

British Virgin Islands: National Risk Assessment of Money Laundering and Terrorist Financing

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Executive Summary

1. Introduction

- 1.1 This is the British Virgin Islands' first money laundering and terrorist financing national risk assessment (NRA). It aims to help the Virgin Islands understand the effectiveness of its measures and systems for anti-money laundering (AML) and combatting the financing of terrorism (CFT) across Government, supervisory and law enforcement agencies and the regulated and private sectors.
- 1.2 The NRA had high-level political commitment, a focused approach and dedicated time and resources. It results from the Virgin Islands' determination to meet international standards and respond to international expectations, including the Recommendations of the Financial Action Task Force (FATF). Conducting a NRA is one of the accepted methods of satisfying a country's obligations to understand, assess and mitigate its ML/TF risks.
- 1.3 The NRA reviewed the period 2011-2014 to identify threats and vulnerabilities for a range of agencies and sectors. Some of the challenges detected were addressed during or shortly after the NRA process and this is noted in relevant places of the Report where considered necessary. Plans are currently being developed to address other issues.
- 1.4 The aim is for all necessary steps to be taken to improve matters and mitigate risks by targeting resources where they are most needed. It would be helpful to conduct a further review within a year to assess progress in giving effect to the recommendations of the Report.
- 1.5 This NRA differs from ones undertaken by other countries in the detail of the analysis and areas for improvements published. In addition to identifying threats and vulnerabilities, the Report is a self-assessment of the BVI's AML/CFT compliance level. This approach is considered helpful in assisting the territory to understand its shortcomings better and undertake appropriate remedial measures to mitigate the identified threats and vulnerabilities.

2. NRA methodology

- 2.1 A broad section of the Government and Virgin Islands society participated in the NRA process. The Cabinet set the policy for compliance with FATF Recommendation One and established the structure for conducting the NRA. Overall policy was set by a committee (NRAC) chaired by the Premier. Its other members were the Governor, Deputy Governor, Attorney General, Managing Director/CEO of the Financial Services Commission, Financial Secretary and a

private sector representative. The NRAC met every two months or more often as requested by the NRASG.

- 2.2 A Steering Group (NRASG), supported by a secretariat, was responsible for the conduct of the NRA, including developing the NRA framework. It trained, guided and evaluated Assessors and prepared this Report on the basis of the findings and reports of the Assessors. The NRASG was chaired by the FSC's Director of Policy Research and Statistics and included members from the FIA, FSC, ODPP and RVIPF, some of whom are trained assessors in the Fourth Round of Mutual Evaluations and have participated in peer review assessments.
- 2.3 A Public Education Committee (PEC) raised public awareness of the NRA and the ramifications of ML/TF activities through a series of public outreach programmes. A Communications Committee encouraged public and private sector participation through media engagement.
- 2.4 Members of the Inter-governmental Committee on AML/CFT Matters (IGC) nominated 39 Assessors to undertake the NRA. These assessed competent authorities, law enforcement agencies, financial institutions, designated non-financial businesses and professions, non-profit organisations and high value goods dealers. An Internal Reviewer and External Assessor reviewed the framework and this Report. The Internal Reviewer represented the Territory's Joint Anti-money Laundering and Terrorist Financing Advisory Committee (JALTFAC).
- 2.5 Following initial data collection through pre-assessment questionnaires, the NRA's scope was expanded to include key governmental and non-governmental institutions as these might have vulnerabilities that might prevent implementation of the sectoral recommendations. The NRA exercise thus went beyond the usual pure risk assessment by considering all areas relevant to ensuring full compliance with AML/CFT obligations.
- 2.6 Where any deficiencies were identified, this was not intended as an indictment but as an opportunity for improvement to ensure the strongest possible AML/CFT defence.
- 2.7 In Phase I, relevant persons were invited to respond to pre-assessment questionnaires (PAQs). A total of 485 PAQs were distributed and 193 responses were received, representing a 39.8 per cent response rate.
- 2.8 The PAQs explored international cooperation issues relevant to CAs; regulation and supervision by the FSC and FIA; internal controls; operational risk factors; record keeping requirements; AML/CFT compliance and handling of STRs by FIs, NPOs, DNFBPs and HVGs; how FIs and DNFBPs cooperate internationally; law enforcement and how the FIA functions as an FIU; and national, intra-agency AML/CFT cooperation and coordination
- 2.9 In Phase II, Assessors conducted 237 onsite interviews. As well as specific questions, these used the responses in Phase I to gather missing data, verify key

information and compare what entities said with what they had written. Assessors also used data from other sources such as the IMF, Global Forum, FATF and CFATF.

- 2.10 Both quantitative and qualitative data were used to make the requisite AML/CFT (including proliferation financing [PF]) assessment, given that criminals use the same or similar ways to raise or move funds. The analysis took account of frameworks such as the NRA Framework (NRAF) and relevant literature issued by the World Bank.
- 2.11 Risk assessment criteria included whether reporting entities, CAs and LEAs had robust controls to identify and mitigate ML/TF risk; whether measures were commensurate with the risks identified; the types of Virgin Islands criminal activity that were ML/TF predicate offences; and the extent of cooperation to mitigate ML/TF risks.
- 2.12 Factors included assessment of LEAs, the relevant regulators and CAs; and the Territory's international cooperation mechanisms. Private sector input was used in assessing FIs, DNFBPs, HVGs and NPOs.
- 2.13 Questions were risk weighted based on the FATF Recommendations and the probability and frequency of an occurrence and its ML/TF and international cooperation impact on the Virgin Islands. A weighted risk average was arrived at and ratings of high, medium or low applied.

3. Domestic advisory bodies

- 3.1 The **Joint Anti-money Laundering and Terrorist Financing Advisory Committee (JALTFAC)** advises the FSC on AML/CFT initiatives. It performs to a generally high standard and its meetings are in-depth and robust. Work is ongoing to increase public outreach and attendance at meetings.
- 3.2 The **Inter-governmental Committee on AML/CFT Matters (IGC)** raises public awareness of ML/TF issues and fosters AML/CFT cooperation between key domestic agencies and with overseas AML/CFT agencies. Attendance at IGC meetings and the provision of statistical data to the IGC has steadily improved since 2011. An important area for improvement is for the IGC to undertake meaningful analysis of data to identify AML/CFT trends and typologies.
- 3.3 It is unclear what impact the IGC has had on improving the AML/CFT framework or awareness of ML/TF risks. A limitation is that the JALTFAC and IGC are not responsible for coordinating the AML/CFT regime in line with FATF Recommendations One and Two. It would be helpful to establish a national body that directs and coordinates all AML/CFT issues at the domestic level.

4. Legal persons and arrangements

- 4.1 The Virgin Islands is not alone among international finance centres in being susceptible to the abuse of its corporate structures by unscrupulous persons. Through effective supervision, it seeks to ensure that lawful vehicles are not abused for ML, TF and other crime.
- 4.2 The Financial Services Commission (FSC) regulates and supervises the Virgin Islands' financial services sector. This covers banking, insurance, mutual funds, investment business, trust and corporate service providers (TCSPs), financing and money service providers and insolvency practitioners. The FSC also approves authorised custodians and representatives, directors, senior officers and other independent officers.
- 4.3 Companies are governed by the BVI Business Companies Act (BVBCA) and only a registered agent (RA) can apply to incorporate a company. Ownership and control may be vested in natural or legal persons. A BVIBC must have a registered office and agent in the Virgin Islands and maintain a register of members. Where records are maintained outside the BVI, the RA must know the address and who has control.
- 4.4 The FSC carries out AML/CFT oversight by regulating and supervising TCSPs who act as registered agents (RAs) to the level of a financial institution, in line with FATF Recommendations. TCSPs must risk-assess the BVIBCs for which they act. The FSC checks they are doing so through periodic inspections. This enables some identification of ML/TF risks.
- 4.5 A company can issue bearer shares, which must be immobilized and deposited with authorized or recognized custodians in or outside the BVI, along with ownership identification. Since July 2012, RAs within the Virgin Islands have had to maintain full information on the owners of bearer shares. Relatively few companies are authorised to issue bearer shares and CAs and LEAs such as the FSC, FIA and ITA are satisfied any risk has been contained. They have found getting information on people behind bearer shares straightforward.
- 4.6 The FSC carries out onsite inspections of authorised custodians but not of recognised custodians as they are investment exchanges or clearing organisations in an FATF member jurisdiction, where they are normally supervised to high standards.
- 4.7 Trust service business is regulated and subject to AML/CFT legislative provisions, with due diligence required. Trusts do not have to be registered, making it harder to quantify the number or the value of their assets. Limited partnerships may be formed under the Partnership Act, 1996 and must maintain a registered office and RA in the Virgin Islands which holds the name, address, amounts and contribution dates for each partner.

- 4.8 For non-regulated entities, the FSC assesses risk by regulating and supervising their RAs, who must undertake CDD and other AML/CFT checks and understand their company's business activities.

5. Competent authorities (CAs)

Governor's Office (GO)

- 5.1 The Governor is Her Majesty's representative in the Virgin Islands and in that capacity also serves her Majesty's interests. He is responsible for security and governance, including extradition, and is the competent authority for the receipt and processing of incoming and outgoing MLA requests (excluding MLA requests related to the USA unless for extradition).
- 5.2 Both the GO and the Attorney General's Chambers (AGC) act on MLA and extradition matters. The AGC is a member of the IGC and JALTFAC. It is the central authority for US MLA, while the GO is the central authority for MLA to and from other countries. There is also opportunity to improve how the GO is made aware of requests sent directly to the AGC, to provide training for staff in MLA and extradition matters and to develop more detailed standard operating procedures (SOPs) for processing requests.
- 5.3 The GO has a records management policy and all files are secure. Maintaining information electronically would make it easier to locate files quickly and track any access granted.

Attorney General's Chambers (AGC)

- 5.4 The Attorney General (AG) is the Government's principal legal adviser and sits ex officio in Cabinet and in the House of Assembly. The AG's independence is assured under The Virgin Islands Constitution Order 2007.
- 5.5 Medium-risk areas for improvement relate to governance and administration, handling of incoming MLA and international cooperation requests from foreign CAs, handling of outgoing MLA and international cooperation requests, the number of requests that are declined, complaints handling, records management and maintenance, and processing MLA requests and extradition in a timely manner
- 5.6 Swifter processing of extradition and MLA requests could be achieved by having an internal policy and written procedures for handling MLA requests, providing in-depth training for key staff and filling vacant posts. Opportunities for the AGC to be more proactive include asking foreign CAs for feedback on the information it has sent, entering into MoUs with overseas CAs, requesting clarification of unclear requests, and recommending reforms to Virgin Islands laws.
- 5.7 Other opportunities for improvement lie in extending training to all legal staff and addressing some security shortcomings.

Financial Investigation Agency (FIA)

- 5.8 The Financial Investigation Agency (FIA) is a statutory body which functions autonomously and independently of Government. It is a fully participating member of the Egmont Group of financial intelligence units (FIUs) and the CFATF Working Group on FIUs.
- 5.9 Staff receive extensive, expert training. They understand their legal obligations on conflicts of interest and corruption despite no apparent formal training in these or PF. Records management and security are largely good.
- 5.10 The Director effectively carries out the work of the FIA's Steering Committee, although the committee is statutorily mandated to receive and review SARs/STRs. Increasing the number of skilled staff would help with speeding up SAR/STR investigations and prosecutions, responding to the large volume of overseas requests and reviewing compliance manuals. In the review period, SARs/STRs could not always be investigated in the year they were received, resulting in inordinate delays.
- 5.11 The FIA has not proactively used the MoUs it has signed with numerous IGC members, as well as the IGC MMoU. Opportunity exists for greater cooperation between the FIA, RVIPF and ODPP, from identification to prosecution of possible ML offences. Obtaining feedback from overseas CAs after giving them information would help the FIA judge its effectiveness.
- 5.12 The FIA's SOP manual does not always reflect current practice and dates from November 2012. The FIA would benefit from having a documented procedure for document control and management, with regular review and revision.

Financial Services Commission (FSC)

- 5.13 The FSC has powers to regulate and supervise financial services businesses which are licensed, authorised or approved to carry out business in and from within the BVI. The FSC scored well on governance and administration, handling local CAs' requests for assistance, providing feedback on declined requests, handling complaints and records management and maintenance.
- 5.14 Areas of medium risk for improvement include the handling of incoming and outgoing MLA requests, challenges to MLA requests from foreign CAs and handling of complaints received.
- 5.15 Of particular benefit would be increasing the number of staff dedicated to compliance inspection (there was a low level of inspections in the review period and slow finalising of reports) and to enforcement.
- 5.16 The FSC's risk assessment mechanisms are set out in various manuals, forms and guidance. Having a single document could help ensure that all those involved in risk assessment applied the same required criteria to the extent feasible.

International Tax Authority (ITA)

- 5.17 The ITA executes bilateral and multilateral tax agreements. It is a department of Government, and the Financial Secretary delegates to the ITA his functions as CA for all exchange of information related to tax matters.
- 5.18 The highest risk area for improvement is the timely processing of requests for MLA. Other areas include inter-agency cooperation, handling incoming MLA requests from foreign CAs, assistance provided in MLA requests that result in prosecution and conviction, and handling of external complaints.
- 5.19 The ITA is responsible for serving notices to people to provide information. Ending its reliance on the Ministry of Finance's messenger for this would speed up the serving of notices and enhance international cooperation.
- 5.20 Where service providers fail to provide information, the ITA can refer matters to the ODPP for prosecution. However, it has no power to impose administrative penalties itself. Improving the ODPP's responsiveness would enhance international cooperation.
- 5.21 The ITA's governance and administration structure and system are largely good, as are handling of outgoing MLA requests, provision of feedback on declined requests, handling of complaints filed by the ITA and records management and maintenance.

6. Financial institutions (FIs)

- 6.1 The Virgin Islands' financial services industry is comprised of traditionally regulated FIs, which include banking business, insurance business, investment business, TCSPs, insolvency practitioners and the financing and money services business. The largest sub-sector is TCSPs, which, through company incorporations, are the main direct revenue generator for the Government. The second largest is investment business, which by its nature exists largely outside of the Territory.
- 6.2 Common areas for improvement include corporate governance issues, beneficial ownership, client verification/CDD and ECDD measures, AML/CFT internal control measures, internal risk assessment measures, filing of SARs/STRs, banking relationships and electronic transfers, high-risk business practices, demographics as it relates to customer, beneficial owner, and counterparty transactions, and client-based risk assessment measures.
- 6.3 Most FIs have sufficient and effective AML/CFT internal controls in place, with the possible exception of MSBs. The banking and TCSP sub-sectors make the highest level of SARs/STRs filings. MSBs and banking institutions have room for improvement in mitigating geographical risks.
- 6.4 Looking at risk frameworks and client verification and CDD/ECDD measures, TCSPs and banking institutions present a lower risk than insolvency practitioners and insurance.

Trust and corporate service providers (TCSPs)

- 6.5 Although under the FATF Recommendations TCSPs are considered DNFBPs, the Virgin Islands regulates them under the Banks and Trust Companies Act, 1990, the Company Management Act, 1990 and related legislation. Many TCSPs are a part of groups in other international finance centres (IFCs) and most clients are non-resident in the BVI.
- 6.6 High-risk areas for improvement are TCSPs' over-reliance on third parties to obtain relevant client information and ensuring accessibility of records. As regards client verification, BO and CDD/ECDD, TCSPs could be more effective in applying risk assessments and more proactive in filing SARs/STRs. It would be helpful to improve the keeping of records and allow for their easy access and retrieval.
- 6.7 In 2011-14, TCSPs accounted for 30 per cent of all FSC inspections. Enforcement action appears largely to rely on onsite inspections. This suggests an opportunity for the FSC to go beyond onsite inspections to ensure TCSPs follow legal obligations at all times.

Insurance business

- 6.8 Insurance business is licensable under the Insurance Act, 2008 and the Insurance Regulations, 2009 (IR) and includes domestic insurers, captive insurers, insurance managers, loss adjusters and insurance intermediaries (agents and brokers). Domestic insurance accounts for most business, and property and casualty insurance in particular pose a low AML/CFT risk. Foreign insurance is undertaken primarily by captive insurers, also low risk.
- 6.9 Domestic businesses maintain readily available BO information in the Territory. Two-thirds of business conducted elsewhere do the same or make the information easily accessible, which means there is an opportunity for the other third to do so. All maintain CDD/ECDD and client information in the BVI. All have written policies for accepting customers, which are mostly adequate.
- 6.10 Four in five do not maintain records of one-off transactions but the risk level is medium, as it is or the location of customers, BOs and counter-party transactions. Opportunities for improvement include procedures for identifying different customer risk categories (undertaken by 60 per cent of insurers) and risk-profiling of business relationships (40 per cent) and filing of SARs/STRs (27 per cent).
- 6.11 There are no high-risk banking relationships or relationships with FIs in high-risk jurisdictions.

Insolvency business

- 6.12 Insolvency practitioners are licensed under the Insolvency Act, 2003 and are required to maintain AML/CT systems and controls. The Report's sample size of five practitioners is too small to draw objective conclusions but risks are considered low

given the nature of insolvency work and that practitioners are normally appointed by the High Court and effectively function as officers of the Court.

- 6.13 Most have access to BO information in the Virgin Islands on their business relationships and all have CDD/ECDD measures in place and adequate written policies for accepting customers, with good understanding of client relationships. All carry out risk assessments of their business and business relationships and maintain readily accessible records.
- 6.14 Based on the low filing of SARs/STRs, practitioners may need to review their AML/CFT reporting mechanisms. Greater inspection by the FSC might enable more timely discovery of any ML/TF risks.

Investment business

- 6.15 Investment business in the Virgin Islands is regulated by the FSC under SIBA. This covers all types of mutual funds. Investment advisers, investment managers, broker/dealers and fund administrators are also licensed.
- 6.16 Most service providers are outside the Virgin Islands and are not covered by the NRA. While it would be helpful to assess these, a review of those in the Territory provides some useful learning. All licensees wherever located must have a local authorised representative.
- 6.17 High-risk areas for improvement are beneficial ownership and CDD, and client verification and CDD/ECDD measures. Medium-risk areas include staff training, internal risk assessment measures, SAR/STR filing, records maintenance and accessibility, banking relationships and electronic payments, involvement in high-risk business practices, client-based risk assessment measures and demographics in relation to customers, BOs of customers and counterparty transactions.
- 6.18 In the review period, the FSC carried out 25 onsite inspections. This suggests an opportunity to enhance supervisory resources to increase inspections and undertake an in-depth analysis of ML/TF and supervisory risks.

Banking institutions

- 6.19 The banking sector is regulated under the BTCA and other related regulatory legislation and each bank operating in the Territory is licensed. The Virgin Islands has just six commercial banks and one restricted banking institution. Nearly all their business is domestic.
- 6.20 Banks have among the most effective AML/CFT controls of all Virgin Islands sub-sectors. BO information is well managed and maintained, with information kept in the Virgin Islands or readily available, and staff receive AML/CFT training and can report risk concerns. All requirements of FATF Recommendation 16 on electronic transfers are met. In the review period, banks accounted for 30 per cent of all SARs/STRs filed, demonstrating their vigilance.

- 6.21 There is some opportunity for improvement in corporate governance, managing banking relationships, verifying domestic business and client demographics.

Money services businesses (MSBs)

- 6.22 Money services businesses (MSBs) have been regulated since the enactment of the Financing and Money Services Act, 2009. The first MSB licence was issued in 2011, followed by another in 2012, and the two MSBs remain for the periods 2013 and 2014. With the global trend towards de-risking, access to the banking system for MSBs in the BVI and the region is extremely limited. This potentially poses a serious risk of driving money transmission underground, where there is no supervisory or monitoring mechanism.
- 6.23 High-risk areas for improvement are collecting and maintaining BO and CDD information, internal risk assessment measures, SAR/STR filing and client-based risk assessment measures. Other areas include corporate governance, client verification and CDD/ECDD measures, AML/CFT internal controls, banking relationships, high-risk business practices and demographics in relation to customers, BO and counterparty transactions.
- 6.24 Record keeping is good. Most MSB users do not send large amounts but are largely meeting home country obligations. However, having procedures in place for the electronic transfer of funds would be useful.
- 6.25 The FSC conducted only one inspection of an MSB during the period under review and has not issued AML/CFT guidelines to assist MSBs. Regulation has yet to address the aggregate size of remittances, type of clientele and the purpose of remittances.

7. Designated Non-Financial Businesses and Professions (DNFBPs)

- 7.1 The DNFBP sector in the Virgin Islands is small, considering that the TCSP sector is treated as part of the FI sector. DNFBPs dealing in precious metals and stone are addressed separately in the HVG section of this Report. There is some uncertainty about numbers as many businesses that engage in DNFBP-type activities have trade licences but are not currently required to register with the FIA.
- 7.2 The DNFBPs assessed are legal practitioners (including notaries public), real estate agents (REAs) and accountants. Medium-risk areas for improvement are corporate governance and administration, resources for monitoring AML/CFT compliance, internal risk assessment measures, staff training and filing of SARs/STRs.
- 7.3 There is opportunity to deepen FIA oversight, which consisted mostly of desk reviews rather than onsite inspections in the review period. The FIA inspected neither REAs or law firms in the review period, which provokes further reflection about its supervision of the sector.

- 7.4 The real estate agents were least aware of their AML/CFT obligations but there is no evidence of ML/TF activity among REAs or any attempt at this. Areas for improvement include governance and administration, CDD/ECDD measures, internal control measures, resources for monitoring ML/TF risk, risk policies, staff training and reporting of SARs/STRs. They regularly accepted cash for property transactions, whereas 95 per cent of accountants and law firms did not accept cash at all.
- 7.5 The legal practitioners demonstrated better familiarity with the AML/CFT laws and had appropriate CDD/ECDD and client verification measures in place. A large number are linked to regulated entities such as a Virgin Islands trust company or an international law firm, and understand their AML/CFT obligations. Medium-risk areas for improvement are corporate governance and internal risk assessment deficiencies.
- 7.6 Most legal firms have at least one practitioner appointed as a notary public and nearly all Virgin Islands notaries public are legal practitioners. These present a low AML/CFT risk as their reliance on original documents establishes a paper trail and requests for their services come from regulated entities, mostly TCSPs.
- 7.7 As regards accountants, most did not engage in activities within the scope of the AMLR but largely undertook auditing and insolvency. Although they filed only one SAR/STR in the review period, accountants pose a low AML/CFT risk as they know their obligations and have client risk-profiling and monitoring in place.

8. Non-Profit Organisations (NPOs)

- 8.1 NPOs reviewed for the NRA comprised community-based organisations, foundations, national country associations, performing arts organisations, religious organisations, service organisations, sports organisations and youth organisations.
- 8.2 Although NPOs generally lack understanding of ML/TF, they do not pose a material ML/TF risk to the BVI. Most are small, community-based, know their donors locally and have a low income. Few NPOs appoint MLROs, provide AML/CFT training or carry out background checks on potential members or volunteers. None filed SARs/STRs in the review period. Those with international affiliations generally rely on the systems of HQs in jurisdictions recognised under the AMLTFCOP.
- 8.3 No NPO appears to engage in high-risk activities or large monetary transactions regularly. The bulk of their activities is within the Virgin Islands and can be monitored.
- 8.4 Following the NRA assessment, the Assessors consider that sections 4 and 5 of the AMLTFCOP should be reviewed to reduce the compliance burden on smaller NPOs as they generally do not signal vulnerability to ML/TF. Supervision by the FIA for AML/CFT compliance should still continue on a risk basis. The NPOA should also

be reviewed to reduce the burdens that have prevented most NPOs from being able to register with the NPO Board.

9. High value goods (HVG) dealers

- 9.1 HVG dealers are persons who buy and sell certain high value goods for a cash payment of \$15,000 or more in any currency. While reviewed separately by the NRA, they are supervised by the FIA as a sub-set of DNFBPs. There are four designated categories: boat (yacht) dealers; vehicle dealers; jewellers; and furniture, machinery and art dealers.
- 9.2 Compliance with AML/CFT obligations varied across the categories. Areas for improvement include training in detecting red flags for ML/TF and the obligation to file SARs/STRs. Other areas include ensuring client verification systems, conducting CDD/ECDD on business relationships, internal control measures, having sufficient resources to monitor staff's AML/CFT compliance and conducting risk assessments.
- 9.3 Despite this, the HVG sector is considered to pose only a medium risk. The industry is small and most transactions are carried out using credit/debit cards, high-value transactions are conducted by FIs and most dealers have adequate record-keeping measures.
- 9.4 None was inspected for AML/CFT compliance during the period under review, although following the NRA, the FIA has inspected seven entities and is raising HVGs' awareness of their obligations.

10. Law enforcement agencies (LEAs)

- 10.1 The NRA reviewed seven law enforcement agencies (LEAs) with an AML/CFT locus: the Department of Immigration, Her Majesty's Customs, the Royal Virgin Islands Police Force (and its Financial Crimes Unit), the Office of the Director of Public Prosecutions, the BVI Airports Authority, the BVI Ports Authority, and the judiciary (Magistrate's Court and High Court).
- 10.2 Overall, high-risk areas for improvement are handling incoming MLA and extradition requests, handling outgoing MLA requests, processing MLA requests, ability to monitor BVIBCs for ML/TF, and handling of investigations relating to ML/TF. Other areas are of governance and administration, staff training in AML/CFT, records management and maintenance, handling of seizure of contraband, smuggling and security breaches, and inter-agency cooperation.

Immigration Department (ID)

- 10.3 The ID is responsible for controlling entry into the Virgin Islands and approving residence of people within the BVI. It is governed by the Immigration and Passport

Ordinance and headed by the Chief Immigration Officer (CIO), who reports directly to the Permanent Secretary in the Premier's Office.

- 10.4 The ID overall appears to pose a low risk, although a lack of data left questions open. A high-risk area for improvement is training in AML/CFT matters, with other areas being governance and administration, records maintenance and accessibility, and smuggling activities and deportation of illegal migrants and undesirable persons.

Her Majesty's Customs (HMC)

- 10.5 Her Majesty's Customs (HMC) prevents restricted and prohibited goods from entering or leaving the Virgin Islands and assists with border protection in cooperation with the ID and RVIPF. It comes under the Ministry of Finance and the Commissioner of Customs reports directly to the Financial Secretary.
- 10.6 HMC poses a low risk overall, with good governance and administration, inter-agency cooperation and an accessible records management system. Staff training (including around bribery and corruption), the handling of seizures and smuggling, and vulnerability to security breaches would benefit from greater focus.
- 10.7 HMC does not set a timeframe for responding to international information requests but claims to do so efficiently and there were no outstanding requests at the time of the NRA. It would be helpful to develop records to verify numbers of requests and the adequacy of staffing for handling these.

Royal Virgin Islands Police Force (RVIPF)

- 10.8 The RVIPF is governed by the Police Act. Its duties include maintaining law and order and preventing and detecting crime. It arrests suspects, prefers or initiates charges and forwards matters for prosecution to the ODPP.
- 10.9 The RVIPF has the most high-risk areas for improvement of the LEAs. These comprise staff training in AML/CFT matters, handling of outgoing MLA requests and of incoming MLA and extradition requests from foreign CAs, records maintenance and accessibility, feedback on declined requests and monitoring BVIBCs for ML/TF activities. Other areas are governance and administration, inter-agency cooperation on incoming MLA requests and handling of investigations relating to ML/TF.
- 10.10 Staffing is a high-priority area for improvement. Human and technical resources for the Crime Division, FCU and CID (including communication and storage) need to be commensurate with the level of criminal activity, given these units' AML/CFT importance. The RVIPF training budget was radically reduced in 2014.
- 10.11 The Police Service Commission advises the Governor on appointing, removing and disciplining RVIPF officers. The National Security Council (NSC) advises him on national security and has to approve any officer appointment above Chief Inspector rank. A lack of responsiveness from both institutions meant their overall effectiveness could not be evaluated.

- 10.12 With regard to internal cooperation between the RVIPF's own agencies, greater appreciation of the FCU's role would enhance ML investigations. There is an opportunity for the CID to consult the FCU as a matter of course and develop a common procedure.
- 10.13 As the agency responsible for investigating all crimes in the Territory, the RVIPF is required to liaise with all CAs, other LEAs and other agencies. There is room for improvement here: the MoU with the FIA for processing Interpol requests could operate more effectively; HMC was not clear about the outcome of matters it had sent to the RVIPF for investigation; and guidance for officers on investigations and an expansion of expertise and resources would reduce delays between the RVIPF recording offences and submitting them to the ODPP. Tackling the disparities between the offences which the RVIPF and ODPP record would help match charges brought to offences prosecuted.

Office of the Director of Public Prosecutions (ODPP)

- 10.14 The ODPP is an independent team of prosecutors headed by the DPP, who is responsible for all its proceedings. The DPP initiates and may discontinue prosecutions.
- 10.15 The ODPP does not have any high-risk areas for improvement. Two other areas relate to governance and administration and to inter-agency cooperation. The latter particularly refers to the RVIPF, in order to ensure that all the ML/TF that could arise from predicate offences is considered. There could be greater willingness to pursue and prosecute ML-related offences.
- 10.16 The ODPP is responsible for pursuing confiscation and forfeiture of property connected to offences prosecuted. The impetus to pursue confiscation as part of prosecutions appears limited, as no evidence was shown to demonstrate otherwise. Indeed, LEAs generally appear satisfied to pursue forfeiture proceedings rather than conduct investigations with a view to confiscation. Fuller training on asset recovery, asset restraint, confiscation and forfeiture might improve this.

BVI Airports Authority (BVIAA)

- 10.17 The BVIAA has responsibility for the administration of all the Virgin Islands' airports, including ensuring their security.
- 10.18 The BVIAA does not have any high-risk areas for improvement. There are, however, areas of medium risk that relate to governance and administration, inter-agency cooperation and level of interaction with other LEAs, staff training, records maintenance and accessibility, and seizures, smuggling and security breaches.

BVI Ports Authority (BVIPA)

- 10.19 The BVIPA is responsible for the Virgin Islands' seven ports: five domestic and international terminals, one cruise port and one cargo facility.

- 10.20 Two high-risk areas for improvement are staff training (there is an opportunity to introduce AML/CFT training as it relates to smuggling) and the handling of seizures, smuggling and security breaches. Other areas related to governance and administration, inter-agency cooperation and interaction with other LEAs, and records maintenance and accessibility.

The judiciary: Magistrate's Court (MC)

- 10.21 The MC decides mainly summary criminal matters, minor civil claims and certain family law matters. It also has limited jurisdiction over maritime salvage and wrecks. It does a good job of safeguarding its independence. Its decisions are appealable to the Court of Appeal.
- 10.22 A high-risk area for improvement is staff training, in that although matters may have AML/CFT dimensions, only the Senior Magistrate has received AML/CFT training. It would also be helpful to address resource issues, as the absence of court reporters means justice is dispensed less speedily, most staff work extra time every day, and the JEMS case tracking system cannot be used optimally.
- 10.23 Other areas for improvement are governance and administration, level of records maintenance and accessibility, handling of complaints and level of inter-agency cooperation. Better physical security for court premises should be considered.

The judiciary: High Court (HC)

- 10.24 The HC has three judges, one dedicated to the ECSC's Commercial Division based in the Virgin Islands and two dealing mostly with criminal and civil matters. HC decisions are appealable to and heard by the Court of Appeal and the latter's decision can be appealed to the Judicial Committee of the Privy Council.
- 10.25 The HC's written cooperation with the NRA extended only to responding to questions about staffing. While a full evaluation is not possible, an interview with HC Registry officials has nonetheless enabled some analysis. A separate review of the HC Registry would be helpful.
- 10.26 Medium-risk areas for improvement are governance and administration, staff training and records management and accessibility. The HC Registry would benefit from better appreciating its relevance to the Virgin Islands' AML/CFT regime.

11. Freezing, seizure, confiscation and forfeiture

- 11.1 The Virgin Islands' legislative framework to freeze, seize, confiscate and forfeit assets and proceeds of criminal conduct for the purpose of mitigating ML/TF risks includes the Drug Trafficking Offences Act, 1992 (DTOA), Criminal Justice (International Cooperation) Act, 1993 (CJ(IC)A), Proceeds of Criminal Conduct Act, 1997 (PCCA), Drugs (Prevention of Misuse) Act (Cap. 178) (DPMA) and Anti-

terrorism (Financing and Other Measures) (Overseas Territories) Order 2002 (AT(FOM)(OT)O).

- 11.2 The LEAs were assessed to determine whether they facilitate effective freezing, seizure, confiscation and forfeiture (foreign agencies can identify Virgin Islands counterparts, procedures allow informal and spontaneous sharing of information, asset sharing agreements are in place to facilitate asset tracing and financial investigations) and minimise structural impediments (sufficient expertise and trained personnel, mechanisms and procedures for real-time joint enforcement and prosecution, especially in cross border requests, streamlining asset tracing and financial investigation and reduce bureaucratic barriers around formal requests)
- 11.3 The **RVIPF** can investigate predicate offences, including ML, and apply to the courts for an order to freeze, seize, forfeit or confiscate cash, property or other assets suspected or linked to proceeds of crime. The Financial Crime Unit (FCU) in the RVIPF takes responsibility for cash seized by HMC and has a seizure policy which covers cash of at least \$10,000. An area for improvement is how to identify and record cash for investigative purposes. Data from the overall RVIPF and its FCU (which undertakes more detailed recording) show differences for various types of forfeiture and seizure.
- 11.4 **HMC** may seize and detain goods, including vessels, and condemn contraband. A declaration system requires disclosure when moving \$10,000 or more in or out of the BVI. Penalties range from cash forfeiture to fines and imprisonment. In the review period, HMC recorded no outgoing declarations or related cash seizures. Better training, including in identifying signs and detection of suspicious persons, could improve detection. It is also not clear that HMC data for other crimes reflects the scale of the problem. Addressing inconsistencies in ODPP and RVIPF data would clarify whether seizures led to investigation and prosecution.
- 11.5 The **ODPP** is responsible for initiating or undertaking confiscation proceedings for cash forfeiture. There was no evidence of an active pursuit of confiscations during the review period, perhaps due to a focus by investigators and prosecutors on conviction than confiscation. Areas for improvement include procedures for confiscating the proceeds of crime, coordination between the RVIPF and the ODPP, ODPP guidance for police investigators on identifying ML, and training for investigators and prosecutors.
- 11.6 When it suspects they may be the proceeds of crime, the **FIA** has the power to freeze funds for two periods of 72 hours. It did not take any temporary freezing action during the review period.
- 11.7 The **AGC** provides legal advice on MLA requests, including on matters relating to the confiscation of property, and has developed SOPs for these. Maintaining consistent records would help provide a true picture of processed MLA requests, especially in relation to seizures, freezing, confiscation and forfeiture orders.

12. Terrorist financing and proliferation financing

- 12.1 Although low, there is some risk of TF through LEAs, CAs, FIs, NPOs and DNFBPs. Areas for improvement include training LEAs and CAs to detect, investigate and prosecute TF, and ensure proper verification of all persons engaging in business activities within the financial services sector. There were no TF investigations, prosecutions or convictions in the Territory in the review period.
- 12.2 The Virgin Islands has criminalised TF and implements UNSCR 1267, 1373, 1988 and 1989. It has not criminalised the restrictions and prohibitions outlined in UNSCR 2178 in relation to foreign terrorist fighters.
- 12.3 As with TF, the risk of PF in the Virgin Islands is considered to be low and relatively remote. However, due to the nature of the financial services industry, it is recognised that some risk may exist of the misuse of corporate entities to fund WMDs. The enactment of the Proliferation Financing (Prohibition) Act, 2009 (PF(P)A) is a positive step.

1. Introduction

- 1.1 This is the British Virgin Islands' first money laundering and terrorist financing national risk assessment (NRA). It aims to help the Virgin Islands understand the effectiveness of its measures and systems for anti-money laundering (AML) and combatting the financing of terrorism (CFT) across Government, supervisory and law enforcement agencies and the regulated and private sectors.
- 1.2 The NRA had high-level political commitment, a focused approach and dedicated time and resources. It results from the Virgin Islands' determination to meet international standards and respond to international expectations, including the Recommendations of the Financial Action Task Force (FATF). Conducting a NRA is one of the accepted methods of satisfying a country's obligations to understand, assess and mitigate its ML/TF risks.
- 1.3 The NRA reviewed the period 2011-2014 to identify threats and vulnerabilities for a range of agencies and sectors. Some of the challenges detected were addressed during or shortly after the NRA process and this is noted in places. Plans are currently being developed to address other issues.
- 1.4 The aim is for all necessary steps to be taken to improve matters and mitigate risks by targeting resources where they are most needed. It would be helpful to conduct a further review within a year to assess progress in giving effect to the recommendations of the Report.
- 1.5 This NRA differs from ones undertaken by other countries in the detail of the analysis and areas for improvements published. In addition to identifying threats and vulnerabilities, the Report is a self-assessment of the BVI's AML/CFT compliance level. This approach is considered helpful in assisting the territory to understand its shortcomings better and undertake appropriate remedial measures to mitigate the identified threats and vulnerabilities.

2. Overview of the BVI economy

- 2.1 The British Virgin Islands (“BVI” or “Virgin Islands”) is a United Kingdom Overseas Territory. It uses the US dollar as its official currency, has a low crime rate and is politically stable, with a cabinet-style government. Located in the Lesser Antilles in the Caribbean, it consists of some 60 islands, islets and cays, 20 of which are inhabited. It has a population of 28,800, of which 60 per cent are expatriates from over 110 countries and territories.
- 2.2 Until the introduction of financial services in the late 1970s, the Virgin Islands was relatively poor and dependent on small industries, the largest being tourism. By 2013, GDP had grown to \$891.03 million, with tourism and financial services together contributing 53 per cent of the Territory’s GDP.
- 2.3 The US is the Virgin Islands’ main source of goods and the Territory mirrors the US’s low inflation rates. It is particularly vulnerable to changes in food prices.
- 2.4 Virgin Islands citizens and residents are well educated and entrepreneurial, and employment stood at 89.9 per cent in 2014. Expansion in tourism, financial services and construction, along with government initiatives to stimulate public and private investment, are creating new employment opportunities.
- 2.5 Looking at the period 2011-14, financial services generated the highest economic activity (34 per cent of GDP). The remaining percentage of GDP is split between tourism; information and communication; wholesale and retail trade; public administration; defence; social security; transportation and storage (notably the BVI Ports Authority); electricity (through the BVI Electricity Corporation) and water; and construction and quarrying. The latter has been facilitated by an improved transportation and telecommunications infrastructure and civil engineering works.
- 2.6 The Virgin Islands is one of the Caribbean’s leading tourism destinations and the hotel and restaurant sector grew by 3.9 per cent in 2011-2014. While day trippers fell by 10 per cent, overnight visitors increased by nine per cent to a record 386,127 million and total visitor expenditure increased by four per cent to \$458.9m.
- 2.7 The Virgin Islands is also one of the world’s leading international finance centres and financial services contribute 60 per cent of Government revenue. The Territory is well established in banking and legal services, captive insurance, company incorporations and re-registrations, mutual funds administration, company management and trust and company management. This provides significant employment for insurers, trust and corporate service providers (TCSPs), funds and investment administrators and ancillary professionals such as lawyers, accountants and management consultants.
- 2.8 The International Business Companies Act in 1984 was the springboard for the Virgin Islands’ growth, and company incorporations and re-registrations still

generate the highest revenue. The sector has remained resilient despite increased global competition and regulatory pressures.

- 2.9 The Virgin Islands' laws are comprised of the common law of the United Kingdom, locally enacted legislation and UK Orders in Council. The Eastern Caribbean Supreme Court has jurisdiction and the Virgin Islands follows its jurisprudence. As a result, all financial services business, designated non-financial businesses and professions and other designated entities are subject to AML/CFT obligations in line with the FATF Recommendations and other international standards.
- 2.10 Having a strong financial services sector is fundamental to the Virgin Islands Government's long-term development strategy, and the Government has stated its determination to do all that is necessary to safeguard the Territory's competitive position. Integral to this are maintaining a strong AML/CFT regime to address the risks faced by all financial centres, and sustaining the effective partnership that exists between Government, industry and regulator.

3. NRA methodology

Structure of the NRA

- 3.1 The **National Risk Assessment Council (NRAC)** provided policy guidance and oversight for the NRA. Chaired by the Premier, its other members were the Governor, Deputy Governor, Attorney General, Managing Director/CEO of the Financial Services Commission, Financial Secretary and a private sector representative. The NRAC met every two months or more often as requested by the NRASG.
- 3.2 The **National Risk Assessment Steering Group (NRASG)**, supported by a Secretariat, coordinated the NRA's work. It prepared the National Risk Assessment Framework (NRAF), sensitised the **Joint Anti-money Laundering & Terrorist Financing Advisory Committee (JALTFAC)**¹ and the **Inter-governmental Committee on AML/CFT Matters (IGC)**², managed training, guided the Assessors and prepared this Report on the basis of the reports received from the Assessors.
- 3.3 Chaired by the Director of Policy Research and Statistics at the Financial Services Commission (FSC), five of the NRASG's other eight members came from the FSC: the Deputy Managing Director of Regulation, Acting Director of Investment Business, Deputy Director of Fiduciary Services, Deputy Director of Policy Research and Statistics and Director of Finance. Other members were the Director of the Financial Investigation Agency (FIA), the Principal Crown Counsel in the Office of the Director of Public Prosecutions (ODPP) and a Detective Constable from the Royal Virgin Islands Police Force (RVIPF).
- 3.4 The NRASG Chairman attended the NRAC to provide guidance, advice and reports, and took instructions to the NRASG for implementation. This ensured a joined-up approach between policy-making and execution.
- 3.5 Under the NRASG came the JALTFAC, IGC, Public Education Committee (PEC) and Communications Committee (NRACC) – and the Assessors.
- 3.6 Thirty-eight **Assessors** carried out the off-site and on-site assessment. An external Assessor also reviewed the NRA Framework, the conduct of the NRA and the draft NRA, and provided guidance.
- 3.7 Assessors were mostly IGC members. To enhance transparency, independence and credibility, two came from the private sector to serve as independent reviewers.

¹ The JALTFAC is a statutory, independent, public-private body which advises on AML/CFT matters.

² The IGC ensures domestic cooperation on AML/CFT matters. It comprises the FSC, MOF, HMC, Immigration Department, High Court Registry, Magistrate's Court, BVIPA, BVIAA, IRD, Land Registry, ODPP, AGC, BVISR, TCAD, FIA, NPO Board, Post Office, ITA and RVIPF.

The Assessors were grouped into sectoral teams covering financial institutions (FIs)³, designated non-financial businesses and professions (DNFBPs)⁴, non-profit organisations (NPOs), competent authorities (CAs)⁵, law enforcement agencies (LEAs)⁶ and high value goods dealers (HVGs)⁷. A further team analysed assessment data.

- 3.8 Assessors' training covered AML/CFT issues, FATF obligations and methodology and the NRA's purpose. Assessors learned to identify and assess risks, vulnerabilities and potential threats and to map out consequences.
- 3.9 To facilitate the overall NRA exercise, including the workings of its various parts, an NRA website was established (www.bvinra.org). This enabled information to be fed into the NRA process and disseminated to the public.
- 3.10 The **Public Education Committee (PEC)** undertook a campaign to make the general public aware of AML/CFT issues and of the NRA's importance and progress. The **Communications Committee (NRACC)** kept key people informed about NRAC and NRASG decisions and worked with the PEC to encourage the public to provide information for the NRA. Both committees used print, online and other media; and the PEC developed and distributed pamphlets to schools and the general public.

Data collection

- 3.11 Following initial data collection through pre-assessment questionnaires (PAQs), the NRA's scope was expanded to include key governmental and non-governmental institutions as these might have vulnerabilities that might prevent implementation of the sectoral recommendations. The NRA exercise thus went beyond the usual pure risk assessment by considering all the areas considered relevant to ensuring full compliance with AML/CFT obligations.
- 3.12 Where any deficiencies were identified, this was not intended as an indictment but as an encouragement to take the necessary steps to ensure the strongest possible AML/CFT defence.
- 3.13 In **Phase I**, to inform the onsite visits, PAQs were distributed to financial FIs, DNFBPs, NPOs, CAs and HVGs. No specific PAQs were developed for LEAs as the NRASG felt these should be fully reviewed in Phase II, considering how inter-

³ FIs include banks, trust and corporate service providers (TCSPs), insurance companies, and investment business and insolvency practitioners

⁴ DNFBPs include lawyers, accountants, real estate agents

⁵ CAs cover the Attorney General's Chambers, Governor's Office, Financial Services Commission, Financial Investigation Agency and International Tax Authority

⁶ LEAs are the Immigration Department, HMC, RVIPF, ODPP, BVIAA, BVIPA, MC and HC

⁷ HVGs are furniture dealers, car dealers, yacht brokers and jewellers

related they were. However, the PAQs included questions specific to the Office of the Director of Public Prosecutions (ODPP) and the Royal Virgin Islands Police Force (RVIPF).

- 3.14 While private sector completion of the PAQs was voluntary, the Association of RAs and BVI Accounting Association urged their members to do so. Radio and online advertisements also encouraged participation. To encourage frankness, the NRA's independence and confidentiality were stressed and participants were assured their information would not be shared with any supervisory authority. A total of 485 PAQs were distributed and 193 responses were received, representing a response rate of 39.8%.

Pre-assessment questionnaires (PAQS)

The PAQs explored:

- **International cooperation** issues relevant to CAs – international treaties, mutual legal assistance, freezing and confiscation, extradition, sanctions and other forms of international cooperation
- **Regulation and supervision** – the supervisory powers of the FSC and FIA, human resource capacity, handling of wire transfers, introduced business, new technologies, PEPs and beneficial ownership of legal persons/arrangements
- **Internal controls**, operational risk factors, record keeping requirements, AML/CFT compliance and handling of STRs by FIs, NPOs, DNFBPs and HVGs (as a sub-set of DNFBPs)
- How FIs and DNFBPs **cooperate internationally** by responding to and processing information requests from domestic CAs
- **Law enforcement** (including ML, TF, PF, tipping-off, targeted financial sanctions, predicate offences and confiscation), how the FIA functions as an FIU (which includes powers to collect, analyse and disseminate STRs, investigative powers and human resource capacity)
- **National, intra-agency cooperation** and coordination on AML/CFT matters.

The questionnaires were available on an official NRA website (www.bvinra.org) and emailed to all entities on record within the identified sectors. To ensure legitimacy, a declaration required the name and email address of the person completing the PAQ.

- 3.15 In **Phase II**, Assessors conducted 237 onsite interviews. As well as specific questions, these used the responses in Phase I to gather missing data, verify key information and compare what entities said with what they had written.
- 3.16 Assessors also drew on quantitative and qualitative data from other sources such as the IMF, Global Forum, FATF and Caribbean FATF (CFATF), as well as the Virgin Islands' FIA and IGC and LEAs, CAs, FIs, DNFBPs and NPOs. A data analysis team undertook in-depth analysis of the findings and ensured a consistent approach.

Risk analysis

- 3.17 The risk analysis methodology applied the same mechanisms across AML, TF and proliferation financing (PF), given that criminals use the same or similar ways to raise or move funds. It assumed that criminals could launder money and finance terrorism through any sector as even low risk ones might, without attention, become susceptible to ML, TF or PF. The analysis took account of frameworks such as the NRA Framework and relevant literature from the World Bank.

Methodology for risk analysis

Criteria included whether reporting entities, CAs and LEAs had robust controls to identify and mitigate ML/TF risk; whether measures were commensurate with the risks identified; the types of Virgin Islands criminal activity that were ML/TF predicate offences; and the extent of cooperation to mitigate ML/TF risks.

Factors included assessment by LEAs, the relevant regulators and CAs; and the Territory's international cooperation mechanisms. Private sector input was used in assessing FIs, DNFBPs, HVGs and NPOs.

Risk weightings were given to individual PAQ questions based on their ML/TF impact on the BVI: a 50 per cent impact was high; 30 per cent medium to high; 15 per cent medium to low; and five per cent low. Each question was then risk-rated one for low, four for medium and seven for high. The same was done for onsite visit responses.

A **weighted risk average** was arrived at by comparing PAQ and onsite responses: 1.00–3.00 for low risk, 3.01–6.00 for medium risk and 6.01 and above for high risk.

Applying ratings to the data enabled a **risk profiling** of individual questions (for issues across an entire sector and/or agencies), specific groups of questions (governance, records, STRs, etc.), individual respondents (to identify any outliers), sectoral sub-groupings (to assess any greater risks), and individual sectors (high, medium or low risk).

Reporting

- 3.18 Each team drafted a sectoral report, explaining the methodology used and being consistent across sectors (unless otherwise explained). The reports stated the risks, threats, vulnerabilities and consequences identified, and recommended mitigation. NRASG members reviewed the reports for quality and consistency.
- 3.19 NRASG consolidated the sectoral reports into a final report. It met with the CAs and LEAs individually to ensure there were no factual inaccuracies and to clarify and close gaps. The final Report was then reviewed by a domestic independent Reviewer for quality and consistency and submitted to the external Assessor for his review and recommendations, before being finalised by the NRASG.

4. Domestic advisory bodies

- 4.1 In line with FATF Recommendation Two and under the Anti-money Laundering and Terrorist Financing Code of Practice, 2008 (AMLTFCOP), the authorities and mechanisms below develop, implement and coordinate national AML/CFT policies in the BVI.
- 4.2 The **Joint Anti-money Laundering and Terrorist Financing Advisory Committee (JALTFAC)** advises the FSC on AML/CFT initiatives and has 15 public and private sector members.⁸ It performs to a generally high standard and its quarterly (or more frequent) meetings are in-depth and robust. Work is ongoing to increase public outreach and attendance at meetings.
- 4.3 The **Inter-Governmental Committee on AML/CFT Matters (IGC)** raises public awareness of ML/TF issues and fosters AML/CFT cooperation between key agencies and with overseas AML/CFT agencies.⁹ Its members (15 in the 2011-14 review period¹⁰) meet every quarter or as required. Attendance at IGC meetings and the provision of statistical data to the IGC has improved. An important area for improvement is for the IGC to undertake meaningful analysis of the data to identify AML/CFT trends and typologies.
- 4.4 It is unclear what impact the IGC has had on improving the AML/CFT framework or awareness of ML/TF risks. A limitation is that the JALTFAC and IGC are not responsible for coordinating the national AML/CFT regime in line with FATF Recommendations One and Two. It would be helpful to establish a national body that directs and coordinates all AML/CFT issues at the domestic level.
- 4.5 The FSC and FIA promote IGC cooperation and private sector dialogue to build a broad-based awareness of ML/TF matters and information sharing.

⁸ The JALTFAC was established by the Proceeds of Criminal Conduct Act, 1997, Section 27A (1).

⁹ The IGC was established under powers granted to the FSC and FIA by the AMLTFCOP, Section 50 (1).

¹⁰ In 2015, the addition of HC, MC, IR and Land Registry brought membership to 19.

5. Legal persons and arrangements

- 5.1 We set out here the legal framework and regulatory regime for establishing and supervising legal persons and arrangements in the BVI, and combating misuse. The international cooperation framework and how information on legal persons and arrangements is gathered are addressed in the sections of this Report that deal with the FSC, FIA, ITA, GO, RVIPF and AGC.
- 5.2 The Virgin Islands is not alone among IFCs in being susceptible to the abuse of its corporate structures by unscrupulous persons for nefarious purposes. Through effective supervision, it seeks to ensure that lawful vehicles for business development and transactions are not abused for ML, TF and other crime.
- 5.3 As the responsible CA and in line with FATF requirements, the FSC combats abuse by: licensing persons allowed to carry on activities such as incorporating and registering companies and establishing trusts; subjecting licensees to the full AML/CFT regime and requiring them to carry out full customer due diligence (CDD) on all business incorporations and registrations and ongoing business relationships; and inspecting licensees regularly to establish and ensure CDD compliance.

Companies

- 5.4 Companies are governed by the BVI Business Companies Act (BVIBCA). Section 5 allows for five types of company: limited by shares; limited by guarantee and not authorised to issue shares; limited by guarantee and authorised to issue shares; unlimited and not authorised to issue shares; and unlimited and authorised to issue shares.
- 5.5 A company may undertake any business activity and transaction and may issue and hold shares (including bearer shares). At the end of 2014, there were 457,971 active companies incorporated or registered.
- 5.6 Only a registered agent (RA) can apply to incorporate a company. Documents filed must include the memorandum and articles of association and formal consent by the proposed RA to act. The Registrar then registers the documents by allotting a company number and issuing a certificate of incorporation.
- 5.7 Foreign companies can register under their corporate name or an alternative. At this time, they must provide evidence of incorporation, a certified copy of their constitutional instrument, a list of directors and details of their appointed RA.
- 5.8 As regards ownership and control, these may be vested in natural or legal persons. A register of members must be maintained, with names and addresses of registered shareholders and the number of each class and series of shares. Following the

NRA, since 2016, companies have had to file an up-to-date copy of their directors' register with the Registrar, in line with FATF Recommendation 24.¹¹

- 5.9 A BVI Business Company (BVIBC) must have a registered office and agent in the BVI. The RA must maintain the memorandum and articles, registers of members and directors and copies of all filings. The company itself must keep records of its transactions and financial position in hard copy or electronic form in line with the Mutual Legal Assistance (Tax Matters) Act (MLA(TM)A). Where records are maintained outside the BVI, the RA must know the address and who has control.
- 5.10 A limited liability company can issue bearer shares, which must be immobilized and deposited with authorized or recognized custodians in or outside the BVI, along with ownership identification. The FSC has approved 11 persons (four foreign) as authorized custodians and 11 institutions as recognized custodians. Since July 2012, RAs within the Virgin Islands have had to maintain full information on the owners of bearer shares, obtaining this from the person depositing the shares or the custodian. As at December 2014, 275 companies were authorised to issue bearer shares, a decrease from 323 in 2012.
- 5.11 The FSC carried out onsite inspections in 2010-2013 to verify that all authorised custodians' record-keeping was compliant. The FSC does not inspect recognised custodians as they must be investment exchanges or clearing organisations in an FATF member jurisdiction, where they are normally supervised to high standards.
- 5.12 Given the limited number of companies that can issue bearer shares and the mechanisms for immobilizing bearer shares, CAs and LEAs (such as the FSC, FIA, ITA and RVIPF) are satisfied the risk these shares pose has been contained. They have found it straightforward to secure information on people behind bearer shares.
- 5.13 With respect to striking off from the Register, a company may be struck off where it does not have an RA, fails to make a required filing, has ceased business, is undertaking an unlicensed activity or fails to pay its annual fee or a late payment penalty. In 2014, 53,408 companies were struck off and as of Q3 2015 the number was 20,730. The number of struck-off companies for which RAs remain active is not known but is believed to be large.
- 5.14 A struck-off company ceases to function as a legal entity. The company, directors, members and any liquidator or receiver cannot undertake any activity or deal with the assets unless they apply for the company to be restored. However, striking it off does not prevent the company incurring liabilities or being pursued for a claim, and the directors, members, officers or agents remain liable.
- 5.15 A company may be restored to the Register within seven years and is then deemed never to have been struck off. Reasons for restoration include inadvertency in failing to pay a fee; bringing, defending or continuing a claim; asset disposal; and winding

¹¹ BVI Business Companies (Amendment) Act, 2015, which came into force 1 January 2016.

down specific transactions. A refusal by the Registrar to restore may be appealed to the High Court.

- 5.16 Even if an RA resigns as agent, a struck-off company's registered address invariably remains the RA's to ensure that documents can be served there. RAs can on occasion refuse documents for a struck-off company where their business relationship has not formally ended. This potentially inhibits the Virgin Islands' ability to meet its international cooperation obligations.
- 5.17 CDD under the Proceeds of Criminal Conduct Act, 1997 (PCCA), Anti-money Laundering Regulations, 2008 (AMLR) and AMLTFCOP requires customer and beneficial owners to be identified and verified, and the purpose and intended nature of the business relationship to be understood. All CDD information must be maintained for at least five years. All legal persons must regularly update this – annually for high-risk businesses and for low risks every three years (extended to four years in 2016).
- 5.18 One area for improvement for RAs lie in updating information for struck-off companies from the termination date if this falls earlier than the regular review (struck-off companies are published in the Gazette). Another lies in recording the date of the strike off and the (later) date on which the CDD information was updated, as losing contact with the directors/principals can make review difficult.
- 5.19 The Virgin Islands is considering streamlining and clarifying the BVIBCA's striking off provisions to clarify the obligations of an RA in relation to a struck-off company, in order to ensure clear parameters for rendering MLA with respect to such companies.

Trusts and partnerships

- 5.20 Trust service business is regulated and subject to AML/CFT legislative provisions, with due diligence required on trusts and other legal arrangements.¹² In the final quarter of 2014, there were 226 licensed trust service businesses.
- 5.21 Limited partnerships may be formed under the Partnership Act, 1966. Articles of partnership must be submitted to the RA and a memorandum of partnership to the Registrar, the latter stating: the partnership's name, objects and purposes; the RA's name and address; the registered office in the Virgin Islands and general partner; and terms and conditions.
- 5.22 A limited partnership must maintain a registered office and RA in the BVI. The office must hold the name, address, amounts and contribution dates (both money in and returned) for each partner. The limited partnership is required to keep its own accounts and financial records. The legislation does not as yet provide for the obligations of a general partnership, which is an area for improvement.

¹² Under the Banks and Trust Companies Act, 1990 (BTCA) and the AMLTFCOP and AMLR respectively.

Financial Services Commission

- 5.23 The FSC regulates and supervises the Virgin Islands' financial services sector (see page 21 below for details).¹³ This covers banking, insurance, mutual funds, investment business, trust and corporate service providers (TCSPs), financing and money service providers and insolvency practitioners. The FSC also approves authorised custodians and representatives, directors, senior officers and other independent officers.
- 5.24 The FSC takes a risk-based approach, determine the frequency and level of supervision by assigning a high, medium or low risk rating to each licensed entity. This risk assessment incorporates the FATF Recommendations and other international standards.¹⁴ It looks at where the entity physically operates and at its products and who they are offered to.
- 5.25 The Virgin Islands carries out AML/CFT oversight of legal persons and arrangements by regulating and supervising TCSPs who act as RAs. The FSC licenses and supervises RAs to the level of a financial institution, in line with FATF Recommendations.
- 5.26 TCSPs must risk-assess the BVIBCs for which they act as agents. The FSC checks they are doing so through periodic inspections. This enables some identification of the ML/TF risk of transacting business wherever the company operates (see Section 7 for a more detailed analysis of TCSPs, including RAs).
- 5.27 The **Registry of Corporate Affairs (ROCA)**, an FSC division, ensures that companies doing business in and from within the Virgin Islands are incorporated or registered. A company incorporated in the Virgin Islands may carry on business anywhere in the world where not prohibited. As a result, foreign regulators or law enforcement agencies may request information about it. This mainly takes place through the gateway provisions of the FSCA and through Memorandums of Understanding (MoUs), tax information exchange agreements (TIEAs) and mutual legal assistance treaties (MLATs). The information available includes all that filed with the ROCA and any other maintained by the company or its RA.
- 5.28 For non-regulated entities, the FSC assesses risk by regulating and supervising their RAs, who must undertake CDD and other AML/CFT checks and understand their entities' business activities. The FSC uses onsite inspection to understand entities' risk, looking at their business and their AML/CFT compliance.

¹³ The Financial Services Commission Act, 2001 (FSCA) sets out the FSC's functions, which include monitoring of compliance by licensees with the AMLTFCOP and with other ML/TF-related Acts, regulations, codes or guidelines.

¹⁴ These include the BCP, IAIS CP, IOSCO PSR and Group of International Finance Centre Supervisors (GIFCS) SBP.

- 5.29 The FSC also monitors daily a wide range of information sources which might indicate involvement by a BVIBC in an FATF predicate offence, the only CA or LEA to do so.
- 5.30 The FSC takes enforcement action against breaches of AML/CFT laws (see Sections 6 and 7 for details), mainly in the form of warnings and imposition of administrative penalties.

6. Competent authorities

- 6.1 This section considers the Virgin Islands' five Competent Authorities (CAs): the Governor's Office, Attorney General's Chambers, Financial Investigation Agency, Financial Services Commission and International Tax Authority.

Risks	High	<ul style="list-style-type: none"> • Handling of incoming and outgoing extradition requests • SAR/STR processing • Time taken to complete AML/CFT compliance inspections
	Medium	<ul style="list-style-type: none"> • Handling of outgoing information requests from local CAs • Handling of incoming MLA requests from overseas CAs • Ability to process incoming requests for High Court evidence • Prosecutions and convictions resulting from assistance provided • Handling of investigations stemming from MLA requests • Court challenges to incoming requests from overseas CAs • Difficulties in processing MLA requests • Ability to monitor BVIBC's for ML/TF

- 6.2 The CAs are generally carrying out their functions at an appreciable level. Areas to address include resources and expertise, the appropriate collection of statistical data to assess effectiveness, and overall compliance with international standards, particularly the FATF's Recommendations and tax-related information exchange agreements.

Governor's Office

Risks	High	<ul style="list-style-type: none"> • Handling of incoming and outgoing extradition requests
	Medium	<ul style="list-style-type: none"> • Inter-agency cooperation • Handling of incoming MLA requests from overseas CAs • Records maintenance and accessibility

- 6.3 The Governor is Her Majesty's representative in the Virgin Islands and in that capacity also serves her Majesty's interests. He is responsible for security and governance, including extradition, and is the competent authority for the receipt and processing of incoming and outgoing MLA requests. He chairs Cabinet but is not a member and cannot vote. Five of the eleven Governor's Office (GO) staff deal with MLA and extradition matters. All staff take an oath of confidentiality and are governed by the General Orders of the Public Service and the Public Service Regulations ("public service rules").

- 6.4 Both the GO and the Attorney General's Chambers (AGC) act on MLA and extradition matters. There is opportunity to improve communication between the GO and AGC on MLA and extradition matters to ensure that the GO is aware of requests sent directly to the AGC and how the AGC is progressing these, as well as to avoid anomalies over numbers. Following the NRA, the GO and AGC have procedures for keeping each other informed of requests: further coordination would be helpful.
- 6.5 The GO would benefit from more specialist training for staff with MLA and extradition matters and from more detailed Standard Operating Procedures (SOPs) for requests (eg separate logging of MLA and extradition requests).
- 6.6 UN or EU sanctions are extended to the Virgin Islands through UK Government Orders in Council and published in the BVI Gazette and on the FIA and FSC's websites. Following the NRA, the Foreign & Commonwealth Office communicates Orders two weeks before UK publication and HM Treasury provides a daily updated list to avoid any risk of sanctioned persons continuing their activity.
- 6.7 The GO has a records management policy and all files are classified and kept secure. It also maintains independent computer systems for its respective Foreign & Commonwealth Office (FCO) and Virgin Islands Government activity (the latter including MLA and extradition). Maintaining all information electronically would make it easier to locate files quickly and track any access granted.
- 6.8 Following the NRA, an FCO review has made specific recommendations to improve the physical security of the GO building.

Main threats (T) and vulnerabilities (V) identified for the GO	
T	<ul style="list-style-type: none"> • Criminals' ability not to be extradited due to procedural failures in the extradition process. • Criminals' ability to retain proceeds of crime where there is inability to provide information through MLATs.
V	<ul style="list-style-type: none"> • Poor communication between the GO and AGC on MLA and extradition matters increases the risk of criminals not being extradited and hence retaining the proceeds of crime, and ultimately not being brought to justice. • Lack of clearly defined SOPs for MLAs and extraditions leads to inconsistency in the way staff deal with matters. This affects timing and the proper execution of MLAs that could lead to extraditions.

Attorney General's Chambers

Risks	Medium	<ul style="list-style-type: none"> • Governance and administration • Handling of incoming MLA and international cooperation requests from overseas CAs • Knowledge of whether assistance provided resulted in conviction or was helpful in any other way • Handling of outgoing MLA and international cooperation requests • Declined requests • Complaints handling • Records maintenance and accessibility • Timely processing of MLA requests and extradition matters
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- 6.9 The Attorney General (AG) is the Government's principal legal adviser and sits ex officio in Cabinet and in the House of Assembly. The AG's independence is assured under The Virgin Islands Constitution Order 2007. The AG's Chambers (AGC) has five sections: accounts, administration, civil litigation, law reform commission and legislative drafting. Staff take an oath of confidentiality and are governed by public service rules and by lawyers' professional ethics.
- 6.10 The AGC is a member of the IGC and JALTFAC. It is the central authority for US MLA, while the GO is the central authority for MLA to and from other countries.¹⁵ With the CFATF, the AG has overall policy direction and coordination and is the CFATF's Prime Contact in the Virgin Islands. The FSC leads on technical issues. Since the NRA, the AGC and GO have agreed a notification procedure for matters concerning MLA requests: further enhancements to their communication would be helpful. The AGC has an SOP that guides staff on MLA duties. Swifter processing of extradition and MLA requests could be achieved by having an internal policy and written procedures for handling MLA and extradition requests, providing in-depth training for key staff and filling vacant posts. Effective security measures are in place, and improvements to equipment and access were made in January 2016.
- 6.11 The BVI's extradition regime is administered by the GO with the advice and assistance of the AGC. Extradition requests are dealt with in accordance with established treaties and the governing local law.

¹⁵ This is under the MLA (USA) A and CJ (IC) A and PCCA respectively.

Extradition from and to the BVI

The Governor receives requests for extradition from the BVI. He consults the AGC on whether these meet the Virgin Islands' legal requirements. The AGC is expected to inform the GO of requests it receives directly. Where a request is valid and contested, the AGC takes it through the judicial process. The AGC works closely with the police, for example in detaining the subjects of requests.

The BVI received seven extradition requests over the review period. Five were contested and sent to the AGC; none related directly to ML/TF. Two were not contested and the GO dealt with them directly.

When seeking an extradition to the BVI, the ODPP forwards a request to the AGC, which vets it and submits it for the Governor's signature. The GO sends the request back to the AGC, which forwards it to the Deputy Governor for an apostille. The request then returns to the AGC, which confirms all steps have been complied with and submits the completed request to the GO for onward transmission via diplomatic channels.

At the time of the NRA, the Extradition (Overseas Territories) Order 2002 governed extradition requests. Since 9 November 2016, the Extradition Act 2003 (Overseas Territories) Order 2016 has provided for a more flexible procedure.

- 6.12 Opportunities for the AGC to be more proactive include asking CAs for feedback on the information it has sent, entering into MoUs with overseas CAs, requesting clarification of unclear requests, and recommending reforms to the Virgin Islands' laws.

Main threats (T) and vulnerabilities (V) identified for the AGC

T	<ul style="list-style-type: none">• Criminals' ability to retain proceeds of crime where there is inability to provide information through MLATs.• Unauthorised persons accessing information due to inadequate file management system and storage.• The absence of an orderly to provide the AG with security may place sensitive government material and information at risk if the AG's personal security is compromised.
V	<ul style="list-style-type: none">• The records for MLAs and extraditions within the AGC and the GO do not correspond with each other (MLA records for AGC are mostly more current). This suggests a breakdown within the system, which can affect efficiency when handling international cooperation matters.• Poor communication between the GO and AGC on MLA and extradition matters.• Lack of written procedures and of training in dealing with local and overseas law enforcement requests can contribute to unnecessary delays in processing extradition requests.• The significant number of vacant posts leads to a lack of sufficient resources for the processing of MLAs, including those related to confiscation of the proceeds of crime.

Financial Investigation Agency

Risks	High	<ul style="list-style-type: none"> • Governance and administration
	Medium	<ul style="list-style-type: none"> • Handling of incoming and outgoing MLA requests • Handling of investigations stemming from MLA requests • Complaints handling of reports by local CAs against the FIA • Processing of MLA requests • Monitoring of BVIBCs

- 6.13 The Financial Investigation Agency (FIA) is a statutory body established under the FIA Act (FIAA) which functions autonomously and independently of Government.¹⁶ Its Board consists of the Deputy Governor (Chairman), AG (Deputy Chairman), Financial Secretary, Commissioner of Police, Commissioner of Customs, MD/CEO of the FSC and FIA Director (ex officio). The Board meets annually with Cabinet.
- 6.14 The FIA is a fully participating member of the Egmont Group of financial intelligence units (FIUs) and the CFATF Working Group on FIUs. All staff and the Board take an oath of confidentiality and are governed by public service rules.
- 6.15 The FIA is a hybrid FIU in that it both analyses and investigates Suspicious Activity Reports/Suspicious Transaction Reports (SARs/STRs). A Steering Committee receives all STR reports from, and advises, the Director. The committee's value should be clarified, given how sparingly it meets and that the Director effectively carries out its work.
- 6.16 Staff receive extensive, expert training relevant to their job, including foreign FIU attachments for supervisory staff.
- 6.17 Security is good. Access to the FIA's office and filing rooms is restricted and can be accessed only by key card. Other physical measures are in place. The FIA has adequate technological resources and has four servers, including an offsite server for daily backup. Access to its databases is limited to the staff that use them and none of the databases is connected to the internet. Records are stored in hard copy in a secure area, backed up offsite electronically and scanned in. Physical separation between supervision and investigation (which did not exist) would ensure that SAR/STR information was fully secure.
- 6.18 The FIA has signed MoUs with the FSC, RVIPF, HMC and the Virgin Islands Shipping Registry (VISR), and in 2014 signed a Multilateral Memorandum of Understanding (MMoU) with all IGC members. It has not proactively used these, although the FSC has used its MoU in relation to the FIA on a number of occasions, largely to conduct its fit and proper assessment of persons it considers for approval.

¹⁶ Its ML/TF/PF authority is derived from the FIAA and other legislation, principally the PCCA, AMLTFCOP and PF(P)A but also the AMLR, AT(UNOM)(OT)O and AT(FOM)(OT)O.

- 6.19 The FIA assists overseas CAs investigate ML/TF and related predicate offences, usually through Egmont membership or MoUs with specified countries. The FIA actively seeks MoUs with relevant CAs and has not yet been refused. It has MoUs with Australia, Canada, Israel, Jamaica, Japan, Macedonia, Moldova, Montenegro, Poland, Russia, St Maarten and Taiwan
- 6.20 Search warrants to obtain information can be issued following MLAT requests to the FIA via the AGC. Over the review period, 209 search warrants were issued and none was refused; and the FIA responded to 1,403 information requests from Egmont members, with a response time of between 22-28 and 29-60 days.
- 6.21 Increasing the skilled staff in the FIA's Analysis and Investigative Units would benefit the extent and speed of investigations of SARs/STRs, the supervision of compliance and responding to the large volume of overseas requests.

Steps for handling SARs/STRs

1. The SARs/STRs are filed by regulated or non-regulated entities.
2. They are assigned a unique reference number and an official receipt is sent within 48 hours of them being received.

An Analyst reviews the information and the FIA obtains any additional information from the source of the SAR/STR or any other entity or individual.

The FIA has the power to request information from all regulated as well as non-regulated entities. If these prove recalcitrant, rather than prosecute, the FIA refers them to the FSC for action, such as the imposition of administrative penalty. Cabinet is considering empowering the FIA to impose administrative penalties.

The Analyst then draws conclusions about the type(s) of criminal offences and makes any recommendations to the Deputy Director, Analysis and Investigations or the Director. Both have AML/CFT training and police powers of arrest, search, seizure and investigation.

The recommendations generally comprise one or more of: (a) refer the case to the RVIPF for them to take any action they deem necessary; (b) refer the contents of the SARs/STRs to FIUs in the Egmont Group for intelligence purposes or for them to take action; or (c) close the file and store the information in the FIA database for information or intelligence.

The information can be shared with other entities for intelligence purposes within FIAA restrictions (rights of third parties, including the maker and subject(s) of the SAR/STR; and use of the information). Because of their strict protocols on using it, information is generally only exchanged with Egmont members.

3. The Deputy Director either approves the conclusions or refers the SAR/STR back to the Analyst. He may also refer SARs/STRs to the Director for advice.

The findings go to the RVIPF's FCU other domestic agencies or Egmont FIUs

4. The Director sends written feedback to the maker of the SAR/STR, with as much detail as possible on the FIA's action as well as any outcomes. The timing of feedback is relative as SAR/STRs require varying analysis and investigation.

- 6.22 Although the FIA supervises NPOs, not all known NPOs have yet registered with the NPO Board. The Board is actively engaging with those who have not.
- 6.23 The FIA receives and reviews compliance manuals from DNFBP and NPO entities. To ascertain issues or risks within particular sectors, it would be useful to maintain statistics on the categories of DNFBPs that have filed manuals. The FIA would also benefit from greater resources to review the manuals. In 2011-14, it received 256 and reviewed and approved 196.
- 6.24 As there is no requirement for DNFBPs and HVGs to register, the FIA assesses who to supervise on the basis of information from the Department of Trade and Consumer Affairs, which has an impact on the timing and certainty of supervision.
- 6.25 The FIA is developing a more thorough risk assessment framework following the NRA. In the review period, SARs/STRs could not always be investigated in the year they were received. There was no confiscation of proceeds of crime or identification of when ML/TF occurred. Opportunity exists for greater cooperation between the FIA, RVIPF and ODPP in the process, from the identification to the prosecution of possible ML offences.
- 6.26 Entities submitting SARs/STRs have a challenging five days to respond to the FIA's request for information and can apply for an extension. Maintaining statistics would help ascertain whether extensions were granted appropriately.
- 6.27 Obtaining feedback from overseas CAs after giving them information would help the FIA judge its effectiveness. It would also be useful to keep reporting entities better informed, as the FIA is required to do.
- 6.28 Staff understand their legal obligations in relation to conflicts of interest and corruption despite no apparent training in the specific elements of these or of PF.
- 6.29 The FIA's SOP manual does not always reflect current practice and dates from November 2012. The FIA would benefit from having a documented procedure for document control and management, with regular review and revision.

Main threats (T) and vulnerabilities (V) identified for the FIA	
T	<ul style="list-style-type: none"> • Insufficient staff assigned to handle supervisory activities, conduct regular AML/CFT inspections and assigned to analyse, investigate and disseminate SARs/STRs and the relevant information. • Failure of coordination between key offices, especially the FIA and the RVIPF (and the RVIPF and the ODPP) inhibits the proper investigation and prosecution of ML matters. • Filing of poor quality SARs/STRs by financial institutions and DNFBPs makes investigations and analyses difficult and leads to waste of resources. • Security of premises and lack of physical separation of analysts and investigative staff from other staff could lead to compromised data.
V	<ul style="list-style-type: none"> • A lack of fully skilled staff trained in investigative techniques, to analyse SARs/STRs and to supervise and monitor DNFBPs could leave the BVI unable to provide meaningful international cooperation and detect ML/TF activities overall, which could lead to criminals avoiding prosecution. • Absence of strategic analysis of data collected means the FIA is unable to identify trends in ML/TF and put mechanisms in place to reduce the risks posed by those engaging in such activities. • Lack of sufficient feedback means that entities who submit SARs/STRs may not be in a position to improve their risk assessment and techniques to identify persons who may be engaged in ML/TF or pose a high risk of doing so.

Financial Services Commission

Risks	Medium	<ul style="list-style-type: none"> • Inter-agency cooperation – handling of outgoing requests • Handling of incoming and outgoing requests for information • Challenges to requests for information made by overseas CAs • Handling of complaints filed by overseas CAs • Timeframe to complete AML/CFT compliance inspections
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6.30 The FSCA establishes the FSC as an autonomous statutory body and it functions and operates independently. The FSC has powers to regulate and supervise financial services businesses¹⁷ which are licensed, authorised or approved to carry out business in and from within the BVI. The FSC's independence is buttressed by how it is funded.¹⁸

¹⁷ The FSCA defines "financial services business" as any business or activity which requires a licence from the FSC or which is so specified in regulations made under the FSCA. Licenses are generally required to engage in banking, TCSPs, insurance, financing and money services business, insolvency practice and investment business.

¹⁸ The FSCA establishes a Government Trust Account into which monies collected by the FSC are paid. The FSC retains not less than 7½ and not more than 15 per cent a year.

- 6.31 The FSC has nine divisions: Banking and Fiduciary Services, Corporate Services, Human Resources, Insolvency Services, Insurance, Investment Business, Legal and Enforcement, Policy, Research and Statistics and Registry of Corporate Affairs (ROCA).
- 6.32 The FSC's Board is appointed by, and responsible to, Cabinet. It comprises a Chairman and six to eight other Commissioners appointed for two or three years, with the MD/CEO serving as an *ex officio* member. At least two non-*ex officio* members must be people from outside the Virgin Islands with financial services qualifications and experience. All members must be fit and proper and have suitable expertise. To ensure transparency and non-interference, a Commissioner may only be removed by Cabinet following established criteria, with reasons published in the Gazette.
- 6.33 While the MD/CEO has day-to-day responsibility, the Board, which meets monthly, is the overall governing body, approving policies, monitoring implementation, overseeing overall management and approving the accounts, estimates and work programme. It gives an annual account to Cabinet of its stewardship and presents its work programme for the following year.
- 6.34 The FSC has an MoU with the FIA and is a signatory to the IGC MMoU, as is the RVIPF, which cooperates with the FSC. The FSC is the central authority for international cooperation on regulatory and financial services supervisory matters, and the MD/CEO is the contact person.
- 6.35 There are three operational committees.
- The statutory **Licensing and Supervisory Committee** functions independently and has its own guidelines and operating procedures. It meets weekly at least 50 times a year.
 - The statutory **Enforcement Committee** functions independently and has its own guidelines and operating procedures for dealing with breaches, including AML/CFT ones. It generally meets weekly but less often than the LSC (there are fewer enforcement actions than licensing applications). It publishes enforcement actions.
 - The **Crisis Management Group** meets when there is a matter to address and did not meet during the review period. In 2013, it drafted a procedure manual, which is being finalised. It was renamed the **Business Risk Group** in April 2016.
- 6.36 The **Financial Services Appeal Board** is part of the FSC's governance structure but functions independently. For the review period, it had five members appointed by the Cabinet. It meets only to determine appeals against FSC decisions. Some NRA concerns about transparency and independence were addressed by the Financial Services Appeal Board Act, 2016, which completely removes the Financial Services Appeal Board from the FSC's direct governance structure.

- 6.37 In the review period, staff numbers increased by 15 per cent to 155. Some 28 per cent were dedicated to supervision and two per cent to investigation. Further expansion of the Compliance Inspection Unit and the Fiduciary Services Division would assist the FSC's policy of inspecting each licensee in a four-year cycle and understanding fully the non-compliance risk that licensees pose.
- 6.38 The Enforcement Unit investigates legislative breaches and monitors companies that may be involved in ML/TF and other criminal activities. Staffing fell during the review period but was increased to four in 2016 and this may be reviewed further.
- 6.39 In the review period, only the FSC's Board of Commissioners had to make a declaration of interests. In 2015, the FSC developed a conflicts of interest framework and amended its staff code of conduct accordingly.
- 6.40 The FSC provides very robust regulatory and AML/CFT training. This combines theory and practice and extends beyond compliance inspectors to ROCA staff. Assessments at the end of each session help determine effectiveness, as do external training certificates and qualifications. Some ten staff a year get external AML/CFT/PF training and staff are also trained overseas.
- 6.41 The FSC's records management combines electronic and paper records. Measures are in place to reduce the risk of security breaches. Files are accessible electronically and in hard copy, kept in a secure location. A mirrored server automatically backs up data. Greater technological resources would enhance record keeping and the generation of statistics.
- 6.42 An RFID document management system allows files to be easily located and delivered. This is logged and the files are returned by the end of the day.
- 6.43 The FSC applies a risk-based approach to regulation and supervision and assesses risk on multiple levels, ranging from the ML/TF susceptibility of services and products within the Virgin Islands to standards established by the FATF, International Organisation of Securities Commissions (IOSCO), Basel Committee on Banking Supervision (BCBS), International Association of Insurance Supervisors (IAIS), Group of International Finance Centre Supervisors (GIFCS) and other international bodies.
- 6.44 The FSC's risk assessment mechanisms are set out in onsite inspections manuals, procedures manuals and risk assessment forms and guidance. A single document for the entire risk assessment framework could ensure that all those involved in risk assessment applied the required criteria.
- 6.45 When an entity is licensed, it receives a risk assessment and a low, medium or high rating for prudential and AML/CFT compliance. A high-risk firm will be inspected annually or more frequently. Low-risk entities should normally be assessed once every three to four years but this is not always the case. Areas for improvement include continuous updates of risk assessments and having a written follow-up procedure.

- 6.46 Licensees must appoint FSC-approved compliance officers, who provide annual reports to the FSC. A coordinated review system would increase the reports' value in enhancing the enforcement process.
- 6.47 Depending on licensees' size, inspections may run from three days to two weeks, with a follow-up inspection within six months. Licensees are invited to comment on the first draft of a inspection report. In the review period, due to limited resources in the Compliance Inspections Unit, issuing the report took from four months to two and a half years and some licensees took corrective action beforehand. Reports were completed more quickly in 2014 but some still took nearly a year. Finalizing reports no more than six weeks after an inspection would give them real value.
- 6.48 The FSC can take enforcement action for breaches of the AMLTFCOP and AMLR; conducting business detrimental to public, client, creditor or investor interest; violating financial services legislation; failure to comply with an FSC directive; breaching a licence; or giving the FSC false information. It can suspend, cancel or revoke a licence, impose administrative penalties, issue a warning letter or an order to cease business, or appoint an examiner. Actions may be appealed through the Financial Services Appeal Board.
- 6.49 In the review period, the FCS took 281 enforcement actions, of which 57 (20 per cent) were for AML/CFT matters. Of those, 45 penalties related to AML infractions and none to TF. The majority of those penalised were TCSPs.
- 6.50 A total of 93 cases attracted administrative penalties to the value of \$1,195,100. Since the NRA, the FSC has designated a separate account for these funds and is developing a policy for their use.
- 6.51 In the review period, the FSC followed clear written policies and procedures to receive and make MLA requests. It only declined three out of 421 processed requests, demonstrating its commitment to international information exchange.
- 6.52 When the FSC requests information from overseas CAs, the average response time is 29-60 days against an industry standard of within 21 days. The FSC's own response time to foreign requests is 30-41 days, where general practice is 22-28 days. A shorter response time would assist in detecting ML/TF involving Virgin Islands companies and facilitate overseas investigations and prosecutions.
- 6.53 Once information was provided to foreign CAs, the FSC did not follow up to establish whether the information had been useful. Following up with requesting CAs would help the FSC determine the usefulness of information it provides and any changes needed.
- 6.54 Although in 2011-2014, the FSC did not respond to six requests, the FSC has since centralized requests processing to reduce the number going unanswered.

Main threats (T) and vulnerabilities (V) identified for the FSC	
T	<ul style="list-style-type: none"> • Having inadequate staff to perform inspections and supervisory activities could open the Territory to reputational damage by leading both to ML/TF or other financial crimes going undetected, and to a failure to monitor regularly the activities of BVI companies operating outside the Territory and take appropriate action, including assisting counterparts and law enforcement agencies • Inadequate or lax policing of the financial perimeter could lead to ML/TF abuse of the BVI financial services regime
V	<ul style="list-style-type: none"> • Excessive time to respond to requests for information from foreign CAs could mean that ML/TF involving a BVI company may go undetected or prosecutions and investigations by foreign authorities may be hindered. • Inadequate number of trained human resources dedicated to compliance inspection and enforcement of FSC legislation means that the FSC is unable fully to address the risk posed by licensees and prevent ML/TF. • Lack of understanding of the risk posed by licensees and particular sectors by the FSC prevents appropriate mechanisms being put in place to reduce risk and counter ML/TF.

International Tax Authority

Risks	High	<ul style="list-style-type: none"> • Governance and administration
	Medium	<ul style="list-style-type: none"> • Inter-agency cooperation • Handling of incoming MLA requests from overseas CAs • Assistance with MLA requests resulting in prosecutions and convictions • Complaints handling

6.55 The ITA executes bilateral and multilateral tax agreements.¹⁹ It was established in 2012 and is a department of Government, directly overseen by the Ministry of Finance. The Financial Secretary (FS) delegates to the ITA his functions as CA for all exchange of information related to tax matters.

6.56 The ITA comprises a Director, Deputy Director and six research officers. All staff receive ongoing training on their duties as a CA responsible for exchanging tax information. Senior staff are involved in key decision-making around MLA and international cooperation and advise Government on necessary reforms. All staff follow public service rules.

¹⁹ These include TIEAs, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC), the BVI-USA agreement to improve tax compliance and implement the Foreign Account Tax Compliance Act (US FATCA), and the UK-BVI agreement to improve international tax compliance (UK FATCA).

- 6.57 As a signatory to the IGC MMoU, the ITA can share and receive pertinent information with and from Virgin Islands authorities. The ITA has not yet used the MMoU.
- 6.58 The ITA's IT system sit within the wider Government network. Segregated access ensures confidentiality. The ITA has sufficient servers for automatic exchange of information (AEOI)²⁰ and the BVI Financial Account Reporting System (FARS). For AEOI, FARS enables FIs to register and upload annual filings which the ITA can transmit to the relevant foreign competent authority.
- 6.59 Most ITA staff time is spent gathering information in response to EOI requests under the TIEAs and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC). The volume of requests means the ITA is currently procuring a database tailored for its needs, which may add a resource constraint if not fully provided for by Government.
- 6.60 The ITA is responsible for serving notices to people to provide information. Ending a reliance on the Ministry of Finance's messenger for this would speed up the serving of notices and enhance international cooperation.
- 6.61 ITA staff receive thorough training around tax evasion, due diligence and EOI requests, including on preparing and identifying cases that require an application for court warrant or a referral to the ODPP. Senior officers are trained by the OECD as Assessors and undertake assessments in other jurisdictions. Offering staff training in predicate offences beyond tax-related ones would enhance their appreciation of the interrelated nature of predicate offences relating to ML/TF.
- 6.62 In the absence of generally available training in EOI, staff are trained through competent authorities meetings, peer review group (PRG) meetings, assessor training seminars and the Global Forum's regional seminars. All new employees attend these. The Director also trains new staff every week in analysing requests. In 2013-2014, the FSC trained the ITA and other IGC members on the FATF's revised 40 Recommendations.

Automatic exchange of information

As a member of the Global Forum on Transparency in Tax Matters, the Virgin Islands Government is involved in setting the global EOI standard and monitoring its implementation. The Virgin Islands is also a member of two Global Forum sub-groups: the PRG, which conducts peer reviews of compliance with the standard; and the AEOI Group, which is preparing for AEOI and will be the body for the new Common Reporting Standard.

The international TIEA standard is constantly changing and the Virgin Islands must now

²⁰ USA and UK FATCA, CRS, EU Savings Directive

furnish information both upon request and on an automatic basis. At the request of the Virgin Islands Government, the UK extended its ratification of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC) to the Virgin Islands on 21 November 2013 (in force 1 March 2014). The Virgin Islands has also signed the Multilateral Competent Authority Agreement (MCAA) to enable it to exchange information automatically with other MAAC signatories.

It is too soon to determine the effectiveness of these evolving initiatives.

- 6.63 The ITA collaborates with the AGC over general legal matters and MLA-related judicial reviews, and with the ODPP over prosecutions. Where licensees do not provide the requested information, the ITA reports this for the FSC to consider as part of its risk assessments. In 2011-2014, the ITA made 20 submissions to the FSC, in some cases seeking information for an EOI request. As noted, the FSC and ITA are working to improve the effectiveness of their cooperation.
- 6.64 The ITA operates written policies and procedures for handling information requests to and from overseas authorities, including a Guide to the International Tax Authority of the Virgin Islands. It exchanges information upon request, automatically (e.g. under the US-BVI FATCA agreement) and spontaneously. For automatic exchange, it does not have to request information, as individuals and entities are required to, and do, submit this on an annual basis for the ITA to transmit onwards.
- 6.65 While generally cooperative, the local financial services industry has complained that ITA notices can be less detailed than those from other CAs and comprise “fishing expeditions”. Addressing these concerns would be helpful in maintaining full cooperation.
- 6.66 Where service providers fail to provide information, the ITA has powers of search and seizure (undertaken by the RVIPF) and can refer matters to the ODPP for prosecution. However, it has no power to impose administrative penalties itself.
- 6.67 The ITA made no referrals in 2011-14 but since 2014 has sent the ODPP five failures to respond to a request. The ODPP is still considering three. It decided not to prosecute the other two as the companies were struck from the Register, although this raises questions as companies can be restored to the Register and they were in good standing when the ITA requested prosecution.
- 6.68 The ITA receives MLA requests directly or via the MoF and processes these according to the MLA(TM)A and TIEAs with requesting jurisdictions. In the absence of a TIEA, the ITA cannot legally provide assistance unless this falls within AEOI with the jurisdiction. However, where the case relates to criminal matters, including tax crimes, the ITA will refer the jurisdiction to the relevant Virgin Islands CA, usually the AGC.

- 6.69 The ITA records all outgoing and incoming international cooperation requests. Capacity issues are creating a risk of the ITA being perceived as unable to meet its international obligations to provide assistance in a timely manner.²¹
- 6.70 It would be helpful for the ITA to seek feedback after providing information to know how many cases resulted in prosecution or conviction or are still ongoing.
- 6.71 Information requested from TCSPs covers legal and beneficial ownership; directors and accounting information; correspondence between the service provider and the company; and other general information, such as the purpose for which the company was established and company minutes.

Main threats (T) and vulnerabilities (V) identified for the ITA	
T	<ul style="list-style-type: none"> • The length of time to process requests and inability to gather required information could leave the ITA unable to provide timely and accurate information to foreign counterparts, which would affect investigations into ML/TF or other criminal activities. • The ITA has no power to impose administrative penalties on service providers who fail to supply requested information, meaning it has no real deterrent outside of commencing court proceedings. This could hinder the ability to comply with requests for information and provide full cooperation to enable prosecutions for ML/TF and other crimes. • Failure to prosecute or a delay in prosecuting persons who do not comply with ITA requests to produce documents and other information has a negative impact on the discharge of the ITA's international obligations, causing difficulties for counterparts who require the information to proceed with investigations.
V	<ul style="list-style-type: none"> • Failure to provide timely and accurate information when requested. • Inability to take action against persons who fail to provide requested documents. • Inability to prosecute properly those who fail to produce documents.

²¹ The Global Forum said in August 2015 that the BVI should ensure it responds to EOI requests in a timely manner. The Virgin Islands is scheduled to be reviewed again in 2018.

7. Financial institutions

Risks	Common areas	<ul style="list-style-type: none"> • Corporate governance • Maintenance of beneficial ownership and CDD information • Verification measures for CDD and ECDD information • AML/CFT internal control measures • Internal risk assessment measures • SAR/STR reporting • Records maintenance and accessibility • Banking relationships and electronic transfers • High-risk business practices • Demographics – location of customer, beneficial owner, and counterparty transactions • Client-based risk assessment measures
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- 7.1 The Virgin Islands' financial services industry is comprised of traditionally regulated FIs, which include banking business, insurance business, investment business, TCSPs²² and insolvency practitioners. In 2009, regulation extended to the financing and money services sub-sector. The largest sub-sector is the TCSPs, which, through company incorporations, are also the largest direct revenue generator for the Government. The second largest sub-sector is investment business, which by its nature exists largely outside of the Territory.
- 7.2 We look below at the sector as a whole and then at individual sub-sectors, based on their PAQ responses and interviews (see Methodology box below).
- 7.3 Up to three-quarters of respondents, but not all, had governance structures in place. All sub-sectors needed to intensify their efforts to collect beneficial ownership (BO) information and verify their clients. Most had sufficient and effective AML/CFT internal controls in place, with the possible exception of MSB.
- 7.4 It is a statutory requirement to file SARs/STRs to the FIA (where there is suspicion of ML or TF) and to maintain internal records of filings. The banking and TCSP sub-sectors make the highest level of filings and over three-quarters of all sub-sectors maintain internal records of filings.
- 7.5 ML/TF risks can be created if monetary transactions take place beyond regulatory reach, and procedures for electronic funds transfer should be in place.

²² Although the TCSPs are considered as DNFBPs under the FATF Recommendations, in the BVI they are treated as part of the financial institutions sector and governed by the rules both for DNFBPs and for financial institutions.

- 7.6 The assessment reviewed the extent to which FIs' business relationships were based in jurisdictions which were high risk (i.e. not in Schedule 2 of the AMLTFCOP) or known for their political instability or involvement in terrorism. Overall, the FI sector presented a medium risk here.
- 7.7 As most do not engage with clients face to face, FIs need to put systems and controls in place to mitigate geographical risks. MSBs and banking institutions have the greatest opportunity for improvement here.
- 7.8 Looking at risk frameworks and client verification and CDD or extended CDD (ECDD) measures, TCSPs and banking institutions' presented a lower risk than insolvency practitioners and insurance.
- 7.9 The FIs play a critical role in the Virgin Islands' compliance with international obligations. Any domestic CA may request BO information directly from any licensed entity and failure to respond is an offence.²³ In the review period, CAs made 1,414 requests for information, 95 per cent of these from TCSPs, four per cent from banks and one per cent from insurance and investment business. The FSC, with its robust enforcement powers, has the greatest success in obtaining information, while the FIA issues more typology reports to help FIs address ML/TF deficiencies.

Methodology for assessing FIs

Assessors collected data through the PAQs, interviewed FI practitioners and spoke to CAs that engage with FIs. They reviewed enforcement action taken, advisory warnings and FSC inspections published for 2011-14.

Of the 277 industry and 277 international cooperation questionnaires sent out, the industry survey received 118 responses of which 75 were in a usable format, and the international cooperation survey received 89 responses of which 74 were usable (27 per cent of the total in both cases).

Onsite interviews were conducted with management, Compliance Officers and/or MLROs in 107 entities: 75 TCSPs, six commercial banks, 15 insurance entities (10 domestic and five captive), eight fund administrators, one insolvency practitioner and two money service businesses.

PAQ responses were clarified and additional documentation was reviewed, including organisational charts, training logs and AML/CFT compliance manuals and procedures.

²³ Various Acts give the CAs compulsory powers: for the AGC, the Mutual Legal Assistance (USA) Act, CJ(IC)A, DTOA and PCCA; for the FIA, the FIAA, PF(P)A, T(UNM)(OT)O and AT(FOM)(OT)O; for the FSC, the FSCA; and for the ITA, the MLA(TM)A.

Trust and corporate service providers

Risks	High	<ul style="list-style-type: none"> • Maintenance of beneficial ownership and CDD information • Verification measures for CDD and ECDD information
	Medium	<ul style="list-style-type: none"> • Corporate governance • SAR/STR reporting • Records maintenance and accessibility • Banking relationships and electronic transfers • High-risk business practices • Demographics – location of customers, beneficial owners, and counterparty transactions • Client-based risk assessment measures

- 7.10 Under the FATF Recommendations and as implemented by most regulatory frameworks, TCSPs are considered DNFBPs. To ensure due diligence, record keeping and internal controls, the Virgin Islands has regulated TCSPs since 1990 (under the Banks and Trust Companies Act, 1990 [BTCA] and the Company Management Act, 1990), adding AML/CFT measures in 1998. As noted, only RAs may incorporate or register BVIBCs and form limited partnerships. They must perform full CDD and ascertain BO information.
- 7.11 Many TCSPs are a part of groups operating in other IFCs and most clients are non-resident in the BVI. TCSPs may manage or administer significant assets for clients and encounter high-risk persons, such as PEPs or UHNWIs. They can be asked to provide complex structures and they liaise with legal practitioners and accountants to ensure compliance with Virgin Islands law.
- 7.12 Over the review period, the TCSP sector comprised over 200 licensees.
- 7.13 In the review period, some TCSPs were overly reliant on third parties to obtain relevant client information. Since 1 January 2016, the AMLR and AMLTFCOP have required that where a business relationship is formed through third party introduction, all BO information must be immediately obtained from the third party and kept in the BVI. As regards client verification and CDD/ECDD, TCSPs could be more effective in applying risk assessments and more proactive in filing SARs/STRs.
- 7.14 It would be helpful to improve the keeping of records and allow for their easy access and retrieval.
- 7.15 In 2011-14, TCSPs accounted for 30 per cent of all FSC inspections, due to the fact that TCSPs act for numerous BVIBCs, which are potentially high risk, and TCSPs' products and services may be susceptible to ML/TF opportunities. Identification of contraventions leading to enforcement action appears largely to rely on onsite

inspections. This suggests an opportunity for the FSC to go beyond onsite inspections to ensure TCSPs follow legal obligations at all times.

Main threats (T) and vulnerabilities (V) identified for TCSPs	
T	<ul style="list-style-type: none"> • The lack of adequate oversight by Boards of Directors of TCSPs presents material risk • Risks are not well managed by TCSPs in their record-keeping practices and engagement with third parties, which could lead to criminals going undetected and ML/TF complacency • Poor adherence to CDD/ECDD requirements and inadequate STR/SAR reporting. • Poor maintenance of beneficial ownership information means that legal person and arrangements could be misused and there would be no ability to identify ownership. This could lead to criminals not being detected and prosecuted and proceeds taken away. It may also significantly affect the VI's ability to cooperate internationally, whether as a regulator or law enforcement agency.
V	<ul style="list-style-type: none"> • Operational risks for TCSPs due to poor or inadequate oversight • Poor or inadequate risk assessment framework, which lead to a lack of or improper or inadequate identification of risks • Inability to produce full client records in all cases specifically relating to CDD and beneficial ownership • Defensive reporting of STR/SAR, which can create difficulties for the FIA in identifying ML/TF threats. • Failure of adequate supervision, including absence of appropriate and adequate supervisory framework to guide staff.

Insurance business

Risks	Medium	<ul style="list-style-type: none"> • Corporate governance • SAR/STR reporting • Records maintenance and accessibility • Banking relationships and electronic payments • High-risk business practices • Demographics - location of customer, beneficial owners of customers and counter-party transactions • Client-based risk assessment measures
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7.16 Insurance business is licensable under the Insurance Act, 2008 and the IR²⁴ and includes domestic insurers, captive insurers, insurance managers, loss adjusters and insurance intermediaries (agents and brokers). Domestic insurance accounts for most business, and property and casualty insurance in particular pose a low

²⁴ Relevant legislation also includes the BVBCA and the Regulatory Code

AML/CFT risk. Foreign insurance is undertaken primarily by captive insurers, also low risk.

- 7.17 Insurers must maintain minimum contributed capital and solvency margins. Domestic insurers' Virgin Islands exposures are closely monitored to ensure adequate protection in a catastrophe. A foreign insurer must maintain assets in a trust in the Territory equal to its liabilities to protect policyholders. This is being extended to Virgin Islands insurers in the form of a regulatory deposit with the FSC (under the Insurance (Amendment) Act, 2015 and Insurance (Amendment) Regulations, 2015 (in force as of 1 November 2016).
- 7.18 Over the review period, the insurance sector comprised over 200 licensees.
- 7.19 Domestic businesses maintain readily available BO information in the Territory. For business conducted elsewhere, two-thirds of firms maintain BO information in the Territory and where they do not do that, the information is easily accessible. All maintain CDD/ECDD information in the BVI, including client verification data. Measures for collecting CDD information are adequate in nine out of ten cases and client CDD/ECDD is regularly updated. All respondents have written policies for accepting customers, of which just under three-quarters were adequate.
- 7.20 Staff have sufficient understanding of the purpose of the business relationships entered into and no insurance business maintains any banking relationships that may be considered high risk. Eighty per cent of respondents claim to carry out ML/TF risk assessments of their business relationships, and two-thirds record these or have policies in place.
- 7.21 The low risk nature of the insurance sub-sector may be why only 27 per cent of the respondents filed SARs/STRs with the FIA during the review period. Of these, 87 per cent kept a record of the filings.
- 7.22 As regards record keeping, four in five do not maintain records of one-off transactions but the risk level is medium. The sector is also medium risk in relation to the location of its customers, BOs and counter-party transactions.
- 7.23 Client-based risk assessment procedures pose a higher risk than for TCSP, banking and investment businesses. Sixty per cent of insurers have procedures for identifying different customer risk categories and 40 per cent risk profile their business relationships.
- 7.24 Risk is mitigated by 93 per cent of business having procedures for establishing business relationships (although only 60 per cent have procedures for terminating these) and 73 per cent have processes for consistent monitoring of customers and relationships.
- 7.25 Sixty per cent of respondents have mechanisms for ensuring adherence with the sanctions list. None has relationships with FIs in high-risk jurisdictions, although the sub-sector relies heavily on non-face to face business, especially for captive insurance.

- 7.26 The FSC imposed administrative penalties and issued public (enforcement) statements relating to a number of insurance licensees during the review period, mostly for corporate governance or operational issues, with nine AML/CFT failures. Some insurance business might have been offered by unlicensed entities.

Main threats (T) and vulnerabilities (V) identified for insurance businesses	
T	<ul style="list-style-type: none"> • Inadequate oversight by senior management, which results in breakdowns in the operation and application of internal controls. • Poor record keeping, which negates the proper analysis of risk trends. • Inadequate reporting of suspicious activities and suspicious transactions, which could mean that criminals are not detected.
V	<ul style="list-style-type: none"> • Operational risks for insurance businesses due to poor management oversight • Inadequate reporting of SARs/STRs. • Inability to maintain records that are easily accessible and complete.

Insolvency business

Risks	Medium	<ul style="list-style-type: none"> • Corporate governance • SAR/STR reporting
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- 7.27 Under the Insolvency Act, 2003, only licensed insolvency practitioners may become Virgin Islands administrators, administrative receivers, interim supervisors, supervisors, provisional liquidators, liquidators (other than in a solvent liquidation) or bankruptcy trustees. An overseas insolvency practitioner may be appointed jointly with a Virgin Islands practitioner. As a regulated person, an insolvency practitioner is required to maintain AMF/CFT controls.
- 7.28 The number of licensed insolvency practitioners is low and in 2014 comprised 25 accountants and one legal practitioner. Practitioners tend to be part of accountancy firms or law firms.
- 7.29 The Report's sample size of five practitioners is too small to draw objective conclusions but risks are considered low given the nature of insolvency work (relative to liquidations, receiverships, etc.) and the fact that they are normally appointed by the High Court and effectively often take control of an entity as an officer of the court. They do not establish anonymous or numbered accounts, nor could they do so with local banks.
- 7.30 Eighty per cent of respondents have access to BO information in the Virgin Islands on their business relationships. Although more than a quarter of insolvency business is handled outside of the BVI, the location of some customers, clients and counter-party transactions poses a low risk. All respondents have CDD/ECDD measures in place and adequate written policies for accepting customers, with good understanding of client relationships. All carry out risk assessments of their business

and business relationships and maintain records. Four out of five maintain records of one-off transactions. Records are readily accessible.

- 7.31 Forty per cent of respondents have filed SARs/STRs, suggesting a possible need to review their mechanisms for consistent reporting of ML/TF threats.
- 7.32 In the review period, the FSC made 16 prudential and AML/CFT inspections. It took two enforcement actions in 2011 (a licence revocation and a public statement) and one in 2013 (a warning letter). Greater inspection would enable more timely discovery of any possible ML/TF risks.

Investment business

Risks	High	<ul style="list-style-type: none"> • Maintenance of beneficial ownership and CDD information • Verification measures for CDD and ECDD information
	Medium	<ul style="list-style-type: none"> • Internal risk assessment measures • Staff training in AML/CFT • SAR/STR reporting • Records maintenance and accessibility • Banking relationships and electronic payments • High-risk business practices • Demographics - location of customers, BOs of customers and counter-party transactions • Client-based risk assessment measures

- 7.33 Investment business in the Virgin Islands is regulated by the FSC under SIBA and related legislation. This covers recognition and licensing of private, professional, public and foreign mutual funds; and incorporation or re-registration of segregated portfolio companies as private, professional and public mutual funds.
- 7.34 Investment advisers, investment managers, broker/dealers, and fund administrators are also licensed. An approval regime is maintained for approved investment managers and authorised representatives. Regulations await enactment to permit the public issuance of securities in and from within the BVI.
- 7.35 In the review period, there were over 500 licensees, over 2000 mutual funds, and over 125 segregated portfolio companies.
- 7.36 Most service providers are outside the Virgin Islands, but all licensees are subject to fit and proper assessments and must have a local authorised representative to liaise with the FSC. While it would be helpful to assess providers outside the Territory, a review of those in the Territory provides some useful learning.
- 7.37 The sub-sector presents a medium risk with some areas requiring closer attention, notably BO, CDD, record keeping and client verification.

- 7.38 Nine in ten respondents doing business physically in the Virgin Islands hold BO information in the Territory on their business relationships or can make this readily available. As many say they maintain regularly updated CDD/ECDD information in the Virgin Islands that verified clients' identity. However, most investment businesses are based outside the Territory and more analysis would be useful to reduce any risk.
- 7.39 Only a quarter of respondents filed SARs/STRs with the FIA in the review period and the FIA has records of just four filings. An area for improvement is the maintenance of customer records, undertaken by 62.5 per cent: these are important if the customer seeks to do other business in or from within the BVI.
- 7.40 Three-quarters have documented risk assessment policies and conduct risk assessments of their business and business relationships. Nine in ten do frequent assessments, although a lower 63 per cent maintain records. Only 13 per cent of respondents maintain records of one-off transactions.
- 7.41 As regards having AML/CFT control measures or proper AML/CFT training in place, the related risk is low. For location of its customers, BOs and counter-party transactions, it is medium.
- 7.42 Nearly two-thirds have procedures for categorising customer risk, while 88 per cent develop business relationship risk profiles, have processes for reporting risk concerns to senior management and the Board, operate procedures for establishing business relationships and ensure consistent and effective monitoring. Three-quarters have termination procedures.
- 7.43 Eight-eight per cent have mechanisms in place for ensuring adherence with the sanctions list, although there is room for improvement in the mechanisms.
- 7.44 Investment businesses do not have relationships with FIs in high-risk jurisdictions. By their nature, they transact a high level of non-face to face business but this does not necessarily represent a risk, particularly if mitigated by proper CDD/ ECDD.
- 7.45 In the review period, the FSC carried out 25 onsite inspections. This suggests an opportunity to enhance supervisory resources to increase inspections and undertake an in-depth analysis of ML/TF and supervisory risks. There were 73 enforcement actions (warning letters, directives, revocations, cease and desist orders, advisory warnings and public statements). None was evidently for AML/CFT failures.

Main threats (T) and vulnerabilities (V) identified for investment businesses	
T	<ul style="list-style-type: none"> • There are some challenges in client verification and implementation of CDD/ECDD measures. This presents a material risk from persons who may seek to use mutual funds – and ultimately the services of investment managers, investment advisors, fund administrators and broker/dealers – for ML/FT. • Challenges in obtaining and maintaining beneficial ownership information reduce the ability to identify the risk posed and persons more likely to engage in ML/TF, meaning these persons may go undetected and the proceeds of crime may not be taken away. • Deficiencies in how suspicious activities are identified and risk-assessed and how STRs/SARs are reported affect the ability to identify criminals engaged in MF/TF and increases the FIA's workload due to the potential for defensive filings only. • The FSC's ability to regulate and supervise the sector fully from a risk perspective is questionable, creating an avenue for criminals to exploit.
V	<ul style="list-style-type: none"> • Operational risks due to poor or inadequate oversight. • Inadequate conduct of due diligence and maintenance of beneficial ownership information. • Inability to produce complete records in a number of cases due to failure to maintain proper records. • The role of the FSC as regulator of investment business could be called into question in terms of whether and to what extent it is effective. • ML and TF threats not being consistently reported to the FIA or law enforcement, primarily through failure to file SARs/STRs.

Banking institutions

Risks	Medium	<ul style="list-style-type: none"> • Corporate governance • Verification of CDD and ECDD information • Banking relationships and electronic payments • High-risk business practices
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- 7.46 The banking sector is regulated under the BTCA and other related regulatory legislation and each bank operating in the Territory is licensed. The Virgin Islands have a small sub-sector of six commercial banks and one restricted banking institution, with a total asset base of \$2.4 billion. Approximately 92 per cent is domestic banking, and eight per cent international. There are three classes of licence under the BTCA.
- 7.47 Banks have among the most effective controls of all Virgin Islands sub-sectors. BO information is well managed and maintained, with information kept in the Virgin Islands or readily available, and staff receive AML/CFT training. There is some opportunity for improvement in corporate governance, management of banking relationships, verification of domestic business and client demographics.

- 7.48 For example, enhanced management oversight of junior staff for day-to-day business transactions would reduce risk. Only half of respondents demonstrated that they maintained correspondent banking relationships, had procedures for the electronic transfer of funds or documented or circulated risk assessments to staff of business and business relationships. While Assessors believe most banks in practice do these things, fuller evidence is required.
- 7.49 Banks have CDD policies and update their CDD records regularly. Generally, they maintain accessible electronic records, including for one-off transactions. Staff know the intended purpose of banks' business relationships, although less so for business outside the Territory.
- 7.50 Half of the respondents have correspondent banking relationships. The 17 per cent of banks who have business relationships with FIs in high-risk jurisdictions carry out the necessary ECDD. All requirements of FATF Recommendation 16 on electronic transfers are met, although not all banks have written procedures.
- 7.51 All banks have filed SARs/STRs with the FIA and recorded this. In the review period, banks accounted for 30 per cent of all SARs/STRs filed, demonstrating their vigilance.
- 7.52 Banks have adequate and appropriate risk assessment policies in place and staff understand the banks' risk appetite and can report risk concerns. Banks observe sanctions and have procedures for establishing and terminating business relationships. More than four in five have processes in place for consistent monitoring of customers.
- 7.53 In the review period, the FSC inspected one bank in 2011 for AML/CFT and prudential compliance, all seven banks in 2012 and three banks in 2014. Any breaches were low level or quickly corrected, not requiring enforcement action.

Main threats (T) and vulnerabilities (V) identified for banking institutions	
T	<ul style="list-style-type: none"> • Inadequate oversight by management of junior staff. • Lack of proper management oversight and customer due diligence poses a risk of allowing criminals to engage in ML/TF.
V	<ul style="list-style-type: none"> • Inadequate management oversight of banking operations. • Incompleteness of customer due diligence and beneficial ownership information for all account holders.

Money services businesses

Risks	High	<ul style="list-style-type: none"> • Maintenance of BO and CDD information • Internal risk assessment measures • SAR/STR filing • Client-based risk assessment measures
	Medium	<ul style="list-style-type: none"> • Corporate governance • Verification of CDD and ECDD information • AML/CFT internal control measures • Banking relationships and electronic payments • High-risk business practices • Demographics - location of customer, beneficial owners of customers and counter-party transactions

- 7.54 Money services businesses (MSBs) have been regulated since the enactment of the Financing and Money Services Act, 2009. The first MSB licence was issued in 2011, followed by another in 2012; that number remained through to 2014.
- 7.55 With the global trend towards de-risking, access to the banking system for MSBs in the Virgin Islands and the region is extremely limited. Some Virgin Islands banks have policies against doing business with MSBs.
- 7.56 Some areas of medium risk identified include risk mitigation measures, corporate governance (management oversight), maintenance of BO and CDD information, and verification of CDD and ECDD information. There is opportunity for improvement in how MSBs address risk assessments and report SAR/STRs (see 7.59 below).
- 7.57 Record keeping is good: all respondents maintain records of transactions, noting the recipient of funds and the name, address, occupation and telephone of the sender.
- 7.58 MSBs do not have relationships with other FIs based in high-risk jurisdictions and most business is based on face-to-face transactions, all conducted within the BVI. Most MSB users do not send large amounts but are largely meeting home country obligations such as family support, rent and school fees. Having procedures in place for the electronic transfer of funds would still be useful.
- 7.59 One of the two MSBs has adequate CDD/ECDD policies for accepting customers. It also files SARs/STRs with the FIA and keeps records, frequently risk-assesses its business and business relationships, and has appropriate risk assessment policies in place. Neither has documented risk assessments that have been circulated to staff for AML/CFT guidance. They lack procedures for categorising customers' risk, developing risk profiles of business relationships, establishing or terminating

customer relationships, ensuring consistent monitoring of customers and business relationships or ensuring adherence with the sanctions list.

7.60 As at December 2016, the FSC has issued AML/CFT guidelines for the MSB subsector.

7.61 The FSC conducted only one inspection of an MSB during the period under review and has not issued AML/CFT guidelines to assist MSBs. Regulation has yet to address the aggregate size of remittances, type of clientele and the purpose of remittances.

Main threats (T) and vulnerabilities (V) identified for money services businesses	
T	<ul style="list-style-type: none"> Challenges in obtaining and maintaining beneficial ownership information reduce the ability to identify the risk posed and persons more likely to engage in ML/TF through MSB, meaning these may go undetected and the proceeds of crime may not be taken away. Poor adherence to CDD/ECDD requirements and inadequate STR/SAR reporting could allow criminals to go undetected. The absence of assessment and documentation of risks, including the development of a risk assessment framework to guide staff to detect and prevent transactions that may be associated with ML and TF.
V	<ul style="list-style-type: none"> Inability to gather and verify beneficial ownership information. Improper SAR/STR filings due to lack of understanding of AML/CFT requirements. Lack or low level of staff training in AML/CFT issues. Poor or inadequate AML/CFT control measures, particularly risk assessments.

8. Designated non-financial businesses and professions

Risks	Medium	<ul style="list-style-type: none"> • Governance and administration • Resources for monitoring AML/CFT risks • Internal risk assessments • Staff training on AML/CFT • SAR/STR reporting
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- 8.1 The DNFBP sector in the VI is small, considering that the TCSP sector is treated as part of the FI sector²⁵. DNFBPs dealing in precious metals and stone are addressed separately in the HVG section of this Report.
- 8.2 There is some uncertainty about numbers as many businesses that engage in DNFBP-type activities have trade licences but are not currently required to register with the FIA. The FIA estimates there are 57 entities qualified as DNFBPs under the AMLR and AMLTFCOP, comprising 30 legal practitioners (including notaries public), 15 real estate agents and 12 accountants.
- 8.3 The FIA undertakes AML/CFT supervision and monitoring of DNFBPs. Under the AMLR, it oversees and monitors legal practitioners, notaries public and accountants for AML/CFT purposes where their services cover real estate, managing client assets, managing accounts, paying company contributions, creating, operating or managing legal persons, and buying and selling business entities. It also oversees and monitors real estate agents (REAs) in buying and selling real estate for a client.
- 8.4 The sector as a whole presents a medium level of risk with regard to governance and administration, resources for monitoring AML/CFT risks, internal risk assessments, staff training on AML/CFT and SAR/STR reporting. These are addressed in more detail below.
- 8.5 There is opportunity to deepen FIA oversight, which consisted mostly of desk reviews rather than onsite inspections in the review period. There is also room for improvement in the FIA's cooperation with smaller DNFBPs, who find regulatory obligations onerous and can have difficulty submitting compliance manuals for approval.

²⁵ TCSPs qualify as DNFBPs under the FATF Recommendations, which also permit them to be treated as FIs, as the NRA does. The Virgin Islands' 2008 CFATF Mutual Evaluation Report treated TCSPs as FIs and applied the relevant FATF Recommendations.

Real estate agents

Risks	Medium	<ul style="list-style-type: none"> • Governance and administration • Client verification and CDD/ECDD measures • AML/CFT Internal control measures • Resources for monitoring AML/CFT issues • Internal risk assessments • Staff training on AML/CFT • SAR/STR reporting
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- 8.6 There is no evidence of ML/TF activity among REAs or any attempt at this. All have submitted compliance manuals to the FIA, although adherence was unclear.
- 8.7 As regards CDD/EDD, only half of REAs conduct risk-based verification of property buyers or file SARs/STRs. This may increase risk based on the nature of activity and the fees and value of property involved.
- 8.8 While there is no evidence of any intention to facilitate ML/TF, REAs show a lack of familiarity with AML/CFT obligations and what constitutes a suspicious transaction. There is opportunity to improve staff training and hence the management of adherence to AML/CFT obligations.
- 8.9 REAs regularly accepted cash for property transactions (including rental payments), whereas 95 per cent of accountants and law firms did not accept cash at all. Buying and selling property was mostly done using wire transfers and cheques. Improved awareness is needed of the importance of inquiring into sources of funds and the ultimate BO for belongers and non-belongers alike.
- 8.10 The FIA did not inspect REAs in the review period.

Main threats (T) and vulnerabilities (V) identified for real estate agents	
T	<ul style="list-style-type: none"> • Exploitation by criminals and, in particular, drug traffickers, using natural and legal persons due to lack of proper controls related to SARs/STRS reporting, CDD measures, risk assessments and records management.
V	<ul style="list-style-type: none"> • Lack of understanding of the AML/CFT requirements. • Inadequate SAR/STR reporting. • Poor client verification. • Inadequate risk assessments. • Inadequate knowledge and training of staff in AML/CFT compliance.

Legal practitioners, notaries public and accountants

Risks	Medium	Legal practitioners and notaries public <ul style="list-style-type: none"> • Governance and administration • Internal risk assessment measures Accountants <ul style="list-style-type: none"> • Governance and administration • Internal risk assessment measures • SAR/STR reporting

- 8.11 Eight in ten legal firms do not normally engage in activities that qualify them to be classed as DNFBPs. Those assessed as DNFBPs generally have appropriate CDD/ECDD and client verification measures in place. Seven in ten are linked to regulated entities such as a Virgin Islands trust company or an international law firm, and understand their AML/CFT obligations. Where CDD/ECDD gaps exist, these are primarily in relation to record keeping, risk assessments and client services.
- 8.12 Most legal firms have at least one practitioner appointed as a notary public and nearly all Virgin Islands notaries public are legal practitioners. These present a low AML/CFT risk as their reliance on original documents establishes a paper trail and requests for their services come from regulated entities, mostly TCSPs.
- 8.13 As regards accountants, seven in ten of those reviewed did not engage in activities within the scope of the AMLR but mostly undertook auditing and insolvency (the latter is addressed in the FI section of this Report). Their audit clients are mainly regulated entities, particularly TCSPs. Although they filed only one SAR/STR in the review period, accountants pose a low ML/TF risk as they know their obligations and have client risk-profiling and monitoring in place.
- 8.14 The FIA did not inspect legal firms in the review period, which provokes further reflection about its supervision of the DNFBP sector.

Main threats (T) and vulnerabilities (V) identified	
Legal practitioners	
T	<ul style="list-style-type: none"> • Exploitation by drug traffickers, human traffickers, terrorist groups and other organised criminal groups due to inappropriate risk assessment measures. • Use of the profession by unscrupulous legal practitioners to facilitate clients' ML/TF activities, especially in the absence of an effective and functioning regulatory regime governing the conduct of legal practitioners.²⁶

²⁶ The Legal Practitioners Act was only brought into force in January 2016. Although the General Legal Council has been established, the necessary regulations and rules to ensure the appropriate disciplining of legal practitioners for infractions are yet to be enacted.

V	<ul style="list-style-type: none"> Low levels of compliance with the legislative requirements relating to risk assessment, governance and administration.
Accountants	
T	<ul style="list-style-type: none"> Exploitation by drug traffickers, human traffickers, terrorist groups and other organised criminal groups due to lack of proper risk assessment and SAR/STR reporting. Use of the profession by unscrupulous accountants to facilitate clients' ML/TF activities, especially in the absence of an effective and functioning regulatory regime governing the conduct of accountants as a profession.²⁷
V	<ul style="list-style-type: none"> Lack of proper risk assessment and SAR/STR reporting.

Casinos, gambling and lottery

- 8.15 There are no licensed casinos in the BVI, gambling is prohibited and lotteries require approval from the DGO. There may be some unlicensed sale of foreign lottery tickets from the USVI and Puerto Rico. This may potentially create an ML/TF risk as large sums attributed to winnings could find their way into the financial system, with criminals paying more cash to secure winning tickets to present as a legitimate source of funds.

Main threats (T) and vulnerabilities (V) identified for casinos, gambling and lottery	
T	<ul style="list-style-type: none"> Use by criminals such as drug traffickers and other organised groups for the purposes of "cleaning" ill-gotten proceeds. Increase in physical violence in the community.
V	<ul style="list-style-type: none"> The close proximity of the US Virgin Islands and Puerto Rico makes it easier for persons to smuggle lottery tickets into the VI and encourage the conduct of a business that is not regulated under VI law. Awareness of failings in the enforcement of laws on gambling and the sale of foreign lottery tickets could lead money launderers and organised criminal groups to exploit this loophole to facilitate criminal activity.

²⁷ The accounting profession in the VI is currently unregulated, although it is recognised that individual accountants would be accountable to their various external accounting bodies with which they are registered or enrolled.

9. Non-profit organisations

- 9.1 As of 1 September 2014, there were 131 non-profit organisations (NPOs) operating in or from within the BVI: 93 registered under the Non-profit Organisation Act, 2012 (NPOA), of which 76 were interviewed for the NRA, and 38 unregistered.²⁸ An NPO may be incorporated under the BVIBCA or formed by other means.
- 9.2 The NPOs reviewed for the NRA comprised community-based organisations, foundations, national country associations, performing arts organisations, religious organisations, service organisations, sports organisations and youth organisations.
- 9.3 In 2009, the FSC took a policy decision not to incorporate any foreign companies wishing to carry out non-profit activities outside of the BVI. According to the FSC, 240 entities have been incorporated as NPOs over the years, of which 40 have registered with the Non-profit Registration Board (NPOB). The NPOB is working to assist unregistered NPOs to complete the registration process.

Risks	High	<ul style="list-style-type: none"> • SAR/STR reporting
	Medium	<ul style="list-style-type: none"> • Governance and administration • Client verification and CDD/ECDD measures • AML/CFT Internal control measures • Internal risk assessment measures • Staff training on AML/CFT • Records maintenance and accessibility • Funding and accounting practices • Funding and expenditures • International exposures

- 9.4 Unregistered NPOs were not assessed in the NRA. These are viewed as low risk, being small and local with very little revenue base.
- 9.5 NPOs may experience difficulties in implementing certain NPOA registration requirements, appointing an MLRO and completing their compliance manuals. There is opportunity for improvement in how they conduct CDD/risk assessments, maintain records and train staff and volunteers. Both the NPOB and the FIA, which supervises NPOs, face resource challenges. These are addressed in more detail below.

²⁸ The 76 registered NPOs break down as follows: religious organisations 37 per cent, sports organisations 16 per cent, service organisations 16 per cent, community organisations 13 per cent, youth organisations six per cent, national/country associations eight per cent, foundations three per cent and arts organisations one per cent.

- 9.6 However, NPOs do not pose a material ML/TF risk to the BVI. Many are small, more than 80 per cent generate income locally and more than 60 per cent have an annual income of \$20,000 or less. Those with international affiliations generally rely on the systems and procedures of HQs in jurisdictions which are recognised under the AMLTFCOP. No NPO appears to engage in high-risk activities or to transact large monetary transactions regularly. The bulk of their activities is within the Virgin Islands and can be monitored.
- 9.7 Registration requires NPOs to submit a written constitution and 96 per cent have done so. Constitutional documents must include the organisation's name and structure, how its governing body is elected, duties and power of the governing body, officers, and limitation of objects to solely or primarily charitable or non-profit purposes, including a prohibition on distributing dividends to members or shareholders.
- 9.8 Following the NRA and since the NPOA came into force in September 2014, the FIA has received 106 compliance manuals setting out internal AML/CFT controls, of which 82 are being reworked.
- 9.9 Churches have the most significant donor and revenue bases, with five classed as major religious institutions by size and congregation base. Some major churches did not engage with the NRA and could not be assessed.
- 9.10 Two-fifths of NPO respondents (mostly religious and service organisations) have appointed an MLRO but not all of these have sufficient knowledge or training. NPOs with fewer than five employees may apply for exemption from appointing an MLRO but many think they are automatically exempt.
- 9.11 Few NPOs carry out background checks on potential members or volunteers. Religious organisations expect members to profess a particular faith and do not see the need for formal due diligence. This appears to be universal practice amongst religious organisations and is generally not viewed as a serious risk.
- 9.12 NPOs generally lack understanding of ML/TF. They do not carry out CDD/ECDD or risk assessments on donors or recipients, and none filed an SAR/STR in the review period. Most do not have measures for dealing with PEPs, although given the Virgin Islands' size it is common for NPOs to engage with PEPs, some of whom sit on NPOs' executive bodies.
- 9.13 While this could mean that NPO members might unwittingly participate in ML/TF and become susceptible to bribery, the risk is seen as low because funding sources within the Virgin Islands are inevitably limited, NPOs have local knowledge about donors and PEPs' donations are mostly \$500-\$1,000 or less. Two in five NPOs also understands the consequences of being targeted for ML/TF and are willing to implement AML/CFT policies if guided.
- 9.14 NPOs are required to submit annual revenue and expenditure statements. One in twenty has an income of over US\$250,000 and consistently prepares financial

records. This is mainly the larger religious, service and sports organisations, most of whose revenue funds operating costs and who may be affiliated with an international body. Nine out of ten NPOs provide records of income and expenditure but do not prepare full financial statements.

- 9.15 Some 37 per cent of the NPOs have international affiliations, of which 57 per cent are with religious organisations and the rest with bodies such as Rotary International, British Red Cross, FIFA and the International Olympic Committee. The high level of trust here means that NPOs do not have written agreements in place about the use of their funds or check these have been used as intended.

Registration and supervision

- 9.16 The NPOB is responsible for registering NPOs. Between its establishment in 2013 and the end of 2014, the NPOB received 203 applications for registration and processed 123 that met NPOA requirements. Since end 2014, more NPOs have been registered and applications submitted.
- 9.17 The NPOB is appointed under the NPOA and comprises seven members, including the Registrar, who is an *ex-officio* member and serves as secretary. It employs no other staff. It facilitates the development of the non-profit sector in the BVI, promotes a local understanding of NPOs' role, receives and determines NPO applications for registration, registers NPOs, receives and reviews NPOs' financial statements and reports, and receives and investigates complaints.
- 9.18 Under the AMLTFCOP, the FIA is required to supervise and monitor NPOs for AML/CFT compliance via periodic inspections, outreach and analysis of compliance manuals. Once it registers an NPO, the NPOB gives the FIA the supervisory information it needs through a secure online portal.
- 9.19 There is a clear opportunity to improve the NPOB's effectiveness. While the NPOA stipulates 30 working days for processing a registration application, at the time of the NRA some applications had been pending for more than nine months, with 38 known unregistered NPOs operating in the Territory. This is likely due to a lack of personnel and the infrequency of NPOB meetings. The NPOB is not contemplating enforcement action against NPOs which fail to register.
- 9.20 There is limited communication between the NPOB and the FIA, with no formal links (the FIA is not represented on the NPOB). The FIA faces a resource challenge in supervising and monitoring the NPO sector. It focuses mainly on assessing compliance manuals and making recommendations. It has not conducted any onsite inspections. The FIA Board may wish to optimise existing resources or provide additional ones.
- 9.21 Although NPOs said the FIA was slow to provide feedback on their manuals, the FIA claimed to have reviewed all manuals and provided relevant feedback. Timeframes could not be confirmed. NPOs found an FIA outreach seminar in 2013

on compliance with their AML/CFT obligations useful and expressed a desire for further guidance.

- 9.22 Following the NRA assessment, the Assessors consider that sections 4 and 5 of the AMLTFCOP should be reviewed to reduce the compliance burden on smaller NPOs as they generally do not signal vulnerability to ML/TF. Supervision by the FIA for AML/CFT compliance should still continue on a risk basis. The NPOA should also be reviewed to reduce the burdens that have prevented most NPOs from being able to register with the NPO Board.

Main threats (T) and vulnerabilities (V) identified for non-profit organisations	
T	<ul style="list-style-type: none"> • Lack of sufficient education on AML/CFT matters means members of NPOs could be influenced unwittingly to participate in or facilitate activities involving theft of funds, including ML and TF, and might become susceptible to bribery. • While some NPOs' activities are highly influenced or controlled by external international organisations, such as FIFA, Rotary International and several religious bodies, the absence of, or adherence to, proper processes and procedures defining their relationships creates potential AML/CFT failures. • PEPs serving in the executive bodies of NPOs may exercise undue influence. • Inadequate internal controls relating to CDD, risk assessments, SAR/STR report and source of funding create avenues for criminals to exploit for ML/TF. • NPOs affiliated with "for-profit" entities over which the NPOs exercise full control without clear and full operational and financial separation create a serious threat.
V	<ul style="list-style-type: none"> • Lack of understanding of, and compliance with, the requirements of the NPOA. • Lack of sufficient understanding of ML/TF matters, which leads to reluctance and uncertainty about conducting CDD/ECDD and filing SARs/STRs. • No CDD or risk assessment carried out on donors or recipients of funds as NPOs rely on informal knowledge of individuals or entities to determine their credibility and believe that to request CDD information will be a deterrent to potential donors. • Inadequate resources to review and process applications for registration of NPOs in a timely manner. • Inability or unwillingness of the NPO Board to initiate enforcement actions against unregistered NPOs. • Inadequate resources to supervise and monitor the NPO sector effectively.

10. High value goods dealers

- 10.1 High value goods (HVG) dealers are persons who buy and sell certain high value goods for a cash payment of \$15,000 or more in any currency. While reviewed separately by the NRA, they are supervised by the FIA as a sub-set of DNFBPs. The Non-Financial Business (Designation) Notice, 2008 designates four categories of HVG dealer: eight boat (yacht) dealers (40 per cent of the sector); six vehicle dealers (30 per cent); three jewellers (15 per cent); and three furniture, machinery and art dealers (15 per cent). The NRA excluded art dealers as not presenting an ML/TF risk.
- 10.2 Compliance with AML/CFT obligations varied across the HGV sub-sectors. Areas for improvement included training in detecting red flags for ML/TF and the obligation to file SARs/STRs. Other areas included ensuring client verification systems, conducting CDD/ECDD on business relationships, internal control measures, having sufficient resources to monitor staff's AML/CFT compliance and conducting risk assessments. These are addressed in more detail below.
- 10.3 Nearly half of the entities reviewed have risk assessed their business. Most high value purchases are made through banks, reducing risk. All HVG dealers maintain properly kept and easily accessible transaction records. Only some maintain buyer identity records, reasoning that most relationships are long standing and they are very familiar with their buyers.
- 10.4 Just over 40 per cent have internal control mechanisms and proper CDD measures in place and 55 per cent were reasonably sensitised to their AML/CFT obligations. Just under half have adequate AML/CFT training, and under 60 per cent have the required internal controls. Few conduct CDD or file SARs/STRs or can recognise potentially suspicious activity.
- 10.5 None was inspected for AML/CFT compliance during the period under review, although following the NRA, the FIA has inspected seven entities and is raising HVGs' awareness of their obligations.
- 10.6 Despite this, the HVG sector is considered to pose only a medium risk. The industry is small (only 20 participants), most transactions are carried out using credit/debit cards rather than cash, high-value transactions are conducted by FIs (and are therefore identified, verified and recorded) and most dealers have adequate record-keeping measures in place.

Boat dealers

Risks	Medium	<ul style="list-style-type: none">• Internal risk assessment measures• SAR/STR reporting

- 10.7 Of the eight boat dealers (yacht brokers), five received sensitization and pre-examination visits from the FIA in 2011-2013 (one was inspected for AML/CFT compliance in 2015, outside the review period). All maintain AML/CFT compliance manuals, seven have internal controls and six have the resources to monitor AML/CFT compliance.
- 10.8 Brokers generally undertake CDD and ECDD records on every customer transaction, risk-assess client relationships and maintain records of this. They also maintain easily accessible records of transactions and relationships, and verify and maintain buyers' identities. Most staff appear trained to detect suspicious transactions but none has filed SARs/STRs with the FIA. Six are aware of their threshold reporting obligation and maintain records.

Vehicle dealers

Risks	High	<ul style="list-style-type: none">• SAR/STR reporting
	Medium	<ul style="list-style-type: none">• Client verification and CDD/ECDD measures• AML/CFT internal control measures• Internal risk assessment measures

- 10.9 All six vehicle dealers received sensitization and pre-examination visits from the FIA in 2011-2013 (one was also inspected for AML/CFT compliance in 2015, outside the review period). All maintain AML/CFT compliance manuals, two have internal controls and four have the resources to monitor AML/CFT compliance.
- 10.10 Only three undertake CDD and ECDD and one risk-assesses client relationships. They maintain easily accessible records of transactions and relationships, and verify and maintain buyers' identities. While most staff appear trained to detect suspicious transactions, none has filed SARs/STRs with the FIA or seems aware of their obligation to do so. Equally, while all are aware of their threshold reporting obligation, only four maintain records. All this may heighten ML/TF risk and there is a clear opportunity for improvement here.

Furniture dealers

Risks	Medium	<ul style="list-style-type: none"> • Client verification and CDD/ECDD measures • AML/CFT Internal control measures • Resources for monitoring AML/CFT compliance • Internal risk assessment measures • Staff training in AML/CFT • SAR/STR reporting
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10.11 None of the three furniture dealers received sensitization and pre-examination visits by the FIA in 2011-2013 (one was inspected for AML/CFT compliance in 2015, outside the review period). None maintains AML/CFT compliance manuals, one has internal controls and one has the resources to monitor AML/CFT compliance.

10.12 Only one undertakes CDD and ECDD and one risk-assesses client relationships. They maintain easily accessible records of transactions and relationships and one verifies and maintains customers' identities. While staff in one dealer are trained to detect suspicious transactions, only a single SAR/STR was filed with the FIA in the review period. All are aware of their threshold reporting obligation and two maintain records. This represents a medium risk that the dealers may be abused for ML/TF purposes and suggests a need for improvement.

Jewellers

Risks	High	<ul style="list-style-type: none"> • SAR/STR reporting
	Medium	<ul style="list-style-type: none"> • Internal risk assessment measures

10.13 Of the three jewellers assessed, only one received sensitization and a pre-examination visit by the FIA in 2011-2013 (two were inspected for AML/CFT compliance in 2015, outside the review period). Two maintain AML/CFT compliance manuals, two have internal controls and two have the resources to monitor AML/CFT compliance.

10.14 Two undertake CDD and ECDD and one risk-assesses client relationships. They also maintain easily accessible records of transactions and relationships, but only one company verifies and maintains customers' identities. All are aware of their threshold reporting obligation and two maintain records.

10.15 While staff are apparently trained to detect suspicious transactions, no jeweller filed a SAR/STR with the FIA in the review period, which presents a heightened risk of abuse for ML/TF purposes and would benefit from being addressed.

Main threats (T) and vulnerabilities (V) identified for high value goods dealers	
T	<ul style="list-style-type: none"> • Many visitors to the BVI pay in cash for high value goods like jewellery. This raises questions about counterfeiting and sources of funds and could pose an ML risk where the appropriate control measures are absent. • Inadequate policies and procedures dealing with risk assessments, AML/CFT training and SARs/STRs reporting may enable criminals to conduct ML/TF. • The absence of proper CDD and record keeping measures for purchasing, selling and renting yachts could facilitate ML/TF, which poses a threat to the industry.
V	<ul style="list-style-type: none"> • Inadequate internal systems and controls. • Inadequate systems and controls to prevent ML/TF. • Inadequate CDD/ECDD measures in place to prevent ML/TF. • Lack of training in AML/CFT compliance, including reporting SARs/STRs.

11. Law enforcement agencies

Risks	High	<ul style="list-style-type: none"> • Handling of incoming and outgoing MLA requests • Handling of incoming extradition requests • Processing of MLA requests • Ability to monitor BVIBC's for ML/TF • Handling of investigations relating to ML/TF
	Medium	<ul style="list-style-type: none"> • Governance and administration • Staff training in AML/CFT • Records management and maintenance • Handling of seizures, smuggling and security breaches • Handling of smuggling activities, including deportation • Inter-agency cooperation

- 11.1 The NRA reviewed seven law enforcement agencies (LEAs) with an AML/CFT locus: the Department of Immigration, Her Majesty's Customs, the Royal Virgin Islands Police Force (and its Financial Crimes Unit), the Office of the Director of Public Prosecutions, the BVI Airports Authority, the BVI Ports Authority, and the judiciary (Magistrate's Court and High Court).

Methodology for assessing LEAs

The methodology used to collect and assess data from LEAs differs from that used elsewhere in the NRA.

Except for the RVIPF and the ODPP, PAQs were not used as it was felt that information would be better captured through the face-to-face onsite visits. Preliminary information was obtained through pre-onsite questionnaires (POQs), and an initial (pre-interview) analysis of these was conducted to determine likely threats and vulnerabilities.

Interviews with each LEA reviewed the accuracy of the information in the POQs, examined the perceived threats and vulnerabilities identified and explored whether any others existed.

- 11.2 Almost across the board, much room exists for LEAs to improve staff training and understanding as regards ML/TF, staffing resources and their overall ML/TF law enforcement capability. They will also benefit from having and adhering to policies against political and other interference. Each LEA is discussed in turn below.

Immigration Department

Risks	High	<ul style="list-style-type: none"> • Training in AML/CFT
	Medium	<ul style="list-style-type: none"> • Governance and administration • Records maintenance and accessibility • Control of migrant smuggling activities and handling of deportations

- 11.3 The Immigration Department (ID) is responsible for controlling entry into the Virgin Islands and approving residence of people within the BVI.
- 11.4 The ID is headed by the Chief Immigration Officer (CIO), who reports directly to the Permanent Secretary in the Premier's Office. The ID is governed by the Immigration and Passport Ordinance and the CIO and other staff are bound by public service rules. A Board of Immigration functions in an advisory and consultative capacity, without executive or administrative power.
- 11.5 The ID overall appears to pose a low risk, although a lack of data left questions open. As set out below, areas of improvement include training in AML/CFT matters; investigation into migrant smuggling and human trafficking to determine links with organised crime and ML/TF; and cooperation between the ID, HMC, RVIPF and ODPP. These are addressed in more detail below.
- 11.6 Staff numbers rose from 49 in 2011 to 52 in 2014 but the department hopes for more. Resource challenges can see trained immigration officers reassigned to clerical and administrative tasks, working long extra shifts at entry ports and being tired on the job.
- 11.7 A major part of the ID's job is to screen persons entering the BVI, which includes preventing the smuggling of migrants²⁹. Staff are trained to spot forged passports but less so in investigative techniques or AML/CFT matters. In the review period, of 76 smuggled migrants detected, none was prosecuted and all were repatriated.
- 11.8 Strong governance within the ID will reduce the Virgin Islands' vulnerability to migrant smuggling and human trafficking, as well as to the bribery and corruption of ID officers. New officers are given the public service rules and cautioned to resist bribes and corruption but there is no specific training in this or guidance against outside interference from politicians, suspects, the accused, other LEAs, etc. Two cases are pending of bribery and corruption involving immigration officers.
- 11.9 It would be helpful to put systems in place to record the detection, prevention and treatment of migrant smuggling. The ID was unsure of how many migrant smuggling cases HMC referred to it in the review period, of links to organised crime or ML/TF,

²⁹ The top five countries from which migrant smuggling cases originate are Haiti, the Dominican Republic, Cuba, Brazil and Columbia.

or of migrants' countries of origin. There were two convictions for human trafficking in 2011 but no known cases in 2012 and 2013.

11.10 The Territory's porous borders require extra vigilance as they lend themselves to weapons and people smuggling. This requires the Entrex electronic border management system to be used more consistently than now, and for officers at ports of entry to learn the names of people subject to UN sanctions.

11.11 As regards intra-agency cooperation, informal procedures may exist for receiving referrals from, and exchanging information with, the RVIPF, HMC, FIA, ODPP, BVIPA and BVIAA but the presentation of case files to the ODPP was the only evident one.

11.12 For the review period, it would have been helpful to see records of the following:

- No. of cooperation and exchange of information matters made by or to the ID
- Number that resulted in further investigation, prosecution or conviction
- Any overseas cooperation arrangements to combat migrant smugglers and people traffickers
- Number of international cooperation requests the ID made or received, and to and from whom
- How long it took the ID or foreign authorities to respond
- Number that resulted in further investigation, prosecution or conviction
- Members of staff responsible for international cooperation matters
- Outstanding international cooperation requests made or received
- Internal international cooperation procedures or guidelines
- Number of people deported in 2011-2014 linked to organised crime or TF
- Number of people denied entry into the BVI, including the reason.

11.13 The ID maintains manual records and data on deportation, migrant smuggling and human trafficking but the tracking and combatting of migrant smuggling and human trafficking would benefit from improving storage, the recording of EOI and international cooperation and the analysis and assessment of information collected.

Main threats (T) and vulnerabilities (V) identified for the Immigration Department	
T	<ul style="list-style-type: none"> • Issue related to management and governance include corruption among staff could lead to criminal activity going undetected. • Criminals such as migrant smugglers, human traffickers and money launderers and other criminals dealing with importation of goods may go undetected due to poor records management, insufficient training, human resource constraints and failings in other policies and procedures, including domestic cooperation.
V	<ul style="list-style-type: none"> • Insufficient number of immigration officers at the designated ports of entry and long working hours may leave the VI vulnerable to inadequate checks and balances at the front line and risk the entry of undesirable persons.

	<ul style="list-style-type: none"> • Lack of training of immigration officers (including in AML/CFT, FATF Methodology, the FATF 40 Recommendations, the UN Convention against Transnational Organised Crime, the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, FATF ML/TF predicate offences, and resisting bribery and corruption) limits immigration officers' ability to detect, prevent and deal with persons who may violate the VI's immigration laws and by extension other laws. • Lack of proper or easily retrievable records affects the ID's ability to track and combat migrant smuggling and human trafficking. • Insufficient focus on migrant smuggling and human trafficking may leave the Territory vulnerable to these.
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Her Majesty's Customs

Risks	High	<ul style="list-style-type: none"> • Training in AML/CFT
	Medium	<ul style="list-style-type: none"> • Handling of seized assets, smuggling and security breaches

11.14 Her Majesty's Customs (HMC) prevents restricted and prohibited goods from entering or leaving the territory and assists with border protection in cooperation with the ID and the RVIPF.

11.15 It comes under the Ministry of Finance and the Commissioner of Customs reports directly to the Financial Secretary. HMC is governed by the Customs Management and Duties Act, 2010 and its staff are bound by the public service rules.

11.16 HMC poses a low risk overall. Staff training (including around bribery and corruption), the handling of seizures and smuggling, and vulnerability to security breaches would benefit from greater focus. These are addressed in more detail below. HMC hopes for more space, staff and resources but the need for this requires independent review.

11.17 Governance systems ensure that the Commissioner is updated and informed about relevant matters to exercise proper oversight. He and his senior staff are involved in key decisions on enforcement matters. Depending on the infractions, they also involve the RVIPF. The Commissioner works in tandem with other agencies such as the ID, Department of Agriculture, Conservation and Fisheries and VISR.

11.18 Staff numbers increased from 83 to 99 (15 per cent) between 2011 and 2014, mainly in customs officers. HMC has access to the Regional Clearance System (RCS) and its regional network includes the US Coast Guard in St Thomas and Puerto Rico and US Immigration and Customs Enforcement.

11.19 HMC has five special units.

- The **Marine Task Force** undertakes enforcement at borders and ports, including marine interdictions

- The **Flex Team** examines goods entering and leaving the Virgin Islands outside of designated customs areas and supports joint operations with local and international LEAs
 - The **K-9 Unit** provides canine support, mainly for the search and rummage of larger cargo vessels
 - The **Internal Audit Team** ensures value for money and compliance with all relevant laws and regulations
 - The **Customs Automated Processing System (CAPS) Team** guides, streamlines and automates the electronic clearing of goods.
- 11.20 Enforcement staff receive training in investigative techniques, including risk profiling of individuals. An area for improvement is ML/TF and detecting cross-border cash movements. A number are aware of the FATF 40 Recommendations and Methodology but less so of the UN Conventions against Transnational Organised Crime and on Narcotics and Psychotropic Substances as they relate to smuggling. Some new recruits receive integrity training and all staff are expected to follow public service rules. Only the Commissioner has had specific anti-bribery and corruption training.
- 11.21 As regards conflicts of interest, all civil servants are required to disclose their business interests and seek the DGO's permission to conduct such business. Since 2012, CAPS has curtailed activities such as customs broker duties without permission, as brokers have to be issued an account to use the system.
- 11.22 To prevent bribery and corruption, teams of customs officers are rotated, and information about containers arriving at the ports is recorded on the Overseas Territories Regional Investigative System, which HMC, the ID and the RVIPF share. HMC would benefit from having specific measures against outside interference and internally audit how officers deal with people and goods entering or exiting the BVI.
- 11.23 The Commissioner cannot directly suspend a corrupt officer but must lodge a report which may lead to disciplinary action. In the review period, the absence of a recording system means it is not clear whether any reports were made, although one officer was arrested for corruption and subsequently released and another was sentenced to two years in prison.
- 11.24 Looking at port clearance and border patrol, cargo vessels who want to use non-designated ports of entry must first notify the BVI Ports Authority (BVIPA) and seek HMC approval. HMC also relies on international cooperation and a designated hotline for intelligence on vessels entering the territory. All officers are trained in risk profiling of travellers, which may lead them to allow clearance, do more in-depth inspection or involve the RVIPF.
- 11.25 To prevent illegal entry, HMC patrols non-designated ports of entry based on intelligence received. Special operations teams may carry firearms. Operations

involving US LEAs use the US-BVI Shiprider Agreement. Combined with the presence of a US Coast Guard cutter, this enhances HMC's capabilities and acts as a significant deterrent.

- 11.26 People entering and exiting the Virgin Islands must declare whether they are carrying money to the value of US\$10,000 or more. An incoming declaration form is mandatory and outgoing passengers are expected to self-disclose: this could be made clearer. In line with FATF Recommendation 32, penalties for failing to declare range from forfeiture to fines and imprisonment.
- 11.27 In 2011-14, no outgoing monetary seizures were recorded. Incoming travellers made 3,120,268 declarations of being within the threshold. Five were found to be false and a total of US\$485,839 was seized. Training in identifying suspicious persons and detection of cash smugglers are two areas for improvement. Greater clarity is needed about whether cash declarations are given to the FIA to analyse, in line with FATF Recommendation 32, and whether HMC reviews declarations data for AML/CFT trends and typologies.
- 11.28 Once monies are detected, the RVIPF's Financial Crime Unit is called in to investigate. In 2011-14, cash seizures led to 11 arrests (multiple arrests may follow a single cash seizure), six resulting in prosecutions and one in conviction and cash forfeiture. People may sign an "Admission of Guilt" form to avoid prosecution. Clarity is needed about the use of this and whether it routinely means lower penalties than if breaches went to court.
- 11.29 HMC also undertakes other types of seizure. During the review period, eight drug seizures led to 14 arrests and three prosecutions; and seven seizures of other illegal/restricted items led to two arrests and no prosecutions. In 2014, one marine vessel was seized for cash violation. There were no seizures or arrests relating to banned substances or counterfeit items and no seizures of vessels for human trafficking or people smuggling.
- 11.30 Data may not reflect the depth or risk of smuggling and other crimes because the Virgin Islands imports most goods, HMC resources are limited at various ports and there are some border control issues. ODDP and RVIPF data do not shed light on whether HMC seizures follow proper procedures, leading to formal investigation and prosecution. The RVIPF does not appear to keep HMC informed of the outcome of investigations following a seizure. There is opportunity to improve statistical management and sharing of records among HMC, the ODPP and the RVIPF.
- 11.31 As regards inter-agency cooperation, alongside the general IGC MoU, HMC has separate MoUs with the RVIPF and ID. The robustness of the cooperation that HMC renders or receives is not clear, nor is it clear that the MoU with the ID is used. Once assets are seized, HMC is responsible. It would normally be expected to lead joint operations with the RVIPF and ID but this does not appear to be documented and

is not always smooth, with the lead agency dependent on type of operation and seniority of officers.

11.32 In 2011-13, only six referrals resulted in further investigation, all being to HMC from the RVIPF. No matters referred to or from HMC resulted in prosecution and further RVIPF or FIA investigations are not apparent.

11.33 HMC pursues international cooperation as a member of the High Intensity Drug Trafficking Area Agency and the Caribbean Customs Law Enforcement Council. It participates in the World Customs Organisation through the Virgin Islands' relationship with the UK, which is a member. During the review period, HMC did not make or receive any cooperation requests to or from these organisations.

11.34 HMC responds directly to international information requests. It does not set a timeframe but claims to do so efficiently, and there were no outstanding requests at the time of the NRA. Two to three staff were responsible for international cooperation in 2012 but none were in 2011 or 2013. It would be helpful to develop records to verify numbers of requests and the adequacy of staffing.

11.35 Easily retrievable and updated records are kept as regards interception of smuggling and evasion of customs duty, but this is not the case for domestic and international cooperation.

Main threats (T) and vulnerabilities (V) identified for Her Majesty's Customs	
T	<ul style="list-style-type: none"> Issues related to management and governance include staff corruption could lead to criminal activity going undetected. Criminals such as migrant smugglers, human traffickers and money launderers and other criminals dealing with importation of goods may go undetected due to poor records management, insufficient training, human resource constraints and failings in other policies and procedures, including domestic cooperation. Non-declaration and lack of ability to detect this, primarily in relation to cash, may result in the proceeds of crime not being take away.
V	<ul style="list-style-type: none"> Although a porous Territory, the VI lacks the capacity to patrol all its borders effectively, making it vulnerable to transnational criminal activity, including ML, movement of firearms, human trafficking, the smuggling of people and goods, commercial fraud and other cross-border criminal activity. However, US-VI cooperation arrangements help immensely in protecting the borders. The absence of measures to detect false self-reporting or non-reporting when leaving the Territory creates a vulnerability at ports of entry.

Royal Virgin Islands Police Force

Risks	High	<ul style="list-style-type: none"> • Staff training, resources and expertise • Records maintenance, including data collection and analysis • Handling of incoming and outgoing MLA requests, including extradition matters • Providing feedback on declined requests • Difficulties in processing MLA requests • Monitoring of BVIBC activities
	Medium	<ul style="list-style-type: none"> • Governance and administration • Inter-agency cooperation on processing MLA requests • Investigations related to ML/TF

- 11.36 The Royal Virgin Islands Police Force (RVIPF) is governed by the Police Act. Various statutes confer powers for specific matters.³⁰ Its duties include maintaining law and order, preserving peace, defending the Virgin Islands from external aggression or threat (including border protection), protecting life and property, preventing and detecting crime, and enforcing the Virgin Islands' laws. It arrests and detains suspects, prefers or initiates charges and forwards matters for prosecution to the ODPP.
- 11.37 Of all the LEAS, the RVIPF has the greatest number of high-risk areas for improvement. These include staff training in AML/CFT matters, handling of outgoing MLA requests and of incoming MLA and extradition requests from foreign CAs, records maintenance and accessibility, feedback on declined requests and monitoring BVIBCs for ML/TF activities. Other areas are governance and administration, inter-agency cooperation on incoming MLA requests and handling of investigations relating to ML/TF. These are addressed in the following paragraphs (11.38-11.62)
- 11.38 Governance is led by the RVIPF's management team, which comprises the Commissioner of Police (COP), his Deputy (DCOP), three Superintendents and six Chief Inspectors.
- 11.39 The Crime Division has major responsibility for investigating crimes. It is overseen by a Detective Superintendent and consists of a Crime Unit and a Special Investigations Unit, each of which is overseen by a Detective Chief Inspector.
- 11.40 Within the Crime Division, the **Criminal Investigations Department (CID)** investigates theft, fraud, robbery and similar crimes; the Scenes of Crime Unit deals

³⁰ For instance, the RVIPF's powers in relation to ML investigations are derived from the D(PM)A (Cap. 178), DTOA, CJ(IC)A and PCCA.

with forensics and evaluates and processes all crime scenes; and the Family and Juvenile Unit deals with domestic violence, child protection and sex offenders.

- 11.41 Within the Special Investigations Unit, the Major Crimes Unit deals with murder, firearms, sex offences, serious and organised crime and drug trafficking; the **Financial Crime Unit (FCU)** investigates fraud, corruption, drug trafficking, proceeds of crime and cash seizures (as set out in a policy document); the Intelligence Unit and Technical Collection Unit deal with intelligence gathering; and the Proactive Unit deals with special investigations and covert operations.
- 11.42 The FCU and CID are on the Territory's front line in the fight against ML/TF and have protocols for they should execute their duties.
- 11.43 Disciplinary matters are governed by the Police Act and Police Regulations and an internal policy, although it is not clear how far the latter is followed. An Organisational Risk Group consisting of the COP, Deputy COP and other senior officers addresses corruption and misbehaviour and meets once a quarter. Several officers were under investigation for corruption during the NRA.
- 11.44 The Governor has constitutional responsibility for security matters and a National Security Council (NSC) advises him on internal security. The NSC has to approve any recommendation to appoint an officer above Chief Inspector rank. The Governor may delegate his powers but does not appear to have done so during the review period. The NSC comprises the Governor (as Chairman), Premier, Deputy Premier (as the Premier's nominee), Attorney General and COP.
- 11.45 The Police Service Commission (PSC) advises the Governor on appointing, removing and disciplining RVIPF officers. It has five members appointed by the Governor, two directly, one on the Premier's advice, one on the Leader of the Opposition's advice and one after consultation with the Police Welfare Association.
- 11.46 In 2014, the total number of police staff rose to 233 (45 constables, 41 sergeants, 24 inspectors and 23 auxiliary staff) from 209 in 2011. At end 2014, 26 posts were vacant, compared with 12 in 2011. Thirteen officers had been interdicted, mostly for criminal matters. Greater focus on officer conduct would be beneficial.
- 11.47 Budget cuts meant that in the review period, three of the Virgin Islands' seven police stations required refurbishment, with one of these closed. The force did not recruit in 2012 and 2013, some cars are over ten years old and training expenditure is low. Following the NRA, improvements were undertaken in relation to the affected stations and the closed station was reopened.
- 11.48 Staffing is a high-priority area for improvement. Crime Division staffing needs to be commensurate with the level of criminal activity, as do FCU and CID resources (including space for staff and files) and expertise, given these units' importance in investigating financial crime, including ML/TF and predicate offences. Border protection appears to be undertaken largely by the Marine Unit and there is an opportunity to improve cooperation and coordination between this Unit and HMC

and the ID. Having policies, procedures and clear leadership in place for joint operations would enhance the ML/TF fight.

- 11.49 In the review period, FCU officers received limited training, mainly at three-year intervals, in investigative techniques and AML/CFT matters. This covered some ML/TF predicate offences but not PF. New recruits and lower ranks receive basic, in-house AML training and this should be refreshed. The RVIPF training budget as a whole was reduced to \$40,000 in 2014 from \$90,200 in 2011. Following the NRA, a paper on enhancing the RVIPF's training was submitted to the NSC.
- 11.50 The Virgin Islands has criminalised all predicate offences under the FATF Methodology. This includes major crimes against the person or property, sex-related crimes (including trafficking of sex workers and the sexual exploitation of children), customs and immigration violations (including human trafficking and migrant smuggling), firearms and weapons offences, fraud (including counterfeiting), narcotics offences, tax crimes and other predicate offences. Other predicate offences cover terrorism (including terrorist financing), piracy, insider trading, environmental crime, extortion, corruption and bribery, racketeering, illicit trafficking, counterfeiting and product piracy, kidnapping, illegal restraint and smuggling.
- 11.51 Over the review period, no cases were recorded for these other predicate offences. They appear to pose a lesser threat to the Territory, assuming LEAs are able to detect, investigate and prosecute them. There was a reduction in most major crime areas, although narcotics and assault offences markedly increased (the Virgin Islands is considered a drugs transshipment point between South and North America). Detection rates were up for major crimes, fraud and narcotics offences, but down for firearms/weapons offences and sex-related offences.
- 11.52 The process for investigations is that a Superintendent decides whether to prefer a charge (he may seek ODPP advice) and the DPP decides whether to prosecute. A written manual sets out what should be on file so the ODPP can advise on whether a case should be discontinued. The RVIPF also has a charge vetting form which identifies relevant issues and is reviewed by senior officers before submission to the ODPP. Case summary forms serve a similar purpose and are used throughout the RVIPF.
- 11.53 There is some delay between when the RVIPF makes an initial report and then submits a file to the ODPP, despite internal policy that investigations into summary offences must be submitted to the ODPP within three to four months (they cannot be proceeded with after six months). Indictable matters that are not statute barred may take longer to investigate and prosecute. ML offences and most predicate offences are indictable and not statute-barred.
- 11.54 The RVIPF sent a high proportion of recorded cases to the ODPP for consideration, ranging from 21.3 per cent in 2012 to 24.3 per cent in 2014. Guidance for officers on completing investigations and an expansion of expertise and resources would reduce delays between offences being recorded and submitted. Addressing

disparities between the categories of offences which the RVIPF and ODPP record would facilitate the matching of charges brought to offences prosecuted and the reconciliation of data.

- 11.55 The FCU has a mandate to assist with foreign law enforcement inquiries and investigations. It investigates overseas requests and forwards them to the relevant Virgin Islands agency. Where a requested matter is outside its jurisdiction, the FCU directs the requesting agency to the most appropriate Virgin Islands agency.
- 11.56 The FCU carried out, on average, 31 ML investigations for each of the years under review. These investigations typically were a result of intelligence reports received from the FIA in relation to SARs/STRs that would have been filed by reporting institutions. Additionally, some were a result of requests for assistance from other foreign LEAs and criminal investigations into predicate offences committed within the BVI.
- 11.57 The CID does not generally consult the FCU about the ML aspects of the predicate offences it investigates. The FCU has suggested to the CID developing a common procedure, which would enable proper investigations, but this has not been taken up and there is no evidence of such a procedure. Giving greater priority to the FCU's role within the RVIPF would enhance the ML investigation of predicate offences. There is an opportunity for the CID to consult the FCU as a matter of course and develop a common procedure.
- 11.58 It would be helpful to analyse crime data to explore the RVIPF's contention that many ML offences are not committed in the Virgin Islands and that existing legislation should be extended beyond criminal forfeiture to civil confiscation. The RVIPF would like local FIs and other entities to respond to its requests for information without court orders and search warrants.
- 11.59 The RVIPF's MoU with the FIA for processing Interpol requests could operate more effectively. The FIA suggested that if the RVIPF forwarded requests to it more swiftly and not in batches, responses to Interpol might be speeded up by 30 to 60 days (this could not be verified in the absence of request handling procedures). It would be useful for the RVIPF to collect data on the number of requests received and forwarded, response times to Interpol and whether any requests were declined. The FIA recorded an unexplained 66 per cent decrease in Interpol requests received from the RVIPF in 2013.
- 11.60 As the agency responsible for investigating all crimes in the Territory, the RVIPF is required to liaise with all CAs, other LEAs and other agencies. HMC was not clear about the outcome of matters it had sent to the RVIPF for investigation, and introducing a policy of maintaining information about referrals from CAs and LEAs should be a priority improvement. Addressing the gap in record-keeping and maintenance would allay concerns about leadership, resources and appropriate policies and procedures.

- 11.61 The RVIPF's case and file management records are primarily paper-based. Using technology and other mechanisms to share information internally, whether generally or confidentially, would be helpful. Improving the RVIPF's ability to provide accurate and current statistical data (eg on number and types of crime, investigations, convictions and international information requests) would enable measurement of the force's effectiveness and the allocation of resources to areas of greatest risk, including ML/TF.
- 11.62 The RVIPF has not made significant confiscation of the proceeds of crime (see Section 12 for details).

Main threats (T) and vulnerabilities (V) identified for the Her Majesty's Customs	
T	<ul style="list-style-type: none"> Failures such as corruption means there is potential for persons engaged in ML/TF to go undetected Lack of proper human resources and training, poor records management and slow handling of MLA requests contribute to the possibility of crimes not being detected or prosecuted and of criminals such as migrant smugglers, human traffickers, drug traffickers, money launderers and those involved in child exploitation going undetected. Failure to conduct timely ML/TF investigations means persons engaged in ML/TF may not be detected and proceeds of crime may not be taken away.
V	<ul style="list-style-type: none"> Challenges in curtailing corrupt practices within the RVIPF. Lack of training in AML/CFT, predicate offences for ML and ML/TF investigative techniques. Lack of proper and adequate human and technical resources. Lack of sufficient internal coordination and cooperation on general policing matters, including investigations. Lack of adequate written internal policies and procedures to guide the effective operation of the RVIPF. Lack of a proper file and case management system.

Office of the Director of Public Prosecutions

Risks	Medium	<ul style="list-style-type: none"> Governance and administration Inter-agency cooperation and coordination
	Other issues	<ul style="list-style-type: none"> Resources Experience and training Record keeping ML prosecutions

- 11.63 The Office of the Director of Public Prosecutions (ODPP) is an independent team of prosecutors headed by the DPP, who is responsible for all its proceedings. The DPP initiates prosecution and can discontinue this where proceedings have commenced.

The DPP is also responsible for the ODPP's operational procedures, including the recent overhaul of its case management system. Staff are bound by public service rules and the ethical rules and standards of the legal profession.

- 11.64 The current structure works well, despite a wide gap between the DPP and the next most senior officer, the Principal Crown Counsel. The DPP is not answerable to any other person or authority (his or her independence is guaranteed under the Virgin Islands Constitution 2007) and there is no indication of outside interference or conflicts of interest.
- 11.65 Although there is limited data on the prosecution of ML/TF cases, recent training suggests that the ODPP has a good understanding of AML/CFT matters. Expanded resource constraints would enhance the ODPP's effectiveness, including coordination and cooperation between the ODPP and the RVIPF and with other LEAs.
- 11.66 ODPP staff numbers were fairly consistent during the review period, from 15 in 2011 to 14 in 2014. Claim of an increased caseload could not be confirmed as the ODPP does not measure caseload per worker. Prosecutorial staff has not increased since 2007, despite repeated requests, which may over time affect morale and effectiveness.
- 11.67 Consolidating amendments to the Criminal Code of 1997 would strengthen the rule of law by ensuring the correct statutes were being referenced. Improvements to the record management system would support risk assessment and trend analysis. A comparison of High Court, Magistrate's Court, RVIPF and ODPP case numbers in the review period reveals more convictions than prosecutions and no details on types of case, including ML, and outcomes. In 2014, the ODPP started to move from a manual case management system to a fully automated one.
- 11.68 Great effort was made to enhance the ODPP's ability to deal with ML matters in 2013/2014. A Criminal Justice Advisor from the UK's Crown Prosecution Service (CPS) undertook reviews of systems and operations and of legislation relating to ML and asset recovery. This led to new training and a two-day symposium with the RVIPF, AGC, ODPP, ITA, FSC and FIA.
- 11.69 The ODPP's complaints procedure appears sufficient to deal with any possible issues of corruption or conflicts of interest. Although staff have not had specific training in this, the ODPP indicated that it is governed by the UK Crown Prosecution Service's Code for Crown Prosecutors and ODPP staff seem well-attuned to the potential for bribery and corruption. The ODPP is respected and there is no evidence of any corrupt conduct over the review period. If anyone has a conflict with a matter, they may vet a file but not prosecute it.
- 11.70 The ODPP prosecuted 1,110 predicate offences over the review period. Conviction rates in the High Court (HC) are 20 per cent higher than in the Magistrates' Court (MC) but it is not clear why. There were no ML or TF prosecutions. This seems to

be because the RVIPF prioritises predicate offences and forfeitures instead of investigating the ML dimension at the same time.

- 11.71 When reviewing RVIPF files, prosecution staff must identify on a form any ML element and whether the RVIPF has investigated this (which it usually has not done). In 2012, the ODPP sent back 100 referrals for various reasons. Most were said to come from the RVIPF but as data is not consistently presented in the same format, it is unclear how many directed investigation into an ML aspect.
- 11.72 There could be greater willingness to pursue and prosecute ML-related offences. In the review period, the ODPP sent only 61 of 1,296 cases referred to it (less than five per cent) back to the RVIPF for further investigation. This suggests most could have been prosecuted. It is not clear that the ODPP provides guidance to the RVIPF on how to investigate ML or that ML is discussed during investigations.
- 11.73 The ODPP is responsible for confiscation and forfeiture. The impetus to pursue confiscation as part of the prosecution process appears limited, with no evidence of confiscation. Indeed, LEAs generally appear satisfied with forfeiture. Fuller training on asset recovery, asset restraint, confiscation and forfeiture might improve this. Following the NRA, the ODPP accepts that pursuing asset confiscation should form part of the prosecution process and is providing guidance to its staff, the RVIPF and other relevant LEAs. (See more details in Section 12 of this Report.)
- 11.74 Extradition is generally undertaken by the AGC and the ODPP is only involved when requested to make a determination or provide an opinion on the evidence. The AGC and the GO have guidance in place for the ODPP's role in extradition.

Main threats (T) and vulnerabilities (V) identified for the ODPP	
T	<ul style="list-style-type: none"> • Inability to pursue prosecution for ML offences and pursue confiscation affects the ability to take away proceeds of crime. • Poor cooperation and coordination with other law enforcement agencies, especially the RVIPF, may diminish the likelihood of successful prosecutions.
V	<ul style="list-style-type: none"> • Lack of sufficient human resources (legal staff) to carry out prosecutorial functions optimally. • Lack of an effective electronic case management system. • Lack of effective cooperation and coordination with other domestic LEAs and CAs. • Insufficient training and experience in ML/TF prosecution, including asset confiscation. • Inadequate security for the office and prosecutors.

BVI Airports Authority

Risks	Medium	<ul style="list-style-type: none"> • Governance and administration • Inter-agency cooperation and interaction with other LEAs • Staff training • Records maintenance and accessibility • Detection of seizures, smuggling and security breaches
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- 11.75 BVI Airports Authority (BVIAA), which is both a statutory body and registered company, is responsible for the Virgin Islands' three airports, Terrance B Lettsome International Airport on Beef Island, Taddy Bay Airport on Virgin Gorda and Auguste George Airport on Anegada.
- 11.76 Main areas for improvement are around security, training, cooperation with the relevant LEAs, airports, risk assessment, risk rating and procedures and guidelines. These are set out in more detail below. A camera system monitors the airports and restricted areas throughout the day. It would be helpful to introduce a system for risk rating the activities that take place.
- 11.77 A Board of Directors meets monthly to determine policy and provide direction. Day-to-day management sits with the Managing Director and senior staff. They are involved in key enforcement decisions, mostly where enforcement is challenged.
- 11.78 All staff are made aware of the governance structure and know their remit. The number of staff grew by 14 per cent in the review period, from 160 in 2011 to 182 in 2014 and appears sufficient.
- 11.79 Looking at training, the Chief Security Officer is experienced, knowledgeable about AML/CFT matters. He has been trained on the FATF 40 Recommendations and to some extent on investigative techniques. General security and enforcement staff have an understanding of the Convention on International Civil Aviation but limited familiarity with the FATF Recommendations and Methodology as regards red flags for ML/TF and SARs. Opportunities for improvement include written procedures and training in investigative techniques and ongoing trends in criminal activity.
- 11.80 As a registered company, the BVIAA functions independently and there is no evidence of interference. In 2013, it began developing formal corporate governance that would mitigate against political interference
- 11.81 Although the BVAA lacks formal policies and procedures against bribery and corruption, the Employee Handbook outlines what employees should do if confronted with this. There is ongoing, preventative screening of staff and no evidence that staff have been involved in bribery or corruption has come to light.
- 11.82 Acting on a Board recommendation, the Minister responsible for communication may give qualified officers police powers of arrest and seizure at airports. There do not appear to be guidelines for this and only the Chief Security Officer has this

power. Arrest and seizure might be made more efficient if security officers on the ground did not have to rely on HMC and the RVIPF, who are not always present.

- 11.83 The Chief Security Officer is stationed at the Terrance B Lettsome International Airport (TBL). Police officers are not present on a regular basis at Taddy Bay Airport (which is a designated international airport) or Auguste George Airport. While in theory this may leave them more vulnerable to security breaches, all breaches in the review period were at TBL.
- 11.84 In 2011-13, seven security breaches were recorded, six reported to the RVIPF and/or HMC and three arrests made. There were 4,543 prohibited or restricted goods intercepted, seized and disposed of. One case of undeclared cash was detected in 2011 to a value of \$45,000, with two arrests. Unwritten procedures are in place for detecting the smuggling of contraband (mainly cash, jewellery and firearms), although not whether a breach is related to terrorism, and cases are handed over to the RVIF. All security officers know the procedures.
- 11.85 There is some inter-agency cooperation, in particular with HMC and the RVIPF and ID. Joint Police, Immigration, Customs and Airport Management meetings take place bi-annually and include representatives from airlines operating in the BVI. BVIAA staff also meet the NSC twice a year to discuss security.
- 11.86 The BVIAA is a signatory to the IGC MoU but does not appear to have used it. It has no formal cooperation agreement with the RVIPF, HMC or ID and uses verbal agreements to deal with issues not covered under the IGC MoU, such as information exchange and referrals. More personnel from other agencies at the airports would be helpful in alleviating problems.
- 11.87 The BVIAA makes relatively few referrals and the four it made in the review period (for weapons and jewellery) do not appear to have led to further investigation or prosecution. The BVIAA did not receive feedback and no matters were referred to HMC. A process is in place for when large cash amounts are detected, with the passenger detained until a customs officer arrives to take control.
- 11.88 The BVIAA maintains manual and electronic records of security breaches, detention of contraband, seizure of undeclared goods and detection and interception of smuggling. These are normally recorded and filed daily and reports are prepared. They are easily retrievable and there is a backup system in place.

Main threats (T) and vulnerabilities (V) identified for the BVI Airports Authority	
T	<ul style="list-style-type: none">• Inability to detect security breaches effectively may enable smuggling of goods and other criminal activities.• Insufficient cooperation between BVIAA and HMC and RVIPF makes it difficult to identify, seize and prosecute cash couriers.
V	<ul style="list-style-type: none">• Lack of written procedures for detecting contraband and other restricted goods and ensuring compliance may unwittingly facilitate smuggling through airports.

	<ul style="list-style-type: none"> • Lack of training in basic investigative techniques and AML/CFT inhibits the ability to detect offences and undesirable behaviour efficiently and effectively. • Limited cooperation with the RVIPF and HMC in detecting, apprehending and prosecuting people breaching security or transporting contraband potentially opens up airports to ML and smuggling.
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BVI Ports Authority

Risks	High	<ul style="list-style-type: none"> • Staff training • Handling of seizures, smuggling and security breaches
	Medium	<ul style="list-style-type: none"> • Governance and administration • Inter-agency cooperation, interaction with other LEAs • Records maintenance and accessibility

11.89 The BVI Ports Authority (BVIPA) is responsible for the Virgin Islands' seven ports: five domestic and international passenger terminals, one cruise port and one cargo facility.³¹

11.90 The main areas for improvement are training, cooperation with other LEAs, port security, risk assessment and risk rating system, records management, governance and operations. These are set out in more detail below.

11.91 A Board of Directors, which meets monthly, determines the BVIPA's policy direction and oversees its administration and management. The Managing Director is normally responsible for daily management and administration, although at the time of review this reposed with the Deputy Managing Director. When interviewed for the NRA, the Managing Director deferred to senior officers, raising questions about leadership.

11.92 The BVIPA has no internal written policies, procedures or guidelines, but the BVI Ports Authority Regulations, 1995 cover the management and functioning of port facilities and penalties for any breaches.

11.93 Staffing appears adequate. Numbers grew in the review period by 23 per cent, from 145 in 2011 to 179 in 2014. This was mainly in non-managerial staff. Throughout the review period, the BVIPA had five vehicles, one boat, 65 cameras, ten handheld scanners and four archway scanners.

11.94 Vessels are scheduled in advance to berth and must radio for permission before they can dock. There are security guards and dockmasters at all ports of entry. HMC is the first point of contact for clearing vessels but dockmasters also witness the offloading, which involves the BVIPA in undertaking due diligence on vessels. For

³¹ The five passenger terminals are in West End and Road Town on Tortola, Jost Van Dyke, and Gun Creek and St Thomas Bay on Virgin Gorda; the cruise port is at Tortola Pier Park; and the cargo facility is at Port Purcell on Tortola.

vessels wishing to operate within the Territory, the BVIPA carries out physical inspections and confirms with the VISR the vessels are registered and insured.

- 11.95 Security and other enforcement staff are trained in screening passengers and securing ports of entry but not in investigative techniques, including those related to ML/TF and smuggling. They did not generally understand the FATF Recommendations or the UN Convention against Transnational Organised Crime specifically as regards smuggling and there was no procedure for addressing this. Officers follow the BVI Ports Authority Regulations, 1990 and the BVI Ports Authority Act, 1990 but would benefit from formal training on interpretation, application and implementation.
- 11.96 The BVIPA has fully assessed its own security needs. All ports comply with the International Ship and Port Facility Security Code, based on a threat assessment in November 2014 which included the possibility of terrorism. Code certification is valid to December 2019 and the current security plan was approved by the UK Department for Transport. There were 32 security officers across all ports during the review period, 15 at Port Purcell. The BVIPA said they were hiring ten more.
- 11.97 All CCTV systems can store up to 30 days of surveillance footage, after which this must be disposed of. CCTV is maintained by the BVIPA's Information Technology Department and two security officers are trained to use it. The BVIPA has employed CCTV to assist the RVIPF on several occasions.
- 11.98 There is no evidence of corruption despite the absence of measures to mitigate this. Measures are also not apparent to deter external interference, which the BVIPA feels it does not have the power to counter. While the BVIPA seeks to identify actions that might have resulted from interference, it could be clearer about what is done with the findings (in one instance, there was political and interest group interference with collecting harbour charges from some cargo vessels, with attempts made to usurp the BVIPA's authority and even withdraw staff from a port). To avoid any risk of goods passing through ports that may stem from predicate offences involving ML/TF, it would be useful to introduce formal policies and procedures and adhere fully to informal ones.
- 11.99 The BVIPA sees a limited role for itself in smuggling and seizure, and does not appear to have procedures to detect smuggling, including of migrants and goods. It sees its responsibility as ensuring vessels are authorised to land and HMC as being responsible for the cargo's contents and any seizure. It verifies cargo where HMC had concerns and reports undeclared goods to HMC. While it routinely discovers undeclared goods and cash, BVIPA does not record numbers, types or dates and there is no evidence of seizure or other action.
- 11.100 There do not appear to be any cooperation problems between HMC and the BVIPA. An established MoU enables regular referrals. In the review period, the BVIPA said it referred one matter to HMC while HMC said three were referred, which may suggest a discrepancy in record keeping. Cooperation with the RVIPF appears less

strong: both are IGC signatories but do not have their own MoU and have made no referrals to each other. The BVIPA can levy its own fines and usually deals with legislative breaches internally, particularly non-payment of fees. It is not clear what would happen if a matter required referral to the RVIPF or another LEA.

- 11.101 The BVIPA maintains records on the evasion of port duties, but as mentioned not for the seizure of undeclared goods or interception of smuggling. Paper records are kept for at least seven years. Making the records easily retrievable and having a backup system would facilitate trend analysis, cooperation and requests for information.

Main threats (T) and vulnerabilities (V) identified for the BVI Ports Authority	
T	<ul style="list-style-type: none"> Government and other political interference. Ability of criminals such as migrant smugglers, human traffickers and money launderers to carry out their activities through the ports without much hindrance given the level of AML/CFT training, records management and internal policies and procedures.
V	<ul style="list-style-type: none"> The lack of written procedures to check against and prevent interference from carrying out the BVIPA's legislative mandate to the fullest extent; Lack of written procedures for detecting smuggled and undeclared goods and in detecting and preventing ML and TF activities by users of the ports; Lack of training in basic investigative techniques, in AML/CFT and the UN Convention against Transnational Organised Crime (as regards smuggling). Limited cooperation with other law enforcement agencies such as the RVIPF and HMC may create a law enforcement loophole.

The judiciary: Magistrate's Court

Risks	High	<ul style="list-style-type: none"> Training in AML/CFT
	Medium	<ul style="list-style-type: none"> Governance and administration Inter-agency cooperation and level of independence Records maintenance and accessibility

- 11.102 The Magistrate's Court (MC) presides over and decides mainly summary criminal matters, minor civil claims and certain family law matters. It also has limited jurisdiction over maritime salvage and wrecks and serves as the licensing authority for granting liquor licenses.
- 11.103 The MC does a good job in safeguarding its independence but physical security would benefit from improvement, as would staff AML/CFT training (see 11.109 and 11.110 below).
- 11.104 As regards governance, the MC is headed by the Senior Magistrate, who oversees the other magistrates and the MC's day-to-day functioning, assisted by the Court

Manager. The MC falls under the executive branch of government and the Senior Magistrate consults with and reports to the Deputy Governor's Office (DGO) about key administrative decisions. The DGO exercises oversight through periodic reviews, and any shortcomings are discussed between senior MC staff and the DGO's Permanent Secretary. The DGO approves the budget and staff training.

- 11.105 Although the Virgin Islands judiciary comes within the structure of the Eastern Caribbean Supreme Court (ECSC), the ECSC's Chief Justice does not have administrative oversight or day-to-day decision-making authority in and 11.110 related to the MC. Her role appears to be restricted to recommending the appointment by the Governor of the Senior Magistrate and other magistrates: she chairs the Judicial and Legal Services Commission (JLSC), which makes recommendations for all public legal appointments in the Virgin Islands to the Governor, who takes the final decision.
- 11.106 For the MC to fall under the executive branch departs from the norm in many Commonwealth countries, where the magistracy falls under the judiciary proper. The system, however, appears to work well even if it does not give the desired appearance of judicial independence. It might arguably make the MC less efficient, e.g. by withholding resources or not providing court reporters or adequate security. There is no real evidence of this, although the absence of court reporters and the fact that magistrates still record proceedings manually means justice is dispensed less speedily.
- 11.107 There are 16 employees operating two MCs in Tortola (at John's Hole and Prospect Reef) and one in Virgin Gorda. The Senior Magistrate sits in John's Hole, as do most administrative staff. A lack of resources (human and non-human) requires most staff to work extra time every day to ensure the MC's administrative side runs smoothly in tandem with the judicial work. The Case Manager, Administrative Officer, Court Clerks and Senior Magistrate's Secretary have to be dedicated to the court on a daily basis.
- 11.108 The MC subscribes to the ECSC's Judicial Enforcement Management System (JEMS). This can track all court cases from filing to completion and provide statistical data. The Clerks and the Case Manager are responsible for updating records and tracking case requests and queries. The lack of human resources means JEMS cannot be used optimally and affects records maintenance and management.
- 11.109 An orderly provides security in the courtrooms during court sessions. At John's Hole only, security cameras are installed on the court buildings, office access is restricted by key cards and people must pass through a metal detector before entering the courtroom. However, there is no physical security for court premises. ECSC policies state that security should be provided to all members of the judiciary but the RVIPF withdrew the police officers assigned to magistrates in September

2014, apparently due to lack of resources.³² This may affect the proper and effective administration of justice.

- 11.110 Virgin Islands magistrates benefit from the ECSC's periodic training for magistrates in the OECS region. This generally covers judicial ethics, court independence and court administration. There is also periodic training for bailiffs and court administration staff. Although summary matters may have AML/CFT dimensions, magistrates other than the Senior Magistrate receive no AML/CFT training. They do not appear up to date with the FATF Recommendations or Methodology or the CFATF mutual evaluation process. While there is also no evidence of specific training on conflicts of interest or corruption, it is assumed this falls within the training on judicial ethics and court independence.
- 11.111 During the review period, there was no evidence of conflicts of interest which had compromised the MC's work or integrity or had the potential to do so. There is no formal policy other than general public service rules and the MC appears to operate an honour system, whereby staff disclose any conflicts as and when they arise. At the time of the review, a manual was being developed to include handling conflicts of interest.
- 11.112 The MC does not seem to suffer from external interference (e.g. from the executive, counsel, litigants or witnesses). This is despite a perception that because it comes under the executive, the MC is susceptible to political interference, especially over its budget and staffing. In practice, the MC operates without political interference and the magistrates jealously guard their independence. The Senior Magistrate's direct contact with the DGO is at best minimal. The Office Manager acts as a buffer, liaising regularly with the DGO but only for administrative matters.
- 11.113 Complaints about staff are generally dealt with internally but may be escalated to the DGO. Complaints about a Magistrate's performance are likely to be advanced to the Chief Justice. The MC does not have written policy or procedures for handling complaints. Where discipline is warranted, the case may be referred to the Judicial and Legal Services Commission. During the review period, there was one conflict of interest complaint, which was dealt with internally, did not warrant escalating and did not compromise the MC.
- 11.114 There is no evidence of any bribery or corruption of any MC administrative staff. Although they are not specifically trained in identifying and forestalling this, the public service rules require staff to conduct themselves so as not to bring the service into disrepute. There is acknowledgement that specific training would help to strengthen this.
- 11.115 The Chief Justice is also the President of the Court of Appeal and with other appellate judges hears appeals arising from decisions of the MC and the High Court. Senior MC officers prepare records of appeals and submit these to the High Court Registry under the Senior Magistrate's direction. Resource shortages are delaying

³² This facility was restored in 2016.

the preparation of appeal records, which affects the timeliness of submissions to the Court of Appeal.

- 11.116 As a part of Government's judicial arm, the MC understandably maintains a high degree of independence from institutions outside the judiciary and does not have any formal cooperation agreements with these.³³ However, it cooperates informally with the RVIPF to perform its functions, and the RVIPF provides the court orderly.
- 11.117 As regards records, magistrates take manual notes of court proceedings which are later transposed. Introducing court reporters would speed matters up. The MC said it was purchasing a digital recording system expected to be in place by 2015 (this has not yet happened). This would require additional competent staff.
- 11.118 The MC's work is increasing without a commensurate increase in resources, such as those required to use JEMS optimally. However, JEMS does produce statistical data on the number of cases heard, acquittals and convictions. Sensible changes made include ending the practice in 2013 of recording multiple charges against the same person separately.
- 11.119 Payment of fines above US\$5,000 must be by cashier's cheque. No CDD information is collected for fines below \$5,000. By reducing physical cash held, the MC is less of a target for criminals and large payments are traceable to individuals and possibly their source. However, the lack of physical security for MC premises makes it riskier to accept cash for fines below \$5,000.
- 11.120 The record management system would benefit from reform and modernisation. The Court Manager is responsible for file handling and the only person trained to do so. While this appears to work well, this may pose a risk in the event of her absence, although it was indicated that a person was being identified to take over some of the Court Manager's role. Physical files were said to have disappeared but there were no records of this. For electronic records, the MC relies on the Government's IT infrastructure and would benefit from protocols governing the Government IT Department's access to the MC. Areas for improvement include being able to retrieve historical data to analyse trends in summary offences and identify any reforms needed.

Main threats (T) and vulnerabilities (V) identified for the Magistrate's Court	
T	<ul style="list-style-type: none">• Absence of adequate security for the Magistrates and the MC premises may threaten the judicial system at the MC level.• Absence of knowledge and training on AML/CFT matters may affect prosecution and conviction of ML/TF offences and hinder confiscation of proceeds.
V	<ul style="list-style-type: none">• Lack of sufficient human resources may impede adequate utilisation of the JEMS system and timely processing and submission of appeal records.

³³ In 2016, the MC Registry acceded to the IGC MOU for the exchange of information in appropriate cases with other LEAs.

	<ul style="list-style-type: none"> • The absence of court reporters creates inefficiencies in the speedy processing of cases on trial. • Failings in the records management system inhibit the MC from undertaking a proper trend analysis of criminal prosecutions before the court in order to assess where greater resources are needed.
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The judiciary: Supreme (High) Court

11.121 The HC has three judges, one dedicated to the ESCS's Commercial Division based in the Virgin Islands and two dealing mostly with criminal and civil matters. HC decisions are appealable to and heard by the Court of Appeal; if a party is then not satisfied they can appeal further to the Judicial Committee of the Privy Council.

Risks	Medium	<ul style="list-style-type: none"> • Governance and administration • Inter-agency cooperation and level of independence • Records maintenance and accessibility • Complaints handling
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11.122 In order not to hinder international cooperation, a clear opportunity for improvement lies in the HC's appreciation of ML/TF issues and how the Court fits into the Territory's AML/CFT landscape (see 11.130 below). Enhancements to the timing and processing of court matters would also be beneficial (see 11.126 and 11.132 below).

11.123 The Chief Justice appoints HC and Court of Appeal judges on the ECSC JLSC's advice. While the Court of Appeal visits and sits in all of its nine member jurisdictions, including the BVI, the Chief Justice assigns HC judges to specific jurisdictions. The Chief Justice provides strategic direction for the entire judiciary and issues Practice Directions from time to time.

11.124 The HC's Registrar reports to the DGO for day-to-day administration and to the ECSC's Chief Registrar for legal and judicial matters. Each authority respects its area of responsibility and works to ensure the smooth functioning of the HC.

11.125 Eight court reporters record HC court proceedings. One of these normally covers the proceedings of the Virgin Islands House of Assembly when it sits and this does not appear to impede the HC's work.

11.126 Cases normally take 12 to 18 months to determine. Delays may occur with more complex criminal matters, often due to scheduling conflicts. The ODPP attributes this to the limited number of criminal defence lawyers in the Territory; the problem might also suggest improvements needed in how lawyers prepare. On occasion, judges themselves take extended periods to deliver judgements.

- 11.127 The HC has 46 staff, of which 21 are in senior positions. Sixteen are assigned to the Commercial Court, which does not deal with criminal matters. The Registrar is assisted by two Deputy Registrars and all are legal practitioners.
- 11.128 HC judges sit in Tortola. The number of Registry staff appears sufficient. The HC subscribes to JEMS and all Registry staff are familiar with this and use it regularly.
- 11.129 In place of a formal training programme, the HC Registry conducts some selective training, such as ML/TF training for the Registrar in 2013. Some judges have participated in conferences and symposia with an AML/CFT element. In 2013, the FSC and ECSC co-sponsored AML/CFT training for ECSC judges in Anguilla.
- 11.130 The Registry would benefit from having a better appreciation of its relevance to the Virgin Islands' AML/CFT regime. It has limited understanding of the FATF Recommendations and Methodology in relation to international cooperation and processing MLA requests, even though legislation such as the Criminal Justice (International Cooperation) Act, 1993 (CJ(IC)A) and the PCCA grants the HC jurisdiction over certain applications for restraint, confiscation and charging orders, to which the FATF Recommendations have a nexus.
- 11.131 No cash is collected at the Registry and there was no evidence in the review period that any HC staff were engaged in bribery or corruption. However, staff receive no formal training in this or in conflicts of interest; instead the public service code and general orders are relied on. If a judge or the Registrar and her deputies are found wanting in ethical conduct, they may be subject to disciplinary proceedings leading to removal from office.
- 11.132 For appeals, senior Registry officers prepare records and submit these to the ECSC Chief Registrar for the Court of Appeal judges. Officers are properly supervised to ensure confidentiality. Delays in preparing the records, especially on criminal matters, affects the period of disposition of appeals. This may be a question of management rather than resources.
- 11.133 Like the MC, the HC understandably maintains a high degree of independence from institutions outside the judiciary and does not have any formal cooperation agreements with these.³⁴ The HC is responsible for facilitating the service of foreign documents in the Virgin Islands and cooperates with other judicial authorities on this, using a standard form to streamline the process. Servicing foreign documents normally takes no more than 30 days unless the documents need to be translated. Clarity about how many such requests were received over the review period and how many would have had an ML/TF nexus would help identify how the Virgin Islands is meeting its international obligations.

³⁴ In 2016, the HC Registry acceded to the IGC MOU for the exchange of information in appropriate cases with other LEAs.

- 11.134 The RVIPF informally assigns police officers to the HC during criminal court proceedings, providing police orderlies for all the judges. Statute defines how the HC cooperates with the AGC, FIA, ODPP and FSC for specified matters over which it has jurisdiction.
- 11.135 The HC keeps records and files in physical form and there appears to be limited electronic storage of statistical data. Although they use JEMS, which is linked to the ECSC, staff keep independent records of their case files. There do not appear to be written policies for ML/TF data collection and the HC maintains limited statistical data about predicate offences and ML/TF prosecutions, convictions and acquittals. This inhibits analysis of trends that may result in useful reforms. The only security risk that could be assessed was file storage, to which the public have access, which poses a risk.

12. Freezing, seizures, confiscation and forfeiture

Legislative framework

- 12.1 FATF Recommendation Four requires measures to be in place which enable competent authorities to identify, evaluate and trace assets subject to confiscation and carry out provisional measures, including seizing and freezing to prevent any dealing, transfer or disposal of such property. Recommendation 38 requires countries to have the authority to take expeditious action in response to international requests to coordinate the seizing, freezing and confiscation of the proceeds of criminal conduct. Recommendation 33 requires that countries should maintain comprehensive statistics on, among other things, property frozen, seized or confiscated.
- 12.2 The Virgin Islands has a robust AML/CFT regime and effective legislative framework in place for this (see box below). This is strengthened by the requirement for the RVIPF, ODPP, AGC, HMC and FIA to coordinate domestically and across borders in the freezing, seizure, confiscation and forfeiture of criminal proceeds. This ensures that asset tracing and financial investigations are appropriately conducted.
- 12.3 The NRA assessed Virgin Islands authorities against the legislation and the criteria below.
- **Facilitating effective freezing, seizure, confiscation and forfeiture** by ensuring that: foreign counterparts can easily identify points of contact; legal frameworks enable *informal* information exchange; and procedures enable spontaneous information sharing for asset tracing and financial investigations; and by entering into asset sharing agreements.
 - **Minimizing structural impediments** by: allocating resources for expert, dedicated personnel trained in financial investigation; having mechanisms to coordinate asset tracing and financial investigations; having mechanisms for real-time joint law enforcement and prosecution (especially for cross-border requests); streamlining asset tracing and financial investigations so as to handle requests in a timely manner and monitor their execution; and reducing bureaucracy around formal requests by encouraging all parties to acknowledge that action is being taken.

Legislative framework for freezing, seizures, confiscation and forfeiture

- **Drug Trafficking Offences Act, 1992 (DTOA).** Sections 5 and 8 empower the Court to issue orders to confiscate proceeds related to drug trafficking offences. Section 34 permits HMC or the RVIPF to seize cash found in the Virgin Islands to the value of \$10,000 or more which is suspected to be drug trafficking proceeds or for use in drug trafficking or ML. Section 23 (1) enables the confiscation of any property which represents drug trafficking proceeds. Section 35 enables the Magistrate to order the forfeiture of any cash seized under section 34 where the Police or HMC suspect that it is intended for drug trafficking. Section 35A provides for any drug trafficking or drug money laundering proceeds to be forfeited, whether or not the defendant is convicted.
- **Proceeds of Criminal Conduct Act, 1997 (PCCA).** Section 6 enables the Court to make confiscation orders following a conviction. Section 32 facilitates external confiscation orders and proceedings in a designated country. Section 34 provides for forfeiture of any real property or means of transport following a conviction for using, concealing or transferring criminal proceeds or helping another to benefit from these, and for the defendant to pay a sum or suffer imprisonment. Cash which is undeclared but detected, or which derives from or is used for a crime, can be seized by HMC or the RVIPF under Section 37A and forfeiture is generally conducted under Section 37B.
- **Criminal Justice (International Co-Operation) Act, 1993 (CJICA).** Section 7 provides for international cooperation in enforcing overseas forfeiture orders for any offence under the DPMA or drug trafficking offences in Section 2 of the DTOA. Sections 10(6), 11(1) and (2), and 12(1) provide for international cooperation in confiscating drug trafficking proceeds.
- **Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002.** This provides for the enforcement of forfeiture orders for money or other property likely to be used for terrorism, proceeds from committing terrorism and proceeds of acts carried out for terrorism purposes.
- These measures are supported by the **Drugs (Prevention of Misuse) Act (Cap. 178) (DPMA).** While it does not specifically deal with ML, this empowers the court to order, following a drugs conviction, forfeiture of the drugs and any related transport. For drug trafficking, the court may order the forfeiture of any related valuable consideration, including property derived from the proceeds.

Royal Virgin Islands Police Force

- 12.4 The Royal Virgin Islands Police Force (RVIPF) is governed by the Police Act and exercises other powers under the DTOA, CJ(IC)A, PCCA and DPMA. It can investigate predicate offences, including ML, and apply to the courts for an order to freeze, seize, forfeit or confiscate cash, property or other assets suspected or established to be linked to proceeds of crime.
- 12.5 Within the RVIPF, the FCU advises on and conducts all financial crime investigations, including freezing and confiscation. It has policies on asset seizure and cash seizure under section 6 (2) of the Police Act (Cap. 165). The overall RVIFP would benefit from having similar policies and procedures.
- 12.6 The FCU's asset seizure policy covers all assets apart from cash under the PCCA, DTOA, DPMA and Customs Management and Duties Act, 2010 (CMDA). Assets used in committing a criminal offence may either be seized and forfeited or identified for confiscation.
- 12.7 The FCU takes responsibility for cash seized by Customs and it has a seizure policy which covers cash of at least \$10,000 under the PCCA, DTOA, DPMA and CMDA. A cash seizure may trigger criminal proceedings and seized funds are deposited in a government bank account until criminal proceedings begin. Following a conviction, the cash may be confiscated as the proceeds of criminal conduct. While the cash seizure policy does not address cash of less than \$10,000, the police may seize smaller amounts where they suspect criminal activity and the court may confiscate these.
- 12.8 An area for improvement is how to record and identify cash for investigative purposes. Data provided by the RVIPF as a whole and by the FCU to the NRA show differences in what is presented and how for various types of forfeiture and seizure (see comparative table below of aggregate data on forfeitures and seizures).
- 12.9 The FCU suggested that procedural rules accounted for the disparity in the RVIPF's numbers for cash forfeitures and the FCU's for cash seizures. However, it is likely to be because of separate, unreconciled systems. The RVIPF's information would benefit from being specific, checked and updated, with data entry made mandatory and information on predicate offences entered consistently. The FCU's own database records more information and records on spreadsheets, including drug amounts seized if the FCU is aware of the case.
- 12.10 Data could be designed in a manner that avoids or explains the disparity. To ensure identification of risks, training and improved guidance would be helpful to ensure that information is appropriately categorized, recorded and easily retrievable and that management and analysis are prioritized. It would also be useful to clarify the relationship between the FCU and the RVIPF and assure the FCU of sufficient priority and resources.

Aggregate data on forfeitures and seizures				
RVIPF	2011	2012	2013	2014
Quantity of drugs seized	3.13kg	147.3kg	49.6kg	0.96kg
Value of drugs seized	N/A	N/A	N/A	N/A
Number of persons arrested - drug seizures	91	90	36	39
Number of cash forfeitures	2	0	1	0
Value of cash forfeitures	N/A	N/A	N/A	N/A
Value of cash forfeitures returned	5	2	2	0
Value of cash forfeitures retained	\$225,285	\$210,400	\$344,224	\$165,120
Number of counterfeit items confiscated	4	5	22	19
Value of counterfeit items confiscated	\$400	\$420	\$444	\$800
Persons arrested - counterfeit items	1	2	1	0
Vessels confiscated - marine cash seizures	0	0	0	0
Value of vessels confiscated	0	0	0	0
FCU	2011	2012	2013	2014
Total quantity of drug seizures	0	355 kg	4.8 kg	0
Street value of drugs seized	0	\$26m	\$470,000	0
Number of persons arrested - drug seizures	0	6	7	0
Number of cash seizures	4	7	5	3
Value of cash seizures	\$757,548	\$973,349	\$384,431	\$165,190
Number of cash seizures returned	\$30,920	0	0	0
Value of cash seizures retained	\$471,433	0	\$ 29,000	0
No. of counterfeit seizures - forged currency	0	1	4	4
Value of counterfeit items seized	\$154	\$20	\$349	\$210
Persons arrested - counterfeit items	1	0	0	0
Total vessels seized - human trafficking	N/A	N/A	N/A	N/A
Total vessels seized - marine cash seizures	0	0	1	1
Total vessels seized - migrant smuggling	N/A	N/A	N/A	N/A
Value of vessels seized	0	0	\$65,000	\$40,000
Total number of seized vessels returned	0	0	0	0
Value of seized vessels retained	0	0	\$65,000	0

12.11 While the RVIPF has suggested the legislation is not sufficiently robust on civil forfeiture and confiscation as it only addresses criminal forfeiture, the risk assessment or crime data analysis underpinning this is not clear. The FCU's asset seizure policy enables non-cash assets identified for confiscation to be seized under the PCCA and DTOA. The wider RVIPF lacks effective procedures for referring ML cases and other financial crime to the FCU.

12.12 As regards international and inter-agency cooperation, as noted at 11.59 above, there is an opportunity to improve the RVIPF's MoU with the FIA for processing

Interpol requests, with concrete policies and procedures for handling these. It would also be helpful for the RVIPF to have written procedures for facilitating intra-agency cooperation to avoid inconsistency, restrictions and lack of coordination in sharing information between its own departments, notably the FCU and CID.

- 12.13 More effective investigation would help avoid difficulties with confiscation of the proceeds of crime where the proceeds have been passed to third parties, as would addressing the PCCA's lack of clarity here.

Her Majesty's Customs

- 12.14 Her Majesty's Customs (HMC) is governed by the Customs Management and Duties Act, 2010 (CMDA). This and other statutes, including the DTOA and PCCA, permit forfeiture by detaining and seizing goods, including vessels, and the condemnation of contraband. Officers are not held personally liable.
- 12.15 In line with FATF Recommendation 32, which requires countries to implement a declaration or disclosure system for incoming and outgoing cross border transportation of currency and bearer negotiable instruments, a declaration system requires disclosure when moving \$10,000 or more in or out of the BVI. Penalties for failing to declare range from cash forfeiture to fines and imprisonment. In the review period, HMC recorded no outgoing declarations or related cash seizures. There were five false incoming declarations (out of 3,120,268 declarations) and a total of \$485,839 seized. Twelve arrests were made, of which six resulted in prosecutions and one resulted in conviction and forfeiture. Following the NRA, an outgoing seizure was made in 2015 and HMC implemented a new form for outgoing declarations.
- 12.16 Detected undeclared cash must be counted in the presence of the person carrying it. The FCU investigates the source and legitimacy of detected funds.
- 12.17 Declaration forms are the only written procedures for detecting or seizing bulk cash. Better training, including in identifying signs and detection of suspicious persons, would ensure that measures to detect cash smugglers and bulk cash movements are effective. Another area for improvement is analysis of cash declarations made, including the sharing of declaration trends and issues with the FIA for analysis in line with FATF Recommendation 32, and HMC analysis to identify AML/CFT trends and typologies.
- 12.18 People who fail to make proper declarations or who make false declarations have the option of signing an "Admission of Guilt" form to avoid prosecution. There are no written procedures on how HMC should use this form. HMC stated that the CMDA (section 126) empowered them to compound an offence, stay proceedings or restore anything seized (except with migrant smuggling, human trafficking, drug smuggling, and weapons and firearms smuggling).

- 12.19 HMC claimed this was generally used for breaches such as failure to check a vessel in or out when entering or leaving the Territory, evading customs duty, commercial fraud, and violation of the Cruising Permit Ordinance (Cap. 203). From the data, it is not clear whether or how HMC used this power or if as a matter of routine the penalties imposed were lower than if the breaches had gone to court.
- 12.20 It is not clear that HMC data for other crimes reflects the scale of the problem. In the review period, records shows eight drug seizures, for which 14 people were arrested; seven seizures of other illegal or restricted items, for which two people were arrested; and one vessel seized in relation to a cash seizure. There were no seizures of banned substances or counterfeit items and no vessels seized for human trafficking or migrant smuggling. Addressing inconsistencies in ODPP and RVIPF data would clarify whether seizures were effective and led to, or were the result of, investigation and prosecution.
- 12.21 HMC usually responds directly to international cooperation requests. As noted in Section 11, it does not set a timeframe but stated it responded efficiently and there were no outstanding requests for the review period. In the absence of records, it is not possible to verify how many cooperation requests were received or responded to and in what timeframe. No staff were assigned to international cooperation in 2011 or 2013. Other than the IGC, HMC does not have written procedures for international or domestic cooperation.

Office of the Director of Public Prosecutions

- 12.22 The Office of the Director of Public Prosecutions (ODPP) is responsible for initiating or undertaking confiscation proceedings for cash forfeiture. There was no evidence of an active pursuit of confiscations during the review period even though the possibility existed based on the number of predicate offences prosecuted and convictions secured.
- 12.23 The ODPP explained that, for confiscation, the Crown needed to prove beyond reasonable doubt that the monies or other assets were the proceeds of criminal conduct. It could not do this in the absence of investigations and evidence from the RVIPF, and the PCCA did not have provision for the reverse burden of proof as the UK Proceeds of Crime Act 2002 does. Yet section 6 (9) of the PCCA does provide for proof triggering a confiscation order to be established on a balance of probabilities rather beyond reasonable doubt.
- 12.24 The absence of confiscations appeared due to a focus by investigators and prosecutors on conviction rather than asset confiscation; and to a lack of procedures for confiscating the proceeds of crime, coordination between the RVIPF and the ODPP, ODPP guidance for police investigators on identifying ML in preparing cases for prosecution, and training for investigators and prosecutors in asset recovery, asset restraint, confiscation and forfeiture.

- 12.25 Although the ODPP arranged some training in 2013 and 2014 for its staff, the RVIPF and other relevant LEAs on asset recovery, confiscation and forfeiture, more effective training could ensure greater pursuit of confiscation orders.
- 12.26 Coordination between the ODPP and the RVIPF could be improved to ensure that promising ML confiscation matters are investigated, leading to successful confiscation proceedings.
- 12.27 Clear written guidelines and procedures on initiating and pursuing confiscation matters in relation to predicate offences would assist the RVIPF in pursuing and discovering property that might be related to predicate offences.
- 12.28 There appears to be more flexibility in relation to forfeiture of property. Under the DTOA (section 35A (2)), the court can order this for the proceeds of drug trafficking or drug money laundering irrespective of whether a defendant is convicted. A similar if not equivalent provision is in the PCCA (section 37B (3)), whereby the court may order cash forfeiture irrespective of whether proceedings begin against a defendant for an offence related to the cash. The ODPP would like to see legal provision in the Virgin Islands for non-conviction-based confiscation, civil confiscation or civil forfeiture.

Financial Investigation Agency

- 12.29 The Financial Investigation Agency (FIA) is a statutory body established under the FIAA. Various other pieces of legislation confer further functions and powers on it relating to ML/TF and other financial crime and intelligence gathering.
- 12.30 The FIA plays a minimal role in ML investigations. It gathers intelligence and supports other CAs and LEAs with international cooperation, and it refers suspected ML/TF cases to the RVIPF's FCU. This includes receiving and analysing SARs/STRs and sending any findings to CAs and LEAs for further action, including criminal investigation by the RVIPF.
- 12.31 When it suspects they may be the proceeds of crime, the FIA has the power to freeze funds for two periods of 72 hours. To have the funds frozen for longer, the RVIPF and ODPP would make a court application. The FIA did not take any temporary freezing action during the review period. In previous years, it had worked with the AGC and RVIPF on international cooperation investigations into confiscation matters (the IPOC case).
- 12.32 While the FIA is not directly responsible for initiating or pursuing confiscation, its work in receiving, analysing and disseminating intelligence makes it invaluable to the AML/CFT fight. It has broad powers to impose restrictions on transactions and other activities that may have some nexus to ML or PF³⁵. It is therefore important for the FIA to continue cooperating with all the CAs and LEAs and assisting with

³⁵ Under the Proliferation Financing (Prohibition) Act, 2009.

investigations to ensure successful initiation of confiscation proceedings by the ODPP.

Attorney General's Chambers

- 12.33 The Attorney General's Chambers (AGC) is the central authority for mutual legal assistance requests under the MLA (USA) A and provides legal advice on requests under the CJ(IC)A, although the GO is the central authority there. That includes matters relating to the confiscation of property.
- 12.34 The AGC has developed SOPs for MLA requests, including the enforcement of overseas forfeiture orders and confiscation orders. The CJ (IC) (EOFO) O sets out procedures for the courts to issue external forfeiture orders and restraint orders which prohibit people from dealing with any property liable to forfeiture.
- 12.35 Under the SOPs, the AGC receives a MLA request from the GO (which logs the request) or directly from a foreign CA. If it complies with Virgin Islands law, the AGC forwards the request to the FIA, which investigates and responds to the AGC. Once the request has been satisfied, the AGC forwards the file to the GO to send to the requesting CA.
- 12.36 The AGC has sufficient resources to process MLA and extradition requests effectively and on average three staff do so daily. In the review period, the AGC made four requests to freeze proceeds/assets of which two were granted, three applications to confiscate proceeds/assets which were refused, four applications to forfeit proceeds/drugs/illegal/restricted goods of which one was granted, and one application for a restraint order which was refused.
- 12.37 The freezing requests related to bank accounts involving bribery. As the foreign CA did not communicate the outcome (e.g. prosecution and conviction), the AGC could not confirm whether the order remained in place.
- 12.38 In some cases, MLA requests to confiscate proceeds could not be executed because they did not identify the assets or show that they represented the proceeds of crime. The AGC said it explained this to overseas CAs.
- 12.39 As a signatory to the IGC MoU, the AGC had coordinated with LEAs over successful MLAT requests but had not needed assistance with requests relating to freezing, confiscation and forfeiture. Cooperation between the AGC, GO, FIA and ODPP could have been more effective over the review period. The maintenance of consistent records would have enabled a true picture of processed MLA requests to be provided, especially in relation to seizures, freezing, confiscation and forfeiture orders.

13. Terrorist financing and proliferation financing

- 13.1 The FATF defines terrorist financing as the financing of terrorist acts and of terrorism and terrorist organisations. This usually derives from criminal activities, misuse of charitable organisations (e.g. NPOs) and people directly donating their own funds. Disruption requires input from LEAs, CAs and all AML/CFT stakeholders. In the BVI, the agencies responsible are the RVIPF, ODPP, GO, AGC, FIA, FSC and ITA.
- 13.2 The RVIPF is responsible for investigating TF, the FIA for investigations (including analysing SARs/STRs and providing intelligence to the RVIPF), the ODPP for prosecuting TF, and the GO and AGC for ensuring the MLA regime can assist foreign authorities. As supervisors, the FIA and FSC ensure that reporting entities carry out AML/CFT measures to avoid abuse of the financial system.
- 13.3 LEAs and other CAs consider the TF risk in the Territory relatively remote and low. As the size and nature of the financial services industry provide some risk of it being used to finance terrorists or their activities, the Virgin Islands focuses its mitigating measures on proper and adequate regulation and supervision of the industry, as described in this Report. The measures in place to detect and prevent ML are fully applicable to detecting and preventing TF.
- 13.4 This means ensuring that high-risk areas, such as NPOs, are properly identified and supervised, and that everyone engaging in financial services business is properly identified and verified, including all legal persons and legal arrangements. LEAs must be appropriately trained in detecting, investigating and prosecuting TF.
- 13.5 The analysis set out in this Report suggests that there is some risk of TF through FIs, NPOs and DNFBPs, and that LEAs and CAs should be trained to detect, investigate and prosecute TF.
- 13.6 The Virgin Islands' measures to ensure the Territory meets its obligations to freeze identified terrorist assets without delay (e.g. under FATF Recommendation 60) include freezing assets upon request from a foreign authority. The Virgin Islands implements United Nations Security Council Resolution (UNSCR) 1373, which requires states to freeze terrorists' assets and ensure their nationals cannot make funds and any related financial services available to terrorists. It also implements UNSCR 1267 on targeted sanctions against individuals and entities associated with Al Qaida, which requires freezing designated persons' assets. One area for improvement is the frequency and timeliness of the circulation of materials and lists related to TF.

Criminalisation of terrorist financing

- 13.7 The Virgin Islands criminalises the financing of terrorism through the Terrorism (United Nations Measures)(Overseas Territories) Order 2001 (T(UNM)(OT)O), the

Anti-terrorism (Financing and Other Measures) (Overseas Territories) Order 2002 (AT(FOM)(OT)O), and the Al-Qaida and Taliban (United Nations Measures) (Overseas Territories) Order 2002, all in force. Section 6 of the AT(FOM)(OT)O prohibits persons from providing money or other property for the purposes of terrorism and defines “person” to include any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons. This covers financing of terrorist organisations and individual terrorists.

- 13.8 There have been no TF investigations, prosecutions or convictions in the Territory during the period under review.

Implementation of UN Security Council Resolutions 1267/1989 and 1988

- 13.9 The Virgin Islands implements targeted financial sanctions pursuant to UN Security Council Resolutions (UNSCRs) 1267/1989 and 1988 through the amended provisions of the PCCA and the T(UNM)(OT)O, and the AT(UNM)(OT)O. Together with the PCCA, these enable authorities to freeze the funds of designated persons and entities.
- 13.10 The GO receives the UN Sanctions Committee’s periodic updates of undesirable persons and persons against whom sanctions should be maintained. It disseminates these to the AGC for publication in the Official Gazette. In addition, restrictive measures imposed by the EU against persons are enforced in the Territory through the GO. In accordance with article 5(1) of the T(UNM)(OT)O, the Governor may also order that, for a limited or unlimited period, funds are not to be made available to a designated or restricted person, except under the authority of a licence the Governor grants.
- 13.11 In the review period, few licenses were requested and only one was granted. In 2014, four licences were granted. The FIA and RVIPF enforce these orders with guidance from the AGC. To raise awareness of their obligation to seek licensing when conducting business for or with listed persons, industry practitioners were trained in 2015 on how and under what circumstances they could apply for a licence.
- 13.12 Designations are published in the Official Gazette and on the FSC and FIA websites, and the FSC and FIA send copies electronically to businesses throughout the Territory. This takes 7-14 days and improvement is needed to ensure funds are identified and frozen without delay.
- 13.13 During the review period, no persons or entities with links to the BVI were designated under UNSCRs 1267/1989 and 1988 or assets frozen. The licences granted by the Governor were in relation to EU restricted persons.

Implementation of UNSCR 1373

- 13.14 The Virgin Islands implements UNSCR 1373 through the PCCA and the T(UNM)(OT)O, and AT(UNM)(OT)O. The GO receives and considers overseas requests and makes the relevant designations.
- 13.15 The FIA and other LEAs can share information with the GO. With the Governor's consent, they can also share information with other countries when requesting them to take freezing action under UNSCR 1373. The Virgin Islands has not requested any country to do so.
- 13.16 Designations applicable to the Virgin Islands are generally made by the UNSC and EU, communicated through the GO and published by the AGC (in the Gazette) and by the FIA and FSC (on their websites). The FSC and FIA also send copies electronically to businesses throughout the Territory. The Virgin Islands did not freeze any assets under UNSCR 1373 during the review period.
- 13.17 Failure to comply with sanctions under the relevant UK Orders in Council applicable to the Virgin Islands is an offence which may result in penalties on conviction. For the review period, no FIs or DNFBPs were in breach of their obligation to freeze the funds of designated persons and entities. Areas for improvement include ensuring that the industry has systems to identify if clients include persons on the list and, in addition to existing FSC onsite inspections, having systems to test for compliance by reporting entities.

Implementation of UNSCR 2178

- 13.18 The Virgin Islands has not criminalised the restrictions and prohibitions in UNSCR 2178 in relation to foreign terrorist fighters. Authorities anticipate this will happen shortly.

Criminalisation of proliferation financing

- 13.19 As with TF, the risk of PF in the Virgin Islands is considered low and relatively remote. However, due to the nature of the financial services industry, some risk may exist of the misuse of corporate entities to fund weapons of mass destruction (WMD). The Proliferation Financing (Prohibition) Act, 2009 (PF(P)A) is a positive step.
- 13.20 The PF(P)A gives the FIA the power to take action against persons and activities related to ML, TF or the development of WMD. The FIA may issue directions to a specific person or class of persons within a country where the UNSC or FATF have advised that measures should be taken because of the risks of TF, ML or proliferation activities being carried out by the government of that country or by persons resident or incorporated there. The FIA may also issue directions where it reasonably believes the development or production of nuclear, radiological,

biological or chemical weapons, systems for their delivery, or anything that facilitates such development or production in the country, poses a significant risk to the Virgin Islands or UK's interest. Outside the review period, the FIA published a direction in 2009 and revoked it in 2010.

- 13.21 Where a direction is given, persons may not enter into or continue to participate in specified transactions or business relationships with any person listed unless the FIA grants them a licence to do so. The FIA has not received any such requests. The PF(P)A also gives the FIA enforcement powers, which include the ability to request documents and to impose civil penalties. Criminal penalties may also be applied to persons failing to comply with a requirement imposed by a direction under the Act.
- 13.22 As the current PF legislation is six years old and does not cover some elements of FATF Recommendation 7, it would be prudent for the legislation to be reviewed and where necessary amended.

14. Threats and consequences

- 14.1 The NRA exercise has been helpful in highlighting the primary and secondary threats to be addressed in order to strengthen the Virgin Islands' AML/CFT regime.
- 14.2 A threat is something harmful which will not definitely happen but could happen if relevant action is not taken. ML/TF threats can come directly from people (natural and legal), generally criminals, terrorists and their facilitators. Or they can be indirect, where systems require improvement to detect, mitigate, combat and curtail harmful activity.
- 14.3 Primary threats are those which, while not being certain to occur, have the most likelihood of happening if action is not taken. Secondary threats are less likely to occur. Both could affect the stability of the AML/CFT regime and the reputation of the Virgin Islands if they happened. We identify here the areas of improvement required to mitigate primary and secondary threats.

Primary areas for improvement

- 14.4 The ability of criminals to:
- Avoid extradition where there are procedural failures in the extradition process
 - Retain proceeds of crime where there is inability to provide information through MLATs
 - Launder money and finance terrorism where international cooperation is not effective
 - Retain the proceeds of crime where sanctions are breached
 - Avoid prosecution where there is not proper investigation and coordination amongst LEAs
 - Unlawfully access and publish private and confidential information
 - Exploit any vulnerabilities in the MSB sector to launder money or finance terrorism
 - Engage in illegal gambling and lottery activity to launder the proceeds of crime.
- 14.5 The need for LEAs to:
- Pursue migrant smugglers, human traffickers, money launderers and other criminals
 - Conduct ML/TF investigations in a timely manner
 - Pursue prosecution for ML/TF offences
 - Pursue confiscation of assets
 - Properly detect security breaches

- Have measures in place to tackle internal corruption so that illegal activities are not overlooked or investigations frustrated or circumvented
- 14.6 Any inadequate and inappropriate supervisory and enforcement frameworks for FIs and DNFBPs that could lead to abuse of these systems by criminals.
 - 14.7 Any TCSP negligence or complicity that might result in facilitating ML/TF.
 - 14.8 FIAs' ability to process SARs/STRs in a timely and efficient manner so as not to cause delays in investigations, both locally and internationally, which would mean criminals avoiding prosecution and a breakdown in the Virgin Islands' relationship with its international cooperation partners.
 - 14.9 Any misuse of financial services products such as legal persons, legal arrangements and money services by criminals to facilitate fraud, corruption and other financial crimes and to launder money and finance terrorism.
 - 14.10 Any failures by financial institutions and DNFBPs to maintain and record information on BO and third parties that could allow ML/TF activity to go undetected.
 - 14.11 Any inadequate AML/CFT knowledge or training by law enforcement officers and prosecutors that could inadvertently cause important elements to be overlooked in prosecuting ML/T.
 - 14.12 Any misuse of the real estate sector that might facilitate the laundering of proceeds of crime.
 - 14.13 Any exploitation of legal professionals that could facilitate criminal behaviour and the laundering of criminal proceeds.

Secondary areas for improvement

- 14.14 Any misuse of the local NPO sector to facilitate ML/TF where NPOs may be affiliated with international outreach.
- 14.15 Any exploitation of the jewellery subsector by visitors, particularly those travelling in groups, that could facilitate ML through the purchase and subsequent re-sale of expensive jewellery.
- 14.16 Any absence of proper CDD and record-keeping measures around the purchase, sale and rental of yachts and other high value goods, which could be used to facilitate ML.
- 14.17 Any security weaknesses in the courts which could enable criminals to threaten or manipulate the judicial system.

Consequences

14.18 Knowing and understanding the consequences of ineffective action against ML/TF is fundamental to formulating appropriate policies. We set some consequences out here. They may be short or long term, with a limited or general impact on the Territory's business environment, national and international interests, reputation, attractiveness for financial services and trade relations (including correspondent banking relationships). They may raise safety and stability concerns which could affect the tourism and social services sectors. And they could lead to reduced funding for social and infrastructural development due to falling revenues.

14.19 Reputational damage

- Ineffective policing and border security could potentially lead to the Territory being labelled as facilitating ML/TF or not doing enough to tackle it.
- Any rise in criminality could affect the Territory as a tourist destination and a preferred centre for international business transactions.
- If the judiciary did not have the resources to dispense justice in a timely manner, this could reduce confidence in the judicial system and in the Territory as an important international finance centre.

14.20 Economic damage

- If lawyers, accountants and real estate agents could not mitigate their ML risks, they might become identified as facilitating ML/TF, which would have a negative impact for their business sectors and the Virgin Islands financial services industry generally.
- AML/CFT failures within the FI, DNFBP and NPO sectors could lead to the Virgin Islands being viewed as a safe haven for money launderers and terrorist financiers, leading to a loss of confidence in trading with the Territory and harming its financial services and tourism sectors.
- AML/CFT failures could lead to international sanctions and/or advisories, restricting the Virgin Islands' ability to access international finance and its membership or leadership of international organisations.
- AML/CFT failures could also restrict correspondent banking relationships, harming the Virgin Islands economy and driving business transactions underground, which would increase ML/TF risk further and impede international cooperation (tracing of business activities and funds).
- Any reduction in financial services as a result of reputational damage could harm government revenue, affecting the Territory's ability to fund infrastructure, social services, health and education.

14.21 Any **inability to cooperate** by the Virgin Islands could lead to the following negative effects:

- A lack of timely responses to information request and other international cooperation by CAs could cause the Virgin Islands to be labelled as non-cooperative or non-compliant, which in turn could lead to a negative listing, resulting in loss of business and reduced Government revenue.
- Any poor handling of extradition and MLA requests due to a lack of staff knowledge or training or to weak cooperation between CAs could delay responses or even result in failure to execute the requests.
- Any inconsistency in gathering BO information and verifying CDD/ECDD information by FIs and DNFBPs could hamper the effective processing of MLA requests which seek BO information.
- Any failure by FIs to collect and maintain BO information on clients could impede domestic and international cooperation by preventing LEAs from tracing and apprehending people involved in ML/TF activities; and could impede LEAs' ability freeze and confiscate the proceeds of crime.
- Any failure by the FIA to assist overseas requests could make foreign authorities unable to pursue and prosecute criminals.
- Inefficiencies within the RVIPF, especially as regards coordination between its own sections, could lead the RVIPF to concentrate only on predicate offences, resulting in increased ML activity in the Territory.
- Lack of proper cooperation and coordination between agencies, primarily the HMC, ID and RVIPF (for border protection, crime detection and investigation) and the ODDP (for prosecution), could hinder law enforcement.

14.22 Any **inadequate and ineffective supervision and monitoring** could result in the following inefficiencies:

- If it proved unable to improve its supervision of NPOs, the FIA could not help protect the Virgin Islands from undesirable NPOs and, potentially, TF activity.
- If the FIA did not increase staff numbers to supervise and monitor the DNFBP, HVG and NPO sectors more effectively, this could increase the ML/TF risk for the Territory, particularly in relation to NPOs.
- If it did not increase staff numbers for supervision and inspections, the FSC might be unable to safeguard against the occurrence of ML/TF activities.
- If detection of undeclared inbound and outbound cash did not improve, it could become easier for illegal proceeds to enter and leave the Territory and potentially find a way into the Territory's banking system, facilitating ML/TF.

14.23 **Increase in criminal activity**

- If laws relating to illegal gambling and other criminal behaviour associated with drug trafficking and ML were not enforced, this could lead to an increase in physical violence in the community.
- If inadequate investigations into predicate offences and ML and shortcomings in handling extradition and MLA matters were not addressed, criminals might escape prosecution, retain their illegal proceeds and remain free to commit other crimes within and outside the BVI.
- If the FIA was not able to speed up its analysis and internal investigation of SARs/STRs, this could leave the RVIPF with too little time to carry out a successful investigation leading to prosecution.
- Any inadequate compliance with AML/CFT obligations by FIs and DNFBPs could lead to money launderers and terrorist financiers effectively being permitted to use Virgin Islands FIs without being detected and result in increased cross-border criminality.
- If the capacity to patrol the Territory's borders were not improved, there could be smuggling of goods, narcotics and other contraband into and out of the Territory.
- If LEAs, particularly the RVIPF, did not apply and distribute resources based on risk, sufficient resources might not go to high-risk areas such as border security, resulting in increased drug trafficking, ML and other criminal activity.
- Any failure to investigate ML/TF activities that have a cross-border reach might result in criminals escaping prosecution and having unfettered access to the proceeds of their crimes.

14.24 **Low levels of ML/TF prosecutions and convictions**

- If the FIA could not analyse SARs/STRs and send intelligence to local and international law enforcement agencies in a more timely manner, low levels of ML/TF prosecutions and convictions might lead to low levels of confiscations and forfeiture so that criminals were not deprived of their ill-gotten gains.
- If the courts did not receive resources to speed up their processes and improve AML/CFT training for court officers, the number of successful prosecutions for matters involving ML/TF might fall.

14.25 **Poor record keeping and analysis of data** could contribute to the following failures:

- Any deficiencies in record keeping by FIs and DNFBPs could result in an inability to reconstruct transactions for ML/TF or other financial crime investigations.
- Poor records could also lead to failings in domestic and international cooperation where information for investigations and prosecutions was not available.

- Unless they are able to carry out strategic analysis of data, the FIs could not identify trends in ML activity, address specific risks identified, and allocate resources appropriately.
- If LEAs and CAs were not able to provide relevant statistical data, any analysis of the effectiveness of the AML/CFT regime could be difficult, leading to unfavourable compliance assessments for the Territory and pressure from the international community.

14.26 **Corruption** would have the following effects if left unchecked:

- Any high profile corruption cases involving HMC and RVIPF officers could affect the reputation of these agencies and the Territory as a whole.
- If LEAs remained unable to identify and investigate corruption, corrupt officers might be able to retain any proceeds of crime from their corrupt practices, and LEA's work would be stifled and/or compromised.

14.27 **Poor risk mitigation** has the following consequences:

- Particularly at the subscription stage, any weak application of client verification and CDD/ECDD measures by FIs, including TCSPs and banking institutions, could enable ML/TF to occur undetected.
- Any failure to report SARs/STRs could mask the scale of FIs' ML/TF risks, particularly TCSPs' business relationships, and could prevent the FIA from being more proactive in investigating ML/TF and other financial crimes.
- Any inconsistency in gathering BO information and verifying CDD/ECDD information by FIs, particularly TCSPs, could make it difficult for them to understand their clients' activities and the potential or actual ML/TF risks.
- If it did not prove possible to register all existing NPOs and for the FIA to supervise them properly, this could leave significant gaps in CDD and record keeping, resulting in the poor filing of SARs/STRs and hindering investigation of TF.

15. Conclusion

- 15.1 The same factors that make the Virgin Islands an attractive place for legitimate financial activity – its political stability, advanced professional services sector, and widely understood language and legal system – also make it an attractive place through which to launder the proceeds of crime. In response to this the Virgin Islands has developed its AML/CFT regime over a number of years.
- 15.2 The NRA exercise has taken a hybrid approach to assessing the regime, identifying institutional areas for improvement alongside the risks associated with various industry sectors.
- 15.3 There is considerable opportunity to improve AML/CFT effectiveness in the BVI, including in the agencies critical to any successful mutual evaluation. Financial services supervisors have good systems which need strengthening. Supervision of the DNFBP, NPO and HVG sectors requires enhancement, not least in inspection. Following the NRA, CAs have already taken the opportunity to carry out improvements identified, some but not all of which are reflected in the Report.
- 15.4 The Government is recommended to ensure that all areas for improvement identified in this Report are addressed without delay. A new AML/CFT Implementation Unit within the Ministry of Finance, overseen by the Deputy Financial Secretary, could coordinate this and have day-to-day oversight of implementation. This would work very closely with all agencies on developing timely action plans, and would submit a periodic report to Cabinet advising on each agency's progress. The Government could undertake an overall assessment of improvements and next steps.

Appendix A – Glossary of terms

AEOI	Automatic exchange of information
AG	Attorney General
AGC	Attorney General's Chambers
AML	Anti-money laundering
AMLR	Anti-money Laundering Regulations, 2008
AMLTFCOP	Anti-money Laundering and Terrorist Financing Code of Practice, 2008
AT(FOM)(OT)O	Anti-terrorism (Financing and Other Measures) (Overseas Territories) Order 2002
AT(UNM)(OT)O	Al-Qaida and Taliban (United Nations Measures) (Overseas Territories) Order 2002
BO	Beneficial ownership
BTCA	Banks and Trust Companies Act, 1990
BVI	British Virgin Islands
BVIAA	BVI Airports Authority
BVIBC	BVI Business Company
BVIBCA	BVI Business Companies Act, 2004
BVIPA	BVI Ports Authority
CA	Competent authority
CAPS	Customs Automated Processing System
CCTV	Closed Circuit Television
CDD	Customer Due Diligence
CEO	Chief Executive Officer
CFATF	Caribbean Financial Action Task Force
CFT	Countering the financing of terrorism
CID	Criminal Investigations Division
CIO	Chief Immigration Officer
CJ(IC)A	Criminal Justice (International Cooperation) Act, 1993
CJ (IC) (EOFO) O	Criminal Justice (International Cooperation) (Enforcement of Overseas Forfeiture Orders) Order
CMDA	Customs Management and Duties Act, 2010
COP	Commissioner of Police

DGO	Deputy Governor's Office
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
EOI	Exchange of information
EU	European Union
FARS	Financial Account Reporting System
FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
FCO	Foreign and Commonwealth Office
FCU	Financial Crimes Unit (RVIPF)
FI	Financial institution
FIA	Financial Investigation Agency
FIAA	Financial Investigation Agency Act, 2003
FIFA	Fédération Internationale de Football Association
FIU	Financial Intelligence Unit
FSC	Financial Services Commission
FSCA	Financial Services Commission Act, 2001
GDP	Gross Domestic Product
GIFCS	Group of International Finance Centre Supervisors
GO	Governor's Office
HC	High Court
HMC	Her Majesty's Customs
HVG	High Value Goods
IAIS	International Association of Insurance Supervisors
IFC	International Finance Centre
IGC	Inter-governmental Committee on AML/CFT Matters
IMF	International Monetary Fund
Interpol	International Police Organisation
IOSCO	International Organisation of Securities Commissions

IR	Insurance Regulations, 2009
ITA	International Tax Authority
JALTFAC	Joint Anti-money Laundering & Terrorist Financing Advisory Committee
JEMS	Judicial Enforcement Management System
LEA	Law enforcement agency
MAAC	Multilateral Convention on Mutual Administrative Assistance in Tax Matters
MC	Magistrate's Court
MCCA	Multilateral Competent Authority Agreement
ML	Money laundering
MLA	Mutual legal assistance
MLA(TM)A	Mutual Legal Assistance (Tax Matters) Act
MLA(USA)A	Mutual Legal Assistance (USA) Act
MLAT	Mutual Legal Assistance Treaty
MLRO	Money Laundering Reporting Officer
MoF	Ministry of Finance
MoU	Memorandum of understanding
MMoU	Multilateral Memorandum of Understanding
MSB	Money services business
NPO	Non-profit organisation
NPO Board	Non-profit Registration Board
NPOA	Non-profit Organisation Act, 2012
NRA	National Risk Assessment
NRAC	National Risk Assessment Council
NRACC	National Risk Assessment Communications Committee
NRAF	National Risk Assessment Framework
NRASG	National Risk Assessment Steering Group
NSC	National Security Council
ODPP	Office of the Director of Public Prosecutions
OECD	Organisation for Economic Cooperation and Development
PAQ	Pre-assessment questionnaire
PCCA	Proceeds of Criminal Conduct Act, 1997
PCCA(DCT)O	Proceeds of Criminal Conduct (Designated Countries and Territories) Order, 1999

PEC	Public Education Committee
PEP	Politically exposed person
PF	Proliferation financing
PF(P)A	Proliferation Financing (Prohibition) Act, 2009
POQ	Pre-onsite questionnaire
PRG	Peer review group
PSC	Police Service Commission
Public service rules	General Orders of the Public Service and Public Service Regulations
PWA	Police Welfare Association
RA	Registered agent
Registrar	Registrar of Corporate Affairs
REA	Real estate agents
ROCA	Registry of Corporate Affairs
RVIPF	Royal Virgin Islands Report
SAR	Suspicious Activity Report
SCU	Serious Crimes Unit
SIBA	Securities and Investment Business Act, 2010
SOP	Standard Operating Procedures
STR	Suspicious Transaction Report
TCSP	Trust and corporate service providers
TF	Terrorist Financing
TIEA	Tax Information Exchange Agreement
T(UNM)(OT)O	Terrorism (United Nations Measures)(Overseas Territories) Order 2001
UK	United Kingdom
UN	United Nations
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
US	United States of America
USVI	United States Virgin Islands
VISR	Virgin Islands Shipping Registry
VISTA	Virgin Islands Special Trusts Act, 2003
WMD	Weapons of mass destruction

Appendix B – Risk summary

1. Competent authorities

Risks	High	<ul style="list-style-type: none"> • Handling of incoming and outgoing extradition requests • SAR/STR processing • Time taken to complete AML/CFT compliance inspections
	Medium	<ul style="list-style-type: none"> • Handling of outgoing information requests from local CAs • Handling of incoming MLA requests from overseas CAs • Ability to process incoming requests for High Court evidence • Prosecutions and convictions resulting from assistance provided • Handling of investigations stemming from MLA requests • Court challenges to incoming requests from overseas CAs • Difficulties in processing MLA requests • Ability to monitor BVIBCs for ML/TF

Governor's Office

Risks	High	<ul style="list-style-type: none"> • Handling of incoming and outgoing extradition request
	Medium	<ul style="list-style-type: none"> • Inter-agency cooperation • Handling of incoming MLA requests from overseas CAs • Records maintenance and accessibility

Attorney General's Chambers

Risks	Medium	<ul style="list-style-type: none"> • Governance and administration • Handling of incoming MLA and international cooperation requests from overseas CAs • Knowledge of whether assistance provided resulted in conviction or was helpful in any other way • Handling of outgoing MLA and international cooperation requests • Declined requests • Complaints handling • Records maintenance and accessibility • Timely processing of MLA requests and extradition matters
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Financial Investigation Agency

Risks	High	<ul style="list-style-type: none"> Governance and administration
	Medium	<ul style="list-style-type: none"> Handling of incoming and outgoing MLA requests Handling of investigations stemming from MLA requests Complaints handling of reports by local CAs against the FIA Processing of MLA requests Monitoring of BVIBCs

Financial Services Commission

Risks	Medium	<ul style="list-style-type: none"> Inter-agency cooperation – handling of outgoing requests Handling of incoming and outgoing requests for information Challenges to requests for information made by overseas CAs Handling of complaints filed by overseas CAs Timeframe to complete AML/CFT compliance inspections
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International Tax Authority

Risks	High	<ul style="list-style-type: none"> Governance and administration
	Medium	<ul style="list-style-type: none"> Inter-agency cooperation Handling of incoming MLA requests from overseas CAs Assistance with MLA requests resulting in prosecutions and convictions Complaints handling

2. Financial institutions

Risks	Common areas	<ul style="list-style-type: none"> Corporate governance Maintenance of beneficial ownership and CDD information Verification measures for CDD and ECDD information AML/CFT internal control measures Internal risk assessment measures SAR/STR reporting Records maintenance and accessibility Banking relationships and electronic transfers High-risk business practices Demographics – location of customer, beneficial owner, and counterparty transactions Client-based risk assessment measures
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Trust and corporate service providers

Risks	High	<ul style="list-style-type: none"> • Maintenance of beneficial ownership and CDD information • Verification measures for CDD and ECDD information
	Medium	<ul style="list-style-type: none"> • Corporate governance • SAR/STR reporting • Records maintenance and accessibility • Banking relationships and electronic transfers • High-risk business practices • Demographics – location of customers, beneficial owners, and counterparty transactions • Client-based risk assessment measures

Insurance business

Risks	Medium	<ul style="list-style-type: none"> • Corporate governance • SAR/STR reporting • Records maintenance and accessibility • Banking relationships and electronic payments • High-risk business practices • Demographics - location of customer, beneficial owners of customers and counter-party transactions • Client-based risk assessment measures
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Insolvency business

Risks	Medium	<ul style="list-style-type: none"> • Corporate governance • SAR/STR reporting
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Investment business

Risks	High	<ul style="list-style-type: none"> • Maintenance of beneficial ownership and CDD information • Verification measures for CDD and ECDD information
	Medium	<ul style="list-style-type: none"> • Internal risk assessment measures • Staff training in AML/CFT • SAR/STR reporting • Records maintenance and accessibility • Banking relationships and electronic payments • High-risk business practices • Demographics - location of customers, BOs of customers and counter-party transactions

		<ul style="list-style-type: none"> • Client-based risk assessment measures
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Banking institutions

Risks	Medium	<ul style="list-style-type: none"> • Corporate governance • Verification of CDD and ECDD information • Banking relationships and electronic payments • High-risk business practices
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Money services businesses

Risks	High	<ul style="list-style-type: none"> • Maintenance of BO and CDD information • Internal risk assessment measures • SAR/STR Reporting • Client-based risk assessment measures
	Medium	<ul style="list-style-type: none"> • Corporate governance • Verification of CDD and ECDD information • AML/CFT internal control measures • Banking relationships and electronic payments • High-risk business practices • Demographics - location of customer, beneficial owners of customers and counter-party transactions

3. Designated non-financial businesses and professions

Risks	Medium	<ul style="list-style-type: none"> • Governance and administration • Resources for monitoring AML/CFT risks • Internal risk assessments • Staff training on AML/CFT • SAR/STR reporting
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Real estate agents

Risks	Medium	<ul style="list-style-type: none"> • Governance and administration • Client verification and CDD/ECDD measures • AML/CFT Internal control measures • Resources for monitoring AML/CFT issues • Internal risk assessments • Staff training on AML/CFT • SAR/STR reporting
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4. Non-profit organisations

Risks	High	<ul style="list-style-type: none">• SAR/STR reporting
	Medium	<ul style="list-style-type: none">• Governance and administration• Client verification and CDD/ECDD measures• AML/CFT Internal control measures• Internal risk assessment measures• Staff training on AML/CFT• Records maintenance and accessibility• Funding and accounting practices• Funding and expenditures• International exposures

5. High value goods dealers

Boat dealers

Risks	Medium	<ul style="list-style-type: none">• Internal risk assessment measures• SAR/STR reporting
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Vehicle dealers

Risks	High	<ul style="list-style-type: none">• SAR/STR reporting
	Medium	<ul style="list-style-type: none">• Client verification and CDD/ECDD measures• AML/CFT internal control measures• Internal risk assessment measures

Furniture dealers

Risks	Medium	<ul style="list-style-type: none">• Client verification and CDD/ECDD measures• AML/CFT Internal control measures• Resources for monitoring AML/CFT compliance• Internal risk assessment measures• Staff training in AML/CFT• SAR/STR reporting
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Jewellers

Risks	High	<ul style="list-style-type: none"> SAR/STR reporting
	Medium	<ul style="list-style-type: none"> Internal risk assessment measures

6. Law enforcement agencies

Risks	High	<ul style="list-style-type: none"> Handling of incoming and outgoing MLA requests Handling of incoming extradition requests Processing of MLA requests Ability to monitor BVIBCs for ML/TF Handling of investigations relating to ML/TF
	Medium	<ul style="list-style-type: none"> Governance and administration Staff training in AML/CFT Records management and maintenance Handling of seizures, smuggling and security breaches Handling of smuggling activities, including deportation Inter-agency cooperation

Immigration Department

Risks	High	<ul style="list-style-type: none"> Training in AML/CFT
	Medium	<ul style="list-style-type: none"> Governance and administration Records maintenance and accessibility Control of migrant smuggling activities and handling of deportations

Her Majesty's Customs

Risks	High	<ul style="list-style-type: none"> Training in AML/CFT
	Medium	<ul style="list-style-type: none"> Handling of seized assets, smuggling and security breaches

Royal Virgin Islands Police Force

Risks	High	<ul style="list-style-type: none"> • Staff training, resources and expertise • Records maintenance, including data collection and analysis • Handling of incoming and outgoing MLA requests, including extradition matters • Providing feedback on declined requests • Difficulties in processing MLA requests • Monitoring of BVIBC activities
	Medium	<ul style="list-style-type: none"> • Governance and administration • Inter-agency cooperation on processing MLA requests • Investigations related to ML/TF

Office of the Director of Public Prosecutions

Risks	Medium	<ul style="list-style-type: none"> • Governance and administration • Inter-agency cooperation and coordination
	Other issues	<ul style="list-style-type: none"> • Resources • Experience and training • Record keeping • ML prosecutions

BVI Airports Authority

Risks	Medium	<ul style="list-style-type: none"> • Governance and administration • Inter-agency cooperation and interaction with other LEAs • Staff training • Records maintenance and accessibility • Detection of seizures, smuggling and security breaches
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BVI Ports Authority

Risks	High	<ul style="list-style-type: none"> • Staff training • Handling of seizures, smuggling and security breaches
	Medium	<ul style="list-style-type: none"> • Governance and administration • Inter-agency cooperation, interaction with other LEAs • Records maintenance and accessibility

The judiciary: Magistrate's Court

Risks	High	<ul style="list-style-type: none">• Training in AML/CFT
	Medium	<ul style="list-style-type: none">• Governance and administration• Inter-agency cooperation and level of independence• Records maintenance and accessibility

The judiciary: Supreme (High) Court

Risks	Medium	<ul style="list-style-type: none">• Governance and administration• Inter-agency cooperation and level of independence• Records maintenance and accessibility• Complaints handling
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