FINAL

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

21 November 2008

Virgin Islands

The Virgin Islands is a member of the Caribbean Financial Action Task Force (CFATF), which conducted this evaluation.
The report was adopted by the CFATF Council of Ministers on 21 November, 2008.

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PREFACE - INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF THE VIRGIN ISLANDS

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Virgin Islands was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by the Virgin Islands, and information obtained by the evaluation team during its on-site visit to the Virgin Islands from 11 – 22 February 2008, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Virgin Islands government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of members of the CFATF Secretariat, CFATF and FATF experts in criminal law, law enforcement and regulatory issues: Mrs. Maxine Hypolite-Bones, Examiner II, Central Bank of Trinidad and Tobago (financial expert), Ms. Ingrid de Vries, Senior Examining Officer Central Bank of the Netherlands (FATF financial expert), Mrs. Sandra Edun-Watler, Legal Counsel, Cayman Islands Monetary Authority (legal expert), Mr. John Maxwell, Assistant Superintendent of Police, Royal Barbados Police Force (law enforcement expert), and Mr. Roger Hernandez from the CFATF Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

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

[1] As updated in February 2008

EXECUTIVE SUMMARY

1. Background Information

1. The Mutual Evaluation Report of the Virgin Islands summarises the anti-money laundering/combating the financing of terrorism (AML/CFT) measures in place at the time of the on-site visit (11-22 February, 2008). The report evaluates the level of compliance with the FATF 40 + 9 Recommendations (see attached table on Ratings of Compliance with FATF Recommendations) and provides recommendations for enhancing the AML/CFT regime.

2. The Territory of the Virgin Islands is one of the Overseas Territories of the United Kingdom and is located within the Virgin Islands archipelago a few miles east of the United States Virgin Islands. The Territory is classified as a Non-Self Governing Territory of the United Kingdom with a Cabinet style government. The population is approximately 27,500. The Territory has a relatively low crime rate and is politically stable.

3. The main sectors of the economy are tourism and financial services. The Virgin Islands is well established in the services of accounting, banking and legal services, and captive insurance, company incorporations, mutual funds administration, trust formation and shipping registration. The financial services sector contributes nearly 50% of the Government's annual revenue. The Financial Services Commission (FSC) is the sole supervisory authority responsible for the licensing and supervision of financial institutions under the relevant statutes. Designated non-financial businesses and professions are subject to AML/CFT obligations. While gaming is prohibited in the Virgin Islands, casinos have been incorporated in the definition of relevant business under the AML/CFT regime.

4. The Joint Anti-Money Laundering and Terrorist Financing Advisory Committee (JALTFAC) maintains oversight of the Territory's AML/CFT regime. Other bodies of the institutional framework include the Attorney General's Chambers which is responsible for advising Government on legal and policy matters including AML/CFT matters, the Financial Investigation Agency (FIA) which is responsible for receiving, analyzing, investigating and disseminating information relating to financial offences, and the Office of the Director of Public Prosecutions which is responsible for the prosecution of all money laundering and other criminal offences.

5. The Virgin Islands' AML/CFT policies and objectives have been aimed at maintaining an effective domestic AML/CFT framework, an effective regime for international cooperation and the onsite inspection and monitoring of the financial services sector. The authorities have recently completed a suite of amendments to existing AML legislation including the enactment of the Anti-money Laundering and Terrorist Financing Code of Practice (AMLTFCOP) and the Anti-money Laundering Regulations (AMLR). The AMLTFCOP incorporates a risk-based approach to AML/CFT. The FSC undertakes ongoing risk assessments of its licensees, and the FIA undertakes similar assessments of non-licensees, in shaping a risk-based approach to supervision in accordance with the AML/CFT laws and policies.

2. Legal Systems and Related Institutional Measures

6. Money laundering has been criminalized under the Proceeds of Criminal Conduct Act, 1997 (POCCA) and the Drug Trafficking Offences Act, 1992 (DTOA). ML offences

include receiving, possessing, concealing, disposing of, importing or exporting, proceeds of criminal conduct. The physical and material elements of the ML offence include all aspects of the relevant Conventions with the exception of certain controlled drugs as required by the Vienna Convention. While the money laundering offences are applicable to all indictable offences, insider trading and market manipulation are not specifically criminalized in the Virgin Islands.

7. The offence of ML extends to any type of property and applies to persons who commit the predicate offence. Criminal liability extends to legal persons and proof of knowledge can be drawn from objective circumstances. The low number of ML prosecutions suggests a limited implementation of the legal framework.

8. Terrorist financing is criminalized in accordance with the TF Convention in the Terrorism (United Nations Measures) (Overseas Territories) Order 2001(U.K. S.I. 2001 No. 3366) (TUNMOTO), the Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, (U.K.S.I No. 2002 No. 1822) (ATFOMOTO) and the Al-Qa'ida and Taliban (United Nations Measures) (Overseas Territories) Order 2002 (ATUNMOTO). These were extended to the Virgin Islands by the United Kingdom Government. The components of the terrorist financing offence capture funding for individual terrorists or terrorist organizations. Funds are defined in accordance with the TF Convention. A range of secondary offences are covered, terrorist financing offences are predicate offences for ML and objective factual circumstances may be used to prove intent. Both natural and legal persons are subject to criminal sanctions. There is no evidence of terrorists in the Virgin Islands and there have been no cases of terrorist financing in the Virgin Islands.

9. Provision is made for confiscation, freezing and seizing of the proceeds of crime under the POCCA, the DTOA, the ATFOMOTO and the TUNMOTO. Confiscation of instrumentalities used in or intended for use in the commission of ML or other predicate offences is allowed. Confiscation is not targeted on specific assets as it is value-based. Current measures include the freezing and/or seizing of property to prevent any dealing, transfer or disposal of property subject to confiscation. Police have powers to identify and trace property, and the rights of bona fide third parties are protected. At the time of the mutual evaluation visit, over US $45 million was being held in an interim freeze (this amount was subsequently confiscated by the High Court to be equally shared with Bermuda).

10. Freezing of funds used for terrorist financing, and funds and assets of specific criminal and terrorist organizations is included within the domestic laws of the Virgin Islands. Laws and procedures are in place to freeze pursuant to S/RES/1267 and S/RES/1373. There is provision to give effect to foreign freezing orders and specific directions to financial institutions are issued with relevant notices and restraint orders. Affected persons can apply for reasonable access to frozen funds or assets and the rights of bona fide third parties are protected. No terrorist funds have been discovered in the Virgin Islands.

11. The FIA was established by the Financial Investigation Agency Act, 2003 (FIAA) with its main function including receiving, obtaining, investigating, analyzing and disseminating information which relate to a financial offence or the proceeds of such an offence. The FIA receives SARs from various reporting institutions and has access to a number of open source databases. The FIA can request information from reporting financial institutions, government agencies and statutory bodies. The FIA is an autonomous body and while it is dependent on the Government and the FSC for finances, it controls its budget. The staff of the FIA are highly professional and have received training in ML, TF and criminal intelligence

analysis. As a member of Egmont, the FIA freely exchanges information with its Egmont partners. Annual reports are legally required to be published which contain limited details on some ongoing cases. No typologies are included in these annual reports.

12. The responsibility generally for investigating serious crimes and criminal offences, including ML and TF, rests with the Royal Virgin Islands Police Force Anti-Drugs and Violent Crimes Task Force (ADVCTF) (although the FIA has the power to also carry on the specific responsibility of investigating ML and TF offences). The ADVCTF has the authority to trace, indentify and confiscate assets where applicable. The law enforcement authorities have discretionary powers to waive or postpone the arrest of suspected persons and/or seizure of money. The ADVCTF is currently challenged due to an insufficient number of officers with in-depth training and experience in the field of investigating financial crimes, including money laundering and financing of terrorism offences. The RVIPF works closely with the Customs and Immigration Departments and from time to time conduct joint operations. At the time of the mutual evaluation visit, the police did not maintain records on ML investigations or the number of production orders or search warrants in relation to ML or FT matters.

13. The position of Director of Public Prosecutions (DPP) was established under section 59 of the Virgin Islands Constitution Order 2007 and has complete independence in the exercise of powers conferred by the Order. The DPP's office is responsible for the prosecution of all offences within the Virgin Islands which include ML and FT matters. Confiscation, freezing and forfeiture of criminal proceeds fall within the scope of the office. The DPP's office has a staff complement of 10 persons including the DPP. Provisions have been made to increase the staff in order to improve efficiency. Staff have been trained in techniques relevant to the prosecution of AML/CFT matters.

14. At present, the Virgin Islands operates a declaration system for incoming cross-border transportation of currency or bearer negotiable instruments and a disclosure system for outgoing transportation of same. Customs officers have the authority to make enquiries of travelers and can confiscate cash suspected of being related to criminal activity. Information obtained from false declarations and disclosures are forwarded to the Joint Intelligence Unit and the FIA. The Customs Department works in close collaboration with the Police and Immigration officials. Several officers of the Customs Department have been sensitized to AML/CFT matters.

3. Preventive Measures – Financial Institutions

15. The POCCA, DTOA, AMLTFCOP and the AMLR provide the legal framework for CDD requirements for regulated (natural and legal) persons in the financial sector, although the scope of each of the enactments extends to cover non-regulated entities. The AMLTFCOP and the AMLR were enacted during the mutual evaluation visit and represented revisions of the Anti-money Laundering Guidance Notes, 1999 and the Anti-money Laundering Code of Practice, 1999 respectively. Regulated persons are defined as entities, including DNFBPs, as identified in accordance with the FATF Recommendations which are regulated by the FSC. The AMLTFCOP consists of sections detailing requirements and attached explanations to provide guidance. Since section 2 (2) of the AMLTFCOP states that the explanations merely provide guidance and clarity to the provisions, the explanations are not considered enforceable by the assessment team.

16. Customer due diligence measures are generally comprehensive and include customer identification, beneficial ownership requirements, ongoing due diligence, measures for politically

exposed persons and correspondent banking. These measures are generally applied by the interviewed financial institutions. The main shortcomings are that some requirements are not set out in law or in other enforceable means as required by the FATF standards and effective implementation of AML/CFT measures cannot be assessed due to recent enactment of the AMLTFCOP. With regard to new technologies, there was no specific requirement for financial institutions to have policies to prevent misuse of technological developments in ML or TF or address risks associated with non-face to face business relationships or transactions.

17. Obligations for introduced business include all FATF measures, except the requirement for financial institutions to immediately obtain from third parties necessary information concerning certain elements of the CDD process in criteria 5.3 to 5.6. There are no financial secrecy laws in the Virgin Islands. Information can be obtained either by production of a court order or by the competent authorities, namely the FSC or the FIA with appropriate authorisation. There is a comprehensive framework of international co-operation legislation and procedures to assist foreign judicial, law enforcement, prosecutorial, tax and regulatory authorities. There are no restrictions on the sharing of information between financial institutions.

18. Record keeping requirements are extensive and generally observed. However, record retention of identification data is limited to five years after the last transaction of an account rather than the termination of the account and there is no requirement for account files and business correspondence to be maintained for at least five years following the termination of an account or business relationship. Wire transfer requirements comply with FATF standards. except for the monetary penalties in the AMLTFCOP not being dissuasive.

19. Financial institutions are required to maintain records on the activities relating to complex or unusual large or unusual patterns of transactions which do not have any apparent economic or visible lawful purpose. However, there is no requirement to examine these transactions and set forth the findings in writing and keep those findings available for at least five years. Financial institutions are required to carry out enhanced CDD in relation to customers from countries which do not or insufficiently apply the FATF Recommendations. However, there is no requirement for the examination of transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply FATF Recommendations and making available the findings to assist competent authorities. The Virgin Islands can, however, apply appropriate counter-measures to countries that do not or insufficiently apply the FATF Recommendations.

20. Section 30A of the POCCA makes it an offence for a person not to report to the FIA, any knowledge or suspicion of money laundering acquired in the course of his trade, profession, business or employment. While money laundering offences are applicable to all indictable offences, insider trading and market manipulation are not specifically criminalized in the Virgin Islands. The current legislation in the Virgin Islands deals with the reporting of suspicious transactions including attempted transactions. There are no exemptions for the reporting of suspicious transactions. There is a mandatory obligation on all financial institutions in the Virgin Islands to file suspicious transactions reports where the suspicion is in relation to terrorism and the financing of terrorism as stipulated in the provisions of TUNMOTO and ATFOMOTO.

21. Financial institutions and their directors, officers and employees are protected from both criminal and civil liability for reporting SARs in good faith. The safe harbour provision is extended to the FIA, its Director, officers and personnel in discharging their functions. The provision for tipping off is limited to after the submission of a disclosure to the FIA and therefore does not fully comply with FATF obligations. The FIA advised the assessment team that

acknowledgement letters are sent upon receipt of any SAR to the reporting entity. The responses from the interviewed entities were split in respect to whether there was an official response from the FIA on the respective SARs. Most, however, reported having a good relationship with the FIA.

22. The requirements for internal procedures, policies and controls in the AMLTFCOP are comprehensive and include all FATF obligations, except for mandating that financial institutions maintain an adequately resourced and independent audit function. Financial institutions are required to ensure that their foreign branches, subsidiaries or representative offices observe standards at least equivalent to the AMLR and the AMLTFCOP to the extent permitted by the laws of the foreign jurisdictions. However, there is no requirement for financial institutions to pay particular attention that consistent AML/CFT measures are observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations. Additionally, financial institutions are not required to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures. However, at the time of the on-site inspection, no local entity had foreign branches, subsidiaries or representative offices. Most entities were branches, subsidiaries or representative offices of multinational institutions.

23. While shell banks are not directly prohibited in law in the Virgin Islands, the requirements for the establishment and licensing of a bank effectively prevents the operation of shell banks in the jurisdiction. The AMLTFCOP prohibits entities from entering into, or maintaining a correspondent relationship with a shell bank and prohibits banks from entering into or maintaining a relationship with a respondent bank that provides correspondent banking services to a shell bank.

24. The FSC is the competent authority that monitors AML/CFT compliance by financial institutions and DNFBPs who provide financial services. The FSC's supervisory function relates to the financial institutions that are subject to financial services legislation including the Banks and Trust Companies Act, 1990 (BTCA), the Company Management Act, 1990(CMA), the Insurance Act, 1994 (IA), the Mutual Funds Act, 1996 (MFA),POCCA and the Insolvency Act, 2003. The FSC also incorporates the Registry of Corporate Affairs which deals with the incorporation and registration of legal persons.

25. The FSC is responsible under the regulatory laws for all licensing, enforcement and administrative decisions with respect to all relevant financial services businesses. The FSC's regulatory functions are carried out by professional staff in four regulatory and supervisory divisions, three non-supervisory divisions and four support units. Staff are duly qualified and must be fit and proper to hold their posts. In addition to in-house training sessions organised throughout the year, staff have been exposed to AML/CFT training workshops and seminars held regionally and internationally.

26. The FSC has a broad range of powers to monitor and ensure financial institutions' compliance with AML/CFT measures which include off-site surveillance and on-site prudential visits and inspections. The FSC utilises a risk based approach in developing its on-site inspection programme. On-site inspections have increased from 2004 to 2007, especially in the fiduciary services and insurance divisions. However, only two out of a total of nine banks were examined during the period. There were no on-site visits on mutual fund managers or administrators. With regard to registered agents, the FSC completed a total of 41 inspections during the years 2004-

27. Under various provisions of the FSCA, the FSC may require the provision of any information or the production of any documents that may be reasonably required in connection with the FSC's regulatory functions, including internal audit reports. The record keeping requirements, together with various access provisions for the benefit of both law enforcement and regulatory authorities, ensure that both customer and transaction records are accessible and available to the FSC as required.

28. In general, criminal sanctions are available for offences under the POCCA and DTOA and their respective amendments, TUNMOTO, ATFOMOTO and ATUNMOTO and are applicable to all natural and legal persons. The FSCA authorises the FSC to apply relevant sanctions through enforcement actions which include revocation or suspension of licences and the imposition of prohibitions, limitations or restrictions. Sanctions for non-compliance with AML/CFT obligations in the AMLTFCOP are specified in section 27 of the POCCA. These sanctions can only be imposed by the court through proceedings brought by the DPP. Additionally, the AMLTFCOP allows for the FSC to impose administrative penalties which do not exceed four thousand dollars. Sanctions for non-compliance with the requirements of the AMLR range from five thousand to fifteen thousands dollars. Monetary penalties applicable for offences under the AMLTFCOP and the AMLR, ranging from $4,000 to $15,000 are considered too low to be dissuasive to financial institutions operating in the Virgin Islands.

29. The Financing and Money Services Act, 2007 (FMSA) is due to come into effect in 2008. It outlines the licensing requirements for MSBs in the Virgin Islands. At the time of the assessment, the money remitters in the Virgin Islands were not subject to licensing or registration requirements or supervision. The AMLFTCOP was drafted and issued by the FSC in collaboration with JALTFAC. It was enacted in February 2008 and stipulates preventive AML/CFT measures for financial institutions and DNFBPs. Due to the recent enactment of the AMLTFCOP, the examiners were not able to assess its effective implementation.

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

30. Section 27 of the POCCA, 2008 extends the coverage of the AML/CFT regime to include DNFBPs. The definition of "regulated person" in the AMLTFCOP includes provisions for DNFBPs. The AML/CFT requirements applicable to financial institutions in the AMLR and the AMLTFCOP are also applicable to the DNFBPs. It should be noted that of the DNFBPs, only company managers and trust and company service providers as licensees of the FSC are actively monitored and supervised for compliance with AML/CFT requirements. Deficiencies noted with regard to the AML/CFT regime for financial institutions in relation to specific Recommendations are also applicable to DNFBPs.

5. Legal Persons and Arrangements & Non-Profit Organisations

31. The Registry of Corporate Affairs maintains individual registers for companies, foreign companies and charges. Registration of companies is governed by the BVI Business Companies Act, 2004 (BVIBCA) (and amendments). Section 6 of the BVIBCA requires that applications to incorporate a company be made to the Registrar. An application for incorporation of a company may be filed only by the proposed registered agent. Customer due diligence, identity verification or background checks regarding organizers or beneficial owners of registered entities are required to be performed by registered agents. Registered agents are under the supervision of the FSC and are also subject to the AML/CFT requirements of the AMLTFCOP which mandate the identification of beneficial owners with regard to corporate clients, trusts and fiduciary clients.

32. According to section 9 of the BVIBCA, a company limited by shares can issue bearer shares. Under the BVIBCA, international business companies that were incorporated before 1 January, 2005, and issued bearer shares have until 31 December 2009 to place their bearer shares with an authorised or recognised custodian or immobilise them. IBCs formed after 1 January 2005 are required to immobilize all bearer shares from their date of formation.

33. Information on beneficial ownership of registered companies maintained by registered agents is accessible by all competent authorities. The relatively low number of FSC inspections makes it difficult to assess whether the information on beneficial ownership is being adequately and accurately maintained.

34. There is no central filing requirement for trusts and no register of all trusts in the Virgin Islands. Information on trusts is maintained by licensed trust service providers and can be readily accessed through the investigative and examination powers of the regulatory and law enforcement authorities under the relevant statutes. Trust service business is a regulated activity under the BTCA and is governed by the AMLTFCOP and the AMLR. The record-keeping provisions of the AMLTFCOP require licensed trust service providers to ensure that records are readily available for timely access by the competent authorities. The concern regarding information on beneficial ownership of companies is also applicable to the information on trusts, although the trust and company service providers have indicated their awareness and compliance with AML/CFT laws.

35. The regime for NPOs is governed by the BVIBCA. The assessment team was advised by the FSC that the NPO population is considered “low risk” for potential money laundering and terrorism financing activities. Every NPO is required to have a registered agent in the Virgin Islands. No evidence was presented to the assessors that the authorities had reviewed these laws with regard to protecting NPO´s from being used to finance terrorism. No competent authority has undertaken any formal outreach efforts to the NPO sector regarding AML/CFT requirements or best practices. The assessment team was advised that the vast majority of NPOs operate exclusively in the Virgin Islands serving the needs of the domestic community. Moreover, no NPO is viewed by the government as controlling a portion of the sector’s financial resources.

36. The Registrar of Corporate Affairs is able to identify, with the introduction of the new registration system of VIRGINN, companies that are registered as NPOs. Information on an NPO which has the legal form of a company and is registered as such is publicly available. There are no competent authorities engaged in any formal monitoring of NPOs that do have the legal form of a company, after their registering stage. The FIA is the competent authority, according to

section 9 (2) of the AMLTFCOP to monitor and supervise NPOs. At the time of the assessment, the FIA had no supervisory programme in place to identify non-compliance and violations by NPOs.

6. National and International Co-operation

37. Relevant and competent authorities in the Virgin Islands maintain close working relationships. These include the FIA, the FSC, the RVIPF, the Immigration Department, the Customs Department, the Attorney General's Chambers and the Office of the Director of Public Prosecutions. The main national co-ordination body overseeing the AML/CFT regime in the Virgin Islands is JALTFAC which consists of members drawn from the public and private sectors. The Virgin Islands is constantly reviewing and amending laws to take into account all relevant developments, and the principal legislation governing AML/CFT matters have been reviewed on an ongoing basis.

38. The Virgin Islands as an Overseas Territory has no legal power to ratify or accede to any international treaty and such ratification or accession is carried out on its behalf by the Government of the United Kingdom. However, the Virgin Islands can enact legislation domestically to implement the provisions of relevant international treaties and Conventions. The Vienna Convention was ratified by the UK Government and extended to the Territory on 8th February 1995. The Palermo Convention and the Terrorist Financing Convention were not extended to the Territory. Although the Palermo Convention and the Terrorist Financing Convention have not been extended to the Territory, they have been given effect under the laws of the Territory. The provisions of the UN Security Council Resolutions, S/RES/1267(1999) and S/RES/1373(2001) have been implemented by relevant legislation in the Virgin Islands.

39. Assistance can be provided for the full range of mutual legal assistance requests envisaged by the FATF Recommendations. Generally, mutual legal assistance requests are of three types: law enforcement, regulatory breaches/offences and tax offences. The Governor and the Attorney General are the Central Authorities for law enforcement requests, the Managing Director/Chief Executive Officer of the FSC for regulatory breaches and offences and the Financial Secretary for tax offences. Mutual legal assistance under the CJICA is granted if an offence has been committed under the laws of the requesting country or territory, or there are reasonable grounds to suspect that an offence has been committed and that criminal proceedings or criminal investigations have commenced in the requesting country. Generally, all requests for legal assistance are processed within a period of thirty days from the date of the receipt. Very urgent requests, such as those with close return court dates would be processed in a much quicker time period. Generally, all mutual legal assistance provisions apply also to terrorism and terrorism financing offences.

40. Money laundering is an extraditable offence in the Virgin Islands. The Virgin Islands extradites its own nationals pursuant to Part 1 of the Extradition (Overseas Territories) Order 2002. Extradition is available for any conduct that would be an offence if committed within the Virgin Islands. The Virgin Islands can provide assistance in extradition relating to insider trading and market manipulation since the underlying conduct is regarded as equivalent to conspiracy to defraud in the Virgin Islands. This relates, in essence, to all offences wherein the underlying conduct is considered equivalent to an offence in the Virgin Islands even though the offence does not carry the same name.

41. The Virgin Islands has a comprehensive framework of international co-operation legislation and procedures to assist foreign judicial, law enforcement, prosecutorial, tax and

regulatory authorities. The framework provides an efficient and effective mechanism for cross-border co-operation and exchange of information. Law enforcement agencies, the FIA and the FSC can engage in a wide range of international co-operation and they render assistance in a timely fashion. There is no legal hindrance to the constructive and effective provision of such assistance.

7. Resources and Statistics

42. Most of the competent authorities have adequate resources to carry out their functions. However, the FSC and the ADVCTF have quantitatively inadequate human resources.

43. Comprehensive statistics are generally maintained. However, the RVIPF does not have records on money laundering investigations that have been carried out or the number of production orders or search warrants that have been executed.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on the Territory of the Virgin Islands.

1. The Territory of the Virgin Islands[2] is one of the Overseas Territories of the United Kingdom, and is located within the Virgin Islands archipelago, a few miles east of the United States Virgin Islands, and some 60 miles east of Puerto Rico, in the Lesser Antilles. It consists of approximately sixty islands, islets and cays, twenty of which are inhabited. The largest island, Tortola is approximately 20 km long and 5 km wide, and is the home of approximately 22,900 persons of a total population of 27,518. The greatest numbers of the total population are dispersed between the islands of Tortola, Anegada, Virgin Gorda and Jost Van Dyke. The capital of the Virgin Islands, Road Town, is also situated in Tortola.

2. The main sectors of the economy of the Virgin Islands are tourism and financial services. The Virgin Islands uses the US dollar as the national currency. At the end of 2006, the national gross domestic product averaged 1.1 billion dollars. The tourism sector provides employment for the greater percentage of the population employed in the private sector and accounts for approximately 45% of the country's annual revenue. A great proportion of the businesses in the tourist industry are locally owned. It is estimated that at the end of 2006 there were 825,603 tourist arrivals to the Territory, comprising 25,345 day trippers, 356,271 overnight travelers, and approximately 443,987[3] cruise ship passengers. Both the Government of the Virgin Islands and the industry are committed to maintaining the status of the Virgin Islands as a 'high end' and 'luxury' destination.

3. The financial services contribute nearly 50% of the Government's annual revenue. The Virgin Islands is well established in the services of accounting, banking and legal services, captive insurance, company incorporations, mutual funds administration, trust formation and shipping registration. Since the adoption of pioneering legislation in 1984, the International Business Companies Act (Cap 291), the Virgin Islands has risen to the status of one of the world's leading financial centres, with some 57,000 new companies being registered in 2005, and a cumulative total of 792,732 registered companies as of March 21, 2007. Additionally, the Virgin Islands is regarded among the world's leading domiciles for hedge funds with more that 2,000 funds operating from within the Territory. The Territory has also sustained substantial growth in the areas of captive insurance, where a total of 57 captive insurance companies were licensed in 2006.

4. In 2006, the Government of the Virgin Islands launched the Virgin Islands Shipping Registry (VISR), which enabled the Territory to be upgraded to a Category 1 Shipping Registry within the British Red Ensign Group. VISR was created out of a merger of the Shipping Registry

[2] The name of the Territory is the "Virgin Islands", but since 1917, the Territory has been universally referred to as the "British Virgin Islands" ("BVI") to distinguish the islands from the American Territory, the United States Virgin Islands.

[3] Provisional figures are provided by the Development Planning Unit, Government of the Virgin Islands.

Division of the VI Financial Services Commission with the Marine Services Unit of the Ministry of Communication and Works. This status will enable the registration of large cargo vessels of unlimited tonnage and mega yachts of up to 3,000 gross tons.

5. The Virgin Islands Constitution Order, 2007, (U.K.S.I. 2007 No. 1678) ("the Constitution") was enacted and came into force June 15, 2007. The new Constitution provides, for the first time, a Chapter on fundamental rights and freedoms of the individual and provisions for their enforcement. The Governor is Her Majesty's representative in the Territory, and continues to have responsibility for defence, internal security, including the Police Force, external affairs, the public service and the administration of the courts. Provision is also made for a Public Service Commission, a Teaching Service Commission, a Judicial and Legal Services Commission and a Police Service Commission, to provide advice on appointments to offices in these services and deal with issues of discipline. A National Security Council and a Register of Interests and a Complaints Commissioner for the Territory have been established. The new Constitution also separated the Attorney General's duties of legal advisor to the Government and chief prosecutor, thereby creating the Office of the Director of Public Prosecutions. The Attorney General retains the duty of principal legal advisor to the Government of the Virgin Islands. The Director of Public Prosecutions (DPP) is empowered to the exclusion of any other person or authority, to institute and undertake, or to take over and continue criminal proceedings against any person in respect of an offence against the laws of the Virgin Islands. Accordingly the DPP is now the proper authority to institute and undertake prosecutions in relation to money laundering and terrorist financing offences. In the exercise of his powers the DPP is not subject to the direction or control of any other person or authority.

6. Although classified as a Non-Self Governing Territory of the United Kingdom, a Cabinet style government has been implemented. The formerly-styled office of the Chief Minister is now the Office of the Premier; Cabinet replaced the Executive Council, and the House of Assembly replaced the Legislative Council. The House of Assembly is composed of elected and appointed members, including thirteen elected members (9 district representatives and 4 territorial at-large representatives), a Speaker, and the Attorney General as an *ex officio* member. The new constitutional changes have great political import for achieving an even greater degree of internal self-government.

7. The laws of the Virgin Islands are comprised of the common law of England, locally enacted legislation and imperial legislation enacted by order of Her Majesty by and with the advice of Her Privy Council. The High Court and Court of Appeal of the Eastern Caribbean Supreme Court have jurisdiction in the Virgin Islands. There are two resident High Court Judges. The visiting Court of Appeal is comprised of the Chief Justice and three justices of appeal, who sit twice a year. Presently there are also two full-time Magistrates who sit on Tortola and on Virgin Gorda. The Magistrate's Court is governed by statute, and has summary jurisdiction to hear civil and criminal cases. Under the Drugs (Prevention of Misuse) Act (Cap. 178) (DPMA), the prosecution may elect whether a drug trafficking case will be heard summarily before the Magistrates's Court, or on indictment before the High Court. In the majority of cases, the option to have a drug trafficking case heard before the Magistrate's Court is preferred, since the DPMA gives the Magistrate wider sentencing powers. The Judicial Committee of the Privy Council remains the final appellate court for the Virgin Islands.

8. The Criminal Code (Amendment) Act, 2007, (No. 3 of 2007) strengthened the regime on corruption by public officers. Under Part IV of the Criminal Code 1997, provision is made for offences such as soliciting, promising, offering and receiving of favours by a public officer. Part IV also covers extortion by public officers, false claims by public officers, abuse of

office by a public officer and the false assumption of authority by a public officer. Further provisions governing the conduct of public officers are also included in the General Orders for the Public Service, 1971.

9. Under the Register of Interests Act, 2006, a Registrar of Interests has been appointed and is responsible for the keeping of declarations made by members of the House of Assembly on their assets. Members of the House of Assembly, including the Speaker and the Attorney General were to declare their interests within a month of the coming into force of the Register of Interests Act 2006 in February 2008.

1.2 General Situation of Money Laundering and Financing of Terrorism

10. The crime that is a major source of illegal proceeds is drug trafficking. The situation in the Virgin Islands is similar to that of other jurisdictions in the Eastern Caribbean as it is a transhipment point for drugs moving from Central and South America to the United States and the United Kingdom. Any such illegal proceeds are generated from domestic and international drug trafficking.

11. The Virgin Islands is not immune to money laundering. Opportunities for laundering money in the Territory could arise through the physical movement of money or by electronic transfer into accounts with onward transfers to another jurisdiction. Offenders might employ commercial air flights and sea vessels and commercial banks. The types of persons that would usually be involved in money laundering would be drug traffickers and international fraudsters.

12. As a result of increased due diligence exercised by the banks and the financial services industry generally, the risks of money laundering activity in the Virgin Islands has decreased considerably. This proactive vigilance has in effect discouraged launderers from using these institutions to transfer illegal proceeds.

13. Over the last four years there have been between five to ten investigations into money laundering and suspicions of money laundering. Since 2003 there have been six instances of the High Court granting orders freezing assets in the approximate amount of US$5 million. During the mutual evaluation visit there was one instance where monies of a company in the amount of over US$45 million were being held in an interim freeze awaiting the outcome of an investigation and possible prosecution. In May 2008, the said sum was confiscated and forfeited to be equally shared with Bermuda.

Table 1: Summary of Offences 2004 – 2007

Types of offences	2004	2005	2006	2007
Major Crimes Against the Person	98	61	57	56
Major Crimes Against Property	760	664	589	553
Fraud Offences	130	12	43	21
Drugs Related Offences	98	126	100	84

14. The above figures are from the Royal Virgin Islands Police Force. The figures reveal an overall decrease in crime for the period 2004 to 2007. It should be noted that drugs related offences the major source of illegal proceeds has reported a substantial decrease since 2005.

1.3 Overview of the Financial Sector and DNFBP

Banking & Fiduciary Services Sectors

15. The Financial Services Commission (FSC) is responsible for the licensing and supervision of financial institutions under the relevant statutes. Banks and trust and corporate services providers are regulated under the Banks and Trust Companies Act, 1990 ("BTCA") and Company Management Act, 1990 ("CMA"). Licensees that fall under the remit of the BTCA, and seek to provide trust services and/or company management services may fall into 1 of 5 classes (specifically, a licensee may be licensed as a Class I trust, Class II trust, restricted Class II trust, Class III trust and restricted Class III trust, reference section 10 (1) and (1A) of the BTCA). Further, licensees that are seeking to operate as banks may be licensed under 1 of 3 classes (specifically, they may be licensed with a general banking licence, restricted Class I banking licence or a restricted Class II banking licence, reference section 10 (1) of the BTCA). Additionally, applicants who qualify may seek to be licensed under the CMA, wherein they intend to provide company management services only. The following table gives a breakdown of the types of licences granted under the BTCA and CMA as at the date of the mutual evaluation.

Table 2; Breakdown of licences granted under the BTCA and CMA

Type of licence	Number
General Banking	6
Restricted Class I Banking	3
Class I Trust	95
Class II Trust	2
Class III Trust	2
Restricted Class II Trust	102
Restricted Class III Trust	0
Company Management	18
Authorised Custodian	5

16. A Restricted Class II trust licensee is not permitted to provide registered agent/office services and may only provide trust services to named trusts that have been disclosed in an affidavit submitted by an approved director. Further, the trusts under administration for a Restricted Class II trust licensee cannot exceed 50 named trusts. As at December 2007, there were 102 holders of Restricted Class II trust licensees.

17. Typically, the only classes that can provide registered agent/ office services includes licensees that hold a Class I and Class III trust licences as well as holders of Company Management licences. However, not all such aforementioned licensees do, in fact, act as registered agents / registered office. As at December, 2007, approximately 112 registered agents were operating from within the Virgin Islands.

18. As at December, 2007, the FSC supervised 6 institutions with general banking licences and 3 with restricted Class I banking licences, with total assets as at December, 2007 of US$2.57 billion.

19. The regulation of money service providers is anticipated to fall under the FSC's remit by the fourth quarter, 2008, upon the enactment of the Financing and Money Services Bill, 2008

Mutual Funds Sector

20. The Mutual Funds Act, 1996 (MFA) covers the regulation and supervision of mutual funds, mutual funds managers and mutual funds administrators that operate in or from within the Territory. Further, the MFA specifically requires the recognition or registration of any mutual fund which solicits an individual within the Territory to purchase its shares except where the purchase is a result of an approach made by the individual.

21. In addition, in 2006 the FSC introduced the Segregated Portfolio Regulations which is effected in conjunction with the MFA to cover the regulation and supervision of segregated portfolio companies that are mutual funds.

22. Four types of vehicles are commonly used for operating mutual funds- companies, limited partnerships, unit trusts and segregated portfolio companies. Under the MFA, mutual funds fall under three specific categories, which are: (1) private funds (mutual funds that are either limited to 50 investors or are issued on a private basis in accordance with the MFA), (2) professional funds (mutual funds that are offered to professional investors only and that require that the majority of initial investments be greater than $100,000), and (3) public funds (mutual funds that are neither private funds nor professional funds, i.e. retail funds).

23, The Virgin Islands is a leading domicile for mutual funds, more commonly referred to as hedge funds. As at 31st December, 2007 there were 2,731 mutual funds registered or recognised under the MFA. Professional funds accounted for 1531 of the total and private and public funds made up 832 and 209 respectively. At the end of the same period there were approximately 462 managers, 36 administrators and 47 managers/administrators licensed under the MFA.

Insurance Sector

24. Insurance business is licensed under the Insurance Act, 1994 (IA) and Insurance Regulations, 2005 (IR). Insurance companies operating in or from within the Territory can be issued an insurance licence to operate in the domestic and captive market; and certificates of authority are issued to intermediaries such as agents, brokers, insurance managers and loss adjustors.

25. At the end of 2007, the domestic market comprised of 31 domestic insurers, 14 agents, 8 brokers, 20 insurance managers and 7 loss adjusters.

26. The total number of captives was 392 with the largest representation by parent industry from the finance and insurance industry at 44%, followed by construction and health care industry at 15% each. Ten of the captives are segregated portfolio companies. Estimated net assets of captives in 2006 were US$ 750,000,000.

DNFBPs

27. The new Anti-money Laundering and Terrorist Financing Code of Practice, 2008 (AMLTFCOP) extends the anti-money laundering regime to DNFBPs and money remitters as required by the Recommendations. While gaming is prohibited under the Criminal Code, 1997, the Anti-money Laundering Regulations, 2008 (AMLR) extends its scope to casinos in the definition of "relevant business" in Regulation 2. The AMLTFCOP also covers casinos, since the definition of entity in section 2(1) cross-references the definition of "relevant business" in the AMLR. Trust and company service providers (TCSPs) have been subject to prudential supervision since 1990.

28. At the time of the mutual evaluation there were 96 notaries as defined by the Notaries Public Act CAP 50 and approximately 125 legal practitioners. There is a fused legal profession of both barristers and solicitors and a voluntary Bar Association. However, there is a Legal Profession Bill, 2007 which is under consideration.

29. With regard to the accountancy profession, there are 26 firms and large scale individual businesses and 19 book-keeping services. There is a voluntary Accountants Association. There are 95 real estate agents, brokers and managers, and 17 dealers in precious metals and stones. As already indicated above, trust service providers and company service providers are regulated under the BTCA and the CMA. At the time of the mutual evaluation, there were 9 money remitters.

30. In addition to the above, other non-financial business and professions were brought under the AML/CFT regime with the Non-financial Business (Designation) Notice in February 2008. These include 37 car dealers, 20 yacht dealers, 40 dealers in heavy machinery for purchase or rental and 10 companies leasing office equipment or cars.

Table 3: Types of financial institutions authorised to perform financial activities in the glossary of the FATF 40 Recommendations

Type of financial activity (See Glossary of the 40 Recommendations)	Type of financial institution authorised to perform activity in Virgin Islands
A. Acceptance of deposits and other repayable funds from the public (including Private banking)	Commercial banks
B. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	Commercial banks
C. Financial leasing (other than financial leasing arrangements in relation to consumer products)	To be encompassed in the Financial and Money Services Bill. Not currently a regulated activity.

D. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	Commercial banks, money transmitters,
E. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Commercial banks, Post Office
F. Financial guarantees and commitments	Commercial banks
G. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	Commercial banks, trust and company service providers, mutual fund managers and administrators, private, professional and public funds,
H. Participation in securities issues and the provision of financial services related to such issues	Commercial banks, trust and company service providers, mutual fund managers and administrators, private, professional and public funds,
I. Individual and collective portfolio management	Trust and company service providers, mutual fund managers and administrators, private, professional and public funds,
J. Safekeeping and administration of cash or liquid securities on behalf of other persons	Commercial banks
K. Otherwise investing, administering or managing funds or money on behalf of other persons	Commercial banks, company managers, trust and company service providers, mutual fund managers and administrators, private, professional and public funds,
L. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers)	Captive and domestic insurers, insurance managers, agents and brokers

M. Money and currency changing	Commercial banks

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

31. Provision is made within the laws of the Virgin Islands for the establishment of legal persons and various legal arrangements which are capable of owning property, or holding other assets such as bank accounts, shares and debentures. Under section 5 of the BVI Business Companies Act, 2004 ("BVIBCA"), five types of companies may be established;

- a company limited by shares;
- a company limited by guarantee that is not authorised to issue shares;
- a company limited by guarantee that is authorised to issue shares;
- an unlimited company that is not authorised to issue shares,
- an unlimited company that is authorised to issue shares.

32. A company, subject to section 28 and to its memorandum and articles, has full capacity to carry on or undertake any business activity, and may do or enter any transaction in so doing. Companies are also empowered to issue and hold shares, including treasury shares and conduct financial transactions. It is also acceptable for a foreign company to carry on business in the Virgin Islands. Under the BVIBCA, a 'foreign company' is defined as a body corporate that is incorporated, registered or formed outside of the Virgin Islands. A foreign company, which will be regarded as a non-belonger company, is not permitted to hold land or a mortgage in land in the Territory unless and until it has obtained a non-belonger's land holding licence under the Non-Belonger Land Holding Regulation Ordinance, Cap.122. The requirement also applies to any non-belonger shareholder or director of any company registered in the Virgin Islands which intends to hold land within the Territory. As a preventative measure against circumvention of this requirement, it is an offence for a person to hold property in trust for a non-belonger, without that person obtaining a licence from the Governor in respect of such property. A person who contravenes this provision is liable on summary conviction to a fine, and the property may be forfeited to the Crown. At the end of 2007, 840,932 companies were registered under the BVIBCA. Active companies i.e. those in good standing with no outstanding annual fees, totalled 404,321.

33. Other legal arrangements which may be created or established for purposes of holding property and assets are partnerships, mutual funds, sole proprietorships and trading arrangements.

34. In order for a company to be incorporated, an application for incorporation must be filed by the proposed registered agent only. Applications made by other persons will not be accepted by the Registrar. On behalf of the company, a number of documents must be filed, including: the memorandum and articles of the company, certification from the proposed registered agent

signifying consent to act as registered agent; and the written approval of the FSC, if the company is a segregated portfolio company. Once satisfied that the statutory requirements are met, the Registrar will register the documents, allot a company number and issue a certificate of incorporation to the newly formed company.

35. Foreign companies are registered in accordance with section 187 of the BVIBCA, and such companies are registered in the Register of Foreign Companies. A foreign company may be registered under its corporate name or it may be registered in an alternate name for the purposes of carrying on business in the Virgin Islands. Every foreign company must, upon registration, supply the following: evidence of its incorporation, a certified copy of the instrument constituting or defining its constitution, a list of its directors at the time of the application, a notice specifying the appointed registered agent.

36. It is not a requirement for general partnerships to be registered. However, where two or more persons intend to form a limited partnership, they are required under section 53 of the Partnership Act, 1996, to, (a) execute articles and submit them to the registered agent, and (b) submit a memorandum to the Registrar. This memorandum should include the name of the firm, the objects and purposes for which the partnership was established, the name and address of the registered agent, and the address of the registered office within the Territory, the name and address of each general partner, and the terms and conditions of the partnership.

37. A person, or group of persons, who are trading or carrying on business under a trade name, may hold property on behalf of their sole proprietorship or general partnership. The carrying on of trade must be sanctioned by the Minister responsible for Trade, in accordance with section 6 of the Business Professions and Trade Licences Act, Cap. 200. A person applying must complete the required form, but must also submit information on his or her identity, personal history, experience business record, a record of any convictions, including for offences involving moral turpitude, and any other information that the Minister determines as reasonable. In respect of a firm or body corporate, information on every partner of the firm or every director who will exercise the powers conferred by the licence must be submitted. The Minister may require every partner or director to submit all relevant particulars which apply to an individual.

38. In accordance with Part II of the MFA, a public fund which is intended to carry on business or arrange or administer its affairs from or within the Virgin Islands must be registered. An application to this effect should be made to the FSC in the appropriate form, but must also be supported by: a statement describing the nature and scope of the business to be carried out from or within the Territory, details of the country or jurisdiction where the applicant is carrying on or intends to carry on business, the instrument that supports the valid constitution of the fund under the laws of the Territory or some other jurisdiction, notices of the address of the applicant's place of business, the name and address of a person resident in the Territory who is authorised to represent the applicant, and the address of any place of business that the applicant may have outside the Territory, along with the prescribed fees. Where the FSC approves an application, the FSC will issue to the applicant a certificate of registration.

39. The ownership and control of a company may be vested in either natural or legal persons. A company incorporated under the BVIBCA, is required to keep and maintain a register of members for the company. This register must include the names and addresses of the persons who hold registered shares in the company, the number of each class and series of shares which the shareholder holds. It is a requirement however, that the business and affairs of a company are managed by or under the direction of the directors of the company. Notwithstanding the general powers which may be vested in the directors by the memorandum and articles, section 110(2) of

the BVIBCA prevents directors from delegating powers to a committee of directors in the following areas: amending the memorandum and articles, designating committees of directors, delegating powers to a committee of directors, appointing or removing directors, appointing or removing agents, approving plans or mergers, consolidations or other arrangements, making declarations of solvency or approving liquidation plans, or making a determination that the company will satisfy the solvency test following a distribution.

40. With respect to partnerships, whether general or limited, and sole proprietorships, ownership and control is vested in the person or persons who have applied for and received permission to carry on business.

41. A Virgin Islands business company, a foreign company and a limited partnership must maintain at all times a registered office and registered agent within the Virgin Islands. In respect of a limited partnership, the general partners of the limited partnership are required to maintain or cause to be maintained at the registered office of the limited partnership, the name, address, amounts and dates of contributions of each partner and the amount and date of any payment representing a return of any part of a partner's contribution. The limited partnership is required to keep its own accounts and records of its financial position. A Virgin Islands business company is required to maintain at the office of its registered agent, the memorandum and articles of the company, the register of members, the register of directors, and copies of all notices and documents filed by the company within the previous ten (10) years. Additionally, the minutes of meetings and resolutions of members and of classes of member, and the minutes of meetings and resolutions of directors and committees of directors should be kept at the office of the registered agent of the company. The company itself shall keep records of its transactions, and of its financial position. These records may be kept in written form, on hard copies, or in electronic form. On giving reasonable notice, a director of a company is entitled to inspect the documents of the company, without charge, and make copies or take extracts of such documents. Subject to the memorandum and articles and to a decision of the directors, a member may inspect the company documents, on giving written notice.

42. A foreign company that carries on business in the Virgin Islands shall at all times have a registered agent in the Virgin Islands, primarily to ensure that service may be properly effected on that company. There is no requirement under the BVIBCA for particular company documents to be kept at the office of the registered agent, except for the information which is required for registration of the foreign company. Upon registration, the foreign company must submit a list of its directors as at the effective date of the application outlining the full name, nationality, address and date of appointment of each director. A notice specifying a registered agent, and a notice of any further information required by the Registrar, must also be submitted. This information can generally be accessed by the public once placed in the register. In the absence of a specific requirement, any foreign company documents kept at the office of the registered agent would be kept at the discretion of the directors of the foreign company, and may be inspected by such persons as the directors may determine. A failure to comply with the provisions regarding maintaining a registered office and registered agent renders a company or foreign company liable on summary conviction to a fine of $10,000.

43. Under the BVIBCA, a company limited by shares can issue bearer shares. There are detailed provisions for immobilisation of bearer shares with authorised custodians. International business companies registered before 2005 that issue bearer shares have until 2009 to immobilise or place their bearer shares with authorised custodians.

44. General requirements for trusts are detailed in the Trustee Act which provides for the

duties and powers of trustees. Trusts are not required to be registered and as such there are no reliable figures available on the number of trust relationships or the value of assets held in trust. Trust service business is a regulated activity under the BTCA and is subject to AML/CFT legislative provisions.

45. Births and deaths of persons in the Virgin Islands are registered under the Registration of Births and Deaths Ordinance, Cap. 276. Under the provisions of Part IV of the Immigration and Passport Act, 2000, a person who does not belong to the Virgin Islands, but has resided within the Territory for a period of ten (10) years may apply for a certificate of belonger status. Apart from this process, a person who does not belong to the Territory is required to obtain a work permit to work in the Territory, in accordance with section F5 of the Labour Code Cap. 293, unless the person is exempted from this requirement under section F3(2) of the same Code. Additionally, all persons leaving and entering the Territory are required to produce a valid passport for travel. These passports are reviewed by officers of the Immigration Department at the various ports of entry within the Territory. As such, while there is no structured national identity registration system in place in the Virgin Islands, by the legislative and administrative means mentioned above, the identity of natural persons within the Territory may be determined.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. *AML/CFT Strategies and Priorities*

46. Since the Drug Trafficking Offences Act (DTOA) was introduced in 1992, the Virgin Islands has maintained a robust public policy commitment to ensuring that the Territory plays its part in the global fight against money laundering and the financing of terrorism. Successive Virgin Islands' governments have promoted policies to ensure that the jurisdiction can play its part to effectively combat cross border financial crimes, maintain a reputation of being a clean jurisdiction and where it is found that the jurisdiction has been used by criminals, to fully cooperate with the international community. This government's commitment has led to the jurisdiction being in the forefront in the introduction of modern financial services legislation such as a licensing regime for trust and corporate service providers, immobilization of bearer shares and the introduction of mandatory suspicious activity reporting obligations.

47. The focus of the Virgin Islands' AML/CFT policies and objective over the past several years has been based on three components: 1) an effective domestic AML/CFT framework, 2) an effective regime for international cooperation with overseas law enforcement agencies, financial regulators and other competent authorities and 3) the onsite inspection and monitoring of the financial services sector.

48. The nature of the Virgin Islands financial services industry is such that most of the business is not conducted in the jurisdiction, therefore, maintaining a robust regime for cooperating with foreign regulatory authorities and competent authorities is of paramount importance to the Territory. The Virgin Islands provides legal assistance in the registration of foreign civil judgements, including service of process and in tax information exchange.

49. The FSC recently conducted a comprehensive risk assessment of the trust and corporate service providers as part of its overall supervision remit in order to determine the risk appetite of

the industry and to provide an indication of priority of inspection. The results of such assessments provide a good indication of the jurisdiction's risk profile and thus enable it to strengthen current systems and procedures and, where necessary, devise new and enhanced regimes to more effectively deal with identified risks

50. The authorities have recently completed a suite of amendments to existing AML legislation including the AMLTFCOP and the AMLR. The Virgin Islands has adopted a new approach to the drafting of the AMLTFCOP to achieve two things at the same time: firstly, to frame it in a manner that effectively demonstrates its enforceability as a subsidiary legislation; secondly, to provide explanatory notes below each section, where considered necessary. The new AMLTFCOP also includes some recent developments from the FATF which, though not yet made specific criteria, occupy central roles in considerations of effective AML/CFT regimes. The new AMLTFCOP now sets out a framework for the adoption of a risk based approach which encourages identifying risk associated with business relationships and transactions across all relevant sectors.

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

The Ministry of Finance

51. Presently, the Honourable Premier of the Virgin Islands holds the portfolio for the Ministry of Finance concurrently with other responsibilities. Although the FSC enjoys a very high degree of autonomy, the Minister of Finance has ministerial responsibility for the subject and the FSC has a reporting obligation to the Cabinet.

Financial Services Commission

52. The FSC is established under the Financial Services Commission Act, 2001 (FSCA) and is responsible for the regulation and supervision of the financial services sector in the Virgin Islands. The functions of the FSC are set out in section 4 of the FSCA and includes amongst other things the monitoring of compliance by licensees (and by such other persons who are subject to them) with the Anti-Money Laundering Code of Practice, 1999 (now replaced by the AMLTFCOP) and with such other Acts, regulations, codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed.

53. The FSC has regulatory oversight for banking, insurance, insurance managers and brokers, mutual funds, mutual fund managers and administrators, trusts, company management services and insolvency practitioners. The Registry of Corporate Affairs which is also a Division within the Commission is responsible for ensuring that entities doing business in and from within the Territory are duly registered. This Division also functions as the patents and trademarks registry, facilitating the registration of BVI and UK trade and service marks and patents.

Attorney General's Chambers

54. The Chambers are headed by the Attorney General who is the principal legal adviser to the Government. The Attorney General is an *ex-officio* member of the House of Assembly, Cabinet and the National Security Council. By virtue of the Virgin Islands Constitution Order

2007 (U.K.S.I. 2007 No. 1678) the Attorney General no longer assumes responsibility for the prosecution of criminal cases. Under section 59 of the Constitution, the DPP was set up as a separate office. The Constitution came into effect on June 15, 2007. Nevertheless, the Attorney General's Chambers provides the overall civil, legislative and international legal services. The Attorney General remains responsible for advising Government on legal policy matters, including AML/CFT matters.

Office of the Director of Public Prosecutions

55. The Office of the Director of Public Prosecution ("ODPP") formally came into effect in June 2007 under the BVI Constitution Order 2007. Prior to June 2007, the DPP was head of the Criminal Division within the Attorney General's Chambers with the Attorney General having constitutional responsibility for criminal prosecutions. The ODPP is now a separate and independent office from the Attorney General's Chambers.

56. The ODPP is responsible for the prosecution of all money laundering and other criminal investigation at both the Magistrate's Court level and the High Court level. The ODPP is also responsible for obtaining forfeiture, charging and restraint orders in money laundering and other criminal investigations.

57. The ODPP also advises in the provision of mutual legal assistance in foreign requests which involve criminal matters.

Financial Investigation Agency

58. The Financial Investigation Agency (FIA) was established in December of 2003 and became fully operational in March of 2004. The FIA was created as an autonomous body by virtue of the Financial Investigation Agency Act, 2003 (FIAA) and is the designated FIU of the Virgin Islands. The FIA replaced the Virgin Islands Reporting Authority which was the first FIU of the Virgin Islands. The FIA is a hybrid type FIU and Section 4 (1) of the FIAA designates it as the body responsible for receiving, obtaining, investigating, analysing and disseminating information which relate to or may relate to (a) a financial offence or the proceeds of a financial offence; or (b) a request for legal assistance from an authority in a foreign jurisdiction which appears to the Agency to have the function of making such requests.

59. The functions of the FIA are guided by a policy making Board which comprises of the Deputy Governor who is a senior civil servant as Chairman; the Financial Secretary who is the Government Chief Financial Advisor; the Attorney General; the Managing Director of the FSC; Commissioner of Police; and the Comptroller of Customs. The FIAA confers certain supervisory functions upon the Board. Among these supervisory functions are that the Board must grant its approval before the Agency can enter into any understanding, in writing, with a foreign financial investigation agency/FIU which His Excellency the Governor considers necessary or desirable for the discharge or performance of the functions of the Agency.

Joint Anti-Money Laundering and Terrorist Financing Advisory Committee (JALTFAC)

60. With the enactment of the Proceeds of Criminal Conduct (Amendment) Act, 2008 (POCCAA) JALTFAC has replaced the Joint Anti-money Laundering Co-ordinating

Committee (JAMLCC). The JALTFAC comprises of the Managing Director of the FSC, the Attorney General, Commissioner of Police, Comptroller of Customs, Director of the FIA and the Financial Secretary, together with members of reporting institutions and other stakeholder organisations (Registered Agents Association, Compliance Officers Association, Bankers Association, Bar Association and Society of Trusts and Estate Practitioners).

61. The functions and powers of JALTFAC under Section 14 of the POCCAA, are (a) to ensure the stability of the financial sector of the Virgin Islands; (b) to assist the FSC in formulating an appropriate approach in developing a Code of Practice; (c) keep entities, compliant with anti-money laundering and countering the financing of terrorism measures established locally, regionally and internationally; (d) keep the Territory attuned to developments on international cooperation as they relate or are incidental to anti-money laundering and terrorism financing activities. The JALTFAC may on its own initiative provide such other advice it considers essential to the efforts of the Territory to effectively combat money laundering and terrorist financing activities.

National Security Council

62. The National Security Council (NSC) was set up pursuant to section 57 of the 2007 Constitution. The NSC is responsible for advising the Governor on matters relating to internal security and the Governor is usually obliged to act in accordance with that advice. The NSC is chaired by The Governor; the other members are the Premier, one other Minister, the Attorney General and the Commissioner of Police, the last two being *ex-officio* members. On a weekly basis, the NSC reviews the police report on crime in the Territory and other domestic or international security matters affecting the Territory.

The Judiciary

63. The Judiciary is a part of the Eastern Caribbean Supreme Court (ECSC) system headquartered in St. Lucia and headed by the Chief Justice resident in St. Lucia (Supreme Court Order 1967 No. 223). There are two resident High Court Judges in the Virgin Islands whose decisions may be appealed to the Court of Appeal which is itinerant among the Members of the ECSC. The court of final appeal is the Judicial Committee of the Privy Council. However, at the entry level of the court system is the Magistracy. Presently, there is a resident Senior Magistrate and a Magistrate, both of whom are appointed by The Governor, usually acting in accordance with the advice of the Judicial and Legal Services Commission pursuant to the 2007 Constitution (section 95(4)). Criminal and civil cases are adjudicated at all these levels.

Royal Virgin Islands Police Force

64. The Royal Virgin Islands Police Force (RVIPF) is the principal law enforcement agency in the Territory of the Virgin Islands. The RVIPF Anti-Drug and Violent Crimes Task Force (ADVCTF) is responsible for conducting investigations into all violent crimes as well as investigations relating to drug trafficking, ML and TF.

HM Customs Department

65. HM Customs falls within the portfolio of the Premier in his capacity as Minister of Finance. The role and responsibilities of the Customs Department are governed by the

provisions of the Customs Ordinance (CAP. 104) and Customs Duties Ordinance (CAP. 105). The primary responsibility of HM Customs is to facilitate legitimate trade through the collection of customs duty payable on imported goods and the protection of the territory's borders from smuggling and the illicit traffic in illegal drugs, illegal weapons and the importation of prohibited goods.

Department of Immigration

66. The Department of Immigration falls within the portfolio of the Premier who is also the Minister responsible for Immigration. It operates within the general provisions of the Immigration and Passport Ordinance (CAP. 130) and its main responsibilities are to document, control and monitor persons granted leave to enter or land in the Territory in accordance with the provisions of the Immigration and Passport Ordinance.

c. Approach concerning risk

67. The risk-based approach to combating money laundering and terrorist financing is now incorporated in the AMLTFCOP. In July and December 2007, the FSC delivered presentations to the financial services industry on the risk-based approach. The purpose of these presentations was to:

- Support the development of a common understanding of what the risk-based approach involves.
- Outline the high-level principles involved in applying the risk-based approach, and
- Indicate good public and private sector practice in the design and implementation of an effective risk-based approach.

d. Progress since the last Mutual Evaluation or Assessment

68. The Virgin Islands was evaluated by the CFATF in 2003. Action taken with regard to specific recommendations made in the report is described below.

Legal Recommendations update

69. The Proceeds of Criminal Conduct Act, 1997 (POCCA) was amended in 2006 to incorporate a system of mandatory suspicious transaction reporting.

70. The Guidance Notes of 1999 were effectively revoked in 2008 by the enactment of the AMLTFCOP pursuant to the powers granted thereby under the POCCA (as per the 2008 amendment). The AMLTFCOP provides a new and enhanced regime covering both money laundering and terrorist financing matters. Also the AMLR was enacted to replace the Anti-money Laundering Code of Practice of 1999. .

71. The Bar Association has given consideration to the development of guidelines for its members especially where they perform fiduciary duties and given the role of attorneys as

gatekeepers in anti-money laundering typologies. These considerations are related to the draft Legal Profession Act, 2007.

72. The role of JAMLACC has been more clearly defined in the Amendments to the POCCA with the creation of the JALTFAC.

73. Recent amendments have expanded the definition of 'cash' at Section 38 of the DTOA and Section 37A of the POCCA to include bearer negotiable instruments.

Financial Recommendations update

74. The FSC has instituted on-site supervisions to ascertain that financial services providers are implementing adequate anti-money laundering measures and to complement home country supervision pertaining to the soundness of financial institutions. On site inspections are aided by the K-Review computerized program

75. The FSC has established a number of MOUs all of which are available on its web site. For example, the FSC has signed MOUs with Canada, Jersey, Mexico, Panama, Puerto Rico, the BVI FIA, IOSCO and the Caribbean Regional Regulators.

76. The AMLTFCOP includes the requirement to obtain copies of identification documents from introducers in accordance with the FATF recommendations.

Law Enforcement Recommendations update

77. The RVIPF increased training to its police officers in the investigation of money laundering and terrorist financing.

78. The Customs Department has acquired four dogs – three are trained to detect narcotics and one is multi-trained for purposes of firearms, explosives and criminal apprehension, detection and tracking. These acquisitions have considerably assisted with the Territory's ability to deal with crime, including terrorist threats. .

79. There has been an increase in undercover operations as an investigative tool and many such operations have led to trials and convictions.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

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

2.1.1 Description and Analysis

Recommendation 1

Criminalisation of ML in accordance with UN Conventions

80. The criminalisation of money laundering is achieved by virtue of two main Acts in the Virgin Islands, The POCCA and the DTOA. These Acts provide for the following:

a) Assisting in retaining the benefit of criminal conduct. This criminalizes arrangements in respect of criminal property for the retention, use or control by or on behalf of another person or himself of proceeds of criminal conduct; (s. 28 of POCCA, s. 23 of DTOA);

b) The acquisition, possession or use of the proceeds of criminal conduct. This makes criminal the conduct of any person who knowingly acquires or uses property or having property where it in part or wholly directly or indirectly represents the proceeds of his or another person's criminal conduct; (s. 29 of the POCCA, s. 23A of DTOA); and

c) Concealing or transferring proceeds of criminal conduct. This makes criminal the act of concealing or disguising any property which in whole or in part directly or indirectly represents, a person's proceeds of criminal conduct or where he converts or transfers that property or removes it from the Territory. (s. 30 of the POCCA, s. 23B of DTOA]

81. Apart from actual knowledge, these Acts also make the non-reporting of suspicion of money laundering an offence.

82. Further, the criminal element of money laundering is also included in the Criminal Justice (International Co-operation) Act (CJICA). This Act enables the Virgin Islands to co-operate with other countries in criminal proceedings and investigations and enables the Virgin Islands to join with other countries in implementing the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention).

83. Part II of the CJICA makes it an offence for a person to manufacture a scheduled substance or supply a substance to another person knowing or suspecting that the substance is to be used in or for the unlawful production of a controlled drug. Schedule II of the CJICA lists the prohibited substances and controlled drugs, which largely incorporates the standards prescribed under the Vienna Convention. Controlled drugs under the DPMA include a range of drugs from Classes A to C with Class A drugs being the most serious offences. Schedule II of the DPMA lists the controlled drugs. However, not all substances are banned in accordance with the Vienna

Convention. [4]

Property that represents proceeds of crime

84. The money laundering offences under section 23 of the DTOA and sections 28 to 30 of the POCCA apply to any property regardless of its value and whether it directly or indirectly represents the proceeds of crime or drug trafficking. Property is defined in the DTOA and the POCCA in section 2 of both Acts as including money and all other property, real or personal, including things in action and other intangible or incorporeal property. Under the POCCAA money is further defined to include coins, notes in any currency, cheques and any other monetary or type of bearer negotiable instrument.

85. It is not necessary for a person to be convicted of a predicate offence when proving that property is the proceeds of crime. (s. 23 of the DTOA and ss. 28 to 30 of the POCCA).

Designated categories of offences

86. Section 2(5) (d) of POCCA makes money laundering offences applicable to all indictable offences, save for drug trafficking offences. Drug trafficking offences are predicate offences for money laundering under the DPMA. The FATF designated categories of offences are criminalized under the Criminal Code (CC) and various other statutes as indicated in the following table.

Table 4: Criminalisation of designated categories of offences

DESIGNATED CATEGORIES OF OFFENCES	RELEVANT LEGISLATIVE PROVISIONS IN THE VIRGIN ISLANDS
Participation in an organised criminal group and racketeering	Section 20 of the CC
Terrorism, including terrorist financing	Sections 3 & 4 of Terrorism (United Nations Measures) (Overseas Territories) Order 2001 Sections 6 to 8 of Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002,
Trafficking in human beings and migrant smuggling	Section 201A & 201B of the CC
Sexual exploitation, including sexual exploitation of children	Section 201A of the CC
Illicit trafficking in narcotic drugs and psychotropic substances	Sections 5 to 7 of the DPMA

[4] N-acetylanthranilic acid, Isosafrole, 3,4-Methylenedioxyphenyl-2-propane, Piperonal, Safrole, Hydrochloric acid, Methylethyl Ketone, Potassium permangante, Sulphric acid and Tolune are not banned.

Illicit arms trafficking	Section 3 of the Firearms Importation Prohibition Proclamation 1967 (SO 18/1967)
Trafficking in stolen and other goods	Section 226 of the CC
Corruption and bribery	Sections 79- 85 of the CC (as amended)
Fraud	Parts 14 & 15 of the CC, Section 81G of the CC— Conspiracy to defraud
Counterfeiting currency	Section 235(1)(c), sections 247 – 259 of the CC
Counterfeiting and piracy of products	Section 44 of the CC
Environmental crime	Part X of the Fisheries Act 1997
Murder, grievous bodily injury	Sections 148 and 163 of the CC
Kidnapping, illegal restraint and hostage-taking	Section 195 of the CC
Robbery or theft	Sections 209 and 210 of the CC
Smuggling	Sections 43 to 45 of the Customs Ordinance and 78 of the CC
Extortion	Section 225 of the CC
Forgery	Section 235 of the CC
Piracy	Section 21 of the 1956 Copyright Act (UK) which is extended to the Territory no. 2185 of 1962. Copyright (VI) Order 1962. (amended in 2006)
Insider Trading, & Market Manipulation	N/A

87. As can be noted in the above table, insider trading and market manipulation are not criminalized in the Virgin Islands.

88. By section 31(7) of the POCCA predicate offences for money laundering extend to conduct which occurs in another country which would have constituted a predicate offence if it had occurred in the Territory of the Virgin Islands. This goes beyond the requirement which sets out that the offence should constitute an offence in the other country and a predicate offence had it occurred domestically.

89. This also applies to drug trafficking by virtue of the Criminal Justice (International Co-operation)(Amendment) Act, 2004 (CJICAA) which states that providing assistance for the purpose of criminal proceedings or investigations to a country or territory shall not be subject to the condition that the conduct shall constitute an offence if it had occurred in any part of the Virgin Islands and vice versa. (s. 5(3) (c) of the CJICAA).

90. The POCCAA sets out that the offence of money laundering applies to persons who commit the predicate offence – (s. 23 of the DTOA and s. 32(8) of the POCCAA).

91. Part 20 of the CC provides that it is an offence for a person to counsel another to commit an offence. Conspiracy and attempts to commit offences, complicity in, procuring, aiding and abetting the commission of an offence are criminalized. These sections apply to all offences and are not just limited to money laundering or drug trafficking offences.

Recommendation 2

Scope of liability

92. The word "person" is defined under section 36 of the Interpretation Act (Cap. 136) to include corporations (whether aggregate or sole) and unincorporated bodies of persons.

93. The money laundering offences under the POCCA and the DTOA do require proof of intention whether in the form of knowledge or suspicion. Under the common law (which has application in the Virgin Islands) any element of an offence may be proved by circumstantial evidence. Circumstantial evidence is evidence of relevant facts, i.e. facts from which the existence or non-existence of facts in issue may be inferred. The prosecution may rely on the inferences that a tribunal of fact may properly rely on to infer guilty knowledge or suspicion on the part of an accused. Such inferences can be drawn from the factual circumstances. Therefore, the intentional element of the offence of money laundering can be inferred from objective factual circumstances.

94. There is no distinction in terms of criminal liability between natural and legal persons. As already noted, section 36 of the Interpretation Act allows for words in an enactment importing persons, to include corporations (whether aggregate or sole) and unincorporated bodies. Thus, legal persons are subject to criminal liability to the same extent as natural persons. Regulation 17(4) of the AMLR specifically extends liability for failure to comply with the Regulations to corporate bodies. Section 27(4) of POCCA as amended by POCCAA provides for the liability of corporate bodies for failure to comply with the AMLTFCOP.

95. The law does not preclude the possibility of parallel criminal, civil or administrative proceedings. Section 22(4) of the Interpretation Act states that an enactment creating criminal liability for an act or omission which, apart from that enactment, would give rise to civil liability does not operate to affect the civil liability.

96. The penalties for money laundering are provided for in POCCA. Pursuant to sections 28, 29 and 30 of the POCCA the penalties are on summary conviction six months imprisonment or a fine not exceeding three thousand dollars or both; and on indictment to a term of imprisonment not exceeding fourteen years or a fine of twenty thousand dollars or both.

97. The penalties for laundering the proceeds of drug trafficking under sections 23, 23A and 23B of the DTOA range, on summary conviction, from a fine not exceeding $10,000 or imprisonment not exceeding six months imprisonment, or both, to a fine of one hundred thousand dollars or where there is evidence of the street value of the controlled drug, three times the value of the controlled drug, whichever is the greater and imprisonment for a term between 5 to 10 years. Penalties for conviction on indictment range from a fine not exceeding $50,000 or imprisonment not exceeding 14years or both to imprisonment not exceeding 15years.

Statistics

98. Between the years 2003 to 2006, money laundering offences were primarily predicated by drug trafficking offences and other drug offences. There has been no money laundering convictions since 2003. During the on-site visit there were two ongoing money laundering investigations and pending prosecutions. The prosecutions resulted in two ML convictions.

99. While the legal framework in the Virgin Islands is comprehensive, market manipulation and insider trading is not criminalized and not all scheduled chemicals under the Vienna Convention are banned. The low number of ML convictions show limited implementation of the legal framework..

2.1.2 Recommendations and Comments

100. The Virgin Islands ensures compliance with the necessary obligations imposed by the various international standard setters by rigorously amending their laws to reflect the requisite legal requirements. It is suggested that these amendments be consolidated and a general revision of all laws be done to incorporate the various amendments passed. Additionally the authorities should;

- Enact legislation criminalizing market manipulation and insider trading and banning Vienna Convention scheduled chemicals not already prohibited.

2.1.3 Compliance with Recommendations 1, 2 & 32

	Rating	Summary of factors underlying rating
R.1	**LC**	**Market manipulation and insider trading is not criminalised** **Some scheduled chemicals are not banned in accordance with the Vienna Convention** **The low number of ML convictions show limited implementation of the legal framework**
R.2	**LC**	**The low number of ML convictions show limited implementation of the legal framework**

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

2.2.1 Description and Analysis

101. The relevant legislative provisions on the criminalisation of terrorist financing are primarily contained in the Terrorism (United Nations Measures) (Overseas Territories) Order 2001(U.K. S.I. 2001 No. 3366) (TUNMOTO), the Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002, (U.K.S.I No. 2002 No. 1822) (ATFOMOTO) and the Al-Qa'ida and Taliban (United Nations Measures)(Overseas Territories) Order 2002

(ATUNMOTO). All of these were extended to the Virgin Islands by Orders in Council made by the United Kingdom Government.

Special Recommendation II

Criminalisation of terrorist financing

102. Terrorist financing offences are set out in TUNMOTO. Article 3 of TUNMOTO makes it an offence for any person to invite another person to provide funds, or to receive and provide funds with the intention or knowledge that the funds may be used for the purpose of terrorism. Article 4 of TUNMOTO extends the offence of terrorist financing to any person who willfully provides or makes funds available, by any means, whether directly or indirectly, for the purposes of terrorism.

103. Terrorist financing offences incorporating the additional element of reasonable suspicion are set out in articles 6 to 8 of ATFOMOTO which deal with fund raising, use and possession and funding arrangements. Article 6 of ATFOMOTO makes it an offence to invite another person to provide money or other property or to receive or provide money or other property with the intention or knowledge or reasonable cause to suspect that it may be used for the purpose of terrorism. Article 7 creates the offences of using money and property as well as possessing money and property for the purposes of terrorism or which is reasonably suspected would be used for the purposes of terrorism. Additionally, a person who enters into an arrangement knowingly or with reasonable suspicion becomes concerned in any arrangement, the result of which is to make money or property available for the purposes of terrorism, also commits an offence: (a. 8 of ATFOMOTO)

104. Terrorism is defined under article 4 of the ATFOMOTO, as an action which involves: serious violence against a person, serious damage to property, endangers a person's life, creates a serious risk to health or safety of the public or a section of the public, or is designed seriously to interfere with or seriously to disrupt an electronic system, and which is designed to influence the government, intimidate the public, or advance a political, religious or ideological cause. Criminalization of terrorist financing must be consistent with Article 2 of the UN Convention for the Suppression of the Financing of Terrorism (SFT). The definition of "terrorism" must comply with either Article 2 1(a) which refers to the Conventions and Protocols of the Annex to the SFT or Article 2 1(b). The above definition meets the requirements of Article 2 1(b).

105. For the purposes of ATFOMOTO, the word "property" is defined as including property wherever situated and whether real or personal, heritable or moveable, and things in action and other intangible or incorporeal property.

106. Terrorist financing offences do not require that the funds were actually used to carry out or attempt a terrorist act or to be linked to a specific terrorist act, since articles 6 to 8 of ATFOMOTO only require knowledge, intent and suspicion about the purpose of terrorism.

107. Under section 19 and Part XX of the CC, conspiracy and attempts to commit offences, aiding and abetting the commission of an offence are criminalized. This section will therefore criminalize attempts to commit the offence of terrorist financing and aiding and abetting the commission of such an offence. The provisions outlined in articles 6 to 9 of the ATFOMOTO together with conspiracy, complicity, procuring, and aiding and abetting as stipulated in the CC cover the offences stipulated in Article 2(5) of the SFT.

Terrorist financing as predicate offence for ML

108. Section 2(5)(d) of POCCA makes money laundering offences applicable to all indictable offences, save for drug trafficking offences. It is noted that terrorist financing offences in ATFOMOTO are subject under section 14 to penalties on conviction on indictment and on summary conviction and can therefore be predicate offences for money laundering.

109. Under article 18 of ATFOMOTO terrorist financing offences apply to any person who does anything outside the Territory that would have constituted a terrorist financing offence under ATFOMOTO. Given the broad scope of this provision, the offence would apply to any person alleged to have committed the offence in the same country or a different country from the one in which the terrorist organization is located or the terrorist act occurred.

Inference from objective factual circumstances and criminal liability for legal persons

110. As mentioned with regard to money laundering, the intentional element of an offence can be inferred from objective factual circumstances on the basis of common law practice. By virtue of section 36 of the Interpretation Act 'person' includes corporations and unincorporated bodies. Parallel criminal, civil or administrative proceedings are not precluded by the imposition of criminal liability under section 22(4) of the Interpretation Act.

Sanctions

111. Under article 14 of ATFOMOTO a person guilty of a terrorist financing offence is liable on conviction on indictment to imprisonment for a term not exceeding 14 years, to a fine or to both or on summary conviction to imprisonment for a term not exceeding six months, a fine not exceeding the statutory maximum or both.

Statistics

112. The Virgin Islands submits that there were no instances in which it had cause to investigate any activity of TF. Consequently, there have been no investigations or prosecutions of matters relating to TF in the Virgin Islands.

2.2.2 Recommendations and Comments

113. As there have been no investigations or prosecutions of matters relating to TF, it is difficult to determine the effectiveness of the legal TF regime.

2.2.3 Compliance with Special Recommendation II & 32

	Rating	Summary of factors underlying rating
SR.II	**LC**	**Effectiveness of the legal framework is difficult to assess in the absence of investigations and convictions for TF**

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

2.3.1 Description and Analysis

Recommendation 3

Confiscation of proceeds

114. Provision is made for confiscation, freezing and seizing of the proceeds of crime under the POCCA, the DTOA, the ATFOMOTO, and the TUNMOTO.

115. Section 6 of the POCCA and section 5 of the DTOA provide for the confiscation of the benefit or the amount realizable from the proceeds of criminal conduct and drug trafficking after the conviction of a defendant. Criminal conduct is defined in POCCA as an offence stipulated in the Act and is also applicable to all indictable offences. Determination of benefit under POCCA is to be established on a balance of probabilities. Under the DTOA, the court in determining the benefit from drug trafficking can include property acquired by the defendant within a six year period prior to the beginning of proceedings.

116. Section 34A of POCCA (as amended) and section 35 of DTOA (as amended) provide for forfeiture, after conviction, of any real property, ship, vessel, boat, aircraft, vehicle or other means of conveyance, article, money, or valuable consideration shown to relate to the offence.

Confiscation of instrumentalities

117. Additionally, section 34A (2) of the POCCA and section 35(5) of the DTOA provide for forfeiture, in a trial for an offence, of any property that represents proceeds of criminal conduct or which has been, is being or is reasonably likely to be used in connection with the retention, control, acquisition, possession, use, concealment, disguising, conversion, transfer or moving of the proceeds of criminal conduct whether or not the defendant is convicted of the offence. The above provisions would allow for the confiscation of instrumentalities used in or intended for use in the commission of ML or other predicate offences.

Scope of property

118. While sections of the POCCA and DTOA, as already noted above, provide for forfeiting instruments or the actual direct or indirect proceeds of crime, confiscation is not targeted on specific assets as it is value-based. For the purposes of the above statutes, a person benefits from an offence if he obtains property as a result of a connection with the commission of an offence and the benefit is the value of the property so obtained. Property is defined to include money and all other property, real or personal, including things in action and other intangible or incorporeal property. Section 6(7) of the POCCA provides for the pecuniary advantage derived as a result of the connection with the commission of an offence to be treated as if the defendant had obtained a sum of money to the value of the pecuniary advantage.

119. Forfeiture under sections 34A (4) of the POCCA and 35(7) of the DTOA extends to any property which there is reason to believe has been obtained from the proceeds of anything relating to the offence for which a person is convicted or to a conspiracy to commit any such offence; or to anything into which such property has been converted. This section applies to property whether or not it is held or owned by the defendant.

120. With regard to terrorist financing, article 15 of the ATFOMOTO makes provision for the post forfeiture of any money or other property in possession or under control of the defendant that he intended to use or had reasonable suspicion might be used for the purpose of terrorism. Additionally, the court can forfeit any money or other property which wholly or partly and directly or indirectly is received by any person as a payment or other reward in connection with the commission of the offence. Property is defined in the ATFOMOTO similar to the POCCA.

Provisional measures

121. Provisional measures including the freezing and/or seizing of property to prevent any dealing, transfer or disposal of property subject to confiscation can be found in sections 11 of the DTOA 1992 and section 17 of the POCCA, 1997. These sections allow for restraint orders prohibiting a person from dealing with any realizable property subject to such conditions and exceptions as may be specified by the Court.

122. Additionally, under section 12 of the DTOA and section 18 of POCCA, the court can make a charging order on realizable property for securing payment to the Crown. A charging order can be imposed on any interest in realizable property which is beneficially held by the defendant or by a person to whom the defendant has directly or indirectly made a gift in any asset caught by the Act. These assets include land in the Virgin Islands and assets under trust.

123. Realizable property is defined to include any property held by the defendant and any property held by a person to whom the defendant has directly or indirectly made a gift caught by POCCA and DTOA.

124. Further section 34 of the DTOA makes provision for the seizure and detention of cash that is found in the Territory or that is being imported or exported. Cash can be detained for a period of up to two (2) years pending the investigation of the origin of the cash. Section 37A of the POCCA provides a similar regime in relation to the seizure and detention of cash that is found in the Territory or that is being imported or exported.

125. Section 11 of the DTOA and section 17 of the POCCA allow for the initial application to freeze or seize property subject to confiscation to be made *ex-parte* or without prior notice.

Powers to identify and trace property

126. The police force has powers to identify and trace property under the POCCA and the DTOA. Section 36 of the POCCA and section 26 of the DTOA allow a police officer for the purpose of investigation into whether any person has benefited from any criminal conduct or drug trafficking respectively or into the extent or the whereabouts of the proceeds of any criminal conduct, or drug trafficking respectively, to apply to the High Court for an order to make material available.

127. Section 37 of the POCCA and section 27 of the DTOA allow a police officer for the purposes of an investigation into whether any person has benefited from any criminal conduct or drug trafficking or into the extent or whereabouts of the proceeds of such criminal conduct to apply to the High Court for a search warrant.

128. Paragraph 2 of Schedule 4 under article 17 of the ATFOMOTO provides for a judge in chambers to make an account monitoring order if he is satisfied that the order is for the purpose

of a terrorist investigation and that the tracing of terrorist property is desirable for the purposes of investigation, and the order will enhance the investigation efforts.

Protection of bona fide third parties

129. Provision is made under the respective laws for protection of the rights of *bona fide* third parties.

130. In particular, a restraint order shall provide for notice to be given to persons affected by the order under Section 11(4) (c) of the DTOA and Section 17(4) (c) of the POCCA. It is also the practice that express provision is made in the order for the defendant's reasonable living expenses and legal fees.

131. Persons affected by restraint orders can apply for their discharge or variation under section 17 (5) (a) of the POCCA and section 11(6) of the DTOA. With respect to an external confiscation order, section 9 of Schedule 2 of the Proceeds of Criminal Conduct (Designated Countries and Territories) Order, 1999 is of the same effect as 17(5)(a) of POCCA and 11(6) of the DTOA.

132. Under section 34A (3) of the POCCA and 35(6) of the DTOA, the owner or person claiming to be owner of the thing to be forfeited has an opportunity to be heard prior to forfeiture.

133. In relation to authority to take steps to prevent or void actions whether contractual or otherwise where the person involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation, the court will rely on its inherent jurisdiction pursuant to the common law to grant orders which the justice of the case requires, and these would include preventing or voiding actions whether contractual or otherwise which were taken to prevent or prejudice the authorities' ability to recover property subject to confiscation.

134. Tipping off provisions are contained in the POCCA and DTOA in relation to prejudicing the actions of the authorities in that persons are liable to a fine and imprisonment; however the ability to prevent or void actions whether contractual or otherwise would rest in the inherent jurisdiction of the courts pursuant to the common law.

Additional elements

135. Where an organisation is unincorporated, such as a partnership or a trading entity, the partners and owners of such unincorporated organisations will be personally liable for any actions or omissions of those organizations where they are found to be primarily criminal in nature.

136. Where an organisation is incorporated, the company itself is criminally liable and can be convicted of the offence. However, where there is evidence that the company is a sham and its main purpose is to perform or assist in the performance of illegal activities, the court may lift the corporate veil and treat the company's property as being the property of the natural person.

Statistics

Table 5: Cash and Property Confiscation/Seizures

Year	Cash	Property	Total
2003	$16,802	$20,000.	$36,802.
2004	$10,285	$10,000.	$20,285
2005	$59,115	$483,115.	$542,230
2006	Nil	Nil	Nil
2007	$902.	Nil	$902

137. As can be seen in the above table, there were no property seizures in 2006. There have never been any FT investigations and convictions and only two ML convictions since 2003 in the Virgin Islands. All seizures for the period 2003 to 2007 were cases of confiscation and related to drug trafficking offences and other related drug crimes. At the time of the mutual evaluation visit, over US $45 million was being held in an interim freeze awaiting the outcome of an investigation and possible prosecution.[5] .

2.3.2 Recommendations and Comments

138. The laws adequately address most of the criteria for confiscation, freezing and seizing of the proceeds of crime and figures provided in the above table suggest that the current measures and confiscation regime are effective.

2.3.3 Compliance with Recommendations 3 & 32

	Rating	Summary of factors underlying rating
R.3	**C**	**This recommendation is fully observed**

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

2.4.1 Description and Analysis

Special Recommendation III

Legal framework for freezing terrorist-related assets

139. The freezing of funds used for terrorist financing is included within the domestic laws of the Virgin Islands. Provision is also made for the freezing of funds and assets of specific criminal and terrorist organisations such as Al-Qaida, the Taliban, and Usama Bin Laden, and any other person or group identified by the United Nations Sanctions Committee in accordance with S/RES/1267(1999) and S/RES/1373. This is carried out through the extension by the UK of the ATUNMOTO and TUNMOTO and ATFOMOTO.

[5] In May 2008, the said sum was confiscated and forfeited to be equally shared with Bermuda

Laws and procedures to freeze pursuant to S/RES/1267 and S/RES/ 1373

140. Pursuant to article 8 of the ATUNMOTO, the Governor may by notice direct that funds held by or held on behalf of a "listed person" are not to be made available to that person, except by the authority of a licence. In a similar procedure as described below, the Governor's direction by notice to freeze the funds and assets of a "listed person" may be carried out without delay or prior notice to the owner or person responsible for the funds. A "listed person" is defined as, "Usama bin Laden, or any person designated by the Sanctions Committee in the list maintained by that Committee in accordance with resolution 1390 adopted by the Security Council on 16th January 2002 as: 1) a member of the Al-Qaida organization, a member of the Taliban, and an individual group, undertaking or entity associated with the persons covered by Usama bin Laden, other person named by the Sanctions Committee, Al-Qaida or the Taliban.

141. The periodic updates by the UN Sanctions Committee of undesirable persons, and persons against whom sanctions should be maintained, are received on behalf of the Virgin Islands by the Foreign and Commonwealth Office (FCO). These updates are then forwarded to the Governor's Office, and are disseminated to the relevant office (Attorney General's Chambers) for preparation and publication in the Official Gazette, in accordance with section 22 of the Order.

142. In accordance with article 5(1) of the TUNMOTO, the Governor may by notice direct that funds are not to be made available to any person, except under the authority of a licence granted by the Governor. This power is exercised where the Governor has reasonable grounds for suspecting that a person by, for or on behalf of whom funds are held is: (a) a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism; (b) a person who is controlled or owned directly or indirectly by a person in (a), or (c) a person acting on behalf of, or at the direction of a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism. An order under this article may be issued for a limited or unlimited period.

Procedures for freezing of funds

143. The notice by the Governor directing the freezing of funds must be delivered to "the recipient", (the person (whether natural or legal) holding the funds). The recipient is next required to send a copy of the notice to the owner of/person responsible for the funds without delay: (article 5(5)of TUNMOTO) The requirement that notice must be sent to the owner of or the person responsible for the funds does not, however, delay the process of freezing the funds in the meanwhile. In fact, in accordance with article 5(6), the recipient would have complied with the requirement to send notice to the owner if, without delay, the recipient sends a copy of the notice to the owner's last known address, or if arrangements are made for a copy of the notice to be supplied to the owner at the first available opportunity. As such, under the law, it is possible for funds to be frozen, without delay and without prior notice to the owner, or other person responsible for the funds

Giving effect to foreign freezing mechanisms

144. Where appropriate, the Governor is empowered under the ATFOMOTO, to make an order for the purpose of enabling the enforcement in the Territory of an external order. For this purpose, an external order may include either an external restraint order or an external forfeiture

order on terrorist property, which was made in any country or territory, including any part of the United Kingdom or territory, or another British Overseas territory (Paragraph 11 of Schedule 2).

145. Additionally, further international assistance may be rendered to another country under section 7 of the CJICA, where provision is made for the Cabinet to provide for the enforcement of an order which is made by a court in a country or territory outside the Virgin Islands, that is for the forfeiture and destruction, or for the forfeiture and other disposal of anything in respect of a relevant offence. In the spirit of reciprocity, the Governor, given his Constitutional responsibility for external affairs, may render assistance in an appropriate case.

Definition of terrorist property

146. The freezing action undertaken in accordance with article 8 of the ATUNMOTO and article 5(1) of the TUNMOTO applies to funds which for the purpose of both Orders are defined to include financial assets and economic benefits of any kind. The freezing action of a restraint order under the ATFOMOTO is carried out in respect of any "terrorist property" under the Act which is defined as:

> "(a) money or other property which is likely to be used for the purposes of terrorism,
>
> (b) proceeds of the commission of acts of terrorism, and
>
> (c) proceeds of acts carried out for the purposes of terrorism.

147. In accordance with article 5(2) of the same Order, any reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission).

148. Specific written guidance is provided for financial institutions concerning their obligations to freeze funds of designated terrorist and terrorist organisations or check their accounts against UN or national terrorist lists. Changes in the UN list are sent by the UK Foreign and Commonwealth Office to the Governor's Office. These changes are notified in the Official Gazette and forwarded to the Financial Services Commission, which in turn notifies its licensees in writing to review their databases for any possible connection. Financial institutions are advised to monitor relevant websites for names of suspected terrorists and terrorist organisations.

Directions to financial institutions

149. Specific directions to financial institutions are provided for within any notice by the Governor to freeze funds, or are included by the Court within a restraint Order. Where it is determined that specific directions are to be made concerning any obligations or actions which financial institution must exercise, these will as a matter of course, be included in the Notice or Order as the case may be. Lists of designated terrorists and terrorist organisations are published in the Gazette and by the FSC on its website. The Gazette publication makes it clear to comply with the terms of the list provided – which is to not engage in any activity that would entail making funds available to or for the benefit of any person or organisation on the terrorist list.

150. Notice of a restraint order which would prohibit a person from dealing with terrorist property must, in accordance with article 6(1) of the ATFOMOTO be given to any person affected by such order. This requirement is wide, but essentially covers any person whose property is the subject of the order, and also includes any financial institution which would be associated with or 'affected' by the order. Also, under article 5(5) of the TUNMOTO, and 8(5) of the ATUNMOTO, a notice by the Governor, directing the freezing of funds, shall be given in writing to the person holding the funds in question. A recipient in this context will include any

financial institution, (as a legal person) who may be the holder of funds in respect of which the notice is made.

De-listing procedures

151. For the Virgin Islands, the public notification of 'de-listed' persons would take place after an updated list of undesirable persons, and other persons designated by the UN Sanctions Committee under various resolutions, is received by the Foreign and Commonwealth Office and forwarded to the local Governor's Office for dissemination and publication in the Official Gazette. The public is deemed to have notice of any publication in the Official Gazet*e*, which is published weekly (with extra-ordinary publications being made as may be necessary). As such, the notice of persons who are 'de-listed' is made public within a timely manner.

152. Any notice by the Governor under the TUNMOTO and the ATUNMOTO, directing the freezing of funds, may also be revoked by the Governor, by notice, at any time, thereby unfreezing any funds which were restrained. Where appropriate, including an instance where a person is 'de-listed', the procedure is available for the Governor to exercise his discretion to revoke a notice previously made (article 5(3) and 8(3) respectively). In cases where a person or entity's funds or other assets have inadvertently been affected by a freezing order, articles 5(7) and (8) and 8(7) and (8) of TUNMOTO and ATUNMOTO respectively provide for a person to apply to the Supreme Court to set aside the freezing order. The applicant must give a copy of the application together with supporting witness statements or affidavits to the Governor at least seven days before the hearing of the application.

Access to funds for basic expenses

153. An application by an affected person for reasonable access to funds or other assets frozen pursuant to the ATFOMOTO may be properly made before the Supreme Court: (article 5(c)).

154. Where funds are frozen by virtue of a notice from the Governor under TUNMOTO and ATUNMOTO, the effect of such notice is that the Governor shall direct that certain funds are not to be made available to any person, "except under the authority of a licence granted by the Governor." (article 5(1) of TUNMOTO, and 8(1) of ATUNMOTO). The Governor is therefore vested with the discretionary power to make such funds as he deems appropriate available to whomever, and for such purpose as he considers appropriate. As such, the existing legal framework allows for the possibility that reasonable access to frozen funds and assets may be obtained as necessary for basic expenses and fees in accordance with S/RES/1452(2002).

Right to challenge freezing measures

155. A person whose funds, or other assets (within the wide definition of the word 'funds' under the TUNMOTO and ATUNMOTO), have been frozen is given the opportunity in law to challenge the notice or Order by which his or her funds are frozen. Under TUNMOTO, ATUNMOTO and ATFOMOTO, such challenge is made before the Supreme Court. Specifically, articles 5(7) and (8), of the TUNMOTO provide:

"(7) …any person by, for or on behalf of whom those funds are held may apply to the Supreme Court for the direction to be set aside; and on such application the court may set aside the direction."

"(8) A person who makes an application under paragraph (7) shall give a copy of the application and any witness statement or affidavit in support to the Governor (and to any other person by, for or on behalf of whom those funds are held), not later than seven days before the date fixed for the hearing of the application."

Freezing, seizing and confiscation in other circumstances

156. The freezing and confiscation mechanisms described in section 2.3 of this report are applicable to terrorist-related funds or other assets. Paragraph 2 of Schedule 3 of the ATFOMOTO provides for the seizure of cash by an authorised officer on reasonable grounds of suspecting that it is intended to be used for the purposes of terrorism, is or represents property obtained through terrorism. The period of detention can range from 48 hours to a maximum of 2 years. While the cash is detained, an application for forfeiture can be made to a magistrate's court by an authorised officer under paragraph 6 of Schedule 3.

157. Article 15 of the ATFOMOTO makes provision for the post forfeiture of any money or other property in possession or under control of the defendant that he intended to use or had reasonable suspicion might be used for the purpose of terrorism. Additionally, the court can forfeit any money or other property which wholly or partly and directly or indirectly is received by any person as a payment or other reward in connection with the commission of the offence. Property is defined in the ATFOMOTO similar to the POCCA.

158. Paragraph 2 of Schedule 4 under article 17 of the ATFOMOTO provides for the issuing by a judge of an account monitoring order for the purpose of tracing terrorist property.

Protection of bona fide third parties

159. The rights of a *bona fide* third party are protected under the relevant legislation. This is evident where provision is made for an 'affected' person to make an application before the Court for the discharge or variation of a restraint order: (Paragraph 6(2) of Schedule 2 of the ATFOMOTO). Under paragraph 9 of Schedule 3 of the same Order, provision is made for a person who claims ownership of the whole or part of an amount of terrorist cash which was seized, and in respect of which a forfeiture order was made, to apply to the magistrate's court for the cash or such part of the cash to be released. The Civil Supreme Court has jurisdiction to act, in accordance with the Civil Procedure Rules, 2000, in respect of any notice or order made for the freezing of funds which are or may be used for purposes of terrorism. The Court therefore has jurisdiction to discharge or vary an order on application of a bona fide third party.

160. Law enforcement authorities are responsible for enforcing compliance with the requirements of TUNMOTO, ATUNMOTO and ATFOMOTO. Financial institutions are required under article 10(1) of ATUNMOTO to disclose to the Governor, knowledge or suspicion as to whether any customer or person dealt with during the course of business is either a listed person or has made funds available to a listed person. The FSC, as part of its regulatory oversight is responsible for ensuring that licensed financial institutions have procedures in place to continuously monitor and take action against designated entities.

161. The offence of a breach of a freezing order issued by the Governor under TUNMOTO and ATUNMOTO is liable;

a) on conviction on indictment to imprisonment for a term not exceeding seven years or to a fine, or to both; and

b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or its equivalent or both.

Statistics

162. No money or property has been frozen pursuant to the UN Resolutions in relation to terrorist financing, or money laundering in respect of terrorist financing.

2.4.2 Recommendations and Comments

2.4.3 Compliance with Special Recommendation III & 32

	Rating	Summary of factors underlying rating
SR.III	**C**	**This recommendation is fully observed**

Authorities

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

2.5.1 Description and Analysis

163. The FIA was established by section 3 of the FIAA in December of 2003 and became fully operational in March 2004. The FIA was created as an autonomous body and is the designated FIU of the Virgin Islands. The FIA replaced the Virgin Islands Reporting Authority which was the first FIU of the Virgin Islands. The FIA is a hybrid type FIU and Section 4 (1) of the FIAA designates it as the body responsible for receiving, obtaining, investigating, analysing and disseminating information which relate to or may relate to (a) a financial offence or the proceeds of a financial offence; or (b) a request for legal assistance from an authority in a foreign jurisdiction which appears to the FIA to have the function of making such requests.

164. The functions of the FIA are guided by a policy making Board which comprises the Deputy Governor who is a senior civil servant as Chairman; the Financial Secretary who is the Government Chief Financial Advisor; the Attorney General; the Managing Director of the FSC; the Commissioner of Police; and the Comptroller of Customs. The FIAA confers certain supervisory functions upon the Board. Among these supervisory functions are that the Board must grant its approval before the FIA can enter into any memorandum of understanding, in writing, with a foreign financial investigation agency/FIU which His Excellency the Governor considers necessary or desirable for the discharge or performance of the functions of the FIA.

165. Section 4 (3) also confers on the Board the responsibility for making the policies under which the FIA operates including approval of the FIA's financial budget.

166. Section 4 (5) of the FIAA provides for a Steering Committee which comprises of the Attorney General as Chairperson; the Managing Director of the FSC; and the Director of the FIA. The Steering Committee is responsible for guiding the conduct of investigations conducted by the FIA.

167. In addition, the Steering Committee, upon its own volition or upon the request of the Board or the FSC can investigate or cause the investigation of any matter referred to in any financial services legislation or which is the subject of a request for legal assistance (s. 4 (5)(a)).

168. The Financial Investigation Agency (Amendment) Act, 2007 was passed in the Legislative Council in January 2007. The amendment of section 2 and section 4 of the principal Act allocated additional powers to the FIA.

169. The amended section 2 describes "a financial offence as an offence under any financial services legislation or an offence relating to money laundering (ML), the financing of terrorism (FT) or the breach of any international or domestic sanction prescribed by or under any enactment".

170. The amended section 4 also empowers the FIA to receive all disclosures of information required to be made pursuant to any financial services legislation which is relevant to its functions or pursuant to any other enactment relating to a financial offence, including information from any foreign financial investigation agency which includes foreign FIUs and law enforcement agencies.

171. The FIA also has the power to order a person in writing to refrain from completing any transaction for a period not exceeding seventy-two hours; and may upon receipt of a request whether through His Excellency the Governor, the Attorney General, the FSC or otherwise from a foreign financial investigation agency or a law enforcement authority, including the Commissioner of Police, order in writing any person to freeze a person's bank account for a period of five days if satisfied that the request relates to the proceeds of a financial offence (s. 4 (2) (c) of the FIAA as amended).

172. The mandatory reporting of disclosures relating to SARs is provided for under section 30A (1) of the POCCA as amended by the POCCAA. Sanctions are also provided for non compliance.

173. The FIA receives SARs from the various reporting institutions subject to AML and CFT reporting guidelines currently enforced within the territory of the Virgin Islands. Reporting institutions include banks and trust/company service providers and company formation agents.

174. SARs submitted to the FIA by the various designated reporting institutions are presently submitted on a prescribed form which was circulated as part of the Anti-money Laundering Guidance Notes, 1999 issued by the FSC. All SARs are currently hand delivered. The FIA indicated that consideration will be given to having the reporting procedure expanded to provide for electronic reporting of SARs. This should increase the efficiency and timeliness of reporting and will also increase the timeliness of feedback to reporting institutions.

Receipt and analysis of SARs

175. Upon receipt, SARs are assigned unique reference numbers followed by the dispatch of acknowledgment receipt letters which are sent to the respective reporting institutions. SARs are then logged in an electronic storage system. Once logged the SARs are assigned to the Director of the FIA or the Senior Investigating Officer who shares the responsibility of ensuring that the reports are analysed and investigated. The analysis and investigation of SARs are aided by electronic programmes such as Analysis Notebook 6 and i2, World Check, Data Craft and C6. The majority of SARs are filed by banking institutions and trust and corporate/company service providers.

Guidance

176. Section 20 (1) of the FIAA designates the FSC as the body responsible for issuing ML related guidelines to financial institutions setting out the features of a transaction that may give rise to suspicion that the transaction is or may be relevant to the enforcement of the FIAA; and outlining the procedure for reporting a suspicious transaction orally. The Anti-money Laundering Guidance Notes, 1999 were issued in accordance with this section.

177. As at February 22, 2008 the Anti-money Laundering Guidance Notes, 1999 were revoked and replaced by the AMLTFCOP. The AMLTFCOP was issued by the FSC pursuant to section 27 of POCCA as amended by POCCAA. Section 27 as amended by POCCAA gives the FSC the power to issue a code of practice to give practical guidance on issues relating generally to money laundering and the financing of terrorism.

178. The AMLTFCOP is applicable to all financial institutions and DNFBPs identified by the FATF at risk of AML or TF and stipulates measures for customer due diligence, internal control systems, shell banks and correspondent banking relationships, wire transfers, record keeping, training and reporting. Failure to comply with or contravention of the AMLTFCOP is liable on summary conviction to a fine not exceeding seven thousand dollars or to a term of imprisonment not exceeding two years or both.

179. The FIA and the FSC have partnered in providing training to financial institutions with regard to the preparation of SARs forms and the type of information required and the procedure that should be followed when reporting. No statistics were provided to this effect but during interviews with a number of the institutions it was confirmed that such training was being provided.

Access to information

180. The FIA has access to a number of open source databases from which information can be obtained. These databases include World Check, VIRRGIN (Registry of Corporate Affairs database) and the EGMONT secure web. In addition, the FIA can request information from the RVIPF Criminal Intelligence Unit if and when the need arises. The FIA can also ask the RVIPF Criminal Intelligence Unit to conduct Interpol enquiries on its behalf. Information can also be requested from HM Customs and Excise, Department of Inland Revenue and the Department of Immigration and any other Government Department or Government Agency if and when necessary.

181. At the time of the mutual evaluation, the FIA was in the process of completing various draft Memoranda of Understanding (MOU) to formalise information sharing with Police and Customs in the near future. These MOUs are in addition to one currently in existence between the FIA and the FSC.

182. A record of all information requested and obtained by the FIA can be retained for a minimum of five (5) years after the information is received (s. 4 (2) (e) of the FIAA).

183. The FIA's power to request information including additional information to assist it in carrying out its core functions, is set out in section 4 (2) (d) of the FIAA which gives the FIA the power to require the production of information, excluding information subject to legal professional privilege, that the FIA considers relevant to the performance of its functions. This power extends beyond reporting institutions and includes government departments or agencies, local law enforcement agencies and other statutory/autonomous bodies as previously mentioned.

184. Whereas it can take as much as seven (7) days to receive requested information including additional information from reporting institutions, information requested from government departments, statutory/autonomous bodies and local law enforcement agencies usually takes an average of two(2) working days or less depending on the nature and volume of the information being sought.

185. Failure to provide the FIA with information when requested is an offence and a person who fails or refuses to provide information when required under section 4 (2) (d) of the FIAA commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars (US$20,000.00) or to imprisonment for a term not exceeding two (2) years or both, (s. 4 (4) of the FIAA).

186. The relationship between the FIA and regulated institutions of the local financial services sector is built on mutual respect, understanding and appreciation for each other's individual and collective roles and responsibilities. As a result, information not subject to legal privilege requested by the FIA including additional information associated with SARs is generally forthcoming.

187. Section 4 (2) (f) of the FIAA (as amended) states that "the FIA shall, subject to the FIAA and to such conditions as may be determined by the Director, provide information to the Commissioner of Police where the information may relate to the commission of an offence with respect to a matter being investigated by the Commissioner of Police". The offence may relate to ML and FT.

188. The FIA may also provide information relating to the commission of a financial offence including ML and FT to any foreign financial investigation agency, subject to any conditions as may be considered appropriate by the Attorney General, (s. 4 (2) (g) of the FIAA as amended).

Autonomy and management

189. The FIA is an autonomous body created under section 3 (1) of the FIAA. Its autonomous status was granted to ensure that the Agency maintains a high degree of operational independence. The Board makes the policies by which the operations of the FIA are guided. However, the FIA is not a revenue generating body and therefore relies on Government and the FSC to provide the necessary finances for its operational expenditures. The FIA controls its own budgetary allocations which are provided after submissions of its annual budget estimates by the Director. The FSC contributes 5/12 of the FIA approved budget up to a maximum of $500,000 per annum and the Government contributes the rest.

190. The Director, who is the Executive head of the FIA, is charged with the day-to-day management and operations of the FIA and is accountable in respect of this portfolio. The Director can be forcibly removed from his post where (a) the Board is satisfied that he has become bankrupt, (b) he is incapacitated by physical or mental illness, (c) has been convicted of an offence and sentenced to a penalty of a fine or imprisonment, or (d) he is otherwise unable or unfit to discharge the functions of Director (See Schedule 1 of the FIAA).

Physical security

191. The FIA is situated on the second floor of a concrete constructed building which is shared with two (2) other government departments. Access to the building is controlled by electronic means. The building is equipped with an intruder alarm system which is password protected. This

alarm system is also equipped with an integrated surveillance system complemented by smoke detectors. Entry to the second floor and the space occupied by the FIA is access controlled by an electronic key as well as manual key entry system. A bakery is situated directly below FIA. The Director did not think that its presence posed any serious concern to the FIA. The physical security mentioned above was confirmed during the onsite visit.

192. The FIA has the capability to store information electronically as well as in hard copy form. Information stored in hard copy form is kept in fire proof steel cabinets while information stored electronically is stored on the various computers which are password protected and linked to a server. The FIA upgraded its electronic information storage system in early 2007 when it added a specially crafted database which is also password protected and attached to the server. The addition of this new database was complemented by a new advance scanning system which allows scanned files to be saved directly to the server in individual electronic folders allocated to each analyst/investigator. The information loaded into the specially crafted database which includes information relating to SARs, request for information received from foreign FIUs and domestic and foreign law enforcement agencies are also stored on the server which can only be accessed by authorised members of staff.

193. The server currently being utilized is a Windows Server 2003 located in the general office area. As previously mentioned, it links each office computer which is password protected. The server hardware is housed in an accessed controlled steel frame and the information stored thereon is protected by anti-virus, anti-spyware programmes and a firewall designed to prevent access through the internet. The information stored on the server is updated at regular intervals (daily) so as to ensure its continued consistency and integrity.

Disclosure of Information

194. Section 9 (1) of the FIAA prohibits disclosure of information in any form by any person as a result of their connection with the FIA except so far as it is required or permitted under the FIAA or any other enactment.

195. The penalty for persons found guilty of communicating any information outside the provisions of the FIAA is a fine not exceeding ten thousand dollars on summary conviction or a term of imprisonment not exceeding one year, or to both. The proper handling of information held within the FIA is of paramount importance and this is recognized by each member of staff (Section 9 (1)). In addition, the staff of the FIA adheres to the Egmont principles regarding information exchange.

196. The members of the Board, the Director and each member of staff of the FIA are all required to swear an oath of confidentiality prior to assuming office within the FIA. Under Section 6 of the FIAA, no order for the provision of information, documents or evidence may be issued against the FIA, the Board or Steering Committee or any member of staff (including the Director, officers or personnel or any other person engaged under the FIAA).

Annual reports

197. Section 11 (b) of the FIAA requires the Director of the FIA to prepare and submit an annual report to the Board on or before the 30th of June of each year. The report once reviewed and approved by the Board is sent to the Cabinet and subsequently tabled in the House of Assembly. This report outlines in detail the work undertaken by the FIA during the previous year and includes statistics and trends as well as other useful information on the work of the FIA. As part of its public awareness role the FIA has had several articles published in the local newspapers. Additionally, senior members of staff conduct oral presentations with various public

interest groups including; the Association of Registered Agents, Association of Compliance Officers, schools, the local college and often participates in training sessions organized by various reporting institutions. The requests from interest groups for presentations are usually accepted.

198. During the onsite visit the FIA representatives indicated that annual reports for 2004 and 2005 were prepared. They did indicate that one was currently being finalised for 2006. The report for 2006 was submitted to the assessors after the on-site visit. While the 2004 annual report contained limited details on some ongoing cases, no typologies were included in any of the annual reports.

199. The FIA became a member of the Egmont Group of FIUs in 2003 and actively participates in its Training Working Group. In addition to attending and participating in regular working group meetings and the annual Plenary, the FIA assisted in the creation and maintenance of the working group sanitised cases project.

200. The FIA freely exchanges information with its Egmont partners and in the last twelve months exchanged information with fifty-three nations, forty-five of which were Egmont members. The FIA and its members of staff are fully aware of the Egmont Group Statement of Purpose and its principles regarding exchange of information and always take them into account when sharing information with its Egmont partners and other law enforcement agencies.

Recommendation 30(FIU)

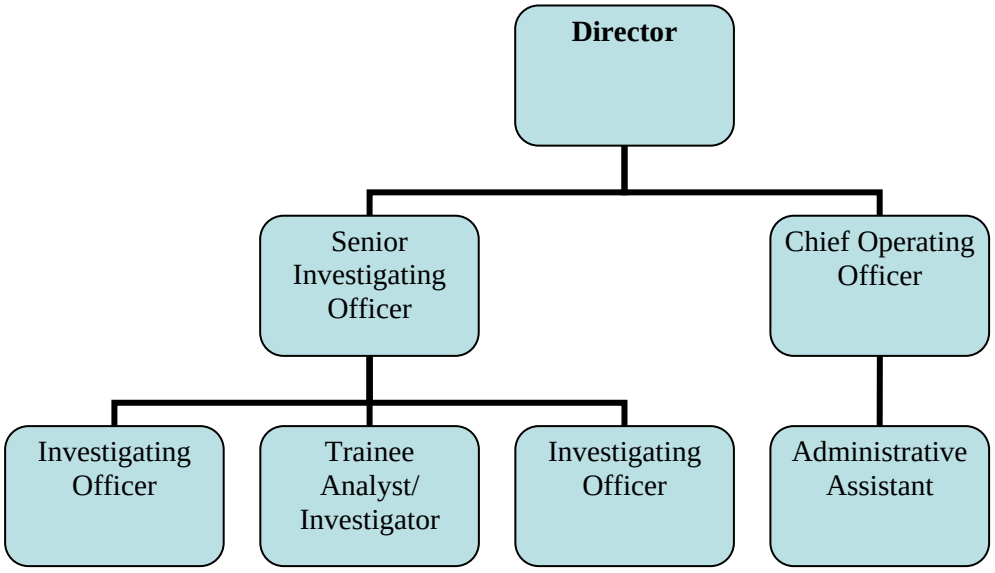
Resources and internal organisation

201. The FIA has a staff complement of six and is in the process of completing the training of an officer originally recruited as an administrative member of staff who is now working as a junior analyst. A replacement administrative officer has been identified and was to assume the post in January 2008. Approval has been given by the Board to identify an additional investigating officer and this will be pursued during 2008.

202. As already mentioned the FIA is an autonomous body with a high degree of operational independence. The Board makes the policies by which the operations of the FIA are guided. While the FIA relies on Government and the FSC to provide the necessary finances for its operational expenditures, the FIA controls its own budgetary allocations which are provided after submissions of its annual budget estimates by the Director. Before financial allocations are granted, the FIA's budget estimates must first be reviewed and approved by its policy making Board. In addition, the FIA can access any assets obtained by the government under an asset sharing agreement (Section 12 (1) of the FIAA). Section 12 (4) of the FIAA prescribes the asset sharing fund for the exclusive use of the FIA. The FIA is funded both by the Government and the FSC in proportions outlined above.

203. The team was advised during the onsite visit that the officer mentioned in paragraph 201 above had completed training and is now functioning as a junior investigator. It must be noted that among the staff members are two police officers and a customs officer. In addition, all funds not used by the FIA during the current financial year are retained and used by the FIA the following year along with the current year's budget. These funds are not required to be returned.

Table 6: FIA Organisational Chart



204. As previously mentioned, the FIA is an autonomous body with its functions and operations guided by a policy making Board and an operational Steering Committee.

Table 7: FIA's Budgetary Allocations 2004-2007

Year	2004	2005	2006	2007
Balance from previous year's allocation (US)	**N/A**	**$974,774.**	**$1,641,415.**	**$1,709,247.**
Government allocation (US)	**$700,000.**	**$700,000.**	**$300,000.**	**$300,000.**
FSC allocation (US)	**$500,000.**	**$500,000.**	**$374,843.**	**$339,805.**
Total allocation (US)	**$1,200,000.**	**$2,174,774.**	**$2,316,258.**	**$2,349,052.**
Expenditure (US)	**$225,226.**	**$533,359.**	**$607,011.**	**$2,009,145**
Surplus/(Deficit) (US)	**$974,774.**	**$1,641,415.**	**$1,709,247.**	**$339,907.**

205. The above figures for budgetary allocation suggest that the FIA continues to enjoy substantial funding both from the FSC and the Government, which will ensure that it is able to carry out its mandate as set out in Virgin Islands legislation and the FATF methodology. The fact that the FIA is able to retain surplus funds from the budgets of previous years will further enhance its ability to carry out its mandate.

206. The FIA was of the view that it was adequately staffed to carry out its functions at the time of the mutual evaluation visit. All SARs received during the preceding four years had been analysed within 1 to 10 days of receipt. However, the FIA foresees the need to increase the staff complement to ten (10) persons by the year 2009 because of anticipated increased activity.

Professional standards

207. The FIA has a cadre of highly professional staff who understand the seriousness of every aspect of work undertaken by the FIA and as mentioned before it is compulsory that each member of staff regardless of position takes an oath of confidentiality prior to taking up employment with the Agency. The taking of the oath is also compulsory for all members of the Board and the Steering Committee.

Training

208. All investigative/analytical staff have received training in ML, TF and criminal intelligence analysis. Training courses are attended regionally (Regional Drug Law Enforcement Training Centre (REDTRAC) in Jamaica) as well as outside the region (West Yorkshire Police Academy or the Greater Manchester Police Training School and New Scotland Yard National Terrorist Financial Investigations Unit). Civilian staff have attended local training, with one undertaking an on-going management training course in the United States of America. FIA personnel also regularly attend overseas conferences and seminars to keep abreast of developments.

Statistics

209. Statistics on the breakdown of SARs received by the FIA for the years 2004 to 2006 are presented in the table below.

Table 8: Breakdown of SARs received by the FIA

Types of reporting entities	2004	2005	2006	2007
Banks	6	12	5	20
Trust Companies	36	79	88	84
Police	6	2	0	0
Lawyers	2	1	0	0
Money remitters	0	0	3	0
Regulators	0	1	2	0
Other	11	6	4	0
Total	**61**	**101**	**102**	**104**

210. As indicated in the above table, while there was a substantial increase in the reporting of SARs in 2005, the following two years only had minimal increases. It is interesting to note that reporting of SARs only became mandatory with the enactment of an amendment of POCCA in 2006. As can be seen from the above table, the majority of SARs, some 90%, was submitted by banks and trust companies for the period 2004 to 2007. The number of SARs filed in the last four years in relation to the number of reporting entities is low. The relevant authorities should consider intensifying their education/training programme with the various entities with respect to the preparation and filing of SARs.

211. The team was advised that 40% of the SARs reported by the banks and trust companies followed receipt by these institutions of written requests for information from the FIU on behalf of foreign agencies. These information requests led to inquiries by the institutions with offshore business partners revealing issues which resulted in the filing of SARs.

212. The FIA investigates all SARs involving international parties and/or transactions. A SAR involving local parties and/or transactions is also investigated by the FIA and where considered to relate to other offences it is forwarded to the RVIPF for investigation. Since 2004, the FIA has disseminated two such SARs to the RVIPF. It should be noted that the FIA has provided information for a number of foreign ML investigations and proceedings.

2.5.2 Recommendations and Comments

213. The FIA appears to be able to carry out its functions as set out under the legislation under which it was created. The personnel have been exposed to a number of training courses which will serve the agency well in the future. The following is recommended;

- The personnel should continue to be exposed to training in the area of AML/CFT to ensure that they remain on the cutting edge. Consideration should be given to exposing staff to attachments to other FIUs to allow them to develop all aspects of their job.
- FIA annual reports should include typologies.
- Efforts should be made to implement electronic delivery of SARs to the FIA.
- The relevant authorities should consider intensifying their education/training programme with the various entities with respect to the preparation and filing of SARs.

2.5.3 Compliance with Recommendations 26, 30 & 32

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	**FIA annual reports do not include typologies**

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

2.6.1 Description and Analysis

Recommendation 27

Royal Virgin Islands Police Force

214. The Virgin Islands has an extensive network of law enforcement agencies tasked with the responsibilities of conducting criminal investigations. However, the responsibility for investigating serious crimes and criminal offences including ML and TF rests with the Royal Virgin Islands Anti-Drugs and Violent Crimes Task Force (ADVCTF).

215. The ADVCTF is a unit of the RVIPF which latter Force has an establishment of two hundred and forty-eight (248) officers. At present it has vacancies for 15 officers bringing the number available for duty to 223. Of that number fifteen (15) make up the ADVCTF. As already mentioned the unit is charged with the responsibility of conducting investigations into ML and TF and other financial offences. While six of the officers have been exposed to training in financial investigations only two are fully trained. Only one officer carries out financial investigations on a full time basis. The ODPP and the FIA also play their part in these matters.

216. Currently two officers from the ADVCTF have received training in counter measures in terrorist financing. During the onsite visit the Commissioner of Police indicated that it is the intention of the Force to increase its membership and by extension the ADVCTF.

Director of Public Prosecutions (DPP)

217. The position of DPP was established under section 59 of the Virgin Islands Constitution Order 2007 and granted complete independence in the exercise of powers conferred by the Order. The DPP's office is responsible for the prosecution of all offences within the Virgin Islands which include ML and FT matters. Confiscation, freezing and forfeiture of criminal proceeds fall within the scope of the office. The DPP's office tried and secured convictions on 73 indictable matters in the High Court during the period 2005 to 2007. During the same time, the RVIPF recorded 506 arrests for serious offences, 70% of which were burglary and theft.

218. The assessment team was advised that it takes about 7-8 months to complete an extradition matter before the court. In addition cases before the magistrates' court takes approximately 12 months to be completed. However, with the recent employment of an additional magistrate, this time is expected to be shortened.

HM Customs

219. HM Customs is a Government Department which falls under the Ministry of Finance and has some eighty-nine (89) officers. The role and responsibilities of the Customs Department are governed by the provisions of the Customs Ordinance (CAP. 104) and Customs Duties Ordinance

(CAP. 105). The primary responsibility of HM Customs is to facilitate legitimate trade through the collection of customs duty payable on imported goods and the protection of the Territory's borders from illicit traffic in illegal drugs, illegal weapons and the importation of prohibited goods.

220. Presently, there is no dedicated unit within the Department tasked with the investigation of ML and TF related offences. Several officers have been sensitised to AML/ CFT matters. The Mobile Task Force Unit, Flex Team, K-9 Unit and the Internal Audit Unit work in close collaboration with each other. In addition, the Department has a close working relationship with the Police and Immigration Authorities.

221. The Department also works in close collaboration with its regional and international counterparts and is a member and former Chair of the Caribbean Customs Law Enforcement Council (CCLEC) and a member of the World Customs Organization.

Immigration

222. The Department of Immigration falls within the portfolio of the Premier who is also the Minister responsible for Immigration. It operates within the general provisions of the Immigration and Passport Ordinance (CAP. 130). Its main responsibilities are to document, control and monitor persons granted leave to enter or land in the territory in accordance with the provisions of the Immigration and Passport Ordinance. Currently, the department has no unit tasked with the responsibility of conducting ML and TF related investigations. However, it works closely and shares information with the Customs and the Police Authorities and often participates in joint operations.

Police

Investigative powers

223. The ADVCTF, as part of its responsibility for conducting investigations into ML and TF offences, has the authority under relevant legislation for the tracing and identification of assets and their confiscation where applicable.

224. There is no explicit legislative authority giving the law enforcement authorities the ability to waive or postpone the arrest of suspected persons and or seizure of money for the purpose of identifying persons involved in such activities. However, the assessment team was advised that the law enforcement authorities have discretionary power to determine when the above enforcement action can be taken.

225. The unit is currently challenged due to an insufficient number of officers with in-depth training and experience in the field of investigating financial crimes including money laundering and financing of terrorism offences.

226. The RVIPF works closely with the Customs and Immigration Departments and from time to time conduct joint operations. A Joint Intelligence Unit has been set up and staffed by members from each of the aforementioned departments.

227. There are no records of any money laundering investigations being conducted by the police. During the onsite visit representatives of the Force indicated that records will be maintained, however only one ML investigation was conducted between 2004 and 2007. Records of the number of production orders or search warrants obtained in furtherance of ML or FT matters were also not maintained at the time of the on-site visit. However, the RVIPF estimated the number of production orders/search warrants to be about 25 per year.

Additional Elements

228. The only special investigative technique that law enforcement authorities can use when conducting ML or FT investigations is wiretapping. Section 90 of the Telecommunications Act of 2006 provides that "the Governor may make written requests and issue orders to operators of telecommunications networks and providers of telecommunications services requiring them, at their expense, to intercept communications for law enforcement purposes or provide any user information or otherwise in aid of his authority". As at the date of the on-site visit there had been no need to use this technique.

229. Currently, there are no other legislative provisions in the Virgin Islands which support or allow the use of electronic surveillance methods and techniques such as the carrying out of surveillance, access to electronic data protected by encryption or passwords and the use of listening devices to gathering information and evidence for use in helping or assisting with the prevention of crime, including ML, TF and other serious crimes.

230. However, law enforcement authorities are fully aware of the potential of using such methods to aid in crime fighting and they are currently working to have this matter fully addressed in the current year 2008. The appropriate legislation, once drafted and approved, is expected to closely mirror the UK Regulation of Investigatory Powers Act (RIPA).

Recommendation 28

Police: Powers to compel production

Production Orders /Orders to make materials available

231. Under Section 36 (1) of the POCCA, a police officer may, for the purposes of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to the High Court for an order under subsection (2) in relation to a particular material or material of a particular description.

232. If upon application the Court is satisfied that the conditions for granting the warrant are fulfilled, then the Court may make an order that the person who appears to the Court to be in possession of the material to which the application relates shall (a) produce it to the police officer for him to take away, or (b) give a police officer access to it within such period as the order may specify.

Search Warrants

233. Under Section 37 (1) of POCCA, a police officer may, for the purpose of an investigation into whether any person has benefited from any criminal conduct or into the extent or

whereabouts of the proceeds of any criminal conduct, apply to the High Court for a warrant in relation to specified premises. Subsection (2) states that "on an application made under subsection (1), the Court may issue a warrant authorising a police officer to enter and search the premises if the Court is satisfied that: (a) an order made under section 36 in relation to material on the premises has not been complied with; (b) the conditions in subsection (3) are fulfilled; or (3) the conditions in subsection (4) are fulfilled.

234. Under Section 6 (7) of the Criminal Justice (International Co-operation) (Amendment) Act, 2004 (CJICAA, 2004), where there is reasonable ground for suspecting that there is on premises in the Virgin Islands evidence relating to an offence in respect of criminal proceedings that have been instituted, or a criminal investigation which is being carried on, in a country or territory outside the Virgin Islands, the Attorney General may, in writing direct, a police officer to apply to a Judge or a Magistrate for a warrant authorizing the police officer to enter and search those premises and seize any such evidence found there, other than items subject to legal privilege.

235. Section 6 (8) goes on to say that "if upon an application made by a police officer pursuant to subsection (7), a Judge or Magistrate is satisfied that a criminal investigation is being carried on, in a country or territory outside the Virgin Islands and that there are reasonable grounds for suspecting that there is on premises in the Virgin Islands evidence relating thereto, he may issue a warrant authorizing the police officer to enter and search those premises and to seize any such evidence found there, other than items subject to legal privilege.

236. Under Section 38 (1) of the Magistrate's Code of Procedure Act, (CAP. 44), "where a Magistrate is satisfied on evidence upon oath that there is reasonable cause to believe that any property whatsoever on or with respect to which any larceny or other felony has been committed is in any place or places he may grant a warrant to search such place or places for such property. And if same or any part thereof be there found to bring the same before the Magistrate granting the warrant or some other Magistrate".

Customs Power to Search

237. The Customs Ordinance (CAP. 104) at Section 9 (a) empowers every customs officer when acting in the course of his duty to prevent evasion or suspected evasion of any provision of the Act relating to the movement of goods and in particular (i) with or without a warrant in that behalf to detain, board and enter any vessel and any place or thing, and to search any thing or person found thereon or therein and to break open any fastened thing or device capable of being used for the concealment of goods; (ii) with a prescribed warrant in that belief to exercise like powers to those provided under subsection (1) for the purpose of searching any place, premises, person or thing whatsoever; (iii) to require any person to furnish orally or in such form as such officer may require any information relating to any goods and to produce for inspection or to be copied any documents or thing relating to such goods or the movement or custody thereof.

Immigration Powers to Search

238. The Immigration and Passport Ordinance (CAP. 130) at Section 5 (1) empowers any Immigration Officer (a) to board any ship within the territorial waters of the territory or any aircraft which has landed in the Territory; (b) without a search warrant, search any such vessel or anything contained therein or any vehicle being landed in the Territory from any such vessel; (c) interrogate any persons reasonably supposed not to belong to the Territory. Section 5 (f) also

requires the master or captain of any vessel arriving from or leaving for any place outside the Territory, or the agent of the vessel to furnish a list in duplicate signed by himself of the names of all persons in the vessel and such other information as may be required.

239. The relevant law enforcement authorities in the Virgin Islands including the Police, Customs and Immigration all have the power to interrogate or question persons as well as record witness statements for use in investigations and prosecution of any offence including ML and TF.

Recommendation 30

Resources

The Royal Virgin Islands Police Force ("RVIPF")

240. The RVIPF is the principal law enforcement agency within the Territory of the Virgin Islands. The police force falls within the portfolio of His Excellency the Governor in accordance with section 6 of the Police Act (CAP. 165) and section 60 of the Virgin Islands Constitution Order, 2007.

241. The police force is headed by a Commissioner of Police (COP) who is appointed by the Governor in consultation with the Police Service Commission. The COP is charged with the day-to-day command, superintendence, direction and control of the force and is answerable to His Excellency the Governor.

242. The COP is also an *ex officio* member of the NSC which consist of the Governor as Chair; the Premier; one other Minister appointed by the Governor, acting in accordance with the advice of the Premier; and the Attorney General who is also an *ex officio* member (s. 57 (1) of the Virgin Islands Constitution Order, 2007).

243. The number of police officers in the RVIPF currently stands at 223, which includes auxiliary officers and four (4) new recruits who are currently undergoing twenty-two (22) weeks of initial training at the Regional Police Training Centre at Seawell, Christ Church, Barbados. In recent years the recruitment of police officers, particularly local Virgin Islanders has been challenging. However, the authorities are considering alternative solutions including reviewing the current salaries and overall benefits of police officers so as to make the career more attractive to qualified persons particularly local Virgin Islanders.

244. As mentioned previously, the ADVCTF is responsible for investigating all serious crimes including financial related crimes such as fraud, and ML and TF arising from information forwarded to the COP by the FIA in accordance with Section 4 (8) of the FIAA. However, the unit is currently challenged due to insufficient number of officers with in-depth experience and necessary training in white-collar crime investigations.

245. The ADVCTF comprises an Acting Superintendent who heads the unit, a Chief Inspector, three (3) Inspectors two (2) of whom are acting, one (1) Sergeant and ten (10) Constables.

246. The budgetary allocation for the police force is approved by the House of Assembly on an annual basis following the submission of budget estimates by the COP. The following table represents funding allocated to the RVIPF for the period 2002-2007.

Table 9: Royal Virgin Islands Police Force Budgetary Allocations

Years	Amount of funds allocated (US$)
2004	$10,128,400.00
2005	$10,381,800.00
2006	$10,888,500.00
2007	$12,378,500.00

247. As mentioned earlier, in recent years the recruitment of police officers, particularly local Virgin Islanders have posed some challenges. These challenges coupled with a general increase in the number of violent crimes, a lack of technical/modern equipment, the high expenses associated with the timely processing of scientific evidence, the public's reluctance to provide information to the police due to fear of reprisal from the criminal elements in the communities, the lack of an established witness protection programme and the lack of adequate resources to provide necessary coverage of the Territory's maritime borders continue to be major priorities on the list of the COP and his management team.

Director of Public Prosecution (DPP)

248. The DPP's office has a staff complement of the DPP, two Senior Crown Counsel, four Crown Counsel, two police prosecutors and one administrative staff member. Provisions have been made to increase the staff in order to improve efficiency. The office is expected to be increased by one Principal Crown Counsel, one Senior Crown Counsel and three administrative staff.

Immigration Department

249. The Immigration Department falls within the portfolio of the Premier who is also the Minister responsible for Immigration. The department is headed by a Chief Immigration Officer who is appointed by the Governor in consultation with the Public Service Commission (PSC). The Chief Immigration Officer is responsible for the administration and discipline of the department and he is assisted by a Deputy Chief Immigration Officer and fifteen (15) senior officers. The department currently has a total of forty-seven (47) Immigration Officers stationed at the Territory's nine (9) designated ports of entry.

250. As mentioned earlier, the department's main responsibility is to document, control and monitor persons granted leave to enter or land in the Territory in accordance with the provisions of the Immigration and Passport Ordinance. Though the department has no unit tasked with the responsibility of conducting investigations linked to ML and TF, it has the ability to conduct investigations/enquiries aimed at identifying persons suspected of entering the Territory illegally, identifying and apprehending persons involved in the transportation of illegal immigrants through territorial waters, identifying persons who may be illegally employed in the Territory and identifying persons/visitors who have stayed longer than the time permitted upon landing in the Territory. Curbing and controlling these particular offences are the greatest challenges now facing the department.

Table 10: Funding allocated to the Immigration Department for the period 2004-2007

Year	Amount of funds allocated
2004	US$ 2, 057,700.00
2005	US$ 1, 967,800.00
2006	US$ 2, 329,600.00
2007	US$ 2, 847, 900.00

Professional standards

251. Discipline within the police force is held to a very high standard and every police officer including auxiliary officers and members of the general support staff are expected to uphold this standard while on and off duty.

252. Disciplinary matters are dealt with in accordance with the relevant provisions of the Police Act (Cap. 165) and Police Regulations, 1990. Additionally, the General Orders, which governs the conduct of public officers, requires civil servants to conduct themselves in a professional manner. However, there are a very small number of police officers who have acted contrary or whose behaviour have fallen short of what is generally expected and such behaviour has resulted in disciplinary action being taken against such officers. Disciplinary measures have included dismissal from the police force in extreme cases.

253. During the period 2004 to 2007, 100 complaints against the police were received. Only 4 of these complaints resulted in a disciplinary charge, 17 in admonishment and 51 were found to have no supporting evidence for the allegation. During the same period, one officer was dismissed from the force after being tried on a disciplinary charge resulting from a criminal offence.

How Disciplinary Matters are handled

254. All disciplinary matters are referred to the Police Complaint and Discipline Unit. The Unit is headed by an Inspector and falls within the portfolio of the Deputy Commissioner of Police (DCP). An internal investigation is initiated following (i) a complaint made against a police officer by a member of the public or (ii) infringement against the force regulation by police officers.

255. Upon receipt of complaints, a file is prepared and sent to the DCP who selects an investigating officer whose rank is determined based on the rank of the officer against whom the complaint is made. Upon completion of the investigations, the investigating officer submits his findings to the DCP who will decide whether or not there is sufficient evidence to bring a charge against the officer in accordance with the force regulations or issue a written warning or have the matter dismissed due to lack of evidence. If formal charges are brought against the officer, the DCP will appoint an adjudicating officer in consultation with the officer who will be appointed to serve as prosecutor. A tribunal is held during which evidence is presented and a record is made.

256. Officers charged, who are also referred to as defaulters have the right to defend themselves or seek assistance from other officers or retain legal counsel to act in their defence at tribunals. The adjudicating officer will then make a ruling based on the evidence presented. If a guilty plea is entered or the 'defaulter', is found guilty, he/she can be reprimanded, fined, demoted and or recommended to the COP for dismissal. In instances where the adjudicator feels

that the punishment warranted cannot be given by him in accordance with the regulations, then he may forward the matter to the COP for sentencing.

257. As mentioned earlier, the professional conduct of officers and employees of the various law enforcement agencies including Customs and Immigration in the Territory are all held to a very strict standard. The Public Service Code of Conduct clearly sets out the manner by which all persons in the employ of the Crown are to conduct themselves. The conduct of the attorneys in the DPP's office will also be guided by their professional code and the General Orders and Public Service Commission Regulations.

Training

258. A small number of police officers have received training in ML and TF investigation techniques. These officers are attached to the ADVCTF. Additionally, some officers also received training in criminal intelligence analysis and basic financial investigation techniques. Officers have also received training in other specialized areas. The majority of these training courses are sourced overseas mainly in the Caribbean, (i.e. Jamaica and Barbados). Some officers also attend specialized training courses in Canada, the U.S.A. and the United Kingdom.

259. Two officers from the ADVCTF received training in counter measures in terrorist financing. During the onsite visit the COP indicated that it is the intention of the Force to increase its membership and by extension the ADVCTF. Information on this plan was not made available to the assessment team. .

260. With respect to the ODPP, the examiners were advised that the DPP and his staff (who until June 15, 2007 formed part of the Attorney General's Chambers) are required to be versatile in all areas of prosecution, including AML/CFT matters, and had been exposed to AML/CFT training through regional and international seminars and conferences and attachments for short durations. The training had been at different levels and included training on AML/CFT prosecution techniques. The DPP and his staff are trained in the prosecution of complex criminal cases involving fraud, murder, terrorism etc, and the techniques and experience acquired in that regard are considered essential in supplementing their training in the prosecution of AML/CFT cases. The DPP is of the view that the techniques of prosecuting AML/CFT matters are not so radically different from the techniques used in prosecuting fraud, murder etc.

261. Although no immigration officer has received formal training in ML and TF finance techniques, officers of the department have been exposed to various training, most of which is focused on border protection.

2.6.2 Recommendations and Comments

262. The following is recommended:

- The ADVCTF should be adequately staffed and trained in the techniques of ML and FT investigations.

- The RVIPF should maintain adequate statistics on ML investigations, production orders and search warrants.

2.6.3 Compliance with Recommendation 27, 28, 30 & 32

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**C**	**This recommendation is fully observed**
R.28	**C**	**This recommendation is fully observed**

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

2.7.1 Description and Analysis

Special Recommendation IX

263. Currently there are nine designated ports of entry within the jurisdiction. There is the Terrence B. Lettsome International Airport on Beef Island, four seaports strategically situated on Tortola, one on the island of Jost Van Dyke, one on the island of Anegada and two on Virgin Gorda. Customs officers are posted at each port. The Customs, Immigration and Police authorities play their roles in the seizure and investigation of money or monetary instruments brought into the jurisdiction illegally.

Declaration system

264. The declaration system currently in place in the Virgin Islands is provided for under Section 18A of the Customs Act (CAP. 104) (CA). Section 18A (1) of the CA states that "any person entering the Territory shall at such place and in such manner as the Comptroller may direct make a declaration of anything contained in his baggage or carried with him which (a) he has obtained outside the Territory or (b) being dutiable goods he has obtained in the Territory without paying duty."

265. Such declarations are made on a prescribed form referred to as a Customs Declaration Card. Question 13 (iv) of the Declaration Card requires persons to declare currency and monetary instruments above US$ 10,000.00. The Declaration Card states that "Failure to make a true and complete declaration may render you guilty of an offence and liable under Section 18A (3) of the Customs Ordinance, to a fine of US$ 5,000.00 or three times the value of the good not properly declared."

266. While there is no declaration system for persons leaving the Virgin Islands, section 18 (2) of the CA makes provision for a custom officer to make enquires of any persons leaving through the ports about goods including money or monetary instruments. These enquiries include obtaining information about the origin of currency or bearer negotiable instruments and their intended use in the case of false disclosures.

267. Section 9 (a) (iii) of the CA empowers every customs officer when acting in the course of his duty to prevent evasion or suspected evasion of any provision of the Act relating to the movement of goods to require any person to furnish orally or in such form as such officer may require any information relating to any goods and to produce for inspection or to be copied any document or thing relating to such goods or the movement or custody thereof. This provision allows for disclosure obligations in relation to cross-border transportation through the mail or

cargo since the term "goods" is defined to include "every movable thing capable of being owned and includes stores, baggage, personal effects and anything carried by post".

Power to seize

268. Section 34 (1) of the DTOA provides that "The Comptroller of Customs or police officer may seize and detain any cash which is found in the Territory or is being imported into or exported from the Territory if its amount is not less than US$ 10, 000.00 and he has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking or drug money laundering''. A similar provision is stipulated in section 37A of POCCA in the 2008 amendment whereby a police officer or customs officer may seize or detain cash on the reasonable grounds for suspecting that the cash directly or indirectly represents any person's proceeds of criminal conduct or is intended by any person for use in criminal conduct. Criminal conduct as defined in POCCA refers to all indictable offences, other than drug trafficking offences and would include money laundering and terrorist financing offences.

269. Cash seized under the said section shall not be detained for a period of more than seventy-two hours unless further detention is authorized by a Magistrate upon an application made by the Comptroller of Customs or a police officer, and no such order shall be made unless the Magistrate is satisfied (a) that there are reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking, (b) continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the Territory or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected, and (c) that proceedings against any person for an offence with which the cash is connected have been started but have not been concluded. The provision refers to cash which includes coins and notes in any currency and any other monetary type of bearer negotiable or monetary instrument provided for under section 38 of the DTOA as per the 2008 amendment.

270. The assessment team was advised that information obtained from false declarations/disclosures, those that exceed the prescribed limit or where there is suspicion of money laundering or financing of terrorism is forwarded to the Joint Intelligence Unit and the FIA via the Customs Intelligence Unit. The FIA also has access to the information on the Customs Declarations Cards, since a Customs Officer is seconded to the FIA and has access to the Customs Automated Processing Systems.

Local and foreign co-operation

271. Co-operation between the Customs, Immigration and Police with regards to the monitoring, detection and prosecution of illicit cross-border movement is through the National Intelligence Committee, the National Intelligence Co-ordinating and Tasking Group and the Joint Intelligence Unit.

272. The co-operation arrangements in place for sharing information with foreign customs authorities are done through CCLEC and various intelligence councils (Caribbean Law Enforcement Intelligence Council, High Intensity Drug Traffic Agency meeting, etc). Information on the declaration forms can be shared with foreign competent authorities for intelligence purposes.

Sanctions

273. Penalties for false declarations as already mentioned, under Section 18A (3) of the Customs Ordinance, range from a fine of US$ 5,000.00 or three times the value of the good not properly declared, whichever is the greater. The minimum penalty is on par with those of similar jurisdictions. Cross-border transportation of currency or bearer negotiable instruments may give rise to a ML offence which would be subject to penalties under sections 28 to 30 of POCCA which include on summary conviction six months imprisonment or a fine not exceeding three thousand dollars or both; and on indictment to a term of imprisonment not exceeding fourteen years or a fine of twenty thousand dollars or both. Additionally, confiscation and forfeiture measures applicable for ML and FT are also applicable in relation to cross-border transportation of currency or bearer negotiable instruments.

274. Customs advised the assessment team that it would consider notifying the competent authorities from originating countries about any unusual cross-border movement of gold, precious metals or precious stones and co-operate appropriately in subsequent investigations. Co-operation would most likely take place under the auspices of the regional and international customs organisations.

275. Safeguards are in place to ensure the proper use of information and data collected on the declaration forms. Access to the Customs automated data system is password protected and restricted to authorised system administrators and users.

Recommendation 30

Resources and professional standards

Customs Department

276. As mentioned earlier, the Customs Department falls under the Ministry of Finance which comes under the portfolio of the Minister of Finance who also happens to be the Premier. The department is headed by a Comptroller of Customs who is appointed by the Governor after consultation with the Public Service Commission. The Comptroller is responsible for the management, supervision and control of the Customs, the administration and implementation of the Customs Ordinance, the collection of Customs revenue and accounting for the same, and the care of public and other property under Customs control, but without having to account for loss thereof unless such loss is due to his personal default. The Comptroller is assisted by a Deputy Comptroller and three (3) Assistant Comptrollers.

277. The department is currently staffed by seventy-three (73) officers not including support staff. These officers are posted at the nine (9) designated ports of entry. The designated ports of entry comprise five (5) on Tortola (which includes one (1) at the Terrence B. Lettsome International Airport at Beef Island), two (2) on the island of Virgin Gorda, one(1) on the Island of Jost Van Dyke and one (1) on the Island of Anegada.

278. The various specialist units within the department are all headed by Senior Customs Officers who report to the Assistant Comptroller in-charge of Enforcement. These specialist units include the Flex Team, the K-9 Unit, the Internal Audit Unit and the Mobile Task Force which includes a Marine Task Force which consist of three (3) high speed vessels used to conduct routine maritime patrols and operations.

279. The Department works in close collaboration with the Police and Immigration officials and often participates in joint land and maritime operations which involve the search of vessels at sea for illegal entry into the Virgin Islands territorial waters, the search for illegal contraband (drugs) including illegal weapons, other prohibited items and un-customed goods, the search for illegal immigrants or persons/visitors overstaying in the Territory and persons who are illegally employed.

280. Though the department is adequately resourced, its ability to effectively stem the flow of illegal activities within the Territory's borders is sometimes challenging. These challenges are often associated with the geographical layout of the small islands making up the Territory, particularly the many lagoons, beaches and open areas which make the Territory prone to the smuggling of commercial merchandise, illegal drugs and weapons. This leaves the department to rely on intelligence provided so that it can undertake its operations. Reliance is also placed on increased surveillance and patrols (land based and marine) which also aid the combat against transnational crime. Additionally, the department is currently experiencing some challenges with respect to the undervaluation of goods, misrepresentation of goods, false invoicing and illegal importation/smuggling of goods into the Territory. The arrangement in place to combat this problem is partly to arrange more training which is sourced and provided through the WCO and CCLEC. This training is proving extremely beneficial.

281. The department's budgetary allocations are provided by the House of Assembly on an annual basis after submission of the budget estimates by the Comptroller.

Table 11: Budgetary Allocation for Customs Department 2004-2007

Years	Amounts Allocated
2004	USC$ 3,624,700.00
2005	USC$ 3,437,600.00
2006	USC$ 3,793,185.99
2007	USC$ 4,257,100.00

282. The professional conduct of custom officers whether on or off duty is always held to a very high standard and is guided by the provisions of the Public Service Code of Conduct, General Orders and Public Service Regulations. Additionally, Section 54 of the Customs Ordinance provides that "in any disputes touching any matter arising out of this Ordinance, the Department of Customs may sue and be sued in its own name and shall be entitled to recover and liable to pay costs in the same manner as any other litigant".

283. The minimum entry level requirement for employment within the Customs Department is a high school diploma (trainee level) and a flawless police record. As one moves up the ranks of the Department, a college degree and management experience become essential, in addition to maintaining an unblemished police record. All employees are required to swear to an oath of secrecy (which generally applies to the entire public service) and they are guided by the General Orders, Civil Service Code and Public Service Commission Regulations.

Training

284. A small number of Customs Officers have been exposed to basic financial investigation training which includes elements of ML and TF offered at REDTRAC in Jamaica. Customs Officers have also attended international and regional AML/CFT seminars and workshops and courses in criminal intelligence analysis in the UK. Other types of training to which Customs Officers are exposed include ongoing dog handlers training for officers posted in the K-9 Unit, maritime and firearms related training for officers posted to the Mobile Task Force, rummaging of vessel training, basic training for new recruits and general training associated with border protection.

Statistics

Table 12: Customs Statistics

Year	2004 US$	2005 US$	2006 US$	2007 US$
Currency Seizure	97,100.	180,115.	18,395.	31,720.
Drug Seizures (Est. Value)	15,000.	3,412,790.	2,538,000.	**562,350**
Other Items Seized	313,000.	3,200.	65,988.	**263,860**
Total estimated value of seizures	425,100.	3,596,105.	2,622,383.	857,930.

285. The above table records seizures by the Customs Department. Currency seizures for the period resulted from the false declarations or non-declarations relating to the carriage of bulk cash. The numbers of declaration forms collected has risen steadily from 511,000 in 2004, to 550,000 in 2005, to 559,000 in 2006 to 578,000 in 2007.

2.7.2 Recommendations and Comments

2.7.3 Compliance with Special Recommendation IX & Recommendation **32**

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**C**	**This recommendation is fully observed**

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

286. The FSCA, the POCCA, the DTOA, (the latter two amended on February 8, 2008), the Anti-money Laundering Code of Practice 1999 (AML Code of Practice, 1999) and the Guidance Notes on the Prevention of Money Laundering (GN) provided, at the time of the on-site visit (11 February – 22 February 2008), a framework of customer due diligence requirements for regulated (natural and legal) persons in the financial sector. On the 8th of February, 2008, POCCAA, 2008 and the DTOAA, 2008 became enforceable.

287. On February 22, 2008, the AMLTFCOP (which replaced the GN), the AMLR (which replaced the AML Code of Practice, 1999) and the Non-Financial Business (Designation) Notice, 2008 were enacted as subsidiary legislation pursuant to the POCCAA, 2008 and became enforceable law.

288. The AMLTFCOP was issued pursuant to section 27 (1) of POCCA as amended by POCCAA, 2008 and subject to a negative resolution of the House of Assembly. Additionally, section 27 (4) makes it an offence to fail to comply with or contravene any provision of the AMLTFCOP with a penalty on summary conviction of a fine not exceeding seven thousand dollars or a term of imprisonment not exceeding two years or both. As such, the AMLTFCOP is considered secondary legislation as defined in the FATF methodology. However, it is noted that the AMLTFCOP consists of sections detailing legislative requirements and attached explanations to provide guidance. Section 2 (2) of the AMLTFCOP states that the explanations do not represent legal interpretations of the sections concerned, but merely serve to provide guidance and clarity in better understanding the sections and overall requirements. Section 2 (3) states that a court or the FIA or the FSC may, in dealing with any matter under or in relation to the AMLTFCOP, have regard to the explanations provided in the AMLTFCOP. It is the view of the assessors that section 2 (2) of the AMLTFCOP makes the explanations attached to various sections discretionary. As such, while all sections of the AMLTFCOP are considered enforceable under the FATF methodology, the explanations are not.

289. The AMLTFCOP applies a risk based approach to the anti-money laundering and combating of terrorist financing requirements. An entity is advised to consider money laundering risks posed by the products and services that it offers, and to devise and document procedures with regard to that risk. Factors are identified which must be taken into consideration in assigning products into high risk or low risk categories, the former attracting enhanced customer due diligence (CDD) measures. The AMLTFCOP provides the minimum requirements in relation to the compliance obligations relating to money laundering and terrorist financing and every entity and professional must fully comply with these requirements.(Section 5 (1))

290. Section 13 of POCCAA, 2008 states that the AMLTFCOP issued by the FSC applies to;

a) entities that are regulated by the FSC, (this refers to a 'regulated person' authorised, licensed, registered or recognised under the 'financial services legislation' as listed in Schedule 2 in the FSCA);

b) entities that are not regulated by the FSC but are identified by the CFATF and the FATF as forming a link in the fight against money laundering and the financing of terrorism;
c) entities (whether public or private), not falling under paragraph (b), that are not regulated by the FSC, but which the FSC designate, by a Notice published in the *Gazette*, as vulnerable to activities of money laundering and terrorist financing; and
d) professionals who may be engaged in preparing or carrying out transactions for their clients concerning:
(i) the buying and selling of real estate;
(ii) managing client monies, securities, or other assets;
(iii) the management of bank, savings, or securities accounts;
(iv) the organisation of contributions for the creation, operation or management of companies;
(v) the creation, operation or management of legal persons or arrangements;
(vi) the buying and selling of business entities; and
(vii) any other activity relating or incidental to any of the matters outlined in sub-paragraphs (i) to (vi).

291. With the issuance of the AMLR, the Virgin Islands included the following activities under the AMLR and the AMLTFCOP;

- any business involving the remittance of telegraph money order under the Post Office (Telegraph Money Orders) Rules, 1934 or money order under the Post Office Rules 1976;

- any business of providing money transmission services or cheque encashment facilities;

- the business of providing advice on capital structure, industrial strategy, advice and services relating to mergers and purchase of undertakings, and the business of money broking, safe keeping and administration of securities, financial services business (lending or leasing).

292. When the Financing and Money Services Act, 2007 (FMSA) comes into effect, businesses that engage in money and currency changing, and money or value transfers as well as in financial services business will be subject to supervision to check for compliance with the AMLTFCOP and the AMLR.

293. POCCAA, 2008 also formed JALTFAC, which is comprised of fourteen public-private sector members, who are versed in AML and CFT matters and recognise the importance of establishing and sustaining such a regime in the Virgin Islands. Both the AMLTFCOP and the AMLR were prepared by the FSC in consultation with JALTFAC.

294. Currently, the AMLTFCOP and the AMLR impose mandatory requirements with sanctions for non-compliance. The present AML/CFT legislative measures in the Virgin Islands are not based on formal national risk assessments (of the ML/TF risks in various sectors) in the manner intended by the FATF. The assessment team was advised that the Virgin Islands formed the JAMLCC in 1999, now superseded by the JALTFAC, as a formal public-private sector organ responsible for advising and coordinating work on AML/CFT matters. Undocumented risk assessments were considered and advised upon by the JAMLCC and appropriate legislative measures recommended and enacted accordingly.

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

3.2.1 Description and Analysis

Anonymous accounts and accounts in fictitious names

295. According to Section 34(1)(b) of the AMLTFCOP an entity is prohibited from keeping or maintaining an anonymous account or an account in a fictitious name, whether or not on its own behalf or on behalf of a customer or otherwise. Section 34(2) provides, however, that where an entity permits the use of numbered accounts, it must ensure that such accounts are kept and maintained in accordance with the requirements of the AMLR and the AMLTFCOP. During the on-site visit, the assessment team was advised that none of the financial institutions keeps or maintains anonymous accounts, accounts in fictitious names or numbered accounts.

CDD Requirements

296. The AMLTFCOP sets out mandatory customer due diligence requirements. Section 19 (4) of the AMLTFCOP requires an entity to undertake customer due diligence in the following circumstances:

(a) when establishing a business relationship;

(b) when effecting a one-off transaction (including a wire transfer) which involves funds of or above USD 15,000 or such lower threshold as the entity may establish;

(c) when there is a suspicion of money laundering or terrorist financing, irrespective of any exemption or threshold that may be referred to in the Code; and

(d) when the entity has doubts about the veracity or adequacy of previously obtained customer identification data.

297. The term “business relationship” is defined in section 2 (1) of the AMLTFCOP as a continuing arrangement between an entity or a professional and one or more parties, where;

a) the entity or a professional has obtained, under procedures maintained in accordance with the Code, satisfactory evidence of identity of the person who in relation to the formation of that business relationship, was the applicant for business;

b) the entity or a professional engages in business with the other party on a frequent, habitual or regular basis; and

c) the monetary value of dealings in the course of the arrangement is not known or capable of being known at entry.

298. The term “entity” is defined in section 2 (1) of the AMLTFCOP as;

(a) a (natural or legal) person that is engaged in a relevant business within the meaning of regulation 2 (1) of the AMLR, and, for the avoidance of doubt, it includes a person that is regulated by the FSCA (defined as “regulatory person” in section 2 (1) of the FSCA: or

(b) a non-financial business designated by the FSC in the Non-Financial Business (Designation) Notice, 2008.

299. The term "professional" is defined in section 2 (1) of the AMLTFCOP as a person, not otherwise functioning as a body corporate, partnership or other similar body, who engages in a relevant business within the meaning of regulation 2 (1) of the AMLR, or engages in a business that is designated as non-financial business by the FSC in the Non-Financial Business (Designation) Notice, 2008. The above definition effectively includes the FATF definitions of financial institutions and DNFBPs except for money value transfer services.

300. In relation to wire transfers, Part V of the AMLTFCOP, covers the requirements regarding the electronic transfer of funds (both domestic and cross-border transfers), which are sent or received by a payment service provider. All wire transfers over USD 1,000 are required to comply with all the provisions of the AMLR and the AMLTFCOP relating to the verification of the identity of the originator of the wire transfer in connection with the opening of an account. This requirement complies with FATF SR VII. With respect to the effectiveness of this part of the AMLTFCOP, sanctions for non-compliance by money remitters can only be implemented with the enforcement of the FMSA and the resulting operation of the supervisory function as part of the onsite supervisory programme.

Required CDD measures

301. Regulation 4 of the AMLR requires a relevant person to establish and maintain identification procedures which require as soon as reasonably practicable after contact is first established, the production by the applicant for business, of satisfactory evidence of his identity or the relevant person taking measures that will produce satisfactory evidence of the identity of the applicant for business.

302. Section 19 (3) (a) and (c) of the AMLTFCOP requires financial institutions to (3) (a) inquire into and identify the applicant for business, or the intended customer and verify the identity and (3) (c) to use reliable evidence through such inquiry as is necessary to verify the identity of the applicant for business or intended customer irrespective of the nature or form of the business.

Identification and verification of natural persons

303. Section 24 (1) of the AMLTFCOP requires an entity or a professional, with respect to an individual (natural person) to undertake identification and verification measures where;

(a) the individual is the applicant or joint applicant for business;

(b) the individual is the beneficial owner[6] or controller of an applicant for business; or

(c) the applicant for business is acting on behalf of the individual.

[6] "Underlying beneficial owner" includes any (a) person on whose instruction the signatory of an account, or any intermediary instructing the signatory, is for the time being accustomed to act; and (b) any individual (natural person) who ultimately owns or controls the customer on whose behalf a transaction or activity is being conducted.

304. Section 24 (2) of the AMLTFCOP requires an entity or a professional to obtain information regarding the individual's full legal name (including any former name, other current name or aliases used), gender, principal residential address and date of birth. Paragraph *(iii)* of the Explanation under section 23 of the AMLTFCOP provides guidance with regard to the identification of natural persons as follows: "The identity of a person may take different formats. With respect to individuals, this may relate to actual photo identification (passport or other government-issued photo identification such as a permanent driving licence and a national identity card), name and address, gender, date and place of birth, career and place of employment (where applicable) as well as reliance on known third party confirmation of identity". According to paragraph (vi) of the Explanation under Section 23, certain documentary evidence are generally not acceptable for verification purposes. These include employment identity cards (notwithstanding they bear the photograph of an applicant for business or a customer), birth certificate, business card, credit or debit card, national health insurance card, provisional driving licence, student/student union card or membership card of any group or organization.

305. Section 30 of the AMLTFCOP provides detailed requirements for certified documents. For instance, in order to rely on a certified document certain requirements must be met and a person making the certification must normally act in a professional capacity and must be subject to some rules of professional conduct promulgated and enforced by the professional body to which he or she belongs. Alternatively, he or she may operate within a statutory system in his or her jurisdiction that provides for specific compliance measures and the application of penalties for breaches of those measures. Additionally, Section 31 of the AMLTFCOP provides detailed requirements for written introductions.

Identification and verification of legal persons and arrangements

306. Section 25 (1) of the AMLTFCOP requires financial institutions with respect to legal persons[7], to undertake identification and verification measures where the legal person;

a) is an applicant for business in its own right;

b) is a beneficial owner or controller of an applicant for business; or

c) is a third party (underlying customer) on whose behalf an applicant for business is acting.

307. Section 25(2) of the AMLTFCOP requires a financial institution, for purposes of the identification and verification of a legal person, to obtain information regarding;

a) the full name of the legal person;

b) the official registration or other identification documents of the legal person;

c) the date and place of incorporation, registration or formation of the legal person;

[7] Legal person covers for the purpose of the AMLTFCOP, companies, partnerships, trusts, foundations, associations any incorporated or unincorporated clubs, societies, charities, churches and other non-profit making bodies, institutes, friendly societies (refer to the explanations under Section 25 of the Code).

d) the address of the legal person in the country of incorporation of the legal person and its mailing address, if different;

e) where applicable, the address of the registered agent of the legal person to whom correspondence may be sent and the mailing address of the registered agent, if different;

f) the legal person's principal place of business and the type of business engaged in; and

g) the identity of each director of the legal person, including each individual who owns at least 10% or more of the legal person.

308. Section 25(4) of the AMLTFCOP requires, for the purpose of verification in relation to a legal person that is a company, that a financial institution obtain the following documents;

a) memorandum and articles of association or equivalent;

b) resolution, bank mandate, signed application form or any valid account opening authority, including full names of all directors and their specimen signatures, signed by no fewer than the number of directors required to make a quorum;

c) copies of powers of attorney or other authorities given by the directors in relation to the company;

d) a signed director's statement as to the nature of the company's business; and

e) such other additional documents that the company considers essential to the verification process:

309. All account signatories should be duly accredited by the company.

310. Section 25(5) requires, for purposes of verification in relation to a legal person that is **a** partnership that a financial institution obtain from the partnership the following information;

a) the partnership agreement:

b) the full name and current residential address of each partner and manager relevant to the application for business, including;

   i. in the case of the opening of an account, the postcode and any address printed on a personal account cheque tendered to open the account; and
   ii. as much information as is relevant to the partner as the entity or professional may consider necessary; and

c) the date, place of birth, nationality, telephone number, facsimile number, occupation, employer and specimen signature of each partner or other senior officer who has the ability to give directions, sign cheques or otherwise act on behalf of the partnership.

311. Section 28 (1) of the AMLTFCOP requires that a financial institution, with respect to a trust, undertakes identification and verification measures, by obtaining the following information:

a) the name of the trust;

b) the date and country of establishment of the trust;

c) where there is an agent/trustee acting for the trust, the name and address of the agent/trustee;

d) the nature and purpose of the trust (as set out in the trust deed);

e) identifying information in relation to any person appointed as trustee, settlor or protector of the trust

312. Section 19 (5) stipulates that in circumstances where an applicant for business or customer is the trustee of a trust or a legal person, additional CDD measures should be undertaken and include determining the following:

a) the type of trust or legal person;

b) the nature of activities of the trust or legal person and the place where its activities are carried out; and

c) in the case of a trust;

i. where the trust forms part of a more complex structure, details of the structure, including any underlying companies; and
ii. classes of beneficiaries, charitable objects and related matters;

d) in the case of a legal person, the ownership of the legal person and, where the legal person is a company, details of any group of which the company is a part, including details of the ownership of the group; and

e) whether the trust or trustee or the legal person is subject to regulation and, if so, details of the regulator.

313. Section 25(6) of the AMLTFCOP requires for purposes of verification in relation to a legal person, other than a company, partnership and trust, subject to any additional information provided under the AMLTFCOP, that the legal person provides the following information:

a) the full name and current residential address of the applicant for business, including:

i. in the case of the opening of an account, the postcode and any address printed on a personal account cheque tendered to open the account; and

ii. as much information as is relevant to the applicant for business as the entity or professional may consider necessary;

b) the date, place of birth, nationality, telephone number, facsimile number, occupation, employer's name and specimen signature of the individual acting for the applicant for business.

314. None of the above provisions require that financial institutions verify that any applicant purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person. This requirement is stated in paragraph (ii) of the explanation under section 19(7) of the AMLTFCOP. As already noted, the explanations under the various sections of the AMLTFCOP are not accepted as enforceable under the FATF Methodology.

Beneficial ownership

315. As already noted, section 24(1) of the AMLTFCOP requires the identification and verification of individuals who are beneficial owners or controllers of an applicant for business. Section 27(1) of the AMLTFCOP requires that where there is an underlying principal with respect to a legal person, a financial institution shall, in establishing a business relationship, verify the underlying principal and establish the true nature of the relationship between the principal and the legal person's account signatory.

316. According to Section 27 (2) of the AMLTFCOP, a financial institution shall make appropriate inquiries on the principal, if the signatory is accustomed to acting on the principal's instruction and the standard of due diligence will depend on the exact nature of the relationship. A financial institution shall ensure that (a) a change in an underlying principal or the beneficial owner or controller of the underlying principal is properly recorded; and (b) the identity of the new underlying principal or the beneficial owner or controller of the principal is appropriately verified.

317. For the purpose of this section "principal" includes a beneficial owner, settlor, controlling shareholder, director or a beneficiary (not being a controlling shareholder) who is entitled to 10% or more interest in the legal person.

318. At the time of the on-site visit, the GN was in place. According to the GN the definition of "underlying beneficial owner" included "*those* who ultimately own or control the company and any person(s) on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are for the time being accustomed to act". On the 22nd of February, 2008 the GN was replaced by the AMLTFCOP. In the AMLTFCOP, the definition of "underlying beneficial owner" changed in respect to the wording; instead of "those" the word "*individual*" has been used. Under the AMLTFCOP, the Virgin Islands also applies a threshold approach, which requires the identification and verification of the identity of any individual, who is entitled to 10% or more interest in a legal person, or any individual, who owns 10% or more of a legal person.

319. During the on-site visit, most interviewed financial institutions informed the assessment team, that they identify the beneficial owner. In practice, the various financial institutions applied different thresholds in this respect. Some financial institutions apply a threshold of 20%, others apply a threshold of 10% or even 5% or only identified the natural persons that have the power to conduct transactions on the applicant's bank account. So, with the AMLTFCOP, the industry has a clear definition as to who qualifies as an underlying beneficial owner.

320. Financial institutions are also required to determine whether the customer is acting on behalf of another person, and take reasonable steps to obtain sufficient identification data to verify the identity of that other person (Sections 24(1) (c) and 25(1) (3) of the AMLTFCOP).

Purpose and intended nature of the business relationship/ongoing due diligence

321. According to section 19(3) (b) of the AMLTFCOP, financial institutions are required to obtain information on the purpose and intended nature of the business relationship. Sections 21 (1) and (2) of the AMLTFCOP requires a financial institution to review and keep up to date the CDD information in respect of the relevant customer. This obligation is applicable at least once a year if the business relationship represents a high risk and at least once every three years if the business relationship represents a normal or low risk (this requirement also applies to beneficial owners or controllers of a legal person in case a legal person is assessed as low risk; refer to Section 26 (2) in this respect).

322. Section 19 (3) of the AMLTFCOP specifically provides that a customer due diligence process requires an entity or a professional to, amongst other things, "conduct, where a business relationship exists, an ongoing monitoring of that relationship and the transactions undertaken for purposes of making an assessment regarding consistency between the transactions undertaken by the customer and the circumstances and business of the customer". Paragraph (viii) of the explanation under section 19 (7) of the AMLTFCOP states; "It is particularly important to note that conducting ongoing CDD on a business relationship is vital to forestalling acts of money laundering and terrorist financing and other activities designed to abuse the facilities offered by an entity or a professional. Thus such ongoing CDD should include a scrutiny and synthesizing of transactions engaged in throughout the period of the business relationship in order to ensure that those transactions are consistent with the entity's or professional's knowledge of the customer, the customer's business and risk profile and the source of funds. In addition, any data or other information received and kept under the CDD process must be kept up-to-date and relevant through a regular review and assessment of current record, especially as they relate to higher risk customers and business relationships."

323. With regards to implementation, the financial institutions interviewed indicated that ongoing CDD monitoring is a routine aspect of their AML/CFT framework.

Risk

324. A requirement to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions is set out in section 20 (1) and (2) of the AMLTFCOP. These paragraphs define: "enhanced customer due diligence" as steps additional to customer due diligence which a financial institution is required to perform in dealings with an applicant for business or a customer in relation to a business relationship or one-off transaction in order to forestall and prevent money laundering, terrorist financing and other financial crime.

325. Section 20(2) requires every entity or professional to engage in enhanced customer due diligence for higher risk categories of customers, business relationships or transactions. According to section 20 (3) a financial institution should adopt such additional measures with respect to higher risk business relationships or transactions as are necessary

(a) to increase the level of awareness about applicants for business or customers who, or transactions which, present a higher risk;

(b) to increase the level of knowledge about an applicant for business, or a customer with whom it or he deals or a transaction it or he processes;

(c) to escalate the level of internal approval for the opening of accounts or establishment of similar relationships; and

(d) to increase the level of ongoing controls and frequency of reviews of established business relationships.

326. With regard to higher risk categories of business relationships or transactions, section 20 (4) of the AMLTFCOP requires an entity or a professional to perform enhanced due diligence for the following;

(a) a politically exposed person (PEP),

(b) a business activity, ownership structure, anticipated, or volume or type of transaction that is unusual, having regard to the risk profile of the applicant for business or customer, or

(c) a person who is located in a country that is either considered or identified as a high risk country or that has international sanctions, embargos or other restrictions imposed on it,

327. Paragraph (vii) of the explanation under section 19 (7)of the AMLTFCOP states that the risks associated with money laundering and terrorist financing may be measured in the categories of customer risk, product/service risk and country/geographic risk. Paragraph (vii) gives the following guidance for consideration by financial institutions when developing a risk profile of applicants for business and customers.

Table 13: Factors for developing risk profile of applicants for business and customers

Risk assessment; applicable risk category	**Examples of higher risk; in assessing risk that may be associated with a customer, the following considerations <u>should</u> be taken into account by financial institutions**
Customer risk	• customers with complex structures where the nature of the 'entity' or relationships sought makes it difficult to identify the actual beneficial owner (BO) or the person or persons with a controlling interest; • use of bearer shares may also fall within this context, especially where the jurisdiction has no requirement for immobilizing bearer shares; • cash or equivalent intensive business (money service business, casinos, betting and other gambling related activities) and monetary instruments with a high value of funds, especially where not fully explained; • customers who conduct their business relationships or transactions in such unusual circumstances as where a significant and unexplained distance between location of customer and the entity, and frequent and unexplained movement of accounts to different entities or funds between entities in different jurisdictions; • where there is insufficient commercial rationale for the transaction or business

	relationship; • where there is a request to associate undue levels of secrecy with a transaction or relationship or, in the case of a legal person a reluctance to provide information regarding the beneficial owners or controllers; • situation where the source of funds and/or the origin of wealth cannot be easily verified, or where the audit trail has been broken or unnecessarily layered; • delegation of authority by the applicant for business or customer, for instance, through a power of attorney; • where the customer is a charity or other non-profit making organization which is not subject to AML/CFT monitoring or supervision, especially those that engage in cross-border activities; • where intermediaries who are not subject to adequate AML/CFT compliance measures are used and in respect of whom there is inadequate supervision; • customers who may be PEPs; • the origin of the funds or source of wealth relates to a jurisdiction on which there is currently an embargo or a sanction: these embargos and sanctions would normally relate to those imposed by the United Nations and the European Union (which are generally extended to the Territory by the UK and published in the BVI Gazette), although entities may decide to take account of other sanctions, embargos or restrictions imposed by reputable financial institutions, including parent companies.
Product/service risk	• where the FIA, FSC or other credible source identifies a particular service as potentially high risk: this would include international correspondent banking services that involve, for instance, commercial payments for non-customers and pouch activities, and international private banking services; • services that involve banknotes and precious metal trading and delivery; • services that seek to provide account anonymity or layers of opacity, or can readily transcend international borders: this latter category would include online banking facilities, stored value cards, international wire transfers, private investment companies and trusts.
Country/geographic risk	• situations where there is an embargo, a sanction or other restriction imposed on a country by the United Nations or the EU; these may relate to persons (natural and legal) and transactions and are generally extended to the Territory by the UK and are published in the BVI Gazette; the scope of the embargo, sanction or other restriction may not necessarily relate to financial prohibitions; • countries that are identified by credible institutions such as the FATF, CFATF or other regional style bodies, IMF, WB or Egmont as lacking appropriate AML/CFT laws, policies and compliance measures, or providing funding or support for terrorist activities that have designated terrorist organizations operating within them, or having significant levels of corruption or other criminal activity (such as abductions and kidnappings for ransom). In assessing jurisdictions which may have a high level of corruption, regard may be had to publications by Transparency International, in particular its annual corruption perception index. There may be other credible organizations (not mentioned) which an entity may wish to consider in making an assessment risk in respect of an applicant for business or a customer. The ultimate objective is to ensure that all the relevant risk factors are considered in dealings with an applicant for business or a customer.

Explanation (vii) goes on, indicating; “certain variables come into play which may impact on the level of risk. These variables may increase or decrease the perceived risk that may be associated to an applicant for business or a customer or indeed a transaction. These essentially would relate to

• the purpose of an account or a business relationship: regular account openings involving small amounts or simply to facilitate routine consumer transactions tend to pose a lower risk compared to account openings designed to facilitate large cash transactions from an unknown source;

• the size and volume of assets to be deposited: an unusual high level of assets or large transactions not generally associated with an applicant for business or a customer within a designated profile may need to be considered as higher risk; similarly, an otherwise high profile applicant for business or customer involved in low level assets or low value transactions may be treated as lower risk;

• the level of regulation, compliance and supervision: less risk may be associated with an entity that is subject to

regulation in a jurisdiction with satisfactory AML/CFT compliance regime compared to one that is unregulated or only subject to minimal regulation; thus publicly traded companies subject to regulation in their home jurisdictions pose minimal AML/CFT risks and may therefore not be subject to stringent account opening CDD measures or transaction monitoring;

- the regularity or duration of the relationship: long standing business relations with the same entity may pose less AML/CFT risk and therefore may not require a stringent application of the CDD measures;
- the familiarity with the jurisdiction in which the applicant for business or customer is located: this entails adequate knowledge of the laws and the regulatory oversight which govern the applicant for business or customer, considering the entity's own operations within that jurisdiction; and
- the use of intermediaries or other structures with no known commercial or other rationale or which simply obscure the relationship and create unnecessary complexities and lack of transparency: the risks associated with such relationships or transactions generally increase the risk profile of the applicant for business or customer.

328. With respect to non-face to face relationships, sections 29 of the AMLTFCOP require an additional verification check, including enhance due diligence measures, to manage the potential risk of identity fraud. The explanation related to Section 29 provides measures as further checks in dealing with non-face to face relationships.

329. According to section 5 (1) of the AMLTFCOP, every financial institution is required to fully comply with the AMLTFCOP, which provides the minimum requirements in relation to the compliance obligations relating to money laundering and terrorist financing.

330. Section19 (2) requires that every entity (financial institution) must engage in customer due diligence in its or his dealings with an applicant for business or a customer, irrespective of the nature or form of the business. Section 19 (6) allows for entities in adopting a risk- based approach to determine customers or transactions as low risk in terms of the business relationship. In making such a determination the entity may take into account such factors as

a) a source of fixed income (such as salary, superannuation and pension);

b) in the case of a financial institution, the institution is subject to anti-money laundering and terrorist financing requirements that are consistent with the FATF Recommendations and are supervised for compliance with such requirements;

c) publicly listed companies that are subject to regulatory disclosure requirements;

d) Government statutory bodies;

e) life insurance policies where the annual premium does not exceed one thousand dollars;

f) insurance policies for pension schemes where there is no surrender clause and the policy cannot in any way be used as a collateral

g) beneficial owners of pooled accounts held by non-financial businesses and professions if they are subject to anti-money laundering and terrorist financing requirements and are subject to effective systems for monitoring and compliance with the anti-money laundering and terrorist financing requirements; and

h) the entity considers, in all the circumstances of the customer, having regard to the entity's anti-money laundering and terrorist financing obligations, to constitute little or no risk.

Reduced or simplified CDD measures

331. Section 19(7) allows an entity (financial institution) to reduce or simplify the customer due diligence measures for a customer it has determined poses low risk. Reduced or simplified due diligence measures are also provided for in the AMLR. A person carrying on relevant business as defined in the AMLR includes financial institutions. Regulation 6 (1) of the AMLR exempts a person carrying on relevant business from obtaining evidence of the identity of an applicant for business where he has reasonable grounds for believing that the applicant for business is;

a) a regulated person;

b) a foreign regulated person; or

c) a legal practitioner or an accountant who belongs to a professional body whose rules of conduct or practice embody legal requirements for the detection and prevention of money laundering that are consistent with the requirements of the CFATF or FATF recommendations and the legal practitioner or accountant is supervised by his or her professional body for compliance with those requirements.

332. However, where an institution knows or suspects that laundering is or may be occurring or has occurred, the exemptions set out in Regulation 6 (1) do not apply.

333. Regulation 6(3) of the AMLR also exempts a person carrying on relevant business, in relation to a one-off transaction, from obtaining evidence of the identity of an applicant for business where the amount to be paid by or to the applicant for business is less than USD 10.000 or the equivalent amount in another currency, unless;

a) the person carrying on the relevant business has reasonable grounds for believing (whether at the beginning or subsequently) that;

   i. the transaction is linked to one or more other transactions; and

   ii. the total amount to be paid by or to the applicant for business in respect of all the linked transactions is USD 10.000 or more; or

b) any person handling the transaction on behalf of the person carrying on relevant business knows or suspects that the transaction involves money laundering.

334. Regulation 7(1) of the AMLR requires a relevant person that relies on the introduction of an applicant for business from a third party ("introducer") to establish and maintain identification procedures which, as soon as reasonably practicable after contact is first made, require (i) the production by the introducer of satisfactory evidence of the identity of the applicant for business; or (ii) the taking of such measures as are specified in the

identification procedures as will produce satisfactory evidence of the identity of the applicant for business. Such identification procedures shall not apply where the financial institution has reasonable grounds for believing that (a) the introducer is a person specified in regulation 6 (1), or (b) the institution and applicant for business are bodies corporate in the same group, unless the person handling the transaction on behalf of the institution carrying on relevant business knows or suspects that the transaction involves money laundering.

335. The Virgin Islands permitted financial institutions, up to February 22, 2008, by way of a list of recognised countries and territories in the GN, to apply simplified or reduced CDD measures on regulated financial institutions situated in these recognised countries or territories. When the AMLR and the AMLTFCOP came into effect, this list was revoked. However, section 52(1) of the AMLTFCOP provides for the FSC to issue for the purposes of the AMLTFCOP, where it considers it necessary to do so, a list of jurisdictions which it recognizes as having in place adequate measures implementing FATF Recommendations. This provision is tied to requirements for introduced business with section 31(3) granting exemptions for verification of identity from introducers located in jurisdictions subject to legal requirements consistent with FATF Recommendations. At present, the decision as to whether a country has effectively implemented the FATF Recommendations is at the discretion of the financial institution. Consequently, the financial institutions in the Virgin Islands should identify their customers previously categorized as 'recognised institutions' as soon as possible, verify the adequacy of the CDD information and request any missing CDD information from such customer(s).

336. Regulations 6(2), 6(3)(b) and 7(2) disallow simplified CDD measures where there is a suspicion of money laundering in the case of introduced business, one-off transactions under ten thousand dollars and applicants who are regulated persons (local and foreign) or a legal practitioner or accountant who belongs to a professional body with rules consistent with FATF Recommendations. This obligation is limited to money laundering. Section 19(4) (c) of the AMLTFCOP obligates an entity to undertake CDD measures whenever "there is a suspicion of money laundering or terrorist financing, irrespective of any exemption or threshold". This requirement is further clarified in paragraph (v) of the explanation under section 19(7) of the AMLTFCOP which states that "simplified measures are not acceptable whenever there is suspicion of money laundering or terrorist financing or specific higher risk scenario exists".

337. Under the Virgin Islands' regime, the application of simplified as well as full measures is governed by the AMLR and the AMLTFCOP, with which all financial institutions are required to comply.

338. The AMLTFCOP advocates the adoption of the risk-based approach by financial institutions and the establishment of appropriate policies, procedures and rules for risk assessments. There is no requirement for the financial institutions to submit their (new) risk-based AML/CFT compliance manual to the FSC for approval in order to enable the FSC where applicable, to assess the adequacy of the financial institutions mitigation measures. However, the FSC will conduct inspections of financial institutions in relation to their risk-based AML/CFT compliance measures. As the AMLTFCOP has just come into force, the FSC has not conducted such specific inspections.

Timing of verification

339. According to section 23(1)(b) of the AMLTFCOP, a financial institution shall establish the identity of an applicant for business or a customer (including the beneficiary owner) with respect to a relationship or transaction by carrying out the verification before or during the course of establishing a business relationship or engaging in a transaction

340. Notwithstanding the abovementioned, section 23 (2) states that where it becomes necessary in order not to disrupt the normal conduct of business, for an entity or a professional to complete the verification after the establishment of a business relationship, it may do so on the conditions that;

a) the verification is completed within a reasonable period not exceeding twenty-one days from the date of the establishment of the business relationship; and

b) the money laundering or terrorist financing risks that may be associated with the business relationship are properly and effectively managed.

341. Paragraph (ii) of the explanation under section 23 (6) states *"it is essential that the verification process is conducted from the inception of forming a business relationship; this will extend to one-off transactions as considered feasible, having regard to the risk assessments. However, it is recognized that there may be instances when it might not be feasible to conduct and complete a verification process at the time of establishing a business relationship in order to ensure the smooth and normal conduct of business. In such a situation, it is permissible to complete the verification process following the establishment of the business relationship. The circumstances in which such a situation may arise include*

- *non-face-to-face business (where the applicant for business is not physically present before the entity or professional);*

- *securities transactions where rapid transactions are required to be performed according to the market conditions at the time of establishing the business relationship;*

- *life insurance business with respect to the verification of the beneficiary under the policy; however, in such a case the requisite verification must be carried out before any payout or the exercise of vested rights under the policy;*

- *court-ordered payments or settlements where the beneficiary under the order is not immediately available; however, in such a case no payment or transfer of funds must take place until the verification process is fully effected, unless the court otherwise directs.*

It is a matter entirely for an entity or a professional to consider any additional circumstances in which it would not be feasible to conclude a verification process prior to establishing a business relationship. Where an entity or a professional permits a business relationship before effecting the necessary verification, it or he or she must adopt the relevant risk management processes and procedures, having regard to the circumstance in which the

relationship is being developed. These may relate to putting necessary limitations on the number, type and/or amount of transaction that may be performed and the monitoring of large or complex transactions outside of the expected norms of the type of business relationship concerned".

342. The requirement for entities and professionals to adopt relevant risk management processes and procedures for permitting a business relationship before effecting the necessary verification is not enforceable since it is set out in the explanation part of the AMLTFCOP.

Failure to satisfactorily complete CDD

343. Regulation 4 (2)(a) of the AMLR requires that where satisfactory evidence of the identity is not obtained, the business relationship or one-off transaction shall not proceed any further, until such evidence is obtained, unless and to the extent that the FIA advises otherwise. Regulation 2 (4)(b) of the AMLR stipulates that satisfactory evidence of identity for the purpose of the AMLR will be determined in accordance with the AMLTFCOP. Section 19 of the AMLTFCOP deals with information necessary for an entity or professional to carry out required customer due diligence to satisfy identity and verification requirements which include the requirements of criteria 5.3 to 5.6.

344. Section 18 (2) of the AMLTFCOP extends the internal reporting of suspicious activity or transaction to the Reporting Officer of an entity or professional to include the reporting of any attempted activity or transaction that the entity or professional has turned away. Further, section 18 (3) specifies that a suspicious report must be made in the circumstances where an applicant for business or a customer fails to provide adequate information or supporting evidence to verify his identity or in the case of a legal person, the identity of any beneficial owner.
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345. Regulation 5 (1) of the AMLR requires a financial institution to obtain satisfactory verification of the evidence of identity of customers in respect of transactions undertaken after a business relationship has been established in compliance with the obligations to identify customers in regulation 4. Failure to obtain such verification after the establishment of a business relationship should result in the termination of the business relationship and any transactions as stipulated in regulation 5 (2) and trigger a suspicious report as required in section 18 (3) of the AMLTFCOP.

Existing customers

346. Since the GN did not contain a risk-based approach, the introduction of the AMLTFCOP in February, 2008 requires financial institutions to assess customer risks, product/service risks and country/geographical risks and develop strategies to mitigate the risks including an effective system of internal controls. The assessment team was advised during the onsite that some financial institutions (i.e. banks) already applied a risk-based approach as best practice. However for financial institutions that did not apply the risk-based approach, the extent to which ECDD measures will have to be applied is unclear.

347. There is no transitional provision in the AMLTFCOP for retrospective due diligence on all relationships. Section 21 of the AMLTFCOP requires financial institutions to review and keep up-to-date CDD information on business relationships. Reviews are to be scheduled on the basis of risk on cycles ranging from annually for higher risk to at least once every three years for

normal or low risk. The authorities are of the view that financial institutions in complying with this review requirement will apply retrospective due diligence to all relationships.

348. Financial institutions are not permitted to keep anonymous accounts or accounts in fictitious names as already mentioned so there is no need for a requirement for retroactive CDD measures on these accounts.

349. Given the recent enactment of the AMLTFCOP and the AMLR, effective implementation of the measures cannot be assessed. While it can be argued that many of the requirements of the present AMLTFCOP are similar to those of the former GN, assessment is still limited by the low number of on-site inspections that have been conducted by the FSC in relation to the total number of the regulated entities that fall under the AML/CFT regime.

Recommendation 6

350. Financial institutions in the Virgin Islands are required to verify the identity of all customers and this includes PEPs. The same CDD and ECDD measures in relation to establishing business relationships and engaging in transactions apply to PEPs. Section 22 of the AMLTFCOP outlines the requirements when dealing with PEPs. The requirements are comprehensive and include the following;

a) Implementing appropriate risk-based policies, processes and procedures for determining whether an applicant for business or a customer is a PEP;

b) Taking reasonable measures to establish the source of funds or wealth of PEPs;

c) Ensuring that senior management approval is obtained for establishing or maintaining a business relationship with a PEP;

d) Implementing a process of regular monitoring of the business relationship with the PEP

e) Ensuring that, in circumstances where junior staff deal with PEPs, there is in place adequate supervisory oversight in that regard; and

f) Ensuring that the requirements for PEPs as outlined above apply in relation to a customer who becomes a PEP during the course of an existing business relationship.

351. The extended explanation section of the AMLTFCOP defines PEPs to be either domestic or foreign and generally comprise persons who are Heads of State/Government, cabinet ministers/secretaries of state, judges (including magistrates), senior and lower political party functionaries with influence in high ranking government circles, military leaders, heads of police and national security services, senior public officials and heads of public utilities/corporations etc. Family members and close associates of PEPs also qualify as PEPs. The explanation section further advises the gathering of relevant data from publicly available information via website search engines which specialize in identifying PEPs.

352. The assessment team was satisfied that all of the entities interviewed adopted risk based approach rules particularly in the area of customer due diligence and know your customer, and

were aware of the ECDD requirements for PEPs where they exist. This was particularly noted for the banks, whose systems were assessed as robust and comprehensive. In all cases, senior management or Board approval is required in dealing with PEPs (new or derived) and the compliance unit/officer plays a critical role in this regard. Owing to the size of the Virgin Islands, most local PEPs are known and enhanced due diligence is required for all PEPs, local and foreign.

353. There was sufficient attempt on the institutions' part to know the true identity of all PEPs and the types of business and transactions the customer was likely to be undertake. There were appropriate policies and procedures in place, including the following:

a) Identify and verify the identity of each customer on a timely basis;
b) Take reasonable risk based measures to identify and verify the identity of any beneficial owner; and
c) Obtain appropriate additional information to understand the customer's circumstances and business, including the expected nature and level of transactions.

354. The obligation was present at all times to determine the due diligence requirements appropriate to each customer which include:

a) A standard level of due diligence, to be applied to all customers;

b) An increased level of due diligence in respect of those customers that are determined to be of higher risk. This may be the result of the customer's business activity, ownership structure, anticipated or actual volume or types of transactions, including those transactions involving higher risk countries or defined by applicable law or regulation as posing higher risk, such as: correspondent banking relationships, politically exposed persons and geographic location

355. The banking industry in particular conducts ongoing CDD especially for high risk businesses and customers such as PEPs. Actual activity versus expected activity reports are generated on a monthly basis to determine if a customer profile changed between periods. This gap analysis is used as a trigger.

356. The United Nations Convention against Corruption 2003 has been signed and ratified by the United Kingdom, and was extended to the Virgin Islands on the 12th October, 2006.

Recommendation 7

357. The assessment team was advised that there are no correspondent banks in the Virgin Islands. The FSC advised that except for one institution, all banks are either branches or subsidiaries of foreign entities. Given the size and limited number of banking institutions in the Territory, there are no banking relationships where a Virgin Islands institution would be considered the correspondent institution. In most cases, a bank that is licensed under the BTCA, qualifies as a respondent bank. All the banks that were interviewed were respondent banks. However, section 35 of the AMLTFCOP details the restrictions on correspondent banking in the Virgin Islands. Specifically, "a correspondent bank shall:

a) not enter into or maintain a relationship with a respondent bank that provides correspondent banking services to a shell bank;

b) undertake customer due diligence measures and, where necessary, enhanced customer due diligence measures in respect of a respondent bank in order

    i. to fully and properly understand the nature of the respondent bank's business;

    ii. to make a determination from such documents or information as are available regarding the reputation of the respondent bank and whether it is appropriately regulated; and

    iii. to establish whether or not the respondent bank is or has been the subject of a regulatory enforcement action or any money laundering, terrorist financing or other financial crime investigation;

c) make an assessment of the respondent bank's anti-money laundering and terrorist financing systems and controls to satisfy itself that they are adequate and effective;

d) ensure that senior management approval is obtained before entering into a new correspondent banking relationship;

e) undertake necessary measures to ensure that senior management reviews any established correspondent banking relationship at least once every year to ensure compliance with the requirements of this section;

f) ensure that the respective anti-money laundering and terrorist financing measures of each party to a correspondent banking relationship is fully understood and properly recorded; and

g) adopt such measures as it considers necessary to demonstrate that any documentation or other information obtained in compliance with the requirements of this subsection is held for current and new correspondent banking relationships."

358. Additionally, section 36 of the AMLTFCOP requires that where "a correspondent bank provides customers of a respondent bank with direct access to its services, whether by way of payable through accounts or by other means, it shall ensure that it is satisfied that the respondent bank

    a) has undertaken appropriate customer due diligence and, where applicable, enhanced customer due diligence in respect of the customers that have direct access to the correspondent bank's services; and

b) is able to provide relevant customer due diligence information and verification evidence to the correspondent bank upon request."

Recommendation 8

359. Section 11 of the AMLTFCOP requires professionals' and entities' written systems of internal controls to include measures implementing risk-based customer due diligence policies, processes and procedures. However, there is no specific requirement for financial institutions to have policies in place or measures to prevent the misuse of technological developments in money laundering or terrorist financing.

360. Requirements for dealing with non-face to face business relationships or transactions are set out in section 29 of the AMLTFCOP. While financial institutions are not required to have policies to address specific risks associated with non-face to face business relationships and transactions, they are obliged to apply the provisions of the AMLTFCOP relating to identification and verification to non-face to face business relationships. Additionally, where identity is verified electronically or copies of documents are relied on in relation to a non face to face application for business, an entity or a professional shall apply an additional verification check, including the enhanced CDD measures, to manage the potential risk of identity fraud.

361. The explanation section of the AMLTFCOP lists additional measures an entity or professional may consider using as further checks in dealing with non-face to face relationships. These measures include requiring the first payment to be carried out through an account in the applicant's or customer's name with a regulated financial institution, verifying additional aspects of the applicant's or customer's identity, establishing a telephone contact with the applicant or customer on a verifiable home or business number, etc.

362. The majority of the entities in the Virgin Islands shy away from dealing with non-face to face client. As most of the entities are divisions of more established financial institutions worldwide, e.g. trust companies, transactions are normally processed via a core application procedure i.e. a central investigation unit, where all clients are screened continuously, and where there are internal triggers once CDD data conflicts from period to period. There are appropriate policies and procedures in place to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

363. In the banking industry, all accounts are opened on a face to face basis and no referrals are accepted. The banks are responsible for their own CDD. Non-face to face transaction may occur, but ECDD is very intensive and identification information must be notarised by a notary public. Internet or online banking services, telephone banking and wire transfers are available offering routine transactions such as - transfers between accounts, payables, payroll payments - but no investments in securities can be made or accounts opened on line. Wire transfer services are offered to existing clients who must have a bank account. Funds are withdrawn from existing accounts. Incoming wires are accepted for existing customers and are normally in the name of an account holder. The required controls are robust and procedures do exist for all incoming and outgoing wires. There are also triggers in place as the reporting system captures all large transactions. These large transactions are consolidated daily.

364. Within the mutual fund industry wired funds are usual, but these funds are not exempt from the AML/CFT rigorous checks and verification. An account must be opened at a bank for a fund to operate and this requirement ensures that the CDD is checked at the bank level and at the

trust company. The assessment team was informed from the industry that money wired from FATF countries attracts lesser CDD than those arriving from non-FATF countries.

3.2.2 Recommendations and Comments

365. The following is recommended;

Recommendation 5

- The requirement for financial institutions to verify that any person purporting to act on behalf of customers that are legal persons or legal arrangements is so authorised, and identify and verify the identity of that person should be legislated.

- The authorities should issue a list of jurisdictions that they recognise as having in place measures implementing FATF Recommendations to allow financial institutions to apply simplified or reduced CDD measures to customers resident in those countries.

- The requirement for entities and professionals to adopt relevant risk management processes and procedures for permitting a business relationship before effecting the necessary verification should be enforceable.

Recommendation 8

- Financial institutions should be required to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing.

- Financial institutions should be required to have policies and procedures to address specific risks associated with non-face to face business relationships or transactions.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**PC**	**The requirement for financial institutions to verify that any person purporting to act on behalf of customers that are legal persons or legal arrangements is so authorised, and identify and verify the identity of that person is not legislated.** **The application of simplified or reduced CDD measures to customers resident in another country is not limited to countries that the authorities are satisfied have effectively implemented the FATF Recommendations.** **The requirement for entities and professionals to adopt relevant risk management processes and procedures for permitting a business relationship before effecting the necessary verification is not enforceable.**

		Due to the recent enactment of the AMLTFCOP effective implementation of AML/CFT measures cannot be assessed.
R.6	**LC**	**Due to the recent enactment of the AMLTFCOP effective implementation of AML/CFT measures with respect to PEPs cannot be assessed.**
R.7	**LC**	**Due to the recent enactment of the AMLTFCOP effective implementation of AML/CFT measures with respect to correspondent banking relation cannot be assessed.**
R.8	**PC**	**No specific requirement for financial institutions to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing.** **No requirement for financial institutions to have policies and procedures to address specific risks associated with non-face to face business relationships or transactions.**

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

Recommendation 9

366. Regulation 7 (1) of the AMLR requires a relevant person that relies on the introduction of an applicant for business from a third party to establish and maintain identification procedures which, as soon as reasonably practicable after contact is first made between the relevant person and the introducer require;

a) the production by the introducer of satisfactory evidence of the identity of the applicant for business; or

b) the taking of such measures as are specified in the identification procedures as will produce satisfactory evidence of the identity of the applicant for business.

Exemptions

367. Regulation 7 (2) provides an exemption from the above identification procedures for introducers who are regulated persons, foreign regulated persons or legal practitioners or accountants who belong to a professional body whose rules of conduct or practice embody legal requirements for the detection and prevention of ML that are consistent with the CFATF and FATF Recommendations and who are supervised for compliance with those requirements. The exemption also applies to instances where the relevant person and the applicant for business belong to the same corporate group. This exemption does not apply where there is knowledge or suspicion involving money laundering.

368. Regulation 7 (4) allows for the acceptance by the relevant person of written assurance from the introducer that evidence of the identity of the applicant for business has been obtained and recorded in accordance with identification procedures that comply with the AMLR and the AMLTFCOP and that this evidence will be supplied to the relevant person upon request. This

written assurance can be regarded as satisfactory evidence of the identity of the applicant for business.

369. While there is a general requirement for the production by the introducer of satisfactory evidence of the identity of the applicant for business, exemptions from identification procedures on the basis of either the type of introducer or a written assurance to the fact that evidence of the identity of the applicant for business is maintained and can be made available upon request, effectively undermine this requirement. Consequently, it can be argued that there is no requirement for a relevant person to immediately obtain from the majority of third parties necessary information concerning elements of the CDD process itemised in criteria 5.3 to 5.6.

370. It should be noted that while the required written assurance would satisfy the criterion for adequate steps to be taken that copies of identification data and other relevant documentation relating to CDD will be made available, this is not applicable for regulated persons, foreign regulated persons or legal practitioners or accountants who belong to a professional body whose rules of conduct or practice embody legal requirements for the detection and prevention of ML that are consistent with the CFATF and FATF Recommendations and who are supervised for compliance with those requirements. However, section 31(5) of the AMLTFCOP makes it a requirement for the necessary CDD information to be kept and this is irrespective of the exemptions provided in regulation 7(2) of the AMLR.

371. As noted above, introducers who are regulated persons and foreign regulated persons are exempted from identification procedures. These persons are defined as being subject to legal requirements for the detection and prevention of money laundering that are consistent with the requirements of the CFATF Recommendations or the FATF Recommendations and are properly and adequately supervised for compliance with those legal requirements. A similar definition applies in the case of introducers who are legal practitioners and accountants. This requirement suggests that financial institutions will have to satisfy themselves that these introducers are regulated and supervised in accordance with Recs. 23, 24 and 29 and have measures in place to comply with the CDD requirements set out in R. 5 and R. 10.

372. At the time of the mutual evaluation visit, the competent authorities had not determined the countries from which third parties that meet the above conditions regarding regulation and supervision and CDD measures can be accepted. It should be noted that section 52 (1) of the AMLTFCOP provides for the FSC to issue for the purposes of the AMLTFCOP, where it considers necessary to do so, a list of jurisdictions which it recognizes as having in place adequate measures implementing FATF Recommendations.

373. Section 31 (5) of the AMLTFCOP requires an entity or professional that relies on an introduction, prior to establishing a business relationship with the applicant or customer to ensure that the introducer has in place a system of reviewing and keeping up-to-date at least once every year the relevant customer due diligence information on the applicant or customer. The entity or professional also has to ensure that the introducer has undertaken in writing to notify the entity or professional in the event of the termination of the business relationship with the applicant or customer.

374. The explanatory note to section 31 states that the above obligation does not absolve the entity or professional from establishing and reviewing the customer due diligence information on the applicant or customer following the establishing of the business relationship with the applicant or customer in accordance with the provisions of the AMLR and the AMLTFCOP. It should be noted that regulation 7(5) of the AMLR puts it beyond doubt that nothing contained in

the regulation limits or absolves an entity from satisfying itself that the requirements of the AMLR and the AMLTFCOP are complied with.

Effectiveness

375. The Compliance Association affirm that the Virgin Islands' legislation requires verification of clients. The Compliance Association in its interview enunciated that customer due diligence is an intense process where apart from the routine customer's ID, bank information (note a limitation of two years time period for dealing with a bank), and background checks are carried out on the internet using World-check, and other search engines. Tax advice from the relevant jurisdictions is requested.

376. Many of the trust companies interviewed by the assessment team stated categorically that they do not rely on introduced business and do not delegate CDD responsibilities, nor accept pre-qualified beneficiaries. The experience of one trust company where a SAR was filed based on dissatisfaction arising from introduced business serves to highlight the pitfalls associated with introduced business. The CDD information required by this company ranged from a copy of the trust deed, details on an ID of the settlor and all of the beneficiaries, passports and references, applicable to all trusts including blind trusts. These documents are available to the FSC immediately if required.

377. One trust company stated that beneficial owners are screened and introducers and intermediaries are mainly based in Europe where relationships are established after obtaining approval from head office where background checks are done. Given the range of the trust business in the Territory and the inability to ascertain the fiduciary and asset management size of the business, and insufficient on-site examinations, it is difficult to assess thoroughly whether the elements of the criteria (5.3 to 5.6) are applied.

378. In the banking industry, not much introduced business is done, and if so, a very select group is used where the level of CDD is still performed. The bank ensures that it knows the beneficial owners of all accounts. One bank stated that there are no exceptions to the CDD requirements. At one of the very large banks, it was noted that no referrals are taken.

379. The Mutual Fund industry, like other sectors of the financial service industry has been subject to AML/CFT requirements. Specific guidance on mutual funds was provided in the GN which preceded the AMLFTCOP. Information gathered from practitioners in the mutual fund industry indicates that the requirements outlined in criteria 5.3 – 5.6 are applied. It was stated that there was no exemption for AML/CFT requirements even though most eligible introducers are from the head office and subsidiary branches, and referrals are from reputable practitioners, third parties and brokers. Most business opportunities are derived from FAFT countries, and higher CDD is imposed on business from non-FATF countries. Identification of the investor is important and the fact that funds are usually channelled through a bank where the required CDD and ECDD are performed provides another layer of protection. The assessors were informed that while most fund managers have investors that are well known to them redemption is delayed until the required documentation on the payee is obtained. Ongoing CDD measures are carried out where beneficial owners are identified holding greater than 5% interest in most cases.

380. End-users, professional service clients and eligible introducers within the Association of Registered agents, are all required to provide detailed references, information on the regulatory regime of the jurisdiction, professional terms of reference, company register, term of business letters, and further information if business is derived from a non FATF country.

381. The same process for CDD requirements applies for end-users and introduced business within the insurance industry. The identification process, request for client's compliance manual, vetting etc are requested before business commences. One insurance manager informed that though they used referrals/introducers the company meet with all prospective clients face to face.

3.3.2 Recommendations and Comments

382. The following is recommended:

- Financial institutions relying upon a third party should be required to immediately obtain from the third party the necessary information concerning certain elements of the CDD process itemised in criteria 5.3 to 5.6

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**PC**	**No requirement for a financial institution to immediately obtain from all third parties necessary information concerning certain elements of the CDD process itemised in criteria 5.3 to 5.6**

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

Recommendation 4

383. There are no financial secrecy laws in the Virgin Islands. Information can be obtained either by production of a court order or by the competent authorities i.e. the FSC or the FIA with appropriate authorisation.

384. There is a comprehensive framework of international co-operation legislation and procedures to assist foreign judicial, law enforcement, prosecutorial, tax and regulatory authorities. The framework allows for cross-border co-operation and exchange of information.

385. Pursuant to section 4(2) (d) of the FIAA, the FIA can require the production of such information, excluding information subject to legal privilege that the Agency considers relevant to the performance of its functions. Section 4(2)(g) of the FIAA allows the FIA to provide information relating to the commission of a financial offence to any foreign financial investigation agency, subject to any conditions as may be considered appropriate by the Attorney General. Sections 28(5) and 29(6) of POCCA, as amended by POCCAA, 2008 gives the Steering Committee of the FIA the authority to disclose information regarding SARs to any law enforcement agency in the Virgin Islands or overseas in order to report the possible commission of an offence or to initiate or assist a criminal investigation, or aid criminal proceedings respecting the matter disclosed in the SARs.

386. Pursuant to section 30(1) of the FSCA, the Board of the FSC may request any person engaged in or related to any financial services business to furnish the Commission with such information as the Board may specify. Section 32 of the FSCA expands on the power in section 30(1) by enabling the FSC to require a person to produce not only specified information but also documents and allows the FSC to request such from a licensee, a former licensee, a person who is believed to have carried on or to be carrying on unauthorised financial services business or any person connected with the aforementioned.

387. Section 33D of the FSCA provides for the FSC, on written request of a foreign regulatory authority and subject to such conditions as it considers appropriate to exercise the powers conferred on it by section 32 to obtain relevant information.

388. There is also in place an MOU for cooperation in the exchange of information related to due diligence, money laundering and terrorist financing and to assist generally in the preservation of the reputation of the Virgin Islands as a financial centre between the FIA and the FSC. This MOU was entered into on the 19th March 2007.

389. With regards to Recommendation 7 financial institutions are required to gather sufficient information about a respondent's business under section 35 of the AMLTFCOP. Section 31 of AMLTFCOP details the due diligence to be performed when dealing with third parties and introducers. No restriction to the sharing of information between financial institutions is imposed, and this applies to foreign parent entities having access to information from their branches and subsidiaries operating in the Virgin Islands. Requirements for cross border and domestic transfers are dealt with in sections 37 to 41 of the AMLTFCOP in accordance with SR VII.

3.4.2 Recommendations and Comments

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	**This recommendation is fully observed.**

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Recommendation 10

Maintenance of transaction records

390. Requirements for record keeping are set out in Regulations 8 to 12 of the AMLR and sections 42 to 45 of the AMLTFCOP. Section 42 of the AMLTFCOP requires an entity or a professional to comply with the record keeping requirements outlined in the AMLR in the forms and details in the AMLTFCOP. Regulation 9 of the AMLR requires a relevant person to maintain a record of all transactions carried out by or on behalf of an identified customer. The records should be sufficient to enable investigating authorities to compile an audit trail for suspected ML.

391. Regulation 10(1) of the AMLR requires the retention of records for a period of at least five years from the date when all transactions relating to a one-off transaction or a series of linked transactions are completed or when the business relationship is formally ended or when the last transaction is carried out.

392. Regulation 10(2) of the AMLR requires the retention of all pertinent records by relevant persons for as long as may be required by the FIA with regard to any matter under investigation. This requirement is further expanded in section 45(4) of the AMLTFCOP which empowers the FIA and the FSC to require for investigative or other purposes, an entity or a professional to maintain a record beyond the period prescribed for the keeping of that record. The entity or professional must maintain the record as required by the FIA or the FSC, until such period as the FIA or the FSC directs otherwise.

393. Section 44 of the AMLTFCOP requires financial institutions to maintain transaction records and to take necessary measures to ensure that the records include:

- *the name and addresses of the customer*
- *kind of currency and amount involved*
- *the beneficiary of the monetary transaction or product*
- *the number, name or other identifier with respect to an account*
- *the date of the transaction*
- *the nature of the transaction and, where the transaction involves securities and investment, the form in which funds are offered and paid out*
- *in the case of a transaction involving an electronic transfer of funds, sufficient detail to enable the establishment of the identity of the customer remitting the funds and*
- *sufficient details of the transaction for it to be properly understood.*

394. Regulation 8 of the AMLR requires a relevant person to maintain a record indicating the nature of evidence obtained in identifying a customer and a copy of the evidence or information that would enable a copy of the evidence to be obtained.

Retention requirements

395. Retention requirements for transaction records are also applicable to identification records. It should be noted that regulation 10(1) (c) limits the period of retention to five years from the date of the last transaction in cases where the business relationship has not formally ended. However, FATF requirements regarding identification data stipulates a period of at least five years following the termination of an account or business relationship. The above instance referred to in regulation 10(1) (c) could result in a situation where identification data for an account dormant for longer than five years could be destroyed in contravention of FATF requirements.

396. None of the record keeping requirements directly refer to account files and business correspondence as required in the FATF standards.

397. Section 42(2) of the AMLTFCOP states that a record of a business relationship or transaction or any other matter required to be maintained under the AMLR and the AMLTFCOP, shall be maintained in a form that it can be easily retrievable. A retrievable form consist of an

original copy or a certified copy of the original copy, microform, a computerised or other electronic data and a scanned document of the original document which is certified where necessary.

398. Interviews with relevant entities confirmed the thorough application of the above requirements. In all cases the retention period far exceeded the minimum requirement of five years and included the records on clients, beneficiaries, addresses, nature and date of transaction, type and currency in use, relevant identifying account numbers and all the matters noted above. The assessment team was informed that these records are immediately available for inspection by the FSC upon request and by other competent authorities upon appropriate authority.

Special Recommendation VII

Wire-transfer requirements

399. Requirements for cross-border and domestic transfers are set out in sections 37 to 41 of the AMLTFCOP. Transfer of funds where both the payer and the payee are payment service providers acting on their own behalf, a transfer to the Government of, or a public body in, the Virgin Islands for taxes, duties, fines or charges of any kind, and any transfer accompanied by a credit card or debit card number are exempted from these requirements.

400. Section 39 of the AMLTFCOP requires the payment service provider of a payer to ensure that every transfer of funds over one thousand dollars is accompanied by the full originator information. Full originator information is defined with respect to a payee to mean the name and account number of the payer, together with the payer's address, the payer's date and place of birth or the customer identification number or national identity number of the payer, or a unique identifier (where the payer does not have an account). The above requirement is not applicable to cross-border batch file transfer from a single payer where the batch file contains the complete information on the payer or the individual transfers in the batch file carry the account number of the payer or a unique identifier.

401. Section 39(3) requires the payment service provider of the payer, before transferring any funds, to verify the full originator information on the basis of documents, data or information obtained from a reliable and independent source. Section 39(4) defines verification of full originator information to mean compliance with all the provisions of the AMLR and the AMLTFCOP relating to verification of the identity of the payer in connection with the opening of that account. The payment service provider of the payer is required to keep records of full originator information on the payer that accompanies the transfer of funds for a period of at least five years.

402. In the case of domestic wire transfers, section 39(7) of the AMLFTCOP requires that the transfer need only be accompanied by the account number of the payee or a unique identifier (where the payer does not have an account) that allows the transaction to be traced back to the payer. This requirement only applies where full originator information is made available to the beneficiary financial institution within three working days of receiving a request. It is noted that the requirement for the account number of the payee to accompany the transfer is redundant and may be inadvertent, since the account number of the payer is more appropriate.

403. Section 41(2) of the AMLFTCOP requires all intermediary payment service providers located in the Virgin Islands to ensure that any information received on a payer that accompanies a transfer of funds is kept with that transfer. An intermediary payment service provider that uses a system with technical limitations which prevent the information on the payer from accompanying the transfer of funds must keep records of all the information on the payer that it has received for a period of at least five years.

404. Section 40(4) of the AMLFTCOP states that in situations where a beneficiary financial institution becomes aware that full originator information is missing or incomplete on incoming wire transfers, the beneficiary financial institution should reject the transfer, request full originator information or take such course of action as the FIA or FSC directs, after it has been notified of the deficiency in originator information. Section 40(5) of the AMLFTCOP states that missing or incomplete information shall be a factor in the risk-based assessment of a payment service provider of the payee as to whether a transfer of funds or any related transaction is to be reported to the FIA as a suspicious transaction or activity with respect to ML or TF.

405. Compliance with the requirements of the AMLTFCOP is monitored by the FSC as mandated by section 8 of the AMLFTCOP. This section not only requires the FSC to monitor the compliance of its licensees but also other persons who are subject to compliance measures with the AMLFTCOP. This latter function is to be shared equally with the FIA according to section 8(2).

406. Section 27(4) of POCCA as amended by POCCAA, 2008 makes it an offence to contravene or fail to comply with a provision of the AMLTFCOP. This offence is liable on summary conviction to a fine not exceeding seven thousand dollars or to a term of imprisonment not exceeding two years or both. This penalty is applicable to a body corporate and its directors, partners or senior officers where appropriate.

407. Section 27(7) allows the AMLTFCOP in specific cases of non-compliance to create offences and impose penalties to be enforced by the FSC as administrative penalties not to exceed four thousand dollars.

408. In accordance with the above, a criminal penalty under section 27(4) of POCCAA, 2008 and administrative penalties ranging from $2,500 to $3,500 are applicable to corporations and individuals for failure to comply with or contravene appropriate provisions of sections 37 to 41 of the AMLFTCOP. These penalties are low and are not considered dissuasive by the assessment team.

Effectiveness

409. The practice in the industry suggests that the relevant requirements were satisfied as far as the team can ascertain. The mutual fund practitioners association informed that reduced CDD measures are applied to wire transfers from FATF countries. Within the banking industry, the identification process is robust. Various levels of checking are done and where the GPS system is used it automatically interfaces with SWIFT. The CDD information is done at the client acceptance stage where the name, address, sender, address of beneficiary, purpose, destination, the corresponding bank information and other customer profile information are taken. Relevant policies and procedures were in place for such transfers. Incoming wire transfers are only

accepted for existing customers with accounts. For incoming and outgoing wire transfers the relevant world-checks are completed.

3.5.2 Recommendations and Comments

410. The following is recommended;

- The AMLTFCOP should be amended to remove the possibility of identification data being destroyed five years after the last transaction of an account that has not been formally terminated.

- Account files and business correspondence should be maintained for at least five years following the termination of an account or business relationship.

- Penalties and sanctions applicable for obligations of SR VII in sections 37 to 41 of the AMLTFCOP should be dissuasive.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	**Record retention of identification data is limited to five years after the last transaction of an account rather than the termination of the account** **No requirement for account files and business correspondence to be maintained for at least five years following the termination of an account or business relationship.**
SR.VII	**LC**	**Penalties and sanctions applicable for obligations of SR VII in sections 37 to 41 of the AMLTFCOP are low and therefore not dissuasive.**

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11

411. Sections 45 (1) and (2) of the AMLTFCOP require an entity or a professional to maintain for a period of five years records on "the activities relating to complex or unusual large or unusual patterns of transactions undertaken or transactions which do not demonstrate any apparent economic or visible lawful purpose or, in relation to a customer, are unusual having regard to the customer's pattern of previous business or known sources of business". The maintenance of these records will of necessity require financial institutions to pay attention to these transactions.

412. There are requirements for the reporting and maintenance of all suspicious transactions. Regulation 15 of the AMLR provides procedures for suspicious transaction reporting. Guidance

on the types of suspicious activities or transactions is outlined in Schedule 1 of the AMLTFCOP which detail apart from others, examples of complex, unusual large transactions or unusual patterns of transactions involving money laundering (ML) that may be reported using cash, bank accounts, and investment related transactions. There is no requirement that the background and purpose of such transactions be examined and the findings set forth in writing.

413. Regulation 10 of the AMLR requires all financial institutions to maintain records of all transactions and section 44 of the AMLTFCOP stipulates the details of the transactions to be maintained. While these requirements refer to records of all transactions, there is no mention of written findings of examinations of the background and purpose of complex, unusual large transactions or unusual patterns of transactions.

414. Interviews with financial institutions indicated that monitoring of all complex, unusual large transactions or unusual patterns of transactions is routine and rigorous. The background and purpose of such transactions are investigated with regard to the customer AML/CFT risk profile and the written findings of such examinations are retained as part of transaction records.

Recommendation 21

415. Section 20 (4) (c) of the AMLTFCOP provides that in circumstances where a business relationship or transaction involves "a person who is located in a country that is either considered or identified as a high risk country or that has international sanctions, embargos or other restrictions imposed on it" it is imperative for an entity or a professional to consider such person (applicant for business/customer) to present a higher risk and ECDD must be performed in relation to the person. In providing guidance on the identification of country or geographic risks, high risk is defined to include "countries that are identified by credible institutions such as the FATF, CFATF or other regional style bodies, IMF, WB or Egmont as lacking appropriate AML/CFT laws, policies and compliance measures, or providing funding or support for terrorist activities that have designated terrorist organizations operating within them, or having significant levels of corruption or other criminal activity (such as abductions and kidnappings for ransom" The above requirement does not make provision to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries. While section 52 of the AMLTFCOP authorises the FSC to issue a list of 'recognised foreign jurisdictions' from which reliable introducers of business can be accepted, this does not satisfy the requirements of this recommendation.

416. While financial institutions are required by section 20 (4) (c) of the AMLTFCOP to carry out ECDD in relation to customers from countries which do not or insufficiently apply the FATF Recommendations, no specific requirements regarding ECDD measures are outlined in the AMLTFCOP. Section 20 (3) of the AMLTFCOP requires entities and professionals to adopt such additional measures with respect to higher risk business relationship which are necessary to increase the level of awareness of applicants for business or customers who, or transactions which, present a higher risk. This requirement is general in nature and is not specific to the FATF criterion for the examination of the background and purpose of transactions from countries which do not or insufficiently apply FATF Recommendations and making available the findings of such examinations to assist competent authorities and auditors.

417. The Virgin Islands can apply appropriate counter-measures to countries that do not or insufficiently apply the FATF Recommendations. Section 54 of the AMLTFCOP authorises counter-measures where the FSC forms the opinion that a jurisdiction in relation to which the Virgin Islands engages in business or the provision of any service through an entity or a professional;

a. does not apply or insufficiently applies the FAFT recommendations,

b. has received an unsatisfactory or poor rating from FATF, CFATF or any similar organisation reviewing the jurisdiction's anti-money laundering and terrorist financing regime, or

c. has no specific regulatory body or agency corresponding to the FSC or FIA in the Virgin Islands with respect to money laundering and terrorist financing activities.

418. The types of counter-measures applicable range from issuing advisories of non-compliance with the FATF Recommendations, applying stringent requirements for the identification and verification of applicants, requiring enhanced reporting mechanisms, limiting business relationships or financial transactions or prohibiting an entity or a professional from engaging in any kind of business relationship emanating from or relating to such jurisdiction. See Section 54 of the Code. The assessment team was advised that the FSC has not applied any counter-measures over the last four years; however it will do so if necessary.

3.6.2 Recommendations and Comments

419. The following is recommended;

- Financial institutions should be required to examine as far as possible the background and purpose of complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and to set forth their findings in writing.

- Financial institutions should be required to keep such findings available for competent authorities and auditors for at least five years.

- Effective measure should be put in place to ensure that financial institutions are advised of concerns about the weaknesses in the AML/CFT systems of other countries.

- The background and purpose of transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply the FATF Recommendations should be examined and the written findings made available to assist competent authorities and auditors.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**PC**	**Financial institutions are not required to examine as far as possible the background and purpose of complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful**

		purpose and to set forth their findings in writing. **Financial institutions are not required to keep such findings available for competent authorities and auditors for at least five years.**
R.21	**PC**	**No effective measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.** **No requirement for the examination of transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply FATF Recommendations and making available the findings of such examinations to assist competent authorities and auditors.**

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Recommendation 13

420. Section 30A of the POCCA as amended by POCCAA, 2008 makes it an offence for a person not to report to the Steering Committee, any knowledge or suspicion of money laundering acquired in the course of his trade, profession, business or employment as soon as reasonably practicable after coming to his attention. The Steering Committee referred to is that of the FIA. Reports sent directly to the FIA rather than the Steering Committee comply with this obligation. A person does not commit an offence under section 30A if he has a reasonable excuse for not disclosing the information or is a professional legal adviser and the information was obtained in privileged circumstances. Penalties applicable to this offence include on summary conviction, a fine not exceeding ten thousand dollars or imprisonment not exceeding three years or both, or on conviction on indictment, a fine not exceeding twenty-five thousand dollars or imprisonment not exceeding five years or both. Money laundering offences as defined in POCCA are applicable to all indictable offences, save for drug trafficking offences. Drug trafficking offences are predicate offences for money laundering under the DPMA. As already noted under Rec. 1, insider trading and market manipulation is not included as a predicate offence in accordance with FATF requirements.

421. Sections 17 and 18 of the AMLTFCOP require employees of an entity or a professional to report a suspicious activity or transaction to a Reporting Officer including details of information giving rise to any knowledge or suspicion. The Reporting Officer is required to make a report to the FIA of every suspicious customer or transaction relating to his entity. Additionally, the Reporting Officer is required to submit to the FIA those reports for which he/she is unable to determine that the information does not substantiate a suspicion of ML or TF and disclose in writing reasons for decisions that information does not substantiate a suspicion of money laundering or terrorist financing.

422. Article 8 of TUNMOTO provides for a limited-scope duty of disclosure. Relevant institutions which include the FSC and deposit-taking institutions commit an offence if they do not disclose to the Governor, as soon as is reasonably practicable, information on which they know or suspect

i. a person commits, attempts to commit, facilitates or participates in the commission of terrorism,

ii. a person is controlled or owned directly or indirectly by a person in (i),

iii. a person acting on behalf , or at the direction of, a person in (i),

iv. a person who has committed offences of collecting funds or making funds available for the purposes of terrorism.

423. A person guilty of an offence under article 8 is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five thousand pounds or its equivalent or to both.

424. Paragraph 1 of Schedule 1 of the ATFOMOTO extends the duty of disclosure referred to in article 8 of the TUNMOTO to make a failure to file a SAR an offence when a person in the regulated sector has knowledge or suspicion or reasonable grounds for knowing or suspecting that another person has committed an offence with regard to fund-raising, use and possession of money or other property or enters into funding arrangements for the purposes of terrorism. The SAR has to be submitted to a constable or a nominated officer, as soon as reasonably practicable after knowledge or suspicion of an offence comes to the person. Possible defences against failure to file a SAR are a reasonable excuse for not disclosing the information or other matter or if the person is a professional legal adviser and the information were obtained in privileged circumstances. A person guilty of an offence under paragraph 1 is liable on conviction on indictment, to imprisonment for a term not exceeding five years, to a fine or to both, or on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

425. The above requirements for reporting refer to the Governor in one instance and a constable or nominated officer in the other. While this could result in confusion as to the appropriate reporting agency, all interviewed institutions and persons were aware that the FIA was the sole agency for reporting all SARs. Additionally, provision is made for the defense of reasonable excuse to a prosecution of failure to report a SAR. Since the term “reasonable excuse” is not defined in statute and is therefore left to the discretion of the Virgin Islands Court, this could undermine the obligations to report SARs. The authorities should consider limiting this defense.

Attempted transactions

426. The current legislation in the Virgin Islands deals with the reporting of suspicious transactions including attempted transactions. Section 18 of the AMLTFCOP requires employees of an entity or professional to report any attempted activity or transaction to the Reporting Officer of the entity or professional. The Reporting Officer is required to determine whether there is a need to submit a report to the FIA. . In practice some members of the financial industry advised the assessment team that SARs are filed on attempted transactions

427. There are no exemptions for the reporting of suspicious transactions. The requirement to report is applicable to money laundering offences which as defined in POCCA covers all indictable offences except drug trafficking which, however, is a predicate offence for money laundering under the DPMA. As a matter of course in schedule 1 in the AMLTFCOP, there is a

comprehensive list of the types of suspicious transactions that may be applicable to the Virgin Islands.

Special Recommendation IV

428. As already noted, there is a mandatory obligation on all financial institutions in the Virgin Islands to file suspicious transactions reports where the suspicion is in relation to terrorism and the financing of terrorism as stipulated in the provisions of TUNMOTO and ATFOMOTO.

429. The financial industry and the various associations (except the Bar Association and accountants) interviewed by the assessment team, were all aware of their responsibility to file SARs to the FIA, (even in the absence of the legislation). The processes used to report SARs were consistent throughout and SARs are filed even on attempted transactions. The assessment team was advised that staff members report suspicious activity using a standard form to the compliance officer, MLRO or a centralised investigative unit as the case may be. It is the compliance officer's responsibility to file the report with the FIA within 14 days. The assessment team was informed that while senior managers were aware of the SARs generated, they cannot veto the decisions, which generally confirm the independence of the compliance function.

Recommendation 14

Safe harbour protection

430. Financial institutions and their directors, officers and employees are protected by law from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any other provision once their suspicions are reported in good faith. Section 8 (1) of the FIAA provides protection to any person, director or employee of a financial or business entity who in good faith transmits information or submits reports in accordance with financial services legislation, the CJICA, the DTOA or any other enactment dealing with mutual legal assistance. This protection relates to proceedings for breach of banking or professional confidentiality. Additionally, section 8(2) states that no civil or criminal action may be brought nor any professional sanction taken against any person who, or against any director or employee of a financial or business entity that, in good faith transmits or submits reports to the FIA.

431. The above protection is extended to the FIA, the Director, officers or personnel of the FIA or any person acting under the direction of the FIA or the Director for anything done or omitted to be done in good faith in the discharge of any functions, duties or powers under the FIAA.

Tipping off

432. Section 31 of POCCA as amended by POCCAA, 2008, makes it an offence for any person, knowing or suspecting that a member of the Reporting Authority i.e. FIA is acting or proposing to act in connection with an investigation into ML, or any action in relation to or arising from ML, to disclose information or any matter which is likely to prejudice the investigation or proposed investigation.

433. Section 31(2) of POCCA, as amended by POCCAA, 2008, makes it an offence for any person, knowing or suspecting that a disclosure has been made to the Steering Committee of the FIA, to disclose to any person information or any other matter which is likely to prejudice any investigation which may arise from the disclosure. This provision effectively covers SARs submitted to the FIA. However, the criterion requires the prohibition of tipping off in relation to a STR or related information being reported or provided. The above provision refers only to tipping off after the submission of a disclosure to the FIA and therefore does not fully comply with FATF obligations.

434. Professional legal advisers are exempt from the above provisions, once the information disclosure is done with regard to giving legal advice to a client or representative of a client in connection with legal proceedings.

Additional element

435. With regard to ensuring that the names and details of staff of financial institutions that make a SAR are kept confidential, section 9(1) of the FIAA requires any person who obtains information in any form as a result of a connection with the FIA must not disclose that information to any person except if required or permitted under the FIAA or any other enactment. Any person who contravenes this section is liable to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding one year, or to both.

Recommendation 25

436. With regard to appropriate feedback mechanisms, the FIA advised the assessment team that acknowledgement letters are sent upon receipt of any SAR to the reporting entity. The responses from the interviewed entities were split in respect to whether there was an official response from the FIA on the respective SARs. Some institutions responded positively about receiving acknowledgement from the FIA whilst others did not. Most however, reported having a good relationship with the FIA. Statistics on the number of SARs, MLATs, and letters of request and company check enquiries were presented in the annual reports for 2004 to 2006. However, there was no information on results of disclosures and typologies. Additionally, there was no information as to whether the FIA provided specific case by case feedback to the reporting entities with regard to the final determination of submitted SARs.

Recommendation 19

437. The authorities in the Virgin Islands advised that a system for reporting cash transactions above a fixed threshold was considered and deemed not appropriate for the Virgin Islands. Threshold reporting of cash transactions is not considered an effective deterrent, since the measure can be easily circumvented by engaging in several transactions below the threshold. The Virgin Islands considers the mandatory reporting of all transactions (single or linked and irrespective of the amount involved) which attract suspicion to be more feasible.

3.7.2 Recommendations and Comments

438. The following is recommended;

- The FIA annual reports should include the results of disclosure and information on typologies.

- Enact legislation criminalizing inside trading and market manipulation as predicate offences for money laundering

- The tipping off offence should be extended to include disclosure of information of the fact that a STR or related information is being reported or provided to the FIA

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**LC**	**Insider trading and market manipulation are not predicate offences for money laundering**
R.14	**LC**	**The tipping off offence with regard to STRs to the FIA is limited to after a STR has been made to the FIA**
R.19	**C**	**This recommendation is fully observed**
R.25	**LC**	**FIA annual reports do not include results of disclosure and information on typologies.**
SR.IV	**C**	**This recommendation is fully observed**

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Recommendation 15

439. A general requirement for relevant businesses to maintain internal controls and communication procedures appropriate for the purposes of forestalling and preventing ML is set out in Regulation 3(1) (a) (iv) of the AMLR. This obligation is extended under section 11 of the AMLTFCOP which requires all financial institutions to establish and maintain internal procedures and controls to prevent ML and TF. Section 11 outlines the components of an entity's or professional's written system of internal controls. Some of these components include:

a. Providing regular reviews of the risk assessment and management policies, processes and procedures;
b. Designating an individual or individuals at the level of the entity's or professional's senior management who is responsible for managing anti-money laundering and terrorist financing compliance;
c. Providing for an anti-money laundering and terrorist financing compliance function and review programme;
d. Implementing risk-based customer due diligence policies, processes and procedures;

e. Providing for additional controls for higher risk customers, transactions and products as may be necessary;
f. Measures to adequately meet record keeping and reporting requirements and provide timely updates in response to changes in regulations, policies and other initiatives relating to ML and TF;
g. Providing mechanisms for the timely identification of reportable transactions and ensure accurate filing of required reports.

440. The reporting obligation is to be supported by providing a mechanism for requisite disciplinary actions to be taken for an employee failing to report any suspicious activity or transaction relating to ML or TF. The requirement for incorporating of anti-money laundering and terrorist financing compliance in the job descriptions and performance evaluations of key staff is a measure of the importance of communicating the policies and procedures on ML and TF to employees.

441. Financial institutions in the Virgin Islands have their head offices in FATF compliant jurisdictions. Interviewed institutions indicated that they were generally equipped with the necessary internal ML and TF control procedures, policies and controls.

Appointment of AML/CFT compliance officer

442. Regulation 13 of the AMLR requires a relevant person to appoint a Money Laundering Reporting Officer (MLRO) with sufficient seniority. In accordance with regulation 13, section 16 of the AMLTFCOP requires an entity to appoint a Reporting Officer (RO) at a senior management level. The RO has the responsibility of ensuring compliance by staff with the provisions of the AMLR, POCCA, the AMLTFCOP and any other enactment relating to ML and TF; the provisions of any internal reporting and manual of compliance procedures relating to ML and TF and any additional reporting and related obligations provided in the AMLTFCOP. The RO must also act as the liaison between the relevant persons and the FIA in matters relating to compliance with the provisions of the AMLR, POCCA, the AMLTFCOP and any other enactment relating to ML and TF. Generally, based on our interviews, the financial industry in the Virgin Islands complied with this requirement.

443. Regulation 15(c) of the AMLR requires a relevant person to establish written internal reporting procedures which ensure that the MLRO has reasonable access to all relevant information which may be of assistance with ML/TF matters. Section 16(3)(c) of the AMLTFCOP states that an entity shall afford the RO direct access to the entity's senior management (including its Board of Directors or equivalent body) with respect to matters concerning the prevention of ML and TF. The extended explanation details that the RO must be placed so as to operate independently, without any undue influence and given unrestricted access to the records and Board of Directors (or equivalent body such as in a partnership) to ensure a balance and objective assessment of suspicious transactions or of customers.

444. Section 11(3) (r) of the AMLFTCOP requires an entity or a professional's written system of internal controls to include providing senior management with the means of independently testing and validating the development and operation of the risk and management processes and related internal controls to appropriately reflect the risk profile of the entity. This statement refers to risk management in general. Section 14(2)(e) of the AMLTFCOP requires senior management

of an entity to ensure that overall the entity's anti-money laundering and terrorist financing systems and controls are kept under regular review and that breaches are dealt with promptly. The requirement to provide the framework for Virgin Islands financial institutions to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures was not specifically stated.

Training

445. Regulation 16(1) of the AMLR requires a relevant person to educate and train its staff - i.e. all of its directors, partners as the case may be, persons involved in management and key staff, to ensure awareness of the provisions of the AMLR, the POCCA and the AMLTFCOP and any other enactment relating to ML and TF. This also includes awareness of relevant regional and international conventions, UN Security Council Resolutions and standards of compliance established from time to time by the CFATF, FATF and other organisations of which the Virgin Islands is a member or associate member or in which it holds observer status. Regulation 16(2) requires a relevant person to provide training for its employees with respect to its policies and procedures to detect and prevent ML and TF and its customer identification, record keeping and other procedures and such staff is to be aware of their personal liability for failure to report information or suspicions in accordance with the requirements of the AMLR, the AMLTFCOP and other enactments. It is noted that such training must be at the initial stage of employment and ongoing throughout the term of employment (regulation 16 (3) of the AMLR).

446. ML and TF training and awareness were a common feature during interviews with relevant members of the financial industry in the Virgin Islands. The assessment team noted that continued employment depended on the success of the internal ML/TF examination.

447. Section 49 of the AMLTFCOP requires an entity or a professional to assess the competence and probity of its or his employees at the time of their recruitment and at any subsequent change in role and subject their competence and probity to ongoing monitoring. The assessment team was advised by interviewed institutions that appropriate checks are carried out in order to ensure high standards when hiring employees

Additional element

448. The compliance officer is able to act independently and report to senior management above the compliance officer's next reporting level. The assessment team was satisfied from the interviews that compliance officers in the financial industry did have the required level of independence.

Recommendation 22

449. Section 53 of the AMLTFCOP requires an entity to ensure that its foreign branches, subsidiaries or representative offices observe standards at least equivalent to the AMLR and the AMLTFCOP to the extent permitted by the laws of the foreign jurisdictions. Where AML/CFT standards between the foreign jurisdiction and the Virgin Islands differ, the entity must ensure that the branches, subsidiaries or representative offices observe the higher standards established in their jurisdiction of operation.

450. There is no requirement for financial institutions to pay particular attention that consistent AML/CFT measures are observed with respect to their branches and subsidiaries in countries

which do not or insufficiently apply the FATF requirements. The Explanation to section 53 of the AMLTFCOP obliges a branch, subsidiary or representative office to advise the entity where it is unable to observe or fully implement appropriate AML/CFT measures on account of any prohibition or other restriction by the laws of its jurisdiction of operation. While this requirement refers to a branch, subsidiary or representative office advising an entity, the FATF criterion stipulates that the home country supervisor be informed. Additionally, the requirement is not enforceable, since it is stated in the Explanation part of the AMLTFCOP.

451. At the time of the mutual evaluation, no local entity had foreign branches, subsidiaries or representative offices. Most entities were branches, subsidiaries or representative offices of multinational institutions.

3.8.2 Recommendations and Comments

452. The following is recommended;

- Financial institutions should be required to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls.

- Financial institutions should be required to pay particular attention that consistent AML/CFT measures are observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations

- Financial institutions should be required to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**PC**	**Financial institutions are not required to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls.** **The recent enactment of the AMLTFCOP did not allow for assessment of the effective assessment of AML/CFT measures.**
R.22	**PC**	**No requirement for financial institutions to pay particular attention that consistent AML/CFT measures are observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations.** **No requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures.**

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Recommendation 18

453. While shell banks are not directly prohibited in law in the Virgin Islands, the requirements for the establishment and licensing of a bank effectively prevents the operation of shell banks in the jurisdiction. Section 3 of the BTCA prohibits any person or company incorporated in the Virgin Islands from carrying on banking business from within the Territory, whether or not such business is carried on within or outside the Territory, without a licence under the BTCA. Section 9 of the BTCA as amended by the Bank and Trust Companies (Amendment) Act, 2006 (BTCAA, 2006) provides that no licence can be granted to an applicant without the applicant designating a principal office in the Virgin Islands and two individuals resident in the Virgin Islands, approved by the FSC, to be that applicant's authorised agents. Additionally, section 4 of the BTCA provides for the FSC to grant banking licence once the application for licensing and the applicant satisfy the requirements of the BTCA and the regulatory codes. Furthermore, the FSC must be satisfied that the organisation, management and financial resources of the applicant are adequate and the applicant meets the FSC's fit and proper criteria. On the basis of this provision the FSC ensures that all applicants for banking licence have appropriate mind and management in the Virgin Islands.

454. The above procedures are in accordance with the official government policy on banking as stated in the guidelines issued by the Executive Council of the Virgin Islands on 26 November 1993. The guidelines deal with the issue of bank licences to operate within or from within the Virgin Islands. The policy with respect to bank licensing, except where the bank is predominantly locally owned and primarily doing business within the Territory is that full banking activities or offshore banking will only be permitted by branches or subsidiaries of banks with a well established and proven track record and which are subject to effective consolidated supervision by their supervisory authority.

455. Banks will only be granted a licence if their place of incorporation, mind and management are within the same jurisdiction or, in the case of a subsidiary, if the mind and management are located in the jurisdiction in which consolidated supervision is being exercised. The licensing authority, i.e. the FSC, in assessing licence applications have established minimum criteria which include, among others, management must have proven experience in banking; controllers must be fit and proper; institution must have an appropriate and sustainable business plan; adequate capital and resources, etc.

456. Section 34(1)(a) of the AMLTFCOP prohibits entities from entering into, or maintaining a correspondent relationship with a shell bank or any other bank, unless satisfied that the bank is subject to an appropriate level of regulation. Section 35(1) of the AMLTFCOP prohibits banks from entering into or maintaining a relationship with a respondent bank that provides correspondent banking services to a shell bank.

3.9.2 Recommendations and Comments

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**C**	**This recommendation is fully observed**

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs Roles, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)

3.10.1 Description and Analysis

Designated supervisory authorities

457. Under the POCCAA 2008, the AMLR and the AMLTFCOP, the full range of financial institutions envisaged by the FATF Recommendations are subject to a comprehensive range of AML/CFT preventative measures including CDD, record keeping, monitoring, STR reporting, internal controls and employee training.

458. The FSC is the competent authority that monitors AML/CFT compliance by financial institutions and DNFBPs who provide financial services, pursuant to the section 4 (1) of the FSCA. The FSC was established in January 2002, as a body corporate whose main functions as outlined in section 4 (1) under the FSCA are as follows:

a) To supervise and regulate licensees in accordance with the FSCA, the financial services legislation and the Regulatory Code

b) To monitor and regulate, in accordance with relevant financial services legislation, financial services business carried on in or from within the Territory;

c) To take action against persons carrying on unauthorised financial services business in or from within the Territory;

d) To receive, review and determine applications for licenses;

e) To monitor compliance by licensees and by such other persons who are subject to them with the AMLTFCOP and with such other Acts, regulations, codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed.

459. The FSC's supervisory function relates to the financial institutions that are subject to financial services legislation listed in Schedule 2 of the FSCA and includes the following;

i. BTCA

ii. CMA

iii. IA

iv. MFA

v. POCCA

vi. Insolvency Act, 2003

460. The FSC also incorporates the Registry of Corporate Affairs which deals with the incorporation and registering of legal persons. A proposed FMSA is to be enacted shortly for the licensing and regulation of financing business i.e. financing leases and money services business.

Recommendation 30

Structure and resources of supervisory authorities

461. The FSC is responsible under the regulatory laws for all licensing, enforcement and administrative decisions with respect to all relevant financial services businesses. The FSC is governed by a Board of Commissioners composed of a managing director as an *ex officio* commissioner and not less than four or more than six additional commissioners, one of whom shall be from outside the Territory. All of the members are appointed by the Cabinet and no FSC commissioner may be a member of the Cabinet or the House of Assembly. All members must satisfy the 'fit and proper' test and have relevant experience and expertise.

462. The Managing Director/CEO is an employee of the FSC appointed on such terms and conditions of service as the Board of Commissioners, after consultation with the Minister (of Finance), may decide. The appointments of the members of the Board of Commissioners, with the exception of the Managing Director, are limited to three years. The Cabinet may by written notice terminate the appointment of any commissioner who, for example, becomes of unsound mind or incapable of carrying out his duties, becomes bankrupt, is convicted of an offence involving fraud or dishonesty, or is guilty of serious misconduct in relation to his duties. The Governor may also terminate the appointment of any commissioner in the public interest.

463. Under the FSCA, two committees of the FSC were established: the Licensing and Supervisory Committee and the Enforcement Committee. Section 16 (1) of the FSCA empowers the Licensing and Supervisory Committee to exercise, on behalf of the FSC, the following functions:

a) To receive, review and determine applications for licences;

b) To supervise licencees to ensure that they continue to satisfy the fit and proper criteria for the conduct of financial services business; and

c) To publish the names of persons who have been granted licences.

464. The Committee comprises the Managing Director as Chairperson, the Deputy Managing Director, the Heads of the regulatory and supervisory divisions, and such other senior officer of the FSC as the Managing Director may designate with the approval of the Board. The Committee decides licence applications on the recommendations of the regulatory and supervisory divisions.

465. The Enforcement Committee comprises the Managing Director, the head of the division of the FSC having responsibility for enforcement and such other senior officers of the FSC as the

Board may appoint. The main functions of the Enforcement Committee are to consider and determine the exercise by the FSC of its powers to take enforcement action under Part V of the FSCA or pursuant to any financial services legislation and to report to the Board all enforcement action taken by the FSC.

466. The day-to-day operational authority of the FSC is vested in the Managing Director and he is assisted by two Deputy Managing Directors. The Managing Director reports directly to the Board of Commissioners and in turn has oversight of five FSC executives - two Deputy Managing Directors, Director of Legal & Enforcement, Director of Policy, Research & Statistics, and the Head of Human Resources. The Heads of Corporate Services, Information Technology/ Operations, Corporate Communications, and Finance and General Administration report to the Deputy Managing Director Corporate Services. The Heads of the regulatory divisions report to the Deputy Managing Director Regulation.

467. FSC's regulatory functions are carried out by professional staff in four regulatory and supervisory divisions (Banking and Fiduciary, Investment Business, Insurance, and Insolvency Services); three non-supervisory divisions (Policy Research and Statistics, Legal and Enforcement, and Registry of Corporate Affairs); and four support units (Finance, HR, Corporate Services and IT).

468. The FSC is funded independently from revenues generated from operations. The Commission retains between 7% and 15% of revenues generated. Over the last four years revenue retained by the FSC amounted to:

Table 14: FSC Revenue Retained ($US million)

	Unaudited 2007	**Audited 2006**	**Audited 2005**	**Audited 2004**
Total Retention	18,688,826	16,177,107	14,897,455	12,230,662

469. This level of independence allows for growth and efficient decision making. The FSC indicated that there is flexibility in hiring and firing. The FSC has a current staff of 128 persons distributed amongst 12 Divisions and/or departments. The FSC felt that the staff complement was adequate as resources are pooled to obtain the Commission's objectives and adequate flexibility in hiring does exist.

Table 15: FSC's staff complement

Division	**# of Employees**
Banking & Fiduciary Services	9
Insolvency Division	5
Insurance Division	8
Investment Business	9

Legal & Enforcement	6
Policy Research & Statistics	5
Registry of Corporate Affairs	57
Corporate Services	9
Finance	7
Human Resources	3
Information Technology	8
Managing Director's Office	2
TOTAL	**128**

470. Staff of the FSC are required to subscribe to an Oath of Confidentiality as provided in Schedule 3 of the FSCA and must be duly qualified, and fit and proper to hold the various posts within the FSC.

471. In addition to in-house training sessions organised throughout the year, staff have been exposed to AML/CFT training workshops and seminars held regionally and internationally. Some members of staff have either acquired or are engaged in acquiring the Association of Certified Anti-Money Laundering Specialists (ACAMS) certification.

Recommendation 29

Authorities Powers and Sanctions

472. The FSC has a broad range of powers to monitor and ensure financial institutions' compliance with AML/CFT measures which include off-site surveillance and on-site prudential visits and inspections. The FSC utilises a risk based approach in developing its onsite inspection programme. A risk questionnaire is sent out to all licensees and forms the basis for assessing priority for onsite inspections.

473. Sections 41 and 41A of the FSCA permit the FSC to issue Regulatory Codes or Guidelines with respect to conduct required of licensees and officers and agents of licensees and conduct expected of financial institutions in the operation of their licensed businesses, respectively. Section 27 of POCCA empowers the FSC in collaboration with JALTFAC to issue the AMLTFCOP for the purpose of giving practical guidance on issues relating generally to money laundering and financing of terrorism.

474. Section 35 of the FSCA empowers the FSC to inspect relevant persons which are defined as licensees, former licensees or the subsidiary or holding company of a licensee or former licensee. The FSC can also conduct compliance inspections for the purpose of monitoring and assessing a relevant person's compliance with the requirements of and its obligations under the AMLTFCOP and with such other Acts, regulations, codes or guidelines relating to money

laundering or the financing of terrorism as may be prescribed. This duty is carried out primarily in each of the FSC's supervisory divisions as part of the off-site and on-site monitoring and inspection processes.

475. During on-site inspections, FSC staff: review the written AML/CFT policies and procedures in place; review the Board of Directors' minutes, assess compliance with internal and regulatory policies; and perform a customer due diligence review by sampling a number of client files and conducting transaction testing and assess training of staff

476. The assessment team was informed by the majority of the interviewed parties that they have been inspected at least once during the last four years. During these examinations it was clear that the FSC reviewed the policies, procedures, books and records which included AML/CFT methods and did some transaction testing. The majority informed the assessors that although the relationship with the FSC was satisfactory, some reports were subject to delays in completion. Over the last four years the following on-site examinations were undertaken:

Table 16: FSC's On-Site Inspections 2004 -2007

Division	2004	2005	2006	2007
Banking	0	1	1	0
Fiduciary	5	5	12	14
Insurance	1	13	16	13
Mutual Funds	0	0	0	0
Money Remitters	0	0	0	0
Total	6	19	29	17

477. On site inspections have increased from 2004 to 2007, especially in the fiduciary services and insurance divisions. This is still unsatisfactory however, as only two out of a total of nine banks were examined during the period. It was noted that there were no on-site visits on mutual funds, managers or administrators. With regard to registered agents the FSC completed a total of 41 inspections during the years 2004-2007 representing 37% of registered agents accounting for only 25% of the total number of registered companies. It is clear that more on-site supervision of all regulated entities is necessary to ensure that the financial landscape remains free from unlawful activities relating to financial services business. This requirement is necessary for the following reasons:

- the rapid changes in the financial industry over the last four years,
- the number of licensed entities not inspected and the frequency of the inspection. Many of the companies interviewed by the assessment team either were recently inspected for the first time or not at all.

478. Implementation of the on-site inspection process has also been a challenge for the FSC where a licensee conducts more than one regulated activity (for e.g. holding a multiple licence) - fiduciary and investment business. To deal with this challenge, the FSC supervisory staff have been exposed to cross training in different business activities and all are trained in AML/CFT on-site inspection.

479. The FSC currently utilizes *KReview*, onsite inspection software, to conduct onsite inspections of entities regulated under Virgin Islands financial services legislation. Within the *KReview* questionnaire, there is a section that specifically addresses AML requirements. This section contains approximately 13 sub-headings, which are reviewed to determine the licensee's compliance primarily with the AML Code of Practice, 1999, as well as prudential standards and international best practices.

480. If a regulated entity is found to be in compliance with the AML Code of Practice, 1999 a rating of "Satisfactory" is awarded. However, if there are some deficiencies, a rating of "Room for Improvement" may be applied, and for significant breaches, a rating of "Unsatisfactory" would be applied. The final report, which is prepared subsequent to the conclusion of an onsite inspection, is issued on a qualified basis, i.e., corrective actions are issued for areas that are rated "Room for Improvement" or "Unsatisfactory". Below, is a table of the sub-headings and the relevant section(s) of the AML Code of Practice, 1999.

Table 17: Excerpt of Sub-Headings contained in KReview

Anti-money laundering (onsite)	
Compliance Officer	Not Rated*
Internal testing	AML Code s 12(2)(e)
Identification procedures (new & continuing business relationships and one-off transactions)	AML Code s 4 & 5
Identification procedures (introduced persons)	AML Code s 4 & 5
Suspicious transactions procedures	AML Code s 3(3), 14(1)
Records, recordkeeping and retrieval	AML Code 7
Registers	AML Code 11 & 14(2)
Overseas interests	Prudential standards – CFATF or FATF jurisdictions
Staff recruitment	International best practices
Staff education and training	AML Code s 15 & 16
Offences and penalties (understanding of)	AML Code s 18 & 13(2)
Client file review	AML Code s 4, 5, 6, 9(1), et. al.
Cooperation by Licence-holder	Internal rating assessment

481. The register of inspections conducted in 2005 - 2007 and the relevant ratings showed that many of the sub-headings contained in KReview were rated satisfactory. The few 'room for improvement' ratings were mainly in the areas of identification procedures, suspicious transaction procedures, and client identification records. Internal testing had the highest level of unsatisfactory ratings.

Powers to compel production of or obtain access to information

482. Under various provisions of the FSCA, the FSC may require the provision of any information or the production of any documents that may be reasonably required in connection with the FSC's regulatory functions, including internal audit reports. This authority may be exercised with respect to: a) a regulated person, b) a person connected with a regulated person, c) a person carrying on financial services business and d) a person reasonably believed to have information relevant to an enquiry by the FSC. The FSCA also gives the FSC authority to exercise these powers at the request of or on behalf of an overseas regulatory authority.

483. Section 37(1) (a) gives the FSC the power to take enforcement action against a regulated person, if amongst other things the regulated person has contravened, or is in contravention of the Regulatory Code or such other enactments or Guidelines relating to money laundering. Failure to comply with a request for information or records from the FSC pursuant to the FSCA is an offence. In the event of a failure to provide information, the FSC may impose administrative penalties or costs, initiate investigations or, in the case of a company, apply to the court for the appointment of a liquidator in respect of the company.

484. The record keeping requirements, together with various access provisions for the benefit of both law enforcement and regulatory authorities, ensure that both customer and transaction records are accessible and available to the FSC as required. Based on the interviews with the financial institutions requests for information from the FSC was given immediate priority by all, as the FSC is well respected in the Virgin Islands.

485. Sections 37(Enforcement), 38(Revocation) 40(power to issue directives) and 32(power to request documents and information) of the FSCA grant substantial powers to the FSC to ensure compliance by financial institutions with relevant AML/CFT matters. Specifically, these sections state:

486. Section 37(1) states amongst other things that the FSC may take enforcement action against a regulated person if, in the opinion of the FSC, the regulated person

i. has contravened or is in contravention of the FSCA, a financial services legislation, practice direction or the Regulatory Code;
ii. has contravened or is in contravention of the Anti-Money Laundering Code of Practice, 1999 (since succeeded by the AMLR) or such other enactments or Guidelines relating to money laundering or the financing of terrorism.;

487. Section 38 states that the FSC may at any time revoke or suspend the licence or certificate of a regulated person if

a) it is entitled to take enforcement action against the regulated person under section 37;
b) the regulated person has failed to commence or ceased to carry on the financial services business for which it was licensed;

488. Section 40 (1) states that the FSC may, amongst other things issue a directive

a) Imposing a prohibition, restriction or limitation on the financial services business that may be undertaken by the licensee, including

   i. That the licensee shall cease to engage in any class or type of business; or

   ii. That the licensee shall not enter into any new contracts for any class or type of business;

489. The FSC also has the power to request information and documents under Section 32(1). In addition, section 3 of the Financial Services Administration Penalties Regulation 2006, gazetted in January 2007, gives the FSC power to impose administrative penalties if the FSC considers that a licensee has contravene a provision of the FSCA or any regulatory legislation, Code or any directive issued by the FSC.

490. Over the last four years the following numbers of enforcement actions were taken in relation to the areas identified:

Table 18: Enforcement Actions Taken by the FSC

Financial Institutions	2004	2005	2006	2007
Bank and Fiduciary	4	4	8	6
Insurance	0	1	4	7
Mutual Fund (Investment Business)	12	2	8	1
Money Remitters	0	0	0	0
Total	16	7	20	14

Recommendation 17

Sanctions

491. In general, criminal sanctions are available for offences under the POCCA and DTOA and their respective amendments, TUNMOTO, ATFOMOTO and ATUNMOTO and are applicable to all natural and legal persons. These sanctions are discussed in section 2 of this report. The FSCA authorises the FSC to apply the relevant sanctions as noted under Recommendation 29. The sanctions allow for enforcement actions, revocation or suspension of licences and the imposition of prohibitions, limitations or restrictions.

492. The sanctions for non-compliance with AML/CFT obligations in the AMLTFCOP are specified in section 13 of the POCCAA, 2008 which states that a person who fails to comply with or contravenes a provision of the AMLTFCOP commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars or to a term of imprisonment not exceeding two years or both. Where a body corporate commits an offence under the above provision, every director, partner or other senior officer of the body corporate shall be proceeded

against as if the director, partner or other senior officer committed the offence and is liable on conviction to the penalty prescribed in the above provision. These sanctions can only be imposed by the court through proceedings brought by the DPP.

493. Additionally, there is a provision which allows for the AMLTFCOP in specific cases of non-compliance with or contravention of the provisions of the AMLTFCOP to create offences and impose penalties to be enforced by the FSC as administrative penalties which do not exceed four thousand dollars. Offences and corresponding administrative penalties are detailed in Schedule 2 of the AMLTFCOP. Due to recent enactment of the AMLTFCOP, there have been no instances requiring impositions of the relevant fines on financial institutions for non-compliance.

494. Sanctions for non-compliance with the requirements of the AMLR are specified in regulation 17 which states that a person who fails to comply with the requirements of the AMLR or any directive issued pursuant to regulation 14(2) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars and on conviction on indictment to a fine not exceeding fifteen thousand dollars. Where an offence under the AMLR has been committed by a body corporate, section 22(2) of the Interpretation Act shall apply. As already noted with the AMLTFCOP, these sanctions can only be imposed by the court through proceedings by the DPP.

495. Money penalties applicable for offences under the AMLTFCOP and the AMLR, ranging from $4,000 to $15,000 are considered too low to be dissuasive to financial institutions operating in the Virgin Islands.

496. Sanctions are available not only in relation to the legal persons that are financial institutions or businesses but also to their directors and senior management. As already noted the range of sanctions available under the FSCA is broad.

Recommendation 23

Market entry

497. The maintenance of a 'fit and proper' environment is essential to the Virgin Islands in ensuring that business activities are conducted in accordance with high standards. The FSC has this overall responsibility under the FSCA for ensuring that regulated entities and approved persons[8] are equipped to conduct business activities in and from within the Virgin Islands. The relevant part of Section 14 of the FSCA states that the FSC has a Licensing and Supervisory Committee[9] and Section 16 (1) specifically outlines the functions of the Licensing and Supervisory Committee, one of which is to supervise licensees to ensure that they continue to satisfy the fit and proper criteria for the conduct of financial services business. In order to fulfil the fit and proper function, the FSC applies the 'Guidance Notes on Fit and Proper Test' 2003, as amended in 2008. It is documented in each separate financial services Act that the FSC is

[8] In part I of the Guidance Notes on Fit and Proper Test an "approved person" is described as a person required to be approved under financial services legislation.

[9] See above

empowered to approve management and shareholders and the basis for such approval is a fit and proper test.

498. The "Fit and Proper Test" is applied to the regulated entity, as well as its approved persons at application stage and on an ongoing basis. Any material changes in the circumstances of the regulated entity of approved person subsequent to the FSC's approval should be communicated to the FSC. The fit and proper criteria used by the FSC are

a) honesty, integrity and reputation
b) Competence and capability
c) Financial Soundness

499. In assessing a) above in relation to an entity, the FSC considers among other things, whether the regulated entity has been convicted, or is connected with a person who has been convicted, of any offence, particularly an offence involving dishonesty, fraud or financial crime, or has been subject to any pending criminal or civil proceedings that may lead to a conviction by any court in the Virgin Islands or elsewhere.

500. In assessing a) above in relation to an approved person, the FSC considers among other things, whether the approved person has been

a) dismissed or asked to resign from employment, a position of trust or a fiduciary or similar appointment;
b) disqualified from acting as a director or in any managerial capacity, is the subject of any proceeding of a disciplinary or criminal nature or has been notified of any potential proceedings or investigation which might lead to such proceedings; or
c) a director, partner or concerned in the management of a business that has gone into insolvency, liquidation or administration while the approved person has been connected with that organisation or within one year of such connection.

501. The FSC supervises and monitors financial institutions in the Virgin Islands in compliance with the Core Principles of prudential regulation as well as compliance with AML/CFT legislation. The regulatory and supervisory measures that apply for prudential purposes are also relevant to AML/CFT.

Money Services Business (MSB)

502. The FMSA is due to come into effect in 2008. It outlines the licensing requirements for MSBs in the Virgin Islands. At the time of the assessment, the money remitters in the Virgin Islands were not subject to supervision[10]. MSBs provide the following services:

(i) money transmission services
(ii) cheque cashing services
(iii) currency exchange services

[10] In the Anti Money Laundering Code of Practice 1999, the definition of regulated persons included activities involving money transmission services and activities involving the remittance of Telegraph Money Order under the post office (Telegraph Money Order) Rules, 1934

(iv) the issuance, sale and redemption of money orders or traveller cheques; or
(v) such other services as may be specified in the regulations;

or they may be operating as an agent or franchise holder of a person carrying on a business specified in the previous paragraph.

503. Post offices in the Virgin Islands are allowed to transfer only up to a maximum of USD 1,000. The post offices operated by the Government are however exempt from licensing under this new Act, but are not exempt from complying with the requirements of the AMLTFCOP. According to Schedule I in the MSB Act, 2007, a Post Office that performs money services business should provide the FSC with a written notice on such business. The assessment team was informed that the MSBs AML/CFT supervisory function will be undertaken by the Banking and Fiduciary Services Division of the FSC.

504. The FSC has sensitized the licensees on a risk based approach to applying AML/CFT measures to their customers. The AMLTFCOP covers prudential as well as ML and TF purposes and adopts a risk based approach for managing the risks that are associated with ML and TF. It also supplements several pieces of legislations including the POCCA and the FSCA.

Statistics

505. The number of financial institutions under the supervisory regime of the FSC at the time of the mutual evaluation consisted of 9 banks, 7 authorised custodians, 2,731 registered mutual funds, 462 mutual fund managers, 36 administrators, 47 managers/administrators, 392 captive insurers, 31 domestic insurers, 20 insurance managers and 15 insolvency practitioners.

506. The low number of onsite examinations as revealed in table 16 in relation to the total number of financial institutions demonstrates ineffective inspection coverage by the FSC and is probably the result of an inadequate number of staff.

Recommendation 25

507. The Joint Anti-Money Laundering Co-ordinating Committee (JAMLCC) which was formed in 1998[11], drafted the GN which was still enforced at the time of the mutual evaluation. The GN did not have the force of law until December 1, 2006. On February 8 2008, the POCCAA, 2008, was gazetted allowing for the issuance of a new Code of Practice, the AMLTFCOP similar to the GN. The AMLFTCOP has the force of law. The AMLFTCOP was drafted and issued by the FSC in collaboration with JALTFAC. It stipulates preventive AML/CFT measures for financial institutions and DNFBPs. The Non-Financial Business (Designation) Notice, 2008 designates additional entities (engaged in the buying and selling of boats, vehicles, jewellery and other high valued goods) that are classified as vulnerable to money laundering and terrorist financing activities and therefore subject to the AMLTFCOP.

[11] This Committee was formed to bring together key members of the public and private sectors to develop written guidance notes on AML.

508. Included in the AMLFTCOP are:

a) Description of all three stages of ML and TF techniques and methods
b) Duties of the FIA
c) Establishing internal control systems
d) Shell banks and Correspondent banking relationships
e) Wire transfers
f) Record Keeping requirements
g) Employee training
h) Miscellaneous
    a. Information exchange between public authorities
    b. Information exchange with private sector
    c. Recognised foreign jurisdictions
    d. Obligation re foreign branches, subsidiaries
    e. Application of counter measures
    f. Form of report
    g. Guidance on the types of suspicious activities or transactions
    h. Offences and penalties
    i. Revocation and transitional

3.10.2 Recommendations and Comments

509. The following is recommended;

- Review sanctions imposed in the AMLR and the AMLTFCOP with a view to making them dissuasive.
- FSC should review present staff complement with a view to improving supervisory coverage
- The FMSA should be enacted as soon as possible.

3.10.3 Compliance with Recommendations 23, 30, 29, 17, 32, & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**PC**	**Sanctions imposed in the AMLR and the AMLTFCOP are not dissuasive.**
R.23	**PC**	**Money value transfer service operators are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements** **Effective supervision by FSC is limited by quantitatively inadequate human**

		resources.
R.25	**LC**	**Unable to assess effective implementation of the AMLFTCOP due to recent enactment**
R.29	**C**	**This recommendation is fully observed.**

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

510. The FMSA was due to be enacted early in 2008. It outlines the licensing requirements for MSB carried on in the Virgin Islands. At the time of the assessment, money remitters in the Virgin Islands were not subject to supervision[12]. With the enactment of the FMSA, application for a licence may be made to the FSC by a Virgin Islands business company or a foreign company. Failure to obtain a licence will be an offence punishable on summary conviction to a fine of USD 50.000 or imprisonment for two years or both.

511. In the Virgin Islands, MSBs as defined in Section 6 of the FMSA provide the following services:

(i) money transmission services
(ii) cheque cashing services
(iii) currency exchange services
(iv) the issuance, sale and redemption of money orders or traveller's cheques; or
(v) such other services as may be specified in the regulations;

or they may be operating as an agent or franchise holder of a person carrying on a business specified in the previous paragraph.

512. The post offices operated by the Government are exempt from licensing under this new Act, but not exempt from complying with the requirements of the AMLTFCOP. According to Schedule I in the FMSA, a post office that performs money services business should provide the FSC with a written notice on such business. The assessment team was informed that the post offices in the Virgin Islands are allowed to transfer only up to a maximum of USD 1.000.

513. With respect to money services business of a post office however sections 18, 19(1)(a) and (b) and 19(3) and (4) of the FMSA apply. Section 18 outlines the management systems and controls and Section 18(1)(a) of the FMSA requires that a licensee shall maintain a clear and appropriate apportionment of significant responsibilities among its directors, senior officers and key functionalities so that it is clear who has which responsibilities.

[12] In the Anti Money Laundering Code of Practice 1999, the definition of regulated persons included activities involving money transmission services and activities involving the remittance of Telegraph Money Order under the post office (Telegraph Money Order) Rules, 1934

514. Section 19(3) and (4) states that the Regulatory Code may prescribe (a) the form and manner in which the records specified in subsections (1) and (2) and other records are to be maintained. Furthermore, a licensee must retain the records for a period of at least six (6) years

515. Once the FMSA is enacted, the MSBs will be subject to the same measure of supervision including fit and proper test on the applicant, senior officers, directors and any person having a significant interest[13] in the applicant. As with other licensees, filing of returns and on-site inspection will be undertaken. The MSBs' AML/CFT supervisory function will be undertaken by the FSC Banking and Fiduciary Services Division. It should be noted that the FMSA does not include a requirement for each licensed or registered money value transfer operator to maintain a current list of its agents which must be made available to the designated competent authority.

516. MSBs are covered by the AMLTFCOP by virtue of their being designated as relevant (money) services business. As such the AMLTFCOP implementing SRVII in relation to wire transfers also applies to MSB's. As already mentioned, the AMLTFCOP took effect in 2008 and as such imposition of sanctions and/or implementation of FATF requirement SRVII has not been tested. Additionally it should be noted that the deficiencies noted in relation to Recommendations 5-11, 15, 17 and 21-23, also apply to the MVT sector.

3.11.2 Recommendations and Comments

517. The following is recommended:

- The FMSA should be enacted as soon as possible.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**NC**	**No requirement for a competent authority to register and/or licence natural and legal persons that perform money or value transfer services and maintain a current list of the names and addresses of licenced and/or registered MVT service operators.** **No system in place for monitoring MVT service operators and ensuring that they comply with the FATF Recommendations** **No requirement for MVT service operators to maintain a current list of agents which must be made available to the designated competent authority.** **Deficiencies noted in relation to Recommendations 5-11, 15, 17 and 21-23, also apply to the MVT sector.**

[13] Five percent or more of the voting rights or a share of five percent or more in any distribution made by a MSB licensee or in any distribution of the surplus assets.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

General Description

518. The definition of regulated person as contained in the AMLTFCOP includes provisions for DNFBPs. The DNFBP's in the Virgin Islands are 18 company managers, 208 trust and company service providers, 125 lawyers/legal practitioners, 26 accountancy firms and large scale individual businesses, 19 book-keeping services, 95 real estate agents, brokers and managers and 17 dealers in precious metals and stones. As mentioned in section 1 of this report, while gaming is prohibited in the Virgin Islands under the CC, the AMLR and the AMLTFCOP include this activity in the definition of relevant business. The assessment team was advised that there were no official gambling businesses in the Virgin Islands.

519. Section 13 of the POCCAA, 2008 extends the coverage of the AML/CFT regime to include other DNFBPs such as real estate agents, entities engaged in the managing of client monies, securities or other assets, the management of bank, savings or securities accounts, the organisation of contributions for the creation, operation or management of companies, the creation, operation or management of legal persons or arrangements and the buying and selling of business entities. It should be noted that of the DNFBPs only company managers and trust and company service providers as licensees of the FSC are actively monitored and supervised for compliance with AML/CFT requirements.

520. The customer due diligence requirements and measures, the record-keeping and transaction monitoring requirements applicable to financial institutions in the ALMR and the AMLTFCOP are also applicable to the DNFBPs. (See Section 3) of this report.

4.1 Customer due diligence and record-keeping (R.12)
(applying R.5, 6, 8 to 11,)

4.1.1 Description and Analysis

521. Every entity[14] and professional[15] is required to fully comply with the AMLTFCOP which provides the minimum requirements in relation to the compliance obligations relating to money laundering and terrorist financing. Therefore, the assessment of CDD measures as indicated in section 3 of this report is also applicable to DNFBP's.

[14] "Entity" means a person that is engaged in a relevant business within the meaning of regulation 2(1) of the AMLR and, a person that is regulated by the FSC, and a business designated under the Non - Financial Business (Designation) Notice, 2008

[15] "Professional" means a person, not otherwise functioning as a body corporate, partnership or other similar body, who engages in a relevant business within the meaning of regulation 2(1) of the AMLR, or engages in a business that is designated as a non-financial business by the FSC in the Non Financial Business (Designation) Notice 2008.

4.1.2 Recommendations and Comments

522. Deficiencies identified for all entities and professionals as noted for Recommendations 5, 6, 8-11, in the relevant sections of this report are also applicable to DNFBPs. Implementation of the specific recommendations in the relevant sections of this report will also apply to DNFBPs.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**PC**	**Due to the recent enactment of the AMLTFCOP and the AMLR, effective implementation of AML/CFT measures cannot be assessed** **Deficiencies identified in Recs. 5,6, 8 – 11, are also applicable to DNFBPs**

4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15, & 21)

4.2.1 Description and Analysis

523. Suspicious transaction reporting requirements for DNFBPs are stated in sections 18, and 30 (A) of the POCCAA 2008, and section 13(2)(d) of the AMLTFCOP. An entity or a professional is required to recognise and report to the Steering Committee[16], a transaction which raises a suspicion that the money involved may be proceeds of criminal conduct, drug trafficking or drug money laundering or may be related to the financing of terrorist activity.

524. The internal procedures and controls to prevent AML/CFT as described for financial institutions are the same requirements for the DNFBPs. Part II Section 11(1) of the AMLFTCOP states that an entity or a professional shall establish and maintain a written and effective system of internal controls which provides appropriate policies, processes and procedures for forestalling, and preventing money laundering and terrorist financing. Section 11(3)(r)details that the internal controls system shall include the ability of senior management to independently test and validate the development and operation of the risk and management processes and related internal controls to appropriately reflect the risk profile of the entity. Many of the institutions in the Virgin Islands indicated in our interviews, that they do have in place internal controls and procedures to prevent AML/CFT.

525. While section 20 (4)(c) of the AMLTFCOP requires entities or professionals to effectively apply ECDD on customers from countries of high risk i.e. countries identified by credible institutions such as the FATF, CFATF or other regional bodies, IMF, WB or Egmont as lacking appropriate AML/CFT laws, policies and compliance measures, there is no provision to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries. The FSC informed the assessment team that it will apply countermeasures on non-compliant FATF countries when necessary. The list of prohibited persons and organisations promulgated by the UN Sanctions Committee is given legal effect in the Virgin Islands.

[16] The Steering Committee of the FIA established under Section 3(3) of the FIA Act, 2003

526. The requirements in relation to Recommendation 13, as indicated in section 3 of this report are also applicable to DNFBPs. There were no changes or differences of approach in applying R. 13 to DNFBPs' categories. The legal professional privilege issue does not influence the reporting of SARs.

527. As indicated in section 3 of this report, SARs are required to be filed with the FIA only.

528. The reporting requirement is extended to the rest of the professional activities of accountants including auditing. Generally, the independent professional bodies were aware of their SAR reporting requirement. Our interview with representatives of a major accountancy firm indicated ignorance with the requirement to report AML/CFT breaches to the relevant authority. The requirement for auditors to do so is only in respect to authorised custodians who must produce a compliance certificate in accordance with the AML/CFT guidelines. Auditors are required to report any unusual transaction or any breach in the Virgin Islands legislation immediately. Based on the statistics provided on SARS filed, none was received from the accountancy body. The assessment team was informed that the AML/CFT audit is basically outside the range of a financial audit.

4.2.2 Recommendations and Comments

529 The deficiencies identified with regard to Recs. 13 to 15, and 21 are also applicable to DNFBPs. Implementation of the specific recommendations in the relevant sections of this report will also apply to DNFBPs.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**	**Due to the recent enactment of the AMLTFCOP and the AMLR, effective implementation of AML/CFT measures cannot be assessed** **Deficiencies identified in Recs. 13 to 15 and 21 are also applicable to DNFBPs**

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

530. Casinos (including internet casinos) are not a legal form of business activity under Virgin Islands legislation. See prohibition against gambling in section 301 of the CC. While there is provision in the AMLR and the AMLTFCOP for gaming to be included in the AML/CFT regime, there is no official gaming operations in the Territory.

531. As at the assessment date, while DNFBPs like the real estate agents, lawyers, other independent legal advisers, accountants, dealers in precious metals and stones were covered by the AML/CFT regime, there were no effective systems for monitoring and ensuring compliance with AML/CFT requirements. As stated in section 3 of this Report, the FSC is responsible for the supervisory regime for financial services business in the Virgin Islands. Therefore, only licensed

DNFBP's like trust and company service providers were subject to the full scope of FSC's regulatory powers and sanctions. Deficiencies identified regarding sanctions and sufficient resources for the FSC would also be applicable to the supervision of DNFBPs.

532. The POCCAA 2008 and the AMLTFCOP are now enforceable on all DNFBPs. Furthermore, given that Section 4 of the FSCA provides that one of the functions of the FSC is: "to monitor compliance by licensees, and by such other persons who are subject to them, with the POCCAA 2008 and with such other Acts, regulations, codes or guidelines relating to money laundering or the financing of terrorism as may be prescribed", the FSC is now also responsible for ensuring that real estate agents, brokers and lawyers dealing with real estate transactions comply with AML/CFT measures.

Recommendation 25

533. All financial institutions and DNFBPs are subject to the requirements of the AMLTFCOP which have the force of law in the Virgin Islands. The AMLTFCOP establishes AML/CFT techniques and methods and measures that DNFBPs could take to ensure that their AML/CFT measures are effective. The AMLTFCOP outlines the duties of the FIA and FSC with respect to AML/CFT monitoring. It also states that an entity or a professional shall establish internal systems and controls which provide appropriate policies, processes and procedures for forestalling, and preventing money laundering and terrorist financing (*See Section 11 (3)).* The AMLTFCOP also gives guidelines on CDDs, PEPs, shell banks and correspondent banking relationships, wire transfer, record keeping, and guidance on the types of suspicious activities or transactions and recognised foreign jurisdictions.

4.3.2 Recommendations and Comments

534. The following is recommended;

- Effective systems for monitoring and ensuring compliance with AML/CFT requirements by real estate agents, lawyers, other independent legal advisers, accountants, and dealers in precious metals and stones should be implemented.

- Deficiencies identified regarding sanctions and sufficient resources for the FSC should be remedied.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**PC**	**While DNFBPs like real estate agents, lawyers, other independent legal advisers, accountants, dealers in precious metals and stones were covered by the AML/CFT regime, there were no effective systems for monitoring and ensuring compliance with AML/CFT requirements.** **Deficiencies identified regarding sanctions and sufficient resources for the FSC are also applicable to the supervision of trust and company service providers.**

R.25	**LC**	**Unable to assess effective implementation of the AMLFTCOP due to recent enactment.**

4.4 Other non-financial businesses and professions Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

535. The Virgin Islands has considered the applicability of these recommendations to a wider range of non-financial businesses and professions. This is evidenced by the implementation of the 2008 amendment to POCCA which at section 13 casts a substantially wider net around the Virgin Islands economy in general. The Non-financial Business (Designation) Notice which came into force on 20th February 2008 designates persons engaged in the business of buying and selling of boats, vehicles, jewellery or other high valued goods as being required to comply with requirements of the AMLTFCOP.

536. In the Virgin Islands, DNFBPs do not perform significant cash transactions, but rather rely on the banking industry for such. Over the years, the banking sector in the Virgin Islands has diversified its product offering to include ATMs, credit cards, debit cards and internet banking. This was revealed during the interview with the major banks in the Territory. This has had the effect of minimizing the use of cash within the economy and has somewhat modernised the banking industry. The use of cash still predominates, however, because of the make up of the society. The assessment team was informed that a significant number of the population consists of expatriates who use cash to a greater extent than the locals. The types of banking services offered via the internet are limited mainly to allowing customers to pay bills and transfer funds between accounts. The growth in the credit cards, ATMs and debit cards over the last four years ranged as follows:

Table 19: Growth in the number of ATMs, Credit Cards and Debit Cards

Services	2004	2005	2006	2007
Credit cards	1135	1722	1523	1417
Debit cards	916	2218	3427	4567
ATMs	17	20	20	20

537. The above table demonstrates the growth in credit and debit cards during the period 2004 to 2007. The number of credit and debit cards increased by 192%. All ATMs are operated by commercial banks. As already indicated the currency in use is the US dollar. The increasing use of electronic money and the availability of electronic banking services should reduce the use of cash and the attendant ML/TF risks. The increasing use of credit and debit cards over the last four years and the availability of electronic banking services should reduce the use of cash and the attendant ML/FT risks.

4.4.2 Recommendations and Comments

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**C**	**This recommendation is fully observed**

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

Description and Analysis

Recommendation 33

538. The Virgin Islands takes certain measures to prevent the unlawful use of legal persons in relation to money laundering and terrorist financing. The Registry of Corporate Affairs maintains individual registers for companies, foreign companies and charges. The Registry is a part of the FSC.

539. Current registrations of companies, foreign companies and limited partnerships exceed 800,000, the majority of which are companies. Registration of companies is governed by the BVI Business Companies Act, 2004 (BVIBCA) (and amendments).

Table 20: No of companies registered in the Virgin Islands as of 31 December 2007

No. of companies limited by shares (not necessarily all active)	840,932
No. of companies limited by guarantee – authorized to issue shares	43
No. of companies limited by guarantee – not authorized to issue shares	42
No. of unlimited companies – authorized to issue shares	74
No. of unlimited companies – not authorized to issue shares	44
No. of BC Foreign companies	7
No. of local companies (Cap. 285)	10,662
No. of Segregated Portfolio Companies (SPC)	49
No. of Restricted Purpose Companies (RPC)	12
No. of Private Trust Companies (PTC)	37
No. of Limited Partnerships registered	553
Number of Active Companies	401.288

Table 21: Incorporations for the past four years

No. of incorporations 2004	61,589
No. of incorporations 2005	59,406
No. of incorporations 2006	65,306
No. of incorporations 2007	77,138

540. Under section 5 of the BVIBCA, the following five types of companies may be established:

a) a company limited by shares;

b) a company limited by guarantee that is not authorised to issue shares;

c) a company limited by guarantee that is authorised to issue shares;

d) an unlimited company that is not authorised to issue shares;

e) an unlimited company that is authorised to issue shares.

Registration requirements

541. Section 6 of the BVIBCA requires that applications to incorporate a company be made to the Registrar by filing the following;

a) a memorandum complying with section 9 that is signed by the proposed registered agent, as incorporator;

b) except in the case of an unlimited company that is not authorised to issue shares, articles that are signed by the proposed registered agent, as incorporator;

c) a document in the approved form signed by the proposed registered agent signifying his consent to act as registered agent;

d) if the company is to be incorporated as a segregated portfolio company, the written approval of the Commission given under section 137(1);

e) such other documents as may be prescribed.

542. Section 6 (2) of the Act stipulates that an application for incorporation of a company may be filed only by the proposed registered agent and the Registrar will not accept an application filed by any other person.

543. The above documentation along with the registration fee is submitted to the Registrar of Corporate Affairs. Company registration submissions are reviewed mainly by the assistant registrars and deputy registrars to confirm compliance with requirements, *e.g.*, that there is a registered office specified (which must be in the Virgin Islands) and that the name of the company is not a prohibited name.

544. The Registrar of Corporate Affairs advised the assessment team that staff of the Registry do not conduct customer due diligence, identity verification or background checks regarding organizers or beneficial owners of registered entities, as this is required to be performed by registered agents. Section 91 of the BVIBCA requires all companies at all times to have a registered agent in the Virgin Islands. The provision of registered agent services is defined as part of company management services which require a licence under the CMA or the BTCA and fall under the supervision of the FSC. Licensees under these statutes are also subject to the AMLTFCOP and are required to identify beneficial owners with regard to corporate clients, trusts and fiduciary clients. Provided that the registration documents are in order the company is assigned a registration number and formally registered, and a certificate of incorporation is issued to the filer.

545. The BVIBCA requires all Virgin Islands companies to maintain the following registers, books and records:

- a register of members containing the names and addresses of members and including a statement of shares held by each member and the date upon which each member became and ceased to be a member;
- a register of charges (limited company only);
- a register of directors;
- proper books of accounts
- records of meetings and resolutions of members and directors.

546. Where a company elects to file with the Registrar a register of its members or directors, then it is required to file any changes to such membership or directorship (see section 231 of the BVIBCA). Where bearer shares are issued, the company is required to maintain a register of members which must, with respect to each bearer certificate issued by the company, record the identifying number of the certificate, number of each class or series of bearer shares, date of issue of the certificate and the name and address of the authorised or recognised custodian of the certificate (section 41 (1)(d) of the BVIBCA).

Information held by Registrar

547. The information concerning a Virgin Islands company that is held by the Registrar (derived from various required filings by the company) include:

- The capital of the company (for companies incorporated under the IBC Act) and maximum number of shares of the company (for companies incorporated under the BVIBCA);
- The names and addresses of subscribers;
- The name of the registered agent and the address of the first registered office;
- The memorandum and articles of association;
- Copies of any special resolutions;
- The directors (optional – see section 231 of the BVIBCA);
- Register of shareholders[17] (in respect of ordinary companies only; optional – see section 231)

[17] With respect to the registers of shareholders and directors which are not filed with the Registrar, section 96 of the BVI Business Companies Act, 2004 nevertheless requires the registered agent to keep and maintain such information, including records of meetings and resolutions of members and directors.

- Non-Profit Organisation, if applicable
- Restricted Purpose Company (RPC)[18], if applicable
- Segregated Portfolio Company (SPC)[19], if applicable
- Private Trust Company (PTC)[20], if applicable

- Bearer shares, if applicable (number of shares inside and outside the Virgin Islands)

548. The following company information and documentation held by the Registrar is available for public inspection:

- name, type and status (good standing);
- the registration date;
- the address of the registered office
- the name and address of the registered agent;
- the maximum number of shares;
- the memorandum and articles of association;
- registers of companies, foreign companies and charges; and
- any other document that has been filed pursuant to the provisions of the BVIBCA.

549. The Register of Charges which records any form of security interest, over property, wherever situated, other than an interest arising by operation of law is open to inspection by any creditor or member of the relevant company.

550. Under section 6 of Schedule 2 of the BVIBCA, every IBC that at December 31, 2006 were on the Register of International Business Companies under the International Business Companies Act were, unless voluntarily re-registered, deemed to be registered under the BVIBCA from January 1, 2007. Similarly, every company on the Register of Companies at December 31, 2008, under the Companies Act will be deemed to be re-registered under the BVIBCA from January 1, 2009 (voluntarily re-registered).

551. Under section 91(6) of the BVIBCA a company that does not have a registered agent commits an offence and is liable upon summary conviction to a fine of $10,000.00. Section 96 makes it an offence if the company does not have the requisite documents at the offices of its registered agent. It is also an offence if the company does not notify the registered agent within 15 days of any change in the register. In these instances the company is liable upon summary conviction to a fine of $10,000.00.

Bearer shares

552. According to section 9 of the BVIBCA, a company limited by shares can issue bearer shares. In general, a memorandum of such company should state whether bearer shares may be issued. A register of shareholders which is kept at the registered agent/company service provider

[18] A Restricted Purpose Company means a company with restricted activities.

[19] A Segregated Portfolio Company means a company that may create one or more segregated portfolios in which the assets and liabilities are segregated from other portfolios of the company; the company is a single legal entity.

[20] A Private Trust Company includes a company that is a qualifying BVI company that is limited and the memorandum of which states that is a private trust company and a trust created for the financial benefit of one or more designated beneficiaries rather than for the public benefit.

should indicate whether in fact bearer shares have been issued. Division 5 of the BVIBCA as well as Aide Memoire #2 and #3 contain detailed provisions in respect to (immobilisation of) bearer shares by depositing with authorised custodians. Strict conditions on the custody of bearer shares and the duties and functions of authorised custodians are set out to ensure that the beneficial owners of bearer shares are known at all times.

553. Bearer shares had been effectively immobilised under the International Business Companies (Amendment) Act, 2003 which came into force in May 2003. This law provided for requirements which have now been incorporated under the BVIBCA which effectively repealed the International Business Companies Act and all its related amendments.

554. Under the BVIBCA, international business companies that were incorporated before 1 January, 2005, and re-registered either voluntarily or by law by being deemed to have re-registered and issued bearer shares have until 31 December 2009 to place their bearer shares with an authorised or recognised custodian[21] or immobilise them. Therefore this is still an issue with regard to ensuring that bearer shares are not misused for money laundering. Companies formed after 1 January 2005 under the BVIBCA are required, where they hold bearer shares, to place them with an authorised or recognised custodian.

555. The FSC advised that the Registry of Corporate Affairs functions within the FSC's overall operating budget which for the last fiscal year was US$17,502,406. The Registry of Corporate Affairs indicates that it has adequate staff (57 full-time employees) and resources.

556. All persons seeking to be licensed under the Regulatory Laws are subject to a statutory fit and proper test applied by the FSC and in this process the assistance of the FIA (includes company checks and/or background checks) is sought as appropriate through the conduct of relevant investigation. The FSC retains the records of beneficial ownership and control submitted by applicants pursuant to this requirement. In addition, under the AMLR and the AMLTFCOP, all regulated FI´s and DNFBP´s are required to identify beneficial owners with regard to corporate clients, trusts and fiduciary clients. The AMLTFCOP also gives specific guidance for financial institutions and company service providers requiring appropriate due diligence on shareholders, beneficial owners, the directors and anyone who gives instructions to the applicant for business on behalf of the company (refer to Recommendation 5 for further details).

557. The requirements detailed above ensure that registered agents must have information on beneficial ownership of all registered companies in Virgin Islands. This information is accessible by all competent authorities. Although the TCSPs interviewed during the on-site visit indicated their awareness of the requirements of the AML/CFT laws and their compliance, the relatively low number of FSC inspections makes it difficult to assess whether the information on beneficial ownership is being adequately and accurately maintained. The authorities are able to access this information for mutual legal assistance on a timely basis.

5.1.2 Recommendations and Comments

558. While the Virgin Islands has a system which requires registered agents to maintain beneficial ownership information of registered companies, the low number of FSC inspections

[21] Authorised custodian means a person approved by the FSC as an authorised custodian under section 50A(1) or 50A(2) of the FSC Act and a recognised custodian means a person recognised by the FSC as a custodian under Section 50B of the FSCA.

makes it difficult to assess whether registered agents maintain adequate and accurate beneficial ownership information. The following is recommended:

- The FSC should implement an effective monitoring system to ensure that registered agents are maintaining adequate accurate and current beneficial ownership information.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**PC**	**Unable to assess whether information on beneficial ownership is being adequately and accurately maintained due to the low number of FSC inspections.** **IBCs incorporated before 2005 are not required to place bearer shares with authorised or recognised custodians until December 2009.**

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

559. The Virgin Islands takes measures to prevent the unlawful use of legal arrangements in relation to money laundering and terrorist financing. The Virgin Islands has in place the Trustee Act (Cap. 303) – as amended by the Trustee (Amendment) Act, 2003 – (which essentially deals with the appointment and discharge of trustees, duties and powers of trustees, trustees and dealings with third parties, dealings with charities and the powers of the court in relation to trustees) and the Virgin Islands Special Trusts Act, 2003 (which essentially deals with special provisions for trusts of shares, prohibitions against trustees and the appointment and removal of directors of a company in accordance with the terms of a trust instrument). In addition, the Virgin Islands follows the common law with regard to the formation of trust. Trust service business is a regulated activity under the BTCA and is governed by the AMLTFCOP and the AMLR. Trust service business is subject to CDD, recordkeeping and other requirements. In sections 19 (5) and 28 of the AMLTFCOP, the requirement to identify the settler, trustee or person who is exercising effective control over the trust and beneficiaries is stipulated.

560. It should be noted that there are approximately 8 local non-profit organisations (NPOs) that are trusts that are not clients of a trust service provider. Such NPOs are required to retain a registered agent under the BVIBCA. These NPOs are active in the community and operate bank accounts locally. As such information would be readily available from the appropriate financial services provider.

561. There is no central filing requirement for trusts and no register of all trusts in the Virgin Islands. Information on trusts is maintained by licensed trust service providers and can be readily accessed through the investigative and examination powers of the regulatory and law enforcement authorities under the relevant statutes. The record-keeping provisions of the AMLTFCOP require licensed trust service providers to ensure that records are readily available for timely access by the competent authorities. The FSC advised that the TCSPs administered over 1300 trusts. As

mentioned with regard to beneficial information, while TCSPs indicated their awareness and compliance with AML/CFT laws, the relatively low number of FSC inspections makes it difficult to assess whether the information on trusts is being adequately and accurately maintained.

5.2.2 Recommendations and Comments.
5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**LC**	**Unable to assess whether information on trusts is being adequately and accurately maintained due to the low number of FSC inspections**

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

Review of the domestic non-profit sector

562. The regime for NPOs is governed by the BVIBCA, amended in 2006 (refer to Section 17A of the amended Act, 2006 for more details) and the AMLTFCOP (refer to Preliminary, Section 4 (1) for detailed requirements). The BVI Business Companies (Amendment) Act, 2006 came into effect on October 27, 2006 and the AMLTFCOP came into effect on February 22, 2008. There is no separate charities law in the Virgin Islands.

563. At the time of the assessment there were approximately 12 types of NPOs operating in the Virgin Islands, some of which are registered by the FSC. The assessment team was advised by the FSC that the NPO population is considered "low risk" for potential money laundering and terrorism finance activities based on the fact that i) their activity is focused on the domestic community, ii) recently, CDD measures are applied to NPO executive committees/boards and iii) no ML/FT issues have emerged to date. Additionally, under section 91 (1) of the BVIBCA, every NPO registered thereunder or previously registered under the Companies Act (Cap. 285) is required to have a registered agent in the Virgin Islands.

564. The Virgin Islands authorities have not provided any documentation pertaining to the adequacy of laws and regulations relating to NPO´s that can be abused for the financing of terrorism and no evidence was presented to the assessors that the authorities had reviewed these laws with regard to protecting NPO´s from being used to finance terrorism. Section 4 of the AMLTFCOP describes the CDD measures that are applicable to NPOs.

Protecting the NPO sector from terrorist financing through outreach and effective oversight

565. No competent authority has undertaken any formal outreach efforts to the NPO sector regarding AML/CFT requirements or best practices. The assessment team was advised that the vast majority of NPOs operate exclusively in the Virgin Islands serving the needs of the domestic community. Moreover, no NPO is viewed by the government as controlling a portion of the sector's financial resources.

566. The BVIBCA, amended in 2006 (Section 17A) is applicable to a company of which the memorandum a) limits the objects of the company to the pursuit of wholly charitable or non-

commercial purposes and requires the company to apply its income solely in promoting those purposes, b) prohibits the company from making any distributions to its members and c) the Commission (Registry) is satisfied that the activities of the company will, following authorisation on the name ending as described in Section 17 (1), be carried out principally within the Virgin Islands.

567. The Registrar of Corporate Affairs is able to identify, with the introduction of the new registration system VIRGINN, companies that are registered as NPOs under Section 17A of the BVIBCA amended in 2006. The assessment team was advised by the Virgin Islands Government that, a NPO may be registered either as a company limited by guarantee, or as an unlimited company, with no authority to issue shares. The Registrar of Corporate Affairs registers all NPOs (irrespective of their legal form) in the VIRGINN system.

568. There are no competent authorities engaged in any formal monitoring of NPOs that do have the legal form of a company, after their registering stage. The FIA is the competent authority, according to section 9 (2) of the AMLTFCOP to license or register NPOs. At the time of the assessment, the FIA had no supervisory programme in place to identify non-compliance and violations by NPOs.

569. A NPO with the legal form of a company should according to Section 96 of the BVIBCA, maintain the following documents at the office of its registered agent:

a) the memorandum and articles of the company (which includes the purpose and objectives of the activities),

b) the register of members and shareholders,

c) register of directors and

d) all notices and other documents filed by the company (at the Corporate Registry) in the previous ten years.

570. Information on an NPO which has the legal form of a company and is registered as such is publicly available. Section 98 of the BVIBCA requires a company to keep records that;

a) are sufficient to show and explain the company's transactions, and
b) will at any time, enable the financial position of the company to be determined with reasonable accuracy.

A company that contravenes this section commits an offence and is liable on summary conviction to a fine of US$10,000. In the AMLR and sections 44 and 45 (1) of the AMLTFCOP, the retention period for records of a business relationship or transaction is set at a minimum of five years. The explanations under section 45 (1) which are not enforceable state "it is a matter for the entity or professional to make a judgement on, having regard to the ultimate duty to maintain sufficient, clear, and reliable records which can be readily accessed whenever required. NPOs are caught under the AMLTFCOP for which the FIA has monitoring responsibility (section 9 (2) of the AMLTFCOP) and consequently has access to their records. Registered agents of NPOs are required to maintain relevant information on client NPOs pursuant to the provisions of the AMLTFCOP.

571. Failure to comply with the terms of the BVIBCA and the AMLTFCOP is punishable. NPOs are not immune from law enforcement sanctions. However, as already noted no competent authorities engage in any formal monitoring of NPOs. Section 4 (2) of the AMLTFCOP states that only those provisions of AMLTFCOP relating to the establishment of internal control systems, effecting customer due diligence measures, maintaining record keeping requirements and providing employee training shall apply to every charity or other association not for profit. According to Section 4 (7) of the AMLTFCOP where a charity or other association not for profit suspects that a donation may be linked to money laundering or terrorist financing, it should not accept the donation.

Responding to international requests for information about an NPO of concern

572. Mechanisms already in place for the sharing of information among all relevant competent authorities with regard to financial institutions and DNFBPs would be utilised in taking preventative or investigative action when there is suspicion or reasonable grounds to suspect that an NPO is being exploited for terrorist financing. Since there has never been any knowledge or suspicion that any person or entity in the Virgin Islands has been or is involved in terrorism or terrorist financing there has been no need for investigation in this area with regard to NPOs.

573. The Governor is the appropriate point of contact pursuant to the ATFOMOTO for all NPOs under suspicion. The FIA assists the Governor in this regard and in the investigation of reports. No such requests have been received to date.

5.3.2 Recommendations and Comments

574. The following is recommended:

- The authorities should review the adequacy of the laws that relate to NPOs and conduct periodic reassessments of the sector's potential vulnerabilities to terrorist activities.
- The authorities should undertake an outreach programme to the NPO sector with a view to protecting the sector from terrorist financing abuse.
- A supervisory programme for NPOs should be developed to identify non-compliance and violations.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR. VIII	**PC**	**No evidence of review of the adequacy of laws and regulations that related to NPOs or of periodic reassessments of the sector's potential vulnerabilities to terrorist activities.** **No supervisory programme in place to identify AML/CFT non-compliance and violations by NPOs.** **No outreach to NPOs to protect the sector from terrorist financing abuse.**

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31 & 32)

6.1.1 Description and Analysis

Recommendation 31

575. Relevant and competent authorities in the Virgin Islands maintain close working relationships. This includes the FIA, the FSC, the RVIPF, the Immigration Department, the Customs Department, the Attorney General's Chambers and the Office of the Director of Public Prosecutions. In fact members of some of these authorities sit on each other's boards.

576. Formerly JAMLCC was established by statute to function as the main national co-ordination body overseeing the AML regime in the Virgin Islands. In the absence of regular meetings of JAMLCC, informal meetings between the agencies continued under the auspices of the Attorney General. Under the POCCA 2008 amendment, JALTFAC was established to replace JAMLCC. JALTFAC consists of members drawn from the public and private sectors with knowledge and experience in anti-money laundering and countering the financing of terrorism issues. The Committee comprises not less than seven and not more than fourteen members. The Managing Director of the FSC serves as chairman of the Committee.

577. This Committee is set up to

- ensure the stability of the financial sector
- assist the FSC in formulating an appropriate approach in developing a Code of Practice
- keep entities compliant with anti-money laundering and countering the financing of terrorism measures established locally, regionally and internationally and
- keep the Territory attuned to developments on international cooperation as they relate or are incidental to anti-money laundering and terrorist financing activities.

578. The FIA continues to maintain close and productive working relationships with the local regulatory body and law enforcement agencies, and has in fact entered into a MOU with the FSC for the purpose of the sharing of information. The FIA intends to enter into other MOUs with the Police Department and Customs Department respectively.

579. The National Joint Intelligence and Coordinating Committee (NJICC) was established to deal with intelligence information and situations that require a coordinated intelligence approach. The NJICC is comprised of the Customs Department, Police, Marine, and Agriculture representatives. The Immigration Department works closely with the Customs Department and the Royal Virgin Islands Police Force in respect of border management. There is also currently in place an MOU among the Police, Customs and Immigration for the sharing of information.

580. The National Drug Advisory Council (NDAC) was established pursuant to section 3 of the DPMA and is still functional. The NDAC developed drug policies for the Government and is still active via the media through public awareness messages on drugs and alcohol abuse.

Recommendation 32

581. The principal legislation governing the AML/CFT has been reviewed on an ongoing basis. Consequently, notice may be taken of the various additions and amendments to the following:

- The DTOA was reviewed and amended in 1993, 1996, 2000, 2006 and 2008
- The POCCA was reviewed and amended in 2001, 2003, 2006
- The Anti-money Laundering Code of Practice was enacted in 1999 and amended in 2000, 2001 and amplified in a new document in February 2008
- The CJICA was reviewed and amended in 1995, 2000 and 2004
- The FIAA was reviewed and amended in 2006 and 2007.
- The FSCA was reviewed and amended in 2004, 2006 and 2007

582. The Virgin Islands is constantly reviewing and amending laws to take into account all relevant developments. One recommendation is to consolidate the various amendments into a current revision.

6.1.2 Recommendations and Comments
6.1.3 Compliance with Recommendations 31 & 32 (criteria 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**C**	**This recommendation is fully observed**

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Recommendation 35

583. The Virgin Islands as an Overseas Territory has no legal power to ratify or accede to any international treaty and such ratification or accession is carried out on its behalf by the Government of the United Kingdom. However, the Virgin Islands can enact legislation domestically to implement the provisions of relevant international treaties and Conventions. The 1988 United Nations Convention on the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) was ratified by the UK Government and extended to the Territory on 8th February 1995. The United Nations Convention against Transnational Organised Crime (the Palermo Convention) and the 1999 UN International Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention) were not extended to the Territory.

Special Recommendation I

584. Although the Palermo Convention and the Terrorist Financing Convention have not been extended to the Territory, they have been given effect under the laws of the Territory. A synopsis of the application of the provisions of the conventions in the jurisdiction follows:

Table 22: Compliance with relevant Treaties

Treaty	Articles	Legislative provisions in the Virgin Islands
Vienna Convention (1988)	3 (Offences and Sanctions)	Offences in respect of drug related matters are addressed primarily in the DPMA and the DTOA. Section 5 of the DPMA restricts the importation and exportation of controlled drugs. The restriction of the production and supply of controlled drugs is set out in section 6. Section 7 restricts the transporting or storing of a controlled drug where possession of the drug is unauthorised. The cultivation of cannabis plant is prohibited by section 8. Other provisions in relation to the manufacture and supply of scheduled substances are found in section 9 of the CJICA. Under section 11 of the CJICA, concealing, disguising, transferring and converting property which represents the proceeds of crime, for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement of a confiscation, have been criminalised. Participation in a drug trafficking offence, conspiracy to participate in such an offence and incitement are included in the definition of a drug trafficking offence. The list of controlled drugs in the Second Schedule to the DPMA is more extensive than the list of drugs under Tables 1 and 11 of the Vienna Convention. A complementary list of controlled drugs is given in Schedule 2 to the CJICA. Not all scheduled chemicals under the Vienna Convention are prohibited.

		Sections 2 and 3 of the CJICA secure the attendance of a defendant at relevant criminal proceedings. The sanctions take into account the gravity of the offences. Terms of imprisonment and fines may be imposed, as well as confiscation of property.
	4 (Jurisdiction)	Domestic courts have jurisdiction over offences committed in the Territory, whether by nationals or any other person in the Territory. Drug trafficking offences under the DPMA include relevant conduct, whether done in the Territory or elsewhere, which is contrary to the Act. Section 21 of the Act provides that an offence is committed if a person in the Territory assists in or induces the commission in any place outside the Territory of an offence punishable under the provisions of a corresponding law in force in that place. Pursuant to section 14 of the CJICA, jurisdiction may also be exercised in respect of drug trafficking offences committed aboard a Virgin Islands ship. Jurisdiction may be exercised pursuant to section 15 in respect of any ship used for illicit traffic in contravention of the prohibition against the unlawful importation or exportation of controlled substances contrary to section 5 of the DPMA.
	5 (Confiscation)	Seizure, confiscation and forfeiture measures are provided under the DTOA and the CJICA. The DTOA permits the forfeiture of controlled drugs, receptacles or conveyances which relate to the offence. Destruction of the controlled drugs is also authorised under the DPMA.
	6(Extradition)	The Extradition (Overseas Territories) Order 2002 provides a comprehensive extradition regime in relation to extradition

		crimes committed in the UK, Ireland, a designated Commonwealth country or a British overseas territory. An extradition treaty exists between the UK and the USA, which has been extended to the Territory. General extradition procedures are stated in Part III of Schedule 2 to the Extradition (Overseas Territories) Order 2002. Part II of Schedule 2 to the Extradition (Overseas Territories) Order 2002 sets out the grounds on which the Territory may refuse to comply with extradition requests. These grounds are in keeping with the guidelines in Article 6 of the Convention. Safeguards in respect of the treatment of persons returned are stated in Part IV of Schedule 2 to the Extradition (Overseas Territories) Order 2002. Provision is made under Part V of Schedule 2 to the Extradition (Overseas Territories) Order 2002 in respect of repatriation cases and international convention cases.
	7(Mutual legal assistance)	The relevant authorities are required to provide the widest range of assistance as the particular case may warrant. Assistance is afforded for the purpose of taking evidence or statements from persons, effecting service of judicial documents, executing searches and seizures, examining objects and sites, providing information and evidentiary items, providing relevant documents and records and identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes. Mutual legal assistance is provided primarily pursuant to the CJICA and the Mutual Legal Assistance (United States of America) Act.
	8 (Transfer of Proceedings)	The Virgin Islands engages in

		this arrangement on an informal basis where proceedings concerning an offender in the Virgin Islands relate to the same or similar proceedings. The Virgin Islands would provide the evidence gathered to the foreign authority that has a better chance of securing a conviction/higher sentence. If the accused is not already in the foreign jurisdiction, his or her transfer to that jurisdiction is secured through an extradition arrangement. Currently this arrangement is carried out with the USA and the need for a similar arrangement with other jurisdictions has yet to arise. This informal arrangement is preferred, since article 8 of the Convention does not require a legislative formula.
	9 (Other forms of co-operation and training)	The Immigration Department works closely with the Customs Department and the Royal Virgin Islands Police Force in respect of border management.
	10 (International Co-operation and Assistance for Transit states)	The Virgin Islands considers itself a "transit State". It has a drugs interdiction cooperation programme with both the UK and the USA. UK warships (including helicopters) on an annual basis and for specific periods patrol Virgin Islands waters to track down and apprehend drug traffickers. Section 16A of the CJICA facilitates such cooperation interdiction. The Virgin Islands has a Shipryder Agreement with the USA for drug interdiction
	11 (Controlled Delivery)	The Virgin Islands legal system does not prohibit the use of controlled delivery to identify and apprehend criminals. These arrangements, which are made at the law enforcement level with appropriate legal advice, are engaged in normally with the US drug law enforcement agency.
	15 (Commercial carriers)	Security checks are carried out at ports of entry to ensure that carriers are not used for unlawful drug activity. The Canine Unit of the Customs Department plays an

		integral role in safeguarding that commercial carriers are not used in the commission of offences.
	17 (Illicit traffic at sea)	Sections 14 and 15 of the CJICA make express provision for the criminalisation of drug trafficking offences committed at sea.
	19 (Use of mail)	Mail is checked routinely for illicit substances at ports of entry by the Customs authorities. The Canine Unit of the Customs Department assists in the control process. Mail, whether under the control of the Government postal service or under the control of private courier services, is subjected to routine scrutiny.
Palermo Convention	5(Criminalization of participation in an organized criminal group)	Sections 19 – 21 of the Criminal Code provide a broad scope criminalising the participation by two or more persons of an offence; this applies irrespective of whether the persons acted alone or as part of an organised group (joint enterprise principle).
	6(Criminalization of laundering of the proceeds of crime)	The laundering of the proceeds of crime is criminalized under the POCCA. Ancillary offences are also covered under the Act.
	7 (Measures to combat money laundering)	Measures are in place to combat money laundering. The FSC organises periodic "Meet the Regulator" workshops to keep the industry abreast of developments in the anti-money laundering regime. There are clear requirements for customer identification, record-keeping and the reporting of suspicious transactions. The various law enforcement bodies, including the FIA, maintain strong ties to national and international intelligence investigative agencies.
	10 (Liability of legal persons)	Legal persons come within the ambit of the anti-money laundering legislative regime. Section 22 of the DPMA speaks to offences committed by corporations. Under the company regime, "person" is construed widely to include corporate and unincorporated entities.

	11 (Prosecution Adjudication and sanction)	The offences crested under the money laundering and proceeds of crime legislation are subject to sanctions, including the payment of fines and terms of imprisonment. The laws of the Territory provide for securing the presence of the defendant at trials. It is the practice that the courts and other competent authorities bear in mind the gravity of offences when considering the eventuality of early release of persons convicted of offences.
	12 (Confiscation and Seizure)	Comprehensive measures in relation to the proceeds of crime are found in the POCCA. The Act covers any benefit derived from criminal conduct and extends to any property. Gifts made by the defendant are caught by the Act. The acquisition, possession and use of proceeds of criminal conduct by another person who knows that the property represents the proceeds of crime and the concealment and transfer of proceeds of crime are also offences under the Act. Bona fide third parties are afforded an opportunity to be heard in confiscation and seizure and forfeiture matters.
	13 (International Co-operation for the purposes of confiscation)	International co-operation for the purposes of confiscation is rendered primarily pursuant to the CJICA and the Mutual Legal Assistance (United States of America) Act. The Territory strives to promote co-operation among judicial, law enforcement and financial regulatory authorities in order to combat money laundering.
	14 (Disposal of confiscated proceeds of crime or property)	Provision is made under section 20 of the POCCA for the application of proceeds of realisation and other sums. Formal asset sharing agreements exist with the USA and Canada. Asset sharing is also available on

		an informal basis.
	15 (Jurisdiction)	Domestic courts have jurisdiction over offences committed in the Territory, whether by nationals or any other person present in the Territory. With respect to predicate offences committed contrary to the Criminal Code, the Territory's courts have jurisdiction to try offences relating to the Administration of Justice under Part V of the Criminal Code.
	16 (Extradition)	The Extradition (Overseas Territories) Order 2002 provides a comprehensive extradition regime in relation to extradition crimes committed in the UK, Ireland, a designated Commonwealth country or a British overseas territory. An extradition treaty exists between the UK and the USA, which has been extended to the Territory. General extradition procedures are stated in Part III of Schedule 2 to the Extradition (Overseas Territories) Order 2002. Part II of Schedule 2 to the Extradition (Overseas Territories) Order 2002 sets out the grounds on which the Territory may refuse to comply with extradition requests. These grounds are in keeping with the guidelines in Article 6 of the Convention. Safeguards in respect of the treatment of persons returned are stated in Part IV of Schedule 2 to the Extradition (Overseas Territories) Order 2002. Provision is made under Part V of Schedule 2 to the Extradition (Overseas Territories) Order 2002 in respect of repatriation cases and international convention cases.
	18 (Mutual Legal Assistance)	Mutual legal assistance is provided primarily pursuant to the CJICA and the Mutual Legal Assistance (United States of

		America) Act.
	19 (Joint Investigations)	The Territory participates upon request in joint investigations both regionally and internationally.
	20 (Special Investigative Techniques)	The Governor may pursuant to section 90 of the Telecommunications Act make written requests and issue orders to operators of telecommunications networks and providers of telecommunications services requiring them, at their expense, to intercept communications for law enforcement purposes or provide any user information or otherwise in aid of his authority.
	24 (Protection of witnesses)	The protection of witnesses as envisaged by the Palermo Convention is available.
	25 (Assistance and protection of victims)	A comprehensive victim assistance and protection programme has not been implemented. However, in appropriate cases victims may be protected.
	26 (Measures to enhance co-operation with law enforcement authorities)	Domestic law enforcement agencies – police, customs, immigration, FIA – have MOUs in place to facilitate and enhance cooperation and intelligence sharing and belong to the same committees in some cases. Also the RVIPF is a member of the Caribbean Commissioners of Police group that meets annually to devise and enhance cooperation mechanisms between their forces. Overseas Territories' Commissioners of Police have a similar arrangement at the OT level conducted on an annual basis. The RVIPF has in place an Informants structure whereby it relies on known members of criminal groups to provide the Police with helpful information to track down and apprehend offenders and other suspects of such criminal groups. Where such informants are part of the offence being investigated, they may be offered immunity from prosecution or reduction of

		charges for their cooperation in providing useful information. Such an arrangement is usually overseen and sanctioned by the DPP. In the case of informants who are not suspects of any criminal group or in any specific offence may be given monetary incentives for providing assistance to the Police. The Police are trained on the use of informants.
	27 (Law enforcement co-operation)	The FIA is a member of Egmont and fully participates in cross-border law enforcement matters. It has the authority (with the approval of the Governor) to conclude memoranda of understanding with foreign authorities. However, in the absence of an MOU, the FIA and the RVIPF are able to coordinate and cooperate with foreign law enforcement authorities on the basis of article 27 (2) of the Convention. Also the Office of the DPP is a member of the International Association of Prosecutors through which prosecutors exchange experiences and information, including the coordination of efforts on specific criminal matters.
	29 (Training and technical assistance) 31 (Prevention)	Training and technical assistance are provided in the area of organised criminal group activity to domestic law enforcement and prosecutorial groups.
	30 (Other measures)	The Virgin Islands has arrangements of cooperation with international bodies such as INTERPOL. As already noted, there is in place cooperation arrangements with the UK and USA with respect to drug interdiction. Currently the UK provides training and expertise assistance to the RVIPF through the secondment of officers from the Metropolitan Police which facilitates and enhances the capacity to effectively tackle transnational organised crime. The annual meetings of Caribbean Commissioners of Police and Overseas Territories

		enable a system of regular dialogue and exchange of information and techniques regarding the effective combating of transnational organised crime. The jurisdictions also assist each other with expertise on a needs basis upon request.
	34 (Implementation of the Convention)	The terms of the Convention are being implemented through relevant legislative and administrative instruments and structures as noted in the representations made above.
Terrorist Financing Convention	2 (Offences)	The Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 is the primary legislation which governs matters relating to terrorist financing.
	4 (Criminalization)	Terrorist activities are criminalized pursuant to the Terrorism (United Nations Measures) (Overseas Territories) Order 2001, the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 and the Al – Qa'ida and Taliban (United Nations Measures)(Overseas Territories) Order 2002.
	5 (Liability of legal persons)	The term "person" is construed to include corporate and unincorporated entities. Sanctions include fines, imprisonment for terms up to fourteen years where conviction is an indictment.
	6 (Justification for commission of offence)	"Terrorism" is defined in the Terrorism (United Nations Measures)(Overseas Territories) Order 2001 to include the use or threat of action where made for the purpose of advancing a political, religious or ideological cause. A similar provision is made under section 4 of the Anti-terrorism (Financial and Other Measures)(Overseas Territories) Order 2002. With respect to extradition matters, section 24 of the Extradition (Overseas Territories)

		Order 2002 provides that offences to which section 1 of the Suppression of Terrorism Act 1978 applies shall be regarded as an offence of a political character and no proceedings in respect thereof shall be regarded as a criminal matter of a political character or as criminal proceedings of a political character.
	7 (Jurisdiction)	Part IV of the Anti-terrorism (Financial and Other Measures)(Overseas Territories) Order 2002 addresses the issue of jurisdiction. Under section 18, jurisdiction extends where a person does anything outside the Territory and where the action of that person would have constituted the commission of an offence under articles 6 to 9 of the Order if it had been done in the Territory.
	8 (Measures for identification, detection, freezing and seizure of funds)	Provision in respect of the freezing of terrorist funds is found in section 5 of the Terrorism (United Nations Measures)(Overseas Territories) Order 2001. Forfeiture orders and accounting monitoring orders are available under the Anti-terrorism (Financial and Other Measures)(Overseas Territories) Order 2002.
	9 (Investigations & the rights of the accused)	Sections 15 and 16 of the Virgin Islands Constitution Order 2007 outline the rights of an accused person. In situations where the law enforcement authorities receive information from any foreign country regarding the presence in the Territory of a criminal fugitive or becomes aware of such presence, it takes necessary steps to inform the foreign country that has interest in the matter. The Virgin Islands also communicates to foreign countries information regarding fugitives from the law seeking assistance for their apprehension should they be found in the foreign country. In cases of discovery of fugitives, arrests and detentions are carried out in close

		collaboration between the relevant authorities. The RVIPF informs, as a matter of routine, the relevant foreign representative of the suspect that is the subject of arrest in the Virgin Islands. Legislative support for this is found in Code 3.3 of the English Police and Evidence Act (PACE) by virtue of section 12 of the Evidence Act, 2006 of the Virgin Islands. Also the foreign representative of the suspect or his or her agent is allowed to visit the suspect in detention in accordance with the visiting provisions of the Prison Rules, 1999.
	10 (Extradition of nationals)	Extradition of nationals is permitted under the Extradition (Overseas Territories) Order 2002.
	11 (Offences which are extraditable)	Terrorism offences come within the definition of "extradition crimes" pursuant to Schedule 2 of the Extradition (Overseas Territories) Order 2002.
	12 (Assistance to other states) 13 (Refusal to assist in the case of a fiscal offence) 14 (Refusal to assist in the case of a political offence) 15 (No obligation if belief that prosecution based on race, nationality, political opinions, etc.)	Assistance is rendered to other states primarily pursuant to the CJICA and the Mutual Legal Assistance (United States of America) Act. Terrorism matters fall within the mutual legal assistance regime. If there are substantial grounds for believing that the request for mutual legal assistance is made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position, the request would be denied.
	16 (Transfer of prisoners)	The Repatriation of Prisoners Act (Cap. 123) authorises the transfer of prisoners into or out of the Virgin Islands. The Colonial Prisoners Removal Act, 1884 also permits the transfer of prisoners between the Overseas Territories and between them and the UK.

		Section 23 of the CJICA provides for the application of the Repatriation of Prisoners Act in respect of the giving of evidence or the rendering of assistance in investigations. The transfer of prisoners to give evidence or assist an investigation overseas is permitted under sections 5A and 5B of the CJICA.
	17 (Guarantee of fair treatment of persons in custody)	The fair treatment of persons in custody is guaranteed under the Constitution. The treatment of these persons must be in accordance with established international standards.
	18 (Measures to prohibit persons from encouraging or organising the commission of offences and to facilitate STRs, record keeping and CDD measures by financial institutions and other institutions carrying out financial transactions and facilitating information exchange between agencies)	The Criminal Code makes it an offence to conspire with others to commit an offence or to aid and abet or counsel the commission of an offence (sections 311, 313, 318, 19 (1) (c) and (d) and (4), 20 and 21). Record keeping and CDD measures to be maintained by financial institutions, including information exchange between authorities, are dealt with under the AMLR and AMLTFCOP. STRs are dealt with under the POCCA, DTOA and AMLTFCOP.

585. As can be noted from the above table, the Virgin Islands has implemented all of the articles of the conventions except as stated in section 2.1 of this report the banning of some scheduled chemicals in accordance with the Vienna Convention.

586. The provisions of the UN Security Council Resolutions, S/RES/1267(1999) and S/RES/1373(2001) have been implemented within the Virgin Islands under the following legislation:

- The Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 (U.K.S.I. 2001 No.3366)
- Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002 (U.K.S.I. 2002 No. 1822)
- The Al-Qaida and Taliban (United Nations Measures) (Overseas Territories) Order 2001 (U.K.S.I. 2001 No.112)
- The Al-Qaida and Taliban (United Nations Measures) (Overseas Territories) (Amendment) Order 2002 (U.K.S.I. 2002 No.266)

587. Pursuant to the Al-Qaida and Taliban (UN Measures)(OT) Order where there is reason to suspect that an aircraft has been or is being or is about to be used on behalf of the Taliban permission can be denied for any aircraft to take off from the Territory. However no provisions are in place for the denial of landing of such an aircraft as is mandated in the United Nations Security Council Resolution 1267(1999).

588. Also there are no provisions in place for denial of safe haven to those who finance, plan support or commit terrorist acts, or provide safe havens in accordance with United Nations Security Council Resolution 1373.

6.2.2 Recommendations and Comments

589. The following is recommended;

- Since these laws have now been implemented locally active efforts should be made to the United Kingdom to have the Conventions extended to the Territory and provisions put in place for the denial of landing of any aircraft used on behalf of the Taliban and denial of safe haven in accordance with United Nations Security Council Resolution 1373.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	**Need to have Conventions extended to the Territory** **Not all scheduled chemicals under the Vienna Convention are prohibited**
SR.I	**LC**	**Need to have Convention extended to the Territory** **Not all requirements of S/RES/1373(2001) and S/RES/1267(1999) have been fully implemented**

6.3 Mutual Legal Assistance (R.36-38, SR.V, R.32)

6.3.1 Description and Analysis

Recommendation 36

590. Mutual legal assistance in the Virgin Islands can be provided under various statutes depending on the types of request. The relevant laws are administered by different entities, which interact as necessary with the FIA, which remains the focal point for conducting investigations. Generally, requests for legal assistance fall under the following categories;

a) Law enforcement – relates to the criminal offences where investigations or proceedings have been instituted.

b) Regulatory breaches/offences – relate to violations or probable violations of the financial and financial services regulatory regime or non-compliance therewith

c) Tax offences – relate to violations or probable violations of tax obligations or non-compliance therewith.

591. With respect to law enforcement, the Virgin Islands' Central Authorities are;

i. The Governor and the Attorney General, in relation to requests under the CJICA, the Governor only in relation to the TUNMOTO, the ATFOMOTO and the Extradition (Overseas Territories) Order 2002;

ii. The Attorney General, in relation to requests that fall under the Evidence (Proceedings in Foreign Jurisdictions) Act 1988, the Mutual Legal Assistance (United States of America)Act, 1990, the DTOA and the POCCA.

592. With respect to regulatory breaches/offences or investigations, the Virgin Islands' Central Authority is the Managing Director/Chief Executive of the FSC. With respect to tax matters (information exchange), the Virgin Islands' Central Authority is the Financial Secretary. The execution of requests for assistance in relation to tax matters is delegated to the Commissioner of Inland Revenue.

593. It is to be noted that the Governor's office and the Attorney General's Chambers work very closely together in the processing of mutual legal assistance requests. Request directed to the Governor are passed on to the Attorney General for advice and execution; similarly request falling to the Governor's responsibility received directly by the Attorney General are acted upon, with the Governor's sanction.

594. Assistance can be granted for the production, search and seizure of information, documents or evidence from persons under the CJICA upon the attaining of a warrant from the court where the matter relates to a criminal offence or proceeding. Under Part IV of the FSCA similar provision exists with respect to financial institutions where the FSC forms the opinion that (amongst other things) an offence under financial services legislation has been or is being committed or may be committed.

595. Under the CJICA, where the Governor receives a request for assistance in obtaining evidence in the Virgin Islands in connection with criminal proceedings that have been instituted or a criminal investigation that is being carried out elsewhere (other than in the Territory) he will after consultation with the Attorney General nominate a court in the Virgin Islands to receive such evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.

596. Under the Evidence (Proceedings in Foreign Jurisdictions) Act, 1988, the Court in the Virgin Islands may provide assistance to requests for the examination of witnesses (orally or in writing), production of documents, inspection, photographing, preservation, custody or detention of property, or medical examination of a person. Assistance is also given in taking of evidence and providing originals or copies under the relevant legislation as well as effecting service of process, including judicial documents pursuant to the Mutual Legal Assistance (United States of America) Act, 1990.

597. Requests for the identification, freezing, seizure or confiscation of assets connected to the laundering of the proceeds of criminal conduct (including money laundering or terrorist financing) are covered under the POCCA, the CJICA, the Criminal Justice (International Co-operation)(Enforcement of Overseas Forfeiture Orders) Order, 1996, and the ATFOMOTO.

598. Section 2(3) of the CJICA allows for the voluntary appearance of persons for the purpose of providing information or testimony to a requesting country.

599. Depending on the route taken, assistance can be given to countries in a timely, constructive and effective manner - responses vary within 20 to 30 days. If there is a treaty with a jurisdiction the process will be more efficient as exact channels for communication will be set out and the requesting jurisdiction would have knowledge on what is required under the law.

600. Wherever a request for legal assistance is received, the contents thereof are studied to establish compliance with the requirements of Virgin Islands' law. This process is completed within a period of five (5) working days. Within that same period the requesting authority is given written confirmation on whether assistance would be provided or if further information is required.

601. Generally, all requests for legal assistance are processed within a period of thirty days from the date of the receipt. Very urgent requests, such as those with close return court dates would be processed in a much quicker time period.

602. Mutual legal assistance under the CJICA is granted if an offence has been committed under the laws of the requesting country or territory, or there are reasonable grounds to suspect that an offence has been committed; that criminal proceedings have been instituted in the requesting country or territory; or that criminal investigations have commenced in the requesting country or territory. Mutual legal assistance can be provided in the case of a fiscal offence where proceedings are yet to be instituted, where the request emanates from a Commonwealth country or territory or is made pursuant to a treaty to which the UK is a party and has been extended to the Virgin Islands; where the conduct constituting an offence would constitute the same or similar offence if it had occurred in the Virgin Islands or there is an existing treaty between the Virgin Islands and the requesting country that would exclude this as a requirement.

603. The only limited circumstance where the request would not be granted under the CJICA is where in the case of a fiscal offence where proceedings have not yet been instituted, the offence would not constitute the same or similar offence if it had occurred in the Virgin Islands in that there is no dual criminality and there is no treaty existing between the requesting jurisdiction and the Virgin Islands.

604. Once the request is in conformity with the laws of the Virgin Islands, confirmation is sent to the requesting authority that assistance can be provided, the FIA is instructed on the nature of the offence committed or believed to have been committed, the fact that the request is in conformity with the laws of the Virgin Islands, and on a direction as to the legislative route of assistance to be followed for all or part of the request. The FIA is then further instructed to commence an immediate investigation and to revert with their results to the central authority within 21 days. The Virgin Islands has issued a booklet on international cooperation which describes all the channels for obtaining mutual legal assistance.

605. The Virgin Islands provides assistance in fiscal matters related to tax offences or from a predicate offence that is fiscal in nature. If the request relates to an offence of a fiscal nature then

section 5(3) of the CJICA would apply. Section 5(3) of the CJICA would apply to fiscal matters where criminal proceedings have not been instituted, and assistance would only be provided under the following circumstances:

1) The request must come from a Commonwealth country or territory or a country or territory which is party to a treaty that the UK is a party and made applicable to the Virgin Islands.

2) There is dual criminality; or

3) If there is no dual criminality then the duty arises from a treaty.

606. It should be noted that the Mutual Legal Assistance (Tax Matters) Act 2003 gives effect to the terms of the Agreement Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, including the Government of the British Virgin Islands, for the exchange of information relating to tax matters and it extends to any similar agreements the Government of the Virgin Islands may enter into. The Act recognises the principle of transparency and the effective exchange of information in tax matters and applies only on the basis of bilateral arrangements through formally concluded agreements.

607. There are no laws that impose secrecy or confidentiality requirements on financial institutions or DNFBPs. The common law principle governing banking confidentiality applies.

608. Section 8 of the FIAA makes provision to prevent criminal or civil liability against any person who provides the FIA with confidential information during the course of an investigation.

609. Powers to search persons or premises or compel production of, or seize and obtain record and data are available to the Governor or the Attorney General under the relevant statutes as noted above. Further, the enforcement of foreign confiscation and forfeiture orders are provided for under POCCA, DTOA and the Criminal Justice (International Co-operation)(Enforcement of Overseas Forfeiture Orders) Order, 1996 and the Drug Trafficking (Designated Countries and Territories) Order, 1996. Additionally, section 4 of the FIAA provides for the FIA to investigate mutual legal assistance requests, and sections 34, 35, 36, 37 and 38 of the POCCA provide for powers of arrest, search, production of materials and immunity from prosecution for law enforcement authorities.

610. In general, in order to avoid conflicts of jurisdiction, in the case of an extraditable offence the defendant would be brought to the Virgin Islands for trial however, as a matter of practicality if the defendant is wanted for offences in another jurisdiction then he would remain in that jurisdiction until criminal proceedings have concluded in that jurisdiction. There is however no written guidance on this.

Recommendation 37

611. Assistance is usually provided to all requesting jurisdictions, as is evident in the tables on requests. It is only in tax offences where assistance may not be granted, where the offence is not one which is similar to that of a Virgin Islands offence in that there is no dual criminality and there is not in force a Treaty with the requesting jurisdiction and proceedings

have not been instituted in the requesting jurisdiction. Even though the nomenclature of a particular offence is not identical to that on the relevant statutes of the Territory, a broad interpretation of the actual allegations is applied to cover the actual crime committed.

612. As long as the aforementioned requirements have been met, assistance in extradition and other mutual legal assistance requests will be dealt with. The request is reviewed and it is required that within the request there must be an extract from the relevant statute, law or code (not a quote or a reference) but an extract. This is for the purpose of verification of the law under which the requesting authority is proceeding in submitting a request for assistance. Technical differences in the manner of categorisation of an offence do not impede the provision of mutual legal assistance.

Recommendation 38

613. As discussed above, responses to requests for mutual legal assistance including those for the identification, freezing, seizure or confiscation of laundered property from, the proceeds from, instrumentalities used in or intended for use in ML, FT or other predicate offences will depend upon the route used. Assistance is provided in a timely, constructive and effective manner usually within 20 to 30 days.

614. Sections 15 – 20 of POCCA as complemented by the Proceeds of Criminal Conduct (Designated Countries and Territories) Order, 1999 allow for the authorities in the Virgin Islands to enforce foreign confiscation orders and charging and restraint orders. The Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) Order, 1996 provides for foreign forfeiture orders.

615. The confiscation regime in the Virgin Islands is as noted with respect to Rec.3 valued based and the same provision is available to foreign confiscation/forfeiture orders, thus allowing for requests relating to property of corresponding value.

616. The Proceeds of Criminal Conduct (Designated Countries and Territories) Order 1999 and the Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) Order, 1996 allow for the enforcement of foreign confiscation/forfeiture orders. Arrangements to coordinate seizure and confiscation actions can be done through MOUs with other jurisdictions.

617. Section 20, 21 of the POCCA as amended by Proceeds of Criminal Conduct (Designated Countries and Territories) Order 1999 deals with funds paid into the Registrar of the High Court and used for reimbursement and payment of expenses. Section 12 of the FIAA empowers the FIA to establish an "Asset Sharing Fund". Assets seized through the process of mutual legal assistance and in respect of which there remain assets to be shared, the portion or part thereof received by the Virgin Islands is to be properly channelled to that Fund for use by the FIA in the discharge of its duties. On April 29, 2008 a Seized Asset Fund was established with part proceeds of forfeited funds from a drug trafficking case.

618. Sharing of confiscated assets is done on a case by case basis. At the time of the mutual evaluation visit there was a matter underway where the relevant authorities had entered into an

MOU in relation to the sharing of assets. In May 2008, a sum of US$45 million was confiscated and forfeited to be equally shared with Bermuda on the basis of the referred MOU agreed upon in advance of the joint investigations launched in 2006.

Special Recommendation V

619. Generally, all mutual legal assistance provisions referred to above apply to terrorism and terrorism financing offences that are offences in the Virgin Islands and are thus applicable to Special Recommendation V.

Statistics

Table 23: Data on Mutual Legal Assistance Requests Received

Year	2004	2005	2006	2007
No. of Requests Received	25	14	24	20

Table 23A: Data on Type/Nature of Offences

Type of offence	2004	2005	2006	2007
Money laundering	25	14	24	18
Fraud	21	14	20	14
Theft	2	1	4	1
Drug Trafficking	2	0	3	0
Corruption	1	0	1	1

620. The above first table shows the total number of mutual legal assistance requests received for the period 2004 to 2007 and the second table shows a breakdown of the related types/nature of offences. Most of the request for assistance related to hybrid investigations into offences; generally requests for assistance in money laundering matters also related to fraud and theft matters. For the period 2004 - 2006, all requests were related in part to money laundering. In 2007 there were two cases that related only to fraud. In all cases of requests assistance was provided and as already noted above the response period in relation to requests is 30 days and in very urgent cases that period is shorter.

621. Statistics on the number of restraint orders effected in the Virgin Islands for the period 2004-2007 are presented in the table below.

Table 24: Statistics on Restraint Orders

Year	No of Restraint Orders	Type of Offence	Amount Restrained (USD)
2004	1	Fraud/Money Laundering	$1,700,000.
2005	7	Money Laundering	$52,071,000.
2006	3	Fraud/Money Laundering	Companies restrained but funds were overseas

2007	1	False Accounting/Perverting the course of justice	$1,600,000.

622 Information on mutual legal assistance made by the Virgin Islands authorities is presented in the following table.

Table 25: Requests for Mutual Legal Assistance Made by the Virgin Islands

Year	No of requests	Types of offences
2005	3	Murder/Fraud/Perverting the course of justice
2006	3	Theft/Fraud
2007	7	Money Laundering

623. With regard to the above table, all requests in 2007 resulted in confiscation being granted in the Virgin Islands. A restraint order was entered in St. Kitts and Nevis in 2006 concerning a theft offence.

6.3.2 Recommendations and Comments

624. The Virgin Islands has measures in place which fully comply with the FATF requirements for mutual legal assistance.

6.3.3 Compliance with Recommendations 36 to 38, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**C**	**This recommendation is fully observed.**
R.37	**C**	**The recommendation is fully observed**
R.38	**C**	**This recommendation is fully observed.**
SR.V	**C**	**This recommendation is fully observed.**

6.4 Extradition (R.37, 39, SR.V, R.32)

6.4.1 Description and Analysis

Recommendation 39

625. The relevant laws in relation to extradition are:

- Fugitive Offenders (Virgin Islands) Order of 1967
- Extradition Treaty (United States of America, United Kingdom) of 1977 as amended by the Supplemental Treaty of 1985
- Extradition (Overseas Territories) Order of 2002

- Extradition Act (Cap. 121)

626. Money laundering is an extraditable offence in the Virgin Islands. Under the Extradition (Overseas Territories) Order 2002 an extraditable crime constitutes an offence punishable with imprisonment for a term of 12 months or any greater punishment. Pursuant to the POCCA money laundering offences carry a term of imprisonment not exceeding fourteen years on indictment. The Virgin Islands also extradites their own nationals pursuant to Part 1 of the Extradition (Overseas Territories) Order 2002.

627. Extradition Requests can be made in two ways consistent with domestic legislation:

1. Provisional arrest: in cases of urgency. The request is generally made through police channels for arrest on the basis of a domestic warrant.

2. Full Order: where the full/formal papers are submitted through the diplomatic channel in advance of the arrest

628. Where a fugitive contests the request which under the Constitution of the Virgin Islands, section 11 (1) of the 2002 Order and common law he can so do, it may then be subject to a lengthy procedure. The law does however provide for the expedited return of fugitives who waive their rights.

629. Extradition from the Virgin Islands is barred by law if:

- The requirement for dual criminality is not satisfied;
- The offence for which extradition is requested is of a political character;
- The offence is not of a criminal nature;
- The request is made in order to prosecute or punish the fugitive on account of his race, faith etc;
- The fugitive has previously been acquitted or convicted of the same crime for which his extradition is sought;
- If it would be unjust or oppressive to extradite the wanted person;
- There is a restriction as it relates to the death penalty, in that the Virgin Islands will only extradite a person if the death penalty will not be enforced in that particular case.

630. The Virgin Islands has received no requests for extradition for ML or TF offences for the period 2004 to 2008. There was one request for attempted murder in 2004 which was granted. The Virgin Islands has requested extradition, in one instance for money laundering and fraud in July 2007. The matter is awaiting a hearing date in the requested country. Two other requests were made, one in May 2007 and the other in January 2008 for offences not related to ML or TF and which are now on trial.

Recommendation 37

631. Extradition is available for any conduct that would be an offence within the Virgin Islands. This is provided for in the following:

- Extradition Treaty (United States of America, United Kingdom) of 1977 as amended by the Supplemental Treaty of 1985
- Section 2 of Schedule 2 of the Extradition (Overseas Territories) Order of 2002.

632. If the test for dual criminality as explained in paragraph 631 is not met then assistance in extradition may be denied. Technical differences between the laws in the requesting and requested states, such as differences in the manner in which each country categorises or denominates the offence do not pose an impediment to the provision of mutual legal assistance. Offences under the Criminal Code and common law are very broad and therefore can incorporate offences in other jurisdictions that are differently designated. The Virgin Islands can provide assistance in extradition relating to insider trading and market manipulation since the underlying conduct is regarded as equivalent to conspiracy to defraud.

Special Recommendation V

633. Offences under ATFOMOTO which include terrorism and terrorist financing are extraditable and subject to the same requirements and conditions for extradition as other similar offences.

6.4.2 Recommendations and Comments

6.4.3 Compliance with Recommendations 37 & 39, Special Recommendation V and R.32

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	**C**	**This recommendation is fully observed**
R.37	**C**	**This recommendation is fully observed**
SR.V	**C**	**This recommendation is fully observed**

6.5 Other Forms of International Co-operation (R.40, SR.V, R.32)

6.5.1 Description and Analysis

Recommendation 40 and Special Recommendation V

634. The Virgin Islands has a comprehensive framework of international co-operation legislation and procedures to assist foreign judicial law enforcement, prosecutorial, tax and regulatory authorities. The framework provides an efficient and effective mechanism for cross-border co-operation and exchange of information. The legislative regime and enforcement tools

are continually reviewed and, where necessary, reformed, to keep attuned to emerging developments in domestic and international arenas.

635. As noted in section 6.3 of this report, procedures are in place to expedite cooperation with foreign counterparts' requests and proceedings relating to ML or FT. Types of requests include law enforcement relating to criminal offences, regulatory breaches/offences relating to violations of the financial and financial services regulatory regime and tax offences related to violations of tax obligations.

FIA

636. Under section 4(1) of the FIAA, the FIA is responsible for receiving, obtaining, investigating, analysing and disseminating information relating to a request for legal assistance from an authority in a foreign jurisdiction which appears to the FIA to have the function to make such requests. Section 4(2) allows the FIA to provide information relating to the commission of a financial offence to any foreign financial investigation agency, subject to any conditions as may be considered appropriate by the Attorney General. Its scope of operation covers law enforcement (fiscal offences) and regulatory breaches or offences that may be referred to it by the Governor, Attorney General or FSC. Thus the primary function of the FIA is to serve as an investigative body in relation to matters that are the subject of foreign requests for assistance. It has the authority to order persons to refrain from completing transactions, freeze bank accounts and produce documents. In the discharge or performance of its functions, the FIA has the power to enter into arrangements (subject to the Governor's fiat) with foreign financial investigation agencies. The FIA has conducted inquiries on behalf of foreign FIUs including searching its own database. All the investigative provisions of the FIAA are available for use on the behalf of foreign counterparts. Section 9 of the FIAA imposes a duty of confidentiality on all persons connected with the FIA.

637. During the last twelve months, the FIA has exchanged information with fifty-three nations, forty-five of which were Egmont members. The FIA uses the Egmont Group Statement of Purpose and its principles regarding exchange of information when sharing information with its Egmont partners and other law enforcement agencies.

638. The RVIPF can seek assistance, share and obtain information on any relevant matter from other foreign police agencies through INTERPOL. The Customs Department shares information with other customs agencies through CCLEC and the WCO.

FSC

639. Under section 33D of the FSCA, the FSC can, among other things, receive and grant assistance on request from a foreign regulatory authority for the purpose of enabling the foreign authority to discharge its regulatory functions. The FSC can make applications for a person to be examined under oath before a Magistrate or examine a person under oath by appointing an examiner to act on its behalf. Generally, the FSC is required to take appropriate steps to co-operate with foreign regulatory authorities or with persons who exercise functions in relation to the detection and prevention of financial crime. The enforcement regime (which incorporates compulsory powers) under the Act, coupled with the gateway provisions for the disclosure of information in section 49A of the Act, is robust and comprehensive in so far as international co-operation on a regulator-to-regulator -basis and in relation to law enforcement are concerned.

640. With regard to tax matters these are dealt with under the Mutual Legal Assistance (Tax Matters) Act which recognises the principle of transparency and the effective exchange of information in tax matters. This applies only on the basis of bilateral arrangements through formally concluded agreements. The Virgin Islands' Central Authority in tax matters is the Financial Secretary and execution of requests for assistance is delegated to the Commissioner of Inland Revenue.

Statistics

Table 26: Foreign Requests to and from the FIA

Year	Requests received	Requests made
2004	34	
2005	51	0
2006	26	2
2007	33	6

641. The above table records the number of mutual legal assistance requests received and made by the FIA during the period 2004 to 2007. All requests received were granted. Requests are made by the FIA for investigative or prosecution purposes. The FIA advised that one request in 2005 and 2 in 2007 were refused. There was no need for the FIA to make spontaneous referrals to foreign authorities during the period.

642. With regard to the FSC, information on requests received and made by the FSC is presented in the following table.

Table 27: Requests for assistance made/received by the FSC

	2004	2005	2006	2007
No of Requests Received	33	36	45	69
No of Requests Made	22	69	142	150
Average Response Period (Requests Received	11	15	21	11
Average Response Period (Requests Made)	-	65	19	22

643. As can be seen in the above table, the FSC is committed to providing timely responses to requests for assistance with the average response period for received requests improving to 11 days in 2007.

6.5.2 Recommendations and Comments

6.5.3 Compliance with Recommendation 40, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**C**	**This recommendation is fully observed**
SR.V	**C**	**This recommendation is fully observed**

7. OTHER ISSUES

7.1 Resources and Statistics

644. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of report i.e. all of section 2, parts of section 3 and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections.

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.30	**PC**	**The ADVCTF is inadequately staffed and trained in AML/CFT.** **Quantitatively inadequate human resources at the FSC.**
R.32	**LC**	**No records on money laundering investigations or number of production orders or search warrants maintained by the police.**

7.2 Other relevant AML/CFT measures or issues

645. There are no further issues to be discussed in this section.

7.3 General framework for AML/CFT system (see also section 1.1)

646. There are no elements of the general framework that significantly impair or inhibit the effectiveness of the AML/CFT system in the British Virgin Islands..

TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

Forty Recommendations	Rating	Summary of factors underlying rating[22]
Legal systems		
1. ML offence	**LC**	**Market manipulation and insider trading is not criminalised** **Some scheduled chemicals are not banned in accordance with the Vienna Convention** **The low number of ML convictions show limited implementation of the legal framework**
2. ML offence – mental element and corporate liability	**LC**	**The low number of ML convictions show limited implementation of the legal framework**
3. Confiscation and provisional measures	**C**	**This recommendation is fully observed.**
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	**This recommendation is fully observed**
5. Customer due diligence	**PC**	**The requirement for financial institutions to verify that any person purporting to act on behalf of customers that are legal persons or legal arrangements is so authorised, and identify and verify the identity of that person is not legislated.** **The application of simplified or reduced CDD measures to customers resident in another country is not limited to countries that the authorities are satisfied have**

1. [22] These factors are only required to be set out when the rating is less than Compliant.

		effectively implemented the FATF Recommendations. **The requirement for entities and professionals to adopt relevant risk management processes and procedures for permitting a business relationship before effecting the necessary verification is not enforceable.** **Due to the recent enactment of the AMLTFCOP effective implementation of AML/CFT measures cannot be assessed.**
6. Politically exposed persons	**LC**	**Due to the recent enactment of the AMLTFCOP effective implementation of AML/CFT measures with respect to PEPs cannot be assessed**
7. Correspondent banking	**LC**	**Due to the recent enactment of the AMLTFCOP effective implementation of AML/CFT measures with respect to correspondent banking relation can not be assessed.**
8. New technologies & non face-to-face business	**PC**	**No specific requirement for financial institutions to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing.** **No requirement for financial institutions to have policies and procedures to address specific risks associated with non-face to face business relationships or transactions.**
9. Third parties and introducers	**PC**	**No requirement for a financial institution to immediately obtain from all third parties necessary information concerning certain elements of the CDD process itemised in criteria 5.3 to 5.6**
10. Record keeping	**LC**	**Record retention of identification data is limited to five years after the last transaction of an account rather than the termination of the account** **No requirement for account files and business correspondence to be maintained for at least five years following the termination of an account or business relationship.**
11. Unusual transactions	**PC**	**Financial institutions are not required to examine as far as possible the background and purpose of complex, unusual large**

		transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and to set forth their findings in writing. **Financial institutions are not required to keep such findings available for competent authorities and auditors for at least five years.**
12. DNFBP – R.5, 6, 8-11	**PC**	**Due to the recent enactment of the AMLTFCOP and the AMLR, effective implementation of AML/CFT measures cannot be assessed** **Deficiencies identified in Recs. 5,6, 8 – 11, are also applicable to DNFBPs**
13. Suspicious transaction reporting	**LC**	**Insider trading and market manipulation are not predicate offences for money laundering**
14. Protection & no tipping-off	**LC**	**The tipping off offence with regard to STRs to the FIA is limited to after a STR has been made to the FIA**
15. Internal controls, compliance & audit	**PC**	**Financial institutions are not required to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls.** **The recent enactment of the AMLTFCOP did not allow for assessment of the effective assessment of AML/CFT measures.**
16. DNFBP – R.13-15 & 21	**PC**	**Due to the recent enactment of the AMLTFCOP and the AMLR, effective implementation of AML/CFT measures cannot be assessed** **Deficiencies identified in Recs. 13 to 15 and 21 are also applicable to DNFBPs**
17. Sanctions	**PC**	**Sanctions imposed in the AMLR and the AMLTFCOP are not dissuasive.**
18. Shell banks	**C**	**This recommendation is fully observed**
19. Other forms of reporting	**C**	**This recommendation is fully observed**
20. Other NFBP & secure transaction techniques	**C**	**This recommendation is fully observed**
21. Special attention for higher risk countries	**PC**	**No effective measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries** **No requirement for the examination of transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply FATF**

		Recommendations and making available the findings of such examinations to assist competent authorities and auditors
22. Foreign branches & subsidiaries	**PC**	**No requirement for financial institutions to pay particular attention that consistent AML/CFT measures are observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations.** **No requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures.**
23. Regulation, supervision and monitoring	**PC**	**Money value transfer service operators are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements** **Effective supervision by FSC is limited by quantitatively inadequate human resources.**
24. DNFBP - regulation, supervision and monitoring	**PC**	**While DNFBPs like real estate agents, lawyers, other independent legal advisers, accountants, dealers in precious metals and stones were covered by the AML/CFT regime, there were no effective systems for monitoring and ensuring compliance with AML/CFT requirements.** **Deficiencies identified regarding sanctions and sufficient resources for the FSC are also applicable to the supervision of trust and company service providers.**
25. Guidelines & Feedback	**LC**	**FIA annual reports do not include results of disclosure and information on typologies.** **Unable to assess effective implementation of the AMLFTCOP due to recent enactment**
Institutional and other measures		
26. The FIU	**LC**	**FIA annual reports do not include typologies**
27. Law enforcement authorities	**C**	**This recommendation is fully observed.**
28. Powers of competent authorities	**C**	**This recommendation is fully observed.**
29. Supervisors	**C**	**This recommendation is fully observed.**
30. Resources, integrity and training	**PC**	**The ADVCTF is inadequately staffed and trained in AML/CFT.** **Quantitatively inadequate human resources at the FSC.**

31. National co-operation	**C**	**This recommendation is fully observed**
32. Statistics	**LC**	**No records on money laundering investigations or number of production orders or search warrants maintained by the police.**
33. Legal persons – beneficial owners	**PC**	**Unable to assess whether information on beneficial ownership is being adequately and accurately maintained due to the low number of FSC inspections.** **IBCs incorporated before 2005 are not required to place bearer shares with authorised or recognised custodians until December 2009.**
34. Legal arrangements – beneficial owners	**LC**	**Unable to assess whether information on trusts is being adequately and accurately maintained due to the low number of FSC inspections.**
International Co-operation		
35. Conventions	**LC**	**Need to have Conventions extended to the Territory** **Not all scheduled chemicals under the Vienna Convention are prohibited.**
36. Mutual legal assistance (MLA)	**C**	**This recommendation is fully observed.**
37. Dual criminality	**C**	**This recommendation is fully observed**.
38. MLA on confiscation and freezing	**C**	**This recommendation is fully observed.**
39. Extradition	**C**	**This recommendation is fully observed**.
40. Other forms of co-operation	**C**	**This recommendation is fully observed**.
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	**LC**	**Need to have Convention extended to the Territory** **Not all requirements of S/RES/1373(2001) and S/RES/1267(1999) have been fully implemented**
SR.II Criminalise terrorist financing	**LC**	**Effectiveness of the legal framework is difficult to assess in the absence of investigations and convictions for TF**
SR.III Freeze and confiscate terrorist assets	**C**	**This recommendation is fully observed.**
SR.IV Suspicious transaction reporting	**C**	**This recommendation is fully observed**.
SR.V International co-operation	**C**	**This recommendation is fully observed.**
SR VI AML requirements for money/value transfer services	**NC**	**No requirement for a competent authority to register and/or licence natural and legal persons that perform money or value transfer services and maintain a current list of the names and addresses of licenced**

		and/or registered MVT service operators. **No system in place for monitoring MVT service operators and ensuring that they comply with the FATF Recommendations** **No requirement for MVT service operators to maintain a current list of agents which must be made available to the designated competent authority.** **Deficiencies noted in relation to Recommendations 5-11, 15, 17 and 21-23 also apply to the MVT sector**
SR VII Wire transfer rules	**LC**	**Penalties and sanctions applicable for obligations of SR VII in sections 37 to 41 of the AMLTFCOP are not dissuasive**
SR.VIII Non-profit organisations	**PC**	**No evidence of review of the adequacy of laws and regulations that related to NPOs or of periodic reassessments of the sector's potential vulnerabilities to terrorist activities.** **No supervisory programme in place to identify AML/CFT non-compliance and violations by NPOs.** **No outreach to NPOs to protect the sector from terrorist financing abuse.**
SR.IX Cross Border Declaration & Disclosure	**C**	**This recommendation is fully observed.**

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1, 2 & 32)	• Enact legislation criminalizing market manipulation and insider trading and banning Vienna Convention scheduled chemicals not already prohibited.
Criminalisation of Terrorist Financing (SR.II, R.32)	
Confiscation, freezing and seizing of proceeds of crime (R.3, R.32)	
Freezing of funds used for terrorist financing (SR.III, R.32)	
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	▪ The personnel should continue to be exposed training in the area of AML/CFT to ensure that they remain on the cutting edge. Consideration should be given to exposing staff to attachments to other FIUs to allow them to develop all aspects of their job. ▪ FIA annual reports should include typologies. ▪ Efforts should be made to implement electronic delivery of SARs to the FIA. ▪ The relevant authorities should consider intensifying their education/training programme with the various entities with respect to the preparation and filing of SARs.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	• The ADVCTF should be adequately staffed and trained in the techniques of ML and FT investigations. • The RVIPF should maintain adequate statistics on ML investigations, production orders and search warrants.
Cross Border Declaration & Disclosure (SR.IX)	•
3. Preventive Measures – Financial Institutions	
Risk of money laundering or terrorist financing	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• The requirement for financial institutions to verify that any person purporting to act on behalf of customers that are legal persons or legal arrangements is so authorised, and identify and verify the identity of that

	person should be legislated. • The authorities should issued a list of jurisdictions that they recognise as having in place measures implementing FATF Recommendations to allow financial institutions to apply simplified or reduced CDD measures to customers resident in those countries. • The requirement for entities and professionals to adopt relevant risk management processes and procedures for permitting a business relationship before effecting the necessary verification should be enforceable. • Financial institutions should be required to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing. • Financial institutions should be required to have policies and procedures to address specific risks associated with non-face to face business relationships or transactions
Third parties and introduced business (R.9)	• Financial institutions relying upon a third party should be required to immediately obtain from the third party the necessary information concerning certain elements of the CDD process itemised in criteria 5.3 to 5.6
Financial institution secrecy or confidentiality (R.4)	
Record keeping and wire transfer rules (R.10 & SR.VII)	• The AMLTFCOP should be amended to remove the possibility of identification data being destroyed five years after the last transaction of an account that has not been formally terminated. • Account files and business correspondence should be maintained for at least five years following the termination of an account or business relationship. • Penalties and sanctions applicable for obligations of SR VII in sections 37 to 41 of the AMLTFCOP should be dissuasive.
Monitoring of transactions and relationships (R.11 & 21)	• Financial institutions should be required to examine as far as possible the background and purpose of

	complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and to set forth their findings in writing. • Financial institutions should be required to keep such findings available for competent authorities and auditors for at least five years. • Effective measures should be put in place to ensure that financial institutions are advised of concerns about the weaknesses in the AML/CFT systems of other countries. • The background and purpose of transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply the FATF Recommendations should be examined and the written findings made available to assist competent authorities and auditors.
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• The FIA annual reports should include the results of disclosure and information on typologies. • Enact legislation criminalizing insider trading and market manipulation as predicate offences for money laundering • The tipping off offence should be extended to include disclosure of the fact that a STR or related information is being reported or provided to the FIA
Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Financial institutions should be required to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls. • Financial institutions should be required to pay particular attention that consistent AML/CFT measures are observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations • Financial institutions should be required to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures.

Shell banks (R.18)	
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)	• Review sanctions imposed in the AMLR and the AMLTFCOP with a view to making them dissuasive. • FSC should review present staff complement with a view to improving supervisory coverage • The FMSA should be enacted as soon as possible.
Money value transfer services (SR.VI)	• The FMSA should be enacted as soon as possible
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• Deficiencies identified for all entities and professionals as noted for Recs.5, 6, 8-11, in the relevant sections of this report are also applicable to DNFBPs. Implementation of the specific recommendations in the relevant sections of this report will also apply to DNFBPs.
Suspicious transaction reporting (R.16)	• Deficiencies identified with regard to Recs. 13 to 15, and 21 are also applicable to DNFBPs. Implementation of the specific recommendations in the relevant sections of this report will also apply to DNFBPs.
Regulation, supervision and monitoring (R.24-25)	• Effective systems for monitoring and ensuring compliance with AML/CFT requirements by real estate agents, lawyers, other independent legal advisers, accountants, and dealers in precious metals and stones should be implemented. • Deficiencies identified regarding sanctions and sufficient resources for the FSC should be remedied.
Other designated non-financial businesses and professions (R.20)	
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	• The FSC should implement an effective monitoring system to ensure that registered agents are maintaining adequate accurate and current beneficial ownership information.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	
Non-profit organisations (SR.VIII)	• The authorities should review the adequacy of the laws that relate to NPOs and conduct periodic

	reassessments of the sector's potential vulnerabilities to terrorist activities. • The authorities should undertake an outreach programme to the NPO sector with a view to protecting the sector from terrorist financing abuse. • A supervisory programme for NPOs should be developed to identify non-compliance and violations.
6. National and International Co-operation	
National co-operation and coordination (R.31 & 32)	
The Conventions and UN Special Resolutions (R.35 & SR.I)	• Since these laws have now been implemented locally active efforts should be made to the United Kingdom to have the Conventions extended to the Territory and provisions put in place for the denial of landing of any aircraft used on behalf of the Taliban and denial of safe haven in accordance with United Nations Security Council Resolution 1373.
Mutual Legal Assistance (R.36-38, SR.V, and R.32)	
Extradition (R.39, 37, SR.V & R.32)	
Other Forms of Co-operation (R.40, SR.V & R.32)	
7. Other Issues	
Other relevant AML/CFT measures or issues	
General framework – structural issues	

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country Comments

ANNEXES

Annex 1: List of abbreviations
Annex 2: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.
Annex 3: Copies of key laws, regulations and other measures
Annex 4: List of all laws, regulations and other material received

Annex 1: Acronyms and Abbreviations

ADVCTF	Anti-Drug and Violent Crimes Task Force
AML	Anti-money Laundering
AMLR	Anti-money Laundering Regulations, 2008
AMLTFCOP	Anti-money Laundering and Terrorist Financing Code of Practice
ATFOMOTO	Anti-Terrorism (Financial and Other Measures)(Overseas Territories) Order, 2001
ATM	Automated Teller Machine
ATUNMOTO	Al-Qa'ida and Taliban (United Nations Measures)(Overseas Territories) Order, 2002
BO	Beneficial Owner
BTCA	Banks and Trust Companies Act, 1990
BTCAA	Banks and Trust Companies (Amendment) Act, 2006
BVIBCA	BVI Business Companies Act, 2004
CC	Criminal Code
CCLEC	Caribbean Customs Law Enforcement Council
CDD	Customer Due Diligence
CFATF	Caribbean Financial Action Task Force
CFT	Combating Financing of Terrorism
CJICA	Criminal Justice (International Co-operation) Act
CJICAA	Criminal Justice (International Co-operation)(Amendment) Act, 2004
CMA	Company Management Act, 1990
COP	Commissioner of Police
DCP	Deputy Commissioner of Police
DNFBP	Designated Non-Financial Businesses and Professions
DPMA	Drugs (Prevention of Misuse) Act (Cap. 178)
DPP	Director of Public Prosecutions
DTOA	Drug Trafficking Offences Act
ECDD	Enhanced Customer Due Diligence
ECSC	Eastern Caribbean Supreme Court
FATF	Financial Action Task Force
FIA	Financial Investigation Agency
FIAA	Financial Investigation Agency Act, 2003
FIU	Financial Intelligence Unit
FMSA	Financial and Money Services Act, 2007

FSC	Financial Services Commission
FSCA	Financial Services Commission Act
FT	Financing of Terrorism
GN	Guidance Notes on the Prevention of Money Laundering
IA	Insurance Act, 1994
IR	Insurance Regulations, 2005
JALTFAC	Joint Anti-money Laundering and Terrorist Financing Advisory Committee
JAMLCC	Joint Anti-money Laundering Co-ordinating Committee
MFA	Mutual Funds Act, 1996
ML	Money Laundering
MLAT	Mutual Legal Assistance Treaty
MOU	Memorandum of Understanding
MSB	Money Services Business
NDAC	National Drug Advisory Council
NJICC	National Joint Intelligence and Co-ordinating Committee
NPO	Non-Profit Organisation
NSC	National Security Council
ODPP	Office of the Director of Public Prosecutions
PEP	Politically Exposed Person
POCCA	Proceeds of Criminal Conduct Act, 1997
POCCAA	Proceeds of Criminal Conduct (Amendment) Act, 2008
PSC	Public Service Commission
RIPA	Regulation of Investigatory Powers Act
RVIPF	Royal Virgin Islands Police Force
SAR	Suspicious Activity Report
TCSP	Trust and Company Service Provider
TUNMOTO	Terrorism (United Nations Measures) (Overseas Territories) Order, 2001
VISR	Virgin Islands Shipping Registry

Annex 2: All Bodies Met During the On-site Visit

GOVERNMENT AGENCIES

Attorney General's Chambers
Ministry of Finance
Financial Services Commission
Office of the Director of Public Prosecutions
Financial Investigation Agency
Royal Virgin Islands Police Force
Her Majesty's Customs
Department of Immigration

INDUSTRY BODIES

BVI Bar Association
Society of Trust & Estate Practitioners
BVI Bankers Association
BVI Insurance Association
BVI Association of Insurance Managers
Association of Accountants
Association of Registered Agents
BVI Association of Compliance Officers
Mutual Fund Practitioners Association

FINANCIAL SECTOR

Scotiabank (British Virgin Islands) Limited
Banco Popular de Puerto Rico
First Bank Virgin Islands
First Caribbean (International) Bank Cayman Limited
Jordans (Caribbean) Ltd
Aleman, Cordero, Galindo & Lee Trust (BVI) Limited
Rawlinson & Hunter Limited
Pro Services Ltd
Folio Administrators Limited
Conifer Fund Services
Fortis Prime Fund Solutions Management Services (BVI) Limited
Belmont Insurance Management Limited
Alphonso Warner Insurance Agency
Sovereign Caribbean Limited
Trident Trust Company (BVI) Limited
ATC Trustees (BVI) Ltd
Codan Trust Company (B.V.I.) Ltd