Mutual Evaluation/Detailed Assessment Report
Anti-Money Laundering and Combating the
Financing of Terrorism

THE BAHAMAS

MINISTERIAL REPORT

November 23rd, 2007

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Preface – Information and methodology used for the Evaluation

1. The Evaluation of the Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) regime of The Bahamas was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004[1]. The Evaluation was based on the laws, regulations and other materials supplied by The Bahamas, and information obtained by the Evaluation Team during its on-site visit to The Bahamas from May 22nd to June 2nd 2006, and subsequently. During the on-site visit the Evaluation Team met with officials and representatives of relevant Bahamian government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the Mutual Evaluation Report.

2. The Bahamas had its first CFATF Mutual Evaluation in November 1997 and its second round Mutual Evaluation in July 2002. This Report is the result of the third Round Mutual Evaluation of The Bahamas as conducted in the period stated herein above. The Examination Team consisted of Mr. Robin Sykes, Legal Expert (Jamaica), Mr. Roger Hernandez, Financial Advisor, CFATF and Financial Expert (Trinidad and Tobago) Mrs. Cheryl Greenidge, Financial Expert, (Barbados), Ms, Isabel Fernandez, Financial Expert (Panama) and Mr. Alan Cleave, Law Enforcement Expert (Bermuda). The Team was led by Ms. Dawne Spicer, Legal Advisor, CFATF Secretariat. The Experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems. The Team would like to express its gratitude to the Government of The Bahamas, particularly the Office of the Attorney General and the Director of Public Prosecutions, for the arrangements made during the visit.

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

[1] As updated on October 14th 2005

EXECUTIVE SUMMARY

1. BACKGROUND INFORMATION

1. The Commonwealth of The Bahamas (The Bahamas) is an archipelago, comprising approximately 700 islands, reefs and cays. The population of approximately 320,000 persons is concentrated mostly on the islands of New Providence (on which the capital, Nassau, is situated) and Grand Bahama.

2. The Bahamian economy is sustained primarily by tourism and international financial services. Tourism represents an estimated forty percent (40%) of GDP and employs, directly and indirectly over half the work force. In 2004, the financial services sector accounted for an estimated fifteen percent (15%) of GDP.

3. The institutional framework for AML/CFT in The Bahamas includes several Ministries, with the Ministry of Finance being the primary Ministry responsible for oversight of the financial services industry. The Gaming Board, which has the responsibility for licensing casino operators and casino employees, is under the purview of the Minister of Tourism. The Financial Intelligence Unit (FIU), the International Legal Cooperation Unit (ILCU), the Department of the Director of Public Prosecutions and the Registrar General all fall within the purview of the Attorney General, while Cooperative Societies fall under the Ministry of Local Government and Consumer Affairs. The Royal Bahamas Police Force and specifically the Drug Enforcement Unit (DEU), which comprises the T&F/MLIS and the CCU, and the Royal Bahamas Defence Force, fall under the Ministry of National Security. The Judicial system comprises Magistrates' Courts, the Supreme Court and the Court of Appeals. The final Appeal Court is the Privy Council.

4. The Bahamas' strategy to prevent money laundering and terrorist financing involves the Group of Financial Service Regulators (GFSR), which meets monthly to coordinate policy regulation for the financial sector. The GFSR's primary purpose is facilitating information sharing between domestic and foreign financial service regulators. The Financial Services Regulatory Reform Commission (FSRRC) a bipartisan Committee was established in 2005 to examine the regulatory framework for the financial services industry.

5. Elements of the national AML/CFT regime were subjected to a comprehensive overhaul, which resulted inter alia in amendments to legislation, revision of Guidelines and codes of conduct, implementation of a focused programme on shell banks and a strengthened governance framework.

6. Since the second round evaluation in 2002, The Bahamas introduced amendments to legislation governing investment funds and cooperative societies, and introduced legislation on foundations and anti-terrorism to name a few.

7. In addition to the Central Bank of The Bahamas (CBB), the Securities Commission (SC) and the Office of the Registrar of Insurance Companies, two new regulatory agencies were established: the Inspector of Financial and Corporate Service Providers (which has responsibility for licensing and supervising company incorporation agents and services providers not otherwise regulated by the CBB and operating in or from The Bahamas for profit) and the Compliance Commission (CC) that has AML/CFT regulatory responsibility for all other financial sector businesses not subject to prudential supervision.

8. The Financial Intelligence Unit (FIU) of The Bahamas is responsible for the receipt, analysis and dissemination of Suspicious Transaction Reports (STRs). Where an investigation is required into the contents of an STR it is forwarded to the Tracing and Forfeiture/Money Laundering Investigation Section (TF/MLIS) of the Drug Enforcement Unit (DEU), Royal Bahamas Police Force. To date, fourteen (14) ML prosecutions have been instituted in The Bahamas and over $6.6 million of forfeited proceeds have been placed in the Confiscated Assets Fund.

9. The geographical characteristics of The Bahamas still make the Islands a location of interest to drug traffickers. However close cooperation with OPBAT, the joint U.S./Bahamas Drug Interdiction Task Force, and the long-standing policy of close co-operation between the United States' Drug Enforcement Administration (DEA) and The Bahamian law enforcement agencies all focus on limiting drug trafficking. Other prevalent crimes include homicides, robberies and house breaking. To date, there has been no evidence of terrorism or the financing of terrorism in The Bahamas.

10. At the time of the Evaluation, there had been no evidence of terrorism or the financing of terrorism in The Bahamas. The Anti-Terrorism Act, 2004 (ATA) provides for the offences of the financing of terrorism and terrorism. The International Obligations (Economic and Ancillary Measures) Act, 1993 is used to designate Al Qaida and the Taliban (Al Qaida and Taliban Order, 2001) in accordance with UNSCR 1267.

11. The Bahamas' financial sector comprises both onshore and offshore financial institutions, that is, banks and trust companies; insurance companies; securities firms and investment funds; financial and corporate service providers, cooperatives, friendly societies and DNFBPs.

12. The CBB as supervisory body responsible for the regulation of bank and trust companies has since 2000 pursued a strategy encompassing four key points: up-to-date Guidelines; comprehensive programme of on-site and off-site supervision of licensees; regular anti-terrorist financing warnings to licensees and public warnings on unauthorised banks allegedly operating out of The Bahamas. The programmes of the other financial sector supervisors though similar, are in some cases less rigorous and their guidelines and codes of practice needed updating.

13. In The Bahamas, the regulated DNFBPs are casinos, lawyers, accountants, real estate agents and trust and company service providers. Dealers in precious metals and dealers in precious stones are not categorized as DNFBPs.

14. The Financial Transaction Reporting Act and the Financial Transaction Reporting Regulations both adopt a risk-based approach as recommended by the Basel Committee and the FATF. Thus the FTRR gives financial institutions the discretion to ascertain the appropriate level of information and documentation required to verify customer identity, based on the nature and degree of risk inherent in the customer relationship. Only the CBB has issued guidance, which covers the risk-based approach. The Compliance Commission will incorporate the risk-based approach in the up-dated Codes of Practice.

2. Legal System and Related Institutional Measures

15. The Bahamas was the first country to ratify the 1988 UN Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances on January 30th 1989. The Bahamas has signed, but not ratified the UN Convention against Transnational Organised Crime.

16. Money laundering is criminalized in The Bahamas under sections 40, 41, 42 & 43 of the POCA, which provide for four main money laundering offences – (i) the transfer or conversion of property with the intent to conceal or disguise the property; (ii) assisting another to conceal the proceeds of criminal conduct; (iii) the acquisition, possession or use of the proceeds of crime, knowing, suspecting or having reasonable grounds to suspect that it is in whole or part another person's proceeds of criminal conduct; and (iv) a legal obligation to make a report to the FIU or police where a person knows, suspects or has reasonable grounds to suspect that another person is engaged in money laundering. The Bahamian Penal Code, Chapter 84, sections 88 and 89 provides for ancillary offences such as aiding and abetting, counselling, procuring, incitement and conspiracy.

17. Under Bahamian law, predicate offences for money laundering are captured under the term "*Criminal conduct*".[2] Money laundering extends to all property that represents the proceeds of criminal conduct. The definition of "*proceeds of criminal conduct*" refers to the benefit received from criminal conduct and includes a reference to *"…any property, which in whole or in part directly or indirectly represents the proceeds of criminal conduct"*. The offence of money laundering extends both to laundering and predicate offences and is applicable to persons who commit the predicate offence. The legal framework of The Bahamas provides for legal equivalents for all but two of the offences (human trafficking and participation in an organized criminal group and racketeering) that are listed in the FATF '*Designated Category of Offences'*. It should be noted also that The Bahamas' listing of predicate offences falls short of the FATF Listing in the key areas of arms trafficking, insider trading and market manipulation, smuggling, counterfeiting and piracy of products since they would not qualify under the Proceeds of Crimes Act as predicate offences as they are not triable on information.

18. The money laundering offences under the POCA all apply to natural persons. The POCA does permit the intentional element of the offence of money laundering to be inferred from objective factual circumstances. Section 54 of the POCA states that a "body corporate" may also be guilty of an offence and punished accordingly Criminal liability does not preclude other forms of sanctions for legal persons and financial institutions can have their licences revoked.

19. From 2000 to present, seventeen (17) persons were charged for money laundering offences by the T&F/MLIS of which seven (7) persons were successfully convicted by the T&F/MLIS in conjunction with the Office of the Attorney General. Out of the seventeen (17) persons charged from May 2000 to present, seven (7) are awaiting the completion of their matters before court while two absconded and left the jurisdiction of The Bahamas. In the latter cases, the relevant property was confiscated.

20. Section 5(1) of the ATA, criminalizes terrorist financing. The mental elements of the

[2] Criminal conduct is defined as drug-trafficking, any other offence (except a drug-trafficking offence) triable on information in The Bahamas whether committed in The Bahamas or elsewhere, an offence under the Prevention of Bribery Act, an offence under the ATA, and the first three money laundering offences listed above.

offence relate to the intention that the funds are to be used or the knowledge that the funds or services are to be used in full or in part to carry out the terrorist act. Both natural and legal persons are subject to criminal sanctions. The definition of funds in the ATA includes assets of every kind whether tangible or intangible, movable or immovable, however acquired; and legal documents or instruments in any form. There is no limit to the type of funds i.e. whether legitimate or illegitimate and it is also not necessary to prove that the funds or financial services were used to carry out the offence. The ATA makes provision for persons who aid or abet terrorism or the financing of terrorism. The ATA however does not refer to all of the required Conventions and Protocols listed in the Annex to the UN Convention on the Suppression of the Terrorist Financing.

21. Penalties under the ATA appear to be in keeping with penalties for other serious offences and are similar to those imposed in other jurisdictions for the same type of offence.

22. To date the T&F/MLIS has not received any STRs from any financial institution or from any other source that would indicate the occurrence of terrorism or of terrorism financing in The Bahamas. Accordingly, there have been no investigations, prosecutions or convictions in The Bahamas for terrorism or the financing of terrorism. Additionally there have been no international requests made relating to terrorism or the financing of terrorism.

23. Pursuant to section 9 of the POCA, confiscation of proceeds of criminal conduct is mandatory upon conviction of a person for drug trafficking offences, provided the Court is satisfied that the person benefited from drug trafficking. Section 10 of the POCA applies to the confiscation of proceeds of all other relevant offences. The forfeiture of instrumentalities or property used in the commission of the offence is clearly available in respect of drug-trafficking offences pursuant to section 9(1) of the POCA. The ATA also provides procedures for freezing (section 9) and confiscation of funds (section 10) that are related to a terrorism offence or a terrorism financing offence.

24. With regard to legal ownership of property that is the proceeds of crime- by third parties, section 4(2) of the POCA makes it clear that any person holds property if he holds any interest in it.

25. Restraint orders can be made under the POCA (section 26(4)) and freezing orders under the ATA (section 9(2)). The powers of confiscation are complemented by extensive investigatory and seizure powers under the POCA, FIUA and the DDA. The investigative and seizure powers include the applications for production orders and search warrants, monitoring orders and the ability of the FIU to order a financial institution in writing to refrain from completing any transaction for a period not exceeding seventy-two (72) hours.. The rights of bona fide third parties are protected under both the POCA and the DDA.

26. The International Obligations (Economic and Ancillary Measures) (Afghanistan) Order, which was issued pursuant to the International Obligations (Economic and Ancillary Measures) Act, prohibits the provision of financial services to or the dealing in any property held by or on behalf of Osama Bin Laden, Al Queda, or related individuals or entities. The Order also has the effect of freezing any accounts held in the name of Osama Bin Laden, Al Queda, related persons or organizations. No funds being held for the entities or individuals named in the Order have been found in The Bahamas.

27. The ATA does not comply with UNSCR 1267 because, the Court may order freezing upon reasonable belief that a person is involved in terrorist activities but cannot order freezing

solely on the basis of a designation by the UN Al Qaida and Taliban Sanctions Committee. With regard to the freezing of funds upon the request of a foreign state, this can be achieved under both the ATA and the POCA. The ATA however requires that the Court be satisfied that there are reciprocal arrangements between the State and The Bahamas. The Government of The Bahamas publishes lists produced pursuant to the International Obligations (Economic and Ancillary Measures) Act (IO(EAM)A) and provides such to the financial system regulators responsible for AML/CFT matters. There are provisions in the ATA for the delisting of persons.

28. The Bahamas' FIU was established in 2000, and is a member of Egmont Group. All technical staff has received AML/CFT training along with the Tracing and Forfeiture Money Laundering Investigation Section (T&F/MLIS) The FIU is an administrative agency and has responsibility for receiving, analyzing, obtaining and disseminating information, which relates to or may relate to the proceeds of offences specified in the Second Schedule of the POCA, and includes money laundering and financing of terrorism offences. The FIU pursuant to the Financial Intelligence Unit Act (FIUA) has issued and disseminated AML Guidelines for several sub-sectors of the financial services industry. The FIUA gives the FIU the authority to disseminate information, subject to such conditions determined by the Director, to the Commissioner of Police. The FIU publishes an Annual Report, which contains statistics, trends, the total amount of STRs received and the work conducted by the FIU. The Report does not contain typologies on money laundering or terrorist financing.

29. Section 14 of the Financial Transaction Reporting Act (FTRA) establishes a mandatory requirement for financial institutions to report suspicious transactions to the FIU. Approximately 91% of all STRs received by the FIU were filed by banking institutions.

30. The Royal Bahamas Police Force is the primary law enforcement agency in The Bahamas. The T&FMLIS has responsibility for investigating all STRs forwarded to the Commissioner of Police from the FIU. Suspicious transactions or other reports, which relate directly to fraud, are forwarded to the Commercial Crime Unit (CCU) of the Central Detective Unit (CDU) for investigation.

31. The Royal Bahamas Police Force has, when appropriate, delayed charging individuals or seizing property with a view to identifying additional suspects. The competent authorities in The Bahamas also have the ability to monitor 'an account or transactions conducted through an account' held at a financial institution (section 39 of the POCA). Controlled deliveries and wiretapping are also available as investigative techniques.

32. The Attorney General has constitutional authority for the commencement and cessation of all prosecutions. The DPP carries out those Constitutional duties on behalf of the Attorney General**.** The Authorities in The Bahamas are actively giving consideration to Constitutional amendments that will grant the DPP independence under the Constitution. The Department of the DPP presently has twenty-five (25) lawyers.

33. In The Bahamas, the cross border transportation of cash is treated as follows: (i) money going into and from the United States and (ii) money going to and from other territories. The United States and The Bahamas have signed a Preclearance Agreement, facilitated through the enactment of legislation, whereby a person leaving The Bahamas for entry into the United States on a pre-cleared flight shall declare to an officer of the United States any thing carried with him. The forms administered to the passengers clearly require the disclosure of any sum of cash equal to or exceeding US$10,000 or its equivalent in cash or

bearer instruments. There is no declaration system regarding outgoing passengers to countries other than the United States.

34. With regard to persons entering The Bahamas from the United States or other countries, there is no obligation to provide a written declaration for sums being brought into the country. However, Immigration Officers may enquire about such matters. The framework for detecting the physical cross border movement of cash or cash instruments is contained in a number of laws including inter alia, the Customs Management Act, the Exchange Control Act and Regulations, and the Preclearance Statute. However, only the Preclearance Statute provides a clear indication to passengers that they are under an obligation to declare cash or cash instruments over the relevant threshold.

35. Section 46 of the POCA provides for the seizure and detention of cash. The seized cash may eventually be forfeited. Information obtained as a result of a cash seizure is retained by authorities however there are no statistics available relating to cash declarations or false cash declarations as the legal framework requiring such declarations is not in place. Both the Customs and Immigration authorities have worked with their international counterparts on matters pertaining to cross border seizures.

3 Preventive Measures - Financial Institutions

36. As at the end of 2005, the regulated financial sector in The Bahamas comprised 54 banks, 91 bank and trust companies, 105 trust companies, 65 broker dealers, 40 security investment advisers, 59 investment fund administrators, 699 investment funds, 14 life insurance companies, 841 active DNFBPs.

37. The regulatory system consists of six (6) regulatory authorities, namely the CBB, Securities Commission (SC), Registrar of Insurance, Inspector, Financial and Corporate Service Providers (IFCSP), the Compliance Commission (CC) and the Gaming Board. The existing regime for countering money laundering and terrorist financing has evolved through collaboration among, and by these authorities with Government and the private sector.

38. The Guidelines for bank and trust companies, the insurance sector, the securities industry, co-operatives societies, financial service providers and licensed casino operators that were issued by the FIU have no specific legislative provision, which empowers the Guidelines as "other enforceable means" in that there are no sanctions for non-compliance except for those provisions, which are directly attributable to enacted legislation. In 2005, the CBB revised its comprehensive Guidelines for Licensees on The Prevention of Money Laundering & Countering the Financing of Terrorism (the CBB AML/CFT Guidelines). The new Guidelines replaced the Guidelines issued by the FIU but only in relation to procedures for the prevention of money laundering and verifying customer identity.

39. Regulation 5A in the Financial Transaction Reporting Regulations (FTRR) gives a financial institution, discretion to exempt certain financial institutions from having to provide documentary evidence for CDD purposes. Each of the categories listed for exemption are either recognized FATF categories of low risk customers or have been exempted on the basis of the fact that information regarding such category of customer is readily available from an alternate source. The CBB and the CC have in their individual guidance advised their constituents with regard to the establishment of appropriate risk frameworks incorporating AML/CFT concerns about customers and products.

40. While there is no specific prohibition against the maintenance of anonymous accounts, under sections 6(1) and 7(1) of the FTRA financial institutions must verify the identity of any facility holder or person carrying out an occasional transaction exceeding the prescribed amount of $15,000. There is no distinction for verification purposes between natural and legal persons. There is no provision for undertaking CDD measures with regard to occasional wire transfers in circumstances covered by the Interpretative Note to SR VII. Regulation 7A of the FTRR requires financial institutions to verify the identities of the beneficial owners of their facilities. In the case of corporate entities, the obligation to verify the beneficial owner's identity is limited to those beneficial owners having a controlling interest. The CBB AML/CFT Guidelines provides specific verification requirements for legal persons, partnerships, trusts and other legal arrangements and Foundations. Due diligence is carried out by the CBB, the SC, the Registrar of Insurance and the Gaming Board on their licensees and registrants, (including due diligence reviews by the SC on companies that seek to go public).

41. Sections 8, 9 and 11 of the FTRA provide that in order for foreign financial institutions to qualify for reduced CDD requirements, the financial institution must be located in a jurisdiction specified in the First Schedule and regulated by a body having equivalent regulatory and supervisory responsibilities as the CBB, the SC, the Registrar of Insurance, or the Gaming Board. Companies registered under the EIA are expected to conduct full CDD. The requirement for financial institutions to terminate the business relationship and to consider making a suspicious transaction report in cases where the business relationship has commenced is only applicable in The Bahamas when CDD measures cannot be implemented for existing customers as at the date of the enactment of the FTRA.

42. The only specific requirements dealing with politically exposed persons (PEPs) are in the CBB AML/CFT Guidelines. Paragraph 98 states that in relation to PEPs, in addition to performing normal due diligence measures, licensees should have appropriate risk management systems to determine whether a customer is a PEP and clear policy and internal guidelines, procedures and controls regarding such business relationships. While senior management approval is required for establishing a relationship with a PEP, there is no such requirement where a customer is subsequently found to be a PEP or becomes a PEP.

43. While the FTRA does not specifically address correspondent banking relationships, the due diligence requirements of the FTRA would apply to these facilities. Assessment of a respondent institution's AML/CFT controls is required only for those institutions not listed in the First Schedule of the FTRA and is limited to identification procedures and not as extensive as assessing AML/CFT controls to ascertain their adequacy and effectiveness. There is no provision requiring financial institutions to obtain approval from senior management before establishing new correspondent relationships.

44. There is currently no provision for financial institutions to have policies in place or to take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

45. With regard to non-face to face business relationships or transactions regulation 7 of the FTRR provides that the financial institution is required to verify the identity of that prospective customer in accordance with the verification requirements set out in regulations 3 to 5 of the FTRR.

46. There is no enacted requirement for financial institutions relying on a third party to immediately obtain from the third party the necessary information concerning identification and verification of customers and beneficial owners and purpose and intended nature of the business relationship. Only the domestic financial institutions listed in the FTRA[3], or their counterpart foreign financial institutions, may act as eligible Introducers (i.e. third party Introducers). Eligible introducers can issue letters of confirmation to satisfy the primary obligation of a financial institution to verify identity where cash above $15,000 is involved in a transaction being conducted by or on behalf of a non-facility holder.

47. The Bahamas has included confidentiality provisions in the Statutes of competent authorities to preserve confidentiality of client information while facilitating gateways for information exchange. The MOU among domestic regulators provides for information sharing, regulatory cooperation and harmonization of standards to the extent permitted by their respective governing legislation.

48. Section 23 of the FTRA requires financial institutions to retain such records of transactions to enable the transactions to be readily reconstructed by the FIU. These records must be kept for a period of not less than five years after the completion of the transactions. The obligation to retain transactions records ceases when corporate financial institutions are liquidated and finally dissolved or where financial institutions that are partnerships have been dissolved (section 27, FTRA). Section 26 of the FTRA provides that transaction and identity records should be readily accessible and convertible. The FTRR (regulation 8) provides that financial institutions are obliged to keep and maintain records of all wire transfers inclusive of information as to the original source, the fields for the ordering and final destination of the funds together with names and addresses.

49. Regulation 9 of the FTRR requires financial institutions to monitor transactions and relationships once customer facilities have been established. The purpose of the monitoring is for financial institutions to be vigilant and to note any significant changes or inconsistencies in the pattern of transactions. They are general in nature and do not specify the need to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and in particular the necessity to record these observations and to have same in a form that can be available to the relevant authorities.

50. Paragraph 103 of the CBB AML/CFT Guidelines addresses the issue of high risk countries and warns licensees that certain countries are associated with predicate crimes such as drug trafficking, fraud and corruption, consequently posing a higher potential risk to licensees. The CC has trained its constituents to monitor reports and studies coming from known sources that analyse AML/CFT developments such as the FATF, OECD, US agencies and certain private sector entities.

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[3] (a) a bank or trust company licensed under the Banks and Trust Companies Regulation Act, 2000 (BTCRA);
(b) a company carrying on life assurance business as defined in section 2 of the Insurance Act (IA) or insurance business as defined in section 2 of the External Insurance Act (EIA);
(c) a licensed casino operator within the meaning of the Lotteries and Gaming Act (LGA);
(d) a broker-dealer within the meaning of section 2 of the Securities Industry Act (SIA);
(e) an investment fund administrator or operator of an investment fund within the meaning of the Investment Funds Act (IFA);

51. Section 14 of the FTRA, makes it mandatory for financial institutions to make STRs to the FIU where an institution knows, suspects or has reasonable grounds to suspect that any transaction conducted through, by or with the financial institution involves the proceeds of criminal conduct. Transactions are subject to be reported whether they are completed or attempted. The reporting of suspicious transactions will only involve tax matters that constitute an offence in The Bahamas as set out in the POCA schedule. Persons who report suspicious transactions in good faith are protected from civil, criminal or disciplinary proceedings. All STRs received by the FIU are acknowledged in writing. Feedback is provided on a case-by-case basis by way of a pro-forma letter, which is forwarded along with a pre-defined list of nine (9) outcomes. Section 7(1) of the ATA also requires the reporting of suspicious transactions where funds or financial services are related to or are to be used to facilitate an offence under the ATA.

52. The FITRR requires financial institutions to appoint a Money Laundering Reporting Officer (MLRO) to whom employees must submit STRs. The CBB AML/CFT Guidelines stipulate the functions and responsibilities of the MLRO. The FITRR also requires financial institutions to ensure that employees are aware of the various requirements under the FITRR and other AML laws. The CBB AML/CFT Guidelines and the CC's Codes of Practice stipulate the types of AML/CFT training that employees should receive. There is no specific requirement for financial institutions to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures.

53. A Notice has been issued to the four (4) licensees that have branches or subsidiaries in foreign jurisdictions on behalf of the CBB reminding them of their obligation to ensure that their overseas branches and subsidiaries comply with The Bahamas' AML/CFT standards, where these are more rigorous than those of the host country. All licensees of the SC having branches in foreign countries are also licensees of the CBB.

54. Following the series of legislative changes in 2000, the CBB ceased issuing licences for entities to be managed through agents in The Bahamas and tightened the minimum operating requirements for existing and future licensees. There are now specific requirements that must be met for these entities to be considered as having a physical presence in The Bahamas. There are three exceptions to the physical presence requirement. (See. Section 3.9 of the Report).

55. The FTRA, ATA and FITRR impose penal and civil sanctions for non-compliance with AML/CFT requirements. A range of sanctions is available under various statutes to deal with persons failing to comply with AML/CFT requirements. However, there is unevenness across competent authorities regarding action that can be taken against natural and legal persons for non-compliance with requirements. Administrative powers, where permitted, are not supported by comprehensive statistics.

56. The CBB licenses and supervises banks, which also operate as MVT service operators. These entities are subject to the CBB's full supervisory powers and scrutiny including on-site inspection. They are also subject to the provisions of the BTCRA, CBBA, FTRA, FTRR, FIUA, FIRR, POCA ATA, and the CBB AML/CFT Guidelines. Stand- alone MVT service operators are licensed by the IFCSP and supervised for AML/CFT compliance by the CC.

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

57. DNFBPs are financial institutions are required to comply with the AML/CFT provisions of the POCA, ATA, FTRA, FTRR, FIUA and FITRR. These laws incorporate customer due diligence and record keeping requirements. In addition to these laws, the CC has issued industry specific Codes of Practice for lawyers, accountants, FCSPs, real estate brokers and developers. With regard to casinos, while the Gaming Board of The Bahamas is the designated AML authority, specific Guidelines for licensed casino operators in The Bahamas have been issued by the FIU. These Guidelines like the Codes of Practice do not have force of law and sanctions can only be imposed if expressly provided for in the regulatory Statute.

58. Dealers in precious metals and dealers in precious stones are not defined as financial institutions and are therefore only subject to comply with the general STR provisions of the POCA and the ATA.

59. DNFBPs are subject to the same requirements as other financial institutions to report suspicious transactions to the FIU. In addition, section 7(1) of the ATA requires persons to report to the Commissioner of Police any transaction that is suspected to be related to or to be used to facilitate terrorism. While the legal and accounting professions in The Bahamas have governing bodies, such bodies are not regarded as SROs for these professions for AML/CFT purposes.

60. There are four (4) licensed casinos in The Bahamas. There are no Internet casinos. By virtue of section 3(1) of the FTRA, a licensed casino operator within the meaning of the LGA is a financial institution. A licence to carry on the business of gaming on premises has to be considered by the Commissioner of Police as well as the Board and approved by the Minister of Tourism.

61. There is no statutory obligation for other non-financial businesses and professions i.e. dealers in high value and luxury goods, pawnshops, gambling and auction houses to comply with AML/CFT requirements.

5. Legal Persons and Arrangements & Non-Profit Organisations

62. The main types of legal persons that exist in The Bahamas are limited liability companies, international business companies, foundations, limited liability partnerships and exempted limited partnerships. The rules for all companies are contained in The Companies Act, 1992, (CA) and involve a system for registering with the Registrar General's Department. Section 56 of the CA requires all companies to keep a register of their shareholders, their names, addresses and other information. FCSPs licensed under the FCSPA are required to record in respect of each client the name and address of the beneficial owners of all IBCs incorporated and or existing under the IBCA and the name and address of all partners registered under the Exempt Limited Partnership Act. There are exceptions to this requirement.

63. The Registrar of Insurance and Director of Societies do not have powers to compel production of routine information from their licensees or registrants. However, information on limited liability companies and foundations may be obtained from the Registrar General (who is the Registrar of Companies). The IFCSP has access to documents that a licensee is required to keep to fulfil the obligations of the FCSPA. Banks and trust companies under the CBB AML/CFT Guidelines are required to obtain in the case of foundations information

on the Foundation's Charter, the source of wealth, and identification evidence for the founder(s).

64. Routine information on domestic partnerships may be obtained directly from the individual partners or from financial institutions with which they have a business relationship.

65. Pursuant to section 10(a) of the IBCA, IBCs cannot issue bearer shares. However, section 48 of the CA permits a company to issue bearer shares or stock for the payment of future dividends on shares or stock included in warrants.

66. The only existing legal arrangements in The Bahamas are trusts that are governed by the Trustee Act, 1998.

67. NPOs may be established in The Bahamas under the CA, the Friendly Societies Act, 1835 (FSA) or pursuant to deeds/instruments of charitable trusts. There are 622 NPOs registered in The Bahamas. All financial institutions are required to identify and verify the beneficial owners of all charities and non-profit organizations pursuant to section 6 of the FTRA and regulation 7 of the FTRR and are subject to the record keeping standards of the FTRA. Foundations may also be established for charitable purposes. The CBB AML/CFT Guidelines require licensees (i.e. banks and trust companies) in the case of NPOs to obtain documented information on the nature of the proposed entity's purposes and operations; and to identify and verify at least two signatories and/or anyone authorized to give instructions on behalf of the entity.

6. National and International Co-operation

68. Based on the laws governing the relevant financial service regulators in The Bahamas, it is clear that co-operation is permitted among domestic regulators to allow them to achieve their statutory objectives The exception is the CBB, which can receive information from but not provide information to the CC and the IFCSP since their names are omitted from Schedule 2 of the BTCRA. Cabinet has already approved amendments to the relevant legislation that will strengthen the ability of domestic regulators to share information.

69. The legislation of The Bahamas addresses the requirements of the 1999 International Convention for the Suppression of the Financing of Terrorism by way of the ATA and the IO(EA)MA. The Bahamas has complied with most of the requirements of the 1988 UN Vienna Convention. The Palermo Convention has not been ratified. The ATA does not comply with UNSCR 1267 (1999) in that it requires an additional requirement beyond the listing of the entity or person by the UN Security Council. While the IO (EAM)A provided an excellent means of responding to the international obligations for 9/11 it was not designed for the purposes of responding to global terrorist threats. Additionally, the penalties provided for under the Statute appear to be small and may not act as an appropriate deterrent.

70. Requests for assistance in criminal matters are dealt with under the Mutual Legal Assistance (Criminal Matters) Act (MLA(CM)A). Where The Bahamas has not negotiated a MLAT with a foreign jurisdiction, requests for assistance are dealt with under the Criminal Justice (International Cooperation) Act (CJ(IC)A) The Bahamas may also respond to overseas requests relating to freezing and forfeiture of assets relating to terrorism offences under the ATA.

71. The Bahamas is able to provide assistance to foreign countries in a timely fashion. The pre Mutual Evaluation request for information about international cooperation with The Bahamas did not result in the receipt of any claims of lack of assistance from The Bahamas. Mutual legal assistance can be provided to a Requesting jurisdiction even though proceedings have not begun or where there is no conviction for an offence. The Bahamas does not refuse requests for mutual legal assistance on the grounds of laws that impose secrecy or confidentiality.

72. There are instances where there is a dual criminality requirement such as with regard to the treatment of an external confiscation order insofar as it must refer to either a drug trafficking offence or a relevant offence. Under the ATA, it should be noted that freezing assistance may only be provided to another State if that requesting state has the ability to act in a reciprocal manner with The Bahamas.

73. The International Legal Cooperation Unit (ILCU) was established in the Office of the Attorney General to deal specifically with requests from foreign jurisdictions. The Bahamas has a Confiscated Assets Fund, from which the Minister of Finance may authorize payments for purposes related to law enforcement, the treatment of rehabilitation and public awareness for example.

74. Bahamian nationals can be extradited. Section 6 of the Extradition Act refers to persons liable to be extradited and does not distinguish between Bahamian and non-Bahamians. At the time of the Assessment there were twenty-four (24) persons awaiting extradition. Technical differences in the categorisation of offences pose no difficulties in extradition matters in The Bahamas. Simplified extradition procedures exist where the fugitive agrees to be extradited.

75. Generally there are clear and efficient processes for the execution of mutual legal assistance requests however there remains some ambiguity with regard to the processes that would apply to requests relating to terrorism offences.

76. The GFSR has published a handbook on The Bahamas' information sharing framework. All regulators have statutory authority to cooperate with foreign regulators exercising comparable functions. While legislation speaks purely to requests for assistance there is no impediment to the regulatory authorities spontaneously providing information to its international counterparts. The SC has on a number of occasions provided information on its own initiative without first receiving a request from a foreign securities regulator.

77. Law enforcement authorities have the ability to conduct investigations on behalf of their foreign counterparts and do so, on a frequent basis. For the period 2002 – 2005, the SC and the CBB have respectively responded to approximately 75 and 132 regulatory requests for information. The FIU and the staff of the various supervisory bodies are under an obligation to keep such information confidential.

MUTUAL EVALUATION REPORT

1. *General*

1.1 General information on The Bahamas

1. The Commonwealth of The Bahamas (The Bahamas) is an archipelago, comprising approximately 700 islands, reefs and cays having its northernmost point situate 80 km from the United States and its southernmost point a similar distance from Cuba and Haiti. From its westernmost island, The Bahamas stretches 750 miles in a south easterly direction, covering nearly 100,000 square miles of the Atlantic Ocean. The population of approximately 320,000 persons is concentrated mostly on the islands of New Providence (on which the capital, Nassau, is situated) and Grand Bahama.

2. The Bahamian economy is sustained primarily by tourism and international financial services, which together account for nearly fifty-five percent (55%) of Gross Domestic Product (GDP). Tourism represents an estimated forty percent (40%) of GDP and employs, directly and indirectly over half the work force. In 2004, The Bahamas attracted in excess of 5 million visitors, of which more than eighty percent (80%) arrived from the United States of America and Canada and who spent over US$2 billion.

3. The financial services sector of the economy accounts for an estimated fifteen percent (15%) of GDP; with a further boost to both tourism and banking, being derived from high value stopover business arrivals. Since the early 1960s, The Bahamas has been an attractive location for the domicile of offshore financial services and has attracted many of the top-tier banking and trust institutions. The Bahamas is generally regarded as one of the pre-eminent Offshore Financial Centres (OFCs) in terms of development, size and market share. It ranks among the world's top ten OFCs in relation to banking assets and assets under management. The sector employs approximately 14,000 persons and its activities are broadly linked to the North American and Latin American markets.

4. The Bahamas' archipelagic geography is vulnerable to natural disasters such as hurricanes. During the 2004 and 2005 seasons damage was inflicted by three major hurricanes - namely Wilma, Jean and Francis. These hurricanes negatively affected the tourism sector and have strained fiscal and economic performance. The Bahamas' archipelagic geography has tended to disperse hurricane damage on the economy as a whole. The effects of hurricane Wilma in October 2005 were concentrated in parts of the Northern Bahamas. But unlike hurricanes Frances and Jean in 2004, Hurricane Wilma's damage was less severe, devastating some residential areas but not significantly damaging the commercial centre of Freeport or the tourism industry in the Grand Bahamas, which is the second biggest island in terms of GDP and employment. New Providence, including Paradise Island, which is home to two-thirds of the country's economic activity, was not significantly affected by either the 2004 or 2005 hurricane seasons. Moody's expects that The Bahamas will continue to cope successfully with the economic shocks from hurricanes, retaining its fundamental credit strengths.

5. Economic growth is on a strengthening trend. Tourism investment and residential construction are driving real GDP growth this year, which both the Government and the International Monetary Fund (IMF) forecast to strengthen to three and a half percent (3.5%)

in 2005 following growth of three percent (3%) in 2004 and less than two percent (2%) in 2001 and 2002. Moody's expects ongoing investment to keep economic growth on its current trend in 2006. Unemployment has edged down to around ten percent (10%) but remains above its historical low of 2001's 6.9 percent. The Bahamas' pegged exchange rate has helped contain inflation, with the Consumer Price Index (CPI) at 1.8 percent in August 2005, year-on-year, although high oil prices in recent months have accelerated month-on-month inflation somewhat above the 12-month level.

6. The success of The Bahamas' economic performance over the past decade is reflected in a per capita GDP of more than $17,550 estimated for 2005, not only the highest among Caribbean countries (excluding British overseas territories) but also above most of the median for AA- and A-rated emerging market countries. The Bahamas' economic performance also reflects relatively sound governance. The World Bank's (WB) governance indicators, such as for Government Effectiveness, Regulatory Quality and Rule of Law, place The Bahamas close to the average level of OECD members.

7. On January 30, 1989, the Commonwealth of The Bahamas became the first country to ratify the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances ("the 1988 Vienna Convention"). Even prior to its ratification of the Vienna Convention, The Bahamas, in 1986, enacted the Tracing and Forfeiture of Proceeds of Drug Trafficking Act, which came into effect in January 1987 ("the 1986 Drug Trafficking Act"). This legislation was subsequently repealed and replaced by the more comprehensive Proceeds of Crime Act, 2000. The Bahamas also ratified the International Convention for the Suppression of the Financing of Terrorism on October 21, 2005. The instruments of ratification for the Inter-American Convention against Terrorism, (which was signed on June 26th 2002) have been sent to the Ministry of Foreign Affairs.

8. The Bahamas' compliance with international AML/CFT standards is reflected in its ratification of relevant international and bi-lateral treaties and promulgation of domestic legislation such as the following:
   - The Financial Transactions Reporting Act, 2000 as amended (FTRA)
   - The Financial Transactions Reporting Regulations (FTRR)
   - The Financial Intelligence Unit Act, 2000 (FIUA)
   - The Financial Intelligence (Transaction Reporting) Regulations (FITRR)
   - The Proceeds of Crime Act, 2000 (POCA)
   - Proceeds of Crime (Designated Countries and Territories) Order (POCO)
   - The Dangerous Drugs Act, 2000 (DDA)
   - The Criminal Justice International Cooperation Act, 2000 (CJ (IC)A)
   - The Mutual Legal Assistance (Criminal Matters) Act (MLA(CM)A)
   - The Extradition Act, 1994 (EA)
   - The Anti-Terrorism Act 2004 (ATA)
   - Justice Protection Act, 2006(JPA)
   - Transfer of Offenders Act (TOA)
   - Criminal Justice (International Cooperation)(Enforcement of Overseas Foreign Orders) Order (CJ(IC)(EOFO)O)

9. The Bahamas has a Mutual Legal Assistance Treaty with the United States, one with Canada and one with the United Kingdom, which relates to cooperation in drug-trafficking matters.

10. Following upon the Financial Action Task Force's (FATF) removal of The Bahamas from

the FATF's Non-Cooperating Countries and Territories (NCCT) list 2001, the FATF further announced in October 2005 that it would end five (5) years of monitoring The Bahamas. The decision was based on The Bahamas' ability to respond to foreign judicial and regulatory requests. This will further enhance the reputation of the offshore financial sector in The Bahamas.

11. The Bahamas announced at the end of 2000 that existing 'shell banks' had either to close or acquire a physical presence (minimum standards for which were set in detail in 2003). As a result over the period 2001-2005, 199 licenses were withdrawn. These revocations were the result of a mixture of actions by The Bahamas and withdrawals by the banks themselves due to post-2000 physical presence requirements and institutions merging or reorganizing to meet the challenges of a more competitive global environment and to realize cost efficiencies.

12. Offshore, "non-resident" banks in The Bahamas cannot take deposits in Bahamian dollars. Depositors are not covered by the deposit protection scheme neither are they subject to Exchange Control restrictions on the transfer of funds

13. The Government has strong incentives to continue to protect the reputation of The Bahamas' financial services sector and comply with the evolving international regulatory regime, which now includes a focus on stemming terrorism as well as narcotics and other criminal financing flows.

14. The comprehensive overhaul of the AML regulatory regime which took place in 2000 introduced a robust system for the regulation of financial services which included the imposition of statutory obligations for mandatory know your customer (KYC) requirements in respect of customers and beneficial owners that seek financial services. To ensure that financial institutions that are not regulated by the Central Bank, the Securities Commission and the Office of the Registrar of Insurance, have adequate oversight and supervision, two new regulatory agencies were established: the Inspector of Financial and Corporate Services Providers and the Compliance Commission. See. section 1.3 of this Report

15. In 2005 a bipartisan Committee, named The Financial Services Regulatory Reform Commission, (FSRRC) under the chairmanship of the Minister of State for Finance, was established to examine a more conducive regulatory framework for the financial services industry.

16. Three Government officials from The Bahamas hold international certification as anti-money laundering specialists. Two are with the Financial Intelligence Unit and the other is with the Compliance Commission.

17. The Bahamas has a comprehensive system of laws, regulations and Codes of Conduct to combat corruption. In addition, The Bahamas has signed and ratified the Organization of American States Corruption Convention and is a member of the Committee of Experts for the Implementation of the Corruption Convention, which commits The Bahamas to a system of peer review of its efforts in implementing the terms of the Convention.

18. The Public Disclosure Act provides for statutory declarations of income, assets and liabilities by all candidates for election to Parliament in The Bahamas as well as annual declarations by those elected (and appointed) legislators, as well as a defined group of public civil servants. A Public Disclosure Commission, established under the Act has

powers of investigation of the accuracy of these disclosures and refusal or failure to declare carries penal sanctions.

19. The Prevention of Bribery Act makes it an offence for any public officer to solicit or accept a bribe in respect of his public functions and also creates appropriate offences against persons offering such bribes.

20. In addition, a Code of Ethics for Ministers and Parliamentary Secretaries was presented to the House of Assembly on the 25th June 2002, which provides a standard of conduct to prevent conflicts of interest in order to ensure that the Prime Minister and other Ministers of government observe the highest standards of probity in public life. The Code includes the following:

    - Private work whether remunerate or not is prohibited.
    - A Minister must not hold any other public office or serve as director and or officer of public or private companies or associations except personal or family holding companies that are not involved in any business or trade, and religious or non-profit organisations.
    - On appointment, a Minister must divest of any investments that could create a conflict of interest. If the Prime Minister is satisfied that outright disposal is impractical; these investments are to be transferred to a 'blind trust'. A trustee not related to the Minister should administer such a trust.
    - A Minister who previously engaged in a profession or business is not necessarily required to dispose of his interest in the relevant entity, but he shall remove his name from all business letterheads or amend them to reflect his inactive status and cease to participate in the profits except for an amount due to him in return for his previous investment.
    - Ministers with direct contractual obligations with the Government must terminate them.
    - While in office, a Minister should not make investments which could result in a conflict of interest, nor use 'insider information' to make speculative investments in the securities market to obtain some advantages for him in advance of an imminent change in Government policy or revenue measures.
    - Ministers are prohibited from recommending former firms or businesses to persons seeking the Government's favour or continued favour.
    - Whenever Cabinet is due to discuss any matter that could affect the private interest of a Minister that Minister should declare his interest and withdraw from the meeting for the duration of the discussion.
    - Ministers should not accept gifts that might be perceived to create an obligation to the donor.

21. There are also General Orders applicable to civil servants, which make provisions:

    - Prohibiting any public officer engaging either directly or indirectly in trade in private professional practice, or from taking part, directly or indirectly, in the management or proceedings of a commercial undertaking.
    - Not allowing the awarding of a government contract to a Government servant or to any partnership to which he is a partner, or to a company of which he is a director, unless the measure of his interests in the contract is fully disclosed and the Director of Public Personnel had given permission for the contract to be awarded.
    - Prohibiting a government servant from accepting a directorship with a company

holding a contract with his Department, unless expressly permitted by the Director of Public Personnel.

- Requiring a public officer to divest his private investments and disclose them to the Director of Public Personnel if it is considered that he would have knowledge or authority over those investments in carrying out his official duties and his private affairs might be brought into real or apparent conflict with his public duties or in any way influence them or appear to influence them in the discharge of his duties.
- Requiring a public officer to report to the Director of Public Personnel if he intends to acquire any private interest that might compromise the complete integrity with which he should carry out his official responsibilities.
- Prohibiting public officers from handling public money if excessively in debt, from receiving valuable presents and from selling or leasing their private property to the government.

1.2 General Situation of Money Laundering and Financing of Terrorism

The Money Laundering Situation

22. The Financial Intelligence Unit (FIU) of The Bahamas is responsible for the receipt, analysis and dissemination of Suspicious Transaction Reports (STRs). Where the FIU believes that an investigation is needed into the contents of any STR, they are forwarded to the Tracing and Forfeiture/Money Laundering Investigation Section (T&F/MLIS) of the Drug Enforcement Unit (DEU), Royal Bahamas Police Force. T&F/MLIS is the primary agency in The Bahamas with responsibility for investigating STRs, which relate to criminal conduct and money laundering as defined in the Proceeds of Crime Act, 2000 (POCA). The Section is also responsible for investigating large cash seizures, local drug traffickers or other serious crime offenders to determine whether they have benefited from their criminal conduct. Investigations are also done based on requests for law enforcement assistance from local and international law enforcement agencies.

23. To date, fourteen (14) prosecutions for offences of money laundering have been instituted in The Bahamas. Four (4) of these cases were instituted under the provisions of the Tracing & Forfeiture of Proceeds of Drug Trafficking Act resulting in three (3) convictions and one (1) case pending trial as the defendant absconded. Following the enactment of the POCA a further ten (10) cases have been instituted under this legislation resulting in a further four (4) convictions and six (6) cases are pending trial. Sentences have ranged from three (3) years imprisonment to a fine of $5,000.

24. Over $6.6 million of forfeited proceeds of criminal conduct have been placed in the Confiscated Assets Fund established in accordance with section 52 of the POCA thus far. Of that amount, $3.1 million represents proceeds of criminal conduct that was forfeited between 2002 and May 2006. In addition to the forfeiture of cash, the T&F/MLIS was able to assist the Office of the Attorney General with the forfeiture of a house and land in Bimini following the conviction of a drug trafficker on February 18th, 2005.

The Drug Situation

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

26. In 1986, The Bahamas formed a Joint US/Bahamas Drug Interdiction Task Force (the Task Force). This Task Force meets biannually, in assemblies co-chaired by the Honourable Minister of Foreign Affairs and the United States Ambassador to The Bahamas. The Task Force discusses, among other issues of mutual concern, the operation of drug programmes and drug flows between the two countries.

27. Additionally, the Government of The Bahamas has entered into a Trilateral Agreement (Operation Bahamas, Turks and Caicos Islands) (OPBAT), with the governments of the United States of America and the United Kingdom to assist with drug interdiction efforts in this Region. The OPBAT bases are located on four of the larger islands in The Bahamas. The arrangement has been extremely successful to the extent that it is believed that the local usage of drugs is on a downward trend because of the OPBAT programme. Additionally, most of the major drug traffickers have been incarcerated either in The Bahamas, the United States, Jamaica or Cuba. OPBAT has also targeted drug organizations in the Region, which has resulted in a noticeable shift in transhipment patterns.

28. The economic impact of cocaine income has been substantially isolated from the general economy and developments since the previous Assessment have been driven primarily by domestic macroeconomic factors, external developments and natural phenomena, including hurricanes. Nevertheless, the Government of The Bahamas has reiterated its priority commitment to completely eliminating the islands as a trans-shipment and drop off point for drug trafficking.

29. In its efforts to attain this goal, The Bahamas has adopted a policy of educating citizens and residents about the dangers of drug use. Additionally, the long-standing policy of close co-operation between the United States' Drug Enforcement Administration (DEA) and the Bahamian law enforcement agencies continues in place. The policy of close collaboration is further demonstrated by the unfettered access that the US Coast Guard is given, with the consent of the Government of The Bahamas, to enter the territorial waters of The Bahamas while in hot pursuit.

30. The Mutual Evaluation Team was provided the following statistics relating to drug seizures, property seizures and drug arrests: -

Drug Seizures & Arrests – 2001 – 2006 (to date):

	2001	**2002**	**2003**	**2004**	**2005**	**2006**
Cocaine	3,238lbs	5,449lbs	9,609lbs	1,632lbs	227lbs	353lbs
Marijuana	9,203lbs	25,197lbs	13,361lbs	4,040lbs	5,262lbs	2,405lbs
Marijuana Plants	10,207	110	14,114	1,552	8,306	21,570
Hashish/Hashish Oil	31lbs	136lbs	-0-	56lbs		-0-
Heroin	-0-	-0-	-0-	-0-	2lbs	-0-

Amphetamine	-0-	-0-	5lbs	-0-	-0-	-0-
Cash	**$4,559,884**	**$1,305,131**	**$2,961,608**	**$453,722**	**$394,170**	**$143,897**
Vehicles	5	3	10	8	6	3
Boats	13	13	14	9	6	2
Aircraft	-0-	-0-	3	-0-	-0-	1
Arrest	1,926	1,896	1,596	1,612	1,628	492
Cases	1,469	1,516	1,193	1,351	1,314	395
Cases Prosecuted	1,209	1,289	1,019	1,193	1,164	362

Other Crimes

31. In addition to drug trafficking, homicides, robberies and house breaking are some of the more prevalent crimes. In 2005 there were fifty-two (52) homicides; while for 2006 there have been twenty-two (22) so far. Most of these murders are as a result of domestic violence, followed by drug related matters. There has also been an increase in the use of firearms in the commission of crimes. However counter measures by the Police have recently resulted in a decrease in the use of firearms but an increase in the use of knives. The firearms problem is affected by The Bahamas' geographical location to the United States' east coast. The Police have also taken steps to establish a DNA database to assist with profiles for serious crimes. Towards this end, citizens voluntarily gave DNA samples over a period of three days in May 2006.

Financing of Terrorism Situation

32. To date, there has been no evidence of terrorism or the financing of terrorism in The Bahamas. The Bahamas has enacted the Anti-Terrorism Act, 2004, which provides for the offences of financing of terrorism and terrorism. The International Obligations (Economic and Ancillary Measures) Act, 1993, has been used to designate Al Qaida and the Taliban (Al Qaida and Taliban Order, 2001) in accordance with UNSCR 1267.

1.3 Overview of the Financial Sector and DNFBPs

The Financial Sector

33. The Bahamas' financial sector comprises both onshore and offshore financial institutions, which includes banks and trust companies; insurance companies; securities firms and investment funds administrators; financial and corporate service providers, cooperatives, friendly societies and DNFBPs.

34. The Bahamas currently has six (6) financial sector regulators:

- The Central Bank of The Bahamas which licenses and supervises banks and trust companies;
- The Securities Commission of The Bahamas which regulates the securities and investment funds industry;
- The Compliance Commission which supervises financial sector businesses that are not otherwise subject to prudential supervision, (with the exception of persons offering life insurance as a business), for compliance with the AML/CFT obligations imposed on them by law;

- The Inspector of Financial and Corporate Service Providers[4] (IFCSP) who licenses and supervises company incorporation agents and other financial services providers (not otherwise regulated by the Central Bank) including lawyers and accountants in respect of financial corporate services provided by these groups;
- The Registrar of Insurance Companies who regulates and supervises the insurance industry and
- The Director of Societies who regulates credit unions and societies.

35. The Central Bank, Securities and Compliance Commissions fall within the portfolio of the Minister of Finance, and enjoy autonomy in the execution of their functions. The Registrar of Insurance Companies and the Inspector of Financial and Corporate Service Providers fall within the portfolios of the Minister of Finance and Minister responsible for Companies respectively, both having less autonomy from Government with the Registrar of Insurance being a Government Department. The Department of Cooperatives reports to the Minister of Local Government and Consumer Affairs. The FSRRC has as part of its mandate recommended a process for the transfer of the latter two agencies to the Ministry of Finance, which has portfolio responsibility for financial services regulation.

The Central Bank of The Bahamas

36. The Central Bank of the Bahamas (CBB) is constituted under legislation (currently the Central Bank of The Bahamas Act, Ch 351) designed to give it the powers and the financing and other resources to carry out the duties assigned to it under this legislation. Its obligations to conduct the supervision of banks and trust companies, and the powers it has to do this, are elaborated in the Banks and Trust Companies Regulation Act, 2000 (BTCRA).

37. Within the Central Bank, the Inspector of Banks & Trust Companies, who reports directly to the Governor, has responsibility for supervising and regulating banks and trust companies. The Inspector and his staff are required under the BTCRA to conduct on-site and off-site examinations of licensees to ensure their compliance with the provisions of the BTCRA and the Financial Transaction Reporting Act (FTRA). The CBB does not receive the licence fees paid by banks and trust companies (this goes directly to the Ministry of Finance) but the CBB's own finances enable it to fund resources for supervision. Current supervisory staff numbers are just over fifty (50). An active training and development programme for staff is provided. Considerable detail on the Central Bank's supervisory operations is published each year in the Central Bank's Annual Report.

38. The CBB meets frequently with its constituents and implements new measures in a consultative manner. The CBB is very closely involved in the modernization of the payment system having spearheaded the initial project, which began in 2004. The project, in which the Association of Clearing Banks (ACB) is also playing a pivotal role, is expected to reduce the level of cash payments in the system.

The Securities Commission (SC)

39. The Securities Commission of the Bahamas is a statutory corporation established pursuant

[4] The Registrar General, who is also Inspector FCSPs, reports to the Attorney General.

to The Securities Industry Act (SIA) which provides for the powers and functions of the SC. The mandate of the SC requires inter alia that the SC (i) formulates principles for regulation, (ii) maintain surveillance over industry participants; and (iii) create and promote conditions to ensure orderly growth of the investment fund, securities and capital markets. In addition the SC is mandated to provide advice to the Minister in relation to these markets. Specific provisions relating to the regulation of the investment funds industry are found in the Investment Funds Act, 2003. The SIA however, is expected to be repealed by 2007 and replaced with a more modern mandate for the securities regulation. A first draft of the new Act has already been completed and is being reviewed by the relevant authorities.

40. While there are no express provisions empowering the SC to conduct on-site examination in the SIA the SC has used the broad power provided to it in section 4(2) of the SIA as the basis of its authority to conduct on-site inspections of its licensees and registrants under the SIA. Section 49 of the IFA expressly authorizes the Commission to conduct on-site inspections of the fund industry participants. The SC was the first regulator to do onsite visits starting in 1999 and their target is to inspect their licensees on a two (2) to three (3) year cycle. Inspections are also being done on a risk-based approach. There is no specific fit and proper formula that is applied, generally the experience, qualifications and the manner of doing business is taken into consideration.

41. The SC will begin hosting an annual AML training session starting June 2006. Usually, staff is sent to AML/CFT training in the U.S.A. on an annual basis. While the SC has formally adopted the CBB's AML/CFT Guidelines so that it licensees and registrants are encouraged to abide by the Guidelines, there have been no rules made by the SC pertaining to any AML provisions of the Guidelines. The SC recognizes that this will have to be done in order to make the Guidelines enforceable. The Guidelines are considered explanatory tools in terms of how to best implement certain measures. The SC is of the view that rules that are based on the Guidelines will have the force of law when they are developed. The staff complement of the Securities Commission is forty-four (44).

42. Currently, there is regulatory overlap between the SC and the CBB as it pertains to banks that conduct security and investment business and where an overlap occurs, the licensee has to make separate prudential reports to the SC and CBB respectively. Based on Regulation 13 of the Securities Regulations, it has been decided that banks that conduct securities and investment business must be registered and licensed with the SC. Approximately 120 financial institutions fall under the umbrella of the SC.

The Compliance Commission (CC)

43. The Compliance Commission (CC) was established in December 2000 pursuant to the FTRA Part VI. The main functions of the CC are 'to maintain a general review of financial institutions for which it has supervisory responsibility, in relation to the conduct of financial transactions and to ensure compliance with the provisions of the FTRA; and to conduct annual on-site examinations (or whenever the CC deems such to be necessary) of its constituent financial institutions for the purpose of ensuring compliance with the provisions of the AML laws and regulations'. The CC can appoint an auditor at the expense of the financial institution, to conduct such examinations and report thereon to the CC. Should there be any issues found during the auditor's visit, the CC will then do a follow-up onsite visit to ensure that those issues are resolved.

The Inspector of Financial and Corporate Service Providers

44. The Inspector of Financial and Corporate Service Providers (IFCSP) of The Bahamas also operates in a dual capacity as the Registrar General. As Registrar General, he is responsible for the country's civil registry, including births and deaths, incorporations, business names, copyrights and trademarks. At present there are 115,000 registered IBCs, with only 42,000 of those being active i.e. with fees paid for 2006. The Registrar also registers Non-Profit Organisations (NPOs), for which there is a strict registration procedure that involves provision of a detailed list of the intended activities of the NPO. The Registrar reports to the Attorney General and the Minister of Finance signs the NPO's licence. The Inspector has the power to suspend and revoke licences of financial and corporate service providers. There has been one revocation thus far. The FIU has online access to the Registrar's records.

Regulatory Collaboration

- The Group of Financial Sector Regulators (GFSR)

45. The members of the GFSR are the CBB, SC, Registrar of Insurance, Inspector of FCSP (IFCSP), the Director of Societies[5] and the CC. The current chair is the SC and the group holds monthly meetings. The Office of the Attorney General and the FIU are usually invited to attend these meetings. The primary purpose of the GFSR is to facilitate information sharing between domestic and foreign financial service regulators and provide a forum at which cross cutting issues affecting the various regulators may be addressed. The Group issued a Handbook, "Information Sharing Arrangements in The Bahamas" in June 2005.

- Memorandum of Understanding

46. Overlapping responsibilities between the CBB, SC, CC, Registrar of Insurance and the IFCSP was a contributing factor to the signing of a Memorandum of Understanding in 2002. The MOU seeks to facilitate the harmonization of regulatory practices, thus minimizing supervisory overlap, and also to foster greater efficiency in the regulation and supervision of financial institutions, including harmonization of standards and practices for licensing and registration, and onsite examinations.

The Association of Clearing Banks (ACB)

47. The ACB consists of seven (7) member retail banks that meet monthly with a view to harmonizing systemic practices. At present the ACB's efforts are directed towards the modernization of the payment system in The Bahamas. Phase 1 commenced in 2004 with the real time gross settlements system and during 2005, average daily transactions (76) totalled $31.53 million. The current phase is concentrated on an automated clearing-house, which is well on the way, in conjunction with consultants from the World Bank. The target start date for cheque automation is June 30, 2006, and year-end for direct debit and credit payments. Five (5) members of the Association are in the process of implementing imaging

[5] The Director of Societies joined the GFSR in 2005

capability.

Designated Non-Financial Businesses and Professions (DNFBPs)

48. In The Bahamas, the regulated DNFBPs are casinos, lawyers, accountants, real estate agents and trust and company service providers. Dealers in precious metals and dealers in precious stones are not regulated. Although these regulated entities and services are categorized as DNFBPs according to the FATF definition, they are in fact designated as financial institutions in The Bahamas under the Financial Transactions Reporting Act (FTRA).

49. The Ministry of Tourism is responsible for The Gaming Board of The Bahamas which licenses and oversees casinos and also, has AML/CFT regulatory oversight of the gaming industry by virtue of the FTRA. The Gaming Board approves and issues licences for casino operator applicants and also casino employees. Casino Operators are investigated before they are granted a licence or operate a casino in The Bahamas. There are currently four (4) casinos operating in The Bahamas. Employees' licences are renewable on an annual basis and they are re-vetted at the time of renewal. There is a procedure for cancellation of an employee's licence should the need arise before the annual renewal. AML/CFT training is provided for all casino employees except bartenders and waiters. Each casino has a Money Laundering Reporting Officer (MLRO). Internet gambling is prohibited by law in The Bahamas.

50. The CC has AML oversight only and is not responsible for licensing the persons that they oversee. At present, the CC's constituents include oversees lawyers, accountants, cooperatives and real estate brokers in respect of prescribed financial intermediary activities. At present, two local Attorneys have started a legal challenge, to the validity and constitutionality of the full slate of financial laws passed in 2000 and in particular to onsite inspections of law firms. The Bahamas Bar Association joined the action as 'intervener' sometime after. The Attorney General's Office provided an undertaking that there would be neither on-site inspections of law firms nor the financial and corporate service activities of law firms until the matter has been settled in Court. During the Mission, however the Attorney General stated that the Government had as a matter of policy taken a decision to remove the undertaking with effect from June 25, 2006[6]. Additionally, the CC has AML oversight only for the life insurance industry, and the financial and cooperative service providers[7] that manage funds on behalf of clients.

51. Both the accounting and legal professions are overseen by professionally established bodies. In the case of the legal profession, oversight occurs by The Bahamas Bar Association (BBA), which also exercises disciplinary functions. In the case of the accounting profession, the Public Accountants Act and its Regulations govern the conduct of accountants. The Bahamas Institute of Chartered Accountants (BICA), in addition to exercising a licensing function also has disciplinary oversight of its members and can

[6] This undertaking was revoked on 11th August, 2006 by the Attorney General.

[7] Although both the IFSCP and the Registrar of Insurance are charged under their respective governing statutes with ensuring that the FTRA is being complied with, the CC has been given jurisdiction under Section 46 of the FTRA over the service providers in both these sectors. The IFCSP and the Registrar of Insurance permit the CC to execute the function and provide the relevant reports to them, in satisfaction of their respective obligations.

investigate and revoke a member's licence. Auditors who provide onsite AML/CFT reviews for the CC must be members of BICA and also registered with the CC. At present, BICA has a membership of 500.

The Bahamas Association of Compliance Officers (BACO)

52. The Bahamas Association of Compliance Officers (BACO) has a membership of approximately 200. It has individual membership as opposed to corporate and so there can be more than one person from a single financial institution. BACO has membership from the sectors of the financial services industry in accordance with the definition of financial services in the FTRA. The membership is generally comprised as follows: Banks and Trust Companies – 83%; Law Firms – 7%; Financial and Corporate Service Providers and Others – 6%; Insurance Companies – 3%; and Accounting Firms – 1%. Members are screened before being admitted, through a review of their academic history, professional background and whether there have been any disciplinary action taken against them in their professional capacity. BACO educates and trains compliance officers. Training and education is not restricted to AML matters and includes other areas of compliance such as risk and corporate governance. BACO produces a Newsletter for its Members that deals with issues that affect financial service providers in The Bahamas such as risk management and compliance standards.

The Bahamas Real Estate Association (BREA)

53. The real estate industry is governed by the Real Estate Brokers and Salesmen Act, its Code of Ethics and the relevant provisions of the FTRA. The BREA has 460 members who are licensed real estate brokers. An applicant must be a Bahamian or permanent resident of The Bahamas and take part in a week-long course at the end of which they are required to take and pass an examination. The person also has to be sponsored by a broker and work under that broker for a period of three (3) years before they are eligible to apply to be a broker, which involves an additional process. The licence issued by the Association is renewable annually and at that time involves the payment of the requisite fee unless complaints have been received about a particular broker. A Disciplinary Committee comprised of a Government representative and members of the Association's Board, has the authority to suspend or revoke licences. The CC meets with the Association at least once per year and is scheduled to do so in October 2006. The CC has done inspections of some of the Association's Members.

54. Under the POCA there is a general obligation on persons who come across money laundering or terrorist financing activities to file a report with the police. This obligation extends to all professions and employees and is not limited to financial institutions.

Association of International Banks & Trust Companies (AIBTC)

55. The mandate of the AIBTC, formed in 1976 is to:
    - Provide a channel of communication to Government, regulator and the media;
    - Promote high standards in the industry through codes of conduct;
    - Provide the banking industry with a forum to debate issues as they arise;
    - Sponsor new legislation and amendments;
    - Assist regulators with drafting and introducing new guidelines as necessary;
    - Sponsor education initiatives including provision of speakers;

- Serve as a contact point for visitors to the jurisdiction; and
- Support activities of other professional associations

56. The AIBTC issued a Code of Conduct in 2005, which was approved by the CBB. Included among the guiding principles are full compliance with applicable laws and regulations, development of a counter money laundering environment through KYC procedures, training and awareness, and maintaining confidentiality and privacy of customer relationships in accordance with the BTCRA.

57. Ongoing AIBTC projects relate to the Private Trust legislation and a compensation survey. General topics, which may warrant further discussion in The Bahamas, include the availability of expertise in the industry, client-created hedge funds and even criteria for equivalency status across jurisdictions. Quarterly and semi-annual meetings are held with the CBB and the SC, respectively. The AIBTC is associated with the Florida International Bankers Association (FIBA) and encourages its members to attend annual AML/CFT conferences hosted by FIBA.

The Bahamas Financial Services Board (BFSB)

58. The BFSB serves to promote greater awareness of The Bahamas as an international financial centre. It represents and promotes the development of all sectors in the industry and coordinates programmes to increase confidence and knowledge of the jurisdiction. The BFSB was formed in 1998 and has a membership of approximately 150. The Board comprises both private and public representatives, including the AIBTC, BACO, BBA, BICA, BREA, and the Society of Trust and Estate Practitioners (STEP). The CEO /Executive Director serves on the FSRRC.

59. Committees are in place with respect to e-business, financial sector reform and legislation. Some of the matters under discussion are registration of MLROs with the FIU, recognition internationally of The Bahamas' strides in strengthening its AML/CFT framework, addition of other jurisdictions on approved lists issued by the SC, and corporate governance. Annual seminars are held to sensitize members on current issues.

60. The BFSB has a good relationship with the regulators and government and consulted with the CBB on the 2005 AML/CFT Guidelines. It hosts annual retreats, which have been attended by Cabinet Ministers and regulatory authorities. AML/CFT matters have not arisen at these retreats since 2004 when the discussion surrounded the risk-based approach.

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

61. There are three primary pieces of legislation in The Bahamas governing the incorporation and establishment of legal persons: The Companies Act, the International Business Companies Act (IBCA) and the Foundations Act (FA). All permit the establishment of legal entities that enjoy a separate legal personality from their owners. The Companies Act (CA) deals with the incorporation and registration of limited liability companies and primarily operates within the domestic economy, though it does allow for registration of foreign companies. Under the IBCA IBCs although capable of being established by Bahamians are mainly used in the offshore sector. Foundation legislation was recently

introduced and supplements the financial services product offering of The Bahamas. The registry of all companies, IBCs and foundations is maintained at the Companies Registry.

62. In addition Bahamian law allows for exempted limited partnerships, segregated account companies and trusts. All of these vehicles are subject to regulation by one of the five (5) main financial sector regulators ensuring that AML/CFT standards are adhered to and complied with. Draft legislation[8] is under discussion that would provide a new legislative framework for private trusts. This would protect the necessary AML controls but exempt private trusts from unnecessarily burdensome regulation. The CBB would be responsible for monitoring the exemptions.

63. IBCs can only be incorporated by a licensed bank or trust company or a licensed financial and corporate service provider.

64. The Secretary of a foundation can only be a licensed bank or trust company or a licensed financial and corporate service provider. The same is the case for at least one trustee of a purpose trust.

65. IBCs must have a registered agent, which has to be either a licensed bank or trust company or a licensed financial and corporate service provider.

66. A company may only offer trust services in or from The Bahamas if it is licensed by the CBB.

67. Bearer shares are not permitted under the IBCA. Under the CA it is permissible for a company to issue bearer shares or stock for the payment of future dividends on shares or stock included in warrants. Domestic regulatory authorities have power to compel information on the beneficial owners of bearer shares and any transfer of shares to foreign ownership requires prior exchange control approval.

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68. As at September 2005, companies licensed to conduct bank and trust or trust business numbered 190, comprising: 84 public bank and trust companies; 19 public trust companies; 6 restricted bank and trust companies; 24 restricted trust companies and 57 nominee trust companies.

1.5 Overview of strategy to prevent money laundering and terrorist financing

69. The GFSR consisting of the six (6) financial services regulators meets monthly to coordinate policy regulation for the financial sector. Since introducing a risk-based approach to both regulation and KYC in 2003 the interaction assists the regulators in determining levels of associated risks in relation to respective sectors and monitoring trends that may have cross-sectoral implications.

70. Since 2002 the CC has made available to all of its constituents industry specific Codes of Practice. These Codes are in the final stages of updating to reflect guidance based on risk-assessment, and will be released in July 2006. In addition the CC conducts regular training sessions for its constituents, with regard to new trends being explored and the recommendation of practical solutions.

[8] The Private Trust Companies legislation came into force in December 2006

71. As the supervisory body responsible for the regulation of banks and trust companies, the CBB has pursued a strategy since 2000 with the following key points:

a) Enunciation of up-to-date Guidelines for its licensees on AML and terrorist financing issues. The latest (and comprehensive) Guidelines were published in October 2005.

b) A comprehensive programme of off-site and on-site supervision of licensees, on a risk-based approach to check on the safety and soundness of the licensees. Within this programme, on-site examinations began in 2000. Initially they concentrated solely on AML issues but from 2001 were broadened to full safety and soundness checks. Where weaknesses are found in any aspect of a licensee's operations, the CBB makes recommendations to the licensee for consequent remedial changes. The licensee is required to report on a regular basis (usually every 3 months) on its progress and the adequacy of the measures taken is checked at the next examination.

c) Regular anti-terrorist financing warnings to licensees, requiring them to respond to questions as to whether they hold or have held accounts for named terrorist suspects.

d) Public warnings (including a regularly updated page on the CBB's web-site) on unauthorised banks allegedly operating out of The Bahamas.

72. With regard to the securities and capital markets of The Bahamas the SC has (i) adopted the CBB AML/CFT Guidelines and is in the process of developing final guidelines in the form of rules which are enforceable; (ii) developed and implemented comprehensive on-site inspection programmes which require the review of the AML/CFT procedures instituted by its licensees and registrants; and (iii) issued press releases on its website dealing with warnings and informing its public about international developments involving licensees and registrants.

a. AML/CFT Strategies and Priorities

73. For each licensee, the nature of their business and the licensee's track record determine the CBB's assessment of the risk category into which they fall. High-risk institutions may be examined as frequently as annually. For each examination, past knowledge is used to determine priorities for examination, though in the majority of cases, an examination is full scope.

1.5a (i) What are the current control policies and objectives of your government for combating money laundering or terrorist financing? Describe which aspects of the anti-money laundering policies and /or programmes have the highest priority? Why?

74. The authorities consider that their programme is coherent and comprehensive. The focus in recent years has been on the effective implementation of that programme, with particular reference to (a) the on-site inspection and monitoring of the major parts of the financial sector in The Bahamas; (b) the more effective coordination among domestic financial regulators and (c) an increased emphasis on timely cooperation with overseas financial regulators.

75. With respect to (a), the CBB, the SC and the CC have implemented an extensive programme of examinations since 2000. Where weaknesses are found in a licensee's AML/CFT operations, recommendations are made for improvement and close monitoring follows to ensure that these are carried out.

76. The CBB AML/CFT Guidelines have been endorsed by the SC for their licensees. The CC is expected to publish updated versions of its Codes.[9]

77. With regard to (b), the GFSR was created in 2002. It meets monthly and commits an increasing body of resources to discussing issues of common concern (including AML/CFT) and so work together on cases of possible illegal operation or where, given the nature of the firm(s) involved, the issues may span more than one regulator. Increasingly, the domestic regulators have consulted one another before new licences are awarded and proposed changes in domestic legislation will remove the remaining barriers to full information-sharing between the regulators. The GFSR has also issued press notices on issues of common concern.

78. Turning to (c), the CBB (which currently has the widest powers of obtaining information) has taken a lead role in dealing with requests for cooperation from overseas financial regulators (the requests to date have been exclusively banking or securities related). In June 2005, the GFSR published and made available on the Internet a Handbook on 'Information Sharing in The Bahamas', to assist foreign authorities to direct their requests for help to the correct local body and to frame the requests in conformity with local law.

79. The regulators and other relevant parts of Government (such as the FIU) continue with high levels of AML/CFT training.

80. In one area – Money Value Transfer businesses (MVTs) – the authorities have recognized the need to review current legislation. The CBB has been working on the implications of this and the legislation that might be needed. The current main players in this area are banks, which are already subject to the full range of AML/CFT monitoring. Two (2) stand-alone (non-bank) entities have been licensed and monitored under the FCSP regime. One of them had its licence revoked and there is currently only one (1) stand-alone licensed MVT operating in the jurisdiction. The need for additional legislation is being actively considered.

1.5a (ii) Have you measured the effectiveness of your policies and programmes? If so, describe how this was done and what the results are

81. The effectiveness of the CBB's AML/CFT-related policies cannot easily be measured. However, it is possible to say that, over time, the number of examinations that have concluded that the licensee is "high-risk" has fallen and that the number and importance of specific AML-related recommendations has fallen significantly. It is also the case that nearly all non-domestic banks have some time ago completed the verification of 100% of their client accounts in accordance with CBB requirements. Domestic banks – with far more accounts per licensee to handle - have been given until the end of June 2006 to reach 100% compliance and the numbers of uncompleted checks is falling rapidly. The banks (those met by the Evaluation Team) are aware of this deadline and continue to work

[9] The Compliance Commission published an updated version of its Codes in July 2006.

assiduously towards meeting it.

82. Similar difficulty is met in assessing the effectiveness of AML/CFT policies applied by other regulators in The Bahamas. In the case of AML/CFT policies of the SC it is noted that the examinations of licensees and registrants of the SC have over the relevant period established that AML-related recommendations have not been significant. As regards, the requirement to complete the verification of 100% of their client accounts in accordance with the provisions of the FTRA, the SC is in the process of completing a survey of the industry to establish the level of compliance.

1.5 a (iii) Describe any new initiatives that your government is planning for combating money laundering or terrorist financing.

83. The Government of The Bahamas has requested the CBB to assume regulatory oversight, primarily for AML/CFT purposes, of non-bank money transmission businesses. These institutions are currently licensed and regulated by the IFCSP and are subject to AML supervision by the CC. The CBB has prepared draft legislation[10] to enable it to supervise these institutions and conduct on-site examinations to assess their AML/CFT programmes.

84. Additionally, the FSRRC, which comprises the Minister of State for Finance, the previous Minister of Finance, the Heads of Regulatory bodies, the Director of Economic Planning, and senior personnel from the Attorney General's Office is tasked with reviewing and streamlining the whole system of financial regulation. This includes amendments to relevant legislation to provide for such matters as the effective cooperation and sharing of information between the regulatory agencies and also with cross border agencies. These amendments have already been approved by Cabinet and are anticipated to be presented before Parliament in its new term. The Government of The Bahamas is committed to this process of streamlining and the work and composition of the FSRRC reflects the Government's policy of consultation between the private and public sectors.

85. The Government of The Bahamas is also aware of the need for specialized Courts and attempts will be made in the future to attract Judges to The Bahamas that would work in these Courts. In this regard, a judicial complex is to be built, which will house all the Courts and facilitate the upgrading of the judiciary by way of additional technical hardware and software so as to develop an integrated justice system that will include a focus on AML/CFT issues.

86. The Attorney General's Office has also initiated a 'Swift Justice'[11] pilot project in which the AG's Office is committed to a policy of 'swiftly caught, swiftly tried, swiftly punished'. Towards this end, the approach to cases involves collaboration between the institutions and agencies within the criminal justice system and the involvement of victims and their families. Specifically, this requires a team effort between the police, the probation department, the courts, the prisons and the AG's Office to work together in a seamless

[10] The Central Bank of The Bahamas has prepared and provided to the Attorney General's Office draft legislation on MVTs for review. This draft, together with draft consultation papers explaining the legislation has also been submitted to the Ministry of Finance for review. The CBB is awaiting the Government's agreement to these drafts.

[11] The information was taken from a document on the 'Swift Justice' Pilot Project that was provided by the Office of the Attorney General.

fashion. In order to facilitate the level of cooperation that is required for the Programme to work, representatives from each of the participating agencies meet regularly with the Director of Public Prosecutions (DPP) and the Attorney General. 'The 'swift justice' programme is designed to strengthen transparency and accountability'. The ultimate goal of the Programme is to have a matter that would on the average take six (6) years to proceed from charging to trial in the Supreme Court to move through the system in three (3) years in the first instance and in time, even less. The Swift Justice system intends to use a Voluntary Bill of Indictment Process to replace the lengthy Preliminary Inquiry process. In order to further this process along, during the month of August 2006, when some Judges are taking their vacation, comprehensive training sessions will be scheduled with the Central Detective Unit on the Voluntary Bill of Indictment Process. The Attorney General also noted that 'in the area of Anti-Money Laundering, Anti-Terrorism activities targeted by the Drug Enforcement Unit and the Financial Intelligence Unit are very good relative to their standards of the preparation of files, related exhibits and financial evidence. The Commercial Crime Unit (CCU) is also very good in their presentation of commercial crime cases'.

87. It has also been asserted that as a matter of policy, the Government is reviewing the number of Judges devoted to crime and also considering increasing the complement of attorneys within the criminal side of the Chambers. The DPP's Department is also committed to providing training to all of the prosecutors generally and also specifically in the area of AML/CFT and as mutual evaluation examiners for the CFATF.

88. At the beginning of each year, the Chief Justice provides The Bahamas Judicial Training Days. For 2006, these days are as follows: February 28th, May 26th, September 29th, and December 1st. The training contains AML/CFT issues among other things. In the Attorney General's Office, AML/CFT training has been received by six (6) persons, including the DPP, Chief Counsel and Senior Counsel. Training on the 2004 Methodology was done by one Senior Counsel and one Counsel.

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

The Ministry of Finance

89. The Ministry of Finance is the primary Ministry with responsibility for the regulation of the financial services industry and has within its portfolio relations with the CBB, the SC, the CC and Registrar of Insurance. The Ministry also has portfolio responsibility for relations with the multilateral and regional agencies such as the International Monetary Fund (IMF), the World Bank (WB), the Organisation for Economic Cooperation and Development (OECD), the Inter-American Development Bank (IADB) and the Caribbean Development Bank (CDB). The Ministry in consultation with the GFSR will recommend adjustments to the regulatory framework designed to address any potential vulnerabilities in the AML/CFT framework. The Ministry also coordinates the IMF's financial sector assessment exercises for The Bahamas.

90. As at the date of the Mission, a proposal was before the Cabinet to amend the FCSPA's definition of "Minister" from the "Minister with responsibility for companies" to "Minister with responsibility for the administration of the FCSPA".

91. The Treasurer who is the custodian for the Confiscated Assets Fund also falls under the purview of the Ministry of Finance. The Royal Bahamas Police Force however, has over the years and pursuant to Section 52(3) of the POCA applied for funds for the payment of informants, as well as drug eradication and for the maintenance of seized assets.

92. The Customs Department also falls under the Ministry of Finance. The Department has 568 employees of whom 460 are uniformed. The size of the workforce is due to the thirty (30) ports that require monitoring in The Bahamas. The primary goal of the Customs Department is the collection of revenue for The Bahamas. All goods entering The Bahamas are under the control of Customs. Joint exercises are undertaken with the Police and the Defence Force with regard to checking vessels throughout the chain of islands for the purpose of drug interdiction and smuggling of goods or migrants. There are also inland joint exercises with these same Agencies.

93. Since February 2006, the Registrar of Insurance falls under the Ministry of Finance. The Registrar is responsible for the regulation of the insurance industry in The Bahamas. The Insurance Act, 1969, (as amended 1972) and the External Insurance Act, 1983 are the legislative provisions that control the sector. A new Insurance Act was passed in June of 2005; however it is yet to be put into force by the Government. The new Act is expected to 'bring the domestic insurance industry operations into the 21st Century' and represents the Caribbean Model Bill. At present, the Minister of Finance makes all decisions with regard to the Insurance industry. Under the new Act, an Insurance Commission would be established with similar powers to the CBB and the SC.

The Ministry of Tourism

94. As stated earlier, the Gaming Board, which has the responsibility for licensing Casino Operators and casino employees, is under the purview of the Minister of Tourism. The Gaming Industry is a major tourist attraction with over ninety percent (90%) of patrons coming from the United States. Residents of The Bahamas are not allowed to gamble in casinos in The Bahamas. The four (4) casinos in The Bahamas have gross receipts of $199 – $200 million annually. Casinos request source of funds information from their patrons. Audits conducted on the casinos to date have not revealed any breaches of the AML/CFT measures that are in place.

Attorney General's Ministerial Portfolio

95. The Financial Intelligence Unit (FIU), the International Legal Cooperation Unit (ILCU), the Department of the Director of Public Prosecutions and the Registrar General all fall within the purview of the Attorney General. The FIU pursuant to the Financial Intelligence Unit Act (FIUA) is responsible for the receipt and analysis of suspicious transaction reports as they relate to money laundering. Where money laundering is suspected, the FIU forwards or disseminates the STRs to the T&F/MLIS of the Drug Enforcement Unit for investigation and prosecution in conjunction with the AG's Office. The FIUA permits the Minister responsible for the administration of the Act to give policy directions to the FIU. The FIU has produced Guidance Notes for the relevant financial sectors as to STRs and other AML related matters. The FIU intends to review the current Guidelines with a view to re-drafting and re-issuing them by mid 2007. The FIU maintains its own bank accounts to avoid any conflicts with central government bureaucracy. The IFSCP also falls within the A.G.'s portfolio.

96. The ILCU provides assistance to countries that make requests under Mutual Legal Assistance provisions. The ILCU uses the POCA, the POCA Designated Countries and Territories Order (POCO), the Criminal Justice (International Cooperation) Act (CJ(IC) A), the Criminal Justice (International Cooperation) Order (CJ(IC) O), and the International Obligations (Economic and Ancillary Measures) Act (IO (EAM) A). With regard to the latter the ILCU works closely with the Ministry of Foreign Affairs. To date, the ILCU has not had any requests for the freezing of terrorist assets. The Criminal Justice (International Cooperation) Act (CJ(IC) A), and the Criminal Justice (International Cooperation) Order (CJ(IC) O) has no dual criminality requirements.

97. The Department of the Director of Public Prosecutions represents the criminal arm of the Office of the Attorney General's Chambers. It is therefore responsible for the prosecution of money laundering and terrorist/terrorist financing matters. The overall strength of the DPP's Department is twenty-five (25). A small sub-unit consisting of five attorneys has been created to deal specifically with restraint and confiscation matters. In addition to receiving AML/CFT training from the CFATF, the Commonwealth Secretariat and the US Department of Justice, the DPP's Department also provides training for the police with regard to the taking of statements and has also assisted police prosecutors with matters in the magistrate's courts.

Ministry of Local Government and Consumer Affairs

98. Subsequent to February 2006, responsibility for Cooperative Societies fell under this Ministry. Prior to this, the Ministry of Agriculture was the responsible Ministry. The Director of Cooperative Societies licences and regulates cooperative societies, including credit unions and Societies.

The Ministry of National Security

99. The Royal Bahamas Police Force and specifically the Drug Enforcement Unit (DEU), which comprises the T&F/MLIS and the Commercial Crime Unit (CCU), and the Royal Bahamas Defence Force, fall under the Ministry of National Security.

100. The TF/MLIS as stated earlier is responsible for the receipt of STRs from the FIU for investigation and prosecution where necessary with the assistance and collaboration of the Attorney General's Office. The CCU, which is the other arm of the DEU, receives and investigates STRs from the FIU that pertain to fraud.

101. Drug interdiction and border security are the primary functions of the Royal Bahamas Police Force and the Customs Department assisted by the Royal Bahamas Defence Force.

102. The Royal Bahamas Defence Force which has an establishment of seventy-six (76) officers and one thousand and five (1,005) enlisted personnel is responsible for: -

- ♣ The defence of The Bahamas
- ♣ The protection of territorial integrity
- ♣ The patrol of the waters of The Bahamas
- ♣ The provision of general assistance in times of disaster
- ♣ The maintenance of order in The Bahamas in conjunction with law

enforcement authorities

- ♣ Any other such duties as determined by the Security Council.

103. The Royal Bahamas Defence Force operates a fixed wing aircraft with a maximum flight time of between seven and eight hours. This aircraft is used mainly for maritime surveillance and intelligence gathering. The Defence Force also has a marine capability and provides assistance to both the Police and Customs in this area. The Defence Force conducts drug interdiction patrols of the territorial waters of The Bahamas and also has a small team that works with the Royal Bahamas Police Force.

104. Joint operations are conducted with the Police and Customs and the Defence Force has a team involved in OPBAT.

The Judiciary

105. The Judicial system comprises Magistrates' Courts, the Supreme Court, the Court of Appeals. The final Appeal court is the Privy Council. As stated above, a judicial complex is being built to house all the Courts and to have a fully integrated judicial system in terms of information technology.

106. The appellate jurisdiction is vested in the first instance in the Court of Appeal, which hears appeals from the High Court, and the Magistrate's Court. In criminal matters, a further right of appeal lies in the Judicial Committee of the Privy Council.

107. Within the last five years, the criminal justice sector generally, and the administration of justice in particular, have seen the introduction of laws designed to aid or strengthen the system itself. One example is the Justice Protection Act 2006 (JPA), which was meant to address the intimidation and elimination of witnesses to pending cases in order to frustrate their successful prosecution. This is particularly so in criminal cases involving "gang-related" murders and illicit narcotics trafficking. The Act provides for the establishment of a programme for the protection of certain witnesses and other persons (e.g. jurors, judicial and law enforcement personnel and their families) and for matters incidental thereto. However, it is still necessary to pass regulations to govern the implementation of the legislation.

1.5 c. Overview of Policies and Procedures

108. The FTRA and the FTRR both adopt a risk-based approach as recommended by both the Basel Committee and the FATF itself. Thus the FTRR gives financial institutions the discretion to ascertain the appropriate level of information and documentation required to verify customer identity, based on the nature and degree of risk inherent in the customer relationship.

109. The Central Bank has issued guidance, which covers the risk-based approach. The Licensee's Board of Directors must approve the AML/CFT framework. It must be appropriate for the type of products offered by the Licensees and be capable of assessing the level of potential risk that each client relationship poses to the Licensee. A fuller description of the desired features of the framework and examples of the risk criteria that should be considered are given in paragraph 25-28 of the Central Bank's AML/CFT Guidelines. The Compliance Commission will incorporate the risk-based approach in the

up-dated Codes of Practice.

110. In establishing what is exactly being done by the CBB's licensees, CBB Examiners assess the adequacy of a licensee's (i) account/relationship acceptance policy and procedures, (ii) client risk rating framework and (iii) the account activity monitoring policy and procedure.

111. Regarding the risk rating framework and the account activity monitoring requirements, the CBB Examiners accept that there is no singly 'correct approach' but look to see that the approach adopted is:

a) Sensibly constructed given the nature of the business and products of the licensees;

b) Appropriately implemented and applied by the licensees in an objective and consistent fashion to each client relationship;

c) Produces a realistic pattern of risk rating (so that to take a relatively trivial example, not all clients qualify as 'low risk');

d) Providing a risk related periodic relationship review process with high risk at a higher frequency, say quarterly, and

e) Ensuring an ongoing account activity monitoring process, again with high risk client relationships being monitored continually and lower risk at specific intervals.

1.5 d. Progress since the last Mutual Evaluation or Assessment

112. The following measures that were taken were based on recommendations made in the Second Round CFATF Mutual Evaluation of The Bahamas.

113. The Bahamas' FIU was established on December 24, 2000 by an Act of Parliament, The Financial Intelligence Unit Act, 2000. The FIU is an administrative agency responsible for receiving analyzing, obtaining and disseminating information, which relates to or may relate to the proceeds of offences under the POCA and the ATA.

114. The FIU was granted 'Approved Authority' status on 24th August 2005. The FIU currently employs a total of fifteen (15) persons inclusive of a Director, who serves as the Chief Executive Officer, a Counsel and Attorney-at-Law, a Public Accountant, Police Officers, Analysts and other necessary personnel. The budgeted amounts for the FIU have decreased over the past three years from a high in 2003 of $830,808 to $656,738 and $664,000 in 2004 and 2005 respectively.

115. All financial sector supervisory bodies now have comprehensive on-site examination programmes. For example, the CC, which has supervisory responsibility for all service providers except those in the banking, securities and gaming sectors has a programme of annual on-site examinations operating since 2002.

116. In 2003, the FTRR was amended to introduce a risk-based approach to KYC, and remove earlier overly prescriptive requirements.

Legal Recommendations update

117. Training has been a major priority of all agencies, with a number of officers gaining international certification in the area of AML and CFT. Local and international training and certification are a common component of the enhancement of human resources.

Collaborative training has taken place with the OAS, CFATF, US Embassy, amongst others. There has been no policy decision taken as yet with regard to bringing into force the provision to have the Department of the Director of Public Prosecutions established as a separate independent entity.

118. With regard to the recommendation that the legislation on seizure of bulk cash should be amended to allow for a requirement of an explanation by the accused in such circumstances, the DPP does not agree that this is a substantive provision, nor a requirement of the FATF 40 Recommendations. With regard to the recommendation that 'ongoing efforts to complete Asset Sharing Agreements especially with Canada should be concluded to satisfy 'other disposition' within the legislation', The Bahamas believes that ad hoc sharing programmes exist and that no international partner of theirs has raised this as an issue and that it is more of a concern for them. Finally, that the Criminal Justice (International Cooperation) Act and the Dangerous Drugs Act spell out the specific Vienna Convention provisions.

Financial Recommendations update

119. The CC has a full programme of on-site examinations for the insurance industry under its original jurisdiction. (FTRA, Section 3(1) (j) (iv)). These are part of the collaborative work of the GFSR, which has sought to coordinate activities that may otherwise overlap in respect of certain financial institutions.

120. The CBB currently requires that all AML procedures be applied to branches and majority owned subsidiaries located abroad. In the case of the CC, it has only recently been exposed to the phenomenon since two (2) law firms have opened branch offices in the United Kingdom. In consultation with the GFSR the CC will seek to implement guidelines requiring such branches to conform and be subject to on-site examinations. The CBB, the Securities Commission Board and the CC require their licensees'/registrants' AML programmes include adequate screening procedures to ensure high standards when hiring employees and an audit function to test the system in their respective guidelines/codes of practice.

121. With regard to measures to monitor the cross-border flow of cash, the present mechanisms provide for charges to be brought under the Customs Management Act (CMA), the Penal Code and the Exchange Control Regulations (ECR).

122. The FTRA has licensed banks and trust companies as 'designated introducers'. This means that another financial institution can rely on the verification carried out by a bank on a potential customer to satisfy its primary obligations to verify. Lawyers never have been designated as eligible introducers. Further, the real estate industry has largely indicated that as a result of the requirements of the FTRA, they have stopped accepting funds that do not represent commissions due to them and have directed their customers to place deposits with lawyers instead. The threshold for verification in the case of cash transactions was raised from $10,000 to $15,000 in 2003. The newly introduced risk-based KYC regime has significantly reduced the extent of the obligations to verify pensioners, as they are now designated as 'low-risk' and the basic information necessary to verify these customers are generally already on file.

123. Codes of Practice were completed for the following industries: Legal, Accounting, Real Estate Brokers, Real Estate Developers and Financial Corporate Service Providers. The

industry specific Codes were published in November 2002. They are currently being updated to accommodate the implementation of the Anti-Terrorism Act, 2004 (ATA) and the amendments to the FTRA and accompanying regulations that introduced risk-based KYC.

124. The GFSR allows the coordination of activities between regulators. The GFSR is exploring the possibility of consolidating the various databases and other forms of shared arrangements to reduce regulatory fatigue. The Government has appointed a FSRRC that has a mandate to examine options for consolidating the present regulatory structure. Since 2002, a new suite of financial services and products has been introduced such as foundations, non-charitable purpose trusts, smart funds and segregated accounts companies. Legislation to allow for private trusts companies is due to be introduced within the next few months.

125. All regulators have regular and consistent interaction with their respective constituencies and a range of training sessions, workshops and seminars that are usually hosted by the FIU. In addition, the CC meets at the beginning of each year with the Bar Association, BICA, BREA, Department of Cooperatives and the Bahamas Cooperative Credit League, Registrar of Insurance and the IFSCP. The purpose of these sessions is to conduct a post mortem of the sector's previous year. When significant changes are proposed, regulators hold comprehensive implementation issues. As indicated earlier for example the CC convenes a number of training sessions during the year to familiarize its constituents and external examiners (accountants) with new trends and typologies. For the external examiners this is incorporated into the BICA Annual Continuing Education Certification Programme.

Law Enforcement Recommendations update

126. The National Drug Action Plan sets a five (5) year plan of overall strategy dealing with drug trafficking, use, interdiction etc. The establishment of a National Joint headquarters is under consideration. With regard to Customs officers, there has been significant improvement in staff re-sourcing, which has released officers to concentrate on their core responsibilities. There is currently an assessment of the Customs operations underway by the World Customs Organisation (WCO), which will assist in identifying resource needs. High-tech scanning equipment for containers capable of scanning a forty (40) foot container in three (3) minutes was purchased and installed at a cost of $5M. An ad hoc inter-agency Task Force was convened to complete the FATF's trade-based money laundering questionnaire. The Task Force proposes to recommend to the policy level that it be converted to a permanent grouping that will also provide an on-going programme of AML training for Customs Officers.

127. The FIU and the Regulators have a comprehensive and in-depth strategy for monitoring AML/CFT trends through the monthly meetings of the "Task Force". Through the GFSR, the FIU keeps Regulators informed of developments to effectively counter new and emerging trends. The FIU's involvement in Egmont, FATF, CFATF, GAFISUD, UNODC, IMF and OAS workshops, seminars and training programmes provide invaluable insights into emerging trends and typologies. In addition the FIU conducts industry training sessions.

Legal System and Related Institutional Measures

2. Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 & 2 & 32)

2.1.1 Description and Analysis

Recommendation 1

128. The Bahamas was the first country to ratify the 1988 UN Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances on January 30th 1989. The Bahamas has signed the UN Convention against Transnational Organised Crime but has not yet ratified it. Money laundering is criminalized in The Bahamas under Part V, Sections 40, 41, 42 & 43 of the POCA[12].

129. Section V of the POCA creates four main money laundering offences, which include the transfer and conversion of property with the intent to conceal or disguise the property, which represents the accused's proceeds of criminal conduct. Provision is also made for the offence of self laundering. Persons who have reasonable grounds to suspect that property represents another person's proceeds of criminal conduct and 'uses, transfers, sends, delivers, dispose etc the property with the intent to conceal or disguise the property are also penalized. Concealing or disguising property includes concealing or disguising the nature, source, location, disposition, movement, ownership or any rights associated with the property.

130. The offence of 'assisting another to conceal proceeds of criminal conduct,' is also covered. Protection is provided for persons who disclose in good faith to a police officer a suspicion or belief that funds or property are derived from or were used in connection with criminal conduct.

131. The acquisition, possession or use of the proceeds of crime, knowing, suspecting or having reasonable grounds to suspect that any property directly or indirectly represents another person's proceeds of criminal conduct is also an offence.

132. The provisions of section 42(2) of the POCA, prima facie, would seem to allow a person accused of acquiring using or possessing property knowing or having a reasonable grounds for suspecting that the property is or represents proceeds of crime, a defence if he acquired, used or had possession for adequate consideration. The representations of the DPP's Department that the provisions were intended to apply to persons not having the knowledge or suspicion referred to in subsection (1) were noted. However, in the absence of a judicial interpretation (by way of a decided case) as to the effect of this provision, the provision has to be given its literal interpretation and effect, which is that an accused person may escape conviction for knowingly using the proceeds of crime if he can prove that he obtained same for a fair consideration. The effect of this section is that compliance with the criminalization requirements of the Vienna and Palermo Convention are not fully met.

[12] Part V of the POCA is attached at Annex 3

133. The DDA Part II establishes offences for cultivation; trade in importation of coca leaves, Indian hemp and derivative resins and preparations. Part III creates offences with regards to prepared opium, including dealing and possession. PART IV deals with offences relating to the importation, exportation and manufacturing of cocaine and morphine. Section 11 of this Act establishes a listing of drugs to which the prohibitions relating to this Part applies. The Act also contains several offences relating to supply of, importation and exportation, cultivation of dangerous drugs (which refers to all drugs named in the Act). With regard to Art. 3(1) (c)(ii) of the Vienna Convention, it was noted that except for a derivative of lysergic acid (lysergic acid diethylamide), the Examiners were not able to reconcile the listing of precursor chemicals[13] contained in section 11 of Dangerous Drugs Act with Table 1 of the Vienna Convention.

134. Money laundering extends to all property that represents the proceeds of criminal conduct. The definition of "*proceeds of criminal conduct*" under section 2 of the POCA refers to the benefit received from criminal conduct and includes a reference to *"...any property, which in whole or in part directly or indirectly represents the proceeds of criminal conduct"*. Property is widely defined in the POCA to mean money and all other property, both moveable and immovable, including things in action and other intangible or incorporeal property.

135. The POCA also establishes a legal obligation for persons to make a report to the FIU or a police officer where they know, suspect or have reasonable grounds to suspect that another person is engaged in money laundering. The reporting requirements for financial institutions are contained in the FTRA (Discussed at section 2.5 of the Report). Section 44 establishes the offence of tipping off.

136. Under Bahamian law, predicate offences for money laundering are captured under the term "*Criminal conduct*". Criminal conduct is defined as drug-trafficking or any relevant offence. A relevant offence includes, any other offence (except a drug-trafficking offence) triable on information in The Bahamas whether committed in The Bahamas or elsewhere, an offence under the Prevention of Bribery Act, an offence under the ATA, and money laundering offences under sections 40, 41, 42 and 43 of the POCA. Drug Trafficking is defined in section 3 of the POCA. Under the Dangerous Drugs Act[14], such offences include money laundering relating to drug trafficking, as well as aiding, abetting, counselling, or procuring the commission of offences as well as the smuggling of dangerous drugs under the Customs Management Act sections 115 and 116.

137. The Examiners noted that offences triable on information are the same as indictable offences in the Bahamian jurisdiction, insofar as the Penal Code indicates that indictable offences are those that are triable on information. Such offences are considered to be serious offences insofar as Article 32 of the Constitution of The Commonwealth of the Bahamas provides that persons charged with an offence triable on information in the

[13] In respect of the precursor chemical issue, there is legislation before the Upper Chamber of Parliament dealing with the other listings of precursor chemicals, but the Narcotic drugs and psychotropic substances are all prohibited.

[14] Section 22(3) of the DDA 2000 provides that the intent to supply to another or others applies 'irrespective of whether that other or others be within The Bahamas or elsewhere.'

Supreme Court have a constitutional right to trial by jury.

138. The law of The Bahamas contains equivalent offences[15] to the FATF Designated Category of offences as follows:

OFFENCE	BAHAMIAN EQUIVALENT
Terrorism and Terrorism Financing	The Anti-Terrorism Act sections 3, 9, 10 and 11
Sexual exploitation including sexual exploitation of children	Sexual Offences & Domestic Violence Act
Illicit Trafficking in Narcotic Drugs and Psychotropic substances	Dangerous Drugs act sections 22 and 28 Also customs act
Illicit Arms Trafficking	Firearms Act section 22 and 28
Illicit trafficking in stolen and other goods	Penal Code sections 62, 63 and 64, Evidence Act sections 8,9
Corruption and Bribery	Prevention of Bribery Act s. 3, 4, 5,6,7,8, and 9, Public Disclosure Act, section 13.
Fraud	Penal Code section 348,349,350, 351, 352
Counterfeiting currency	Penal Code sections 371 and 379
Counterfeiting and Piracy of products	Copyright Act section 40, Trademarks Act
Insider trading, market manipulation	Companies Act section 106, 107, 108 and 109
Environmental crime	Merchant Shipping (Oil Pollution Act) section 5.
Murder, Grievous bodily injury	Penal Code sections 271 and 291
Kidnapping, illegal restraint and hostage taking	Penal Code sections 286 and 287
Robbery or theft	Penal Code section 339
Smuggling	Immigration Act section 47, Penal Code section 237, Customs Management Act
Extortion	Penal Code section 346
Forgery	Penal Code sections 366, 367, 368 and 369
Piracy	Protection of Aviation section 24

There appears to be no direct equivalent offence with regard to human trafficking or participation in an organized criminal group and racketeering. It should be noted however that in practice these offences would in the majority of cases be dealt with under other offences in the Bahamian law that have common elements. In addition the Examiners noted that of the provisions indicated several would not qualify under the Proceeds of Crimes Act as predicate offences as they are not triable on information. These include the offences relating to the Firearms Act, the Copyright Act, the Trademark Act, the Companies Act, the Immigration Act and some of the provisions of the Penal Code (sections 237). Consequently, The Bahamas' listing of predicate offences falls short of the FATF Listing in the key areas of arms trafficking, insider trading and market manipulation, smuggling, counterfeiting and piracy of products. It is also not clear from the Penal Code whether the

[15] The Bahamas employ a combined approach which includes a "threshold approach" insofar as the POCA applies to all serious crimes, which in the case of the Bahamas are triable on information.

offences for trafficking in stolen goods are triable on information or whether they are summary offences.

139. The offence of money laundering extends to any person who commits that offence, including a person who also committed the predicate offence. The law does not require that a person must be convicted of a predicate offence to establish that the related assets were proceeds of criminal conduct.

140. The predicate offences established in the Schedule to the POCA specifically include certain crimes which, if committed outside The Bahamas, would constitute a predicate criminal offence had it occurred in The Bahamas. In practice, the Bahamian authorities would review the relevant section of the POCA, as well as the relevant sections of the domestic Bahamian legislation, to determine if the conduct would constitute an offence, if committed in The Bahamas.

141. Pursuant to Section 40(1) of the POCA, the offence of money laundering does apply to persons who commit the predicate offence.

142. Section 41(1) deals with entering into or otherwise being involved in arrangements which facilitate proceeds of crime being retained or controlled by or on behalf of a person who has committed criminal conduct. The subsection also criminalizes arrangements, which are used to ensure, that funds are placed at the disposal of the person who committed the criminal conduct or which are used to acquire property for the benefit of such persons. These provisions would operate to cover persons engaged in facilitating, aiding and abetting and conspiring to commit money laundering.

143. In addition the Penal Code Section 89 deals with persons whom the law will consider to be guilty of an offence of abetting. These include any person who, whether directly or indirectly, instigates, commands, counsels, procures, solicits in any manner, purposely aids, facilitates, encourages or promotes, whether by his presence or otherwise. Section 87 of the Code also provides that a person may be guilty of abetting notwithstanding the fact that a different offence was actually committed. In addition the Penal Code Section 83 also prescribes the ancillary offence of attempt.

144. As an Additional Element to Recommendation 1, under the POCA, the predicate offences (Drug Trafficking and the offences listed in the Schedule of the POCA) are referable to acts that constitute offences under Bahamian law, wherever they occur. There is no requirement that the acts should constitute an offence in the actual country where the act was committed.

Recommendation 2

145. The money laundering offences under the POCA all apply to natural persons. The POCA does permit the intentional element of the offence of money laundering to be inferred from objective factual circumstances. Sections 40(2), 41(1) and 42(1) of the POCA require that the person 'know, suspect or have reasonable grounds to suspect'. The Authorities also advise that the courts do take objective factual circumstances into account in coming to a finding on the mental state of a Defendant.

146. Criminal liability for money laundering extends to legal persons pursuant to section 54 of

the POCA, which states that a "body corporate" may also be guilty of an offence under the Act and the offence was committed with the consent or connivance of any director, manager, secretary etc. of the body corporate. Corporations will be punished under the POCA by a fine as set out in section 45(1).

147. The Interpretation and General Clauses Act also defines the term "*person"* at section 23 of that Act to mean any public body and any body of persons, corporate and unincorporated and that this definition will apply notwithstanding that the word *"person*" occurs in any provision creating or relating to an offence or for the recovery of any fine or compensation.

148. Criminal liability does not preclude other forms of sanctions for legal persons. For example, Banks and Trust Companies may have their licence revoked where they engage in activities that are contrary to the interests of depositors. Other financial institutions and DNFBPs are also subject to the revocation of licences or other forms of regulatory sanctions if they engage in money laundering. With respect to administrative and civil sanctions, section 6 of the IBCA gives the Registrar the power to strike off a company that was incorporated for any criminal purposes.

149. Individuals found guilty of committing money laundering under sections 40-42 of the POCA can be fined up to $100,000 or imprisoned for up to five (5) years or both (summary conviction) or up to twenty (20) years and/or an unlimited fine (conviction on information). Individuals found guilty of committing the offences of failure to disclose and tipping off under sections 43- 44 can be fined up to $50,000 or imprisoned up to 3 years (summary conviction) or up to 10 years and/or an unlimited fine (conviction on information). Section 45(3) allows confiscation of assets to the Crown. Corporations, when guilty of the offence of money laundering, "shall be liable to be proceeded against and punished accordingly."

Recommendation 32 (money laundering investigation/prosecution data)

150. The T&F/MLIS of the Drug Enforcement Unit, Royal Bahamas Police Force is the primary agency in The Bahamas with the responsibility for investigating STRs, which relate to criminal conduct as defined in the POCA, inclusive of money laundering.

151. At the end of July 2002 the T&F/MLIS had received thirty-eight (38) STRs for that year. For 2002 the Section with the assistance of the Office of the Attorney General had obtained two (2) restraint orders, one local and the other on behalf of a foreign jurisdiction.

152. In 2003 sixty (60) STRs were received with restraint orders being obtained for six (6) of the matters. In 2004 the T&F/MLIS received a total of fifty-four (54) STRs four of which resulted in restraint orders. All of the assets restrained for 2004 were on behalf of foreign jurisdictions.

153. As of 16th December 2005, sixty-one (61) STRs were received from the FIU. Out of the total amount of STRs received by the T&FMLIS from 2000 to present, twenty-one (21) were forwarded to the CCU of the Royal Bahamas Police Force for further investigations. These matters related to fraud allegations committed mostly in foreign jurisdictions

154. From the date of the last evaluation in July 2002 to present five (5) persons were charged with money laundering offences by the T&F/MLIS.

155. From 2000 to present, seventeen (17) persons were charged for money laundering offences by the T&F/MLIS of which seven (7) persons were successfully convicted by the T&F/MLIS in conjunction with the Office of the Attorney General. Out of the seventeen (17) persons charged from May 2000 to present, seven (7) are awaiting the completion of their matters before court while two absconded and left the jurisdiction of The Bahamas. In these cases, the relevant property was confiscated.

156. Convictions for money laundering offences 2000-2006

Date Convicted	Charge	Section of Act	Property	Result
21 March 2001	Possession of Proceeds of Drug Trafficking	POCA s. 42(1), 45(1)(a)	$1,077,090	3 years imprisonment, money forfeited
6 October 2003	Possession of proceeds of criminal conduct	POCA s. 42(1) & 45(1)(a)	$30,000	Fined $5,000 or 1 year imprisonment, bound over for 2 years for good behaviour, money forfeited
3 December 2003	(1) Conspiracy to possess property derived from participation in drug trafficking; (2) Conspiracy to launder proceeds of crime; (3) Possession of property derived from participation in drug trafficking	(1)Penal Code S.88; also Tracing and Forfeiture of Proceeds of Drug Trafficking Act Chapter 77 and section 20(2)(a) (2)Penal Code s. 88(1) and Money laundering Proceeds of Crimes Act s. 9(1)(a); (3)Tracing and Forfeiture of Proceeds of Drug Trafficking Act s. 20(2)(a) and s. 20(8)(b)	$137,704	2 years imprisonment on each count to run concurrently, money forfeited
3 December 2003	(1) Conspiracy to possess property derived from participation in drug trafficking; (2) Conspiracy to launder proceeds of crime; (3) Possession of property derived from participation	(1)Penal Code s. 88; also Tracing and Forfeiture of Proceeds of Drug Trafficking Act Chapter 77 and section 20(2)(a) (2) Penal Code s. 88(1) and Money	$103,223	2 years imprisonment on each count to run concurrently, money forfeited.

	in drug trafficking	Laundering Proceeds of Crimes Act s. 9(1)(a); (3)Tracing and Forfeiture of Proceeds of Drug Trafficking Act s. 20(2)(a) and s. 20(8)(b)		
1 March 2004	Possession of Proceeds of Criminal Conduct, Money Laundering	POCA s. 42(1) & s. 45(1)(a), section 40(1)(b) & 45(1)(a)	$23,875	Fined $5000 or one year imprisonment; bound over for 2 years; money forfeited
11 October 2005	Possession of Proceeds of criminal Conduct	POCA s. 42(1)	$6000	Awaiting trial; money forfeited

Pending matters

Date of Arrest	Offence	Statute	Amount involved (if any)	Status
July 2005	Money laundering	POCA s. 40	$41,824	Pending Trial
July 2005	Money Laundering	POCA s. 40	$53,628	Warrant of arrest issued
May 2005	Failing to keep records	FTRA		Pending trial
May 2006	Possession and dealing with proceeds of criminal conduct	POCA s. 40 and 42	$28,357	Pending trial

157. The foregoing, in the view of the Examiners, points to reasonable success on the part of the Bahamian Authorities in the utilization of the country's AML legal framework. The Authorities did point to the need for greater resources both in terms of manpower (particularly in the staffing of the DPP's office) and the expansion and streamlining of the court system to move cases more speedily through the court system.

2.1.2 Recommendations and Comments

158. The Examiners consider that The Bahamas has met many of the requirements under Recommendations 1, 2 and 32. However there are particular concerns that the Examiners had to take into account. These were as follows:

- Section 42(2) of the POCA should be amended to cure the deficiency noted at paragraph 132.

- The Draft Precursor Chemical legislation is not yet in place and should be enacted to bring the legislation in compliance with the requirements of the Vienna Convention.

- The Bahamas should proceed to implement the provisions of the Palermo Convention.

- The Bahamas should proceed to enact laws to deal with Migrant Smuggling and Human Trafficking and further effect the necessary amendment to either the POCA or other laws to ensure compliance with the FATF list of Designated Categories of offences.

2.1.3 Compliance with Recommendations 1, 2 & 32

	Rating	Summary of factors underlying rating
R.1	**PC**	• **POCA section 42(2) has a deficiency with respect to compliance with the requirements of the Vienna Convention and the Palermo Convention.** • **Lack of a precursor chemical statute.** • **The predicate offences for money laundering do not cover a number of critical offences named in the twenty (20) FATF's Designated Categories of Offences.**
R.2	**C**	**This Recommendation is fully observed.**
R. 32	**PC**	• **See the reasons given in sections 2.2, 2.4, 2.6, 2.7, 3.7, 3.10, 6.1,**

2.2 Criminalisation of Terrorist Financing (SR.II& 32)

2.2.3 Description and Analysis

Special Recommendation II

159. Section 5(1) of the ATA, criminalizes terrorist financing in that it provides that "…any person who in or outside The Bahamas directly or indirectly, unlawfully and wilfully (a) provides or collects funds; or (b) provides financial services or makes such services available to persons, with the intention that the funds or services are to be used or with the knowledge that the funds or services are to be used in full or in part in order to carry out (i) an act that constitutes an offence under or defined in any of the Treaties listed in the First Schedule; or (ii) any other act- (a) that has the purpose by its nature or context, to

intimidate the public or to compel a government or an international organization to do or to refrain from doing any act; and (b) that is intended to cause (aa) death or serious bodily harm to a civilian or in a situation of armed conflict, to any person not taking an active part in the hostilities; (bb) the risk, damage, interference or disruption of the kind mentioned in sub-paragraph (B), (C) or (D) of section 3 (1) as the case may be is guilty of an offence and is liable on conviction on information to imprisonment for a term of 25 years."

160. Section 2 of the ATA defines funds as (a) assets of every kind whether tangible or intangible, movable or immovable, however acquired; and (b) legal documents or instruments in any form; including electronic or digital, evidencing title to or interest in such assets as banks credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit. There is no limitation stated in the law which refers to the source of these funds, whether legitimate or illegitimate.

161. Section 5(2) of ATA states, *"...for an act to constitute an offence under subsection (1) it is not necessary to prove that the funds or the financial services were used to carry out the offence."*

162. The ATA does not specifically provide for the offence of 'attempting'. However, the offence of "attempt" is dealt with generally in section 83 of the Penal Code.

163. Section 3(1) of the ATA criminalizes terrorist acts. It provides that:

"Where a person who in or outside The Bahamas carries out;

(a) an act that constitutes an offence under or defined in any of the treaties listed in the First Schedule; or
(b) any other act-
(i) that has the purpose by its nature or context, to intimidate the public or to compel a government or an international organization to do or to refrain from doing any act; and
(ii) that is intended to cause-
(A) death or serious bodily harm to a civilian or in a situation of armed conflict, to any other person not taking an active part in the hostilities;
(B) Serious risk to health or safety of the public or any segment of the public;
(C) substantial property damage; whether to the public or private property, where the damage involves a risk of the kind mentioned in sub-paragraph (B) or an interference or disruption of the kind mentioned in sub-paragraph (D); or
(D) serious interference with or serious disruption of an essential service, facility or system, whether public or private; not being an interference or disruption resulting from lawful advocacy or from protest, dissent or stoppage of work,

is guilty of the offence of terrorism and on conviction on information where death ensues and where that act would have constituted the offence of murder or treason, prior to the commencement of this act, shall be sentenced to death; or in any other case, is liable to imprisonment for life."

164. The Conventions listed in the First Schedule are:

- Convention on offences and certain other Acts committed on Board Aircraft signed at Tokyo 14th September, 1963.
- Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16th December, 1970.
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23rd September, 1971
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14th December, 1973.
- International Convention against the taking of Hostages, adopted by the General Assembly of the UN 17th December, 1979.

165. It should be noted that the ATA does not refer to five (5) of the Conventions and Protocols listed in the Annex to the UN Convention on the Suppression of Terrorist Financing. Article 2 of the UN Convention requires that states should criminalize the financing of the activities covered in the Annex. The ATA does not make reference to the following Treaties and Protocols that are listed in the Annex to the Convention.

1. Convention on the Physical Protection of Nuclear material, adopted at Vienna on 3 March 1980;
2. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988;
3. Convention for the Suppression of Unlawful Acts against the safety of Maritime Navigation, done at Rome 10 March 1988;
4. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988;
5. International Convention for the Suppression of terrorist Bombings adopted by the General Assembly of the United Nations on 15 December 1997.

166. Persons who aid or abet terrorism offences, including the financing of terrorism offences are captured by sections 3(2) and 5(2) respectively of the ATA, as well as Penal Code section 86. The offence of abetting under the Code covers acts of directly or indirectly, instigating, commanding, counselling, procuring, soliciting, purposely aiding, facilitating, encouraging or promoting (whether by act or presence). It is to be noted however that there is no offence for the FT by a group of persons acting with a common purpose as required by Article 2(5) (c) of the Terrorist Financing Convention.

167. Terrorist financing has been added to the Schedule to the POCA by way of consequential amendment pursuant to the passage of the ATA, whereby all offences under the ATA were

included as predicate offences under the POCA. The terrorism financing offence under Section 5 of the POCA is also an offence, which is triable on information and therefore would qualify as a predicate offence for money laundering under the POCA.

168. Section 5(1) of the ATA makes it an offence for persons who provide or collect funds or provide financial services or make those services available for the purpose of financing terrorism to be prosecuted whether the person is 'in or outside The Bahamas'.

169. The mental elements of the financing of terrorism offence relate to the intention that the funds are to be used or the knowledge that the funds or services are to be used in full or in part to carry out the terrorist act. Although this matter has not yet been tested in Court, the advice of the authorities is that the Courts would make inferences relating to the mental state of the accused based on inferences, which consider the objective circumstances of the case, as has been done for money laundering cases.

170. As stated above, under the Interpretation and General Clauses Act, the term *"person"* includes bodies' corporate and unincorporated bodies.

171. Section 6 of the ATA provides for a specific penalty of $2,000,000 for any corporate entity located or registered in The Bahamas or organised under the laws of The Bahamas which is involved (by virtue of the acts of its manager or controllers) in terrorism or the financing of terrorism. Section 6(b) of the ATA also provides that notwithstanding this penalty, the entity will be subject to *'any civil or administrative sanctions that may have been imposed by law'*.

172. Pursuant to sections 5 and 6 of the ATA, both natural and legal persons are subject to criminal sanctions. Section 5 provides for a penalty for conviction on information of a term of imprisonment of twenty-five (25) years, while under section 6 there is a fine of $2,000,000 for corporate entities, in addition to any other non-criminal penalties provided for in the law. These penalties appear to be in keeping with penalties for other serious offences and are similar to those imposed in other jurisdictions for the same type of offence. There have been no prosecutions for the financing of terrorism in The Bahamas; accordingly, it is not possible to determine whether the penalties are dissuasive or being implemented effectively.

Recommendation 32 (terrorist financing investigation/prosecution data)

173. The Authorities indicated that they intended to create a special unit within The Royal Bahamas Police Force to deal particularly with investigations and other law enforcement actions relating to terrorism offences. However in the interim, the T&F/MLIS would be responsible for maintaining statistics relating to this activity, including investigations, restraint, freezing, confiscation and forfeiture actions. The Office of the Attorney General would maintain statistics on the prosecutions and convictions as well as international request via the ML(CM)A or the CJ(IC)A.

174. To date the T&F/MLIS has not received any STRs from any financial institution in The Bahamas, or from any other source that would indicate the occurrence of terrorism or of terrorism financing in The Bahamas. Therefore there have been no investigations, prosecutions or convictions in the Bahamas for the said offences. Additionally there have been no international requests made relating to terrorism or the financing of terrorism. The

Examiners felt that the Authorities did have the appropriate capacity and resources to manage any data on terrorist financing that was provided to them.

2.2.2 Recommendations and Comments

175. The special unit to deal with terrorism within the Royal Bahamas Police Force should be established.

176. The Examiners considered that the ATA did provide for the criminalization of the financing of terrorism; however the fact that the scope of the crime of terrorism did not cover all of the conduct referred to in the Annex to the Terrorist Financing Convention constituted a serious shortfall that the Authorities should move to rectify.

177. The Examiners were satisfied that the T&F/MLIS and the Office of the Attorney General had the appropriate capacity and facilities to maintain statistics on cases involving terrorism financing, once they arise.

178. The Bahamas should ensure that the offences of terrorism financing under the ATA extends to all of the offences specified in Article 2(5) of the Terrorist Financing Convention.

2.2.3 Compliance with Special Recommendation II & 32

	Rating	Summary of factors underlying rating
SR.II	**LC**	• **The offence of terrorist financing under the ATA does not extend to all of the offences listed in the Annex to the UN Convention on the Financing of Terrorism.** • **The FT offence does not cover all the types of conduct set out in Art. 2(5) of the Terrorist Financing Convention, specifically Art. 2(5)(c).**
R.32	**PC**	• **There has been no evidence on which effective implementation can be measured as the police have not received information regarding terrorism or terrorism financing.**

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3 & 32)

2.3.1 Description and Analysis

Recommendation 3

179. Pursuant to section 9 of the POCA, confiscation of proceeds of criminal conduct[16] is

[16] See paragraph 133 above

mandatory upon conviction of a person for drug trafficking offences, provided the Court is satisfied that the person benefited from drug trafficking. Section 10 of the POCA applies to the confiscation of proceeds of all other relevant offences.[17] Both types of confiscation orders apply to the payment of sums by the Defendant based on the Courts assessment of the benefit received by the Defendant from his actions. In the case of Drug Trafficking offences, under the POCA section 11, the Courts may apply an assumption that any payments or rewards received since the passage of the Act in 2000 or within the six (6) years prior to conviction were benefits that accrued from drug trafficking activities.

180. POCA section 10(4) deals with assessing benefit in the case of predicate offences other than drug trafficking. The benefit includes the obtaining of property as a result of or in connection with an offence, or a pecuniary advantage obtained as a result of or in connection with the offence. Gifts to third parties are captured if they are made after the commission of the predicate offence.

181. Section 11 of the POCA provides an extensive framework to assist the Court in determining on whether an accused person has benefited from drug trafficking. The Court will assess benefit as all payments or rewards received by the accused in connection with drug trafficking (whether committed by himself or another person) since the date of commencement of the POCA or within the six (6) years preceding the institution of proceedings. The law permits the Courts to make an assumption that any property held by the accused or transferred to him during the said six year period are proceeds of trafficking. In addition, the court will also consider any payments made by the accused during the period as being made from the proceeds of trafficking and therefore to be included in assessing the benefit accruing to the accused from drug trafficking. Gifts to third parties are also captured for the purpose of confiscation if they are made within the six (6) year period ending when proceedings are commenced or when an application for a restraint or charging order is made and where they are received in connection with drug trafficking or the property represents property received by the accused in connection with drug trafficking. The Examiners take the view that the broad nature of the definition of property would include income, profits or other indirect benefits

182. The forfeiture of instrumentalities or property used in the commission of the offence is clearly available in respect of drug-trafficking offences pursuant to section 9(1) of the POCA which provides that the Court may make a forfeiture order under section 33 of the Dangerous Drugs Act, 2000 (DDA). Section 33 allows for the making of a forfeiture order in relation to both personal and real property, whether used in the commission of or in connection with a drug offence or whether the property was received or possessed as a result of or product of an offence. Personal property is defined at section 2 of the DDA as '*any money, aircraft or vessel or other thing'*. These provisions have been tested by the Courts and have been upheld and forfeiture has occurred even where the instrumentality was owned by a third party.

183. The cases of Culmer v. the Commissioner of Police case 38/1992 and Attorney General et al v. Rolle case 1276/1996 make it clear that forfeiture of instrumentalities under the Dangerous Drugs Act may be ordered notwithstanding the ownership of the property being vested in a person other than the Defendant.

[17] See paragraph 135 above

184. With respect to the instrumentalities of other predicate offences, section 5(5) of the POCA grants power to the Court to order to be forfeited any money, aircraft, vessel or other thing including premises that has been used in the commission or in connection with an offence and any money or property received as a result of the offence.

185. Notwithstanding the fact that offences under the ATA would be predicate offences for the purposes of the POCA, it should further be noted that the ATA also provides for procedures for Freezing (section 9) and Confiscation of funds (section 10) that are related to a terrorism offence or a terrorism financing offence. Forfeiture under section 10 would require a conviction for a terrorism or terrorism financing offence. The Court may seek to forfeit all funds in the Defendant's possession or under his control or that are subject to a freezing order. The onus falls on the convicted person to prove that the funds are not related to terrorism or terrorism financing.

186. The authorities also have extensive powers under the POCA to restrain and impose a charge on realizable property (which is defined as all property belonging to a Defendant (including property which he has given as a gift) save and except property that is subject to a forfeiture order. The Court may also appoint a receiver for the purpose of realizing this property for the purpose of satisfying a confiscation order. As a consequence, the law does provide for confiscatory measures to be taken against property of a corresponding value.

187. With regard to legal ownership of property that is the proceeds of crime by third parties, section 4(2) of the POCA makes it clear that property is held by any person if he holds any interest in it. Thus such property would be considered by a Court in making a determination on the benefits accruing to a Defendant for the purpose of making a Confiscation Order, notwithstanding the fact that the legal or partial ownership is vested in another person.

188. Under section 26 of the POCA, the Court may issue restraint orders to prohibit any person from dealing with realizable property. Section 27 allows for the imposition of charging orders on realizable property. Additionally, under section 9 of the ATA, the Court may where it is satisfied of certain things and upon application by the Attorney General freeze funds that are 'in the possession or under the control of 'the person charged with an offence under the ATA or listed under the ATA

189. Section 26(4) of the POCA provides that restraint orders shall be made on an ex-parte basis to a Judge in chambers. Section 9(2) of the ATA allows an application for a freezing order to be made ex parte.

190. The powers of confiscation are complemented by extensive investigatory and seizure powers under the POCA, FIUA and the DDA. The investigative and seizure powers include the applications for production orders and search warrants (sections 35-37 of the POCA), monitoring orders (section 38 of the POCA) and the ability of the FIU to order a financial institution in writing to refrain from completing any transaction for a period not exceeding seventy-two (72) hours (section 4(2)(b) of the FIUA).

191. The rights of bona fide third parties are protected under section 15 of the POCA, whereby such parties may apply to the Court to assert an interest in the realizable property, provided that the parties can prove that they were not involved in the Defendant's criminal conduct and that they acquired the interest for sufficient consideration and in the absence of any knowledge or suspicion that the property represented the proceeds of crime.

192. Under section 33(3) of the DDA, the Court may also make its Order for forfeiture subject to a term that permits a specified person to redeem such property on conditions as the Court deems fit including the payment of the value of or a portion of the value to the Crown. This specified person would be a Party with an interest in the property that was not involved in the commission of the offence

193. Section 33(5) of the DDA permits the Minister for Finance at his discretion (after the forfeiture proceedings have been concluded) to entertain moral claims to property by an applicant. The view expressed by the Authorities was that the exercise of the Minister's discretion should be based according to the circumstances of the case However it seems that if proceeds of crime have been confiscated and been paid into the Confiscated Assets Fund (section 52 of the POCA), then the Minister may be bound to only make payments for the purposes specified in this Section.

194. Pursuant to section 13 of the POCA, the Court may prior to making a Confiscation Order under section 9 or 10 and after the making of a restraint order, set aside any transfer or conveyance of property that occurred after the seizure of the property or after the service of the notice pursuant to the restraint proceedings. With regard to transactions taking place prior to the making of these Orders, they would be captured by section 6 of the POCA relating to the making of gifts. Gifts include cases where the Defendant makes a transfer (at any time after the offence) to another person for a consideration that is significantly less than the market price.

195. The Attorney General's Department has indicated that there have not been any instances where it had become necessary to void contracts in the course of a confiscation action.

196. Pursuant to section 47 of the POCA, seized cash can be forfeited without a criminal conviction, if the judge is satisfied that the cash directly or indirectly represents any persons proceeds of or benefits from criminal conduct. The cash may also be forfeited if the Judge believes that it was intended that the cash be used in criminal conduct. Cash includes notes and coins as well as negotiable instruments.

Recommendation 32 (confiscation/freezing data)

197. The T&F/MLIS of the Drug Enforcement Unit (DEU), Royal Bahamas Police Force is the primary agency in The Bahamas with the responsibility for investigating STRs, which relates to criminal conduct as defined in the POCA, inclusive of money laundering. These reports are received from financial institutions in The Bahamas through the FIU and from others directly to the police under the POCA. The Section is also responsible for investigating large cash seizures, local drug traffickers or other serious crime offenders to determine whether they benefited from their criminal conduct, as well as request for law enforcement assistance from local and international law enforcement agencies.

198. The T&F/MLIS provided the following data on Production Orders, Search Warrants and Monitoring Orders Obtained pursuant to – Section 35, 37 & 39 POCA 2000:

	2002	**2003**	**2004**	**2005**	**2006**
Production Orders	**38**	**29**	**24**	**11**	**4**

Search Warrants	**21**	**3**	**21**	**7**	**6**
Monitoring Orders	**0**	**0**	**0**	**0**	**0**

199. The T&F/MLIS also advised of the status of current Confiscation Proceedings pursuant to – Sections 9 of the POCA as follows:

June 2003 Section 9 – POCA Pending - Trial

May 2004 Section 9 – POCA Pending - Trial

January 2005 Section 9 – POCA Pending - Trial

200. With regard to Forfeiture Proceedings pursuant to Sections 46 & 47 of the POCA, the following data was provided by the T&F/MLIS

Date of Charges	Amount Involved	Status
July 2002	**68,331**	**Trial pending**
January 2003	**157,291**	**Sums forfeited**
February 2003	**106,000**	**Forfeiture, Appeal pending**
March 2003	**74,950**	**Forfeiture, Appeal pending**
March 2003	**40,575**	**Trial pending**
August 2003	**13,720**	**Monies ordered returned**
September 2003	**100,724**	**Pending trial**
September 2003	**200,040**	**Forfeited**
November 2003	**1,508,591**	**Forfeited**
March 2004	**24,132**	**Forfeited**
November 2004	**136,765**	**Trial pending**
November 2004	**194,794**	**Trial pending**
November 2004	**32,039**	**Trial pending**
May 2005	**29,924**	**Trial pending**

201. With the assistance of the Office of the Attorney General, in 2002, two (2) restraint orders were obtained. In 2003 six (6) restraint order were obtained one of the restraint orders was for a local matter, while the other five (5) were done on behalf of foreign jurisdictions. Two (2) out of the six (6) restraint orders were initiated by a commercial bank in The Bahamas on behalf of its parent bank. In 2004 four (4) restraint orders were obtained and in 2005 two (2) were obtained. The Restraint Orders obtained in 2005 were all obtained on behalf of foreign jurisdictions, inclusive of Switzerland, Italy and the United States of America. There are currently three restraint orders in place pending trial. These matters were commenced in June 2003, May 2004 and January 2005.

202. Section 52 of the POCA provides for the establishment of the Confiscated Assets Fund. Money arising from Confiscation Orders (sections 9 & 10 POCA), cash forfeited (section 47 POCA) forfeitures (section 33 DDA) and money paid to the Government of The Bahamas by a foreign jurisdiction is placed in the Fund. As at June 2004, the balance in the fund stood at $4,658,756.

203. The T&F/MLIS assisted by the Office of the Attorney General pursuant to section 26 of the POCA, obtained Restraint Orders in connection with assets suspected to be the proceeds of criminal conduct. These restraint actions resulted either from local investigation or were obtained on behalf of foreign jurisdictions.

204. In addition to these matters, the Office of the Attorney General, after the conviction of a local drug trafficker on 18th February 2005, was successful in having forfeited the first real property in the form of a house and land in Bimini. It is expected that the ownership of the property will be transferred to the Government by the end of July 2006.

205. The T&F/MLIS has recently concluded investigations into the status of another house and land, the property of another convicted drug trafficker, and the results of these investigations are currently before the Court.

206. Property confiscated or forfeited under sections 9 or 46 of the POCA is placed in the Confiscated Assets Fund pursuant to section 52 of the POCA. Money placed into the fund can be used for purposes relating to law enforcement (in particular for investigations into drug trafficking and money laundering), treatment and rehabilitation of drug addicts and public education amongst other things.

2.3.2 Recommendations and Comments

207. The laws of The Bahamas do grant to the authorities wide and varied powers to deal with confiscation, freezing and seizing of the proceeds of crime. The Authorities have shown that these measures are effective and have had a reasonable level of success in this area.

208. The Examiners considered the provisions of section 33(5) of the DDA, which permits the Minister of Finance to deal with forfeited property upon application by a person who indicates a moral claim. Whilst the Examiners consider that The Bahamas Government does retain a wide discretion to deal with property that has vested in the Crown, the Examiners considered that the terms of the DDA section 33 could be amended to make it clear that the Minister should only exercise the discretion in circumstances where the Minister is satisfied that the applicant was not involved in the criminal activity or any other criminal activity. The provisions of the section may also have to be reconciled with the provisions of the POCA section 52, which establishes the Confiscated Assets Fund. These comments do not however affect the rating for Recommendation 3.

2.3.3 Compliance with Recommendations 3 & 32

	Rating	Summary of factors underlying rating
R.3	**C**	**This recommendation is fully observed.**
R.32	**PC**	• **See reasons given in sections 2.2, 2.4, 2.6, 2.7, 3.7, 3.10, 6.1.**

2.4 Freezing of funds used for terrorist financing (SR.III & R.32)

2.4.1 Description and Analysis

Special Recommendation III

209. The Bahamas has two major statutory instruments that are used in the fight against terrorism and the financing of terrorism. These are the International Obligations (Economic and Ancillary Measures) Act (IO(EAM)A and the Anti Terrorism Act (ATA).

210. Pursuant to the IO(EAM)A, on 25 September 2001, the Governor General executed the International Obligations (Economic and Ancillary Measures) (Afghanistan) Order, 2001. The Order prohibited the sale or supply of goods to Afghanistan, and the provision of financial services to or the dealing in any property held by or on behalf of the territory of Afghanistan under Taliban control or Usama Bin Laden and the Al Qaida organization or any individuals or entities associated with them. The Order also had the effect of freezing any accounts held in the name of Usama Bin Laden, the Al Qaida organization or any person or organization associated with them, as designated from time to time by the Attorney-General, after consultation with the Governor of the Central Bank of The Bahamas and the Director of the Financial Intelligence Unit.

211. Under section 3 of the IO(EAM)A, the Governor General may make an Order to implement a decision, resolution or recommendation of an international organization or association of states (of which The Bahamas is a member) which relates to economic measures. He may also make the Order where a grave breach of international peace has taken place or is likely to result in a serious international crisis. These Orders can restrict and prohibit a number of activities and require the seizure, freezing or sequestration of property situate in The Bahamas. An Order issued under the IO(EAM) A does not require notice or an application to the Court.

212. The issue of the Notice and the accompanying correspondence from the authorities (particularly the financial sector regulators) did not reveal any funds being held for the entities or individuals named in the Order. There was therefore no experience as to the practical implementation of the Order.

213. The Attorney General, after consultation with the Governor of the Central Bank and the Director of the Financial Intelligence Unit has issued additional Notices under IO(EAM)A, namely The International Obligations (Economic and Ancillary Measures) (Cote d'Ivoire) Order, 2005).

214. Notwithstanding the use of IO(EAM)A by the Bahamian Authorities, the primary legislation dealing with the freezing of terrorist funds or other assets is acknowledged to be the ATA.

215. Section 4 of the ATA establishes the procedure for the Attorney General to seek a declaration from the Court that an entity is a listed entity for the purpose of the ATA. For the application (which is ex parte) to succeed, the entity must be included on a list of entities designated as terrorist entities by the United Nations Security Council **and** (*emphasis added)* where the Attorney General has reasonable grounds to believe that the entity has knowingly committed or participated in a terrorism offence or is knowingly

acting on behalf of, at the direction of or in association with a UN listed entity. To date, the Attorney General has not made any applications to the Court under this provision.

216. The ATA allows for freezing of funds in the possession of or under the control of a person who has been charged or is about to be charged with an offence, or in the possession of a listed entity, or where a request has been made by a foreign State in respect to an individual who has been charged or is about to be charged with a terrorism offence or in respect of whom there is a reasonable suspicion that the person has committed an offence.

217. Section 9(2) of the ATA allows the application for a freezing order to be made ex parte**.** One issue that can potentially affect the effectiveness of the freezing mechanism is the fact that the ATA seems to indicate a limitation on the duration of a freezing order. Section 9(6) makes it clear that the freezing order will be valid for six (6) months unless the person against whom the Order was made has been charged with an offence. Section 9(7) provides for a maximum freezing period of eighteen (18) months. It is not clear whether section 9(7) would allow a Court to extend a freezing order beyond this period. Generally Courts have an inherent jurisdiction to extend time, however there is a possibility that a Court could consider itself bound by the limitation, depending on the view it takes of the intention of the legislature in establishing that limitation.

218. Section 9 of the ATA deals with the freezing of funds where a person is charged with an offence under the ATA or a person is declared a listed entity or a request is made by the appropriate authority of another State. This application is made to the Court in writing and on an ex parte basis. The application is required to be supported by affidavit stating the following:

    (i) where the person has been charged and the offence for which he is charged;
    (ii) the listing of the person as a listed entity under the ATA;
    (iii) in cases where the person has not been charged, the grounds for belief or reasonable suspicion that the person committed the offence;
    (iv) a description of the funds which are being sought;
    (v) the name and address of the individual who is believed to have possession of the funds, and
    (vi) the grounds for believing that funds are related to or are used to facilitate an offence under the ATA and that the funds are under the effective control of that person.

    There have been no applications for freezing or any requests for freezing made from other jurisdictions.

219. The question arises whether the ATA meets the requirements of Special Recommendation III and the two separate obligations that must be met. They are as follows:

    (a) UNSCR 1267, the implementation of measures to, without delay, freeze and seize terrorist related funds and other assets arising from a designation by the UN Al Qaida and Taliban Sanctions Committee; and
    (b) UNSCR 1373, the implementation of measures to freeze without delay the funds or assets of person who commit or attempt to commit, or participate in or facilitate the commission of terrorist acts, or their agents or entities.

220. In the view of the Examiners, the fact that under ATA section 4, the Court can only make an order for listing when it is satisfied of both the UN listing and the involvement in terrorist offences makes it clear that an entity may not be listed solely on the criteria of UN

designation, nor solely on the criteria of reasonable belief in their involvement in terrorist offences.

221. The ATA requires a separate application to the Court for freezing applications under section 9. With regard to freezing applications, the Court may order freezing upon reasonable belief that a person is involved in terrorist activities but cannot order freezing solely on the basis of a designation by the UN Al Qaida and Taliban Sanctions Committee as required by UNSCR 1267. Any UN designated entity would seem to have to be firstly, the subject of a listing application, which requires not only proof of the designation but also proof of a reasonable belief in the commission or possible commission of the offence and then secondly the subject of a freezing application under section 9. Thus the ATA does not comply with Resolution 1267.

222. The question also arises as to whether the procedures for freezing under the ATA would comply with the "without delay" requirement of SR III. The FATF Interpretative Note to SR III however states that the term "without delay" for the purpose of UNSCR 1373, means "…upon having reasonable grounds or a reasonable basis to suspect that a person is a terrorist, one who finances terrorism or a terrorist organisation". Although the Office of the Attorney General has not yet had the opportunity to make applications either for listing and freezing under the ATA, the fact that a freezing application may be made once the authorities are in a position to lay charges against a person indicates that the Authorities would be able to proceed without delay and upon reasonable suspicion as required by UNSCR 1373.

223. With regard to the freezing of funds upon the request of a foreign state, this can be achieved under both the ATA and the POCA.

224. Under the ATA, section 9(4) such an Order can only be made if the Court is satisfied that there are reciprocal arrangements between the State and The Bahamas, whereby that Foreign State must be able to make a similar Order in respect of a request made by The Bahamas. This can potentially obstruct a critical request for freezing, depending on the state of the requesting country's laws in this area. There is some ambiguity with regard to the process to be followed in relation to requests made under the ATA. The ATA section 17 states that requests for freezing orders from another State should adopt the procedures under section 6 of the MLA(CM)A. That Section in turn provides that, "*The provisions of any written law respecting the grant of authority to and powers and privileges of a law enforcement officer to carry out searches and seizures shall extend with such modifications as the circumstances require….*"

225. The POCA at section 26 deals with restraint orders and charging orders that may be made in cases where proceedings have commenced in a Designated State, or cases where an confiscation order has been made or where the Supreme Court believes that there are reasonable grounds for believing that an external confiscation order may be made.

226. Under the POCA, section 50(1) deals with the registration of confiscation orders on behalf of Designated States listed in the First Schedule to the POCA (Designated Countries and Territories) Order. The requirements are:

(a) that the foreign Order must be in force and not be subject to appeal,

(b) the person involved should have had notice of the proceedings resulting in the Order (even if he did not defend) and

(c) the enforcement of the Order would not be contrary to the interest of justice.

227. Pursuant to section 9(1)(c) of the ATA, the Attorney General may apply to the Court for a freezing order to be issued where a request has been made by the appropriate authority of another State in accordance with section 17, in respect of a person who has been charged or is about to be charged with an offence described in, the ATA or in respect of whom there is reasonable suspicion that the person has committed such an offence.

228. Section 17 of the ATA (on the provision of freezing assistance under the ATA) refers to the procedures for seizure under the MLA(CM)A section 6. However section 6 of the MLA(CM)A does not provide a specific procedure but rather refers to the provisions of any written law respecting the grant of authority to and powers and privileges of a law enforcement officer to carry out searches and seizures

229. Section 9(1) of the ATA refers to the freezing of 'funds in the possession of or under the control of that person.' The definition of funds however includes '*assets of every kind whether tangible or intangible movable or immovable, however acquired and legal documents or instruments…'* as required by the Terrorist Financing Convention.

230. Under the POCA section 26, there are powers to restrain realizable property. Realizable property is defined as property held by the defendant that is not the subject of forfeiture under the DDA or an Order under section 262 of the Criminal Procedure Code and any property the subject of a gift made by the defendant. Property in turn means money and all other property movable or immovable, including things in action and other intangible or incorporeal property.

231. The ATA contemplates that funds owned by more than one person could be subject to freezing insofar as section 9(3) requires the Court to give notice to any person who appears to have an interest in the funds in question. A joint holder of a banking account would clearly fall in this category and would be given an opportunity to be heard by the Court.

232. The freezing actions extend to designated persons (re: UNSCR 1267) under the IO(EAM)A.

233. Section 9(3) (a) of the ATA requires that the Freezing Order '*be published within such time and manner as the Court directs.*' Further, section 9(3)(b) requires the applicant (the Attorney General) to serve notice of the Order together with a copy on 'any person whom, in the opinion of the Court, appears to have an interest in the funds. Notice does not have to be given where it appears that giving such notice would result in the disappearance, dissipation or reduction in the value of the funds.

234. The Bahamian authorities have utilized the IO(EAM)A to implement their international obligations, particularly pursuant to UNSCR 1267. That Statute allows the Governor General to issue an order, which would have the effect of prohibiting any dealing with and freezing any property of the States and related persons made in the Order. Under the International Obligations (Economic and Ancillary Measures) (Afghanistan) Order, funds or other assets of Al Qaida, the Taliban, Usama Bin Laden or persons and entities associated with them were frozen upon the issue of the Order. The authorities have advised that these Orders issued under this Statute have been published.

235. The financial system regulators responsible for AML/CFT matters (CBB, SC and CC) did

provide their respective regulated entities with the Order and lists produced pursuant to the IO(EAM)A and its effect. The CBB and the SC has advised the financial banking institutions of those lists with instructions as to their responsibilities via letter. However, in the case of the SC, the notification did not give any guidance as to what was to have occurred if such funds or assets were discovered, nor did it require a response from the regulated entities.

236. The Attorney General has not sought to list any entities under the ATA, nor has there been any freezing of funds under section 9 of the ATA or section 26 of the POCA with regards to a terrorism or terrorism financing offence. Neither the CBB AML/CFT Guidelines (which was also adopted by licensees under the SC), the Codes of Conduct issued by the CC nor the Guidelines issued by the FIU address this situation and the obligations and procedures required of regulated firms in such circumstances.

237. Sections 4(6) to (10) of the ATA provides for the delisting of persons. There however, appears to be no express mechanisms for unfreezing that are triggered by delisting. Section 9(3) (c) allows notice to persons (to be heard) where it will not result in the disappearance, dissipation etc. of the funds and section 9(6) makes it clear that the freezing order will be valid for six (6) months unless the person against whom the Order was made has been charged with an. Offence.

238. Notwithstanding the absence of express provisions for unfreezing under the ATA, the Examiners take the view however that as a matter of law, a Court would have the inherent jurisdiction to unfreeze funds upon the de-listing of an accused person since a Court's ability to make an Order will include a power to vary or discharge same, particularly where the circumstances upon which the original Order was made are no longer applicable. The question as to whether these procedures are well known may be affected by the fact that the Court has discretion under this section with regard to the notification of affected parties to these proceedings. The fact that a Court has discretion as to whether the person who is the subject of an Order should be notified of the making of the Order would not, affect compliance with the Recommendation which requires that procedures exist and that they are well publicized.

239. Under the POCA section 26(5) a restraint order may be varied or discharged upon the application of a person affected by the Order or upon the conclusion of the criminal proceedings. Under section 27(7) the Court may vary or discharge a charging order upon the application of a person affected by the Order or upon the conclusion of the criminal proceedings.

240. The Examiners take the view that orders under the IO(EAM)A may be revoked by the Governor General, which would have a similar effect to de-listing. However this is not stated in the law and would have to be implied based on the rules of statutory interpretation.

241. The terms of the International Obligations (Economic and Ancillary Measures) Act or the International Obligations (Economic and Ancillary Measures)(Ancillary Orders) does not provide any specific avenues for persons affected by the order to reverse or vary the effect of the order, or to unfreeze any property frozen by virtue of the order. The avenues for unfreezing and being "unlisted" for the purpose of these orders cannot be said to be 'publicly known' as required. Similarly, neither the Act nor the Order provides for an avenue for a person whose property has been inadvertently affected by a seizure, freezing,

or sequestration to be given an opportunity to seek to vary the order or to unfreeze that property as required.

242. The procedures for discharging restraint orders are established under the POCA section 26(5). In the case of the IO(EAM)A and the Orders made thereunder there are no procedures established for recovery of property seized, sequestrated or frozen**.**

243. Section 9(5)(b) of the ATA allows the Court to give directions with regard to '(ii) the payment of debts incurred in good faith prior to the making of the Order; (iv) the payment of monies to the person referred to in subsection (1) for the reasonable subsistence of his family; or (v) the payment of costs of the person referred to in subparagraph (iv) to defend criminal proceedings against him'. These provisions comply with UNSCR 1452 (2002). Under the POCA, there are also powers to vary or discharge restraint and charging orders. The IO(EAM)A or orders made thereunder do not comply with SR III with regard to mechanisms for the release of funds seized, sequestrated or frozen to cover expenses or fees contemplated by UNSCR 1452

244. Section 9(3)(c) of the ATA provides procedures for a person or entity whose funds have been frozen to challenge the measure unless giving such notice can have an adverse effect. Under the POCA notice of restraint orders must be served on affected parties and such orders may be varied or discharged on the application of such parties under section 26. However there is no similar avenue available under the IO(EAM)A or Orders made thereunder.

245. The elements of Criteria 3.1 to 3.4 and 3.6 apply in relation to the freezing, seizing and confiscation of terrorist related funds or other assets to the same extent that it applies to 'criminal conduct', which includes 'relevant offences', under the POCA since offences under the ATA are included as offences covered by the POCA.

246. The ATA complies with EC 3.2 (provisional measures) insofar as section 9 provides for the freezing of terrorist related funds and other assets. In addition, section 26 allows for the issue of restraint orders applicable to realizable property (which refers to all property of a defendant save for property subject to a forfeiture order under the DDA or an order under section 262 of the Criminal Procedure Code).

247. Applications for freezing under the ATA are compliant with Rec. 3. as they are made on an ex parte basis per section 9(2). Investigatory powers to trace and identify terrorist related funds or other assets per E.C. 3.4 are contained in sections 35 (production orders), section 37 (search warrants), section 38 (disclosure of information by government departments) and section 39 (monitoring orders). In addition under the POCA, section 13 the Court has the power to void contracts as required by EC 3.6.

248. The rights of bona fide third parties are provided for under section 9(8) of the ATA in cases of freezing applications under that Act. They are also protected in relation to restraint orders under section 26(5) of the POCA. The IO(EAM)A does not provide this protection.

249. Since terrorist financing is a predicate offence for the purposes of the POCA (and is therefore covered by the FTRA), all of those provisions in respect of compliance with the provisions the FTRA are applicable. The CBB, the SC and the CC do carry out inspections or other measures to determine whether financial institutions are maintaining compliance with the laws.

250. In addition, the CBB and the Registrar of Insurance have indicated that they may impose administrative sanctions on licensees for statutory breaches of the AML/CFT legislation. The SC does not appear to have power to sanction its licensees for any breach outside of its own statute. The IFCSP has powers of suspension and revocation (sections 16, 17 of the FCSPA) on grounds that could include terrorism financing offences.

Recommendation 32 (terrorist financing freezing data)

251. The Bahamian Authorities have stated that no information has been revealed showing the presence of any funds relating to terrorism or terrorism financing within The Bahamas. Consequently there have been no freezing actions taken. However the Commissioner of Police has the responsibility for investigating these offences and therefore the Royal Bahamas Police Force would maintain the responsibility for maintaining statistics on any law enforcement action relating to this area.

252. The Examiners were advised that a special unit within the Royal Bahamas Police Force is to be set up to deal specifically with Terrorism Offences. The Examiners were satisfied that the T&F/MLIS and the Office of the Attorney General had the appropriate capacity and facilities to maintain statistics on cases involving Terrorism Financing freezing once they arise.

2.4.2 Recommendations and Comments

253. SR III (EC III.2) requires that countries should have procedures to examine and give effect to actions initiated in other countries provided that there are reasonable grounds or a reasonable basis to freeze funds. Section 9(4) introduces different criteria in relation to freezing terrorist funds and an amendment should be considered.

254. The authorities should provide clarity, whether in the law or in the policies outlined by the Attorney General's Office as to the effect of section 17 of the ATA and section 6 of the MLA(CM)A, and consequently the basis upon which requests made under the ATA by foreign States would be addressed.

255. It is the view of the Examiners that the International Obligations (Economic and Ancillary Measures) Act would have been a pre-existing measure, with a particular focus on applying international economic sanctions against Nation States. It would not meet the focus of SR III as being a preventative measure that is necessary and unique in the context of stopping flows or the use of funds or other assets to terrorist groups. It is therefore recommended that the ATA should be amended to achieve compliance with the UNSCRs.

256. The Special Anti-Terrorism Unit should be established within the Royal Bahamas Police Force.

257. The language at section 9(7) of the ATA should be clarified to establish whether the period of 18 months is an absolute outer limit for freezing and the Authorities may wish to consider whether this is appropriate given the length of time that an offence under the ATA may take to reach to trial.

2.4.3 Compliance with Special Recommendation III & 32

	Rating	Summary of factors underlying rating
SR.III	**PC**	• **The ATA does not address UNSCR 1267 adequately as freezing cannot take place solely upon a designation by the UN Security Council without delay.** • **The reciprocal requirements for the granting of an application for a freezing order to a foreign jurisdiction could inhibit the granting of such requests.** • **The International Obligations (Economic and Ancillary Measures) Act is a pre-existing measure that was not designed to meet the combating of the financing of terrorism and the related UNSCRs.**
R.32	**PC**	• **There has been no evidence on which the effectiveness of the freezing actions with regard to terrorism or terrorist financing can be measured as the police have not received information regarding those matters.**

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)

2.5.1 Description and Analysis

Recommendation 26

258. The Bahamas' FIU was established on 29th December 2000 by an Act of Parliament, Financial Intelligence Unit Act (FIUA). The FIU is an administrative agency, which commenced its operations on the 1st January 2001. The FIU has responsibility for receiving, analyzing, obtaining and disseminating information, which relates to or may relate to the proceeds of offences specified in the Second Schedule of the POCA, and includes money laundering and financing of terrorism offences. (Section 4(1) of the FIUA).

259. The FIU was granted "Approved Authority" status by an Order of the Governor General on 24th August 2005 thereby preserving the pension benefits of those persons transferred to the FIU. The FIU is a body corporate of perpetual succession. It has a common seal with power to enter into contracts and to do all such things necessary for the purpose of fulfilling its functions and mandate as prescribed under the FIUA.

260. STRs submitted to the FIU are systematically analyzed within the Analysis Unit by trained Analysts to determine whether or not funds involved represent the proceeds of crime in the Schedule to the POCA and the ATA. Based on the Analyst's findings, the Analyst Report may be referred to the Police for an investigation or filed for intelligence purposes.

261. The Analyst assigned to process an STR (i.e. case) will complete his/her analysis of same and make a formal recommendation to the Head Analyst. The Head Analyst will review the Analyst's Report and, subject to any amendments, will accept or reject the Analyst's recommendation. If the Analyst recommendation is for referral of the case to the Police and same is accepted, the Head Analyst will forward the Case File to the Director with his recommendation/endorsement. If the Director concurs, he will sign off on the Head Analyst's recommendation. A letter addressed to the Commissioner of Police is prepared for the Director's signature; a copy of the Analyst' Report and supporting documents will be hand delivered to the Office of the Commissioner of Police. The FIU will maintain an open case file on the matter and will follow up with Police for progress reports on investigation until the case is closed or disposed of. The FIU will keep the reporting institution informed on the status of the case until disposed of.

262. The FIU, by virtue of the FIUA, is an independent body and the Minister can only remove the Director if he, the Director, has become bankrupt, is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the functions of the position.

263. Section 15 of the FIUA mandates the FIU to issue guidance to financial institutions (a) setting out any features of a transaction that may give rise to a suspicion that the transaction is or may be relevant to the enforcement of the POCA and (b) setting out the circumstances and manner in which an oral report can be made to the FIU.

264. In December 2001, the FIU produced and disseminated AML Guidelines for numerous sub-sectors of the financial services industry including:

- ♣ Banks & trust companies
- ♣ Financial & corporate service providers
- ♣ Cooperative societies
- ♣ Casinos
- ♣ Insurance companies
- ♣ Securities industry

265. These Guidelines give detailed procedures for the reporting of suspicious transactions, including the prescribed form to be utilized for reporting suspicious activity to the FIU. They also provide guidance in connection with record keeping, education & training, identification procedures and internal controls, policies and procedures.

266. Section 18 of the FIUA mandates the FIU from time to time, to review the Guidelines issued. This review is underway, which is good given that there are instances where they are outdated. For example, the Guidelines display a note on the last page referring to the Supreme Court decision in the case of Financial Clearing Corporation v. The Attorney General No. 232 of 2001. The case challenged the FIU's ability to request the production of information under section 4(2)(d) of the said Act. This challenge was dismissed by the Court of Appeal in July 2002 (written reasons provided in October 2002). The recently appointed Director of the FIU has recognized the need to review the Guidelines currently in place and also the need to constantly re-assess resource and technical needs. The review of the Guidelines is a medium-term goal for the FIU, with the expectation that they can be re-issued by mid-2007. It has also been recognized that more can be done with respect to enhancing awareness amongst some of the smaller financial sectors such as the real estate industry. The review will also have to include the more recently enacted ATA.

267. The FIU has the legislative power, under section 4(2)(d) of the FIUA, to require the production of financial, administrative and law enforcement information, excluding information subject to legal professional privilege that the FIU considers relevant to fulfil its functions. This provision does not require the consent of a Court to require production of the information. This section provides the FIU with the ability to gather additional information from a financial institution following the making of a STR, in order to enable it to complete analysis of the circumstances of the report.

268. The Mutual Evaluation Team was informed that this power to require production extends not only to financial institutions but also to Government bodies and other institutions. The FIU also has direct access to a number of databases and information sources, and these include:

- ♣ Lexis/Nexis
- ♣ World Check
- ♣ Internet
- ♣ The Bahamas' Customs database
- ♣ The Bahamas' Registrar General – company information, land registration, deeds, births, deaths and marriages.

269. Authority has been granted for direct access into the Royal Bahamas Police Force computer system and direct access to INTERPOL 24/7 database. Access to the Road Traffic Department records and the Immigration databases is under discussion.

270. The FIU also has access to the resources of the CBB. When information is sought using the provisions of section 4(2)(d) of the FIUA the information being sought is received in a timely manner.

271. Section 4(2)(f) of the FIUA gives the FIU the authority to disseminate information, subject to such conditions as may be determined by the Director, to the Commissioner of Police, who is responsible for the investigation of criminal offences committed under the POCA and the ATA.

272. The FIU has a Director, who functions as the Chief Executive Officer and who is responsible for the day-to-day operations and administration of the Unit. Secondly, the FIU does not generate its own income and is therefore dependent on the Central Government for funding. However, the Unit itself is directly responsible for managing its finances, on the contingency that Central Government approves its Budget. For this purpose, the Unit maintains its own bank account and its accounts are audited by external auditors, annually (section 13(2) of the FIUA). Copies of the audited accounts of the FIU for each year of its operation were provided to the Mutual Evaluation Team.

273. The FIU operates out of offices at Frederick Street, Nassau, Bahamas. Access to the building, and the offices themselves is strictly controlled. Only senior members of the FIU can access the offices and all other staff can only enter the offices during normal working hours. Internal access to areas is also controlled. Files are secured in a file room and only removed when they are required for work related matters. A keypad lock controls access to the file room and all filing cabinets are locked. Staff members are not permitted to take files out of the office.

274. The FIU's computer system is an 'in-house' network and access to the internet is gained

through separate computer server. Password protection is employed to restrict access to the network to employees only. Additionally, access to STR information is further restricted to the Director, legal counsel, IT professional, analysts and data entry clerks. STR information is entered and maintained on a purpose built Microsoft Access database. Daily computer back-ups are carried out with off-site storage.

275. Section 9 of the FIUA provides for a penalty of up to $10,000.00 and/or a term of imprisonment not exceeding one (1) year or to both such fine and imprisonment for any person who is convicted of the unauthorized disclosure of information received by him as a result of his connection with the FIU.

276. Only such disclosure made in accordance with the FIUA is protected. Once such protection is operable, the Supreme Court cannot order disclosure against the FIU or any of its members or sources.

277. Pursuant to section 10 of the FIUA, the FIU publishes an Annual Report, which contains statistics, trends, the total amount of STRs received and types of reporting financial institutions as well as details of the work conducted by the FIU for the reporting year.

278. As stipulated by the FIUA the Minister responsible for the Agency, annually tables the Annual Report in both Houses of Parliament and copies of the same are distributed to all regulators and financial institutions operating within the jurisdiction, foreign financial intelligence units and the general public.

279. The Mutual Evaluation Team was provided with the FIU Annual Reports prepared for the years 2001 through 2004. The 2005 report is due to be tabled before Parliament in June 2006.

280. The FIU of The Bahamas became the 54th member of the Egmont Group of Financial Intelligence Units during the Group's June 2001 meeting, held in The Hague, Netherlands.

281. The Bahamas' FIU, since attaining membership has been very active in Egmont's Out Reach Working Group and more recently the Information Technology Working Group, the Training Working Group and the Egmont Committee. The Deputy Director of the FIU is the Group's Co-Representative for the Americas Region. The Bahamas' FIU is also extremely active in sponsoring membership of non-member countries.

282. The Government of The Bahamas subscribes fully to the 'Egmont Group's Statement of Purpose' and 'The Principles for Information Exchange between Financial Intelligence Units'. This commitment is reflected in the implementation of the Financial Intelligence Unit Act, 2000, which inter alia, endows the FIU with powers to exchange information with counterpart FIUs inside and outside the Egmont Group in accordance with sections 4(2) (g) & (h) of the FIUA as follows respectively:

- "The Financial Intelligence Unit may provide information relating to the commission of an offence specified in the Second Schedule to any foreign Financial Intelligence Unit, subject to any conditions as may be considered appropriate by the Director."
- "The Financial Intelligence Unit may enter into any agreement or arrangement, in writing, with a Foreign Financial Intelligence Unit which the Director considers necessary

or desirable for the discharge or performance of the functions of the Financial Intelligence Unit."

283. The FIU of The Bahamas has been operating for some five and half years and is well established in terms of its legal framework, resources and involvement with the financial community. Awareness of the FIU and its role, amongst those persons interviewed, was extremely high. This is no doubt due to the participation, by its members in training activities and the interaction generally between the FIU and the financial institutions.

284. The current structure is sound with a senior management team, analysis capabilities, in-house information technology staff and an operational section.

285. Approximately ninety-one percent (91%) of all STRs received were filed by banking institutions of all types – domestic, offshore and those conducting both domestic and offshore business. The banking sector being by far the largest in the financial services sector of the economy.

Recommendation 30

286. The FIU has a current established complement of sixteen (16) positions and at the time of the Mutual Evaluation fifteen (15) of those positions were filled. The filled positions are as follows: -

- ♣ 1 - Director - who serves as the Chief Executive Officer
- ♣ 1 - Legal Counsel
- ♣ 1 - Public Accountant
- ♣ 3 - Police Officers (Deputy Director & two analysts)
- ♣ 2 - Analysts
- ♣ 2 - Information Technology
- ♣ 5 - Administrative staff

287. The current structure provides for the Legal Counsel, Accountant and other Management Officers to report directly to the Director. The FIU employs two persons who have responsibility for Information Technology matters and the remaining staff is separated into Analysis and Operations. Four (4) analysts report to the Head of Analysis and five (5) operations staff report to the Head of Operations.

288. The former Director of the FIU resigned on the 31st December 2003 and between that date and the 31st October 2005 the post of Acting Director was filled by an Acting Detective Superintendent, a Certified Fraud Examiner (CFE). The current Director has an MBA and was appointed on the 1st November 2005. He is also an experienced banker.

289. The Director advised that he and Senior Management Authorities at the FIU are cognizant of the rapid pace of change in business and in particular, financial services, precipitated by changes in technology, product innovations, clients' demographics and other factors and that such changes pose a direct challenge to regulators globally to adopt a proactive stance in discharging their mandates or risk becoming irrelevant.

290. In this regard, consideration has been given to restructuring the organization internally by year-end 2006. These initiatives are intended to impact operations at departmental levels

and will include changes in reporting lines, development and recruitment of additional human resources, and enhancement in systems capability.

291. These initiatives are being undertaken in conjunction with other initiatives, already implemented or pending, which include the formalization of Employees Terms and Conditions of Employment and a review of current structure and staffing. A comprehensive Policies and Procedures document, along with detailed job descriptions (all positions with in the FIU) were completed between January and April 2006. The Terms and Conditions of Employment document is with the Office of The Attorney General for review and comment.

292. Other initiatives under consideration include a disaster recovery model with on-line storage of data, scanning of records to assist with archiving and retrieval and the development of a web site.

293. The Bahamas Government provides funding for the operations of the FIU based on budget submissions submitted by the Director annually. Government funding for the FIU has been as follows: -

Financial Year 1st July – 30th June 2001 refers to a six-month period

	Income **Government Funding:**	Expenditure **Expenditure Salary:**	Expenditure **Operations:**
♣ **2001**	$466,712	$ 97,651	$126,105
♣ **2002**	$784,000	$373,096	$296,887
♣ **2003**	$830,808	$387,085	$329,801
♣ **2004**	$656,738	$350,837	$355,439
♣ **2005**	$664,000	$301,395	$409,145

294. It should be noted that the salary figures shown do not include the salaries of police officers. They are paid a stipend out of the FIU budget and only 50% of the salaries of the public accountant and legal counsel are met out of this budget. Expenditure for 2004 and 2005 exceeded income and was met out of surpluses accumulated in previous years.

295. The FIU is a body corporate of perpetual succession. It has a common seal with powers to enter into contracts and to do all such things necessary for the purpose of its functions. As a result, the FIU enjoys considerable independence and autonomy. The Unit has its own office facilities and staff and has relations with other agencies of government on an arms length basis.

296. The Management Team of the FIU comprises of the Director, a Deputy Director, Legal Counsel, Public Accountant and Head of Operations who all have the requisite professional qualifications to efficiently direct the Unit's administrative and day-to-day operations. The FIU is directly responsible for managing its finances and accordingly manages its own bank account, which is audited annually.

297. Within the FIU the posts of Director, Legal Counsel and Accountant are positions advertised to the wider public, while persons 'invited' to join the FIU fill all other

positions. The FIU conducts its own background checks on prospective employees as well as checking references. The Security Intelligence Branch goes through a vetting process on all FIU applicants to ensure individuals are fit and proper. The Unit does not utilize polygraph testing, drug testing or psychological testing for prospective employees. On-going monitoring is achieved through a close working relation with all staff members. Each member of the Management Team possesses the requisite skills to perform the respective functions of the Financial Intelligence Unit.

298. Each employee is presented with a copy of the Unit's Terms and Conditions of Employment, which he acknowledges receipt of and undertakes to comply with at all times. Additionally, section 9 of the FIUA requires that all information obtained by staff be kept confidential. There are penalties of fine and or imprisonment for breach of confidentiality.

299. All staff members are deputed to participate in AML training, locally and overseas, suited to their job responsibilities and as such training opportunities evolve from time to time. Such training is fully budgeted for by the FIU itself, although some training exercises have been subsidized by external organizations.

300. During the past two (2) years members of the FIU have attended a wide variety of courses, seminars and evaluations, including seven (7) Egmont Group related Working Group meetings and eleven Caribbean Financial Action Task Force (CFATF) training seminars, meetings and mutual evaluations. Also included is the CFATF/FATF/World Bank and IMF hosted mutual evaluators workshop held in Trinidad & Tobago in 2006. Members have also attended a variety of money laundering, compliance and economic crime courses and seminars. In total members have attended thirty-two (32) such training courses or seminars and it is a testament to the involvement of The Bahamas' FIU in local, regional and international financial crimes training.

301. Members of the FIU are extremely active in the local community providing advice and support in connection with AML/CFT matters. Members also participate in or assist with AML/CFT training conducted by local financial institutions. In the past two (2) years they have participated in twenty (20) such training exercises. No doubt such participation by the FIU leads to enhanced awareness amongst members of the financial community

302. Members of the T&F/MLIS continue to receive relevant training in the conduct of money laundering and financing of terrorism investigations.

303. From July 2002 to present thirty-nine (39) members of both sections have attended some twenty-five (25) local and international enhancement courses. The courses covered financial investigations, fraud and economic crime, proceeds of crime investigations and intelligence gathering and analysis.

304. Members of the T&F/MLIS and the CCU will undergo advanced financial investigation training courses in Jamaica, Barbados and Canada commencing in June 2006.

305. The T&F/MLIS and the CCU have been involved in a number of successful money laundering prosecutions and have provided assistance to overseas law enforcement agencies in many instances. The ongoing training in the area of financial and money laundering investigations has no doubt contributed to these successes. The advanced training courses scheduled for 2006 are a natural progression of such a training programme.

Recommendation 32

306. The FIU has maintained detailed statistics on STRs received since its inception in relation to money laundering. These statistics are included in the FIU's Annual Report, which must be tabled in Parliament each year, pursuant to Section 10 of the FIUA. A copy of the Annual Report is distributed to regulators, financial institutions, foreign financial intelligence units, Government Agencies namely the Department of Statistics, Tertiary Institutions and the general public. As stated earlier, the 2005 Report is due to be tabled before Parliament in June 2006. The T&F/MLIS also maintains statistics on STRs received since 2001 relative to money laundering.

307. Section 14 of the FTRA establishes a mandatory requirement for financial institutions to report suspicious transactions to the FIU. Under the ATA suspicious transactions are to be reported to the FIU. However, to-date, no suspicious transactions has been reported to the FIU under this Act. As a result, there are no substantive statistics on this issue.

308. The following is a summary of the statistics maintained by the FIU relating to Suspicious Transaction Reports under the FIUA:

Suspicious Transactions Reports – 2001 – 2006 (to date of the Mutual Evaluation):

	2001	**2002**	**2003**	**2004**	**2005**	**2006**	**Totals:**
Received	**246**	**160**	**176**	**145**	**177**	**124**	**1,028**
Open - FIU	5	7	21	41	53	60	**187**
Closed - FIU	154	93	96	63	68	49	**523**
Forwarded to Police	87	60	59	41	56	15	**318**

Suspicious Transactions Reports – By Reporting Entity 2001 – 2004:

	2001	**2002**	**2003**	**2004**	**Totals:**	
Domestic Bank	41	50	55	24	**170**	**(23%)**
Domestic/Offshore Bank	74	52	61	58	**245**	**(34%)**
Offshore Bank	109	45	44	52	**250**	**(34%)**
Other	22	13	16	11	**62**	**(9%)**
Total	**246**	**160**	**176**	**145**	**727**	**(100%)**

309. Over the reporting period, and year on year, the banking sector has consistently filed approximately 91% of all STRs. As noted above, the banking sector is by far the largest sector in the financial services economy.

Suspicious Transactions Reports – Resulting in the Restraint of Assets 2001 – 2005:

	2001	**2002**	**2003**	**2004**	**2005**	**Totals:**
72 Hour Restraint	9	0	2	4	2	**17**
5 Day Freeze	9	0	2	4	2	**17**
Supreme Court Restraint	6	0	3	5	5	**19**

310. The three leading grounds for filing reports were: internet searches, account activity not in keeping with client's profile and significant cash transactions. Given the availability and access to information over the internet in today's world it is not unexpected that such information would be used to enhance knowledge of clients and in some instances provide grounds for a suspicion that requires reporting.

311. Fraud, corruption and drug trafficking are the three areas of criminality most commonly noted as being the reason for the filing of a STR.

312. Below are the statistics showing the number of STRs received by the Royal Bahamas Police Force from the FIU for further investigation.

	2001	**2002**	**2003**	**2004**	**2005**	**2006**	**Totals:**
Received by the FIU	246	160	176	145	177	124	1,028
Fwd. to Police for investigation	87	60	59	41	56	15	**318**
	35%	**37%**	**33%**	**28%**	**31%**	**12%**	**31%**

313. There is no requirement for financial institutions to report currency transactions above a certain threshold, the reporting requirements under the various legislative frameworks is 'suspicion based' and does not refer to monetary values or threshold reporting. Consequently, no statistics are available from the FIU relating to currency transactions or international wire transfers.

Money Laundering Reporting Officer – Register:

314. Section 5 of the Financial Intelligence (Transaction Reporting) Regulations 2001 (FITRR) mandates financial institutions to institute and maintain internal reporting procedures, including identifying and appointing a person to be the Money laundering Reporting Officer (MLRO). The MLRO must register with the FIU.

315. Statistics provided to the Mutual Evaluation Team regarding those who have registered are as follows: -

♣	Accounting Firms	13
♣	Banks & Trust Company	252
♣	Casinos	3
♣	Corporate Service Providers	15
♣	Insurance Company	22
♣	Investment Firm	30
♣	Law Firm	33
♣	Management Company	22
♣	Real Estate Company	23
♣	Unions	14
♣	Securities Company	3
♣	**Total MLRO's Registered**	**430**
♣	Total Financial Institutions Exempted	213

* Note – some entities are classified as a financial institution only by virtue of the type of business they conduct therefore for example, not all law firms will be classified as Financial Institutions. If the entity does not conduct the type of business that classifies them as a financial institution they can seek an exemption from the CC.

2.5.2 Recommendations and Comments

316. The FIU may wish to consider issuing a narrower set of guidelines, relating to suspicious transactions and Suspicious Transaction Reporting that can be included in the Guidelines issued by the various sub-sectors of the financial services industry. This recommendation does not affect the rating for Rec. 26.

2.5.3 Compliance with Recommendations 26, 30 & 32

	Rating	Summary of factors underlying rating
R.26	**C**	**This recommendation is fully observed.**
R.30	**PC**	• **See reasons given in Sections 2.6, 3.10**
R.32	**PC**	• **See reasons given in sections 2.2, 2.4, 2.6, 2.7, 3.7, 3.10, 6.1.**

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing R.27, 28, 30 & 32)

2.6.1 Description and Analysis

Recommendation 27

317. The Royal Bahamas Police Force is the primary law enforcement agency in The Bahamas. The T&FMLIS and the CCU have responsibility for investigating all STRs forwarded to the Commissioner of Police from the FIU. This section also deals with all 'cash seizures' and provides assistance to local and overseas agencies in connection with money laundering matters.

318. The T&F/MLIS is headed by an Assistant Superintendent who has a staff of six (6) officers.

319. The laws used by the T&F/MLIS for the investigation and prosecution of offences and for the confiscation, restraint and forfeiture of proceeds of crime are: The POCA sections 9, 10, 26, 35, 40 – 47, the Penal Code, Customs Management Act, and the Exchange Control

Regulation. The DDA also provides for the forfeiture of real and personal property pursuant to section 33 of the said Act.

320. Suspicious transaction or other reports, which relates directly to fraud, are forwarded to the CCU of the Central Detective Unit (CDU) for investigation. The T&F/MLIS works closely with the CCU and the Office of the Attorney General as it relates to the investigation and prosecution of money laundering and fraud related matters. Both Sections also liaise daily with the FIU for assistance in accordance with the FIUA.

321. The quality of file preparation carried out by the DEU, T&F/MLIS and the CCU was commended by the prosecuting authorities.

322. The T&F/MLIS in close collaboration with the Office of the Attorney General have and continue to obtain production orders for financial and non-financial institutions pursuant to section 35 of the POCA. Production orders can be granted for the purpose of investigations into (a) drug trafficking (b) whether any person has benefited from criminal conduct and (c) the whereabouts of any proceeds of criminal conduct.

323. Production orders obtained for financial institutions are for all financial documents, inclusive of transaction records, identification data obtained through the Customer Due Diligence (CDD) process and all other supplemental documents maintained by the financial institution on behalf of the client, except items subject to legal professional privilege.

324. The T&F/MLIS have and continue to obtain search warrants under section 37 of the POCA to enter and search with regard to drug trafficking/money laundering investigations. The Act also gives the officers the authority to seize and retain any material, which is likely to be of substantial value to the investigation.

325. Under the FIUA the FIU can provide assistance to the T&F/MLIS upon request provided the request falls within the provisions of the Act.

326. The Royal Bahamas Police Force has, when appropriate, delayed charging individuals or seizing property with a view to identifying additional suspects. As a result of this ability, specialist units within the Royal Bahamas Police Force have been able to use special investigative techniques such as 'controlled deliveries' and 'undercover operations' although there is no specific legislation providing a framework for such activities. The Courts of The Bahamas have accepted evidence gathered as a result of these techniques

327. The Police are empowered to use a wide range of special investigative techniques generally, and specifically in money laundering and terrorist financing investigations. Controlled deliveries have been used in other matters, such as undercover drug investigations and may be used in money laundering investigations as well.

328. Electronic listening or 'wiretapping' is also an investigative tool available to officers of the Royal Bahamas Police Force. Authorization for the use of such devices can be granted by the Commissioner of Police following consultation with the Attorney General pursuant to section 5(2) of the Listening Devices Act 1972 (LDA). Authorization can be granted for the investigation of an offence that has been committed or an offence that is about to be committed. The authorization must be in writing and may not exceed fourteen (14) days.

329. The structure of the Attorney General's Chambers also includes the ILCU, which has a

staff of seven (7) attorneys. The ILCU provides assistance to countries that make requests under Mutual Legal Assistance provisions. The ILCU uses the POCA, the Proceeds of Crime (Designated Countries and Territories) Order, the Criminal Justice (International Cooperation) Act, the Criminal Justice (International Cooperation) Order and the International Obligations (Economic and Ancillary Measures) Act. With regard to the latter the ILCU works closely with the Ministry of Foreign Affairs. To date, the ILCU has not had any requests for the freezing of terrorist assets. The CJ(IC)A and the CJ(IC)O have no dual criminality requirements.

Recommendation 28

Production Orders – Proceeds of Crime Act:

330. The competent authorities in The Bahamas have the ability to compel the production of records by virtue of section 35 of the POCA. A production order may be issued for the purpose of an investigation into (a) drug trafficking, (b) to determine whether a person has benefited from criminal conduct or (c) to locate the proceeds of criminal conduct.

331. A production order can be issued in respect of particular material or material of a particular description and 'material is defined as, "including any book, document or other record in any form whatsoever, and any container or article relating thereto." It is an offence to fail to comply with a production order.

Search Warrants – Proceeds of Crime Act:

332. The competent authorities in The Bahamas have the ability to obtain a search warrant to enter premises and search for materiel by virtue of section 37 of the POCA. A search warrant can be applied for when a production order has not been complied with, w here it is not practicable to communicate with any person entitled to produce the material or grant access to the material or the premises on which the material is situated. Search warrants may be issued for the purpose of an investigation into drug trafficking, to determine whether a person has benefited from criminal conduct or to locate the proceeds of criminal conduct. A search warrant can be issued in respect of particular material or material of a particular description.

Monitoring Orders – Proceeds of Crime Act:

333. The competent authorities in The Bahamas also have the ability to monitor 'an account or transactions conducted through an account' held at a financial institution by virtue of section 39 of the POCA. A monitoring order can be for a period not exceeding three (3) months. It is an offence if any person knowingly contravenes a monitoring order or provides false or misleading information.

334. Statistics regarding the use of production orders, search warrants and monitoring orders by the Royal Bahamas Police Force have been provided and can be seen at section 2.3 of this Report.

Search Warrants – Financial Transaction Reporting Act:

335. By virtue of the provisions of section 31 of the FTRA a Magistrate can issue a search warrant in respect of evidence gathering in connection with offences against the Act or any Regulation made under the Act.

Compelling the Production of Information – Financial Intelligence Act:

336. The FIU can compel the production of such information, excluding information subject to legal professional privilege, that the Unit considers relevant to fulfil its functions under section 4(2)(d) of the FIUA. Since the dismissal of the legal challenge in the case Financial Clearing Corporation v. The Attorney General No. 232 of 2001, the FIU has made frequent use of the provisions to fulfil its functions under the Act.

337. The competent authorities in The Bahamas have the ability to take witness statements for the purposes of any investigation pursuant to the POCA or the ATA.

Recommendation 30

338. The Attorney General has constitutional authority for the commencement and cessation of all prosecutions in The Bahamas. The DPP carries out those Constitutional duties on behalf of the Attorney General**.** The Department of the DPP is responsible for prosecuting all matters in the Supreme Court and other serious or complex matters in the Magistrate's court as necessary. Accordingly, the Department is responsible for prosecuting money laundering and financing of terrorism matters. The Department of the DPP presently has twenty-five (25) lawyers several of whom have received Caribbean Anti-Money Laundering Programme (CALP) money laundering training, as well as other training in combating money laundering and terrorist financing. Several of the lawyers in this Department are also trained legal experts for the CFATF mutual evaluation process. The staff has also received training from the Commonwealth Secretariat, the U.S. Department of Justice and the law school's Council of Legal Education. Five (5) of the attorneys comprise a small sub-unit, which deals specifically with restraint and confiscation matters.

339. The Department is adequately funded and the Government provides the technical and other resources necessary for the Department to carry out its duties. The DPP's representatives did however indicate that the workload of the office did require the recruitment of more senior attorneys to prosecute cases. The Department, while a part of the Attorney General's Office, enjoys sufficient operational independence and suffers from no undue influence.

340. The Authorities in the Bahamas are actively giving consideration to Constitutional amendments that will grant the DPP independence under the Constitution of the Commonwealth of The Bahamas. The proposed amendments provide for the means of appointment of the DPP, the powers of the DPP and the term of tenure and the grounds for removal.

341. The structure of the Attorney General's Chambers includes the ILCU, which has a staff of seven (7) attorneys. The ILCU provides assistance to countries that make requests under Mutual Legal Assistance provisions. The ILCU uses the POCA, the Proceeds of Crime

(Designated Countries and Territories) Order, the Criminal Justice (International Cooperation) Act, the Criminal Justice (International Cooperation) Order and the International Obligations (Economic and Ancillary Measures) Act. With regard to the latter the ILCU works closely with the Ministry of Foreign Affairs. To date, the ILCU has not had any requests for the freezing of terrorist assets. The CJ(IC)A and the CJ(IC)O have no dual criminality requirements. The Department works very closely with other units in the Attorney General's office, in particular the ILCU.

342. The T&F/MLIS have a very good relationship with the Director of the FIU and his staff. The FIU is called upon regularly to render analytical and other assistance, inclusive of freezing accounts as permitted by the FIUA.

343. The T&F/MLIS, as previously noted, is headed by an Assistant Superintendent and has a complement of one (1) Inspector, one (1) Sergeant one (1) Corporal and three (3) Constables. An Accountant and a Secretary are also attached to the Section. The Section has an adequate amount of technical and other resources at its disposal and the Section's budget is funded as part of the Royal Bahamas Police Force budget. The Section operates with a high degree of Confidentiality and is free from any undue influence and interference. Whilst staffing levels are always a concern, a review of the current workload and staffing level has identified a need for a further four positions within the Section. This matter is under review and consideration is being given to recommending an increase in establishment of four (4) Constables.

344. The CCU is headed by an Assistant Superintendent and staffed as follows:

- ♣ 1 - Assistant Superintendent
- ♣ 1 - Inspector
- ♣ 5 - Sergeants
- ♣ 2 - Corporals
- ♣ 4 - Constables

The staffing complement of this department is also under review and consideration is being given to recommending an increase in the establishment of four (4) Constables.

345. As a result of the close liaison between the Department of the DPP and the T&F/MLIS advice is provided on an ongoing basis during the course of investigations as well as on file preparation. Consequently, files presented to the DPP for review and prosecution have been described as being well presented, thorough and complete.

346. The Police also carry out prosecutions in the Magistrate Courts with the advice and guidance of the DPP's Office and the Examiners were advised that several of these police officers have gone on to study law.

347. The T&F/MLIS is staffed by trained, motivated, loyal and competent men and women with the highest degree of integrity. The officers are mature, professional and extremely confidential with the information that they receive. Officers of the Section are reminded daily of their responsibility as financial investigators and to be beyond reproach as it relates to their public and private lives. These Officers are also given lectures by senior officers and other professionals on honesty and integrity during regular career enhancement training.

348. All officers who join the Royal Bahamas Police Force are vetted by the Security Intelligence Branch to ensure individuals are fit and proper to join. On joining members are provided with a copy of the Force's "Code of Conduct." In addition members, when transferring to the T&F/MLIS are further vetted by the Security Intelligence Branch and sign a document outlining the provisions of section 407 of the Breaches of Official Trust Chapter 84 of the Penal Code and the penalties for such a breach. From the inception of the T&F/MLIS there have been no reports of incidents of corruption or impropriety involving or concerning any of its staff.

349. Staff of the DPP's office are all attorneys at law and are therefore subject to the requirements of the profession as stipulated by the Legal Professions Act. The attorneys on staff would also be subject to disciplinary proceedings under the Legal Professions Act in the event of any breach of their duties as attorneys. Staff within the DPP's Department has received AML/CFT training from the CFATF, the Commonwealth Secretariat and the US Department of Justice.

350. As outlined above, members of the T&F/MLIS continue to receive relevant training in the conduct of money laundering and financing of terrorism investigations. Between July 2002 and the present thirty-nine (39) members of the T&F/MLIS and the CCU have attended some twenty-five (25) local and international enhancement courses.

351. One concern raised, was the length of time cases could take to go from an arrest to trial and verdict. Cases at the Magistrates' Court level can sometimes take five (5) years to be heard whilst cases in the Supreme Court can take as long as six (6) years. The recognition of this problem has resulted in a pilot project named "Swift Justice" being implemented – "swiftly caught, swiftly tried, swiftly punished." In order to ensure the level of co-operation necessary regular meetings with the Attorney General and the DPP are held involving all stakeholders and partners in the Project.

Recommendation 32 *(competent authorities)*

352. Statistics regarding reports filed on international wire transfers are not available as no legislative framework is in place requiring reports to be made on international wire transfers.

353. It should be noted that The Bahamas has in place a foreign exchange control regime, which requires certain permissions to be in place before a foreign currency transaction can be conducted.

2.6.2. Recommendations and Comments

354. Every effort should be made to reduce the length of time between arrest and a matter coming to trial which can in some instances in the Supreme Court be as long as six years. The 'Swift Justice' project is a good start and its effectiveness should be reviewed and measured on an ongoing basis to ensure all necessary measures are being taken to speed up the administration of justice.

355. The DPP should seek to recruit additional staff especially at the senior level in order to strengthen the Department's capability.

356. It is recommended that a legislative framework be put in place requiring the reporting of international wire transfers transactions, and the collection, recording and analysis of the information obtained.

2.6.3. Compliance with Recommendation 27, 28, 30 & 32

	Rating	Summary of factors underlying rating
R.27	**C**	**This recommendation is fully observed.**
R.28	**C**	**This recommendation is fully observed.**
R.30	**PC**	• **Inordinate length of time to bring matters to trial.**
R.32	**PC**	• **The legal framework requiring the reporting of international wire transfers is not in place therefore no statistics are available**.

2.7 Cross Border Declaration or Disclosure (SR IX & R.32)

2.7.1 Description and Analysis

Special Recommendation IX

357. The framework for detecting the physical cross border movement of cash and negotiable instruments is contained in a number of statutes and regulations including inter alia, the CMA, the ECA and Regulations, and the Preclearance Statute. Each of these statutes provides powers to customs and immigration officers (in the case of the Preclearance statute, to US Immigration Officers) to search passengers and seize contraband. In addition the POCA provides for law enforcement powers to seize cash.

358. The legal basis that would support seizures at the border are:

- The Customs Management Act section 114, which prohibits the importation and exportation or possession of prohibited and restricted goods.
- The Exchange Control Regulations, regulation 32 which provides that the enactment relating to Customs, applies mutatis mutandi, for the prohibited importation and exportation of goods (including currency) without due permission.
- These regulations also establish a requirement for disclosure (when requested by Customs or Immigration Officers) with regard to possession of any goods that are prohibited with regard to the importation or export except with the permission of the Comptroller.
- Under Part III paragraph 1(2) of the Exchange Control Regulations, declarations required to be given under Part IV of the Regulations shall be taken as being deemed to be a declaration in a matter relating to Customs.

- Regulations 19 and 20 of the Exchange Control Regulations prohibit the importation and exportation of notes being legal tender of the United Kingdom or such other notes as the Comptroller specifies, documents of titles to securities and treasury

359. To a large extent, the monitoring of the cross border movement of cash and instruments lies in the hands of The Bahamas Customs Department. Operationally the Customs Department has outlined in its Strategic Management Plan for 2006 – 2009 four (4) main goals for the Department as follows:

- Enhancing the revenue collection process;
- Strengthening enforcement actions;
- Human resource Development;
- Development of Partnerships.

The issue of improving or modifying the system for the monitoring of the cross border movement of cash or monetary instruments is not cited as an item for action

360. In the Bahamas, the cross border transportation of cash is divided into two categories:

(a) Money going into and from the United States
(b) Money going to and from other territories

This monitoring of money going into and from the United States is facilitated by the Preclearance Act, which embodies the Preclearance Agreement signed between the United States and The Bahamas.

361. The Act provides at Section 3, inter alia, that a person leaving The Bahamas for entry into the United States on a pre-cleared flight shall declare to an officer of the United States any thing carried with him. He is also required to answer questions relating to anything carried with him and if required must produce the thing for inspection. The forms administered to the passengers clearly require the disclosure of any sum of money equal to or exceeding US$10,000 or its equivalent in cash or bearer instruments. Approximately 90% of all persons leaving The Bahamas travel to or through the United States.

362. Breach of these provisions would constitute an offence, which may be prosecuted summarily and render the person liable on conviction to a fine of $2,000 or to imprisonment for a term of two (2) years (or both) and the forfeiture of any baggage or thing or currency in relation to the offence.

363. The law also provides at section 4 for powers of search by a Bahamian peace officer in respect of persons departing The Bahamas for the United States and the ability of an officer of the United States to refuse to allow any person to board a pre-cleared flight. The sums that are the subject of the declaration may also be seized pursuant to the search under section 4.

364. With regard to persons entering The Bahamas from the United States, the authorities indicate that there is no obligation to provide a written declaration for sums being brought into the country. However, the immigration officers can ask passengers how much money is being brought into the country.

365. There is no declaration system regarding outgoing passengers to countries other than the

United States. The Bahamas relies on a system of detection, whereby if a person is leaving The Bahamas with a large sum of money and they cannot substantiate the source of it, the money is liable to seizure. It seems that this may be done under either the POCA or the CMA.

366. With regard to incoming passengers from countries other than the United States, the Authorities indicate that there is no obligation to provide a written declaration for sums being brought into the country. However, the Immigration Officers can ask passengers how much money is being brought into the country. If the amount of US$10,000 or its equivalent is exceeded, these funds can be seized if no proper explanation is given for possession of that amount of money and the proper sanction applied. The authorities also note that the customs laws and the exchange control laws would place an obligation of passengers to make an appropriate declaration in order not to be found in breach of these laws. However, this position has not found favour with the courts and the comment at Paragraph 80 of the judgement in the Lewis appeal clearly advises the authorities of what is required.

367. Thus it is only in the case of the Preclearance statute (and the declaration forms issued by the US Authorities) that there is a clear indication to passengers that they are under an obligation to declare cash or cash instruments over the relevant threshold.

368. This situation has resulted in some difficulty in mounting prosecutions based on the seizure of cash outside of the circumstances relating to the Preclearance Statute. The Examiners refer to a matter heard in the Court of Appeal of the Commonwealth of The Bahamas in the case of Lamont Pierre Basil Lewis -v- The Attorney General. The section of the judgement shown is relevant to Special Recommendation IX.

"78. In our judgment, while it is accepted that everyone is deemed to know what the law is, that presumption is easily rebutted where, as here, there is no evidence that anyone in authority required the appellant to state under the Management Act or the Exchange Control Regulations that he was bringing more than one hundred and forty dollars into The Bahamas. Furthermore, there is no indication on the customs declaration form requiring a person to declare that he/she is bringing any sum of money in bank notes of any territory into The Bahamas. Nor is there any evidence that the charge in this case was preferred with the consent of the Attorney General.

79. In our judgment, the appellant could not be said to have known or ought reasonably to have known that he ought to declare the bank notes to the customs officer or the police officer so that the mental element of the offence with which he was charged could not have been proven to the requisite standard.

80. It is open to the authorities, if they wish to criminalise the kind of conduct alleged to have occurred in this case, to make it clear in the appropriate legislation the particulars of any such offence and to amend the forms to make it clear to disembarking passengers what they are required to declare.

81. We take judicial notice of the fact, that very few, if any, persons visiting or returning to The Bahamas from abroad ever make or are asked to make any declaration to customs about how much foreign currency they are bringing into The Bahamas. If the relevant authorities wish to require persons entering the Bahamas –including temporary visitors- to declare how much money (in bank notes) they are bringing here, they are free to do so bearing in mind all of the ramifications of such a decision. It is not for a court, however,

to interpret any statutory provision so as to criminalize that which has not been clearly made criminal by Parliament."

369. The Bahamas would appear to have elements of both the declaration system and the disclosure system. With regard to obligations under the United States of America and the Bahamas Pre-clearance Agreement Act, there is a clear declaration obligation.

370. Under the terms of the ECR, Schedule IV there is a disclosure obligation when incoming passengers are interviewed by immigration authorities, which may or may not take place. The requirement for such disclosures lies in the discretion of the Customs or Immigration Officer, and would seem to be based on whether there is a suspicion that illegal importation or exportation of prohibited items is taking place. However, the fact that passengers are not made aware of this obligation would seem to create a difficulty in mounting prosecutions as shown in the Basil Pierre case.

371. The Examiners were not shown any evidence that travellers into The Bahamas or outgoing travellers to countries other than the United States were made aware of their obligations not to breach the ECR or the CMA.

372. Section 46 of the POCA provides for the seizure and detention of cash if a police officer has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of criminal conduct or is intended by any person for use in any criminal conduct. Cash is defined as "coins or bank-notes in any currency and negotiable instruments." Criminal Conduct includes offences under the ATA. Cash seized under this provision may be detained for an initial period of ninety-six (96) hours whilst its origin is being investigated or consideration is given to instituting criminal proceedings against any person for an offence with which the cash is connected. Detention of the cash beyond the initial ninety-six (96) hours can be authorized by a Stipendiary and Circuit Magistrate for a period of three months up to a maximum period of two (2) years. Forfeiture may be obtained under section 47 of the POCA upon the Courts satisfaction that the funds represent any person's proceeds, benefit, or is intended for use in a criminal action.

373. The Examiners have however noted that under the POCA *"criminal conduct*" is defined as drug trafficking or any relevant offence. The Examiners take the view that the authorities would be constrained in seeking to use the POCA to forfeit cash seized on the basis of a failure to declare or disclose pursuant to either the ECR as applied by the CMA section 114. The offence under section 114 is a summary offence and not one that is triable on information or indictment, as would seem to be required for the offence to fall within the POCA.

374. Under the ECR, Part III, a customs or Immigration Officer may seize anything, which the Officer believes is prohibited to be imported or exported. However there is no express power to seize based on a false declaration, or upon a suspicion of money laundering or terrorist financing.

375. Information obtained as a result of a cash seizure is retained by authorities however there is no information or statistics available relating to cash declarations or false cash declarations as the legal framework requiring such declarations is not in place. The Examiners were also advised that declarations made to the United States authorities under the Pre-Clearance Act were not provided to the Bahamian Customs authorities, although details of particular

declarations would be made available to support prosecutions under the Act.

376. Additionally, because the disclosure requirements only relate to incoming passengers, on a discretionary basis, there would not be documentary records of the transportation activities of all travellers. The advice received from the Authorities indicates that the disclosure to the Customs or Immigration Officer in any event is made orally, and that therefore there would not be any documentary evidence of the disclosure generated until the matter has escalated into an investigation.

377. There is no requirement to declare or disclose the cross border transportation of cash or negotiable instruments therefore no statistics or information is obtained in this area. Consequently no information, based on declarations, is available for forwarding and analysis by the FIU. STRs filed as a result of suspicions caused by the cross border transportation of cash or negotiable instruments are however forwarded to the FIU. The lack of a declaration or disclosure system prevents an analysis of cross border movements to determine or detect any particular trends in this area.

378. Under the CMA section 4(1), Customs Officers are under an obligation not to disclose any information acquired by him in the course of his duties unless such disclosure is pursuant to the purposes of the Act, or upon a requirement by the Court or with the approval of the Minister. The Customs Department and the FIU are a part of the Task Force established to develop AML/CFT policies.

379. The FIU would as a result of its statutory powers have the power to request information from the Customs Department. However, there is no established procedure or protocol for the consistent provision of information to the FIU relating to suspicious cross border transportation activities, save for the possible exchanges made at the Task Force level.

380. The issues relating to the declaration of cross border transportation of cash or negotiable instruments has been discussed at the local level however no definitive decision has been taken to implement a system as outlined at Special Recommendation IX. However, the Customs Authorities in their Strategic Management Plan 2006 – 2009 cite the necessity to enhance their enforcement efforts by way of developing greater intelligence-gathering systems, networking with national and international law enforcement agencies, increased surveillance at air and sea ports and, acquiring and using of technology to assist in the Department's duties and training**.**

381. Both the Customs and Immigration authorities have the ability to work with their international counterparts, and have done so on a frequent basis in a number of areas. International assistance in the seizure of funds at the ports of entry to and from The Bahamas are available under the POCA, the Proceeds of Crimes (Designated Countries and Territories) Order (POCO), the Mutual Legal Assistance (Criminal Matters) Act (MLLA(CM)A) and, the Criminal Justice (International Co-operation) Act (CJ(IC)A). Seizures under the Pre-Clearance statute are also available.

382. Section 46 of the POCA provides for the seizure and detention of cash where a police officer has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of criminal conduct or is intended by any person for use in any criminal conduct.

383. Persons who fail to or make a false disclosure under the ECR would appear to be liable to a penalty under sections 116 and 123 of the CMA. Section 116 establishes the offences relating to declarations with the penalty and section 123 establishes a penalty of a fine for $5000 upon summary conviction.

384. These sanctions can be imposed by the Courts based upon prosecutions mounted by the DPP's Department. The sanctions under the CMA with regard to these offences relate to fines, and in some cases, seizure and forfeiture.

385. The Authorities may take additional action under the POCA where there is a suspicion that the monies in question relate to criminal conduct, including powers of search, restraint orders and forfeiture. The offence of money laundering would also apply to parties who are in possession of funds that are or are reasonably suspected to be either instrumentalities or proceeds of crime.

386. The Customs and Immigration Authorities are empowered to administer sanctions under the ECA and the CMA. The police are empowered to take action under the POCA.

387. Under the POCA, the sanctions may be applied to the directors and senior management of any institution, which has committed a breach by virtue of section 54 of that Act.

388. The sanctions that are applicable generally under the POCA, the ATA, the ECR and the United States/Bahamas Preclearance Agreement Act are applicable in circumstances where the accused is attempting to circumvent these statutes. Where institutions in the financial sector are involved the breach will also attract regulatory action, the extent of which will depend on the nature of the breach.

389. Part VI of the POCA provides for the seizure and subsequent forfeiture of cash that is or is reasonably suspected to be the proceeds of or instrumentalities relating to criminal conduct. The provision for the seizure of cash while not specifying cross border is applicable where a police officer has reasonable grounds for suspecting that the cash directly or indirectly represents any person's proceeds of criminal conduct or is intended for use in criminal conduct' and so will include cross border seizures. The POCA also permits the use of restraint orders and charging orders with regard to property pursuant to sections 25 – 28 of that Statute. The definition of property is defined to include money and all other property moveable and including things in action and other intangible and incorporeal property. The Authorities will use these confiscatory tools on the same basis that apply in cases that do not involve the cross border movement of cash and monetary items. As a consequence the definition of property under the Act and the provisions of sections 10 and 11 of the POCA make it clear that confiscation can apply to the widest range of property.

390. Forfeiture may also be ordered under the Preclearance Statute. A Customs Officer may seize and detain prohibited goods under the ECR. Forfeiture is also available under the DDA.

391. Seizure and detention of cash under the POCA may be made by a police officer without an application to the Court pursuant to section 46 of the POCA. Restraint and charging orders are also available under the POCA section 25 – 28. Customs and Immigration officers have search and seizure powers under the CMA and the Preclearance Act.

392. Powers for monitoring and identifying the physical cross border transportation of cash and

bearer instruments include declarations and disclosures under the Pre-clearance Act and under the ECA, as well as searches. In addition, the POCA also provides for search warrants (section 37), production orders (section 35), monitoring orders (section 39) and disclosures from Government Departments under section 38.

393. The POCA provides protections for innocent third parties at section 15 and at section 47. The DDA provides protections in the case of forfeitures at section 33. There does not appear to be statutory protections under the Pre-clearance Act and the ECR. The Courts have the power to void contracts under section 13 of the POCA.

394. Part VI of the POCA is applicable to the cross border transportation of funds that are intended for FT since offences under the ATA are included in the definition of criminal conduct under the POCA.

395. All of the provisions of the ATA and the POCA will apply to persons engaged in the physical cross border transportation of currency where such transportation relates to the financing of terrorism. This includes the criminalization of terrorist acts, and the financing of terrorism and the powers to freeze funds under section 9 of the ATA although it should be noted that the authorities may not freeze funds solely upon the designation of an entity by the UN Security Council, nor will it freeze the funds of an entity upon the request of a foreign State unless that State is in a position to respond to a similar request from The Bahamas. See. Discussions at Section 2.3 of this Report.

396. The Customs Department works closely with its sister agencies and have advised that in such circumstances they would be able to notify a foreign Customs Service. It should be noted that under the CMA, customs officers would require either Ministerial approval or to be summoned as a witness in order to share information obtained in the course of his duties, unless this disclosure is made for the purposes of that Act.

397. The current system for monitoring cross border movements of cash and bearer instruments appears to lack effectiveness because of the fact that Customs and Immigration Officers generally do not require passengers to disclose the sums that they are carrying. Additionally, the customs forms administered to passengers does not make the passenger aware of the fact that they are responsible for ensuring that there is no breach of the ECR or the CMA as there currently exists for the US Preclearance Act. This has led to difficulties in prosecuting persons found in possession of undeclared amounts of cash, but who have not been required to make a disclosure by the Immigration or Customs authorities. See. Also discussion of the Basil Lewis case above.

Recommendation 32

398. The legal framework requiring declarations regarding the cross border transportation of cash or negotiable instruments is not in place. Although the Customs authorities indicated that Customs had provided STRs to the FIU, the statistics of the FIU do not reveal STRs emanating from this source. In addition The Bahamas does not receive any data with regard to the declarations made to the United States Authorities under the pre-clearance arrangements unless they are for prosecutions.

399. Disclosures made under the ECR appear to be oral in nature, and are only made upon a decision by the Customs or Immigrations Officer acting upon a suspicion. These

disclosures are not required to be made by all incoming passengers, and therefore the statistics maintained would not reflect all of the movement of currency and bearer instruments above a certain threshold.

400. Since the system of disclosure used by The Bahamas is not intended to cover all passengers and because the Bahamian authorities do not receive any data relating to declarations made under the Preclearance Statute unless they are for prosecutions, the Examiners consider that The Bahamas authorities are not in a position to compile comprehensive statistics on the movement of cash couriers into and out of The Bahamas.

2.7.2 Recommendations and Comments

401. Whilst the legislation is in place in The Bahamas for the seizure and detention of cash or negotiable instruments where a suspicion arises regarding its origin or its intended use there is no requirement to make a declaration of cash or negotiable instruments during cross border transportation, where the value exceeds a certain threshold. There are also certain provisions under the CMA and the ECA, which indicate an obligation to disclose the movement of funds or instruments, in response to the query of customs or immigration officers. The Government of The Bahamas should implement a more rigorous system of cross border disclosure and declaration, which meets the requirements of Special Recommendation IX. This can be achieved by way of an amendment to current legislation or enacting new legislation to address this issue.

402. A system should be implemented to collect, collate and analyze declarations of cross border transportation of cash or negotiable instruments. Ideally this could be achieved by means of a computerized system, which would allow authorities, possibly the FIU, to have ready access to the information and the ability to spot trends or make a query against a specific target.

403. Customs forms should clearly outline the obligations for the traveller to disclose the value of the sums being carried above a certain amount.

2.7.3 Compliance with SR IX & R.32

	Rating	Summary of factors underlying rating
SR.IX	**PC**	• **The legal framework requiring the declaration of cross border transportation of cash or negotiable instruments is only applicable to travellers to the USA.** • **The detection method used by the Authorities appears to have deficiencies as outlined by the Courts.**
R.32	**PC**	• **Statistics regarding the cross border transportation of cash or negotiable instruments are not maintained as the legislative framework is not in place requiring such a declaration in the first instance**.

3 Preventive Measures - Financial Institutions

404. Section 3 of the FTRA prescribes the financial institutions and their activities which are subject to AML/CFT obligations to verify customers, file STRs and maintain records amongst others. Section 3 defines financial institutions as follows;

(a) a bank or trust company, licensed under the Banks and Trust Companies Regulation Act;

(b) a company carrying on life assurance business under the Insurance Act or insurance business of which a substantial amount of the risks underwritten are risks of an affiliated company under the External Insurance Act;

(c) a co-operative society registered under the Co-operative Societies Act;

(d) a friendly society enrolled under the Friendly Societies Act;

(e) a licensed casino operator within the meaning of the Lotteries and Gaming Act;

(f) a broker-dealer within the meaning of the Securities Industry Act;

(g)a real estate broker, but only to the extent that the real estate broker receives funds in the course of the person's business for the purpose of settling real estate transactions;

(h) a trustee or administration manager or investment manager of a superannuation scheme;

(i) an investment funds administrator or operator of an investment fund within the meaning of the Investment Funds Act, 2003;

(j) any person whose business or a principal part of whose business consists of any of the following:

(i) borrowing or lending or investing money;

(ii) administering or managing funds on behalf of other persons;

(iii) acting as trustee in respect of funds of other persons;

(iv) dealing in life assurance policies;

(v) providing financial services that involve the transfer or exchange of funds, including (without limitation) services relating to financial leasing, money transmissions, credit cards, debit cards, treasury certificates, bankers draft and other means of payment, financial guarantees, trading for account of others (in money market instruments, foreign exchange interest and index instruments, transferable securities and futures), participation in securities issues, portfolio management, safekeeping of cash and liquid securities, investment related insurance and money changing; but not including the provision of financial services that consist solely of the provision of financial advice;

(k) a counsel and attorney, but only to the extent that the counsel and attorney receives funds in the course of that person's business-

(i) for the purposes of deposit or investment;

(ii) for the purpose of settling real estate transactions; or

(iii) to be held in a client account;

(l) an accountant, but only to the extent that the accountant receives funds in the course of that person's business for the purposes of deposit or investment.

405. As at the end of 2005, the regulated financial sector in The Bahamas comprised 54 banks, 91 bank and trust companies, 105 trust companies, 65 broker dealers, 40 security investment advisers, 59 investment fund administrators, 699 investment funds, 14 life

insurance companies, 841 active DNFBPs (lawyers, accountants, real estate brokers/developers, trust and company service providers) and 15 co-operatives (credit unions).

406. The AML/CFT measures applicable to the Bahamian financial sector are primarily contained in legislation and in guidelines issued by the financial services regulators of The Bahamas and the FIU.

407. Under section 15 of the FIUA, the FIU in 2001 issued Suspicious Transactions and Anti-Money Laundering Guidelines for banks and trust companies, the insurance sector, the securities industry, co-operatives societies, financial service providers and licensed casino operators. The Guidelines were to provide a practical interpretation of the provisions of the legislation and to give examples of good practice. There is no specific legislative provision, which empowers the Guidelines as "other enforceable means" in that there are no sanctions for non-compliance except for those provisions which are directly attributable to enacted legislation. The non-binding status of the Guidelines is further demonstrated by the statement in the explanatory foreword that an institution adopting alternative procedures relating to anti-money laundering policies and procedures will need to demonstrate the adequacy of those procedures. The Examiners did note at regulation 8(2) of the FIUR that the Guidelines of the FIU or other competent authorities are to be considered by the Court in making a determination on a financial institutions compliance with those regulations. Those regulations refer to identification, record keeping, internal reporting procedures, the appointment and duties of the MLRO, and compliance officer, and employee training. However, in the Examiners' view these provisions did not suffice to bestow on the FIU's Guidelines the force of law.

408. On 19th October, 2005, the CBB issued a set of comprehensive 'Guidelines For Licensees On The Prevention of Money Laundering & Countering The Financing of Terrorism' (the CBB AML/CFT Guidelines), which replaced the Suspicious Transactions and Anti-Money Laundering Guidelines for Banks and Trust Companies issued by the FIU in 2001, but only in relation to procedures for the prevention of money laundering and verifying customer identity. Licensees of the CBB are required to continue to adhere to the FIU's Guidelines insofar as they relate to suspicious transactions reporting.

409. The CBB AML/CFT Guidelines which apply to all banks and trust companies licensed to conduct business from within The Bahamas have been adopted by the SC and are applicable to all licensees and registrants of the SC under the SIA. This was communicated to the industry as an interim SC Guideline. The CBB AML/CFT Guidelines incorporate both the mandatory minimum requirements of the FTRA and industry best practices. Licensees of the CBB and the SC are expected to adhere to the CBB AML/CFT Guidelines in developing responsible procedures suitable to their business to prevent money laundering and terrorist financing.

410. Both the CBB and the SC have advised all licensees that these Guidelines would be used as part of the criteria against which it will assess the adequacy of a Licensee's systems to counter money laundering and terrorist financing. The SC has advised that these Guidelines are not legally enforceable on its licensees. Further licensees and registrants of the SC are inspected for compliance with these provisions and failure to comply will result in citation which will note that the licensee or registrant is not compliant with best practices in that particular regard. The SC has posted these guidelines on its website and

issued the same to its licensees and registrants. The SC will be addressing the binding nature of the guidelines either through rules or new legislation.

411. The CBB AML/CFT Guidelines, like the FIU Guidelines have no specific sanctions for non-compliance except for those provisions which are subject to penalties in enacted legislation. However, the Guidelines were issued pursuant to Paragraph 1(b) of the First Schedule of the BTCRA, which empowers the Inspector of Banks and Trust Companies to establish appropriate and prudent standards for conducting safe and sound banking and trust business. Under section 4(6)(a) of the BTCRA, the Governor of the CBB has the power to impose any necessary conditions and limitations consistent with the Act on a licence that relates to the business of the bank or trust company. This provision allows the CBB to sanction non-compliance with any of the requirements of the CBB AML/CFT Guidelines. As a result of violations of the CBB AML/CFT Guidelines, conditions were imposed on two licensed bank and trust companies in March 2006. Given the above, the CBB AML/CFT Guidelines are considered binding requirements.

412. The SC's 'Interim Guidelines for AML and KYC Procedures for Licensees and Registrants' also contain guidance for investment fund administrators.

413. The CC has AML regulatory responsibility for gatekeepers e.g. lawyers, accountants, real estate brokers/developers, other providers of financial services not regulated by the CBB or SC, and persons dealing in life assurance policies (section 45 of the FTRA). The CC has issued industry-specific Codes of Practice for lawyers, accountants, financial and corporate service providers, real estate brokers and real estate developers.

414. The Codes of Practice incorporate both enacted and additional AML/CFT requirements. There are no specific sanctions for non-compliance with the Codes of Practice except for those requirements which have penalties in enacted legislation. The substantive regulatory authorities of the CC registrants, the IFSCP, Registrar of Insurance and Director of Societies have limited sanctions for failure to comply with non-legislated AML/CFT requirements in the Codes of Practice. These sanctions comprise revocation or suspension of licence or registration and prohibition or limitation of business. There has been no instance of these sanctions being used for non-compliance with AML/CFT requirements in the Codes of Practice. Additionally, the regulatory authorities have no ladders of intervention with wide and proportionate sanctions applicable to varying levels of non-compliance with AML/CFT requirements in the Code of Practice. As a result of the foregoing, the Codes of Practice are not considered other enforceable means.

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering and terrorist financing

415. The Bahamas has enacted reduced and simplified CDD measures in the FTRR. Regulation 5A in the FTRR gives a financial institution, discretion to exempt certain financial institutions from having to provide documentary evidence for CDD purposes. In addition, the financial institution can exercise the same discretion with regard to certain products and transactions.

416. Each of the categories listed for exemption are either recognized FATF categories of low risk customers or have been exempted on the basis of the fact that information regarding such category of customer is readily available from an alternate source. As such the

Bahamian authorities did not have any documented assessment for the implementation of reduced or simplified CDD measures for these categories. It was noted by the Examiners that dealers in precious stones and metals have not been included in the AML/CFT regime for DNFBPs. The authorities were of the view that dealers in precious metals and stones do not provide an avenue for AML/CFT risk in The Bahamas and furthermore are required under section 43 of the POCA to report suspicious transactions.

417. In addition to the above the CBB and the CC have in their individual guidance advised their constituents with regard to the establishment of appropriate risk frameworks incorporating AML/CFT concerns about customers and products. The Examiners were advised that the CC is considering including in updated Codes of Practice requirements concerning AML procedures for customers with low risk designation.

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

3.2.1 Description and Analysis

Recommendation 5

418. All financial institutions are required under sections 6(1) and 7(1) of the FTRA to verify the identity of any person seeking to establish a business relationship with them or carrying out an occasional transaction exceeding the prescribed amount of $15,000. Although there is no explicit prohibition against the maintenance of anonymous accounts or accounts in fictitious names in The Bahamas, the inclusive range of the provisions of the FTRA will of necessity cover numbered accounts.

419. The FTRA mandates the verification of customer identification in the following circumstances:

i. Before establishing a business relationship (section 6(1) and 6(2)).

ii. Whenever the amount of cash involved in an occasional transaction exceeds $15,000 (section 7(1)(a))

iii. Whenever it appears that two or more (occasional) transactions are or have been deliberately structured to avoid lawful verification procedures in respect of the person(s) conducting the transaction(s) and the aggregate amount of cash involved in the transaction(s) exceeds $15,000 (section 7(1)(b)).

iv. Whenever the financial institution knows, suspects or has reasonable grounds to suspect that a customer is conducting or proposes to conduct a transaction which (i) involves the proceeds of criminal conduct as defined in the POCA; or (ii) is an attempt to avoid the enforcement of the POCA. (section 10A(1)). Criminal conduct as defined in POCA includes offences under the ATA such as FT.

v. Whenever during the course of a business relationship there is reason to doubt the identity of the customer (section 6(4)).

vi. Whenever it appears to a financial institution that (i) a transaction is being conducted on behalf of a third party and (ii) the transaction(s) have been or are being

deliberately structured to avoid lawful verification procedures in respect of the third parties for whom the transaction(s) are being conducted; and (iii) the aggregate amount of cash involved in the transaction(s) exceed $15,000 (sections 8(2) and 9(2)).

420. The above legislative requirements for occasional transactions are limited to transactions involving cash and do not cover all occasional transactions as required by the CDD criteria of Recommendation 5.

421. Wire transfers are included in the general definition of 'facilities' in the FTRA and therefore require verification of customer identification. Regulation 8 requires financial institutions to retain originator information including the name and address of the originator. While wire transfers are included in the general definition of 'facilities; in the FTRA and require verification of customer identification, the specific circumstances covered by the Interpretative Note to SR VII, which refer mainly to the transmission of originator and account information with wire transfers, are not mandated. The CBB'S review of The Bahamas' legislative and regulatory provisions to facilitate compliance with SR VII is on-going and is expected to be completed by the end of the second quarter in 2006[18].

422. The requirements of the FTRA to verify the identity of every customer who seeks to establish a business relationship make no distinction between natural and legal persons or legal arrangements (sections 6(1), 6(2) and 6(3)).

423. Section 11(1) of the FTRA requires that financial institutions obtain such documentary or other evidence as is reasonably capable of establishing the identity of a customer, including official documents and structural information in the case of corporate entities.

424. Regulation 3(1) of the FTRR sets out the minimum information that financial institutions must obtain when they seek to verify the identity of individual customers, namely the full and correct name of the individual, their address, date and place of birth, and the purpose of the account (facility) and the nature of the business relationship (see CBB AML/CFT Guidelines paragraph 35 – 35.2).

425. With respect to individual customers, regulation 3(2) of the FTRR provides financial institutions with guidance on the type of additional information and documentation they may rely upon (apart from the minimum information which they must obtain to identify individual customers) when verifying individual customer identity. The type of additional documentation that may be relied upon include a copy of the relevant pages of a passport, drivers licence, voters card, national identity card or such other identification. This regulation is discretionary in nature and was enacted to introduce a risk-based approach to customer due diligence.

426. The FTRA at sections 8(1) and 9(1) provide inter alia that whenever a transaction is conducted through a financial institution (either as an occasional transaction or by a facility holder through a facility) and it appears to the financial institution that the person

[18] The CBB completed its review of The Bahamas' legislative and regulatory provisions in early July 2006 and issued a consultation paper on the full implementation of SR VII. Comments are due from the Central Bank's licensees by the end of August 2006 and the Bank's recommendation to the Government is planned for early September 2006.

conducting the transaction is doing so on behalf of any other person or persons, and the amount of cash involved in the transaction exceeds $15,000 then in these circumstances the financial institution should verify the identity of the person conducting the transaction and the third parties. The above provisions include the opening of an account. There is no general provision in primary legislation to verify that any person purporting to act on behalf of the customer is so authorised. Paragraph 66 of the CBB AML/CFT Guidelines states that financial institutions should seek to verify the legal existence of corporate clients and ensure that any person purporting to act on behalf of the corporate entity is authorized to do so.

427. The procedures for the verification of the identity of corporate entities, partnerships and unincorporated businesses are stipulated in regulations 4 and 5 of the FTRR. Full implementation of all requirements is discretionary, as the FTRR was amended to facilitate a risk-based approach. Regulation 4 of the FTRR sets out the information, which may be relied upon by a financial institution to verify the identity of any corporate entity whether incorporated in The Bahamas or elsewhere as follows:

For corporate entities-

(a) certified copy of the certificate of incorporation;
(b) certified copy of the Memorandum and Articles of Association of the entity;
(c) location of the registered office or registered agent of the corporate entity;
(d) resolution of the Board of Directors authorising the opening of the account and conferring authority on the person who will operate the account;
(e) confirmation that the corporate entity has not been struck off the register or is not in the process of being wound up;
(f) names and addresses of all officers and directors of the corporate entity;
(g) names and addresses of the beneficial owners of the corporate entity;
(h) description and nature of the business including:
    (i) date of commencement of business.
    (ii) products or services provided;
    (iii) location of principal business;
    (iv) purpose of the account and the potential parameters of the account including:-
        (i) size, in the case of investment and custody accounts;
        (ii) balance ranges, in the case of deposit accounts;
        (iii) the expected transaction volume of the account;

(j) written confirmation that all credits to the account are and will be beneficially owned by the facility holder except in circumstances where the account is being operated by an intermediary for the purpose of holding funds in his professional capacity;
(k) such other official documentary and other information as is reasonably capable of establishing the structural information of the corporate entity.

428. The current wording of the regulations and in particular the wide discretion granted to financial institutions to determine levels of customer verification procedures has the potential for such institutions to exercise this discretion improperly. It should however be noted that the Examiners did not observe any evidence of any improper exercise of this discretion. The Bahamas Authorities may wish to consider amending regulations 4 and 5 of the FTRR to clarify the basis for the exercise of this discretion.

429. With regard to partnerships and unincorporated associations, regulation 5 of the FTRR provides the information, which may be relied upon by a financial institution to verify the identity of any partnership or other unincorporated businesses as follows:

Partnerships and other unincorporated associations-

(a) verification of all partners or beneficial owners in accordance with regulation 3;
(b) copy of Partnership Agreement (if any) or other Agreement establishing the unincorporated business;
(c) description and nature of the business including:
(i) date of commencement of business;
(ii) products or services provided;
(iii) location of principal place of business
(d) purpose of the account and the potential parameters of the account including:
(i) size in the case of investment and client accounts;
(ii) balance ranges, in the case of deposit and client accounts;
(iii) the expected transaction volume of the account;
(e) mandate from the partnership or beneficial owner authorising the opening of the account and conferring authority on those who will operate the account.
(f) written confirmation that all credits to the account are and will be beneficially owned by the facility holder except in circumstances where the account is being operated by an intermediary for the purpose of holding funds in his professional capacity;
(g) such documentary or other evidence as is reasonably capable of establishing the identity of the partners or beneficial owners.

430. In addition to the above, regulation 7A of the FTRR requires financial institutions to verify the identities of the beneficial owners of their facilities. This will aid financial institutions in understanding the ownership and control structure of legal persons or legal arrangements. In the case of corporate entities, the legal obligation to verify beneficial owner identity is limited to those beneficial owners having a controlling interest in the corporate entity. The provision is not specific as to determining the ultimate natural person who owns or controls a legal person or legal arrangement; however the CBB advised that all their licensees maintained this information.

431. Paragraph 66 of the CBB AML/CFT Guidelines state that a financial institution's principal requirement is to look behind a corporate entity to identify those who have ultimate control over the business and the company's assets, with particular attention being paid to any shareholders or others who exercise a significant influence over the affairs of the company.

432. For the purposes of the CBB AML/CFT Guidelines, the CBB defines "controlling interest" as "an interest of ten percent (10%) or more of a corporate entity's voting shares.

433. Paragraph 63(vi) of the CBB AML/CFT Guidelines requires that financial institutions obtain satisfactory evidence of the identity of (a) each beneficial owner having a controlling interest in the corporate entity (other than a publicly traded company) being any person holding an interest of 10% or more of a corporate entity's voting shares or with principal control over the company's assets and (b) the person (or persons) on whose instructions the signatories on the account are to act or may act where such persons (if any) are not full time employees, officers or directors of the company. The identities of all persons referred to in

(a) and (b) having a controlling interest must be verified in accordance with paragraph 35 and 35.1 (identification procedures for natural persons) of the Guidelines. The identities of individual beneficial owners must be identified in accordance with FTRR regulation 3(1).

434. The CC's Codes of Practice in Part IV require institutions to obtain information regarding the purpose of the facility and confirmation or otherwise that all credits to the account are and will be beneficially owned by the facility holder, except in circumstances where the account is being operated by an intermediary for the purpose of holding funds in his professional capacity. In this latter case the beneficial owners must be verified in accordance with the regulations.

435. For legal arrangements such as partnerships, the CBB AML/CFT Guidelines state at paragraph 73 that it will normally be necessary to obtain documented information concerning partnerships and unincorporated businesses including (i) identification evidence for all partners/controllers of a firm or business, who are relevant to their firm's application to become a facility holder and who have individual authority to operate a facility or otherwise to give relevant instructions; (ii) identification evidence for all authorised signatories, in line with the requirements for individual customers. When authorised signatories change, care should be taken to ensure that the identity of the current signatories has been verified.

436. For trusts and other legal arrangements, the CBB AML/CFT Guidelines state in paragraph 77.1 that financial institutions should inter alia (i) make appropriate enquiry as to the general nature and the purpose of the legal structure and the source of funds; (ii) obtain identification evidence for the settlor(s); (iii) verify the identity of the provider of the funds such as the settlor and those who have control over the funds, for example, the trustees, advisors, and any controllers who have power to remove the trustees/advisors; and (iv) in the case of a nominee relationship, obtain identification evidence for the beneficial owner(s)

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437. Paragraphs 93–95 of the CBB AML/CFT Guidelines list similar due diligence requirements for CBB licensees providing facilities for investment funds.

438. With respect to foundations, paragraph 83 of the CBB AML/CFT Guidelines provides that it will normally be necessary for financial institutions to obtain documented information concerning (i) the foundation's charter; (ii) the Registrar General's certificate of registration in order to confirm the existence and legal standing of the foundation; (iii) the source of wealth of the party providing the funds for the foundation; (iv) the source of funds, and (v) identification evidence for the founder(s) and for such officers and council members of a Foundation as may be signatories for the account(s) of the foundation. Licensees should follow the guidance in paragraph 35 (i) – (iii), 35.1(ii) and (iii) of the Guidelines when verifying the identities of signatories. Where the founder is a company, licensees should have regard to the guidance on corporate clients contained in paragraphs 63 to 70; where the founder is an individual, licensees should follow the guidance provided in paragraphs 35 to 43. The Guidelines provide further that identification evidence should also be obtained for all vested beneficiaries of the foundation.

439. The CC's Codes of Practice at sections 11.3 and 11.4 sets out similar information requirements for verification of corporate entities and other legal arrangements. The CC's Codes of Practice are not considered 'other enforceable means' as promulgated by the FATF Recommendations.

440. Regulation 9(2) of the FTRR requires financial institutions to monitor their client relationships to assess consistency with the account holder's stated purposes during the business relationship. Regulation 9(1) states that no further verification of identity is necessary unless there is a material change in the way a facility is operated.

441. Paragraph 138 of the CBB AML/CFT Guidelines requires licensees to have systems and controls in place to monitor on an ongoing basis relevant account activities in the course of the business relationship. The nature of this monitoring will depend on the nature of the business. Possible areas to monitor include:

(a) transaction type;
(b) frequency;
(c) amount;
(d) geographical origin/destination; and
(e) account signatories.

442. Paragraph 46 of the CBB AML/CFT Guidelines provides a list of "trigger events" which may prompt a financial institution to review a business relationship with a view to ensuring that transactions are consistent with the institutions knowledge of the client, their business and risk profile and to re-verify a customer's identity:

i. A significant transaction (relative to a relationship);
ii. A material change in the operation of a business relationship;
iii. A transaction which is out of keeping with previous activity;
iv. A new product or account being established within an existing relationship;
v. A change in an existing relationship which increases a risk profile (as stated earlier); and
vi. The assignment or transfer of ownership of any product.

443. The above list should not be considered exhaustive. In addition paragraphs 25.2 and 26 require that periodic reviews of customers be conducted for risk rating related purposes.

444. The CC at section 15 of its Codes of Practice states that the purpose of monitoring is to be vigilant for any significant changes or inconsistencies in the pattern of transactions. Inconsistency is measured against the stated original purpose of the accounts. The possible areas to monitor could be the same as discussed at paragraph 439 above.

445. The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships, is enforceable only on banks and trust companies through the CBB AML/CFT Guidelines. As already noted these Guidelines are also applicable to the licensees and registrants of the SC but are not enforceable.

446. Paragraph 32 of the CBB AML/CFT Guidelines states that once a business relationship has been established, reasonable steps should be taken by the licensee to ensure that descriptive due diligence information is kept up to date as opportunities arise.

447. Paragraph 25 of the CBB AML/CFT Guidelines requires each licensee to develop and implement a risk-rating framework approved by its Board of Directors as being appropriate

for the type of products offered by the licensee, and capable of assessing the level of potential risk each client relationship poses to the licensee. Paragraph 25.1 of the CBB AML/CFT Guidelines sets out the criteria licensees should adopt in developing their risk-rating framework.

448. Paragraph 26 of the CBB AML/CFT Guidelines provides that the risk rating framework should include customer acceptance and on-going monitoring policies and procedures that assist the licensee in identifying the types of customer that are likely to pose a higher than average risk of money laundering or funding of terrorist activities. A more extensive customer due diligence process should be adopted for higher risk customers. There should also be clear internal guidelines on which level of management is able to approve a business relationship with high-risk customers.

449. Licensees are required to conduct due diligence on non-resident clients. Paragraphs 57 and 58 of the CBB AML/CFT Guidelines provide inter alia that for (i) non-residents, documents providing photographic evidence of identity need to be compared with the applicant's appearance. To guard against the dangers of postal intercept and fraud, prospective customers are not asked to send their identity documents by post; and (ii) for prospective non-resident customers where there is no face-to-face contact, and it will not be practical to seek sight of a passport or other photographic identification document, verification of identity should be sought from a financial institution in a country listed in the First Schedule of the FTRA.

450. As stated above, financial institutions are required to conduct due diligence on (i) individual clients, (ii) corporate clients, (iii) the settlors and founders of legal structures, (iv) the beneficial owners of legal structures; and (v) the beneficiaries under legal structures (where vested).

451. Paragraph 77 of the CBB AML/CFT Guidelines underscores the fact that particular care is needed on the part of a licensee, when the facility holder is a trustee or fiduciary who is not an exempted client or an eligible introducer. The principal means of preventing money laundering and terrorist financing through the use of legal structures, nominee companies, and fiduciaries is for the licensee to verify the identity of the provider of funds, such as the settlor and also those who have control over the funds, that is to say, the trustees, advisors, and any controllers who have the power to remove the trustees/advisors etc. In the instance that the settlor may also be a sole trustee or a co-trustee of the trust, then identification documentation should be obtained in relation to the settler.

452. Paragraph 104 of the CBB AML/CFT Guidelines requires licensees to exercise caution in respect of the acceptance of certified documentation from individuals and entities located in high-risk countries and territories and make appropriate verification checks on such individuals/entities to ensure their legitimacy and reliability. The CC will incorporate this requirement in its updated Codes of Practice.

453. Regulation 5A in the FTRR gives a financial institution, discretion to exempt certain financial institutions from having to provide full documentary evidence for CDD purposes as follows:

a. financial institutions regulated by the CBB, the SC, the Registrar of Insurance, or the Gaming Board;

b. a foreign financial institution located in a jurisdiction specified in the First Schedule of the FTRA, which is regulated by a body having equivalent regulatory and supervisory responsibilities as the CBB, the SC, the Registrar of Insurance, or the Gaming Board;

c. any central or local government agency or statutory body;

d. a publicly traded company or investment fund listed on The Bahamas International Stock Exchange or any other Stock Exchange specified in the Schedule to the FTRR and approved by the SC;

e. an investment fund regulated in The Bahamas or in a jurisdiction specified in the First Schedule of the FTRA., which is regulated by a body having equivalent regulatory and supervisory responsibilities as the SC.

454. In addition, the financial institution can exercise the same discretion with regard to certain products and transactions as follows;

- a single occasional transaction when payment by, or to, the customer is less than $15,000 (FTRA section 7(1)(a) and CBB AML/CFT Guidelines paragraph 129);
- superannuation schemes;
- discretionary trust
- occupational retirement/pension plans which do not allow non-employee participation
- an applicant for insurance consisting of a policy of insurance in connection with a pension scheme taken out by virtue of a person's contract of employment or occupation;
- an applicant for insurance in respect of which a premium is payable in one instalment of an amount not exceeding $2,500;
- an applicant for insurance in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed $2,500; and
- any Bahamian dollar facility of or below $15,000.

455. It should be noted that with regard to superannuation schemes, section 2 of the FTRA excludes those superannuation schemes that provide retirement benefits to employees, where contributions are made by way of deduction from wages and the rules do not permit the assignment of a member's interest under the scheme from the obligations of the FTRA. Participation in these schemes is contingent upon due diligence being undertaken by the employer to verify the identity of each participating employee.

456. With regard to insurance, the exemptions are not specific to life insurance as set out in the requirements of Recommendation 5. Additionally the exemption of insurance policies with annual premium of $2,500 is in excess of the suggested limit of $1,000 for life insurance. The exemption of Bahamian dollar facilities below $15,000 is not consistent with the requirements of Recommendation 5 which only applies this exemption to occasional transactions.

457. Due diligence is carried out by the CBB, the SC, the Registrar of Insurance and the Gaming Board on their licensees and registrants, (including due diligence reviews by the SC on companies that seek to go public). Financial institutions should obtain evidence that an

entity is eligible for reduced due diligence pursuant to regulation 5A. (See CBB AML/CFT Guidelines paragraph 127).

458. With respect to discretionary trusts referred to above, the beneficiaries of these trusts are not likely to be known until they obtain a vested interest under the trust following the occurrence of a contingency, which arises under the trust deed. Whenever the interest of the beneficiary becomes vested, there is a duty on the financial institution to verify the identity of the beneficiary pursuant to Regulation 7A of the FTRR save that where the transaction is or has been introduced by another financial institution on behalf of the settlor and beneficiary and such financial institution is itself required to verify the identity of the settlor and beneficiary.

459. During training sessions for its constituents the CC has identified the following low-risk indicators:

•Those facility holders identified in regulation 5A as exempt e.g. licensed financial institutions, central and local government agencies, publicly traded companies, regulated investments funds etc.
•Bahamian residents whose accounts/facilities are serviced solely either by salary deductions, or financing arrangements via a prudentially regulated Bahamian financial institution.
•Special situation of mortgages provided by co-operative societies (credit unions) – The CC will collaborate with CBB on the adequacy of AML procedures for these institutions as a precondition for low risk designation of its customers. These indicators will be incorporated in updated Codes of Practice.

460. Sections 8, 9 and 11 of the FTRA provide that in order for foreign financial institutions to qualify for reduced CDD requirements, the financial institutions must be located in a jurisdiction specified in the First Schedule of the FTRA, and regulated by a body having equivalent regulatory and supervisory responsibilities as the CBB, the SC, the Registrar of Insurance, or the Gaming Board.

461. The CBB AML/CFT Guidelines provide in paragraph 122.1 that only the following domestic financial institutions (or their foreign equivalents) may be eligible introducers: banks or trust companies licensed by the CBB, companies carrying on life assurance business pursuant to section 2 of the Insurance Act, broker-dealers as defined by section 2 of the SIA; or an investment fund administrator or an operator of an investment fund (as defined by the IFA).

462. The CC permits reduced CDD for non-Bahamian entities consistent with the above.

463. Simplified or reduced CDD measures are not permitted for companies registered under the EIA to do insurance business in another country. Such companies are expected to conduct full CDD.

464. Section 10A of the FTRA requires financial institutions to verify a customer's identity where the financial institution knows or has reasonable grounds to suspect that a transaction or proposed transaction involves the proceeds of criminal conduct as defined in the POCA or an offence under the POCA or an attempt to avoid the enforcement of any provisions of the POCA.

465. Paragraph 130.1 of the CBB, AML/CFT Guidelines states that irrespective of the size and nature of the transactions and exemptions set out in paragraph 130 of the Guidelines, identity must be verified in all cases where money laundering or terrorist financing is known or suspected and reported to the relevant authorities. It should be noted that under section 14 of the FTRA, all financial institutions are required to report transactions suspected of involving financing of terrorism to the FIU. There is a reporting requirement to the Commissioner of Police, which is a general requirement applicable to all persons under the ATA.

466. During its training sessions the CC has identified this circumstance as demanding compulsory CDD and will incorporate this into updated guidelines.

467. The FTRA together with the FTRR permit financial institutions discretion to conduct customer due diligence (CDD). The regulations also permit discretion to verifying individual customer identity (regulation 3(2)), the identities of corporate entities (regulation 4 and CBB AML/CFT Guidelines Paragraphs 63-72 and 75-76), and the identities of partnerships and other unincorporated businesses (regulation 5 and CBB AML/CFT Guidelines paragraphs 73 -74). The CBB AML/CFT Guidelines state in the opening paragraphs that licensees are expected to pay due regard to the Guidelines in developing responsible procedures suitable to their business to prevent money laundering and terrorist financing. If a licensee appears not to be doing so the CBB will seek an explanation and may conclude that the licensee is carrying on business in a manner that may give rise to sanctions under the applicable legislation.

468. As part of the on-going onsite examination programme, the CBB's onsite examiners assess the adequacy of licensees' risk rating policies, processes and procedures, in light of the type of business conducted by licensees, as well as the extent to which licensees have adhered to legislative requirements. The SC's approach in this regard is to assess the adequacy of each licensee's FTRA procedure as a whole, and therefore examinations conducted by the SC are at this time more prescriptive.

469. The CC has provided extensive training to its constituents on the risk based approach to KYC over the past year and it-s updated Codes of Practice will incorporate guidance in this area.

470. All financial institutions are required to verify the identity of proposed customers prior to establishing a business relationship. The FTRA provides that verification should take place at the following times:

i. before permitting new customers to become facility holders (section 6(2));

ii. whenever the amount of cash involved in an occasional transaction exceeds $15,000, the identity of the person who conducts the transaction should be verified before the transaction is conducted (section 7(4)(a);

iii. whenever it appears that two or more (occasional) transactions are or have been deliberately structured to avoid lawful verification procedures in respect of the person(s) conducting the transaction(s) and the aggregate amount of cash involved in the transaction(s) exceed $15,000 (section 7(1)(b)). Verification of the person conducting the transaction(s) should be conducted as soon as

practicable after the financial institution becomes aware of the foregoing circumstances (section 7(4)(b));

iv. whenever it appears to the financial institution that a person conducting transaction exceeding $15,000 in cash is doing so on behalf of any other person or persons, (sections 8(1) and 9(1)), the financial institution should verify the identity of the person conducting the transaction and of the third parties before the transaction is conducted (sections 8(4) and 9(4));

v. whenever a transaction is conducted through a financial institution (either as an occasional transaction or by a facility holder through a facility) and it appears to the financial institution that (i) the person conducting the transaction is doing so on behalf of any other person or persons; (ii) the transaction(s) are or have been deliberately structured to avoid lawful verification procedures in respect of the third parties for whom the transactions are being conducted; and (iii) the aggregate amount of cash involved in the transaction(s) exceed $15,000 (sections 8(2) and 9(2)). Verification should be conducted as soon as practicable after the financial institution becomes aware of the foregoing circumstances (sections 8(5) and 9(5)).

471. Section 10 of the CC's Codes of Practice provide for the above requirements. Whenever verification needs to be performed during a business relationship it is required to be carried out as soon as reasonably practicable. This requirement is being reviewed with a view to recommending amendments to the law to bring it in line with international best practice.

472. Since section 6(2) of the FTRA requires financial institutions to verify the identities of proposed customers prior to establishing a business relationship or conducting a transaction there is no need for a requirement to adopt risk management procedures where a customer is permitted to utilise the business relationship prior to verification.

473. The above provision does not include a requirement for the consideration of making a STR if the institution is unable to carry out CDD measures. However, paragraph 32.3 of the CBB AML/CFT Guidelines states that where a prospective client fails or is unable to provide adequate evidence of identity or in circumstances in which the licensee is not satisfied that the transaction for which it is or may be involved is bona fide, an explanation should be sought and a judgement made as to whether it is appropriate to proceed with the business relationship, what other steps can be taken to verify the client's identity and whether or not a report to the FIU ought to be made.

474. Paragraph 34 of the CBB AML/CFT Guidelines states that where satisfactory evidence of customer identity is required; a licensee should "suspend" the rights attaching to the transaction pending receipt of the necessary evidence. Documents of title should not be issued, nor income remitted (though it may be re-invested) in the absence of identity.

475. Paragraph 119 of the CBB AML/CFT Guidelines dealing with reliance on third parties to conduct KYC on customers provides for the suspension of an account where the required level of due diligence i.e. receipt of a letter of confirmation is not followed by the actual CDD documents within thirty (30) days. If after a further reasonable period, the licensee still does not receive the documents, the business relationship must be terminated.

476. The requirement for financial institutions to terminate the business relationship and to consider making a STR in cases where the business relationship has commenced is set out in the CBB AML/CFT Guidelines. Section 6(6) of the FTRA mandates financial institutions to verify the identity of any client having an account or facility in existence prior to the 29th December 2000. The CBB AML/CFT Guidelines requires licensees to take steps to suspend or terminate business relationships in case of failure to satisfy verification requirements of section 6(6) of the FTRA (paragraph 133).

477. Such measures would include, for example, refusing to accept further funds from customers whose identities have not been verified, or provide further services to such persons or suspending the account or other facilities held in the customer's name or the termination of the business relationship altogether. Any such action should be carried out if and to the extent that it can properly be done by the licensee, without prejudicing third parties (including customers whose identities have been verified) and without exposing the licensee to liability, loss or prejudice. See. also paragraph 135 of the CBB AML/CFT Guidelines.

478. The CC is proposing that those facilities which have not been verified on the stated date should be made inactive by the financial institution. Further, that no transaction be allowed by those respective facility holders unless/ until the requisite verification documentation have been received by the financial institution. A notification of such facilities must accompany the next examination return that is submitted to the CC.

479. Paragraph 133 of the CBB AML/CFT Guidelines has directed licensees to complete the verification exercise for existing clients in the case of domestic retail business, by 30th June 2006 and in the case of all other business by 31st December 2005. Licensees must implement appropriate measures to satisfy the verification requirements of section 6(6) of the FTRA by these dates, or take steps to suspend or terminate the business relationship. The CBB advised that as at the date of the Mutual Evaluation the offshore sector had completed the verification exercise while only 4.5% of the value of total accounts still remained outstanding for onshore institutions.

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480. Licensees of the SC are also subject to section 6 (6) of the FTRA. In this regard the SC had at the time of the Evaluation issued letters to their constituents requiring that information be provided regarding the level of compliance of its licensees and registrants under this provision.

481. The CBB and the SC will monitor and assess the programmes implemented by licensees to meet the verification requirements of the FTRA by the target dates. With respect to re-verification of customer identity, the FTRA and the FTRR provide that further verification of existing customer identity is mandatory if:

(a) during the course of the business relationship the financial institution has reason to doubt the identity of the customer (section 6(4) of the FTRA);

(b) a licensee knows, suspects or has reasonable grounds to suspect that a customer is conducting or proposes to conduct a transaction which:

- involves the proceeds of criminal conduct as defined in the POCA; or
- is an attempt to avoid the enforcement of the POCA;

(in such cases, verification should take place as soon as practicable after the licensee has knowledge or suspicion in respect of the relevant transaction) (section 10A of the FTRA);

(c) there is a material change in the way a facility is operated (regulation 9(1) of the FTRR).

482. Paragraph 45 of the CBB AML/CFT Guidelines provides that where a financial institution has reasonable grounds to suspect that funds as defined in the ATA or financial services are related to or are to be used to facilitate an offence under the ATA, verification should take place as soon as practicable after such suspicions arise. Paragraph 46 further states that financial institutions may also as part of their own internal AML and KYC policies, re-verify a customer's identity on the occurrence of any of the aforementioned "trigger events".

483. The need to confirm and update information about identity, such as change of address, and the extent of additional KYC information to be collected over time will differ between firms within any sector. It will also depend on the nature of the product or service being offered, and whether personal contact is maintained enabling file notes of discussions to be made or whether all contact with the customer is remote.

484. The CC has scheduled consultations with representatives of its constituents with a view to agree on a procedure to deal with all facilities which were in existence prior to the AML laws effective date of 1st January 2001 and which are not verified by 31st July 2006. Since 2004 the CC has been working with its constituents to implement the risk-based KYC process, which reduced the numbers of pre-2001 unverified accounts. This exercise is on going. While the CC is unable to say precisely how many of these pre-2001 unverified accounts are in existence, the numbers are expected to be minimal, due to the frequent i.e. annual on-site examinations for this group.

485. Since the enactment of the FTRA in 2000, the mandatory requirement of section 6(1) for financial institutions to verify the identity of any customer who seeks to establish a business relationship with the financial institution has in principle prohibited the establishment of anonymous accounts in The Bahamas. Furthermore, section 6(6) of the FTRA which mandates financial institutions to verify the identity of any client having an account or facility in existence before the enactment of the FTRA effectively requires financial institutions to perform CDD measures on all existing customers.

Recommendation 6

486. The only specific requirements dealing with politically exposed persons (PEPs) are at paragraph 98 of the CBB AML/CFT Guidelines. These Guidelines are applicable to the CBB's licensees i.e. banks and trust companies and have been adopted by the SC in the interim for its licensees and registrants, although they are not legally enforceable on its licensees.

487. Paragraph 98 of the CBB AML/CFT Guidelines states that in relation to PEPs, licensees in addition to performing normal due diligence measures, should have appropriate risk management systems to determine whether a customer is a PEP and clear policy and internal guidelines, procedures and controls regarding such business relationships.

Customer in this regard would also include beneficial owners as required by regulation 7A of the FTRR. In addressing PEPs risk, the Guidelines at paragraph 100 require licensees to develop and maintain enhanced scrutiny practices which may include the following measures:

(i) Licensees should assess country risks where they have financial relationships, evaluating, inter alia, the potential risk for corruption in political and governmental organizations. (A list of relevant websites with information concerning this is set out in an appendix in the Guidelines). Licensees, which are part of an international group, might also use the group network as another source of information;

(ii) Where licensees entertain business relations with entities and nationals of countries vulnerable to corruption, they should establish who the senior political figures are in that country, and should also seek to determine, whether or not their customer has close links with such individuals (for example immediate family or close associates). Licensees should note the risk that customer relationships may be susceptible to, by acquiring such connections after the business relationship has been established; and

(iii) Licensees should be vigilant where their customers are involved in those businesses which appear to be most vulnerable to corruption, such as, but not limited to trading or dealing in precious stones or precious metals.

488. Paragraph 98 (iii) of the CBB AML/CFT Guidelines requires that licensees obtain senior management approval for establishing business relationships with PEPs

489. There is no provision 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.

490. Paragraph 98 (iv) of the CBB AML/CFT Guidelines requires licensees to take reasonable measures to establish the source of wealth and source of funds of PEPs. Additionally, the Guidelines require detailed due diligence (paragraph 101), which is defined to include among other things every effort to establish the source of wealth and source of funds, both at the outset of the business relationship and on an ongoing basis.

491. Paragraph 98 (v) of the CBB AML/CFT Guidelines requires licensees to ensure proactive monitoring of the activity on the accounts of PEPs, so that any changes are detected and consideration can be given as to whether such changes suggest corruption or misuse of public assets. With regard to monitoring, detailed due diligence requires;

a. the development of a profile of expected activity on the business relationship so as to provide a basis for future monitoring. The profile should be regularly reviewed and updated;

b. a review at senior management or board level of the decision to commence the business relationship and regular review, on at least an annual basis, of the development of the relationship; and

c. close scrutiny of any unusual features, such as very large transactions, the use of Government or CBB accounts, particular demands for secrecy, the use of cash or bearer bonds or other instruments which break an audit trail, the use of unknown financial institutions and regular transactions involving sums just below a typical reporting level.

Full documentation of the information collected in line with licensees' policies to avoid or close business relationships with PEPs is required.

492. At present enforceable requirements for PEPs are limited to banks and trust companies. There are no specific requirements regarding PEPs in the Guidelines issued by the FIU or the CC's Code of Practice. The CC has provided guidance on high-risk indicators during training sessions covering customer and trading relationships in locations experiencing political instability. There is need for guidance on PEPs to be issued to all financial institutions as defined in the FTRA.

493. As an Additional Element to Recommendation 6, the CBB AML/CFT Guidelines do not distinguish between domestic and foreign PEPs, and the requirements of Rec.6 are currently applied to both.

494. The UN Convention against Corruption has not been signed or ratified, but the Government is giving consideration to accession to the Convention.

Recommendation 7

495. While the FTRA does not specifically address correspondent banking relationships, the due diligence requirements of the FTRA would apply to these facilities. As such information requirements about the description and nature of the business as stipulated for corporate entities will apply for respondent institutions. This requirement is discretionary and intended to be applied on a risk basis. Specific requirements concerning correspondent banking relationships are stipulated in the CBB AML/CFT Guidelines. There is no requirement to determine the reputation of a respondent and the quality of supervision including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action. While the CBB AML/CFT Guidelines stipulate the establishment of a risk framework whereby financial institutions are required to risk rate their customers, the criteria for such a framework does not include the specifics of the FATF requirements for correspondent banking relationships.

496. Assessment of a respondent institution's AML/CFT controls in paragraph 109 of the CBB AML/CFT Guidelines is required only for those institutions not listed in the First Schedule of the FTRA and is focussed on ascertaining and assessing a respondent's internal policy on AML/CFT and KYC procedures for the purpose of determining whether the respondent is required to verify the identity of customers in accordance with standards which are at least equivalent to those required under Bahamian law. This requirement is limited to identification procedures and not as extensive as assessing AML/CFT controls to ascertain their adequacy and effectiveness.

497. There is no provision requiring financial institutions to obtain approval from senior management before establishing new correspondent relationships. The CBB AML/CFT Guidelines stipulates general requirements for a risk-rating framework. Paragraph 26 of the Guidelines states that the risk rating framework should include customer acceptance and on-going monitoring policies and procedures that assist the licensee in identifying the types of customer that are likely to pose a higher than average risk of money laundering or funding of terrorist activities. The Guidelines also require a more extensive customer due diligence process to be adopted for higher risk customers and that there should also be clear

internal guidelines on which level of management is able to approve a business relationship with high-risk customers. This requirement is not specific with regard to the risk of correspondent relationships.

498. There is no requirement for financial institutions to document respective AML/CFT responsibilities in correspondent banking relationships.

499. The requirement covering the maintenance of "payable-through accounts" is covered under provisions dealing with transactions conducted through a facility provided by a financial institution to another financial institution. Financial institutions providing such facilities would have met their obligation to verify the identity of the customer if it obtained written confirmation that the other financial institution had verified the identity of the customer and if it took such steps as are reasonably necessary to confirm the existence of the facility provided by the other financial institution (See. sections 11(3) and 11(4) of the FTRA).

500. Financial institutions may only rely upon verification of a customer's identity conducted by financial respondent institutions that are located in countries listed in the First Schedule of the FTRA, after obtaining written confirmation of such measures from the said institutions. (See. sections 7(2), 8(6), 9(6), 11(3) and 11(4) of the FTRA). The provisions do not specify that financial institutions should be satisfied that all the CDD measures of Recommendation 5 have been met by the respondent financial institution. Further, there is no requirement for the financial institution to be satisfied that the respondent institution can provide reliable customer identification data upon request.

501. Paragraphs 111.1 and 112 of the CBB AML/CFT Guidelines require that licensees train staff dealing with correspondent banking accounts to recognize high risk circumstances, and be prepared to challenge respondents over irregular activity, whether isolated transactions or trends and to, submit an STR where appropriate. Further, licensees should consider terminating the accounts of respondents who fail to provide satisfactory answers to reasonable enquiries including, where appropriate, confirming the identity of customers involved in unusual or suspicious transactions. Payable through accounts are not relevant to the activities of the SC's licensees and registrants.

Recommendation 8

502. There is no provision for financial institutions to have policies in place or to take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

503. With regard to non-face to face business relationships or transactions regulation 7 of the FTRR provides that where a request is made to a financial institution by telephone, internet, or written communication for a prospective customer, the financial institution is required to verify the identity of that prospective customer in accordance with the verification requirements set out in regulations 3 to 5 of the FTRR.

504. Paragraph 10 of the CBB AML/CFT Guidelines states that financial institutions should consider the money laundering risks posed by the products and services they offer, particularly where there is no face-to-face contact with the customer, and devise their AML procedures with due regard to that risk.

505. Paragraph 58 of the CBB AML/CFT Guidelines requires that, for prospective non-resident customers where there is no face-to-face contact, and it will not be practical to seek sight of a passport or other photographic identification document, verification of identity should be sought from a financial institution in a country listed in the First Schedule of the FTRA. Verification details should be requested covering true name(s) or name(s) used, current permanent address, date and place of birth, verification of signature and a certified copy of a passport or other document providing photographic evidence of identity.

506. Paragraph 60 of the CBB AML/CFT Guidelines provides that any subsequent change to the customer's name, address, or employment details of which the licensee becomes aware, should be recorded and also be regarded as a "trigger" event. Generally a KYC review would be undertaken as part of good business practice and due diligence process but it would also serve for money laundering or terrorist financing prevention.

507. Paragraph 61 of the CBB AML/CFT Guidelines provides that file copies of supporting evidence should be retained. Licensees that regularly conduct one-off transactions should record the details in a manner, which allows cross-reference to transaction records. Such licensees may find it convenient to record identification details on a separate form, to be retained with copies of any supporting material obtained.

508. Paragraph 62 of the CBB AML/CFT Guidelines provides that an introduction from a respected customer personally known to the management, or from a trusted member of staff, may assist the verification procedure but does not replace the need for verification of address as set out above. Details of the introduction should be recorded on the customer's file.

509. The CC at section 12 of its Codes of Practice stipulates that the establishment of facilities by telephone, Internet or post can occur on the basis of a letter of introduction by an eligible introducer. Licensees of the CBB, the SC the Gaming Board, life insurance companies regulated by the Registrar of Insurance and their equivalent entities in countries listed in Appendix B of the Codes can be introducers. The letter of introduction must stipulate that the Introducer has verified the prospective customer.

510. A facility established by the above means does not require an independent verification of the customer. However there is still a requirement for the financial institution to ascertain directly from the customer details regarding the source of income/funds, purpose, use, potential activity and other parameters for the operation of the facility, and document these. In addition financial institutions are encouraged to have a qualified eligible introducer complete the verification of customer identity form appearing in Appendix F to the Codes of Practice, in appropriate circumstances.

511. The above obligations only partially comply with the requirements of the criteria for specific policies to be in place to deal with risk associated with non face-to face verification etc. The legislative provision applicable to all financial institutions deals only with verification of the identity of prospective customers. The CBB AML/CFT Guidelines which are enforceable for banks and trust companies extend the requirements to include monitoring, record-keeping and introduction by third parties. These requirements are specific to non-resident customers. The requirements of the CC's Codes of Practice are not enforceable; while section 94 of the SIA states that any guidelines issued by the SC do not have the force of law.

3.2.2 Recommendations and Comments

512. While the requirements covering customer due diligence including enhanced or reduced measures are comprehensive, additional provisions will have to be implemented to achieve full compliance. The CDD requirements contained in the CBB AML/CFT Guidelines are enforceable only in respect of the licensees of the CBB. These guidelines have been formally adopted by the SC and similar requirements exist in the CC's Codes of Practice.

513. 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.

514. The legislative requirement for occasional transactions should be amended to cover all occasional transactions that exceed $15,000 in value.

515. The basis for the application of any reduced or simplified CDD measures for designated customers should be formally documented by the Authorities.

516. Regulations 4 and 5 of the FTRR concerning the verification of the identity of legal persons should be amended to require minimum mandatory requirements as in Regulation 3 rather than permitting discretion for all requirements.

517. The requirement for financial institutions to understand the ownership and control structure of legal persons or legal arrangements should be enforceable on all financial institutions.

518. Financial institutions should be required to ensure that documents, data or information collected under the CDD process are kept up-to-date.

519. The requirement for financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction should be enforceable on all financial institutions.

520. The exemption for insurance should be limited to life insurance policies with an annual premium of no more than $1,000 or a single premium of no more than $2,500.

521. Bahamian dollar facilities below $15,000 should not be exempted from full CDD measures.

522. All financial institutions except those already covered should be required to consider making a STR if it is unable to comply with CDD measures.

523. The requirements concerning PEPs detailed in the CBB AML/CFT Guidelines should be imposed on all other financial institutions.

524. Senior management approval should be required to continue a relationship with a customer who is subsequently found to be a PEP or who subsequently becomes a PEP.

525. 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.

526. Requirements for policies and procedures to address specific risks associated with non-face to face business relationships and transactions should include ongoing due diligence and should be enforceable on all financial institutions.

527. Financial institutions should be required to gather sufficient information about a respondent institution to understand fully the nature of the respondent's business, the reputation of the institution and the quality of supervision.

528. Financial institutions should assess the respondent institution's AML/CFT controls and ascertain their adequacy and effectiveness.

529. Financial institutions should be required to obtain approval from senior management before establishing new correspondent relationships.

530. Financial institutions should document respective AML/CFT responsibilities in correspondent banking relationships.

531. Financial institution with correspondent relationships involving "payable-through accounts" should be required to be satisfied that the respondent financial institution has performed all normal CDD obligations on its customers that have access to the accounts and that the respondent institution can provide reliable customer identification data upon request.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**PC**	• **No requirement for financial institutions to undertake CDD due diligence measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII.** • **The legislative requirements for occasional transactions are limited to transactions involving cash and do not cover all occasional transactions** • **No requirement for financial institutions to 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.** • **No requirement for financial institutions to take**

		reasonable measures to determine the natural persons who ultimately own or control legal persons or legal arrangements. • **All requirements for verification of the legal status of a legal person or legal arrangements are discretionary.** • **The requirement for financial institutions to understand the ownership and control structure of legal persons or legal arrangements is enforceable only on banks and trust companies.** • **The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up to date is only enforceable on banks and trust companies.** • **The requirement for financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction is enforceable only on banks and trust companies.** • **No requirement for a financial institution to consider making a STR if it is unable to comply with CDD measures.** • **The exemption for insurance from full CDD measures is not limited to life insurance policies with an annual premium of no more than $1,000 or a single premium of no more than $2,500.** • **Bahamian dollar facilities below $15,000 are exempt from full CDD measures.**
R.6	**PC**	• **Enforceable requirements concerning PEPs are applicable only to banks and trust companies at present.** • **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.**
R.7	**NC**	• **No requirement to determine the reputation of a respondent and the quality of supervision.** • **Assessment of a respondent AML/CFT controls is limited to identification procedures.** • **No provision to obtain senior management approval before establishing new correspondent relationships.**

		• **No provision to document respective AML/CFT responsibilities in correspondent relationships.** • **No requirement for financial institution with correspondent relationships involving "payable-through accounts" to be satisfied that the respondent financial institution has performed all normal CDD obligations on its customers that have access to the accounts.** • **No requirement for the financial institution to be satisfied that the respondent institution can provide reliable customer identification data upon request.**
R.8	**PC**	• **No provision for financial institutions to have in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.** • **Legislative provision for non-face to face transactions does not include ongoing due diligence.** • **Requirements in the CBB AML/CFT Guidelines extend specifically to non-resident customers and are only enforceable for banks and trust companies.**

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

Recommendation 9

532. There is no enacted requirement for 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 purpose and intended nature of the business relationship. Section 2(3) of the FTRA provides that only the following domestic financial institutions listed in section 3(1) (a), (b), (e), (f) and (i) of the FTRA, or their counterpart foreign financial institutions, may act as eligible Introducers (i.e. third party Introducers):

(a) a bank or trust company licensed under the Bank and Trust Companies Regulation Act, 2000;
(b) a company carrying on life assurance business as defined in section 2 of the Insurance Act or insurance business as defined in section 2 of the External Insurance Act;
(c) a licensed casino operator within the meaning of the Lotteries and Gaming Act;
(d) a broker-dealer within the meaning of section 2 of the Securities Industry Act;
(e) an investment fund administrator or operator of an investment fund within the meaning of the Investment Funds Act;

533. Sections 7(2), 8(6), 9(6), 11(3)(b) and 11(4)(b) of the FTRA permit reliance on eligible introducers through written confirmation of the verification of the identity of customers in defined circumstances dealing with occasional transactions and transactions conducted on behalf of another person.

534. The FTRA at section 2(1) defines a "foreign financial institution" as a financial institution, which, in a country specified in the First Schedule of the FTRA, exercises functions equivalent to the corresponding financial institution in The Bahamas and referred to in section 2(3).

535. Licensees of the CBB and the SC are advised in paragraph 122.1 of the CBB AML/CFT Guidelines that in practice they may rely only upon the eligible Introducers listed at (a), (b), (d) and (e) above and their foreign counterparts. Where an intermediary is not an eligible introducer the FTRA requires licensees to not only verify the identity of the intermediary but also to look through that entity to the underlying client(s). In these circumstances measures must be taken to verify the identity of the underlying clients. In satisfying this requirement, the licensee should have regard to the nature of the intermediary, the domestic regulatory regime in which the intermediary operates and the financial institutions' confidence in it, to its geographical base and to the type of business being done. Where however, the intermediary is an eligible introducer, such verification is not required.

536. Paragraph 119 of the CBB AML/CFT Guidelines requires that licensees have clear and legible copies of all documentation in their possession within thirty (30) days of receipt of the written confirmation of the eligible introducer that they (the other financial institution) have verified customer identity in accordance with national laws. The eligible introducer must certify that any photocopies forwarded are identical with the corresponding originals. The certification should be provided by a senior member of the introducer's management team.

537. If documents are not obtained within thirty (30) days of receipt of the Introducer's written confirmation, the account should be suspended and if after a further reasonable period, the licensee still does not receive the documents, the business relationship must be terminated.

538. The above requirement which is limited to banks and trust companies more than meets the criterion for financial institutions to take steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay. The CC proposes to incorporate this requirement in its updated Codes of Practice.

539. The circumstances under which eligible introducers are permitted for DNFBPs are detailed in section 12 of the CC's Codes of Practice. Licensees of the CBB, the SC, the Gaming Board, life insurance companies regulated by the Registrar of Insurance and their equivalent entities in countries listed in Appendix B of the Codes can be eligible introducers. In the case of facilities, eligible introductions are permitted for the establishment of facilities by telephone, Internet or post, arrangements between existing facilities and corporate group introducers.

540. A facility established by the above means does not require an independent verification of the customer. However there is still a requirement for the financial institution to ascertain

directly from the customer details regarding the source of income/funds, purpose, use, potential activity and other parameters for the operation of the facility, and document these. In addition financial institutions are encouraged to have a qualified eligible Introducer complete the verification of customer identity form appearing in Appendix F to the Codes of Practice, in appropriate circumstances.

541. Eligible introducers can issue letters of confirmation to satisfy the primary obligation of a financial institution to verify identity where cash above $15,000 is involved in a transaction being conducted by or on behalf of a non-facility holder.

542. There is no enacted 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. It should be noted that the list of eligible introducers in the FTRA includes regulated domestic financial institutions and by extension regulated foreign financial institutions. Paragraph 127 of the CBB AML/CFT Guidelines and section 12.1.4 of the CC Code of Practice for Accountants require the licensees and registrants to satisfy themselves that eligible introducers are regulated and supervised. However the extent of regulation as stipulated in the criterion is not specified.

543. Paragraph 127.1 of the CBB AML/CFT Guidelines requires licensees to be satisfied that they can rely upon the eligible introducer and may request from an eligible introducer such evidence as they reasonably required to satisfy themselves as to the identity of the introducer and the robustness of its KYC policies and procedures.

544. Paragraph 127 of the CBB AML/CFT Guidelines states that verification of identity is not normally required when the facility holder is one of the domestic financial institutions referred to in paragraph 122.1 or 122.2 of the CBB AML/CFT Guidelines. However, licensees should satisfy themselves that the financial institution does actually exist (e.g. that it is listed in the Bankers' Almanac, or is a member of a regulated or designated investment exchange); and that it is also regulated. In cases of doubt, the relevant regulator's list of licensees can be consulted. Additional comfort can also be sought by obtaining from the relevant licensee evidence of its authorization to conduct financial and/or banking business. These matters are also covered in section 12 of the CC's Codes of Practice.

545. The FTRA provides a list of countries in the First Schedule, which are regarded by the authorities as jurisdictions that adequately apply the FATF Recommendations (reproduced in Appendix D of the CBB AML/CFT Guidelines). Financial institutions located in these countries that are equivalent to the domestic financial institutions designated in the FTRA may act as third party introducers**.** The list of countries is strictly limited to those in high international standing, such as the G10.

546. Paragraph 124 of the CBB AML/CFT Guidelines states that where reliance is to be placed on an eligible Introducer, the licensee remains ultimately responsible for ensuring that adequate due diligence procedures are followed and that the documentary evidence is satisfactory for these purposes. Satisfactory evidence is such evidence as will satisfy the AML/CFT regime in the First Schedule country from which the introduction is made. Copies of all documentation necessary to enable the licensee to ascertain the identity of the introduced client must be supplied within thirty (30) days of receipt of the eligible introducer's written confirmation that verification has been undertaken.

547. Section 14 of the CC's Codes of Practice stipulates that the primary duty to verify identity using best evidence and means rests with the financial institution. The Codes of Practice are applicable to lawyers, accountants, financial corporate services providers, real estate salesmen and developers.

3.3.2 Recommendations and Comments

548. All 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 purpose and intended nature of the business relationship.

549. The present requirement for banks and trust companies to obtain copies of all documentation from third parties should be extended to all financial institutions.

550. 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.

551. All financial institutions relying on third parties should be ultimately responsible for customer identification and verification.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**PC**	• **No requirement for all financial institutions relying on a third party to immediately obtain from the third party the necessary information concerning elements of the CDD process covering identification and verification of customers and beneficial owners and purpose and intended nature of the business relationship.** • **Only banks and trust companies are required to obtain identification documentation from third parties.** • **No provision requiring financial institutions to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendations 5 and 10.** • **The ultimate responsibility for customer identification and verification when relying on third parties is only enforceable on banks and trust companies.**

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

Recommendation 4

552. The Bahamas has included confidentiality provisions in the Statutes of competent authorities to preserve confidentiality of client information while facilitating gateways for information exchange. Competent authorities have varying powers of access to information and have been able to effectively facilitate requests from foreign regulatory authorities.

553. On October 16th, 2002, the GFSR signed a MOU providing for information sharing, regulatory cooperation and harmonization of standards to the extent permitted by their respective governing legislation. The Parties to the MOU are the CBB, the SC, Registrar of Insurance Companies, IFCSP, and the CC. The GFSR has already identified the need for specific legislative amendment some of which have been drafted and approved by Cabinet to further remove any barriers to implementing the FATF Recommendations.

554. There are some provisions in various laws, which inhibit the implementation of this FATF Recommendation.

Central Bank of The Bahamas

555. The BTCRA governs the regulation of entities providing banking and trust business within The Bahamas. The Inspector of banks and trust companies is empowered under section 13(3) of the BTCRA to access such books, records, vouchers, documents cash and securities of any licensee, and the reports and working papers of the external auditor, as is reasonably required for the purpose of enabling the Inspector to perform his functions under the Act.

556. Pursuant to section 19(1) of the BTCRA the Inspector can disclose information without the explicit or implied consent of a customer of a licensee for specified purposes including the performance of his duties or exercise of his functions under the Act.

557. Sections 19(5) and (6) of the BTCRA allow the Governor to provide information on the beneficial owners, directors, officers and operations of a licensee to the Supervisory Authority which is responsible for regulating the head office of the licensee for the purpose of consolidated supervision and to specified domestic regulatory authorities, respectively. Section 19(7) of the BTCRA also empowers the Inspector to share information relating to, inter alia, the identity of any customer of a licensee with the FIU where he believes that a suspicious transaction was not reported as required under the FTRA.

558. Under section 35(1) of the CBBA, the CBB may require any financial institution or trust company, or any director, officer or servant of such an institution or company, to supply to the CBB in such form and within such time as the CBB may determine such information as the CBB considers necessary to enable it to carry out its functions under the Act. In addition, section 38(3) of the CBBA permits the CBB to disclose to an overseas regulatory authority any information necessary to enable that authority to exercise its regulatory

functions. In addition, there are several MOUs in place with regional and international regulatory authorities. See Recommendation 40 at section 6.5 of this Report.

559. Access by foreign supervisors to individual client information on assets under management and deposits is facilitated by the CBB, which conducts reviews of the specified accounts and reports on their findings, which may include client confidential information.

560. The BTCRA does not provide for the sharing of information with the IFCSP, and the CC.

561. The CBB drafted an amendment to section 19(2) of the Act regarding the exchange of information for the purpose of consolidated risk management by banking groups. This amendment was being reviewed by the Attorney General's Office. In addition, amendments to section 19(6) of the BTCRA and section 38 of the CBBA had been approved by Cabinet to strengthen the framework for regulatory cooperation among domestic regulators, particularly for consolidated supervision.

562. With regard to the question as to whether the laws on confidentiality would affect a financial institution's ability to share information under Recommendations 7 and 9 and Special Recommendation VII, the Examiners noted that as it relates to the requirements of Recommendation 7, the nature of the information provided to correspondent banks would not extend to the details of any particular customer, but rather to the AML/CFT procedures of the bank and whether it maintained relationships with "shell banks". In the case of Recommendation 9 on introducers, the consent of relevant customer would as a matter of practice be had prior to the bank undertaking this introduction on the customer's behalf, thus the law would not be a difficulty in this situation. The transmission of details of clients using wire transfers (SR VII) is also the subject of the contracts for the transmission of funds, whereby the consent of the customer is obtained as a condition of the bank carrying out this service.

Securities Commission

563. The IFA regulates investment funds (unit trusts and companies and partnerships that issue or have equity interests, the purpose or effect of which is the pooling of investor funds) in The Bahamas. Sections 51(1) and 51(2) of the IFA grants the SC powers to request such information or explanation in respect of an investment fund or fund administrator as reasonably required to enable the SC to carry out its duties under the Act. Section 49(1) requires the SC to satisfy itself that the provisions of the FTRA, or any other regulation made thereunder are being complied with.

564. Gateways for disclosure of information on the affairs of a customer or client of a regulated person are in place at section 59 to allow the SC to exercise any functions conferred by the IFA and any other Act. The SC can also disclose information to an overseas regulatory authority in accordance with section 59(3) subject to the SC satisfying itself with regard to restrictions relating to its use and purpose of the request – (section 59(6)). Section 59(8) allows the sharing of information among domestic regulatory authorities where the SC considers such information may be relevant to their functions.

565. The SIA provides for the regulation of security exchanges and the securities industry. Section 91(3) of the SIA authorizes the SC to disclose information to an overseas

regulatory authority on the same terms as the CBB. There are limitations to the SC's access to information as discussed at Recommendation 29. It is noted that various deficiencies in the powers of the SC in this regard are being addressed through the development of new legislation. The first draft of the Act is presently under review.

566. In the meantime reliance is placed on the CBB's comprehensive powers to assist with information sharing with international securities regulators and to compel production of information to satisfy such overseas requests. The CBB, the SC and the Attorney General have signed an agreement/undertaking on the sharing of information with the US Securities and Exchange Commission.

567. However regulation 134 of the SIR requires that requests by the SC to a registered firm, or registered or licensed individual for reports, testimony or production of documents regarding bank accounts of the firm or of the individual shall be pursuant to a court order.

568. With regard to cross border supervision, the present securities legislation is silent. Neither the SIA nor the IFA provide for consolidated supervision of broker-dealer firms, securities investment firms or investment fund administrators operating in or from The Bahamas, which are branches or subsidiaries of entities operating in an international jurisdiction. Amendments to section 59(8) of the IFA and section 91(8) of the SIA have been approved by Cabinet to strengthen the framework for regulatory cooperation among domestic regulators, particularly consolidated supervision.

Compliance Commission

569. The CC has oversight over financial institution defined at section 46 of the FTRA, namely a cooperative society; friendly society; real estate broker receiving funds in the course of business for the purpose of settling real estate transactions; trustee, administration manager or investment manager of a superannuation scheme; any person whose business or principal part consists of defined activities[19]; and a counsel and attorney receiving funds for the purpose of deposit or investment, settling real estate transactions or to be held in a client account; and an accountant receiving funds for the purpose of deposit or investment.

570. Section 39(2) of the FTRA empowers the CC to do all such things necessary for the purpose of its functions, one of which is to conduct onsite examinations of financial institutions for the purpose of ensuring compliance with the Act. Section 44 grants the CC authority to require the financial institution to produce records and supply such information or explanation as reasonably required.

571. Section 44A of the FTRA permits the sharing of information including for the purpose of assisting the CC in exercising any functions conferred on it by the Act or Regulations made

[19] Borrowing or lending or investing money; administering or managing funds on behalf of other persons; acting as trustee in respect of funds of other persons; dealing in life assurance policies; providing financial services that involve the transfer or exchange of funds, including services relating to financial leasing, money transmission, credit cards, debit cards, treasury certificates, bankers draft and any other means of payment, financial guarantees, trading for account of others, participating in securities issues, portfolio management, safekeeping of cash and liquid securities, investment related insurance and money changing.

thereunder, and when lawfully required or permitted by any Court of competent jurisdiction within The Bahamas.

572. The CC is allowed to disclose information to an overseas regulatory authority in accordance with section 44A(3) subject to the CC satisfying itself with regard to restrictions relating to its use and purpose of the request. An overseas regulatory authority is defined as "an authority which in a country or territory outside The Bahamas exercises functions corresponding to any functions of the CC".

573. Section 44A(8) permits the sharing of information to any other regulatory authority in The Bahamas where the CC considers such information may be relevant to the functions of such other regulatory authorities. However, there are no provisions for information sharing for the purposes of consolidated supervision. An amendment has been approved by Cabinet to section 45(8) of the FTRA to facilitate information sharing with local authorities for the purposes of consolidated supervision. Similar amendments have been proposed for inclusion in the governing statutes of all domestic regulators including those for whom the CC administers their AML/CFT onsite programme.

Financial and Corporate Services

574. The FCSPA governs the licensing and regulation of financial and corporate services[20]. By virtue of section 20, the FCSPA does not apply to a company licensed under the BTCRA. Section 11(3)(b) of the FCSPA lists as one of the functions of the Inspector, the conduct of onsite and offsite examinations to satisfy himself that the licensee is complying with the FTRA. A licensee is required to produce for examination such books, records and other documents and supply such information or explanation as the Inspector may reasonably require.

575. Gateways for information sharing are provided for at section 12A of the FCSPA and include inter alia when lawfully required or permitted by any Court of competent jurisdiction within The Bahamas or for the purpose of assisting the Inspector to exercise any functions conferred on him under the Act or by regulations made thereunder. Provisions for the Inspectors to disclose to overseas and domestic regulators are found at sections 12A(3) and 12A(8) of the FSCPA.

576. There is no provision that allows for information sharing for purposes of consolidated supervision and section 12(8) of the FCSPA is being amended to facilitate this.

Registrar of Insurance

577. The Insurance Act (IA) provides for the carrying out of insurance business in The Bahamas, including life assurance business, providers of which qualify as financial institutions under the FTRA. Provisions for information sharing with domestic and foreign regulatory authorities are also included. Sections 55A(8) and 21(8) of the IA and EIA

[20] Online financial services; registration or management and administration of international business companies (IBCs); provision of registered agent services and registered office services for IBCs; provision of director or officers for IBCs; provision of nominee shareholder for IBCs; provision of partners for partnerships; provision of registered agent services and registered office services for partnerships.

respectively are to be replaced to facilitate the exchange of information with domestic regulators to facilitate consolidated supervision.

578. The Registrar of Insurance Companies may make disclosure to overseas regulators under Sections 55A(2) and 21(3) of the IA and EIA, respectively. Gateways for the provision of information without the consent of the client involved are found at sections 55A(1) and 21(2) of the IA and EIA, respectively.

579. There are some limitations to the powers of Registrar of Insurance to access information as discussed at Recommendation 29.

Department of Cooperative Development

580. The Cooperative Societies Act, 2005 (COSA) governs all Societies that conform to criteria set out at section 5[21]. The Act distinguishes between credit unions, consumer's societies, housing societies and industrial societies. Section 67 of the Act addresses confidentiality from the perspective of a disclosure relating to a transaction concerning shares of a society or a debt obligation and making use of such information for the benefit or advantage to materially affect the share or debt obligation. While the COSA does not directly address the sharing of information, neither does it prohibit the Director of Societies from sharing information.

581. However section 74 of the COSA permits directors and officers of a society, by resolution, to pass by a majority of members at an annual or special meeting, a declaration relating to secrecy of transactions with members. Such declarations must be filed with the Director of Societies. While the Bahamian Authorities are of the view that the provision is not intended to prevent regulatory bodies from obtaining or exchanging information on a particular society, the provision is unclear and may equally be interpreted as a hindrance.

582. Under sections 88(1), the Director may inspect a Society on his own motion or on application of a creditor of a society. Access is specific to the books of the society. This contrasts to access granted on application by the lesser of twenty-five (25) members or ten percent (10%) of the members to the Inspector. In this case, the Director has no powers of inspection while a society, its officers, members, agents or employees are compelled at section 89(4) to furnish the examiner appointed by the Director with any books, accounts, securities or other documents the examiner requires.

Gaming Board

583. The Lotteries and Gaming Act (LGA) makes provision for the Inspector to access relevant information as needed, and was being amended to strengthen information sharing between domestic regulators.

[21] Members and delegates are restricted to one vote; business is carried out primarily for the benefit of members; membership is voluntary and available without artificial restriction or discrimination; the limit on interest or dividends on share capital does not exceed the prescribed rate; any surplus from operations is used for business development, improving services, distributed to members, education of members, officers or employees or the general public, contributed to non-profit charitable benevolent organizations, contributed to equity up to a limit of 10% of total assets, and to facilitate cooperation with other co-operatives.

584. The Gaming Board may make disclosure to overseas regulators under section 63A(3) of the LGA. The Act also provides for gateways for the provision of information to domestic regulators under section 63A(8).

585. Once again it should be noted that there is no provision that allows for information sharing for purposes of consolidated supervision and the LGA is being amended.

Financial Intelligence Unit

586. The FIU has powers to obtain and disseminate information under its governing Statute. Under FIUA, section 4, the FIU may exercise its powers *"...notwithstanding any laws to the contrary...."* Section 4 empowers the FIU, inter alia, to require the production of information from any person in The Bahamas as may be necessary for the FIU to perform its functions (with the exception of items subject to legal professional privilege). Under the same section, the FIU is empowered to share information with overseas FIUs. It may also share information received with the Commissioner of Police in circumstances where the material indicates the commission of an offence under the POCA.

Summary of Legislative Amendments on-Information Sharing

587. The Examiners have noted the draft amendments provided by the Bahamian Authorities and as already approved by Cabinet. These include:

(a) Amendments to the IA to permit the Registrar to co-operate with any other regulatory authority in The Bahamas by the sharing of information.
(b) Amendments to the EIA to permit the Registrar to co-operate with any other regulatory authority in the Bahamas by the sharing of information.
(c) Amendments to the SIA to permit the SC to co-operate with any other regulatory authority in The Bahamas by the sharing of information.
(d) Amendments to the IFA to permit the SC to co-operate with any other regulatory authority in The Bahamas by the sharing of information.
(e) Amendments to the CBBA to permit the CBB to co-operate with any other regulatory authority in The Bahamas by the sharing of information.
(f) Amendments to the BTCRA to permit the CBB to co-operate with any other regulatory authority in The Bahamas by the sharing of information on beneficial owners, directors, officers and operations of a licensee, where the information is deemed relevant to the regulatory functions of the agency with whom the information is shared.
(g) Amendments to the FTRA to permit the CC to co-operate with any other regulatory authority in The Bahamas by the sharing of information, where the information is deemed relevant to the regulatory functions of the agency with whom the information is shared.
(h) Amendments to the FCSPA to permit the Inspector to co-operate with any other regulatory authority in The Bahamas by the sharing of information, where the information is deemed relevant to the regulatory functions of the agency with whom the information is shared.
(i) Amendments to the LGA to permit the Gaming Board to co-operate with any other regulatory authority in The Bahamas by the sharing of information, where the information is deemed relevant to the regulatory functions of the agency with whom the information is shared.
(j) Amendments to the SIA by the inclusion of new provisions that will provide the SC

with powers similar to those of the CBB to require persons to provide information as may reasonably be required by the SC in the exercise of its statutory functions. The amendments will also facilitate the SC directing the provision of information where such information is needed to satisfy a request from an overseas authority, subject to the application of legal professional privilege.

(k) Amendments to the FTRA and the FCSPA in order to remove the mandatory annual inspection requirement required in these Statutes. The proposed amendment will leave the frequency of on site inspections to the discretion of the CC and the IFCSP providers respectively.

588. It is the Examiners' view that these amendments will remove any remaining legislative difficulties experienced with regard to domestic regulator-to-regulator information sharing and will further broaden methods of co-operation beyond the sharing of information.

589. The main deficiencies identified under Recommendation 4 are the limitations on the powers of the SC to compel information from licensees as well as deficiencies relating to information sharing among domestic regulators.

3.4.2 Recommendations and Comments

590. The Authorities should move quickly to enact the legislation that will correct the deficiencies that exist with regard to the ability of the regulatory bodies to share information on a domestic basis as pointed out.

591. The new SIA should be finalized as soon as possible to allow the SC powers to compel information, and to share information with the FIU and the SIR should be amended to grant the SC powers to access bank accounts without a court order.

592. The requirement for a policyholder to consent to the Registrar of Insurance accessing his account information should be removed from the EIA.

593. Information exchange with domestic and foreign regulatory authorities should be formalized with the inclusion of information exchange provisions in the COSA, in line with other domestic Statutes. Section 74 of the COSA should be reviewed; and the Society, its officers, members, agents or employees should be required to provide the Inspector with wide access to accounts, securities or other documents required to allow the Inspector to perform his duties. The Director should reserve the right to inspect a Society on the basis of all applications received from members.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**LC**	• **The SC is not generally empowered to access information records or documents for purposes other than investigations under section 33 of the SIA.** • **The CBB cannot share information with the IFCSP or the CC.**

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Recommendation 10

594. Section 23 of the FTRA requires financial institutions to retain such records of transactions conducted through them as are reasonably necessary to enable the transactions to be readily reconstructed by the FIU. Such records must be kept for a period of not less than five (5) years after the completion of the transactions.

595. Section 27 of the FTRA provides that the obligation to retain transactions records ceases when corporate financial institutions are liquidated and finally dissolved or where financial institutions that are partnerships have been dissolved.

596. Section 23(2) of the FTRA requires financial institutions to retain transaction records that must contain information on the nature of the transaction; the amount of the transaction and the currency in which it was denominated; the date on which the transaction was conducted; the parties to the transaction; where applicable, the facility through which the transaction was conducted, and any other facilities (whether or not provided by the financial institution) directly involved in the transaction. This list of informational requirements is not exhaustive.

597. Paragraphs 148–151 of the CBB AML/CFT Guidelines elucidate the legislative requirements with respect to transaction records retention and provides, inter alia, that the records should be such that:

(a) competent third parties will be able to assess the institution's observance of AML/CFT policies and procedures;
(b) any transactions effected via the institution can be reconstructed; and
(c) the institution can satisfy court orders or enquiries from the appropriate authorities.

598. Regulation 52 of the SIR, 2000 prescribes the type of records registered firms and facilities of the SC are expected to keep and maintain. They include but are not limited to customer account forms, records relating to trading securities, correspondence, receipts, bank statements, order tickets, customer account statements, and other information that can be used to reconstruct individual transactions. The regulation also gives the SC power to ensure that registered firms keep other types of records not listed in the regulations. Whereas the FTRA requires retention of the records for five (5) years, regulation 53 of the SIR requires the retention of records for seven (7) years.

599. Section 18 of the CC's Codes of Practice has detailed requirements on transaction records.

600. Section 24 of the FTRA requires financial institutions to retain such identity verification records as are reasonably necessary to enable the nature of the evidence used in the verification process to be readily identified by the FIU. In respect of a person other than a facility holder i.e. beneficial owner, identity records are to be kept for a period of not less than five (5) years after the termination of the account. Section 24(c) also requires the

retention of any other identity records of any person for not less than five years after verification.

601. In keeping with best practices, the date when a person ceases to be a facility holder is the date of:

(a) the carrying out of a one-off transaction or the last in the series of transactions; or,

(b) the ending of the business relationship, i.e., the closing of the account or accounts; or,

(c) the commencement of proceedings to recover debts payable on insolvency.

602. Section 28(2) and (3) of the FTRA provide that a financial institution may retain any record, required to be retained pursuant to sections 23, 24 and 25, beyond the statutory period where such record is necessary:

(a) in order to comply with the requirements of any other written law;

(b) to enable any financial institution to carry on its business; or

(c) for the purposes of the detection, investigation or prosecution of any offence.

603. Section 26 of the FTRA provides that transaction and identity records are to be kept either in written form in the English language, or so as to enable them to be readily accessible and readily convertible into written form in the English language. Regulation 11 of the FTRR further provides that records required to be kept pursuant to sections 23, 24 or 25 of the FTRA may be stored on microfiche, computer disk or in other electronic form.

604. While the above provisions generally comply with most of the requirements of Recommendation 10, the obligations concerning the retention of transaction and identification records do not fully meet the standard. Under section 27 of the FTRA, the obligation to retain transaction records ceases when corporate financial institutions are liquidated and finally dissolved or where financial institutions that are partnerships have been dissolved. The criteria demands retention of transaction records for at least five (5) years following the termination of a transaction regardless of whether the account or business relationship is ongoing or terminated. The standard would require that customer records of liquidate or dissolved financial institution will have to be accordingly maintained.

605. With regard to identification of records, the date of termination of an account includes the commencement of proceedings to recover debts payable on insolvency. This is not in compliance with the requirements for a five (5) year period of retention after termination of a business relationship which can still continue after commencement of proceedings to recover debts payable on insolvency.

Special Recommendation VII

606. Pursuant to regulation 8 of the FTRR, financial institutions are obliged to keep and maintain records of all wire transfers inclusive of information as to the original source, the fields for the ordering and final destination of the funds together with names and addresses. This is the only legal requirement concerning wire transfers in The Bahamas.

607. Paragraph 147 of the CBB AML/CFT Guidelines requires licensees to ensure that they keep and maintain records of all payment messages sent via electronic payment and

message systems such as SWIFT, in accordance with the provisions of regulation 8 of the FTRR.

608. There are no requirements for financial institutions to comply with the remaining criteria of SR VII, which include measures to cover domestic, cross-border, and non-routine wire transfers, obligations for intermediary and beneficial financial institutions handling wire transfers and measures to effectively monitor compliance with the requirements of SR VII.

609. The Bahamas has until the end of 2006 to comply with FATF SR VII. A review of The Bahamas' legislative and regulatory provisions to facilitate compliance with SR VII is on going and is expected to be completed by the end of the second quarter in 2006.

3.5.2 Recommendations and Comments

610. The legislative provision for the cessation of the obligation to retain transaction records when corporate financial institutions are liquidated and finally dissolved or where financial institutions that were partnerships have been dissolved should be repealed.

611. The inclusion of the commencement of proceedings to recover debts payable on insolvency as a definition of termination of an account should be eliminated.

612. With regard to SR VII, The Bahamas is compliant with only the first criterion of the recommendation. See. Paragraph 662. It is recommended that the review of The Bahamas' legislative and regulatory provision take consideration of all requirements of the recommendation and appropriate legislation be enacted as soon as possible.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**PC**	• **Termination of the obligation to retain transaction records when corporate financial institutions are liquidated and finally dissolved or where financial institutions that are partnerships have been dissolved.** • **Inclusion of the commencement of proceedings to recover debts payable on insolvency as a definition of termination of an account.**
SR.VII	**NC**	• **There are no measures in place to cover domestic, cross-border and non-routine wire transfers.** • **There are no requirements for intermediary and beneficial financial institutions handling wire transfers.** • **There are no measures in place to effectively monitor compliance with the requirements of SR VII.**

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11

613. Legislative requirements for financial institutions to monitor transactions and relationships are contained in regulation 9 of the FTRR as amended by the Financial Transactions Reporting (Amendment) Regulations, 2003.

614. Regulation 9(1) of the FTRR states that once customer facilities have been established, financial institutions are required to monitor the operation of such facilities and to undertake further identity and verification procedures if material changes are detected in the way the customer's facility is operated. Under regulation 9(2), financial institutions are obliged to monitor facility holders during the business relationship to ensure consistency with the facility holder's stated account purpose.

615. Paragraph 138 of the CBB AML/CFT Guidelines expands on the obligation of banks and trust companies to undertake ongoing monitoring of relevant account activities in the course of the business relationship. The purpose of the monitoring is for financial institutions subject to the Guidelines to be vigilant to note any significant changes or inconsistencies in the pattern of transactions. Inconsistency is measured against the stated original purpose as required to be obtained under regulations 3(1), 4 and 5 of the FTRR. Possible areas to monitor include, but are not limited to transaction type; frequency; amount; geographical origin and destination; and account signatories.

616. Similar requirements are also incorporated in section 15 of the various Codes of Practice issued by the CC to its DNFBPs.

617. While the above legal requirements are of a general nature, those stipulated in the CBB AML/CFT Guidelines and the CC Codes of Practice satisfy the conditions of the criterion. However, as already noted, only the CBB AML/CFT Guidelines are considered to be 'other enforceable means' and they are only enforceable on banks and trust companies.

618. Paragraph 139 of the CBB AML/CFT Guidelines, requires employees of licensees who observe unusual activity in relation to any customer account to question the customer concerned. Any failure by the customer to provide credible answers would inevitably provide grounds for further enquiry about his activities, make the licensee reconsider the wisdom of doing business with him and lead to a STR being made to the MLRO, and, potentially, the FIU. The above requirement is only applicable to banks and trust companies and does not stipulate the recording of findings in writing of the examination of all unusual activity.

619. Financial institutions are subject to the general requirement in sections 23 and 24 of the FTRA to retain verification and transaction records for the five (5) year statutory period. There are no specific provisions in legislation or related guidelines requiring financial

institutions to retain the findings of their examination of complex, unusual large transactions, or unusual patterns of transactions for the same period.

Recommendation 21

620. The First Schedule of the FRTA contains a list of countries that are generally regarded as sufficiently applying the FATF 40 + 9 Recommendations and having AML/CFT legislative and regulatory frameworks of comparable stringency to that of The Bahamas. The FTRA limits the category of intermediaries and third party introducers upon whose CDD procedures a financial institution may rely, to those eligible introducers that are located in First Schedule countries.

621. Paragraph 103 of the CBB AML/CFT Guidelines addresses the issue of high risk countries and warns licensees that certain countries are associated with predicate crimes such as drug trafficking, fraud and corruption, consequently posing a higher potential risk to licensees. Licensees conducting business relationships with customers who are either citizens of or domiciled in such countries are reminded that this exposes them to both reputational and legal risks. Paragraph 104 requires licensees to exercise caution in accepting certified documentation from individuals and entities located in high-risk countries and territories and to institute appropriate verification checks on such individuals/entities to ensure their legitimacy and reliability. These specific requirements are applicable only to banks and trust companies.

622. The CC has via training, which will be incorporated into updated Codes cautioned its constituents to pay particular attention to, and regard as high risk indicators:

- Persons resident in or maintaining trading operations in locations that are known to have significant established organised crime environments.
- Persons resident in or maintaining trading operations in known drug producing/transhipment locations.
- Persons from or maintaining trading operations in locations that are experiencing political instability or with a history of this.
- Persons from or maintaining trading operations in locations that are designated by their relevant national authorities as high intensity financial crime areas or such similar designation.

623. The CC has determined that singling out locations, in whichever country they may be, that have certain high-risk characteristics, will probably assist in zeroing in on the real risk.

624. The CC has trained its constituents to monitor reports and studies coming from known sources that analyse AML/CFT developments such as FATF, OECD, US agencies and certain private sector entities. This recommendation will be incorporated into the updated Codes. There is no indication of effective measures in place to ensure that the financial institutions under the other regulatory bodies are advised of concerns about weaknesses in the AML/CFT systems of other countries.

625. Regulation 9(1) of the FTRR requires financial institutions to conduct on-going monitoring of their client relationships to assess consistency with the account holder's stated purposes. Paragraph 139 of the CBB AML/CFT Guidelines provides where

licensees observe unusual activity in relation to any client account they should question the customer concerned, even if this means asking "awkward" questions.

626. There is a general provision for financial institutions under section 23 of the FTRA to keep such records as are reasonably necessary to enable transactions that are conducted through them to be readily reconstructed for a period of not less than five (5) years after the completion of that transaction. While the above requires financial institutions to monitor and examine unusual activity in accounts, there is no requirement for written findings of the examinations of the unusual activity to be kept.

627. While The Bahamas has not applied counter measures against countries for specifically not applying or insufficiently applying the FATF Recommendations, paragraph 104 of the CBB AML/CFT Guidelines requires licensees to exercise caution in respect of the acceptance of certified documentation from individuals and entities located in high-risk countries and territories associated with predicate crimes such as drug trafficking fraud and corruption and requires that appropriate verification checks be undertaken on such individuals/entities to ensure their legitimacy and reliability. This includes countries that do not apply or insufficiently apply the FATF Recommendations.

628. The above requirements are specific to banks and trust companies and there are no complementary measures in place for other financial institutions. The requirements have however been adopted by the SC and incorporated in the CC's Codes of Practice.

3.6.2 Recommendations and Comments

629. All financial institutions except those already covered should be required to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.

630. Financial institutions should be required to examine as far as possible the background and purpose of such transactions (i.e. all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose) and set forth findings in writing.

631. Financial institutions should be required to keep such findings (i.e. of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose) available for competent authorities and auditors for at least five (5) years.

632. Financial institutions should be required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries, which do not or insufficiently apply the FATF Recommendations.

633. Effective measures should be in place to ensure that not only the registrants of the CC but all other financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.

634. Written findings of the examinations of transactions with persons from or in countries, which do not or insufficiently apply the FATF Recommendations that have no apparent economic or visible lawful purpose should be available to assist competent authorities.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**PC**	• **The monitoring requirement focussing on significant changes and inconsistencies in patterns of transactions is only enforceable on banks and trust companies.** • **Financial institutions are not required to examine as far as possible the background and purpose of complex, unusual large transactions and to set their findings in writing.** • **Financial institutions are not required to keep such findings available for competent authorities and auditors for at least five (5) years.**
R.21	**PC**	• **The only requirement for special attention to business relationships is generally for those with high risk countries and it is only applicable to banks and trust companies.** • **Effective measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries have only been implemented by the CC for its registrants**. • **No requirement for written findings of the examinations of transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations that have no apparent economic or visible lawful purpose to be available for competent authorities.**

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25, SR.IV & R. 32)

3.7.1 Description and Analysis

Recommendation 13

635. Section 14 of the FTRA, makes it mandatory for financial institutions to make STRs to the FIU where an institution knows, suspects or has reasonable grounds to suspect that any transaction conducted through, by or with the financial institution involves the proceeds of criminal conduct as defined in the POCA see discussions at section 2.1 of this Report or

any offence under the POCA or an attempt to avoid the enforcement of any provision of the POCA. The requirement to report a suspicion applies both the subjective and objective test.

636. The predicate offences for money laundering include most of the Designated Category of Offences with the exception of 'participation in an organized criminal group and racketeering. See. Discussions on Rec. 1 at section 2.1 of this Report

637. Section 7(1) of the ATA provides that any person who has reasonable grounds to suspect that funds or financial services are related to or are to be used to facilitate an offence under the Act has a duty to report the matter to the Commissioner of Police.

638. Section 19 of the ATA amends the Schedule to the POCA to include offences under the ATA as predicate offences.

639. The mandatory obligation for a financial institution to make STRs established under section 14 of the FTRA relate to any transaction completed or attempted which the financial institution knows, suspects or has reasonable grounds to suspect involves the proceeds of criminal conduct, regardless of the amount of such transaction.

640. The reporting of suspicious transactions may be made with respect to tax matters where they relate to a substantive offence which would constitute an offence under the POCA.

641. A summary of the statistics maintained by the FIU regarding the number of STRs submitted by reporting entities can be reviewed at section 2.5 of this Report under Rec. 32. The figure for non-banking sectors is 9% of the STRs received; it has remained substantially low throughout the period. The low figures for STRs submitted by the non-banking sector raise questions as to whether these sectors have effectively implemented suspicious transaction reporting measures.

Recommendation 14

642. Section 16 of the FTRA provides that, when a person makes a STR to the FIU or reports information to the Police in good faith, such a person is protected from civil, criminal or disciplinary proceedings.

643. Section 8(2) of the FIUA provides similar provision as under Section 16 of the FTRA. Section 8(1) of the FIUA provides that no proceedings for breach of banking or professional confidentiality, or no civil or criminal liability action may be instituted against any person or against directors or employees of a financial or business entity who in good faith transmit information or submit reports to the FIU.

644. Section 43 of the POCA provides that where a person in good faith discloses to a police officer his suspicion or belief that another person is engaged in money laundering; or any information on which that suspicion or belief is based, such disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by Statute and shall not give rise to any civil liability. The section also makes it an offence for such a person not to disclose this information to the police or to the FIU unless legal professional privilege exists.

645. Under section 18 of the FTRA financial institutions that have made, or are contemplating

making a STR are prohibited from disclosing the existence of the report or that the making of such a report is contemplated to any person except: the financial institution's Supervisory Authority; the FIU; the Commissioner of Police or other authorized member of the police; an officer, employee or agent of the financial institution, for any purpose connected with the performance of that person's duties; a counsel and attorney, for the purpose of obtaining legal advice or representation in relation to the matter; or the CBB, for the purpose of carrying out its functions under the CBBA. In addition, such persons are prohibited from disclosing any information received except to a person specified in section 18.

646. Sections 20(4) and (5) of the FTRA, make it an offence for any person to disclose that a STR has been made or that the making of such a report is contemplated, for the purpose of obtaining an advantage or pecuniary gain, either for that person or any other person; or with the intention of prejudicing any investigation into the commission or possible commission of a money laundering offence,

647. Section 44 of the POCA makes it an offence to disclose information that is likely to prejudice an investigation if the person knows, suspects or has reasonable grounds to suspect that an investigation into money laundering is being, or is about to be, conducted or if he knows, suspects or has reasonable grounds for suspecting that a disclosure has been made under sections 41, 42 or 43 of the POCA. A person who discloses such information is guilty of an offence.

648. Paragraph 13 of the CBB AML/CFT Guidelines admonishes persons subject to the Guidelines that where it is known or suspected that a STR has already been filed with the FIU, the Police or other authorized agency and it becomes necessary to make further enquiries of a customer in order to verify his identity or to ascertain the source of funds or the precise nature of the transaction being undertaken, great care should be taken to ensure that the customer does not become aware that his name have been brought to the attention of the authorities.

649. Pursuant to section 19 of the FTRA the identity of a person who, in his or her capacity as an officer, employee or agent of a financial institution has handled a transaction in respect of which a STR was made or a person who has prepared a STR or who has made a STR shall not be disclosed by the police except for purposes of (a) the enforcement of the POCA; (b) the detection, investigation and prosecution of any relevant offence within the meaning of the POCA; (c) the administration of the Mutual Legal Assistance (Criminal Matters) Act, 1998 or (d) to assist the FIU and foreign FIUs to carry out their functions.

650. In instances of judicial proceedings, the identity of the person to whom the STR was made is protected unless a Judge is satisfied that the disclosure of the information is necessary in the interests of justice.

651. Section 9 of the FIUA makes it an offence punishable upon conviction by imprisonment for one (1) year and/or a fine not exceeding $10,000.00, for any person who obtains information in any form as a result of his connection with the FIU to disclose that information to any person except as permitted under the Act or any written law.

652. Section 56 of the POCA makes it an offence, punishable upon conviction by imprisonment for one (1) year or a fine of $2,000.00, for a police officer to disclose any information obtained in the performance of his duties under the Act. Such disclosure is permitted for the purpose of the performance of the police officer’s duties or the exercise of his functions or

when lawfully required to do so by any Court or under the provisions of any other law.

Recommendation 19

653. At the time of the Mutual Evaluation Mission, the Bahamian Authorities were considering the issue of monitoring the physical cross border transportation of currency and bearer negotiable instruments. The Examiners were not however presented with any documentary evidence showing the analysis of this issue and/or any policy decision in this regard.

654. The ECA in The Bahamas requires that transactions in foreign currency must receive an approval by the CBB. This is not done for AML/CFT purposes but to monitor and control the amount of foreign currency in the economy. Other legislation addresses the detection of criminal activity such as money laundering and the financing of terrorism and the monitoring of transactions for AML/CFT purposes.

655. Other means of monitoring cross border movement of funds are prescribed by:

(a) The CMA, particularly section 114 which deals with the summary offence of being in possession of uncustomed goods; and the requirements of form C17 in the regulations (the Accompanied Bag Declaration) which refers to the obligation to make an oral declaration with regard to goods that may be subject to duty.
(b) The Exchange Control Regulations particularly section 19(1) which prohibits the importation into The Bahamas of notes without the permission of the CBB and section 19(2) which refers to a declaration made under the Exchange Control Regulations being deemed the same as a declaration made under the CMA.
(c) With regard to transportation of funds outside of The Bahamas, the provisions of the Pre-clearance Act apply to persons travelling to the United States of America.

656. The Examiners considered that this regime relating to the outward movement of funds would only detect or monitor the movement of cash/bearer instruments on an exception basis rather than on an ongoing, consistent basis.

657. The Bahamian Authorities did not present any documentation relating to a policy consideration of this issue, but rather a statement indicating the Authorities' description of the system in place.

658. The Bahamian Authorities indicated that under the ECA, there was a regime for the reporting of certain transactions carried out in foreign currency to the CBB who provides authorization for these transactions. This authorization function has also been delegated to commercial banks so that clients may purchase foreign currency at commercial banks without the need for direct authorization from the CBB. However there is no regime for the reporting by financial institutions of transactions in Bahamian dollars above a particular threshold. The CBB has the authority to provide the FIU with this information. The Bahamian Authorities did not provide any documentation evidencing a consideration of any development of regime that would more closely comply with the Recommendation.

659. In discussions with the Bahamian Authorities, (Customs) there were no cases where unusual international shipments of currency, monetary instruments, precious metals or gems were discovered. They did however indicate that the Customs Department would co-operate with domestic and overseas law enforcement authorities with a view to establishing

the source, destination, and purpose of any such shipment and taking appropriate action if any.

660. There are no systems for the reporting and recording of cross border or large currency transactions for AML/CFT purposes on a consistent basis. The system of monitoring cross border movement of funds is monitored only for the purposes of exchange control.

Recommendation 25

661. All STRs received by the FIU are acknowledged in writing. Feedback is provided on a case-by-case basis by way of a pro-forma letter, which is forwarded along with a pre-defined list of nine (9) outcomes. Additional verbal feedback is also provided upon request. Without exception, all of the financial institutions interviewed stated that they received feedback on STRs filed and that they could always make telephone enquiries with the FIU to receive additional information.

662. The FIU publishes an annual report, which contains detailed statistics of STRs filed during the reporting period. In general terms, the annual report provides a cross-section of analytical data to the public on the 'Suspicious Transactions' reported. There is no information on current techniques, methods and trends i.e. typologies in the report**.**

663. The FIU also provides training assistance to financial institutions, in conjunction with their own in-house training programmes on anti-money laundering matters and typologies. Training assistance rendered is shown at Recommendation 30 section 2.5 of this Report.

664. In addition, the CC meets annually (at the beginning of each year) with the representatives of its industry constituents e.g. Bar Association, BICA, BREA, Registrar of Insurance, IFCSP, Bahamas Cooperative Credit Union League and the Department of Cooperatives to discuss developments of the previous year and map a plan of action for the upcoming year. During these sessions trends and typologies are discussed, as well as means by which to counter activity that might be emerging and the general experiences of the on-site examination process. The industry representatives also share observations of emerging trends with regulators and discuss means for alerting the industry generally.

Special Recommendation IV

665. Section 14 of the FTRA requires financial institutions to submit STRs to the FIU on reasonable suspicion that the reported transaction involves the proceeds of criminal conduct as defined in the POCA or any offence under the POCA. The POCA criminalizes money laundering and predicate offences which are listed in the Schedule to the POCA and include offences under the ATA. Section 7(1) of the ATA, provides, inter alia, that a person who has reasonable grounds to suspect that funds or financial services are related to or are to be used to facilitate an offence under the Act, has a duty to report the matter to the Commissioner of Police.

666. Section 19 of the ATA amends the Schedule to the POCA to include offences under the ATA as predicate offences. While there are no provisions in the ATA requiring the reporting of attempted suspicious transactions, the mandatory reporting obligation under section 14 of the FTRA which includes FT offences requires reporting of attempted transactions.

Recommendation 32

667. There is currently no system in place in The Bahamas requiring the reporting of STRs based on domestic or foreign currency transactions above a certain threshold. See. Discussions on Rec. 19 in this section of the Report.

3.7.2 Recommendations and Comments

668. The FIU should consider providing information on AML/CFT typologies in their annual report.

669. Measures should be taken to ensure that there is effective reporting by all financial institutions.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), Special Recommendation IV and Recommendation 32.

	Rating	Summary of factors underlying rating
R.13	**PC**	• **Statistics on STRs suggest that only the banking sector has effectively implemented suspicious transaction reporting measures.**
R.14	**C**	**This recommendation is fully observed.**
R.19	**NC**	• **No evidence that The Bahamas has considered the feasibility and utility of implementing a fixed threshold currency reporting system.**
R.25	**LC**	• **No information on current typologies is presented in the FIU's annual report.**
SR.IV	**C**	**This recommendation is fully observed.**
R. 32	**PC**	• **There is no system in place requiring the reporting of STRs based on domestic or foreign currency transactions above a certain threshold.**

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Recommendation 15

670. Regulations 3 and 4 of the Financial Intelligence (Transaction Reporting) Regulations (FITRR) require financial institutions to establish and maintain identification procedures and record-keeping procedures in compliance with the FTRA and FTRR. Regulation 5 of the FITRR provides, inter alia, that a financial institution shall institute and maintain internal reporting procedures. The required procedures do not include the detection of unusual and suspicious transactions. Regulation 6(b) of the FITRR requires financial institutions to take appropriate measures to make all relevant employees aware of the procedures maintained by the institution in compliance with the duties imposed under the regulations.

671. Financial institutions subject to the CBB AML/CFT Guidelines are required by paragraph 19 to establish clear responsibilities and accountabilities to ensure that policies, procedures, and controls which deter criminals from using their facilities for money laundering or the financing of terrorism, are implemented and maintained, thus ensuring that they comply with their obligations under the law.

672. The CC's Codes of Practice stipulate similar procedures for its registrants.

673. Regulation 5 of the FITRR requires financial institutions to appoint a Money Laundering Reporting Officer (MLRO) to whom employees must submit STRs. Sub-regulation 5(b) requires the MLRO, in considering any STR made, to have regard to other relevant information and regulation 5(c) requires that the MLRO should have access to any other information, which may be of assistance to him in considering the report. Regulation 5(e) requires financial institutions to appoint a senior officer as a Compliance Officer to ensure that the institution is in full compliance with the law of The Bahamas. The same person may perform the duties of MLRO and Compliance Officer.

674. Paragraph 22 of the CBB AML/CFT Guidelines requires licensees to inter alia (i) introduce procedures for the prompt investigation of suspicions and if appropriate subsequent reporting to the FIU; (ii) provide the MLRO with the necessary access to systems and records to fulfil this requirement.

675. Additionally paragraphs 153 and 154 of the CBB AML/CFT Guidelines stipulate the responsibilities and functions of the MLRO. The MLRO is required to determine whether the information or other matters contained in the submitted transaction report gives rise to a knowledge or suspicion of money laundering or financing of terrorism. In making a determination the MLRO has to consider all relevant information available within the institution. This may include a review of other transaction patterns and volumes through the account or accounts in the same name, the length of the business relationship, and reference to identification records held.

676. Similar requirements are detailed in Part VI of the CC's Codes of Practice for its registrants.

677. While the above requirements give the MLRO access to any information which maybe of assistance in considering making a report, the criteria for Recommendation 15 requires that such access be extended to include other appropriate staff.

678. There is no specific requirement for financial institutions to maintain an adequately resourced and independent audit function to test compliance (including sample testing)

with AML/CFT procedures. As stated previously, the FITRR, places an obligation on all financial institutions to appoint a Compliance Officer who shall ensure that the institution is in full compliance with the laws of The Bahamas. While it can be argued that an internal audit function is necessary to comply with this provision, the obligation is too general and the essential requirement for the internal audit function to be adequately resourced, independent and to test compliance by sampling is not stated. Paragraph 23 of the CBB AML/CFT Guidelines requires larger licensees to assign the role of ensuring compliance with AML/CFT legal requirements to their Internal Audit Department. Small licensees are permitted to introduce a regular review by the Board of Directors or their external auditors. A similar requirement is stipulated at section 9 of the CC's Codes of Practice.

679. Regulation 6 of the FITRR requires financial institutions to take appropriate measures, from time to time, to ensure that relevant employees are aware of the financial institution's procedures for compliance with the duties imposed under the FITRR as well as with the provisions of the FIUA, FTRA, FCSPA, POCA and any other statutory provision relating to money laundering.

680. Financial institutions are further required, at least once per year, to provide relevant employees with appropriate training in the recognition and handling of money laundering transactions. New employees must receive appropriate training as soon as practicable after their appointment.

681. Paragraphs 158-63 of the CBB AML/CFT Guidelines set out the steps licensees should take to ensure compliance with regulation 6 of the FITRR. Appropriate training is prescribed for different types of staff based on their function. Section 30 of the CC's Codes of Practice has similar requirements.

682. There is no legislative requirement for financial institutions to put in place screening procedures to ensure high standards when hiring employees. Supplementary to the newly released CBB AML/CFT Guidelines, the Inspector of Banks and Trust Companies in December 2005 issued a general notice to all licensees, requiring that they always make diligent enquiries about the personal history of the individual and take up appropriate financial, character or employer references on the individual before hiring a new member of staff.

683. Employee(s) that are to be registered with the SC under the categories of broker and securities investment advisor are required by rule of the SC to meet certain minimum educational requirements. It is expected that licensees and registrants employ persons having conducted proper and adequate due diligence on them. In addition, the fit and proper status of an employee of the SC's licensees and registrants is verified by the SC upon application for licensing or registration and during onsite inspections conducted by the SC.

684. The CC emphasises similar requirements in all its training sessions and will incorporate ~~it~~ them into its updated Codes of Practice.

685. It is understood from the CBB AML/CFT Guidelines, that the compliance officer should be one that is sufficiently senior within the financial institution to command the necessary authority. As the compliance function carries significant responsibilities, the independence of the AML/CFT compliance officer should be protected so that independent determinations may be made as to whether or not a transaction should be

reported as "suspicious". Further, only written reports of suspicious transactions should be submitted to that officer who should record his or her determination in writing and the underlying reasons thereof.

686. The reporting line (and actual performance) of the MLRO is examined as part of the on-site examination process, by both the CBB and the SC. Due to the extreme diversity of business types and sizes regulated by the CC specific guidance on this point is under consideration and will be incorporated in the CC's updated Codes of Practice.

687. Interviewed financial institutions attested to the independence of their MLRO in the final determination of the submission of STRs to the FIU and in their internal reporting structure.

Recommendation 22

688. The 'Scope' section of the CBB AML/CFT Guidelines recommends that where a financial institution is a part of an international group, the group policy be followed to the extent that all overseas branches, subsidiaries and associates where control can be exercised, ensure that verification of identity and record keeping practices are undertaken at least to the standards required under Bahamian law or if the standards in the host country are considered or deemed more rigorous, to those higher standards.

689. Reporting procedures for STRs and the offences to which the anti-money laundering and anti-terrorism legislation in The Bahamas relates must be adhered to in accordance with Bahamian laws and practices.

690. There are four (4) licensees that have branches or subsidiaries in foreign jurisdictions. The Inspector of Banks and Trust Companies has issued a Notice to them on behalf of the CBB reminding them of their obligation to ensure that their overseas branches and subsidiaries comply with The Bahamas' AML/CFT standards, where these are more rigorous than those of the host country. They have also been advised that their overseas branches or subsidiaries will be subject to focused on-site examinations with AML/CFT compliance being the key test area.

691. The above requirements as stipulated in the CBB AML/CFT Guidelines and the Notice issued by the Inspector of Banks and Trust Companies does not require financial institutions to ensure that branches and subsidiaries in countries that do not or insufficiently apply the FATF Recommendations observe AML/CFT measures consistent with FATF standards to the extent that local laws permit.

692. All licensees of the SC having branches in foreign countries are also licensees of the CBB. The CC is reviewing this standard with a view to incorporating this in its updated Codes of Practice.

693. There is no legal requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures due to a prohibition by local (i.e. host country) laws, regulations or other measures. The SC has four (4) firms with foreign branches or subsidiaries (all in nearby countries) where changes in AML/CFT rules would rapidly be drawn to the attention of the relevant Bahamian authorities. The Authorities have advised that where the licensee cannot apply this requirement, they would be expected to notify the home supervisor, as compliance by their overseas branches or subsidiaries would be subject to testing by the onsite examination process.

694. The main requirements of Recommendation 22 have been included in the CBB AML/CFT Guidelines, which are applicable as enforceable means only for banks and trust companies.

3.8.2 Recommendations and Comments

695. The Bahamas has taken substantive action in complying with the requirements of Recommendation 15. The following is recommended for full compliance:

i. Timely access to CDD information, transaction records and other relevant information should be extended to include both the compliance officer and other appropriate staff.

ii. Requirements in the CBB AML/CFT Guidelines to establish and maintain internal procedures, policies and controls including the detection of unusual and suspicious transactions should be enforced on all financial institutions.

iii. Financial institutions should be required to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with procedures, policies and controls.

iv. Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees.

696. Most of the requirements of Recommendation 22 have been applied to banks and trust companies. It is recommended that all financial institutions be required to:

- Ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations to the extent that local (i.e. host country) laws and regulations permit.
- Pay particular attention that AML/CFT standards consistent with FATF Recommendations are observed with respect to their branches and subsidiaries in countries, which do not sufficiently apply the FATF Recommendations.
- Where AML/CFT requirements of home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.
- Inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• **Access to information which may be of assistance in making a STR is not extended to both the compliance officer and other appropriate staff.** • **Requirement for the establishment and maintenance of internal procedures, policies and controls with regard to the detection of unusual and suspicious transactions is only enforceable on banks and trust companies.**

		• **There is no requirement for the maintenance of an adequately resourced and independent audit function to test compliance with procedures, policies and controls.** • **There is no requirement for all financial institutions to put in place screening procedures to ensure high standards when hiring employees.**
R.22	**PC**	• **The majority of the requirements of the Recommendation are only applicable to banks and trust companies.**

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Recommendation 18

697. Following a series of legislative changes at year-end 2000, the CBB ceased issuing licences for entities to be managed through agents in The Bahamas and tightened the minimum operating requirements for existing and future licensees. The new physical presence policy stipulated that existing licensees, which operated on a "managed" basis through agencies, had to establish a physical presence by 30th June 2004. A further definition of "minimum physical presence" was provided in 'Guidelines for the Minimum Physical Presence Requirements for Banks and Trust Companies Licensed in The Bahamas', which were issued by the CBB on 28th March 2003. These Guidelines further enhanced this process by outlining the governance, record keeping and physical facilities requirements necessary to satisfy the physical presence status. In addition to licensees having a dedicated office space and infrastructure, a licensee must also appoint no less than two (2) resident executive officers directly responsible for its management and day-to-day operations in The Bahamas and one (1) non resident-executive director.

698. The only exceptions permitted to the policy requiring the establishment of full physical presence are - a) banks subject to consolidated supervision located in G10 countries or another jurisdiction with effective consolidated supervision; b) banks from non-G-10 countries that had effective consolidated supervision in accordance with Basle principles; and c) restricted licensee provided they had an approved managing agent with a full physical presence in The Bahamas and the restricted licensee met the requirements set out in the May 2002 Guidelines. These requirements include the appointment of two (2) senior officers resident in The Bahamas responsible for the administration and maintenance of corporate records pertaining to the branch, which are to be maintained in The Bahamas. The officers are also responsible for facilitating the parent bank's compliance with all applicable Bahamian legislation including AML/CFT statutes. The CBB has full access to all corporate records of the branch.

699. Apart from those entities, which were permitted to continue in existence if they met the requirements outlined in the foregoing paragraph, the CBB ceased issuing licences for entities to be managed through agents in The Bahamas.

700. At year-end 2000, there were 196 "managed" banks and /or trust institutions operating out of a grand total of 410 banking and/or trust institutions

701. A breakdown of licensees as at December 31st 2005 is as follows:

SUMMARY	PUBLIC	RESTRICTED	NON/ACTIVE	TOTAL
Physical	134	67	3	204
Transitioning	3	0	0	3
Managed	12	24	7	43
TOTAL	**149**	**91**	**10**	**250**

702. Of the remaining forty-three (43) licensees under management, thirty-one (31) are restricted/non-active licensees and twelve (12) public branch operations with established management agreements in place (included in the latter group of the twelve (12) banks are three (3) banks from the United States, one (1) from the United Kingdom, one (1) from Italy, two (2) from Japan three (3) from Brazil, one (1) from Portugal, and one (1) from Germany).

703. At the date of the Assessment The Bahamas had forty-three (43) managed banks. This figure represents a significant decline from 196 at the year-end of 2000. Additionally the conditions imposed on these institutions requiring physical mind and management in The Bahamas and access for the supervisor substantially reduces any potential risk posed by these institutions. At the end of 2005, there were only three (3) licensees that The Bahamian authorities regard as 'shell banks'. Two (2) of these licences have since been revoked at the owner's request and the third bank is in liquidation and will lose its licence shortly.

704. In 2005, the CBB placed significant emphasis on completing the onsite examination programme of banks that have transitioned to physical presence.

705. The CBB's AML/CFT Guidelines, state at paragraph 110, on correspondent relationships that licensees must not maintain relationships with banks that have no physical presence in any country or with respondent banks that permit their accounts to be used by such banks.

706. The jurisdiction has clearly enunciated its policy regarding shell banks and implemented a regime, which is closely supervised by the CBB. Guidelines were issued on the minimum operating requirements for physical presence and the CBB's onsite programme in 2005 dealt largely with those banks that were previously managed by other licensees and had converted to physical presence. Most banks had transitioned satisfactorily, while others required improvements in governance practices. The Bahamas has implemented a regime which no longer permits shell banks and has successfully removed all former shell banks.

3.9.2 Recommendations and Comments

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**C**	**This recommendation is fully observed.**

Regulation, supervision, guidance monitoring and sanctions

3.10 The Supervision and Oversight (R.23, 30, 29. 17, 32 & 25)

3.10.1 Description and Analysis

707. In general, The Bahamas has a reasonably sound regulatory regime that provides a framework for the regulation and supervision of a range of financial institutions.

708. The regulatory system consists of six (6) regulatory authorities, namely the CBB, SC, Registrar of Insurance Companies, IFCSP, CC and the Gaming Board. The existing regime for countering money laundering and terrorist financing has evolved through collaboration among, and by these authorities with the Government and the private sector.

709. Against the backdrop of the compendium of statutes dealing with AML/CFT cited in section 1.1, the key powers of the various authorities are embedded in the BTCRA, CBBA, IFA, SIA, FTRA, FCSPA, IA, EIA, and COSA. Guidelines and Codes of Practice complement the legislative framework.

710. The regulatory framework is subject to ongoing review by the GFSR and a comprehensive review of the regulatory framework is being conducted by the FSRRC. A legislative framework was being devised for private trusts, and stand-alone MVT service providers both of which may be administered by the CBB. The FSRRC is developing a regulatory framework for pension funds.

711. Following comprehensive reviews of the regulatory framework in 2002 and 2004, a new SIA had been drafted and is under review. Some of the issues under consideration are the overlapping permissible activities of registrants and the powers of the SC regarding investigations, examinations, information sharing and enforcement.

Authorities/SROs roles and duties & Structures and resources-R. 23, 30

Recommendation 23

Central Bank of The Bahamas

712. The CBB has statutory responsibility for the licensing, regulation and supervision of banks and trust companies ("licensees") operating in and from within The Bahamas pursuant to the BTCRA and CBBA. Additionally, the CBB has the duty, inter alia, in collaboration with financial institutions, to promote and maintain high standards of conduct and management in the provisions of banking and trust services (See section 5(1)(b) of the CBBA).

713. All licensees are expected to adhere to the CBB's licensing and prudential requirements and on-going supervisory programmes, which include onsite examinations. The Inspector of Banks has a duty under section 13 of the BTCRA to, inter alia, ensure compliance by licensees with the provisions of the FTRA. Paragraph 1(h) of the First Schedule to the BTCRA provides that the Inspector shall ensure that banks have in place inter alia adequate policies, practices and procedures, including strict KYC that promote high ethical standards, and so prevent the use of the bank for criminal purposes. Notwithstanding the specific reference to banks there have been no challenges to date in this regard. Compliance with the FTRA is monitored through the CBB's on-site examinations programme.

Summary of CBB Licensees as at December 31 2005

	Public	**Restricted**	**Non-Active**	**Total**
Bank & Trust	82	4	5	91
Bank	48	3	3	54
Trust	19	84	2	105
Total	149	91	10	250

714. The 2005 onsite programme also focused on banks that had transitioned to a physical presence. While the CBB has established internal cycles for conducting onsite visits based on perceived risks, (six to twenty-four month cycle) discussions with some licensees suggest that the Inspector has not visited all licensees.

Securities Commission

715. The SC is the statutory corporation responsible for the regulation and supervision of the securities industry in The Bahamas. The SC was established by the Securities Board Act, 1995 and was renamed the Securities Commission of The Bahamas under the SIA. Securities industry participants (including the investment funds industry) are required to be licensed or registered with the SC, except for those exempted as discussed at Rec. 29. Participants required to be licensed or registered are Securities Exchanges, Broker-Dealers (firms), Brokers/Traders (individuals), Facilities, Associated Persons, Securities Investment Advisors (firms and individuals), Investment Funds and Investment Fund Administrators.

716. Securities industry participants in The Bahamas, which are defined in the FTRA as financial institutions, are subject to AML/CFT regulation and supervision by the SC. Pursuant to section 3(1)(j) of the FTRA, the AML/CFT framework does not include "financial services that consist solely of the provision of financial advice". However the SC by virtue of section 29(5) of the SIA treats all licensees and registrants as brokers unless there is a clear statement from the firm and confirmation by the SC that the only activity of the firm is investment advice.

717. Summary of licensees and registrants as at December 31, 2005

Investment Funds

	2003	**2004**	**2005**
Standard	365 ($28.2)	275 ($19)	285 ($25.65)

Professional	150 (19.68)	337 (54.2)	242 (39.02)
SMART	0	75 (21.3)	88 (19.03)
Recognised Foreign Funds	198 (81.34)	151 (68.9)	84 (91.5)
Total NAV (US$ B$)	129.22	163.4	175.2
Investment Fund Administrators:			
Unrestricted	46	38	38
Restricted	21	18	19
Exempt[22]	3	3	2

Broker / Dealers & SIAs

Broker-Dealers (non banks & trust companies)			
Class l	11 (3)	12 (3)	13 (3)
Class ll	49 (9)	49 (9)	52 (10)
SIA	30	32	40

718. SROs are provided for at section 32 of the SIA, which allows the SC to delegate to a Securities Exchange or any other body registered under the Act and regulated by the SC, any of its powers conferred on it by the SIA, including the authority to adopt and enforce rules for the conduct of members and the responsibility to regulate their members' compliance with the provisions of those rules and of the SIA. In this regard the SC has delegated its duties relevant to material change reporting to The Bahamas International Securities Exchange (BISX). However, listed companies are simultaneously required to report material changes to the SC. There are twenty (20) listed companies and three (3) trading members. This is the extent of SRO activity within The Bahamas securities market.

719. The BISX has had three (3) instances of disciplinary action, one (1) of which is ongoing. BISX has no set cycle for onsite examinations of its members during which it checks for compliance with the SC's Interim Guidelines. See. Rec. 25.The SC has reviewed BISX once.

720. To ensure that the appropriate AML/CFT standards as well as other regulatory requirements are met all licensees and registrants of the SC are subject to on-site inspections, which are conducted on a two (2) to three (3) year rotation. See Rec.32. Further, the SC is authorized to conduct onsite inspections for cause with no notice to the licensee or registrant to be inspected. This authority of the SC is specifically provided for at section 49 of the IFA, and is exercised generally in respect of SIA licensees pursuant to its authority in section 4(2) of the SIA. Specific authority to conduct inspections under the SIA is to be provided for in the draft legislation presently being reviewed by the SC.

721. Pursuant to section 4(3) of the SIA, and section 48 of the IFA, the SC is responsible for ensuring that its licensees and registrants are complying with the FTRA and thus the SC is the competent authority for AML/CFT measures relevant to its licensees and registrants.

[22] Section 32(3) of the IFA authorizes the SC to exempt an investment fund administrator from obtaining an investment fund administrator's licence if, upon application made to it in the prescribed form accompanied by the prescribed fee, it is satisfied that the applicant would otherwise be granted a restricted IFA license, will not be administering more than one specified investment fund, and complies with the prescribed financial requirements.

722. Investment funds licensed by the SC are not subject to the verification of identity provisions contained in the FTRA.

Compliance Commission

723. Section 43(a) of the FTRA lists one of the CC's functions as maintaining a general review of financial institutions in relation to the conduct of financial transactions and to ensure compliance with the provisions of the Act. Section 39 establishes the CC as the body responsible for ensuring compliance with the FTRA. The CC has oversight over financial institutions defined at Section 46 of the FTRA (Refer to Recommendation 4).

724. The definition creates some overlap with other competent authorities and it is understood that licensees of the CBB, and the SC would not fall within the ambit of the CC. The MOU between the five (5) domestic regulators is meant to address some of the regulatory fatigue brought on by overlapping jurisdiction of competent authorities. (E.g. Section 43 of the FTRA and section 12(3) of the FCSPA). The CC administers the on-site examination process for the life insurance, financial and corporate service providers industries and cooperatives. The Director of Societies is appointed annually under section 43(b) of the FTRA to conduct onsite examinations of the non-financial cooperatives (i.e. the non-credit union cooperatives), which are considered low risk. These are referred to as the producer/supplier cooperatives.

725. Three (3) government agencies, The Bahamas Development Bank, The Bahamas Mortgage Corporation, and the Post Office Savings Banks are also subject to AML regulation whenever the following services are provided:

(1) Any arrangement for a client/ customer in the nature of a continuing relationship that allows for deposits, withdrawals, encashment, payments or transfer of funds by any means, including accounts and safety deposit or safe custody arrangements; and/ or
(2) Any arrangement as a business service that allows for the transmission or receipt of funds through a transmission, money changing and safekeeping of cash and/or liquid securities.

726. The CC's registration process, which is ongoing, will define the number and type of each financial institution falling under its mandate.

Summary of Registrants

Constituent	**Active (1)**	**Inactive (2)**	**Unregistered (3)**	**Total (1) & (3)**	**Total (1)+(2)+(3)**
Accountants	18	132	77	95	227
Attorneys	357	145	134	491	636
Cooperatives	15	4	0	15	19
Real Estate Brokers / Developers	113	73	98	211	284
FCSPs	353	17	0	353	370
Life Insurance	12	2	0	12	14
Other	4	0	0	4	4
Total	872	373	309	1,181	1,554

727. While the CC does not licence its constituents, it does require that all financial institutions, which fall within its remit complete its registration process. Information obtained from the completed registration form assists the CC in determining whether the institution is 'Active' or 'Inactive'.

728. It should be noted that a pay-day loan provider was included on training delivered by the FIU in 2006. The statistics maintained by the IFCSP and the CC do not list subcategories of licensees and registrants, respectively.

Other Financial Institutions / Competent Authorities

729. The responsibility of the IFCSP and Registrar of Insurance to ensure compliance with AML/CFT requirements is found at section 11(3)(b) of the FCSPA and sections 2 and 21A of the IAA and EIA, respectively.

730. The Director of Cooperatives is not charged with the responsibility of AML/CFT compliance.

731. Pursuant to section 11(5) of the FCSPA and Section 7(2) of the COSA the respective domestic supervisors have agreed that supervision for AML/CFT compliance under the FTRA will be managed and administered by the CC.

732. The Registrar of Insurance does not have the authority to authorize any person to assist with the performance of his functions under either the IA or EIA. However, section 43(b) of the FTRA requires the CC to carry out on-site examination of financial institutions for the purpose of ensuring compliance with the FTRA and the definition of a financial institution includes a company carrying on life assurance business in accordance with section 2 of the IA.

Market Entry and Ownership/Control

733. Applicants for a banking or trust licence are subject to conditions established in several statutes and Guidelines[23].

734. It is the policy of the CBB to favour the granting of licences to branches and subsidiaries of established, reputable banks and trust companies having (1) a good track record, (2) management of high integrity, and (3) originating from jurisdictions which supervise banks in compliance with the 'Basel Capital Accord and Core Principles for Effective Banking Supervision'.

[23] The BTCRA; The Banks and Trust Companies (Licence Application) Regulation, 2002; The Banks and Trust Companies (Restriction on Use of Banking Names and Descriptions) Regulations, 2002; The CBBA; The Exchange Control Regulations Chapter 360; General Information and Guidelines for Licence Applications; Guidelines for the Minimum Standards of Character and Financial References; and the 2005 CBB AML/CFT Guidelines for Licensees On The Prevention Of Money Laundering & Countering The Financing of Terrorism.

735. The CBB does not entertain applications for the licensing of "shell banks" or "parallel-owned banks"[24] The only exception in the latter case, may be where the supervisory regulator of a sister entity is willing to supervise the Group, preferably at a holding company level.

736. The Registrar of Cooperatives is a member of the GFSR but not a signatory to the MOU among domestic regulators. In keeping with its mandate to harmonise licensing standards, the GFSR vets all applications to the Cooperatives Department.

Central Bank of The Bahamas

737. Banking business is defined as the business of accepting deposits of money which may be withdrawn or repaid on demand or after a fixed period or after notice and employing those deposits in whole or in part by lending or otherwise investing them for the account and at the risk of the person accepting them. Trust business is the business of acting as trustee, executor or administrator.

738. The CBB has the right to set criteria and reject applications from establishments that do not meet the standards required by the Bank. The licensing process, at a minimum, consists of an assessment of the banking organization's structure, directors and senior management, its operating plan and internal controls, and its projected financial condition, including its capital base. An assessment regarding the effect on the public interest of the operation of a proposed licensee is also conducted. All applicants are reviewed to determine their financial soundness and the fitness and propriety of the shareholders, directors and senior management.

739. Licensing criteria are clearly indicated in section 4 of the BTCRA which states that the Governor shall give consideration inter alia as to whether the applicant is a fit and proper person or company as the case may be, and whether those who will operate the company have the character, competence and experience to do so. The Bank and Trust Companies (Licence Application) Regulations, 2002[25], and the General Information and Guidelines for Licence Applications (June 2006 revision) provide details on fit and proper standards. No other regulator has documented fit and proper standards/criteria. Where the proposed owner or parent organization is a foreign bank, the prior consent of its home country supervisor must be obtained. No licensee can appoint or replace a director or executive officer without the prior approval of the Governor (Section 3, Banks and Trust Companies (New Appointments) Regulations, 2005).

[24] Where a bank in one jurisdiction has the same or similar ownership as a bank in another Jurisdiction and where one is not a subsidiary of another.

[25] A draft Amendment to the Regulations was issued for comment on June 6, 2006, with consultation to end on August 29, 2006. The key changes will differentiate the level of detail of financial information for persons seeking to acquire, own, hold or exercise voting control of share capital either above/below 10% of the shares in a proposed licensee; and exempting a group director or director of a parent bank (seeking to serve on the board of a Bahamian Licensee) from a country that is a full member of the OECD, from submitting detailed character references in preference to confirmation of due diligence from the home regulator and a certificate of good standing.

740. Individuals may participate in the ownership of banks, but in such cases a minimum of twenty-five (25%) participation from an acceptable financial institution is required. Shares in a licensee or certificates of deposits or any other securities cannot be issued or transferred or disposed of without the prior approval of the Governor (section 6(1) of the BTCRA).

741. Licensees, their shareholders, controllers, directors and senior management are subject to annual internal review by the Bank Supervision Department of the CBB.

742. All applicants or their representatives are required to have an interview with the CBB before the application process is completed.

743. Between 2002 and 2003, the CBB issued three (3) fit and proper guidelines for licensees adherence, namely "Guidelines for Assessing the Fitness and Propriety of Applicants for Regulated Functions" (directors, executive and senior officers, and persons owning, holding or exercising voting control over five percent (5%) or more of the share capital of a license), "Guidelines for the Minimum Standards for Character and Financial References" (shareholders, directors and senior or executive officers), and "Confidential Statement by Individuals who are proposing to hold the position of Director and/or Executive Officer of a Bank or Trust Company Licensed by the Central Bank of The Bahamas".

744. When analysing the suitability of directors and senior management, the CBB takes into consideration all information requested in these Guidelines, the applicant's character, professional and educational experiences, the applicant's personal (e.g. police record) and financial character. There is also an ongoing obligation imposed on directors and executive officers to advise the Inspector of any material changes within twenty-one (21) days of realization.

745. In light of the June 2006 consultation document amending the licensing application regulations, which includes a threshold of ten percent (10%), it is not clear whether the fit and proper test will continue to be applied at the five percent (5%) level.

746. The net worth statements of individual shareholders are carefully scrutinized to ensure that the individual has sufficient means (financial resources) to lend support to the proposed entity and can support their capital position. In assessing this area, the reviewer examines the general makeup of the financial statement (i.e., liquid assets, shares in companies, loans, liabilities, etc.); and assesses resources against the proposed stake in the bank/trust company to be established.

747. Section 4(4) of the BTCRA requires that the Governor be notified of changes in the authorised agents of Licensees with head offices or registered offices outside of The Bahamas. The Act also requires that a locally incorporated licensee obtain prior approval before opening a subsidiary, branch, agency or representative office outside of The Bahamas.

Securities Commission

748. The SC as the primary regulatory authority for securities, investment funds and the capital markets has a statutory duty to ensure that all industry participants are of reputable

character. Due diligence is undertaken on all parties associated with applications submitted to the SC for licensing and/or registration.

749. Section 33(2) of the IFA provides that "The Securities Commission may grant an investment fund administrator's licence if it is satisfied that the applicant among other things is of sound reputation and has Directors, officers and senior management who meet the fit and proper requirements of the Securities Commission." Section 16 of the IFR requires an existing investment fund administrator to submit specified information regarding directors to the SC, prior to appointment of that director. Further, section 44 establishes that the prior approval of the SC is required for changes to directors and executive officers (or equivalent positions), while an investment fund administrator must notify the SC of any material changes to prior information submitted in support of an application. Formal procedures are in place for annual declarations from an investment fund, investment funds administrator and non-Bahamian based investment funds.

750. However, pursuant to section 5A of the FTRR, documentary evidence is normally not required for investment fund administrators[26] with respect to funds licensed or registered under the IFA. This exemption was provided on the basis of the structure of funds and the fact that the CDD processes for funds are conducted by the promoters who are screened at the point when the funds are licensed by the SC. The Bahamian authorities do not consider this to be a responsibility of administrators despite the latter being charged (a) at section 26 of the IFA with ensuring that an investment fund does not carry on business contrary to the provisions of the Act and (b) at section 39 with notifying the SC when an investment fund is carrying on business otherwise than in accordance with the IFA or any other applicable legislation. The SC has nevertheless provided guidance to administrators and operators to ensure that each investment fund fulfils its obligations under the POCA, which include CDD. The Examiners noted that there is no mandatory obligation on promoters to undertake CDD on funds, and that this is done on a voluntary basis.

751. Section 22(2) of the SIA provides that "Before registering the applicant as a Broker-Dealer the SC shall among other things, be satisfied that the applicant and its principals are fit and proper persons who have and maintain a good reputation." By extension, under its power in section 4(2) of the SIA to do anything to facilitate its functions under the Act, the SC has in practice applied this requirement to securities investment advisors and all other categories of registrants under the SIA. In the circumstances the fit and proper procedures are conducted in respect of all Directors, substantial shareholders (over 10% ownership) and officers of applicants for licensing and registration with the SC.

752. Regulations 26, 28 and 31 of the SIR, which respectively deal with the registration/licensing of brokers, securities investment advisors, principal and associated persons collectively state that all such individuals should be of good character.

753. As stated previously various provisions of the IFA and SIA require that all Directors, substantial shareholders and officers of licensees of the SC be subject to fitness and propriety tests. In this regard the SC reviews and considers the parties character, educational and professional qualifications as well as their personal and financial references. Guidelines on educational requirements for market participants (stockbrokers,

[26] Pursuant to section 32(1) of the IFA, an investment fund administrator shall be either a company incorporated or registered under the Companies Act, or incorporated under the IBC Act.

investment advisors, traders and dealers) were issued in March 2004.

754. Regulation 10(1) of the IFA provides that "An investment fund shall – a) appoint as its operator a person that is fit and proper for the performance of its duties; and b) upon application for licensing submit to the licensor sufficient information so as to enable the licensor to assess the fit and proper status of the operators." The operator of an investment fund is defined at section 2 of the IFA as the director(s) of the fund. A licensor can be either the SC or an unrestricted fund administrator.

755. Regulation 12 provides that "The Securities Commission may require at any time evidence, from an investment fund that a custodian, investment manager or investment fund advisor of the fund is appropriately qualified for the performance of its functions."

756. The application forms for licensing as a principal, associate person and securities investment adviser require disclosures relating to past relations with any securities-related or financial institution; disciplinary proceedings by a regulatory body of the financial services industry; denial, suspension, revocation or restriction of any investment-related business and convictions in any country.

Registrar of Insurance

757. Pursuant to sections 8 and 6 of the IA and EIA, respectively, the Minister has powers to register or approve an application. Pursuant to sections 7 and 6 of the IA and EIA respectively, the Minister may request any documents and particulars as may be reasonably required. The responsible Minister is only defined in the IA, as, the Minister responsible for Insurance. A registered insurer under the IA must notify the Registrar in writing of the appointment of a new principal representative within twenty-one (21) days of the change (section 13(3)).

758. The Insurance (Registration) Regulations (IRR) set out the information requirements for applications for registration of a registered insurer, association of underwriters and registered insurance agent. For applications other than Members of Association of underwriters, information is required on directors, partners, managers, officers and beneficial shareholders (10% or more) and underwriting managers. The identity of the manager who is the company's representative in The Bahamas must also be disclosed. Background checks are undertaken on such persons. In addition, a compliance certificate from the governing authority is required where the applicant is doing business in another country. Regulation 5 and section 7 of the IRR and EIA, respectively require an applicant to inform the Registrar of any material changes to the application.

759. However, there is no obligation for the Registrar to be notified of changes in beneficial ownership or controlling interest.

760. Section 8(3) of the EIA states that if any officer associated with an application is not a fit and proper person then the Minister may refuse the registration. However, fit and proper criteria are not documented. Proof of qualifications is required in the case of applicants seeking to be registered as an agent, broker and salesman.

Financial and Company Service Providers

761. Applications are processed by the IFCSP and approved by the Minister responsible for Companies. Licensing criteria are identified at section 4(3) of the FCSPA for applicants, officers, directors and managers or partners, as the case may be. The assessment is repeated annually before a licence is renewed. Matters for consideration relate to fitness and propriety, professional reputation and experience, qualifications, and residency status. There is no reference to beneficial owners. The IFCSP consults with the GFSR before making a determination about applications and renewals.

762. No shares in a licensee may be issued, transferred or otherwise disposed of without the prior approval of the IFCSP, which is also the case with the appointment of directors. The IFCSP is to be notified of changes in officers. (See. also section 11 of the FCSPA).

763. There are no documented fit and proper criteria. Applicants for a FCSP licence submit name, address and nationality of directors, shareholders, beneficial owners, partners, officers and managers, together with character and financial references. A police certificate is also required. However, fit and proper tests need to be more robust vis-à-vis information requests and scrutiny of natural and legal persons for example, no queries are raised about the past convictions and censure, discipline and arrangements with creditors.

Cooperatives Department

764. The Director of Societies is responsible for registration of Societies pursuant to section 7(1) of the COSA. An applicant is required to submit such information with respect to the Society as the Director may require (section 7(4)). A detailed business plan must be submitted for all applications discussing the overall project proposal, organization and management, market analysis, and financial analysis.

765. The GFSR vets all applications to the Cooperatives Department.

766. The Director utilises comprehensive fit and proper tests. Section 16(2) of the COSA establishes fit and proper standards for management of a Society as it relates to offences involving dishonesty, default of debt and bankruptcy. Further all persons serving in an official capacity at a Society are assessed as it relates to their educational background, experience and criminal convictions and are subject to a credit and background check. Checks are also made with other supervisory authorities.

Money Value Transfer Services

767. Money or value transfer services that are supervised by the CBB as part of a licensee's operations, are subjected to fit and proper tests promulgated in previously mentioned licensing regulations and fit and proper guidelines.

768. The IFCSP has been identified as being responsible for licensing stand-alone MVT service providers. Section 4(3) of the FCSPA requires the IFCSP to assess the fitness and propriety of applicants and each officer, director or manager or partner as the case may be. There was one (1) such entity registered with the CC. Statistics maintained by the IFCSP and the CC do not list subcategories of licensees and registrants, respectively. Draft amendments to the BTCRA and draft

regulations have been prepared to address the supervision of stand alone MVT service providers.

Ongoing Supervision and Monitoring

Central Bank of The Bahamas

769. Section 13 of the BTCRA gives the Inspector of Banks and Trust Companies the responsibility to conduct on-site examination and off-site supervision of licensees, and to ensure that the provisions of the BTCRA (including the First Schedule) and the FTRA are complied with by licensees and that licensees are in a sound financial condition.

770. The BTCRA empowers the Inspector of Banks and Trust Companies to "ensure that banks have in place adequate policies, practices and procedures, including strict KYC rules that promote high ethical and professional standards, to prevent the use of the bank for criminal purposes (BTCRA section 17 and First Schedule paragraph 1(h)).

771. In carrying out its functions, the CBB has regard to recommendations of the Basle Committee insofar as they have been incorporated in the statutory regime relevant to banks and trust companies.

772. Banks and trust companies are prohibited from operating from within The Bahamas unless they are duly licensed (section 3(1) and (2)). Section 4(2) of the BTCRA sets out the factors to be considered at the time application is made for licensing. Applicants must also provide the information and documents required by the Licence Applications Regulations, 2002 (LAR).

773. The AML/CFT Guidelines provide at paragraph 19 that licensees are required to establish clear responsibilities and accountabilities to ensure that policies, procedures, and controls which deter criminals from using their facilities for money laundering or the financing of terrorism, are implemented and maintained, thus ensuring that they comply with their obligations under the law.

774. The AML/CFT Guidelines in Part III also require licensees to develop appropriate strategies and policies to minimise the risk of licensees being used to facilitate money laundering or terrorist funding.

775. The opening paragraphs of the AML/CFT Guidelines provide inter alia that where a licensee is a part of an international group, it is recommended that a group policy be followed to the extent that all overseas branches, subsidiaries and associates where control can be exercised, ensure that verification of identity and record keeping practices are undertaken at least to the standards required under Bahamian law or, if standards in the host country are considered or deemed more rigorous, to those higher standards.

776. All licensed banks and trust companies are subject to on-going supervision and monitoring on a monthly, quarterly and yearly basis as the case may be for inter alia AML/CFT compliance. This process is carried out jointly by the off-site and on-site supervisory teams under the direction of the Inspector of Banks and Trust Companies.

777. The Bank Supervision Department has established a 'Watch List Committee' to enable it to monitor more closely those licensees, which pose a level of enhanced risk to the jurisdiction. The Committee is chaired by the Inspector and members comprise the Manager of BSD, the Deputy Managers of the Supervision Policy and Administration Units, and the Chief Examiner. The Policy Unit serves as the Secretariat of the Committee, which meets monthly or as directed by the Inspector. An action plan of all agenda items is circulated to all members prior to the meeting. Criteria taken into consideration when identifying a bank to be placed on the watch list are the inadequacy of capital; excess lending to related party; excessive deposits/capital ratios; excessive delay in submission of prudential/regulatory and statutory returns; frequent exits or changes in senior personnel; unapproved changes in ownership; geographical concentration of assets; and the on-site examination ratings which are high or medium.

778. The Department also monitors policies applied to licensees via the Policy Advisory Committee established by the CBB and chaired by the Governor. The membership of this committee is comprised of the Inspector, the Manager of BSD, Policy Unit of BSD and Legal Counsel.

779. During the year 2005, the Department initiated, on a full scale, the process of approaching home country supervisors to establish linkages for on-going monitoring of banks within the jurisdiction for the purpose of consolidated supervision. The CBB already has a good working relationship with home country regulators, but to formalize the exercise; formal letters were issued with an attached questionnaire. The home country supervisors were also given a brief update of the status of the Bahamian licensee. To avoid undue burden on any home country supervisor, letters were distributed over the course of the year with the remainder to be issued in early 2006.

Securities Commission

780. Industry participants must be licensed, registered or filed with the SC in various categories under either the SIA or the IFA with the exception of those participants discussed at Rec. 29.

781. Section 49 of the IFA provides the SC with authority to conduct on-site and off-site examinations of its licensees to ensure compliance with the provisions of the IFA, SIA and FTRA. The SC employs general powers granted at section 4(2) of the SIA to conduct FTRA onsite examinations. By virtue of section 4(3) of the SIA and section 48 of the IFA the SC is required to satisfy itself that its licensees have complied with the provisions of the FTRA. The legislation also provides that licensees of the SC adhere to and maintain certain financial requirements.

782. The standards set out in the CBB's Interim AML/CFT Guidelines are also applicable to the SC's licensees and registrants. Further, licensees of the SC are subject to on-going supervision and monitoring inter-alia for AML/CFT compliance, on a two to three year rotation or more frequently if determined to be necessary by the SC.

783. Regulatory and supervisory measures applied to licensees and registrants of the SC generally for regulatory, prudential and disclosure purposes are being applied for AML/CFT purposes.

784. In 2002, the regulation of the securities sector was reviewed by the IMF, which was

followed up in 2004 with a technical assistance mission. A number of recommendations were identified which will bring the framework in line with IOSCO standards. New legislation was drafted and is being reviewed. In addition, assistance was being sought to provide institutional strengthening with regard to the AML/CFT inspection process as part of a Regional programme.

Registrar of Insurance

785. Departmental manuals were not available to assess the offsite programme in place. The Registrar does not have an onsite programme due to lack of legislative capability. This weakness is to be corrected in the new legislation, which will also seek to strengthen the powers of the Registrar and give the Registrar more autonomy.

Financial and Company Service Providers

786. The FCSPA requires any person offering financial or corporate services for profit in or from within The Bahamas to have a financial and corporate service providers' licence. See Rec.4.

Summary of FCSP Licensees

	2004	**2005**	**2006**
Lawyers	87	98	124
Companies	56	74	88
Accountants	22	10	19
Total	165	173	231

787. Such persons are to be regulated for AML/CFT purposes by the CC where they offer any of the services identified in section 46 to the FTRA.

788. FCSPs (which include lawyers and accountants) are licensed and supervised by the IFCSPA pursuant to the FCSPA. They are subject to the requirements of the FTRA pursuant to section 45.

789. While the FTRA together with the FTRR make provisions for financial institutions to apply a risk based approach to customer due diligence there is no documented consideration by competent authorities of the AML/CFT risk posed by FCSPs. A Code of Practice for FCSPs was still being updated at Mission date to inter alia incorporate the risk-based approach

Cooperatives Department

790. Section 86(10) of the COSA, dealing with annual returns, allows the Director of Societies, on his own motion, to hold an inquiry into the constitution, operations and financial position of any society during which the Registrar may inspect the books, accounts and records of the society. Section 88(1) states that the director on his own motion and shall on application of a creditor of a society, inspect or direct an authorized person to inspect the books of a society. Section 89 allows the director on his own motion or on application made by the lesser of twenty-five (25) members or ten percent (10%) of the members,

appoint an examiner to undertake an investigation of the books and affairs of a society and submit a report to the Director.

791. The Department has documented an Inspection Manual, which includes a chapter on the FATF/FTRA addressing inspections, member verification, record keeping, training, and suspicious transaction reporting. Internal policies for onsite and offsite inspections were issued in 2004 and AML checklists have been prepared. Risk ratings are included for seven (7) elements – credit, interest rate, liquidity, transaction, compliance, strategic and reputational risk. One of the identified purposes of offsite monitoring is determining the progress in correcting deficiencies cited during onsite examinations. This is used to determine the inspection cycle. The Department maintains a watch list for problematic and potentially problematic credit unions.

Money Value Transfer Services

792. The CC is responsible for AML/CFT compliance monitoring for stand-alone MVT service providers by virtue of section 3 (1) (j) (v) of the FTRA. There is one (1) stand-alone MVT service provider. It is intended that the CBB will take over the licensing and supervision of stand alone MVT service providers and agents.

793. All money and currency changing services are provided by licensees of the CBB and are therefore subject to AML/CFT compliance monitoring as part of the onsite examination programme.

Recommendation 30

794. The competent authorities responsible for AML/CFT regulation and supervision, the CBB, SC and the CC, fall under the Ministry of Finance. The CBBA sets out the establishment and functions of the CBB, while the securities industry is governed by the SIA and IFA.

795. The IFCSPs and the Registrar of Insurance report to the Ministry of Financial Services and Investments. However, the former contravenes the FCSPA and an amendment is before Cabinet to change the definition of "Minister" in the FCSPA from "Minister with responsibility for companies" to 'Minister responsible for the administration of this Act." The Director of Societies and the Gaming Board report to the Ministry of Local Government and Consumer Affairs, and Ministry of Tourism, respectively.

796. A Financial Services Regulatory Reform Commission (FSRRC) was formed in 2005 to streamline the financial sector regulatory regime. See. Section 1.5 (a).(iii) and Recommendation 4 of this Report. It has several functioning committees - structure, legal, pension funds and resources. It is possible that budget requests from competent authorities for additional resources may not be fully satisfied until the report from the FSRCC is completed at year-end 2006. In the interim, The Bahamas will need to continue to be vigilant to ensure effective monitoring of the financial system in the face of any resource constraints.

Central Bank of The Bahamas

797. The Board of the CBB consists of three (3) directors who are appointed by the Governor General. The Governor of the CBB can be re-appointed every five (5) years, while the two

(2) Deputy Governors are limited to five-year terms. The terms of appointment or re-appointment of the remaining directors cannot exceed four (4) years. Paragraph 11 of the Schedule to the CBBA provides that the CBB may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, such officers, servants and agents as the Board considers necessary for the due discharge of the functions of the Bank. Paragraph 12 makes provision for the CBB to remunerate staff as it determines.

798. Under the CBBA, the CBB has autonomy/operational independence in all supervisory and regulatory matters, with only the notification of certain significant actions and activities (i.e. issuing /refusing to grant licences, or revocation of licences), for informational purposes, to the Minister of Finance. The CBB uses its own resources exclusively and independently to carry out its statutory objectives and responsibilities, which include its regulatory and supervisory functions.

799. The Supervision Department comprises four (4) units - onsite (8 persons), offsite (29 persons), policy (6 persons) and administration (10 persons – five non-technical). Further, offsite staff regularly assists with onsite examinations. Consideration is also being given to forming an additional Unit of six (6) persons to deal with MVTs. Resource implications for private trusts, which are to be migrated to the CBB, have not been finalised.

800. The staff complement for the department at year-end 2000 to 2005 is as follows:

2000	2001	2002	2003	2004	2005
32	37	52	52	52	53

801. Section 38 of the CBBA imposes a duty of confidentiality on the employees of the CBB. All new employees are required to sign a Declaration of Secrecy and to adhere to rules of conduct pursuant to the Central Bank Staff Regulations.

802. The minimum entry-level qualification for technical staff is an undergraduate degree in finance, accounting, economics or business. The CBB's reputation is generally regarded as strong.

803. For 2005, the CBB conducted a one-day workshop with Bank Supervision staff and members of the banking community to review the revised CBB AML/CFT Guidelines. In addition to on-going scheduled training (internationally and locally) conducted or hosted by various supervisory agencies (i.e. Association of Banks of the Americas (ASBA), Caribbean Group of Banking Supervisors (CGBS), Office of the Superintendent of Financial Institutions (OSFI), Financial Stability Institute (FSI), Federal Reserve Board and the WB), staff of the Bank Supervision Department attended in-house training sessions lead by the Inspector of Banks and Trust Companies. It is worth noting that a large number of technical staff has taken independent initiative to upgrade their skills in the areas of trust and compliance.

804. In January 2006 the Bank Supervision Department held a two-day AML/CFT training course in conjunction with the U.S. Treasury Department.

805. The staff complement of the Bank Supervision Department has grown by approximately forty-three percent (43%) over the last five (5) years. Notwithstanding the employ of a risk-based approach with respect to the 250 CBB licensees, and the availability of offsite resources to lend assistance in the onsite programme, statistics on onsite examinations appear low. See Recommendation 32.

Securities Commission

806. There are nine (9) members appointed to the Board of the SC, which consists of six (6) non-executive members and three (3) ex officio members (Executive Director of the SC, The Governor of the CBB and The Registrar of Insurance).

807. Section 6 of the SIA establishes the funding sources of the SC, which include inter alia monies provided by Parliament and accrued from the SC's operations. The SC reported that seventy-five per cent (75%) of finances is provided by Government subvention while the remaining twenty- five per cent (25%) is derived from the payment of fees by licensees and registrants.

808. The SC is an independent body under the portfolio of the Minister of Finance. The Minister of Finance appointed the Executive Director in May 2006. The SC does not have full operational autonomy as evidenced for example in section 5 of the SIA, which states "The Minister may give the SC directions in writing for the discharge of its functions and the SC shall give effect to such directions"; and "The SC shall furnish the Minister with any returns, accounts and other information as he may from time to time require with respect to the property and activities of the SC and shall afford to him facilities for verifying the information in any manner and at such time as he may reasonably require." The Examiners were informed that the new SIA will further restrict the powers of the Minister. It is noted that the SC appears however to operate effectively and SC officials advised that there has to date not been any incidence of Ministerial interference.

809. The SC appoints and employs staff on such terms and conditions as it deems fit. The staff complement is presently forty-four (44) of which 27 are technical persons who are distributed as follows - legal affairs (4), authorizations (5), market surveillance (7), executive department (4), policy and research (2), inspections (5) and corporate affairs (0). The SC is desirous of obtaining additional resources to assist in supervising and regulating its constituents, particularly with respect to the market surveillance unit.

810. The technical staff of the SC is fully qualified and experienced in law, accounting, finance, economics, administration and other general degrees. It is the policy of the SC to require that all technical staff within the first year of their employment attend at least one of three (3) predetermined courses including the annual:

- Market Regulation programme offered by the US Securities Exchange Commission;
- Investigations and Enforcement programme offered by the US Securities Exchange Commission; and
- Market Regulation programme offered by the Financial Services Authority, United Kingdom.

811. These conferences usually include material on AML/CFT. All Managers and the majority of the technical staff have attended various training programmes specifically on/which included AML issues. A summary of recent workshops, conferences and seminars include, Market Regulation – IOSCO, Market Regulation – SEC (2005), Market Regulation – Ontario Securities Commission (2005), Securities Investigators Training Program (2005), Broker Dealer Level 1 & 2 NASAA – (2005) Securities Market Leadership Program (2005), Central Banking Annual Training Course/Seminar Series including "How to Combat Money Laundering, Financial Crime and The Abuse of Electronic Payments Spring 2005, Money Laundering Alert Annual Conference – OGCISS, ACFE Annual Fraud Conference - OGCISS, and MAR Hedge Fund Conference – OGCISS. Training is ongoing.

812. All employees of the SC are subject to a statutory duty of confidentiality as provided at section 91 of the SIA and section 59 of the IFA. Further, staff members are required to sign a confidentiality agreement upon employment with the SC.

813. In addition to requiring that potential employees submit certificates of clear criminal records, the SC conducts independent background checks on its employees. The SC's staff regulations also require that employees are of good repute and "maintain high standards of honesty and integrity" and conduct their personal and financial affairs so as not to adversely affect the confidence of the public in the integrity of the SC.

814. The SC onsite examination statistics for 2005 indicate coverage of twenty (20) out of some 164 registrants/licensees (excluding investment funds). Notwithstanding overlapping constituents with the CBB (which as stated earlier may need to re-evaluate its own onsite resources), the adequacy of resources dedicated to both onsite and market surveillance is an issue that needs to be addressed.

Compliance Commission

815. Pursuant to section 39(2) of the FTRA the CC shall be a body corporate having perpetual succession and a common seal with power to enter into contracts and do all such things necessary for the purpose of its functions. Section 40 of the FTRA allows for three (3) Commissioners having wide experience and expertise in financial and commercial matters, industry law or law enforcement. The Governor General appoints the Commissioners and the two (2) in place are a retired banker and an attorney, who is also the legal adviser, with the Ministry of Finance.

816. At present, the CC has a staff complement of seven (7) persons with its daily operations supervised by an Executive Commissioner. There are four (4) technical officers: inspector, senior examiner and two (2) examiners. In view of the plans to reform the financial services sector, it is not envisaged that any further recruitment will occur, although replacements occasioned by attrition will be engaged.

817. The CC appoints BICA licensed accountants to conduct routine annual on site examinations of registrants', while follow-ups are done by the CC itself. See Rec. 29. Auditing firms are appointed under the joint authority of the IFCSPs, the Executive Commissioner, and the Registrar of Insurance for a one (1) year term to conduct inspections as agents of the authorities. The authorities reserve the right to jointly or

severally withdraw an appointment of any individual auditor, where misconduct has been established or where disciplinary proceedings end in adverse findings. As agents, the auditors are bound by the confidentiality provisions in the FTRA. The CC drafted a Code of Practice for Accountants in 2002, while BICA initially issued a set of Professional Practice Notes for its members, on the conduct of examinations.

818. The CC also uses an advanced electronic management information system, which has contributed to reducing the need for excessive numbers of staff.

819. The CC like the CBB has complete statutory autonomy from Government, but is completely dependent on government for its funding and operations, with staff being largely on loan from the Ministry of Finance, although two officers are on contract.

820. Under section 44 A of the FTRA, employees, officers and agents of the CC are strictly prohibited from disclosing any information related to the activities of the CC and the financial institutions which it supervises except as permitted under the FTRA. The penalty for breach of the statutory duty of confidentiality is a maximum fine of fifty thousand dollars ($50,000) or maximum prison sentence of three (3) years.

821. Among the staff of the CC is a senior Attorney-at-Law, certified Anti- Money laundering Specialist, an officer with a Diploma in Compliance and Anti-money laundering from the International Compliance Association (ICA), another officer who is presently enrolled in the ICA diploma programme and an officer who has completed a Bachelors and Masters degrees in law from the United Kingdom and who is currently completing the New York State Bar.

822. The staff of the CC is regularly exposed to training both internationally and locally, and pursue certification courses on an annual basis. In addition, the CC regularly provides participation for its staff in the annual Money Laundering Alert workshops in Florida, CFATF meetings and FATF workshops. The CC has also implemented in-house staff training where AML/CFT matters are addressed. The CC also participates in and facilitates various seminars and workshops, put on by the CBB, the Attorney General's Office and professional bodies such as BICA, BACO and BFSB.

823. The CC has from its inception in 2001, engaged the accounting profession in AML/CFT training at least once annually. These sessions, which also satisfy the Continuing Professional Education Programme (CPE) of the BICA, serve a two-fold purpose: (1) To apprise accounting firms of their statutory AML/CFT obligations as financial institutions under the financial laws i.e. when they provide the financial intermediary services named in section 3(1)(l) of the FTRA and (2) To provide guidance to those accounting firms acting as agents of the CC, the IFCSP and the Registrar of Insurance in conducting on-site examinations. These sessions take the form of workshops and are very interactive.

824. The CC was unable to provide statistics on the number of accounting firms/accountants that had been trained in AML/CFT and who conducted on-site examinations on their behalf. The Examiners were therefore unable to verify that the auditors who do on-site inspections on behalf of the CC had received AML/CFT training by the CC.

FCSP

825. The IFCSP, who is also the Registrar General, is appointed by the Minister responsible for Companies. The Inspector does not have full operational autonomy as evident at section 12(3) where an onsite visit cannot be initiated by the Inspector himself but is done on an annual basis and when required by the Minister. Under section 22, the Minister can give the IFCSP general or specific instructions as to the policy that should be followed by the IFCSP to carry out his functions and the IFCSP shall give effect to any such direction.

Insurance

826. The Registrar, Deputy Registrar and Assistant Registrar are appointed by the Governor General on the advice of the Public Service Commission. All applications for registration under the EIA and IA are made to the Minister. Section 11 of the EIA, requires prudential reporting to the Minister. Section 15 requires underwriting managers with certain knowledge or information to forthwith report such to the Minister. Cancellation of an external insurer is done under the direction of the Minister (section 12(3) of the EIA).

827. Under sections 8 and 30 of the IA, the Minister directs the Registrar of Insurance to register insurers; and agents, brokers or salesmen, respectively. The Minister imposes restrictions on business activities of registered insurers (section 10). Cancellation of a registered insurer is done under the direction of the Minister (section 11). Pursuant to section 31, the Minister gives the Registrar directions on notifications regarding cancellation of registrations. Under section 36, the Minister may waive or modify the requirements on Parts ll and lll of the IA.

Cooperatives

828. The Director of Societies and staff are determined by the Minister, appointed by the Public Service Commission and reports to the Minister of Local Government and Consumer Affairs with responsibility for Cooperatives. The Office of the Director appears to be sufficiently operationally independent of the Minister.

Authorities Powers and Sanctions-R.29 & 17

829. The Inspector of Banks and Trusts has a duty at section 13 of the BTCRA to ensure compliance with the FTRA. Pursuant to section 43(3) of the SIA and Section 48 of the IFA the SC is responsible for ensuring that its licensees and registrants are complying with the FTRA. Approximately, ninety percent (90%) of licensees and registrants of the SC are also licensees of the CBB. The CC is charged at section 43(a) with maintaining a general overview of financial institutions within its remit.

830. In general, competent authorities utilize Guidelines or Codes of practice to assist licensees and registrants in implementing AML/CFT programmes that comply with the FTRA. With the exception of the CBB AML/CFT Guidelines, the other Guidelines/Codes do not carry the force of law but are used during the onsite process and shall be considered by the Courts to adjudge compliance with the FTRA. See Rec. 25.

Central Bank of The Bahamas

831. The Inspector of Banks and Trust Companies has a duty under section 13 of the BTCRA to ensure compliance by licensees with, inter alia, the provisions of the FTRA. The Inspector pursuant to section 17 of the BTCRA has a duty to observe the Rules for Inspection set out in paragraph 1(h) of the First Schedule to the BTCRA.

832. Prior approval is required before a licensee can establish a foreign subsidiary, branch, agency or representative office (section 5) and the Governor can make a licensee subject to such conditions or limitations that are consistent with the BTCRA and that relate to the business of the bank or trust company as deemed necessary.

833. The CBB AML/CFT Guidelines state at paragraph 18.1 that the CBB has informed all of its licensees that failure to implement or maintain adequate policies and procedures relating to ML and FT would be taken into account in determining if the licensee continues to satisfy the criteria for licensing laid down in the BTCRA. All licensees have been further advised that these Guidelines would be used as part of the criteria against which the CBB will assess the adequacy of a licensee's systems to counter money laundering and terrorist financing. Effective March 2006, those licensees that had not yet been examined by the CBB were not required to have their external auditors prepare a report on the adequacy of AML/CFT policies as required in the FTRR and the ATA. Instead, these licensees were asked to complete a new section that was added to the Annual Corporate Governance Certificate.

834. Section 13(2)(b) of the BTCRA provides that the Inspector may conduct on-site examinations and off-site supervision of the business of the licensees for the purpose of satisfying himself that the provisions of the BTCRA or the FTRA are being complied with, and that the licensee is in a sound financial position. Section 13(2)(f) provides that the Inspector may inspect and supervise banks and trust companies in accordance with the Rules for Inspection and Supervision as set out in the First Schedule, which provides that the Inspector shall ensure that banks have in place inter alia adequate policies, practices and procedures, including strict KYC rules that promote high ethical standards, and so prevent the use of the bank for criminal purposes.

835. Examination templates are in place for varying reviews including AML/CFT, which incorporates sample testing. The four (4) core objectives of the AML/CFT examinations are:

1) To determine whether the licensee has adopted appropriate and effective policies and procedures, including a corporate governance process and risk management programme, to ensure compliance with applicable laws, regulations, supervisory guidelines, and best practices and to provide assurance for a safe and sound operation;

2) To determine whether the licensee's internal controls, internal audit, and/or independent review processes, as well as its external audit provide assurance that the risk in its business activities and operations are appropriately identified and effectively identified, measured, monitored, and controlled;

3) To determine whether the licensee's management and staff have appropriate experience, knowledge, training, and technical skills to implement adequate compliance with applicable laws, regulations, supervisory guidelines and best business practices; and

4) To determine whether the services provided by the licensee to managed licensees or other affiliates include verification of those entities' compliance with KYC/AML requirements and the Guidelines for the requirements for the transition of managed licensees to full physical presence.

836. Section 13(3) of the BTCRA allows the Inspector to require that the auditor of a licensee enlarge the scope of the examination of the annual financial statements, or direct that any other procedure be performed in any particular case.

837. Sections 8, 9 and 11 of the BTCRA provide that licensees shall furnish the Governor of the CBB with financial statements, special returns and such further information as required. Section 13(2)(e) allows the Inspector to examine the affairs or business of any licensee carrying on business in The Bahamas, by way of receipt of regular returns or in such other manner as he thinks necessary. Audited accounts and prudential data on Licensees and their subsidiaries are routinely received and analysed.

838. Section 13(3) of the BTCRA allows the Inspector in the performance of his functions under this Act and subject to the provisions of section 19, to have access to such books and records of a licensee as he may reasonably require, enabling him to perform his functions under the BTCRA. The Inspector may also require that the auditor of a bank report to him on the extent of procedures regarding the examination of the annual statements.

839. Under section 35(1) of the CBBA, the CBB has the power to compel a licensee to supply such information it deems necessary to enable the Bank to carry out its functions under the Act.

840. Section 35 of the CBBA also empowers the CBB to compel production of information from a person regulated under the financial law, a connected person or a person reasonably believed to have information relevant to an enquiry. Such requests may require specified information or information of a specified description, or require specified documents or documents of a specified description as may be reasonably required in connection with the exercise of the Bank's function. The CBB may also direct licensees, other persons specified earlier and a person engaging in an activity that is subject to regulation under the regulatory laws, to provide information in order to assist overseas regulators. None of these powers are predicated on the need for a court order.

841. Section 13(6) of the BTCRA makes provision where a licensee fails to provide books, records, and other information and explanation as required by the Inspector. Section 18 grants the Governor powers of revocation, by order, where inter alia the licensee is contravening the provisions of the BTCRA or any other Act, any order or regulations made under the BTCRA, or any of the terms or conditions of its licence. Provision is made for other sanctions that can be taken.

842. Sanctions may be imposed against directors or senior management of a licensee under the BTCRA. Section 13(6)(b) makes it an offence for a person to knowingly or intentionally supply false or misleading information to the Inspector or his agent (See. also section 16(6)(d)). Section 18(1)(d) empowers the Governor to require the removal of any director or officer of a licensee. Section 22(4) relates to obstruction of a search warrant and section 27(5) relates to non-payment of fees payable by licensees.

Securities Commission

843. Under section 46 of the IFA, the SC is charged with maintaining a general review of the operations of investment funds and related parties and monitoring the affairs and business of such. The SC also has powers to regulate and establish rules for such matters as may be necessary or expedient to give effect to its duties. Section 4(2) of the SIA grants the SC wide powers to do anything to facilitate, is incidental to or conducive to the discharge of its duties. Pursuant to sections 4(3) of the SIA and 48 of the IFA, the SC is required to ensure that its licensees and registrants are complying with the FTRA. It is noted that the following categories of persons are exempted from licensing and registration under the SIA where their investment activities are only incidental to their primary business. The categories of persons exempted are licensees under the BTCRA and Insurance Acts, IFA, a counsel and attorney and accountants qualified to practice in The Bahamas, as well as publishers and writers of newspapers and other publications. This matter is under consideration in the new SIA. The SC's on-site inspection programme includes a review of the AML/CFT systems, and an assessment of the AML/CFT policies, procedures and practices of the licensee. The SC also has powers under the IFA only, to appoint an auditor for the purpose of ascertaining that licensees and registrants are complying with the FTRA.

844. While the SC has the authority to compel production of or to obtain access to all records of its licensees and registrants under the SIA in respect of any investigation it conducts pursuant to section 33, the SC is not generally empowered to access the information, records or documents for other purposes. As such, there is no specific inspection authority provided to the SC under the SIA.

845. In the circumstances, the SC must rely in part on regulation 53, which requires that licensees make all books and records readily accessible to the SC, as well as relying on its general authority provided for in section 4(2) of the SIA. It is intended that the draft securities industry legislation will address this issue and provide the SC with specific authority to access all records of transactions, information and documents of its licensees and registrants. In addition, provisions will be required to obligate licensees and registrants to provide the SC with any information it may reasonably require.

846. The core objectives of onsite inspections are:

i. Updating the SC's understanding of the Company's operations;
ii. Determining the accuracy of the Company's registration in its category of licensing or registration with the SC, together with assessing whether other persons in the organization should be registered;
iii. Testing, on a sample basis, the Company's compliance with the SIA, the SIR, and with its supervisory procedure manual to the extent it addresses the opening of new customer accounts and trading and records keeping processes.

847. The on-site inspection programme[27] includes an assessment of the AML/CFT policies, procedures and practices of the licensee/registrant and where necessary, follow-up inspections are undertaken to ensure that specific concerns are satisfactorily resolved. On-site inspections are normally conducted on a two (2) to three (3) year rotation. The time

[27] This was evident in inspection programmes for security investment advisors, local broker-dealers, offshore broker-dealers and mutual fund administrators.

interval provided between inspections of licensees and registrants can be adjusted based on any AML/CFT or general concerns resulting from the inspection.

848. Section 46 of the IFA establishes one of the duties of the SC as the monitoring by way of regular reports or in such other manner as it thinks necessary the affairs or business of any investment fund or party related to an investment fund in The Bahamas. Under section 51 of the IFA, the SC can compel a party related to an investment fund and an investment fund administrator to provide such information or explanation in respect of an investment fund as the SC may reasonably require. Section 52 grants the SC broad authority to access the records of investment fund administrators, investment funds and parties related to an investment fund. The latter includes the promoter, investment advisor/manager and custodian of a fund.

849. Section 49 of the IFA empowers the SC to conduct routine onsite inspections (with notice) or onsite examinations for cause (without notice), and offsite examinations of an investment fund or a related party to the fund to satisfy itself about compliance with the Act or regulations, and the FTRA or regulations. The SC may appoint an auditor to conduct such examinations at the expense of the investment fund or related party to the fund.

850. The SC's authority to access information or compel production under the IFA does not require that a court order be made. However, regulation 134 of the SIR states "Any request by the SC upon a registered firm or registered or licensed individual for reports, testimony or production of documents regarding bank accounts of the firm or of the individual shall be pursuant to a court order." The requirement for a court order with regard to bank records is to be repealed in the new SIA legislation.

851. The SC may make rules providing for such matters as may be necessary or expedient for giving effect to its responsibilities ([section 30(1)). Section 57 of the SIR imposes a duty on registrants and licensees to comply with the provisions of the Act, regulations, rules, orders and directives of the SC. Sections 33 of the SIA and 55 of the IFA lists various sanctions available to the SC which may be imposed as a result of a settlement of dispute or as a result of a decision of the Commission in a regulatory hearing convened inter alia for failure to comply with (a) the SIA, regulations or rules made thereunder or (b) any regulation or rules of the Securities Exchange or any other body registered under the SIA and regulated by the SC. Both criminal and administrative actions can be brought against a company and responsible individuals under the FTRA.

852. There are however no provisions in the SIA establishing powers of enforcement and sanction for non-compliance with AML/CFT requirements. Therefore while the provision of the FTRA is enforceable, guidelines relating to AML/CFT matters, issued in accordance with section 94 of the SIA do not have force of law.

Compliance Commission

853. For both the CC and the IFCSP, the law empowers them to have a general review of the activities of financial institutions and to conduct annual on-site examinations (section 43 FTRA and section 11(3) of FCSPA).

854. Effective August 2002, the IFCSP and the CC commenced joint onsite examinations with respect to those financial institutions supervised by the CC but who also hold a FCSP licence due to the overlapping constituency arising from section 3 (1) (j) of the FTRA. The

CC manages this process. BICA licensed accountants conduct the annual review, while follow-up visits are done by the CC. The scope of these reviews extends beyond AML/CFT and the full report is submitted to the CC.

855. The Registrar of Insurance does not have the authority in either the IA or EIA to conduct inspections to assess compliance with the FTRA and accompanying regulations. Pursuant to sections 39(2) of the FTRA and 55A and 21 of the IA and EIA, respectively, the Registrar of Insurance and the CC have agreed that supervision for AML regulation under the FTRA will be managed and administered by the CC, again arising from the overlapping constituency in sections 3 (1) (j) (iv) and 3 (b). As noted previously, the CC has jurisdiction to supervise life insurance business under section 46 of the FTRA.

856. Notwithstanding Sections 43 and 46 of the FTRA which provides the CC jurisdiction over some licensees under the Cooperatives Act the Director of Societies does not have general powers of onsite examinations without cause.

857. All active registrants of the CC must submit to an on-site examination by 31st of July of a given year recognizing that the examination year spans 1st August of one year to 31st July of the following year. Examination forms for each type of registrant are posted on the CC's website. There is an examination form for stand-alone MVT providers and pay-day loan providers.

858. The on-site examination is not an audit but consists of a review of the AML/CFT systems of financial institutions i.e. establishing audit trails and sources of funds of various transactions etc.

859. The CC conducts four (4) types of on-site examinations- namely Routine, Follow-up, Random and Investigative. The first type is conducted by independent auditors acting as agents of the CC, the IFCSP and the Registrar of Insurance Companies, while the other three (3) types are conducted by the CC.

860. Routine examinations evaluate the financial institution's compliance with AML/CFT laws and Guidelines. The examination is a review of five (5) operational areas:

1. The verification and identification of customers;
2. Maintenance of customer verification and transaction records;
3. Assignment of a MLRO and Compliance Officer;
4. The establishment of self-audits; and
5. The implementation of an effective AML/CFT staff training and awareness programme.

861. Follow-up examinations are for the express purpose of addressing the inadequacies of the AML/CFT systems of the financial institutions revealed through the Routine examination. Thus, the examination will be very specific in focus.

862. Random examinations are conducted for the purpose of testing the Routine examination process. These examinations come about as a result of a computer-generated random selection process.

863. Special examinations for cause are conducted where a financial institution violates any provision of the AML/CFT laws, or where information comes to the knowledge of the CC that a statutorily designated financial institution is providing financial services despite advising the CC to the contrary. Such examinations may also be initiated by a request from the domestic FIU.

864. The CC does not have a system of offsite monitoring in place, which could encompass mandatory reporting of periodic self-audits by registrants. This would be beneficial in light of the intention to remove the obligation to conduct annual onsite examinations of registrants.

865. There is no legal requirement or practice in place to establish that AML/CFT requirements are applied to foreign branches and majority owned subsidiaries of registrants. The CC has only recently been exposed to the phenomenon since law firms have opened branch offices in the United Kingdom. In consultation with the GFSR, the CC will seek to implement guidelines requiring such branches to conform and be subject to on-site examinations.

866. Pursuant to section 43 of the FTRA, the auditor appointed by the CC to examine the AML/CFT policies and procedures of a registrant must report his findings to the CC. Section 44 of the FTRA allows the CC to require financial institutions to produce its records for examination and such information or explanation as the CC may reasonably require. Section 44(2) establishes a penalty for failure to comply. The powers of the substantive regulators who license registrants of the CC are as follows:

Registrar of Insurance

867. Under section 38 of the IA, the Registrar of Insurance may demand any document or information relating to any insurance-related business or transaction from a licensee or registrant. Section 40 permits the Minister to appoint a person to investigate a licensee/ registrant.

868. Section 29(1) of the EIA permits the Registrar powers to conduct inspections without cause. There is no specific power to compel production of information**.** Section 29(3) of the EIA requires the Registrar to give reasonable notice to gain access to information of any external insurer and to call upon the manager or his designate. However, the consent of the policyholder is required to access his insurance account. See Rec. 4.

869. The issue of powers of the Registrar of Insurance is being addressed in the new legislation. A new IA was approved in 2005.

Inspector of Financial Corporate Service Providers

870. Pursuant to section 11(4) of the FCSPA, the Inspector may require a licensee to produce for examination such of his books, records and other documents that the licensee is required to maintain pursuant to the Act, and require a licensee to supply such information or explanation.

871. For the IFCSP, the power to compel production of or obtain access to information is found in section 11(4) of the FCSPA. Additionally, section 12(3) permits the appointment of an

auditor to assist the IFCSP in the execution of his functions.

Director of Societies

872. Although the CC supervises cooperatives for AML/CFT compliance it was observed that the Director does not have general powers to compel production of records and other information. Powers to access records and other information are found at sections 89 and 90 of the COSA. In addition, section 7 of the COSA states that the Director of Societies shall supervise all Societies and further allows the Director of Societies to, in writing, delegate his functions (save ensuring that records are kept up to date and that reports from Societies are current), to an individual or organization in such a manner as the Director may determine. Section 88 (1) of COSA gives the Director of Societies the authority to conduct onsite examinations without cause.

873. Power to compel production of or obtain access to information for supervisory purposes is granted to the CC under section 44 of the FTRA, and is not predicated on any court intervention.

874. Pursuant to section 44 (2) FTRA persons that do not cooperate with the CC when called to provide information can face a fine or custodial sentence or both on conviction:

> "(2) Any person failing or refusing to produce any record or to supply any information or explanation as is required by subsection (1) is guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars ($50,000) or to imprisonment for a term not exceeding three (3) years or to both such fine and imprisonment."

875. Other than for failure to produce records or supply information, there are no provisions in the FTRA obligating a registrant to comply with an instruction issued by the CC. With regard to FCSPs, insurance companies and co-operative societies where a registrant impedes the CC from carrying out its functions, sanctions may be applied against the registrant under the relevant legislation administered by its primary regulator.

Recommendation 17

876. A range of sanctions is available under various statutes to deal with persons failing to comply with AML/CFT requirements. These can be found in the FTRA (sections 12, 20, 30 and 44), ATA (section 7), FITRR (section 8), FIUA (section 4), BTCRA (section 18), SIA (section 33) and IFA (section 55). Revocation or suspension of a licence is the main sanction available to the IFCSP, Registrar of Insurance and Director of Societies.

877. Any action against a financial institution for an offence embodied in the FTRA or ATA for failure to comply with AML/CFT requirements is to be directed to the Office of the Attorney General. Such charges although proffered by the Office of the Attorney General would be recommended by the various competent authorities upon the discovery of a breach of the legislation. The process of the competent authority escalating a matter to this level is yet to be extensively tested.

878. The FTRA, ATA and FITRR impose penal and civil sanctions for non-compliance with AML/CFT requirements:

- FTRA

879. Section 12 makes it an offence to fail to comply with the customer verification requirements of sections 6(2), 7(4)(a), 7(4)(b), 8(4), 8(5), 9(4) and 9(5) of the FTRA[28]. Such an offence is punishable on summary conviction to a fine not exceeding, in the case of an individual, $20,000 and in the case of a body corporate, $100,000.

880. Sections 20(2) and (3) make it an offence to knowingly provide a false or misleading statement in a STR or to knowingly omit a relevant statement from a STR. A person guilty of this offence is liable on summary conviction to a fine of up to $10,000.

881. Section 20(4) provides that it is an offence to disclose the existence of an STR or the fact that the making of an STR is in contemplation, with the intent to prejudice an investigation. A person guilty of this offence is liable on summary conviction to a fine of up to $5,000 or imprisonment for up to six (6) months. A body corporate is liable to a fine not exceeding $20,000.

882. Section 20(5) makes it an offence on summary conviction to illegally disclose information about an existing or contemplation of a STR for pecuniary gain or with intent to prejudice an investigation. The maximum penalty is two (2) years imprisonment.

883. Under Section 20(7), where a financial institution makes a disclosure about a STR contrary to circumstances defined in the FTRA, on summary conviction (a) the individual is punishable to a maximum fine of $5,000 or six (6) months imprisonment or (b) the body corporate is punishable to a maximum fine of $20,000.

884. Under Section 30 failure to maintain records as required is punishable on summary conviction to a maximum fine of $20,000 for an individual and $100,000 for a body corporate.

885. Section 44(2) makes it an offence to fail or refuse to produce records, information or explanation when required to do so by the CC and is punishable on conviction by a maximum fine of $50,000 or three (3) years imprisonment or both.

- ATA

886. Section 7(4) provides that it is an offence to fail to report suspicions of terrorist financing, punishable on conviction by a fine of $250,000 or to imprisonment for a term of five (5) years.

- FITRR

887. Failure to comply with any requirement under the Regulations e.g. maintain internal reporting procedures, appointment of a MLRO, providing staff education and training to

[28] Failure to allow for the provision of a new facility or the conduct of any occasional transaction as the case may be without having verified the identity of the customer and any person on whose behalf the person may be acting as required.

detect and prevent money laundering is punishable by a fine of $10,000 on summary conviction or $50,000 for a first offence and $100,000 for any subsequent offences (section 8).

- FIUA

888. Section 4 (3) of the FIUA creates offences for failing to cooperate with the FIU. The punishment on summary conviction is a maximum fine of $50,000 or maximum imprisonment of two (2) years or both.

Central Bank of The Bahamas

889. Section 4(6) of the BTCRA empowers the Governor to at any time he considers necessary: (a) Make a licence subject to conditions or limitations consistent with the BTCRA and that relate to the business of the bank or trust company; (b) amend or revoke any authorisation contained in the licence or any condition or limitation to which the licence is subject. In either case however, before taking any such action the Governor must provide the bank or trust company with an opportunity to make representation regarding any proposed action.

890. Under section 18 of the BTCRA the Governor has a range of powers to sanction licensees. The Governor may revoke or suspend the licence of a licensee if, in the opinion of the Governor, the licensee is carrying on its business in a manner detrimental to the public interest or to the interests of its depositors or other creditors or is either in The Bahamas or elsewhere contravening the provisions of the BTCRA or any other Act or of any order or regulations made under the BTCRA, or any term or condition subject to which the licence was issued.

891. The Governor may also under section 18(1) of the BTCRA:

- Require the substitution of any director or officer of the licensee;
- At the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs and to report to the Governor thereon within three (3) months of the date of his appointment;
- At the expense of the licensee, appoint a receiver to assume control of the licensee's affairs in the interest of creditors who will have all the powers of a receiver under Ch. 308. Companies Act; and
- Require such action to be taken by the licensee, as the Governor considers necessary.
- Apply to the Supreme Court for an order compelling a licensee to (i) comply with a direction from the CBB; (ii) do anything required to be done under the provisions of the BTCRA; or (iii) cease the contravention of the Act or of a direction of the CBB; and
- Impose, amend or vary conditions upon the licence.

892. Section 24 of the BTCRA grants the Governor powers to make regulations generally for the purpose of putting into effect the provisions of the BTCRA and to establish fines which are applicable where there is a failure to comply with any regulation.

893. In practice, where the CBB finds licensees to be non-compliant with AML/CFT requirements during on-site examinations or otherwise, recommendations are normally

made on the steps required for compliance and a timetable for completion of remedial action is also given to delinquent licensees. The licensee is monitored for progress in correcting deficiencies. Failure to do so could lead ultimately to revocation of the licence.

894. The CBB has indicated that a breach of the CBB AML/CFT Guidelines would in most cases lead to a breach of the BTCRA, and as such is to be considered as 'other enforceable means' as stated in the FATF Handbook at paragraph 38. In April 2006, the CBB issued "A Guide to the Ladder of Supervisory Intervention", which states what measures can be applied in instances of non-compliance by a licensee with guidelines and Directives issued by the CBB.

895. Summary of Disciplinary Action by the Central Bank of The Bahamas.

	2001	**2005**	**2006**
Revocations	6	1	0
Directive to Change Managing Agent	0	0	1
Restriction on Licence	0	0	1

Securities Commission

896. As a result of a regulatory hearing or investigation, a number of administrative sanctions are available to the SC under both the SIA and IFA as follows

- Censure
- Fine (up to three hundred thousand dollars ($300,000));
- Disgorgement of profits or other unjust enrichment plus a penalty not to exceed twice the amount of such profits or unjust enrichment;
- Restitution;
- Suspension of license, registration or approval;
- Revocation of license, registration or approval;
- Any other action or remedies as the justice of the case may require; and specifically with regard to investment funds and investment administrators:
- Requiring the substitution of any party related to the investment fund or any similar senior officer of an investment fund or investment fund administrator;
- Appointing a person to advise an investment fund on the proper conduct of its affairs or to advise an administrator on the proper conduct of its investment fund administration;
- Appointing a person to assume control of the investment fund administrator's affairs relating to fund administration;

- Applying to the Court for an Order to take such other action as it considers necessary to protect the interests of investors and creditors of investment funds or an investment fund administrator; and

- Imposing sanctions or remedies as the justice of the case may require.

897. The SC is able through its inspection process and reporting mechanism to enforce compliance its inspection process and reporting mechanism. A major part of the inspection programme of the SC covers a review of the licensees FTRA compliance. Where deficiencies in the licensees or registrants operations are identified a report is produced requiring that the licensee or registrant provide the SC with a response as to how the deficiencies will be addressed. Once the response is received the SC monitors the progress of the licensee or registrant until full compliance on the particular deficiency is achieved.

898. Where a person fails to comply with a direction of the SC, contravenes the IFA or omits to do anything required under the Act to rectify the omission, pursuant to section 53(b) of the IFA, the SC may apply to the Court for an order to compel a person to take action. Where a registered firm or individual fails to comply with an official request under the SIA, the SC must issue a complaint against the non-compliant party, charging the party with contravention of the regulations. Where there is failure to comply during proceedings, the SC must issue a summary order of suspension of either the registrant or licensee, which stays in effect until there is compliance.

899. In addition, section 53 of the IFA grants the SC powers of revocation of the licence or registration of an investment fund, or administrators licence on the grounds of cessation of business or insolvency only. Except where revocation or suspension is imposed out of a regulatory hearing or dispute, section 36 of the SIA allows for the suspension of registration, licence or approval where a person does not fully comply with the terms of a decision of the SC. Pursuant to section 23 (b) of the SIR, the SC may suspend, limit or subject a registered firm to remedial action on matters relating to filings and failure to meet obligations under the SIA or SIR. The process of applying sanctions requires simplification.

900. Notwithstanding, failure of licensees and registrants of the SC to comply with the provisions and various requirements of the FTRA may result in a criminal offence. Such charges although proffered by the Office of the Attorney General would be recommended by the SC in the case of its licensees and registrants upon the discovery of a breach of the legislation.

Compliance Commission

901. The CC monitors registrants to oversee corrective measures taken to address concerns arising from onsite examinations. There are no provisions for sanctions against a registrant or its directors or senior officers for failure to comply with AML/CFT requirements. The CC is performing a specific supervisory function in accordance with section 46 of the FRTA and does not in itself license or regulate the activities of registrants. Powers of enforcement and sanction for failure to comply with AML/CFT requirements lie with the substantive regulatory authorities.

- The IFCSPA can suspend a licence where the licensee is contravening the FCSPA or any other law Section 16(1)(b). The Inspector may by order revoke a licence under section 17 if he is of the opinion that the licensee is carrying on his business in a manner detrimental to the public interest.
- Pursuant to sections 11 and 12(2) of the IA and EIA, respectively the Minister may cancel a registration where the business of the insurer is not being conducted in accordance with sound insurance principles. "Minister" is however not defined in the EIA.
- Section 10 of the IA allows the Minister to prohibit a registered insurer from writing new policies and restrict/limit new policies that can be written, in the interest of policyholders. In addition, the Minister may restrict the investment activities of a local insurer.
- Under section 15 of the COSA, the Director of Societies can by order suspend the registration of a Society where inter alia (a) the Society, officer or board member has not complied with any obligations under the Act, regulations or bye-laws and (b) the Society, Officer or Board member has refused to comply with any order or request made by the Director. A suspension cannot exceed (12) twelve months and must be predicated by a hearing. "Where after a period of suspension a society has not rectified the circumstances leading to the suspension, the Director may cancel the registration of that society".

902. The IFCSPA, Registrar of Insurance and Director of Societies have limited criminal, civil and administrative sanctions against natural or legal persons who fail to comply with their own directives or those from the CC regarding AML/CFT requirements.

903. There are no sanctions available against directors, and senior management under the FCSPA, IA, EIA or COSA.

904. The IFCSP, Registrar of Insurance and Director of Societies do not have ladders of intervention with wide and proportionate sanctions applicable to varying levels of non-compliance with AML/CFT requirements.

Recommendation 32

Central Bank of The Bahamas

905. On-site examinations have become an integral part of the supervisory and monitoring process of both the CBB and the SC.

906. For the year 2005, thirty-nine (39) examinations of CBB licensees were conducted (inclusive of three follow-up examinations). The examinations focused on physical presence compliance; special focus (for purpose of credit risk, corporate governance, audit processes, provisioning and write off, KYC/AML process, and documents integrity); managed banks; and safety and soundness. A statistical breakdown is as follows:

Examinations Type	**Number Examined**
Physical Presence	23
Special Focus	5*
Safety and Soundness	6
Managed Banks	2
Second Cycle	2
File Review (Non Bank)	1

Total	**39**

* 4 were AML related.

Securities Commission

907. Examinations conducted by the SC in 2005 included twenty (20) routine inspections, which focused on compliance with the SIA, IFA and FTRA as applicable.

908. Since the commencement of onsite examinations, twenty-nine (29) examinations were undertaken of investment fund administrators and eighty-two (82) examinations were undertaken of securities firms. Of these, one (1) investment firm and eleven (11) securities firms were subject to a second round inspection. Statistics on FTRA focused examinations by the SC were not available.

Compliance Commission

909.

COMPLIANCE COMMISSION- STATISTICS OF ON-SITE EXAMINATIONS 1ST AUGUST, 2004- 31ST JULY, 2005	
INDUSTRY	**TOTAL NO. OF EXAMINATIONS**
ACCOUNTING FIRMS	4
COOPERATIVE SOCIETIES	5
REAL ESTATE BROKERS	2
REAL ESTATE DEVELOPERS	3
INSURANCE	1
FINANCIAL & CORPORATE SERVICE PROVIDERS	47
LAW FIRMS	8
GOVERNMENT	2
TOTAL	**72**

Recommendation 25 (Guidance for financial institutions other than on STRs

910. In 2001, the FIU issued 'Suspicious Transactions and Anti-Money Laundering Guidelines' to casinos, banks and trust companies, companies carrying on life assurance business and persons dealing in life assurance policies, registered broker-dealers and mutual funds administrators, co-operative societies, and other financial services providers referred to in section 3(1) of the FTRA. Financial institutions were advised that the Court would have regard to any relevant Guidelines issued by the FIU or the relevant supervisory agency or both.

911. It was determined in 2004 that each supervisor with responsibility for a sector of the financial services industry in The Bahamas would issue its own guidelines in respect of its relevant sector. The CC also has powers at section 47 of the FTRA to issue Codes of Practice, which it has done and which were being reviewed at the time of the Mutual Evaluation.

Central Bank of The Bahamas

912. Following on from the 2004 Interim Guidelines, the CBB issued revised AML/CFT Guidelines in October 2005 to assist licensees in implementing and complying with their respective AML/CFT requirements. The Guidelines are comprehensive and provide assistance in such areas as internal controls, policies and procedures; risk rating; customer verification; record keeping; the role of the MLRO and education and training. Licensees are however required to continue to follow the 2001 FIU Guidelines with regard to suspicious transaction reporting.

Securities Commission

913. The SC issued its own Interim Guidelines in 2004 on AML and KYC procedures in which it instructed licensees and registrants under the SIA (regardless of whether they are licensees of the CBB), to adopt the 2004 Interim Guidelines for AML and KYC Procedures. The SC determined that it would be in the best interest of its licensees and registrants to adopt the Interim Guidelines issued by the CBB, as approximately ninety per cent (90%) of the licensees under the SIA were also registered with the CBB. This approach was considered to be the best use of resources and further assisted in maintaining consistency in the principles of AML/CFT applied in the financial services industry. In the circumstances, it has also been determined that this approach would be taken in issuing finalized guidelines for the SC.

914. The basis for issuing guidelines is not rooted in the IFA as regulation 62(1) only grants the SC powers to issue regulations. However, this has been addressed by the issuance of specific instructions in the SC's Interim Guidelines. The 2001 FIU Guidelines remain in force for all licensees and registrants with regard to suspicious transaction reporting.

915. The SC was reviewing the CBB AML/CFT Guidelines with a view to developing its finalized guidelines on AML/CFT during the second quarter of 2006. The provisions of the CBB's Interim Guidelines continue to be applied by licensees and registrants of the SC mutatis mutandis.

Compliance Commission

916. Section 47 of the FTRA permits the CC to issue Codes of Practice for its constituents identified in section 46. The Commission may from time to time after consultation with the Inspector, The Bahamas Bar Council, BICA, the FIU and such other bodies and organisations representative of such financial institutions as are required to be regulated under this Act, issue such codes of practice as the CC thinks necessary-

(a) For the purpose of providing guidance as to the duties, requirements and standards to be complied with and the procedures (whether as to verification, record-keeping, reporting of suspicious transactions or otherwise) and best practices to be observed by financial institutions;

(b) Generally for the purposes of this Act.

917. It was pursuant to this provision that the CC issued the initial Codes of Practice in 2002 for Accountants, Lawyers, Real Estate Brokers and Developers and FCSP. The Codes were being updated to reflect guidance on the risk-based approach, accommodate the implementation of the ATA and to include the amendments to the FTRA. The target completion date is July 01, 2006. The CC issued revised Codes of Practice on July 24th, 2006. These were publicized in the local newspaper and are available on the CC's website.

The CC is presently working with the Registrar of Insurance to update the Guidelines for the life insurance industry. The Bahamas Cooperative League, with assistance from the CC, issued guidelines for members but these are not up-to-date with current laws[29].

3.10.2 Recommendations and Comments

918. The Bahamas has made significant strides in strengthening the supervision and oversight of the financial sector. The CBB plays a key role in developing policies; procedures and a general approach to regulation/supervision that collectively form the point of reference for other regulators. Guidelines have been issued for all financial institutions under the FTRA and comply with all the requirements of the first Criterion of Recommendation 25. While criminal sanctions are in place to deal with the non-compliance with requirements, all competent authorities do not have adequate administrative powers. The CBB for example, reports that the need to enforce administrative powers has been limited given the tendency for licensees to address issues arising from examinations. In general, statistics are not maintained on recommendations for action. Recommendations for the enhancement of the regime are as follows:

- Rec. 17

919. The SC should have powers of sanction against a licensee or registrant who fails to comply with a directive. In addition, the process of applying sanctions requires simplification.

920. The IFCSP, Director of Societies and Registrar of Insurance should be granted more extensive administrative powers of enforcement against licensees, directors and senior officers for failure to comply with AML/CFT requirements. This is particularly relevant given the limited powers of the CC to compel registrants to comply with directives.

921. The "Minister", who has powers to cancel registrations under the EIA, should be defined in that Statute.

922. Non-compliance with the FTRA and accompanying regulations should be a consideration for cancelling a registration under the IA and EIA.

923. The IFCSP, Registrar of Insurance and Director of Societies should introduce ladders of supervisory intervention that are broad and proportionate.

- Rec. 23

924. The SC should implement a system whereby exemption of investment funds is granted on the basis of proven CDD by promoters.

925. As licensing and supervisory authority, the functions of the Director of Societies should include responsibility for ensuring that licensees and registrants comply with the FTRA. This would facilitate enforcement action for non-compliance with AML/CFT requirements.

926. The Registrar of Insurance should be authorized by law to make arrangements with a person to assist with the execution of his functions.

927. Registered insurers under Part II of the IA should be required on an ongoing basis to seek the Registrar's prior approval for changes of directors and partners and beneficial share ownership over the ten percent (10%) threshold. In addition, the Registrar should be

[29] The Codes for The Bahamas Cooperative League were updated in July 2006.

informed of changes in managers and officers of registered insurers and incorporated agencies.

928. Applications for FCSP licences should include information on beneficial shareholders of a significant or controlling interest so as to facilitate due diligence.

929. Fit and proper criteria should be defined by the Registrar of Insurance for EIA registrants; and strengthened in the case of the IFCSP.

930. The Bahamas is encouraged to finalize the revisions to the licensing and registration regime for stand-alone MVT service providers so as to strengthen their licensing and ongoing supervision, including monitoring of natural and legal persons.

- Rec. 29

931. The exemption at section 29(7) of the SIA should be removed to ensure that all financial institutions are at a minimum registered with the SC.

932. The SC should have powers under the SIA similar to those at section 49(2) of the IFA, which allow for the appointment of an auditor to assist in examinations.

933. The Registrar of Insurance should be granted powers to conduct inspections without cause with respect to the IA and to appoint an auditor to assist in the execution of his functions.

934. The CC should formulate an offsite inspection programme to augment the onsite process. This could be of particular benefit when the CC moves away from annual onsite inspection cycles. In addition, the CC should develop procedures and criteria to trigger formal notification of substantive authorities when powers of enforcement and sanction need to be implemented.

935. The SIA should include provisions for access by the SC to information, and imposition of an obligation on licensees and registrants to provide the SC with any information required to fulfil its mandate.

936. The Director of Societies and the Registrar of Insurance (with respect to the EIA) should have general powers to compel production of records and other information, as deemed necessary.

937. The CBB and the CC should continue their efforts to inspect all licensees/registrants.

938. The issuance of rules by the SC should be fully explored to facilitate enforcement of the guidelines; and both the SIA and the IFA amended to allow for action without a hearing.

- Rec. 30

939. The SC and CC should consider revising their staff complement to meet the demands of their constituency base.

940. The Registrar of Insurance and to a lesser extent, IFCSPs should be granted more operational autonomy under their respective Statutes.

- Rec. 32

941. The SC should maintain statistics on FTRA focused examinations, and sanctions applied for non-compliance with AML/CFT requirements.

3.10.3 Compliance with Recommendations 17, 23, 29, 30, 32 & 25

	Rating	Summary of factors underlying rating
R.17	**PC**	• **The supervisory authorities for financial corporate service providers, insurance and cooperatives have limited sanctions against natural or legal persons.** • **The supervisory authorities for financial corporate service providers, insurance and cooperatives have no powers to sanction directors and senior managers of their licensees under their relevant Statutes.**
R.23	**PC**	• **Inadequacies in staffing resources, with the exception of the CBB, of competent authorities impact on the capacity to adequately regulate and supervise all financial institutions.** • **The SC does not have a system whereby exemption of investment funds is granted on the basis of proven CDD by promoters.** • **Licensees and registrants under the Registrar of Insurance (with respect to the EIA) and the IFCSP are not subject to adequate fit and proper tests.**
R.25	**LC**	• **See. Reasons given in section 3.7**
R.29	**PC**	• **The powers to access and compel information by the SC and Director of Societies are inadequate. The powers of the Registrar of Insurance to compel information under the EIA are also deficient.** • **The SC's powers of enforcement and sanction under the SIA are inadequate.** • **The CC's ongoing AML/CFT supervision lacks an offsite programme.**
R.30	**PC**	• **There are insufficient resources overseeing AML/CFT with regard to financial institutions.** • **There is insufficient operational independence and autonomy of the Registrar of Insurance and the Inspector, FCSP.**

R.32	**PC**	• **Statistical information from the SC in support of AML/CFT effectiveness is not maintained.**

3.11 Money or value transfer services (SR VI)

3.14.1 Description and Analysis

Special Recommendation VI

942. This section must be read in conjunction with discussions on MVTs in section 3.10 of this Report.

943. There is one (1) stand-alone money transfer MVT services provider. The FCSPA has specific requirements for the application and granting of licences by the IFCSP. There is no provision however to require each licensed or registered MVT service operator to maintain a current list of its agents which must be made available to the designated competent authority. The IFCSP has the authority to conduct on-site and off-site examinations of the business of the licensee to ensure compliance with the provisions of the FCSPA. However, pursuant to sections 3(1)(j)(v), 43(a) and 45 of the FTRA, these examinations are currently being done by the CC. It is intended that the CBB will take over this function from the IFCSP and the CC amendments to the BTCRA and enabling regulations have been drafted.

944. The FCSP Code of Practice is intended to cover all categories of FCSPs. The FIU training conducted in 2006 included the one (1) stand-alone MVT service provider.

945. For MVT businesses operating on the basis of a banking licence issued by the CBB (as part of an established licensee's operations), the CBB can review (and has reviewed) the MVT aspect of its licensee's operations during on-site examination and has the legal power to obtain at any time a current list of that licensee's agents.

946. MVT operators being subject to the FTRA, the FTRR the FIUA, the FIRR, the ATA and the POCA are also subject to the relevant sanctions available under each Statute. MVT operators under the authority of the CBB are also liable to sanctions under the BTCRA for contravention of the CBB AML/CFT Guidelines. With regard to stand-alone MVT operators, examination forms are forwarded to the primary regulator who has authority to take action See Rec. 17.

947. MVT service providers who are also licensees under the BTCRA are generally well regulated and supervised by the CBB. The framework for stand-alone providers is less effective and efforts to bring these entities under the scope of the CBB are well advanced.

3.11.2 Recommendations and Comments

948. MVT service operators should be required to maintain a current list of their agents, which must be made available to the designated authority.

949. The Bahamas should implement the amendments to the legal framework as soon as

possible to bring about full compliance with SR VI.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**LC**	• **No requirement for money value transfer service operators to maintain a current list of their agents which must be made available to the designated authority.**

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

950. This section should be read in conjunction with the discussion on DNFBPs in section 3.10 of this Report.

951. As defined in section 3 of the FTRA, financial institutions subject to AML requirements include the following DNFBPs:

- A licensed casino operator within the meaning of the LGA
- A real estate broker who receives funds in the course of settling real estate transactions;
- A counsel and attorney, where he receives funds in the course of his business to deposit or invest funds, settle real estate transactions, or hold in a client's account;
- An accountant, where he receives funds in the course of his business to deposit or invest;
- Any person whose business or a principal part of whose business consists of any of the following-

    - Borrowing or lending or investing money
    - Administering or managing funds on behalf of other persons
    - Acting as trustee in respect of funds of other persons
    - Dealing in life assurance policies
    - Providing financial services that involve the transfer or exchange of funds, including (without limitation) services relating to financial leasing, money transmission, credit cards, debit cards, treasury certificates, bankers draft and other means of payment, financial guarantees, trading for account of others (in money market instruments, transferable securities issues, portfolio management, safekeeping of cash and liquid securities, investment related insurance and money changing; but not including the provision of financial services that consist solely of the provision of financial advice.

952. While the last category above is a broad definition, paragraph 3.2 of the CC's Code of Practice for Financial and Corporate Service Providers gives further guidance by stating that licensed financial and corporate service providers are considered financial institutions for AML purposes under this category and subject to supervision where services rendered

involve the licensee in facilitating the movement of funds on behalf of clients in circumstances where the financial and corporate service provider acts as an agent, or intermediary.

953. Dealers in precious metals and dealers in precious stones are not included in the FRTA's definition of financial institutions nor are they considered DNFBPs under The Bahamas' legislative framework. These categories of persons are only covered under the general provision of the POCA that requires the filing of an STR where persons come across suspicious situations in the course of their employment. It should be noted that the CBB AML/CFT Guidelines at paragraph 98 states that dealers in precious stones and metals are vulnerable to corruption and that licensees should implement enhanced scrutiny measures. The Bahamian Authorities are of the view however that this category is of low AML/CFT risk, although no formal documented risk assessment was completed to justify this opinion.

954. The FATF listed activities that are not covered by section 3 of the FTRA except for management of client money, security or other assets can only be carried on with a license under the FCSPA. Furthermore, section 12(3) of the FCSPA requires the Inspector of Financial Corporate Services to ensure compliance of licensees under FCSPA with the requirements of the FTRA. This effectively incorporates all these activities within the AML/CFT regime. With regard to the managing of client money, securities or other assets, this would be included under the definition of any person whose business or principal part of whose business consists of administering or managing funds on behalf of other persons.

955. Except for casinos, the CC is the designated AML supervisory authority for DNFBPs, co-operative and friendly societies and the insurance industry under the FTRA. It should be noted that the CC does not licence or regulate the business activities of the DNFBPs for which it has AML supervisory responsibility. Licensing of the DNFBPs activities, if required by law and regulation is done by the relevant statutory body charged with this responsibility. The various bodies for the DNFBPs under the CC include the Bar Council for the legal profession, the Council of The BICA for public accountants, the BREA for real estate brokers and salesmen and the IFCSP for financial and corporate services providers.

956. The CC has a two-fold function: to maintain a general review of designated financial institutions in relation to the conduct of financial transactions; and to conduct on-site examinations annually or whenever deemed necessary by the CC.

957. The CC has sought to secure the registration of all its constituents. The most recent analysis suggests that the number of DNFBPs under the CC stands at 1,554. Of this number, 872 are active registrants i.e. they hold current licences from their respective authorities and provide services qualifying them as financial institutions under section 3 of the FTRA. Of the remaining registrants, 373 are inactive (i.e. persons who have indicated that they do not provide the services stated in section 3 of the FTRA), deceased or currently residing abroad and 309 are unregistered.

958. It should be noted that the financial laws of 2000 including the FTRA and its provisions regarding the imposition of AML obligations on lawyers have been challenged by two lawyers on the basis that the laws circumvent certain provisions of the Constitution of The Bahamas. As a result of this challenge, the Attorney General agreed in July 2003, that there were to be no on-site inspections by the CC of attorneys' offices until the resolution of the

challenge in the Privy Council in London. As at the date of the mutual evaluation, this undertaking was still in effect, however the Attorney General indicated that the Government had taken a policy decision to remove the undertaking. The CC envisages a resolution of this matter in the near future.

959. The regulatory authority responsible for the licensing, regulation and AML compliance of casinos is the Gaming Board of The Bahamas. As at the date of the Mutual Evaluation there were four (4) casinos operating in The Bahamas with total annual betting activity of one billion dollars ($1B).

4.1 Customer due diligence and record keeping (R.12) (Applying R.5, 6, 8 to 11 & 17)

4.1.1 Description and Analysis

Recommendation 12

960. Since DNFBPs are defined as financial institutions under the FTRA, they are required to comply with the AML/CFT provisions of the POCA, ATA, FTRA, FTRR, FIUA and FITRR. These laws incorporate customer due diligence and record keeping requirements. In addition to these laws, the CC has issued industry specific Codes of Practice for lawyers, accountants, FCSPs, real estate brokers and developers. The Codes provide practical guidance to institutions on how to implement the AML/CFT laws and rules. These Codes of Practice do not have the force of law and sanctions can only be imposed in cases where non-compliance with the Codes of Practice is coterminous with a breach of legislation and the sanction is specific to the breach of the legislation. With regard to casinos, while the Gaming Board of The Bahamas is the designated AML authority, specific Guidelines for licensed casino operators in The Bahamas have been issued by the FIU. These Guidelines like the Codes of Practice do not have force of law and sanctions can only be imposed in a similar fashion. As stated earlier, dealers in precious metals and stones are not defined as financial institutions like the other DNFBPs and are therefore only subject to comply with the general STR reporting provisions of the POCA and the ATA.

Rec 5

961. The CDD requirements applicable to all financial institutions, including DNFBPs, stipulated in the FTRA and the FTRR have been detailed in section 3.2 of this Report. The Guidelines for licensed casino operators do not elaborate or extend the legal requirements of the relevant AML Statutes. However, the CC in its Codes of Practice has imposed additional CDD requirements on its constituents. As noted in section 3.2, the procedures for the verification of the identity of corporate entities, partnerships and unincorporated businesses stipulated in regulations 4 and 5 of the FTRR are discretionary as to full implementation. However, the Codes of Practice require that its constituents obtain all requested information in the regulations. Furthermore, constituents are required to verify the legal existence of the applicant company and ensure that any person purporting to act on behalf of the company is fully authorised.

962. In the case of unincorporated entities such as clubs, charities and societies the Codes of Practice require that copies of the constitution or bye-laws of such entities, names and addresses of all signatories and the written mandate authorizing signatories to sign on the account be retained.

963. With regard to trusts, nominee and fiduciary arrangements, the Codes of Practice require verification of the identity of the settlor and the beneficial owner of the funds, the provider of the funds, and of any controller or similar person having power to appoint or remove the trustees or fund managers and the nature and purpose of the trust be available to the FIU, law enforcement and relevant agencies.

964. In the case of the possible application of simplified or reduced CDD measures the CC has identified certain low-risk indicators. These include along with the facility holders identified in regulation 5A of the FTRR, Bahamian residents whose accounts are serviced solely either by salary deductions or financing arrangements via a prudentially regulated Bahamian financial institution, and mortgages provided by co-operative societies (credit unions). These indicators are to be included in updated Codes of Practice.

965. With regard to the application of CDD measures to existing customers at the time of the implementation of the AML requirements, the CC has been working with its constituents since 2004 to implement a risk-based KYC process to reduce the numbers of pre-2001 unverified accounts. The exercise is ongoing and a deadline of July 31, 2006 for completion has been established. As stated previously, the CC is proposing that facilities that are still unverified on the deadline should be made inactive and that no transaction be allowed until verification documentation has been obtained by the financial institution.

966. As already noted the CC's Codes of Practice are not binding in that sanctions can only be applied for non-compliance with requirements that are directly attributable to enacted legislation.

Rec. 6

967. The only specific requirements dealing with PEPs in The Bahamas are in the CBB AML/CFT Guidelines. These Guidelines are applicable only to banks and trust companies[30].

Rec. 8

968. There is no legislation in The Bahamas dealing with the misuse of technological developments in AML/CFT schemes. With regard to non-face to face customers, regulation 7 of the FTRR provides for basic verification of the identity of such clients. The CC's Codes of Practice state that an eligible Introducer can establish facilities for non-face to face customers on the basis of a letter of introduction. The letter has to stipulate that the introducer has verified the prospective customer. A list of eligible introducers is attached to the Codes of Practice. Additionally, the financial institution is still required to ascertain directly and document from the customer details about source of funds, purpose, use,

[30] The CC's revised Codes of Practice (issued subsequent to the Mutual Evaluation Mission) also deal with PEPs in its risk-based approach to customer verification requirements.

potential activity and other parameters for the operation of the account. However these requirements are not enforceable.

Rec. 9

969. The FTRA permits reliance on eligible introducers through written confirmation of the verification of the identity of customers in defined circumstances dealing with occasional transactions and transactions conducted on behalf of another person. However, as noted in section 3.3 of this Report, the provisions do not fully comply with all the requirements of Recommendation 9. As noted above, the CC's Codes of Practice allow for eligible introducers in the case of non-face to face customers. However, the primary duty to verify identity using the best evidence and means rests with the financial institution.

Rec.10

970. The record keeping provisions in the FTRA applicable to all financial institutions including DNFBPs are largely compliant with the requirements of Recommendation 10 as noted in section 3.5 of this Report.

Rec. 11

971. All financial institutions are required in regulation 9 of the FTRR to monitor accounts for consistency with the stated purpose during the business relationship. The requirement is general in nature and does not provide any further details. However, the Codes of Practice require the DNFBPs to monitor accounts in the following possible areas; transaction type, frequency, amount, geographical origin/destination, and account signatories.

Rec. 17

972. The relevant sanctions for breaches of AML/CFT requirements under Recommendations 5, 6, and 8-11 as applicable in The Bahamas for DNFBPs are the same as for other financial institutions and are dealt with in section 3.10 of this Report.

973. The CC has agreed a joint on-site examination process with the Registrar of Insurance Companies for life assurance companies and with the IFCSP. Although the Director of Societies is the primary regulator of cooperative societies, the CC maintains AML supervision of those institutions (section 3(1)(c) of the FTRA). Those cooperative societies which provide financial intermediary services are subject to on-site examination by the CC, or an independent appointed to act as agent of the CC.

974. Overall, The Bahamas has one of the most developed AML/CFT regimes for DNFBPs. There is a designated AML/CFT authority with defined functions and sector specific Guidelines, which provide comprehensive coverage of major AML/CFT concerns. However, the AML/CFT framework does not include dealers in precious stones and metals. Deficiencies identified in the relevant AML/CFT laws with regard to the requirements for specific recommendations are also applicable to the DNFBPs since they are subject to the same laws.

4.1.2 Recommendations and Comments

975. It should be noted that some of the criteria of these Recommendations were met by requirements stipulated in the CBB AML/CFT Guidelines which are not applicable to DNFBPs. While most of the requirements in the CBB AML/CFT are mirrored in the Codes of Practice, which are applicable to DNFBPs, the Codes of Practice as stated previously are not binding because sanctions can only be applied for non-compliance with requirements which are directly attributable to enacted legislation. Given the significance of the CBB AML/CFT Guidelines in the rating of Recs. 5.6, 8, 9 and 11, which were mostly rated partially compliant, ratings for the Recommendations with regard to DNFBPs would require a discounting.

976. Dealers in precious metals and dealers in precious stones should be included as DNFBPs in the AML/CFT framework.

977. Ensure that the recommendations formulated for Recommendations 5, 6, 8-11, in sections 3.2.2, 3.3.2, 3.5.2, 3.6.2 of this Report are also applied to the DNFBPs.

978. The Codes of Practice should be binding with sanctions for non-compliance.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	**PC**	• **Dealers in precious metals and dealers in precious stones are not included as DNFBPs under the AML/CFT framework.** • **Deficiencies identified for all financial institutions for Recommendation 5, 6, 8-11, in sections 3.2.3, 3.3.3, 3.5.3, 3.6.3 of this Report are also applicable to DNFBPs** • **Requirements of Recommendations 5, 6 and 8-11, which are stipulated in the Codes of Practice are not enforceable on DNFBPs.**

4.2 Monitoring transactions and other issues (R. 16) (applying R.13-15, 17 & 21)

4.2.1 Description and Analysis

Recommendation 16

979. DNFBPs are subject to the same requirements as other financial institutions under Section 14 of the FTRA to report suspicious transactions to the FIU. Reporting of these transactions is required on the basis of reasonable suspicion that they involve the proceeds of criminal conduct as defined in the POCA or any offence under the POCA. The POCA criminalizes money laundering and predicate offences which are listed in the Schedule to the POCA and include FT offences under the ATA. In addition, section 7(1) of the ATA requires any person to report to the Commissioner of Police any transaction that is suspected to be related to or to be used to facilitate terrorism. Accountants, in their capacities as auditors, are required by section 15 of the FTRA to report any suspicious transaction to the police. There is a distinct requirement for DNFBPs to report both knowledge of or any suspicion that funds may be the proceeds of criminal activities that constitute predicate offences for the purpose of money laundering as defined in the POCA. Specifics as to the requirements of relevant legislative provisions are detailed in section 3.7 of this Report.

980. Dealers in precious metals and precious stones are not defined as financial institutions in the FTRA. However, there is a general obligation under section 43 of the POCA for these institutions to report any suspicious activity that comes to their attention as a result of their trade, business, employment or profession, to the Police or the FIU. It should be noted that the reporting requirements stipulated above are of course limited to the functions specified for the DNFBPs in the FTRA. As already stated, these functions do not include all of the FATF listed activities for lawyers, accountants and company service providers.

981. With regard to lawyers, section 14 of the FTRA does not include privileged communication. Legal professional privilege is provided for in section 17 of the FTRA, which allows for attorneys and counsels to withhold the disclosure of privileged communication in certain circumstances. These circumstances include written or oral confidential communication between attorneys or counsels in a professional capacity and between counsel or attorney and their client in a professional capacity. Additionally, communication given to a counsel and attorney by, or by a representative of, his/her client in connection with legal advice, or a communication made for the purpose of obtaining or giving legal advice or assistance is included in legal professional privilege. Communication made for the purpose of committing or furthering the commission of some illegal or wrongful act is not included as legally privileged communication.

982. Section 17 (3) sets out that - "Where the information consists wholly or partly of, or relates wholly or partly to, the receipts, payments, income, expenditure or financial transactions of a specified person (whether a counsel and attorney, his or her client or any other person), it shall not be a privileged communication if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the counsel and attorney in connection with a client's account of the counsel and attorney."

983. Section 17 (4) defines 'a counsel and attorney' for the purpose of professional legal privilege to include a firm in which a counsel or attorney is a partner or associate. There are no similar legal obligations of secrecy or privilege for accountants.

984. A licensed FCSP who provides trust and company services' involving the managing, handling or administering funds on behalf of others is covered by section 14 of the FTRA.

However, if they do not manage funds on behalf of another and come across any suspicious activity in the course of their employment, trade, business of profession, they are nevertheless obliged under section 43 of the POCA to report such activity to the FIU or the police.

985. Although the legal and accounting professions in The Bahamas have governing bodies, such bodies are not regarded as SROs for these professions. The law requires that all STRs be forwarded to the local FIU or the police.

986. The figures for STRs submitted by reporting entities as highlighted in paragraph 303 of section 2.5 of this report reveal that only 62 STRs from the non-banking sector were submitted to the FIU for the period 2001 to 2004. Given that the CC has 841 active registrants at the last analysis, the low figures of STRs raises questions as to whether the DNFBPs are effectively implementing suspicious reporting measures.

987. The DNFBPs are subject to the same requirements as other financial institutions with regard to Recommendations 14, 15 and 21. These requirements are dealt with in sections 3.7, 3.8 and 3.6 of this Report respectively.

988. The relevant sanctions for breaches of AML/CFT requirements under Recommendations 13-15, and 21 as applicable in The Bahamas for DNFBPs are the same as for other financial institutions and are dealt with in section 3.10 of this Report.

989. Accountants, in their capacities as auditors, are required by section 15 of the FTRA to report any suspicious transaction to the Police.

990. There is a distinct requirement for DNFBPs to report both knowledge of or any suspicion that funds may be the proceeds of criminal activities that constitute predicate offences for the purpose of money laundering as defined in the POCA.

4.2.1 Recommendations and Comments.

991. As noted before the requirements for DNFBPs are the same as those for all other financial institutions under the relevant laws and the deficiencies identified with regard to specific recommendations are also applicable to the DNFBPs.

992. The Bahamas should ensure that recommendations formulated for Recommendations 13, 15 and 21 in sections 3.7.2; 3.8.2 and 3.6.2 of this Report are also applied to DNFBPs.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors underlying rating
R.16	**PC**	• **Deficiencies identified for all financial institutions for Recommendations 13, 15, and 21 in sections 3.7.3, 3.8.3, and 3.6.3 of this Report are also applicable to DNFBPs.** • **Ineffective implementation of suspicious transaction reporting requirements.**

4.3 Regulation, supervision and monitoring (R. 17, 24-25)

4.3.1 Description and Analysis

Recommendation 24

993. The FTRA is the governing legislation for DNFBPs in The Bahamas. The FTRR sets out the documentary requirement of financial institutions in the provision of financial intermediary services. The FITRR sets out the identification, record-keeping and training procedures, including the designation of a MLRO.

994. There are four (4) licensed casinos in The Bahamas none of which are Internet casinos.

995. A transaction as defined under the FTRA excludes the placing of any bet and participation in any game of chance defined in the LGA. Sections 15 and 16 of the LGA provide for the lawful conduct of private lotteries and lotteries for charitable and other purposes. While the participation in permissible lotteries is not considered a transaction under the FTRA, proceeds of the said lotteries in excess of $15,000 if deposited in a bank are subject to AML/CFT rules. Section 17 requires that permitted lotteries shall at all times be open to the inspection of the Government or auditor appointed by the Minister of Finance. However, the LGA does not make provision for supervision of these lawful lotteries for compliance with the FTRA.

996. In accordance with section 45 of the FTRA, the CC is the designated competent authority for DNFBPs. See Rec. 23.

997. By virtue of section 3(1) of the FTRA, a licensed casino operator within the meaning of the LGA is a financial institution. However, casinos do not fall under the ambit of the CC. Section 32 of the LGA establishes a Gaming Board for The Bahamas whose duty it is 'to keep under review the extent, character and location of gaming facilities provided on premises in respect of which licences under the Act are in force, and perform such other functions assigned.' Pursuant to the Lotteries and Gaming Board (Amendment) Act, 2001, in exercise of its functions, the Board must satisfy itself that casinos are complying with the FTRA.

998. The Board consists of a chairman and two (2) other persons appointed by the Minister of Tourism. The Board is supported by a secretary; two (2) deputy secretaries and assistant secretaries with responsibility for audit; enforcement and electronic surveillance, investigations and licensing staff.

999. The LGA provides for the issue, renewal and revocation of certificates of approval for premises; and issue, renewal and revocation of permits to persons employed on licensed premises. An application for a licence to carry on the business of gaming on premises is considered by the Commissioner of Police as well as the Board (section 34). Licences are approved by the Minister of Tourism under such terms and conditions as considered appropriate (section 31(3)). Every licence granted to manage premises is conditional inter alia on the licensee authorising "every bank (whether in The Bahamas or elsewhere) at which he conducts an account (whether directly or through any nominee and whether or not jointly with any other person) to make available at any time, upon being so required by the

Board or to any officer of the Board duly authorised by the Board in that behalf, full particulars of that account."

1000. An application for a licence to manage premises is accompanied by a Personal declaration Form which permits the Gaming Board to assess a shareholder, a person who has a financial interest in an application, a person who will have actual and effective control over the licensed premises, and a person who will have actual and effective control over the gaming on the licensed premises. Assessments are undertaken inter alia on employment history, criminal offences, bankruptcy, banking history, tax history, net worth and source of investment.

1001. There are no procedures to address ongoing monitoring but reliance is placed on section 46(1)(e) where the licences are subjected to the following conditions:

(i) The company shall notify the Gaming Board in writing of every alteration in the personnel responsible for management and control of the relevant premises; and
(ii) It shall notify the Gaming Board in writing of any proposed alteration in the ownership or control of the company during the life of the licence.

1002. Section 47 grants the Minister powers to amend a licence granted to manage premises upon such terms and conditions as he sees fit, and cancel a licence where inter alia there is a breach of any restrictions or conditions imposed. Non-compliance with the FTRA is not stated as grounds for revocation.

1003. Pursuant to section 62, the Board may appoint an inspector to assist it in carrying out its functions under the Act. There are currently sixty-four (64) inspectors in total. The incidence of training (attendance and plans) are as follows:

- Casino Auditing Level 1, October 2006 (3 persons)
- Caribbean AML/CFT Workshop, May 2006 (2 persons)
- Bahamas Institute of Financial Services – Policing the Industry & Increasing Anti Money Laundering Awareness, May 2006 (3 persons)
- Crystal Palace Casino – Texas Hold'Em Poker Game (16 persons)
- Money Laundering Conference Florida, March 2006 (1 person)

1004. The Inspector may from time to time enter any premises; inspect the same and any machine, equipment, document which constitutes a record or account. Failure to furnish the information is grounds for an offence.

1005. Fines resulting from the commitment of an offence under Part 1V of the LGA are minimal and not dissuasive. These range from $300 to $1,200 and imprisonment from six (6) to twelve (12) months. Section 63 of the LGA establishes a fine of $300 for inter alia refusal to furnish an inspector with information reasonably required by the Board for the purpose of the performance of its functions. A similar size fine results from hindering, obstructing or interfering with an inspector acting in the exercise of his duties.

1006. Section 42 states that the Board may refuse to recommend the granting of a licence to manage premises on the grounds that the applicant is not a fit and proper person. An individual[31] or company is ineligible to manage premises if convicted of an offence

[31] Includes a director (any person serving as a director, by whatever name called) and an officer (director,

anywhere, involving fraud of dishonesty.

1007. Section 52 identifies those persons who must be certified annually by the Board to be employed or perform specific functions at a casino. These are Accountants, Assistant Casino Manager, Assistant Director of Security, Cashier, Casino Manager, Change Booth Operator, Change Girl, Company Official, Croupier, Director of Security, Inspector, Office Assistant, Office Manager, Credit Manager, Security Supervisor, Supervisor, Sports Book Manager, Sports Book Shift Manager and Sports Book Writer/Cashier. Such persons are subject to fit and proper tests, failure of which is ground for refusal of an application or renewal.

1008. Pursuant to section 53, a security officer, bartender, cocktail waitress and host or hostess requires a permit from the Board for employment. Such persons are subject to fit and proper tests, failure of which is a ground for refusal of an application or renewal.

1009. While there are no explicit provisions in the LGA requiring the identification and screening of beneficial owners of a significant or controlling interest in casinos, in practice this is done at licensing.

1010. As stated in Rec. 4, amendments have been approved by Cabinet to amend the LGA to facilitate information sharing with other regulatory authorities.

- BREA

1011. Real estate brokers are licensed under the Real Estate (Brokers and Salesmen) Act, CAP 171 (REBSA). A broker is defined in Part 1 as 'an individual who, for another or others, for compensation, gain or reward or hope or promise thereof, either alone or through one or more officials or salesmen, trades in real estate, or an individual who holds himself out as such.' Real Estate brokers receiving funds in the course of settling real estate are included in the FTRA as financial institutions. At Mission date, there were 141 registered brokers and 29 broker/appraisers.

1012. BREA's board[32] issues certificates of registration to brokers on satisfaction inter alia of fit and proper tests[33] (Section 15 of the REBSA). Under section 17, registration can be cancelled or suspended if the broker is convicted of an offence involving fraud or dishonesty, or has been disciplined by way of suspension from membership of any professional body overseeing brokers or salesmen. Registrants are issued with licences, which may be granted with conditions.

1013. There is a Code of Ethics and standards of practice in place which list (a) among the duties to the public, that a realtor must protect the public against fraud, misrepresentation or unethical practices in the real estate field; and (b) among duties to clients and customers, realtors must preserve confidential information unless inter alia with

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manager or secretary).

[32] The Board consists of a minimum of fourteen (14) broker members of the Association who are elected by members from amongst the Association who are in good standing.

[33] Section 12 states that an individual cannot qualify for registration as a broker if inter alia he is an undercharged bankrupt.

the client's consent, it is so required by a Court, it is the intention of the client to commit a crime and the information is necessary to prevent its occurrence. The Code also speaks to the client account in which the realtor must keep separate his own funds from those of his clients.

1014. The Association can establish two (2) committees. The Investigative Committee decides whether complaints are referred to the Disciplinary Committee, which hears the complaints and makes recommendations to the Board. Four (4) of the seven (7) members of the Disciplinary Committee must be non-executive members and appointed by the Minister of Tourism, who also appoints all members of the Investigative Committee. The Disciplinary Committee is not functional as a result of failure of Government to appoint their representatives. An amendment to the REBSA has been drafted to address this matter.

1015. Section 39 of the REBSA requires brokers, who receive client monies to maintain a client account with an authorized financial institution. Brokers have taken a decision not to accept settlement monies, and clients have been advised to make payments to their attorneys. The Examiners were advised that written undertakings from real estate brokers are received by the CC on an ongoing basis. The undertakings are periodically reviewed and updated. However, developers do accept settlement monies and some may maintain foreign currency accounts for which CBB approval would have been obtained. Developers would therefore be subject to review by the CC. There were nine (9) registered Developers at Mission date.

- BBA

1016. The Legal Profession Act, 1992 (LPA) governs the practice of law by persons in The Bahamas as it relates inter alia to admission to practice, creation of a registered associations and legal executive, conduct and discipline of registered associates, legal executives and persons admitted to practice. All persons admitted to practice law automatically become members of the Bahamas Bar Association and thereafter have an option to leave the membership.

1017. Section 5 of the LPA includes among the functions of the Bar Council, the making of bye-laws for the direction, control and governance of the Bar Association, maintenance of the honour and independence of the Bar and promoting standards of etiquette and professional conduct. Persons disqualified for or suspended from practice in any Court and not of good character are not eligible for admission to practice (section 10). Pursuant to section 30, the Ethics Committee is charged with:

- Receiving complaints made in respect of the conduct of counsel and attorneys, registered associates and legal executives;
- Determination as to whether there exists reasonable grounds for the making of a complaint and if so referring same to the Disciplinary Tribunal;
- Reprimanding counsel and attorneys, registered associates and legal executives where it is considered that a reprimand is adequate penalty;
- Upholding standards or professional conduct for counsel and attorneys, registered associates and legal executives.

1018. Pursuant to section 38, the Disciplinary Tribunal hears complaints and disciplines counsel and attorneys, registered associates and legal executives and dismisses or makes orders including:

- Striking off the Roll;
- Suspending counsels and attorneys for a period not exceeding three (3) years;
- Requiring payment of a penalty of no more than $1,000;
- Requiring payment of compensation for any personal injury, loss or damage resulting from improper conduct that is the subject of a complaint; and
- Requiring payment of costs or of such sums other than on a complaint.

1019. The Tribunal comprises two (2) Supreme Court judges appointed by the Chief Justice and two (2) lay persons who are appointed by the Attorney General. In addition, the Bar Council can intervene in counsel and attorney practice where inter alia the counsel or attorney is adjudged bankrupt or has made a composition or arrangement with his creditors.

1020. As discussed, there is an ongoing dispute surrounding the jurisdiction of the CC. Discussions with the BBA indicated that rules are being considered relating to the Code of Conduct, which should assist in addressing the issue.

- BICA

1021. BICA was formed in 1971 and is governed by the Public Accountants Act, 1991 (PAA), the accompanying regulations and professional practice notes. BICA's objectives include governing the discipline and regulating professional conduct of members, associates and students; and establishing standards of qualification for and to regulate the professional conduct of public accountants who are not entitled to be registered as members. Qualification for membership and registration as associate are contained in section 9 of the PAA. Fit and proper tests are only undertaken on applicants for registration as associates where persons are not citizens or permanent residents and are of good character and standing.

1022. The PAA grants the Council of the BICA powers to license persons as qualified public accountants. Resident partners in public accounting firms must also be licensed. All licences are renewable annually. As at December 31, 2005, there were 289 accountants, of whom just under 200 were licensed public accountants. The balance of the BICA membership is employed by the industry or are partners in firms.

1023. Complaints on BICA members must be submitted by affidavit to an Investigations Committee, which decides whether to forward the matter to a Disciplinary Committee. The latter decides whether to overturn or hold an enquiry into the complaint. Disciplinary action includes removal from the register of BICA members, suspension or revocation of a licence, and award of costs in connection with the proceedings.

1024. BICA meets annually with the CC and has co-hosted training for the past three (3) years. Members are strongly urged to attend particularly in light of the fact that some BICA licensees undertake compliance reviews for the CC. BICA licensees are required to register with the CC on an annual basis, their availability to conduct such reviews. Discussions with the industry representative suggest that some firms were trending towards divesting this type of activity, that is, corporate services.

1025. The CC has established a practice of convening regular meetings with the leaders of its constituent governing bodies. These meetings, which are usually held at the beginning of each year, are for the purpose of reviewing the AML/CFT initiatives of the past year and devising strategies for strengthening the AML/CFT programmes for the ensuing year.

1026. With regard to the other DNFBPs, the AML/CFT role of the CC vis-à-vis the Director of Societies and IFCSPs is discussed in section 3.10 of this Report.

1027. The CC is the competent authority for DNFBPs and its powers (as well as those of substantive regulators) to monitor and adequacy of resources are discussed at Rec.17 and Rec. 29. The FTRA does not include a framework for SROs of DNFBPs. BICA stated that they were not an SRO. The BREA, BBA and BICA, can play an important supporting role in such areas as licensing and disciplinary action. None of these organisations include monitoring and ensuring compliance with AML/CFT requirements as part of their function. Discussions with the BREA highlighted a lack of awareness with the AML/CFT issues, which in part may be attributable to the individual's recent appointment to office.

Recommendation 25 (Guidance for DNFBPs other than guidance on STRs).

1028. Consistent with section 47 of the FTRA, the CC produced and issued Codes of Practice to those DNFBPs for which it has supervisory responsibility. These include attorneys, accountants, financial & corporate service providers and real estate brokers and real estate developers.

1029. The Codes of Practice issued by the CC are for the purpose of providing its constituents with practical guidance on how to implement the provisions of the AML/CFT legislation and provide examples of good business practice.

1030. The aforementioned Codes of Practice cover topics such as: the Bahamian Anti-Money Laundering Legislative and Regulatory Framework, the On-Site Examination Process, Verification of Identity Procedures (KYC Rules), Record Keeping Requirements, Recognition and Reporting of Suspicious Transactions and Education & Training Requirements

1031. The CC in its Codes of Practice addresses all aspects of the amendments to the financial legislation that occurred in December 2003. These have become one of the primary tools used during industry-specific training sessions, which the CC holds for its constituents at least once each year. Additionally, the CC also convenes one-on-one training for its constituents upon request.

1032. The Authorities stated that the Codes of Practice issued to 'designated' DNFBPs will be periodically reviewed to ensure its congruence with the most current anti-money laundering strategies.

1033. The FIU issued Guidelines for licensed casino operators in 2001. These Guidelines have not been updated to reflect subsequent legislative amendments to the AML/CFT framework.

4.3.2 Recommendations and Comments

1034. In general, the Gaming Board provides effective oversight over casinos in The Bahamas. The CC is the competent authority for DNFBPs. SROs while not recognized for

the purposes of AML/ CFT, provide a good basis for governance of DNFBPs. Measures recommended are as follows:

- Rec. 24

1035. Non-compliance with the FTRA should constitute grounds for revocation of a licence under the LGA.

1036. Sanctions and enforcement action under the LGA should be proportionate and dissuasive.

1037. Consideration should be given to including in SRO codes of ethics/conduct, the need for members who are designated as financial institutions to conform to the requirements of the FTRA.

1038. The BREA should institute an annual declaration for brokers who do not accept client funds.

- Rec. 25

1039. The FIU Guidelines for casino operators should be updated to preserve relevance to the existing legal and regulatory framework.

1040. The revised Codes of Practice for DNFBPs should be finalized as soon as possible.

4.3.3 Compliance with Recommendations 24 & 25(Criteria 25.1, DNFBP)

	Rating	Summary of factors underlying rating
R.24	**PC**	• **Non-compliance with the FTRA does not constitute grounds for revocation of a licence under the LGA.** • **Sanctions and enforcement action under the LGA are neither proportionate nor dissuasive.** • **There is no formal ongoing system to obtain information on changes to beneficial owners of casinos to prevent criminals from holding or becoming the beneficial owner of a significant or controlling interest.**
R.25	**LC**	• **See reasons given in section 3.7**

4.4 Other non-financial businesses and professions

Modern secure transaction technique (R. 20)

4.4.1 Description and Analysis

Recommendation 20

1041. At present Section 3 of the FTRA stipulates specific obligations for DNFBPs. As already mentioned, these DNFBPs do not include dealers in precious metals or precious stones. Additionally, all persons in The Bahamas are subject to the requirements of the POCA section 43 to make a disclosure where there are reasonable grounds to suspect money laundering, when such information comes to their attention in the course of a business or trade.

1042. Other than the above, there is no statutory obligation for other non-financial businesses and professions i.e. dealers in high value and luxury goods, pawnshops, gambling and auction houses to comply with AML/CFT requirements. The Bahamas is of the view that no other businesses, other than those already designated DNFBP's, are considered to be at particular risk.

1043. The Bahamas Government's online initiative, which is part of the Government's e-government/information society strategy, proposes to make available more government services online including eventually permitting the public and industry to transact such business electronically. This will significantly contribute to a reduction in the use of cash.

1044. As discussed in section 1.3 of this Report, the CBB in conjunction with the AOCB, has embarked on a project to modernize the payment system by way of introducing a real time gross settlement system and an automatic clearing-house. Initiatives are well advanced in support of efforts to apply modern and secure techniques for conducting financial transactions.

1045. The largest denomination bank note issued in The Bahamas is the $100.00 note.

1046. Credit card debt outstanding as at December 31, 2005 approximated to two-thirds of the value of cash.

Statistics on Credit card & ATM Penetration at December 31, 2005

Number of cards outstanding	111,116
Value of credit debt outstanding	$188,058,000
Value of credit limits	$368,510,000
Credit card Penetration*	70%

* Estimated by credit cards outstanding / Employed Labour Force

Notes in circulation	$286,292,000
Coins in circulation	$ 14,893,000

Number of ATMs	Location
77	Nassau
28	Other*

* Outside Nassau but within The Bahamas

Currency Dispensed	ATMs*
Bahamian $	84
Bahamian & US$	10
US$	11

* ATMs configured to dispense foreign currency are programmed to reject local ATM cards and credit cards (i.e. issued by domestic banks).

4.4.2 Recommendations and Comments

1047. Initiatives are well advanced in support of efforts to apply modern and secure techniques for conducting financial transactions.

1048. The continued work being done at the National level (e.g. the FSRRC) and among domestic regulators (e.g. the GFSR) supports the view that The Bahamas has paid due consideration to potential risks of Non-Financial Businesses or Professions to the system.

4.4.3 Compliance with Recommendation 20

	Rating	**Summary of factors underlying rating**
R.20	**C**	**This recommendation is fully observed.**

5. Legal Persons and Arrangements & Non-Profit Organisations

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

Recommendation 33

1049. The main types of legal persons that exist in The Bahamas are limited liability companies, international business companies, foundations, limited liability partnerships and exempted limited partnerships. As at the end of 2005, there were approximately 71,026 companies (active IBC and regular companies), 36 foundations and 232 partnerships.

1050. The rules for all companies are contained in *The Companies Act, 1992*, and involve a system for registering with The Registrar General's Department. Section 19 of the CA states inter alia that the Registrar shall maintain a register in which shall be entered the following particulars-

a) the name of the company;

b) the location in The Bahamas of the registered office;

c) the amount of capital of the company, the number of shares into which it is divided and either the nominal value of each share or indication that the shares are shares of no par value;

d) the names, addresses and occupations of the subscribers to the memorandum and the number of shares taken by each subscriber;

e) in the case of a company limited by guarantee or which has no limit placed on the liability of its members, a statement that such a company is limited by guarantee or is unlimited, as the case may be;

1051. Further section 58 of the CA requires companies to make an annual list of members as at fourteen (14) days after the first ordinary general meeting of each year stating names, addresses and occupations of all members and the number of shares held by each of them. This list is to be forwarded to the Registrar of Companies to be kept with the original Memorandum.

1052. The company is obliged to file documents such as annual returns of allotments, an annual list of members and particulars thereof, notice of any increase consolidation or conversion of share capital, copies of any special resolutions and particulars of directors. Additionally particulars of charges and mortgages against the company's property have to be filed at the Registrar's office, as are articles of merger or consolidation.

1053. There is no legislative provision for making the register available to members of the public. However the Registrar advised the Evaluation Team that the general public has access.

1054. NPOs may also be formed by way of a company limited by guarantee under the Act. The Memorandum of such companies has to state inter alia, that the company has no authorised share capital, and is carried on without financial gain for members.

1055. Under the IBCA, these companies may only be incorporated by FCSPs and licensed banks and trust companies. The company is established by the registration of the Memorandum which must state inter alia, the company's name, its registered address the names and addresses of the registered agents, the objects of the company, the currency in which its shares are denominated, statement of the authorised capital, a statement as to the number and classes of shares and the par value of these shares (if any). These companies are not required to list shareholders, as is the case for onshore companies.

1056. It should be noted that a company incorporated abroad which wishes to continue as a Bahamian IBC may seek provisional registration. However, the Registrar is prohibited from revealing the documents filed in support of such an application (i.e. Memorandum of Continuance and authorization designating a person who may give the instruction for the continuance to be affected) prior to receipt of the authorization being issued. The Registrar is also prohibited from divulging any information in this regard, prior to the continuance being affected.

1057. Section 56 of the CA requires companies to maintain a register of their shareholders at their registered

office containing the names, addresses and occupations, if any, of the members of the company, a statement of the shares held by each member, the date at which the name of any person was entered on the register as a member and the date on which any person ceased to be a member. The register of members subject to such restrictions as may be imposed by the directors may be inspected by members of the company and any member of the general public upon payment of such fees as may be determined by the directors. The FIU has statutory authority to compel the production of such information that the FIU considers relevant to fulfil its functions from any person in The Bahamas, where the predicate offence is one specified in the second schedule of the POCA. Predicate offences in the schedule include the FATF 'designated categories of offences' except for human trafficking and participation in an organised criminal group and racketeering.

1058. FCSPs licensed under the FCSPA are required to record in respect of each client the name and address of the beneficial owners of all IBCs incorporated and or existing under the IBCA and the name and address of all partners registered under the Exempt Limited Partnership Act. Exemptions from the above provision include:

a) Any financial institution regulated by the CBB, the SC, the Registrar of Insurance or the Gaming Board where the financial institution is instructing a licensee on behalf of its client;

b) A financial institution located in a jurisdiction specified in the First Schedule to the FTRA which is regulated by a regulatory authority equivalent to the CBB, the SC, the Registrar of Insurance or the Gaming Board where the financial institution is instructing a licensee on behalf of its client;

c)A publicly traded company or mutual fund listed on the BSIX or any other Stock Exchange prescribed by the FTRR;

d) A regulated investment fund under the IFA or a regulated investment fund located in a country specified in the First Schedule of the FTRA.

1059. As stated previously the Registrar of Insurance (with respect to the EIA) and Director of Societies do not have powers to compel production of routine information from their licensees or registrants.

1060. Information on limited liability companies may be obtained from the Registrar General (who is the Registrar of Companies). Companies are required to file annual returns with the Registrar detailing the names of directors and shareholders.

1061. Financial institutions providing facilities for limited liability companies would also obtain information on the ultimate beneficial owners (those holding an interest of 10% or more) of such companies. Investigating authorities may obtain information on source of funds from financial institutions, which provide accounts or other facilities to limited liability companies. In the case of the FIU, information may be obtained from a financial institution doing business with the company, from the company itself or from the appropriate financial services regulator.

1062. Section 4(a) of the FCSPA gives the IFCSP access to such books, records and other documents that a licensee is required to keep fulfilling the obligations of the FCSPA.

1063. Bank and trust companies are also authorised to incorporate IBCs. Paragraph 63(vi) of the CBB AML/CFT Guidelines requires financial institutions to obtain satisfactory evidence of the identity of each of those beneficial owners having a controlling interest that is an interest of ten percent (10%) or more or with principal control over the company's assets. Additionally, paragraph 75 of the CBB AML/CFT Guidelines requires verification of the identity of any client of a FCSP where the FCSP operates a facility such as an omnibus account on behalf of its clients.

1064. Where a FCSP or their underlying clients are companies, the requirements for the identification of beneficial owners apply. As discussed in section 3.2 of this Report, there is no legal obligation for financial institutions to determine the ultimate natural person who owns or controls a legal person. However, the CBB advised that all their licensees maintained this information. This situation may result in information on ultimate natural persons who own or control a legal person not being available.

1065. An IBC is required under section 29 of the IBCA to maintain a register of shareholders at its registered office. Section 39 of the IBCA, allows for the register maintained by the IFCSP pursuant to section 9 of the FCSPA, to serve as the register of IBCs. Section 11(4) of the FCSPA requires licensees to maintain records of the beneficial owners of IBCs. The Inspector has access to such records pursuant to section 12(4) of the FCSPA. Under the FCSPA, the register is open to the public while the IBCA requires the register to be published in the Gazette on an annual basis. Under section 44 of the IBCA, a register of an IBC's directors and officers must be filed with the Registrar General and with its registered office.

1066. Generally under section 190 of the IBCA, a person may inspect the documents maintained by the Registrar and request various certificates relating to inter alia, incorporation, consolidation, or merger, which shall be treated as conclusive of the matters stated therein in a Court of law.

1067. Bank and trust companies under the CBB AML/CFT Guidelines are required to obtain in the case of foundations, documented information concerning the Foundation's Charter, the source of wealth and funds and identification evidence for the founder(s), such officers and council members of a foundation who may be signatories for the account, and all vested beneficiaries.

1068. Routine information on domestic partnerships may be obtained directly from the individual partners or from financial businesses with which they transact business. This information may be obtained from the financial institutions, which establish facilities for these partnerships. Exempt limited liability partnerships must be licensed by the IFCSP. With regard to limited liability partnerships information may be obtained from the Registrar General. The CBB is empowered to obtain information on the settlors, beneficiaries or other persons connected with a trust (including the person who provided the funds or assets of the trust) where this information is required to enable the bank to carry out its functions.

1069. With regard to foundations, routine information may be obtained from the Registrar General or from financial institutions, which provide facilities to foundations. It is a requirement in The Bahamas, that the secretary of the foundation must be either a licensed trust company (or a licensed financial and corporate service provider (section 12(4) of the FA) which are subject to monitoring by the CBB and the IFCSP/CC with regard to AML/CFT.

1070. To establish a foundation the secretary must file a statement containing inter alia, the following particulars:

(a) the name of the foundation;
(b) the date of Charter;
(c) the foundation's purpose;
(d) the name of the founder and the address in The Bahamas for service;
(e) name and address of the foundation's Council or governing body;
(f) name and address of the Secretary;
(g) the value of the initial assets;
(h) listing of the addresses of foundation's first officers;
(i) a declaration as to compliance.

1071. Details of amendments of the Charter are required to be filed with the Registrar under section 50 of the FA, as are applications to re-domicile under section 51 of the FA and copies of Orders for winding up or dissolution.

1072. Under section 59 of the FA, the Registrar is required to maintain a register of all documents delivered to him, which he is obliged to maintain for the life of the Foundation and then for ten (10) additional years. Section 60 allows a person on the payment of the prescribed fee to inspect and take extracts or copies from the Register.

1073. Section 63 of the FA provides a gateway for disclosing information about a Foundation, without the consent of the founder.

1074. Regulators in The Bahamas have access to information from their relevant licensees necessary to carry out their respective functions under their relevant statutes. Under section 4 of the FIUA, the FIU has statutory authority to compel the production of such information that the FIU considers relevant to fulfil its functions from any person in The Bahamas, where the predicate offence is one specified in the second schedule of the POCA.

1075. The POCA also provides various avenues for the law enforcement authorities to obtain information from financial institutions. These include production orders (section 35), search warrants (section 37), monitoring orders (section 39) and powers to require disclosure from Government departments (section 38).

1076. As previously stated, while the CBB has adequate powers to obtain or have timely access to information, registered insurers under Part II of the IA should be obligated to seek the Registrar's prior approval for changes in beneficial share ownership over the ten percent (10%) threshold, directors and partners. In addition, the Registrar should be informed of changes in managers and officers of registered insurers and incorporated agencies.

1077. Pursuant to section 10(a) of the IBCA, IBCs cannot issue bearer shares. Section 48 of the CA permits a company to issue bearer shares or stock for the payment of future dividends on shares or stock included in warrants. The Examiners were informed that Exchange Control permission would be required for any transfer to foreign ownership, while foreign owners require approval from the National Economic Council to participate as owners in companies operating in the domestic economy. Any illegal transfer of shares of a domestic company would normally come to the attention of CBB's Exchange Control Division as domestic companies require specific approval to convert domestic funds into dividends, to repay foreign loans, or to repatriate proceeds of the sale of domestic assets. This process would lead to the disclosure of beneficial ownership of shares of the domestic company. Similarly, any transfer of bearer shares from foreign to domestic ownership will require Exchange Control approval for payment.

1078. The perceived risk of money laundering or terrorist financing in the domestic sector is low relative to the much larger and significant offshore sector.

1079. It should be noted that business relations cannot be established without the financial institution being provided with requested documentary information on beneficial ownership (section 6 of the FTRA).

5.1.2 Recommendations and Comments

1080. There should be a legal requirement for financial institutions to take reasonable measures to determine the natural persons that ultimately own or control legal persons.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**LC**	• **No requirement to determine the natural persons who ultimately control legal persons.**

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

Recommendation 34

1081. A company may only offer trust services in or from The Bahamas if licensed by the CBB. Licensees engage in establishing and administering trusts and providing professional trustee services. The provisions of the BTCRA and the FTRA provide access to information on beneficial ownership and control. In addition to these Statutes, other applicable legislation relating to legal arrangements are the Trustee Act, 1998 and the Purpose Trusts Act (PTA)[34]. Legislation is being prepared on private trust companies.

[34] It is unclear which Ministry is responsible for the PTA.

1082. The only existing legal arrangements in The Bahamas are trusts that are governed by the Trustee Act 1998. Unlike the central system for registering companies, section 94 of the Trustee Act provides for an exemption from registration for trusts. The provision of professional trust services must be provided either pursuant to a licence from the CBB or the IFCSP. Trust services licensed by the CBB under section 3(2) of the BTCRA are subject to its supervision, while trust services offered under financial service providers' licence are subject to AML/CFT supervision by the CC.

1083. Pursuant to the BTCRA the CBB's approval must be obtained before changes in the ownership and control of trust companies may occur. Section 6 of the BTCRA provides that no shares in any licensed trust company may be issued, transferred or otherwise disposed of without the prior approval of the CBB.

1084. Trust instruments creating an authorised purpose trust of capital or income of any property or discretionary trusts of or discretionary dispositive powers over, capital or income of any property, requiring or permitting it to be disposed of for different authorised purposes or among one or more individuals, corporations or charitable purposes, are governed by the PTA. A trustee of a purpose trust must be a licensee under the BTCRA or FCSPA. Pursuant to the Purpose Trust (Amendment) Act, 2005, section 7(2) of the PTA requires a trustee to keep in The Bahamas a copy of the trust instrument, copies of amending and supplemental instruments; a register of each trust specifying the name of the creator of the trust, a summary of its purpose and address of any authorised applicants; and documents showing the financial position of each trust. Under the PTA a purpose trust is a trust established for non-charitable purposes and is subject to the general law regarding trusts set out in the Trustee Act, 1998 (section 10 of the PTA).

1085. The FTRA requires licensed trust service providers to obtain, verify and retain information on the beneficiaries and settlors of trusts for which they act. Financial institutions that provide accounts and facilities for trusts are under the same obligation to obtain, verify and retain this information.

1086. As discussed in section 3.2 of this Report, there is no legal obligation for financial institutions to determine the ultimate natural person who owns or controls a legal arrangement. While the CBB advised that all their licensees maintained this information, a situation may result where information on ultimate natural persons who own or control a legal arrangement is not available in those institutions not supervised by the CBB.

1087. Section 10 of the FTRA provides an exemption from verification only in the case of beneficiaries who do not have any vested interest in a trust. Whenever the interest of the beneficiary becomes vested, there is a duty on the financial institution to verify the identity of the beneficiary pursuant to regulation 7A of the FTRR save where the transaction is or has been introduced by another financial institution on behalf of the settlor or beneficiary and such financial institution is itself required to verify the identity of the settlor or beneficiary.

1088. Section 10A of the FTRA requires a financial institution to re-verify a customer's identity where there is knowledge or suspicion that any of the provisions of the POCA or the ATA have been infringed. Regulation 9(1) of the FTRR requires further verification of a customer's identity where there is a material change in the way a customer's facility is operating.

1089. The CBB AML/CFT Guidelines set out the verification requirements the licensees should meet with respect to trusts. The financial institution should normally, in addition to obtaining identification evidence on the trustee(s) and any other person who has signatory powers on the trust account:

(i) Make appropriate enquiry as to the general nature and the purpose of the legal structure and the source of funds;
(ii) Obtain identification evidence on the settlor(s); and
(iii) In the case of a nominee relationship, obtain identification evidence on the beneficial owner(s).

1090. Trust companies are required to retain transaction records for transactions conducted by or on behalf of trusts, settlors or vested beneficiaries or other persons connected with the trust for at least five (5) years from the date a person ceases to be a facility holder or from the date of completion of a transaction (sections 23, 24 and 25 of the FTRA). Regulation 4 of the FITRR requires financial institutions to establish and maintain record-keeping procedures in compliance with the provisions of the FTRA and the FTRR.

1091. The CC in its Codes of Practice requires its constituents to verify the true identity of the underlying principals of trusts, nominee and fiduciary arrangements. Verification of the identity of the settlor and beneficial owner of the funds, the provider of the funds and of any controller or similar person having power to appoint or remove the trustees or funds managers and the nature and purpose of the trust must be available to the FIU, law enforcement and the relevant agencies in the event of an enquiry.

1092. Section 13 of the BTCRA makes provision for the Inspector of Banks and Trust Companies ("the Inspector") to have complete access to information (such as the licensee's books and records) he requires to perform his duties and empowers him to require the managers of licensees or their designated officers to provide him with any information he requires in the performance of his duties.

1093. Section 19(7) of the BTCRA also empowers the Inspector to share information relating to, inter alia, the identity of any customer of a licensee of the CBB with the FIU where he believes that a suspicious transaction was not reported as required under the FTRA.

1094. By virtue of section 4(2)(d) of the FIUA, the FIU has wide powers to compel the production of any information (except where it is subject to legal professional privilege) from any person where the FIU considers that such information relates to AML/CFT investigations.

1095. By virtue of section 22 of the BTCRA the Inspector, in the performance of his functions, may apply to a Magistrate for a search warrant to search premises and seize any records whenever he reasonably believes there is evidence of the commission of any offence under the BTCRA.

1096. Pursuant to section 35 of the CBBA, the CBB is empowered to obtain information on the settlors, beneficiaries or other persons connected with a trust (including the person

who provided the funds or assets of the trust) where this information is required to enable the CBB to carry out its functions.

1097. Under regulation 6 of the FTRR, a trust settlement is also a facility for the purpose of the FTRA, in which case the trustee is a financial institution subject to AML oversight by the CC. The CC's mandate includes the conduct of AML/CFT reviews of the licensees of the IFCSP; however, the authority to conduct examinations was under challenge by law firms. As such, the ability to obtain and access information on the beneficial ownership and control of legal arrangements for which lawyers provide trust services was hindered. It is hoped that this legal challenge would be resolved as soon as possible.

1098. The Examiners were advised that the framework governing legal arrangements was being revised with respect to private trust companies. It appears that this initiative will result in the strengthening of oversight of legal arrangements not provided by the CBB's licensees.

5.2.2 Recommendations and Comments

1099. The Bahamas has a statutory regime for the regulation and supervision of trust service providers, which requires transparency with regard to information on beneficial ownership and control. A new legislative framework for private trust companies was being proposed and this should be enacted as soon as practicable to further strengthen oversight of all legal arrangements.

1100. There should be a legal requirement for financial institutions to take reasonable measures to determine the natural persons that ultimately own or control legal arrangements.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**LC**	• **The ability to obtain and access information on the beneficial ownership and control of legal arrangements for which lawyers provide trust services was hindered by the legal challenge.** • **No requirement to determine the natural persons who ultimately control legal arrangements.**

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

Special Recommendation VIII

1101. NPOs may be established in The Bahamas under the CA, the Friendly Societies Act, 1835 (FSA) or pursuant to deeds/instruments of charitable trusts. There are 622 NPOs registered in The Bahamas. However statistics on the number of friendly societies were not available.

1102. The Bahamas has taken measures to ensure that NPOs are not used to facilitate the financing of terrorism by enacting the ATA, which criminalizes the financing of terrorism, and applies to persons, actions and property both inside and outside The Bahamas. Section 5 of the ATA makes it an offence to provide financial services to a person if it is known or intended that the funds or services are to be used to carry out terrorist activities. Persons who have reasonable grounds to suspect that funds or financial services are related to or are to be used to facilitate terrorism have a duty pursuant to section 7 of the ATA to report their suspicions to the Commissioner of Police. Failure to make a report is an offence. The ATA contains provisions under sections 9 to 11 empowering the Attorney General to freeze, forfeit and dispose of funds used to facilitate terrorism.

1103. With regard to measures that specifically impose AML/CFT obligations on non-profit organizations, the Examiners have noted that the only measure taken in this regard appears to be the inclusion of friendly societies as financial institutions under the terms of the FTRA.

1104. Friendly societies may be formed for the following purposes pursuant to section 27 of the FSA:

(a) For the relief, maintenance or endowment (29 of 1847, s. 1) of the members, their husbands, wives, children, kindred or nominees, in infancy, old age, sickness or widowhood;

(b) Toward making good any loss sustained by the members by fire, flood, or shipwreck, or by any contingency, whereby they shall have sustained any loss of or damage to their live or dead stock, or goods, or stock-in-trade, or the tools or implements of their trade or calling;

(c) For the frugal investment of the savings of the members, for better enabling them to purchase food, clothes or other necessaries, or the tools or implements of their trade or calling, or to provide for the education of their children or kindred;

(d) For any other purpose which shall be certified to be legal by the Attorney-General, and which E.L.A.O., 1974 shall be allowed by the Minister, as a purpose to which the powers and facilities of this Act ought to be extended.

1105. Foundations under the FA may also be established for charitable purposes. The secretaries of such foundations being licensees of the FCSPA are also subject to the provisions of the FTRA and FTRR.

1106. The requirements under the CA for the incorporation of NPOs are conventional. The Bahamian Authorities have not provided any documentation pertaining to the adequacy of laws and regulations relating to NPOs that can be abused for the financing of terrorism and no evidence was presented to the assessors that the authorities had reviewed these laws with regard to protecting NPOs from being used to finance terrorism. The only requirements, which dealt with NPOs concerning money laundering and terrorist financing, are in the FTRA and the CBB AML/CFT Guidelines.

1107. All financial institutions are required to identify and verify the beneficial owners of all charities and NPOs pursuant to section 6 of the FTRA and regulation 7 of the FTRR and are subject to the record keeping standards of the FTRA (sections 23, 24 and 26). The FTRA does not accord any special treatment of friendly societies with respect to any risk sensitive approach to the obligations of these institutions.

1108. Paragraphs 87 to 92 of the CBB AML/CFT Guidelines require licensees (i.e. banks and trust companies) in the case of NPOs to obtain the following documented information:

(i) an explanation of the nature of the proposed entity's purposes and operations; and

(ii) the identity of at least two signatories and/or anyone authorized to give instructions on behalf of the entity (verification required).

1109. The Guidelines also recommend that licensees should verify that the NPO does not appear on any terrorist lists nor that it has any association with money laundering and that identification information on representatives/signatories is obtained. Particular care should be taken where a NPO funds are used for projects located in a high-risk jurisdiction.

1110. Under section 4 of the ATA The Bahamas has established a listed entity regime whereby a list of entities designated terrorist entities by the United Nations Security Council and any other entity reasonably suspected by the Attorney General of being involved or related to terrorism can be declared a listed entity by court order and thereby be subject to a freezing order. There is no legislative requirement for financial institutions to check their facilities against the listed entities except for banks and trust companies in the CBB AML/CFT Guidelines. Section 5 of the ATA makes it an offence to provide financial services to a person if it is known or intended that the funds or services are to be used to carry out terrorist activities. Persons who have reasonable grounds to suspect that funds or financial services are related to or are to be used to facilitate terrorism have a duty pursuant to section 7 to report their suspicions to the Commissioner of Police. Failure to make a report is an offence. The ATA contains provisions under sections 9 to 11 empowering the Attorney General to freeze, forfeit and dispose of funds used to facilitate terrorism.

1111. In addition paragraph 90 of the CBB AML/CFT Guidelines also state that where a NPO is registered as such in an overseas jurisdiction, it may be useful for licensees to contact the appropriate Charity Commission or equivalent body, to confirm the registered number of the Charity and to obtain the name and address of the Charity commission's correspondent for the charity concerned. Licensees should satisfy themselves as to the legitimacy of the organization by, for example, requesting sight of the constitution.

1112. A list of relevant websites, which provide information on NPOs and charities, is provided in Appendix B of the CBB AML/CFT Guidelines.

1113. The approach suggested by the FATF involves outreach to the sector, supervision and monitoring, effective investigation and information gathering and effective measures for international co-operation. Bahamian NPOs (other than Friendly Societies and Foundations) have not been made subject to measures for supervision and monitoring in particular, relating to investigations, information gathering and international co-operation.

1114. Supervisory measures should include:

- The licensing or registration of all NPOs,
- The maintenance of detailed records for at least five (5) years, including owner information, and the purpose and objective of the entity,
- The review of annual financial statements,
- The implementation of appropriate controls to ensure that funds are accounted for and spent in accordance with the institutions objectives;
- Implementation of know your beneficiaries and associate NPO policies and;
- Measures to monitor compliance and apply sanctions.

1115. Specific guidance with regard to NPOs is provided for in the CBB AML/CFT Guidelines as already mentioned. In addition to verification requirements concerning the identity of the NPO, the CBB AML/CFT Guidelines at paragraph 92 recommends that licensees undertake a basic "vetting" of all NPO established in other jurisdictions, in relation to known money laundering and terrorist activities. The Guidelines suggest that particular care be taken where the NPO's funds are used for projects located in high-risk jurisdictions. The above requirements are limited to CDD and suspicious transaction reporting. The regulatory framework for NPOs is basic and has not been reviewed for adequacy.

1116. In this regard, the Guidance for SR VIII indicates various measures that can be taken to ensure that funds are not diverted to support the activities of terrorist organizations, including use of formal financial channels, (where-ever possible), and the implementation of proper record keeping, reporting, and verification practices.

1117. The Bahamian Authorities have only implemented measures under this Recommendation to the extent that Friendly Societies and Foundations (which may or may not be NPOs) are captured by the FTRA. In addition the Authorities have issued guidance to the financial sector with special reference to dealings with NPOs in other jurisdictions. However the authorities have not made a detailed assessment of the NPO sector and the potential CFT threat and of the measures that are appropriate for the protection of the sector, based on the FATF Recommendation.

5.3.2 Recommendations and Comments

1118. The Authorities should review the adequacy of the laws that relate to NPOs.

1119. The requirements concerning NPOs in the CBB AML/CFT Guidelines should be enforceable on all financial institutions.

1120. The Authorities should consider some of the additional measures in the Best Practices Paper to Special Recommendation VIII to ensure that funds or other assets collected by or transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations.

5.3.3 Compliance with Special Recommendation VIII

	Rating	**Summary of factors underlying rating**

SR.VIII	**PC**	• **No information was available for the Examiner's to gauge the size and risk of NPO activity.** • **No evidence of review of the adequacy of laws and regulations that relate to NPOs.** • **Specific guidance with regard to NPOs is enforceable only on banks and trust companies.** • **Only friendly societies and foundations (by virtue of their secretaries) are included as financial institutions under the FTRA.**

6. National and International Co-operation

6.1 National co-operation and coordination (R.31& 32)

6.1.1 Description and Analysis

Recommendation 31

1121. The Government of The Bahamas has established a Task Force, whose mandate is to facilitate operational cooperation between the respective regulatory and law enforcement agencies and in the development of AML/CFT policies. The Task Force comprises the following persons:

- ♣ Minister of State for Finance
- ♣ Attorney-General,
- ♣ Minister of Foreign Affairs
- ♣ Minister of Financial Services and Investments
- ♣ Governor of the Central Bank of The Bahamas

Senior representatives from:

- ♣ Office of the Attorney-General
- ♣ Ministry of Financial Services and Investments
- ♣ Central Bank of The Bahamas
- ♣ Financial Intelligence Unit
- ♣ Ministry of Finance
- ♣ Securities Commission of The Bahamas
- ♣ Registrar General
- ♣ Registrar of Insurance
- ♣ Customs Department
- ♣ Gaming Board
- ♣ Compliance Commission
- ♣ Royal Bahamas Police Force

1122. From the laws governing the relevant financial service regulators in The Bahamas, it is clear that co-operation among domestic regulators to allow them to achieve their

statutory objectives is permitted with the following exceptions: the CBB can receive information from but not provide information to the CC and the IFCSP (their names are omitted from Schedule 2 of the BTCRA). Section 19(6) of this Act describes the information that the CBB may provide to other named domestic regulators).

1123. The legal provisions in place for information sharing among domestic regulators and other parties are as follows:

(a) The SC may share information with domestic regulators pursuant to section 91(8) of the SIA with regard to - the affairs of licensees or applicants under that Act;

(b) The CBB can share information on the affairs of banks and trust companies with the FIU, the Registrar of Insurance, the Registrar of Companies and the SC pursuant to section 15(6) and the Second Schedule of the BTCRA. It may receive information from but not provide information to the CC and the IFCSP. See. Rec. 4.

(c) The Registrar of Insurance may share information garnered in the course of his duties under the EIA or any other Act with domestic regulators pursuant to section 21(8) of the EIA.

(d) The IFCSPA may share information garnered in the course of his duties under the FCSPA or any other Act with domestic regulators pursuant to section 12 (8) of that Act.

(e) The CC may share information garnered in the course of its duties under the FTRA and any other Act with domestic regulators pursuant to section 45(8) of that Act.

(f) The Gaming Board may share information garnered in the course of its duties under the LGA and any other Act with domestic regulators pursuant to section 63(8) of that Act.

(g) The FIU has a general mandate to disseminate information under section 4(1) of the FIU Act. There is no indication that this dissemination includes regulatory authorities. Subsection (2) which is supposed to not limit the effect of section 4(1) only mentions the Commissioner of Police as the person to whom information can be provided regarding the commission of offences referred to in the Schedule of that Act.

(h) In practice, the domestic regulators have, since 2002 when they signed a MOU creating it, met regularly together in the *Group of Financial Sector Regulators (GFSR)*. At these meetings, the regulators discuss matters of mutual interest, such as individual cases that seem to cross regulatory boundaries and policy issues (such as Anti-Money Laundering and international regulatory co-operation. see below). The GFSR has no formal powers of its own. Each regulator continues to act under its own statutory powers. The GFSR published an 'Information-Sharing Handbook' in June 2005 on the status of its various members and their ability to co-operate with overseas regulators. This can be found, inter alia, on the CBB's web site – www.centralbankbahamas.com.

1124. In April 2005, the Government announced the creation of a FSRRC chaired by the Minister of State for Finance. The objective of the FSRRC is to review the existing regulatory structure for the financial services sector of The Bahamas. The FSRRC is considering amongst other things, whether The Bahamas should move to a single regulatory structure and is examining the approach of other jurisdictions on this issue. This body has met regularly since it was established and has submitted an interim report to Cabinet.

1125. There appear to be strong efforts being made to facilitate the review of the Bahamas' AML/CFT framework on a regular, consistent basis with the meeting of the Task Force and the GFSR. The examiners could not view some of the work of the Task Force insofar as the documentation (with regards to the recommendations of the Task Force) was currently under consideration at Cabinet level. The legislative amendments proposed show that the authorities are addressing many of the legislative and operational issues that affect in particular the streamlining of the regulatory structure of the jurisdiction's financial services sector.

1126. Since 2000 the CBB has from time to time conducted joint on-site examinations with the SC of entities, which are licensed by both the CBB and the SC. It is intended that going forward, inspections are streamlined to reduce and eliminate regulatory overlap (pending the FSRRC conclusions on the new regulatory structure in The Bahamas).

1127. The Bahamian authorities have also indicated that amendments have been approved by Cabinet, which will improve the existing legislative powers of domestic regulators to co-operate with each other, deepen the relations between regulators, increase efficiency and reduce overlaps. These amendments will facilitate consolidated supervision and prevent regulatory arbitrage and enhance the SC's powers to compel production of information. In the meantime the GFSR, which meets monthly, works at the policy level to create avenues for coordination amongst the regulators.

1128. The T&F/MLIS of the Royal Bahamas Police Force continues to enjoy a professional, helpful and courteous law enforcement relationship with all domestic law enforcement agencies in The Bahamas. The T&F/MLIS dialogues with Customs, Immigration and other law enforcement agencies as well as regulatory agencies on a regular basis, as it obtains information for the investigation of money laundering, large money seizure matters or other matters under the POCA.

1129. The CBB consults regularly with its licensees with regard to proposed legislative changes and new guidelines which the Bank would wish to issue. These draft guidelines are published on the Bank's website. The CBB also meets on a regular basis with industry representative bodies such as The Bahamas Financial Services Board to discuss pertinent issues. At the beginning of each year, the CC holds meeting with the leaders of its constituency to review activities of the previous year and to galvanize initiatives between the CC and its constituency.

1130. The Examiners did note that The Bahamas is undergoing a financial sector reform project, which is looking at the critical issue of the streamlining of the regulatory structure of the country. However, it was not shown that the work of this body included the review and possible reform of the AML/CFT framework.

Recommendation 32

1131. The mandate of the Task Force established by the Government of The Bahamas (See. Rec.31 above) is to facilitate operational co-operation between the various regulatory and law enforcement agencies in the development of AML/CFT policies.

1132. Whilst many AML related statistics are available, they do not appear to form part of the decision making process at the monthly Task Force meetings. These statistics provide valuable information on trends or new typologies and can be put to greater use when developing policies or strategies to combat AML/CFT issues.

1133. The Task Force meets monthly on the last Thursday of the month. Extraordinary meetings are held as required and all recommendations formulated by the Task Force are sent to Cabinet for approval.

1134. The Bahamas has undergone a number of reviews by international organisations in recent years, which in part cover some AML/CFT measures. These reviews have provided a means to assess effectiveness of the AML/CFT system.

1135. The FIU participates in the GFSR meetings when case specific issues are discussed. Matters of mutual interest are also discussed particularly individual cases that involve cross-regulatory boundaries and policy issues such as anti-money laundering and international regulatory co-operation. As stated earlier, the GFSR has no formal powers of its own.

1136. The Bahamas amended the FTRA and Regulations in 2003 to inter alia introduce a risk based approach to verification of customer identity and to make it mandatory for financial institutions to re-verify a customer's identity where an offence under the POCA is suspected.

6.1.2 Recommendations and Comments

1137. The legislative reforms that have been proposed should be pursued as a matter of urgency in particular those that will expand the CBB's powers to share information. It may also be useful for the Authorities to consider flexible approaches in terms of information sharing. In addition, the legislative amendments that will enhance co-operation powers of regulators will also be very useful in ensuring that resources are properly allocated.

1138. The Government of the Bahamas should establish some form of 'umbrella' group or committee that can review and make recommendations on AML/CFT matters. These recommendations would be at the policy level and from a strategic perspective using the statistics generated to assist in the decision making process.

6.1.3 Compliance with Recommendations 31& 32 (criteria 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**C**	**This recommendation is fully observed.**
R.32	**PC**	• **No evidence of review of AML/CFT systems by the Task Force.**

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Recommendation 35 & Special Recommendation 1

1139. The Bahamas ratified the 1988 United Nations Convention on the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) on January 30, 1989. The Bahamas has signed the United Nations Convention against Transnational Organized Crime (the Palermo Convention), but has not ratified it.

1140. The Bahamas signed the 1999 United Nations Convention for the Suppression of the Financing of Terrorism on 2nd October, 2001; and ratified same on 21st October 2005. On December 31, 2004, The Bahamas enacted the Anti-Terrorism Act, 2004, in order to give effect to the United Nations Convention Respecting the Suppression of the Financing of Terrorism (the Terrorist Financing Convention).

1141. The Examiners considered that the state of The Bahamas' compliance with the requirements of the Vienna, Palermo and the Terrorist Financing Conventions could be summarized by reference to the following table:

Treaty	Articles	Bahamas situation
Vienna Convention (1988)	3 (Offences and Sanctions)	Addressed by DDA Parts II, III, IV and V and in particular by section 29 (offences). However with the exception of lysergic acid diethylamide, which appears to be a derivative of lysergic acid, the pharmaceuticals in sections 6 and 11 do not correspond with the chemicals specified at Table 1 and 2 of the Vienna Convention. In addition, the provisions of section 42(2) of the POCA are not in keeping with the conduct that is required to be criminalized under the Convention.
	4 (Jurisdiction)	Addressed by DDA s. 16, also DDA s. 21. In addition Part III and the Second Schedule of the CJ(IC)A[35] addresses this issue comprehensively.
	5 (Confiscation)	The POCA Parts II and III (in particular s. 9) and DDA s. 33 addresses this issue.
	6 (Extradition)	The Extradition Act and in particular s. 5 deals with extraditable offences. Only applies to treaty states and Commonwealth states (2). S. 9 deals with arrest for committal. S. 12 deals with treatment of proceedings in The Bahamas in

[35] The Criminal Justice (International Co-operation) Act

		relation to extradition requests.
	7 (Mutual Legal Assistance)	The MLA(CM)A and the CJ(IC)A afford wide avenues for mutual legal assistance in keeping with the requirements of this Article.
	8 (Transfer of Proceedings)	The TOA makes provisions for the transfer of offenders. Similar powers are contained in the CJ(IC)A s. 7.
	9 (Other forms of co-operation and training)	The Bahamas does facilitate proper avenues for co-operation and training as required by this Article.
	10 (International Co-operation and Assistance for Transit states)	The Bahamas does co-operate to assist other states (both transit and otherwise) in interdiction and related activities.
	11 (Controlled Delivery)	The Bahamas' authorities are able to use controlled delivery in their law enforcement operations.
	15 (Commercial carriers)	The Bahamas law enforcement authorities (including the Police, Customs Department, and the Defence Force) apply measures to ensure that commercial carriers do not commit drug offences.
	17 (Illicit Traffic at sea)	Part III and the Second Schedule of the CJ(IC)A addresses this issue. The authorities are also engaged in joint operations with other states to suppress this trafficking[36].
	19 (Use of mail)	There is control over use of the mails (parcel post) to export drugs from The Bahamas through the use of an Export Authorization Form. Form B of the DDA.
Palermo Convention	5 (Criminalization of participation in an organized criminal group)	Treaty not ratified. No offence established in relation to an organized criminal group.
	6 (Criminalization of laundering of the Proceeds of Crime)	Treaty not ratified. However criminalization under the POCA. POCA section 42(2) may not meet the requirements of Article 6(1)(b)(i).
	7 (Measures to combat money laundering)	Treaty not ratified. Measures are implemented under POCA and the FTRA and FIUA and other

[36] For example, the US, Bahamas, Turks and Caicos Interdiction Programme (OPBAT)

		statutes. There are deficiencies in the systems for monitoring the cross border movement of cash.
	8 (Criminalization of corruption)	Treaty not ratified. The Prevention of Bribery Act is a measure to implement this Article.
	9 (Measures against corruption)	Treaty not ratified. The Prevention of Bribery Act is a measure to implement this Article.
	10 (Liability of Legal persons)	Treaty not ratified. There are no offences directly relating to organized criminal groups.
	11 (Prosecution Adjudication and sanction)	Treaty not ratified. There are no offences directly relating to organized criminal groups.
	12 (Confiscation and Seizure)	Treaty not ratified. There are general powers under POCA but these would not apply to organized criminal groups.
	13 (International Co-operation for the purposes of confiscation)	Treaty not ratified. These measures not available in the case of organized criminal groups.
	14 (Disposal of confiscated proceeds of crime or property)	Treaty not ratified. These measures not available in the case of organized criminal groups
	15 (Jurisdiction)	Treaty not ratified. There are no offences directly relating to organized criminal groups.
	16 (Extradition)	Treaty not ratified. There are no offences directly relating to organized criminal groups.
	17 (Transfer of sentenced persons)	Treaty not ratified. The current law would not apply to offences directly relating to organized criminal groups.
	18 (Mutual Legal Assistance)	Treaty not ratified. The current law would not apply to offences directly relating to organized criminal groups.
	19 (Joint Investigations)	Treaty not ratified. The Bahamian Authorities have the power to and have conducted joint investigations.
	20 (Special Investigative Techniques)	Treaty not ratified. The current measures would not apply to offences directly relating to organized criminal groups.
	21 (Transfer of Criminal Proceedings)	Treaty not ratified. The Transfer of Criminal Proceedings is not permissible under the criminal law.
	22 (Establishment of criminal record)	Treaty not ratified.

	23 (Criminalization of obstruction of justice)	Treaty not ratified. The Bahamian law does not address this issue.
	24 (Protection of witnesses)	Treaty not ratified. The Bahamian Authorities are actively considering this matter.
	25 (Assistance and protection of victims)	Treaty not ratified.
	26 (Measures to enhance cooperation with law enforcement authorities)	Treaty not ratified. The Bahamian law does not address the issue of plea bargaining.
	27 (Law Enforcement cooperation)	Treaty not ratified. The current measures would not apply to offences directly relating to organized criminal groups
	28 (Collection, exchange and analysis of information on the nature of organised crime)	Treaty not ratified. The current measures would not apply to offences directly relating to organized criminal groups.
	29 (Training and technical assistance)	Treaty not ratified. The current measures would not apply to offences directly relating to organized criminal groups.
	30 (Other measures)	Treaty not ratified.
	31 (Prevention)	Treaty not ratified.
	34 (Implementation of the Convention)	Treaty not ratified.
Terrorist Financing Convention	2 (Offences)	Section 3(1) of the ATA addresses this. The First Schedule of the ATA lists the Treaties containing the list of offences referred to in section 3(1) as follows:- • Convention on offences and certain other Acts committed on Board Aircraft signed at Tokyo 14th September, 1963. • Convention for the Suppression of Unlawful Seizure of Aircraft, 1970. • Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 23rd September 1971. • Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, December,

		1973. • International Convention against the taking of Hostages, December 1979. Section 3(2) of the ATA addresses this and provides further that the aidor, abettor or conspirator in this regard is liable to be punished as a principal offender. There are however 4 Conventions or Protocols that are listed in this Article of the Convention that are not contained in the ATA. See section 2.2 of this Report.
	4 (Criminalization)	Section 3(1) of the ATA states that where the conduct of such activities results in death and the activities would have constituted murder or treason prior to this Act, then the penalty is death. In any other case a person is liable to life imprisonment. Section 3(2) provides further that the aidor, abettor or conspirator in this regard is liable to be punished as a principal offender.
	5 (Liability of legal persons)	Section 6 of the ATA speaks only to a penalty on conviction of $2million. The question of the adequacy of this fine in relation to the gravity the related offences arises. It should be noted that an entity is subject to the penalty under section 6 regardless of any civil or administrative sanction that may have been imposed by law. (See. section 6(b) of the ATA).
	6 (Justification for commission of offence)	There is no defence provided in the ATA relating to political, ideological, racial, etc considerations.
	7 (Jurisdiction)	Section 3(1) refers to "a person who in or outside of the Bahamas caries out an act that constitutes an offence under the ATA. Section 5(1) of the ATA also

		speaks to a person who in or outside of The Bahamas indirectly, directly, unlawfully and wilfully provides or collects funds for terrorist purposes. It should be noted that section 7 of the ATA mandates the Commissioner of Police to investigate information received that an offence under the Act has been or will be committed whether the source of the information is in or outside of The Bahamas. Section 12 of the ATA deals with the authority of The Bahamas to deal with offences committed in its jurisdiction. Section 13 of the Act outlines the circumstances under which proceedings in relation to offences committed under the Act can be commenced in The Bahamas and the circumstances outlined incorporate the circumstances outlined in Article 7(2) of the CFT Convention. Section 14 of the ATA addresses the requirement to notify the UN of the countries' jurisdiction. Section 15 of the ATA deals with the co-ordination required where two states claim jurisdiction. Mutual legal assistance is also provided for in other Statutes.
	8 (Measures for identification, detection, freezing and seizure of funds)	Section 9(1) of the ATA provides that the Court may make an order freezing funds in the possession or under the control of a person once it is satisfied by the application of the A.G. that: • The person has been or will be charged with an offence under the Act; • The person has been declared a listed entity under the Act; A request has been made by the appropriate authority of another State that the person has been or

		will be charged with an offence described in the Act; or there is a reasonable suspicion that the person has committed an offence described under the Act. Section 10 of the ATA speaks to the Court having the discretion to forfeit any funds of or in the possession or control of a person convicted of an offence under section 3 or 5 of the Act or to forfeit funds that are the subject of a freezing order, unless it is proved that the funds did not derive from the commission of an offence under section 3 or 5 by the person convicted. Section 11 (1) of the ATA addresses the issue of sharing of forfeited assets. Section 11(2) of the ATA addresses the issue of the use of forfeited funds. Section 9(8) of the ATA indicated that a freezing order granted by the Court under that section shall not prejudice the rights of any third party acting in good faith.
	9 (Investigations & the rights of the accused).	Section 7 of the ATA mandates the Commissioner of Police to investigate information received that an offence under the Act has been or will be committed whether the source of the information is in or outside of The Bahamas. Section 12 of the ATA addresses the obligation to ensure an offender's presence for prosecution or extradition. Section 8 of the ATA deals with the rights of the accused. Section 14 of the ATA speaks to the notification of the Secretary-General of the UN where a person is taken into custody as a result of a section 7 investigation, that jurisdiction is established

		under section 9 (freezing order) and section 10 (forfeiture order) of the Act.
	10 (Extradition of nationals)	Section 12(1) of the ATA states that where a person who has committed or is alleged to have committed an offence under the Act is present in The Bahamas and it is not intended to extradite that person, the A.G. shall prosecute this person.
	11 (Offences which are extraditable)	Section 12(1) of The ATA implies that offences under that Act are extraditable.
	12 (Assistance to other states)	Section 15 of the ATA speaks to the conditions under which a detained person will be transferred to facilitate the identification, testimony, or other assistance in obtaining evidence for the investigation or prosecution of offences for the purposes of this Act. These conditions include the person freely giving his consent; and the receiving State must agree not to restrict the personal liberty of the person transferred in respect of any prior acts done or convictions received. Section 17 of the ATA states that the Mutual Legal Assistance (Criminal Matters) Act applies to the procedure to be adopted in facilitating requests for assistance from other States in obtaining a freezing or forfeiture order under the Act "with such modifications as are necessary to give effect to such requests."
	13 (Refusal to assist in the case of a fiscal offence)	Offences under the ATA are not regarded as fiscal offences.
	14 (Refusal to assist in the case of a political offence)	The offences under the ATA are not regarded as political offences which would constitute grounds for a refusal to provide extradition or mutual legal assistance.
	15 (No obligation if belief that prosecution based on race, nationality, political opinions, etc.)	Section 12(2) of the ATA addresses the issue of extradition and mutual legal assistance.

	16 (Transfer of prisoners)	Section 15 (1) of the ATA speaks to the conditions under which a detained person will be transferred to facilitate the identification, testimony, or other assistance in obtaining evidence for the investigation or prosecution of offences for the purposes of this Act. These conditions include: • the person freely giving his consent; • the competent authorities of both States agree subject to conditions both deem appropriate; and the receiving State must agree not to restrict the personal liberty of the person transferred in respect of any prior acts done or convictions received (section 15(2)). Section15 (3) of the ATA addresses the credit to be received by the accused in terms of his sentence served in the transferring state.
	17 (Guarantee of fair treatment of persons in custody)	The constitutional law of The Bahamas guarantees the fair treatment of accused persons. In addition The Bahamas does adhere to international human rights laws.
	18 (Measures to prohibit persons from encouraging, organising the commission of offences and STRs, record keeping and CDD measures by financial institutions and other institutions carrying out financial transactions) and facilitating information exchange between agencies)	Section 3(1) of the ATA deals with aiding and abetting of offences. The issue is also dealt with in the Penal Code Sections 83 and 84. The FTRA establishes KYC and STR requirements for financial institutions and gatekeeper professions. Information on legal existence and structures are required to be obtained by financial institutions. Complex, large or unusual transactions are not required by

		law to be reported to authorities. Protections for reporting are contained in the POCA and in the FTRA. The FTRA establishes appropriate record-keeping requirements. The CBB is finalizing laws to govern remittance companies. The Bahamas does have laws relating to the movement of funds cross border, however there are limitations to this system as outlined at Recommendation 19. Section 16 of the ATA states that the A.G. is the competent Authority in The Bahamas for the exchange of information relating to criminal investigations or extradition proceedings in respect of an offence under the Act. There are additional avenues for the exchange of information under the MLA(CM)A and the CJ(IC)A and the FIUA.
	19 Communication of outcomes to UN Secretary General	Section 14(b) of the ATA deals with the obligations to notify the UN of the outcome of cases under the ATA.

1142. With regard to SR I the ATA seeks to implement the United Nations Convention for the Suppression Of the Financing of Terrorism, the UNSCRs 1267 and 1373 on Terrorism and generally to make provision for preventing and combating terrorism. Section 3 of the Act provides that "*a person who in or outside The Bahamas carries out; (a) an act that constitutes an offence under or defined in any of the treaties listed in the First Schedule; … is guilty of the offence of terrorism…"* Both the 1999 International Convention for the Suppression of the Financing of Terrorism and the 2002 Inter-American Convention against Terrorism are listed in the First Schedule of the Act. The effect of this is that offences under these treaties would constitute a terrorism offence.

1143. The legislation of The Bahamas addresses the requirements of the 1999 International Convention for the Suppression of the Financing of Terrorism by way of the ATA and the IO(EA)MA. The Examiners discussed the provisions of these statutes at paragraph 214 et. seq above as they relate to adherence to the freezing requirements of UNSCR 1373 and UNSCR 1267. The criminalization of the wilful collection, by any means, directly or indirectly, of funds with the intention or knowledge that the funds should be used to carry out terrorists acts as mandated by UNSCR 1373 Article 1(a) and (b) are dealt with in SR II, paragraph 160.

1144. With regard to the requirements of UNSCR 1267, The Bahamas Authorities issued the International Obligations (Economic and Ancillary measures) (Afghanistan) Order 2001 on 25 September 2001. That Order had the following:

(a) Prohibiting sale or supply of goods to Taliban controlled Afghanistan;
(b) Prohibiting flights to and from Afghanistan;
(c) Prohibiting dealings in property held by or on behalf of Taliban controlled Afghanistan or Usama Bin Laden and the Al Qaida organisation;
(d) Prohibition on the provision of financial services to, from or for the benefit of Taliban controlled Afghanistan or Usama Bin Laden and the Al Qaida organisation;
(e) Prohibition on banks and financial institutions from conducting business with Taliban controlled Afghanistan or Usama Bin Laden and the Al Qaida organisation; and
(f) The freezing of all accounts in the name of Usama Bin Laden and the Al Qaida organisation or any individuals or entities associated with them as designated by the Attorney General after consultation with the Governor of the Central Bank and the Director of the FIU.

However a major drawback of the Order and the parent Act is that breaches of the provisions of the Order and Act are punishable upon summary conviction by a fine of $10,000 and/or a one year prison term pursuant to section 6 of the Act. The low level of the penalty imposed is not in keeping with the requirements of the UNSCR 1267.

1145. With regard to the obligations under UNSCR 1373 that do not relate to freezing of funds or other assets of terrorists, the IO(EAM) (Afghanistan) Order specifies that no aircraft shall be permitted to take off from, land in or fly over The Bahamas if that aircraft is destined to land in or has taken off from Afghanistan, save and except in cases of a humanitarian nature. This complies with Article 4(b) of the UNSCR 1267. It should again however be noted that breaches under the IO(EAM)A are punishable by a fine in the relatively low amount of $10,000, which appears to be small and would not constitute the 'appropriate penalties' as contemplated by paragraph 8 of the Resolution.

1146. It should also be noted that the IO(EAM)A was not designed for the purposes of responding to global terrorist threats. It has nonetheless been used as an interim measure to implement the requirements of UNSCR 1267 by the issue of the IO(EAM)(A)O. UNSCR 1267 requires specifically that states act strictly in accordance with the provisions of the resolution. The IO(EAM)A does not implement UNSCR 1373 insofar as the powers of the Authorities to take action under that statute are not directly referable to terrorism nor the financing of terrorism.

1147. With regard to the obligations contained in UNSCR 1373 apart from those relating to the freezing of terrorist funds and the criminalization of terrorist financing, the laws of the Bahamas addressed these issues as shown below:

1. The Bahamas refrains from providing support to entities and persons involved in terrorist acts as required by Article 2(a). This is amply evidenced in the legal framework which criminalizes terrorist acts and provides mechanisms for prosecution of persons involved in terrorist activities.
2. The Bahamas has taken steps to prevent the commission of terrorist acts including

the provision of early warning by way of exchange of information, as required by Article 2(b). The FIUA, the CJ(IO)A and the MA(CM)A all provide appropriate gateways for the exchange of information. The need for the ICLU of the Attorney General's Chambers to update their procedures to deal with requests for assistance under the ATA has been noted.

3. The Bahamas denies safe haven to all persons who finance and plan or commit terrorist acts as required by Article 2(c). In addition to criminalizing these acts, The Bahamas will extradite persons committing these acts.
4. The Bahamas criminalizes terrorist acts, wherever they occur. The ATA, the POCA, the EA and other statutes prevent terrorists from using their respective territories to facilitate terrorist acts against other States.
5. The ATA and the POCA treat terrorism offences as serious offences and the relevant punishment is appropriately severe, as required by Article 2(e).
6. The Bahamian Authorities afford other countries the widest range of assistance in connection with criminal investigations as required by Article 2(e). This issue is discussed in detail at Recommendation 35.
7. The Bahamas has effective border controls and controls through its customs and immigration laws on the issuance of identity papers and travel documents to prevent the movement of terrorists and terrorist groups as required by Article 2(g).

6.2.2 Recommendations and Comments

1148. The ATA should be extended to criminalize conduct referred to in the Conventions and Protocols that are named in the Terrorist Financing Convention but that are currently not named in the ATA.

1149. The procedures for mutual legal assistance issued by the ILCU should be further improved to deal with the treatment of potential requests for information relating to suspected terrorism offences. The GFSR should include in its procedures manual the procedures that will apply in these cases, and particularly in cases of applications for freezing under the ATA.

1150. The Bahamas has not ratified the Palermo Convention and should move to do.

1151. The Bahamas should also move to criminalize a person's participation in an organized criminal group as required by the Convention and to extend the existing measures to cover this type of offence.

1152. The ATA does not fully implement UNSCR 1267 insofar as the Bahamian Authorities may not designate an entity as a terrorist entity or freeze its assets solely upon the designation being issued by the relevant UN Security Council Committee. The ATA should be amended to effect full compliance.

1153. The ATA does not fully implement UNSCR 1373 insofar as the Bahamian Authorities may not in all cases effect the freezing of terrorist funds without delay as required by UNSCR 1373, because of the separate procedural requirements of the ATA in respect to listing and freezing applications.. The requirements in the ATA for reciprocity as a pre-condition for effecting freezing of assets may not constitute *"...the greatest measure of assistance* …" as contemplated by paragraph 2(f) of the Security Council Resolution. The Authorities may also wish to establish offences relating to dealing with the property of a listed entity.

1154. In addition, under section 9(4) if the request emanates from another jurisdiction, it must be proven that that State has reciprocal arrangements to facilitate an arrangement for freezing from The Bahamas. The question arises as to whether this is consistent with the requirements of UNSCR 1373 for freezing in response to a request from an overseas jurisdiction based on reasonable grounds or a reasonable basis to suspect that the individual is a terrorist, a terrorist financier or a terrorist organization

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	• **Section 42(2) of the POCA does not comply with the Vienna Convention requirements.** • **The ATA does not extend to all Conventions and Protocols named in the Terrorist Financing Convention.** • **The Palermo Convention has not been ratified.** • **Section 9(4) does not constitute appropriate grounds for refusing a request for freezing from a foreign State under the ATA.**
SR.1	**PC**	• **The ATA does not extend to all Conventions and Protocols named in the Terrorist Financing Convention.** • **The ATA does not fully implement the requirements of UNSCRs 1267 and 1373 particularly as they relate to the freezing of the funds or assets of terrorists.** • **The ATA does not deal with the prohibition on the movement of aircraft owned leased or operated by the Taliban.**

6.3 Mutual Legal Assistance (R. 36 - 38, SR.V, R.32)

6.3.1 Description and Analysis

Recommendation 36

1155. Requests for assistance in criminal matters are dealt with under the MLA(CM)A. The MLA(CM)A came into force on the 20th August, 1990, and incorporates into the Bahamian legal framework the Mutual Legal Assistance Treaties (MLATs) which the Government of The Bahamas has signed with the United States of America, Canada and

The United Kingdom.

1156. The Bahamas' MLAT with the United Kingdom relates to matters involving drug trafficking and confiscation of the proceeds of drug trafficking. The MLAT with the United States of America was signed on the 12th June 1987 and the 8th August 1987 respectively. The MLAT with the United Kingdom was signed on 28th June 1988 and with Canada on the 13th March 1990.

1157. Requests for assistance in criminal matters from foreign jurisdictions for use in criminal proceedings/investigations in the foreign jurisdictions with whom The Bahamas has not negotiated an MLAT are dealt with pursuant to the CJ(IC)A. Requests for legal assistance may include requests for obtaining banking documents, records, the taking of testimony or statements of witnesses, executing requests for search and seizure, transferring persons in custody for testimonial purposes, serving documents, locating persons, exchanging information in relation to the investigation, prosecution and suppression of offences and restraining forfeitable assets.

1158. The ATA also acknowledges at sections 9(1)(c) and 17 that The Bahamas may respond to overseas requests relating to freezing and forfeiture of assets relating to terrorism offences.

1159. The laws of the Bahamas provide for the following provisions relating to Mutual Legal Assistance:

(a) Powers of production and search: MLA(CM)A section 6 provides for search and seizure in response to overseas requests from a Treaty State. With regard to non-treaty states there is currently a legal dispute as to whether section 6 of the CJ(IC)A) allows the Bahamian authorities to obtain production orders in response to a request. The section provides for the Attorney General to *"...nominate a court in the Bahamas to receive the evidence to which the request relates"*. The Attorney General's office is confident that the decision will be rendered in the Government's favour as evidence has been produced under this provision on several occasions. The subject of an application may refuse to produce documents or other evidence, if the refusal is based on the provisions of Bahamian law, or breach a law relating to privilege in the requesting state, or if compliance with the request would amount to a breach under the requesting state's law (section 7(4)).

(b) Taking of evidence or a statement: Under the MLA(CM)A section 6 provides for comprehensive procedures for the taking of evidence, while section 7 provides for similar procedures.

(c) The Effecting of Service is provided for under the CJ(IC)A section 3 and section 13 of the MLA(CM)A. With regards to Treaty States, service is provided by Article 2(e) of the MLAT with the United States, and by Article II, section 2 of the MLAT with Canada

(d) Facilitating the Voluntary Appearance of Witnesses is effected by CJ(IC)A section 6(6), (which includes compelling the witnesses) and MLA(CM)A 7.

(e) Identification, Freezing and Confiscation of Laundered and Financing of Terrorism assets and instrumentalities, as well as assets of corresponding value. See

POCO (Enforcement of External Confiscation Orders), section 25 et seq. (Charging and Restraint order) section 29 (Registration and Enforcement of External Confiscation Orders), ATA section 9 (Freezing), MLA(CM)A section 6 (search and seizure) and the CJ(IC)A section 9 (enforcement of External Confiscation Orders)

(f) The Transfer of Prisoners is governed by section 7 of the CJ(IC)A and section 9 of the MLA(CM)A

(g) The Lending of Exhibits is governed by section 10 of the MLA(CM)A

(h) The enforcement of fines is governed by section 5 of the MLA(CM)A

1160. The Bahamas is able to provide assistance to foreign countries in a timely fashion. The ILCU as stated previously deals specifically with requests from foreign jurisdictions. The ILCU has also prepared a manual, which establishes the procedures, which will govern various types of requests for international assistance and all the stages that are involved in this process. This Manual has been posted on the OAS website and is available to the public. Further, the Manual has been sent to all requesting authorities. This manual however does not specifically deal with requests for assistance pursuant to the provisions of the ATA. It should be noted that a pre Mutual Evaluation request for information about international cooperation with The Bahamas did not result in the receipt of any claims of lack of assistance from The Bahamas.

1161. Mutual Legal Assistance is not prohibited on the grounds that judicial proceedings have not commenced in the requesting country. Nor is there a requirement for a conviction before assistance can be given. The terms of the Treaties executed between parties govern the circumstances where assistance may be rendered.

1162. Article I (I) of the Treaty between the United States of America and The Bahamas on Mutual Assistance in Criminal Matters provides that "the Contracting States agree in accordance with the provisions of this Treaty, to provide mutual assistance in the investigation, prosecution and suppression of offences and proceedings connected therewith, as defined in Article II."

1163. Article II, Paragraph 1 of the Treaty between the Government of Canada and the Government of The Bahamas provides that "The parties shall provide, in accordance with the provisions of this Treaty, mutual legal assistance in all matters relating to the investigation, prosecution and suppression of offences."

1164. Article I (I) of the Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and The Government of The Bahamas provides that "the parties shall, in accordance with this agreement, grant to each other assistance in investigations and proceedings in respect of drug trafficking including tracing and confiscation of the proceeds of drug trafficking.

1165. Section 6 of the CJ(IC)A provides for use of Bahamian evidence overseas specifically section 6 (1) allows the Attorney-General to receive a request for assistance from a court, tribunal or any other authority in a requesting country exercising criminal or prosecutorial jurisdiction in that country to obtain evidence in The Bahamas in connection with criminal proceedings that have been instituted or a criminal investigation that is being carried on in that country.

1166. However section 9(4) of the ATA is clear that freezing of terrorist assets is subject to a requirement for reciprocal arrangements between The Bahamas and the requesting

state, where the requesting state has a similar power to make a freezing order in response to a request from The Bahamas (See. discussions at section 2.2 of this Report). This freezing process is the only one available for freezing proceedings emanating from a listing by the UN Sanctions Committee. Other freezing proceedings, such as restraint orders under the POCA designated Countries and Territories Order, are only available upon grounds that either an external confiscation order has been made or that may be made in the proceedings in or about to be commenced in the requesting State.

1167. The general policy of The Government of The Bahamas is that the Attorney General does not provide assistance to obtain evidence for use in proceedings, which relate exclusively to the investigation or prosecution of fiscal offences. The CJ(IC)A Section 6(6) makes it clear that the Attorney General will not make an order nominating a Court to receive evidence in response to a foreign State's request if the request relates solely to a fiscal offence and in the absence of a Tax Information Exchange Agreement (TIEA) between The Bahamas and the requesting State providing for this.

1168. The Government of The United States of America and the Government of The Bahamas signed a TIEA in January 2002, which came into force on the 1st January 2004. This Treaty has been incorporated into law by *The Bahamas and the United States of America Tax Information Exchange Agreement Act 2003 (*and its attendant regulations, namely, *The Bahamas and the United States of America Tax Information Exchange Agreement Regulations 2004)*.

1169. The Bahamas is participating in the OECD Global Forum on Taxation, which is looking at the development of international standards in the area of information exchange in tax matters. The Bahamas is also represented on the United Nations Committee of Experts on International Cooperation in Tax Matters, which is also looking at international standards and best practices in this area.

1170. In The Bahamas requests for mutual legal assistance are not refused on the grounds of laws that impose secrecy or confidentiality. The Examiners have noted that section 3(1) of the MLA(CM)A provides that *"In the event of any inconsistency between the provisions of this Act and that of any other written law, other than the provisions of this Act prohibiting the disclosure of information or prohibiting its disclosure under certain circumstances, the provisions of this Act prevail to the extent of the inconsistency."*

1171. The Attorney General's Office advises that this provision is interpreted to mean that the provisions of MLA(CM)A will prevail where any other law relating to confidentiality is in conflict with this Statute.

1172. Privilege Against Self-Incrimination is preserved in section 7(4) of the MLA(CM)A, which provides that a person may refuse to answer a question before a Court constituted to receive evidence under that Act where the refusal is based on a law in force in The Bahamas or would constitute the breach of a privilege recognised by the law of the requesting State.

1173. The Competent Authority is defined as the Attorney General in section 2 of the MLA(CM)A who is able via an Order of the Supreme Court to use compulsory measures for the production of records held by financial institutions and other persons, for the seizure and obtaining of evidence in cases where there is a MLAT with the requesting State.

Assistance includes:

(a) Taking the testimony or statements of persons;

(b) Providing documents, records, and articles of evidence;

(c) Executing requests for searches and seizures;

(d) Transferring persons in custody for testimonial purposes;

(e) Serving documents;

(f) Locating persons;

(g) Exchanging information in relation to the investigation, prosecution and suppression of offences;

(h) Immobilizing forfeitable assets; and

(i) any other matter mutually agreed upon.

1174. Under the CJ(IC)A, the following investigatory powers are available:

(a) Service of Documents (section 3);

(b) Nomination of a Court to receive evidence (section 6(2)); including securing attendance of witness, power to administer oaths, and transmission of evidence.

(c) Transfer of witness (section 7);

1175. Under the Evidence (Proceedings in other Jurisdictions) Act, section 5, a Court may make an Order for the purpose of obtaining evidence where an application is made on behalf of a requesting Court or tribunal in civil proceedings for the following:

(a) examination of witnesses whether oral or in writing;

(b) production of documents;

(c) inspection photographing preservation custody or detention of any property;

(d) the taking of samples of property, the carrying out of experiments on property;

(e) the medical examination of any person;

(f) taking or testing of blood samples from other persons.

1176. The Bahamian Authorities and, in particular the Attorney General (in whom is reposed the constitutional power to determine on prosecutions) may determine, on a case-by-case basis, after discussion with the relevant country, whether it will prosecute any matter over which it has jurisdiction.

1177. With regard to the Additional Element for Rec.36, the investigatory powers may be used in response to a direct request made by the overseas authorities. Requests under the MLA(CM)A will be based on the terms of the Treaty. Under the CJ(IC)A, the request must come from a Court or tribunal exercising criminal jurisdiction or the prosecuting authority or from any other authority that the Attorney General views as having the requisite authority to make the request.

1178. The FIU may take action upon a direct request from an overseas counterpart. The Police Authorities may also act on intelligence provided by overseas counterparts.

Recommendation 37 (dual criminality relating to mutual legal assistance).

1179. Under the MLAT requests from the United States of America are acceded to either on the basis that the conduct is punishable as a crime under the laws of both countries; or that the conduct is punishable as a crime under the laws of the requesting State by one year's imprisonment or more, arises from, or relates to, results from, or otherwise involves: narcotics or drug activity, theft, crimes of violence, fraud (including fraud on the government or its agencies), and violations relating to currency or other financial transaction that have the effect of substantially contributing to the named offences.

1180. There are no requirements for dual criminality in respect of requests from Canada and the United Kingdom of Great Britain and Northern Ireland pursuant to their Treaties with The Bahamas.

1181. In respect to all other countries legal assistance is rendered in the absence of dual criminality. Section 6 of the CJ(IC)A chapter 105 provides that the Attorney General may render assistance where he is satisfied that either an offence under the law of the requesting State has been committed or there are reasonable grounds for believing that such an offence has been committed. He may also render assistance where proceedings or investigations have commenced in the requesting State.

1182. However there is a requirement for dual criminality for the more intrusive measures. For example, there is an implied requirement for dual criminality with regard to the treatment of an external confiscation order under the POCO insofar as such an order must be referable to either a drug trafficking offence or a "*relevant offence*", which refers to an offence which would if committed in The Bahamas would be triable on indictment. Restraint and charging orders under the POCO must also be referable to a relevant offence.

1183. Dual criminality is also required under the Criminal Justice (International Co-operation) (Enforcement of Foreign Orders) Order. Under paragraph 3 of this Order an 'external forfeiture order' made by the Court of a designated country must relate to either a drug trafficking reference or any offence, which would constitute an offence under the POCA.

1184. The '*Conduct Test*" is applied in extradition matters in The Bahamas, to determine whether an offence is extraditable; therefore differences in the categorisation of offences in The Bahamas and the Requesting State would not act as a bar to an extradition application.

1185. As previously stated, the Conduct Test has been defined by the Attorney General's

Office as a consideration of whether an act or omission, if committed in The Bahamas would amount to an offence in The Bahamas. In the case of a non-Treaty State, the act or omission must constitute an offence which attracts a penalty of two (2) years imprisonment or more in the country where it was committed and also constitute an offence which, had it had been committed in The Bahamas, be punishable for a term of two years or greater (EA section 5(1)(a)). In the case of Treaty States, an offence (provided for in the relevant extradition Treaty) which would have constituted an offence in The Bahamas, had it been committed in The Bahamas is an extraditable offence (EA section 5(1)(b)).

Recommendation 38

1186. Measures for mutual legal assistance in the areas of identification, freezing and confiscation of laundered and financing of terrorism assets and instrumentalities, are contained in the following Statutes:

(a) The POCA section 49 relating to the enforcement of External Confiscation Orders;
(b) The POCO: sections 25 and 26 (restraint order), Section 27 (charging orders) and section 29 (realization of property and enforcement of external confiscation orders),
(c) ATA section 9 (freezing in response to a foreign request),
(d) MLA(CM)A section 6 (Search and Seizure)
(e) CJ(IC)A section 9 (enforcement of external confiscation orders)

1187. Confiscation of assets of an equivalent value for the purposes of mutual legal assistance are contemplated by the definition of external confiscation orders under the POCO. An external confiscation order is defined as an order made in a designated country for the purpose of recovering property or the value of such property obtained as a result of or in connection with drug trafficking or a relevant offence or for the purpose of depriving a person of a pecuniary advantage so obtained. Thus provided the country whose Court issues the external confiscation order is able to issue an order relating to assets of an equivalent value, the Bahamian authorities will be able to enforce the Order within The Bahamas.

1188. As stated earlier under the ATA, freezing assistance may only be provided to another State if that requesting State has the ability to act in a reciprocal manner with The Bahamas. In addition, there is some ambiguity with regard to the effect of section 17 of the ATA which refers to section 6 of the MLA(CM)A. Section 6 provides that " T*he provisions of any written law respecting the grant of authority to and powers and privileges of a law enforcement officer to carry out searches and seizures shall extend with such modifications as the circumstances require…."* It is therefore not clear which law will be used to provide the assistance required under the MA(CM)A.

1189. U
nder the POCO, Schedule Three of the Order modifies POCA, including, inter alia, section 4, which defines the meaning of "realisable property". Realizable Property is defined in relation to an external confiscation order as the property named in that order. In the other case, Realizable property is defined as any property held by the defendant and any property which the defendant has made a gift of to any third party, whether directly or indirectly.

1190. Restraint orders under the POCA section 26 apply to both property specified in the

external confiscation order but also to all realizable property held by a specified person, whether described in the restraint order or not. With regard to charging orders under section 27, these would apply to "*any interest in realizable property*" as defined in section 4(1) of the POCO.

1191. The authorities in The Bahamas can coordinate seizure and confiscation actions with other countries on an ad hoc basis. The main operation of this nature was the OPBAT.

1192. The POCA makes provision for the establishment of a Confiscated Assets Fund pursuant to section 52 of the Act. The components of the Fund are proceeds received from confiscations or cash seizures under the POCA, forfeitures under the DDA and funds received from foreign governments under asset sharing arrangements.

1193. Under the Act, The Minister of Finance may authorise payments to be made out of the Fund for purposes related to law enforcement, including the investigation of suspected drug trafficking and money laundering; the treatment and rehabilitation and public education in relation to drug addiction; to satisfy obligations of the Government of The Bahamas to a foreign jurisdiction in respect of confiscated assets, meeting the remuneration and expenses of a receiver, to pay compensation or costs awarded under the POCA or to cover costs associated with administration of the Fund.

1194. Section 53 of the Act makes provision for the Administration of the Fund including provisions for the auditing of the Fund by the Auditor General within three (3) months of the close of the financial year. The Report of the Auditor General is laid before the Parliament each year.

1195. Monies arising from confiscation orders (sections. 9 & 10 of the POCA), cash forfeited (section. 47 of the POCA) forfeitures (section.33 the DDA) and money paid to the Government of The Bahamas by a foreign jurisdiction is placed in the Fund.

Confiscated Assets Fund – Balances:

- ♣ June 2002 $3,758,052*.
- ♣ June 2003 $4,094,651
- ♣ June 2004 $4,658,756

- $200,000 paid out during the financial year

1196. The Bahamas is prepared to consider sharing confiscated assets, both on a case-by-case basis (in the absence of Asset Sharing Agreements) and also on the basis of any asset sharing agreements, which may be entered into. The Bahamas is currently negotiating the term of an asset-sharing agreement with the United States.

1197. As an Additional Element to Rec. 38 compliance, section 49 of the POCA allows for the registration of external confiscation orders, which may include non-criminal confiscation orders.

Special Recommendation V

1198. Requests for assistance in criminal matters from foreign jurisdictions for use in criminal proceedings/investigations in the foreign jurisdictions with which The Bahamas has not negotiated an MLAT are dealt with pursuant to the CJ(IC)A. Requests for legal assistance may include requests for obtaining banking documents, records, the taking of testimony or statements of witnesses, executing requests for search and seizure, transferring persons in custody for testimonial purposes, serving documents, locating persons, exchanging information in relation to the investigation, prosecution and suppression of offences and restraining forfeitable assets.

1199. As stated at paragraph earlier, the ATA also acknowledges at sections that The Bahamas may respond to overseas requests relating to freezing of assets relating to terrorism offences only in cases where the requesting country may freeze assets in response to an overseas request.

1200. As discussed at Rec. 36 above, the laws of the Bahamas provide for various provisions relating to Mutual Legal Assistance

1201. It should be noted that terrorist offences (including financing of terrorism offences) are relevant offences for the purposes of the POCA and the POCO. The mutual assistance available under the CJ(IC)A would also extend to circumstances relating to terrorist offences provided that the Attorney General is satisfied under section 6(2)that an offence has been committed or there are reasonable grounds for believing that an offence has been committed and that proceedings have either commenced or that investigations are underway. The application of the MLA(CM)A would depend on the terms of the Treaty signed between the countries.

1202. There are no limitations on the provision of mutual legal assistance on the grounds of confidentiality save that the Authorities are required to use the avenues that are provided by any law which deals with confidentiality provisions. The investigatory powers of the Authorities with regard to terrorism offences are outlined above. In addition, by section (1) of the ATA the Commissioner of Police is responsible for the investigation of offences under this Act. Where a person accused of having committed an offence under the ATA \is found to be in The Bahamas, the Commissioner must make a report to the Attorney General for the necessary steps to be taken to prosecute the person as the circumstances warrant.

1203. Generally there are clear and efficient processes for the execution of mutual legal assistance requests however there remains some ambiguity with regard to the processes that would apply to requests relating to terrorism offences[37]. As mentioned previously, there is some ambiguity with regard to the application of section 17 of the ATA and section 6 of the MLA(CM)A to which it applies.

1204. The MLA(CM)A at section 3 preserves the effect of statutory provisions relating to secrecy. However, this prohibition will not prevent the competent authorities from acquiring information and sharing it under such gateway mechanisms that are provided for in the laws.

[37] With regard to requests relating to terrorism and financing of terrorism offences the Procedures Manual will be updated to clarify the process and procedures that would apply to such requests

1205. The investigatory powers available to the Bahamian authorities under Recommendation 28 are also available with regard to terrorism offences and terrorism financing offences.

1206. The Bahamas is able to cooperate and exchange information with countries for proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations notwithstanding the absence of dual criminality.

1207. The Bahamian Authorities may utilize the following Statutes in this regard:

(a) The Criminal Justice (International Co-operation) Act;
(b) The Financial Intelligence Unit Act;
(c) The Mutual Legal Assistance (Criminal Matters) Act

1208. There are no practical impediments to the extradition of legal or natural persons in the case of terrorism offences save for the prohibition on freezing orders in response to foreign requests outlined at ATA section 9(4).

1209. Section 9 of the ATA provides that the Court may where satisfied on the application by the Attorney-General that a person has been charged or is about to be charged with an offence under the Act, or has been declared a listed entity or a request has been made by the appropriate authority of another State, make a freezing order to freeze the funds in the possession of or under the control of that person. The application for a freezing order may be made ex-parte and shall be in writing and be accompanied by an affidavit.

1210. However, the Bahamian Courts will not make a freezing order in response to an overseas request unless it is shown that the requesting state is empowered to make a similar order with regard to requests made by The Bahamas. This reciprocity requirement could hinder cooperation.

1211. External confiscation orders will also be enforced under section 49 of the POCA and the provisions of the POCO. The order also provides for the making of restraint and charging orders upon the request of a foreign State. External forfeiture orders may also be enforced under the CJ(IC)A section 9.

1212. There have been no request for assistance with regard to terrorism or terrorism financing offences and therefore there has been no co-ordination of operations relating to these offences.

Recommendation 32

1213. The ILCU maintains a computer database of all mutual legal assistance and international requests received by the Office of the Attorney General. The list contains the date the request was received the subject matter of the request i.e. the offences, the assistance requested, and the action taken on the matter. The following are statistics of the amount of requests received for the period indicated:

STATISTICS for 2002 – 2005

Criminal Justice (International Cooperation) Act requests

2002	-	27
2003	-	36
2004	-	37
2005	-	42
Total	**=**	**142**

Evidence (Proceedings in Other Jurisdictions) Act requests

2002	-	5
2003	-	2
2004	-	6
2005	-	8
Total	**=**	**21**

MLATS

Years	Canada	UK	USA
2002	4	2	19
2003	4	2	9
2004	3	2	19
2005	5	0	10
Totals	**16**	**6**	**57**

SERVICE OF PROCESS

2002	-	52
2003	-	53
2004	-	79
2005	-	82
Totals	**=**	**266**

1214. Restraint orders obtained by the T&F/MLIS in conjunction with the office of the Director of Public Prosecutions on behalf of foreign Jurisdictions:

Date Received:	Date Restrained:	Amount:	Status:

July 2001	June 2005	**$169,555,321**	Restraint obtained under section 26 of the POCA on behalf of **Switzerland**. Restraint was challenged and order lifted. Swiss authorities were acting on behalf of a third party and did not provide additional information.
February 2002	February 2002	**$3,300,00**	Restraint obtained under section 26 of the POCO on behalf of **Switzerland**. Restraint is pending the outcome of overseas proceedings
February 2003	February 2003	**$401,600**	Restraint obtained under section 26 of the POCA on behalf of **German** authorities. October 2003 German confiscation order registered in the Supreme Court of the Commonwealth of The Bahamas and funds transferred to requesting country.
September 2004	December 2004	**$489,954**	Restraint obtained under section 26 of the POCO on behalf of **Switzerland**. Restraint is pending the outcome of overseas proceedings.
September 2004	October 2004	**$30,788,426**	Restraint obtained under section 26 of the POCA on behalf of the **United Kingdom**. Order has since been varied by the Supreme Court and various funds paid out.
November 2004	November 2004	**$5,000,000**	Restraint obtained under section 26 of the POCO on behalf of **Switzerland**. Order has since been varied by the Supreme Court and various funds paid out. Restraint order remains in place.
November 2004	November 2004	**$8,000,000**	Restraint obtained under section 26 of the POCO on behalf of **Switzerland**. Order has since been varied by the Supreme Court and various funds paid out. Restraint order remains in place.
April 2005	April 2005	**$3,415,133**	Restraint obtained under section 26 of the POCA on behalf of **Switzerland**. Order has since been varied by the Supreme Court and various funds paid out. Restraint order remains in place.
April 2005	May 2005	**$6,186,903**	Restraint obtained under section 26 of the POCA on behalf of **Italian** authorities. Restraint is pending the outcome of overseas proceedings.

1215. Restraint Orders Obtained against Bahamian Assets on behalf of the United States of America:

- Eleven (11) restraint orders were obtained on the 24th June 2004 under the provisions of section 26 of the POCA against Bahamian assets in the form of bank accounts and other property.

- ♣ Restraint orders were obtained on behalf of the United States of America.

- ♣ Matters are pending trial.

1216. The following is a summary of statistics maintained by the T&F/MLIS of the Royal Bahamas Police Force:

Extradition Statistics:

- ♣ Between 2002 and 2006 six (6) Bahamian nationals waived their right to extradition proceedings and voluntarily travelled to the United States of America.

- ♣ On the 9th April 2004 one (1) Bahamian national was extradited to the United States of America.

- ♣ Currently, a further twenty-four (24) Bahamian national are the subject of extradition proceedings, which are at various stages before the Courts.

A breakdown of the twenty-four (24) persons awaiting extradition is as follows: -

- ♣ Fourteen (14) persons are charged in connection with one specific matter. A number of constitutional challenges were made and heard at the Privy Council. The Privy Council ordered that the extradition proceedings should continue. When the matter was referred back to the Magistrate, new Constitutional challenges were raised and are now before the Supreme Court.

- ♣ Five (5) persons have been charged in connection with another matter and again Constitutional challenges have been raised along with Habeas Corpus applications. This matter is now pending before the Supreme Court.

- ♣ Two (2) persons have been charged in connection with another matter. Habeas Corpus applications in the Supreme Court were dismissed and confirmed by the Court of Appeal. The defendants are now seeking to appeal to the Privy Council.

- ♣ One (1) person has had his extradition hearing and is awaiting the Magistrates decision and a further two persons voluntarily surrendered to the requesting State.

1217. FIU – Statistical Data – 2001 - 2004:

	Total:	**Granted:**	**Denied:**	**Processing:**	**Withdrawn:**
2001 - Request from Foreign FIU	22	21	1	0	0
2002 - Request from Foreign FIU	49	40	5	1	3
2003 - Request from Foreign FIU	67	57	3	7	0
2004 - Request from Foreign FIU	68	67	0	1	0

FIU – Statistical Data – 2005:

	Total:	**Granted:**	**Denied:**	**Processing:**	**Withdrawn:**

Request from Foreign FIU	66	54	7	2	3
Request from local law enforcement	7	6	1	0	0
Spontaneous disclosure to foreign FIU	6	0	0	0	0
Spontaneous dis.to local law enforcement.	0	0	0	0	0
Request for production of information	152	148	0	4	0
Requests made to Foreign FIU	40	34	0	6	0
72 hour restraints	9	9	0	0	0
5 day freeze	7				
Supreme Court restraint	6				
Total restrained	$182,251,323 *				

** $150,000,000 of this figure related to one Restraint Order, which was subsequently revoked*

1218. Statistical Data – 2006 (to date):

	Total:	**Granted:**	**Denied:**	**Processing:**	**Withdrawn:**
Request from Foreign FIU	29	21	3	5	0
Request from local law enforcement	7	3	0	4	0
Spontaneous disclosure to foreign FIU	1	0	0	0	0
Spontaneous disc. to local law enforcement.	0	0	0	0	0
Request for production of information	151	115	0	35	1
Requests made to Foreign FIU	23	15	0	7	0
72 hour restraints	4	4	0	0	0
5 day freeze	4				
Supreme Court restraint	1				
Total restrained	$1,976,485				

6.3.2 Recommendations and Comments

1219. With regard to Recommendation 36, the ILCU should incorporate into their manual of procedures relating to mutual legal assistance matters, guidance with regard to the procedures that will be applicable when a request is made for freezing pursuant to section 9 of the ATA. This would be useful in providing a legal interpretation as to the effect of section 17 of the ATA and section 6 of the MLA(CM)A. This recommendation does not affect the rating for Recommendation 36.

1220. The Authorities may wish to clarify in the law, the effect of section 3(1) of the ML(CM)A.

6.3.3 Compliance with Recommendations R. 36 to 38, SR V, R.32

	Rating	**Summary of factors underlying rating**
R.36	**C**	**This recommendation is fully observed.**

R.37	**C**	**This recommendation is fully observed.**
R.38	**LC**	• **Freezing assistance under ATA is limited on the grounds of reciprocity.**
SR.V	**LC**	• **The reciprocity requirement could hinder international cooperation.**
R.32	**PC**	• **See reasons given in sections 2.2, 2.4, 2.6, 2.7, 3.7, 3.10, 6.1.**

6.4 Extradition (R.37, 39, SR.V, R.32)

6.4.1 Description and Analysis

Recommendation 39

1221. Since money laundering is an offence in The Bahamas punishable by more than one (1) year imprisonment, it is also an extraditable offence.

1222. Extradition is available in respect of Bahamian nationals. Section 6 of the EA refers to persons liable to be extradited and does not distinguish between Bahamian and non-Bahamians. Bahamians have been extradited on several occasions.

1223. Special cooperation between The Bahamas and other countries with regard to the extradition of Bahamians is not necessary since The Bahamas extradites its nationals.

1224. All extraditions and other procedures are conducted with due process of law. At the time of the Assessment there were twenty-four (24) persons awaiting extradition. See. Breakdown at section 6.3 (Rec. 32) of this Report. The Extradition procedures in The Bahamas are well established and are applicable to FT offences. However, the defendants in these cases often seek to use constitutional grounds to oppose extradition applications, with many appeals going to the Privy Council with resultant delays. The Authorities may wish to consider whether there is some means that could be used to fast track these applications.

1225. As an Additional Element of Compliance with Rec. 39 persons who waive their rights to an extradition hearing can be extradited without formal proceedings. During the period 2002 to 2006, six (6) persons (Bahamian nationals) waived their right to an extradition hearing and surrendered to the United States of America.

Recommendation 37 (dual criminality with regard to extradition)

1226. Technical differences in the categorisation of offences pose no difficulties in extradition matters in The Bahamas, as the underlying conduct, not the description of the offence is considered in the conduct test. The use of the broad conduct test is well established and ensures that extradition and other forms of less intrusive mutual legal

assistance may be granted without the need to show dual criminality.

Special Recommendation V

1227. Financing of terrorism offences constitutes an extraditable offence under the EA, with regard to designated Commonwealth States, insofar as the FT offence provides for a penalty of conviction of a term of twenty-five (25) years. For States with which The Bahamas has extradition arrangements, the offence would be named in the Treaty.

1228. The statutory framework for extradition is described at Recommendation 39. This framework would apply to persons being extradited for FT offences. As stated before Bahamian citizens are subject to extradition.

1229. The Bahamas has stated that the law provides for simplified extradition procedures. The EA provides at section 17 for the procedures applicable where a fugitive indicates that he is willing to be extradited in which case he may be extradited without any formal proceedings under the EA. He must be advised of his right to formal extradition proceedings and he is required to put his consent in writing. This provision applies to all extraditable offences including acts of terrorism and the financing of terrorism.

6.4.2 Recommendations and Comments

6.4.3 Compliance with Recommendations 39 & 37, and Special Recommendation V, and R.32

	Rating	Summary of factors underlying rating
R.37	**C**	**This recommendation is fully observed.**
R.39	**C**	**This recommendation is fully observed.**
SR.V	**LC**	• **See reasons given in sections 6.3 and 6.5.**
R.32	**PC**	• **See reasons given in sections 2.2, 2.4, 2.6, 2.7, 3.7, 3.10, 6.1.**

6.5 Other Forms of International Cooperation (R. 40, SR V & R.32)

6.5.1 Description and Analysis

1230. In June 2005, the GFSR published a handbook on the information-sharing framework in The Bahamas under the CBBA, BTCRA, SIA, IFA, IA, EIA, FCSP and FTRA. The document:

- Sets out legislative provisions and principles that govern the exchange of information between Bahamian and overseas regulators;
- Outlines the procedures to be followed by overseas regulators for making requests for information or assistance to each regulator;
- Identifies the appropriate Bahamian agencies to which regulatory information requests should be made;
- Defines the specific purposes for which agencies may share information; and
- Contains information about The Bahamas' participation and membership in international standards-setting bodies concerned with financial sector regulation.

Recommendation 40

1231. The removal of The Bahamas from the FATF's NCCT list in 2001 and the discontinuation in October 2005 of the FATF's five-year monitoring programme were influenced by The Bahamas' ability to respond to foreign judicial and regulatory requests.

1232. All regulators have statutory authority to cooperate with foreign regulators exercising comparable functions. (See Rec.4) To effectively facilitate this process an amendment has been proposed to the SIA that would allow the SC the same breadth to compel production of information, which the CBB currently enjoys. This would enable the SC to more fully cooperate directly with its foreign counterparts. The draft Act is currently under review.

1233. The GFSR Handbook contains extensive discussion on information sharing between Bahamian and overseas regulatory authorities. In practice, nearly all-overseas requests are sent to the SC or the CBB (100% of those received in 2005 for example).

1234. The governing Statutes of all regulators, with the exception of the Director of Societies, have provisions allowing for the sharing of information with overseas regulators to enable said regulators to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by those regulators subject to certain conditions being satisfied.

The specific provisions in the relevant Statutes are as follows:

1) The CBB may make disclosure to overseas regulators under section 38(3) of the Central Bank of the Bahamas Act (CBBA). The Act also provides for gateways for the provision of information without the consent of the client involved at section 38(1).

2) The Registrar of Insurance may make disclosure to overseas regulators under section 55A(3) of the IA. The Act also provides for gateways for the provision of information without the consent of the client involved at section 55A(1).

3) The Registrar of Insurance may make disclosure to overseas regulators under section 21(3) of the EIA. The Act also provides for gateways for the provision of information without the consent of the client involved at section 21(2).

4) The IFCSP providers may make disclosure to overseas regulators under section 12A(3) of the FCSPA. The Act also provides for gateways for the provision of information without the consent of the licensee involved at section 12A(1).

5) The Gaming Board may make disclosure to overseas regulators under section 63A(3) of the LGA. The Act also provides for gateways for the provision of information without the consent of the licensee involved at section 63A(2).

6) The SC may make disclosure to overseas regulators under section 59(3) of the IFA and 91(3) of the SIA. The Act also provides for gateways for the provision of information at sections 59(2) and 91(2) respectively.

7) The CC does not have express powers to share information. It does under section 39(2) of the FTRA have power to *"... do all such things necessary for the purpose of its functions"*. With regard to the gateways for information from licensees, the Commission has powers to require licensees to supply information as necessary for the Commission to perform its functions.

1235. The SC can obtain and share bank records with a foreign regulator, only if the SC obtains a Court order. It can also obtain beneficial ownership information on trusts, partnerships and foundations that are established as investment funds or that become facility holders. The SC can only obtain information from persons and entities that are unregistered if there is a breach or a possible breach of Bahamian securities law.

1236. Because of these considerations, the SC often passes requests from overseas securities regulators to the CBB. For the CBB, the conditions precedent to information being shared with an overseas regulator is the same as for the SC (section 38(3) of the CBBA). However, the CBB's powers to access information are broader than those of the SC. In particular, the CBB can access the records of its licensees without a Court order. The CBB is further authorised by section 35 of the CBBA to require information from regulated persons, persons connected to a regulated person and persons reasonably believed to have information relevant to an enquiry made by the CBB.

1237. The Bank can apply to the court to have a person examined by the court and the results sent to the Bank. Further under section 36 of the CBBA, the Bank can seek the assistance of the Commissioner of Police in obtaining information about persons or matters which are the subject of inquiries being carried out by or on behalf of an overseas regulatory authority or the Bank. As such**, t**hese powers of the CBB are considerably wider than those of other domestic financial services regulators in The Bahamas.

1238. The CBB, in the past year, has also taken over the task of co-ordinating responses to overseas regulators and providing summary information to FATF and other international bodies as required.

1239. The T&FMLIS has a very good professional relationship with law enforcement officials around the world. Assistance is requested from and offered to the FBI, DEA, RCMP and other law enforcement agencies regularly. Additionally on the initiative of the T&F/MLIS countries such as Spain, Germany, Switzerland, Italy and others have been alerted to the whereabouts of alleged criminal proceeds being held at financial institutions in The Bahamas and are then invited to provide the necessary information to the competent Authority in The Bahamas for the restraint of the same on their behalf. The T&F/MLIS also continues to provide police assistance to Caribbean counterparts.

1240. The GFSR Handbook on information sharing arrangements in The Bahamas stipulates timelines for dealing with requests for information in an efficient manner as follows;

a) Acknowledgement – Within one (1) week of receipt, the relevant Bahamian regulatory authority will acknowledge receipt of the request and advise the requesting overseas regulatory authority if the assistance of another Bahamian regulatory authority is needed to process the request.

b) Notification and determination of timeframe for release of information – within two (2) weeks of the receipt of the request, the Bahamian regulatory authority will advise the requesting authority whether the request can be met and the likely timeframe for supplying the requested information. Where the relevant Bahamian regulatory authority is unable to comply with a request it will provide its reasons to the requesting authority and advise of any further action the requesting authority may be able to take to facilitate a review of the request.

c) Notification of delay in obtaining information and periodic status updates – Where the Bahamian regulatory authority is unable to meet the specified timeframe, it will immediately notify the requesting authority indicating the reasons for the delay and thereafter provide monthly updates to the overseas authority on the progress of the request.

d) Formal conclusion of a request – To conclude the request, the requesting authority will be asked to provide written confirmation that the request has been answered satisfactorily.

1241. Requests for information are forwarded in the first instance to the Inspector of Banks and Trusts and the Manager of the Bank Supervision Department. They deal with more sensitive issues and forward routine requests to other relevant staff members. A log is kept of the date of receipt of each request and of the date of response.

1242. The SC is authorized pursuant to sections 91 (3) and 59(3) of the SIA and the IFA respectively to disclose information to overseas regulatory authorities which is necessary to enable that authority to exercise its functions including the conduct of civil or administrative investigations and proceedings to enforce the laws, regulations and rules administered by that authority. Where the SC receives such a request the following steps are taken:

1. The request is received by the Secretary's office either by letter or by fax. (The SC's Legal Counsel currently holds the Office of Secretary of the SC). A copy of the request is provided to the Secretary and Legal Counsel directly.

2. The correspondence is logged both in the general mailing log for the SC, as well as in the Legal Counsel's mail log. It is also entered into Legal Counsel's report on International Regulatory Requests for Assistance.

3. The request is reviewed by Legal Counsel who assigns the matter as follows:

   (i) Where the matter relates to information being requested from a registrant of the SC the matter is assigned to a legal officer; and
   (ii) Where the request does not involve information from a registrant of the SC the matter is assigned to both the SC's investigative officer as well as to a legal officer.

4. The Officer to whom the matter is assigned takes the following steps:

    (i) Ascertains the public information available in respect of the request;
    (ii) Determines whether the SC is able to assist with obtaining the non-public information requested;
    (iii) Where the SC is not able to assist, the officer then determines whether the matter is an appropriate one, for which to request the assistance of the CBB;
    (iv) If the matter is appropriate, the SC both verbally and in writing advises the requesting authority that it is unable assist. The SC also at that time notifies the requesting authority that the CBB may be able to assist and requests the consent of the requesting authority to pass the request to the CBB for handling. The SC then advises the CBB of the matter and provides the CBB with a copy of the request and the correspondence between the SC and the requesting authority;
    (v) Where the matter is one in which the SC can assist, the SC prepares the appropriate undertaking for review and comment by the requesting authority and takes the necessary steps to conclude same. Where there are multiple issues raised by the requesting authority each matter is dealt with on a case-by-case basis;
    (vi) The information requested is simultaneously requested from the SC's registrant by letter;
    (vii) Once the SC has received both the signed undertaking from the requesting authority and the information from its registrant the information is forwarded.

5. Each step taken by an Officer is recorded in the International Regulatory Requests for Assistance report. Legal Counsel reviews this report on a weekly basis. The report is also forwarded to the Ministry of Finance on a weekly basis and monthly to the GFSR.

6. Personnel assigned to deal with international regulatory requests are as follows:

    (i) Legal Counsel;
    (ii) Deputy Legal Counsel;
    (iii) Investigative Officer; and
    (iv) OLC Secretary

    Where necessary, assistance is sought from the officers in the Market Surveillance Department.

1243. Further discussion on other regulatory authorities (Registrar of Insurance, Inspector of Financial and Corporate Services) is captured in the GFSR Handbook. However, the Registrar of Insurance and the Director of Societies cannot compel production of information under the EIA and COSA, respectively but provisions are included in the FCSPA [12(4)(b) and the IA (section 38).

1244. Section 4(2)(g) of the FIUA gives the FIU the authority to disseminate information, subject to such conditions as may be determined by the Director, to any foreign financial intelligence unit, for the investigation of criminal offences committed under the POCA and the ATA. The FIU does not require a MOU to exchange information with its counterparts.

1245. Section 4(2)(h) of the FIUA authorises the FIU to enter into any agreement or arrangement, in writing, with a foreign FIU which the Director considers necessary or desirable for the discharge or performance of the functions of the FIU. To date the FIU has signed MOUs with seven (7) foreign FIUs.

1246. The CBB has bilateral MOUs with Brazil, Costa Rica, Guatemala, Panama and Peru as well as a multilateral MOU with CARICOM partners (e.g. Barbados, Jamaica, Belize, Trinidad and Tobago, Netherlands Antilles, British Virgin Islands and the Cayman Islands). The Eastern Caribbean Central Bank will be signing on upon changes to the legal provisions in their governing laws. The CBB is currently engaged in ongoing negotiations with Mexico.

1247. The CBB, the SC and the Attorney General have also signed an agreement/undertaking on the sharing of information with the US Securities and Exchange Commission.

1248. While legislation speaks purely to requests for assistance there is no impediment to the regulatory authorities spontaneously providing information to their international counterparts. The SC has on a number of occasions provided information on its own initiative without first receiving a request from a foreign securities regulator.

1249. The CC does not exchange information spontaneously and all requests must be submitted on a prescribed form, a specimen of which is provided in the GFSR Handbook. The CC has received no requests to date.

1250. The FTRA permits the CC to do all such things necessary for the purpose of its function. Regulation 7 of the Insurance (Amendment) Act 2001 and section 21(7) of the EIA and section 12A(7) of the FCSPA provide for the Registrar to invoke the jurisdiction of a Stipendiary and Circuit Magistrate to obtain information requested by an overseas regulatory authority.

1251. The draft SIA makes provision for the SC to have authority to conduct inquiries on behalf of its foreign counterparts.

1252. The FIU is empowered via the provisions of section 4 (2) (g) of the FIUA, to assist its foreign counterparts and does not require a MOU to exchange information.

1253. As a member of the Egmont Group the FIU subscribes fully to the Egmont "Principles for Information Exchange between FIU for Money Laundering and Terrorism Financing Case."

1254. Requests for assistance from other FIUs are dealt with expeditiously. Processing of such requests may involve the FIU checking not only its own databases but also those of other regulators as well as law enforcement agencies and the results of such searches being provided to their foreign counterparts. Hereto follows the FIU's statistics in this regard for the years 2001-2004.

Requests From Foreign Financial Intelligence Units								
	2001		2002		2003		2004	
Assistance Granted:	21		41		56		67	
Assistance Denied	1		5		11		1	
Requests Withdrawn	0		3		0		0	
Total Requests Received:	22		49		67		68	

1255. Law enforcement authorities have the ability to conduct investigations on behalf of their foreign counterparts and do so, on a frequent basis.

1256. The statutes of each competent authority contains identical provisions to permit disclosure to an overseas regulatory authority, which is defined:

- In the BTCRA as " a foreign entity charged with the responsibility of conducting consolidated supervision of banking and trust business by organizations licensed in its home country" and
- In the FCSPA, IAA, and EIA, as "an authority which, in a country or territory outside The Bahamas, exercises functions corresponding to its any functions. That is, any information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority, subject to certain conditions being satisfied.

1257. As already mentioned, section 38(3) of the CBBA provides a gateway for the CBB to disclose information to an overseas authority. Conditions for disclosure are detailed in section 38(7) as follows:

"(7) Nothing in subsection (3) authorises a disclosure by the Bank unless -

(a) the Bank has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or

(b) the Bank has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Bank; and

(c) the Bank is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws administered by that authority; and

(d) the Bank is satisfied that information provided following the exercise of its powers under subsection (3) will not be used in criminal proceedings against the person providing the information."

1258. The Bank may also take into account the following factors set out in sections 38(4) and (5) when determining whether to grant assistance to an overseas regulatory authority:

"(4) In deciding whether or not to exercise its power under subsection (3), the Bank may take into account -

(a) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in The Bahamas or involve the assertion of a jurisdiction not recognised by The Bahamas; and
(b) the seriousness of the matter to which the inquiries relate, the importance to the inquiries of the information sought in The Bahamas.

(5) The Bank may decline to exercise its powers under subsection (3) unless the overseas regulatory authority undertakes to make such contribution towards the costs of the exercise as the Bank considers appropriate."

1259. In determining whether to exercise its authority to share information with a foreign regulator the SC in its discretion may take account of various factors including, whether the inquiries relate to possible breaches for which there is no equivalent provision in The Bahamas; the seriousness of the matter to which the inquiries relate as well as the importance of the information requested to the inquiries. The SC can refuse to share the information unless the foreign authority undertakes to make such contribution to the cost of the exercise, as the SC considers appropriate.

1260. Further, the SC is prohibited by sections 59(6) and 91(6) of the IFA and the SIAA respectively from disclosing information unless under the identical conditions cited for the CBB.

1261. The CC, the IFCSP, the Registrar of Insurance, and the Gaming Board have similar provisions in their relevant statutes.

1262. There is no specific prohibition on requests to any regulator, which involve fiscal matters. These requests will be subject to the conditions stipulated in each regulator's governing statute for cooperation.

1263. There is no specific prohibition on requests on the basis of secrecy and confidentiality on financial institutions. See Rec.4. As already mentioned the regulatory authorities are provided with gateways for the provision of information without the consent of the client in the respective statutes.

1264. The relevant laws governing the operations of the CBB, SC, Registrar of Insurance, CC, the IFCSP and the Gaming Board impose a duty of confidentiality on the employees and advisers of the respective regulators. Staff are subject to criminal prosecution for breaching confidentiality obligations.

1265. As an Additional Element of compliance with Rec. 40, pursuant to the CBBA, the CBB has the discretion to extend the range of corresponding functions to include any additional regulatory function in relation to companies or financial services as the bank may specify by order. While the CBB may potentially be able to share information with non-bank regulatory authorities in other jurisdictions, in practice, this is not necessary because other domestic regulators have power under their statutes to share information with their foreign counterparts. As previously discussed, the only non-bank foreign regulators that the CBB shares information with presently are securities regulators. Information

requests from authorities other than foreign regulators are channelled through the appropriate mechanisms.

Special recommendation V

1266. The measures available to the Bahamian Authorities for the provision of international cooperation would be also available in cases of suspected financing of terrorism. The measures are contained in the MLA(CM)A, the CJ(IC)A, the POCA (DCT)A, the ATA, FIUA as well as under the statutes governing the financial regulators such as the CBBA, SIA, LGA, and the IA.

1267. There have been no requests for international information exchange or other assistance under the ATA or with regard to terrorism financing.

1268. The gateways for the exchange of information on terrorism financing include the procedures under the statutes referred to at Recommendation 36. The CBB also maintains several MOU with regional and other foreign supervisory authorities to facilitate the exchange of information between the Bank and its international counterpart.

1269. The methods of exchanging information available to the Bahamian Authorities vary in terms of the degree of spontaneity. The law enforcement and regulatory authorities make disclosures of their own accord as well as on request. These disclosures can be made with respect to terrorist financing.

1270. The Bahamian Competent Authorities are able to conduct inquiries on behalf of foreign counterparts, although as pointed out the SC and the Director of Societies have information gathering (and thus sharing) limitations.

1271. The FIU can search its own database as well as those of other Government Departments on behalf of overseas counterparts.

1272. The law enforcement and regulatory authorities are able to conduct investigations on behalf of overseas counterparts using measures available under the FIUA, the POCA and the POCO, the CJ(IC)A as well as the ATA, in the case of law enforcement and the financial statutes (CBBA, SIA, FTRA and LGBA) in the case of the regulators. Section 44A(3) of the FTRA allows the CC to disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.

1273. Information exchange with respect to terrorism financing offences is not subject to disproportionate or unduly restrictive conditions. The same conditions that apply with regard to the sharing of information relating to other serious offences will apply with regard to terrorism financing.

1274. The fact that certain types of information exchange will be limited because the query relates to fiscal offences (as is the case under the CJ(IC)A) would not apply with respect to queries relating to terrorism financing as a result of the TIEA with the United States of America.

1275. Requests for regulatory co-operation in The Bahamas would not be declined on the grounds of laws relating to secrecy. It should be noted however that in the information sharing provisions relating to regulatory issues, the issue of the costs of investigations is one that the parties may have to agree upon prior to the rendering of assistance.

1276. There are some limitations in the information gathering powers of the SC that require legislative amendment. This would also apply to sharing arrangements relating to terrorism financing information.

1277. The FIU is under a statutory obligation to maintain confidentiality with regard to the information it receives. CBB employees are similarly under an obligation for confidentiality as is staff of the SC, Gaming Board and the CC and the IFCSP.

Recommendation 32

1278. Since January 2004 the SC has maintained a contemporaneous status report on all international requests received by the commission from it international counterparts. This report tracks the following information in relation to each request received:

(i) Name of Regulator;

(ii) Name of Matter;

(iii) Date of receipt of the request;

(iv) Date of acknowledgement of the request by the Commission;

(v) Officer to whom the matter is assigned;

(vi) Background information to the request;

(vii) Information Requested;

(viii) Status of the Request;

(ix) Outstanding Action on the matter; and

(x) Date matter closed.

1279. Since October 2002 the SC has responded to approximately seventy-five (75) regulatory requests.

1280. The CBB maintains statistics on requests made by foreign supervisors. Since 2002 the CBB has responded to approximately 132 regulatory requests for information; of that total, 4 requests, from 2005, are still being processed. The CBB signed MOUs with foreign counterparts in Brazil and Peru during 2005.

	# Requests	Completed	Outstanding
BVI	2	2	
St. Lucia	1	1	
Trinidad	3	3	
USA	5	2	3
Panama	3	3	

1281. **Summary of Requests for International Cooperation for 2005**

Year	Number of Regulatory Requests for Co-operation
2002	41
2003	30
2004	28
2005	33
Total	**132**

6.5.2 Recommendations and Comments

1282. The Registrar of Insurance and the Director of Societies should be granted powers to compel production of information under the EIA and COSA, respectively in order to effectively facilitate international cooperation.

1283. The legislation for the SC should be fast tracked to allow for stronger information gathering powers. The SC may also wish to establish MOUs for the sharing of information with overseas counterparts.

1284. The SC should have power similar to the CBB to access records of its licensees and registrants.

1285. All regulatory authorities should have the power to conduct inquiries on behalf of

foreign counterparts.

6.5.3 Compliance with Recommendations 40, Special Recommendation V and R.32

	Rating	Summary of factors underlying rating
R.40	**LC**	• **The Registrar of Insurance does not have powers to compel production of information under the EIA.** • **The SC does not have powers to conduct inquiries on behalf of foreign counterparts.**
SR.V	**LC**	• **The SC does not have powers to conduct inquiries on behalf of foreign counterparts.**
R.32	**PC**	• **See reasons given in Sections 2.2, 2.4, 2.6, 2.7, 3.7, 3.10, 6.1.**

7. **OTHER ISSUES**

The Bahamian Authorities have not provided any information on other issues.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA).

Forty Recommendations	Rating	Summary of factors underlying rating[38]
Legal systems		
1. ML offence	**PC**	**POCA section 42(2) has a deficiency with respect to compliance with the requirements of the Vienna Convention and the Palermo Convention.** **Lack of a precursor chemical statute;** **The predicate offences for money laundering do not cover two (2) out of the twenty (20) FATF's Designated Categories of Offences, specifically Racketeering and Human Trafficking.**
2. ML offence – mental element and corporate liability	**C**	**This recommendation is fully observed.**
3. Confiscation and provisional measures	**C**	**This recommendation is fully observed.**
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	**The SC is not generally empowered to access information records or documents for purposes other than investigations under section 33 of the SIA.** **The CBB cannot share information with the IFCSP or the CC.**
5. Customer due diligence	**PC**	**The legislative requirements for occasional transactions are limited to transactions involving cash and do not cover all occasional transactions.** **No requirement for financial institutions to undertake CDD due diligence measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR**

[38] These factors are only required to be set out when the rating is less than Compliant.

		VII. **No requirement for financial institutions to 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.** **No requirement for financial institutions to take reasonable measures to determine the natural persons who ultimately own or control legal persons or legal arrangements.** **All requirements for verification of the legal status of a legal person or legal arrangements are discretionary.** **The requirement for financial institutions to understand the ownership and control structure of legal persons or legal arrangements is enforceable only on banks and trust companies.** **The requirement for financial institutions to ensure that documents, data or information collected under the CDD process is kept up-to-date is only enforceable on banks and trust companies.** **The requirement for financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction is enforceable only on banks and trust companies.** **No requirement for a financial institution to consider making a STR if it is unable to comply with CDD measures.** **The exemption for insurance from full CDD measures is not limited to life insurance policies with an annual premium of no more than $1,000 or a single premium of no more than $2,500.** **Bahamian dollar facilities below $15,000 are exempt from full CDD measures.**
6. Politically exposed persons	**PC**	**Enforceable requirements concerning PEPs are applicable only to banks and trust companies at present.**

		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.
7. Correspondent banking	**NC**	**No requirement to determine the reputation of a respondent and the quality of supervision.** **Assessment of a respondent AML/CFT controls is limited to identification procedures.** **No provision to obtain senior management approval before establishing new correspondent relationships.** **No provision to document respective AML/CFT responsibilities in correspondent relationships.** **No requirement for financial institutions with correspondent relationships involving "payable-through accounts" to be satisfied that the respondent financial institution has performed all normal CDD obligations on its customers that have access to the accounts.** **No requirement for the financial institution to be satisfied that the respondent institution can provide reliable customer identification data upon request.**
8. New technologies & non face-to-face business	**PC**	**No provision for financial institutions to have in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.** **Legislative provision for non-face to face transactions does not include ongoing due diligence.** **Requirements in the CBB AML/CFT Guidelines extend specifically to non-resident customers and are only enforceable for banks and trust companies.**
9. Third parties and introducers	**PC**	**No requirement for all financial institutions relying on a third party to immediately obtain from the third party the necessary**

		information concerning elements of the CDD process covering identification and verification of customers and beneficial owners and purpose and intended nature of the business relationship. **Only banks and trust companies are required to obtain identification documentation from third parties.** **No provision requiring financial institutions to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in Recommendations 5 and 10.** **The ultimate responsibility for customer identification and verification when relying on third parties is only enforceable on banks and trust companies.**
10. Record keeping	**PC**	**Termination of the obligation to retain transaction records when corporate financial institutions are liquidated and finally dissolved or where financial institutions that are partnerships have been dissolved.** **Inclusion of the commencement of proceedings to recover debts payable on insolvency as a definition of termination of an account.**
11. Unusual transactions	**PC**	**The monitoring requirement focussing on significant changes and inconsistencies in patterns of transactions is only enforceable on banks and trust companies.** **Financial institutions are not required to examine as far as possible the background and purpose of complex, unusual large transactions and to set their findings in writing.** **Financial institutions are not required to keep such findings available for competent authorities and auditors for at least five (5) years.**
12. DNFBPs – R.5, 6, 8-11	**PC**	**Dealers in precious metals and dealers in precious stones are not included as DNFBPs**

		under the AML/CFT framework. **Deficiencies identified for all financial institutions for Recommendation 5, 6, 8-11, in sections 3.2.3, 3.3.3, 3.5.3, 3.6.3 of this Report are also applicable to DNFBPs.** **Requirements of Recommendations 5,6, and 8-11 which are stipulated in the Codes of Practice are not enforceable on DNFBPs.**
13. Suspicious transaction reporting	**PC**	**Statistics on STRs suggest that only the banking sector has effectively implemented suspicious transaction reporting measures.**
14. Protection & no tipping-off	**C**	**This recommendation is fully observed.**
15. Internal controls, compliance & audit	**PC**	**Access to information which may be of assistance in making a STR is not extended to both the compliance officer and other appropriate staff.** **Requirement for the establishment and maintenance of internal procedures, policies and controls with regard to the detection of unusual and suspicious transactions is only enforceable on banks and trust companies.** **There is no requirement for the maintenance of an adequately resourced and independent audit function to test compliance with procedures, policies and controls.** **There is no requirement for all financial institutions to put in place screening procedures to ensure high standards when hiring employees.**
16. DNFBP – R.13-15 & 21	**PC**	**Deficiencies identified for all financial institutions for Recommendations 13, 15, and 21 in Sections 3.7.3, 3.8.3, and 3.6.3 of this Report are also applicable to DNFBPs** **Ineffective implementation of suspicious transaction reporting requirements.**
17. Sanctions	**PC**	**The supervisory authorities for financial corporate service providers, insurance and cooperatives have limited sanctions against natural or legal persons.** **The supervisory authorities for financial corporate service providers, insurance and**

		cooperatives have no powers to sanction directors and senior managers of their licensees under their relevant Statutes.
18. Shell banks	**C**	**This recommendation is fully observed.**
19. Other forms of reporting	**NC**	**No evidence that the Bahamas has considered the feasibility and utility of implementing a fixed threshold currency reporting system.**
20. Other NFBP & secure transaction techniques	**C**	**This recommendation is fully observed.**
21. Special attention for higher risk countries	**PC**	**The only requirement for special attention to business relationships is generally for those with high risk countries and it is only applicable to banks and trust companies.** **Effective measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries have only been implemented by the CC for its registrants**. **No requirement for written findings of the examinations of transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations that have no apparent economic or visible lawful purpose to be available for competent authorities.**
22. Foreign branches & subsidiaries	**PC**	**The majority of the requirements of the Recommendation** are **only applicable to banks and trust companies.**
23. Regulation, supervision and monitoring	**PC**	**Inadequacies in staffing resources, with the exception of the CBB, of competent authorities impact on the capacity to adequately regulate and supervise all financial institutions.** **The SC does not have a system whereby exemption of investment funds is granted on the basis of a proven CDD by promoters.** **Licensees and registrants under the Registrar of Insurance (with respect to the EIA) and the IFCSP are not subject to adequate fit and proper tests.**
24. DNFBP - regulation, supervision and monitoring	**PC**	**Non-compliance with the FTRA does not constitute grounds for revocation of a licence under the LGA.**

		Sanctions and enforcement action under the LGA are neither proportionate nor dissuasive. **There is no formal ongoing system to obtain information on changes to beneficial owners of casinos to prevent criminals from holding or becoming the beneficial owner of a significant or controlling interest.**
25. Guidelines & Feedback	**LC**	**No information on current typologies is presented in the FIU's annual report.**
Institutional and other measures		
26. The FIU	**C**	**This recommendation is fully observed.**
27. Law enforcement authorities	**C**	**This recommendation is fully observed.**
28. Powers of competent authorities	**C**	**This recommendation is fully observed.**
29. Supervisors	**PC**	**The powers to access and compel information by the SC and the Director of Societies are inadequate. The powers of the Registrar of Insurance to compel information under the EIA are also deficient.** **The SC's powers of enforcement and sanction under the SIA are inadequate.** **The CC's ongoing AML/CFT supervision lacks an offsite programme.**
30. Resources, integrity and training	**PC**	**Inordinate length of time to bring matters to trial.** **There are insufficient resources overseeing AML/CFT with regard to financial institutions.** **There is insufficient operational independence and autonomy of the Registrar of Insurance and the Inspector, FCSP.**
31. National co-operation	**C**	**This recommendation is fully observed.**
32. Statistics	**PC**	**There has been no evidence on which effective implementation can be measured as the police have not received information regarding terrorism or terrorism financing.** **There has been no evidence on which the effectiveness of the freezing actions with regard to terrorism or terrorist financing**

		can be measured as the police have not received information regarding those matters. **The legal framework requiring the reporting of international wire transfers is not in place therefore no statistics are available**. **Statistics regarding the cross border transportation of cash or negotiable instruments are not maintained, as the legislative framework is not in place requiring such a declaration in the first instance.** **There is no system in place requiring the reporting of STRs based on domestic or foreign currency transactions above a certain threshold.** **Statistical information from the SC in support of AML/CFT effectiveness is not maintained.** **No evidence of review of AML/CFT systems by the Task Force.**
33. Legal persons – beneficial owners	**LC**	**No requirement to determine the natural persons who ultimately control legal persons.**
34. Legal arrangements – beneficial owners	**LC**	**The ability to obtain and access information on the beneficial ownership and control of legal arrangements for which lawyers provide trust services was hindered by the legal challenge.** **No requirement to determine the natural persons who ultimately control legal arrangements.**
International Co-operation		

35. Conventions	**PC**	**Section 42(2) of the POCA does not comply with the Vienna Convention requirements.** **The ATA does not extend to all Conventions and Protocols named in the Terrorist Financing Convention.** **The Palermo Convention has not been ratified.** **Section 9(4) does not constitute appropriate grounds for refusing a request for freezing from a foreign State under the ATA.**
36. Mutual legal assistance (MLA)	**C**	**This recommendation is fully observed.**
37. Dual criminality	**C**	**This recommendation is fully observed.**
38. MLA on confiscation and freezing	**LC**	**Freezing assistance under the ATA is limited on the grounds of reciprocity.**
39. Extradition	**C**	**This recommendation is fully observed.**
40. Other forms of co-operation	**LC**	**The Registrar of Insurance does not have powers to compel production of information under the EIA.** **The SC does not have powers to conduct inquiries on behalf of foreign counterparts.**
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	**PC**	**The ATA does not extend to all Conventions and Protocols named in the Terrorist Financing Convention.** **The ATA does not fully implement the requirements of UNSCRs 1267 and 1373 particularly as they relate to the freezing of the funds or assets of terrorists.** **The ATA does not deal with the prohibition on the movement of aircraft owned leased or operated by the Taliban.**
SR.II Criminalise terrorist financing	**LC**	**The offence of terrorist financing under the ATA does not extend to all of the offences listed in the Annex to the UN Convention on the Financing of Terrorism.** **The FT offence does not cover all the types of conduct set out in Art. 2(5) of the Terrorist Financing Convention specifically Art. 2(5)(c).**

SR.III Freeze and confiscate terrorist assets	**PC**	**The ATA does not address UNSCR 1267 adequately as freezing cannot take place solely upon a designation by the UN Security Council without delay.** **The reciprocal requirements for the granting of an application for a freezing order to a foreign jurisdiction could inhibit the granting of such requests.** **The International Obligations (Economic and Ancillary Measures) Act is a pre-existing measure that was not designed to meet the combating of the financing of terrorism and the related UNSCRs.**
SR.IV Suspicious transaction reporting	**C**	**This recommendation is fully observed.**
SR.V International co-operation	**LC**	**The reciprocity requirement could hinder international cooperation.** **The SC does not have powers to conduct inquiries on behalf of foreign counterparts.**
SR VI AML requirements for money/value transfer services	**LC**	**No requirement for money value transfer service operators to maintain a current list of their agents which must be made available to the designated authority.**
SR VII Wire transfer rules	**NC**	**There are no measures in place to cover domestic, cross-border and non-routine wire transfers.** **There are no requirements for intermediary and beneficial financial institutions handling wire transfers.** **There are no measures in place to effectively monitor compliance with the requirements of SR VII.**
SR.VIII Non profit organisations	**PC**	**No information was available for the Examiner's to gauge the size and risk of NPO activity.** **No evidence of review of the adequacy of laws and regulations that relate to NPOs.** **Specific guidance with regard to NPOs is enforceable only on banks and trust companies.** **Only friendly societies and foundations (by virtue of their secretaries) are included as**

		financial institutions under the FTRA.
SR IX Cash Couriers	**PC**	**The legal framework requiring the declaration of cross border transportation of cash or negotiable instruments is only applicable to travellers to the USA.** **The detection method used by the Authorities appears to have deficiencies as outlined by the Courts.** **Customs forms should clearly outline the obligations for the traveller to disclose the value of the sums being carried above a certain amount.**

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	No text required
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1, 2 & R.32)	• **Section 42(2) of the POCA should be amended to cure the deficiency noted at paragraph 132 of this Report.** • **The Draft Precursor Chemical legislation is not yet in place and should be enacted to bring the legislation in compliance with the requirements of the Vienna Convention.**

	• **The Bahamas should proceed to implement the provisions of the Palermo Convention.** • **The Bahamas should proceed to enact laws to deal with Migrant Smuggling and Human Trafficking to ensure compliance with the FATF list of Designated Categories of offences.**
Criminalisation of Terrorist Financing (SR.II, R.32)	• **The special unit to deal with terrorism within the Royal Bahamas Police Force should be established.** • **The Examiners considered that the ATA did provide for the criminalization of the financing of terrorism; however the fact that the scope of the crime of terrorism did not cover all of the conduct referred to in the Annex to the Terrorist Financing Convention constituted a serious shortfall that the Authorities should move to rectify.** • **The Bahamas should ensure that the offences of terrorism financing under the ATA extends to all of the offences specified in Article 2(5) of the Terrorist Financing Convention.**
Confiscation, freezing and seizing of proceeds of crime (R.3, R.32)	• **The Examiners considered the provisions of section 33(5) of the DDA, which permits the Minister of Finance to deal with forfeited property upon application by a person who indicates a moral claim. Whilst the Examiners consider that The Bahamas Government does retain a wide discretion to deal with property that has vested in the Crown, the Examiners considered that the terms of the DDA section 33 could be amended to make it clear that the Minister should only exercise the discretion in circumstances where the Minister is satisfied that the applicant was not involved in the criminal activity or any other criminal activity. The provisions of the section may also have to be reconciled with the provisions of the POCA section 52, which establishes the Confiscated Assets Fund.**
Freezing of funds used for terrorist financing (SR.III, R.32)	• **SR. III (E.C. III.2) requires that countries should have procedures to examine and give effect to actions initiated in other countries provided that there are reasonable grounds or a reasonable basis to freeze funds. Section 9(4) introduces different criteria in relation to freezing terrorist funds and an amendment should be considered.**

	• **The authorities should provide clarity, whether in the law or in the policies outlined by the Attorney General's Office as to the effect of section 17 of the ATA and section 6 of the MLA(CM)A, and consequently the basis upon which requests made under the ATA by foreign States would be addressed.** • **It is the view of the Examiners that the International Obligations (Economic and Ancillary Measures) Act would have been a pre-existing measure, with a particular focus on applying international economic sanctions against Nation States. It would not meet the focus of SR III as being a preventative measure that is necessary and unique in the context of stopping flows or the use of funds or other assets to terrorist groups. It is therefore recommended that the ATA should be amended to achieve compliance with the UNSCRs.** • **The Special Anti-Terrorism Unit should be established within the Royal Bahamas Police Force.** • **The language at section 9(7) of the ATA should be clarified to establish whether the period of 18 months is an absolute outer limit for freezing and the Authorities may wish to consider whether this is appropriate given the length of time that an offence under the ATA may take to reach to trial.**
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• **The FIU may wish to consider issuing a narrower set of guidelines, relating to suspicious transactions and Suspicious Transaction Reporting that can be included in the Guidelines issued by the various sub-sectors of the financial services industry**.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	• **Every effort should be made to reduce the length of time between arrest and a matter coming to trial which can in some instances in the Supreme Court be as long as six years. The 'Swift Justice' project is a good start and its effectiveness should be reviewed and measured on an ongoing basis to ensure all necessary measures are being taken to speed up the administration of justice.** • **The DPP should seek to recruit additional staff**

	especially at the senior level in order to strengthen the Department's capability. • **It is recommended that a legislative framework be put in place requiring the reporting of international wire transfers transactions, and the collection, recording and analysis of the information obtained.**
Cross-border declaration or disclosure (SR IX & R. 32)	• **The Government of The Bahamas should implement a more rigorous system of cross border disclosure and declaration, which meets the requirements of Special Recommendation IX. This can be achieved by way of an amendment to current legislation or enacting new legislation to address this issue.** • **A system should be implemented to collect, collate and analyze declarations of cross border transportation of cash or negotiable instruments. Ideally this could be achieved by means of a computerized system, which would allow authorities, possibly the FIU, to have ready access to the information and the ability to spot trends or make a query against a specific target.** • **Customs forms should clearly outline the obligations for the traveller to disclose the value of the sums being carried above a certain amount.**
3. Preventive Measures – Financial Institutions	
Risk of money laundering or terrorist financing	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• **Legislation should be enacted or amended to require that financial institutions undertake: CDD measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII; verify that any person purporting to act on behalf of legal persons or legal arrangements is so authorised and identify and verify the identity of that person; take reasonable measures to determine the natural persons that ultimately own or control legal persons or legal arrangements.** • **The legislative requirement for occasional transactions should be amended to cover all**

	occasional transactions that exceed $15,000 in value. • **The basis for the application of any reduced or simplified CDD measures for designated customers should be formally documented by the Authorities.** • **Regulations 4 and 5 of the FTRR concerning the verification of the identity of legal persons should be amended to require minimum mandatory requirements as in Regulation 3 rather than permitting discretion for all requirements.** • **The requirement for financial institutions to understand the ownership and control structure of legal persons or legal arrangements should be enforceable on all financial institutions.** • **Financial institutions should be required to ensure that documents, data or information collected under the CDD process are kept up-to-date.** • **The requirement for financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction should be enforceable on all financial institutions.** • **The exemption for insurance should be limited to life insurance policies with an annual premium of no more than $1,000 or a single premium of no more than $2,500.** • **Bahamian dollar facilities below $15,000 should not be exempted from full CDD measures.** • **All financial institutions except those already covered should be required to consider making a STR if it is unable to comply with CDD measures.** • **The requirements concerning PEPs detailed in the CBB AML/CFT Guidelines should be imposed on all other financial institutions.** • **Senior management approval should be required to continue a relationship with a**

	customer who is subsequently found to be a PEP or who subsequently becomes a PEP. • **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.** • **Requirements for policies and procedures to address specific risks associated with non- face to face business relationships and transactions should include ongoing due diligence and should be enforceable on all financial institutions.** • **Financial institutions should be required to gather sufficient information about a respondent institution to understand fully the nature of the respondent's business, the reputation of the institution and the quality of supervision.** • **Financial institutions should assess the respondent institution's AML/CFT controls and ascertain their adequacy and effectiveness.** • **Financial institutions should be required to obtain approval from senior management before establishing new correspondent relationships.** • **Financial institutions should document respective AML/CFT responsibilities in correspondent banking relationships.** • **Financial institution with correspondent relationships involving "payable-through accounts" should be required to be satisfied that the respondent financial institution has performed all normal CDD obligations on its customers that have access to the accounts and that the respondent institution can provide reliable customer identification data upon request.**
Third parties and introduced business (R.9)	• **All 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 purpose and intended nature of the business relationship. • **The present requirement for banks and trust companies to obtain copies of all documentation from third parties should be extended to all financial institutions.** • **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.** • **All financial institutions relying on third parties should be ultimately responsible for customer identification and verification.**
Financial institution secrecy or confidentiality (R.4)	• **The Authorities should move quickly to enact the legislation that will correct the deficiencies that exist with regard to the ability of the regulatory bodies to share information on a domestic basis as pointed out.** • **The new SIA should be finalized as soon as possible to allow the SC powers to compel information, and to share information with the FIU and the SIR should be amended to grant the SC powers to access bank accounts without a court order.** • **The requirement for a policyholder to consent to the Registrar of Insurance accessing his account information should be removed from the EIA.** • **Information exchange with domestic and foreign regulatory authorities should be formalized with the inclusion of information exchange provisions in the COSA, in line with other domestic Statutes. Section 74 of the COSA should be reviewed; and the Society, its officers, members, agents or employees should be required to provide the Inspector with wide access to accounts, securities or other documents required to allow the Inspector to perform his duties. The Director should reserve the right to inspect a Society on the basis of all applications received from members.**

Record keeping and wire transfer rules (R.10 & SR.VII)	• **The legislative provision for the cessation of the obligation to retain transaction records when corporate financial institutions are liquidated and finally dissolved or where financial institutions that were partnerships have been dissolved should be repealed.** • **The inclusion of the commencement of proceedings to recover debts payable on insolvency as a definition of termination of an account should be eliminated.** • **With regard to SR VII, The Bahamas is compliant with only the first criterion of the recommendation. See. Paragraph 662. It is recommended that the review of The Bahamas' legislative and regulatory provision take consideration of all requirements of the recommendation and appropriate legislation be enacted as soon as possible.**
Monitoring of transactions and relationships (R.11 & 21)	• **All financial institutions except those already covered should be required to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.** • **Financial institutions should be required to examine as far as possible the background and purpose of such transactions (i.e. all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose) and set forth findings in writing.** • **Financial institutions should be required to keep such findings (i.e. for all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose) available for competent authorities and auditors for at least five (5) years.** • **Financial institutions should be required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries, which do not or insufficiently apply the FATF Recommendations.**

	• **Effective measures should be in place to ensure that not only the registrants of the CC but all other financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.** • **Written findings of the examinations of transactions with persons from or in countries, which do not or insufficiently apply the FATF Recommendations that have no apparent economic or visible lawful purpose should be available to assist competent authorities.**
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• **The FIU should consider providing information on AML/CFT typologies in their annual report.** • **Measures should be taken to ensure that there is effective reporting by all financial institutions.**
Internal controls, compliance, audit and foreign branches (R.15 & 22)	**The Bahamas has taken substantive action in complying with the requirements of Recommendation 15. The following is recommended for full compliance:** • **Timely access to CDD information, transaction records and other relevant information should be extended to include both the compliance officer and other appropriate staff.** • **Requirements in the CBB AML/CFT Guidelines to establish and maintain internal procedures, policies and controls including the detection of unusual and suspicious transactions should be enforced on all financial institutions.** • **Financial institutions should be required to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with procedures, policies and controls.** • **Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees.** • **Most of the requirements of Recommendation 22 have been applied to banks and trust**

	companies. It is recommended that all financial institutions be required to: • **Ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations to the extent that local (i.e. host country) laws and regulations permit.** • **Pay particular attention that AML/CFT standards consistent with FATF Recommendations are observed with respect to their branches and subsidiaries in countries, which do not sufficiently apply the FATF Recommendations.** • **Where AML/CFT requirements of home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.** • **Inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures.**
Shell banks (R.18)	
The supervisory and oversight system - competent authorities and SROs (R. 23, 30, 29, 17, 32 & 25).	• **<u>Rec. 17</u>** • **The SC should have powers of sanction against a licensee or registrant who fails to comply with a directive. In addition, the process of applying sanctions requires simplification.** • **The IFCSP, Director of Societies and Registrar of Insurance should be granted more extensive administrative powers of enforcement against licensees, directors and senior officers for failure to comply with AML/CFT requirements. This is particularly relevant given the limited powers of the CC to compel registrants to comply with directives.** • **The "Minister", who has powers to cancel registrations under the EIA, should be defined in that Statute.** • **Non-compliance with the FTRA and**

	accompanying regulations should be a consideration for cancelling a registration under the IA and EIA. • **The IFCSP, Registrar of Insurance and Director of Societies should introduce ladders of supervisory intervention that are broad and proportionate.** • **<u>Rec. 23</u>** • **The SC should implement a system whereby exemption of investment funds is granted on the basis of proven CDD by promoters.** • **As licensing and supervisory authority, the functions of the Director of Societies should include responsibility for ensuring that licensees and registrants comply with the FTRA. This would facilitate enforcement action for non-compliance with AML/CFT requirements.** • **The Registrar of Insurance should be authorized by law to make arrangements with a person to assist with the execution of his functions.** • **Registered insurers under Part II of the IA should be required on an ongoing basis to seek the Registrar's prior approval for changes of directors and partners and beneficial share ownership over the ten percent (10%) threshold. In addition, the Registrar should be informed of changes in managers and officers of registered insurers and incorporated agencies.** • **Applications for FCSP licences should include information on beneficial shareholders of a significant or controlling interest so as to facilitate due diligence.** • **Fit and proper criteria should be defined by the Registrar of Insurance for EIA registrants; and strengthened in the case of the IFCSP.** • **The Bahamas is encouraged to finalize the revisions to the licensing and registration regime for stand-alone MVT service providers so as to strengthen their licensing and ongoing supervision, including monitoring of natural and legal persons.** • **<u>Rec. 29</u>** • **The exemption at section 29(7) of the SIA should be removed to ensure that all financial**

	institutions are at a minimum registered with the SC. • **The SC should have powers under the SIA similar to those at section 49(2) of the IFA, which allow for the appointment of an auditor to assist in examinations.** • **The Registrar of Insurance should be granted powers to conduct inspections without cause, with respect to the IA, and to appoint an auditor to assist in the execution of his functions.** • **The CC should formulate an offsite inspection programme to augment the onsite process. This could be of particular benefit when the CC moves away from annual onsite inspection cycles. In addition, the CC should develop procedures and criteria to trigger formal notification of substantive authorities when powers of enforcement and sanction need to be implemented.** • **The SIA should include provisions for access by the SC to information, and imposition of an obligation on licensees and registrants to provide the SC with any information required to fulfil its mandate.** • **The Director of Societies and the Registrar of Insurance (with respect to the EIA) should have general powers to compel production of records and other information, as deemed necessary.** • **The CBB and the CC should continue their efforts to all licensees/registrants.** • **The issuance of rules by the SC should be fully explored to facilitate enforcement of the guidelines; and both the SIA and the IFA amended to allow for action without a hearing.** • **<u>Rec. 30</u>** • **The SC and CC should consider revising their staff complement to meet the demands of their constituency base.** • **The Registrar of Insurance and to a lesser extent, IFCSPs should be granted more operational autonomy under their respective Statutes.** • **<u>Rec 32</u>**

	• **The SC should maintain statistics on FTRA focused examinations, and sanctions applied for non-compliance with AML/CFT requirements.**
Money value transfer services (SR.VI)	• **MVT service operators should be required to maintain a current list of their agents, which must be made available to the designated authority.** • **The Bahamas should implement the amendments to the legal framework as soon as possible to bring about full compliance with SR VI.**
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• **Dealers in precious metals and dealers in precious stones should be included as DNFBPs in the AML/CFT framework.** • **Ensure that the recommendations formulated for Recommendations 5, 6, 8-11, in Sections 3.2.2, 3.3.2, 3.5.2, 3.6.2 of this Report are also applied to the DNFBPs.** • **The Codes of Practice should be binding with sanctions for non-compliance.**
Suspicious transaction reporting (R.16)	• **The Bahamas should ensure that recommendations formulated for Recommendations 13, 15 and 21 in Sections 3.7.2; 3.8.2 and 3.6.2 of this Report are also applied to DNFBPs.**
Regulation, supervision and monitoring (R. 24-25)	• **<u>Rec. 24</u>** • **Non-compliance with the FTRA should constitute grounds for revocation of a licence under the LGA.** • **Sanctions and enforcement action under the LGA should be proportionate and dissuasive.** • **Consideration should be given to including in SRO codes of ethics/conduct, the need for members who are designated as financial institutions to conform to the requirements of the FTRA.**

	• **The BREA should institute an annual declaration for brokers who do not accept client funds.** • **<u>Rec. 25</u>** • **The FIU Guidelines for casino operators should be updated to preserve relevance to the existing legal and regulatory framework.** • **The revised Codes of Practice for DNFBPs should be finalized as soon as possible.**
Other designated non-financial businesses and professions (R.20)	
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	• **There should be a legal requirement for financial institutions to take reasonable measures to determine the natural persons that ultimately own or control legal persons.**
Legal Arrangements – Access to beneficial ownership and control information (R.34)	• **A new legislative framework for private trust companies was being proposed and this should be enacted as soon as practicable to further strengthen oversight of all legal arrangements.** • **There should be a legal requirement for financial institutions to take reasonable measures to determine the natural persons that ultimately own or control legal arrangements.**
Non-profit organisations (SR.VIII)	• **The Authorities should review the adequacy of the laws that relate to NPOs.** • **The requirements concerning NPOs in the CBB AML/CFT Guidelines should be enforceable on all financial institutions.** • **The Authorities should consider some of the additional measures in the Best Practices Paper to Special Recommendation VIII to ensure that funds or other assets collected by or transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations.**
6. National and International Co-operation	
National co-operation and coordination (R.31& 32)	• **The legislative reforms that have been proposed should be pursued as a matter of urgency in particular those that will expand the CBB's powers to share information. It may also be**

	useful for the Authorities to consider flexible approaches in terms of information sharing. In addition, the legislative amendments that will enhance co-operation powers of regulators will also be very useful in ensuring that resources are properly allocated. • **The Government of the Bahamas should establish some form of 'umbrella' group or committee that can review and make recommendations on AML/CFT matters. These recommendations would be at the policy level and from a strategic perspective using the statistics generated to assist in the decision making process.**
The Conventions and UN Special Resolutions (R.35 & SR.I)	• **The ATA should be extended to criminalize conduct referred to in the Conventions and Protocols that are named in the Terrorist Financing Convention but that are currently not named in the ATA.** • **The procedures for mutual legal assistance issued by the ILCU should be further improved to deal with the treatment of potential requests for information relating to suspected terrorism offences. The GFSR should include in its procedures manual the procedures that will apply in these cases, and particularly in cases of applications for freezing under the ATA.** • **The Bahamas has not ratified the Palermo Convention and should move to do.** • **The Bahamas should also move to criminalize a person's participation in an organized criminal group as required by the Convention and to extend the existing measures to cover this type of offence.** • **The ATA does not fully implement UNSCR 1267 insofar as the Bahamian Authorities may not designate an entity as a terrorist entity or freeze its assets solely upon the designation being issued by the relevant UN Security Council Committee. The ATA should be amended to effect full compliance.** • **The ATA does not fully implement UNSCR 1373 insofar as the Bahamian Authorities may not in all cases effect the freezing of terrorist funds without delay as required by UNSCR**

	1373, because of the separate procedural requirements of the ATA in respect to listing and freezing applications. The requirements in the ATA for reciprocity as a pre-condition for effecting freezing of assets may not constitute "*…the greatest measure of assistance* …" as contemplated by paragraph 2(f) of the Security Council Resolution. The Authorities may also wish to establish offences relating to dealing with the property of a listed entity.
Mutual Legal Assistance (R.32, 36-38, SR.V)	• **With regard to Recommendation 36, the ILCU should incorporate into their manual of procedures relating to mutual legal assistance matters, guidance with regard to the procedures that will be applicable when a request is made for freezing pursuant to section 9 of the ATA. This would be useful in providing a legal interpretation as to the effect of section 17 of the ATA and section 6 of the MLA(CM)A.** • **The Authorities may wish to clarify in the law, the effect of section 3(1) of the ML(CM)A.**
Extradition (R.37, 39, SR.V, and R.32)	
Other Forms of Co-operation (R. 40, SR.V & R.32)	• **The Registrar of Insurance and the Director of Societies should be granted powers to compel production of information under the EIA and COSA, respectively in order to effectively facilitate international cooperation.** • **The legislation for the SC should be fast tracked to allow for stronger information gathering powers. The SC may also wish to establish MOUs for the sharing of information with overseas counterparts.** • **The SC should have power similar to the CBB to access records of its licensees and registrants.** • **All regulatory authorities should have the power to conduct inquiries on behalf of foreign counterparts.**
7. Other Issues	
Other relevant AML/CFT measures or issues	
General framework – structural issues	

Table 3: Authorities' Response to the Evaluation

RESPONSE BY THE BAHAMAS
TO THE CFATF MUTUAL EVALUATION REPORT

1. The Government and people of The Bahamas, wish to thank the CFATF Secretariat, the Examiners and their respective countries for the efforts undertaken by them all in producing a mutual evaluation report for The Bahamas. The work on a mutual evaluation report is not only taxing for the country being examined, but it is also a considerable undertaking for Examiners.

2. The Bahamas recognises the vital importance of the mutual evaluation process, not only as a barometer of the prudential health of our financial regulatory regime, but also as a bell-weather of that health, signalling to all in the international community the state of enforcement of the international norms for anti-money laundering and combating the financing of terrorism. For this reason, it is vitally important that these reports are as accurate as they can be, because they all have potential international and domestic consequences.

3. The Bahamas accepts that, as with any jurisdiction, there is work to be done to bring legislation, guidelines and practices up to the ever-changing standards of "best practice".

4. Within weeks of the Assessment visit, a number of actions were taken including:

    - Updated Codes of Conduct from the Compliance Commission on risk-based KYC were published on July 24th 2006 for the industries that they examine and can be found on the Commission's web-site (see Report para 937).

    - The Securities Commission formally adopted the Central Bank's AML/CFT Guidelines at its July 2006 Board meeting. The Guidelines have been put on the Commission's website and a copy sent to the Commission's registrants.

    - A draft letter of assurance was also sent by the Securities Commission to IOSCO**.** It confirms, among other things, that The Central Bank of The Bahamas will continue to use its powers to assist the Commission to meet international requests for co-operation. The parties thereto are in the process of finalizing one technical issue and it is expected that there will be a final letter in the very near future. The letter is part of the wider dialogue between The Bahamas, IOSCO and the Financial Stability Forum about future international co-operation.

    - The Central Bank set a deadline of 30th September 2006 by which all domestic banks were to have completed their verification of accounts of customers who existed at end-2000 or terminate/freeze the accounts until verification was completed. The Report noted (para. 477) that at the time of the visit only 4.5% of the value of total accounts still remained outstanding; these were resolved by 30th September 2006.

5. Several other changes were also effected, of which we would note particularly:

- Legislative changes in 2007 to-

  - give the Securities Commission the same powers as those already possessed by the Central Bank (which were found fully sufficient by the Assessors) to compel the production of information by any person; and

  - to enhance the co-operation and exchange of information between domestic regulators.

- The amendment, as recommended by the Examiners of the Proceeds of Crime Act to clarify the provision affording a possible defence to the charge of acquiring, using or having possession of the proceeds of criminal conduct.

- Publication by the Central Bank in March 2007 of the draft amendments and regulations on stand-alone money transfers businesses (MTBs); the report recommends action in this area in para. 951.

- Publication, also in March 2007, of updated FIU Guidelines.

6. The Report has been accepted by the Plenary and approved at the Ministerial meeting of the Caribbean Financial Action Task Force. As with other reports, there are differing points of view between the Examiners and the examined country. The Bahamas considers that it has an effective AML/CFT regime which has been properly implemented.

7. The Bahamas remains committed to the mutual evaluation process and to ensuring that our anti-money laundering and combating the financing of terrorism regime complies with international best practices and the 40+9 Recommendations and Special Recommendations of the Financial Action Task Force.

ANNEXES

Annex 1: List of abbreviations
Annex 2: Details of all bodies met on the on-site mission – Ministries, other government authorities or bodies, private sector representatives and others
Annex 3: Copies of key laws, regulations and other measures
Annex 4: List of all laws, regulations and other material received

Annex 1

LIST OF ABBREVIATIONS

ACB	Association of Clearing Banks
AIBTC	Association of International Banks and Trust Companies
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
ASBA	Association of Banks of the Americas
ATA	Anti-Terrorism Act, 2004
BACO	Bahamas Association of Compliance Officers
BBA	Bahamas Bar Association
BFSB	Bahamas Financial Services Board
BICA	Bahamas Institute of Chartered Accountants
BISX	Bahamas International Securities Exchange
BREA	Bahamas Real Estate Association
BTCRA	Bank and Trust Companies Regulations Act, 2000
CA	Companies Act, 1992
CALP	Caribbean Anti-Money Laundering Programme
CBB	Central Bank of The Bahamas
CBBA	Central Bank of The Bahamas Act, 2000
CC	Compliance Commission
CCU	Commercial Crime Unit
CDU	Central Detective Unit
CDB	Caribbean Development Bank
CFATF	Caribbean Financial Action Task Force
CGBS	Caribbean Group of Banking Supervisors
CID	Criminal Investigation Division
CJ(IC)A	Criminal Justice (International Cooperation) Act,
CJ(IC)(EOFO)O	Criminal Justice (International Cooperation)(Enforcement of Overseas Foreign Orders)Order
COSA	Cooperatives Societies Act, 2005
DDA	Dangerous Drugs Act, 2000
DEA	Drug Enforcement Administration
DEU	Drug Enforcement Unit
DNFBI	Designated Non-Bank Financial Institutions
DBFBPs	Designated Non-Financial Businesses or Professions
EA	Extradition Act, 1994
ECA	Exchange Control Act
ECR	Exchange Control Regulations
EIA	External Insurance Act, 1983
FA	Foundations Act, 2004
FATF	Financial Action Task Force
FCSPA	Financial and Corporate Service Act, 2000
FCSP	Financial and Corporate Service Providers
FIBA	Florida International Bankers Association
FIU	Financial Intelligence Unit
FIUA	Financial Intelligence Unit Act, 2000
FSA	Friendly Societies Act, 1835
FSI	Financial Stability Institute

FSRRC	Financial Services Regulatory Reform Commission
FITRR	Financial Intelligence (Transaction Reporting) Regulations, 2001
FTRA	Financial Transactions Reporting Act, 2000 as amended
FTRR	Financial Transaction Reporting Regulations, 2000
GAFISUD	Grupo de Accion de Finanaciere de Sud America
GB	Gaming Board
GFSR	Group of Financial Sector Regulators
IA	Insurance Act
IAA	Insurance (Amendment) Act, 2001
IADB	Inter-American Development Bank
IBC	International Business Companies
IBCA	International Business Companies Act, 2000
ICA	International Compliance Association
IFA	Investments Funds Act, 2003
IFCSPs	Inspector Financial and Corporate Service Providers
IFR	Investments Funds Regulations, 2003
ILCU	International Legal Cooperation Unit
IMF	International Monetary Fund
IO(EAM)A	International Obligations (Economic and Ancillary Measures) Act
IOSCO	International Organisation of Securities Commission
IRR	Insurance (Registration) Regulations
JPA	Justice Protection Act, 2000
LAR	Licence Application Regulations, 2002
LGA	Lotteries and Gaming Act
MLAT	Mutual Legal Assistance Treaty
MLA(CM)A	Mutual Legal Assistance (Criminal Matter) Act, 1988
MLRO	Money Laundering Reporting Officer
MVT	Money Value Transfer
NPO	Non-Profit Organisation
OAS	Organisation of American States
OECD	Organisation for Economic Cooperation and Development
OGCISS	Offshore Group of Collective Investments Scheme Supervisors
OPBAT	Operation Bahamas Turks & Caicos Island
OSFI	Office of the Superintendent of Financial Institutions
PAA	Public Accountants Act
POCA	Proceeds of Crime Act, 2000
POCO	Proceeds of Crime (Designated Countries and Territories) Order, 2001
PTA	Purpose Trust Act
REBSA	Real Estate (Brokers and Salesmen) Act, CAP 171
SC	Securities Commission
SIA	Securities Industry Act, 1999
SIAA	Securities Industry (Amendment) Act, 2001
SIR	Securities Industry Regulations, 2000
SRO	Self-Regulatory Organisation
STR	Suspicion Transaction Report
STEP	Society of Trust and Estate Practitioners
T&F/MLIS	Tracing and Forfeiture Money Laundering Investigation Section
TIEA	Tax Information Exchange Agreement
TOA	Transfer of Offenders Act
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office of Drug Control
UNSCR	United Nations Security Council Resolution
WB	World Bank
WCO	World Customs Organisation

Annex 2

Details of all bodies met on the Mission – Ministries, other government authorities or bodies, private sector representatives and others

Ministries

Ministry of Legal Affairs
- Office of the Attorney General
- Department of the Director of Public Prosecutions (DPP)
- Registrar General/Inspector
- International Legal Cooperation Unit (ILCU)

Ministry of National Security
- The Commissioner of Police
- The Tracing & Forfeiture/Money Laundering Investigation Section
- The Drug Enforcement Unit
- The Commercial Crime Unit
- The Central Detective Unit
- Royal Bahamas Defence Force

Ministry of Finance
- Minister of State for Finance
- Compliance Commission

Ministry of Financial Services and Investments

2 Operational Agencies

Financial Intelligence Unit
Customs Department

3 Financial Sector – Government

Central Bank of The Bahamas
- Bank Supervision Department

Securities Commission and the GFSR
Department of Cooperative Development
Registrar of Insurance Companies
Bahamas Cooperative Credit Union League
Bahamas International Security Exchange
Bahamas Financial Services Board

4. Financial Sector – Associations and Private Sector entities

- Association of International Banks and Trust Companies
- Association of Clearing Banks
- First Caribbean
- Ansbacher Bank

- Colonial Imperial Insurance Company
- Family Guardian Insurance Company
- Swiss Financial Services (Bahamas) Ltd.
- Fidelity Merchant Bank & Trust Ltd. & Western Union
- SG Hambros
- Price Waterhouse Coopers
- Atlantis Casino

5. DNFBPs – Government and SROs

- Gaming Board
- Bahamas Association of Compliance Officers
- Bahamas Institute of Chartered Accountants
- Bahamas Real Estate Association
- Bahamas Bar Association

Annex 3

PART V (Proceeds of Crime Act, 2000)
MONEY LAUNDERING
Offences

40.(1) A person is guilty of an offence of money laundering if he -

(a) uses, transfers, sends or delivers to any person or place any property which, in whole or in part directly or indirectly represents his proceeds of criminal conduct; or

(b) disposes, converts, alters or otherwise deals with in any manner and by any means that property,

with the intent to conceal or disguise such property.

(2) A person is guilty of an offence of money laundering if, knowing, suspecting or having reasonable grounds to suspect that any property in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he -

(a) uses, transfers, sends or delivers to any person or place that property; or

(b) disposes of or otherwise deals with in any manner by any means that property,

with the intent to conceal or disguise such property.

(3) In this section the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

41.(1) Subject to subsection (3), a person is guilty of an offence if he enters into or is otherwise concerned in an arrangement whereby -

(a) the retention or control by or on behalf of another person ("A") of A's proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or

(b) A's proceeds of criminal conduct -

(i) are used to secure that funds are placed at A's disposal; or

(ii) are used for A's benefit to acquire property,

and he knows, suspects, or has reasonable grounds to suspect that A is a person who is or has been engaged in or has benefited from criminal conduct.

(2) Where a person discloses in good faith to a police officer a suspicion or belief that any funds or property are derived from or used in connection with criminal conduct, or any matter on which such a suspicion or belief is based -

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any civil liability; and

(b) if he does any act in contravention of subsection (1) and the

disclosure relates to the arrangement concerned, he does not commit an offence under this section if -
(i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer; or
(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.
(3) In proceedings against a person for an offence under this section, it is a defence to prove -
(a) that he did not know, suspect or have reasonable grounds to suspect that the arrangement related to any person's proceeds of criminal conduct;
(b) that he did not know, suspect or have reasonable grounds to suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1)(b); or
(c) that -
(i) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (2) in relation to the arrangement, but
(ii) there is reasonable excuse for his failure to make any such disclosure in the manner mentioned in subsection (2)(b).
(4) In the case of a person who was in employment at the time in question, subsections (2) and (3) shall have effect in relation to disclosures and intended disclosures to the appropriate person in accordance with any procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.

42.(1) A person is guilty of an offence if, knowing, suspecting or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.
(2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.
(3) For the purposes of subsection (2) -
(a) a person does not acquire property for adequate consideration if the value of the consideration is significantly less than the value of the property; and
(b) a person does not use or have possession of property for adequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

(4) The provision for any person of services or goods which are of assistance to him in criminal conduct shall not be treated as consideration for the purposes of subsection (2).

(5) Where a person discloses information to a police officer in good faith that any property is, or in whole or in part directly or indirectly represents the proceeds of criminal conduct -

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any civil liability; and

(b) if he does any act in relation to the property in contravention of subsection (1), he does not commit an offence under this section if -

(i) the disclosure is made before he does the act in question and the act is done with the consent of the police officer; or

(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

(6) For the purposes of this section, having possession of any property shall include doing an act in relation to it.

(7) In proceedings against a person for an offence under this section, it is a defence to prove that he intended to disclose to a police officer such a belief or matter as is mentioned in subsection (5) and there is reasonable excuse for his failure to make any such disclosure in the manner mentioned in subsection (5) (b).

(8) In the case of a person who was in employment at the time in question, subsections (5) and (7) shall have effect in relation to disclosures and intended disclosures, to the appropriate person in accordance with any procedure established by his employer as they have effect in relation to disclosures, and intended disclosures, to a police officer.

(9) No police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other statutory provision relating to drug trafficking or relevant offences or the proceeds of criminal conduct.

43.(1) Where a person in good faith discloses to a police officer -

(a) his suspicion or belief that another person is engaged in money laundering; or

(b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise and shall not give rise to any civil liability.

(2) A person is guilty of an offence if -

(a) he knows, suspects or has reasonable grounds to suspect and fails to disclose to the Financial Intelligence Unit or to a police officer that another person is engaged in money laundering which relates to any proceeds of drug trafficking or any relevant offence;
(b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and
(c) he does not disclose the information or other matter to a police officer as soon as is reasonably practicable after it comes to his attention.
(3) A person shall not be required under subsection (2) to disclose information or to produce a document which he would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege except that a counsel and attorney may be required to provide the name and address of his client or principal.
(4) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.
(5) Any disclosure made by a person who was in employment at the time in question to the appropriate person in accordance with any procedure established by his employer shall be treated, for the purposes of this section, as a disclosure to a police officer.
(6) For the purposes of this section, any information or other matter comes to a counsel and attorney in privileged circumstances if it is communicated or given to him -
(a) by, or by a representative of, a client of his in connection with the giving by the counsel and attorney of legal advice to the client;
(b) by, or by a representative of, a person seeking legal advice from the counsel and attorney; or
(c) by any person -
(i) in contemplation of, or in connection with, legal proceedings; and
(ii) for the purpose of those proceedings;
but no information or other matter shall be treated as coming to a counsel and attorney in privileged circumstances if it relates to criminal conduct or is communicated or given with a view to furthering any criminal purpose.

Annex 4

List of all Laws, Regulations and other Material received

1. Proceeds of Crime Act, 2000.
2. Proceeds of Crime (Designated Countries and Territories) Order, 2001.
3. Financial Transaction Reporting Act, 2000.
4. Anti-Terrorism (Financial and Other Measures) Act, 2004.
5. Financial Intelligence Unit Act, 2000.
6. Central Bank of The Bahamas Act.
7. Criminal Justice (International Co-operation) Act, 2000.
8. International Business Companies Act, 2000.
9. International Business (Amendment) Act, 2004.
10. Extradition Act, 1994.
11. Extradition (Application to the United States) Order, 1994.
12. Exchange Control Act.
13. Exchange Control Regulations.
14. Dangerous Drugs Act, 2000.
15. International Obligations (Economic and Ancillary Measures) Act, 1993.
16. Foundation Act, 2004.
17. Foundation (Amendment) Act, 2005.
18. Public Disclosure Act.
19. Firearms Act.
20. Listening Devices Act.
21. Bank and Trust Companies Act.
22. Trustee Act, 1998.
23. Trustee (Amendment) Act, 2004.
24. Central Bank (Overseas Regulatory Authority) Order, 2001.
25. Purpose Trust Act, 2004.
26. Purpose Trust (Amendment) Act, 2005.
27. External Insurance Act.
28. Domestic Insurance Act.
29. Securities Industry Act.
30. Investment Funds Act.
31. Financial and Corporate Service Providers Act.
32. Lotteries and Gaming Act, 1969
33. Lotteries and Gaming Board (Amendment) Act, 2001.
34. Real Estate Salesman Act.
35. Section 89 & 90 Penal Code, Chapter 84.
36. FIU Annual Reports 2001 – 2004.
37. FIU Audited Financial Statements 2001 – 2004.
38. FIU Statistics
39. Bahamas Financial Services Board 2005 Annual Report.
40. Compliance Commission Agency Overview.
41. Constitutional Amendments relative to the Director of Public Prosecutions, Art.92A, paragraph 7
42. Bowe & Davis – Privy Council Appeal No. 44 of 2005
43. Major – Const. Appeal No. 14 & 15 of 2005
44. Lewis – MC Cr App. No. 32 of 2005

45. Kerr et. al – Court of Appeal, Criminal Appeal No. 18/1999, 19/1999 & 20/2000.
46. The Attorney General & C.O.P. vs. Rolle – Supreme Court Criminal Side No. 1276 of 1996.
47. Culmer vs. C.O.P. – Supreme Court No. 38/1992.
48. Government of Denmark vs. Neilson (1984) 2 All ER, Page 81.
49. Rey vs. The Government of Switzerland and Others.
50. (In the Matter of Articles 15, 20, 21, & 27 of The Constitution of The Bahamas and In The Matter of the Financial Intelligence Unit Act, 2000). The Attorney General vs. Financial Clearing Corporation, Ct. of App. No. 70 of 2001.
51. (In the Matter of the Criminal Justice (International Cooperation) Act, 2000 and In the Matter of Order 65 Rules of the Supreme Court and In the Matter of a Request for Assistance from the Federal Prosecutor, of the Office of the National Prosecutor in Federal, Criminal, and Correctional Matters, The Republic of Argentina.) Attorney General vs. Lucini et. al. Supreme Court No. 854 of 2001.
52. Attorney General vs. Capital Management International et. al. Supreme Court No. 785 of 2000.
53. Suisse Security Bank & Trust Ltd. vs. Francis (in the capacity of the Governor of the Central Bank of The Bahamas).
54. Statistics on Money Laundering convictions in the last three (3) years.
55. A comparison study of the Bahamian Legislation and the FATF Designated Category of Offences.
56. Extradition – Bahamians surrendered/extradited in the past three (3) years.
57. Formal note on the 'Swift Justice' Project, polices and objectives.
58. Prescribed Quarterly Judicial Training days.
59. 'Conduct Test' – Extradition
60. Office of the Attorney General – List of Officers who received training.
61. Bahamas Real Estate Association (BREA) booklet and list of members and addresses.
62. Organisational Chart for the Securities Commission of The Bahamas.
63. Statistics on staff compliment of the Securities Commission.
64. Training Schedule for the Securities Commission Employees 2002 – 2005.
65. Statistics on Registrants and Licensees of the Securities Commission.
66. Information on Onsite Inspection of the Securities Commission including a sanitized report and the Inspection Programmes for Banks & Trust Companies, Mutual Fund Administrators, Offshore Broker-Dealers, Local Broker-Dealers and Security Investment Advisors.
67. Memo from the Securities Commission on outstanding legal queries.