (b) determining whether the customer is acting for a third party and, if so, identifying the third party; (c) verifying the identity of the customer and any third party for whom the customer is acting; (d) identifying the identity of each beneficial owner of the customer and third party, where either the customer or third party, or both, are not individuals; (e) taking reasonable measures, on a risk-sensitive basis, to verify the identity of each beneficial owner of the customer and third party so that the financial business is satisfied that it knows who each beneficial owner is including, in the case of a legal person, partnership, trust or similar arrangement, taking reasonable measures to understand the ownership and control structure of the legal person, partnership, trust or similar arrangement; and (f) obtaining information on the purpose and intended nature of the business relationship or occasional transaction.</p> <p>(2) Customer due diligence measures include— (a) where the customer is not an individual, measures for verifying that any person purporting to act on behalf of the customer is authorised to do so, identifying that person and verifying the identity of that person; and (b) where the financial business carries on insurance business, measures for identifying each beneficiary under any long term or investment linked policy issued or to be issued by the financial business and verifying the identity of each beneficiary.</p> <p>(3) Customer due diligence measures do not fall within this regulation unless they provide for verifying the identity of persons whose identity is required to be verified, on the basis of documents, data or information obtained from a reliable and independent source.</p> <p>(4) Where customer due diligence measures are required by this regulation to include measures for identifying and verifying the identity of the beneficial owners of a person, those measures are not required to provide for the identification and verification of any individual who holds shares in a company that is listed on a recognised exchange.</p> <p>Clearly the AML/PTF Regulations provide that FIs must conduct CDD on legal arrangements. The AML/PTF Code 2011 also makes similar provisions for CDD in relation to legal arrangements.</p> <p>Section 11 outlines the CDD measures to be applied by financial business and states that: “11. (1) Subject to complying with the specific requirements of the AML/CFT Regulations and this Code, a financial business must apply a risk-sensitive approach to determining the extent and nature of the customer due diligence measures to be applied to a customer and to any third party or beneficial owner. (2) Without limiting subsection (1), a financial business shall—</p> | |
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| | | | <p><i>(a) obtain customer due diligence information on every customer, third party and beneficial owner comprising—</i></p> <p><i>(i) identification information in accordance with section 14, 16, 19 or 21 as the case may be; and</i></p> <p><i>(ii) relationship information in accordance with section 12;”</i></p> <p>The Guidance note to that section note on page 25 at paragraph (v) state that:</p> <p><i>“(v) It should be noted that the AML/CFT Regulations include within the definition of beneficial owner, an individual who exercises ultimate control over the management of a legal person, partnership or legal arrangement, whether alone or jointly.”</i></p> <p>It is also noted on page 40, which outlines additional guidance that:</p> <p><i>“(iii) In essence, all persons who are not individuals, including companies, foundations, partnerships or trusts and any other type of legal arrangement are regarded as having a beneficial owner who is an individual. The definition of “beneficial owner” is contained in regulation 3 of the AML/CFT Regulations which, in summary, provides that beneficial owners are:</i></p> <p><i>(a) individuals who are ultimate beneficial owners of the legal person, partnership or legal arrangement; and</i></p> <p><i>(b) individuals who exercise ultimate control over the management of the legal person, partnership or legal arrangement.</i></p> <p><i>It should be noted that it makes no difference whether:</i></p> <p><i>(a) an individual’s ultimate ownership or control of a legal person, partnership or legal arrangement is direct or indirect; and</i></p> <p><i>(b) an individual is the sole beneficial owner or a joint beneficial owner.”</i></p> <p>Further section 19 of the AMLPTF Code specifically deals with identification information on trusts and trustees and provides:</p> <p><i>“19. (1) Where a financial business is required by the AML/CFT Regulations or this Code to identify a trust, it shall—</i></p> <p><i>(a) obtain the following identification information—</i></p> <p><i>(i) the name of the trust;</i></p> <p><i>(ii) the date of the establishment of the trust;</i></p> <p><i>(iii) any official identifying number;</i></p> <p><i>(iv) identification information on each trustee of the trust;</i></p> <p><i>(v) the mailing address of the trustees;</i></p> <p><i>(vi) identification information on each settlor of the trust; and</i></p> <p><i>(vii) identification information on each protector or enforcer of the trust; and</i></p> <p><i>(b) obtain confirmation from the trustees that that they have provided all the information requested and that they will update the information in the event that it changes.</i></p> <p><i>(2) For the purpose of this Code, “settlor” includes a person who, as settlor, established the trust and any person who has, at any time, subsequently settled assets into the trust.</i></p> <p><i>(3) Where a financial business determines that any business relationship or occasional transaction concerning the trust that it is required to identify presents a higher level of risk, the financial business shall obtain such additional identification information as</i></p> | |
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| | | | <p><i>it consider appropriate.</i></p> <p><i>(4) Where subsection (3) applies, but without limiting it, a financial business shall obtain identification information on—</i></p> <p><i>(a) each beneficiary with a vested right; and</i></p> <p><i>(b) each beneficiary, and each person who is an object of a power, who the financial business determines presents a higher level of risk.</i></p> <p><i>(5) Identification information required to be obtained on any person under this section shall be obtained in accordance with section 14 if the person is an individual, section 16 of this Code if the person is a legal entity or section 21 if the person is a foundation.”</i></p> <p>Section 20 of the Code also speaks to the verification that is needed for trusts and trustees.</p> <p>Guidance has been prepared by the FIA in relation to both Suspicious Transaction Reports and Terrorist Property Reporting. These reports may be found on the FIA’s web page at http://www.tcipolice.tc/index.php/financial-intelligence-unit</p> | |
| 6. Politically exposed persons | NC | <ul style="list-style-type: none"> Financial institutions should be required to | <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</p> | None |

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| | C (5 th FUR) | <p>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.</p> <ul style="list-style-type: none"> The FSC should consider issuance of guidance with regard to financial institution's handling of relationships with PEPs. | <p>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 addresses 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>Recognizing that corruption and money laundering are related the TCI moved to strengthen its anti-corruption measures, in order to avoid rendering our anti-money laundering regime ineffective. Therefore, the TCI is the first regional jurisdiction to take the bold step of reforming the area of campaign financing. Campaign donations received by political parties and candidates are now required to be reported to the Integrity Commission, an anti-corruption watchdog body established under the Constitution. Additionally, the Integrity Commission Ordinance 2008 (as amended and strengthened in 2012) requires annual detailed declarations as to income, assets and debts from Persons in Public Life (including members of the Cabinet and of the House of Assembly, as well as senior public officials whether part of the public service or heading public bodies). The Political Activities Ordinance 2012, administered by the Integrity Commission, places restrictions on the kind of donors, donations and the amounts of campaign donations, and requires not only the filing of reports citing the amounts and names of donors but also introduces criminal sanctions and financial penalties on the leaders and treasurers of political parties liable. There is also an AML/CFT style obligation on political parties and independent candidates to maintain transparent accounting records and to produce audited accounts. Provisions also allow for the forfeiture of prohibited donations. The Integrity Commission has issued guidance to political parties under these Ordinances.</p> <p>Additionally, work is being done on an Anti-Bribery Bill, which is before Cabinet for consideration.</p> | |
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| 7. Correspondent banking | NC C (5 th FUR) | <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 with correspondent banking. Regulation 16 was amended to extend it to all financial institutions in accordance with a decision taken by the MLRA in its meeting in December 2010. Regulation 16 was amended on 1st December 2011 to make it clear that the prohibition regarding entering into or continuing corresponding banking relationships with shell banks applies to all financial business.</p> | None |
| 8. New technologies & non face-to-face business | NC C (9 th FUR) | <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>The FSC considered whether there was a need to bring the business of mortgage lending under a licensing regime and to this end conducted a market survey, reviewed and analysed the result of this survey by the at the end of September 2013. An initial review of the numbers of entities which have been issued licenses by the business licensing unit revealed that there were only 2 such entities. The MLRA at its February 21, 2014 meeting decided to single this area as one of the first areas to be considered in preparatory work for the National Risk Assessment. The NRA Team has agreed to take on this work.</p> | None |
| 9. Third parties and introducers | PC C | <ul style="list-style-type: none"> Financial institutions relying on a third party should be required to immediately obtain | <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</p> | None |

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| | (5 th FUR) | <p>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> <ul style="list-style-type: none"> 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>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 was amended on 1st December 2011 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> | |
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| 10. Record keeping | PC C (5 th FUR) | <ul style="list-style-type: none"> It is recommended that the TCI review its legislative and regulatory provisions to take consideration of all requirements of Recommendation 10 particularly as it pertains to the retention of records and that appropriate legislation should be enacted as soon as possible. | <p>Regulations 18 and 19 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations require records to be kept for at least five years. These records include CDD, account files and transaction records sufficient to enable a reconstruction of the individual transactions.</p> <p>Failure to comply with that regulation will result in a fine of 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> <p>A new Partnerships Ordinance was made in October 2011 and came into force on 1st November 2011. This new Ordinance codifies the law relating to partnership. Under the common law legal system, the basic form of partnership is a general partnership in which all partners manage the business and are personally liable for its debts. A partnership is defined as the relationship which subsists between persons carrying on business with a view of profit.</p> <p>A key feature of a partnership is that it does not have a legal personality of its own. In the eye of the law, a partnership is merely a way of describing the individual partners who make up the partnership. Thus unlike companies where a member of the company is to a large extent insulated from liabilities of the company, in a partnership, each partner is held responsible not just for the liabilities caused by his actions, but also for liabilities incurred by each partner.</p> <p>By virtue of section 28(1), partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his agents.</p> <p>Under section 28(2), a partnership must keep or cause to be kept proper books of accounts including day books of accounts and underlying documentation including contracts and invoices, with respect to—</p> <p>(a) all sums of money received and expended by the partnership and the matter in respect of which the receipt and expenditure take place;</p> <p>(b) all sales and purchases of goods by the partnership; and</p> <p>(c) the assets and liabilities of the partnership.</p> <p>For the purpose of subsection (2) proper books of accounts do not satisfy the statutory requirement to be kept if there are not kept such books as are necessary to give a true and</p> | None |
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| | | | <p>fair view of the state of the partnership's affairs and to explain its transactions. (section 28(3))</p> <p>Every partnership must keep all books of accounts required to be kept under subsection (2) for a minimum period of five years from the date on which they are prepared. (section 28(4))</p> <p>Any partner who knowingly contravenes, permits or authorizes the contravention of the provisions of subsection (2) or (4) commits an offence and is liable on summary conviction to a fine not exceeding \$50,000.(section 28(5))</p> | |
| 11. Unusual transactions | NC C (5 th FUR | <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> | None |
| 12. DNFBP–R.5, 6, 8-11 | NC PC (11 th FUR) | <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 | <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</p> | <ul style="list-style-type: none"> FSC will issue some guidance to the Bar Association and lawyers |

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| | | <p>legislation and inform them of the consequences of these changes for their respective industries.</p> <ul style="list-style-type: none"> Define the major risk area targeted under the group of DNFBP's categorized as "dealers in goods of any description involving a cash payment of \$50,000 or the equivalent in any currency". Determine who will be responsible for the oversight of the precious metals and precious stones industry and the industry labelled as "dealers in goods of any description involving a cash payment of \$50,000 or the equivalent in any currency" Where not regulated, TCI should regulate market participants in order to be able to monitor compliance by these market players with applicable AML/CFT rules and regulations; Determine who will be responsible for the regulatory oversight of the relevant DNFBP's; In light of client privileges issues that might arise relative to the implementation of an oversight regime for legal advisers, it is | <p>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>The Anti-Money Laundering and Prevention of Terrorist Financing (Amendment) Regulations 2011 came into operation on 1st December 2011. These Amendment Regulations amended regulation 24, to specify that there shall be a separate part of the NRFB Register for each category of non-regulated financial business (DNFBPs).</p> <p>The FSC is the identified NRFB Supervisor under the POCO. The FSC created a DNFBP Department at the end of 2012 and has commenced a system of registration, which is continuing.</p> <p>Additionally, the POCO was amended in January 2013 to make it clear that the FSC is the NRFB Supervisor and an amendment was made to the AML & PTF Regulations to prescribe a registration fee of \$150.</p> <p>These pieces of legislation came into force on April 1, 2013.</p> <p>The FSC conducted an AML seminar on April 25th 2013 at which there was wide representation across the sectors. These included: attorneys, accounting services and trust companies. At the end of the seminar each participant received a certificate of participation which counts as credit towards various certifications in AML. The training was targeted at licensees which includes some lawyers and accountants but it was not specific to those sectors.</p> <p>Training for the Bar Association on DNFBPs was held in 2014. Additionally members of the Bar has participated in the various conferences and workshops organized in relation to AML/PTF.</p> <p>Sections 2, 111,116, 120, 121,148F, 148Q and 148M of POCO were amended to reflect the correct name of the AML/PFT Regulations. This amendment came into force on 1st December 2011.</p> <p>Contact was made individually with Jewellers by Head of DNFBPs in the 4th quarter of 2013 to inform them of the AML/CFT legislative changes and the consequences to their industry. Guidance was issued and posted February 2014 on the FSC website and can be viewed at http://tcifsc.tc/departments/designated-non-financial-businesses-professions/legislation-regulations-guidance</p> <p>The role and functions of the Gaming Inspectorate has been discussed at various meetings of the MLRA starting from January 2011, at which time Gaming Inspectorate officials were in attendance.</p> <p>The Gaming Inspectorate and the Permanent Secretary, Finance attended the September 2011 meeting of the MLRA and both were briefed on the recommended improvements and provided with copies of the relevant documents and information. The Permanent Secretary, Finance agreed to place the required improvements to the Gaming Inspectorate</p> | <p>in relation to separation of legal work from DNFBP work to advise its members</p> <ul style="list-style-type: none"> Complete Gaming Policy Consultation Have draft Bill approved by Cabinet and put on the schedule of the House of Assembly Increase staffing at the Gaming Inspectorate |
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| | | <p>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.</p> <ul style="list-style-type: none"> • 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>on the agenda of the Ministry of Finance' work plan so that they can be prioritised in the Government's budget for the 2012/2013 financial year.</p> <p>In March 2013 the Government announced a moratorium on the issuance of new licences for gaming for up to one year with a view to implementing an Action Plan devised by the Ministry of Finance for reform in the Gaming Industry consistent with the recommendations of the MLRA. Changes to the Gaming legislation, strengthening of the Gaming Inspectorate, including training are part of this reform initiative.</p> <p>The moratorium on any new licences for gaming remains in effect. The consultant appointed to review the gaming inspectorate started work in October 2013 by visiting the country and doing preliminary work. The Consultant returned in February 2014 and met with the Attorney General on February 20. The report was finalized in April 2014 and the MLRA received a presentation on it at its meeting on May 22, 2014. The report contained a number of recommendations for legislation to over-haul the industry and the structure of the body which will regulate the industry and also make it more compliant with AML/CFT standards. At its meeting on July 23, 2014 Cabinet decided that included in the legislative agenda would a Gaming Bill.</p> <p>The proposed timelines for the new legislation is August/September 2016. The Policy has been approved in principle by Cabinet and public consultations on the Policy Document commenced in August and will end at the end of October. The public consultation is now closed and another draft of the policy has been produced. Consultants, Gaming Laboratories International has been engaged to assist with the finalisation of the policy and preparation of legislation and will be in the country in April 2016.</p> <p>Whilst there has not been an increase in new personnel, the vacant position for Director is has been advertised and the interview process will start shortly.</p> <p>Funding for new resources has been allocated in the FY 2014/2015 budget and the department has commenced the necessary steps in acquiring the goods.</p> <p>AML training has been done.</p> | |
| 13. Suspicious transaction reporting | <p>PC</p> <p>C (8th FUR)</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, | <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. Although guidance information is provided as a part of the Money Laundering Reporting Authority's Suspicious Transaction/ Activity form, it has been decided that guidance notes will also be issued under section 111(2) of the Proceeds of Crime Ordinance. These will be made available on both the FSC and FIU websites.</p> | None |

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| | | <p>the means through which STRs should be filed with the FCU should be standardized.</p> <ul style="list-style-type: none"> 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>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>The MLRA considered the issuance of guidelines and these guidelines were drafted and posted on the FIU's website since May 2013.</p> <p>The FIA has issued and updated guidance and forms in relation to both Suspicious Transaction Reports and Terrorist Property Reporting. These forms and guidance may be found on the FIA's web page at http://www.tcipolice.tc/index.php/financial-intelligence-unit</p> | |
| 14. Protection & no tipping-off | C | | | |
| 15. Internal controls, compliance & audit | PC | <ul style="list-style-type: none"> The FSC 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. | <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>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> <p>The FSC has issued guidelines in relation to Internal Control and Audit. These guidelines were issued in November 2012 and revised July 2014 and have been available on the FSC's website since that time at http://tcifsc.tc/policies-guidelines?start=10.</p> <p>In August 2014 the Commission issued Risk Management and Internal Controls guidelines for insurance companies. This includes reference to Internal Audit requirements. http://tcifsc.tc/policies-guidelines?limitstart=0</p> <p>The Commission in its examination on manuals does not routinely look for reference to terrorist financing. However focus is on the Risk Assessment of the business the outcome of which drives the policy manuals. (Section 4 of the Code). If a business can demonstrate that the assessment of TF risk is minimal or non-existent then the manual should reflect that.</p> | |

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| | | <ul style="list-style-type: none"> 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. <p>Financial institutions should be required to have their screening policy for new personnel formalized and documented for review by the FSC.</p> | <p>The FSC website addresses the risk of terrorist financing through NPOs (http://tcifsc.tc/departments/head-compliance-unit/non-profit-organisations)</p> <p>Screening of all employees is included in scope of onsite examinations. (For compliance with Section 33 of the Code)</p> | |
| 16. DNFBP-R.13-15 & 21 | NC LC (9 th FUR) | <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. This work is ongoing.</p> <p>Since 2011 the NRFB Supervisor has conducted training for DNFBPs on the filing of STRs to promote a compliant regime within the relevant industries and guidelines for each category of DNFBP has been issued.</p> <p>The FSC is the identified NRFB Supervisor under the POCO. The FSC created a DNFBP Department at the end of 2012 and has commenced a system of registration, which is continuing.</p> <p>Additionally, the POCO was amended in January 2013 to make it clear that the FSC is the NRFB Supervisor and an amendment was made to the AML & PTF Regulations to prescribe a registration fee of \$150. These legislative changes came into operation on April 1, 2013.</p> <p>The Head of the DNFBP Dept. completed the work, including consultation on guidelines for the DNFBP's in September 2013.</p> <p>In January 2014 the TCI FSC published for Consultation guidelines for High Value Dealers. The consultation period ended on February 18, 2014. These guidelines are now finalized and have been publicized on the FSC's website at http://tcifsc.tc/departments/designated-non-financial-businesses-professions/legislation-regulations-guidance</p> <p>The FIA often times with the assistance of the FSC has engaged in continuous efforts to bring awareness to AML/CFT issues including advertisement in newspapers; appearing on talk shows and engaging with sector specific firms such as attorneys and money transmitters. The FIA has in 2015 updated its STR and SAR forms and provided guidance in relation to it. This guidance was issued after consultation.</p> | None |

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| 17. Sanctions | PC C (5 th FUR) | <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 takes enforcement action and issues administrative penalties against licensed entities in accordance with the Financial Services (Financial Penalties) Regulations made 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>The FSC continues to foster compliance among licensees and in this regard, the FSC had a vigorous enforcement programme during 2011. A table and detailed enforcement action taken during the year was supplied to the CFATF. The information reveals that the FSC had taken a total of 138 enforcement actions during 2011. The majority have been against insurance companies, with a few trust and, company managers and one money remitter. The majority of actions (89) have involved a 'notice of intention to revoke licence'. During the period, there was the suspension of a licence and the surrender of a licence.</p> <p>For 2012 approximately 30 enforcement actions were initiated. Of that number 8 resulted in actual penalty notices being issued, 7 resulted in revocations of licences, 1 resulted in legal action to have the company wound up and for the remainder, and the enforcement action did not materialize.</p> <p>Initially, penalty notices issued by the FSC were not considered as a civil debt which could be legally recovered through the courts. As a result the only recourse where a person failed to pay a penalty was to pursue criminal action or seek to have the company wound up and the licence revoked.</p> <p>Consistent with similar provisions in the POCO in respect of DNFBPs, the FSC has therefore proposed, and the Government agreed, that there be an amendment to section 47 of the FSCO to make a Penalty Notice (once it becomes final on the expiration on 14 days from the date of issue) to be considered as a debt.</p> <p>FINANCIAL SERVICES COMMISSION (AMENDMENT) ORDINANCE 2013 (No. 5 of 2013) adds a new section 49 to the FSCO in relation to recovery of financial penalties. The amendment was assented to on May 16, 2013 and came into force July 1, 2013.</p> <p>Two judicial matters have been commenced since the amendment came into force. Both of these has since been settled.</p> | None |
| 18. Shell banks | PC C (6 th FUR) | <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> <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> | None |

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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. | 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. | |
| 19. Other forms of reporting | NC C (1 st FUR) | <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. | None |
| 20. Other NFBP & secure transaction techniques | PC C (11 th FUR) | <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. | <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. The sub-committee reported to the MLRA at its meeting held on 23rd July 2012 that it was making progress but would report again at the MLRA meeting scheduled for 3rd September 2012. At a February 21, 2014 MLRA meeting a report was presented detailing the results received which showed that the risk at this time was minimal.</p> <p>An initial review of the numbers of entities which have been issued licenses by the business licensing unit has revealed that there are currently only 2 such entities. The MLRA at its February 21, 2014 meeting decided to single this area as one of the first areas to be</p> | <ul style="list-style-type: none"> Complete Gaming Policy Consultation Have draft Bill approved by Cabinet and put on the schedule of the House of Assembly Increase staffing at the Gaming Inspectorate |

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| | | <ul style="list-style-type: none"> 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>considered in preparatory work for the National Risk Assessment. The NRA Team agreed to take on this work with a view to having some preliminary finding by the end of April, 2014.</p> <p>The NRA team determined that it is likely that there is a risk that the construction industry could be misused for ML or FT and has agreed to further consider the issue in conducting its work on the National Risk Assessment.</p> <p>Credit card facilities are now available in casinos.</p> <p>A review of the regulatory framework of the gaming industry was undertaken and a report on the findings was finalized in April 2014. The MLRA received a presentation on it at its meeting on May 22, 2014. The report contained a number of recommendations for legislation to over-haul the industry and the structure of the body which will regulate the industry and also make it more compliant with AML/CFT standards. At its meeting on July 23, 2014 Cabinet decided that included in the legislative agenda for the balance of 2014 would be a Gaming Bill.</p> <p>The proposed timelines for the new legislation is August/September 2016. The Policy has been approved in principle by Cabinet and public consultations on the Policy Document commenced in August and will end at the end of October. The public consultation is now closed and another draft of the policy has been produced. Consultants, Gaming Laboratories International has been engaged to assist with the finalisation of the policy and preparation of legislation and will be in the country in April 2016.</p> <p>Whilst there has not been an increase in new personnel, the vacant position for Director is has been advertised and the interview process will start shortly.</p> <p>Funding for new resources has been allocated in the FY 2014/2015 budget and the department has commenced the necessary steps in acquiring the goods.</p> <p>AML training has been done.</p> | |
| 21. Special attention for higher risk countries | NC C (8 th FUR) | <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 | <p>The MLRA has deliberated on the Examiner's recommendations to consider the appropriate counter measures for the TCI to take against countries that do not or insufficiently apply the FATF Recommendations and decided that the FSC will create an advisory on its website regarding carrying on business with countries which do not sufficiently meet the FATF standards and provide a link to the FATF list of countries which do not sufficiently meets its standards. This was completed by August 2012.</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>Following a decision of the Money Laundering Reporting Authority the TCI decided that the appropriate counter measures to be applied against countries who do not or insufficiently apply the FATF recommendations was by posting on the FSC's web page, the names of such non-compliant jurisdictions as published by the FATF and notifying licensees. The FSC on its website has a sanctions page, where it has posted a number of Orders relating to countries against which there are sanctions.</p> | None |

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| | | <p>FATF standards. However, if a particular jurisdiction continues to impose a high risk for ML or TF on the financial services industry of the TCI, the FSC should consider applying its powers under the FSCO to issue additional guidance on the subject. In this respect, the FSC might consider for example issuing a list of countries that do not or insufficiently apply the FATF standards and for which transactions originating from these countries should be subject to a higher degree of scrutiny.</p> | <p>The FSC has promoted a risk-based approach to money Laundering among its licensees including that licensees should have regard to country or geographical risks in its client acceptance and CDD systems. These requirements are specifically stated in section 11(3)(d) of the AML & PTF Code and paragraph (viii)(c)(II) & (III) and paragraph (xxvi) to (xxviii) of the guidance to the Code. The FSC has provided AML/CFT and Compliance training on this and other requirements of the Code in November 2011, November 2012 and recently on April 25, 2013.</p> | |
| 22. Foreign branches & subsidiaries | <p>NC C (3rd FUR)</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> | None |
| 23. Regulation, supervision and monitoring | <p>PC C (8th FUR)</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. | <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 engaging with IOSCO and working within their required timelines and procedures to gain membership in IOSCO.</p> | None |

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| | | <ul style="list-style-type: none"> • 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 is currently in the process of reviewing its securities legislation to bring it up to standard with IOSCO Core Principles and other internationally accepted best practices. A first draft of the legislation has been prepared and circulated to the industry for comments however, it is recognized that a significant amount of work remains to be completed on the Bill itself and on the drafting of subsidiary legislation to compliment the Bill.</p> <p>The FSC is also in the process of a completing draft new Banking. The Trust Bill and the Trust Companies Licensing and Supervision Bill are currently being considered by Cabinet. Once this work has been completed the Bills have to undergo a period of consultation with the Industries.</p> <p>The Government has recently approved a new Domestic Insurance Bill which seeks to implement the recommendations of the IMF on its assessment of the industry in 2003. In this regard, the FSC has engaged with the House of Assembly members by a meeting set for 30th April 2013 to walk through the provisions of the Bill before it is debated at the next meeting of the House set for May 2013. At the May 2013 sitting of the House, the Bill had its first reading but was not debated. The Bill was then redrafted and has received its first reading in the House of Assembly. It is currently slated to received its second reading and be debated before the end of October 2015.</p> <p>Additionally, the Money Transmitters Ordinance has been fully implemented. There are currently four licensed Money Transmitters. Of this number, one licensee was inspected last year and 2 licensees have undergone onsite inspections since the beginning of this year. The FSC’s Banking department noted that all Money Transmitters completed their risk assessment by the end of the financial year 2013. Detailed AML/CFT guidance for Money Transmitters is set out in the AML/PTF Code. Formal reporting for Money Transmitters was introduced in September 2010 with the mandatory reporting process commencing as at the end of the last quarter in 2010. Money Transmitters must report on and complete financial returns and supplemental reports which show inter alia, the largest transaction, the number of transactions and the value of transactions for each month in a quarter both for funds sent as well as for those received. Additionally, there are two other supplemental filings which require information on all single and aggregate transactions above USD \$5,000 in any one month for funds sent as well as for those received.</p> <p>As at October 2015 is that there are only two operating MSBs in TCI. During 2015, the Western Union agent ceased trading and another MSB surrendered its licence voluntarily. – That MSB had never traded. As of February 2015 the Commission has placed MSBs on an annual cycle of onsite inspections. In March /April 2015 the then three MSBs were subject to on site examinations. Remediation of findings is in hand. Further onsites of the remaining two MSBs will take place in Q1 2016.</p> <p>In relation to Recommendation 23, the assessor’s recommendation was that the TCI should consider the relevance of including collective investment schemes “Core Principles” in their supervisory framework. Again the FATF Methodology notes that: <i>“Consider - References in the Recommendations that require a country to consider taking particular measures means that the country should have made a proper consideration or assessment of whether to implement such measures.”</i></p> | |
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| | | | <p>The TCI has already indicated that the FSC is in the process of updating its securities law to bring it up to standard with the IOSCO Core Principles and that a first draft was circulated to the industry for their comments and remains under consultation. Work on this is continuing as a number of regulations and codes and guidelines must be enacted in tandem with the primary legislation. Therefore, we have given full consideration to this matter.</p> | |
| 24. DNFBP - regulation, supervision and monitoring | NC (1 st – 11 th FUR) | <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 relevant sector; ◦ Who is responsible for training of the gaming industry in the | <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 FSC created a DNFBP Department at the end of 2012 and took on additional staff to Head that Department. The FSC is already met with and engaging with the Bar Council, Realtors, and Accountants to inform them of their obligations and move the registration drive forward.</p> <p>Additionally, the POCO was amended in January 2013 to make it clear that the FSC is the NRFB Supervisor and an amendment was made to the AML & PTF Regulations to prescribe a registration fee of \$150. These legislative changes came into operation on April 1, 2013.</p> <p>Finally, in March 2013, the Government approved amendments to be made to the POCO, AML & PTF Regulations and Code to change the terminology from Non-Regulated Financial Business to Designated Non-Financial Businesses & professions. These amendments were brought into force November 2013.</p> <p>The DNFBP Department issued guidelines for various DNFBP sectors which are out for consultation. These guidelines have now been finalised and issued as at September 2013.</p> <p>In January 2014 the TCI FSC published for Consultation guidelines for High Value Dealers. The consultation period ended on February 18, 2014. These guidelines are now finalized and have been publicized on the FSC's website at http://tcifsc.tc/departments/designated-non-financial-businesses-professions/legislation-regulations-guidance</p> <p>The MLRA requested that a documented plan be produced for the AML/CFT supervisory regime for casinos be done. In this regard, the Gaming Inspector and the Permanent Secretary, Finance attended the September 2011 meeting of the MLRA and both were briefed on the recommended improvements and provided with copies of the relevant documents and information.</p> <p>A follow up meeting with a representative for the Permanent Secretary, Finance was held on 23 July 2012 and he reported that they had begun the work of reviewing the gaming supervisory regime. It was recognised that there is a need for updated legislation and greater staff training. A commitment was received from the Gaming Board of The Bahamas to provide technical assistance and also from Gaming Laboratories International</p> | <ul style="list-style-type: none"> • Complete Gaming Policy Consultation • Have draft Bill approved by Cabinet and put on the schedule of the House of Assembly • Increase staffing at the Gaming Inspectorate |

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| | | <p>introducer phase;</p> <p>○What are the tools required for an effective oversight of the industry's compliance with AML/CFT laws and regulations;</p> <p>○Where necessary resources should be sought to appropriately equip the Gaming Inspectorate for the effective AML/CFT oversight tasks.</p> <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 | <p>to provide auditing assistance. It was also recognised that the finances to undertake the much needed restructuring of the Gaming Inspectorate was not available at that time.</p> <p>As noted above, the necessary reforms needed in respect of the Gaming Inspectorate will form part of the Government's Legislative Agenda and a moratorium on the issuance of new licences in this area was instituted from 2013-2014.</p> <p>A consultant was appointed to review the gaming inspectorate and started work in October 2013 by visiting the country and doing preliminary work. The Consultant returned in February 2014 and met with the Attorney General on February 20. Consultation took place and simultaneously a draft report was prepared. The report was expected to include suggested legislative changes and a model legislation that may be best suited to the country. Once the report was finalised an Action Plan was to be devised by the Ministry of Finance for reform in the Gaming Industry, changes to the Gaming legislation and the structure of regulation of the Gaming Industry.</p> <p>A report on the findings of the consultant was finalized in April 2014. The MLRA received a presentation on it at its meeting on May 22, 2014. The report contained a number of recommendations for legislation to over-haul the industry and the structure of the body which will regulate the industry and also make it more compliant with AML/CFT standards. At its meeting on July 23, 2014 Cabinet decided that included in the legislative agenda for the balance of 2014 will be a Gaming Bill.</p> <p>The proposed timelines for the new legislation is August/September 2016. The Policy has been approved in principle by Cabinet and public consultations on the Policy Document commenced in August and will end at the end of October. The public consultation is now closed and another draft of the policy has been produced. Consultants, Gaming Laboratories International has been engaged to assist with the finalisation of the policy and preparation of legislation and will be in the country in April 2016.</p> <p>Whilst there has not been an increase in new personnel, the vacant position for Director is has been advertised and the interview process will start shortly.</p> <p>Funding for new resources has been allocated in the FY 2014/2015 budget and the department has commenced the necessary steps in acquiring the goods.</p> <p>AML training has been done.</p> | |
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| | | <p>with domestic regulators.</p> <ul style="list-style-type: none"> • TCI Authorities should appoint an oversight body for each of the category of DNFBPs (same oversight body might also supervise more than one category of DNFBP) in order to determine effective compliance by regulated entities with applicable AML/CFT laws and regulations. • Continuing on the effective compliance with laws and regulations, the oversight bodies have the responsibility to enforce sanctions where situations of non-compliance with AML/CFT laws are observed. In this regard, reference is made to section 3 where recommendations have been made relative to the AML/CFT non-compliance sanctioning/enforcement regime in place. | | |
| 25. Guidelines & Feedback | <p>NC</p> <p>LC (11th FUR)</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 | <p>Typologies and risk trends are published on a regular basis in the local press – copies of which were supplied to evaluation team. The FCU/FIA has been involved in a number of the FSC's AML and compliance training workshops/ seminars to the financial industry and on those occasions provided feedback to regulated entities on trends and specifically on the level of SAR reporting. The most recent occasion was at the FSC's AML Seminar which was held on September 2015. Feedback is provided to reporting entities on an ongoing basis.</p> <p>The industry is small and in practical terms the head of the FIA liaises directly with compliance officers.</p> | |

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| | | <p>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.</p> <ul style="list-style-type: none"> 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. | <p>Typologies and risk issues are also published on the FIA website.</p> <p>The FIA has completed its annual reports for 2011-2014 which include statistics, trends and typologies relating to AML/CFT. These reports were published on the websites of the FCU/FIA and the FSC.</p> <p>The FIA agreed to provide quarterly reports on trends and typologies to the MLRA. The latest report is found on its website.</p> <p>Statistics were published by the MLRA and FIA in MLRA Annual Reports to the Governor for 2009 and 2010 since 2009 in compliance with the POCO.</p> <p>MLRA with the assistance of FIA has ensured that adequate feedback has been given on STRs, typologies and trends.</p> <p>The FIA has full operational independence and is responsible for dealing with SAR's. The head of the FIA carries out all staff recruitment.</p> <p>Every SAR is responded to with a strategy within most cases 24 hours. Successful outcomes of investigations are also reported.</p> <p>The FIA is situated in a secure building with electronic security monitoring.</p> <p>The FIA Ordinance (No. 11 of 2014) was passed in the House of Assembly on June 12th 2014 and came into effect in October 2014.</p> <p>The FSC underwent an organizational review. The final report was approved by the FSC's Directors and the FSC commenced implementation of the report on a phase basis. Over the course of 2011 to 2013, the staff compliment in mid to senior level positions has increased by over 10 persons. In June 2014 the FSC formed a bespoke compliance unit with specific responsibility for AML/PTF compliance. Resources have been increased and since August 2015 the unit has four compliance officers reporting to the Head of Compliance. This has increased the level of productivity in the issuance of reports of findings from onsite examinations and enabled it to put in place a system for following up on identified deficiencies.</p> <p>The Governor attended a 'National Promotion Plan' workshop organised by the Financial Services Commission on Tuesday 8 May 2012. The event drew together representatives from the financial services industry, government officials, and an international expert from the British Virgin Islands to discuss ways of working together to better promote the TCI financial services sector and to provide opportunities for growth. The workshop concluded with the formation of a joint industry-government co-ordinating committee for promotion of the financial services sector that will meet on a regular basis. The main aim of the committee will be to effectively represent the sector as it seeks to develop its product base and attract new clients to the Turks and Caicos Islands. The representation of both government and the private sector on the committee offers the opportunity to draw together policy ideas and identify and overcome barriers to progress.</p> <p>The FSC has improved its onsite procedures to provide follow-up on deficiencies and continued monitoring.</p> | |
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| | | <ul style="list-style-type: none"> The FSC should make the appropriate adjustments in its structure, in order to increase productivity in the issuance of report of findings resulting from on-site examinations. The FSC should provide follow up to deficiencies identified and keep statistics on the outcome of these follow up actions. The FSC should establish instructions provided to regulated entities in general in writing in order to increase transparency of policy, enforceability and structural compliance with these instructions. 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 | <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 NRFB Supervisor to undertake compliance visits.</p> <p>Sections 148J to 148P set out the various types of enforcement action that can be taken by the NRFB Supervisor against non-regulated financial businesses. This includes disciplinary action, which is the imposition of an administrative penalty.</p> <p>Section 148 Q provides the NRFB Supervisor with the power to require information and the production of documents.</p> <p>The new sections 148F to 148Q therefore establishes a strong enforcement regime with respect DNFBPs.</p> <p>The FSC reviewed its supervisory capacity to ensure that it secures the necessary resources to effectively implement a DNFBP regulatory regime. Training was conducted with various stakeholders in this sector in 2013 to assist in establishing compliance with the new framework. The FSC updated its website to provide links to lists and information on terrorist which is published periodically by the UNSC and other reputable body. A notice advising all financial institutions of the publication and the requirement to assess their client base against the list, was circulated in tandem with the availability of the information on the FSC's website.</p> <p>The FSC has enhanced its supervisory capacity to ensure that it secured the necessary resources to effectively implement a DNFBP regulatory regime.</p> <p>The FSC has established greater contact with the DNFBP sector to better implement a framework for AML/CFT compliance and STR Reporting. Training was conducted with various stakeholders in this sector in 2013 to assist in establishing compliance the new framework.</p> <p>Additionally, work commenced on the issuing of guidelines for DNFBPs. The FSC has now issued guidelines for the legal sector, real estate sector, and accountancy sector. Guidelines for High Value Dealers were finalized and have been publicized on the FSC's website at http://tcifsc.tc/departments/designated-non-financial-businesses-professions/legislation-regulations-guidance</p> | |
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| | | specific guidelines that address the respective DNFBPs industries' challenges in the implementation of an AML/CFT compliant regime. | | |
| Institutional and other measures | | | | |
| 26. The FIU | PC C (11 th FUR) | <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>The FIA Ordinance (No. 11 of 2014) was passed in the House of Assembly on June 12th 2014 and came into effect October 2014.</p> <p>The FIA has now full operational independence.</p> <p>The matter of the FIA's operational independence, autonomy and budget allocation has been addressed in the FIA Ordinance which was came into force October 2014.</p> <p>The FIA has issued and updated guidance and forms in relation to both Suspicious Transaction Reports and Terrorist Property Reporting. These forms and guidance may be found on the FIA's web page at http://www.tcipolice.tc/index.php/financial-intelligence-unit</p> <p>Typologies and risk trends are published on a regular basis in the local press. The FIA's website also has a link to trends and typologies.</p> <p>Every SAR is responded to with a strategy within most cases 24 hours. Successful outcomes of investigations are also reported.</p> <p>Statistics were published by the FIA in the annual reports for 2011-2104.</p> <p>The FIU is situated in a secure building with electronic security monitoring.</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.</p> | None |
| 27. Law enforcement authorities | C | | | |

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| 28. Powers of competent authorities | C | | | |
| 29. Supervisors | PC (10 th FUR) | <ul style="list-style-type: none"> The Registrar Head 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 DNFBP Supervisor to impose administrative sanctions on DNFBPs.</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>Regulation 3 of the AMLPFT Code defines the scope of that Code as follows –</p> <p>3. This Code applies, to the extent specified, to—</p> <p>(a) financial businesses within the meaning of the AML/CFT Regulations; and</p> <p>(b) directors and boards of financial businesses.</p> <p>The words “board” and “director” are defined in regulation 2 as follows –</p> <p>“board” means—</p> <p>(a) in relation to a corporate body, the board of directors, committee of management or other governing authority of the corporate body, by whatever name called or, if the corporate body only has one director, that director;</p> <p>(b) in relation to a partnership, the partners, or in the case of a limited partnership, the general partners; or</p> <p>(c) in relation to any other organisation or undertaking, the persons fulfilling functions equivalent to the functions of the directors of a company;</p> <p>“director”, in relation to a legal entity, means a person appointed to direct the affairs of the legal entity and includes—</p> <p>(a) a person who is a member of the governing body of the legal entity; and</p> <p>(b) a person who, in relation to the legal entity, occupies the position of director, by whatever name called</p> <p>The POCO prescribes the supervisory authority for financial businesses as the FSC, for DNFBPs as the DNFBP Supervisor, which is also the FSC and finally for NPOs as the NPO Supervisor, which is also the FSC.</p> <p>The FSCO provides that the FSC is responsible for monitoring licensee’s compliance with, inter alia, the AMLPFT Regulations and the AMLPFT Code (see section 4(1)(d)). Similar provisions to those cited below are made in respect of DNFBPs and NPOs in the POCO.</p> <p>Section 31(1) of the FSCO requires a licensee to establish and maintain adequate systems and controls for ensuring its compliance with the requirements of and its obligations under –</p> <p>(a) this Ordinance and the Financial Services Ordinances;</p> <p>(b) the Code, or any guidance issued by the Commission, that applies to the licensee;</p> <p>(c) any directives issued by the Commission that apply to the licensee.</p> | |

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| | | | <p>Section 33(1)(a)(i) and (ii) empowers the FSC to take enforcement action against licensees who, inter alia, -</p> <p>(a) in the opinion of the Commission, the licensee—</p> <p>(i) has contravened or is in contravention of this Ordinance, a Financial Services Ordinance or the Code;</p> <p>(ii) has contravened or is in contravention of the Anti-Money Laundering Regulations or of such Ordinances or codes relating to money laundering or the financing of terrorism as may be prescribed for the purposes of section 4(1)(d);</p> <p>Section 33(2) of the FSCO provides that where the FSC is entitled to take enforcement action against a licensee, the FSC may exercise one or more of the following powers –</p> <p>(a) revoke or suspend the licensee's licence under section 34;</p> <p>(b) issue a directive under section 37;</p> <p>(c) appoint an examiner to conduct an investigation under section 35;</p> <p>(d) require the licensee to appoint a qualified person under section 36;</p> <p>(e) apply for a protection order under section 38;</p> <p>(f) where the licensee is a company, petition the Court for the winding up of the licensee under section 92 of the Companies Ordinance;</p> <p>(g) impose a financial penalty on the licensee in accordance with Part VII.</p> <p>Furthermore section 41 empowers the FSC to require the removal of a director or agent etc. who is not deemed to be fit and proper by the FSC.</p> <p>Part VII of the FSCO sets out the disciplinary actions which the FSC can take. Note in particular section 45(1)(b) and (4)(b).</p> <p>Finally, section 57 of the FSCO provides for liability for directors etc. for offences under the FSCO –</p> <p>57. (1) Where an offence under this Ordinance is committed by a body corporate, a director or officer who authorized, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction to the same financial fine as an individual would be liable for.</p> <p>(2) Where an offence under this Ordinance is committed by a body corporate and its affairs are managed by its members, subsection (1) applies to a member of that body corporate as if he was a director of the body corporate.</p> <p>Note that the Financial Services (Financial Penalties) Regulations made under sections 45 and 55 of the FSCO set out the ranges of penalties for the various contraventions. Note in particular regulations 2(2) and 3(2) and Schedule 1.</p> <p>Note also that the Financial Services Commission (Prescribed Instruments) Regulations made under section 55 of the FSCO prescribe the AMLPFT Regulations and AMLPFT Code issued under section 118(1) of the POCO for the purposes of section 4(1)(d) of the FSCO. Note in particular regulation 3. The implication being that licensees are required to comply with them for the purposes of the FSCO.</p> | |
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| 30. Resources, integrity and training | NC (1 st – 11 th FUR) | <p>AML/CFT related training is lacking at the Gaming Inspectorate</p> <p>Funding for the Gaming Inspectorate is dependent upon government funds (Ministry of Finance)</p> <p>The FSC is not properly structured. The current structure imposes a risk for conflict of interest.</p> <p>Insufficient staff at the FSC to execute additional tasks pursuant to legislative changes, reference is in this regard made to the enactment of the MTO.</p> <p>The FCU lacks full operational independence and autonomy as it is one (1) of six (6) Departments within the overall TCI Police Force and does not have its own budget allocation.</p> <p>AML/CFT training for staff of competent authorities with few exceptions have not been adequate. AML/CFT training has not been provided to the judges, magistracy and court personnel. Only recently have staff of most of the competent authorities been sufficiently trained in ML/FT matters.</p> <p>Law enforcement agencies operate with clear monetary and manpower constraints. The</p> | <p>The Immigration Department increased its staff by 19 persons in the FY 2015/2016 and continues to advertise for new staff. With the additional of a coastal radar station in 2014, this has allowed for increased detection of unauthorized boats and ships in TCI waters.</p> <p>The role and functions of the Gaming Inspectorate has been discussed at various meetings of the MLRA starting from January 2011, at which time Gaming Inspectorate officials and the Permanent Secretary, Finance were in attendance.</p> <p>The Permanent Secretary, Finance agreed to place the required improvements to the Gaming Inspectorate on the agenda of the Ministry of Finance' work plan so that they can be prioritized in the Government's budget for the 2012/2013 financial year.</p> <p>In March 2013 the Government announced a one year moratorium on the issuance of new licences for gaming.</p> <p>The consultant appointed to review the gaming inspectorate started work in October 2013 by visiting the country and doing preliminary work. The Consultant returned in February 2014 and met with the Attorney General on February 20. The report was finalized in April 2014 and the MLRA received a presentation on it at its meeting on May 22, 2014. The report contained a number of recommendations for legislation to over-haul the industry and the structure of the body which will regulate the industry and also make it more compliant with AML/CFT standards. At its meeting on July 23, 2014 Cabinet decided that included in the legislative agenda would a Gaming Bill.</p> <p>The proposed timelines for the new legislation is August/September 2016. The Policy has been approved in principle by Cabinet and public consultations on the Policy Document commenced in August and will end at the end of October. The public consultation is now closed and another draft of the policy has been produced. Consultants, Gaming Laboratories International has been engaged to assist with the finalisation of the policy and preparation of legislation and will be in the country in April 2016.</p> <p>Whilst there has not been an increase in new personnel, the vacant position for Director is has been advertised and the interview process will start shortly.</p> <p>Funding for new resources has been allocated in the FY 2014/2015 budget and the department has commenced the necessary steps in acquiring the goods. AML training has been done.</p> <p>As a result of a process of organizational review, the FSC reviewed existing posts, and created new posts. Over the course of 2011 to 2013, the staff compliment in mid to senior level positions has increased by over 10 persons. In June 2014 the FSC formed a bespoke compliance unit with specific responsibility for AML/PTF compliance. Resources have been increased and since August 2015 the unit has four compliance officers reporting to the Head of Compliance. This has increased the level of productivity in the issuance of reports of findings from onsite examinations and enabled it to put in place a system for following up on identified deficiencies.</p> | <ul style="list-style-type: none"> • Complete Gaming Policy Consultation • Have draft Bill approved by Cabinet and put on the schedule of the House of Assembly • Increase staffing at the Gaming Inspectorate |
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| | | <p>Immigration Department in particular suffers from severe staffing constraints exacerbated by onerous illegal immigrants' issues.</p> | <p>The head of the FIA has full operational independence when dealing with SAR's. The matter of the FIAs operational independence, autonomy and budget allocation has been addressed in the FIA Ordinance which was came into force October 2014.</p> <p>Judges and Magistrates underwent AML/CFT training during the latter part of 2009.</p> <p>The FCU/FIA was awarded 2nd place in the Best Money Laundering Case in the worldwide competition among policing agencies. The award was presented in Armenia in early 2012.</p> <p>Two-week training in financial intelligence and financial investigation Training in the United Kingdom hosted by the National Police Improvement Agency was done for members of the FCU/FIU along with Customs Officers and Fraud Unit Officers. .</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 insurance have been relocated to Providenciales which ensures that there is adequate oversight and supervision of the relevant industries. The Head of the rebranded Company Management and Investments Department along with her staff have each obtained a Diploma in Compliance from the International Compliance Association. Additionally, new staff members have been engaged for these departments which have increased its capacity to enable it to properly supervise these areas. All four compliance officers are pursuing qualifications in either ACAMS or ICA.</p> <p>In addition the head of Compliance has obtained the "CAMS – Audit" qualification in September 2015 – this being the highest qualification offered by ACAMS.</p> <p>The Office of the Director of Public Prosecutions arranged for training on POCO and related legislation to be conducted by AML expert the attendees included the FCU, Prosecutors from the ODPP, counsel from the AGC and Integrity Commission officers. Regular training has been done since 2013.</p> <p>During the week of March 14-18, 2016, two Immigration Officials and a Senior Crown Counsel from the Attorney General's Chambers attended course in the UK hosted by the International Centre for Parliamentary Studies which allows for a Professional Certificate in Tackling Human Trafficking, upon completion of the four day-long course and subsequent written tasks.</p> | |
| 31. National cooperation | <p>PC</p> <p>C (8th FUR)</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 | <p>The MLRA meets, at a minimum, once every quarter.</p> <p>The MLRA and FSC conducted an AML/CFT seminar for reporting entities and a number of DNFBPs in April 2013. Training has also been provided as part of the National Risk Assessment process and the TCI also hosted the 10th Compliance Conference which saw participation from representatives of the various regulated sectors.</p> <p>The MLRA has invited the Deputy Attorney General, having overall oversight of the various departments of the Attorney General's Chambers as well as the Deputy Director of Public Prosecutions, a Principal Crown Counsel, Civil as well as the Principal Legislative Drafter to attend meetings. This decision was affirmed at the meeting of the MLRA held in April 2012 and February 2013.</p> <p>The 2011 Constitution (in force on 15th October 2012) introduced the post of Director of Public Prosecutions with the independence to carry out prosecutions in the Islands. The</p> | <p>None (On-going)</p> |

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| | | <p>effectiveness of operational systems which have been implemented further to the AML/CFT legislation.</p> <ul style="list-style-type: none"> Since the Attorney General's Chambers has two distinct departments, the criminal and the civil side, it would be useful for the Principal Crown Counsel as Chief Prosecuting Counsel, to be a part of the MLRA or at the very least to attend some meetings when policy is being formulated or reviews undertaken. The members of the MLRA can agree to appoint persons to assist in the performance of its functions pursuant to section 108(5) of the POCO, and this therefore facilitates the attendance of other persons in the discretion of the MLRA. | <p>criminal side of the Attorney General's Chambers has been established as the DPP's Office and a new DPP was appointed on 1st February 2013.</p> <p>The MLRA is developing and seeking to implement policies and activities to combat ML/FT on an ongoing basis.</p> <p>The national agencies routinely work together in AML/CFT matters. Also the importance of getting the regulated sectors involved in the production of policies and legislation that affects them is realized. Consultation is regularly done and involvement in the National Risk Assessment process has fostered better cooperation nationally among the competent authorities and the regulated entities.</p> | |
| 32. Statistics | PC (1 st -11 th FUR) | <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 Reports.</p> <p>Reports on enforcement actions are submitted on a monthly basis internally at the FSC. These are used to determine and shape areas where further guidance, training or legislative changes may be needed.</p> <p>The FIU publishes an annual report covering a wide range of statistics relating to AML/CFT SAR/STR reporting, international cooperation etc. In March 2016, the Cabinet approved proposed amendments to the FIA Ordinance to include a provision for the Agency to make an annual report of its activities or work for the preceding year. The bill is to be considered by the House of Assembly at its sitting scheduled for April 18, 2016.</p> <p>Both the Attorney General's Chambers and the Office of the DPP has now created databases which provide for statistics on prosecutions and convictions, property frozen; seized and confiscated, legal assistance and international requests.</p> | <p>From 10th FUR: "it was still unclear that comprehensive statistics were being maintained by competent authorities or that there is a review of statistics to determine the effectiveness of the systems to combat ML and TF on a regular basis."</p> |
| 33. Legal persons–beneficial owners | PC LC | <ul style="list-style-type: none"> The TCI Authorities should develop guidelines that financial institutions must follow in the event that issued bearer | <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, which was reviewed by the MLRA circulated among the industry for comment. In March 2013 the Government reviewed the results of the consultation and decided to propose a bill to the House of Assembly to abolish bearer shares in the Islands.</p> | None |

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| | (11 th FUR) | <p>shares in a company for which they represent are 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>The Issuance and use of bearer shares have now been abolished within the TCI by virtue of the Abolition of Bearer Shares Ordinance 2013. This ordinance was enacted in December 2013 and came into operation on January 1, 2014. The transitional period to convert any remaining bearer shares into registered shares was six months from the date of coming into operation of the Ordinance.</p> <p>A number of companies that used bearer shares have converted those shares into registered shares. The FSC continues work on attaining full compliance by both ordinary and exempt companies. The Abolition of Bearer Shares Ordinance 2013 came into operation on 1st January 2014.</p> <p>Part IV “Transitional Provision” Section 13 (2) states that any bearer shares which have not been recalled and cancelled within the period of six months from the date of commencement of the Ordinance shall thereafter be null and void and be without effect for all purposes of law.</p> <p>All companies no longer have Bearer Shares, by virtue of the six month transition arrangement which expired on 1st July 2014.</p> <p>The FSC Compliance Unit has commenced onsite reviews of all Company Manager licensees. The thirty seven licensees will be examined at the rate of two per month meaning the programme will be completed over 18 months. The Compliance Unit has increased and is continuing to increase resource to meet its widening responsibilities. Legal arrangements and bearer shares are in scope for these examinations.</p> <p>The FCU/FIU conducted AML/CFT training for the staff of the International Banking Group on 19th April 2012. The FSC will be conducting a Compliance Workshop on October 24, 2012. The FSC also conducted a Compliance Workshop on October 24, 2012 and another AML Seminar on April 25, 2013. The procedure for STR/SAR reporting is continuously reinforced as part of the FIAs ongoing outreach and awareness seminars. The FIA has in 2015 updated its STR and SAR forms in relation to both Suspicious Transaction Reports and Terrorist Property Reporting and provided guidance in relation to it, including beneficial ownership.</p> <p>The FIA continually partners with the FSC and other stakeholders in facilitating the various AML/CFT seminars and workshops. Training has been provided as part of the National Risk Assessment process and the TCI also hosted the 10th Compliance Conference which saw participation from representatives of the various regulated sectors.</p> <p>The FIA often times with the assistance of the FSC has engaged in other efforts to bring awareness to AML/CFT issues including advertisement in newspapers; appearing on talk shows and engaging with sector specific firms such as attorneys and money transmitters.</p> | |
| 34. Legal arrangements – beneficial owners | PC (11 th FUR) | <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 | <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>The FIU/FIA was directed by the MLRA to ensure that all persons associated with Legal Arrangements were made aware of the requirements of the POCO and the MLRA Codes regarding the reporting of suspicious transactions.</p> <p>The FIU reviewed its training programme to include AML/CFT training on matters relative to Legal Arrangements.</p> | None (On-going) |

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| | | <p>of suspicious transactions.</p> <ul style="list-style-type: none"> The FCU should review its training programme to include AML/ CFT training on matters relative to Legal Arrangements. | <p>The FIU/FIA continually partners with the FSC and other stakeholders in facilitating the various AML/CFT seminars and workshops. Training has been provided as part of the National Risk Assessment process and the TCI also hosted the 10th Compliance Conference which saw participation from representatives of the various regulated sectors.</p> <p>The procedure for STR/SAR reporting is continuously reinforced as part of the FIAs ongoing outreach and awareness seminars. The FIA has in 2015 updated its STR and SAR forms in relation to both Suspicious Transaction Reports and Terrorist Property Reporting and provided guidance in relation to it, including beneficial ownership. This guidance was issued after consultation.</p> | |
| International Cooperation | | | | |
| 35. Conventions | PC (1 st -11 th FUR) | <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>The AG has been following-up on its request to the UK FCO for the extension of the Palermo Convention and the Convention for the Suppression of the Financing of Terrorism on behalf of the TCI. In July 2013 the FCO advised that a questionnaire relating on how compliant the country was with the requirements of the convention needed to be submitted. The questionnaire completed and sent to the FCO. TCIG is now waiting to revert to us.</p> <p>The UK FCO advised that the conventions could not be ratified until the country had enacted local legislation to give effect to them. With the enactment of the Prevention of Terrorism Ordinance (No. 9 of 2014) in May 2014 the process to get the Conventions extended to the TCI was engaged once again.</p> <p>The Palermo Convention was extended to TCI in August 2015. Here is the link to the Depository Notification https://treaties.un.org/doc/Publication/CN/2015/CN.446.2015-Eng.pdf</p> <p>The Prevention of Terrorism Ordinance does accommodate and refer in Schedule 1 to the 1999 United Nations Convention for the Suppression of the Financing of Terrorism. This convention has not yet been extended to the TCI. We are advised that the UK Home Office has not yet completed their review. The TCI still awaits completion of the internal UK procedures</p> <p>Additionally, please note that work is being done on an Anti-Bribery Bill, which is before Cabinet for consideration. The new provisions relating to bribery which will include an offence imposed on commercial organisations who fail to put measures to prevent bribery within their organisations; and the application of extra territorial jurisdiction to prosecute bribery committed abroad by persons ordinarily residents in the TCI or TC Islanders and TCI corporate bodies (this will be the equivalent of what the UK has imposed on its residents, nationals and corporate bodies). It will also supplement the Integrity Commission Ordinance, Public Service Ordinance and Political Activities Ordinance and strengthen the TCI's compliance to Articles 8 and 9 of the UNTOC which provide for criminalisation of corruption (corruption by public officials and foreign public officials) and measures against corruption (measures to promote integrity and prevent, detect and punish corruption of public officials).</p> | <ul style="list-style-type: none"> Have the Convention for the Suppression of the Financing of Terrorism extended to the TCI |

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| 36. Mutual legal assistance (MLA) | PC C (2 nd FUR) | <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 seventeen Tax Exchange Information Agreements to date and are in active negotiations with a number of other OECD countries to sign additional TIEAs. An implementation Ordinance was made and brought into force in December 2009.</p> <p>Since the TCI acceded to the OECD process in 2002 we have moved gradually to enacting appropriate legislation to give effect to the TIEAs entered into to date, mainly with OECD countries. The TCI has established an Exchange of Information Unit within the Ministry of Finance with dedicated staff working hard to ensure that the TCI meets all of its tax treaty obligations.</p> <p>Since accepting the European Union Directive on the Taxation of Savings Income and enacting legislation in 2005, the TCI formally transitioned from the withholding tax arrangement under the Directive to the automatic exchange of information arrangement in July 2012 and has issued guidance to the industry as late as February 2013.</p> <p>With the advent of the US Foreign Account Tax Compliance Act (commonly referred to as "FATCA"), the TCI undertook necessary consultations with all stakeholders in the jurisdiction with a view to bringing about cooperation on the subject with the US Government. And has decided to enter into a FATCA arrangement with the US as part of its negotiations to conclude a TIEA. At the end of August 2013, a TCI delegation led by the Attorney General with officials from the FSC and Exchange of Information Unit met with the US Treasury Department to continue discussions concluding a FATCA IGA and a TIEA with the US. They also attended a workshop on FATCA.</p> <p>In the same vein, the TCI has taken the decision recently to thereafter engage Her Majesty's Government in the United Kingdom in negotiating and concluding an Inter-Governmental Agreement that emulates the US-type FATCA.</p> <p>The TCI continues to negotiate TIEAs with jurisdictions that are inclined to concluding such an arrangements and have a further eleven TIEAs in various stages of negotiations and has decided to explore a multilateral approach.</p> <p>The Convention on Mutual administrative Assistance in Tax Matter was extended to the TCI in August 2013. The Tax Information (Exchange and Mutual Administrative Assistance) Ordinance ("TIEO") allows for exchange of information between the TCI and countries with whom it has a TIEA. By amendment in 2014, the TIEO also includes is a party to any arrangement or convention relating to exchange of information or mutual assistance in tax matters applicable to or entered into by the Turks and Caicos Islands. The 2014 amendments also allow for Automatic and Spontaneous exchange of information.</p> <p>The 2014 amendment to the FSCO also expands information sharing capabilities to spontaneous exchange of information.</p> <p>Guidelines on MLA in Criminal and Civil Matters have been drafted and disseminated to the various authorities for comments.</p> | None |
| 37. Dual criminality | C | | | |

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| 38. MLA on confiscation and freezing | PC C (11 th FUR) | <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>The TCI has provided mutual assistance in a number of matters. The FCU/FIU and the Attorney General's Chambers working with the Government of Taiwan successfully seized the amount of \$187,000 from a Taiwanese national who was indicted in Taiwan for bribery and illegal arms dealing and transferred funds through the Bahamas into the Islands. This matter arose as a result of a SAR.</p> <p>Additionally, a confiscation order against David Smith, a Jamaican national convicted in relation to a regional 'ponzi scheme' run through his company Olint TCI and other regional companies. This was due to a joint effort between the FCU/FIU and the Attorney General's Chambers.</p> <p>The Proceeds of Crime (Amendment) Ordinance 2010 provides for the recovery of instrumentalities intended for use in or in connection with unlawful conduct through civil forfeiture. It includes sections on freezing orders.</p> <p>In particular, The Proceeds of Crime Ordinance now contains as an additional 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 definition of tainted property is also included. There are a number of provisions that give effect to the recovery of tainted property.</p> <p>Section 143 and 144 of POCO deals with international cooperation and allows for external requests and orders, which include the Attorney General making an application for a restraint order on behalf of an overseas authority. Since 2013, the Attorney General's Chambers has successfully made on behalf of authorities from the United States of America.</p> <p>In January 2014 the United States offered to share forfeited funds. The assets in question represented a portion of securities fraud proceeds forfeited following the recovery of the proceeds from accounts in the Turks and Caicos Islands. At the FBI's request, the Turks and Caicos Islands authorities restrained the accounts which eventually resulted in the voluntarily repatriation of the monies to the United States for forfeiture.</p> <p>This marked the first time that the United States shared forfeited assets with the Turks and Caicos Islands. The funds as part forfeited proceeds of crime was placed in the national forfeiture fund.</p> <p>The Prevention of Terrorism Ordinance came into force in October 2014. Part 3 of the Bill makes it an offence to use or possess property or engage in fundraising for the purposes of terrorism and to money launder terrorist property. It also provides a procedure for forfeiture of terrorist property (Schedule 3) which includes the making of restraint orders and enforcement of orders made in the United Kingdom and its Overseas Territories and external orders made in other countries.</p> <p>Guidelines on MLA in Criminal and Civil Matters have been drafted and disseminated to the various authorities for comments.</p> | None |
| 39. Extradition | C | <ul style="list-style-type: none"> The TCI authorities should seek to have extradition requests transmitted directly | <p>Extradition requests are submitted to the UK by treaty partners and then sent to the Governor. This procedure complies with the legal requirements of the treaties and does not cause a delay in attending to such requests.</p> | |

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| | | from the UK Government to the TCI so as to ensure prompt and early attention to such requests. | | |
| 40. Other forms of co-operation | PC C (9 th FUR) | <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 has negotiated MOU's with a number of 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> <p>An Exchange of Information (EOI) Unit was created within the Ministry of Finance which includes the Competent Authority's delegate and which performs the administrative functions relations to exchange of information for tax purposes pursuant to the TIEO and the EU Saving Directive. The EOI Unit has already entered into an MOU with the Attorney General's Chambers and hopes to complete MOU's with the FIU and the FSC shortly.</p> <p>TCI FSC prepared a Handbook setting out guidelines, which stipulate standard operating procedures for the processing of requests for assistance received by foreign competent authorities. The Handbook has been available on the FSC's website since the end of June 2013.</p> | None |
| 9 Special Recommendations | | | | |
| SR.I Implement UN instruments | PC C (11 th FUR) | <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 Terrorist Asset-Freezing etc. Act 2010 (Overseas Territories) Order 2011. Under the Order access to frozen funds and assets may be done by the issue of a license issued by the Governor under section 17.</p> <p>Standalone legislation on CFT has been produced. Provisions in line with the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism are included.</p> <p>The Prevention of Terrorism Ordinance covers all the concerns of the Special Recommendations. I to V.</p> <ul style="list-style-type: none"> Part 2 of the Ordinance deals with offences relating to membership in or support of a proscribed organization (listed in Schedule 1) which is concerned with terrorism. Part 3 of the Ordinance makes it an offence to use or possess property or engage in fundraising for the purposes of terrorism and to money launder terrorist property. It also provides a procedure for forfeiture of terrorist property (Schedule 3) which includes the making of restraint orders and enforcement of order made | Continue to press the UK to have convention extended. |

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| | | | <p>in the United Kingdom and its Overseas Territories and external orders made in other countries</p> <ul style="list-style-type: none"> • Part 4 is concerned with investigating terrorism and includes powers to search premises, cordon an area, the ability to obtain orders production of materials, orders for explanations to be given, and orders to/against a financial institution to provide customer information or for an account monitoring. It also provides that non-disclosure of information relating to terrorism, tipping off and interference with material would be offences. • Part 5 of the Ordinance deals with the power to search, arrest, detain and stop and search. It also provides for the exercise of these powers at ports (Schedule 7). The treatment of persons detained is in Schedule 8 which covers, places of detention, the right to legal advice, identification, fingerprinting and the taking of intimate samples. It also provides a procedure for the review of the detention • Part 6 of the Ordinance covers further terrorist offences such as weapons training, directing terrorism, possession for terrorist purposes, and collection of information and inciting terrorism overseas. <p>With the enactment of the Prevention of Terrorism Ordinance (No. 9 of 2014) in May 2014 the process to get the Conventions extended to the TCI has been engaged once again. The TCI still awaits completion of the internal UK procedures.</p> | |
| SR.II Criminalize terrorist financing | <p>PC</p> <p>C (11th FUR)</p> | <p>I. 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.</p> <ul style="list-style-type: none"> • Directing terrorism as an offence should be defined in the laws of the Turks and Caicos Islands. • The TCI Authorities should consider | <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> <p>Provisions in line with the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism are included in Part III of the Prevention of Terrorism Ordinance as mentioned above:</p> <ul style="list-style-type: none"> • Part 3 of the Ordinance makes it an offence to use or possess property or engage in fundraising for the purposes of terrorism and to money launder terrorist property. It also provides a procedure for forfeiture of terrorist property (Schedule 3) which includes the making of restraint orders and enforcement of order made in the United Kingdom and its Overseas Territories and external orders made in other countries. The procedure also includes variation and discharge of such orders. | None |

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| | | 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. | | |
| SR.III Freeze and confiscate terrorist assets | LC | <ul style="list-style-type: none"> The TCI should establish administrative systems, which complement the CFT legislative framework, such as standard operating procedures which outline time frames for certain processes to take place. Clear administrative guidelines as to who has responsibility for the lists of suspected or named terrorist and whether such lists are in fact circulated in the TCI in order to alert financial institutions of suspected terrorist whose accounts they may be holding, should be implemented. The TCI should also provide for authorizing access to frozen funds and assets for the payment of incidental expenses when a freezing order is made and a person inadvertently affected by a freezing order should have a clear process of redress. | <p>The 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. The duration of designations is provided for under sections 4 and 8 and designations may be varied or revoked under section 5 and 9. Sections 11-15 dealing with freezing of funds and economic resources; making funds or financial services, or economic resources available to designated persons or for benefit of designated persons, provide for the freezing of assets by FIs without delay. 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. Similar provisions are also included in Orders in Council made in 2012-2015 which have been extended to the TCI relating to Afghanistan, Al-Qaida, Iran, Syria, Sudan, South Sudan, Libya, Somalia, Burma, the Ivory Coast, Guinea-Bissau, Democratic People's Republic of Korea, Zimbabwe, Sudan, South Sudan, Ukraine, Russia, Crimea and Sevastopol, Yemen and the Democratic Republic of the Congo.</p> <p>The Financial Intelligence Agency section 6 also empowers the FIA give notices to any relevant financial institution in the Islands, requiring it to freeze or not to make available any funds to any person specified in the notice.</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 sections on freezing orders.</p> <p>Standalone legislation on CFT has been produced in the form of the Prevention of Terrorism Ordinance. Provisions in line with the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism are included. The Prevention of Terrorism Ordinance in Part II makes provisions relating to involvement in proscribed organizations, including membership in and support of proscribed organizations. As mentioned above the Part 3 of the Prevention Terrorism Ordinance also provides a procedure for forfeiture of terrorist property (Schedule 2) which includes the making of restraint orders and enforcement of order made in the United Kingdom and its Overseas Territories and external orders made in other countries.</p> | |

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| | | | <p>On March 18, 2016, the Cabinet approved the submission of the Prevention of Terrorism (Amendment) Bill 2016 to the next sitting of the House of Assembly scheduled for April 18, 2016. This bill includes provisions relating to the insertion of a new section 5A to make provision for the deproscription of an organisation declared to be engaged in terrorism.</p> | |
| SR.IV Suspicious transaction reporting | PC (1 st - 11 th FUR) | <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 proposed new comprehensive anti-terrorism legislation is hoped to be in place by the end of the year, that should bring the TCI into full compliance with SR IV including 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>A first draft of the Terrorism Bill 2013 was circulated to members of the MLRA and the Judiciary in August 2013 for consideration. It is hoped that this Bill will be considered by Cabinet in October and the House of Assembly in November 2013.</p> <p>As mentioned above the Terrorism Bill includes provisions relating to making STRs in relation terrorist financing. It is anticipated that the Bill be approved in the House of by the end of April 2014.</p> <p>The Prevention of Terrorism Ordinance (No. 9 of 2014) was passed in the House of Assembly on May 22nd 2014 and is came into effect October 2014.</p> <p>Amendments are being prepared to insert a provision in the Prevention of Terrorism Ordinance relating the reporting of suspicion of involvement in a Terrorist Organization.</p> <p>On March 18, 2016, the Cabinet approved the submission of the Prevention of terrorism (Amendment) Bill 2016 to the next sitting of the House of Assembly scheduled for April 18, 2016. This bill includes provisions relating to the reporting of suspicion of involvement in a terrorism organization.</p> | |
| SR.V International cooperation | LC | | <p>The Prevention of Terrorism Ordinance in section 20 allows for disclosure of information relation to a terrorist offence for the purposes of the investigation of crime outside the Islands or of criminal proceedings outside the Islands to an authority outside the Islands which is a foreign regulatory authority. It also provides a procedure for forfeiture of terrorist property (Schedule 2) which includes the making of restraint orders and enforcement of orders made in the United Kingdom and its Overseas Territories and external orders made in other countries.</p> | None |

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| | | | Guidelines on MLA in Criminal and Civil Matters have been drafted and disseminated to the various authorities for comments. | |
| SR.VI AML requirements for money and value transfer services | PC C (8 th FUR) | <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 legislative framework. In order to execute the abovementioned, the FSC should appropriately resource a department within the Commission that is responsible for the effective execution of the MTO. | <p>Guidelines on MLA in Criminal and Civil Matters have been drafted and disseminated to the various authorities for comments.</p> <p>The licensing of money service providers has been completed. A supervisory regime including the issuance of guidelines (published on the FSC's website), reporting forms and standards and a programme of onsite inspection has also been instituted. 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 DNFBPs and a DNFBP Supervisor.</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 training was first conducted in September 2010.</p> <p>As mentioned above, the FSC has commenced a programme of onsite reviews of Money Transmitters and by the end of the 1st Quarter of financial year 2013 had completed a cycle of onsite inspections. A component of these examinations related to the licensees AML/CFT compliance. The Management Report produced by the FSC sets out recommendations to improve compliance levels and states timelines by which these must be achieved. The FSC has also introduced quarterly reporting as a part of its offsite supervisory programme. Deficiencies are monitored on a risk focused basis.</p> | None |
| SR.VII Wire transfer rules | NC PC | <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 | <p>POCO and Anti-Money Laundering and Prevention of Terrorist Financing Regulations now includes a regulatory regime for DNFBPs and a DNFBP Supervisor.</p> <p>Part 9 of the Anti-Money Laundering and Prevention of Terrorist Financing Code gives effect to SRVII concerning wire transfers.</p> | |

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| | (6 th FUR) | <p>particularly domestic, cross-border and non-routine wire transfers. Additionally, TCI should review its legislative and regulatory 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> | <p>Section 118 (5) of POCO (2014 Revision) provides that a Code issued under POCO is subsidiary legislation and has full legislative effect. This position is confirmed in the guidance to section 3 of the Code. The Code is enforced by the FSC in accordance with section 33 of Financial Services Commission Ordinance which sets out a number of actions that can be taken by the FSC including the imposition of a financial penalty. The FSC takes enforcement action and issues administrative penalties against licensed entities in accordance with the Financial Services (Financial Penalties) Regulations made on October 29, 2010. Section 49 of the FSCO (2014 Revision) provides that any financial penalty issued constitutes a civil debt enforceable by court action.</p> <p>The FSC has since June 2015 commenced a process of reviewing whether licensees have adequate controls in place with regard to the wire transfer instructions (inward and outward). The Commission requested details of relevant procedures from the banking sector and this review of such procedures is underway. To date two of the three major retail bank have procedures to an acceptable level of detail. The third has just submitted their own procedures which is now under review.</p> | |
| SR.VIII Non-profit organizations | NC PC (10 th FUR) | <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 | <p>A new section 148S has been added to POCO which provides for the appointment of an NPO Supervisor.</p> <p>The POCO was amended in January 2013 to give the Governor power to make regulations that would create a regulatory and supervisory regime for NPO's. Regulations creating the supervisory framework for NPO's were made in March, 2013. The Regulations includes sanctions against NPOs that do not comply with AML/CFT oversight measures. The regulations include requirements for NPO's to maintain information on the purpose and objectives of their stated activities as well as other essential information for a minimum of five years.</p> <p>The Companies (Amendment) Ordinance 2012 was enacted on October 10, 2012, which allows for the establishment of Non-Profit Companies.</p> <p>A Proceeds of Crime Amendment Ordinance has been drafted which will enable the establishment of a supervisory regime for Non-Profit Organisations. This along with the NPO Regulations have been approved by the Advisory Council (equivalent to Cabinet) on October 3, 2012 and is anticipation to be enacted in November 2012, after the new Ministerial Government takes office. The Regulations includes sanctions against NPOs that do not comply with AML/CFT oversight measures.</p> <p>An amendment to the Companies (Fees) Regulations was also made in March 2013 to insert new fees into the schedule in relation to Non-Profit companies.</p> <p>These four bits of legislation came into operation on April 1, 2013. The head of the DNFBP Department of the FSC will also function as the NPO Supervisor.</p> <p>Working with the FSC, the FCU is to ensure that all NPOs are made aware of the revised procedures for reporting suspicious transactions.</p> <p>All known NPO's are aware of their responsibilities.</p> | |

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| | | <p>are sanctions in place against NPOs that do not comply with AML/CFT oversight measures.</p> <ul style="list-style-type: none"> NPOs should be required to maintain the relevant required information on domestic and international financial transactions for a minimum period of five (5) years and make such information available to the relevant law enforcement authorities such as the FCU. The FCU should ensure that all NPOs are made aware of the revised procedures for reporting suspicious transactions. The FCU should revise its training programme to include AML/ CFT training for NPOs. A specific point of contact should be established with regard to international request for information on NPOs. | <p>NPO registration has commenced and deadline the deadline for registration set by law is March 31, 2014. Additionally, NPO's which are companies are now making the election required by the amendment to the Companies Ordinance to indicate whether they will continue as a Non-Profit Company (NPC). Such companies are also making the chances to comply with the recent amendments relating to NPC's in order to comply with these new requirements. All new NPC's must meet the new requirements in order to be incorporated. Again, companies operated as non-profit associations before the amendment and which elect to continue as a NPC must elect and comply with the new requirements by March 31, 2014. Those associations which were incorporated as companies, which do not comply with the requirements and make the election by March 31, will be struck off the Register. The Registry is to work with Government to ensure that various Government Departments are aware of the changes and now request the general registration of all NPO's with the NPO Supervisor is also underway and the deadline for registration is also March 31, 2014. The NPO Supervisor has through the local media conducted various awareness rising actions. Banks and other financial institutions have also commenced requesting the registration certificate issued by the FSC as a part of its ongoing due diligence measures.</p> <p>As a result of further representations and consultations with NPOs on August 27, 2014, Cabinet has agreed to extend the period, by 3 months, for Non-Profit Organisations (NPOs) to register with the Financial Services Commission from 31 August to 30 November. The extension is being provided to enable consideration by Cabinet of submissions received from NPOs on the existing NPO legislation and the proposed amendments thereto.</p> <p>The FIA continually partners with the FSC and other stakeholders in facilitating the various AML/CFT seminars and workshops which now include representatives of NPOs. Additionally, training has been provided as part of the National Risk Assessment process.</p> <p>The Non-Profit Organisation (NPO) Regulations 2014 came into force in November 2014, with the exception of Part V which cited the enforcement action available to the NPO Supervisor. The FSC, Attorney General's Chambers and NPOs continue to meet and review this issue. A meeting is planned in November 2015 at which time it is expected that the outstanding issues will be resolved.</p> <p>The deadline for registration of existing NPOs was 20th February 2015. To date 125 applications to register have been received from existing NPOs.</p> <p><u>Non Profit Companies.</u> After consultation with the private sector throughout 2014 the Companies (Amendment) (No2) Ordinance 2014 was published in the Gazette on 27th November 2014 with commencement on the same date. Concerns of the private sector with regard to elements of the Companies (Amendment) Ordinance 2012 were addressed.</p> | |
| SR.IX Cash Couriers | NC LC (10 th FUR) | <ul style="list-style-type: none"> The Immigration Department should seek to establish MOUs with Immigration | <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, precious metals or previous stones from their jurisdictions. This is being kept under review by the MLRA.</p> | |

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| | | <p>Departments in other jurisdictions.</p> <ul style="list-style-type: none"> • The TCI Authorities should notify other countries when there is an unusual movement of gold, precious metals or precious stones from their jurisdictions | | |
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