



GRUPO DE ACCION
FINANCIERA DEL
CARIBE

Cuarto Informe de Seguimiento

Bermuda

22 de Noviembre de 2013

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EVALUACION MUTUA DE BERMUDA: CUARTO INFORME DE SEGUIMIENTO

Solicitud para pasar de un seguimiento regular a las actualizaciones bienales

Decisión clave: ¿la sesión Plenaria está de acuerdo que Bermuda ha tomado las medidas adecuadas para ser trasladado de un seguimiento regular a la actualización bienal?

I. INTRODUCCIÓN

1. El Informe Detallado de Evaluación (DAR) sobre Bermuda de la tercera ronda fue adoptado por el Consejo de Ministros del GAFIC en noviembre de 2007 en Costa Rica y el país fue colocado en un proceso de seguimiento regular. Bermuda informó a la Plenaria del GAFIC en mayo de 2009 ([Bermuda 1er informe de seguimiento](#)) y se mantuvo en el seguimiento regular sobre la base de que , con las nuevas leyes promulgadas y la modificación de las ya existentes , algunas de las Recomendaciones Esenciales, Clave y Otras aún quedaban pendientes. Bermuda informó a la Plenaria del GAFIC en mayo de 2011 (Segundo informe de seguimiento) y se mantuvo de nuevo en un proceso de seguimiento regular y fue dirigido a informar en mayo de 2013 sobre la base de que, después de haber promulgado más enmiendas a las leyes existentes , algunas Recomendaciones Esenciales, Clave y Otras quedaban pendientes y había la necesidad de demostrar la implementación efectiva, en particular con dichas Recomendaciones Esenciales y Clave. En mayo de 2013 Bermuda informó a la Plenaria del GAFIC (tercer informe de seguimiento de Bermuda), presentó un plan de acción (véase el apéndice 1) y manifestó su intención de solicitar la eliminación del seguimiento regular en la Plenaria de noviembre de 2013.
2. Este informe está elaborado de acuerdo con el procedimiento para la eliminación del seguimiento regular a la actualización bienal, que se detalla en el párrafo 67 del Programa de Evaluación Mutua del GAFIC - Procesos y Procedimientos del 02 de mayo, 2007 (Modificado). Contiene una descripción y un análisis detallado de las medidas tomadas por parte de Bermuda para rectificar las deficiencias observadas en las Recomendaciones Esenciales y Clave asignadas la calificación de incumplimiento (NC), parcialmente cumplido (PC) y mayormente compatible (MC) y una descripción y análisis de las otras Recomendaciones clasificadas PC y NC. Para que un país puede sea considerado para la eliminación de un seguimiento regular *la Plenaria considerará que el País Evaluado ha tomado medidas significativas, cuenta con un sistema eficaz ALD / CFT vigente, bajo el cual ha implementado las Recomendaciones “Esenciales y Clave” a un nivel esencialmente equivalente a una calificación de C o MC, teniendo en cuenta que no habría ninguna otra asignación de calificación.*
3. También se presta atención a la decisión de la Plenaria de noviembre 2012 que todos los países en el seguimiento regular deben lograr avances sustanciales en las reformas de las recomendaciones pendientes en sus IEM y, en todo caso, para cumplir plenamente con las Recomendaciones Esenciales y Clave e informar al ICRG GAFIC en noviembre de 2013.
4. Bermuda recibió calificaciones de PC o NC en ocho (8) de los dieciséis (16) Recomendaciones Principales y Clave como sigue:

Tabla 1: Calificaciones para las Recomendaciones Esenciales y Clave

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

5. Con respecto a las demás Recomendaciones que no son ni Esenciales ni Clave, Bermuda recibió la calificación de Parcialmente Cumplida o No Cumplida de la siguiente forma:

Tabla 2: ‘Otras Recomendaciones calificadas como PC y NC

Parcialmente Cumplida (PC)	No Cumplida (NC)
R. 14 (Protección y no delación (tipping-off)).	R. 6 (Personas Expuestas Políticamente).
R. 15 (Controles internos, cumplimiento y auditoría).	R. 7 (Banca corresponsal).
R. 17 (Sanciones).	R. 8 (Las nuevas tecnologías y las operaciones donde no media una presencia física entre las partes).
R. 25 (Lineamientos y Realimentación).	R. 9 (Terceros e intermediarios introductores).
R. 29 (Supervisores).	R. 11 (Transacciones inusuales).
R. 30 (Recursos, integridad y capacitación).	R. 12 (APNFD–R.5, 6, 8–11).
R. 31 (Cooperación nacional).	R. 16 (APNFD–R.13–15 y 21).
R. 32 (Estadísticas).	R. 21 (Atención especial para los países de mayor riesgo).
RE. VI (Requisitos ALD para los servicios de transferencia de dinero/valor).	R. 22 (Sucursales y filiales extranjeras).
RE. VIII (Organizaciones sin fines de lucro).	R. 24 (APNFD – regulación, supervisión y monitoreo).
	RE. VII (Normas para las transferencias cablegráficas).
	RE. IX (Declaración y Revelación en el Cruce de Fronteras).

6. La tabla que se inserta a continuación persigue como objetivo ayudar a ofrecer una introspección sobre el nivel de riesgo de los principales sectores financieros en Bermuda:

Tabla 3: Dimensiones e integración del sector financiero de Bermuda a septiembre de 2013

		Banks	Otras Instituciones de Crédito	Fondos de Inversión	Seguros	TOTAL
Cantidad de Instituciones	Total #	4	1	712	970	1687
Activos	US\$	\$23.5b	6,592,978 Ver nota 3	\$190.4b		\$665.91bn
Depósitos	Total: US\$	\$19.90bn	5,443,211 Ver Nota 3			\$19.91bn
	% No-residentes	Ver Nota 1	Ver Nota 3			
Vínculos Internacionales	% de propiedad Extranjera	Ver Nota 2	Ver Nota 3	Ver Nota 4	Ver Nota 5	
	# Filiales en el extranjero	6	NA	Ver Nota 4	Ver Nota 6	

Estadísticas bancarias del 1er trimestre de 2013 (Del Regulatoria BMA Actualización julio 2013)

Fondos de Inversión hasta el 1er trimestre de 2013 (Del Regulatoria BMA Actualización julio 2013)

Estadísticas de Seguros del informe anual del BMA del ejercicio 2012 para el año 2011.

Tabla 4: Definición de las siglas utilizadas en este informe de seguimiento

SIGLAS	DEFINICIÓN
POCA	Proceeds of Crime Act 1997 (Ley de Activos del Crimen 1997)
RA	Revenue Act 1898 (Ley de Ingresos)
IA	Insurance Act of 1978 (Ley de Seguros 1978)
T(RTB)A	Trusts (Regulation of Trust Business) Act 2001 (Ley de Fideicomisos (Regulación de Servicios de Fideicomisos)) 2001
CSP Act	Corporate Service Provider Business Act 2012 (Ley de Empresas de Proveedores de Servicios Corporativos)
SEA	
IBA	Investment Business Act 2003 (Ley de Inversión Empresarial)
AML/ATF Regulations	Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (Regulaciones de Activos del Crimen 2008 (Anti Lavado de Activos y Contra el Financiamiento del Terrorismo)
CSP	Corporate Service Providers (Proveedores de Servicios Corporativos)
BMA	Bermuda Monetary Authority (la Autoridad Monetaria de Bermuda)
ALA/CFT	Anti-money laundering /Anti -terrorism financing (Anti lavado de Activos/ Contra el Financiamiento del Terrorismo)
BDCA	Banks and Deposit Companies Act 1999, (Ley de Bancos y Compañías de Depósitos.)
R(A)A 3	Revenue Amendment Act 2012:3 (Ley de Ingresos (Enmienda))
R(A)A 16	Revenue Amendment Acts 2012:16 (Leyes de Ingreso Enmiendas)
ATFA	Anti-Terrorism (Financial and Other Measures) Act (Ley Contra el Terrorismo (Medidas Financieras y Otras)

PRINCIPAL CONCLUSIÓN Y RECOMENDACIONES A LA PLENARIA

Recomendaciones Esenciales y Clave

7. La acción legislativa reciente de Bermudas parece haber abordado todas las deficiencias en las Recomendaciones Esenciales y Clave 13, II, IV, 3, 36 y RE.III. Para la REC 35 y RE.I, aunque se ha promulgado la legislación doméstica para dar efecto a los distintos artículos, las Convenciones todavía no han sido extendidas a las Bermudas.

Otras Recomendaciones

8. Bermuda ha hecho progreso suficiente para cerrar las Recomendaciones 7, 8, 17, 22 y 25, RE.VI, REVII y REIX. También se han realizado progresos significativos con todas las otras Recomendaciones.

Conclusiones

9. La tupidéz de la Ley de *Activos del Crimen y las Medidas Relacionadas Enmienda de 2013* y la Ley de Crimen Transnacional Organizado 2013 ha impedido la realización de un análisis detallado de las disposiciones. Aunque un breve análisis inicial ha demostrado que las disposiciones aparecen satisfacer las deficiencias pendientes de la Recomendaciones Esenciales, Clave y hasta las Otras, el Reino Unido aún no ha extendido la Convención a las Bermudas.
10. Por lo tanto, se recomienda que la Plenaria aplaze una decisión sobre si deben quitar a las Bermudas de seguimiento regular a Actualizaciones bienales hasta la Plenaria de mayo de 2014.

II. RESUMEN DEL AVANCE ALCANZADO POR BERMUDA

Resumen de los cambios principales desde la aprobación del DAR

11. Desde la publicación del MER en 2007, Bermuda ha propuesto reforzar su marco legislativo ALD / CFT a través de la promulgación de la Ley Anti - Terrorismo (Medidas Financieras y de Otro Tipo) de 2004, Ley de Productos del Delito de 1997, Ley de Productos del Delito Enmienda 2007 y Ley de Ingresos 1998. Un nuevo Reglamento sobre Productos del Delito (Anti Lavado de Dinero contra el Financiamiento del Terrorismo) fue promulgado para reemplazar el Reglamento sobre Productos del Delito (Lavado de Dinero) 1998, que estaba en vigor en el momento de la Evaluación Mutua. Además, con el fin de tomar las medidas necesarias que exigían a la Autoridad Monetaria de Bermuda y otros organismos profesionales designados para adoptar medidas que puedan garantizar el cumplimiento con el reglamento establecido bajo la Ley de Productos del Delito 1997 y la Ley Anti Terrorismo (Medidas Financieras y de Otro Tipo) de 2004, y también para proporcionar poderes para imponer sanciones civiles , entre otras cosas , la Ley del Reglamento sobre Productos del Delito (Supervisión e Implementación) 2008 (SEA) fue promulgada . La Orden Anti - Terrorismo, que especifica los tipos de empresas que pertenecen al sector regulado fue promulgada y el reglamento sobre transferencias electrónicas fue promulgado. Se pusieron en vigor nuevas Notas Directrices el 27 de marzo de 2009. Bermuda sustituyó a la Unidad de Investigación Financiera, que era un organismo del Servicio de Policía de Bermuda, con la Agencia de Inteligencia Financiera. Además, la Ley de Ingresos 1898 (RA), la Ley de Seguros de 1978 (IA), La Ley de Bancos y Compañías de Depósitos 1999 (BDCA), La Ley de Inversión Empresarial 2003 (IBA) y la Ley de (Regulación de Servicios de Fideicomisos) Fideicomisos 2001 (T (RTB) A). Bermuda también ha promulgado nueva legislación en la forma de la Ley de Empresas de Proveedores de Servicios Corporativos 2012 (CSP Act).). La ley de la CSP entro en vigor el 01 de enero de 2013 y se pretende regular las empresas de proveedores de servicios corporativos empresariales y también para proteger a los intereses de los clientes y clientes potenciales de las personas que operan empresas de proveedor de servicios corporativos. La ley de CSP requiere que los Proveedores de servicios corporativos estén licenciados con, y estén bajo la supervisión de la BMA. Esta acción asegura que un régimen prudencial y de ALA/CFT para los CSPs, bajo los auspicios de la BMA, similar a la que ya estaba establecida para la industria de fideicomisos, no sólo mejorará la eficiencia del proceso de formación corporativa, pero también es consistente con las normas internacionales de mejores prácticas para el sector.

12. Mediante la Orden de Designación Activos del Crimen (Supervisión y Ejecución de Anti Lavado de Activos y la Lucha Contra el Financiamiento del Terrorismo) 2012, Bermuda, en agosto de 2012, estableció una nueva autoridad de supervisión en la forma de la Junta de Abogados y Contadores Anti lavado de Activos y Lucha contra el Financiamiento del Terrorismo (la Junta) para empresas de servicios legales y contable, es decir "Empresas profesionales reguladas". Por lo tanto "profesionales independientes", es decir, las personas que operan empresa de servicios legales y de contabilidad tienen ahora han sido colocados bajo el alcance de las Regulaciones de ALA/CFT y son por lo tanto "personas relevantes" en virtud del **r. 2(1) y 4 (b)** de dicho Reglamentos de ALA/CFT. También, durante el 2012, el Ministro de Justicia aprobó las Notas Directrices para los Sectores Legales y Contables.
13. Las Bermudas promulgó la Ley de Activos del Crimen y las Medidas Relacionadas Enmienda 2013 y la Ley de Crimen Transnacional Organizado en septiembre de 2013. Estas leyes fueron asintidas el 04 de octubre de 2013 y entraron en vigor el 08 de noviembre de 2013. Estas leyes modificaron la POCA, la ATFA y legislación relacionada con el fin de fortalecer el marco de ALA/CFT. Dicha legislación también, entre otras cosas, incorporó las disposiciones de la Convención de Palermo y los Convenios de SFT en el marco legislativo nacional para abordar brechas y para permitir la extensión de dichos Convenios a las Bermudas por el Reino Unido. Además se han efectuado cambios adicionales a la POCA (Activos del Crimen Enmienda (Nº 2) 2013) (POCA 2 Enmienda 2013) para incorporar disposiciones para un Régimen de Recuperación de Activos Civil para mejorar aun y fortalecer el marco de ALA/CFT.

III. EXAMEN DE LAS MEDIDAS ADOPTADAS EN RELACIÓN CON LAS RECOMENDACIONES ESENCIALES

14. **Recomendación 1 fue calificada como MC.** La única deficiencia fue la incapacidad para medir la eficacia, puesto que sólo había un (1) enjuiciamiento del LD en ese momento. Desde entonces, sin embargo, Bermuda ha tenido siete (7) condenas de LD de las cuales seis (6) ocurrieron en 2012. Además, actualmente existen cuatro (4) casos de LD pendientes ante los tribunales de Bermuda. Consulte [aquí](#) para obtener estadísticas detalladas sobre los casos de LD de Bermuda. ***Se ha cumplido plenamente con*** esta Recomendación.
15. **Recomendación 5 fue calificado como NC** y los evaluadores recomendaron diecisiete acciones para rectificar las deficiencias señaladas en el DAR
 - i. *Extender el régimen regulador para instituciones financieras con el fin de cubrir explícitamente CFT.* Como se señaló en el primer informe de seguimiento ([Bermuda 1er informe de seguimiento](#)) esta deficiencia fue rectificada a través de la promulgación el 1 de enero de 2009, del nuevo Reglamento sobre Productos del Delito (Anti-Lavado de Dinero y contra el Financiamiento del Terrorismo) (ALD /ATF). Aquí los Reglamentos 6 y 11 disponen específicamente que las medidas de DDC y DDC mejoradas, en su caso, deben ser realizadas por las personas relevantes, cuando se sospecha el financiamiento del terrorismo. ***Se ha rectificado esta deficiencia.***

- ii. *Establecer en el Reglamento o en otro instrumento ejecutivo (otros medios coercitivos) todos los requisitos aplicables de acuerdo con las Recomendaciones del GAFI 5-8. Los Reglamentos actuales son limitados y las Notas Directrices no son ejecutables.* Parte 2 del Reglamento ALD / ATF se ocupa de CDD. En cuanto a la situación de esta sanción como OEM, se observa que el Ministro de Justicia, en virtud del **s.49 (3)** de la **POCA** y **s.12A** del ATFA hizo el Reglamento ALD / ATF como parte de las leyes de Bermuda. Es aplicable a todas las instituciones financieras ALD / ATF reguladas y profesionales independientes cuando existe la realización de negocios en o desde Bermuda. El Reglamento 19 elaboró las sanciones aplicables en caso de incumplimiento con las obligaciones establecidas en los reglamentos relacionados con la DDC. ***Se ha rectificado esta deficiencia.***
- iii. *Ampliar los requisitos DDC más allá de la identificación del cliente.* El Reglamento ALD / ATF ha extendido más allá de la identificación. En la Parte 2, reglamento 7 se ocupa de monitoreo permanente en relación con DDC, reglamento 9 se ocupa de las exigencias de cesar una transacción la persona es incapaz de aplicar las medidas de DDC establecidas; reglamento 11 se refiere a la DDC, las circunstancias lo que daría lugar a ella, y la acción acorde a tomar por personas competentes; reglamento 12 dispone sobre las ramas y filiales de las instituciones financieras ALD / ATF reguladas situadas fuera de Bermuda, mientras que el reglamento 13 dispone sobre la prohibición de los bancos ficticios y cuentas anónimas. Con base en lo anterior, ***Se ha rectificado esta deficiencia.***
- iv. *Requerir DDC en todos los casos (las relaciones de negocios y transacciones singulares) donde hay conocimiento o sospecha de LD / FT y no sólo en los casos de operaciones de una sola vez. Además, aclara que el umbral de operaciones singulares no se aplica cuando existe una sospecha. Este requisito también debe incluir la presentación de informes de sospecha cuando una IF no puede obtener la identificación necesaria / información DDC bajo Rec. 5.15 y 5.16 -.* De acuerdo con el reglamento 6 (1) (c) del Reglamento ALD / AFT, las personas relevantes en Bermuda deben aplicar DDC cuando existe una sospecha de LD o FT. Esto aclara que la aplicación de medidas de DDC es inclusivo de todas las transacciones que se sospecha de LD / FT. ***Se ha rectificado esta deficiencia.***
- v. *Reducir el umbral mínimo de DDC para las transferencias electrónicas para el equivalente de EE.UU. / BD \$ 1.000. (Ver recomendación sobre mantenimiento de registros en la sección 3.5.3 -.* Las regulaciones de transferencias electrónicas que fueron promulgadas en marzo de 2010 abordaron esta deficiencia al exigir en el Reglamento 23 (4) que los proveedores de servicios de pago comprobar la información sobre el beneficiario sólo cuando la cantidad excede \$ 1,000. ***Se ha rectificado esta deficiencia.***
- vi. *Ampliar los requisitos DDC a los casos en que existan dudas sobre la veracidad o adecuación de la información obtenida previamente. Véase la recomendación siguiente sobre la necesidad de actualizar la información de las cuentas "derechos adquiridos".* Esto se ha logrado en el reglamento 6 (1) (d) del Reglamento ALD / AFT cuando la DDC es aplicable cuando una persona competente tiene la obligación de aplicar las medidas que se pone en duda la veracidad o idoneidad de los documentos, datos o información obtenidos previamente para el propósito de identificación o verificación. ***Se ha rectificado esta deficiencia.***

- vii. *El Reg. 4 (4) podría establecer de manera más explícita la obligación de identificar y obtener información de DDC sobre beneficiarios subyacentes, incluidas las personas y arreglos jurídicas. Esto haría que las Notas Directrices sean más coherente con el Reglamento. Esta deficiencia se aborda en la Parte 2 del reglamento 5 (b) del Reglamento ALD / AFT que define las medidas de DDC en relación con los beneficiarios que no son los clientes. Aquí está la obligación de identificar al beneficiario y adoptar las medidas adecuadas en un análisis del riesgo en la medida en que la persona está convencida de que él sabe quién es el beneficiario. En este sentido, donde el negocio consiste en que una persona jurídica, fideicomiso o acuerdo similar, debe contar también con medidas para comprender la estructura de propiedad y control de la estructura de la persona jurídica o de otro acuerdo. **Se ha rectificado** esta deficiencia.*
- viii. *Revisar las exenciones de identificación del cliente incluidas en las Notas Directrices para la coherencia con el Reglamento y el GAFI Rec. 5, 8, y 9. En el párrafo 84 del DAR , los evaluadores escribieron que el Reglamento ALD de Bermuda y las notas directrices proporcionan exenciones o requisitos reducidos de identificación de clientes, pero no había una base establecida para este tipo de exenciones . Los negocios de seguros de vida, así como los clientes que se encontraban como otras instituciones financieras reguladas y "pequeñas" operaciones singulares fueron eximidos. Bermuda ha tratado de rectificar esta deficiencia en el reglamento 6 del Reglamento ALD / AFT que se exige a una persona competente para aplicar medidas de DDC cuando se establece una relación de negocios, llevando a cabo una transacción ocasional, al sospechar LD de TF o cuando está en duda la veracidad o suficiencia de cualquier dato o información presentada a él. No hay exenciones establecidas aquí. Sin embargo, en el reglamento 8 (3) una persona competente está autorizada a llevar a cabo la verificación durante el establecimiento de una relación comercial si el tiempo fue necesario para no perturbar el desarrollo normal de los negocios y también donde existe un pequeño riesgo de LD o FT. En este caso, la verificación debe ser realizada tan pronto como sea posible después de que se pone en contacto por primera vez. En cuanto a un seguro de vida, el reglamento 8 (5) permite la realización de verificación de la identidad del beneficiario después de establecer la relación de negocio una vez que esto se hace antes de cualquier pago o en el momento de, o antes de que el beneficiario se aprovecha de cualquier derecho conferido bajo la política. En el reglamento 10 se prescribe la DDC simplificada para las instituciones financieras ALD / AFT reguladas que están sujetas a los requisitos del Reglamento ALD / AFT y las instituciones financieras ALD / AFT reguladas ubicadas en jurisdicciones que imponen obligaciones de DDC equivalentes a las impuestas en Bermuda y que en realidad están siendo supervisadas con dichas obligaciones de DDC. **Se ha rectificado** esta deficiencia.*
- ix. *Revisar la redacción de Notas Directrices 129, 130, 139, 140 y 140 sobre las exenciones de identificación para asegurarse de que no crean una limitación práctica de DDC en el sector de los servicios de seguros e inversiones. Se requiere una revisión similar para ND 131, 132 y 133 para servicios de inversión. Esto también debe ser revisado en el contexto del momento de la verificación a efectos de la Recomendación. 5.13 y 5.14. Como se señaló anteriormente, esto se ha logrado en el reglamento 8 del Reglamento ALD / AFT. **Se ha rectificado** esta deficiencia.*
- x. *Requisitos de DDC que incluyen el propósito y la naturaleza de las relaciones comerciales (y transacciones únicas significativas) deben ser establecidos. Esto es, de hecho, un requisito en el reglamento 5 (c) cuando se define DDC para incluir "la obtención de información sobre el propósito y la naturaleza de la relación comercial. El Reglamento 6 (3) también es relevante porque exige a una persona relevante para determinar el nivel de DDC que se aplicaría de forma sensible al riesgo, pero dependiendo del tipo de cliente, la relación comercial, producto o transacción. **Se ha rectificado** esta deficiencia.*

- xi. *Exigir a las IF para llevar a cabo un seguimiento mejorado para negocios de más alto riesgo y la actualización periódica de la información del perfil del cliente, para llevar a cabo una DDC mejorada para clientes, relaciones de negocios y transacciones de alto riesgo. El Reglamento 11 se refiere a DDC mejorado y las personas relevantes están obligadas a aplicarla de forma sensible al riesgo. DDC se toma en el contexto del reglamento 6, que incluye las obligaciones de monitoreo continuo particularizado en el reglamento 7. En 7 (2) (b) existe la obligación de mantener la información DDC actualizado. **Se ha rectificado** esta deficiencia.*
- i. *Exigir a las IF para realizar una DDC mejorada para clientes, relaciones o transacciones comerciales de mayor riesgo, ya sea en la POCA, Reglamentos u otros medios coercitivos. Como se señaló anteriormente el reglamento 11 del Reglamento ALD / AFT ha abordado adecuadamente esta deficiencia. **Se ha rectificado** esta deficiencia.*
- ii. *Revisar las exenciones / simplificaciones previstas en el Reglamento y (no obligatorio) Notas Directrices para asegurarse de que están justificadas sobre la base de bajo riesgo probado (documentado). En su caso, dichas exenciones / simplificaciones inferiores solo deben ser permitidas cuando la información del cliente está disponible al público o cuando hay existe otra forma de chequeos y controles adecuados en el sistema, sobre todo cuando los clientes no son otras entidades financieras reguladas. Se prescribe la DDC simplificado en el reglamento 10. Ver viii anteriormente. **Se ha rectificado** esta deficiencia.*
- iii. *Donde se permite la DDC simplificada, debe haber disposiciones para limitarla a los casos en que los clientes no residentes son de países que han implementado efectivamente las Recomendaciones del GAFI. Se prescribe la DDC simplificado en el reglamento 10. Ver viii anteriormente. **Se ha rectificado** esta deficiencia.*
- iv. *Como regla general, no permiten exenciones o medidas de DDC reducida cuando hay sospecha de LD / FT. Las disposiciones establecidas en el reglamento 6 (1) (c) y el Reglamento 11 cumplen con este requisito. Bajo el reglamento 6 (1) (c) DDC debe ser aplicada cuando existe una sospecha de LD / FT y no hay excepción a este requisito ni se puede realizar la diligencia debida simplificada (en el reglamento 10) cuando exista una sospecha de LD / FT. Además, el reglamento 11 también exige la realización de la DDC mejorada cuando una situación por su naturaleza presenta un mayor riesgo de LD / FT. **Se ha rectificado** esta deficiencia.*
- v. *Eliminar la exención general en la Nota Directrices 50 en el momento de la verificación cuando se realiza el pago de "otra cuenta", ya que podría ser interpretado, por ejemplo, desde una cuenta manejada por cualquier empresa no IF o la persona no regulada. Las Notas Directrices que estaban en vigor en el momento de la visita in situ ya no son aplicables. El Reglamento ALD / AFT ha abordado el momento de la verificación en el reglamento 8 (véase viii) anterior. **Se ha rectificado** esta deficiencia.*
- vi. *Exigir a las IF para acelerar el desarrollo de la DDC y la documentación actualizada del cliente para los clientes existentes en la fecha de emisión de los reglamentos, los llamados clientes de "antigüedad". El Reglamento fue emitido en 1998 (hace 9.5 años) y el progreso lento en la actualización de la información crea una vulnerabilidad importante en toda la industria. Bermuda ha indicado que las nuevas Notas Directrices a 5.37-5.40 abordaron la deficiencia identificada en relación con CE 5.13 y la recomendación de que las IF deben actualizar la documentación de los clientes de las cuentas de "antigüedad". Bermuda ha optado por adoptar un enfoque basado en el riesgo a la presente recomendación al 5.38 de las nuevas Notas Directrices cuando ahora se exige a las instituciones financieras, como el riesgo dicta, para tomar medidas para garantizar que disponen de la información adecuada para demostrar que conocen a todos sus clientes. **Se ha rectificado** esta deficiencia.*

Recomendación 5, conclusión general.

16. El DAR ha identificado 17 deficiencias en la Recomendación 5. En base a las medidas legislativas positivas adoptadas por Bermuda, tiene el efecto de **rectificar plenamente todas las deficiencias observadas.**
17. **Recomendación 10 fue calificada MC** con tres (3) deficiencias. (i.) *Incluir en todas las Listas para los criterios mínimos de concesión de licencias de las leyes de regulación financiera de un requisito de mantenimiento de registros para cumplir con la legislación ALD / CFT, no sólo a los efectos de las leyes reglamentarias;* (ii) *Considerar nueva redacción Reg. 5 (4) para que sea más consistente con la Nota Directrices 95 para afirmar que el período de retención en caso de una investigación sería más largo que el período mínimo de cinco años especificado. También aclara lo que constituye el "resultado de la investigación" y si se incluiría, por ejemplo, los procedimientos de acusación, juicio, condena o confiscación;* (iii) *Revisar las Notas Directrices (G97) para asegurarse de que el mantenimiento de los registros de transacciones no se limita a los detalles de valores e inversiones negociados, y que se aplican a los negocios no relacionados con valores, por ejemplo, transacciones bancarias y de seguros.* - Se abordan estas tres deficiencias en el reglamento 15 del Reglamento ALD / AFT. En el reglamento 15 (5) una vez que un oficial de policía haya informado a una persona competente , por escrito , de que ciertos documentos pueden ser relevantes para una investigación que se está llevando a cabo dicha persona deberá conservar los récords hasta la finalización de dicha investigación. Además, los registros necesarios para ser mantenidos deben incluir la evidencia sobre la identidad del cliente obtenida de conformidad con los requisitos de DDC y DDC mejoradas en el reglamento 6 .1, 13 y 14. **Se ha rectificada estas tres deficiencias.**

Recomendación 10 conclusión general.

18. El DAR identificó tres (3) las deficiencias en relación con la Recomendación 10. En base a la acción específica tomada por Bermuda, se han abordado plenamente estas deficiencias, y por lo tanto tener el efecto de **rectificar plenamente todas las deficiencias observadas.**
19. Para la **Recomendación 13**, una calificación de **PC** fue asignada para dos (2) las deficiencias observadas en el DAR. Deficiencia 1: Se está abordando *la modificación a la ATFA para exigir ROS relacionados con FT para fondos vinculados a organizaciones terroristas* a través de la Enmienda de Ley sobre Productos del Delito y Medidas Relacionadas 2013, que tiene por objeto modificar la ley ATFA para incluir la financiación de organizaciones terroristas. Bermuda informó que esta enmienda, que ya ha sido aprobada en la Cámara de Diputados y presentada en el Senado iba a ser debatida allí el 2 de octubre de 2013. Esta deficiencia permanece **vigente.**

20. Deficiencia 2: *Mejorar la capacitación para la identificación de las transacciones relacionadas con el FT.* Dado que las transacciones relacionadas con el FT no fueron capturadas antes, no existía el requisito de capacitación en la identificación de este tipo de transacciones. No obstante, Bermuda ha demostrado la implementación de las disposiciones existentes a través de la presentación de cuatro (4) SAR por sus entidades de reporte, en relación con el financiamiento del terrorismo. Además, con el fin de mejorar su capacidad para realizar un seguimiento y detectar ROS relacionados con el financiamiento del terrorismo, la FIA ha instalado software de aplicación que tiene la capacidad de bandera roja dichos informes, basado en parámetros específicos definidos por la FIA. Finalmente aquí, la FIA ha incluido temas de FT en su módulo de capacitación en el régimen ALD / CFT para sus entidades de reporte. ***Se ha rectificado esta deficiencia.***

Recomendación 13 conclusión general.

Una deficiencia está cerrada y la otra presuntamente ha sido abordada en legislación recientemente promulgada.

21. **Recomendación Especial II fue calificada como PC** y los evaluadores recomendaron cuatro (4) acciones para rectificar las deficiencias señaladas en el DAR:
- i. *Modificar la definición del terrorismo de la ATFA para incluir los actos cubiertos por los nueve convenios contemplados en la Convención SFT -.* Según se informa abordado en la Enmienda de Ley sobre Productos del Delito y Medidas Relacionadas de 2013. Esta ley se encuentra actualmente ante el Senado de Bermuda. Esta deficiencia permanece ***vigente.***
 - ii. *Modificar la ATFA para incluir actos realizados contra las organizaciones internacionales.* Se aborda esta cuestión en sección **s.3 (1) (b)** de la ATFA enmendada. Aquí el terrorismo también significa el uso o amenaza de acción diseñada para influir una organización internacional. La acción en este sentido se inscribe en el sentido indicado en **s.3 (2) (a) – (g)**. ***Se ha rectificado esta deficiencia.***
 - iii. *Enmendar la ley ATFA para incluir una referencia a al financiamiento de las organizaciones terroristas.* Según se informa abordado en la Enmienda de Ley sobre Productos del Delito y Medidas Relacionadas de 2013. Esta ley se encuentra actualmente ante el Senado de Bermuda. Esta deficiencia permanece ***vigente.***
 - iv. *Enmendar la ley ATFA para cubrir actos extraterritoriales relativos a las organizaciones terroristas.* Bermuda ha ofrecido que la **s.17** de la ATFA ha acordado la deficiencia aquí. Aquí una persona es culpable cuando hace algo fuera de Bermuda y su acción constituye la comisión de un delito de financiamiento del terrorismo bajo **s.5** y **s.6**. No se hace referencia a los actos cometidos por organizaciones terroristas. Esta deficiencia permanece ***vigente.***

Recomendación Especial II conclusión general.

22. Una deficiencia está cerrada y la otra presuntamente ha sido abordada en legislación recientemente promulgada
23. En la **Recomendación Especial IV calificada PC** las deficiencias y rectificaciones recomendadas son idénticas a las de la Recomendación 13. ([Véase más arriba](#)) Estas al parecer se han abordado en la legislación recientemente promulgada.
24. De los dos (2) las deficiencias identificadas en el IEM una (1) todavía está pendiente de la aprobación final del Senado de Bermuda, mientras que se ha rectificado la otra. La presente Recomendación permanece **vigente**.

IV. EXAMEN DE LAS MEDIDAS ADOPTADAS EN RELACIÓN CON LAS RECOMENDACIONES CLAVE

25. **Recomendación 3 fue calificada como PC.** Deficiencia 1: *Proporcionar explícitamente en su legislación el decomiso de bienes que constituyen medios destinados a ser utilizados en la comisión de ML y otros delitos predicados no narcotráfico.* Solo se aborda parcialmente esta deficiencia. Los comentarios del primer informe de seguimiento ([Bermuda 1er informe de seguimiento](#)) son relevantes aquí. Bermuda ha informado de que la Enmienda de Ley sobre Productos del Delito y Medidas Relacionadas de 2013, que tiene por objeto cubrir las deficiencias señaladas en el primer informe de seguimiento, y así permitir la realización de una Orden de Privación de la Corte, para privar a las personas declaradas culpables de se esperaba que la "propiedad contaminada", la cual se debatirá en el Senado el 2 de octubre de 2013. Esta deficiencia permanece **vigente**.
26. Deficiencia 2: *proporciona explícitamente en la legislación que, a los fines de decomiso de los beneficios de delitos de LD, los ingresos que son la base de la infracción pueden incluir los pagos recibidos por el demandado en cualquier momento en relación con el delito de LD realizado por él o por otra persona* y Deficiencia 3: *con respecto a la nulidad de los contratos, proporcionar expresamente a las autoridades con los medios para prevenir acciones que obstaculicen la recuperación de los bienes sujetos a confiscación.* Se informó Ambas deficiencias en el primer informe de seguimiento de informe ([Bermuda 1er informe de seguimiento](#)) que han sido suficientemente abordadas por Bermuda. **Se ha rectificado estas deficiencias.**

Recomendación 3 conclusión general.

27. El IEM identificó tres (3) deficiencias en relación con la Recomendación 3. Dos (2) han sido abordadas a través de modificaciones legislativas. La otra (1) ha sido parcialmente abordada y modificaciones legislativas adicionales para rectificarla plenamente debía haber sido promulgadas recientemente..
28. **Recomendación 23 fue calificada como NC.** (Deficiencias 7, y 10): (7) *Revisar y cuando sea necesario fortalecer las prácticas de concesión de licencias de manera consistente que refleja las preocupaciones no sólo del solicitante, sino de otros miembros del grupo, incluida la aplicación de la necesidad continua de criterios de idoneidad, bajo los requisitos mínimos de licencia.* (10) *Llevar a cabo una revisión sistemática para determinar si se está llevando a cabo otras actividades financieras objeto de la recomendación del GAFI en o desde Bermuda sobre una base comercial regular.*

29. Para la deficiencia de 7 Bermuda ha informado que el procedimiento de autorización aprobada por la Autoridad Monetaria de Bermuda (BMA) implica un proceso de evaluación y revisión que garantice que los negocios a ser realizados por el titular de la licencia propuesta está prevista en la ley de Bermuda y dicho titular cuenta con los sistemas y procedimientos necesarios para manejar tal negocio. Estos procedimientos de concesión de licencias también incluyen medidas para garantizar que las personas que proponen para gestionar y dirigir este tipo de empresas son de idoneidad para actuar como reguladores y funcionarios de la citada empresa. Además, en esta etapa, se realiza una evaluación sobre aquellas cuestiones que puedan tener un impacto en el titular de la licencia y otros miembros del grupo. (*Véase el informe de Bermuda aquí para ver información de este aspecto del procedimiento de concesión de licencia de BMA*). ***Se ha rectificado esta deficiencia.***
30. Para la deficiencia 10, Bermuda informó que se realizó una evaluación preliminar del riesgo en 2011-2012 y seguida por una evaluación más detallada de los riesgos nacionales (NRA), que está actualmente en curso. La NRA continuo requiere una lista de productos y servicios que se obtiene de todas las instituciones financieras reguladas, junto con estadísticas de la actividad y del volumen. Se determinará la identificación de otras áreas de actividades que podrían requerir una revisión más detallada. Puesto que esta acción aún está en curso una deficiencia muy pequeña todavía existe. (*Véase el informe de Bermuda aquí para ver información sobre la NRA continua de Bermuda*).

Recomendación 23 conclusión general.

31. Había diez (10) deficiencias observadas en el IEM. Los informes de seguimiento anteriores ([Bermuda 1er informe de seguimiento](#)), ([Bermuda 2do Informe de seguimiento](#)), ([Bermuda 3er Informe de seguimiento](#)), ya han detallado los análisis técnicos de la acción de Bermuda, y han concluido que las únicas deficiencias pendientes estaban en relación con las deficiencias de 7 y 10. En base a todo lo anterior se considerará que ***se ha rectificado plenamente la presente Recomendación.***
32. **Para la Recomendación 26, que fue clasificada como MC los evaluadores recomendaron que Bermuda: Asegurar de que se ha establecido la nueva FIA y estará en funcionamiento, y proporcionará los niveles de dotación de personal suficiente a la Policía de la UIF existente.**
33. Se fundó la nueva FIA en 2008, está en funcionamiento y ha desempeñado un papel significativo en 13 condenas por lavado de dinero de la jurisdicción desde la aprobación del IEM. Aquí seis (6) de esas condenas estaban directamente relacionadas con las revelaciones STR, mientras que la FIA apoyó las otras siete (7) a través de información relacionada con STR . Bermuda también ha informado de que hay otros asuntos relacionados con ALD bajo investigaciones y ante los tribunales de Bermuda. (*Por favor, vea aquí para otra información complementaria proporcionada por Bermuda en relación con la FIA*). Se abordará la segunda parte de la acción recomendada para aumentar la dotación de personal en la Policía de UIF en la Recomendación 30. ***Se ha rectificado esta deficiencia.***

Recomendación 26 conclusión general

34. La única acción recomendada para la Recomendación 26 ha sido plenamente resuelta y como resultado esta Recomendación ha sido ***plenamente rectificada.***
35. **La Recomendación 35 fue calificada PC** con una (1) deficiencia: *Los Convenios de SFT y de Palermo no han sido extendidos a Bermuda.*

36. Bermuda informó que ha solicitado formalmente al Reino Unido para extender los Convenios de SFT y de Palermo para incluirlo. Mientras tanto actualmente, la legislación se encuentra ante el Senado para fortalecer el marco necesario para consagrar los dos Convenios. Esta Recomendación Especial *permanece vigente*.
37. **Recomendación 36 fue calificada como MC**, debido a la existencia de *ningunos procedimientos específicos que faciliten una acción expeditiva a ser tomada o para establecer plazos precisos para responder a las peticiones de asistencia legal mutua*. Bermuda informa que ha abordado este asunto a través de la Procuraduría General de la Nación, donde se ha establecido una política de establecer plazos precisos para atender las solicitudes de asistencia legal mutua. *Se ha rectificado plenamente esta Recomendación*.
38. **Recomendación Especial I fue calificada PC** con una (1) deficiencia: *Los Convenios de SFT y de Palermo no han sido extendidos a Bermuda*. Los comentarios anteriores en relación con la Recomendación 35 también son pertinentes aquí. Bermuda informe que en agosto de 2012, los requisitos de la Resolución 1267 (1999) en su forma enmendada, y otras medidas adicionales de la Unión Europea ("UE") medidas entraron en vigor en Bermuda: El Al-Qaida (Medidas de Naciones Unidas) (Territorios de Ultramar) 2012 No. 1757 ("Orden de Al-Qaida 2012") y el Afganistán (Medidas de Naciones Unidas) (Territorios de Ultramar) 2012 N ° 1758 ("Orden de Afganistán 2012"). Los requisitos de la Resolución CSNU 1267 (1999) se llevaron a cabo previamente en Bermuda a través de la Orden de Al-Qaeda del Talibán (Medidas de Naciones Unidas) (Territorios de Ultramar) de 2002, según enmendada. Esta Recomendación Especial *permanece vigente*.
39. De las cuatro (4) acciones necesarias para cerrar las deficiencias de la DAR, sólo una puede considerarse haber sido abordada suficientemente. Los comentarios en el párrafo 43 son también relevantes aquí Esta Recomendación Especial *permanece vigente*.
40. **Recomendación Especial III fue calificada MC** y observaron dos (2) deficiencias en el DAR: Deficiencia 1 y 2: (1) *No existen directrices específicas emitidos al sector regulado en cuanto a su obligación positiva de adoptar medidas con respecto a la lista de la Resolución*. (2) *No existen procedimientos específicos para la exclusión o descongelamiento*.
41. En marzo de 2009, la BMA publicó Notas Directrices para instituciones financieras ALD /ATF reguladas en virtud de **s.52 de SEA**, **.49A de POCA** y **s.12B de la ATFA**. Párrafos 5.304-5.311 tienen que ver con las "Personas que las instituciones no deben aceptar como clientes". En concreto, en 5.305, se hace mención de la Orden del Terrorismo en el Reino Unido (Naciones Unidas) (Territorios de Ultramar) de 2001 y sus restricciones a la aportación de fondos y servicios financieros a disposición de las personas enumeradas. En 5.306 se observa las obligaciones del Gobernador para emitir un Aviso de congelación de fondos en manos de personas competentes. *Se ha rectificado esta deficiencia*.
42. Todavía se está abordando Deficiencia 2. Aquí se informó que el Comité Nacional Anti Lavado de Dinero de Bermuda está trabajando con la Casa de Gobierno y la Oficina de Relaciones Exteriores y de la Mancomunidad del Reino Unido para elaborar los procedimientos para solicitudes de eliminación de lista y descongelamiento de fondos. Esta deficiencia permanece *vigente*.

Recomendación Especial III conclusión general

43. De las dos (2) pequeñas deficiencias que dieron lugar a la asignación de una calificación de MC en el DAR una (1) ha sido plenamente abordada mientras que la otra sigue vigente. Esta Recomendación Especial *permanece vigente*.

V. DESARROLLOS RELATIVOS A LAS OTRAS RECOMENDACIONES CALIFICADA A PC o NC: R6, R7, R8, R9, R11, R12, R14, R15, R16, R17, R21, R22, R24, R25, R29, R30, R31, R32, REVI, RE VII, REVIII y REIX.

44. **Recomendación 6 fue calificada NC** debido a la única deficiencia mediante la cual no existía el requisito para la realización por las IF de una DDC mejorada para PEP. Se ha abordado esta deficiencia en el reglamento 11 del reglamento de ATFA, que tiene que ver con una diligencia debida mejorada. Específicamente con respecto a las PEP, en **11 (4) (c)**, cuando una persona competente ha establecido una relación comercial con una PEP se requiere la realización de un monitoreo mejorado continuo de esa relación comercial. Antes de esto, sin embargo, la aprobación de la alta dirección es un pre-requisito para el establecimiento de la relación comercial y se deben poner en marcha las medidas adecuadas para determinar el origen del patrimonio y de los fondos involucrados en la relación de negocios o transacción ocasional, según el caso. Sin embargo, los reglamentos no disponen sobre ningún requisito para que las personas pertinentes obtengan la aprobación de la administración superior para continuar una relación comercial con una persona descubierta como una PEP con posterioridad al establecimiento de la relación comercial. Esta deficiencia permanece *vigente*.

Recomendación 6 conclusión general

45. Recomendación 6 ha sido rectificada en gran medida con la pequeña deficiencia de la falta de cualquier obligación para las personas quienes se convierten en PEP una vez establecida la relación de negocios. La presente Recomendación *permanece vigente*.
46. **Recomendación 7 fue calificada NC** debido a la única deficiencia mediante la cual no existía *ningún requisito de que las IF para llevar a cabo una DDC mejorada con respecto a la banca corresponsal y relaciones similares*. El Reglamento **11 (3)** de la ATFA ha recibido el mandato de una institución bancaria que tiene o propone tener una relación de corresponsalía bancaria con un banco cliente fuera de Bermuda para hacer lo siguiente:
- a) recopilar información suficiente sobre el respondent para comprender cabalmente la naturaleza de sus actividades;
 - b) determinar a partir de la información accesible al público que la reputación del respondent y la calidad de su supervisión;
 - c) evaluar los controles de respondent en relación con los controles relativos a la lucha contra el lavado de dinero y el financiamiento del terrorismo;
 - d) obtener autorización de la alta dirección antes de establecer una nueva relación de corresponsalía bancaria;
 - e) documentar las responsabilidades respectivas de respondent y corresponsal;
 - f) estar convencido de que, con respecto a los de los clientes de respondent que tienen acceso directo a las cuentas de la corresponsal, el respondent -

- i. ha verificado la identidad de, y lleva a cabo una diligencia debida continua sobre dichos clientes, y
- ii. es capaz de proporcionar a petición los datos de debida diligencia sobre el cliente relacionados con el corresponsal

Recomendación 7 conclusión general

47. Se ha rectificado la deficiencia y por lo tanto ***se ha rectificado plenamente la presente Recomendación.***
48. **Recomendación 8 fue calificada NC** con la única deficiencia que no *había ningunos requisitos para que las IF apliquen medidas para prevenir el uso indebido de los avances tecnológicos que podrían facilitar el LD / FT.* Bermuda ha aplicado la recomendación de los examinadores, detallando en 9 (1) del Reglamento sobre Productos del Delito (Anti Lavado de Dinero y Anti Financiamiento del Terrorismo) 2008, los requisitos para cesar operaciones. Además, en 11 (2) del mismo Reglamento , las instituciones financieras , donde un cliente no haya estado físicamente presente para su identificación, a tomar medidas específicas con el fin de compensar el mayor riesgo. Estas medidas se detallan en el 11 (2) (a), (b) y (c) e incluyen asegurar que se utiliza los documentos, datos o información para establecer la identidad del cliente y/ o el uso de medidas complementarias encaminadas a comprobar o certificar los documentos suministrados, o que requieren certificación de confirmación expedida por una entidad financiera, que también está sujeta a reglamentos equivalentes. Estas disposiciones tienen el efecto de ***rectificar esta deficiencia.***

Recomendación 8 conclusión general

49. La única deficiencia ha sido rectificada y por lo tanto ***se ha cumplido plenamente con la presente Recomendación está totalmente subsanado.***
50. **Recomendación 9 fue calificado PC** y hay cuatro (4) acciones recomendadas realizadas por los examinadores destinadas para las de rectificar las deficiencias en el DAR.
- i. *Exigir a las IF para obtener de inmediato la información DDC de terceros aceptables cuando se basa en su DDC CDD – Rectificación de la deficiencia aquí depende de la Enmienda de Ley sobre Productos del Delito y Medidas Relacionadas de 2013, que iba a ser debatida en el Senado de Bermuda en octubre de 2013. Esta deficiencia permanece vigente.*
 - ii. *Al permitir a las IF que confían en DDC realizada por terceros, les exigen para haber ocupado sí mismos de que la documentación requerida de DDC ha sido obtenida por los terceros, y que será puesta a disposición oportuna de las entidades financieras según solicitud.* Bermuda ha ofrecido que el reglamento 15 (7) del Reglamento de ATFA ha abordado la deficiencia aquí. De acuerdo con este reglamento, una persona relevante en Bermuda tiene la obligación de adoptar medidas para garantizar que el tercero de quien se depende para la aplicación de medidas de DDC proporcionará copias de los datos de identificación y verificación, y otros documentos de identificación pertinentes tan pronto como sea posible después de que éstos han sido solicitados por la persona relevante. Parece que el reglamento no dispone sobre ningún requerimiento por parte de la persona relevante para asegurarse de que esta información DDC y los datos de hecho han sido obtenidos por el tercero. ***Esta deficiencia permanece vigente.***

- iii. *Revisar periódicamente la adecuación de la base sobre la que las IF dependen de la DDC de terceros ya sea en Bermuda o en otros países, en lo que respecta a su supervisión a los efectos ALD / CFT, y la implementación de las Recomendaciones del GAFI por parte de los países en los que los terceros son ubicados.* Aunque Bermuda ha ofrecido el reglamento 14 del reglamento de ATFA como rectificación de la deficiencia aquí, no está claro cómo se lo ha logrado, puesto que el reglamento 14 no hace mención de los requisitos para llevar a cabo las revisiones periódicos necesarios. ***Esta deficiencia permanece vigente.***
- iv. *Hacer explícito que cuando se permite la dependencia de otros para ciertos aspectos de la CDD, que la responsabilidad última recae en la IF.* La rectificación de la deficiencia aquí depende de la Enmienda de Ley sobre Productos del Delito y Medidas Relacionadas de 2013, que iba a ser debatida en el Senado de Bermuda en octubre de 2013. ***Esta deficiencia permanece vigente.***

Recomendación 9 conclusión general

51. La resolución de la presente Recomendación depende en la legislación recientemente promulgada.
52. **Recomendación 11 fue calificada NC** y los evaluadores recomendaron que Bermuda debe *introducir en la ley, los reglamentos o OEMs un requisito para supervisar, examinar y registrar información sobre patrones complejos, inusualmente grandes, o inusuales de transacciones que no tengan un propósito económico o lícito aparente.* Se informe que esto asunto ha sido abordado en la Enmienda de Ley sobre Productos del Delito y Medidas Relacionadas de 2013. Esta ley se encuentra actualmente ante el Senado de Bermuda. La presente Recomendación ***permanece vigente.***
53. Para la **Recomendación 12**, Bermuda fue calificada como NC y los evaluadores hizo seis (6) recomendaciones para rectificar las deficiencias observadas en el IEM. Se puede encontrar un análisis detallado de la acción de Bermuda para rectificar estas deficiencias en el tercer informe de seguimiento ([Bermuda 3er Informe de seguimiento](#)). Los evaluadores observaron varias deficiencias todavía vigentes. Bermudas tiene previsto promulgr Ordenanzas que traerían a otras APNFDs especificadas bajo la supervisión de la FIA durante el 2013. Para este informe, la situación sigue siendo la misma. La presente Recomendación ***permanece vigente.***
54. Para la **Recomendación 14, que fue clasificado como PC**, favor consultar el primer informe de seguimiento ([Bermuda 1er informe de seguimiento](#)) para un análisis detallado de las medidas ya adoptadas para abordar algunas de las deficiencias observadas. Se informa que se ha abordado las deficiencias pendientes en la Enmienda de Ley sobre Productos del Delito y Medidas Relacionadas de 2013. Esta ley se encuentra actualmente ante el Senado de Bermuda. La presente Recomendación ***permanece vigente.***
55. **Recomendación 15 fue calificado como PC** y los evaluadores recomendaron cuatro (4) acciones para rectificar las deficiencias señaladas en el DAR. El primer y segundo informes de seguimiento ([Bermuda 1er informe de seguimiento](#)), ([Bermuda 2do Informe de seguimiento](#)) han detallado las acciones tomadas de Bermuda hasta el momento.
56. La primera acción recomendada: *extender los requisitos de los procedimientos a la gama completa de la CDD y del mantenimiento de registros, y también requerir la elaboración de políticas, cumplimiento y controles ALD / CFT. También se debe considerar especificar, en todo caso, que ya se ha completado los requisitos de los sistemas de control contenidos en las leyes financieras*

reglamentarias aplicables a AML / CFT (véase el primer informe de seguimiento) por lo tanto aquí se ha rectificado la deficiencia.

57. La segunda acción recomendada: *ampliar el papel de la función de cumplimiento ALD / CFT más allá del reporte de actividades sospechosas e incluir un requisito para una función de auditoría interna independiente que cubre ALD / CFT.* La conclusión en el primer informe de seguimiento es relevante aquí. El Reglamento 16 del Reglamento de ATFA de hecho ha ampliado la función de cumplimiento más allá del reporte de actividades sospechosas sin embargo, el reglamento ATFA no dispone sobre la necesidad de una función de auditoría interna independiente. ***Esta deficiencia permanece vigente.***
58. La tercera y cuarta acciones recomendadas: (3) *ampliar los requisitos de capacitación más allá de los "empleados relevantes", definidos en el Reglamento para los demás que pueden jugar un papel en la implementación y supervisión del cumplimiento con los requisitos ALD / CFT institucionales y legales, y (4) incluir los requisitos de selección de empleados en el Reglamento ALD para complementar los requisitos de idoneidad de los altos funcionarios de IFs que figuran en las leyes de regulación financiera* a ser abordados en la Enmienda de Ley sobre Productos del Delito y Medidas Relacionadas de 2013. Esta ley se encuentra actualmente ante el Senado de Bermuda. ***Esta deficiencia permanece vigente.***

Recomendación 15 conclusión general.

59. De las cuatro (4) acciones recomendadas de los evaluadores, dos (2) presuntamente han sido abordadas en la legislación recientemente promulgada.
60. **Recomendación 16 fue calificada como NC** y los evaluadores recomendaron cinco (5) acciones para rectificar dos (2) de las deficiencias observadas.
61. *Enmendar la POCA para garantizar que el requisito del reporte de SAR conforme a las Recs del GAFI aplicables, incluyendo los requisitos para los profesionales del derecho -.* Bermuda ha informado de que la disposición ya establecida bajo la POCA s.46 (2) (6) cumple con este requisito. En s.46 (6) las obligaciones genéricas de reporte ahora captura a los profesionales legales.. ***Esta deficiencia cerrada.***
62. *Las autoridades deben tomar medidas adicionales, incluyendo pero no limitado a la emisión de reglamentos y directrices, para asegurar que las APNFD, incluidos los abogados, presentan SARS cuando sea apropiado.* Aquí Bermuda ha informado de que **s.46** de la POCA y la ATFA en el reglamento 9 se sirve para rectificar el asunto. Como se señaló anteriormente los asesores profesionales legales han sido capturados por las obligaciones genéricas de reporte prescritas.***Esta deficiencia esta cerrada.s***
63. *Revisar la legislación pertinente con respecto a la delación por parte de los abogados, con el fin de proteger la confidencialidad de la información SAR.* Aquí Bermuda informa que la POCA en **s.47 (3)** y la "ATFA enmienda 2008' aborda esta deficiencia. **S.47** de la POCA se ocupa de delación y el inciso 3 tiene como objetivo proteger a un asesor profesional del derecho cuando revela la información u otro asunto de conformidad con las circunstancias no relacionadas con ALD / CFT. ***Esta deficiencia permanece vigente.***
64. *Según lo recomendado en el numeral 5.2 anterior, incluir todas las APNFD bajo el régimen de medidas preventivas de conformidad con el Reglamento POC 1998. Las medidas obligatorias deberían incluir los requisitos de contar con sistemas y controles eficaces para controlar las*

transacciones de sospechas y para asegurar que las actividades sospechosas son reportadas. Aquí Bermuda ha informado de que el marco legislativo que exige a IFs y APNFDs para contar con los sistemas y controles necesarios vigentes. Hasta la fecha, TSPs, CSPs, abogados y contadores han sido colocados en el alcance bajo el régimen. Con respecto al reporte de los SAR, la obligación de reportar está en su lugar para todas las APNFD. No obstante, los comentarios para la Recomendación 12 también son pertinentes aquí en que todavía hay algunas APNFD que aún no han sido capturadas. Esta deficiencia permanece vigente.

65. *Cualquier régimen de supervisión ALD / CFT para las APNFD introducido (TSB están ya cubiertos) debería incluir facultades para el supervisor con el fin de garantizar la aplicación efectiva de los requisitos de reporte de ROS. En efecto, esto ha sido abordado mediante SEA que otorga los poderes necesarios a las autoridades de supervisión. Aquí el análisis de la Recomendación 23 detallado en los informes anteriores de seguimiento son relevantes. Se ha rectificado esta deficiencia.*

Recomendación 16 conclusión general

66. Aún no han abordado dos (2) de las acciones recomendadas necesarias para rectificar las deficiencias señaladas en el IEM. La presente Recomendación *permanece vigente*.
67. En relación con **la Recomendación 17**, que fue calificada como PC, la cuestión pendiente se refiere a la segunda recomendación de los evaluadores que *las multas bajo la POCA con respecto a las condenas sumarias y ciertas convicciones sobre la acusación deben ser planteadas*. Aquí Bermuda ha opinado que las sanciones correspondientes se encuentran en niveles adecuados y, de hecho, mayores que las sanciones aplicables en varias jurisdicciones. Según **el Art. 25 () de la Ley de Jurisdicción Sumaria de 1930**, cuando una persona es condenada sumariamente de un delito enjuiciable por acusación y el tribunal es de la opinión de que un mayor castigo, que el tribunal está facultado para imponer, debe ser impuesto, el tribunal está facultado para comprometer a esa persona a la Corte Suprema para la sentencia. Sin embargo, Bermuda afirma que, incluso en ausencia de esta disposición, las sanciones aplicables en caso de condena sumaria para delitos relacionados en Bermuda son más altas en comparación con otros países específicos. Bermuda ha elaborado la siguiente tabla que compara las sanciones aplicables en Bermuda con las que les corresponderían en Guernsey, Islas Caimán y el Reino Unido.

Tabla 5: Resumen de las sanciones aplicables en Bermuda y otros Países.

Sanciones	Bermuda	Guernsey	Caimán aimán	REINO UNIDO
IEM Calificación (Rec 17)	PC Enero de 2008	MC Enero de 2011	C Nov de 2007	MC Junio de 2007
LD (sumaria)	5 años o una multa de \$ 50,000.00 o ambos	12 meses y / o una multa no superior a £ 10.000	2 años y / o una multa de hasta \$ 5,000	6 meses o una multa no superior a la máxima legal o ambos
LD (enjuiciamiento)	20 años o una multa ilimitada o ambos	14 años y / o una multa ilimitada	14 años y / o una multa ilimitada	14 años y / o una multa
Falta de revelar (sumaria)	3 años o una multa de \$	6 meses y / o una multa no superior	Multa de \$50,000	6 meses o una multa que no

	15,000.00 o ambos	a £10,000		exceda de la máxima legal o ambos
Falta de revelar (enjuiciamiento)	10 años o una multa ilimitada o ambos	5 años o una multa ilimitada o ambos	2 años y / o una multa ilimitada	5 años y / o una multa ilimitada
Delación (sumaria)	3 años o una multa de \$ 15,000.00 o ambos	6 meses y / o una multa no superior a £ 10.000	2 años y / o una multa de hasta \$ 5,000	6 meses o una multa que no exceda del máximo legal o ambos
Delación (enjuiciamiento)	10 años o una multa ilimitada o ambos	5 años o una multa ilimitada o ambos	5 años y / o una multa	5 años y / o una multa ilimitada o ambos

Recomendación 17 conclusión general.

68. De las dos (2) recomendaciones de los examinadores una (1) ha sido abordada específicamente en la legislación (SEA 2008), mientras que Bermuda ha señalado una clara incoherencia en la aplicación de la calificación que ha dado lugar a la calificación de PC. ***Se ha rectificado esta Recomendación.***
69. **En la Recomendación 21, que fue calificada como NC** los comentarios de los primero y segundo informes de seguimiento (*Bermuda_1st_Follow-up_Report*), (*Bermuda_2nd_Follow-up_Report*) todavía son relevantes. Sin embargo, la acción recomendada necesaria para rectificar la deficiencia va a ser abordada en la Enmienda de Ley sobre Productos del Delito y Medidas Relacionadas de 2013. Esta ley se encuentra actualmente ante el Senado de Bermuda. La presente Recomendación ***permanece vigente***
70. **Recomendación 22 fue calificada NC** y el primer informe de seguimiento ya ha llegado a la conclusión de que *"la promulgación de este Reglamento tiene el efecto de asegurar que ahora se ha cumplido plenamente con esta recomendación"*. ***Se ha rectificado plenamente*** esta Recomendación.
71. **En la Recomendación 24, que fue calificada como NC** los evaluadores realizaron tres (3) recomendaciones para rectificar las deficiencias señaladas en el IEM. Favor ver el primer, segundo y tercer informes de seguimiento ([Bermuda 1er informe de seguimiento](#)), ([Bermuda 2do Informe de seguimiento](#)) ([Bermuda 3er Informe de seguimiento](#)) para la acción de Bermuda hasta el momento. En relación con la primera acción recomendada, el tercer informe de seguimiento había señalado que *"todas las APNFD todavía no han sido puestas bajo supervisión ALD / CFT*. Las observaciones en el párrafo 21 relativas a la NRA en curso es relevante aquí y afecta de forma positiva esta deficiencia. Sin embargo, el otro comentario *que no se proporcionó información sobre los recursos, incluidos los recursos técnicos y habilidades, etc. que están disponibles para estas autoridades de supervisión para llevar a cabo eficazmente sus funciones. Además, no se proporcionó los datos para demostrar la realización actual de las funciones de supervisión*" todavía son relevantes. ***Esta deficiencia permanece vigente.***
72. Se ha abordado de manera significativa la tercera acción recomendada en relación con una guía actualizada a través de las notas directrices específicas del sector, que fueron aprobadas por el Ministro y emitidas al sector en el año 2012, para los fiduciarios y abogados y contadores. Hay que

señalar también que en 2010 se publicó una guía actualizada para todas las instituciones financieras, incluido el sector de fideicomisos. No está claro si se ha emitido otras Directrices. ***Se ha rectificado esta deficiencia.***

Conclusión general para la Recomendación 24.

73. La Recomendación 24 ahora queda con una deficiencia muy pequeña que está vinculada a la implementación de las medidas adoptadas para rectificar la deficiencia señalada.
74. **La Recomendación 25, que fue clasificado como PC**, los tres informes anteriores de seguimiento son relevantes. Bermuda ha indicado que se emiten las directrices específicas del sector a través de reuniones trimestrales de realimentación, por la BMA, a través de los informes generados automáticamente por el software de aplicación goAML, informes anuales, sesiones de divulgación de la industria y reuniones trimestrales regulares de realimentación. ***Se ha cumplido con esta Recomendación.***
75. **En la Recomendación 29, que fue clasificado como PC**, la recomendación pendiente es en relación con la recomendación de los evaluadores de que Bermuda, "*Especificar facultades claras en la Ley de Cooperativas de Crédito que la BMA, por delegación de poderes, puede supervisar e inspeccionar las instituciones financieras, en particular para el cumplimiento con las obligaciones ALD / CFT.*" El marco para el monitoreo y supervisión de las cooperativas de crédito se basa en el hecho de que una cooperativa de crédito es un negocio de depósitos tal como se define en la sección 4 de **la Ley de Bancos y Sociedades de Depósitos 1999**. La definición abarca aquí ¹ las actividades de una cooperativa de crédito, porque las cooperativas de crédito prestan dinero recibido en concepto de depósito a los demás y financia sus otras actividades de los intereses recibidos por los préstamos.
76. Tanto el reglamento 2 (2) de la ATFA y la sección 2 (1) de la SEA incluyen en la definición de una institución regulada ALD / AFT "una persona que lleva a cabo el negocio de depósitos en el sentido del Art. 4 de **la Ley de Bancos y Sociedades de Depósitos 1999**. El Reglamento 4 (a) se convierte a las instituciones las instituciones financieras ALD / AFT reguladas en "personas relevantes" en el ámbito de los reglamentos y por lo tanto todos los requisitos ALD / CFT de los reglamentos se aplican a la cooperativa de crédito. De conformidad con **s. 3 (1) (a) de la SEA** la BMA es la autoridad de supervisión en materia de las instituciones financieras ALD / AFT reguladas, y bajo la **s.5 y 6 de la SEA** la BMA tiene la responsabilidad de vigilar las instituciones financieras ALD / AFT reguladas (incluyendo el crédito sindicatos) para el cumplimiento con los reglamentos etc., lo que incluye la facultad de realizar inspecciones in situ para comprobar el cumplimiento. ***Se ha rectificado plenamente esta Recomendación.***
77. **En la Recomendación 30, que fue clasificado como PC** el primer, segundo y tercer informes de seguimiento detallan la acción de Bermuda hasta el momento. Había diez (10) acciones recomendadas hechas por los evaluadores

¹ Sección 4 (1): **Significado de "negocios de depósitos "** Sujeto a las disposiciones de esta sección, una persona quien maneja un negocio de depósitos para los efectos de esta Ley si

(a) en el curso de los negocios, que presta dinero recibido en concepto de depósito a los demás, o
(b) que financia cualquier otra actividad de la empresa en todo o en grado material, de la capital o los intereses sobre el dinero recibido en concepto de depósito

(2) A los fines de la subsección (1), todas las actividades que una persona ejerza con carácter de negocios, se considerarán como una sola actividad empresarial realizada por él.

78. La primera y segunda medidas recomendadas fueron para que *BMA mejore la capacitación del personal de BMA con el fin de facilitar la identificación de las deficiencias relacionadas con ALD / CFT y la BMA debería mejorar la capacidad del personal para llevar a cabo la supervisión ALD / CFT más completa incluyendo el ejercicio de la supervisión consolidada efectiva en calidad de o supervisor doméstico o de anfitrión*. Tras el comienzo de la SEA en 2008, el papel de la BMA se amplió para incluir el deber de vigilar el cumplimiento de las instituciones financieras con el Reglamento ALD/CFT. Como consecuencia se estableció una unidad dedicada a la lucha contra el lavado de dinero y contra el financiamiento del terrorismo y siete (7) personas que fueron nombradas y Bermuda ha informado de que estos oficiales cuentan con un promedio de 20 años de experiencia por cada miembro en el cumplimiento, el riesgo operacional, las investigaciones de lavado de dinero y la ejecución relativa a los procedimientos reglamentarios y han trabajado en los diferentes sectores financieros. Los miembros de la unidad también tienen diplomas, certificados y títulos pertinentes como CAMS. Bermuda informa que en 2010 el Equipo de ALD ha llevado a cabo una serie de programas separados de capacitación interna de una semana con el fin de desarrollar las competencias en el personal de supervisión para revisar y evaluar el cumplimiento AML durante las vistas in situ supervisadas. ***Se ha rectificado estas deficiencias.***
79. La tercera acción recomendada para *asegurar la continuación de la experiencia y habilidad en las investigaciones financieras en el Departamento de Delitos Comerciales* ha sido abordada. Por favor, consulte con el primer informe de seguimiento. ([Bermuda 1er informe de seguimiento](#)). ***Se ha rectificado esta deficiencia.***
80. La cuarta acción recomendada *Un oficial de enlace debe ser nombrado y el personal de la UIF existente debe capacitar a sus sucesores con el fin de facilitar la transición de la UIF* ha sido lograda debido a que dos (2) funcionarios de la UIF anterior FIU fueron contratados a la UIF para ayudar en la transición. ***Se ha rectificado esta deficiencia.***
81. La quinta acción recomendada *el número de cargos vacantes en la oficina de la Fiscalía del Estado debe ser corregido, y los esfuerzos realizados para retener al personal profesional* ha sido abordada. Por favor, véase el primer informe de seguimiento ([Bermuda 1er informe de seguimiento](#)). ***Se ha rectificado esta deficiencia***
82. La sexta acción recomendada que *recursos suficientes deben estar disponibles para la capacitación de la DPP, personal aduanero y policial*. Favor ver el primer informe de seguimiento ([Bermuda 1er informe de seguimiento](#)). Además Bermuda ha reportado que la capacitación está en curso. ***Se ha rectificado esta deficiencia.***
83. La séptima acción recomendada *se deben hacer los esfuerzos para atraer personal calificado para la UIF, y para asegurar la continuidad en la transición a la nueva FIA* parece haber sido abordada parcialmente puesto que, como se señaló en el párrafo 65 arriba, los dos (2) funcionarios de la UIF anterior fueron contratados a la FIA para ayudar en la transición.
84. La octava acción recomendada para una mayor capacitación ha sido abordada. Además de informar que la capacitación está en curso, Bermuda también ha informado de que las necesidades de formación de FIA así como otras fuerzas del orden y han sido abordadas a través FINTRAC y otras autoridades en la Formación Analítica y de Inteligencia. El personal de la FIA han participado en la formación en las siguientes áreas: Análisis Táctico, Análisis de Inteligencia Financiera, el Cumplimiento y la Financiación del Terrorismo. El personal sigue asistiendo y participando activamente en conferencias, seminarios y talleres previstos por el GAFI, GAFIC, Egmont y otras UIF. La formación ha producido a nivel local e internacional la participación del orden público, regulador y personal de la UIF extranjera. La financiación de la formación anual ha sido

presupuestada y proporcionada a la FIA. Con respecto a la capacitación en la Oficina del DPP, desde 2009, los miembros de la Sección de Especialistas continúan entrenando a través de la participación práctica en los procesos del lavado de dinero, retención y confiscación del producto del delito. Los miembros de la Sección de Especialistas también han asistido a la formación pertinente en materia ALD / CFT y el fraude en el extranjero. En cuanto al Servicio de Policía de Bermuda cinco (5) Los funcionarios de la unidad están actualmente certificados CAMS. Dos (2) supervisores en la oficina han adquirido Diplomas Avanzados en Cumplimiento y Prevención de la Delincuencia Financiera con International Compliance Association (ICA) y tienen o están en el proceso de completar una licenciatura en " delitos de cuello blanco. En cuanto a la formación BMA está en curso. ***Se ha rectificado esta deficiencia.***

85. La novena acción recomendada fue *para financiar la FIA de manera adecuada con personal y con recursos técnicos, en particular en términos de conocimientos técnicos como la contabilidad forense*. Aquí Bermuda ha informado de que "La FIA está adecuadamente financiada y estructurada, formada y cuenta con los recursos técnicos y de otro tipo para realizar plena y eficazmente su función designada. La FIA ha adquirido la solución de software goAML de las Naciones Unidas, que permite a todas las entidades reguladas para presentar informes de sospechosa actividad (SAR) on-line a través de un entorno seguro. El sistema recibe datos, clasifica y proporciona información sobre los ROS presentados. Esto ha permitido un proceso de revelación eficaz y eficiente, que ya ha demostrado un aumento en el flujo de trabajo y las revelaciones hechas a la policía, las UIF extranjeras y otras autoridades. ***Se ha rectificado esta deficiencia.***
86. La décima acción recomendada para *garantizar el establecimiento de la nueva Unidad de Inteligencia Financiera administrativa (FIA) y está en funcionamiento y proporciona los niveles de dotación de personal suficiente a la UIF policiales existentes para permitir un mayor número de investigaciones relacionadas con el LD / FT* ha sido abordada. Ver el parrafo 81. Esta Recomendación ha sido plenamente **Rectificada**

Conclusión general para la Recomendación 30.

87. De las diez acciones recomendadas ocho (8) se han sido rectificadas de manera definitiva, mientras que dos (2) han sido abordadas al punto donde sólo existe una deficiencia pequeña pendiente.
88. **Recomendación 31 fue calificada como PC** con dos (2) acciones recomendadas. La primera: *un coordinador nacional ALD / CFT debería ser nombrado y el papel de desarrollo de políticas de NAMLC debería estar activado*. Esta recomendación ha sido rectificada. Favor ver el primer y segundo informes de seguimiento ([Bermuda 1er informe de seguimiento](#)), ([Bermuda 2do Informe de seguimiento](#)). La cuestión pendiente relativa a la Política sin mencionar CFT debe ser abordada en la Ley de Productos del Delito y Medidas Relacionadas 2013 que está actualmente ante el Senado de Bermuda. La presente Recomendación ***permanece vigente.***
89. **En la Recomendación 32, que fue calificada como PC** Bermuda ha proporcionado estadísticas detalladas de la Secretaría, que demostraron que la jurisdicción, de hecho, mantiene las estadísticas como exige la Recomendación 32. Se pueden ver esas estadísticas [haciendo clic aquí](#). Esta recomendación ha sido ***plenamente rectificada.***
90. **En la Recomendación Especial VI, que fue calificada como PC** la acción recomendada fue que *Se debe exigir a los servicios de transferencia de dinero con licencia para mantener una lista de sus agentes y para ponerla a disposición de las autoridades. Dado que no se ha probado el nuevo régimen jurídico para los negocios de servicios monetarios, no hay ninguna base para evaluar la*

aplicación efectiva. Hay 2 empresas de servicios de dinero con licencia que actualmente operan en Bermuda. Ambas están sujetas a las mismas obligaciones ALD como otras instituciones financieras en Bermuda y han sido sometidas a inspecciones in situ en diciembre de 2012. Aquí, los comentarios de la Recomendación 23. Esta recomendación ha sido *plenamente rectificada*.

91. **Recomendación Especial VII ya ha sido plenamente rectificada subsanado.** El segundo informe de seguimiento ([Bermuda 2er Informe de seguimiento](#)) detalla todas las medidas adoptadas por Bermuda para implementar plenamente las acciones recomendadas de los evaluadores.
92. **Recomendación Especial VIII fue calificada PC.** Bermuda ha informado de que, tras la consulta pública sobre el sector de la Ley de Caridades NPO ha sido elaborada y debe ser presentada a finales de 2013 para la entrada en vigor a principios de 2014. Esta Recomendación Especial *permanece vigente*.
93. **Recomendación Especial IX fue clasificada como NC.** Favor ver el primer y segundo y tercer informes de seguimiento ([Bermuda 1er informe de seguimiento](#)), ([Bermuda 2er Informe de seguimiento](#)) ([Bermuda 3er Informe de seguimiento](#)) para un análisis detallado de la acción tomada por Bermuda en la rectificación de las deficiencias señaladas en el IEM. Esta Recomendación Especial *plenamente rectificada*.

VI CONCLUSION

94. El análisis de este informe fue elaborado en la base de la información proporcionada por Bermuda y resulta ser inherentemente una evaluación de escritorio. Como resultado, el nivel y la naturaleza de la información proporcionada y aceptada en muchos casos es inherentemente diferente a la que habría sido aceptada durante una visita in situ. Sin embargo, en base a esta revisión de escritorio, se puede observar que para las Recomendaciones Esenciales y Clave cinco (5) de las recomendaciones 13, II, IV, 3, 35, 36, REI y REIII están permanecen vigentes.

Secretaria del GAFIC
18 de Noviembre de 2013

Report and Submission to CFATF for Removal from Follow-up Process
Bermuda (September 2013)

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
Legal systems				
1. ML offence	LC		<p>The effectiveness of the updated legal framework was highlighted in a ML prosecution under s. 44 of POCA in 2009. The guilty verdict on all 11 Counts reaffirmed the efficacy of the anti-ML provisions as well as the skills of the law enforcement, and prosecuting teams which worked on this matter over a 3 year period.</p> <p>From 2009 to 2011, there were an additional 3 convictions for money laundering; 1 in the Magistrates' Court, and 2 in the Supreme Court.</p> <p>As of 31 August 2013 there have been a total of 13 convictions for money laundering in Bermuda; two convictions have been in the Magistrates Court and 11 convictions in the Supreme Court. Thus, there were a further 9 convictions for money laundering during the period 1 February 2011 to 31 August 2013.</p> <p>Further, there are currently 7 individuals charged with offences of Money Laundering before the Supreme Court and Magistrate's Court in Bermuda. In addition there have been many more arrests for money laundering during the period and although this has not resulted in further prosecutions, the evidence in respect of these arrests has been used towards successful convictions in regards to existing matters before the courts. These prosecutorial decisions have been assisted by the effective ML legislation. The overall effectiveness of the legislation is now being regularly and rigorously tested and being upheld at all levels of the system. This has resulted in not only positive results but with appropriate case law being created by affirmative Appeals Courts decisions.</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
2. ML offence – mental element and corporate liability	LC	<p>i) Fines under POCA with respect to summary convictions and certain convictions on indictment should be substantially increased.</p> <p>ii) Additional investigations and prosecutions are necessary in order to maintain an effective AML/CFT framework, particularly given that there has only been one prosecution of ML in the last five years and limited numbers of ML investigations.</p>	<p>i) It was our view that no action was required to be taken on this recommendation as we did not agree that it was appropriate. We presented to the Secretariat the required information to support our position (copy attached in Addendum, Section A II) and were informed by the Secretariat that this item was now considered closed (via email from Jefferson Clarke dated 20 May 2013).</p> <p>ii) The effectiveness of the updated legal framework was highlighted in a ML prosecution under s. 44 of POCA in 2009 (see Rec.1 above). There have been a number of confiscation orders as well as forfeitures. Further, the Bermuda authorities have been directly responsible for successful convictions in 5 cases in the United States, while two subjects have been convicted of money laundering offences in the UK. In addition, three persons have been charged with money laundering offences in the Caribbean and are awaiting trial. Other investigations are ongoing locally and there is close cooperation between the DPP and the BPS in this regard.</p> <p>As of 31 August 2013 there have been a total of 13 convictions for money laundering in Bermuda; two convictions have been in the Magistrates Court and 11 convictions in the Supreme Court. The sentences for these offences have ranged from 3 years to 8 years imprisonment, and demonstrate the ability of the BPS and the DPP to investigate and prosecute these offences. There has been 1 not guilty verdict for money laundering during the period 1 February 2011 to 31 August 2013 in regards to a husband and wife who were however convicted of providing false and misleading information to the Bermuda Monetary Authority.</p> <p>Additionally, as noted above, there are currently 7 individuals charged with offences of Money Laundering before the Supreme Court and Magistrate’s Court in Bermuda. This demonstrates willingness by both the Bermuda Police Service and Department of Public Prosecutions to investigate and prosecute complex money laundering cases.</p>	
3. Confiscation and provisional measures	PC	<p>i) Explicitly provide in legislation for the confiscation of property which constitutes instrumentalities intended for use in the commission of ML or other non-drug trafficking predicate offenses.</p>	<p>i) The required legislation (Clause 14 of the Proceeds of Crime and Related Measures Amendment Act 2013) has now been passed by the House of Assembly and tabled in the Senate for debate and approval on October 2, 2013. Clause 14 amends the Criminal Code Act 1907 by inserting section 70IA, which allows a court to make a Deprivation Order to deprive a convicted person of tainted property, which is property that was used in or in connection with the commission of an offence.</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
		<ul style="list-style-type: none"> ii) Explicitly provide in legislation that, for the purposes of confiscation of the benefits of ML offenses, the proceeds that are the basis of the offense may include any payments received by the defendant at any time in connection with the ML offense carried out by him or by another person. iii) With respect to the voiding of contracts, explicitly provide the authorities with the means to prevent actions to hinder the recovery of property subject to confiscation. 	<ul style="list-style-type: none"> ii) Provisions made under POCA Amendment 2008, clause 7, s. 48A (3) have addressed this recommendation. iii) Section 10 of the POCA Amend. Act 2007 has addressed this recommendation. 	
Preventive measures				
4. Secrecy laws consistent with the Recommendations	C			
5.Customer due diligence	NC	<ul style="list-style-type: none"> i) <i>Extend the regulatory regime for FIs to explicitly cover CFT issues.</i> ii) <i>Establish in the Regulations or in other enforceable instrument (Other Enforceable Means) all of the applicable requirements under FATF Recommendations 5–8. The current Regulations are limited and the Guidance Notes are not enforceable.</i> iii) Extend the CDD requirements beyond customer identification. iv) Require CDD in all cases (business relationships and one-off transactions) where there is knowledge or suspicion of ML/FT and not only in cases of one-off transactions. Also, clarify that the threshold for one-off transactions does not apply when there is suspicion. This requirement should also include reporting of suspicion when an FI cannot obtain the required identification/CDD information under Rec. 5.15 and 5.16. v) Reduce the minimum CDD threshold for wire transfers to the equivalent of US/BD\$1,000. (See recommendation on recordkeeping under section 3.5.3. 	<ul style="list-style-type: none"> i) Provisions made under Regs. 6 and 11 have addressed this recommendation. ii) Provisions made under Regs. Part 2, regulations 5 -14 have addressed this recommendation. iii) Provisions made under the Regs, Part 2, regulations 7, 9, 11, 12 and 13 have addressed this recommendation. iv) Regulation 6 satisfies this requirement in that Reg 6(1)(c) mandates that there must be CDD when there is knowledge of suspicion of ML/FT. It also applies even if the threshold for one off transactions do not apply. v) Part 4 – Wire Transfers of the Regulations makes provisions relating to electronic funds (wire transfers) and satisfies this recommendation. (The updated Regulations came into force in March 2010). In particular, this issue is addressed in Regulation 23 (4). vi) Provisions made under Reg. 6 have addressed this 	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
		<ul style="list-style-type: none"> vi) Extend the CDD requirements to cases where there is doubt as to the veracity or adequacy of previously obtained information. See recommendation below on the need to update information for “grandfathered accounts”. vii) Reg. 4(4) could more explicitly establish the requirement to identify and obtain CDD information on underlying beneficiaries, including for legal persons and arrangements. This would make the Guidance Notes more consistent with the Regulations. viii) Review the customer identification exemptions provided for in the Guidance Notes for consistency with the Regulations and FATF Rec. 5, 8, and 9. ix) Review the wording of Guidance Notes 129, 130, 139, 140 and 140 on exemptions from identification to ensure that they do not create a practical limitation of CDD in the insurance and investment services sectors. Similar review is required for GNs 131, 132 and 133 for investment services. This should also be reviewed in the context of timing of verification for purposes of Rec. 5.13 and 5.14. x) CDD requirements that include the purpose and nature of business relationships (and significant one-off transactions) should be established. xi) Require FIs to conduct enhanced monitoring for higher risk business and regular updating of customer profile information, to conduct enhanced CDD for higher risk customers, business relationships and transactions. xii) Require FIs to conduct enhanced CDD for higher risk customers, business relationships or transactions in either in the POCA, Regulations or other enforceable means. 	<p>recommendation.</p> <ul style="list-style-type: none"> vii) Provisions made under Regs. 5(b) and 6(4) (b) have addressed this recommendation. viii) Provisions made under Regs. 8(3), 8(4), 8(5) and Reg. 10 have addressed this recommendation. ix) Provisions made under Regs. 10(4), 10(6) and Reg. 8 have addressed this recommendation. x) Provisions made under Regs. 5(c) and 6(3) have addressed this recommendation. xi) Provisions made under Regs. 11(1), 11(2), and 11(3) have addressed this recommendation. xii) Provisions made under Regs. 11 have addressed this recommendation. xiii) Provisions made under Regs. 10 have addressed this provision. 	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
		<p>xiii) Review the exemptions/simplifications provided for in the Regulations and (non-mandatory) Guidance Notes to ensure that they are justified on the basis of proven (documented) low risk. Where applicable, such lower exemptions/simplifications should be allowed only where customer information is publicly available or when there are otherwise adequate checks and controls in the system, especially when the clients are not other regulated FIs.</p> <p>xiv) Where simplified CDD is allowed, there should be provisions to limit these to cases where non-resident customers are from countries that have effectively implemented the FATF Recommendations.</p> <p>xv) As a general rule, do not allow exemptions or reduced CDD measures when there is suspicion of ML/FT.</p> <p>xvi) Remove the general exemption in Guidance Note 50 on the timing for verification when payment is to be made from "other account" as this could be interpreted, e.g. from an account held by any non-FI business or unregulated person.</p> <p>xvii) Require FIs to expedite the conduct of CDD</p>	<p>xiv) Provisions made under Regs. 10(2) (b) and 10(4) have addressed this recommendation.</p> <p>xv) Provisions made under Reg. 6(1) (c) and Reg. 11 satisfy this requirement. Under Reg 6(1)(c) CDD must be applied where there is a suspicion of ML/FT and there is no exemption from this requirement nor can simplified due diligence (under Reg 10) be conducted where there is a suspicion of ML/FT. Additionally, Reg 11 also requires that enhanced due diligence (EDD) be conducted where a situation by its nature presents a higher risk of ML/FT.</p> <p>xvi) The Guidance Notes issued in 1998 are no longer applicable and reference should be made to the new guidance notes. Paragraphs 46-50 of the old guidance notes refer to the "Timing and Duration of Verification." At the time these GNs were issued, the POC regulations did not require verification of identity and as you are aware, the GN are not OEMs. The new regulations require the verification of identity and therefore the 'general exemption' (I believe it should have said paragraph 48) is no longer applicable. S. 8 of the regulations addresses the 'Timing of Verification' which must be completed prior to establishing a business relationship or conducting an occasional transaction. S.8 provides three exceptions to this rule, as provided for in the FATF recommendation. Therefore the timing of verification has been legislated for and the old GN are not applicable. Paragraphs 5.16 - 5.19 of the new GNs refer.</p> <p>xvii) Para 5.37 – 40 of the GN address the issue of dealing with 'grandfathered' accounts.</p>	

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		and update client documentation for clients in existence when the Regulations were issued, the so called “grandfathered” customers. The Regulations were issued in 1998 (about 9.5 years ago) and the slow progress in updating such information creates a significant vulnerability across the industry.		
6. Politically exposed persons	NC	Require FIs to conduct enhanced CDD for PEPs.	Provisions made under Regs. 11(4), 11(5), 11(6), 11(7) and the Schedule, section 2 of Regs have addressed this recommendation.	
7. Correspondent banking	NC	Require FIs to conduct enhanced CDD with respect to correspondent banking and similar relationships.	Provisions made under Regs. 11(3) have addressed this recommendation.	
8. New technologies & non face-to-face business	NC	Require FIs to address risks associated with non-face to face business relationships or transactions, and to implement measures to prevent misuse of technological developments that could facilitate ML/FT.	Provisions made under Regs. 9, 11(2), 11(3), 12, and 13 have addressed this recommendation.	
9. Third parties and introducers	NC	<p>i) Require FIs to immediately obtain CDD information from acceptable third parties when relying on their CDD.</p> <p>ii) When allowing FIs to rely on CDD conducted by third parties, require them to have addressed themselves that the requisite CDD documentation has been obtained by such third parties, and that it will be made available to the FIs promptly on request.</p> <p>iii) Periodically review the adequacy of the basis on which FIs rely on the CDD of other third parties whether in Bermuda</p>	<p>i) Reg. 14 has been updated to address this recommendation. Regulation 14 directs that a relevant person may rely on a third party to apply CDD measures where the person falls within one of the categories set out in regulation 14(2) provided the person gives their consent. Under Clause 21 of the Proceeds of Crime and Related Measures Amendment Act 2013, this Regulation has now been amended and provides that notwithstanding the relevant person’s reliance on another party (person), the relevant person must obtain information sufficient to identify customers. Further, the amendment requires that a relevant person must ensure that the reliance is appropriate, given the level of risk for the jurisdiction in which the party to be relied upon is usually resident.</p> <p>ii) Provisions made under Regs. 14, 15(6), (7) have addressed this recommendation.</p> <p>iii) Provisions made under Reg. 14 have addressed this recommendation.</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
		<p>or in other countries, with respect to their supervision for AML/CFT purposes, and implementation of the FATF Recommendations by countries where the third parties are located.</p> <p>iv) Make it explicit that where reliance on others for certain aspects of CDD is allowed, that the ultimate responsibility lies with the FI.</p>	<p>iv) Clause 21 of the Proceeds of Crime and Related Measures Amendment Act 2013 has addressed this recommendation by amending Reg. 14. That is, Reg 14 has been amended to include that the relevant person (FI) will remain liable for any failure to apply any CDD measures (Reg. 14(b)(iii)). The said Amendment Act was passed in the Lower House and has now been tabled in the Senate for debate and passage on October 2, 2013.</p>	
<p>10.Record keeping</p>	<p>LC</p>	<p>i) <i>Include in all the Schedules for minimum licensing criteria of the financial regulatory laws a recordkeeping requirement to comply with the AML/CFT legislation, not only for purposes of the regulatory laws.</i></p> <p>ii) <i>Consider rewording Reg. 5(4) to make it more consistent with Guidance Note 95 to state that the retention period in cases of an investigation would be longer than the minimum five-year period specified. Also clarify what constitutes the “outcome of the investigation” and whether it would include, e.g. the prosecution, trial, conviction or confiscation procedures.</i></p>	<p>i) The record keeping provisions at s.15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 meet the requirements of FATF recommendation 10. Guidance Notes Chapter 8 paragraphs 8.1 – 8.28 refer.</p> <p>ii) Regulation 5(2) of the OLD regulations refers to keeping records for the minimum retention period (five years) if they would assist in the investigation of money laundering. The NEW regulations - S.15(5) makes specific reference to keeping records, in the case of an institution being notified those records may be relevant to an investigation, "pending the outcome of the investigation." S.15(5) of the NEW regulations makes no reference to the 5 year retention period in these circumstances. Therefore the situation has been rectified as required.</p> <p>iii) Provisions made under Reg. 15(2) have addressed this recommendation.</p>	

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		<p>iii) <i>Revise the Guidance Notes (G97) to ensure that the retention of transaction records are not limited to details of securities and investments transacted, and that they apply to non-securities related business, e.g. banking and insurance transactions.</i></p> <p>iv)</p>		
11.Unusual transactions	NC	Introduce in law, regulations or OEMs a requirement to monitor, examine and record information on complex, unusually large, or unusual patterns of transactions that have no apparent economic or lawful purpose.	We were of the view that provisions in Regs. 7, 15 and 16 adequately addressed the FATF requirements. However, for the avoidance of doubt, further amendments were made to Regulations 7 and 15 in Clause 19 (amends Reg.7) and Clause 22 (amends Reg. 15) of the Proceeds of Crime and Related Measures Amendment Act 2013. The amendment to Reg. 7 provides for ongoing monitoring to include “all complex, unusually large transactions, and all unusual patterns of transaction which have no apparent economic or lawful purpose”; and Reg. 15 was amended to provide for the keeping of records, for all documents related to investigations of complex transactions, unusually large transactions, or unusual patterns of transactions in relation to Reg. 7, for a minimum period of 5 years. The said Amendment Act was passed in the Lower House and has now been tabled in the Senate for debate and passage on October 2, 2013.	
12.DNFBP – R.5, 6, 8-11	NC	i) Amend POCA and the POC Regulations 1998 to require lawyers, accountants, company service providers, dealers in precious metals and stones, including jewelers, and real estate agents to implement AML/CFT programs covering: (a)CDD, (b) record-keeping, (c) internal reporting programs (to include reporting by an MLRO to the FIU), and (d) training.	i) Lawyers and accountants were brought into scope under POCA Amend. 2008, ATFA Amend. 2008 and Regs. Parts 2 and 3. The SEA Amendment Act 2010 established the complete framework for the supervision of DNFBP’s. A new SRO (Barristers and Accountants AML/ATF Board) has been set up to supervise lawyers and ICAB Accountants. The Barrister and Accountants AML/ATF Board was designated as the supervisory authority for Lawyers and ICAB Accountants by the Minister of Justice in August 2012 (pursuant to s. 4 of SEA) and these independent professionals are now within scope for AML/CFT supervision. Under the SEA Amendment Act, the FIA was designated as the regulatory body for Regulated Non-Financial Businesses and Professions (which was intended to include all DNFBPs not	i) The required steps are now taken to bring the outstanding DNFBPs, including dealers in precious metals and stones and real estate agents, into scope. However, it should be noted that having brought lawyers, accountants, Trust and Company Service Providers into scope, we essentially covered all of the key risk DNFBP sectors.

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
		<p>ii) In the case of lawyers and accountants, the AML/CFT program obligation should apply either when they plan for or when they carry out for their client the transactions enumerated in Rec. 12. Consideration should be given to extending the AML/CFT program obligations for accountants to all of their activities.</p> <p>iii) Given evidence that local drug dealers have made investments in the local property market, and the requirements of C 12.1, the AML/CFT program requirements for real estate dealers should cover all real estate transactions, not just those carried out in cash. Consideration should be given to requiring that all real estate transactions be settled by bank transfer.</p> <p>iv) Any SRO arrangements established for monitoring and oversight of AML/CFT program compliance should include adequate powers for the designated supervisor to review the policies and procedures and records of supervised parties as well as powers to effectively enforce compliance.</p> <p>v) All high value dealers, specifically dealers in precious metals and precious stones, including jewelers, engaging in</p>	<p>supervised by the BMA or the Barristers and Accountants AML/ATF Board Supervisory Board). The BMA became the supervisory authority, as defined in the SEA Act, for corporate service providers when the Corporate Service Providers Act 2012 came into effect on 1 January 2013. It is intended that Orders will be enacted within this year to bring other specified DNFbps under the supervision of the FIA.</p> <p>ii) Provisions made under POCA and Reg. 2 satisfies the relevant requirements under Recommendation 12. Extending the AML/CFT program obligations for accountants to all of their activities is not a FATF requirement and having given full consideration to this matter as discussed below, it was our view that such a change is not required at this time.</p> <p>iii) Discussions have commenced on the development of the regime for the real estate sector and it is certainly expected that we will incorporate the matters required by FATF in the regime. In relation to the recommendation that all real estate transactions should be settled by bank transfer, we would note that in our discussions with the sector, we have been informed that in fact, property sales are not settled by cash. Notwithstanding, , Bermuda is currently undertaking a national assessment of risks and vulnerabilities and it is expected that the additional proposals in this recommendation will be further reviewed once the results of the risk assessment are determined</p> <p>iv) Section 5 of the SEA Act also addresses the general duties of supervisory authorities. The SEA Act was amended in July 2010. In particular, the amendment Act expanded the supervisory framework to a designated SRO. It gives the full range of powers required to monitor and enforce compliance. Therefore this recommendation is now satisfied.</p> <p>v) High value dealers to be brought in scope during a future phase. As noted in i) above, it is intended that Orders will be enacted within this year to bring other specified DNFbps under the supervision of the FIA.</p>	<p>v) As noted in the previous column i) above, steps are being taken to</p>

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
		<p>cash transactions with customers of \$15,000 or more should be subject to the AML/CFT preventive measures regime.</p> <p>vi) An awareness campaign should be undertaken to familiarize DNFBBs with their responsibilities and obligations under any new AML/CFT laws or regulations.</p>	<p>vi) An awareness campaign for the financial institutions (which includes TSP's) and lawyers and accountants was carried out in 4th quarter 2008. Since then, there have been ongoing sessions held with the Trust sector to reinforce the AML/ATF requirements and strengthen compliance.</p> <p>In addition, the BMA has recently embarked on an outreach program to Corporate Service Providers in relation to their AML/CFT obligations. The Barristers and Accountants AML/ATF Board has held a number of informational sessions with the entities that they are responsible for supervising. Further, during Bermuda's NRA the FIA commenced discussions with companies in other DNFBB sectors regarding the AML/ATF framework and in relation to the filing of SARs.</p>	high value dealers into scope.
13.Suspicious transaction reporting	PC	<p>i) Amend ATFA to require FT-related SARs for funds linked to terrorist organizations.</p> <p>ii) Enhance training for identification of FT-related transactions</p>	<p>i) Legislative amendments made in Clause 8 of the Proceeds of Crime and Related Measures Amendment Act 2013 amends section 5 of the Anti-Terrorism (Financial and other Measures) Act 2004 (ATFA) to broaden the prescribed offences to include the financing of terrorist organisation. Thus the disclosure provisions contained in section 9 of ATFA that require reporting suspicious activity to the FIA, now captures financing of terrorist organisations offences under section 5 of ATFA. As noted above, the legislative amendments have been passed in the Lower House and tabled in the Senate for debate and approval by the Senate on October 2, 2013.</p> <p>ii) The previous regulations and guidance notes did not address FT related matters. Therefore, there was previously no formal requirement for training on FT related transactions. The new regulations, apply to FT as well as ML matters. Training on FT related transactions is now a requirement (Reg 18) and failure to do so can result in a criminal or civil penalty.</p> <p>Additionally, the FIA confirms that entities are filing SARs on Terrorist Financing (TF) with the FIA. Four (4) SARs have been filed and disclosed. One with the former FIU/BPS and the others with the current FIA. Additionally, Go-AML software used by the FIA allows them to track filings on terrorist financing made by reporting entities and a UN Terrorist list has been built in the</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
			<p>system to red flag such reports of interest. FIA staff have attended International Conferences/Seminars/Workshops on terrorist financing. Further, the FIA does cover AML/CFT in their training module to reporting entities (or FI's).</p>	
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> i) Amend ATFA and POCA to provide explicit protection for those who are required file SARs based on FT. ii) Amend POCA to provide explicit protection from criminal liability resulting from a SAR filing. iii) Amend POCA to provide for tipping-off offence that explicitly covers the fact of or any information about a SAR filing and the contents therein. iv) Amend POCA to limit the scope of the exemption from tipping off by lawyers in a manner consistent with R.14 and R.16. 	<ul style="list-style-type: none"> i) Provisions under the Anti-Terrorism (Financial and Other Measures) Act 2004, Schedule 1, Part 1(2) have addressed this recommendation. ii) Provisions made under POCA Amend. 2008, clause 6, section 46 have addressed this recommendation. iii) Provision to address this was made under the Proceeds of Crime and Related Measures Amendment Act 2013. Clause 3 amends section 47 of POCA to make it an offence for a person to disclose to another person that a suspicious transaction report or related information has been filed with the FIA. As noted above, this bill was passed in the Lower House and tabled in the Senate for debate and approval by the Senate on October 2, 2013. iv) Having carried out a thorough review of our provisions and similar provisions in other jurisdictions, we have noted that our provisions in this regard are consistent with those in other jurisdictions so we are of the view that no change is required at this time. 	
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> i) Extend the procedures requirements to the full range CDD and recordkeeping requirements, and also require the formulation of AML/CFT policies, compliance and controls. Also consider specifying, in all cases, that the control systems requirements contained in the financial regulatory laws apply to AML/CFT. ii) Expand the role of the AML/CFT compliance function beyond suspicious activity reporting and include a requirement for an independent internal audit function that covers AML/CFT. 	<ul style="list-style-type: none"> i) Provisions under Regs. 5, 6, 7, 11 and 16 have addressed this recommendation. ii) Provision made under Reg. 16 expands the role of the AML/CFT compliance function beyond suspicious activity reporting. The requirement for an independent internal audit function that covers AML/CFT has been included in the revised Guidance Notes (sections 3.15-3.22). 	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
		<ul style="list-style-type: none"> iii) Extend the training requirements beyond those “relevant employees” defined in the Regulations to others who can play a role in implementing and monitoring compliance with institutional and legal AML/CFT requirements. iv) Include employee screening requirements in the AML Regulations to complement the fit and proper requirements for senior officials of FIs contained in the financial regulatory laws. 	<ul style="list-style-type: none"> iii) & iv) Amendments made to Regulation 18 under Clause 23 of the Proceeds of Crime and Related Measures Amendment Act 2013 broadens the meaning of relevant employee in relation to training requirements and related measures, as well as requires such persons to be properly screened prior to hiring. These amendments have passed in the Lower House and are tabled in the Senate for debate and approval by the Senate on October 2, 2013. 	
16.DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> i) Amend POCA to ensure that SAR reporting requirement conforms to the applicable FATF Recs., including requirements for legal professionals. ii) The authorities should take additional measures, including but not limited to the issuance of regulations and guidance, to ensure that DNFBP, including lawyers, file SARs when appropriate. iii) Revise relevant legislation with respect to tipping off by lawyers, in order to protect the confidentiality of SAR information. iv) As recommended in 5.2 above, bring all DNFBPs under the preventive measures regime called for in POC Regulations 1998. Mandatory measures should include requirements to have effective systems and controls to monitor transactions for suspicions and to ensure that suspicious activities are reported. v) Any AML/CFT supervisory regime introduced for DNFBPs (TSBs are already covered) should include powers 	<ul style="list-style-type: none"> i) Provision already made under POCA s.46(3)(6). ii) The requirement to file SAR’s is in POCA section 46 and ATFA section 9 and Schedule 1. This is reinforced through Reg 17 and the Guidance Notes – Chapter 6. iii) Provisions made under POCA s. 47(3) and ATFA Amend. 2008, clause 5, s. 10A have addressed this recommendation. iv) The legislative framework requiring FIs and DNFBPs to have the required systems and controls is in place. To date TSPs, CSPs, lawyers and accountants have been brought into scope under the regime. With regard to the reporting of SARs, the reporting requirement is already in place for all DNFBPS. v) Provisions under the SEA Act give supervisory authorities the full range of powers required for effective supervision. As noted previously, in relation to DNFBPs, the sectors already in scope are 	<p>In relation to item iv), the rel outstanding actions have been de under Recommendation 12.</p>

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
		for the supervisor to ensure effective implementation of SAR reporting requirements.	TSPs, CSPs, lawyers and accountants. As all real estate transactions require the use of a lawyer, bringing lawyers into scope has addressed key risks in that sector as well.	
17.Sanctions	PC	<p>i) Enact legislation for civil money penalties and conservatorship powers to be applied by the BMA.</p> <p>ii) Fines under POCA with respect to summary convictions and certain convictions on indictment should be raised.</p>	<p>i) Chapter 4 of the SEA Act 2008 implements civil money penalties to be applied by the BMA. In 2010-2011 the Authority imposed civil penalties against 3 entities for significant and substantial failures in AML compliance. The total fines were \$150,000.</p> <p>Conservatorship powers are only mentioned by way of “examples of types of sanctions include...”, followed by a list of examples including conservatorship. It is not a FATF requirement that all the examples given be legislated. There is no power to take any form of conservatorship over an Institution’s operations because of AML breaches, however it is possible to remove or restrict an Institutions licence or registration should the circumstances justify it. In one instance in 2009, the Authority issued a notice proposing such an action; however the Institution voluntarily closed until it could develop policies and procedures to meet its obligations, and the Authority did not proceed with the proposed action.</p> <p>ii) As noted under Recommendation 2 above, it was our view that no action was required to be taken on this recommendation as we did not agree that it was appropriate. We presented to the Secretariat the required information to support our position (copy attached in Addendum, Section A II) and were informed by the Secretariat that this item was now considered closed (via email from Jefferson Clarke dated 20 May 2013).</p>	
18.Shell banks	LC	Consider incorporating an explicit prohibition on the licensing of shell banks or requiring in the licensing criteria that licensees maintain a significant presence and mind and management in Bermuda, consistent with the Basel Paper on shell and parallel banks.	Provisions under Reg. 13 have addressed this recommendation.	
19.Other forms of reporting	C			
20.Other NFBP & secure transaction techniques	C			
21.Special attention for higher risk countries	NC	Require FIs to pay special attention, examine and record business relationships/transactions with persons from or in countries which do not sufficiently apply the FATF Recommendations,	Regulation 11(1) (b) is applicable to this circumstance as it imposes the requirement to apply enhanced CDD in any situation which by its nature can present a higher risk of ML or TF. Paragraph 3.13 of the Guidance Notes addresses this point and encourages institutions to make appropriate use of international findings such as FATF assessments	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
		and implement a system identify such countries	<p>where countries have been found to be materially deficient. Paragraph 5.131 also addresses this point where the location of the customer may present a higher risk of ML or TF.</p> <p>However, to further strengthen the requirements in this regard, Regulation 11 (1) has been amended by Clause 20 of the Proceeds of Crime and Related Measures Amendment Act 2013 to require enhanced due diligence to be applied where the country that the customer is from is identified by FATF as a high risk. This amendment Act has been passed in the lower House and the legislation was tabled in the Senate for debate and passage on October 2, 2013.</p> <p>Also the Minister of Justice issues an advisory after each FATF plenary providing the information in the FATF public statement and the List of Countries with strategic deficiencies. This advisory warns industry to note the risks related to each jurisdiction and to take these risks into account in their business processes and procedures.</p> <p>In addition, in August 2013 the CFATF Public Statement was uploaded to the website of the National Anti-Money Laundering Committee (NAMLC) and highlighted in the “News Alerts” section and the “CFATF Public Statements” section; and an email was also circulated to the NAMLC Agencies advising of the Public Statement issued by the CFATF.</p>	
22.Foreign branches & subsidiaries	NC	<p>i) Include in the Regulations an obligation for FIs to implement AML/CFT measures in overseas branches and subsidiaries.</p> <p>ii) Require FIs to inform the Bermudian authorities when their overseas operations cannot observe appropriate measures.</p>	<p>i) Provisions made under Reg. 12 have addressed this recommendation.</p> <p>ii) Provisions made under Reg. 12(2) have addressed this recommendation.</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
23.Regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> i) Develop and implement both an offsite and onsite supervision program for AML/CFT that is risk-based, and prioritizing for full scope inspections those sectors and institutions that present a higher degree of ML/FT risk, including in the insurance sector. ii) Expand the scope of onsite reviews including a focus on the adequacy of formal policies and the demonstrated commitment of the Board of Directors and senior management. iii) Enhance the onsite inspections program by focusing on particular areas of potential high risk activities and business relationships especially with respect to wire transfers, CDD on ultimate beneficiary clients, and controls and compliance involving reliance on intermediaries or introducers of business. 	<p>i, ii, iii) Section 3 of the SEA Act gives the Bermuda Monetary Authority (“the Authority”) the duty and power to effectively monitor compliance by financial institutions with the Regs. and other AML/ATF legislation and to enforce compliance with their provisions.</p> <p>In order to carry out its functions under the Act, the Authority has created and staffed a dedicated anti-money laundering and anti-terrorist financing unit (“the AML/ATF Unit”) to carry out the supervisory functions of the Authority. This includes both an on-site and off-site monitoring program. The unit was fully staffed by August 2009. Additionally, the unit works along with the Supervisory Departments for banking, investment, trust and insurance. Staff members in the supervisory Departments also have training in AML/ATF and complement the supervisory work carried out by the AML/ATF Unit.</p> <p>The Authority commenced an active on-site regime in 2009 and has carried out a risk based approach in planning the onsite programme. The initial focus of the regime was the banking sector, given the high vulnerability of this sector to ML/TF activities. On-sites were carried out on all institutions in this sector and they have had regular follow-up reviews since the initial on-sites were carried out. In 2010 and 2011 the Authority focused on the activities of the Trust sector, based on the vulnerability caused by the nature of the Trust business, the attendant risk, and given the international nature of the Bermuda Trust industry. On-sites were conducted on some 18 licensed trustees. Between 2010 and 2012 on-site reviews were also conducted in the Investment Business and Investment Funds sectors, based on the Authority’s view of the relative vulnerability of these sectors to the risks of AML/ATF. In all some 34 (of 93) licensed institutions in these sectors were the subject of on-site reviews.</p> <p>In 2013 the Authority commenced a review of AML/ATF compliance in the direct Long Term Insurance sector, again based on the Authority’s view of its relative vulnerability. Sixteen onsite inspections have taken place between January and August 2013, six of which were on the direct long term insurance sector.</p> <p>In 2011 the Authority engaged a third party to do an informal assessment of AML/ATF vulnerability in the financial sector, which broadly confirmed the Authority’s own assessment of relative risks in this area.</p> <p>Where deficiencies were identified with specific institutions remediation plans were put in place. The remediation plans were then monitored. In some cases this entailed a follow up onsite inspection.</p>	

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			<p>In summary there were a total of 102 AML/ATF on-sites carried out from 2009-2012 as follows: 2009 – 20 2010 – 33 2011 - 27 2012 - 22</p> <p>The 102 on-sites resulted in the review of 107 separate licenses (it should be noted that an entity can carry multiple licences).</p> <p>On-site inspections are regulatory inspections conducted by the Authority at the premises of the institution, which require BMA officers to examine the books, records and controls of an institution and to hold discussions with its senior management on the financial institution’s AML compliance framework. The on-site reviews include a review of the financial institution’s risk based AML/ATF policies and procedures as well as an evaluation of the commitment and involvement of senior management. Included in the review of all policies and systems is an assessment of the process for identification of beneficial owners, wire transfers and the controls in place to ensure compliance by intermediaries.</p> <p>In addition to the above the Authority conducted a sector wide survey in 2009, which sought to identify where specific institutions had not fully complied with AML/ATF obligations. On-site reviews and other mechanisms were used to address identified deficiencies. Further, in 2012 and 2013 the Authority has been conducting desk based reviews of all sectors, starting with the trust sector, to ensure that all institutions with AML/ATF obligations had suitable policies and procedures in place to deal with their AML/ATF risks.</p> <p>This review included 38 off-sites, or desk-based reviews, for the trust, investment business and fund administration industries; and 179 desk-based reviews for non-licensed persons (such persons are not required to be licensed under the prudential regulatory regime but come under the AML/ATF framework). As at the end of August 2013 reviews have been completed for all long term insurers who write direct business. Notwithstanding the risk based approach taken by the Authority in relation to its supervision of FIs, it should be noted that at the end of the 2013, the Authority will have completed either on-site or desk based reviews (off-site) of all AML/ATF regulated financial institutions, which currently total 1250.</p> <p>The number of visits to an institution is determined by the Authority’s risk assessment of the institution and its record of compliance. Financial institutions whose business presents an inherently high risk to money laundering or terrorist financing are subject to routine visits more frequently.</p>	

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		<p>iv) Develop and implement a framework for conducting consolidated supervision for AML/CFT compliance beyond banking, paying urgent attention to FIs that are parent and operating holding companies with significant operations overseas. Supervision should particularly focus on the existence and adequacy of applications for group-wide risk management, compliance and audit functions.</p> <p>v) Enhance the review of the sufficiency and quality of SAR reporting systems, and take fuller account of the work of external auditors in their review of the AML/CFT control environment.</p> <p>vi) Review the effectiveness of the overall supervisory process for purposes of applying enforcement action for AML/CFT related breaches and concerns.</p>	<p>iv) Outside of the banking sector there are few groups of any consequence within the financial services sectors other than insurance. The one major group in the investment sector is reviewed by a dedicated team in the investment department along with AML/ATF unit. With regard to insurance, the Insurance Act 1978 has been amended to allow for Group supervision, following extensive consultation with the insurance sector. Presently Bermuda has a register of 22 groups for which the Authority is recognised as group supervisor. The Insurance Department has been setting up colleges to work with regulators who supervise members of a particular group. Group-wide evaluations of AML compliance are being conducted, where appropriate, and recommendations addressing the obligations of different group members are made following on-site inspections.</p> <p>v) The onsite program was amended in January 2010 to broaden the tests for Internal reporting procedures to ensure institutions' employees are aware of who the MLRO is, the process each company has established for reporting and their responsibilities in reporting any suspicious activity directly to the MLRO. The independence of the MLRO position is established by reviewing the companies' organisational charts, job description and documentation showing unlimited access to information to enable the position to be effectively executed. A review of the company's internal reporting log and the number of SARS reported is requested to ensure the reporting process has been effective. In addition, as part of the onsite process there is a review of any internal or external audits and where there are issues raised about AML/CFT controls these are incorporated in the examination work plan.</p> <p>vi) The SEA Act empowers the BMA to impose civil monetary fines where a financial institution is found to be in breach of the regulations. The Act provides for a maximum fine of \$500,000 and the amount levied would be, in each particular instance, consistent with the principle that the fine must be appropriate, i.e. "effective, proportionate and dissuasive".</p> <p>Recent amendments in 2012 made to the Insurance Act 1978, the Banks and Deposit Companies Act 1999, the Investment Business Act 2003 and the Trusts (Regulation of Trust Business) Act 2001 introduced a uniform set of enforcement powers, and associated procedures for these Acts. Additional powers include:</p> <ul style="list-style-type: none"> • The power to impose civil penalties of up to \$500k for breaches of the relevant Act 	

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		<p>vii) Review and where necessary strengthen licensing practices in a consistent manner that reflects concerns not only of the applicant, but of other members of the group, including enforcement of the ongoing need for fit and proper criteria under the minimum licensing requirements.</p>	<ul style="list-style-type: none"> • The power to prohibit an individual from performing specific activities in respect of entities regulated under each Act • The power to seek injunctions to restrain or compel conduct. • The power to publish a statement where the Authority considers an Institution has breached an obligation under the relevant Act. • The various Acts also contain an express provision allowing the Authority to publish Decisions made in relation to enforcement activity. <p>Similar amendments are being developed for the Investment Funds Act 2006. The new powers augment the existing range of powers available for enforcement purposes; and the BMA has taken steps to issue a comprehensive Statement of Principles dealing with the use of the powers for enforcement under all of the Acts.</p> <p>In addition, the Corporate Service Providers Act 2012 brought corporate service providers within the AML regulatory regime.</p> <p>In respect of enforcement measures, in one instance in 2009, the Authority issued a notice proposing to withdraw a licence following AML breaches because of the perceived risk of money laundering. However the Institution voluntarily closed until it could develop policies and procedures to meet its obligations and the Authority did not proceed with the process.</p> <p>In 2010 and 2011 the Authority imposed civil penalties against 3 entities, for significant and substantial failures in AML compliance. Total fines imposed were \$150,000. In 2011 restrictions were imposed on the operations of a financial institution.</p> <p>vii) The Bermuda Monetary Authority’s licensing process evaluates and reviews amongst other things: that the business to be carried on by the proposed licensee falls within the provisions of relevant Bermuda law; that the licensee will have the requisite systems, procedures and policies in place to conduct the business to be carried on; and that persons proposing to manage and direct such business are fit and proper to act as controllers and officers of the proposed licensee in accordance with established Bermuda law requirements. The licensing process includes the review and evaluation of any issues which may have an impact on the licensee and other members of a group; and discussions are held with relevant overseas supervisory authorities in this regard. In addition, the process also requires a copy of proposed AML/ATF policies to be submitted and evaluated for adequacy prior to the issuance of a</p>	

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		<p>viii) Review licensing procedures to ensure that the full requirements for ultimate beneficiaries of proposed licensees are established in accordance with the application documentation requirements. Also, conduct a review of application documentation review procedures to ensure that signed applicant declaration forms relating to competence and probity, are consistent</p>	<p>license by the Authority. In particular all submissions are vetted by the Licensing and Authorisations department to ensure that all principals involved in the business, are fit and proper. This includes performing world check and internet searches to confirm the validity of the information. The individual qualifications of the officers of the company are also reviewed and approved by the Authority at the time of the application. There is also a requirement to submit the shareholders of the company, and they are vetted by the Licensing and Authorisations department prior to approval as well. Fitness and Propriety of shareholders, Directors and officers of licensed institutions is monitored on an ongoing basis through the following mechanisms:</p> <ul style="list-style-type: none"> • There is an obligation contained in each of the regulatory Acts to advise the Authority of any proposed change in shareholder controllers. Any new shareholder controller is assessed for suitability in the same manner as that conducted during the licensing process, prior to approval being given for the shareholding transfer. In the event the proposed transferee is found to be unsuitable the Authority can refuse its consent to the transfer • The on-site review processes as well as the annual reporting process are both used to identify any issues in conduct or competence in the management of the institution on an ongoing basis. There are minimum criteria in each of the Regulatory Acts requiring Directors and others to meet standards of fitness and propriety on an ongoing basis. Each Act contains the power to issue Directions or Restrictions to individual Institutions which could include requirements as to training, excluding individuals from specific activities, remedial actions, etc. • Each Act contains a provision that permits the Authority to ban an individual from specific or general activities in relation to any entity licensed under the relevant Act, if the BMA concludes that the individual does not currently meet the standards of fitness and propriety required in the minimum criteria. <p>viii) The Authority periodically reviews its licensing and application procedures and amends as required. The Authority's Assessment and Licensing Committee (ALC) process and manage the procedures for licensing. The ALC considers applications (licensing and other related matters) referred to it by the executive member responsible for the supervision of insurance, banking, trust, investments, fund administration business and money service business in Bermuda. The Authority is currently reviewing the licensing process with updated procedures due to be adopted prior to year end, which coincides with the implementation of the CSP</p>	

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		<p>with the type of license being sought.</p> <p>ix) Expedite the licensing/registration process for money services firm(s) and the provisions under Section 20AA of the BMA Act and the Regulations thereunder, to ascertain the adequacy of or need for provisions relating to agents/subagents of such licensees, as well as certain aspects of their operations to give practical implementation to issues such as minimum holding period of client money</p> <p>x) Conduct a systemic review to ascertain whether other financial activities covered by the FATF Recommendation is taking place in or from within Bermuda on a regular commercial basis</p>	<p>legislation. With respect to the review of declaration forms relating to competence and probity, this is also an ongoing process. For example the Fund Administrators' declaration form was reviewed and updated in December 2011.</p> <p>ix) The licensing and registration process is in place to allow the BMA to grant a license to an institution to carry on money service business. As of August 2013 two financial institutions have been granted a license under the Money Service Business Regulations 2007. Institutions licensed under the MSB Regulations are subject to the same AML/ATF framework as other financial institutions in Bermuda. The current MSB license holders do not have any agents or sub agents and in respect of the money service business do not 'hold' client money.</p> <p>x) A preliminary qualitative risk assessment carried out in 2011-2012 informed the Authority generally of the areas of vulnerability in Bermuda in addition to determining the on-site and off-site schedules. A quantitative risk assessment based on the World Bank model is currently underway. Consequently this process is to identify other areas of activity that might require more detailed review.</p> <p>The Authority has, as part of the quantitative risk assessment of the national risk assessment initiative, commenced to assemble data on supervisory activities and financial information on regulated entities. This project is ongoing but will continue to better inform the Authority about the details of the regulated sector and assist in effective resource allocation for supervisory and oversight purposes. Staff was trained on the World Bank Risk Assessment Tool in January 2013.</p> <p>Additionally, a portion of the NRA requires that lists of products and services are obtained from all regulated financial institutions along with activity and volume statistics. This information will allow the Authority, as part of the process, to ascertain whether other financial activities covered by the FATF recommendations are taking place on a regular commercial basis.</p>	<p>x) Bermuda is currently carrying out a National Risk Assessment (NRA) which is expected to be completed in the second half of 2013. From the results of this, a determination will be made as to whether any additional financial activities need to be brought into scope. However, it should be noted that the key financial activities covered by the FATF are already in scope.</p>

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<p>24. DNFBP - regulation, supervision and monitoring</p>	<p>NC</p>	<p>i) When lawyers, accountants, company service providers, real estate agents, jewelers and high value dealers are brought under the AML/CFT preventive regime, ensure that effective supervisory arrangements are established for each sector, including adequate powers for the supervisors to monitor and sanction, and adequate resources to carry out the supervisory function.</p>	<p>i) The supervisory framework has now been established through the SEA Amendment Act 2010. An SRO has been established for the supervision of lawyers and ICAB accountants and the FIA has been designated as the regulatory authority for all other DNBP's. Both bodies have full powers to effectively monitor and enforce compliance.</p> <p>As noted above the legislative framework requiring FIs and DNFBPs to have the required systems and controls is in place. To date TSPs, CSPs, lawyers and accountants have been brought into scope under the regime. Additionally, the Barristers and Accountants AML/ATF Board (the SRO for lawyers and accountants) is adequately funded and is effectively carrying out its functions under the relevant legislation. The Supervisor is an experienced senior lawyer with extensive AML/CFT knowledge. The SRO has conducted the following: outreach to all the law firms and accounting firms; held public information sessions in addition to Continuing Legal Education sessions for law firms; finalised the registration of all regulated law firms and accounting firms; requested that all regulated firms provide for review, any and all AML/AFT documented policies and procedures in relation to processes for mitigation against money laundering and terrorist finances; completed desk based reviews for such firms who provided the above said information; and commenced the on-site review process on firms deemed high risk due to non-compliance in regards to the request to submit to the Board the above requested information and documents.</p> <p>In Bermuda, Trust Service Providers (TSPs) and Corporate Service Providers are designated as FIs. The BMA, which is the supervisor for all FIs including TSPs and CSPs is also adequately funded and staffed. The BMA has an AML Unit that regularly conducts outreach and awareness raising sessions, as well as onsite and offsite. A comprehensive outline of their supervisory regime has been provided under R 23. Further, as noted in Rec. 12(i) above, it is intended that Orders will be enacted within this year to bring other specified DNFBPs under the supervision of the FIA.</p>	

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		<p>ii) Ensure that the scope of activities of professional lawyers and accountants that is subject to AML/CFT obligations and to supervision conforms to the requirements of Rec. 24.</p> <p>iii) Updated guidance should be issued relevant to all DNFbps.</p>	<p>ii) Professional lawyers and accountants are brought into scope of the Regulations through Reg 4. The scope of activities covered is detailed under the definition of “independent professional in Reg 2(1). The Barristers and Accountants AML/ATF Board was designated as the supervisory authority for Lawyers and ICAB Accountants by the Minister of Justice in August 2012 (pursuant to s. 4 of SEA) and these independent professionals are now within scope for AML/CFT supervision. In particular, section 5 of the SEA Act addresses the general duties of supervisory authorities.</p> <p>The SEA Act was amended in July 2010, and the amendment Act expanded the supervisory framework to a designated SRO. Thus, the Act gives the full range of powers to the Barristers and Accountants AML/ATF Board required to monitor and enforce compliance.</p> <p>iii) The GN for AML/ATF regulated financial institutions applies to TSPs and CSPs. Additionally, specific guidance Notes for the Trust Sector were published in 2012.</p> <p>The Barristers and Accountants AML/ATF Board’s Guidance Notes were approved by the Minister and issued to the sector in 2012. Please also note that General Guidance Notes for all Financial Institutions, including the Trust Sector was issued by the BMA in 2009 and updated in 2010.</p> <p>Guidance notes for all outstanding DNFbps will be issued by the relevant supervisory body once the sectors are brought into scope.</p>	

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25. Guidelines & Feedback	PC	<p>i) Review/update the Guidance Notes for completeness and relevance to the current needs of industry, and remove inappropriate exemptions or simplifications in customer due diligence.</p> <p>ii) Develop guidance for FIs and DNFBP relating to latest industry-specific typologies and additional preventative measures.</p> <p>iii) Formalise procedures for providing feedback on SARs.</p>	<p>i, ii) The Regs. have incorporated and expanded upon many of the requirements that were previously in Guidance.</p> <p>These regulations have been made pursuant to section 49(3) of POCA and section 12A of ATFA and revoke the previous regulations.</p> <p>The Bermuda Monetary Authority, as supervisor of financial institutions, has now finalised new guidance to assist with compliance with the revised regulations and various sections of the Proceeds of Crime Act 1997 and the Anti-Terrorism (Financial and Other Measures) Act 2004. The new GN replaces the previous guidance and, along with the Regs. address the issue at point one.</p> <p>Further, general Guidance Notes for all Financial Institutions, including the Trust Sector were published by the BMA in 2009 and updated in 2010. Additionally, specific guidance Notes for the Trust Sector were published in 2012. The Investment Business Sector and Investment Fund Sector specific Guidance Notes are being finalised and sector specific Guidance Notes for CSPs are being developed. Also in 2012 GNs were issued by the Barristers and Accountants AML/ATF Board Board for lawyers and accountants and by the BMA for the Trust sector. Trends and typologies are shared with industry (inc. FIs and DNFBPs) as follows:</p> <ul style="list-style-type: none"> - by the BMA with the FIs/Trust Sector during their quarterly feedback meetings; - by the FIA through i) GoAML system which automatically sends typologies reports to reporting entities (any FIs/DNFBPs that have filed a SAR), ii) Annual Report, iii) regular industry outreach sessions, and iv) quarterly feedback meetings with the banks and MSBs; -by the publication on a quarterly basis of the NAMLC newsletter which is distributed via email to industry (inc FIs/DNFBPs) and available on the NAMLC website (www.namlc.bm); -by the specific guidance notes for the trust, legal and accountancy sectors including typologies (see BMA AML/ATF Sector Specific Guidance Notes for Trusts, Guidance Notes for the Accounting Sector, and Guidance Notes for the Legal Sector (<i>hyperlinks</i>)). <p>iii) The FIA has a formalised procedure for providing feedback to FIs and other legislated authorities in place to direct how the feedback is to be sent in relation to SAR reporting. Quarterly meetings take place with FIs to provide them with feedback on both general and specific issues that arise.</p> <p>Meetings with the Banks and Money Service Businesses (MSBs) are held on a quarterly basis, wherein the FIs are provided with a</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
			<p>written report outlining feedback that is specific to their institution along with a review of their relevant industry sector and the overall country review.</p> <p>Expansion of the FIA outreach sessions to all reporting entities that are registered with the FIA's goAML online filing system (which includes FIs and DNFBPs) includes information on trends and typologies, case studies, red flags and ML/FT indicators. Further, during Bermuda's NRA the FIA commenced discussions with DNFBP sectors regarding the AML/ATF framework and in relation to the filing of SARs and there is ongoing dialogue between the FIA and the relevant DNFBP sectors.</p>	
Institutional and other measures				
26.The FIU	LC	Ensure that the new FIA is established and becomes operational, and provide sufficient staffing levels at the existing Police FIU to enable an increased number of ML/FT-related investigations.	<p>The new FIA is now operational and has adequate staff in posts to deal with the number of SARs currently being generated by FIs and other entities.</p> <p>An MOU is in place between the FIA and BPS that allows for the presence of a Police Liaison Officer at the FIA. This assisted in the transition from the FIU to the FIA and also enhances the day to day continuity between the two bodies.</p> <p>An MOU is in place with the FIA and HM Customs which allows for the full-time presence of a Customs Liaison Officer at the FIA. This serves to enhance the day to day continuity between the two bodies.</p> <p>Since the IMF assessment of May 2007, the Bermuda Police Service, which was already conducting ongoing money laundering investigations, has undertaken a number of additional money laundering cases.</p> <p>Additionally, since the FIA became operational in November 2008 there have been 13 convictions for money laundering in Bermuda. In respect of these convictions, 6 are a directly related to disclosures, and the other convictions have been supported by SAR information.</p> <p>The FIA plays an active role in both CFATF and the Egmont Group. Within CFATF, the FIA sits on the Steering Group Committee and is involved in the Accreditation and Typologies Working Group. Within the Egmont Group, the FIA holds the positions of Regional Representative for the Americas and the Vice Chair of the Legal Working Group.</p> <p>Currently there are a number of AML related matters before the courts or the subject of ongoing investigation.</p>	

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27.Law Enforcement Authorities	LC	<p>i) The authorities should make greater efforts to follow up on signs and traces of ML and to initiate non-SAR triggered investigations.</p> <p>ii) Investigating and prosecuting ML/FT cases should be made a priority by law enforcement authorities, with sufficient resources allocated reflecting that priority.</p>	<p>i) The Police FIU has commenced a number of non-SAR triggered investigations. In recent months, two very large ML enquiries have been generated from within the Bermuda Police Service, and subsequently supported with SAR information.</p> <p>ii) The commitment to ML/FT matters was demonstrated in the 2009 ML prosecution under s.44 POCA. The guilty verdict on all 11 counts reaffirms the efficacy of the anti-ML provisions as well as the skills of the law enforcement and prosecuting teams which worked on this matter over the past 3 years. There have been a number of confiscation orders as well as forfeitures. Further, the Bermuda authorities have been directly responsible for the successful conviction on 5 cases in the United States, while two persons are currently subject to money laundering charges in the Caribbean. Other investigations are currently ongoing. We would note that the current BPS Strategic Plan outlines the high priority which the Services afford ML and FT. It states, in particular:</p> <p>Maintaining capability to match the threat of serious and series offenders who commit crimes in Bermuda and internationally;</p> <p>Maintaining capability to investigate all major crime committed in Bermuda;</p> <p>Increasing capability to maximize the benefits o the Proceeds of Crime Act the Confiscated Assets Trust Fund and other statutory provisions, and becoming a centre of excellence for financial investigation.</p> <p>Further, to date there have been an additional 3 convictions for money laundering: 1 in the Magistrates’ Court and 2 in the Supreme Court; and 6 persons are currently charged with money laundering offences before the courts and their trials are pending.</p> <p>As stated previously (see Recs. 1 and 2) the BPS has brought 14 money laundering cases before Bermuda’s courts. The convictions in 13 of these cases are testimony to the hard work and commitment of the organisation to investigate these matters. Further, in addition to convictions locally, the BPS has provided direct assistance to overseas counterparts in several other money laundering prosecutions. The stated success has been achieved in a climate where the BPS has had to employ additional resources to investigate the upswing of gun and gang activity. The BPS objectives have focussed on guns, gang violence and drugs, and to this end the financial links between these activities have been the focus of the FCU. Of the 6 convictions for ML in 2012, 4 are believed to be related to these predicate activities.</p> <p>In addition the new s.50 amendment to the POCA has resulted in</p>	

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			an increase in cash seizures, forfeitures and confiscations. In 2012 35 cash seizures were made and were a direct result of POCA's s.50 amendment.	
28.Powers of competent authorities	C			
29.Supervisors	PC	<p>i) For purposes of consistency with other sectors, consider extending the definition of covered financial institutions and supervisory powers under the BMA Act to the insurance sector.</p> <p>ii) Establish an explicit mandate for the BMA to monitor, enforce and sanction for compliance with the AML/CFT obligations of FIs and review the adequacy of the proposed Bill to amend the POCA/BMA Act to ensure that it provides a clear and complete mandate to the BMA in all these areas.</p> <p>iii) Specify clear powers in the Credit Union Act that the BMA, under delegated authority, can supervise and inspect these FIs, including for compliance with AML/CFT obligations.</p> <p>iv) Extend in the Bank and Deposit Companies Act, prudent conduct/minimum licensing criteria to compliance with other laws so as to cover AML/CFT legislation.</p>	<p>i) Provisions under SEA Act have addressed this recommendation.</p> <p>ii) This has been addressed through the SEA Act.</p> <p>iii) A new Credit Union Act was enacted in 2010 to strengthen the BMA's oversight of the Credit Unions. As noted on Page 2 of the addendum to this Report, through SEA, the Regulations and the Credit Union Act, a strong and robust regime has been put in place for the Credit Union and the BMA has the required powers to supervise and enforce compliance of its operation including AML/CFT requirements. That is, the Credit Union is licensed by the Authority for prudential purposes under the Credit Union Act 2010. However, the framework for monitoring and supervision of AML/ATF compliance is based on the fact that the Credit Union is a deposit taking business as defined by section 4 of the Banks and Deposit Companies Act 1999. Deposit taking business is captured by definitions contained in both the POCA Regulations and the SEA Act, i.e. "a person who carries on deposit taking business within the meaning of section 4 of the Banks and Deposit Companies Act. Credit Unions are therefore captured as relevant persons for the purpose of AML/ATF supervision by the Authority.</p> <p>iv) This has been addressed through Section 6 of the SEA Act.</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
		<p>v) Include in the legislation a specific power for the BMA to enforce compliance with the AML/CFT requirements, including for the application of administrative measures and sanctions, as exist in the financial regulatory laws.</p> <p>vi) Consider clarifying in the proposed Bill to amend the BMA Act that the scope of BMA's AML/CFT supervision includes a monitoring function as well as enforcement and sanctions powers under the regulatory laws.</p>	<p>v) Provisions made under the SEA Act have addressed this recommendation.</p> <p>vi) Provisions made under the SEA Act have addressed this recommendation.</p>	
30.Resources, integrity and training	PC	<p>i) Enhance training for BMA staff to facilitate the identification of deficiencies relating to AML/CFT requirements for FIs, including, but not limited to internal controls, CDD, SARs filings, recordkeeping, MLRO qualifications and operations. Increased specialization and focus on AML/CFT supervision, if the insurance and investment business/mutual fund sectors may be given priority.</p> <p>ii) The BMA should enhance its staff capacity to undertake more comprehensive AML/CFT supervision, including for the conduct of effective consolidated supervision whether as home or host supervisor.</p>	<p>i, ii) With the commencement of the SEA Act 2008, the Authority's role expanded to include a duty to effectively monitor financial institution's compliance with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (the "Regulations") and to enforce compliance with the said legislation. In order to carry out this duty the Authority established a dedicated anti-money laundering and anti-terrorist financing unit ("the AML/ATF Unit") comprised of a team of officers experienced in AML/ATF.</p> <p>The appointment of a dedicated unit (7 persons), which works independently of and with the regulatory units, enhances both staff capacity and training capabilities to carry out AML/CFT supervision. The AML Unit averages 20 years' experience per member in compliance, operational risk, money laundering investigations and enforcement pertaining to regulatory procedures and have worked in the various financial sectors. The unit members also hold relevant diplomas, certifications and degrees such as CAMS. The team is supported by the supervisory departments of The Authority which carry out, in accordance with their annual supervisory plan, onsite and offsite examinations and annual reporting reviews to ensure regulated financial institutions are compliant with the financial services legislation.</p> <p>In 2009 the Authority conducted external presentations dealing with general AML obligations for the sectors under its supervisory regime. The Authority continues to build on these sessions and to date they include: 6 external presentations in 2010; 10 outreach and 5 internal seminars in 2011; 5 outreach and 6 internal seminars in 2012; and in first quarter of 2013 2 outreach seminars and 1 internal seminar.</p> <p>In addition, since 2010 the AML Team has conducted a number of separate week long internal training programmes to develop</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
		<p>iii) Ensure continuation of the experience and skill in financial investigations in the Commercial Crime Department.</p> <p>iv) A liaison officer should be named and existing FIU staff should train their successors in order to facilitate the transition from the FIU to the FIA.</p> <p>v) The number of open positions in the DPP's office should be remedied, and efforts made to retain professional staff.</p>	<p>competencies in supervisory staff to review and evaluate AML compliance during supervisory on-sites.</p> <p>iii) The Commercial Crime Unit has been renamed the Financial Crime Unit, which has been established as a new department under the Asst. Commissioner of Police Serious Crimes. All officers in the Unit are experienced Detectives. Since Bermuda's first Follow-up Report, 7 officers in the FCU held Certification as Anti-Money Laundering Specialists with the ACAMS organisation; due to natural attrition 5 officers in the unit are currently CAMS certified. Two Supervisors in the Office hold Advanced Diplomas in Compliance and Financial Crime Prevention with International Compliance Association (ICA) and have or are in the process of completing bachelor's degrees in 'white collar crime'.</p> <p>Since the assessment the FCU have successfully replaced their analyst (on retirement) with another qualified analyst with over 30 years detective and analytical experience, and the BPS has obtained additional capacity by agreeing short term contracts with trained Financial Investigators (FIs) for specific investigations. Currently three additional FIs are so employed; this allows for additional capacity in the unit and increases the internal mentoring and training within the department.</p> <p>iv) Two officers from the former FIU were seconded to the FIA to assist in the transition. The FCU have provided training modules to new police recruits, detective training courses and senior investigating officer (SIO) training courses. This together with regular training and liaison with uniform staff and HM Customs has ensured that Proceeds of Crime Offences and powers have become more effectively utilised in the jurisdiction and has laid the foundation for future development of the unit.</p> <p>Following the completion of the transition of the FIA, a MOU was signed with the FIA and BPS that allowed for the full-time presence of a Police Liaison Officer at the FIA to facilitate direct communication and networking between the two agencies.</p> <p>v) The Specialist Section within the Office of DPP is fully staffed. The specialist section is tasked with the management and conduct of hearings and the provision of advice in respect to the proceeds of crime, mutual legal assistance and extradition. The section is also specifically tasked with all AML/CFT advice and hearings. The staff compliment of the section includes 1 Senior Legal</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
		<p>vi) Sufficient resources should be made available for training of DPP, Customs and Police staff.</p> <p>vii) Efforts should be made to attract qualified personnel to the FIU, and to provide continuity in the transition to the new FIA</p> <p>viii) Training should be increased at all agencies and at all levels not only in AML/CFT issues including typologies, analysis and international standards, but also in fundamentals such as investigating and prosecuting white collar crime cases, managing complex cases, and criminal procedure. Assessor training courses offered by CFATF, the IMF and the World Bank should be considered as a means of developing AML/CFT expertise.</p>	<p>Crown Counsel, 1 Crown Counsel, and 2 Crown Counsel – Junior Grade.</p> <p>Training in the department of public prosecutions is on-going in the area of AML/CFT.</p> <p>vi) See above and below.</p> <p>vii) The FIA is appropriately staffed and two officers from the former FIU assisted in the transition.</p> <p>viii) Training needs in the FIA and other law enforcement agencies have been addressed through FINTRAC and other authorities on Analytical and Intelligence Training. Additional training courses have been undertaken.</p> <p>Training is ongoing at the FIA. FIA staff have participated in training in the following areas: Tactical Analysis, Financial Intelligence Analysis, Compliance, and Terrorist Financing. Staff continue to attend and actively participate in Conferences, Seminars and Workshops provided by FATF, CFATF, Egmont, other FIUs. Training has occurred locally and internationally involving law enforcement, regulators and foreign FIU staff. Funding for annual training has been budgeted and provided to the FIA.</p> <p>The FIA has also taken part in the Strategic Analysis Course provided by the Egmont Group. It is anticipated that a staff member will be qualified to deliver the SAC Training from June, 2013. All analysts (which includes both the Police Liaison Officer and Customs Liaison Officer working at the FIA) of the FIA have taken part in the Tactical Analysis Course also developed by the Egmont Group. The FIA has a member of its analytical team that is qualified to deliver this Tactical Analysis Course. It is anticipated that this course will be delivered to members of the FCU during 2013.</p> <p>The FIA continues to enhance its skills and products by providing local training and presentations to FI's and other organizations upon request. Training has also been provided to the Association</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
		<p>ix) The FIA should be adequately funded, staffed and provided with technical resources, particularly in terms of technical expertise such as forensic accounting.</p> <p>x) Ensure that the new administrative Financial Intelligence Unit (FIA) is established and becomes operational and provide sufficient staffing levels at the existing Police FIU to enable an increased number of ML/FT-related investigations.</p>	<p>of Bermuda Compliance Officers and the Society for Trusts and Estates Practitioners.</p> <p>In respect of training in the DPP Office, since 2009, the members of the Specialist Section continue to train through hands on involvement in Money Laundering prosecutions, Restraint and Confiscation of Criminal Proceeds. Members of the Specialist Section have also attended relevant training in AML/CFT and Fraud overseas. The Specialist Section has also trained other counsel in the Office of DPP in relation to applications for forfeiture of the proceeds of crime and complex case management.</p> <p>As noted previously, training at the BMA is also ongoing. With regard to the BPS, as mentioned above, 5 officers in the unit are currently CAMS certified. Two Supervisors in the Office hold Advanced Diplomas in Compliance and Financial Crime Prevention with International Compliance Association (ICA) and have or are in the process of completing bachelor's degrees in 'white collar crime'.</p> <p>It is also further noted that representatives from the BMA, FIA, DPP's Office and the Office of NAMLC participated in a Mutual Evaluation Workshop held by the World Bank in conjunction with the CFATF.</p> <p>ix) The FIA is adequately funded, structured, staffed and is provided with technical and other resources to fully and effectively perform its mandated function.</p> <p>The FIA has acquired the United Nation's goAML software solution which allows for all reporting entities to file suspicious activity reports (SARs) on-line through a secured environment. The system receives stores, collates and provides feedback on all filed SARs. This has allowed for an effective and efficient disclosure process that has already shown an increase in workflow and disclosures made to law enforcement, foreign FIUs and other authorities</p> <p>x) The new FIA has been established and is fully functional. Staffing and resource levels are reviewed on a regular basis to ensure that the FIA can effectively carry out its duties.</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
31.National co-operation	PC	<p>i) A national AML/CFT coordinator should be appointed and the policy development role of NAMLC should be energized.</p> <p>ii) Systematic mechanisms should be put in place for coordination among and between all AML/CFT agencies and departments. These mechanisms could include assigned duties to individuals for coordination, regularly scheduled meetings and distribution of contact lists.</p>	<p>i) POCA Amendment 2008, clause 8, s. 49 addresses this recommendation. Additionally, the Office of the National Money Laundering Committee has been established and staffed and is tasked with coordinating and progressing Government's and NAMLC's AML/CFT initiatives in relation to money laundering, terrorist financing and the financing of proliferation. In addition, Government continues to engage the services of an AML/ATF consultant to ensure that NAMLC is actively involved in policy development.</p> <p>Further, amendments have been made to Sections 49 to specifically note NAMLC's involvement in policy development in the areas of terrorist financing and the financing of proliferation (see Clause 4 of the Proceeds of Crime and Related Measures Amendment Act 2013).</p> <p>ii) Coordination among agencies has been further enhanced with regular meetings established between relevant agencies. Under the leadership of NAMLC, three sub-committees meet on a regular (quarterly basis), they are:</p> <ul style="list-style-type: none"> • Legal Working Group (containing representatives of BMA, DPP, AG's Office, Office of NAMLC and FIA) • Sanctions Working Group (containing representatives from BMA, Office of NAMLC, AG's Chambers, and other agencies as required) • Operational Working Group (containing representatives from the BPS(FCU), FIA, HMC, Tax Commissioner, DOSI, AG's, BMA, MOF (Tax Treaty Team). <p>Each group report regularly to the NAMLC Committee within their specialist areas to provide recommendations to the Committee. The OWG for example has this year had responsibility for completing modules 1 and 2 of the NRA. The OWG group is a platform to discuss current typologies and trends and has proven to be an excellent source of information and a vehicle to enhance operational successes.</p> <p>In addition an MOU exists between the FIA and BPS, and the FIA and HMC to ensure collaborative work. To enhance this work the BPS and HMC have both agreed to have a member of staff from their respective agencies permanently seconded to the FIA. Weekly strategic and operational meetings are conducted between these</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
			<p>three agencies. The FIA and BMA meet on a quarterly basis. However, it should also be noted that additional operational meetings are conducted as the need arises.</p> <p>Due in part to the size of the jurisdiction, but also the recognition of its importance, all agencies report a close working relationship. An on-going example of this is the close liaison between the FCU and BMA in two current parallel investigations (due to sensitivity these cannot currently be named).</p> <p>The BPS assists the Inter-Agency Gang Task Force, which is made up of representatives of several government ministries, and sits in an advisory capacity on a second task force, which includes community partners that has been set-up to holistically tackle the crime culture in Bermuda which includes tackling the profits in crime. The agencies report an increase in intelligence and cooperation between all parties.</p>	
32.Statistics	PC	<p>i) Additional statistics should be maintained on amounts of restrained property compared with amounts ultimately confiscated and the types of crimes related to these actions.</p> <p>ii) Also needed is information on the recovery rates of the amounts subject to confiscation orders, and the amounts actually recovered.</p> <p>iii) Statistical systems should be updated and maintained in line with the recommendations in R.32.</p>	<p>It is our view that the recommendations in this regard have now been addressed. We have provided as an annex statistics to demonstrate the effectiveness of Bermuda's AML/CFT Regime, including in relation to the awareness raising and outreach activities of the relevant AML/CFT authorities; money laundering and terrorist financing investigations, prosecutions and convictions; seizures and confiscations; Suspicious Activity Reports; cash declarations; supervision and oversight of Financial Institutions and DNFBPs; and mutual legal assistance and international cooperation..</p> <p>i), ii) A record is now kept in the DPP of all cases with current restraint orders in effect; pending confiscation matters with flags on the relevant timelines; as well as orders made for confiscation and forfeiture..</p> <p>iii) Performance data in relation to FCU's investigations is regularly reported on and FIA statistics are shared with reporting agencies and other appropriate authorities on a quarterly basis. This allows the FIA to produce useful trends and typologies for publication.</p> <p>These trends and typologies are shared with the reporting entities during their quarterly feedback meetings in addition to being provided to NAMLC for publication on a quarterly basis.</p> <p>Further, the Attorney General's Chambers, in conjunction with the Department of Statistics, developed a computer database program to electronically capture statistical information on MLA Requests. Additionally statistics are also captured in respect of extradition</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
			requests made by and to Bermuda's Central Authority. It is also anticipated that the completion of Bermuda's NRA will assist the authorities with determining whether other statistical information should also be captured.	
33. Legal persons – beneficial owners	C			
34. Legal arrangements – beneficial owners	C			
International Co-operation				
35. Conventions	PC	Request that the UK extend the SFT and Palermo Conventions to Bermuda.	<p>The Proceeds of Crime and Related Measures Amendment Act 2013 and the Transnational Organised Crime Act 2013 have been passed in the Lower House and are tabled in the Senate for debate and approval by the Senate on October 2, 2013. The passage of these Acts has strengthened Bermuda's legislative framework so that the articles of the SFT and Palermo Conventions are enshrined in the legislative framework.</p> <p>In addition, Bermuda has formally requested that the UK extend the said Conventions to Bermuda and have provided the UK with relevant comparative charts setting out Bermuda's legislative provisions that give effect to the said Conventions.</p>	Bermuda Authorities are awaiting further details from the UK in regards to extension of the Conventions to Bermuda.
36. Mutual legal assistance (MLA)	LC		<p>The Attorney General's Chambers has implemented a policy establishing precise timelines to address requests for Mutual Legal Assistance. Further, the BPS continues to assist the Attorney General's Chambers in these matters and is able to turn around MLA requests in an appropriate time frame.</p> <p>As noted above, the Attorney General's Chambers, in conjunction with the Department of Statistics, developed a computer database program to electronically capture statistical information on MLA Requests.</p>	
37. Dual criminality	C			
38. MLA on confiscation and freezing	LC	Amend relevant statute to provide for external confiscation requests relating to instrumentalities used in a commission of an ML, FT or other predicate offense.	The Attorney General's Chambers, in conjunction with the Ministry of Legal Affairs and the Department of Public Prosecutions established a Treaties Working Group, and are in the process of making recommendations to Cabinet to request the UK authorities extend a number of treaties with foreign jurisdictions to Bermuda. This exercise will also involve amending relevant domestic legislation, which will include a provision for mutual legal assistance in respect of external confiscation requests for proceeds and instrumentalities of crime and terrorist funds. It is anticipated that these amendments will be enacted prior to year end (December 2013).	Legislative amendments will be made by December 2013
39. Extradition	LC	Review resources available at AGC and Police/FIU to ensure that MLA requests are acted upon in as efficient a manner as possible.	The AGC and the BPS have addressed matters pertaining to resources necessary to ensure that MLA requests are acted upon most efficiently (see also response for Rec. 36). The Attorney General's Chambers and the Department of Public	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
			Prosecutions have established processes in place for both initiating and receiving extradition requests.	
40. Other forms of co-operation	C			
Nine Special Recommendations				
SR.I Implement UN instruments	PC	Request that the UK extend the SFT and Palermo Conventions to Bermuda.	The comments under R35 should be noted in this regard. In addition, we would note that in August 2012, the requirements of UNSCR 1267 (1999) as amended, and other additional European Union (“EU”) measures, were brought into force in Bermuda: The Al-Qaida (United Nations Measures) (Overseas Territories) Order 2012 No. 1757 (“Al-Qaida Order 2012”) and The Afghanistan (United Nations Measures) (Overseas Territories) Order 2012 No. 1758 (“Afghanistan Order 2012”). The requirements of UNSC Resolution 1267 (1999) were previously implemented in Bermuda through The Al-Qa’ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002, as amended.	Letter has been sent to Government F requesting that the UK extend conventions to Bermuda, and we received and responded to queries from UK authorities in relation to our request.
SR.II Criminalise terrorist financing	PC	<ul style="list-style-type: none"> i) Amend the ATFA’s definition of terrorism to include the acts covered by the nine conventions referred to in the SFT Convention. ii) Amend ATFA to include acts taken against international organizations. iii) Amend the ATFA to include a reference to the financing of terrorist organizations. iv) Amend the ATFA to cover extra-territorial acts relating to terrorist organizations. 	<ul style="list-style-type: none"> i) Provisions under Clause 3 of ATFA Amendment Act 2008 have addressed this recommendation. In addition, Clauses 6 and 7 of the Proceeds of Crime and Related Measures Amendment Act 2013 amended section 3 of ATFA broadening the recognised means by which acts of terrorism can be committed in order to ensure that all of the acts covered by the list of nine conventions referred to in the SFT Convention are included in the definition of terrorism. ii) Provisions under Clause 3 of ATFA Amend. 2008 have addressed this recommendation iii) The Proceeds of Crime and Related Measures Amendment Act 2013 (Clause 8) amended section 5 of ATFA to include offences in respect of the financing of terrorist organisations and the financing of a person or persons participating in terrorist activity. This amendment Act has been passed in the lower House and was tabled in the Senate for debate and passage on October 2, 2013. iv) Provisions made under ATFA Amend 2008, Part. IV, s. 17 has addressed this recommendation. 	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
SR.III Freeze and confiscate terrorist assets	LC	<p>i) Guidance should be issued to the regulated sector concerning affirmative obligations to freeze assets of persons listed by the UNSCR 1267 Committee and the EU. These affirmative obligations should include incorporating the information into their AML/CFT compliance programs, and reporting to authorities on any transactions that may be connected to terrorist financing.</p> <p>ii) Procedures for delisting requests and the unfreezing of funds should be developed and published.</p>	<p>i) The new GN para 5.304 – 312 provide guidance on freezing of assets and the UN and EU obligations.</p> <p>ii) The Office of NAMLC is working in conjunction with Government House and the UK Foreign and Commonwealth Office to develop the procedures for delisting requests and the unfreezing of funds.</p> <p>Following the receipt of information from the European Commission in respect of de-listing procedures in August 2013, the NAMLC Sanctions webpage on the NAMLC website (www.namlc.bm) has been updated to include a section titled “Challenging European Union and United Nations Designations”, which provides information to persons as to who to contact in order to petition the respective committee for de-listing requests.</p>	
SR.IV Suspicious transaction reporting	PC	Amend ATFA to require FT-related SARs for funds linked to terrorist organizations.	Clause 8 of the Proceeds of Crime and Related Measures Amendment Act 2013 amends section 5 of the Anti-Terrorism (Financial and other Measures) Act 2004 (ATFA) to broaden the prescribed offences to include the financing of terrorist organisation. Thus the disclosure provisions contained in section 9 of ATFA that require reporting suspicious activity to the FIA, now captures financing of terrorist organisations offences under section 5 of ATFA. As noted above, the legislative amendments have been passed in the Lower House and tabled in the Senate for debate and approval by the Senate on October 2, 2013.	
SR.V International co-operation	C			
SR.VI AML requirements for money/value transfer services	PC	Licensed money transfer services should be required to maintain a list of their agents and to make this list available to the authorities. Since the new legal regime for money service business is untested, there is no basis for evaluating effective implementation.	As of August 2013 two financial institutions have been granted a money service business license. Both are subject to the same AML obligations as other financial institutions in Bermuda. The relevant regulations do not make any provision for the utilisation of agents in the operation of a money service business and neither business operates utilising the services of	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
			<p>agents.</p> <p>By its nature this business is considered high risk and regular on-sites are held with full review of all systems and procedures in accordance with the Authorities' on-site and off-site monitoring programme. Since 2009 annual onsite examinations have occurred at both money service businesses with the last one taking place between November and December 2012.</p>	
SR VII Wire transfer rules	NC	<p>i) Reduce the minimum recordkeeping threshold to the equivalent of US\$1,000, and specify that full originator information should be obtained and retained for the minimum period in accordance with SRVII.</p> <p>ii) Ensure that the Regulations, Guidance Notes, examination procedures and general oversight of FIs includes compliance with wire transfer requirements as set out under all the essential criteria of SRVII.</p> <p>iii) Include lack of complete originator information as a basis for determining whether a suspicious activity report is filed with the FIU.</p>	<p>i) Regulations 23 and 26 specifically address this recommendation.</p> <p>ii) New Regulations -and Guidance Notes were issued in March 2010 which meets the FATF requirement. In particular, Regs21 – 32 are part of a new Part IV which deal with SR VII.</p> <p>iii) Reg. 28 specifically addresses this recommendation.</p>	
SR.VIII Non-profit organisations	PC	<p>i) The authorities should undertake a review of laws and regulations related to non-profit organizations to ensure that they cannot be misused for financing of terrorism.</p> <p>ii) Recordkeeping requirement should be established in line with C. SR VIII 3.4.</p> <p>iii) The authorities should implement measures to ensure that they can effectively investigate and gather information on NPOs, as called for in C. SR VIII.4</p>	<p>i.), ii), iii) A draft framework to ensure that FATF requirements relating to NPO's are appropriately met is currently being considered.</p> <p>In July 2012, the then Cabinet approved the relevant amendments, but with the change of political administration the responsibilities for charities was moved to another Ministry, the Ministry of Home Affairs. The new Minister has committed to progressing this matter and amendments to the Charities legislation was highlighted in the Throne Speech in February 2013. Since which the Ministry of Home Affairs has conducted a domestic review of the NPO sector and issued a public Consultation Paper (consultation period closed in early April 2013). Further to the public consultation the Ministry issued a Cabinet Memorandum that formed the basis of a recently drafted Bill entitled the Charities Act 2013, which is expected to be tabled by the end of 2013. It is anticipated that the Act will come into force early in 2014, and will greatly enhance the effectiveness of the supervision of charities.</p>	Legislation in relation to Charities expected to be enacted by the end of 2013.

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
SR.IX Cross Border Declaration & Disclosure	NC	<p>i) Adopt the declaration system now being considered by the authorities;</p> <p>ii) Cover outgoing transportation of currency by the declaration system, and not just incoming as currently planned;</p> <p>iii) Amend relevant laws to substantially increase the scale of civil money fines and criminal penalties for customs violations;</p> <p>iv) Enhance domestic cooperation on customs issues;</p> <p>v) Ensure sufficient information-sharing between Customs and other law enforcement authorities;</p> <p>vi) Amend the Revenue Act to provide clear legal authority, as now exists in POCA, to charge</p>	<p>i), ii) The Collector of Customs, in exercise of the powers conferred by section 16 of the Revenue Act 1898 (RA), has issued "The Customs Traveler Declaration Notice 2010" (BR 39/2010). In this Notice the Collector requires, among other things, that every person arriving at Bermuda or leaving Bermuda must declare when they have currency in excess of \$10,000.</p> <p>The Customs Traveler Declaration Notice 2010 covers both incoming and outgoing transportation of currency.</p> <p>In addition, HM Customs is currently drafting the Revenue (Bermuda Customs Declaration) Notice 2013 to be Gazetted with statutory effect by the end of October 2013. The implementation of the said Notice will provide for the obligation to declare cash or Bearer Negotiable Instruments (BNIs), greater than \$10,000.00, which are imported or exported via post or a courier service.</p> <p>iii) The Revenue Act 1898 has been amended so that in the new section 86(2), the fine for the indictable offence of a false declaration has been upgraded from the level 5 amount (\$30,000) to the level 7 amount (\$100,000). The term of imprisonment has likewise been increased from 2 years to 10 years in order to correlate with the increase in the level of the fine.</p> <p>iv) Domestic cooperation has been enhanced through NAMLC and Bermuda Law Enforcement Review Group; and there is ongoing dialogue between relevant agencies, as required.</p> <p>In 2010, the BPS FCU assisted in training HMC staff and BPS personnel in the area of cash seizures and bulk currency smuggling. Additionally, an MOU is in place with the FIA and HM Customs which allows for the full-time presence of a Customs Liaison Officer at the FIA. This serves to enhance the day to day continuity between the two bodies.</p> <p>v) Periodic meetings are held between the relevant agencies and there is a MOU in place that allows for formal transmission of appropriate information.</p> <p>Customs routinely informs the Police Financial Crime Unit (FCU) and the Financial Intelligence Agency (FIA) of all currency seizures and receives feedback regarding suspects from the FIA.</p> <p>vi) Bermuda amended the Revenue Act of 1989 by inserting section 91A, which provides that where a body corporate has been proved guilty of committing an offence under the said Revenue Act, any</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
		<p>directors and officers who have connived with the corporation with an offense.</p> <p>vii) In addition, consideration should be given to (1) amending the relevant laws to provide the Customs Department with explicit legal authority to seize, detain, and confiscate currency in the event of a false declaration and (2) developing a procedure to notify other customs agencies of search and detention reports relating to precious metals other than gold, as well as to precious stones.</p>	<p>director, officer, person or the body corporate who committed the act, consented or connived shall be guilty of the offence held liable and punished accordingly [section 91A inserted by amendment 2008:14, effective 25 March 2008].</p> <p>vii) (1) Section 16 of the Revenue Act 1898 has been amended to expand the Collector's power to require persons to make customs declarations in respect of currency and negotiable instruments. In addition, the new Revenue Act section 86(3) provides that any article (including currency) is liable to forfeiture if that article is not declared or is falsely declared. Therefore, there is currently no restriction on the importation of currency and bearer negotiable instruments in Bermuda; however items that are not declared are liable to forfeiture.</p> <p>Notwithstanding the above, it should be noted that the gap in question (explicit legal authority to seize, detain and confiscate currency in the event of a false declaration") was addressed by 2008 amendments to RAss16 and 86. RA s16 was also amended with the addition of subsection (5) to provide for the forfeiture of falsely declared cash. The Customs (Traveller Declaration Notice) 2010 imposes an obligation on travellers to declare cross-border movements of cash and negotiable instruments.</p> <p>Effective June 1st 2012 two separate but linked Revenue Amendment Acts (2012:3 and 2012:16) significantly enhanced customs powers to search goods and persons. As a result all customs summary powers of search are now exercisable in respect of any cash, the importation or exportation of which, is restricted or prohibited by or under any Act. Such searches can now be made at any time (not just at the time of arrival/importation); in a customs area (or outside a customs area in cases of hot pursuit); or on board any vessel or aircraft being lawfully boarded by customs. Customs powers to search under a Magistrate's warrant have been similarly enhanced to allow for search of any place suspected of containing cash (s.97 RA 1898).</p> <p>These changes affected the following sections of the Revenue Act 1898:</p> <p>S. 2 – Interpretation (refer to definition of "uncustomed goods", which has been amended and now includes currency and negotiable instruments)</p> <p>S. 82 – Powers of customs officers to board any ship, secure hatches, mark goods</p>	

Forty Recommendations	Rating	Recommended Actions	Actions Already taken	Remaining Actions to be taken
			<p>S. 96 – Search of person suspected of carrying uncustomed goods</p> <p>S. 97 – Grant of search warrant for smuggled goods</p> <p>S. 98 – Power of search</p> <p>It is worth noting that the authority for police officers to exercise customs search powers has been preserved (refer to definition of “customs officer” in RA S.2).</p> <p>It should also be noted that section 86(3) of the RA provides that in addition to any penalty for failure to declare, or for mis-declaring any article, that article shall be liable for forfeiture. Cash and negotiable instruments are ‘articles’ and as such are liable to forfeiture pursuant to s.86(3) if they are not lawfully declared or are falsely declared (RA s.2 defines goods).</p> <p>(2) Procedures are already in place, and information is presently sent to the WCO CEN database, and CCLEC RILO database.</p>	

Addendum to the Bermuda Action Plan - CFATF Third Follow-Up Report (Report)

It is the view of Bermuda that the recommended actions of the MER and of the CFATF Follow-up Reports noted in this document have been addressed, *viz.* in relation to certain legislative provisions and statistics. In light of the evidence submitted in this Addendum, we would therefore be grateful if CFATF could please confirm whether Bermuda would now be deemed to have effectively addressed these recommended actions.

This Addendum provides the following information:

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| A. Additional information to document how Bermuda has addressed specific recommendations of the 2007 Mutual Evaluation Report (MER) | 2 |
| B. Statistics which demonstrate the effectiveness of Bermuda's AML/CFT Regime | 7 |
| C. High level summary of legislative matters that are intended to be addressed in relation to the 2007 MER | 18 |

Section A provides evidence to document the completion of certain recommended actions, particularly in relation to the powers of supervisors for credit unions (Rec 29), the provision of statistics (Rec 32), and the level of certain penalties (Rec 17). **Section B** provides statistics which demonstrate the effectiveness of Bermuda's AML/CFT Regime, including in relation to the awareness raising and outreach activities of the relevant AML/CFT authorities; money laundering and terrorist financing investigations, prosecutions and convictions; seizures and confiscations; Suspicious Activity Reports; cash declarations; supervision and oversight of Financial Institutions and DNFBPs; and mutual legal assistance and international cooperation. **Section C** provides a high level summary of the legislative matters in relation to the outstanding matters identified in the 2007 MER that, unless otherwise indicated, will be presented to Parliament in the upcoming session for enactment by August 2013.

It should also be noted that in January 2013, Bermuda embarked on a National Risk Assessment. Further, it is expected that a number of legislative enhancements will be made in 2013 to reflect the 2012 revisions to the FATF standards.

A. Additional information to document how Bermuda has addressed specific recommendations of the MER

Section A of this Addendum provides evidence to document the completion of certain recommended actions, particularly in relation to the supervision of credit unions, the provision of statistics, and the level of certain penalties. Section I provides additional information to document the completion of certain recommendations of the MER, and section II provides the rationale for Bermuda’s position that no action is required with regard to the recommendation of the MER addressing penalties.

I. Additional information to document the completion of certain recommendations of the MER

i. Powers of Supervisors: Credit Union (Recommendation 29)

Paragraph 32 of the CFATF third follow-up report states: “At Recommendation 29, the outstanding is in relation to the assessors’ recommendation that Bermuda, “*Specify clear powers in the Credit Union Act that the BMA, under delegated authority, can supervise and inspect these FIs, including for compliance with AML/CFT obligations*”. Bermuda has indicated that “*as Credit Unions are captured as “deposit-taking business” pursuant to section 4 of the Banks and Deposit Companies Act 1999. This Recommendation remains outstanding.*”

Evidence to document the completion of the recommendations of the MER: We are of the view that the Bermuda AML/CFT legislation contains all of the required powers for effective monitoring and enforcement of compliance of credit unions with the AML/CFT obligations, as noted on page 32 of the Action Plan in relation to Recommendation 29. Please also see the below summary of the legislative provisions which enable the Bermuda Monetary Authority (BMA) to supervise and monitor credit unions for the purposes of AML/CFT.

The Credit Union is licensed by the BMA for prudential purposes under the [Credit Union Act 2010](#) (*hyperlink*). However, the framework for monitoring and supervision of AML/ATF compliance uses provisions that are based on the fact that the Credit Union is a

deposit taking business as defined in section 4 of the Banks and Deposit Companies Act 1999. The definition in section 4² of the [Banks and Deposit Companies Act 1999](#)” (BDCA) (*hyperlink*) clearly encompasses the activities of a Credit Union, as a Credit Union lends money received by way of deposit to others and finances its other activities out of the interest received on the loans. It should be noted that the importation of that definition into the AML/ATF legislation makes it irrelevant whether an entity is licensed under the BDCA.

Both Regulation 2(2) of the [Proceeds of Crime \(Anti-Money Laundering and Anti-Terrorist Financing\) Regulations 2008](#) (Regulations) (*hyperlink*) and Section 2(1) of the [Proceeds of Crime \(Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement\) Act 2008](#) (SEA Act) (*hyperlink*) include in the definition of an AML/ATF regulated institution “a person who carries on deposit taking business within the meaning of section 4 of the Banks and Deposit Companies Act 1999”. Regulation 4(a) makes AML/ATF regulated financial institutions “relevant persons” within the scope of the Regulations and therefore all of the AML/CFT requirements of the Regulations apply to the Credit Union, as a deposit taking business, (e.g. CDD, ongoing monitoring, record-keeping, systems and training). Pursuant to section 3(1)(a) of the SEA Act the BMA is the supervisory authority for AML/ATF regulated financial institutions; and under sections 5 and 6 of the SEA Act, the BMA has the duty to monitor AML/ATF regulated financial institutions (inc. credit unions) for compliance with the Regulations etc., which includes the power to conduct on-site examinations to test for compliance. Section 6(2) of the SEA, coupled with the inclusion of the Credit Union Act under the definition of regulatory Acts in section 2(1,) allow the BMA to utilise all of the powers in the Credit Union Act in the enforcement of AML/ATF obligations.

ii. **Statistics (Recommendation 32)**

Paragraph 35 of the Report states: “Relative to **Recommendation 32** the assessors had recommended that, “*Statistics should be maintained on amounts of restrained property compared with amounts ultimately confiscated and the types of crimes related to these*

² Section 4(1): **Meaning of "deposit-taking business"** Subject to the provisions of this section, a person carries on deposit-taking business for the purposes of this Act if

(a) in the course of the business, he lends money received by way of deposit to others; or

(b) he finances any other activity of the business wholly or to any material extent, out of the capital of or the interest on money received by way of deposit.

(2) For the purposes of subsection (1), all the activities which a person carries on by way of business shall be regarded as a single business carried on by him.

actions". Bermuda has not provided any data to demonstrate that statistics are being maintained in accordance with this recommendation but has reported that, "For the period 2011-2012 there were 7 confiscation orders and 5 forfeiture orders, and this further evidences the effectiveness of the legislation. This gap remains *open*. Whilst neither of the other two (2) recommendations of the assessors has as yet been taken on board, Bermuda has also reported having had 13 money laundering convictions, up to January 2013, with sentences ranging from between 3-8 years imprisonment. This Recommendation remains *outstanding*."

Evidence to document the completion of the recommendation of the MER: We are of the view that Bermuda does maintain the required statistics, as noted on page 38 of the Action Plan in relation to Recommendation 32. Section B of the Addendum provides comprehensive statistics to assist in the evaluation of Bermuda's AML/CFT Regime, including in relation to the awareness raising and outreach activities of the relevant AML/CFT authorities; money laundering and terrorist financing investigations, prosecutions and convictions; seizures and confiscations; Suspicious Activity Reports; cash declarations; supervision and oversight of Financial Institutions and DNFBPs; and mutual legal assistance and international cooperation.

II. Rationale for Bermuda's position that the recommendation of the MER in relation to penalties (Recommendation 17) has already been complied with

- i. Paragraph 26 of the Report states:** "Relative to **Recommendation 17** paragraph 14 is relevant. However the comments noted in both the first and second follow-up reports are still relevant in that Bermuda is of the opinion that relevant penalties are at appropriate levels. This Recommendation is *outstanding*."

Evidence to document the completion of the recommendation of the MER: It is our considered view that there are adequate penalties for money laundering, failure to disclose knowledge or suspicion, and tipping-off under the Proceeds of Crime Act 1997 (POCA 1997) (as discussed on page 15 of the Action Plan in relation to Recommendation 17). We would note that the penalties in force in Bermuda are actually higher than a number of jurisdictions, including Guernsey³, Cayman Islands⁴ and the United Kingdom⁵. Furthermore, these jurisdictions received in their Detailed Assessment Reports a ‘largely compliant’ or ‘compliant’ rating for Recommendation 17 with no recommended actions in relation to their criminal sanctions for money laundering etc. Please see the chart 1 on page 6 for a summary of the penalties in the various jurisdictions.

The Bermuda MER of 2007 concludes that one of the factors for the underlying rating of “PC” for Recommendation 17 is that fines under POCA for summary convictions and certain convictions on indictment are deemed much too low. Please note that “summary offences” under POCA are in respect of offences that are deemed not as serious and to be tried without a jury in Magistrates Court, whilst offences deemed more serious are tried on indictment in the Supreme Court with a jury. Offences tried on indictment, given the more serious nature would therefore warrant the higher penalties. Moreover, where a matter is tried summarily, upon conviction the Magistrate has authority to commit the defendant to the Supreme Court for sentencing if he deems the circumstances of the case warrant a penalty higher than the threshold that can be levied by the Magistrate’s Court (section 25 of the [Summary Jurisdiction Act 1930](#)).

Chart 1: Summary of the penalties in various jurisdictions

Penalties	Bermuda	Guernsey	Cayman Islands	UK
MER Rating (Rec 17)	PC Jan 2008	LC Jan 2011	C Nov 2007	LC Jun 2007

³ See paragraph 795-797 on page 214 and 215, and pages 226 and 343 of the Guernsey [Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism](#) (*hyperlink*)

⁴ See paragraph 87 on page 28, paragraph 479 on page 99, and pages 148 and 156 of the Cayman Islands [Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism](#) (*hyperlink*)

⁵ See paragraph 131 on page 35, paragraph 803 on page 166, and pages 285 and 291 of the UK [Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism](#) (*hyperlink*)

ML (summary)	5 years or a fine of \$50,000.00 or both	12 months and/or a fine not exceeding £10,000	2 years and/or a fine not exceeding \$5,000	6 months or a fine not exceeding the statutory maximum or both
ML (indictment)	20 years or an unlimited fine or both	14 years and/or an unlimited fine	14 years and/or an unlimited fine	14 years and/or a fine
Failure to disclose (summary)	3 years or a fine of \$15,000.00 or both	6 months and/or a fine not exceeding £10,000	Fine of \$50,000	6 months or a fine not exceeding the statutory maximum or both
Failure to disclose (indictment)	10 years or an unlimited fine or both	5 years or to an unlimited fine or both	2 years and/or an unlimited fine	5 years and/or an unlimited fine
Tipping off (summary)	3 years or a fine of \$15,000.00 or both	6 months and/or a fine not exceeding £10,000	2 years and/or a fine not exceeding \$5,000	6 months or a fine not exceeding the statutory maximum or to both
Tipping off (indictment)	10 years or an unlimited fine or both	5 years or an unlimited fine or both	5 years and/or a fine	5 years and/or an unlimited fine or both

B. Statistics on the effectiveness of Bermuda's AML/CFT Regime

In response to the comments noted in paragraph 35 of the Report (in relation to old Rec. 32), we would note that it is the view of Bermuda that the relevant statistical data is maintained in Bermuda. Section B of this Addendum provides the updated statistics in relation to the effectiveness of Bermuda's AML/CFT Regime to date.

Chart 1(a)**Money laundering and terrorist financing investigations, prosecutions and convictions; on property frozen, seized and confiscated****Summary of Statistics:**

- Seven (7) convictions for Money Laundering Offences from 2009 to present (there were none prior to 2009);
- Bermuda assisting its overseas counterparts, resulting in seven (7) overseas convictions, five (5) in the USA and two in the UK between 2009 and 2011; and
- Over \$2.6m in cash and assets was seized between 2009 and 2011.

Factors/Elements	2011	2012	2013 (Q1)
INVESTIGATIONS			
ML investigations	5 commenced 2 ongoing (most investigations have multiple subjects (smurfs))	3 commenced 8 ongoing (most investigations have multiple subjects (smurfs))	4 commenced 5 ongoing (most investigations have multiple subjects (smurfs))
FT investigations	0	0	0
PROSECUTIONS			
ML prosecutions	10 commenced; 5 ongoing	3 commenced; 2 ongoing	1 new 4 ongoing
FT prosecutions	0	0	0
CONVICTIONS			
ML convictions	3	6	0
FT convictions	0	0	0
PROPERTY FROZEN, SEIZED, CONFISCATED			
Property restrained	4, 1 restraint lifted following conviction. 1 lifted following not guilty verdict. (\$1.2million returned to US Victim)	1 on-going 2 lifted following conviction	1 new restraint value \$2,200,000. (MLAT/CJIC) 1 restraint ongoing
Number of cases and the amounts of property frozen, seized (s50 Proceeds of Crime 1997 (POCA)), forfeited and confiscated relating to criminal proceeds (incl. ML)	Total: \$3,148,873.88: S50 POCA seizures: \$1,633,575.67 Confiscation (7 confiscation orders): \$1,474,613.82 Forfeiture (1 forfeiture orders): \$40,684.39	Total: \$ 1,172,516.16 S50 POCA seizures: \$339,934.14 Confiscation: \$632,524.02 Forfeiture: \$200,058.00	Total: \$340,031.00 S50 POCA seizures: \$147,052.00 Confiscation: 0 Forfeiture: \$32,979.00 PACE ML Seizure: \$160,000

No of cases, frozen, seized, and confiscated re FT	0	0	0
No of persons/entities and amounts of ppty frozen pursuant to UNSCR re FT	0	0	0
Any sanctions applied re SR.III	0	0	0
Level of resources dedicated to the ML/TF related investigations and prosecutions	BPS/FCU = 1 Insp 2 Sgts + 6 Detectives + 1 Analyst + 1 Consultant investigator (split role with fraud/corruption)	BPS/FCU = 1 Insp 2 Sgts + 8 Detectives + 1 Analyst (split role with fraud/corruption)	BPS/FCU = 1 Insp 2 Sgts + 7 Detective + 1 Analyst (split role with fraud/corruption)

Chart 1(b)(i)
Annual statistics on STRs received and disseminated

Factors/Elements	2011		2012		2013 (Q1)	
	QUANTITY					
ML: suspicious transaction reports, and other reports where appropriate under domestic law, received and disseminated	327		378		85	
TF: suspicious transaction reports, and other reports where appropriate under domestic law, received and disseminated	0		1		0	
STR received by the FIU by type of financial institution, DNFBP, and by other business or person making the STR	Banks (includes a Credit Union)	157	Banks (includes a Credit Union)	244	Banks (includes a Credit Union)	50
	Investment Service Providers	7	Investment Service Providers	2	Investment Service Providers	1
	Money Service Businesses (MSB)	140	Money Service Businesses (MSB)	103	Money Service Businesses (MSB)	28
	Corporate Service Providers (CSP)	2	Corporate Service Providers (CSP)	2	Corporate Service Providers (CSP)	0
	Law Firm	1	Law Firm	7	Law Firm	0
	Trust Company	4	Trust Company	5	Trust Company	1
	Local Regulators	3	Local Regulators	1	Local Regulators	0

	Long Term Insurers	11	Long Term Insurers	14	Long Term Insurers	5
	Other (Metal Dealers)	1	Other (Metal Dealers)	0	Other (Metal Dealers)	0
	TOTAL	327	TOTAL	378	TOTAL	85
QUALITY						
No of SARs used in investigations, result of supervision of the FIA	130 SARs Disclosed		193 SARs Disclosed		32 SARs Disclosed (Q1)	
Ongoing training to stakeholders relative to the manner of reporting	Yes. The FIA undertakes ongoing training relative to all reporting entities (17 were conducted in 2011).		Yes. The FIA undertakes ongoing training relative to all reporting entities (21 were conducted in 2012).		Yes. The FIA undertakes ongoing training relative to all reporting entities (0 were conducted in 2013 Q1).	
Awareness of specified STR reporting form	The FIA conducts training in electronic reporting of SARs or a regular basis.		The FIA conducts training in electronic reporting of SARs or a regular basis.		The FIA conducts training in electronic reporting of SARs or a regular basis.	

Chart 1(b)(ii) Customs Authorities (R.26 & 27 and SR.IX)

Factors/Elements	2011	2012	2013 (Q1)
Number of Reports (in relation to seizures) made by Customs to the	Approx. 12	Approx. 12	Approx. 12

Police			
Number of declarations of cash in excess of \$10,000	Approx. 280	Approx. 280	Approx. 280
Amounts seized/confiscated	\$53,639.00 USD	\$140,672.00 USD	\$250,077.00 USD
Number of operations aimed at identifying/targeting illicit cash couriers	0*	1 – Leg B4 Wicket Operation was planned with HM Customs and US Customs personnel to identify cash couriers. No one was identified during this period (25 th July – 1 st August 2012)*	0*

***On a daily basis, the Joint Intelligence Unit:-**

1. checks airline manifests
2. monitors passengers departing for the United States (Assist and work along with US Customs and Border Protection at the US Departure Gate)
3. monitors passengers departing on the Air Canada & Westjet flights to Toronto; monitor passengers departing on the British Airways flight to London, Gatwick when operational
4. provides intelligence to all Sections in the Department including the Cruise Ship Enforcement and the Yacht Reporting centre

JIU disseminates information of all cash seizures to the Police Financial Crime Unit and the Financial Intelligence Agency; and also disseminates information to US Customs and Border Protection; Canada Border Service Agency (CBSA); UK Border Agency and to members of the Caribbean Customs Law Enforcement Council.

Chart 1(c)
Supervision and Oversight

Factors/Elements	2011	2012	2013 (Q1)
RESULTS			
R.17 (sanctions) and SR.VI (MSBs)- the number of cases where sanctions have been applied, the nature of the failings and the type of sanctions applied	<ul style="list-style-type: none"> • 0 cases 	<ul style="list-style-type: none"> • 0 cases 	<ul style="list-style-type: none"> • 0 cases
R.23 (Reg/Supervision of FIs) & 29 (powers of supervisors) and the operations of the AML/ATF Unit - the number of on-site supervisory inspections that covered AML/CFT issues; the frequency and duration of inspections; the types and range of institutions inspected having regard to ML/TF risks; the nature of the on-site inspection, the use of other supervisory techniques e.g. offsites; and the results in terms of compliance by FIs	<ul style="list-style-type: none"> • 27 on-sites • 5-10 day duration of inspections • Frequency: Regulated FIs (RFIs) were selected for an onsite based on the risk based approach • Range of RFIs inspected include all sectors covered by the Bermuda AML framework • The onsite process is composed of three stages; a review of the company's submissions which in part include their AML/ATF policies and procedures; a structured visit to the licence holder's offices to conduct face to face interviews with management and staff; onsite file testing and other reports as deemed 	<ul style="list-style-type: none"> • 22 on-sites • 5-10 day duration of inspections • Frequency: for those RFIs hat did not have an on-site inspection as documented in the reply to Rec 23(i), off-sites or desk based review were completed for those RFIs (Trusts, Investment Businesses, Fund Administrators, Funds and NLPs). As outlined in the reply to Rec 23(i) and Rec 23(x), the NRA will assist in on-going prioritisation of on-sites and off-sites from a risk based approach. • Range of RFIs inspected include all sectors covered by the Bermuda AML framework GN 5.67 The institution should obtain the following information in relation to the private individual; <ul style="list-style-type: none"> • Full name; • Residential address; and 	<ul style="list-style-type: none"> • 5 on-sites (Jan-Mar) [4 in April; 3 in May] • 5-10 day duration of inspections • Frequency: for those RFIs hat did not have an on-site inspection as documented in the reply to Rec 23(i), off-sites or desk based review were completed for those RFIs (Long Term Insurers writing direct business to be completed by mid-2013). As outlined in the reply to Rec 23(i) and Rec 23(x), the NRA will assist in on-going prioritisation of on-sites and off-sites from a risk based approach. • Range of RFIs inspected include all sectors covered by the Bermuda AML framework • The onsite process is composed of three stages; a review of the company's submissions which in part include their AML/ATF policies and procedures; a structured visit to the licence holder's offices to conduct face to face interviews with management and staff ; onsite file testing and other reports as deemed necessary. • The offsite process began in 2012 and continues in 2013 for all regulated FIs which have not had a face to face onsite in the last two years or one scheduled for 2013. • Other supervisory techniques includes

	<p>necessary.</p> <ul style="list-style-type: none"> • Other supervisory techniques includes external/internal outreach and seminars on AML; continuous dialogue with RFIs • RFI compliance post inspection or review is carried out through remediation and follow-up inspections 	<ul style="list-style-type: none"> • Date of birth. • The onsite process is composed of three stages; a review of the company’s submissions which in part include their AML/ATF policies and procedures; a structured visit to the licence holder’s offices to conduct face to face interviews with management and staff ; onsite file testing and other reports as deemed necessary. • The offsite process began in 2012 and continues in 2013 for all regulated FIs which have not had a face to face onsite in the last two years or one scheduled for 2013. • Other supervisory techniques includes external/internal outreach and seminars on AML; along with the use of off-site or desk based review inspections; continuous dialogue with RFIs • RFI compliance post inspection or review is carried out through remediation and follow-up inspections 	<p>external/internal outreach and seminars on AML; along with the use of off-site or desk based review inspections; continuous dialogue with RFIs</p> <ul style="list-style-type: none"> • RFI compliance post inspection or review is carried out through remediation and follow-up inspections
<p>R.23 data to demonstrate - enforcement of ongoing fit and proper criteria; reviewing of the licensing procedures to ensure full requirements for ultimate beneficiaries of proposed</p>	<ul style="list-style-type: none"> • 0 enforcement cases • SPR Committee reviews all the ALC processes and procedures for licensing 	<ul style="list-style-type: none"> • 0 enforcement cases • SPR Committee reviews all the ALC processes and procedures for licensing [please refer to the reply for 	<ul style="list-style-type: none"> • 0 enforcement cases • SPR Committee reviews all the ALC processes and procedures for licensing [please refer to the reply for Rec 23(vii)-(viii)]

licensees are established in accordance with the applicant documentation	[please refer to the reply for Rec 23(vii)-(viii)]	Rec 23(vii)-(viii)]	
STRUCTURAL ISSUES			
R.23 and SR VI: general organisation of the AML/ATF Unit; adequacy of resources (financial, staff, technical, etc. especially in relation to the “Unit’s” responsibility for registering/licensing under SR VI) and adequate capacity/expertise (including staff background, training and professional standards)	5 staff in the AML unit The ALC reviews all applications and licenses	6 staff in the AML unit The ALC reviews all applications and licenses	7 staff in the AML unit The ALC reviews all applications and licenses
GUIDANCE			
Specificity of guidance to particular types of FIs and persons engaged in other business activity	<ul style="list-style-type: none"> Trust Specific AML Guidance Notes – (in progress) 	<ul style="list-style-type: none"> Completed Trust Specific AML Guidance Notes Investment Business Specific AML Guidance Notes – (in progress) 	<ul style="list-style-type: none"> Completed Investment Business Specific AML Guidance Notes Funds and Fund Administration Specific AML Guidance Notes – (in progress, near completion)
AWARENESS RAISING			
(Rec. 25, SRVI and SRVIII) Number of awareness raising campaigns and seminars conducted.	10 Outreach 5 Internal Seminars	5 Outreach 6 Internal Seminars	2 Outreach 1 Internal Seminar

Chart 1(d)**Statistics on mutual legal assistance or other international requests for cooperation (R.36-40)**

Factors/Elements	2011	2012	2013 (Q1)
MUTUAL LEGAL ASSISTANCE: All mutual legal assistance requests (including requests relating to freezing, seizing and confiscation) that are made or received in relation to: (including the nature of the request, whether it was granted or refused, and the time required to respond)			
Details of MLA	The Central authority responsible for MLA maintains a MLA database which records the following information: the nature of each request, the outcome of each request, and the completion time of each request. The Central Authority responds to all requests within 5 days of receipt of the request. However, the time in which the MLA request is completed is contingent on the nature of the request and the entities involved.		
ML	4	1	2
TF	0	0	0
Predicate offences	3	2 (note: 1 for murder)	0
EXTRADITION: All extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received in relation to: (including the nature of the request, whether it was granted or refused, and the time required to respond)			
ML	0	0	0
TF	0	0	0
Predicate offences	0	0	0
Other formal requests for assistance made or received, including whether the request was granted or refused			
Competent authorities in Bermuda are able to rapidly, constructively and effectively provide the widest range of international cooperation. For example, the Bermuda Financial Intelligence Agency has MOUs with 35 Egmont Members.			
30B requests (US SEC)	18	5	1

C. High level summary of legislative matters to be addressed

Section C of this Addendum provides a high level summary of the legislative matters that will be addressed in relation to the outstanding matters identified in the 2007 MER. The key pieces of legislation that will be effected by the proposed amendments include:

- Proceeds of Crime Act 1997 (POCA 1997),
- Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (POCA Regulations), and
- Anti-Terrorism (Financial and Other Measures) Act 2004 (ATFA 2004).

The following amendments will be made in the Parliamentary session which commences in May 2013:

- 1.1 Powers of law enforcement and investigative authorities: Amendment of relevant AML/ATF legislation to specifically note NAMLC's role in relation to ATF policy.
- 1.2 Ongoing monitoring and record-keeping of unusual transactions: Clarification necessary to ensure that all documents related to investigations of complex or unusually large or unusual patterns of transactions are recorded and kept for five years.
- 1.3 Internal control: Expansion of the scope of persons who are subject to AML/ATF training (Relevant Employees) to include any person who plays a role in implementing and monitoring compliance with the AML/ATF requirements. Additionally, it is proposed that all shortlisted/potential Relevant Employees are screened to ensure they meet standards for "fitness and propriety".
- 1.4 EDD (Regulation 10) and EDD: Expansion of the criteria for carrying out SDD and EDD. . It is proposed that two distinct amendments be made:

- 1.4.1 SDD: SDD would not be permitted whenever there is ML/TF suspicion or where specific higher risk scenarios apply.
- 1.4.2 EDD: Expansion of the criteria for carrying out EDD to include closer scrutiny of a customer who is from a country identified by FATF as high risk.
- 1.5 Reliance on third parties: Amendment of the third party reliance in relation to CDD measures as follows: (i) a relevant person must obtain information sufficient to identify the customers, and (ii) a relevant person must satisfy himself that reliance is appropriate given the level of risk for the jurisdictions in which the party to be relied upon is usually resident.
- 1.6 Tipping-off and confidentiality (section 47 of POCA 1997 and section 10A of ATFA 2004): Amendment of the tipping-off provisions as follows: (i) offense of “tipping-off” to explicitly cover any disclosure on the filing, and content, of a SAR, and (ii) consider limitation of the scope of the tipping-off exemptions for members of legal profession.
- 1.7 International Conventions: Implementation in Bermuda of the outstanding provisions of the United Nations International Convention for the Suppression of the Financing of Terrorism (SFT) and United Nations Convention Against Transnational Organised Crime (Palermo). In this regard, the UK has already been requested to extend the SFT and Palermo to Bermuda. In relation to the SFT, it is proposed that the offence of terrorism be extended to cover the financing of “terrorist organisations”, the financing of “individuals participating in terrorist activity”, and all of the acts covered by the list of nine conventions referred in the SFT. In addition to this, section 15A of ATFA 2004 should be amended to refer to the latest terrorist-asset freezing Overseas Territories Order in Council, the Terrorist-Asset Freezing etc. Act 2010 (Overseas Territories) Order 2011.
- 1.8 Confiscation: Explicit provision for confiscation of property which constitutes instrumentalities intended for use in the commission of money laundering or other non-drug trafficking predicate offences.

- 1.9 Regulation of those Designated Non-Financial Businesses and Professions (DNFBPs): It is intended that Orders will be enacted within this year to bring other specified DNFBPs under the supervision of the FIA. (High Value Dealers, Dealers in Precious Metals & Stones, Real Estate Agents).
- 1.10 Non Profit Organisations (NPOs): The Ministry of Home Affairs has committed to progressing this matter and amendments to the Charities legislation were highlighted in the Throne Speech in February 2013. Since which the Ministry of Home Affairs has conducted a domestic review of the NPO sector and issued a public Consultation Paper (consultation period closed in early April 2013). A Cabinet Memorandum, which sets out the legislative amendments, is currently being finalised and is expected to be submitted to Cabinet shortly and the amendments laid in Parliament in the session which begins by November.

With regard to these Legislative amendments, it should be noted that a consultation paper has been issued to ensure that industry is aware of the proposals; cabinet approval to proceed with drafting has been received; and steps are being taken to progress the drafting. A draft bill is expected to be completed at or near end May for submission to Parliament in June and subsequent enactment.