



Fourth Follow-Up Report

Turks & Caicos Islands

April 18, 2011

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TURKS & CAICOS ISLANDS: FOURTH FOLLOW-UP REPORT

I. Introduction

1. This report represents an analysis of the Turks and Caicos Islands' report back to the CFATF Plenary concerning the progress that it has made with regard to correcting the deficiencies that were identified in its third round Mutual Evaluation Report. The third round Mutual Evaluation Report of the Turks and Caicos Islands was adopted by the CFATF Council of Ministers in October 2008 in St. Kitts & Nevis. The Turks and Caicos Islands presented a follow-up report at the November 2012 Plenary in the Cayman Islands at which time it was determined that the Turks & Caicos Islands would be required to report at the May 2011 Plenary. Based on the review of actions taken by the Turks & Caicos Islands since its last follow-up report to meet the outstanding recommendations made by the Examiners, a recommendation would be made as to whether the Turks & Caicos Islands would remain on expedited follow-up or be placed on regular follow-up.
2. The Turks & Caicos Islands received ratings of PC or NC on twelve (12) of the sixteen (16) Core and Key Recommendations as follows:

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

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

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

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

Size and integration of the jurisdiction's financial sector

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

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

5. Since the third follow-up report, the Financial Services (Financial Penalties) Regulations, 2010 has been enacted (October 29, 2010). These Regulations provide the FSC with the power to independently impose financial sanctions on the regulated financial sectors. The Anti-Money Laundering and Prevention of Terrorist Financing Regulations, 2010 (AML/PFT) will be amended to deal with Recs. 5, 9, 12, compliance. The amendments are expected to be made by the end of April 2011. Additionally, the Anti-Money Laundering and Prevention of Terrorist Financing Code (AML/PFT Code) is also expected to be implemented by the end of April 2011. This new Code will cover deficiencies noted in Recommendations 6, 7, 8, 11, 13, 15, and 18. Various sections of the POCO, will also be amended and draft stand-alone legislation on CFT issues will be drafted. Law reform is also taking place in the Turks and Caicos Islands and a Bill on NPOs is to be drafted by the Law Reform Consultants currently in the TCI. The Mutual Legal Assistance legislation is also expected to be reviewed as part of this process for possible amendment.
6. At present, the Financial Services Commission (FSC) is reviewing the legislative and regulatory provisions with regard to wire transfers (SR. VII). The FSC, will also be preparing compliance guidelines which are expected to be completed by the end of April 2011. Amongst other things, these guidelines will give guidance to financial institutions on the implementation of an independent audit function to test compliance with AML/CFT policies and procedures as required by Rec. 15. The Guidelines will also address issues with regard to Money Service Providers. (SR. VI). With regard to

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

regulation and supervision, the FSC is actively working on membership in IOSCO² and will be including collective investment schemes 'Core Principles' in its supervisory framework. The FSC is also currently well advanced in its negotiating MOUs with a number of jurisdictions with regard to international cooperation. The Money Laundering Reporting Authority (MLRA) has been meeting regularly and have made several policy decisions concerning issues such as the drafting of specific legislation to deal with all matters concerning CFT; the role and functions of the Gaming Inspectorate; assessment of the AML/CFT risk posed by the construction industry; countermeasure that should be applied against countries that do not or insufficiently apply the FATF Recommendations; request for a documented plan for dealing with the AML/CFT supervisory regime for casinos; sector specific guidelines for DNFBPs; national/ domestic cooperation and other matters which will be discussed below under the relevant Recommendations.

Core Recommendations³

Recommendation 5

7. Based on the previous follow-up report, the Examiners' recommendation pertaining to measures for financial institutions to enforce for occasional transactions that are wire transfers was not met. At present, the Authorities have noted that the AML/PFT will be amended to address this issue. With regard to outstanding deficiencies for E.C. 5.5.2(b) and E.C. 5.4(b), the AML/PFT Regulations will be amended to require the determination of the natural person who ultimately owns or controls customers that are legal persons and also legal arrangements and to require the verification of the legal status of the legal person or legal arrangement. The amendments to the AML/PFT are expected to be made by the end of April 2011. Based on the status of the amendments, the Examiners' recommendations pertaining to these issues remain outstanding.

Recommendation 13

8. As noted in the Third Follow-Up Report, the issue with regard to the timing for filing of SARs was still outstanding; although it was noted that the significant training provided on the filing of SARs would have positively influenced filing. In that regard, the Authorities have indicated that the AML/PFT Code will address the issue with the inclusion of a prescribed timeframe (within twenty-four (24) hours). As previously noted the Code is expected to be implemented by the end of April 2011. The Authorities have not indicated whether any guidance was given with regard to the reporting of unusual transactions.

Special Recommendations II and IV

9. As noted above, the Turks and Caicos Islands Authorities intend to draft a new Terrorism Offences Bill to replace the piecemeal CFT provisions and that will address the

² IOSCO membership may be considered at its July 2011 meeting.

³ Recommendations 1 and 10 have been fully met and since there are no new updates, they will not be reflected in this Follow-Up Report.

Examiners' recommendations for both SR. II and SR. IV. Accordingly, the Examiners' recommendations remain outstanding for both Special Recommendations.

Key Recommendations

Recommendation 23

10. With regard to the outstanding issue pertaining to the inclusion of collective investment schemes 'Core Principles' in the FSC's supervisory framework, the FSC has indicated in the current matrix that these investment schemes will be included in their supervisory framework. With regard to membership in IOSCO, they have noted that it may be considered by the IOSCO in July 2011. .

Recommendation 26

11. With regard to the issue that the FCU should produce and periodically release its own monthly reports containing statistics on STRs, trends and typologies and updates on its activities, the MLRA at its January 2011 meeting directed the FCU to produce and periodically release these reports containing the information noted. In order to be fully met the level of compliance will have to be assessed based on the level of implementation reported by the TCI Authorities. The Authorities have indicated that this issue was further discussed at the January 2011 meeting of the MLRA when a discussion paper was circulated and a subcommittee was formed to prepare an action plan for the full autonomy of the FCU and to report back to the MLRA at its next meeting scheduled for the end of April 2011. Additionally, the Attorney General, as chairman of the MLRA has written to the Governor to confirm the MLRA's recommendation for the creation of legislation to establish an independent FCU.

Recommendation 35

12. The situation remains the same, in that the Palermo and Financing of Terrorism Conventions have not been ratified by the United Kingdom on behalf of the Turks and Caicos Islands. The MLRA will follow-up on its request to the UK FCO. Accordingly, the Examiners' recommendation has not been met.

Recommendation 36

13. The Examiners' recommendation has been previously met. The TCI Authorities have however further indicated that in 2010, Orders giving effect to all the Tax Information Exchange Agreements (TIEA) signed by the end of December 2010 were made and the letters were sent informing TIEA partner countries that all internal procedures had been completed

Recommendation 40

14. The situation with regard to Recommendation 40 remains the same as was stated in the previous Follow-Up Report. The stipulation of specific standard operating procedures for dealing with the execution of request received is still under review. As to the Examiners

recommendation that the FSC consider entering into MOUs with other foreign supervisory authorities so as to facilitate the effective exchange of ML/FT information, the Authorities have noted in their updated matrix that the FSC is currently well advanced in negotiating MOUs with a number of jurisdictions. The TCI Authorities have concluded two MOUs with Jamaica and Cayman Islands and are in late stage negotiations with the Financial Services Commissions of several other countries. The MOUs can be viewed on the TCI FSC's website. www.tcifsc.tc. Additional MOU's with Bahamas, Trinidad and Tobago and Barbados are under negotiation and should be concluded by the later half of 2011.

Special Recommendation I

15. As noted previously, the TCI Authorities intend to draft stand-alone legislation on CFT matters. The Authorities have noted that the Bill on Terrorism will contain provision in line with the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism. Accordingly, the Examiners' recommendation for the full implementation of the UNSCRs remains outstanding.

Other Recommendations⁴

Recommendations 6 and 7

16. With regard to meeting the outstanding Examiners' recommendation as they pertain to PEPs and the requirements of E.C. 6.2, the Authorities have noted that the AMLPFTC is to be implemented by the end of April 2011 and based on section 13(1) and (3) of the new Code will require senior management approval for the continuation of a financial institutions relationship with a PEP. The same approval will also be required for a customer who is found to be a PEP and one who subsequently becomes a PEP. The Authorities have also noted that Regulation 1392)(d) of the AML/PTF Regulations make provisions for enhanced CDD for PEPs. With regard to Rec. 7, Regulation 16 of the AML/PTFR will be amended to extend the provision to all financial institutions. This amendment will be done before the end of April 2011 in keeping with a decision taken by the MLRA at its December 2010 meeting. It is also expected that sections 42 and 43 of the new Code (AML/PFT Code) will deal with correspondent banking. Accordingly, the Examiners' recommendations have not been met with regard to Recs. 6 and 7.

Recommendation 8

17. The Examiners' recommendations still remain outstanding however; the Authorities have indicated that the AMLPFTC at sections 6(2) and 24 will deal with issues pertaining to E.C. 8.1 and 8.2.

Recommendations 9

⁴ Recommendations 19 and 22 have been fully met and since there are no updates, these recommendations have not been presented in this Report.

18. Based on the deficiencies noted in Regulation 14 of the AML/PTFR in the Third follow-up report, the Authorities have indicated that Reg. 14 will be amended to include the specific wording of E.C. 9.1. The amendment is expected to be reflected in the new AML/PFT Code which as previously noted is to be implemented by the end of April 2011. The Examiners' recommendations remain partially complied with.

Recommendation 11

19. Based on the analysis in the previous follow-up report, two of the Examiners' recommendations remain outstanding; (E.C. 11.2 and E.C. 11.3) the Authorities have indicated that these will be addressed in the new Code that was discussed previously.

Recommendation 12

20. Based on the Examiners' recommendation that have not been previously addressed, the Authorities have noted that training for the Bar Association on DNFBPs is being planned and should be held by May 2011. Additionally, Regulation 24 of the AML/PFT Regulations will be amended to reflect that the Non-Regulated Financial Businesses (NRFB) Supervisor should keep a register of each category of DNFBP. The TCI Authorities have indicated whether this measure is intended to address the issue of having a structure that will separate lawyers DNFBP duties relative to financial or real estate transactions from their other legal duties. With regard to recommendations for the Gaming Inspectorate which remained outstanding, the Authorities have indicated that at the January 2011 meeting of the MLRA, the role and functions of the Gaming Inspectorate was tabled for discussion and it was decided to list it for further discussion at the next MLRA meeting carded for the end of April 2011 when it was expected that the Gaming Inspectorate officials will be in attendance. The recommendations remain outstanding. The relevant sections of the POCO will also be amended to reflect the correct name of the Regulations. The Examiners' recommendations remain partially met.

Recommendation 15

21. Based on measures previously taken by the TCI Authorities to address the Examiners' recommendations, only two recommendations pertaining to the screening of policy manuals by the FSC and the screening of new employees have been fully met. With regard to the outstanding recommendations, the Authorities have noted that the FSC will be preparing compliance guidelines by the end of April 2011, which will include information on the implementation of the independent audit function. The Authorities have also noted that the AML/PFT Code will include provisions in similar terms to E.C. 15.2. Note has also been taken of the penalty in the AML/PFT Regulations with regard to the failure to maintain policies on the screening of employees and internal controls. The Examiners' recommendations have been partially met.

Recommendation 16

22. The FSC as the supervisor for DNFBPs will conduct training by the end of July 2011 with regard to the filing of STRs in an effort to promote a compliant regime within the relevant industries. This is an extension of work previously done with regard to advising stakeholders on the filing of SARs/STRs. With regard to the issuance of guidelines for

each category of DNFBP, the FSC is expected to do this by the end of April 2011. Based on the aforementioned, the Examiners' recommendations have been partially met.

Recommendation 17

23. Since the last follow-up report, there have been no additional enforcement actions on the new penalties. The sanctions available to the FSC under the Financial Services (Financial Penalties) Regulations, 2010 should be reviewed in terms of being effective, proportionate and dissuasive.

Recommendation 18

24. In an effort to fully comply with the Examiners' recommendations, the TCI Authorities have noted that Regulation 16 which currently places restrictions on banks dealing with shell banks will be expanded to include all financial institutions in keeping with the FATF Recommendations. The implementation of the new AML/PFT Code is also expected to extend the application of the provision to all financial institutions. The Examiners' recommendations remain partially met.

Recommendation 20

25. 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. The sub-committee will prepare a paper for consideration by the MLRA. The Examiners' recommendations remain substantially complied with at this time.

Recommendation 21

26. The MLRA is currently giving consideration to appropriate counter measures that should be applied against countries that do not or insufficiently apply the FATF Recommendations. There has been no update with regard to the FSC's consideration of a country risk assessment regime. Accordingly, the Examiners' recommendations remain partially met.

Recommendation 24

27. With regard to the establishment of an implementation plan for DNFBPs, the MLRA has requested that a documented plan be produced for the AML/CFT supervisory regime for casinos, which would include the training of gaming inspectors, resources for the Gaming Inspectorate and oversight of the industry and cooperation with the international authorities. The Plan is expected to be completed by the end of May 2011. The Examiners' recommendations remain outstanding in this regard.

Recommendation 25

28. As noted above in the discussion on Rec. 16, the MLRA has directed that sector specific guidelines be completed for DNFBPs by the end of April 2011. The Examiners' recommendation is therefore not met. With regard to the issuance of trends and

typologies, the MLRA with the assistance of the FCU, will ensure that adequate feedback is given on STRs, typologies and trends. Based on the aforementioned the Examiners' recommendations in these areas remain outstanding. No information has been provided with regard to the consideration of the issuance of lists or information on terrorist, terrorist organisations to regulated entities. Additionally, the recommendation pertaining to the establishment of written instructions to regulated entities has not been met.

Recommendation 29

29. The Financial Services (Financial Penalties) Regulations, 2010, which came into operation on October 29, 2010 provides for penalties with regard to licensing, timely access to records, record keeping and compliance as it pertains to AML/CFT. The Regulations however do not have sanctioning power against directors or senior management, but only against the licensee. Additionally, some of the penalty ranges appear low and may not be dissuasive in keeping with Rec.17. However, the Authorities have stated that they consider the penalties to be sufficiently dissuasive. Further, responses have revealed that the mere threat of penalties appear to be sufficient to cause compliance and acquiescence with the request for changes made by the FSC in order to avoid the prospect of actually being penalized. Based on the aforementioned, the Examiners' recommendation has only been partially met.

Recommendation 30

30. The status of this Recommendation remains as stated in the Third follow-up report. Accordingly, staffing issues have not been addressed with regard to law enforcement agencies and there has been no training with regard to the Gaming Inspectorate. The Examiners' recommendations are only partially met.

Recommendation 31

31. On the outstanding issue of the development of policies and activities to combat ML/FT, the MLRA is developing and seeking to implement these measures. While the Examiners' recommendation in this regard remains outstanding, there is overall substantial compliance with Rec. 31.

Recommendation 32

32. The Authorities have noted in its current matrix that a system for more comprehensive statistics has been introduced and that this is reflected in the MLRA's Annual Report for 2010. As noted in previous follow-up reports, while this is positive progress with regard to the maintenance of statistics, it does not address the issue of comprehensive statistics not being maintained by all competent authorities or the review of these statistics to determine the effectiveness of the AML/CFT systems. Accordingly, the Examiners' noted deficiencies have only been partially addressed.

Recommendation 33

33. In an attempt to comply with the Examiners' recommendations, the FSC produced a paper on bearer shares, which included considerations on whether bearer shares should be prohibited or whether greater restrictions should be placed on them. The MLRA ~~has~~ reviewed the Paper and directed that it be circulated among the industry for comments. Comments back from the industry suggest that the industry is not opposed to the abolition of bearer shares, allowing a short transitional period. The MLRA will assess the feedback at its next meeting and make a determination on how to proceed. Based on the comments received, at a minimum, the new Code will include procedures to deal with instances where bearer shares are held by an institution outside of the Turks and Caicos Islands and where the TCI licensed Company Manager or Company Agent is required to submit a certificate issued by an authority as prescribed in section 32E of the Company Ordinance. The Examiners' recommendations remain outstanding.

Recommendations 34

34. With regard to ensuring that all persons associated with legal arrangements are made aware of the requirements of the POCO and the MLRA Codes regarding the reporting of suspicious transactions, the FCU has been directed by the MLRA to ensure that this recommendation is executed. The FCU will also review its training programme to include AML/CFT training on matters relative to legal arrangements. Accordingly, the Examiners' recommendations have not been met.

Recommendation 38

35. With regard to complying with the Examiners' recommendation for Rec. 38, the Authorities have stated that at present law reform is on-going in the TCI. As a result, the MLRA has directed that the mutual legal assistance legislation be reviewed and if necessary new legislation or amendments will be initiated. Consequently, the Examiners' recommendation has not been met.

Special Recommendation VI

36. In an effort to comply with the outstanding recommendations, the TCI Authorities have stated that the FSC will start an assessment of the current level of compliance with AML/CFT rules and regulations made by the MSPs and also develop a plan to improve the current level of compliance by the end of May 2011. With regard to the development of guidelines, issuance of instructions and the provision of training to guide MSPs in the effective execution of their responsibilities under the legislation, the FSC will institute these measures by the end of May 2011. The FSC intends to conduct training with MSPs in September 2011 to among other things highlight their responsibilities under the POCO and under the AML/PFT Regulations. The training was also to introduce new reporting forms and train persons on the use of the forms. There is only partial compliance with SR. VI.

Special Recommendation VII

37. Compliance with the Examiners' recommendation remains outstanding. The Authorities have however noted that the new AMLPFT Code addresses the requirements of Special Recommendation VII in Part 9. The new Code is expected to come into force by the end of April 2011.

Special Recommendation VIII

38. In the current matrix, the TCI Authorities have indicated that the law reform consultants will draft a Bill on NPOs. There will also be a review of the legislative framework to provide for laws and regulations that relate to the abuse of NPOs for the financing of terrorism. The Bill will also include sanctions for NPOs that do not comply with the AML/CFT oversight measures. The FCU will also ensure that all NPOs are made aware of the revised procedures for reporting suspicious transactions. Compliance with the Examiners' recommendations remains outstanding until the proposed Bill is enacted and implemented.

39. Special Recommendation IX

40. In order to comply with the Examiners' recommendations, the MLRA at its January 2011 meeting recommended that the Immigration Department seek to establish MOUs with foreign Immigration Departments. They also recommended that the Customs Department should notify other jurisdictions when there is an unusual movement of gold, precious metals or precious stones from their jurisdictions. These recommendations by the MLRA will meet the Examiners' recommendations once there is implementation by the Immigration and Customs Departments. At present, they remain outstanding.

III. Conclusion

41. The Turks and Caicos Islands have made some progress with regard to attaining compliance with the outstanding Examiners' recommendations. With regard to the Core Recommendations, Recommendations 1 and 10 have been fully met, Rec. 13 has been substantially met, Rec. 5 has been partially met and Special Recommendations II and IV have not been met. For the Key Recommendations the TCI has fully met Rec. 36 and substantially met Recs. 23, and 26, partially met Rec. 40, while SR. I and SR. II have not been met. With regard to the non-Core or Key Recommendations, there is full compliance with Recs. 19 and 22, substantial compliance with Recs. 20 and 31, partial compliance with Recs. 9, 11, 12, 15-18, 21, 24, 25, 29, 30, 32, and SR. VI Recommendations 6-8, 33, 34, 38, and SR. VII-IX have not been met with regard to the Examiners' recommendations.
42. Based on the assessment, seven of the Core and Key Recommendations are still either partially met or not met, while the majority of the other outstanding recommendations are partially met. The TCI has new legislation and guidelines that are expected to be enacted and implemented in the near future (April/May 2011) that is expected to enhance its level of compliance with the outstanding recommendations. It is therefore recommended that the Turks and Caicos Islands report back to Plenary in November 2011.

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
Legal systems				
1. ML offense	PC	<p>The exact scope of what the POCO appeals, amends and saves is ambiguous.</p> <p>Schedule 1 of the POCO refers to offences which are not defined in the laws of the TCI, namely directing terrorism, people trafficking and arms trafficking.</p> <p>The FATF 20 Designated Categories of Offences are not fully reflected in the laws of the TCI.</p> <p>All the precursor chemicals under Article 3 (c)(ii) of the Vienna Convention are not covered by TCI law and there is no precursor chemical legislation.</p> <p>The effectiveness of TCI's legal framework is difficult to assess since there have no money laundering convictions since 2002.</p> <p>The defence to the ML offence at section 119(2) of the POCO provides a criminal with the opportunity to escape liability merely by showing that the property was obtained for adequate consideration.</p>	<ul style="list-style-type: none"> The POCO should clearly reflect what it is intended to save, repeal or amend and consolidate of the pre-existing law in relation to anti money laundering, as sections 150 and 151 of the POCO do not effectively achieve this. Omissions contained in Schedules 5 and 6 of the POCO should also be addressed in order to fully reflect what the POCO seeks to do. In addition, the enabling provisions for the offences of directing terrorism, arms trafficking and human trafficking listed in Schedule 1 should be clearly defined. TCI should fully comply with Article 3(1)(c) in relation to the precursor chemicals requirements. The FATF 20 Designated Offences should also be fully incorporated in the laws of the Islands. 	<p>New Regulations converting the Code into regulations have been prepared and made. The Proceeds of Crime (Amendment) Ordinance 2009 and Proceeds of Crime (Amendment) Ordinance 2010 came into force on December 8, 2009 and May 24, 2010 respectively. The omissions in Schedules 5 and 6 have been addressed. What is intended to be saved, repealed and amended are all now clearly indicated.</p> <p>In essence the Control of Drugs Trafficking Ordinance and former Proceeds of Crime Ordinance are repealed.</p> <p>However, transitional provisions keep them in force in respect of matters falling under the former legislation.</p> <p>The offences of “directing terrorism”, “people trafficking” and “arms trafficking” have been deleted from the Schedule. The remaining offences “drug trafficking offence” and “money laundering offence” have been defined in the amendments to section 2.</p> <p>Section 119(2) is amended to require that, in addition to obtaining adequate consideration, the defendant must show that he did not know or suspect that the property was criminal property.</p> <p>The MLRA at its meeting held on January 21, 2011 decided to have specific legislation drafted to cover all of the required areas relating to CFT in one place. An EU funded Law Reform Project underway in the TCI will be tasked with this work. That project is to be completed within 15 months from November 2010.</p>
2. ML offense— mental element and corporate liability	LC	<p>The penalties for money laundering upon summary conviction are lenient and therefore are not dissuasive sanctions.</p> <p>The efficacy of implementation of the anti-money laundering regime is uncertain, particularly in view of the very low incidence of ML prosecutions.</p>	<ul style="list-style-type: none"> The penalty for the primary money laundering offences (sections 117, 118 and 119) upon summary conviction should be sufficiently dissuasive, so as not to limit prosecution of money laundering at the magisterial level to the most trivial of cases 	<p>The Proceeds of Crime (Amendment) Ordinance 2010 amends the penalties under sections 117 to 119 by raising the penalties from twelve months imprisonment to two years minimum and the fines from \$40,000 to \$200,000.</p>

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
3. Confiscation and provisional measures	LC	Forfeiture or confiscation of instrumentalities intended for use in or used in ML/FT offences are not clearly covered by the POCO.	<ul style="list-style-type: none"> The POCO should be amended to provide for the confiscation and/or forfeiture of instrumentalities intended for use in or used in ML/FT offences. 	<p>The Proceeds of Crime (Amendment) Ordinance 2010 amends Part III of POCO to provide for the recovery of instrumentalities intended for use in or in connection with <u>unlawful conduct</u> through civil forfeiture. It includes new sections on freezing orders.</p> <p>In particular, section 59 now contains as an additional objective of the civil forfeiture regime, the recovery of property which is, or represents “property that has been used in, or in connection with, or is intended to be used in, or in connection with, unlawful conduct”. A new definition of tainted property is also included.</p> <p>There are a number of sections that amend various sections in PART III to give effect to the recovery of tainted property.</p>
Preventive measures				
4. Secrecy laws consistent with the Recommendations	C	This Recommendation is fully observed.		
5. Customer due diligence	NC	<p>There are no requirements in the POCO and AMLR which prohibit financial institutions from keeping anonymous accounts or accounts with fictitious names.</p> <p>No requirement for the conduct of CDD measures where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.</p> <p>No requirement for financial institutions to conduct CDD on legal persons or legal arrangements.</p> <p>No requirement for financial institutions to verify that any person purporting to act on behalf of a customer who is a legal person is so authorized, and identify and verify the identity of that person.</p> <p>No requirement for financial institutions to verify the</p>	<ul style="list-style-type: none"> Legislation should be enacted or amended to require that financial institutions: undertake CDD measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII; verify that any person purporting to act on behalf of legal persons or legal arrangements is so authorised and identify and verify the identity of that person; take reasonable measures to determine the natural persons that ultimately own or control legal persons or legal arrangements. Legislation should be enacted or amended to prohibit financial institutions from keeping anonymous accounts or accounts with fictitious names. 	<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>

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
		<p>legal status of the legal person or legal arrangement.</p> <p>No requirement for financial institution perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.</p> <p>No requirement for financial institutions to conduct ongoing due diligence on existing customers.</p> <p>No requirement for financial institutions to perform enhanced due diligence on high risk customers.</p> <p>No requirement for financial institutions to undertake CDD measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII.</p> <p>No requirement to terminate the business relationship if proper CDD cannot be conducted.</p> <p>No requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date.</p> <p>Lack of guidance on matters such as PEPs, risk based approach and reduced CDD impacts on the effectiveness of the TCI's AML/CFT regime.</p> <p>The scope of AML/CFT legislation in the TCI does not cover financial institutions that engage in mortgage lending.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p>	<ul style="list-style-type: none"> • Legislation should be enacted or amended to require that financial institutions conduct CDD measures whereby the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. • Legislation should be enacted or amended to require that financial institutions conduct CDD on legal persons or legal arrangements. • There seemed to be a high level of dependence on personal relationships between financial institutions and clients which results in CDD measures not being carried out. During interviews with financial institutions these institutions typically indicated that the reason for limited or no CDD measures is a result of the small size of the local industry and the fact that everyone knows each other. Such scenarios may open the TCI to a higher risk of financial institutions being used for money laundering and financing of terrorism. Therefore, TCI authorities should develop a sensitization campaign whereby financial institutions are made aware of the benefits and requirement to do relevant CDD. 	<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 AML/PTF Regulations are to be amended to provide for specific provisions for occasional transactions that are wire transfers and to ensure that the requirements of EC 5.2 apply to all financial institutions and not just Money Service Businesses.</p> <p>The AML/PTF Regulations (regulation 5) are to be amended to require the determination of the natural person who ultimately owns or controls customers that are legal persons or legal arrangements. (EC 5.5.2(b)) and to require the verification the legal status of the legal person or legal arrangement (EC 5.4(b))</p> <p>These amendments are expected to be made by the end of April 2011.</p>

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
6. Politically exposed persons	NC	<p>No requirements concerning PEPs are applicable to regulated persons at present.</p> <p>No requirement for senior management approval of a relationship with a customer who is found to be a PEP.</p> <p>No requirement for senior management approval to continue a relationship with a customer who is subsequently found to be a PEP or who subsequently becomes a PEP.</p> <p>Little awareness of the requirements in relation to the performance of enhanced CDD measures on high risk customers who are PEPs.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p>	<ul style="list-style-type: none"> Financial institutions should be required to seek senior management approval for a relationship with a customer who is found to be a PEP and to continue a relationship with a customer who is subsequently found to be a PEP or who subsequently becomes a PEP. The FSC should consider issuance of guidance with regard to financial institution's handling of relationships with PEPs. 	<p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations contain provisions relating to PEPs. PEPs are defined in regulation 6. Regulation 13 requires enhanced due diligence and ongoing monitoring on PEPs and imposes a fine of up to \$50,000.00 if that regulation is contravened.</p> <p>The Financial Services Commission issued guidance in relation PEP's in August 2009.</p> <p>The Anti Money Laundering and Prevention of Terrorist Financing Code is to be implemented by the end of April 2011. Section 13(1) and (3) of the Code addresses requirements of E.C. 6.2. 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>
7. Correspondent banking	NC	<p>No requirement to determine the reputation of a respondent and the quality of supervision.</p> <p>No provision to obtain senior management approval before establishing new correspondent relationships.</p> <p>No provision to document respective AML/CFT responsibilities in correspondent relationships.</p> <p>No requirement for financial institutions with correspondent relationships involving "payable-through accounts" to be satisfied that the respondent financial institution has performed all normal CDD</p>	<ul style="list-style-type: none"> TCI authorities should consider issuing more guidance to financial intuitions on matters relating to AML/CFT. 	<p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations provide that no bank operating in or from the islands shall enter into or continue a correspondent banking relationship with a shell bank or a bank that is known to permit its accounts to be used by a shell bank.</p> <p>Regulation 16 provides for a fine of up to \$100,000.00 if a bank acts in contravention to the regulation.</p> <p>With regard to Rec. 7, Section 42 and 43 of the Code, to be implemented as stated above, deals will</p>

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

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
		<p>obligations on its customers that have access to the accounts.</p> <p>No requirement for the financial institution to be satisfied that the respondent institution can provide reliable customer identification data upon request.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p>		<p>correspondent banking. Regulation 16 will be amended to extend it to all financial institutions before the end of April 2011 in accordance with a decision taken by the MLRA in its meeting in December 2010.</p>

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
8. New technologies & non face-to-face business	NC	No provision for financial institutions to have in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.	<ul style="list-style-type: none"> Financial institutions should have in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes. TCI authorities should consider bringing the business of mortgage lending under a licensing regime which will make it subject to AML/CFT requirements. 	<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, which is to be implemented as stated above, 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>
9. Third parties and introducers	PC	<p>No requirement for all financial institutions relying on a third party to immediately obtain from the third party the necessary information concerning elements of the CDD process covering identification and verification of customers and beneficial owners and the purpose and intended nature of the business relationship.</p> <p>No provision requiring financial institutions to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendations 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendations 5 and 10.</p>	<ul style="list-style-type: none"> Financial institutions relying on a third party should be required to immediately obtain from the third party the necessary information concerning elements of the CDD process covering identification and verification of customers and beneficial owners and the purpose and intended nature of the business relationship. Financial institutions should be required to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendations 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendations 5 and 10. Financial institutions relying on third parties should be ultimately responsible for customer identification and verification. TCI authorities should make more explicit requirements for financial institutions to immediately obtain from the third party all the necessary information concerning certain elements of the CDD process and 	<p>Regulation 14 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations provides that a financial institution may only rely on introducers and intermediaries who are a regulated person or a foreign regulated person. The regulation requires introducers and intermediaries to have carried out CDD and to maintain records of that information which would be available upon request from the financial business or the Commission. It also provides that the financial business will be liable for any failure to apply CDD measures by the introducer or intermediary.</p> <p>Regulation 14 of the AML/PFT Regulations will be amended to include the specific wording of EC 9.1 that Financial institutions relying upon a third party should be required to immediately obtain from the third party the necessary information concerning certain elements of the CDD process (verifying the customers identity and the ultimate beneficial owner, who is a natural person). This will also be reflected in the Code which is to be implemented by the end of April 2011</p>

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

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
			for financial institutions to accept introducers pursuant to its assessment of AML/CFT adequacy.	
10. Record keeping	PC	There are no requirements for financial institutions to maintain records of the identification data, account files and business correspondence for at least five years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority).	<ul style="list-style-type: none"> It is recommended that the TCI review its legislative and regulatory provisions to take consideration of all requirements of Recommendation 10 particularly as it pertains to the retention of records and that appropriate legislation should be enacted as soon as possible. 	<p>Regulations 18 and 19 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations requires records to be kept for at least five years. These records include CDD, account files and transaction records sufficient to enable a reconstruction of the individual transactions.</p> <p>Failure to comply with that regulation will result in a fine up to \$100,000.00.</p>
11. Unusual transactions	NC	<p>No requirements for special attention to be paid to characteristics of size and purpose of transactions.</p> <p>No requirement to put findings in writing that result from a closer investigation of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.</p> <p>No minimum record retention period applies for the findings resulting from a closer investigation of unusual transaction patterns.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p>	<ul style="list-style-type: none"> TCI authorities should expand the scope of attention for unusual transaction patterns to include characteristics of size and purpose as addressed in Rec. 11 (essential criterion 11.1). Financial institutions should be required to set forth in writing any findings related to a closer examination of the background and purpose of unusual transaction patterns. The record retention policy addressed under section 7 of the AMLR should be expanded to provide for the retention of records related to a closer investigation of the background and purpose of unusual transactions. 	<p>Regulation 17 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations requires financial businesses to establish, maintain and implement appropriate risk-sensitive policies, systems and controls to prevent and detect money laundering and terrorist financing which provide for identification and scrutiny of complex or unusually large transactions and other activities.</p> <p>The Code will address these requirements. Work is ongoing to ensure that the provisions of the Code capture all elements of this requirement. The Code is to implemented by the end of April 2011.</p>
12. DNFBP–R.5, 6, 8-11	NC	For the majority of the DNFBPs that have not been subjected to the TCI AML/CFT legislative framework, it remains unclear how TCI authorities will ensure proper compliance with recommendation 5, 6 and 8 through 11 of the FATF. Except for trust and company service providers which are considered financial institutions, effective implementation of Rec. 12 lacks for all remaining groups of DNFBP's.	<ul style="list-style-type: none"> Contact the relevant new businesses and professions that have been subjected to AML/CFT rules and regulations due to the recently enacted legislation and inform them of the 	<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</p>

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
		<p>No contact has been established with dealers in precious metals or precious stones to inform them of the AML/CFT legislative changes and the consequences thereof for the relevant industry.</p> <p>TCI Authorities have not determined yet who will be responsible for the compliance oversight of the dealers in precious metals and precious stones.</p> <p>TCI Authorities have not defined the targeted risk that it aims to manage with the inclusion of dealers in goods of any description involving a cash payment of \$50,000 or the equivalent in any currency, under the definition of relevant businesses, and consequently, TCI authorities are unable to develop an implementation plan for this specific group of DNFBPs.</p> <p>There is a lack of information to the real estate industry, about the AML/CFT changes in the legislation and its implications for the sector.</p> <p>The TCI real estate sector is currently not regulated, thereby imposing a constraint to the effective implementation of an AML/CFT oversight regime for the relevant sector.</p> <p>No implementation plan has been developed yet for the regulatory oversight of the legal practitioners' industry or the accounting/auditing industry relative to their compliance with AML/CFT rules and regulations.</p> <p>The gaming industry lacks the implementation of an AML/CFT compliance supervisory regime.</p> <p>The role of the Gaming Inspectorate and the FCU in</p>	<p>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 advisable that a structure be maintained for these DNFBP's, where their duties relative to financial or real estate transactions on behalf of their clients is legally and physically separated from their other legal proceedings assistance duties. TCI should consider the use of the Bar Association as a channel for the training of industry practitioners. TCI should define the role of respectively, the Gaming Inspectorate and the FCU, in the implementation of the AML/CFT 	<p>relating to non-regulated financial businesses in Part V. The POCO provides that the Commission is the NRFB (DNRFB) Supervisor. The FSC has issued notices to all NRFBs other than casinos requiring them to register their beneficial ownership, place of business, types of business and other details with the FSC on or before 1st January 2011.</p> <p>AML/PTF Regulation 24 will be amended to reflect that the NRFB Supervisor should keep a register of each category of DNFBPs</p> <p>Training for the Bar Association on DNFBPs is being planned, which should be held by May 2011.</p> <p>The role and functions of the Gaming Inspectorate was tabled for discussion at the January 2011 meeting of the MLRA and it was decided to list it for further discussion at the next meeting of the MLRA scheduled for the end of February 2011, at which time Gaming Inspectorate officials will be in attendance.</p> <p>Section 148M of POCO will be amended (also sections 2, 111,116, 120, 121,148F and 148Q) to reflect the correct name of the Regulations.</p>

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

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
		the implementation of the AML/CFT framework is not clearly defined.	<p>framework, in order to avoid inefficiencies.</p> <ul style="list-style-type: none"> 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. 	

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
13. Suspicious transaction reporting	PC	<p>The guidance provided for the effective execution of the suspicious transaction reporting requirement is not considered sufficient</p> <p>The broad time frame given by the POCO has been interpreted by the industry to be time periods that seem quite long. (24 to 30 days).</p> <p>The awareness amongst financial institutions for the misuse of TCI's financial system for the financing of terrorist is low thereby affecting the effectiveness of the CFT regime.</p> <p>The deficiencies identified within R 1 as it pertains to predicate offences not defined in the TCI laws; specifically directing terrorism, people trafficking and arms trafficking are also applicable here.</p>	<ul style="list-style-type: none"> TCI Authorities should provide for more guidance in the process of reporting unusual transactions. In this regard, standardized STR-forms that meet the requirements of the industry should be issued. Furthermore, the means through which STRs should be filed with the FCU should be standardized. TCI Authorities should consider issuing guidelines on the filing of STRs which includes information on the requirement for timely filing to ensure a prompt reporting behaviour. 	<p>The standardized reporting form has been improved.</p> <p>This was published at a presentation to the industry by way of a two-hour presentation, including power point, copies of which were distributed.</p> <p>A revised form has since been circulated with guidance notes attached.</p> <p>The Code will contain a requirement for the timely filing of SARs, including a prescribed timeframe (within 24 hours) (See section 120 in the POCO)</p>
14. Protection & no tipping-off	C	This Recommendation is fully observed.		
15. Internal controls, compliance & audit	PC	<p>Applicable requirements for the implementation of an internal control framework do not address the issue of CFT.</p> <p>Policy manuals of entities supervised by the FSC do not include CFT.</p> <p>No requirements in place for the appointment of an independent audit function to test compliance with procedures, policies and controls on AML/CFT.</p> <p>No effective implementation of the AMLR requirement to keep training records of employees.</p> <p>No requirement to have financial institutions put in place screening procedures to ensure that high standards apply when hiring new employees.</p>	<ul style="list-style-type: none"> The FCS should screen the Policy Manuals of all supervised financial institutions, to ensure compliance with CFT. The FSC should play a more active role in creating awareness amongst financial institutions with regard to the issue of CFT. The TCI should provide guidance for financial institutions on the implementation of an independent audit function to test compliance with AML/CFT procedures, policies and controls. TCI should take appropriate action to implement the recently enacted AMLR requirement to keep employees training records. The TCI should amend its requirement for screening relevant personnel upon hiring. 	<p>The FSC screens policy manuals both at the point where an entity applies for licensing and also during onsite examinations.</p> <p>The FSC has included a review of training logs as a part of its onsite inspection regime.</p> <p>The FSC is to do compliance guidelines, by the end of April 2011, which is to include provisions on how the audits are to be conducted</p> <p>The sections in the Code on internal reporting procedures will include 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</p>

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

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
			<p>to the screening of all employees to fully comply with essential criterion 15.4.</p> <ul style="list-style-type: none"> Financial institutions should be required to have their screening policy for new personnel formalized and documented for review by the FSC. 	<p>financial business being fined up to \$50,000.00.</p>

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
16. DNFBP–R.13-15 & 21	NC	<p>There is a lack of implementation of the AML/CFT legislative framework for DNFBPs</p> <p>To date no STRs have been filed with the FCU by any category of DNFBP, except for Trust and company service providers.</p> <p>No training of DNFBPs on the filing of STRs.</p> <p>DNFBPs have not implemented an internal framework for the compliance with AML/CFT rules and regulations.</p>	<ul style="list-style-type: none"> • TCI should ensure an effective implementation of the recently enacted AML/CFT legislative framework for DNFBPs, including the requirement for the filing of STRs. • TCI Authorities should consider training for DNFBPs on the filing of STR's to promote a compliant regime within the relevant industries. • The relevant supervisory authorities per category of DNFBP should issue guidelines and instructions on the drawing up and maintaining of internal frameworks for compliance with AML/CFT rules and regulations. 	<p>The FCU has met with and advised stakeholders in this area of the requirements for filing STR's.</p> <p>The NRFB Supervisor is to conduct training, by the end of July 2011, for DNFBPs on the filing of STRs to promote a compliant regime within the relevant industries</p> <p>The NRFB Supervisor is to issue guidelines for each category of DNFBP by the end of April 2011.</p>
17. Sanctions	PC	<p>The sanctions in the legislative framework are not effective or dissuasive.</p> <p>Financial sanctions can not be applied by the supervisory without a court order.</p> <p>The sanctions applicable in case of non-compliance with provisions of the AMLR in respect of regulation 10 are not defined in the respective legislation.</p>	<ul style="list-style-type: none"> • The TCI supervisory authority should promote an effective implementation of enforcement actions in order to increase the dissuasiveness of the existing sanctions framework. This can be improved amongst other methods through improvement of the follow up provided by the supervisory authority relative to outstanding issues with regard to the compliance with AML/CFT rules and regulations by financial institutions. • The TCI Authorities should make appropriate adjustments to its legislative framework to provide for the FSC to impose financial sanctions without court order in case of non-compliance with AML/CFT rules or regulations. • The TCI should include in the AMLR the sanctions applicable to an offence under AMLR section 10(1). 	<p>The FSC has taken enforcement action against several licensed entities since the last follow-up report and has had regulations drafted and made in relation to Administrative Penalties. The Financial Services (Financial Penalties) Regulations came into operation on October 29, 2010..</p> <p>There has been no enforcement action on the new penalties.</p>
18. Shell banks	PC	Although the Code appropriately addresses shell banks	<ul style="list-style-type: none"> • Financial institutions should not be 	The Anti-Money Laundering and Prevention of

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

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
		it cannot be properly enforced.	<p>permitted to enter into, or continue, correspondent banking relationships with shell banks.</p> <ul style="list-style-type: none"> Financial institutions should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. 	<p>Terrorist Financing Regulations 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> <p>R. 16 prohibits banks from carrying on business with a shell bank. Regulation 16 is to be amended to extend its application to all financial institutions. The implementation of the new Code will also extend its application to all financial institutions.</p>

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
19. Other forms of reporting	NC	It appears that the TCI Authorities have not considered the feasibility and utility of implementing a system where financial institutions are required to report all transactions above a fixed threshold.	<ul style="list-style-type: none"> We advise that the TCI consider the implementation of a system where all (cash) transactions above a fixed threshold are required to be reported to the FCU. In this regard TCI should include as part of their considerations the possible increase of STRs filed, the size of this increase compared to resources available for analyzing the information and the effectiveness of the additional intelligence in the process of intercepting illicit activities. 	TCI Authorities considered and decided against the use of a system where all (cash) transactions above a fixed threshold require reporting to the FCU.
20. Other NFBP & secure transaction techniques	PC	<p>TCI has not considered the risk of other non-financial businesses and professions being misused for the purpose of ML/ FT.</p> <p>TCI Authorities have not considered or taken adequate steps to ensure that the money laundering risk associated with the large volumes of cash at the casinos are reduced.</p>	<ul style="list-style-type: none"> TCI should consider if there are other non-financial businesses and professions that are at risk of being misused for ML or FT. In this regard, TCI should specifically assess the risk of ML and FT in the construction industry, considering the amount of cash turnover in this industry. TCI Authorities should consider taking an intermediary role in the process of establishing proper communications between local banks and the casino, in order to assure that credit card facilities for casino clients are available at the casinos place of business in order to reduce the amount of cash in circulation in the casino. 	<p>POCO has been amended to include a regime for a Non Regulated Financial Businesses and a Non Regulated Financial Business Supervisor and actions have been taken to register NRFBs since January 1st 2011.</p> <p>The MLRA, at its meeting in December 2010 decided to have a sub-committee assess the risk of the construction industry being misused for ML and FT purposes and prepare a paper for consideration of the MLRA.</p> <p>Credit card facilities are now available in casinos.</p>
21. Special attention for higher risk countries	NC	<p>The majority of financial institutions do not observe the level of compliance of the foreign jurisdiction when establishing international business relationships.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p>	<ul style="list-style-type: none"> The FSC should promote an effective implementation of a country risk management regime with regard to AML/CFT. In this regard, the FSC should promote an effective implementation of provisions 4.18 and 4.23 of the Code amongst licensed institutions. It is not a conclusive requirement to issue a blacklist containing countries that do not or 	<p>The FSC is considering these matters and moving towards issuing a list of countries which do not sufficiently meet the FATF standards</p> <p>The Anti-Money Laundering and Prevention of Terrorist Financing Regulations require enhanced CDD and enhanced ongoing monitoring on a risk-sensitive basis when the financial business proposes to have a business relationship with a person connected with a country that does not apply or insufficiently applies the</p>

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

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
			insufficiently apply the FATF standards. However, if a particular jurisdiction continues to impose a high risk for ML or TF on the financial services industry of the TCI, the FSC should consider applying its powers under the FSCO to issue additional guidance on the subject. In this respect, the FSC might consider for example issuing a list of countries that do not or insufficiently apply the FATF standards and for which transactions originating from these countries should be subject to a higher degree of scrutiny.	FATF recommendations. The Money Laundering Reporting Authority is presenting giving consideration to appropriate counter measures to be applied against countries who do not or insufficiently apply the FATF recommendations

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
22. Foreign branches & subsidiaries	NC	There are currently no provisions in place pertaining to the regulation of compliance with AML/CFT rules and regulations by TCI financial institutions' subsidiaries in foreign jurisdictions.	<ul style="list-style-type: none"> Although, the TCI does not have any local financial institution, with foreign branches and/or subsidiaries, TCI should consider including regulations pertaining to possible TCI financial institutions' subsidiaries in foreign jurisdictions. Particularly in light of the envisioned growth of the financial services industry. 	The Anti-Money Laundering and Prevention of Terrorist Financing Regulations contain provisions for the application of the Regulations outside of the Islands. Specifically Regulation 10 provides that a branch or subsidiary of relevant financial business located in or incorporated in a country outside the Islands shall comply with the regulations and Code, to the extent that the laws of that country permit.
23. Regulation, supervision and monitoring	PC	<p>The integrity component to the "fit and proper" testing of relevant persons is not clearly specified by the FSC.</p> <p>There was no evidence that Collective investment Schemes' Core Principles (IOSCO) apply for Mutual Funds in TCI.</p> <p>The recently enacted legislative framework providing for the licensing and supervision of MVT is not yet effective.</p>	<ul style="list-style-type: none"> The FSC should develop clear procedures for the assessment of integrity of relevant persons, as part of its execution of the "fit and proper" testing requirement. The TCI should consider the relevance of including collective investment schemes "Core Principles" in their supervisory framework. The TCI should develop an approach and set clear terms for the effective implementation of the recently enacted MTO. In this regard, the TCI should consider its resources and where required take action to support an effective implementation of a supervisory regime for MVTs 	<p>The FSC has issued fit and proper guidelines to the industry which covers these matters.</p> <p>The FSC is currently considering including these principles in its supervisory framework.</p> <p>The MTO is now effective with an established licensing regime which continues to grow.</p> <p>The FSC will be including collective investment schemes 'Core Principles' in their supervisory framework. The FSC is also actively working on its membership into IOSCO, which may be considered in IOSCO's meeting in July 2011.</p>
24. DNFBP - regulation, supervision and monitoring	NC	<p>No implementation plan in place addressing the relevant issues pertaining to the effective implementation of an AML/CFT oversight regime for the gaming industry.</p> <p>The due diligence performed on entities requesting a gaming license is not formally established, nor is it clear that all key personnel are subjected to scrutiny for the purpose of granting a gaming license.</p> <p>TCI authorities have not appointed oversight body(ies) that is/are responsible for monitoring compliance with AML/CFT rules and regulations by DNFBPs (except</p>	<ul style="list-style-type: none"> TCI should draw up an implementation plan, for the AML/CFT supervisory regime for casinos. This plan should address the following: <ul style="list-style-type: none"> Who is responsible for the training of gaming inspectors in the area of AML/CFT compliance oversight; Who is responsible for informing the relevant sector of the AML/CFT changes and the respective implications for the 	<p>This is being considered by the MLRA.</p> <p>Casinos are now covered in the definition of financial business in the Anti-Money Laundering and Prevention of Terrorist Financing Regulations.</p> <p>POCO and Anti-Money Laundering and Prevention of Terrorist Financing Regulations now include a regime for non-financial business persons.</p> <p>The MLRA has requested that a documented plan be produced for the AML/CFT supervisory regime for casinos which should include training of gaming inspectors, resources for the gaming inspectorate</p>

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

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
		<p>for trust and company service providers that fall under the supervision of the FSC).</p> <p>No effective implementation of the enforcement regime for DNFBPs.</p> <p>The Gaming Inspectorate does not have the ability to disclose information to overseas regulators and to domestic regulators.</p>	<p>relevant sector;</p> <ul style="list-style-type: none"> ○ Who is responsible for training of the gaming industry in the introductory phase; ○ What are the tools required for an effective oversight of the industry's compliance with AML/CFT laws and regulations; ○ Where necessary resources should be sought to appropriately equip the Gaming Inspectorate for the effective AML/CFT oversight tasks. <ul style="list-style-type: none"> • The due diligence process performed for the granting of a Gaming license should be formalized and TCI Authorities should determine the risk areas within gaming establishments and require that key personnel responsible for these risk areas be assessed by the Gaming Inspectorate. • The Gaming Inspectorate should possess the ability to disclose information to overseas regulators and to share information with domestic regulators. • TCI Authorities should appoint an oversight body for each of the category of DNFBPs (same oversight body might also supervise more than one category of DNFBP) in order to determine effective compliance by regulated entities with applicable AML/CFT laws and regulations. • Continuing on the effective compliance with laws and regulations, the oversight bodies have the responsibility to enforce sanctions where situations of non-compliance with AML/CFT laws are observed. In this regard, reference is made 	<p>and oversight of the industry, cooperation with international authorities. This plan is to be completed by the end of May 2011.</p>

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

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
			to section 3 where recommendations have been made relative to the AML/CFT non- compliance sanctioning/enforcement regime in place.	

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
25. Guidelines & Feedback	NC	<p>The FSC has not issued any guidance relative to trends and typologies in ML/FT.</p> <p>The FSC has not promoted the issuance of lists containing names of terrorists and terrorist organizations to provide for FT screening of clientele by financial institutions.</p> <p>Other than the Code that provides general instructions to regulated sector, DNFBP's have not been provided with specific guidelines that address the respective industries' challenges in the implementation of an AML/CFT compliant regime.</p> <p>The FCU is currently not issuing reports on statistics, trends and typologies related to ML and TF to regulated entities</p> <p>Except for the Trust and Company Service Providers there is no effective AML/CFT framework in place for DNFBPs, consequently, STRs are currently not being filed by DNFBPs.</p> <p>Lack of training of the DNFBP sector is a major shortcoming in the process of implementing the new legislative framework that addresses the AML/CFT requirements for DNFBPs.</p> <p>The guidance provided so far to DNFBPs with regard to the introduction of the new AML/CFT requirements is insufficient.</p> <p>No effective implementation of AML/CFT regime as a result of recent enactment of legislation (AMLR and Code) and guidance.</p>	<ul style="list-style-type: none"> The FCU should provide more feedback to regulated entities in order to increase their capacity to detect and deter ML and TC practices. TCI Authorities should consider contacting and working together with the relevant DNFBP's that have recently been included in the AMLR towards the implementation of a framework for compliance with the established AML/CFT rules and regulations, including the reporting of STRs. Guidelines should be issued, trainings should be provided and assistance should be given to the relevant DNFBPs to establish compliance with the new applicable AML/CFT requirements. The FSC should consider issuing trend and typologies relative to ML/FT schemes in order to increase awareness amongst industry practitioners and thereby increase their ability to effectively identify ML/FT activities. The FSC should provide for more guidance in the combating of the financing of terrorist. In this regard, the FSC should consider issuing lists/ information on terrorists and terrorist organization to regulated entities. The regulated entities will then be required to assess their client base against the relevant information. The FSC should make the appropriate adjustments in its structure, in order to increase productivity in the issuance of report of findings resulting from on-site examinations. The FSC should provide follow up to deficiencies identified and keep statistics on 	<p>Typologies and risk trends are published on a regular basis in the local press – copies of which were supplied to evaluation team.</p> <p>The industry is small and in practical terms the head of the FCU liaises directly with compliance officers.</p> <p>Typologies and risk issues are also published on the FCU website – as pointed out to the evaluation team.</p> <p>Statistics were published by the MLRA and FCU in MLRA Annual Report for 2009 in compliance with the POCO.</p> <p>The FSC has recently undergone an organizational review. The final report has already been approved by the FSC Directors and the FSC has commenced implementation of the report on a phase basis. Over the last year, the staff compliment in mid to senior level positions has increased by over 5 persons.</p> <p>The FSC has improved its onsite procedures to provide follow-up on deficiencies and continued monitoring.</p> <p>A new Part VIII has been added to POCO which provides for supervision and enforcement. The following new sections are relevant:</p> <p>Section 148F(2) provides for the appointment of a NFRB Supervisor (ie Supervisor for non-regulated financial businesses). This will be the new DNFBP Supervisor.</p> <p>Section 148F(3) sets out the responsibilities of the supervisory authority (ie monitoring compliance and taking enforcement action).</p> <p>Section 148H provides for the registration of non-regulated financial businesses.</p>

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
			<p>the outcome of these follow up actions.</p> <ul style="list-style-type: none"> • The FSC should establish instructions provided to regulated entities in general in writing in order to increase transparency of policy, enforceability and structural compliance with these instructions. • TCI Authorities (oversight bodies) should consider issuing sector specific guidelines that deal with the relevant issues pertaining to the specific sectors and disregard requirements that are not applicable considering the structure of the industry and/or the risks that the relevant industry activities impose. • TCI Authorities and specifically the regulatory body for the specific industries once appointed should issue specific guidelines that address the respective DNFBPs industries' challenges in the implementation of an AML/CFT compliant regime. 	<p>Section 148I enables the NRFB Supervisor to undertake compliance visits.</p> <p>Sections 148J to 148P set out the various types of enforcement action that can be taken by the NRFB Supervisor against non-regulated financial businesses. This includes disciplinary action, which is the imposition of an administrative penalty.</p> <p>Section 148 Q provides the NRFB Supervisor with the power to require information and the production of documents.</p> <p>The new sections 148F to 148Q therefore establish a strong enforcement regime with respect DNFBPs.</p> <p>MLRA has directed that sector specific guidelines for financial institutions and DNFBPs be completed by the end of April 2011</p> <p>MLRA with the assistance of FCU will ensure that adequate feedback is given to on STRs, typologies and trends</p>

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
Institutional and other measures				
26. The FIU	PC	<p>The FCU does not appear to have full operational independence and autonomy.</p> <p>The FCU has not provided sufficient guidance to financial institutions and other reporting parties regarding the reporting of STRs.</p> <p>The FCU has not provided feedback to reporting parties in a formalized and timely manner.</p> <p>The FCU does not release periodic reports which include statistics on STRs, trends and typologies within the sector and an update of its activities.</p> <p>The building which houses the FCU does not appear to be properly secured.</p>	<ul style="list-style-type: none"> • The Head of the FCU should be afforded more operational independence particularly with regard to matters such as staff recruitment and budget management. • The FCU should provide guidance to relevant parties on the revised procedures for reporting STRs. • The FCU should provide feedback to reporting parties in a formalised and timely manner. • The FCU should produce and periodically release its own monthly reports which should contain statistics on STRs, trends and typologies within the sector and an update on its activities. • The security of the building which houses the FCU should be addressed as a matter of urgency. 	<p>These matters are under review; however, the head of the FCU has full operational independence when dealing with SAR's. The head of the FCU carries out all staff recruitment.</p> <p>Typologies and risk trends are published on a regular basis in the local press – copies of which were supplied to the evaluation team.</p> <p>Every SAR is responded to with a strategy within most cases 24 hours. Successful outcomes of investigations are also reported.</p> <p>The industry is small and in practical terms the head of the FCU liaises directly with compliance officers.</p> <p>Typologies and risk issues are also published on the FCU website – as pointed out to the evaluation team.</p> <p>Statistics were published by the FCU in the annual report for the last calendar year and new statistics are now being prepared.</p> <p>While TCI is a low risk crime country the FCU is situated on the top floor of a converted hotel which otherwise houses the police. In addition to the steel door in place at the entrance to the office. Further steel doors have been erected at both ends of the corridor housing the unit. Unwanted visitors would now need explosives to enter.</p> <p>The MLRA at its meeting in January 2011 directed the FCU to produce and periodically release its own monthly reports which should contain statistics on STRs, trends and typologies within the sector and an update on its activities.</p>
27. Law enforcement authorities	C	This Recommendation is fully observed.		

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
28. Powers of competent authorities	C	This Recommendation is fully observed.		
29. Supervisors	PC	<p>Written reports of findings resulting from on-site examinations of banking and insurance companies have not been issued to the respective companies.</p> <p>The report of findings relative to on-site examinations of the trust and company service providers industry have not been issued consistently (backlog).</p> <p>The FSC is limited in its potential to give follow up to deficiencies identified during on-site inspections.</p> <p>The FSC does not provide for sufficient written instruction to regulated entities.</p> <p>The FSC does not have the authority to impose financial sanctions independently (summary of convictions required)</p>	<ul style="list-style-type: none"> The Registrar of Insurance and the Registrar of Co-operative Societies should have adequate powers of enforcement and sanction against financial institutions and their directors or senior management for failure to comply with AML/CFT requirement. 	<p>POCO and Anti-Money Laundering and Prevention of Terrorist Financing Regulations now empowers the NFBP Supervisor to impose administrative sanctions on NFBPs.</p> <p>The Financial Services (Financial Penalties) Regulations came into operation on October 29, 2010. The regulations inter alia, provide the FSC with the authority to impose financial sanctions independently.</p>
30. Resources, integrity and training	NC	<p>AML/CFT related training is lacking at the Gaming Inspectorate</p> <p>Funding for the Gaming Inspectorate is dependent upon government funds (Ministry of Finance)</p> <p>The FSC is not properly structured. The current structure imposes a risk for conflict of interest.</p> <p>Insufficient staff at the FSC to execute additional tasks pursuant to legislative changes, reference is in this regard made to the enactment of the MTO.</p> <p>The FCU lacks full operational independence and autonomy as it is one (1) of six (6) Departments within</p>		<p>The MLRA has recognized the need for an action plan with regard to the Gaming Inspectorate. In keeping with this Senior Officials from the Gaming Inspectorate have been invited to attend the next meeting of the MLRA.</p> <p>As a result of a process of organizational review, the FSC has reviewed existing posts, and created new posts. Some of these have been filled and it is anticipated that others will be filled shortly.</p> <p>This matter is under review, but the head of the FIU has full operational independence when dealing with SAR's. The head of the FCU carries out all staff recruitment.</p>

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

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
		<p>the overall TCI Police Force and does not have its own budget allocation.</p> <p>AML/CFT training for staff of competent authorities with few exceptions have not been adequate. AML/CFT training has not been provided to the judges, magistracy and court personnel. Only recently have staff of most of the competent authorities been sufficiently trained in ML/FT matters.</p> <p>Law enforcement agencies operate with clear monetary and manpower constraints. The Immigration Department in particular suffers from severe staffing constraints exacerbated by onerous illegal immigrants' issues.</p>		<p>Judges and Magistrate underwent AML/CFT training during the latter part of 2009.</p> <p>There is serious strain on the local economy in keeping with the worldwide economic downturn. However, the MLRA is reviewing the situation in order to make appropriate recommendations to the Governor.</p>

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
31. National cooperation	PC	Implementation and coordination of local cooperation and efforts by the various units i.e. MLRA, SPICE or of the MOU involving Customs and Police are limited and must be strengthened.	<ul style="list-style-type: none"> The MLRA should play a more active role in local cooperation and coordination and should aim to have a set minimum number of meetings each year, for example, once every quarter. The MLRA should develop and implement policies and activities to combat ML/FT on a regular basis. It is even more desirable for the MLRA to be able to monitor adherence to such policies and to be able to assess the effectiveness of operational systems which have been implemented further to the AML/CFT legislation. Since the Attorney General's Chambers has two distinct departments, the criminal and the civil side, it would be useful for the Principal Crown Counsel as Chief Prosecuting Counsel, to be a part of the MLRA or at the very least to attend some meetings when policy is being formulated or reviews undertaken. The members of the MLRA can agree to appoint persons to assist in the performance of its functions pursuant to section 108(5) of the POCO, and this therefore facilitates the attendance of other persons in the discretion of the MLRA. 	<p>These matters will be tabled for consideration of the MLRA. The MLRA meets frequently and has decided to meet, at a minimum, once every quarter.</p> <p>The MLRA and FSC have conducted AML training in May 2010 for the industry and plans to hold further training in September 2010 and throughout the remainder of 2011.</p> <p>The MLRA has now invited to attend the meetings of the MLRA, the Deputy Attorney General, having overall oversight of the various departments of the Chambers as well as Principal Crown Counsel responsible for the Civil and Criminal sections of the Chambers as well as the Principal Legislative Drafter.</p> <p>The MLRA is developing and seeking to implement policies and activities to combat ML/FT on an ongoing basis.</p>
32. Statistics	PC	<p>The TCI does not review the effectiveness of its systems for combating money laundering and terrorist financing on a regular basis.</p> <p>Comprehensive statistics are not maintained by all competent authorities</p> <p>No data had been provided regarding AML/ CFT on-site examinations of financial institutions and, where appropriate, sanctions relative thereto.</p>		<p>The TCI has instituted a system for more comprehensive statistics. This has been reflected in the MLRA Annual Report for 2010.</p>

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
33. Legal persons– beneficial owners	PC	<p>There is no evidence that any training occurred on matters relative to legal persons including the revised procedure for reporting of suspicious transactions.</p> <p>The deficiencies identified in Rec. 5 with regard to beneficial ownership apply equally to Rec. 33.</p>	<ul style="list-style-type: none"> The TCI Authorities should develop guidelines that financial institutions must follow in the event that issued bearer shares in a company for which they represent are held outside the TCI. The FSC should develop procedures to deal with instances where bearer shares are held by an institution outside the TCI and where the TCI licensed Company Manager or Company Agent is required to submit a certificate issued by an authority as prescribe in 32E of the Companies Ordinance. The FCU should ensure that all legal persons are made aware of the requirements of the POCO and the Code regarding the procedure for reporting suspicious transactions. 	<p>The FSC has produced a paper on bearer shares including considerations on whether they should be prohibited or whether greater restrictions should be placed on them. The MLRA has reviewed that paper and directed that the paper be circulated among the industry for comment.</p> <p>Subject to the outcome of consultation referred to above, the new Code will include 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 prescribed in 32E of the Companies Ordinance.</p>
34. Legal arrangements – beneficial owners	PC	<p>Persons associated with Legal Arrangements do not appear to be aware of the revised protocol for reporting suspicious transactions.</p> <p>There is no evidence that the FCU held training sessions on matters relative to Legal Arrangements.</p> <p>The deficiencies identified with regard to beneficial ownership at R5 apply to trustee services.</p>	<ul style="list-style-type: none"> The FCU should ensure that all persons associated with Legal Arrangements are made aware of the requirements of POCO and the MLRA Codes regarding the reporting of suspicious transactions. The FCU should review its training programme to include AML/ CFT training on matters relative to Legal Arrangements. 	<p>Training was arranged in London UK in September 2009 and again in February 2010 for the Judiciary, Prosecutors and key law enforcement officials.</p> <p>While the FCU is a law enforcement unit and there is some doubt that this falls within their area of responsibility, staff from the FCU have recently given presentations to the money remitters industry and the insurance industry.</p> <p>Now in planning stage for formalized presentation within the remaining industry.</p> <p>The FCU has been directed by the MLRA to ensure that all persons associated with Legal Arrangements are made aware of the requirements of the POCO and the MLRA Codes regarding the reporting of suspicious transactions</p> <p>The FCU is to review its training programme to include AML/CFT training on matters relative to</p>

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
				Legal Arrangements
International Cooperation				
35. Conventions	PC	<p>The Palermo Convention and the Terrorism Financing Convention have not by extension been ratified on behalf of the TCI.</p> <p>Not all relevant aspects of the Conventions have been implemented.</p>	<ul style="list-style-type: none"> • TCI should recommend or propose ratification of the Palermo Convention and the Financing of Terrorism Convention on its behalf to the UK Government; particularly as the TCI has enabling legislation under these Conventions already in place and the UK Government has already ratified the said Conventions on its own behalf. 	<p>These matters were considered by the MLRA. A request is to be made to the UK Foreign Office to have these conventions extended to the TCI.</p> <p>The MLRA is to follow-up on its request to the UK FCO for the ratification of the Palermo Convention and the Financing of Terrorism Convention on behalf of the TCI.</p>
36. Mutual legal assistance (MLA)	PC	<p>Mutual legal assistance will not be provided by the TCI once tax or fiscal matters are involved which do not fall within certain exemptions.</p> <p>The effectiveness of implementation is difficult to assess due to the lack of statistical details.</p> <p>There are no formal administrative procedures except those implemented by the Chief Magistrate further to the MLAO, which would work towards ensuring that assistance would be given in a timely manner.</p>	<ul style="list-style-type: none"> • The TCI should consider rendering mutual legal assistance for requests which deal solely or for those portions of the request which deal partially, with tax or fiscal matters. 	<p>TCI authorities signed fifteen Tax Exchange Information Agreements to date and are in active negotiations with a number of other OECD countries to sign additional TIEAs before the end of the year. An implementation Ordinance was made and brought into force in December 2009. In 2010, Orders giving effect to all of the TIEAs signed by the end of December 2010 were made and letters informing TIEA partner countries that all internal procedures had been completed.</p>
37. Dual criminality	C	This Recommendation is fully observed.		
38. MLA on confiscation and freezing	PC	<p>There are no administrative arrangements in place for coordinating actions relating to seizure and confiscation actions with other countries, neither are any arrangements in place in relation to the sharing of the assets resulting from such coordinated efforts.</p> <p>The effectiveness of implementation cannot be ascertained.</p>	<ul style="list-style-type: none"> • The TCI Authorities should establish administrative guidelines to accompany legislated provisions which permit the rendering of international assistance by the TCI, so as to ensure that international assistance is given in a prompt and efficient manner. Time frames relative to each procedural step, and other administrative details with respect to the execution of international requests, should be formalised in written guidelines or standard operating procedures. Effectiveness should not depend solely on the commitment and efficiency of the entity or persons 	<p>These matters will be tabled for consideration of the MLRA.</p> <p>Law Reform is currently on-going in the country. The MLRA has directed that the mutual legal assistance legislation to be reviewed and if necessary new legislation or amendments will be made.</p>

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

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
			responsible for executing a request but on formal systems which can monitor and support such efficiency.	

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
39. Extradition	C	The Recommendation is fully observed	<ul style="list-style-type: none"> The TCI authorities should seek to have extradition requests transmitted directly from the UK Government to the TCI so as to ensure prompt and early attention to such requests. 	These matters will be tabled for consideration of the MLRA.
40. Other forms of co-operation	PC	<p>No MOUs in place between the FSC and other similar bodies or by the FCU with FIUs which require MOUs for the exchange of information</p> <p>It cannot be ascertained whether assistance by certain competent authorities including the Attorney General's Chambers and the FSC ,was given in a rapid, constructive and effective manner due to lack of statistical detail.</p> <p>Considerations which apply under the FSCO before regulatory assistance is given are onerous when taken conjunctively.</p>	<ul style="list-style-type: none"> The TCI Authorities should stipulate specific standard operating procedures inclusive of targeted time frames with regard to the execution of requests for assistance received by foreign competent authorities. The FSC should consider entering into MOUs with other foreign supervisory authority to ensure that the exchange of information to combat ML/FT can effectively be executed with other foreign jurisdictions. 	<p>The FSC Ordinance 2007 adequately allows for the exchange of information with foreign regulators. In 2009 the FSC dealt with four requests. These were handled expeditiously and no problems were encountered. The FSC is currently well advanced in negotiating MOU's with a number of jurisdictions.</p>
9 Special Recommendations				
SR.I Implement UN instruments	PC	The Terrorist Financing Convention has not been ratified or fully implemented.	<ul style="list-style-type: none"> All the provisions of the United Security Council Resolutions should be fully implemented, for example, authorising access to frozen funds for the purpose of meeting the defendant's basic expenses and certain fees in accordance with UNSCR 1452. 	<p>The MLRA has already agreed to request the extension of relevant sections of the UK Terrorist Financing Act and that was done by the UK Order in Council.</p> <p>Draft stand alone legislation on CFT is to be produced. In that Bill on Terrorism, provisions in line with the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism will be included.</p>
SR.II Criminalize terrorist financing	PC	<p>Penalties for terrorist financing offences at the summary level are lenient.</p> <p>The elements of directing terrorism as required by Article 2(5) of the Terrorist Financing Convention, are undefined in the laws of the TCI.</p>	<ul style="list-style-type: none"> The TCI Authorities should review the penalty for terrorism and terrorist financing offences at the summary level to determine whether it accords the spirit and intent of the anti-terrorism legislation and indeed if these sanctions are in fact effective punishment 	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.

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

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
		<p>Inconsistent mens rea requirements for terrorism offences.</p> <p>The effectiveness of the CFT regime is difficult to assess in the absence of any STRs or investigations on FT.</p>	<p>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 amending the mens rea requirement for the offences in the Terrorism UN Order and the Al Qa'ida Order so that they are consistent with the description set out in the Anti-Terrorism Order. 	<p>A new Terrorism Offences Bill is to be drafted to replace existing piece meal provisions.</p>

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

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
SR.III Freeze and confiscate terrorist assets	LC	<p>Ineffective implementation of a strong CFT regime:</p> <ul style="list-style-type: none"> no formal or administrative provisions to ensure that freezing of funds and assets will be carried out without delay; no procedures which apply directly to persons inadvertently affected by freezing orders; no procedures for authorizing access to frozen funds for incidental costs or expenses; and <p>no clear procedures for the communication of lists of suspected terrorists to the financial sector.</p> <p>De-listing procedures are not publicly known.</p>	<ul style="list-style-type: none"> • The TCI should establish administrative systems, which complement the CFT legislative framework, such as standard operating procedures which outline time frames for certain processes to take place. • Clear administrative guidelines as to who has responsibility for the lists of suspected or named terrorist and whether such lists are in fact circulated in the TCI in order to alert financial institutions of suspected terrorist whose accounts they may be holding, should be implemented. • The TCI should also provide for authorizing access to frozen funds and assets for the payment of incidental expenses when a freezing order is made and a person inadvertently affected by a freezing order should have a clear process of redress. 	<p>The TCI Authorities will keep this matter under review but are of the view that the POCO amply covers the freezing of funds for any criminal conduct.</p> <p>A draft stand-alone legislation on CFT is to be produced. The consideration is being given to having such a provision covered in the new legislation.</p> <p>The Proceeds of Crime (Amendment) Ordinance 2010 amends Part III of POCO to provide for the recovery of instrumentalities intended for use in or in connection with <u>unlawful conduct</u> through civil forfeiture. It includes news sections on freezing orders</p>
SR.IV Suspicious transaction reporting	PC	<p>The awareness amongst financial institutions for the misuse of TCI's financial system for the financing of terrorist is low thereby affecting the effectiveness of the CFT regime.</p>	<ul style="list-style-type: none"> • The reporting of STRs with regard to terrorism and the financing of terrorism should include suspicion of terrorist organisations or those who finance terrorism. • The obligation to make a STR related to terrorism should include attempted transactions. 	<p>These matters 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>The new Terrorism Offences Bill is to include provisions to require the reporting of STRs with regard to terrorism and the financing of terrorism and suspicion of terrorist organisations or those who finance terrorism and to include an obligation to make a STR related to terrorism cover attempted transactions.</p>
SR.V International cooperation	LC	<p>There are no formal administrative procedures which have been established to ensure mutual legal assistance is given in a timely manner.</p>		<p>These matters will be tabled for consideration of the MLRA.</p>

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

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
		Deficiencies noted with regard to Recs. 36 and 38 are also applicable to this Recommendation.		A draft stand-alone legislation on CFT is to be produced. These issues are being considered for inclusion in the Bill.

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SR.VI AML requirements for money and value transfer services	PC	<p>Money service providers have not yet been licensed within the TCI.</p> <p>The AML/CFT legislative framework applicable to money service providers has not been effectively implemented.</p> <p>The deficiencies noted with regard to Rec. 5 as it pertains to customer identification such as lack of proper beneficial ownership requirements; Rec. 6 PEPs and Recs. 11 and 21 transaction monitoring also apply to money service providers.</p>	<ul style="list-style-type: none"> The FSC should establish contact with the money service providers' industry, to start the licensing process of the relevant companies. The FSC should assess the current level of compliance with AML/CFT rules and regulations by the money service provider and develop a plan to improve the current compliance level. The FSC should develop guidelines, issue instructions and provide for training to guide money service providers into the effective execution of their responsibilities under the recently enacted AML/CFT 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>The licensing of money service providers has commenced. New applications for their business areas are also being received.</p> <p>A unit within the FSC's Banking Department has been created and is responsible for the effective implementation of money service providers under the legislative framework.</p> <p>POCO and Anti-Money Laundering and Prevention of Terrorist Financing Regulations now include a regulatory regime for NFBPs and a NFBP Supervisor.</p> <p>FSC is to start assessment of the current level of compliance with AML/CFT rules and regulations by the MSP and develop a plan to improve the current compliance level, by the end of May 2011.</p> <p>The FSC is to develop guidelines, issue instructions and provide for training to guide MSP into the effective execution of their responsibilities under the recently enacted AML/CFT legislative framework, by the end of May 2011.</p>
SR.VII Wire transfer rules	NC	<p>There are no measures in place to cover domestic, cross-border and non-routine wire transfers.</p> <p>There are no requirements for intermediary and beneficial financial institutions handling wire transfers.</p> <p>There are no measures in place to effectively monitor compliance with the requirements of SR VII.</p>	<ul style="list-style-type: none"> It is recommended that the TCI review its legislative and regulatory provisions to take consideration of all requirements of the recommendation particularly domestic, cross-border and non-routine wire transfers. Additionally, TCI should review its legislative and regulator framework to ensure that there is monitoring of compliance by financial institutions and the implementation of effective, proportionate and dissuasive sanctions for non compliance with SR VII. Appropriate legislation should be enacted as soon as possible. 	<p>POCO and Anti-Money Laundering and Prevention of Terrorist Financing Regulations now includes a regulatory regime for NFBPs and a NFBP Supervisor.</p> <p>The new AMLPFT Code contains provisions to meet the requirements of the SR VII and the examiner's recommendations. The new Code will come into force at the end of April 2011.</p>
SR.VIII Nonprofit organizations	NC	<p>TCI Authorities have not addressed the non-profit organizations that can be used for FT purposed in their legislative framework.</p>	<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 	<p>A new section 148S has been added to POCO which provides for the appointment of an NPO Supervisor.</p>

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FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
		<p>There is no requirement for NPOs to maintain information on the nature of their activities or on the persons who control or direct their activities and to make this information available to the public.</p> <p>There are no sanctions against non-profit organisations for failure to comply with AML/CFT measures.</p> <p>There is no requirement for NPOs to maintain relevant information on domestic and international financial transactions for at least five (5) years and make such information available to the law enforcement authorities.</p> <p>No measures to ensure that NPOs can be effectively investigated and that required information can be gathered.</p> <p>Regulatory bodies have not issued any guidance notes to regulated entities to increase awareness for the relevant risks of non-profit organizations as FT vehicles.</p> <p>The FCU has not provided any guidance to NPOs regarding the reporting of suspicious transactions.</p> <p>There has not been any training for NPOs.</p> <p>There is no point of contact with regard to obtaining international requests for information on NPOs.</p>	<p>financing of terrorism.</p> <ul style="list-style-type: none"> • The TCI Authorities should ensure that regulatory bodies make their regulated entities vigilant of the risks for abuse of non-profit organizations for the purpose of financing terrorism. • NPOs in the TCI should be required to maintain information on the purpose and objectives of their stated activities and on the persons who own or control or direct those activities and make such information available to the public. • The TCI Authorities should ensure that there are sanctions in place against NPOs that do not comply with AML/CFT oversight measures. • NPOs should be required to maintain the relevant required information on domestic and international financial transactions for a minimum period of five (5) years and make such information available to the relevant law enforcement authorities such as the FCU. • The FCU should ensure that all NPOs are made aware of the revised procedures for reporting suspicious transactions. • The FCU should revise its training programme to include AML/ CFT training for NPOs. • A specific point of contact should be established with regard to international request for information on NPOs. 	<p>A Bill on NPOs is to be drafted by the Law Reform Consultants currently working in the TCI. There will be a review of the legislative framework to provide for laws and regulations that relate to the possible abuse of NPOs for the financing of terrorism. The Bill is to include sanctions against NPOs that do not comply with AML/CFT oversight measures.</p> <p>The FCU should ensure that all NPOs are made aware of the revised procedures for reporting suspicious transactions.</p> <p>All known NPO's are aware of their responsibilities.</p>

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FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Turks and Caicos Islands
SR.IX Cash Couriers	NC	<p>The recently enacted POCO has had no time to be effectively implemented.</p> <p>The Immigration Department has not established any MOUs with its counterparts abroad.</p> <p>There are no provisions for Authorities in the TCI to notify other countries when there is unusual movement of gold, precious metal and precious stones from their jurisdictions.</p>	<ul style="list-style-type: none"> • The Immigration Department should seek to establish MOUs with Immigration Departments in other jurisdictions. • The TCI Authorities should notify other countries when there is an unusual movement of gold, precious metals or precious stones from their jurisdictions 	<p>These matters are under review by the relevant Department.</p> <p>The MLRA at its January 2011 meeting recommended that the Immigration Department should seek to establish MOUs with Immigration Departments in other jurisdictions and that the Customs Department should notify other countries when there is an unusual movement of gold, precious metals or previous stones from their jurisdictions.</p>