CARIBBEAN FINANCIAL
ACTION TASK FORCE

Third Follow-Up Report

Virgin Islands

January 18, 2011

VIRGIN ISLANDS – THIRD FOLLOW-UP REPORT

I. Introduction

1. This report is the third written follow-up report by Virgin Islands to the Caribbean Financial Action Task Force (CFATF) Plenary on the action taken to implement the recommended actions listed in the third mutual evaluation report (MER) of Virgin Islands which was adopted in November 23, 2008. Virgin Islands submitted its first written report in May 2009 and its second in May 2010. Virgin Islands indicated at the time that it would report to the Plenary in November 2010 on additional measures taken to address outstanding deficiencies and apply to move from regular follow-up to biennial updates. Virgin Islands has formally applied to move from regular follow-up to biennial updates.

2. The following report is prepared in accordance with CFATF follow-up procedures in relation to an application for removal from regular follow-up to biennial updates. The Virgin Islands has provided the Secretariat with up to date information on its progress. The report contains detailed descriptions and analyses of the actions taken by Virgin Islands with regard to the core and key Recommendations rated PC or NC as well as those other Recommendations rated PC or NC. The procedures for removal to biennial reporting requires that an examined member take significant action to have an effective AML/CFT system in force, under which it has implemented the core and key Recommendations (Recommendations 1, 3 – 5, 10, 13, 23, 26, 35, 36, 40 and Special Recommendations I – V) at a level essentially equivalent to a C or LC, taking into consideration that there would be no re-rating. Additionally, the procedures require that consideration be taken of all other Recommendations rated PC or NC

3. Virgin Islands received ratings of C or LC on fourteen (14) of the sixteen Core and Key Recommendations and PC on the remaining two (2) Core and Key Recommendations as follows:

Table 1: Ratings of Core and Key Recommendations

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

4. With regard to the other non-core or key Recommendations, Virgin Islands was rated partially compliant or non-compliant on fourteen (14), as indicated below.

Table 2: Non Core and Key Recommendations rated Partially Compliant and Non-Compliant

Partially Compliant (PC)	**Non-Complaint (NC)**
R. 8 (New technologies & non face-to-face business)	SR. VI (AML requirements for money value transfer services)
R. 9 (Third parties and introducers)	
R. 11 (Unusual transactions)	

R. 12 (DNFBP – R.5,6,8-11)	
R. 15 (Internal controls, compliance & audit)	
R. 16 (DNFBP – R.13-15 & 21)	
R. 17 (Sanctions)	
R. 21 (Special attention for higher risk countries)	
R. 22 (Foreign branches & subsidiaries)	
R. 24 (DNFBP – regulation, supervision and monitoring)	
R. 30 (Resources, integrity and training)	
R. 33 (Legal persons – beneficial owners)	
SR. VIII (Non-profit organizations)	

5. The following table is intended to provide insight into the size and risk of the main financial sectors in Virgin Islands.

Table 3: Size and integration of the jurisdiction's financial sector
As at 30th June 2010 – Virgin Islands

		Banks	Other Credit Institutions*	Securities	Insurance	TOTAL
Number of institutions	Total #	9 (6 commercial and 3 private)	n/a	2956 (professional, private and public funds) 572 (managers, administrators and manager/administrators)	284 (includes captive insurers, credit life, domestic, agents, brokers, managers & loss adjusters)	3821
Assets	US$	$2.5 billion	n/a	Not available	2.0 billion**	
Deposits	Total: US$	$1.5 billion	n/a	n/a	n/a	
	% Non-resident	% of deposits	n/a	n/a	n/a	
International Links	% Foreign-owned:	% of assets not available	% of assets n/a	% of assets not available	% of assets not available	% of assets not available
	#Subsidiaries abroad	n/a	n/a	Not available		

n/a indicates "not applicable"
*The Virgin Islands began regulating financing and money services businesses in February 2010. No licences were approved prior to 30th June 2010.
**Figures for the insurance sector are unaudited as at year end, 2009.

6. In preparing the following report, the Secretariat provided a draft analysis to Virgin Islands (with a list of additional questions) for its review and comments. Requested information and comments have been taken into account in the final draft of the report.

7. It should be noted that all applications to move from regular follow-up to biennial reporting rely on a paper based desk review, which is not as detailed or comprehensive as a mutual evaluation report. The report is limited to Recommendations rated PC or NC and focus on technical compliance of legislation with the FATF standards. Effectiveness of implementation is taken into account primarily through data provided by the country. It is important to note that conclusions in this report are not binding on the results of future assessments since they have not been verified through an on-site process and are not as comprehensive as a mutual evaluation.

II. Main conclusion and recommendations to the Plenary

8. **Core and Key Recommendations:** As noted the Virgin Islands was rated PC in both Recs. 5 and 23. The Virgin Islands has substantively improved compliance with Rec. 5 by implementing measures that effectively address all except one of the deficiencies identified in the MER. The remaining deficiency dealing with implementation is outside the scope of this review. However, the measures implemented are considered adequate to make the level of compliance equivalent to a LC.

9. With regard to Rec. 23, measures have been implemented to address the two identified deficiencies through enactment of legislation and provision of increased staff to the FSC. While implementation figures do raise some concern with regard to whether increased resources are adequate to deal with one of the deficiencies, the measures are sufficient to bring the level of compliance to a LC. The Virgin Islands was previously rated either C or LC on all other core and key Recommendations.

10. **Other Recommendations:** Substantive progress has been made addressing deficiencies in other Recommendations, especially R.8, R.11, R.12, R.15, R.16, R.21, R.22, R.30 R.33and SR..VI.

11. **Conclusion:** Since the Virgin Islands has achieved a satisfactory level of compliance with R.5 and R. 23 and all other core and key Recommendations, it is recommended that the Plenary remove the Virgin Islands from the regular follow-up process to biennial updates with the first such update scheduled for November 2012.

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III. Summary of progress made by Virgin Islands

12. In response to the MER, the Virgin Islands has amended certain of its anti-money laundering/combating the financing of terrorism (AML/CFT) laws, regulations and guidelines incorporating most of the recommended actions from the MER. The latest revisions include:

1) The Anti-money Laundering and Terrorist Financing (Amendment) Code of Practice, 2009 which was enacted in January 2009.

2) The Financing and Money Services Act which was enacted in May 2009

3) The Proceeds of Criminal Conduct (Amendment) Act 2010 which was enacted in February 2010.

4) The Anti-money Laundering (Amendment) Regulations which was signed on April 29, 2010.

5) The Securities and Investment Business Act which was passed on April 12, 2010.

13. In accordance with the Virgin Islands commitment to effective implementation of the AML/CFT regime the Financial Services Commission (FSC) monitors AML/CFT activities that would have an adverse effect on the reputation of the jurisdiction and takes appropriate action where necessary. Periodic on-site inspections are conducted by each of its regulatory divisions and financial institutions continue to be sensitised to AML/CFT matters through the FSC's Meet the Regulator Forums.

14. The other agencies involved in combating ML and TF activities continue to strengthen their law enforcement tools and systems in order to ensure the full and effective implementation of the Anti-money Laundering Terrorist Financing Code of Practice (AMLTFCOP), the Anti-money Laundering Regulations (AMLR) and the related Proceeds of Criminal Conduct Act (PCCA) and other relevant legislation designed to effectively deal with money laundering (ML) and terrorist financing (TF). The Inter-governmental Committee on AML/CFT discusses and exchanges information on AML/CFT vulnerabilities and determines how best member agencies can strengthen cooperation in order to ensure that activities of ML and TF in and through the Territory are minimized.

Core Recommendations

Recommendation 5 – rating PC

R. 5 (Deficiency 1): The requirements for financial institutions to verify that any person purporting to act on behalf of customers that are legal persons or legal arrangements is so authorised, and identify and verify the identity of that person is not legislated.

15. Section 19(3) of the AMLTFCOP was amended to require an entity or professional:

> "to enquire into and identify a person who purports to act on behalf of an applicant for business or a customer, which is a legal person or a partnership, trust or other legal arrangement, is so authorised and to verify the person's identity."

16. As indicated in the Virgin Islands mutual evaluation report, the AMLTFCOP consists of sections detailing legislative requirements and attached explanations providing guidance. The section quoted above is a legislative requirement.

R. 5 (Deficiency 2): The application of simplified or reduced CDD measures to customers resident in another country is not limited to countries that the authorities are satisfied have effectively implemented the FATF Recommendations.

17. Section 19(6) of the AMLTFCOP has been amended to allow entities to apply simplified or reduced CDD measures where:

> "the applicants for business or customers are resident in foreign jurisdictions which the Commission is satisfied are in compliance with and effectively implement the FATF Recommendations pursuant to the provisions of section 52;
>
> in the case of a body corporate that is part of a group, the body corporate is subject to and properly and adequately supervised for compliance with anti-money laundering and terrorist financing requirements that are consistent with the FATF Recommendations"

18. Section 52(2) of the AMLTFCOP provides the legal framework for the listing of recognised jurisdictions as laid out in Schedule 2 of the AMLTFCOP. This relates to jurisdictions

> "(a) which apply the FATF Recommendations and which the Commission considers, for the purposes of subsection (1), apply or sufficiently apply those Recommendations; and
>
> (b) whose anti-money laundering and terrorist financing laws are equivalent with the provisions of the Anti-money Laundering Regulations, 2008 and this Code."

19. The amendment is dealt with under the Anti-money Laundering and Terrorist Financing (Amendment) Code of Practice, 2009 which was enacted in January, 2009.

20. The authorities advise that Schedule 2 is, as a matter of policy, reviewed from time to time to establish whether the jurisdictions listed in the Schedule continue to comply with their AML/CFT obligations, utilising a set of criteria, including the FATF/FSRB or World Bank/IMF continued reviews and/or assessments and any follow up reports generated therefrom. The review also entails an in depth consideration of the AML/CFT regimes of non-listed jurisdictions to establish whether they substantially comply with the FATF Recommendations to warrant their inclusion in the list of recognised jurisdictions.

21. This Schedule was reviewed by the Joint Anti-money Laundering and Terrorist Financing Advisory Committee (JALTFAC) in July, 2009, taking into account compliance with the FATF core and key Recommendations and the International Cooperation Review Group's process of listing jurisdictions that fall below the established standards regarding the said core and key Recommendations, which resulted in the addition of five new jurisdictions to the Schedule, with two of those being identified for biannual reviews by JALTFAC. Accordingly, the AMLTFCOP was amended in August, 2009 specifically in relation to Schedule 2 thereof.

22. The Schedule was further reviewed by JALTFAC in June, 2010, and two additional jurisdictions were placed on the Schedule. Accordingly, the AMLTFCOP was amended in July, 2010.

R. 5 (Deficiency 3): The requirement for entities and professionals to adopt relevant risk management processes and procedures for permitting a business relationship before effecting the necessary verification is not enforceable.

23. Section 23(2) of the AMLTFCOP has been amended to allow an entity or professional to complete verification after the establishment of a business relationship on the condition that:

> "(b) prior to the establishment of the business relationship, the entity or professional adopts appropriate risk management processes and procedures, having regard to the context and circumstances in which the business relationship is being developed; and
>
> (c) following the establishment of the business relationship, the money laundering or terrorist financing risks that may be associated with the business relationship are properly and effectively monitored and managed."

R. 5 (Deficiency 4):Due to recent enactment of the AMLTFCOP effective implementation of AML/CFT measures cannot be assessed

24. As mentioned before, the focus of this report is on technical compliance of legislation with the FATF standards. Assessment of effective implementation of AML/CFT measures in relation to Rec. 5 in the AMLTFCOP is difficult in a paper-based off-site review. Since the AMLTFCOP has been in force since February 2008, recent enactment can no longer be the basis for assuming lack of effective implementation. However, assessment of implementation is not possible without reviewing indicators of effectiveness or an on-site evaluation. Consequently this deficiency has not been assessed.

Conclusion

25. The Virgin Islands has substantively addressed three of the four deficiencies identified under Rec. 5. The three deficiencies related to technical compliance of the legislative framework and have been dealt with by amendments to the AMLTFCOP. Assessment of the effectiveness of the AMLTFCOP in relation to the requirements of Rec. 5 are beyond the scope of this review. Since three of the deficiencies have been addressed, the level of compliance is considered equivalent to a LC.

Key Recommendations

Recommendation 23 – rating PC

R. 23 (Deficiency 1): Money value transfer service operators are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements.

26. At the time of the mutual evaluation the Financing and Money Services Act (FMSA) was still to be enacted. Passage of the FMSA brought money value transfer service operators under the licensing and supervisory authority of the FSC. The FMSA came into force in May 2009 and money value service operators are subject to the same supervisory regime as other licensees of the FSC. As outlined in the MER, this would include off-site surveillance and on-site prudential visits and inspections. Pursuant to regulation 2(1) of the AMLR and section 2(1) of the AMLTFCOP all MVT services operators are also required to comply with the provisions of the AMLTFCOP and the AMLR.

R. 23 (Deficiency 2): Effective supervision by FSC is limited by quantitatively inadequate human resources.

27. The FSC monitors its staff complement on an ongoing basis to ensure maximum use of resources. Since 2004 there has been a 23% increase in staff. Twenty-two additional persons have been added to the staff since the evaluation in 2008. Of these 22 persons, 14 were added to the following regulatory divisions to improve the FSC's supervisory coverage.
    - Banking and Fiduciary Services
    - Investment Business
    - Insurance
28. The additional persons would increase the total staff complement of the above divisions by 63% from 22 at the time of the mutual evaluation to 36. The enhancement of the FSC's staff complement has allowed for an increase in on-site inspections of its licensees. The numbers of inspections have increased from 17 in 2007 to 53 in 2008 and 35 in 2009.

Conclusion

29. While there have been measures to address the two deficiencies, there is concern as to whether the actions taken with regard to increasing the human resources of the FSC are adequate. While staff has increased and the number of inspections tripled in 2008, there was a one-third decrease in the number of inspections in 2009. This together with the addition of the money value transfer service operators to the supervisory regime in 2009 would suggest the need for additional staff. However, the measures appear sufficient to raise the level of compliance to a LC

Other Recommendations

Recommendation 8 – rating PC

R. 8 (Deficiency 1): No specific requirement for financial institutions to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing.

30. The AMLTFCOP has been amended by including a new section 11A which states that:

> "11A. An entity or a professional shall adopt and maintain such policies, procedures and other measures considered appropriate to prevent the misuse of technological developments for purposes of money laundering or terrorist financing."

R. 8 (Deficiency 2): No requirement for financial institutions to have policies and procedures to address specific risks associated with non-face to face business relationships or transactions.

31. Section 13 of the AMLTFCOP has been amended to require financial institutions to:

> "(j) adopt and maintain policies and procedures to deal with any specific risks that may be associated with non-face to face business relationships or transactions, including when establishing or conducting ongoing due diligence with respect to such relationships or transactions."

32. The above amendments successfully address the deficiencies and improve the level of compliance to a LC.

Recommendation 9 – rating PC

R. 9 (Deficiency 1): No requirement for a financial institution to immediately obtain from all third parties necessary information concerning certain elements of the CDD process itemised in criteria 5.3 to 5.6

33. The authorities advise that the AMLTFCOP makes it a requirement for all financial institutions relying on third party introducers to satisfy themselves that the relevant CDD process has been engaged and all relevant information is maintained and can be provided immediately upon request. It is the authorities' belief that the intent of this aspect of Recommendation 9 is to ensure the availability of CDD information whenever it is required and not that it should be obtained upfront in each case of introduced business. This argument completely ignores the wording of the criterion of Recommendation 9 which is directly reflected in the above deficiency. As such, the response does not address the deficiency which remains outstanding and therefore leaves the level of compliance at a PC.

Recommendation 11 – rating PC

R. 11 (Deficiency1): Financial institutions are not required to examine as far as possible the background and purpose of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and to set forth their findings in writing.

34. Section 13 of the AMLTFCOP has been amended to require that an entity or professional exercise constant vigilance in its dealings with an applicant for business or a customer and requires the entity or professional to:

> "(h) identify and pay special attention to, and examine, as far as possible, the background and purpose of, any complex or unusual large or unusual pattern of transaction or transaction that does not demonstrate any apparent or visible economic or lawful purpose or which is unusual having regard to the pattern of business or known sources of an applicant for business or a customer;"

R. 11 (Deficiency2): Financial institutions are not required to keep such findings available for competent authorities and auditors for at least five years.

35. Section 13 of the AMLTFCOP has also been amended to require an entity or professional to:

> "(i) record its or his findings in relation to any examination carried out pursuant to paragraph (h) and make such findings available to the Agency, Commission or other lawful authority, including the auditors of the entity or professional, for a period of at least five years;

36. The above measures fully address identified deficiencies and enhance compliance to the level of a LC.

Recommendation 12 – rating PC

R. 12 (Deficiency1): Deficiencies identified in Recs. 5, 6, 8 – 11, are also applicable to DNFBPs

37. The deficiencies identified in Recs. 5, 8, 9, and 11 are dealt with in the respective sections of this report. With regard to Rec. 6, the rating is LC and the identified deficiency is the inability to assess effective implementation of the AMLTFCOP due to its recent enactment at the time of the mutual evaluation. The authorities advised that effective implementation of the requirements established to address issues surrounding politically exposed persons (PEPs) continues to be recognised during the FSC's onsite inspection programme. All financial institutions are assessed with respect to their internal control manuals as they relate to establishing business relationships, transactions and

other dealings with PEPs, including compliance with international sanctions, embargoes and other restrictions that affect or relate to PEPs.

38. In relation to Rec. 10 the rating is LC and the identified deficiencies are as follows:

    a. Record retention of identification data is limited to five years after the last transaction of an account rather than the termination of the account.

    b. No requirement for account files and business correspondence to be maintained for at least five years following the termination of an account or business relationship.

39. In response to the recommended action dealing with the first deficiency above, the Anti-money Laundering (Amendment) Regulations, 2010 removed paragraph 10 (1) (c) which allowed the maintaining of records for a period of five years from the time "when the last transaction was carried out". The determining period under the amendment now relates only to the time when the established business relationship was formally ended, which addresses the deficiency. The Anti-money Laundering (Amendment) Regulations, 2010 were approved by Cabinet on 29th April, 2010.

40. In addressing the second deficiency, section 45 of the AMLTFCOP has been amended to allow for the retention of account files and business correspondence for at least five years following the termination of a business relationship.

R. 12 (Deficiency 2):Due to recent enactment of the AMLTFCOP effective implementation of AML/CFT measures cannot be assessed

41. Remarks as noted under Rec.5 in relation to this same deficiency are also applicable here. Consequently this deficiency has also not been assessed.

Conclusion

42. With regard to the first deficiency Recs. 6 and 10 were already rated LC and the measures taken to address the deficiencies in Recs. 5, 8 and 11 have resulted in an enhanced level of compliance of LC. As noted, assessment of the other deficiency is outside the scope of this review. However given the overall improvement in the first deficiency the level of compliance for Rec. 12 is considered equivalent to a LC.

Recommendation 15 – rating PC

R. 15 (Deficiency 1): Financial institutions are not required to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls.

43. Section 11 of the AMLTFCOP has been amended by including a new sub-section (3A) which requires that:

"(3A) Every entity and professional shall establish and maintain an independent audit function that is adequately resourced to test compliance, including sample testing, with its or his written system of internal controls and the other provisions of the Anti-money Laundering Regulations, 2008 and this Code."

R. 15 (Deficiency 2):Due to recent enactment of the AMLTFCOP effective implementation of AML/CFT measures cannot be assessed

44. Remarks as noted under Rec.5 in relation to this same deficiency are also applicable here. Consequently this deficiency has also not been assessed.

Conclusion

45. The first deficiency has been remedied by an appropriate amendment to the AMLTFCOP. The only deficiency left cannot be assessed by a desk-based review. However, the above measures are considered adequate to enhance compliance to the level of a LC.

Recommendation 16 – rating PC

R. 16 (Deficiency 1):Due to recent enactment of the AMLTFCOP effective implementation of AML/CFT measures cannot be assessed

46. Remarks as noted under Rec.5 in relation to this same deficiency are also applicable here. Consequently this deficiency has also not been assessed.

R. 16 (Deficiency 2): Deficiencies identified in Recs. 13 to 15 and 21 are also applicable to DNFBPs

47. The deficiencies identified in Recs. 15 and 21 are dealt with in the respective sections of this report. With regard to Rec. 13, the rating is LC and the identified deficiency is that insider trading and market manipulation are not predicate offences for money laundering. Insider trading and market manipulation have been respectively criminalized in sections 88 and 91 of the Securities and Investment Business Act (SIBA) as indictable offences thereby making them predicate offences for money laundering. The SIBA was brought into force in May 2010.
48. The rating for Rec. 14 is LC and the identified deficiency is that the tipping off offence with regard to suspicious transaction reports (STRs) to the Financial Investigation Agency (FIA) is limited to after a STR has been made to the FIA. The Proceeds of Criminal Conduct Act, 1997 (PCCA) has been amended to extend the offence of tipping off to include disclosure of the fact that a STR or related information is being reported or provided to the FIA. Section 31(2) (a) of the Act now reads:

"(2) A person commits an offence if

(a) he knows or suspects that a disclosure ("the disclosure") is being or has been made to the Reporting Authority under section 28 or 29;"

Conclusion

49. With regard to the second deficiency Recs. 13 and 14 were already rated LC and the measures taken to address the deficiencies in Recs. 15 and 21 resulted in an enhanced level of compliance of LC. As noted, assessment of the first deficiency is outside the scope of this review. However given the overall improvement in the second deficiency the level of compliance for Rec. 16 is considered equivalent to a LC.

Recommendation 17 – rating PC

R. 17 (Deficiency 1): Sanctions imposed in the AMLR and the AMLTFCOP are not dissuasive.

50. The examiners' recommended action required a review of sanctions imposed in the AMLR and the AMLTFCOP with a view to making them dissuasive. The authorities advised that the PCCA has been amended to increase the penalties for:

- contravening provisions of the AMLTFCOP; (section 27 – amended penalty, fine of $25,000 or term of imprisonment not exceeding two years or both. FSC can impose administrative fines up to $20,000 for breaches of AMLTFCOP)
- assisting another to retain the benefit of criminal conduct; (section 28 – amended penalty, on summary conviction – imprisonment not to exceed 6 months or a fine not to exceed $25,000 or both, on conviction on indictment - imprisonment not to exceed 14 years or a fine not to exceed $40,000 or both.)
- the acquisition, possession or use of proceeds of criminal conduct; (section 29 – amended penalty, same as section 28.)
- concealing or transferring proceeds of criminal conduct; (section 30 – amended penalty, same as section 28.)
- failing to report suspicious transactions;(section 30A – amended penalty, on summary conviction – imprisonment not to exceed three years or a fine not to exceed $25,000 or both, on conviction on indictment – imprisonment not to exceed 5 years or a fine not to exceed $40,000, or both.)
- tipping-off; (section 31 – amended penalty, on summary conviction – imprisonment not to exceed 6 months or a fine not to exceed $25,000, or both, on conviction on indictment – imprisonment not to exceed 5 years or fine not to exceed $40,000, or both) and
- making a disclosure that would likely prejudice an investigation upon knowing that or suspecting that the investigation is taking place once an order has been made or applied for (section 36 – amended penalty – on summary conviction – imprisonment not to exceed 6 months or a fine not to exceed $20,000).

51. The administrative penalties outlined in Schedule 4 of the AMLTFCOP are expected to be increased with the coming into force of the amendments to the PCCA (the parent legislation). As noted above, administrative fines cannot exceed $20,000. The amendments are dealt with under the Proceeds of Criminal Conduct (Amendment) Act, 2010 which was enacted in February 2010.

52. A review of the penalties imposed by the amended POCA reveal a range of fines from a high of $40,000 to a low of $20,000. While these penalties are substantially greater than what obtained before, they are still not considered dissuasive when compared with jurisdictions of similar development. Additionally, the AMLR has not been amended and the penalties as outlined in regulation 17 are on summary conviction, a fine not exceeding $5,000 and on conviction on indictment, a fine not exceeding $15,000. Given the above, the rating remains at PC.

Recommendation 21 – rating PC

R. 21 (Deficiency 1): No effective measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries

53. Section 52 of the AMLTFCOP has been repealed and replaced with a new Section 52 which instructs all entities and professionals to pay special attention to business relationships and transactions relating to persons from jurisdictions which do not sufficiently apply the FATF Recommendations and allows for the production of a list of recognized jurisdictions. The new section 52 reads as follows:

"52. (1) Every entity and professional shall pay special attention to a business relationship and transaction that relates to a person from a jurisdiction which the Commission considers does not apply or insufficiently applies the FATF Recommendations with respect to money laundering and terrorist financing.

(2) The jurisdictions listed in Schedule 2 are, for the purposes of this Code and the Anti-money Laundering Regulations, 2008, recognized as jurisdictions

(a) which apply the FATF Recommendations and which the Commission considers, for the purposes of subsection (1), apply or sufficiently apply those Recommendations; and

(b) whose anti-money laundering and terrorist financing laws are equivalent with the provisions of the Anti-money Laundering Regulations, 2008 and this Code.

(3) Where the Commission is satisfied that a jurisdiction listed in Schedule 2 no longer satisfies or insufficiently satisfies the FATF Recommendations, it may amend the Schedule to remove that jurisdiction from the Schedule and from the date of the removal of the jurisdiction from the Schedule, that jurisdiction shall cease to be recognized as having anti-money laundering and terrorist financing laws equivalent to the Anti-money Laundering Regulations, 2008 and this Code.

(4) Where an entity or a professional relies on this section for not effecting any obligation under the Anti-money Laundering Regulations, 2008 and this Code with respect to any business relationship relating to or arising from a recognized jurisdiction to the extent permitted by this Code, it shall, with effect from the date of removal of the jurisdiction from Schedule 2, perform the obligations imposed by the Anti-money Laundering Regulations, 2008 and this Code in relation to business relationships connected to that jurisdiction.

(5) The Commission may from time to time

(a) issue advisory warnings to entities and professionals pursuant to the Financial Services Commission Act, 2001 or this Code, advising entities and professionals of weaknesses in the anti-money laundering and terrorist financing systems of other jurisdictions;
(b) amend Schedule 2, and every amendment of the Schedule shall be published in the Gazette.

54. The result of the above measures is that financial institutions are required to regard countries that are not listed as a recognized jurisdiction as having weaknesses in their AML/CFT systems, thereby dealing with the identified deficiency.

R. 21 (Deficiency 2): No requirement for the examination of transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply FATF Recommendations and making available the findings of such examinations to assist competent authorities and auditors.

55. Section 13(2) of the AMLTFCOP has been amended to require entities or professionals to exercise constant vigilance in their dealings with applicants for business or customers, and to:

"(h) identify and pay special attention to, and examine, as far as possible, the background and purpose of, any complex or unusual large or unusual pattern of transaction or transaction that does not demonstrate any apparent or visible economic or lawful purpose or which is unusual having regard to the pattern of business or known sources of an applicant for business or a customer;

(i) record its or his findings in relation to any examination carried out pursuant to paragraph (h) and make such findings available to the Agency, Commission or other lawful authority, including the auditors of the entity or professional, for a period of at least five years;"

56. The above measures by requiring the examination of all transactions with no apparent economic or visible lawful purpose and the recording of the findings which must be available to assist competent authorities and auditors would include transactions with no apparent economic or visible lawful purpose from countries which do not or

insufficiently apply FATF Recommendations. The above provisions for both deficiencies would enhance the overall level of compliance to a LC.

Recommendation 22 – rating PC

R. 22 (Deficiency 1): No requirement for financial institutions to pay particular attention that consistent AML/CFT measures are observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations.

57. Section 53 of the AMLTFCOP has been amended by inserting subsection 1(A) to require that financial institutions pay particular attention that consistent AML/CFT measures are observed with respect to their branches and subsidiaries in countries which do not sufficiently apply the FATF Recommendations. The subsection reads as follows:

> "(1A) An entity shall, in particular, ensure that the requirement of subsection (1) is observed by its branches, subsidiaries or representative offices that operate in foreign jurisdictions which do not or which insufficiently apply anti-money laundering and terrorist financing standards equivalent to those of the Anti-money Laundering Regulations, 2008 and this Code."

58. The requirement of subsection (1) referred to above, is that branches, subsidiaries or representative offices operating in foreign jurisdictions observe standards that are at least equivalent to the AMLR 2008 and the AMLTFCOP.

R. 22 (Deficiency 2): No requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures.

59. Section 53 of the AMLTFCOP has been further amended by inserting subsections (3A) and (3B) to require that financial institutions inform their home country supervisor that a foreign branch is unable to observe appropriate AML/CFT measures because of prohibition by local laws, regulations and other measures: The subsections read as follows:

> "(3A) An entity that has branches, subsidiaries or representative offices operating in foreign jurisdictions shall notify the Agency and the Commission in writing if any of the entity's branches, subsidiaries or representative offices is unable to observe appropriate anti-money laundering and terrorist financing measures on account of the fact that such observance is prohibited by the laws, policies or other measures of the foreign jurisdiction in which it operates.
>
> (3B) Where a notification is provided pursuant to subsection (3A),

(a) the entity concerned may consider the desirability of continuing the operation of the branch, subsidiary or representative office in the foreign jurisdiction and act accordingly; and

(b) the Agency and the Commission shall liaise and consider what steps, if any, need to be adopted to properly and efficiently deal with the notification, including the need or otherwise of providing necessary advice to the entity concerned."

60. The above measures for both deficiencies would enhance the level of compliance of this Recommendation to a LC.

Recommendation 24 – rating PC

R. 24 (Deficiency 1): While DNFBPs like real estate agents, lawyers, other independent legal advisers, accountants, dealers in precious metals and stones were covered by the AML/CFT regime, there were no effective systems for monitoring and ensuring compliance with AML/CFT requirements.

61. The JALTFAC has been tasked with the responsibility of reviewing the AML/CFT supervisory regime in place and recommend a way forward as to how best real estate agents, lawyers, accountants and dealers in precious metals and stones may be dealt with in relation to their supervision for AML/CFT compliance. The independent professionals currently fall under the purview of the FIA by virtue of section 9 (2) of the AMLTFCOP, but the current plan seeks to explore the effectiveness of the current arrangement in order to ensure full monitoring and supervision of these independent advisers. JALTFAC has recently made contact with all relevant DNFBPs in an effort to determine the best way in which these entities should be supervised. This process is ongoing. As such, this deficiency is still to be fully addressed.

R. 24 (Deficiency 2): Deficiencies identified regarding sanctions and sufficient resources for the FSC are also applicable to the supervision of trust and company service providers.

62. Deficiencies regarding sanctions and sufficient resources are dealt with under Recs. 17 and 23. As noted in the section dealing with Rec. 17 the penalties that have been amended are still not considered dissuasive.

63. As previously mentioned under Rec. 23, 19 additional persons have been added to the FSC staff since the evaluation in 2008; 11 in the regulatory divisions to improve the FSC's supervisory coverage. The enhancement of the FSC's staff complement has allowed for an increase in on-site inspections of its licensees. Given the above, only one of the deficiencies have been partially dealt with and the level of compliance for this recommendation remains a PC.

Recommendation 30 – rating PC

R. 30 (Deficiency 1): The Anti-Drug and Violent Crimes Task Force (ADVCTF) is inadequately staffed and trained in AML/CFT.

64. It is part of the Government's current plan to ensure that officers of the ADVCTF are sensitised to AML/CFT investigative techniques. Of the eighteen officers currently assigned to the Task Force seven have been trained in AML/CFT. Additional training has been identified which members of staff are scheduled to participate in within the next six months. There is also some in-house training slated to take place shortly. Indeed, it is part of the plan to provide training to members of the Inter-governmental Committee on AML/CFT and their staff regarding AML/CFT obligations and investigative techniques. While the above response deals with the issue of training, there is no reference to the level of staffing in the ADVCTF.

R. 30 (Deficiency 2): Quantitatively inadequate human resources at the FSC.

65. As previously mentioned under Recommendation 23, the FSC monitors its staff complement on an ongoing basis to ensure maximum use of resources. Since the evaluation in 2008, 22 additional persons have been added to the staff. Of these 22 persons, 14 were added to the regulatory divisions to improve the FSC's supervisory coverage. The enhancement of the FSC's staff complement has allowed for an increase in on-site inspections of all of its licensees and has strengthened its AML/CFT supervision of these entities. The above measures do not address the issue of training in the first deficiency, however there are considered adequate to raise the level of compliance to a LC.

Recommendation 33 – rating PC

R. 33 (Deficiency 1): Unable to assess whether information on beneficial ownership is being adequately and accurately maintained due to the low number of FSC inspections.

66. The FSC's on-site inspection programme is a risk-based programme which ranks entities based on their risk profile. Entities with a higher risk rating are subject to more frequent inspections than those with a lower rating. During such inspections all necessary action is taken to ensure that these entities are maintaining adequate and current beneficial ownership information. Such action includes a process of sampling files to establish whether registered agents are indeed maintaining adequate and current information on beneficial ownership. The enhancement of the FSC's staff complement has allowed for an increase in the number of on-site inspections. In 2008, the FSC conducted 53 on-site inspections and there were 35 inspections conducted in 2009. The table below demonstrates the FSC's improved monitoring of registered agents through its onsite inspection programme in accordance with the examiners' recommendation.

Table 4; Number of on-site inspections of registered agents carried out by the FSC

Year	Number of onsite inspections	Percentage of providers inspected	Percentage of market-share inspected (in terms of number of companies/trusts covered or otherwise)
2009	19	16.0	41.9
2008	22	18.0	24.9
2007	14	12.0	17.5
2006	10	9.0	4.6

67. While the number of onsite inspections has only doubled at most from 10 in 2006, the percentage of market share inspected in terms of number of companies/trusts covered increased approximately tenfold from 4.6 % to 41.9 %. Since inspections seek to ensure the maintenance of adequate and current beneficial ownership information, the increased coverage should improve effective implementation of this requirement.

R. 33 (Deficiency 2): IBCs incorporated before 2005 are not required to place bearer shares with authorised or recognised custodians until December 2009.

68. Since December 2009 all IBCs are required to place bearer shares with authorized or recognized custodians. The improved inspection coverage of registered agents and the extension of the requirement for the placement of bearer shares with authorized or recognized custodians enhances the level of compliance of this Recommendation to a LC.

Special Recommendation VI – rating PC

SR. VI (Deficiency 1): No requirement for a competent authority to register and/or licence natural and legal persons that perform money or value transfer services and maintain a current list of the names and addresses of licenced and/or registered MVT service operators.

69. The FMSA was enacted on 26th May 2009. Section 7 of the FMSA requires persons carrying on money service businesses in or from the Virgin Islands to be licensed. Under section 9, the FSC is the authority responsible for assessing and granting licences to operate money services businesses in the Virgin Islands. With respect to the maintenance of a current list of names and addresses of licensed and/or registered MVT service operators, the FSC under section 42 of the FMSA is required to maintain a

register of licensees and such other registers as may be specified in the regulations pertaining to the FMSA. No regulations pertaining to the FMSA have been enacted.

SR. VI (Deficiency 2): No system in place for monitoring MVT service operators and ensuring that they comply with the FATF Recommendations

70. At the time of the mutual evaluation the FMSA was still to be enacted. Passage of the FMSA brought money value transfer service operators under the licensing and supervisory authority of the FSC. The FMSA came into force in May 2009 and money value service operators are subject to the same supervisory regime as other licensees of the FSC. As outlined in the MER, this would include off-site surveillance and on-site prudential visits and inspections. Pursuant to regulation 2(1) of the AMLR and section 2(1) of the AMLTFCOP all MVT services operators are also required to comply with the provisions of the AMLTFCOP and the AMLR.

SR. VI (Deficiency 3): No requirement for MVT service operators to maintain a current list of agents which must be made available to the designated competent authority.

71. There is no legal requirement for money value service operators to maintain a current list of agents which must be available to the FSC.

SR. VI (Deficiency 4): Deficiencies noted in relation to Recommendations 5-11, 15, 17 and 21-23 also apply to the MVT sector

72. The deficiencies identified with Recs. 5, 8, 9, 11, 15, 17, 21 – 23 are dealt with in the respective sections of this report. Deficiencies under Recs. 6 and 10 which are also applicable to DNFBPs are dealt with under Rec. 12. The above measures substantively address the issues of three deficiencies: the remaining deficiency requires legislative amendment to implement. Consequently, the level of compliance is considered equivalent to a LC.

Special Recommendation VIII – rating PC

SR. VIII (Deficiency 1): No evidence of review of the adequacy of laws and regulations that related to NPOs or of periodic reassessments of the sector's potential vulnerabilities to terrorist activities.

73. In response to the above deficiency, the authorities have amended the AMLTFCOP by inserting a new section 4A to comprehensively deal with charities and other non-profit making institutions, associations or organizations in the application of the AMLTFCOP. The new section provides the following;

> 4A.(1) The provisions of this Code relating to the establishment of internal control systems, effecting customer due diligence measures, maintaining record keeping requirements and providing employee training shall apply to every charity or other association not for profit which

(a) is established and carries on its business in or from within the Virgin Islands;

(b) is established outside the Virgin Islands and registered to carry on its business wholly or partly in or from within the Virgin Islands; or

(c) is established as provided in paragraph (a) and receives or makes payments, other than salaries, wages, pensions and gratuities, in excess of ten thousand dollars in a year.

(2) A charity or other association not for profit shall

(a) comply with the provisions outlined in subsection (1) in relation to every donor to the charity or other association not for profit of monies or equivalent assets in excess of ten thousand dollars;

(b) maintain relevant documentation with respect to its administrative, managerial and policy control measures in relation to its operations;

(c) ensure that any funds that are planned and advertised by or on behalf of the charity or other association not for profit are verified as having been planned and spent in the manner indicated; and

(d) adopt such measure as are considered appropriate to ensure that any funds or other assets that are received, maintained or transferred by or through the charity or other association not for profit are not for, or diverted to support,

(i) the activities of any terrorist, terrorist organization or other organized criminal group; or

(ii) any money laundering activity.

(3) For the purposes of subsection (2), where a series of donations from a single donor appear to be linked and cumulatively the donations are in excess of ten thousand dollars in any particular year, the requirements outlined in subsection (1) shall apply.

(4) Subsection (1) (c) does not apply where payment is made for goods or services the total of which do not in any particular year exceed twenty-five thousand dollars or its equivalent in any currency.

(5) Where a person who makes a donation (whether in cash or otherwise in excess of the amount or its equivalent stipulated in this section) does not wish to have his name publicly revealed, the charity or other association not for profit that receives the donation shall nevertheless carry out the requisite customer due diligence and record keeping measures under this Code, including

(a) establishing the nature and purpose of the donation;

(b) identifying whether or not there are any conditions attached to the donation and, if so, what those conditions are;

(c) identifying the true source of the donation and whether or not the donation is commensurate with the donor's known sources of funds or wealth;

(d) establishing whether or not the funds or other properties that are the subject of the donation are located in a high risk country; and

(e) establishing that the donor is not placed on any United Nations, European Union or other similar institution's list of persons who are linked to terrorist financing or against whom a ban, sanction or embargo subsists.

(6) Where a charity or other association not for profit suspects that a donation may be linked to money laundering or terrorist financing, it shall

(a) not accept the donation; and

(b) report its suspicion to the Agency.

(7) For the purposes of the application of the Parts of this Code outlined in subsection (1) to a charity or other association not for profit, the relevant provisions shall be applied with such modifications as are necessary to ensure compliance with the requirements of the provisions.

(8) Schedule 1 provides best practices for charities and other associations not for profit and every charity and other association not for profit shall govern its activities utilizing those best practices, in addition to complying with the other requirements of this Code.

74. It is assumed that the measures above would be initiated by a review of the adequacy of the laws and regulations related to NPO's in place at the time.

SR. VIII (Deficiency 2): No supervisory programme in place to identify AML/CFT non-compliance and violations by NPOs.

SR. VIII (Deficiency 3): No outreach to NPOs to protect the sector from terrorist financing abuse.

75. With regard to the above deficiencies the FSC has written to the Government recommending the enactment of a separate licensing and supervisory regime for NPOs and is awaiting action on this matter. It is the plan that the new regime would establish a body that would undertake the relevant outreach programme to NPOs, but in the meantime this responsibility is reposed in the FIA pursuant to section 9 (2) of the AMLTFCOP. Given the above, the last two deficiencies remain outstanding until the

regime for the NPOs has been effectively implemented. Consequently the rating remains at PC.

Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Virgin Islands

Forty Recommendations	Rating	Summary of factors underlying rating	Recommended Actions	Action Taken
Legal systems				
1 ML offence	**LC**	Market manipulation and insider trading is not criminalised Some scheduled chemicals are not banned in accordance with the Vienna Convention The low number of ML convictions show limited implementation of the legal framework	• Enact legislation criminalizing market manipulation and insider trading and banning Vienna Convention scheduled chemicals not already prohibited.	• Part V of the Securities and Investment Business Act, 2009 (SIBA) addresses market abuse and makes insider trading and market manipulation criminal offenses as outlined in Sections 88 and 91 respectively. The penalties for such acts are also outlined in these sections of the Act, and the criminalisation of such makes them predicate offenses for money laundering. SIBA was passed by the House of Assembly on 12th April and brought into force on 17th May 2010. • The Criminal Justice (International Cooperation) (Amendment of Schedule 2) Order, 2009 which amends Schedule 2 of the Criminal Justice (International Cooperation) Act, 1993 was laid on the Table of the House of Assembly in accordance with the Act and was approved by Cabinet on 26th April 2010. The Order amends Tables I and II by including the following substances in its list of banned substances: Isosafrole 3,4-Methylenedioxythenyl-2-Proranone N-Acetylanthranilic Acid Norephedrine Piperonal Safrole Hydrochloric Acid Methyl Ethyl Ketone Potassium Permanganate Sulphuric Acid Toluene

2 ML offence – mental element and corporate liability	**LC**	The low number of ML convictions show limited implementation of the legal framework	• No specific action recommended in the MER.	• The Territory continues to participate in the sharing of information with respect to requests made by other jurisdictions which has resulted in convictions in other jurisdictions. It continues to be vigilant in the fight against ML/TF by investigating all SARs received that might have criminal elements and by requesting assistance from other jurisdictions where necessary. The Territory's principal objective in the effective combating of ML/TF is to build appropriate mechanisms and provide necessary resources to deter criminals from using the jurisdiction to promote or foster their activities. The Territory remains fully committed to properly and effectively investigating ML/TF offences with the view to apprehending and bringing to justice offenders. • Further, the Territory has fully implemented S/RES/1373(2001) and S/RES/1267(1999) through the passage of the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 and the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002.
Preventive measures				
5 Customer due diligence	**PC**	The requirements for financial institutions to verify that any person purporting to act on behalf of customers that are legal persons or legal arrangements is so authorised, and identify and verify the identity of that person is not legislated. The application of simplified or reduced CDD measures to customers resident in another country is not limited to countries that the authorities are satisfied have effectively implemented the FATF Recommendations.	• The requirement for financial institutions to verify that any person purporting to act on behalf of customers that are legal persons or legal arrangements is so authorised, and identify and verify the identity of that person should be legislated. • The authorities should issued a list of jurisdictions that they recognise as having in place measures implementing FATF Recommendations to allow financial institutions to apply simplified or reduced CDD measures to customers resident in those countries. • The requirement for entities and professionals to adopt relevant risk management processes and procedures for permitting a business relationship	• Section 19(3) of the Anti-money Laundering and Terrorist Financing Code of Practice, (AMLTFCOP) has been amended to require an entity or professional: "to enquire into and identify a person who purports to act on behalf of an applicant for business or a customer, which is a legal person or a partnership, trust or other legal arrangement, is so authorised and to verify the person's identity." The amendment is dealt with under the Anti-money Laundering and Terrorist Financing (Amendment) Code of Practice, 2009 which was enacted in January, 2009. • Section 19(6) of the AMLTFCOP has been amended to allow entities to apply simplified or reduced CDD

		The requirement for entities and professionals to adopt relevant risk management processes and procedures for permitting a business relationship before effecting the necessary verification is not enforceable. Due to the recent enactment of the AMLTFCOP effective implementation of AML/CFT measures cannot be assessed.	before effecting the necessary verification should be enforceable.	measures where: "the applicants for business or customers are resident in foreign jurisdictions which the Commission is satisfied are in compliance with and effectively implement the FATF Recommendations pursuant to the provisions of section 52; in the case of a body corporate that is part of a group, the body corporate is subject to and properly and adequately supervised for compliance with anti-money laundering and terrorist financing requirements that are consistent with the FATF Recommendations" Section 52(2) of the AMLTFCOP provides the legal framework for the listing of recognised jurisdictions as laid out in Schedule 2 of the AMLTFCOP. This relates to jurisdictions "(a) which apply the FATF Recommendations and which the Commission considers, for the purposes of subsection (1), apply or sufficiently apply those Recommendations; and (b) whose anti-money laundering and terrorist financing laws are equivalent with the provisions of the Anti-money Laundering Regulations, 2008 and this Code." The amendment is dealt with under the Anti-money Laundering and Terrorist Financing (Amendment) Code of Practice, 2009 which was enacted in January, 2009. Schedule 2 is, as a matter of policy, reviewed from time to time to establish whether the jurisdictions listed in the Schedule continue to comply with their AML/CFT obligations, utilising a set of criteria (see Explanation No. vi to section 52 of the Code), including the FATF/FSRB or World Bank/IMF continued reviews and/or assessments and any follow up reports generated therefrom. The review also entails an in depth consideration of the

				AML/CFT regimes of non-listed jurisdictions to establish whether they substantially comply with the FATF Recommendations to warrant their inclusion in the list of recognised jurisdictions. This Schedule was indeed reviewed by the Joint Anti-money Laundering and Terrorist Financing Advisory Committee (JALTFAC) in July, 2009, taking into account compliance with the FATF core and key Recommendations and the International Cooperation Review Group's process of listing jurisdictions that fall below the established standards regarding the said core and key Recommendations, which resulted in the addition of five new jurisdictions to the Schedule, with two of those being identified for biannual reviews by JALTFAC. Accordingly, the AMLTFCOP was amended in August, 2009 specifically in relation to Schedule 2 thereof. This Schedule was further reviewed by the Joint Anti-money Laundering and Terrorist Financing Advisory Committee (JALTFAC) in June, 2010, and two additional jurisdictions were placed on the Schedule. Accordingly, the AMLTFCOP was amended in July, 2010. • Section 23(2) of the AMLTFCOP has been amended to allow an entity or professional to complete verification after the establishment of a business relationship on the condition that: "(b) prior to the establishment of the business relationship, the entity or professional adopts appropriate risk management processes and procedures, having regard to the context and circumstances in which the business relationship is being developed; and (c) following the establishment of the business relationship, the money laundering or terrorist financing risks that may be associated with the business relationship are properly and effectively monitored and

				managed." The amendment is dealt with under the Anti-money Laundering and Terrorist Financing (Amendment) Code of Practice, 2009 which was enacted in January, 2009.
6 Politically exposed persons	**LC**	Due to the recent enactment of the AMLTFCOP effective implementation of AML/CFT measures with respect to PEPs cannot be assessed	• No specific action recommended in the MER.	• Effective implementation of the requirements established to address issues surrounding PEPs continues to be recognised during the FSC's onsite inspection programme. Indeed, all financial institutions are assessed with respect to their internal control manuals as they relate to establishing business relationships, transactions and other dealings with PEPs, including compliance with international sanctions, embargoes and other restrictions that affect or relate to PEPs.
7 Correspondent banking	**LC**	Due to the recent enactment of the AMLTFCOP effective implementation of AML/CFT measures with respect to correspondent banking relation cannot be assessed.	• No specific action recommended in the MER.	• There are no correspondent banks in the Virgin Islands and as such no issues exist in relation to correspondent banking relationships. The AMLTFCOP addresses correspondent banking relationships and all such measures are being effectively implemented and monitored by the FSC through the FSC's periodic on-site inspection of banks.
8 New technologies & non face-to-face business	**PC**	No specific requirement for financial institutions to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing. No requirement for financial institutions to have policies and procedures to address specific risks associated with non-face to face business relationships or transactions.	• Financial institutions should be required to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing. • Financial institutions should be required to have policies and procedures to address specific risks associated with non-face to face business relationships or transactions	• The AMLTFCOP has been amended to address the issue by including a new section 11A which states that: "11A. An entity or a professional shall adopt and maintain such policies, procedures and other measures considered appropriate to prevent the misuse of technological developments for purposes of money laundering or terrorist financing." The amendment is dealt with under the Anti-money Laundering and Terrorist Financing (Amendment) Code of

				Practice, 2009 which was enacted in January, 2009. • Section 13 of the AMLTFCOP has been amended to require financial institutions to: "(j) adopt and maintain policies and procedures to deal with any specific risks that may be associated with non-face to face business relationships or transactions, including when establishing or conducting ongoing due diligence with respect to such relationships or transactions." The amendment is dealt with under the Anti-money Laundering and Terrorist Financing (Amendment) Code of Practice, 2009 which was enacted in January, 2009.
9 Third parties and introducers	**PC**	No requirement for a financial institution to immediately obtain from all third parties necessary information concerning certain elements of the CDD process itemised in criteria 5.3 to 5.6	• Financial institutions relying upon a third party should be required to immediately obtain from the third party the necessary information concerning certain elements of the CDD process itemised in criteria 5.3 to 5.6	• The AMLTFCOP makes it a requirement for all financial institutions relying on third party introducers to satisfy themselves that the relevant CDD process has been engaged and all relevant information is maintained and can be provided immediately upon request. The Territory believes that the intent of this aspect of Recommendation 9 is to ensure the availability of CDD information whenever it is required and not that it should be obtained upfront in each case of introduced business. A review of other CFATF member countries' AML/CFT regimes lends support to this interpretation. In particular, where an introducer resides in a jurisdiction that is recognised under Schedule 2 pursuant to section 52 of the AMLTFCOP, the legal presumption and the presumption under Recommendation 5 is that the introducer would be properly and effectively monitored for AML/CFT compliance (including the carrying out of relevant CDD actions) in that recognised jurisdiction such that it does not synchronise with logic that CDD information should be immediately required from the same introducer. With regard to introductions from non-recognised

				jurisdictions, the requirement is that all financial institutions must obtain the required CDD information before or at the time of accepting the introduced business; there is no exception in that regard.
10 Record keeping	**LC**	Record retention of identification data is limited to five years after the last transaction of an account rather than the termination of the account No requirement for account files and business correspondence to be maintained for at least five years following the termination of an account or business relationship.	• The AMLTFCOP should be amended to remove the possibility of identification data being destroyed five years after the last transaction of an account that has not been formally terminated. • Account files and business correspondence should be maintained for at least five years following the termination of an account or business relationship.	• Section 44 and 45 of the AMLTFCOP have been amended to remove the possibility of identification data being destroyed five years after the last transaction of an account that has not been formally terminated • The Anti-money Laundering (Amendment) Regulations, 2010 have removed paragraph 10 (1) (c) which allowed the maintaining of records for a period of five years from the time "when the last transaction was carried out". The determining period under the amendment now relates only to the time when the established business relationship was formally ended, which complies with the Examiners' recommended action. The Anti-money Laundering (Amendment) Regulations, 2010 were approved by Cabinet on 29th April, 2010.
11 Unusual transactions	**PC**	Financial institutions are not required to examine as far as possible the background and purpose of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and to set forth their findings in writing. Financial institutions are not required to keep such findings available for competent authorities and auditors for at least five years.	• Financial institutions should be required to examine as far as possible the background and purpose of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and to set forth their findings in writing. • Financial institutions should be required to keep such findings available for competent authorities and auditors for at least five years.	• Section 13 of the AMLTFCOP has been amended to require that an entity or professional exercise constant vigilance in its dealings with an applicant for business or a customer and requires the entity or professional to: "(h) identify and pay special attention to, and examine, as far as possible, the background and purpose of, any complex or unusual large or unusual pattern of transaction or transaction that does not demonstrate any apparent or visible economic or lawful purpose or which is unusual having regard to the pattern of business or known sources of an applicant for business or a customer;" • Section 13 of the AMLTFCOP has also been amended to require an entity or professional to:

				"(i) record its or his findings in relation to any examination carried out pursuant to paragraph (h) and make such findings available to the Agency, Commission or other lawful authority, including the auditors of the entity or professional, for a period of at least five years; and (j) adopt and maintain policies and procedures to deal with any specific risks that may be associated with non-face to face business relationships or transactions, including when establishing or conducting ongoing due diligence with respect to such relationships or transactions." The amendment is dealt with under the Anti-money Laundering and Terrorist Financing (Amendment) Code of Practice, 2009 which was enacted in January, 2009.
12 DNFBP – R.5, 6, 8-11	**PC**	• Deficiencies identified in Recs. 5,6, 8 – 11, are also applicable to DNFBPs • Due to the recent enactment of the AMLTFCOP and the AMLR, effective implementation of AML/CFT measures cannot be assessed	• Deficiencies identified for all entities and professionals as noted for Recs.5, 6, 8-11, in the relevant sections of this report are also applicable to DNFBPs. • Implementation of the specific recommendations in the relevant sections of this report will also apply to DNFBPs.	• See relevant changes made in respect of Recs 5, 6, 8-11.
13 Suspicious transaction reporting	**LC**	Insider trading and market manipulation are not predicate offences for money laundering	• Enact legislation criminalizing market manipulation and insider trading	• The criminalisation of insider trading and market manipulation as addressed in Sections 88 and 91 respectively of the Securities and Investment Business Act, (SIBA) makes them predicate offenses for money laundering. The penalties for such acts are also outlined in these sections of the Act. SIBA was passed by the House of Assembly on 12th April and

				brought into force on 17th May 2010. The Territory has fully implemented S/RES/1373(2001) and S/RES/1267(1999) through the passage of the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 and the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002.
14 Protection & no tipping-off	**LC**	The tipping off offence with regard to STRs to the FIA is limited to after a STR has been made to the FIA	• The tipping off offence should be extended to include disclosure of the fact that a STR or related information is being reported or provided to the FIA	• The Proceeds of Criminal Conduct Act, 1997 (PCCA) has been amended to extend the offence of tipping off to include disclosure of the fact that a STR or related information is being reported or provided to the FIA. Section 31(2) (a) of the Act now reads: "(2) A person commits an offence if (b) he knows or suspects that a disclosure ("the disclosure") is being or has been made to the Reporting Authority under section 28 or 29;" The amendment is dealt with under the Proceeds of Criminal Conduct (Amendment) Act, 2010 which was enacted in February 2010.
15 Internal controls, compliance & audit	**PC**	Financial institutions are not required to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls. The recent enactment of the AMLTFCOP did not allow for assessment of the effective assessment of AML/CFT measures.	• Financial institutions should be required to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls.	• Section 11 of the AMLTFCOP has been amended by including a new sub-section (3A) which requires that: "(3A) Every entity and professional shall establish and maintain an independent audit function that is adequately resourced to test compliance, including sample testing, with its or his written system of internal controls and the other provisions of the Anti-money Laundering Regulations, 2008 and this Code." The amendment is dealt with under the Anti-money Laundering and Terrorist Financing (Amendment)

				Code of Practice, 2009 which was enacted in January, 2009.
16 DNFBP – R.13-15 & 21	**PC**	Due to the recent enactment of the AMLTFCOP and the AMLR, effective implementation of AML/CFT measures cannot be assessed Deficiencies identified in Recs. 13 to 15 and 21 are also applicable to DNFBPs	• Implementation of the specific recommended actions with regard to Recs. 13 to 15, and 21 are also applicable to DNFBPs.	• See relevant changes made in respect of Recs. 13-15 and 21.
17 Sanctions	**PC**	Sanctions imposed in the AMLR and the AMLTFCOP are not dissuasive.	• Review sanctions imposed in the AMLR and the AMLTFCOP with a view to making them dissuasive.	• The PCCA has been amended to stiffen the penalties for: • contravening provisions of the AMLTFCOP; • assisting another to retain the benefit of criminal conduct; • the acquisition, possession or use of proceeds of criminal conduct; • concealing or transferring proceeds of criminal conduct; • failing to report suspicious transactions; • tipping-off; and • making a disclosure that would likely prejudice an investigation upon knowing that or suspecting that the investigation is taking place once an order has been made or applied for. Further, the administrative penalties outlined in Schedule 4 of the AMLTFCOP are expected to be increased after the coming into force of the amendments to the PCCA (the parent legislation). The amendments are dealt with under the Proceeds of Criminal Conduct (Amendment) Act, 2010 which was enacted in February 2010. Other amendments to the AMLTFCOP have been brought into force as already noted above.
21 Special attention for higher risk countries	**PC**	No effective measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries No requirement for the examination of	• Effective measures should be put in place to ensure that financial institutions are advised of concerns about the weaknesses in the AML/CFT systems of other countries.	• Section 52 of the AMLTFCOP has been repealed and replaced with a new Section 52 which instructs all entities and professionals to pay special attention to business relationships and transactions relating to persons from jurisdictions which do not sufficiently

		transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply FATF Recommendations and making available the findings of such examinations to assist competent authorities and auditors	• The background and purpose of transactions with no apparent economic or visible lawful purpose from countries which do not or insufficiently apply the FATF Recommendations should be examined and the written findings made available to assist competent authorities and auditors.	apply the FATF Recommendations and allows for the production of a list of recognised jurisdictions. The new section 52 reads as follows: "52. (1) Every entity and professional shall pay special attention to a business relationship and transaction that relates to a person from a jurisdiction which the Commission considers does not apply or insufficiently applies the FATF Recommendations with respect to money laundering and terrorist financing. (2) The jurisdictions listed in Schedule 2 are, for the purposes of this Code and the Anti-money Laundering Regulations, 2008, recognized as jurisdictions (a) which apply the FATF Recommendations and which the Commission considers, for the purposes of subsection (1), apply or sufficiently apply those Recommendations; and (b) whose anti-money laundering and terrorist financing laws are equivalent with the provisions of the Anti-money Laundering Regulations, 2008 and this Code. (3) Where the Commission is satisfied that a jurisdiction listed in Schedule 2 no longer satisfies or insufficiently satisfies the FATF Recommendations, it may amend the Schedule to remove that jurisdiction from the Schedule and from the date of the removal of the jurisdiction from the Schedule, that jurisdiction shall cease to be recognized as having anti-money laundering and terrorist financing laws equivalent to the Anti-money Laundering Regulations, 2008 and this Code.

				(4) Where an entity or a professional relies on this section for not effecting any obligation under the Anti-money Laundering Regulations, 2008 and this Code with respect to any business relationship relating to or arising from a recognized jurisdiction to the extent permitted by this Code, it shall, with effect from the date of removal of the jurisdiction from Schedule 2, perform the obligations imposed by the Anti-money Laundering Regulations, 2008 and this Code in relation to business relationships connected to that jurisdiction. (6) The Commission may from time to time (a) issue advisory warnings to entities and professionals pursuant to the Financial Services Commission Act, 2001 or this Code, advising entities and professionals of weaknesses in the anti-money laundering and terrorist financing systems of other jurisdictions; (c) amend Schedule 2, and every amendment of the Schedule shall be published in the Gazette." • Section 13(2) of the AMLTFCOP has been amended to require entities or professionals to exercise constant vigilance in their dealings with applicants for business or customers, and to: "(h) identify and pay special attention to, and examine, as far as possible, the background and purpose of, any complex or unusual large or unusual

				pattern of transaction or transaction that does not demonstrate any apparent or visible economic or lawful purpose or which is unusual having regard to the pattern of business or known sources of an applicant for business or a customer; (j) record its or his findings in relation to any examination carried out pursuant to paragraph (h) and make such findings available to the Agency, Commission or other lawful authority, including the auditors of the entity or professional, for a period of at least five years;" The amendments are dealt with under the Anti-money Laundering and Terrorist Financing (Amendment) Code of Practice, 2009 which was enacted in January, 2009.
22 Foreign branches & subsidiaries	**PC**	No requirement for financial institutions to pay particular attention that consistent AML/CFT measures are observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations. No requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures.	• Financial institutions should be required to pay particular attention that consistent AML/CFT measures are observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations • Financial institutions should be required to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures.	• Section 53 of the AMLTFCOP has been amended by inserting subsection (1A) to require that financial institutions pay particular attention that consistent AML/CFT measures are observed with respect to their branches and subsidiaries in countries which do not sufficiently apply the FATF Recommendations: The subsection reads as follows: "(1A) An entity shall, in particular, ensure that the requirement of subsection (1) is observed by its branches, subsidiaries or representative offices that operate in foreign jurisdictions which do not or which insufficiently apply anti-money laundering and terrorist financing standards equivalent to those of the Anti-money Laundering Regulations, 2008 and this Code." • Section 53 of the AMLTFCOP has been further amended by inserting subsections (3A) and (3B) to require that financial institutions inform their home

				country supervisor that a foreign branch is unable to observe appropriate AML/CFT measures because of prohibition by local laws, regulations and other measures: The subsections read as follows: "(3A) An entity that has branches, subsidiaries or representative offices operating in foreign jurisdictions shall notify the Agency and the Commission in writing if any of the entity's branches, subsidiaries or representative offices is unable to observe appropriate anti-money laundering and terrorist financing measures on account of the fact that such observance is prohibited by the laws, policies or other measures of the foreign jurisdiction in which it operates. (3B) Where a notification is provided pursuant to subsection (3A), (a) the entity concerned may consider the desirability of continuing the operation of the branch, subsidiary or representative office in the foreign jurisdiction and act accordingly; and (b) the Agency and the Commission shall liaise and consider what steps, if any, need to be adopted to properly and efficiently deal with the notification, including the need or otherwise of providing necessary advice to the entity concerned." The amendments are dealt with under the Anti-money Laundering and Terrorist Financing (Amendment) Code of Practice,

				2009 which was enacted in January, 2009.
23 Regulation, supervision and monitoring	**PC**	Money value transfer service operators are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements Effective supervision by FSC is limited by quantitatively inadequate human resources.	• FSC should review present staff complement with a view to improving supervisory coverage • The FMSA should be enacted as soon as possible.	• The FSC monitors its staff complement on an ongoing basis to ensure maximum use of resources. Since 2004 there has been a 23% increase in staff. 22 additional persons have been added to the staff since the evaluation in 2008. Of these 22 persons, 14 were added to the following regulatory divisions to improve the FSC's supervisory coverage. • Banking and Fiduciary Services • Investment Business • Insurance The enhancement of the FSC's staff complement has allowed for an increase in on-site inspections of all of its licensees and has strengthened its AML/CFT supervision of these entities. 53 inspections were conducted in 2008 and 35 in 2009. • The Financing and Money Services Act was enacted on 26th May 2009 and now requires all financing and/or money service providers to be licensed and to abide by the provisions of the Act. All money service providers are now under the regulatory supervision of the FSC.
24 DNFBP - regulation, supervision and monitoring	**PC**	While DNFBPs like real estate agents, lawyers, other independent legal advisers, accountants, dealers in precious metals and stones were covered by the AML/CFT regime, there were no effective systems for monitoring and ensuring compliance with AML/CFT requirements. Deficiencies identified regarding sanctions and sufficient resources for the FSC are also applicable to the supervision of trust and company service providers.	• Effective systems for monitoring and ensuring compliance with AML/CFT requirements by real estate agents, lawyers, other independent legal advisers, accountants, and dealers in precious metals and stones should be implemented. • Deficiencies identified regarding sanctions and sufficient resources for the FSC should be remedied.	• JALTFAC has now been tasked with the responsibility of reviewing the current AML/CFT supervisory regime in place and recommend a way forward as to how best real estate agents, lawyers, accountants and dealers in precious metals and stones may be dealt with in relation to their supervision for AML/CFT compliance. The independent professionals currently fall under the purview of the FIA by virtue of section 9 (2) of the AMLTFCOP, but the current plan seeks to explore the effectiveness of the current arrangement in order to ensure full monitoring and supervision of these independent advisers. JALTFAC has recently made contact with all relevant DNFBPs in an effort to determine the best way in which these entities should be supervised. This process is ongoing.

				• See relevant changes made in relation to Recs. 17 & 23.
25 Guidelines & Feedback	**LC**	FIA annual reports do not include results of disclosure and information on typologies. Unable to assess effective implementation of the AMLFTCOP due to recent enactment	• The FIA annual reports should include the results of disclosure and information on typologies.	• FIA Annual Reports now contains details on the results of disclosure and information on typologies.
Institutional and other measures				
26 The FIU	**LC**	FIA annual reports do not include typologies	▪ The personnel should continue to be exposed training in the area of AML/CFT to ensure that they remain on the cutting edge. Consideration should be given to exposing staff to attachments to other FIUs to allow them to develop all aspects of their job. ▪ FIA annual reports should include typologies. ▪ Efforts should be made to implement electronic delivery of SARs to the FIA. ▪ The relevant authorities should consider intensifying their education/training programme with the various entities with respect to the preparation and filing of SARs.	▪ The training needs of members of staff of the FIA are constantly reviewed. Training in the areas of AML/CFT including analysis and investigations has been identified and provided. As a member of the Egmont Group, the FIA is willing to provide training for its staff through attachments with other FIUs within the Egmont Group. The Egmont Group is due to develop a plan to facilitate such attachments. In the meantime, the FIA staff continues to participate in regional and international training programmes geared towards enhancing skills in the preparation of typologies and the AML/CFT investigation techniques. Since the Territory's evaluation in 2008 eight members of the FIA's staff have been trained in AML/CFT, eight in AML/CFT compliance, one in Financial Analysis, one in Intelligence Analysis, two in Financial Crimes Analysis and one in Strategic Analysis. Future training plans include the full certification of the FIA's analysts and investigators as Anti-money Laundering specialists in 2010. The Agency is fully committed to identifying and providing the best available training for its staff and will continue its efforts to keep its staff fully updated on all aspects of AML/CFT issues. ▪ FIA Annual Report now contains details on results of disclosures and information on typologies. ▪ The number of SARs filed by reporting entities is relatively small in comparison to other larger jurisdictions and the FIA currently receives, on average, one hundred and fifty SARs per year. While

				all SARs filed are currently hand delivered, the FIA intends as part of its current plan to encourage regulated institutions to file reports electronically and it is anticipated that provision will be made for the electronic delivery of these reports in the near future. The FIA does, however, feel that the option to hand deliver reports should be maintained as a backup mechanism to the electronic delivery of these reports. Furthermore, because of the size of the jurisdiction and considering the centres of activity, the BVI does not consider the filing of SARs by means other than electronic filing to be ineffective or to cause any delay. ▪ The FIA provides training on AML/CFT, the reporting of SARs, and the role of the FIA to reporting entities on an ongoing basis. Since 2008 the FIA has provided AML/CFT and SAR reporting training to eleven reporting entities including two of the Territory's banks. The FIA is dedicated to the continued enhancement of its outreach programme which aims to raise awareness of AML/CFT matters within the financial services sector including targeting NPOs and other DNFBPs. ▪ The FSC conducts bi-annual Meet the Regulator Forums which afford it the opportunity to educate the industry on current and emerging AML/CFT trends. Regulated entities are, however required, under the AMLR and AMLTFCOP, to conduct their own training of staff to ensure that they remain fully aware of their AML/CFT obligations at all times and are fully capable of fulfilling those obligations. Section 47 of the AMLTFCOP states that: "47.(1) Consistent with the training obligations outlined in the Anti-money Laundering Regulations, 2008, every entity and professional shall, having regard to its commercial or professional disposition and the requirements of this Code, engage in the training of its employees by

				(a) ensuring that they receive appropriate and proportionate training to the standard and level required by the Anti-money Laundering Regulations, 2008 in relation to money laundering and terrorist financing; and (b) employing appropriate systems and procedures of testing the awareness and understanding of the employees with respect to the training provided to them. (2) The training for employees is not restricted to any particular class or rank of employees, although key training requirements will relate to key employees who are critical to an entity's or a professional's anti-money laundering and terrorist financing regime. (3) The training requirements outlined in subsection (1) shall, notwithstanding subsection (2), be extended (a) to employees who are not considered key to an entity's or a professional's anti-money laundering and terrorist financing regime, although such training may be limited to basic anti-money laundering and terrorist financing issues; (b) to temporary and contract employees, including (where feasible) employees of third parties

				who perform anti-money laundering and terrorist financing functions under an outsourcing arrangement." Regulation 16 of the AMLR states that: "16.(1) A relevant person shall provide education and training for all of its directors or, as the case may be, partners, all other persons involved in its management, and all key staff, to ensure that they are aware of (a) the provisions of these Regulations, Proceeds of Criminal Conduct Act, 1997, the Code and any other enactment relating to money laundering and terrorist financing; (b) the relevant regional and international conventions, United Nations Security Council Resolutions and standards of compliance established from time to time by the CFATF, FATF and other organizations of which the Virgin Islands is a member or in which the Virgin Islands holds associate or observer status, relating to money laundering and terrorist financing; (c) their personal and the relevant person's obligations under the enactments and

				instruments referred to in paragraphs (a) and (b); (d) the manual of compliance procedures or internal control systems and other requirements established pursuant to these Regulations and the Code; their personal liability for failure to report information or suspicions in accordance with the requirements of these Regulations, the Code and any other enactment, including any established internal procedures."
30 Resources, integrity and training	**PC**	The ADVCTF is inadequately staffed and trained in AML/CFT. Quantitatively inadequate human resources at the FSC.	• The ADVCTF should be adequately staffed and trained in the techniques of ML and FT investigations. • FSC should review present staff complement with a view to improving supervisory coverage	• It is part of the Government's current plan to ensure that officers of the ADVCTF are sensitised to AML/CFT investigative techniques. Of the eighteen officers currently assigned to the Task Force seven have been trained in AML/CFT. Additional training has been identified which members of staff are scheduled to participate in within the next six months. There is also some in-house training slated to take place shortly. Indeed, it is part of the plan to provide training to members of the Inter-governmental Committee on AML/CFT and their staff regarding AML/CFT obligations and investigative techniques • As previously mentioned under Recommendation 23, the FSC monitors its staff complement on an ongoing basis to ensure maximum use of resources. 22 additional persons have been added to the staff since the evaluation in 2008. Of these 22 persons, 14 were added to the regulatory divisions to improve the FSC's supervisory coverage. The enhancement of the FSC's staff complement has allowed for an increase in on-site inspections of all of its licensees and has strengthened its AML/CFT supervision of these entities.
32 Statistics	**LC**	No records on money laundering investigations or number of production orders or search warrants maintained by the police.	• The RVIPF should maintain adequate statistics on ML investigations, production orders and search warrants.	• Templates covering the types of statistics that should be collected by all relevant bodies with nexus to AML/CFT supervision have been circulated to and discussed with each body. The relevant statistics are

				to be provided periodically (mainly on an annual basis) to the FSC which serves as the repository for such statistical data which are expected to be discussed and analysed at the level of the Inter-governmental Committee on AML/CFT. The collection of such statistics should aid in the development of proper statistical data and allow for more meaningful analysis of this data
33 Legal persons – beneficial owners	**PC**	Unable to assess whether information on beneficial ownership is being adequately and accurately maintained due to the low number of FSC inspections. IBCs incorporated before 2005 are not required to place bearer shares with authorised or recognised custodians until December 2009.	• The FSC should implement an effective monitoring system to ensure that registered agents are maintaining adequate accurate and current beneficial ownership information.	• The FSC's on-site inspection programme is a risk-based programme which ranks entities based on their risk profile. Entities with a higher risk rating are subject to more frequent inspections than those with a lower rating. During such inspections all necessary action is taken to ensure that these entities are maintaining adequate and current beneficial ownership information. Such action includes a process of sampling files to establish whether registered agents are indeed maintaining adequate and current information on beneficial ownership. The enhancement of the FSC's staff complement has allowed for an increase in the number of on-site inspections. In 2008, the FSC conducted 53 on-site inspections and there were 35 inspections conducted in 2009.
34 Legal arrangements – beneficial owners	**LC**	Unable to assess whether information on trusts is being adequately and accurately maintained due to the low number of FSC inspections.	• The FSC should implement an effective monitoring system to ensure that registered agents are maintaining adequate accurate and current beneficial ownership information.	• The FSC's on-site inspection programme is a risk-based programme which ranks entities based on their risk profile. Entities with a higher risk rating are subject to more frequent inspections than are those with a lower rating. During such inspections all necessary action is taken to ensure that these entities are maintaining adequate and current beneficial ownership information. Such action includes a process of sampling files to establish whether registered agents are indeed maintaining adequate and current information on beneficial ownership. The enhancement of the FSC's staff complement has allowed for an increase in the number of on-site inspections. In 2008, the FSC conducted 53 on-site inspections and there were 35 inspections conducted in 2009.
International Co-operation				
35 Conventions	**LC**	Need to have Conventions extended to the	• Since these laws have now been implemented locally active efforts should be made to the United	• The issue if extending Conventions to the Territory

		Territory Not all scheduled chemicals under the Vienna Convention are prohibited.	Kingdom to have the Conventions extended to the Territory and provisions put in place for the denial of landing of any aircraft used on behalf of the Taliban and denial of safe haven in accordance with United Nations Security Council Resolution 1373.	has been discussed with the UK authorities and recommendations made for extending the said conventions to the Territory. Additionally, the Territory has fully implemented S/RES/1373(2001) and S/RES/1267(1999) through the passage of the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 and the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002).
Nine Special Recommendations	**Rating**	Summary of factors underlying rating		
SR.I Implement UN instruments	**LC**	Need to have Convention extended to the Territory Not all requirements of S/RES/1373(2001) and S/RES/1267(1999) have been fully implemented	• Since these laws have now been implemented locally active efforts should be made to the United Kingdom to have the Conventions extended to the Territory and provisions put in place for the denial of landing of any aircraft used on behalf of the Taliban and denial of safe haven in accordance with United Nations Security Council Resolution 1373.	• The issue if extending Conventions to the Territory has been discussed with the UK authorities and recommendations made for extending the said conventions to the Territory. Additionally, the Territory has fully implemented S/RES/1373(2001) and S/RES/1267(1999) through the passage of the Terrorism (United Nations Measures) (Overseas Territories) Order, 2001 and the Anti-terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002).
SR.II Criminalise terrorist financing	**LC**	Effectiveness of the legal framework is difficult to assess in the absence of investigations and convictions for TF	• No Action recommended in the MER.	• There have been no reports of TF requiring investigations in the VI. Consequently no prosecution has been initiated that may lead to conviction. However, the VI's laws and legal system are considered sufficiently robust to mount successful investigations and prosecution of offences relating to terrorist financing.
SR VI AML requirements for money/value transfer services	**NC**	No requirement for a competent authority to register and/or licence natural and legal persons that perform money or value transfer services and maintain a current list of the names and addresses of licenced and/or registered MVT service operators. No system in place for monitoring MVT service operators and ensuring that they	• The FMSA should be enacted as soon as possible	• The Financing and Money Services Act (FMSA) was enacted on 26th May 2009 and now requires all natural and legal persons that perform money or value transfer services to be licensed and to abide by the provisions of the Act. With respect to the maintenance of a current list of names and addresses of licensed and/or registered MVT service operators, Section 42 of the Act specifies that:

		comply with the FATF Recommendations No requirement for MVT service operators to maintain a current list of agents which must be made available to the designated competent authority. Deficiencies noted in relation to Recommendations 5-11, 15, 17 and 21-23 also apply to the MVT sector		"42(1) The Commission shall maintain (a) a Register of Licensees, and (b) such other registers as may be specified in the Regulations, containing such information as may be specified in the Regulations" With the passage of the FMSA all MVT services operators are now required to comply with the provisions of the AMLTFCOP and the AMLR. The amendments made to Sections 11, 13, 19, 23, 44, 45 and 53 of the AMLTFCOP and the inclusion of section 11A, to address the deficiencies outlined in Recommendations 5 – 11, 15, 17 and 21 – 23 now also apply to financing and money services providers. Further, the implementation of the AMLR and specifically Reg.10 (which has been amended, but not yet enacted) requires all relevant persons to maintain records required under regulations 7, 8 and 9 for a period of at least five years from the date when all transactions relating to a one-off transaction or a series of linked transactions were completed, or when the business relationship was formally ended. The amendments to be made to the administrative penalties outlined in the AMLTFCOP and the enhanced penalties proposed in the amendments to the PCCA would also apply to financing and money services providers now that they are regulated. With respect to the concern in relation to the FSC's human resource capacity, as noted previously, the FSC monitors its staff complement on an ongoing basis to ensure maximum use of resources. 22 additional persons have been added to the staff since the evaluation in 2008. The enhancement of the FSC's staff complement has allowed for an increase in on-site inspections of all of its licensees

				and has strengthened its AML/CFT supervision of these entities
SR VII Wire transfer rules	**LC**	Penalties and sanctions applicable for obligations of SR VII in sections 37 to 41 of the AMLTFCOP are not dissuasive	• Penalties and sanctions applicable for obligations of SR VII in sections 37 to 41 of the AMLTFCOP should be dissuasive.	• The PCCA has been amended to stiffen the penalties for: • contravening provisions of the AMLTFCOP; • assisting another to retain the benefit of criminal conduct; • the acquisition, possession or use of proceeds of criminal conduct; • concealing or transferring proceeds of criminal conduct; • failing to report suspicious transactions; • tipping-off; and • making a disclosure that would likely prejudice an investigation upon knowing that or suspecting that the investigation is taking place once an order has been made or applied for. Further, the administrative penalties outlined in Schedule 4 of the AMLTFCOP are expected to be increased following the enactment of the amendments to the PCCA. The amendments to the AMLTFCOP have been brought into force and the amendments to the PCCA are awaiting legislative approval
SR.VIII Non-profit organisations	**PC**	No evidence of review of the adequacy of laws and regulations that related to NPOs or of periodic reassessments of the sector's potential vulnerabilities to terrorist activities. No supervisory programme in place to identify AML/CFT non-compliance and violations by NPOs. No outreach to NPOs to protect the sector from terrorist financing abuse.	• The authorities should review the adequacy of the laws that relate to NPOs and conduct periodic reassessments of the sector's potential vulnerabilities to terrorist activities. • The authorities should undertake an outreach programme to the NPO sector with a view to protecting the sector from terrorist financing abuse. • A supervisory programme for NPOs should be developed to identify non-compliance and violations	• The AMLTFCOP has been amended to insert a new section 4A to comprehensively deal with charities and other non-profit making institutions, associations or organizations in the application of the AMLTFCOP. The new section provides the following: "4A.(1) The provisions of this Code relating to the establishment of internal control systems, effecting customer due diligence measures, maintaining record keeping requirements and providing employee training shall apply to every charity or other association not for profit which (a) is established and carries on its business in or from

				within the Virgin Islands; (b) is established outside the Virgin Islands and registered to carry on its business wholly or partly in or from within the Virgin Islands; or (c) is established as provided in paragraph (a) and receives or makes payments, other than salaries, wages, pensions and gratuities, in excess of ten thousand dollars in a year. (2) A charity or other association not for profit shall (a) comply with the provisions outlined in subsection (1) in relation to every donor to the charity or other association not for profit of monies or equivalent assets in excess of ten thousand dollars; (b) maintain relevant documentation with respect to its administrative, managerial and policy control measures in relation to its operations; (c) ensure that any funds that are planned and advertised by or on behalf of the charity or other association not for profit are verified as having been planned

				and spent in the manner indicated; and (d) adopt such measure as are considered appropriate to ensure that any funds or other assets that are received, maintained or transferred by or through the charity or other association not for profit are not for, or diverted to support, (j) the activities of any terrorist, terrorist organization or other organized criminal group; or (ii) any money laundering activity. (3) For the purposes of subsection (2), where a series of donations from a single donor appear to be linked and cumulatively the donations are in excess of ten thousand dollars in any particular year, the requirements outlined in subsection (1) shall apply. (4) Subsection (1) (c) does not apply where payment is made for goods or services the total of which do not in any particular year exceed twenty-five thousand dollars or its equivalent in any currency. (5) Where a person who makes a donation (whether in cash or otherwise in excess of the amount or its equivalent stipulated in this section) does not wish to have his name publicly revealed, the charity or other

				association not for profit that receives the donation shall nevertheless carry out the requisite customer due diligence and record keeping measures under this Code, including (a) establishing the nature and purpose of the donation; (b) identifying whether or not there are any conditions attached to the donation and, if so, what those conditions are; (c) identifying the true source of the donation and whether or not the donation is commensurate with the donor's known sources of funds or wealth; (d) establishing whether or not the funds or other properties that are the subject of the donation are located in a high risk country; and (e) establishing that the donor is not placed on any United Nations, European Union or other similar institution's list of persons who are linked to terrorist financing or against whom a ban, sanction or embargo subsists. (6) Where a charity or other association not for profit suspects that a donation may be linked to money laundering or terrorist financing, it shall (b) not accept the donation;

				and (b) report its suspicion to the Agency. (7) For the purposes of the application of the Parts of this Code outlined in subsection (1) to a charity or other association not for profit, the relevant provisions shall be applied with such modifications as are necessary to ensure compliance with the requirements of the provisions. • (8) Schedule 1 provides best practices for charities and other associations not for profit and every charity and other association not for profit shall govern its activities utilizing those best practices, in addition to complying with the other requirements of this Code • The FSC has written to the Government recommending the enactment of a separate licensing and supervisory regime for NPOs and is awaiting action on this matter. It is the plan that the new regime would establish a body that would undertake the relevant outreach programme to NPOs, but in the meantime this responsibility is reposed in the FIA pursuant to section 9 (2) of the AMLTFCOP.