



*VIRGIN ISLANDS FINANCIAL SERVICES SECTOR*

---

# **Money Laundering Risk Assessment 2020**

---

## Table of Contents

<b>Foreword .....</b>	<b>4</b>
<b>1. Executive Summary .....</b>	<b>5</b>
<i>National Threats .....</i>	<i>5</i>
<i>Inherent Money-Laundering Risk at the Sectoral Level .....</i>	<i>6</i>
<i>Comparative Assessment of First NRA with Current Assessment .....</i>	<i>7</i>
<b>2. Introduction .....</b>	<b>8</b>
<i>Jurisdictional profile .....</i>	<i>8</i>
<i>Geographical .....</i>	<i>8</i>
<i>Political .....</i>	<i>8</i>
<i>Socio-economic .....</i>	<i>8</i>
<i>The Assessment .....</i>	<i>8</i>
<b>3. Methodology .....</b>	<b>11</b>
<b>4. Money Laundering Overview .....</b>	<b>15</b>
<i>Money Laundering Threats .....</i>	<i>16</i>
<i>Proceeds of Domestic Criminality .....</i>	<i>18</i>
<i>Proceeds of Foreign Criminality .....</i>	<i>18</i>
<i>Seizures, Forfeitures and Confiscations .....</i>	<i>19</i>
<i>Sectoral Money Laundering Risks .....</i>	<i>20</i>
<i>National Money Laundering Risks .....</i>	<i>20</i>
<b>5. AML/CFT Operational Framework.....</b>	<b>22</b>
<i>The Financial Services Commission's Supervisory Framework .....</i>	<i>22</i>
<i>Regulation .....</i>	<i>22</i>
<i>Supervision .....</i>	<i>22</i>
<i>Enforcement Mechanisms.....</i>	<i>23</i>
<b>6. Cooperation Matters .....</b>	<b>24</b>
<i>International Cooperation .....</i>	<i>24</i>
<i>Sanctions .....</i>	<i>25</i>
<i>Domestic Cooperation .....</i>	<i>26</i>
<b>7. Transparency of Beneficial Ownership .....</b>	<b>29</b>
<i>Legal Persons .....</i>	<i>29</i>
<i>BVI Business Companies.....</i>	<i>29</i>
<i>Bearer Shares .....</i>	<i>30</i>

<i>Foreign Companies</i> .....	30
<i>AML/CFT Obligations</i> .....	31
<i>Striking Off from the Register</i> .....	31
<b>Micro Business Companies</b> .....	33
<i>Identification and Mitigation of Risk</i> .....	33
<i>Customer Risk</i> .....	34
<i>Product/Service Risk</i> .....	34
<i>Geographic Risk</i> .....	34
<i>Beneficial Ownership</i> .....	34
<i>RA Obligations</i> .....	35
<b>Legal Arrangements</b> .....	36
<i>Trusts</i> .....	36
<i>VISTAs</i> .....	36
<i>PTCs</i> .....	37
<i>Partnerships</i> .....	38
Assessment of Threats .....	39
ML Vulnerabilities .....	39
Conclusion .....	40
<b>8. Emerging Products and Technologies</b> .....	42
<i>Virtual Assets, Virtual Assets Services Providers</i> .....	42
<i>Other Emerging Products</i> .....	42
<b>9. Banking</b> .....	44
<i>Introduction</i> .....	44
<i>Assessment of Threats</i> .....	45
<i>ML Vulnerabilities</i> .....	45
<i>Conclusion</i> .....	46
<b>10. Financing Business</b> .....	48
<i>Introduction</i> .....	48
<i>Assessment of Threats</i> .....	48
<i>ML Vulnerabilities</i> .....	48
<i>Conclusion</i> .....	48
<b>11. Money Services</b> .....	50
<i>Introduction</i> .....	50

<i>Assessment of Threats</i> .....	50
<i>ML Vulnerabilities</i> .....	50
<i>Conclusion</i> .....	51
<b>12. Insurance</b> .....	<b>53</b>
<i>Introduction</i> .....	53
<i>Assessment of Threats</i> .....	55
<i>ML Vulnerabilities</i> .....	55
<i>Conclusion</i> .....	55
<b>13. Trust and Corporate Service Providers (TCSPs)</b> .....	<b>57</b>
<i>Introduction</i> .....	57
<i>Assessment of Threats</i> .....	58
<i>ML Vulnerabilities</i> .....	58
<i>Conclusion</i> .....	60
<b>14. Investment Business</b> .....	<b>62</b>
<i>Introduction</i> .....	62
<i>Assessment of Threats</i> .....	65
<i>ML Vulnerabilities</i> .....	66
<i>Conclusion</i> .....	67
<b>15. Insolvency Services</b> .....	<b>68</b>
<i>Introduction</i> .....	68
<i>Assessment of Threats</i> .....	69
<i>ML Vulnerabilities</i> .....	69
<i>Conclusion</i> .....	69
<b>16. Recommendations and Conclusion</b> .....	<b>71</b>
<i>National AML/CFT Recommendations</i> .....	71
<i>Supervisor Specific AML/CFT Recommendations</i> .....	71
<b>Glossary of Terms</b> .....	<b>73</b>

## FOREWORD

As the regulator of financial services in the Virgin Islands, the Financial Services Commission (“the Commission”) is proud of the strong and robust Anti-Money Laundering and Counter Terrorist Financing (“AML/CFT”) regime we have helped to develop to combat money laundering and the financing of terrorism and proliferation. We continue to take proactive steps to advance compliance with international standards and to maintain the Territory’s reputation as a leading international financial centre.

We recognise the importance of identifying, understanding and mitigating the inherent money laundering (ML) risks in the provision of financial services. The Commission is cognisant of the ongoing need to comprehensively examine the threats and vulnerabilities within the financial services industry. It is against this backdrop that we have completed a ML risk assessment of each of the financial services sectors that the Commission regulates.

This assessment is a follow up to the National Risk Assessment concluded in 2016. The assessment critically reviewed the ML risks posed by each of the sectors under our supervisory remit, against the backdrop of the ML threats to which the Virgin Islands is exposed. The insight gained from the assessment will ensure that we can continue to take appropriate action to effectively mitigate and manage these and other emerging risks.

The findings of this risk assessment provide valuable information, to us as the regulator, and to our regulated institutions and other stakeholders. The results of this exercise will enable our regulated entities to better identify particular ML risks which may be unique to their areas of business. We invite and encourage all regulated entities to review the report and integrate its findings into their institutional risk assessments and those of their clients.

We are committed to aiding the Virgin Islands in the global fight to combat both money laundering and terrorist financing and to tackling the resulting illicit flows. We are confident that our identification and response to these risks coupled with the continued cooperation and synergy between the public and private sectors, will secure the Virgin Islands’ longstanding reputation as a well-regulated international finance centre and a preferred place to conduct legitimate business.



Jennifer Potter-Questelles  
Ag. Managing Director

## 1. EXECUTIVE SUMMARY

- 1.1 In 2014 the VI embarked on its first AML/CFT National Risk Assessment. This exercise sought to identify the inherent risks and vulnerabilities within the jurisdiction that promote the threat of ML and TF. The result of this exercise was the *Virgin Islands National Risk Assessment Report*<sup>1</sup> which was published in 2016. The report provided an in-depth review of the risks and vulnerabilities of both the Territory's financial and non-financial sectors as well as of the Competent Authorities and law enforcement agencies within the jurisdiction that are responsible for mitigating the risk of ML and TF.
- 1.2 Since that time the VI has made great strides to address the deficiencies identified in its initial NRA Report through various means, including the enactment of new, and revision of existing legislation; establishment of a national coordinating council and other national advisory committees; strengthening of key law enforcement agencies; and enhanced supervision and regulation of financial institutions, DNFBPs and NPOs.
- 1.3 In an effort to determine what effect these actions have had on the ML and TF risk to the Territory, it was decided that follow-up risk assessments should be conducted, with separate assessments being contemplated for ML and TF. This report provides the results of the follow-up ML risk assessments that were conducted in relation to the financial sectors supervised by the FSC.
- 1.4 Data used was collected from the following CAs and LEAs with responsibility for various aspects of the AML/CFT regime within the jurisdiction:

- Financial Services Commission – Regulator/Supervisor of FIs
- Financial Investigation Agency – Financial Intelligence Unit
- Royal Virgin Islands' Police Force – Criminal Investigations
- Governor's Office – International Sanctions
- Attorney General's Chambers – Mutual Legal Assistance
- Office of the Director of Public Prosecutions – Criminal Prosecutions

### National Threats

- 1.5 The domestic money laundering threat stems primarily from drug trafficking, which is considered to be the most significant predicate offence, and associated crimes (i.e. cash and people smuggling, failure to declare cash), as well as fraud to a lesser extent, including online fraud. In relation to fraud, while criminals may transfer funds through the banking system, they may begin the ML process by withdrawing cash in order to break the paper trail and disguise the source of the funds. Other domestic predicates that contribute to ML were primarily considered to be low threat.
- 1.6 The threat from predicate offences committed overseas is viewed as high, which is consistent with international trends. International fraud, foreign corruption and tax evasion, as well as ML committed in other jurisdictions are the more severe predicate offences identified as having an impact on the Territory,

---

<sup>1</sup> A copy of the public report can be found at [https://www.bvifsc.vg/sites/default/files/nra\\_report.pdf](https://www.bvifsc.vg/sites/default/files/nra_report.pdf)

as proceeds from such offences find their way into the financial services sector through the use of the products and services offered by the various FIs.

*Inherent Money-Laundering Risk at the Sectoral Level*

- 1.7 The TCSP sector is the primary gateway to the Virgin Islands' international financial services sector. The sector is attractive to international criminals who wish to obscure ownership of property, evade foreign taxes or conceal the criminal origins of their property due primarily to the nature of products offered.
- 1.8 High transaction volumes and susceptibility of products to abuse in concealing illegal transactions, particularly at the layering and integration stages of ML, is the main risk that facilitates ML within the sector. Additionally, ML risk is also heightened by the fact that a significant number of clients are geographically dispersed, with some originating from high risk jurisdictions. Further, there is the ability for the execution of a significant number of non-face-to-face transactions.
- 1.9 The banking sector in the Virgin Islands is small in comparison to other jurisdictions. However, the sector plays an integral part within the local financial services sector, with operations at both the domestic and international levels. Based on the demographics of the population and the cross-border nature of the financial services industry there is the potential for some of the activities within the sector to involve high risk jurisdictions. However, the volume of such activities is small and are not conducted on a regular basis. Any associated risk is fairly well mitigated through the imposition of the requirements laid out primarily in the AMLTFCOP in dealing with high risk countries and the review of such measures by the FSC during its onsite inspection process.
- 1.10 Although the money services sector itself is small and the sector is not highly integrated with other sectors outside of the banking sector, in terms of outflows it is significant as it accounts for a large volume of cross-border transactions. Services provided are currently limited to money transfer services. Given the nature of the business, transactions are generally conducted face-to-face. However, some transactions may involve high risk jurisdictions based on the demographics of the customer base, although such transactions are not conducted on a regular basis.
- 1.11 The nature of insurance business within the Territory does not provide any evidence that the sector is highly susceptible to or has been used for ML purposes. The captive insurance sector is small and inherently low risk and the products and services offered through domestic insurance companies and intermediaries are relatively standard. Most business is conducted through face-to-face contact and cash transactions are limited to the payment of premiums by some customers.
- 1.12 The size and nature of investment business within the Territory provides evidence that the sector is highly susceptible to ML. This sector is relatively large and can be subdivided into sub-sectors of investment business and investment funds. Both sub-sectors are large and include a wide cross-section of clientele. Products and services offered through this sector are varied with large transaction volumes and assets are widely dispersed globally. A significant amount of business is conducted through non face-to-face contact; however, cash transactions are rare. The inherent vulnerabilities within this sector are high but have been somewhat mitigated based on the control measures currently in place.
- 1.13 The inherent vulnerability of legal persons and legal arrangements is driven by the complexity of the available structures and the complexity of the international financial transactions they engage in, which heighten the risk of these structures being used to facilitate ML. The potential of these structures to be

used to conceal the source of assets and the identity of beneficial owners, the availability of non-face-to-face transactions, and their use by a significant volume of high risk customers, including foreign PEPs increases their vulnerability to be misused for ML purposes. Risk mitigation in place in relation to legal persons and legal arrangements is fostered via measures implemented by the TCSPs that service these structures; however, the inherent vulnerabilities relating to these structures remain high.

- 1.14 To the extent that virtual assets are able to provide the same level of anonymity as physical cash, they also create a risk as they can be transmitted and used globally. In addition to providing another means to pay for contraband or illicit services, virtual assets also are now being used in the layering stage of money laundering to disguise the origin of illicit proceeds.
- 1.15 Additionally, compliance deficiencies within FIs aid in increasing the ML risk because of the potential consequences, as FIs with inadequate AML compliance programs can allow suspicious transactions to occur without adequate screening or reporting. The sectors assessed, however, have been able to mitigate such risk to a large extent as a result of strong adherence to CDD, BO and transaction recordkeeping and reporting requirements.
- 1.16 The Territory’s overall ML risk was determined based on the impact of the ML threats emanating from both domestic and foreign criminality, taking into account all of the vulnerabilities identified within each financial sector. The results of the FIA’s ML risk assessment of DNFBPs and NPOs was also factored into this rating. This resulted in a determination that the overall risk of ML to the Virgin Islands is **Medium-High**.

Comparative Assessment of First NRA with Current Assessment

- 1.17 The methodologies and rating systems used in the initial NRA and current sectoral assessment differed in application, but the overall data used were generally the same. The quality of the data was much improved in this sectoral assessment as opposed to the initial NRA, which made for better and more critical analysis. Although the methodologies used differed, the findings, as outlined in **Chart 1.1** below, show some degree of consistency in the level of risk identified within each sector.

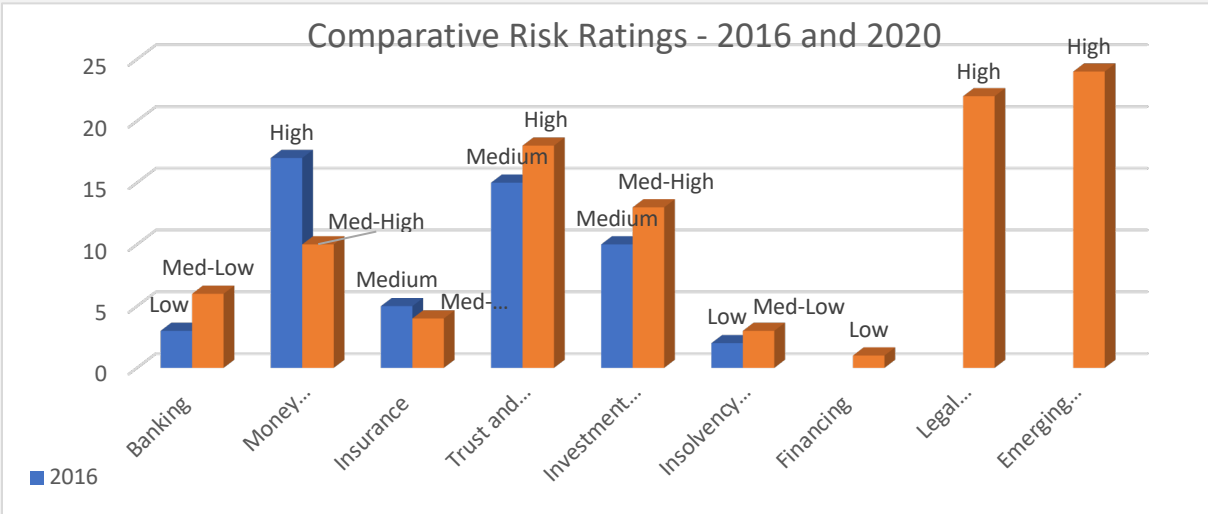


Chart 1.1: Comparison of Results between 2016 and 2020 Assessments



## 2. INTRODUCTION

### *Jurisdictional Profile*

#### Geographical

- 2.1 The Territory of the Virgin Islands is one of the Overseas Territories of the United Kingdom. It is located within the Virgin Islands' archipelago a few miles east of the USVI, some 60 miles east of Puerto Rico, and approximately 110 miles west of St. Maarten in the Lesser Antilles. It consists of approximately sixty islands, islets and cays, twenty of which are inhabited. The islands are primarily volcanic in nature with the exception of Anegada, which is the most northerly of the islands and is constituted of coral and limestone. Due to its geographical composition, the Virgin Islands' borders are quite porous, and while territorial waters between the Virgin Islands and the USVI are heavily trafficked on a daily basis for purposes of commerce, the open waterways also lend to more nefarious activities such as drug and people smuggling.

#### Political

- 2.2 The Territory is classified by the United Nations as a Non-self-governing Territory of the United Kingdom. However, the Territory is internally self-governing, and operates under the Westminster system with a Cabinet style government. The Ministers of Cabinet are appointed from amongst the members of the Legislature and are not independently elected to executive office. Ultimately, they are accountable to the Parliament. The Virgin Islands' parliament consists of thirteen elected members, the Attorney General and a non-elected Speaker selected by the elected members of the House.
- 2.3 Historically, the Virgin Islands has had a relatively low crime rate and is politically stable.

#### Socio-economic

- 2.4 The population of the Virgin Islands is approximately 32,000 and the Territory is home to residents from over 110 different countries and territories who make up approximately 70% of the local labour force. The official currency of the Territory is the US dollar.<sup>2</sup> The primary sectors of the economy which generate the most economic activity and revenue are tourism and financial services, with financial services contributing approximately 22.6% of the Territory's GDP. The Virgin Islands' economic performance is reflected by an increase in positive growth of the Territory's GDP from \$1.02 billion in 2014 to \$1.30 billion in 2019. However, the current global coronavirus pandemic is likely to have some negative impact on performance and growth particularly given the total closure of the tourism sector.

#### *The Assessment*

- 2.5 The initial NRA covered the period 2011 to 2014. These follow-up sectoral assessments now look at the Territory's risk profile resulting from data collected for the years 2015 to 2019. The assessment was carried out by the FSC, led by its AML Unit and involved the following stakeholders:
- Financial Services Commission – Regulator/Supervisor of FIs

---

<sup>2</sup> This is by virtue of the Legal Tender (Adoption of United States Currency) Act (Cap. 102) of the Laws of the Virgin Islands.

- Financial Investigation Agency – Financial Intelligence Unit
- Royal Virgin Islands’ Police Force – Criminal Investigations
- Governor’s Office – International Sanctions
- Attorney General’s Chambers – Mutual Legal Assistance
- Office of the Director of Public Prosecutions – Criminal Prosecutions

2.6 The data used in conducting these risk assessments has been determined through interrogation of the requirements under the FATF Standards and the results of the Virgin Islands’ 2016 National Risk Assessment, as well other international standards setters such as the OECD, IMF and FSB. The assessments looked not only at sector specific data relative to regulation and supervision of the entities within each sector, but also at other critical economic and crime data that were key to properly identifying the level of ML risk posed to the VI.

2.7 The key sources of data for this exercise included:

- Available macro-fiscal data
- FSC prudential and statistical returns
- FSC supervisory and inspection data
- FSC enforcement data
- ODPP prosecutorial data
- RVIPF crime statistics
- Seizure and confiscation data
- HMC related data
- FIA suspicious activity statistics
- Corporate Registry data
- International Cooperation data

2.8 Performing these sectoral risk assessments involved making judgments about threats, vulnerabilities, and consequences of the identified sectors. The assessment relied on the analysis of both quantitative and qualitative data and was driven primarily by evidence collected from the regulator and other CAs and LEAs. This assessment builds on the initial NRA in that, where the initial NRA looked at the risks inherent in the institutions charged with protecting against ML and the mitigating measures in place to reduce those risks, this assessment now focuses on the specific ML threats and vulnerabilities associated with each sector and the impact these threats and vulnerabilities have on the overall risk for each. The level of ML risk of each sector was determined by identifying the inherent threats and vulnerabilities and offsetting the potential consequences resulting from these threats and vulnerabilities by any mitigating controls in place within each sector.

2.9 In order to execute these sectoral risk assessments a specific methodology was developed to ensure the capture and analysis of relevant data, and the consequential identification of an accurate risk level for the various sectors within the financial and non-financial business sectors. This methodology was used to identify and determine the level of ML risk to which the jurisdiction is exposed, in order to further develop the proper mechanisms to effectively mitigate against these risks.

2.10 It should be noted that residual risk ratings are relative to the financial services sector within the context of the Virgin Islands. These ratings are not comparative to corresponding sectors or products in other jurisdictions and should not be looked at in that context.

### 3. METHODOLOGY

3.1 Money-laundering risk is a function of money laundering threats, vulnerabilities and consequences, each of which needs to be properly understood in order for the correct level of risk to be identified. This sectoral assessment process builds on the findings of the initial NRA and attempts to further identify, analyse and understand the Virgin Islands' current ML risks. Such understanding is key in the Territory's ongoing effort of effectively mitigating its ML risk and meeting its international obligations.

3.2 In carrying out this exercise each sector was assessed based on the following identified areas of vulnerability taking into consideration the threat environment relative to each sector and the potential consequences of such vulnerabilities going undetected and unmitigated.

- 1) **Inherent Characteristics:** the extent of the sector's economic significance, complexity of operating structure, and scope and accessibility of operations.
- 2) **Nature of Products and Services:** the nature and extent of the vulnerable products and services and the volume, velocity and frequency of client transactions associated with these products and services.
- 3) **Nature of clientele:** the inherent vulnerabilities associated with the sector's clientele profile; nature of business relationship (with clients); customer status; client's occupation/businesses; facility to identify the beneficial owner for most of the customers (i.e. complex business structure vs. individual).
- 4) **Geographic Reach:** the exposure to high-risk jurisdictions as identified by the FATF.
- 5) **Nature of the Delivery Channels:** the extent to which the delivery of products and services can be conducted with anonymity (face-to-face, non-face-to-face, use of third parties) and complexity (e.g., multiple intermediaries with few immediate controls or no accountability in identifying the originator of the transaction)].
- 6) **Susceptibility to abuse:** the extent to which the sector has been identified in: reported suspicious activities; criminal proceedings (locally and internationally).

3.3 A numerical rating between 1 and 4, with 1 signifying lowest risk and 4 signifying highest risk, was assigned to each of the six criteria based on the inherent vulnerability of each sector to the particular criteria. The sum of these individual ratings determined the total vulnerability rating, which could range between a minimum of six (6) and a maximum of twenty-four (24). This numerical rating determined the sector's vulnerability classification as follows:

	<b>Scale</b>
a) High	21 - 24
b) Medium High	16 - 20
c) Medium Low	11 - 15
d) Low	6 - 10

3.4 The level of each of the following controls in place within each sector to mitigate against the identified vulnerabilities was used to off-set these vulnerabilities:

- 1) Knowledge of AML/CFT
- 2) Prior risk assessment rating

- 3) Risk mitigation policies and procedures in place
- 4) Level of maintenance of BO information
- 5) Actions taken by supervisor

3.5 Similarly to the vulnerability criteria, each of the five (5) mitigating criteria was assigned a rating between 0 and 2, with 0 indicating a low level of mitigation control measures and 2 indicating a high level of mitigation control measures. The sum of these individual ratings determined the total controls rating, which could range between a minimum of zero (0) and a maximum of ten (10). This numerical rating determined the sector's mitigating classification as follows:

	<u>Scale</u>
a) High	9 - 10
b) Medium High	6 - 8
c) Medium Low	3 - 5
d) Low	0 - 2

3.6 The total controls rating was then subtracted from the total vulnerability rating to determine the overall risk rating of the sector. The following point value scales were then be applied to determine the overall risk rating for the sector:

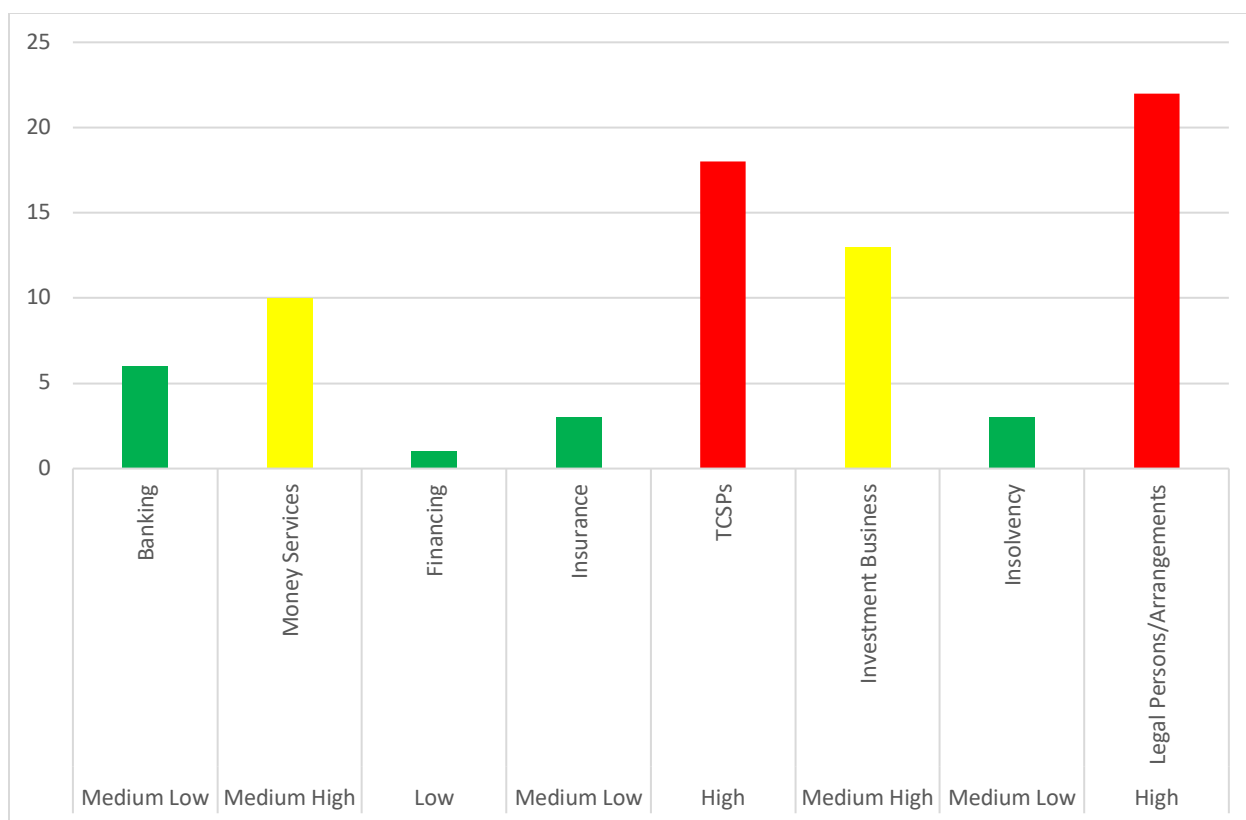
	<u>Scale</u>	<u>Rating</u>
a)	17 -24	High
b)	10 -16	Medium High
c)	3 – 9	Medium Low
d)	-4 - 2	Low

3.7 The resulting risk rating for each sector of either low, medium low, medium high or high as outlined in **Chart 3.1** below, was based on the **average** net score received after applying the mitigating controls to offset the identified vulnerabilities within each sector as detailed in **Table 3.1**.

<u>Sector</u>	<u>Vulnerability</u>	<u>Mitigating Controls</u>	<u>Net Score</u>	<u>Risk Rating</u>
Banking	15	9	6	ML
Financing	6	5	1	L
Money Services	15	5	10	MH
Insurance	11	7	4	ML
TCSPs	23	5	18	H
Investment Business	19	6	13	MH
Insolvency	12	9	3	ML
Legal Persons and Legal Arrangements	22	0 <sup>3</sup>	22	H

**Table 3.1: Sector Risk Scoring and Ratings**

<sup>3</sup> Risk mitigation in relation to legal persons and legal arrangements is fostered via measures implemented by the TCSPs that service these structures and have been taken into consideration in the assessment of that sector



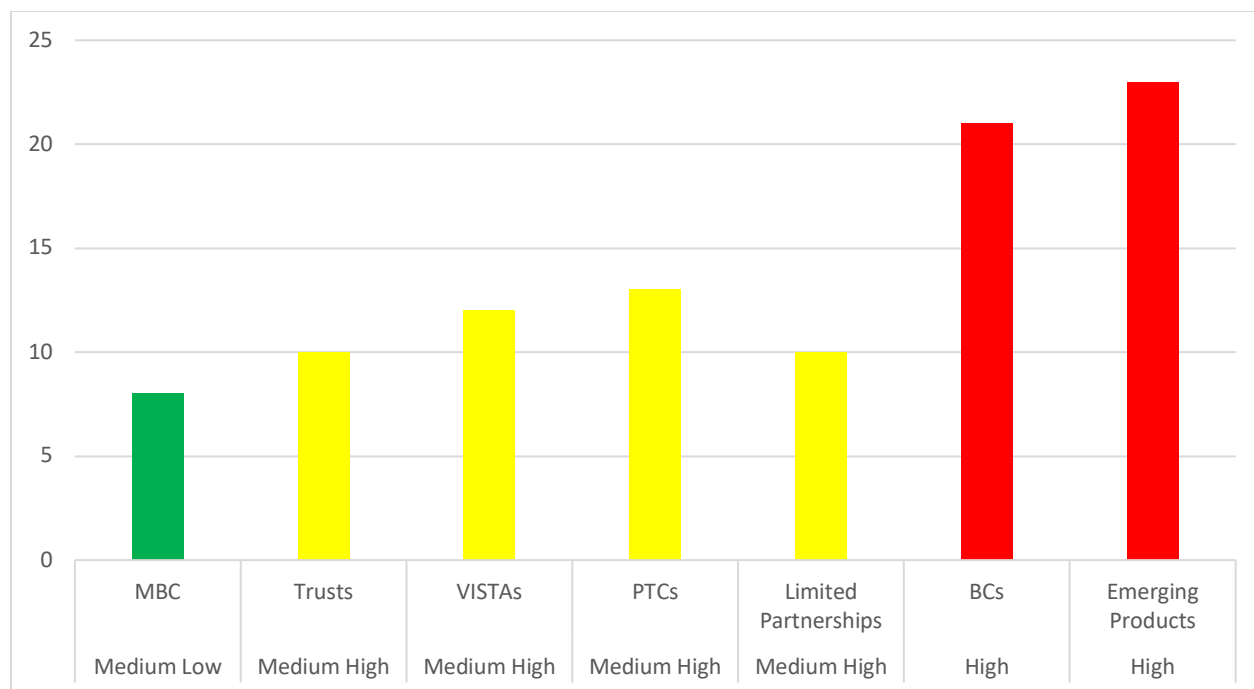
**Chart 3.1: Financial Institutions Sector Risk Ratings**

3.8 The matrix was also applied to each type of legal person and legal arrangement that can be created, as well as to the group of emerging products and technologies identified within the report. As with the sector ratings, the resulting risk rating for each was based on the net score received after applying any mitigating controls identified to offset the vulnerabilities inherent in each product or service. The results are displayed in **Table 3.2** and **Chart 3.2** below<sup>4</sup>.

<u>Product/Service</u>	<u>Vulnerability</u>	<u>Mitigating Controls</u>	<u>Net Score</u>	<u>Risk Rating</u>
Micro Business Company	14	6	8	ML
Trusts	16	6	10	MH
VISTAs	18	6	12	MH
PTCs	18	6	13	MH
Limited Partnerships	15	6	10	MH
Business Companies	24	3	21	H
Emerging Products	24	2	23	H

**Table 3.2: Risk Scoring and Ratings for Legal Persons, Legal Arrangements and Emerging Products**

<sup>4</sup> Discrepancies in final scores are a result of rounding out average vulnerability and mitigating control scores



**Chart 3.2: Risk Ratings for Legal Persons, Legal Arrangements and Emerging Products**

## 4. MONEY LAUNDERING OVERVIEW

- 4.1 A jurisdiction's ML risk is considered to be a function of its ML threats and vulnerabilities. A threat being something which, while it may not definitely happen, could cause harm if relevant action is not taken. ML threats can come directly from people (natural and legal), and criminals generally, or they can be indirect where systems require improvement to detect, mitigate, combat and curtail harmful activity.
- 4.2 The concept of vulnerabilities is closely linked to that of a threat and comprises those things that can be exploited by the threat, or that may support or facilitate threat activities. Vulnerabilities are effectively those factors that represent weaknesses in the Territory's AML/CFT system and covers the broadest areas of the economy.
- 4.3 In 2008 the Virgin Islands was assessed by the CFATF for compliance with the then FATF 40 Recommendations on ML and 9 Special Recommendations on TF. The results found that the Territory was largely in compliance with the Recommendations which comparatively placed the Territory in the top ten percentile globally in relation to its AML/CFT framework and its ability to mitigate its risk through the minimisation of its recognised vulnerabilities. The Territory addressed the deficiencies identified in the report through a series of policy and legislative changes, including the imposition of dissuasive administrative and criminal penalties under the PCCA, AMLR and AMLTFCOP for breaches of the relevant legislative requirements.
- 4.4 Under the revised FATF Recommendations published in 2012, countries are now required to identify, assess and understand their ML/TF risks and apply a risk-based approach to ensure that measures to prevent or mitigate ML and TF are commensurate with the risks identified<sup>5</sup>. To satisfy this requirement and ensure a clear understanding of the ML/TF risks and vulnerabilities that promote the threat of ML and TF in the Virgin Islands, the Territory embarked on its first National Risk Assessment exercise in 2014.
- 4.5 The resulting report provided an in-depth review of the risks, threats and vulnerabilities of both the Territory's financial and non-financial sectors, as well as of the Competent Authorities and law enforcement agencies within the jurisdiction that are responsible for mitigating the risk of ML and TF.
- 4.6 To resolve the deficiencies identified in the NRA Report that aid in propagating these threats and vulnerabilities, each involved agency was required to develop an action plan outlining the measures they intended to put in place to address their specific deficiencies, including where relevant, the enactment of new, and revision of existing legislation. Additionally, key LEAs have been required to identify means by which they intend to strengthen their organisations relative to ensuring the existence of proper policies and procedures and adequate manpower levels, while supervisors have been tasked with ensuring enhanced supervision and regulation of financial institutions, DNFBPs and NPOs. Coordination of these implementation measures rests with the AML/CFT Implementation Unit within the Ministry of Finance,

---

<sup>5</sup> Recommendation 1 of the FATF Recommendations – Assessing Risks and Applying a Risk-based Approach

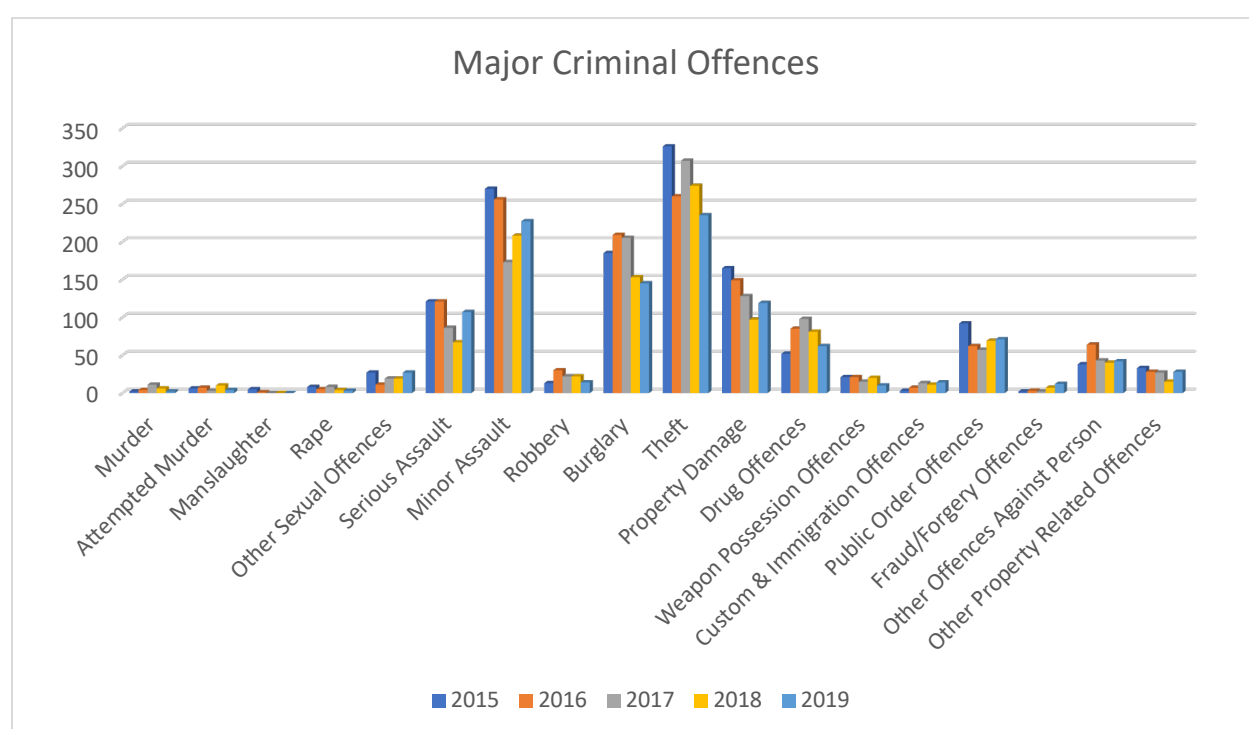


which was established specifically for this purpose to ensure that the identified risks are being addressed through the minimisation of the recognised threats and vulnerabilities.

4.7 The following section looks at the broad ML threats that have now been identified within the Territory in the context of the most commonly occurring domestic and international predicate offences and the risks resulting therefrom. The vulnerabilities within the financial services sector that may be exploited as a result of these threats going unaddressed are dissected in the subsequent sections of the report.

### Money Laundering Threats

4.8 The crime rate in the Virgin Islands is considered to be low, with the RVIPF indicating a downward trend in most major offences during the reporting period as outlined in **Chart 4.1** below.



**Chart 4.1: Number of Major Criminal Offences Recorded by Type: 2015-2019**

4.9 The majority of offences recorded<sup>6</sup> by the RVIPF during the reporting period fell into the following three categories:

- Major Crimes Against the Person
- Major Crimes Against Property
- Narcotics Offences

4.10 Major crimes against the person include murder, attempted murder, manslaughter, and assault including wounding or inflicting grievous bodily harm. Crimes recorded in this category related primarily to

<sup>6</sup> Recorded cases are cases where someone has been charged or issued a caution or warned.

common assault as outlined in **Table 4.1** below. Other more serious crimes of murder and attempted murder are not common, however, there was a spike in 2017 in the number of murders that occurred.

Major Crimes Against the Person	2015	2016	2017	2018	2019
<b>Murder</b>	2	4	11	6	2
<b>Attempted Murder</b>	6	7	3	10	4
<b>Manslaughter</b>	5	1	0	0	0
<b>Serious Assault</b>	121	121	86	67	107
<b>Common Assault</b>	270	256	173	208	227
<b>Total</b>	<b>404</b>	<b>389</b>	<b>273</b>	<b>291</b>	<b>340</b>

**Table 4.1: Major Crimes Against the Person: 2015-2019**

- 4.11 Major Crimes against Property include theft, robbery, burglary, aggravated burglary, arson and damage to property. Crimes recorded in this category related primarily to burglary, theft and criminal damage most of which have been identified as crimes of opportunity (See **Table 4.2** below). These are generally of low financial value and very rarely involve violence against persons.

Major Crimes Against Property	2015	2016	2017	2018	2019
<b>Robbery</b>	13	30	22	22	14
<b>Burglary</b>	185	209	205	153	145
<b>Theft</b>	326	260	307	274	235
<b>Property Damage</b>	165	149	128	97	119
<b>Total</b>	<b>689</b>	<b>648</b>	<b>662</b>	<b>546</b>	<b>513</b>

**Table 4.2: Major Crimes Against Property: 2015-2019**

- 4.12 Narcotics Offences include unlawful cultivation, importation and possession of cannabis and cocaine (including crack cocaine), and possession with intent to supply cannabis and cocaine. Crimes recorded in this category related primarily to unlawful possession of a controlled drug, which in most cases was cannabis (see **Table 4.3** below). Reports have indicated, however, an increase in drug trafficking type cases (i.e. supply and importation) over the last three years. These relate more specifically to an increase in the number of incidents and the quantity of drugs that have been seized at ports of entry and at sea.

Narcotic Offences	2015	2016	2017	2018	2019
Unlawful cultivation of cannabis	4	2	1	1	2
Unlawful importation of cannabis	1	0	0	0	0
Unlawful possession of cannabis	39	70	76	56	51
Unlawful possession of cannabis with intent to supply	5	4	6	11	7
Unlawful importation of cocaine	1	0	1	1	0
Unlawful possession of cocaine	2	6	9	3	1
Unlawful possession of crack cocaine	0	1	0	1	0

Unlawful possession of cocaine with intent to supply	0	2	5	8	1
<b>Total</b>	<b>52</b>	<b>85</b>	<b>98</b>	<b>81</b>	<b>62</b>

**Table 4.3: Narcotic Offences: 2015-2019**

- 4.13 Other areas where the RVIPF has indicated an increase in crime include fraud (including online fraud) and smuggling of both cash and humans as outlined in **Table 4.4** below.

<b>Other Offences</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Custom &amp; Immigration Offences</b>	3	7	13	11	14
<b>Fraud/Forgery Offences</b>	2	3	2	7	12
<b>Total</b>	<b>5</b>	<b>10</b>	<b>15</b>	<b>18</b>	<b>26</b>

**Table 4.4: Other Offences: 2015-2019**

#### Proceeds of Domestic Criminality

- 4.14 The most significant domestic proceeds-generating crimes within the Virgin Islands are drug trafficking and associated crimes (i.e. cash smuggling, failure to declare), as well as fraud to a lesser extent, including online fraud. It is, therefore, not surprising that the major ML threats emanating from domestic criminality relate primarily to these offences. Given its porous borders and proximity to the USVI and Puerto Rico, the Virgin Islands has long been identified as a transshipment point for South American narcotics destined for the US. As such, the illegal movement of cash associated with such trafficking has also been an ongoing issue for law enforcement agencies within the Territory. The RVIPF has indicated that there has been an uptick in the number of cases involving the movement of cash linked to drug trafficking particularly via the airport where persons attempt to transport large sums of cash in and out of the Territory without making the proper declaration.
- 4.15 Additionally, the RVIPF has indicated that there appears to be a network of persons in neighbouring islands in the Eastern Caribbean who specialise in people smuggling to and through the Virgin Islands. While some persons are destined for the Territory, the final destination is usually the USVI. Although there is no hard data to show any links to organised crime or gangs within the Territory, intelligence shows that there is some level of organisation between these neighbouring islands and the USVI. Human trafficking has also been identified, but to a much lesser extent. Cooperation between local LEAs and CAs and their foreign counterparts is considered in **section 7** of the report, but cooperation is considered to be strong at both the regulatory and law enforcement levels.

#### Proceeds of Foreign Criminality

- 4.16 Being an International Financial Centre, the VI is vulnerable to ML through the activities carried out by legal persons and legal arrangements registered in or from within the Territory. To fully understand the extent of the Territory's vulnerability in this area, the level of proceeds of foreign criminality is measured through the analysis of international cooperation mechanisms utilised by the various LEAs and CAs, particularly in regard to requests emanating from agreements such as MLATs. Offences committed, as identified through these MLA requests, usually relate to fraud, corruption and tax evasion as well as ML

committed in other jurisdictions. The threat from predicate offences committed overseas is therefore real as proceeds from such offences find their way into the financial services sector.

- 4.17 Exposure in relation to proceeds derived from tax evasion is reduced primarily through the VI's participation in the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes and the Inclusive Framework on Base Erosion and Profit Shifting (BEPS). Following the commitment of the Virgin Islands to the fight against tax evasion the Multilateral Convention on Mutual Administrative Assistance in Tax Matters was extended to it in 2014. The agreement immediately established a tax information exchange relationship with over 117 countries. In addition, the VI currently has 28 TIEAs in place. These agreements enable the exchange of information in respect of both criminal and civil tax matters.

#### Seizures, Forfeitures and Confiscations

- 4.18 Funds found during the commission of a crime are seized as a matter of policy. There are seizure provisions under the Police Act (PA), the Drugs (Prevention of Misuse) Act (DPMA), the Drug Trafficking Offences Act (DTOA), and the Customs Management and Duties Act (CMDA). Seizure provisions also exist in the Criminal Justice (International Cooperation) Act (CJICA) in relation to criminal proceedings instituted against a person outside of the Virgin Islands which allows a police officer to enter and search premises and seize any evidence found therein. Such searches must be conducted upon application and granting of a warrant.
- 4.19 Outside of drug trafficking offences, forfeiture of assets is limited to cash and is generally pursued in relation to failures to declare incoming or outgoing cash at the border. Forfeiture of tangible assets is permissible in relation to drug trafficking offences under the DPMA if the asset is used as chattel in the transportation of the drugs. Forfeiture is not dependent on gaining a conviction. The CMDA also permits forfeiture which is achieved through the detention and seizure of goods, including vessels used in connection with the commission of criminal conduct. It also allows for the condemnation of contraband. Additionally, under the CJICA, overseas forfeiture orders are also enforced in relation to offences committed outside the Territory that correspond to, or are similar to offences under the DPMA and the DTOA where assets held within the Territory were used in connection to the commission of such an offence. These orders are usually facilitated through a court order.
- 4.20 During the reporting period, approximately \$2.91 million in cash was seized, with a total of \$1.85 million eventually being forfeited to the Crown. These seizures came from inbound and outbound failures to make declarations to Customs and from proceeds of drug trafficking related offences. In that same period the ODPP prosecuted 16 ML related cases from which 9 convictions were secured.
- 4.21 Confiscations are conviction based and can be sought in relation to convictions achieved under the DTOA or the PCCA, which result from prosecutions stemming from criminal investigations. In seeking a confiscation order, the burden of proof is based on a balance of probabilities which is less stringent than the usual requirement of proof beyond a reasonable doubt for other criminal matters. Confiscations are

harder to attain than forfeitures as confiscations require a guilty verdict on a predicate offence, and the general consensus is that there is usually insufficient evidence provided by the RVIPF for the ODPP to secure a confiscation. This again raises the issue of thoroughness and the level of understanding in conducting ML investigations by the RVIPF as well as the level of understanding and willingness of the ODPP to pursue such cases. There were no confiscation cases recorded during the reporting period.

### **Sectoral Money Laundering Risks**

- 4.22 ML risks posed by the individual sectors under review are discussed in **sections 9 to 15** below. The level of risk has been identified based on each sector's level of exposure to identified vulnerabilities taking into consideration the threats to the jurisdiction as identified above, and the extent to which each sector has been able to successfully mitigate these vulnerabilities.
- 4.23 The identified vulnerabilities themselves are based, *inter alia*, on the sector's size, the level of non-face to face business conducted, its exposure to high risk jurisdictions, the interconnectedness with other sectors, the variety of products and services provided within the sector, volume of transactions and the extent to which the sector has been identified in SAR reports and MLA requests.
- 4.24 These vulnerabilities have been mitigated to varying levels in most instances through each sector's understanding of its AML obligations relative to the identification and verification of BO information, the application of proportionate CDD and ECDD measures and maintenance of these, and other BO information. This is buttressed against an effective level of regulation and supervision by the FSC as outlined in **section 5** below.

### **National Money Laundering Risk**

- 4.25 In determining the Territory's overall ML risk level focus was placed on the major ML threats emanating from both domestic and foreign criminality and their impact to the Territory. The ML threat from domestic criminality was considered **Medium-Low**, while the ML threat from foreign criminality was assessed as **Medium-High**. Given the Territory's position as an IFC, the impact of foreign criminality on the overall risk level was considered more severe based on the types of foreign predicates, the value of the proceeds of criminal conduct and the scope of the impact of this conduct.
- 4.26 A number of other factors were also taken into consideration in determining the overall ML risk level. These factors included:
- the threats identified in the initial NRA and whether any of those threats had been minimised based on subsequent actions taken by the Territory;
  - evidence and intelligence provided on the types of crimes committed within and outside the jurisdiction which involved legal persons and legal arrangements established in the Territory;
  - level of vulnerability based on gaps in or absence of data provided;
  - anecdotal evidence provided by CAs and LEAs of their respective assessment of risk and intelligence findings; and
  - consideration of the risk levels within each of the individual sector assessed.

4.27 This analysis resulted in a determination that the overall risk of ML to the Virgin Islands was considered **Medium-High**.

## 5. AML/CFT OPERATIONAL FRAMEWORK

5.1 The Virgin Islands' AML/CFT framework emanates from the Proceeds of Criminal Conduct Act which underpins both the AMLTFCOP and the AMLR. Both the FSC and the FIA are responsible for ensuring the provisions outlined in the AMLR and the AMLTFCOP are adhered to by their respective supervised entities. These legislation lay out specific AML/CFT measures, not the least being the requirement to conduct full and proper CDD, and where appropriate ECDD, including the identification and verification of BO information. Conduct of such CDD measures also includes consideration of the customer, product/service, and geographical risks that a supervised entity, and its clients where applicable, would be exposed to.

### The Financial Services Commission's Supervisory Framework

5.2 The FSC is responsible for the regulation and supervision of FIs in the Virgin Islands. The FSC's AML/CFT operational framework in relation to such regulation and supervision is multifaceted and is centred on a strong licensing and authorisation regime, a comprehensive risk-based supervisory framework, and the execution of proportionate and effective enforcement measures.

### Regulation

5.3 Any FI wishing to carry on business in, or from within the Virgin Islands must apply for and be granted a licence by the FSC under the relevant legislation. The FSC's licensing process has been developed to ensure the minimisation of misuse of BVI structures by criminals and their associates through its robust system of market entry controls. These controls are centred on the FSC's understanding of the ownership and control structures of applicants, including the identification and verification of the beneficial owners of each applicant, along with an assessment of the fitness and propriety of the applicant and all identified senior officers and other independent officers. This process is repeated whenever there is any significant change in ownership (10% or more), or senior officers once the entity is licensed.

5.4 The FSC also engages regulated entities on AML/CFT matters to enhance their overall understanding of ML risk through targeted engagement and the provision of comprehensive sector-specific AML/CFT guidance<sup>7</sup>. Further, the FSC engages the industry to promote collaborative dialogue and ensure regular updates on AML/CFT matters through the use of various industry outreach programmes<sup>8</sup>.

### Supervision

The FSC operates a risk-based approach to AML/CFT supervision based on standards of best practice and in adherence with FATF Recommendations. Supervision includes both desk-based monitoring and on-site inspection processes which are centred around and informed by the FSC's Risk Assessment Framework (RAF). The RAF looks at the nature of innate operational risks, the specific source of such risks and the quality of the management of those risks, and classifies individual licensees based on a 5-tiered risk

---

<sup>7</sup> Such guidance includes AML/CFT Guidelines for the Banking Sector, Money Services Business Guidelines as well as the AMLTFCOP which applies to all sectors

<sup>8</sup> Programmes include Meet the Regulator forums, participation in BVI Finance Breakfast meetings, publication of industry circulars, and presentations at industry association meetings

assessment rating system. This tool is applicable throughout the strata of the licensee's relationship with the regulator and applies to all licensed entities.

- 5.5 Application of these criteria, as part of the wider risk assessment methodology developed by the FSC, determines the level of supervision required for each licensee, which could range, *inter alia*, from routine desk-based monitoring and event driven reviews, to execution of thematic or full inspections, suspension of operations, appointment of an examiner, or withdrawal of a licence.
- 5.6 Results of on-site inspections are shared with the relevant licensee who is required to submit a remediation plan to ensure deficiencies identified are appropriately and timely addressed. Failure to effectively remediate the identified deficiencies may lead to enforcement action being taken against the offending licensees.

#### Enforcement Mechanisms

- 5.7 As part of its regulatory and supervisory mandate the FSC has an obligation to take enforcement action against any licensee for failures of compliance or breaches in regulatory requirements. In so doing, the FSC follows clear criteria set out in its Enforcement Guidelines, which have been developed to ensure fair, consistent and proportionate application of enforcement actions based on the severity of the identified infraction. This includes the application of proportionate and dissuasive sanctions where necessary. During the assessment period the FSC used a number of its available enforcement actions, including the imposition of over \$800,000 in penalties relating to AML breaches.



## 6. COOPERATION MATTERS

### International Cooperation

- 6.1 It is globally recognised that cross border cooperation and coordination of efforts are the most viable tools in the international response to organised crime and in particular, money laundering.
- 6.2 The nature of organised crime is such that it permeates national borders and assumes an international character. This makes it difficult for any country on its own to efficiently and effectively investigate and prosecute acts of criminality without the aid of other countries in which or through which the act of criminal conduct extends. Thus, the efficient and effective combating of organised crime calls for a collaborative effort and cooperation between countries and at an international level. Such cooperation must be robust and multi-faceted in order to significantly thwart criminals from designing and executing their criminal intents.
- 6.3 The Virgin Islands has for over twenty-five years, since the enactment of the Criminal Justice (International Cooperation) Act, 1993, been involved in international cooperation matters by providing mutual legal assistance upon request. The initial remit of the law was to provide assistance in specified criminal matters where a bilateral agreement existed. Then in 1992 a specific assistance regime was prescribed in relation to drug trafficking matters to give effect to the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. This scope was extended further in 1993 to enable assistance in all criminal matters where a request was received from a foreign competent authority so long as certain parameters were complied with. In 1997 a specific legislative regime was established to deal with money laundering offences and facilitating foreign requests for assistance in such matters. Formal MLA requests are handled through the AGC with assistance from the FIA for those requests where a BVIBC may be the subject of the enquiry. The mutual legal assistance regime was further extended in 2000 to enable assistance in the area of financial regulation by providing a regulator to regulator assistance scheme.
- 6.4 In addition, exchange of financial intelligence is facilitated through the FIA's membership in the Egmont Group as well as the Territory's membership in the CFATF, which allows the FIA to utilise information sharing agreements with non-Egmont members. The RVIPIF interacts regularly with its foreign counterparts and has developed strong working relationships with regional, US and UK law enforcement authorities. Additionally, Her Majesty's Customs has forged solid working relationships with regional and international counterparts through its membership in the WCO and the CCLEC. It also works closely with US CBP and ICE and along with the RVIPIF, participates in joint operations with these agencies when necessary. On the regulatory side, the FSC is an active member of IOSCO, GIFCS, IAIS as well as other regional associations such as ASBA, CGBS, and CAIR.
- 6.5 The CA on tax matters in the VI is the ITA. The VI has joined the OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and is an active member of the OECD's Global Forum. Through its membership in the Global Forum the VI has been assessed on its transparency in tax information exchange. As of the date of this report, the VI was rated as Largely Compliant by the Global Forum which confirms the VI's

ability to cooperate with other tax authorities. The assessment report of the Global Forum indicated the ability of the VI to exchange ownership, accounting and banking information.

6.6 To further facilitate the automatic exchange of information under the international standard of automatic exchange (i.e. the Common Reporting Standard (CRS) and Country by Country Reports (CbCr), the VI became a signatory to the MCAA for both CRS and CbCr. It implemented the CBC automatic exchange of information regime and signed a bilateral CBC automatic exchange of information competent authority agreement with the United Kingdom of Great Britain and Northern Ireland and the USA. The VI has also signed an intergovernmental agreement with the USA to ensure automatic exchange of financial account information under the US FATCA.

6.7 The VI implemented CRS in 2016 and its first exchanges occurred in 2017. Since 2016, the VI also automatically exchanges with CBC partner countries information collected from MNEs in relation to all fiscal years.

6.8 The VI is also a founding member of the CFATF and has been assessed under the FATF's Third Round Mutual Evaluation Process. This assessment placed the VI in the top 10% globally in terms of its compliance with the FATF Standards. The VI considers assessments by international independent institutions as key in its international cooperation process, as it positively aids the process of continual review and reform of relevant laws, administrative systems and law enforcement mechanisms. Accordingly, recommendations emanating from such assessments have been reviewed and implemented to strengthen the Territory's international cooperation regime.

### Sanctions

6.9 In order to ensure an effective financial sanctions regime the VI embraces international standards and best-practice standards which promote international cooperation and international security in accordance with international agreements. This includes the implementation of measures to ensure that it meets its obligations to combat ML, TF and PF as embodied under the FATF Recommendations.

6.10 As a British Overseas Territory, the VI is committed to ensuring its role in the maintenance of international peace and security, and therefore implements the international sanctions obligations extended through the United Kingdom (UK) in the form of Orders in Council. The Governor of the Virgin Islands is the Competent Authority with responsibility for enforcing Orders-in-Council relative to international sanctions. Through internal processes between the GO and the FIA these matters are investigated and responded to in a timely manner. The VI has been recognised for its timely and consistent cooperation in these matters.

6.11 Between 2015 and 2019 BVIBCs were named in relation to 30 potential breaches of UN sanctions. In addition, communication regarding 27 additional potential breaches involving BVIBCs were reported from sources including FIs, DNFBPs and foreign NGOs. These potential breaches and reports were in relation to sanctions against Iran, Libya, Syria and the DPRK, *amongst others*. Reports of this nature are forwarded

to the FIA for investigation and results are returned to the GO without exception. There has been only one instance where evidence has been found to warrant action being taken. However, it was deemed by the ODPP that there was no legal framework to attempt prosecution in the matter. This is a clear gap in the Virgin Islands' ability to respond effectively to sanctions related matters. With regard to cooperation, however, the jurisdiction has been praised by the UN Panel for its responsiveness to their requests.

- 6.12 During that same period, the FIA received 51 SARs in relation to sanctions related offences including alleged sanctions breaches, sanctions listees, and associations/connections to a sanctioned individual/entity listed by the UN, EU, UK or other jurisdiction. The majority of these SARs were filed by TCSPs (see **Table 6.1** for details).

Year	TCSPs/RAs	Law Firms	Insolvency Practitioners	BVIBCs	Banks
2015	3	2	0	0	0
2016	2	1	0	0	0
2017	7	0	0	0	0
2018	10	0	0	0	0
2019	21	1	1	1	2
<b>Total</b>	<b>43</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>2</b>

**Table 6.1: Sanctions Related SARs Filings by Sector: 2015-2019**

- 6.13 However, it was found that in only 4 instances were BVIBCs themselves alleged to have breached a UN/EU sanction. Upon investigation two of these SARs were closed and filed for future reference, while one was disseminated to a foreign FIU and the other to the FSC, both for intelligence purposes. In neither instance was there confirmation of any alleged breach.
- 6.14 Given the sheer volume of BVIBCs this may reflect that generally, BVIBCs are aware of their obligations under the various UN/EU sanctions and adhere to the requirements of the sanctions orders. Conversely it could point to insufficient monitoring of the perimeter to detect the true number of BVIBCs involved in sanctions busting activities.

### Domestic Cooperation

- 6.15 The framework used for fostering inter-agency cooperation in the VI includes information exchange based on the use of bi-lateral inter-agency MOUs such as those established between the FSC and FIA, FIA and HM Customs, and FIA and RVIPIF. Additionally, there is a multi-lateral inter-agency MOU established amongst the 18 members of the IGC, which defines the relationship between the members and compels them to work together to, *inter alia*, enhance the Territory's compliance with its international obligations with respect to information exchange, and coordinate activities to effectively combat criminality relative to ML, TF, corruption, matters related to organized crime and tax obligations.

- 6.16 Cooperation amongst these agencies spans the entire gamut of the Virgin Islands' AML regime. Of particular importance is the relationship between the FIA and the RVIPF in relation to the analysis, dissemination and investigation of SARs related activities, as well as the relationship between the RVIPF and the ODPP with respect to investigation and prosecution of ML offences. Additionally, the FIA provides valuable support to the AGC in gathering information relating to legal persons and legal arrangements established in the VI to allow for the AGC to respond to MLA requests.
- 6.17 Disseminations to the RVIPF by the FIA as a result of SARs filed are usually made in relation to SARs in which a local business has been identified after the FIA has conducted its own operational analysis. Between 2015 and 2019 2,396 SARs were received by the FIA. Of that total, 631 were related to entities carrying out business within the Virgin Islands while the remaining 1,765 were associated with entities conducting business outside of the Territory. However, based on the most recent data available, only 7 disseminations had been received by the RVIPF as a result of the FIA's analysis of the 631 "local" SARs received. Six of these were in relation to possible ML, while the other was fraud related. Additionally, 64 disseminations were made to foreign FIUs as a result of SARs received relative to suspicions involving BVI entities operating in other jurisdictions. This low number of disseminations draws into question the quality of the SARs received and whether sufficient information is being provided to the FIA to allow it to conduct proper analysis, as well as the FIA's actual ability to adequately analyse reports when received.
- 6.18 In an effort to improve the quality of SARs received by financial institutions the FIA conducted targeted outreach to MSBs in 2016 which has improved the quality of filings from that sector. In October 2019, the FIA also published its SARs guidance on its website and presented the document to the Association of Compliance Officers for discussion. It is hoped that this guidance will aid the FIs in providing better quality SARs to the FIA which in turn may help in their analysis and subsequent dissemination to the RVIPF for investigation.
- 6.19 The FIA also has the ability to make spontaneous disseminations to other LEAs based on intelligence gathering exercises. During the reporting period 75 such disseminations were made, 24 of which were sent to the RVIPF, while the majority of the remaining disseminations were provided to LEAs in the US, UK and Brazil, which loosely correlates with the jurisdictions from which a large portion of the Territory's international cooperation requests emanate. There are no impediments to the FIA making such disclosures which speaks to a sound level of cooperation between LEAs both locally and internationally.
- 6.20 With regard to investigations and prosecutions, the RVIPF and the ODPP work closely together, with the ODPP providing ongoing advice to the RVIPF including through the use of case conferences which are held during trials where necessary. The ODPP has implemented a vetting procedure where any file submitted by the RVIPF is thoroughly reviewed to ensure that the RVIPF have provided sufficient evidence and that all the criteria outlined in the vetting form are met to enable the case to move forward. Where files are found wanting, they are returned to the RVIPF for further action. Each vetting form includes a section on the identification of proceeds of crime.

6.21 There were 42 ML investigations conducted between 2015 and 2019 by the RVIPF, however, only 16 prosecutions were put forward by the ODPP. This raises issues as to the thoroughness and level of understanding in conducting ML investigations by the RVIPF as well as the level of understanding and willingness of the ODPP to pursue ML cases. The ODPP does not have any specific procedures for prosecuting ML cases. It relies on the RVIPF to ensure there is sufficient evidence to show that any related funds are proceeds of crime or were used in the commission of a crime to allow a case to be prosecuted. ML is treated the same as any other charge brought before the ODPP for prosecution.

## 7. TRANSPARENCY OF BENEFICIAL OWNERSHIP

### Legal Persons

#### BVI Business Companies

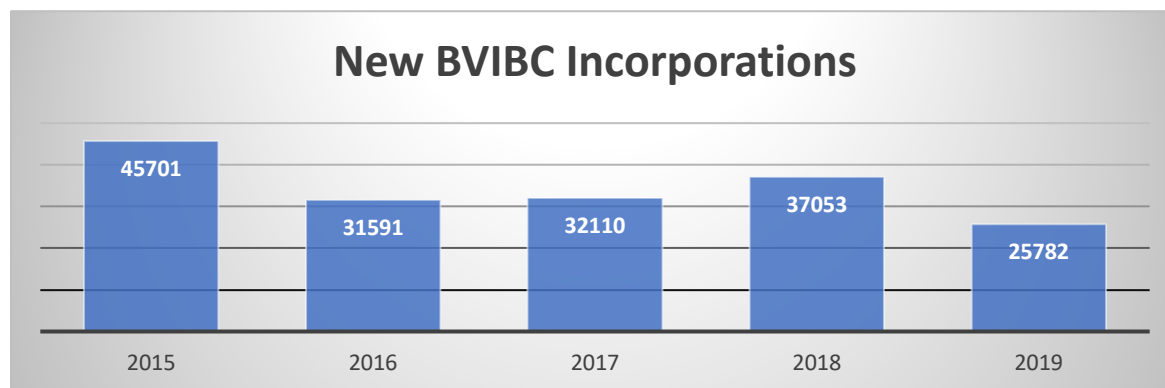
7.1 Only TCSPs that are categorised as RAs are permitted to form legal persons in the Territory. Section 5 of the BVIBCA provides for five types of companies that may be established:

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

7.2 A company, subject to section 28 of the BVIBCA and to its memorandum and articles, has full capacity to carry on or undertake any business activity, and may enter into any transaction in so doing. Companies are also empowered to issue and hold shares, including treasury shares and conduct financial transactions. It is also acceptable for a foreign company to carry on business in the VI through the process of registration.

7.3 In the Virgin Islands there is no distinction between a company established to operate in or from within the Territory. At the end of 2019, there were 387,344 active BVIBCs on the Companies Register (i.e. in good standing and in compliance with the BVIBCA). On average, however, less than 1% of BVIBCs incorporated annually operate physically in the Virgin Islands. The number of new BVIBCs incorporated annually between 2015 and 2019 is outlined in **Chart 7.1** below.

7.4 Most BVIBCs incorporated in the jurisdiction are created for the purposes of cross-border business, primarily as entities to hold assets or as vehicles for joint ventures which may be linked to the investment sector. These companies operate mainly in major global economies including Asia, South America, Europe, North America, and to a lesser extent Africa, and their beneficial owners originate from a similarly wide range of countries.



**Chart 7.1: New BVIBC Incorporations: 2015-2019**

7.5 A BVIBC must maintain at all times a registered office and RA within the VI. It is also required to maintain at the office of its RA, the memorandum and articles of the company, the register of members, the register of directors<sup>9</sup> and copies of all notices and documents filed by the company. The company itself is required to keep records of its transactions, and of its financial position. These records may be kept in written form, hard copies, or in electronic form. The MLA(TM)A expounds on what records must be maintained and provides guidance in that regard. Further, where records are maintained outside the Territory, the RA of that company must be provided with details of the address where the records are kept and who has control over those records. This allows for access to the information by relevant competent authorities and enables the Territory to provide wide ranging international cooperation support.

7.6 All legal persons incorporated in the Virgin Islands are also obliged to maintain basic ownership information and information about their purpose. This information must be maintained by the RA who is responsible for maintaining a record of the beneficial ownership of the legal person and for providing it to the authorities.

#### *Bearer Shares*

7.7 Under the BVIBCA, a company limited by shares can issue bearer shares, but they must be immobilised. All physical bearer shares and information that identify the owner(s) of the bearer shares must be in the possession of either an authorised custodian or a recognised custodian. Custodians can be established either in or outside the VI. There are currently three persons approved by the FSC to act as authorised custodians. Since July 2012, an RA of a company that has issued bearer shares is also required to maintain full information on the owners of such bearer shares. This information is made available from the person depositing the share(s) or the custodian, who are required to submit the ownership information to the RA. The obligation on the RA to keep information on the owners of bearer shares ensures that this information is kept by a person within the Territory. There are ongoing discussions towards eliminating the use of bearer shares which would remove the requirement for custodial services.

7.8 Since 2015 there has been an approximately 14% decrease in the number of companies authorised to issue bearer shares. At December 2019, there were less than 450 companies authorised to issue bearer shares, all of which were incorporated prior to 2019.

#### *Foreign Companies*

7.9 It is also acceptable for a foreign company to carry on business in the VI through the process of registration. Foreign companies are registered in accordance with section 187 of the BVIBCA, and such companies are registered in the Register of Foreign Companies. A foreign company may be registered under its corporate name or it may be registered in an alternative name for the purposes of carrying on business in the Virgin Islands. Every foreign company must, upon registration, provide evidence of its incorporation, a certified copy of the instrument constituting or defining its constitution, a list of its

---

<sup>9</sup> The BVI Business Companies (Amendment) Act, 2015 requires a copy of the register of directors to be filed with the Registrar effective from 1<sup>st</sup> January, 2016.

directors at the time of the application, and a notice specifying the appointed RA. Such registrations are uncommon however, with only 19 such companies being registered between 2015 and 2019.

#### AML/CFT Obligations

- 7.10 The provisions of the PCCA, AMLR and AMLTFCOP apply to all legal persons incorporated or registered in the VI. In this regard, CDD requirements apply in relation to all such legal persons and must be carried out by the RA prior to incorporation and on an ongoing basis during the business relationship. The fundamental elements of CDD require the identification and verification of a customer's identity, the identification and verification of the beneficial owner, and understanding and obtaining information on the purpose and intended nature of the business relationship as appropriate. Furthermore, all CDD information acquired is required to be maintained for at least a period of 5 years from the date of completion of one-off transactions or linked series of transactions, or from the date of the termination of the business relationship with a customer.<sup>10</sup>
- 7.11 In addition, all RAs are required to regularly update CDD information once every year in respect of high risk business relationships and once every four years in respect of low risk business relationships including CDD for legal persons and legal arrangements.<sup>11</sup> In circumstances where a business relationship terminates prior to the specified periods for updating CDD information, the RA is obligated to review and update all the CDD information as of the date of termination of the business relationship.<sup>12</sup> The business relationship terminates only when the company is dissolved or when the RA takes the active step of terminating the business relationship which may be evidenced by resigning as agent of the company.<sup>13</sup> Accordingly, so long as the business relationship continues, the RA has a legal obligation to periodically update the CDD information.

#### Striking Off from the Register

- 7.12 A company that is incorporated or registered under the BVIBCA may be struck-off where the company does not have an RA, fails to make a filing that is required under the BVIBCA, was licensed under financial services legislation and has had its licence cancelled or revoked by the FSC, or where the Registrar is satisfied that the company has either ceased to carry on business, engaged in a licensable activity for which it has not been licensed, or failed to pay its annual fee or a late payment penalty. The striking off process follows a specified procedure outlined in section 213 (3) - (5) of the BVIBCA and the actual striking off of a company from the register takes effect from the date a notice of the striking off is published in the Gazette.
- 7.13 The number of companies struck from the register of companies from 2015 to 2019 is listed in **Table 7.1** below.

---

<sup>10</sup> Regulation 10 (1) of the Anti-money Laundering Regulations, 2008.

<sup>11</sup> Section 21 (1) and (2) of the Anti-money Laundering and Terrorist Financing Code of Practice, 2008.

<sup>12</sup> Section 21 (3) of the Anti-money Laundering and Terrorist Financing Code of Practice, 2008.

<sup>13</sup> A fee of \$25.00 is levied for resigning as RA of a company.



Company Status	2015	2016	2017	2018	2019	Total
<b>Total</b>	<b>95,897</b>	<b>112,665</b>	<b>115,664</b>	<b>94,089</b>	<b>92,500</b>	<b>510,815</b>

**Table 7.1: Number of Companies Struck from the Register by Status: 2015-2019**

- 7.14 The number of struck-off companies for which RAs remain active is approximately 407,000. A significant number of these companies can be restored to the register simply by paying the outstanding fees and penalties. Once this is done the companies become in good standing as if they were never struck off. This creates a risk and vulnerability to be used for proceeds of crime. However, at the point of restoration from being struck-off the RA is required to undertake updated CDD to ensure that information such as BO is accurate and up to date. Further, generally the relationship between an RA and a BVIBC is presumed to continue unless the RA gives notice of termination of that relationship and as such, the RA has an obligation to adhere to all record keeping and BO information requirements as well as updating of CDD as specified in the AMLTFCOP. This is an identified vulnerability within the regime as some RAs are unable or unwilling to maintain the required information even though they are legally obligated to do so.
- 7.15 When a company is struck-off from the register, it effectively ceases to function as a legal entity. In that context, the company and the directors, members and any liquidator or receiver of the company cannot perform any activity in relation to, or in any way deal with the assets of, the company unless they submit an application for the restoration of the company.<sup>14</sup> However, the striking of the name of a company off the register does not prevent the company from incurring liabilities, or any creditor from pursuing any claim against the company; in addition, the liability of any of the company's directors, members, officers or agents is not affected.<sup>15</sup>
- 7.16 There are different reasons why a company may be restored to the register. These may include the fact that failure to pay a fee was inadvertent, the need to bring a claim or defend an action or to continue such claim or action, to enable the disposition of assets, and to wind down on specific outstanding transactions. It is in these contexts that an application would normally be submitted to the Registrar to restore a company on the register and a refusal to restore a company may be the subject of an appeal to the High Court.<sup>16</sup>
- 7.17 **Table 7.2** below provides the number of companies restored to the register of companies for the period 2015 to 2019.

<sup>14</sup> Section 215 (1) and (2) of the Act.

<sup>15</sup> Section 215 (3) of the Act.

<sup>16</sup> Section 217 (4) of the Act.

Year	No. of BVIBCs Restored through Court Order	No. of BVIBCs Restored through Payment of Annual Fee	No. of BVIBCs Restored through Appointment of Registered Agent	Total
2015	64	7110	0	7174
2016	91	6967	0	7058
2017	89	7660	0	7749
2018	115	7547	351	8013
2019	90	4127	360	4577
<b>Total</b>	<b>449</b>	<b>33411</b>	<b>711</b>	<b>34571</b>

**Table 7.2: Number of Companies Restored to the Register by Method of Restoration: 2015-2019**

### Micro Business Companies

- 7.18 The Micro Business Companies Act (MBCA) was brought into force on 4<sup>th</sup> June, 2018 and introduced a new company regime catering to small businesses, particularly start-ups that may find the requirements of incorporation under the BVIBCA overly onerous and cost prohibitive. Being a new product, the MBC regime was reviewed in detail in an effort to understand and identify the level of risk it may pose to the jurisdiction.
- 7.19 An MBC must be incorporated through a registered agent (RA), who is required to conduct the relevant CDD, and ECDD where necessary, as well as carry out its own internal assessment of risk relative to the MBC. The ability to legitimise one's business for persons who would not ordinarily be able to establish a traditional corporate structure, and the benefits that could be achieved in so doing make MBCs attractive to a wide range of small entrepreneurs across the globe, given the ease in which an MBC can be established and the cost effective nature of the regime. The AML/CFT requirements to which an MBC is obliged to adhere to, be it directly through record keeping requirements or indirectly through CDD and other requirements imposed on the RA, allows for greater compliance with global AML/CFT standards by a wider range of entities which cumulatively may be significant to global trade, but which, prior to incorporation as an MBC, could not be monitored in any way for AML/CFT purposes.

### Identification and Mitigation of Risk

- 7.20 While the regime provides the opportunity for small businesses to be incorporated, thereby limiting the liability of the principle(s), it naturally comes with some level of AML/CFT risk. Being a form of legal person, this risk however, is not inherently different to that of a regular business company, albeit with some exceptions and in some cases on a much smaller scale.

The basic types of money laundering ML risk faced by an MBC are in relation to customer type, product and service offerings, and geographical location.

## Customer Risk

7.21 The two areas of identifiable risks in relation to customer type come in the MBC's ability to:

- 1) fully engage in any type of transaction, however, this is limited to such transactions in connection with the MBC's specified business purpose<sup>17</sup>; and
- 2) have PEPs involved in the activities of, or services provided by the MBC.

7.22 However, while an MBC has the ability to fully engage in any type of transaction, this is limited to such transactions connected with the MBC's specified business purpose. This narrowing of scope provides for a better understanding of the activities of the MBC and allows for sounder monitoring by the RA. Additionally, the restriction on the size of the MBC relative to the number of employees and its gross asset value and annual turnover further restricts the potential complexity of the MBC, thereby reducing risk. Given the RA's obligations to adhere to the requirements of the Code, the issue of PEP exposure should also be minimised by application of ECDD measures.

## Product/Service Risk

7.23 The MBCA restricts an MBC from carrying on any regulated financial service business<sup>18</sup>. The restriction on engaging in such high-impact activities as banking, and investment and insurance business by entities that may not have the proper resources to aptly provide such services could also be viewed as a way to contain risk associated with these sectors. The MBCA also gives the FSC the power to prohibit an MBC or class of MBC from engaging in a particular type of business activity<sup>19</sup>. This safeguard is aimed at mitigating risk, including ML/TF risk, of activities that the FSC considers outside of its risk appetite to have entities incorporated in the Virgin Islands engaged in.

## Geographic Risk

7.24 An MBC is able to have its primary place of business in, and conduct business from, any jurisdiction outside of the Territory. This exposes the MBC to the risk of conducting business from jurisdictions, or with entities within jurisdictions that are considered to be high risk. Monitoring of such risk falls to the RA as part of its obligation to understand its clients' risks and to assess and risk rate them accordingly for ongoing due diligence purposes.

## Beneficial Ownership

7.25 The risks relative to BO for an MBC are similar to those of any other legal person. However, the sheer simplicity of the MBC in that the number of shares issuable are limited to the principal and a maximum of five (5) participants who may hold one (1) share each, and which may only be issued in registered form<sup>20</sup> prevents the use of complex structures involving layers of shares registered to other legal persons. This restriction eliminates the risk of misuse of bearer shares as such share types cannot be issued. Further,

---

<sup>17</sup> s.16(1)(a) Micro Business Companies Act, 2017

<sup>18</sup> s.17(1)(a) MBCA

<sup>19</sup> s.17(3) MBCA

<sup>20</sup> s.21(2) MBCA

the definition of “principal” and “participant” restricts such shareholders to “natural individual shareholders” thereby eliminating the possibility of shares being held by other legal persons or nominee shareholders. Participant shares are also non-transferrable and neither they nor the principal’s share may be jointly held or held on trust for another person<sup>21</sup>.

- 7.26 To ensure adequate, accurate and up-to-date basic and beneficial ownership information is available the MBCA requires the charter of the MBC to include the name and nationality of the principal and any participants. The information required to be stated in the charter itself also meets the requirements of the basic information that should be maintained in accordance with Recommendation 24 of the FATF Recommendations with respect to legal ownership and control. The Charter is a publicly available document and thus the information on the principals of an MBC is publicly available.
- 7.27 Further, any change to the principal share must be reflected through an amendment to the charter and filed with the Registrar of Companies. Additionally, the MBCA requires an interim return to be filed no later than seven days after a transfer of the principal’s share occurs. These filing requirements allow up-to-date BO information to be available in a timely manner by CAs and LEAs should such information be required to further an investigation.

#### RA Obligations

- 7.28 The RA of an MBC has an obligation to identify and manage ML/TF risks relative to its clients and implement AML/CFT controls based on those risks. Such controls include the filing of suspicious activity reports and adhering to all applicable sanctions requirements. The RA is also required, as part of its AML/CFT obligations under the AMLTFCOP and the MBCA to maintain verification and transaction documents relative to the MBC and copies of all notices and other documents filed by the MBC for at least five years.
- 7.29 The MBC itself does have an obligation to keep and maintain records and underlying documentation of the company at either its registered office in the Territory, or at its operational address being its primary place of business. Where these records are maintained at the operational address the MBC must provide the RA with the physical address of the operational office and ensure that such records are made available to the RA without delay if requested.
- 7.30 The MBCA was brought into force and later suspended. Therefore, an MBC may not be incorporated in the Territory. Should the MBCA be brought back into force, given the level of identified risk generally associated with an MBC, and the controls in place to mitigate these risks, the product itself could be considered as being low risk for ML. However, based on the global nature of the activities that an MBC may be used for the ML risk associated with an MBC has been elevated to medium-low.

---

<sup>21</sup> s.6(1)(g) MBCA

## Legal Arrangements

- 7.31 With respect to legal arrangements, only two types can be formed in the VI: trusts and limited partnerships.

### Trusts

- 7.32 The general requirements for trusts are detailed in the Trustee Act, which provides for the duties and powers of trustees. Trusts themselves are not required to be registered. Trust service business on the other hand is a regulated activity under the BTCA and is subject to AML/CFT legislative provisions. The requirement to undertake due diligence on trusts and other legal arrangements is contained in the AMLTFCOP and AMLR and is the obligation of the trustee. Of the 258 licensed TCSPs in the Territory at the end of 2019, 147 have the ability to provide trust business. For those TCSPs that provide trust business they also offer professional trustee, protector and administrator services. At the end of 2019 there were 6,841 express trusts under administration. Further, there were 1,545 trusts held under the Virgin Islands Special Trusts Act, 2003 in addition to 1,164 private trusts under administration. As noted earlier, at the end of 2019 the express trusts under administration were valued at approximately \$158.81 billion.

### VISTAs

- 7.33 The Virgin Islands Special Trusts Act 2003 created a special trust known as a VISTA trust. In establishing a VISTA trust, at least one of the trustees must be a BVI licensed trust company, or a BVI Private Trust Company must act as one of the trustees or the sole trustee.
- 7.34 A VISTA trust is used purely for the holding of shares in a BVIBC. The trust assets, therefore, must be shares in a BVI company, which must be transferred into the name of the trustee. A VISTA trust enables the trustee holding the shares in the BVIBC to distance himself from the management of the BVIBC, as the VISTA trust removes the trustee's obligation from the prudent investor rule and therefore has no obligation to oversee the management of the underlying company. The responsibility for managing the company lies with the directors.
- 7.35 The structure of the VISTA reduces the trustees' liability in relation to such high-risk assets as private family company shares. Where the trust deed contains a provision enabling the application of a VISTA trust, the trustee will hold the shares 'on trust to retain'. This duty takes precedence over any duty to preserve or enhance the value of the shares of the BVIBC. It is also possible to add shares from an existing VI trust to a VISTA trust, so that they become subject to VISTA legislation.
- 7.36 VISTAs are commonly used for people with family owned businesses (especially for a sole director/shareholder) who wish to run their company independently as well as benefiting from a trust's estate planning ability, and for trust assets that are invested in what the trustees would traditionally consider high risk investments (i.e. real estate development/speculation or more risky investment strategies). Additionally, for people unfamiliar with the concept of trusts, it allows them to have some comfort when transferring assets to a third party that they can continue to manage the underlying assets.

### PTCs

- 7.37 Some companies that act as trustee or provide other trust related services, particularly for a group of related family trusts are recognised as Private Trust Companies (PTC) and are exempted from the licensing requirement under the BTCA.
- 7.38 The legal framework for the PTC regime comprises three pieces of legislation:
- 1) Financial Services (Exemption) Regulations, 2007;
  - 2) BVI Business Companies (Company Names) Regulations, 2007; and
  - 3) BVI Business Companies (Amendment of Schedules) Order, 2007.
- 7.39 The Exemption Regulations contain detailed provisions for PTCs, including the requirements imposed upon them, while the Company Names Regulations requires that the name of a BVIBC that is a PTC must end with “PTC” immediately before the normal permitted endings. Further, the BVI Business Companies (Amendment of Schedules) Order sets out the fees for a PTC.
- 7.40 To qualify as a PTC, the company must be a qualifying BVI Business Company, i.e., a fully compliant BVI Business Company; be a limited company; and the memorandum of the company must state that it is a private trust company.
- 7.41 PTCs are permitted to carry on trust business that is either unremunerated trust business or related trust business. Currently, PTCs may not carry on both unremunerated trust business and related trust business at the same time. There is, however, consideration being given to allow a PTC to carry on both types of business. A trust is related to another trust where the settlor of the trust is a connected person with respect to the settlor of the second trust. A group of trusts are related trusts where each trust in the group is related to all of the other trusts in the group.
- 7.42 If a PTC breaches these conditions, it loses the benefit of the licensing exemption. The PTC would then be required to amend its memorandum so that it ceases to be a PTC. Failure to comply may result in the FSC taking enforcement action against the PTC under the FSCA. To date, no such actions have ever been taken. However, if this were to occur, the PTC would be required to seek a licence in order to continue to operate.
- 7.43 The FSC does not approve the exemption of a PTC or carry out direct ongoing monitoring of PTCs. Effectively this is done through the RA of the PTC. A PTC’s RA, which must hold a Class I licence, undertakes the monitoring of PTCs. The FSC therefore imposes certain duties and obligations on RAs of PTCs. The FSC may take enforcement action against the RA, as well as the PTC, including revoking the licence of the trust company where there are breaches of the legislative framework for a PTC. As with the PTCs themselves, no action has ever been taken against an RA for any such breaches.
- 7.44 The RA of a PTC must on a risk-based basis, take reasonable steps to satisfy itself that the PTC continues to comply with its obligations and to ensure that all required records relating to a PTC are kept at the office of the RA.

- 7.45 Such records include the trust deed or other document creating or evidencing each trust for which the PTC is providing trust business; and any deed or document varying the terms of the trust. If the RA forms the opinion that the PTC is no longer complying with its obligations it is obligated to notify the FSC of this fact.
- 7.46 The FSC considers VISTAs and PTCs to be low risk as these products, particularly PTCs, may only be provided by specific classes of licensees. PTCs can only be administered by a Class I licensee while VISTAs can be administered by either a Class I, Class II or Restricted Class II licensee. These licensees are responsible for conducting all relevant CDD and maintaining CDD and BO information in accordance with AML/CFT requirements. These products have characteristics that are likely to attract use from high risk persons including PEPs, or persons located in high risk jurisdictions. Furthermore, the very nature of the products means that they are used by high net worth individuals who may emanate from high risk jurisdictions. The FSC's Risk Assessment Framework used to determine the overall risk of each licensee includes the assessment of both PTCs and VISTAs, although the risk of the products themselves has not been assessed since their initial launch. Monitoring of these products is done as part of the onsite inspection process of the RA by the FSC.

### **Partnerships**

- 7.47 Limited partnerships may be formed under the Limited Partnership Act, 2017 (LPA) which replaced the provisions for limited partnerships under the Partnership Act, 1996. A limited partnership is required to have a written limited partnership agreement that provides for the rights and obligations of the partners. Further, the agreement may provide for the affairs of the limited partnership and the conduct of its business and activities. Upon registration the limited partnership agreement becomes binding as between each partner, including subsequent partners or where the limited partnership has legal personality, between the limited partnership and each partner, including subsequent partners<sup>22</sup>.
- 7.48 In order for a limited partnership to be registered, an application in the form of a statement must be filed with the Registrar<sup>23</sup>. The statement must include the name of the limited partnership, the name and address of the RA, the address of the registered office within the Territory, the name and address of each general partner, and the term for which the limited partnership is entered into, or if for an unlimited duration, a statement to that effect. Once this information is submitted and verified, and the other requirements of the Act have been complied with, the Registrar would then allow registration of the limited partnership. Between 2015 and 2019 751 limited partnerships were registered.
- 7.49 A limited partnership must maintain a registered office and RA within the VI at all times<sup>24</sup>. Further, the general partners of a limited partnership are required to maintain at the registered office a register of general partners and a register of limited partners, or a record of the address of where such registers are

---

<sup>22</sup> Section 7(3) Limited Partnership Act, 2017

<sup>23</sup> Section 8(2) LPA

<sup>24</sup> Sections 18 and 19 LPA

maintained<sup>25</sup>. Each register is required to include the name and address of each general and limited partner, the date on which a person became a general or limited partner, the date a person ceased to be a general or limited partner, and the particulars of the general or limited partnership interest, if any. The limited partnership is also required to keep financial records and any other underlying documentation of the limited partnership<sup>26</sup>.

7.50 The LPA does not provide for the establishment of a general partnership.

#### Assessment of Threats

7.51 The risk to the Territory from the threats associated with Legal Persons and Legal Arrangements is largely reputational. Given the global nature of these entities they are highly susceptible to criminal misuse. Between 2015 and 2019 TCSPs filed 1,636 SARs which involved BVIBCs. This accounted for roughly 68% of total SARs received. Conversely, BVIBCs themselves filed only 32 SARs with the FIA during that same period which reflects 1.34% of the total SARs filed. Although only 32 SARs were filed by BVIBCs the transactions identified in those SARs were valued at \$34,547,967 and related primarily to issues of fraud, ML and counterfeiting. SARs involving BVIBCs however, in most cases related to fraud, ML, and tax evasion.

7.52 On average, 10 BVIBCs are named each month in negative news articles, some of which allege the committing of some form of inappropriate or illegal activity by these companies. However, a number of these reports also relate to matters of a commercial nature resulting from civil litigation and are not indicative of any impropriety on the part of the BVIBC. Allegations that stand to pose the most reputational risk to the Territory include those of opacity, ML and fraud. Such allegations generally arise from incidents committed outside the jurisdiction and therefore require cross-border cooperation between regulators and other CAs and LEAs to enquire into the validity of the allegations and to seek action in instances where such allegations are proven to be founded.

7.53 The VI has a long history of sound international cooperation at both the formal and informal levels which is outlined in section 6 below. Both criminal and civil MLA requests involving legal persons and legal arrangements (outside of those involving tax related matters) are handled by the AGC. During the reporting period the AGC received, on average, 80 MLA requests per year associated with matters involving legal persons or legal arrangements, and were able to respond to 80% of such requests directly based on the information provided in the requests. Most of the requests involved matters of ML, fraud and tax evasion coinciding with the key foreign predicate offences identified by the RVIPIF.

#### ML Vulnerabilities

7.54 BVIBCs are used globally for a variety of reasons, but particularly to facilitate legitimate international trade. As such, they are frequently part of larger, often complex, corporate structures involved in

---

<sup>25</sup> Section 53 LPA

<sup>26</sup> Section 54 Limited Partnership Act, 2017



multifaceted international financial transactions across multiple jurisdictions. Such structures provide an inherent vulnerability for these entities to be misused for ML, given the high level of non-face to face transactions, and the potential to be used to conceal the source of assets and the identity of beneficial owners many of which are high risk customers, including PEPs and other high net worth individuals. This, coupled with the potential for them to engage in large cash transactions, and the use of new and emerging technologies, which themselves are, in some instances, considered high risk increase the vulnerability of these entities to exposure and misuse for ML.

- 7.55 Of the 258 licensed TCSPs, 97 have the ability to act as a Registered Agent for BVIBCs while 88 are licensed exclusively to provide trust related services. General AML deficiencies identified by the FSC's compliance inspection process in relation to these TCSPs centred on matters of verification of all types of clients i.e. individual, corporate and trusts, and compliance with CDD measures, reporting of SARs and internal controls.
- 7.56 While the FSC has identified these deficiencies, the relevant LEAs and CAs have indicated that requests for information from TCSPs on clients needed to fulfil international cooperation obligations is generally forthcoming in a timely manner even in instances where the information may not be held directly by the TCSP. Both the FSC and FIA have powers to compel information, therefore the instances in which a TCSP would not respond to such requests are few and far between. Information provided is usually up-to-date and where the TCSP has terminated its relationship with the BVIBC or trust, information is updated and maintained for the statutory period of five years. In cases where TCSPs request an extension of time to provide the information, this is generally accommodated. However, if responses are not received within the extended time CAs sometime seek the assistance of the RVIPIF to retrieve the information. This is not always followed up by the RVIPIF however, and no information was provided as to what course of action the CA would take in such instances.

### Conclusion

- 7.57 The inherent vulnerability of legal persons and legal arrangements is driven by the complexity of the available structures and the complexity of the international financial transactions they engage in, which heighten the risk of these structures being used to facilitate ML. Additionally, the potential of these structures to be used to conceal the source of assets and the identity of beneficial owners, the availability of non-face-to-face transactions, and their use by a significant volume of high risk customers, including foreign PEPs also increases their vulnerability to be misused for ML purposes.
- 7.58 Legal persons and legal arrangements, and more specifically BVIBCs, are the subject of the greatest number of SARs filed with the FIA. The transactions identified in these SARs relate primarily to possible cases of fraud, ML, counterfeiting and tax evasion. However, while these transactions may not necessarily be indicative of any overtly illegal behaviour on the part of the involved BVIBCs, the value of these transactions is significant and speaks to whether the BVIBCs and the TCSPs that service them are being manipulated to facilitate non-legitimate transactions that may be linked to ML and other predicate

offences. This poses a great reputational risk to the Territory regardless of whether these activities are eventually found to be of a legitimate nature.

7.59 While no local criminal proceedings for ML have been initiated against any legal persons or legal arrangements registered in the VI, many of the MLA requests, of both criminal and civil natures, received by the AGC generally involve BVIBCs serviced by TCSPs acting as RAs within the Territory. Most of the requests involve matters of ML, fraud and tax evasion which match directly with the key foreign predicate offences identified by the RVIPF. Such requests require cross-border cooperation between CAs and other regulators and LEAs which is provided at a level recognised by foreign counterparts to be sufficiently adequate.

7.60 Risk mitigation in place in relation to legal persons and legal arrangements is fostered via measures implemented by the TCSPs that service these structures and have been taken into consideration in the assessment of that sector. However, while the various control measures currently in place within the TCSP sector have helped to somewhat mitigate the overall risk of legal persons and legal arrangements, the inherent vulnerabilities relating to these structures remain High.

7.61 Each product or service was individually assessed using the risk matrix outlined in the methodology to determine the risk associated with each type of legal person and legal arrangement available in or from within the Virgin Islands. The results of this assessment concluded the following in relation to the level of risk inherent for each (see **Table 7.3** below):

Product/Service	Risk Rating
BVI Business Company	High
Micro Business Company	Medium-Low
Trusts	Medium High
VISTAs	Medium-High
PTCs	Medium-High
Limited Partnerships	Medium-High
Emerging Products	High

**Table 7.3: Risk Assessment Ratings for Legal Persons, Legal Arrangements and Emerging Products**

7.62 Overall, legal persons and legal arrangements have been assessed as having an ML risk level of **High**.

## 8. EMERGING PRODUCTS AND TECHNOLOGIES

### Virtual Assets, Virtual Assets Services Providers

- 8.1 A review of transactions and economic activities, including company formation and other business, indicates that there is an evolving threat from businesses operating in or from with the Virgin Islands that serve as Virtual Asset Services Providers (VASPs) or facilitate the provision of virtual assets (VA), and other emerging products. These products include initial coin offerings, cryptocurrencies, digital assets and the companies that provide services for these type of products. These products and services were reviewed on the basis of the FATF definition of VA and VASPs, including the inherent risks and vulnerabilities identified by the FATF.
- 8.2 The assessment concluded that these products provide substantial risk of money laundering, and that the VA and VASP industries require some level of supervision to mitigate the ML/TF/PF risk that is posed. The assessment took into account:

- Evidence from the Financial Investigation Agency (FIA) on SARs submitted related to VA/VASPs or submitted by them: FIA records reveal that there have been instances of fraud and potential ML using VA and through VASPs. Particularly of interest, the FIA records indicated that a significant number of SARs were filed by one VASP ( a BVI company) that alleges that clients are using the “dark web” and other fraudulent methods, which effectively made identifying the user/customer untraceable;
- International corporation requests which reveal that some fraudulent and other financial crimes were alleged to have been committed using VA;
- The FSC’s internal intelligence mechanisms, which identified fraud, ML and other financial crimes allegedly being committed using BVI companies issuing VA (effectively initial coin offerings etc.) or BVI companies that act as VASPs;
- FSC data which indicated that:
  - over the past two years it has received a number of requests or enquiries from persons wishing to set up BVI companies for VA purposes, to act as VASPs, and specifically to act as VA exchanges;
  - it has received a number of requests for information from the general public on whether a number of persons are authorised to issue VA or act as VASPs;
- Data which indicated that BVI companies have issued VA and facilitated exchange of such assets through non-face to face means, primarily through electronic exchanges and platforms;
- Data which revealed that clients are geographically dispersed; and
- Data mined from the internet generally indicated that the VI has been touted as one of the leading jurisdictions in the world for VA transactions.

- 8.3 Under existing financial services legislation, primarily SIBA, some VA and VASPs are required to be licensed and/or authorized. For example, a mutual fund that is set up to operate and hold virtual assets is required to be approved. A BVI legal person or legal arrangement that provides investment business services to

these entities would be required to be licensed under SIBA should specific criteria be met. Such criteria would be set out by the FSC as the regulator. The VI's vulnerability to money laundering through VA nonetheless exists primarily in that the majority of transactions are generally characterised by non-face-to-face customer relationships that offer a higher degree of anonymity than traditional non-cash payment methods. Further, VASPs may also include transfers that are anonymous or pseudo-anonymous making it difficult to identify beneficiaries of the transactions.

- 8.4 The inherent vulnerability of VA and VASPs is assessed as high. With limited mitigating measures, their overall money laundering risk is, therefore, also assessed as High.

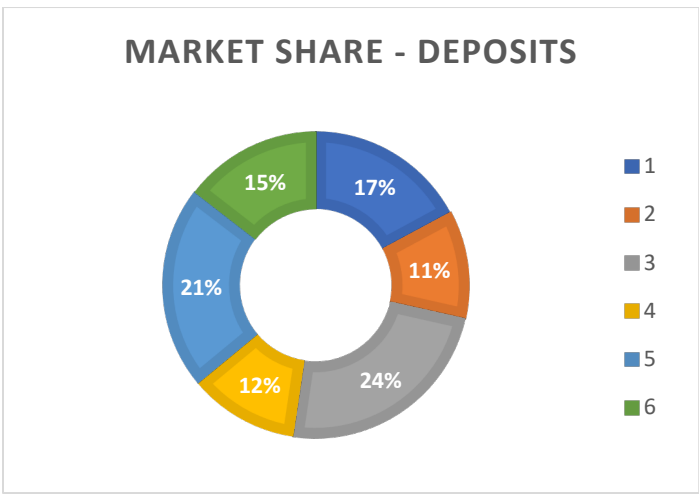
#### Other Emerging Products

- 8.5 In terms of other emerging products, two pieces of legislation were passed in 2020 allowing for gambling and the production of cannabis for medical purposes in the VI. Both products have significantly high inherent ML risk. This risk, coupled with the jurisdiction's inherent vulnerabilities, such as the cash intensive nature of many of its sectors, both financial and non-financial, means that the ML risk of both of these products is likely elevated. The VI would, therefore, need to quickly conduct an assessment of the ML risk posed by both of these emerging products to ascertain its level of ML exposure as a result of their introduction into the economy.
- 8.6 Additionally, the Government of the Virgin Islands also imposed a 7% tax on all MSB transactions in 2020. The result of this, based on news reports, indicates that persons are using the services of MSBs less frequently and the value of individual transactions have declined. Such data indicates a clear risk criteria which could lead to the propagation of the underground movement of funds, as persons attempt to find less costly ways to transmit monies to other jurisdictions. Conversely it may encourage the wider use of the banking sector. The VI would need to undertake further assessment if the threat and vulnerabilities are to be tackled.
- 8.7 The vulnerabilities identified in relation to these emerging products have been assessed as High, while the mitigating controls have been assessed as Low. Overall, these emerging products have been assessed as having an ML risk level of **High**.

# 9. BANKING

## Introduction

- 9.1 The banking sector within the Virgin Islands consists of six commercial banks and one private wealth management institution. Five of the commercial banks are subsidiaries or branches of international banking groups that are established in a range of jurisdictions with equivalent AML/CFT regimes. The sixth commercial bank is domestically owned with the majority shareholder being the Government of the Virgin Islands. No bank in the Territory provides foreign correspondent banking services. However, each bank has relationships with overseas banks that provide the local entities with correspondent banking services. These relationships are critical to the provision of many of the services offered by the local banking institutions. The banks, therefore, take their AML/CFT responsibilities very seriously in order to ensure that they can maintain their relationships with these institutions.
- 9.2 At the end of 2019, total income within the banking sector was \$92.6 million or approximately 8% of GDP. For the same period, these institutions held assets valued at \$2.44 billion with total deposits of \$1.97 billion. Market share in terms of deposits is relatively evenly distributed, with no institution holding less than 10 or more than 25% of total deposits (see **Chart 9.1** below). Loans were valued at \$1.39 billion, \$1.29 billion of which is currently outstanding. Overall, the level of economic activity within the banking sector accounts for approximately 34.1% of economic activity within the wider financial services sector.



**Chart 9.1: Market Share of Deposits by Institution**

- 9.3 These institutions offer a variety of standard products and services including checking and savings accounts, credit cards, residential and commercial mortgages, auto loans, personal loans, time certificates of deposits and wire transfers that support retail, commercial, wealth management, corporate and international transactions. While most institutions now offer some form of online banking, a vast majority of the business conducted is still conducted face-to-face based on the products and services offered. Cross-border transactions engaged in by the banking institutions, based on the value of reported incoming

and outgoing wire transfers primarily involve transfers to and from North America, Europe (including the UK) and the Caribbean.

- 9.4 The banking sector also provides services to non-resident persons either directly or through the provision of banking services to legal persons and legal arrangements with BOs and other relevant persons that are clients of TCSPs and non-resident within the Territory. However, overall, the banking sector predominantly provides banking facilities to local residents and businesses. To put this into perspective the total value of non-resident loans at the end of 2019 was reported at \$71.125 million or just over 5% of all total loans currently issued. Similarly, non-resident deposits accounted for only 14.2% of all deposits. Exposure to high risk customers and PEPs is therefore highly localised to those types of customers resident in the Territory. Exposure to criminality comes from the universal nature of retail banking transactions, as well as the frequency and speed with which they are conducted.

#### Assessment of Threats

- 9.5 Banks filed a total of 407 SARs were filed between 2015 and 2019. Of this amount 56.8% were associated with suspected ML. Fraud related activity was the second most common reason for SARs filed during the reporting period with general reporting of suspicious or unusual account activity being third. Transactions identified in these 407 SARs were valued at \$680,628,947 and were related to internationally based business activities conducted primarily by non-resident legal persons. While the banking sector is responsible for approximately 17% of the total SARs filed between 2015 and 2019, the value of the related transactions account for less than 1% of the total value of reported banking transactions. The value of the reported SARs also made up less than 1% of the total value of all reported SARs.
- 9.6 The FIA has reported that most SARs involving local businesses are filed by banks and involve large cash transactions, unusual large deposits and comingling of accounts. While the FIA has indicated that the banks have a good understanding of their risk, which is reflected in their ability to identify such transactions, these SARs are not always filed timely based on when transactions occur. This makes it difficult to conduct timely analysis and investigations, thereby stymying the jurisdiction's ability to effectively freeze, seize and take the proceeds out of crime in a timely manner. Data provided does not show any seizures or forfeitures resulting from any SARs filed. This is a clear vulnerability in the wider AML/CFT regime and may be as a result of the lack of disseminations of SARs from the FIA to the RVIPF for investigation.

#### ML Vulnerabilities

- 9.7 According to the FATF the banking products/services that pose the greatest risk of money laundering are private banking, anonymous transactions, remote business relationships or transactions, and payment received from unknown or un-associated third parties<sup>27</sup>. Consequently, banking carries a high level of inherent ML risk based on the scope of its role in the financial sector, high transaction volumes and susceptibility of its products to abuse in concealing illegal transactions, particularly at the layering and

---

<sup>27</sup> FATF Specific Risk Factors in Laundering the Proceeds of Corruption, 2012

integration stages of ML. However, in the VI the banking sector does not engage in these types of activities and therefore some of those risks are mitigated by controls.

- 9.8 All of the commercial banks have been subject to AML/CFT compliance inspections. The results of these inspections found that AML deficiencies related to verification procedures and updating of CDD information, particularly in relation to high risk clients, employee training, SARs analysis, and lack of access to Board by compliance officers and senior management.
- 9.9 While most of these institutions have been rated as having inherently medium-high risk based on their operations, the supervisor considers this sector to be largely knowledgeable of its AML/CFT requirements. As a result of this sound understanding of their AML/CFT risks and obligations, there have been no AML/CFT related enforcement actions taken against any of the Territory's banking institutions during the reporting period.
- 9.10 Based on the products and services offered by the banking institutions within the Territory, including the level of non-resident loans and deposits, it was concluded that most PEPs utilising these services are domestic PEPs consisting of government officials and other individuals holding high level positions in statutory corporations, along with their close associates and family members. Foreign PEPs are mostly connected to an account operated by a legal person for which the PEP may be the beneficial owner and director.

#### Conclusion

- 9.11 The banking sector in the Virgin Islands is small in comparison to other jurisdictions. However, the sector plays an integral part within the local financial services sector, with operations at both the domestic and international levels. The products and services offered are standard banking related products and services and are not of an overly complex nature. The volume of transactions conducted, however, is of a substantial nature in the context of the size of both the sector and the jurisdiction. Most customers are attained through face-to-face contact as majority of customers are resident within the Territory, with a high percentage of transactions also being conducted face-to-face. There is a gradual shift to more non-face-to-face transactions as online services are becoming more readily available through most of the entities within the sector.
- 9.12 Based on the demographics of the population and the cross-border nature of the financial services industry there is the potential for some of the activities within the sector to involve high risk jurisdictions, however, the volume of such activities is small and are not conducted on a regular basis. Further, any associated risk is fairly well mitigated through the imposition of the requirements laid out in the AMLTFCOP in dealing with high risk countries and the review of such measures by the FSC during the onsite inspection process.

- 9.13 While the banking sector is responsible for 17% of all SARs filed there have been no criminal proceedings taken against any of the licensees themselves during the reporting period, neither have there been any regulatory enforcement actions taken by the FSC. The susceptibility for abuse of this sector appears to be mitigated through the sector's understanding of its AML/CFT obligations, particularly in relation to its compliance with identification and verification procedures and maintenance of BO information.
- 9.14 The vulnerabilities within the banking sector were rated as Medium-Low. These vulnerabilities were mitigated by a High level of control factors. The banking sector has, therefore, been assessed as having an ML risk level of **Medium-Low**.



## 10. FINANCING BUSINESS

### Introduction

- 10.1 The licensing and regulation of FB in the VI began in 2009 with the passage of the FMSA. Only FBs that operate physically in the VI are subject to authorisation and supervision. FB includes the provision of a wide range of services, from credit, including pay day advances, or consumer finance loans under a financing agreement to a borrower in the Virgin Islands, leasing property under financing lease agreements, cheque cashing and international financing and lending. Since the coming into force of the FMSA, only three FB licences have been issued. All three are relatively small with client bases that are generally connected, such as employees. These three FBs serviced approximately 1,000 clients in 2019. On average, around 51 total transactions are executed on an annual basis. The average value of these transactions is \$113,000. However, one FB is responsible for approximately 85% of the value of these transactions, while the remaining 15% is split between the other two licensees.

### Assessment of Threats

- 10.2 FBs filed no SARs during the reporting period. Given the nature of the current licensees and the products and services offered, as well as the close connection of clientele it is not surprising that no SARs were filed. The threat of laundering associated with financing business is mainly the taking out of loans for the sole purpose of swiftly repaying them using the proceeds of crime. However, given the nature of clientele of the existing FBs this is highly unlikely to be attractive. Further, the threat of ML is mitigated by the fact that services are offered to local residents on a face-to-face basis.

### ML Vulnerabilities

- 10.3 All financing business is conducted face to face and high-risk customers and PEPs utilising these services are domestic in nature. During the reporting period two of the three licensees were subjected to onsite inspections. Based on its engagement the supervisor considers this sector to have a satisfactory knowledge of its AML/CFT requirements. Additionally, no enforcement action was taken against FBs during the period.

### Conclusion

- 10.4 The FB sector is small with only three participants and the services provided are currently limited to the provision of small, short term loans to connected persons or payment plans for insurance premiums. Given the nature of the business, transactions are generally conducted face-to-face and do not involve high risk jurisdictions based on the demographics of the customer base. No regulatory enforcement actions have been taken by the FSC in relation to FBs and there have been no criminal proceedings taken against any FBs during the reporting period.

10.5 The vulnerabilities within the financing business sector have been assessed as Low while the mitigating factors within the sector have been determined to be at the top end of the Medium-Low scale. The financing business sector has been assessed as having an overall ML risk level of **Low**.

## 11. MONEY SERVICES

### Introduction

- 11.1 The licensing and regulation of MSB in the Virgin Islands began in 2009 with the passage of the FMSA. MSB includes the provision of a wide range of services, from money transmissions, cheque cashing, issuance, sale and redemption of money orders and traveller's cheques, and operation of a bureau de change. Since the coming into force of the FMSA, only 2 money services licences have been issued. These two entities are part of large international money transfer organisations with operations throughout the wider Caribbean region and beyond. They currently provide money transmission services through two branches and three representative offices.
- 11.2 Outward money transfers constitute the greatest number of transactions recorded, accounting for 92.68% of all transactions and valued at approximately \$84.075 million. The average value of outgoing transactions is \$288.00. Incoming transfers average approximately \$5.967 million per annum or roughly 7.32%. Given the demographic composition of the Territory this imbalance between incoming and outgoing transfers is not unexpected. The level of economic activity within the MSB sector currently accounts for less than 5% of economic activity within the wider financial services sector.
- 11.3 The core markets for MSBs within the Virgin Islands are non-resident workers repatriating funds to their home countries and residents sending money abroad primarily for business and educational support purposes. Majority of MSB clients have been identified as construction workers, labourers and low-income earners. The top jurisdictions receiving outward transfers are the Dominican Republic, Jamaica and Guyana. This is aligned to the size of these immigrant populations which rank in the top 5 jurisdictions from which the labour force in the VI is sourced.

### Assessment of Threats

- 11.4 MSBs filed 201 SARs between 2015 and 2019, of these 23.4% were directly related to ML suspicions while the remainder of the reports covered a variety of other suspicious activities. Other suspicious activities included general suspicious transactions, high dollar senders to high risk jurisdictions, unusual account activity. SARs filed by MSBs accounted for 8.39% of all SARs filed between 2015 and 2019. The value of the transactions identified in the reported SARs totalled \$1,873,803, which was less than 1% of total outgoing MSB transactions, and less than 1% of the total value of all reported SARs. The greatest proportion of these SARs were filed in 2017 following the impact of Hurricanes Irma and Maria during which time access to normal banking operations were limited, which led to a greater use of MSBs to execute financial transactions.

### ML Vulnerabilities

- 11.5 SARs received from the sector when it initially came under regulation were not of a high quality and were reported to be defensive in nature. This was identified partly as a result of a lack of understanding of their obligations. To improve the quality of SARs the FIA conducted targeted outreach to MSBs in 2016 which has improved the quality of filings from this sector.

- 11.6 All money services business is conducted face to face. High risk customers and PEPs utilising these services would, therefore, expected to be resident persons.
- 11.7 The supervisor considers this sector to be largely knowledgeable of its AML/CFT requirements, and both licensees have undergone compliance inspections. The AML deficiencies identified during the compliance inspection process, however, indicate weaknesses in relation to the proper conduct of risk assessments on clients, and the execution of ECDD measures.
- 11.8 There were three enforcement actions taken against MSBs during the reporting period, including the issuance of two administrative penalties totalling \$15,000 and one warning letter<sup>28</sup>. The enforcement actions accounted for 2.83% of all AML/CFT related enforcement actions recorded during the reporting period, with the value of the imposed administrative penalties accounting for 1.886% of the total value of such penalties.

### Conclusion

- 11.9 MSBs account for a large volume of cross-border transactions. The sector itself is small with only two participants and the services provided are currently limited to money transfer services. Given the nature of the business, transactions are generally conducted face-to-face. However, some transactions may involve high risk jurisdictions based on the demographics of the customer base, although such transactions are not conducted on a regular basis.
- 11.10 During the initial NRA the MSB sector was assessed as high risk. At that time the regulatory regime in place for MSBs was in its infancy and licensees were not as familiar with their AML/CFT requirements as they are now. As such, many of the necessary policies, procedures and control measures were not in place or were not as effective as they were required to be. Since then, based on compliance and outreach programmes engaged in by the FSC and FIA respectively the level of understanding of AML/CFT obligations by the MSB sector has improved.
- 11.11 Few regulatory enforcement actions have been taken by the FSC in relation to MSBs and there have been no criminal proceedings taken against any MSBs during the reporting period. While money transfer services are inherently considered to be of higher risk than other financial services business, the susceptibility for abuse of this sector appears to be mitigated through the sector's understanding of its AML/CFT obligations. Inspections have found the level of risk mitigating procedures within the sector to be adequate, as is its compliance with the requirements of the AMLTFCOP in relation to identification and verification measures and maintenance of BO information. However, as transactions tend to be one-off there is potentially a higher level of risk associated with the verification of BO information as such verification is generally only conducted on high risk customers or on transactions above the specified threshold amount.

---

<sup>28</sup> A warning letter is a form of enforcement action available to the FSC. Such letter informs the licensee that the FSC has considered the breach and decided that a warning is more appropriate. A warning general informs the licensee that any future breaches including breaches of the same legislation will likely incur a more severe penalty.

11.12 The vulnerabilities and controls within the money services sector were assessed at the top end of the Medium-Low scale. The result is that the money services sector has been assessed as having an ML risk level of **Medium-High**.

## 12. INSURANCE

### Introduction

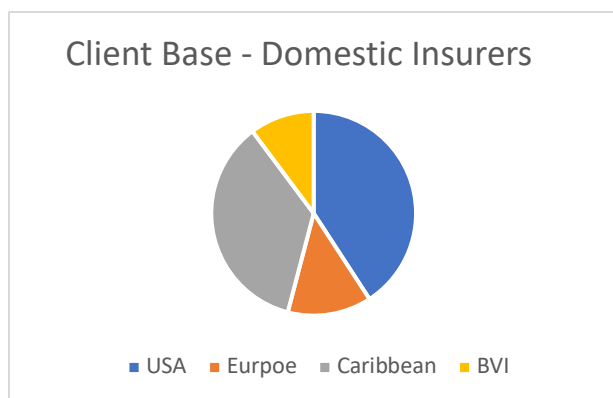
- 12.1 Entities seeking to carry out insurance business in or from within the Virgin Islands must be licensed under the Insurance Act, 2008. Applicants may apply for a licence in one of the classes listed in **Table 12.1** below. The table also indicates the number of licensed insurance entities operating in or from within the Virgin Islands within each class as of 31<sup>st</sup> December, 2019.

TYPE OF LICENCE	SCOPE OF BUSINESS	Number of Licensees (as at Dec 31 2019)
<b>Domestic Insurers</b>		<b>39</b>
Category A	Licensee must be a BVIBC and may carry on insurance business including domestic insurance business	5
Category B	Licensee must be a company incorporated, registered or formed outside the jurisdiction and may carry on insurance business in the Virgin Islands including domestic insurance business	34
<b>Captive Insurers</b>		<b>59</b>
Category C	Licensee must be a BVIBC and may carry on insurance business that is not domestic business, including non-open market reinsurance business	58 (includes 54 insurers and 4 SPCs)
Category D	Licensee must be a BVIBC and may carry on reinsurance business including open market reinsurance business	0
Category E	Licensee must be a BVIBC and may underwrite related party business only	1
Category F	Licensee must be a BVIBC and may underwrite related party business, with a maximum unrelated party business underwritten to qualify as an insurer for a purpose allowable under the laws of a foreign jurisdiction	0
<b>Insurance Managers</b>	May provide insurance expertise to any insurer of which he is not an employee or who exercise such other functions with respect to insurers as may be specified in the Insurance Regulations	<b>7</b>
<b>Insurance Intermediaries</b>		<b>18</b>
Insurance Agents	May solicit applications for insurance, negotiate for insurance business or provide advice to clients once appointed or authorised by an insurer, but excludes an individual who is an employee of the insurer	14
Insurance Brokers	May act as an independent contractor or consultant and who, for commission or other compensation; solicits or negotiates insurance business, including the renewal and continuance	4

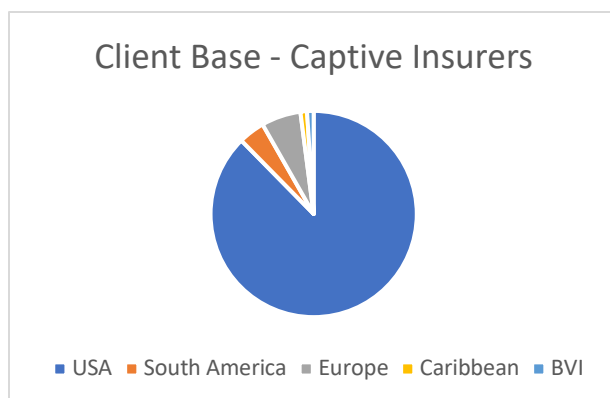
	of such business, on behalf of an insured or a prospective insured other than himself; provides advice to clients concerning their insurance requirements; or brings together persons seeking insurance and insurers	
<b>Loss Adjusters</b>	May, for commission or other compensation, investigate and negotiate the settlement of claims under insurance contracts solely on behalf of either the insurer or the insured provided he or she is not an employee of the insurer or agent while acting on behalf of the insurer or agent	16
<b>Total</b>		<b>139</b>

**Table 12.1: Number of Insurance Business Licensees by Licence Type**

- 12.2 A large portfolio of insurance business in the VI relates to the provision of life and health insurance, and property and casualty insurance business which applies mainly in relation to persons and property in the Territory. The greater portion of clients for both domestic and captive insurers and insurance managers originate in the US (see **Charts 12.1** and **12.2** below). However, based on licensing restrictions in relation to the provision of insurance services within the Territory, the client base for insurance intermediaries is 100% locally based.



**Chart 12.1: Client Base – Domestic Insurers**



**Chart 12.2: Client Base – Captive Insurers**

- 12.3 Most recent data as at the end of 2018 value the gross assets held by captives at \$1.18 billion. For that same period gross premiums held by captives totalled \$306.51 million while total claims were reported at \$73.61 million. Total value of premiums held by domestic insurers at the end of 2018 was \$184.93 million whilst claims totalled \$831.07 million. The disparity in the value of domestic claims in 2018 is a direct result of the catastrophic damage caused by the hurricanes of 2017. Overall, the level of economic activity within the insurance sector accounts for approximately 4.1% of economic activity within the wider financial services sector.

### Assessment of Threats

- 12.4 For the period 2015 to 2019, 17 SARs were filed by entities within the insurance sector. The majority (23.5%) of which identified matters of possible fraud. These SARs accounted for less than 1% (0.71) of the total SARs filed within the financial services sector. The value of these reported transactions was \$2,402,098, which also is far less than 1% of the total value of SARs filed for the reporting period. No criminal prosecutions, convictions or confiscations involving entities within the local insurance sector.

### ML Vulnerabilities

- 12.5 Given the nature and the way in which captive insurers operate they are internationally considered low risk institutions and were identified as low risk during the NRA. However, while insurance licensees providing domestic insurance business other than life and investment-related insurance business appeared to pose a low risk during the NRA, due to some key risk factors indicating a higher level of risk, the overall risk for the insurance sector was rated as medium.
- 12.6 Between 2015 and 2019 FSC conducted 17 full inspections on insurance licensees and 6 thematic inspections which included a review of AML/CFT matters. The most frequent AML/CFT deficiency identified was in relation to lack of proper verification procedures carried out with regard to legal persons. In some instances proper documentation establishing the validity of the legal person was not sought and it was, therefore, difficult to determine whether persons presenting themselves as principals were in fact beneficial owners of the legal persons.
- 12.7 A total of \$45,000 was imposed in AML/CFT related administrative penalties stemming from eight penalty actions taken in 2016 and 2017 surrounding failures relative to internal controls, CDD and ECDD requirements. In addition, four warning letters, two cease and desist orders and two public statements were issued between 2016 and 2018. Further, a total of 8 licences were revoked between 2016 and 2017. This notwithstanding, the supervisor feels that the insurance licensees are largely knowledgeable of their AML/CFT obligations, particularly in relation to CDD and record keeping requirements.
- 12.8 The nature of the insurance business in the Virgin Islands is relatively localised. As such, PEPs utilising these services are generally local PEPs consisting of government officials and other individuals holding high level positions in statutory corporations, along with their close associates and family members.

### Conclusion

- 12.9 The size and nature of insurance business within the Territory does not provide any evidence that the sector is highly susceptible to or has been used for ML purposes. The captive insurance sector is small and inherently low risk and the products and services offered through domestic insurance companies and intermediaries are limited to the relatively vanilla type offerings noted above. Most business is conducted through face-to-face contact and cash transactions are limited to the payment of premiums by some customers.



- 12.10 The instances of involvement of this sector in suspicious activities is low and no criminal proceedings have been taken against any licensee within the sector. However, 22.6% of all AML/CFT related enforcement actions recorded during the reporting period were attributed to the insurance sector. The value of the imposed administrative penalties; however, only accounted for 5.6% of the total value of such penalties. The vulnerabilities within this sector, therefore, appear to be relatively low.
- 12.11 Conversely, the sector has demonstrated a high level of understanding of requirements relative to general CDD and BO identification and verification, and the identification of sources of wealth and funds of its clients. However, identified deficiencies related to verification procedures relative to legal persons need to be addressed. Further, the supervisor has indicated that it finds the level of risk mitigating procedures within the sector to be adequate and no evidence to the contrary was found during the assessment.
- 12.12 Overall, the vulnerabilities within the insurance sector were assessed as Medium-Low, while the mitigating factors were identified to be Medium-High. The insurance sector has been assessed as having an ML risk level of **Medium-Low**.

## 13. TRUST AND CORPORATE SERVICE PROVIDERS (TCSPS)

### Introduction

- 13.1 Given the importance of the Trust and Corporate Services Providers sector to the Virgin Islands' economy and the volume of business conducted from within the Territory by this subsector, the Territory has, since 1990, classified such entities as financial institutions and licensed and regulated them in accordance with the Banks and Trust Companies Act, 1990 and the Companies Management Act, 1990.
- 13.2 Entities seeking to operate under the BTCA or CMA may apply for a licence in one of the classes listed in **Table 13.1** below. The table also identifies the number of entities holding licenses in each licence class at the end of 2019.

CLASS OF LICENCE	SCOPE OF BUSINESS	Number of Licensees
Class I Trust Licence	Trust business and company management business, without restrictions. May act as a Registered Agent (RA).	59
Class II Trust Licence	Trust business only. May not act as RA.	28
Class III Licence	Company management business only. May act as RA.	20
Restricted Class II Trust Licence	Trust business only. Restricted to a maximum 50 trusts under administration. May not act as RA	60
Restricted Class III Licence	Can only provide directors and other officers and nominee shareholders for BVIBCs. May not act as RA.	73
Company Management	Company Management business only (ownership restriction). May act as RA.	18
<b>Total</b>		<b>258</b>

**Table 13.1: Number of TCSP Licensees by Licence Type**

- 13.3 A number of the TCSPs that operate in the VI are part of larger groups of companies operating either locally or in other international finance centres where they are licensed or authorised. Many TCSPs are also affiliated with legal or accounting firms also operating within the Territory. Of the 258 licensed TCSPs approximately 30 are independent operators.
- 13.4 TCSPs offer a variety of services which include company administration, accounting services, ship registration, trustee and protector services, incorporations through the provision of RA services, and provision of directors and nominee shareholder services. The customer base of the TCSP sector spans a broad geographical area with some business relationships involving significant asset values. Most BVIBCs incorporated in the jurisdiction are created for the purposes of cross-border business, primarily as entities to hold assets, or as vehicles for joint ventures. The business activities involving these BVIBCs range the full gamut of international business, including shipping, pharmaceuticals, technology and manufacturing, and as such, they play an integral role in legitimate international trade.

- 13.5 TCSPs that are categorised as RAs are the only entities permitted to incorporate or register BVIBCs and limited partnerships. At the end of 2019, of the 259 TCSPs licensed in the Territory, 98 provided RA services to 387,344 clients who are currently active on the Companies Register (i.e. in good standing and in compliance with the BVIBCA). Typically, the clients of TCSPs comprise persons that are resident and non-resident in the Territory, with the latter constituting the larger majority of their clients. Non-resident clients emanate geographically from most major global economies including those in Asia, South America, Europe, North America, and to a lesser extent Africa.
- 13.6 There are 147 TCSPs that are licensed to provide trust business. Trust business also includes offering professional trustee, protector and administrator services. At the end of 2019 there were 6,841 express trusts under administration by TCSPs. Further, there were 1,545 trusts held under the Virgin Islands Special Trusts Act, 2003 in addition to 1,164 private trusts under administration<sup>29</sup>. At the end of that period the trusts under administration were valued at approximately \$158.81 billion.

#### Assessment of Threats

- 13.7 The TCSP sector is the primary gateway to the Virgin Islands' international financial services sector. TCSPs international client base, the corporate and legal structures facilitated by TCSPs, as well as the other services provided, are attractive to international criminals who wish to obscure ownership of property, evade foreign taxes or obscure the criminal origins of the property. As gatekeepers TCSPs are obligated to know their clients and understand the businesses they engage in. As with all FIs, they are also obligated to report any unusual or suspicious activities of their clients to mitigate any threats that these activities may pose.
- 13.8 In the Virgin Islands, TCSPs are responsible for filing the majority of SARs received by the FIA. Between 2015 and 2019 TCSPs filed 1,636 SARs, or roughly 68% of total SARs received. The transactions identified in these SARs were valued at \$187 billion and accounted for 99% of the value of all reported SARs. The majority of these reports resulted from suspected activities involving the business companies for which the TCSPs provide services. This is not surprising given the international nature of BVIBCs and the use of such structures to facilitate international trade, which requires legitimate transactions involving large sums of money to be executed. The threat, however, may not be based solely on the volume of the reported transactions, but also in whether the TCSPs and their BVIBC clients are being manipulated to facilitate non-legitimate transactions linked to ML and other predicate offences. The general infractions identified in the SARs related to fraud, tax evasion and ML, in addition to failing to provide due diligence information.

#### ML Vulnerabilities

- 13.9 Globally, TCSPs are deemed to have a high vulnerability to ML risks and have been found complicit in setting up corporate vehicles that were misused for money laundering<sup>30</sup>. In the Virgin Islands some of this risk has been mitigated through the strict regulation and supervision of TCSPs which, as noted above, are

---

<sup>29</sup> See section 6 for a detail description of PTCs.

<sup>30</sup> FATF, *Money Laundering Using Trust and Company Service Providers*, Oct 2010

considered to be financial institutions for AML/CFT purposes. They are, therefore, subject to the same stringent regulatory requirements as all other FIs. As a result, the 2016 NRA exercise found the TCSP sector to be at medium risk for ML/TF.

13.10 A sufficiently large number of PEPs and other high-risk individuals utilise products and services offered by TCSPs for estate planning purposes and to ensure confidentiality in business transactions. This increases the vulnerability of this sector to misuse by such persons who may wish to use the available products and services to facilitate corrupt and other illegal behaviour.

13.11 Between 2015 and 2019 thirty-three (33) full compliance and 18 thematic inspections focused on AML related matters were conducted as highlighted in **Table 13.2** below. This number appears low given the number of licensees within this sector, however, in the years preceding the reporting period the FSC conducted a large number of full and AML/CFT focused inspections. Those inspections aided the FSC in narrowing its scope by identifying those TCSPs that needed further inspections based on the level of risk identified. Further, the reduction in the number of inspections carried out in 2018 and 2019 was as a result of the impact of the 2017 hurricanes which displaced a number of licensed entities and caused business disruptions.

	2015	2016	2017	2018	2019
TCSPs (full)	7	11	10	2	3
TCSPs (thematic)	18	0	0	0	0
<b>Total</b>	<b>25</b>	<b>11</b>	<b>10</b>	<b>2</b>	<b>3</b>

**Table 13.2: Number of Compliance Inspections Carried Out in the TCSP Sector: 2015-2019**

13.12 The general AML/CFT deficiencies identified by the FSC's compliance inspection process centred on matters of verification of all types of clients, compliance with CDD measures, reporting of SARs and internal controls. As a result of these inspections and other desk-based monitoring, a total of \$692,500 was imposed in penalties based on the issuance of 35 AML/CFT related administrative penalties. An additional \$10,000 was also imposed for non-AML/CFT related infractions. Additional actions included the issuance of 6 warning letters and 28 directives (see **Table 13.3** below).

	2015	2016	2017	2018	2019	Total
Administrative Penalties	0	8	25	2	0	<b>35</b>
Directives	0	0	27	0	1	<b>28</b>
Warning Letters	1	0	4	0	1	<b>6</b>
<b>Total</b>	<b>1</b>	<b>8</b>	<b>56</b>	<b>2</b>	<b>2</b>	<b>69</b>

**Table 13.3: Number of Enforcement Actions Taken Against TCSP Licensees: 2015-2019**

13.13 Overall, the supervisor feels that the TCSPs are largely knowledgeable of their AML/CFT obligations.

13.14 Unlike the other sectors, more than 95% of the TCSP's client base (i.e. BVIBCs and other legal persons and legal arrangements) conduct business outside of the Virgin Islands. The level of non-face-to-face business is therefore high as many TCSPs rely on third party introductions when taking on clients and executing

transactions. Even in instances where TCSPs have a large end-user clientele many of the transactions executed are done on a non-face-to-face basis. This increases the vulnerability of the TCSP sector to abuse. This is mitigated through the requirement to have third party agreements and to test these relationships to ensure that information being maintained on behalf of the TCSP is accurate and up to date. Legislatively, the TCSP is ultimately responsible for collecting CDD and BO information and may be subject to penalties for failing to maintain accurate records in relation thereto.

### Conclusion

- 13.15 The inherent vulnerability of TCSPs is driven by the large number of companies under TCSP management, the ability to establish complex corporate structures that may facilitate ML, and the complexity of the international financial transactions engaged in by clients. Additionally, the vulnerability of TCSPs to be misused for ML purposes is increased by the potential for legal persons and legal arrangements to be used to conceal the source of assets and the identity of beneficial owners, the availability of non-face-to-face transactions, and the significant volume of high risk customers, including foreign PEPs.
- 13.16 The TCSP sector accounts for the greatest number of SAR filings, which resulted primarily from suspected activities involving the BVIBCs for which the TCSPs provide services. While the transactions identified in these SARs may not necessarily be indicative of any overtly illegal behaviour on the part of the involved BVIBCs, the value of these transactions is significant and speaks to whether the TCSPs and their clients are being manipulated to facilitate non-legitimate transactions that may be linked to ML and other predicate offences. This poses a great reputational risk to the Territory regardless of whether these activities are eventually found to be of a legitimate nature.
- 13.17 While no local criminal proceedings have been initiated against any licensee within the sector, enforcement actions taken against TCSPs accounted for 65.1% of all enforcement actions taken. These actions resulted in the imposition of over \$690,000 in administrative penalties as a result of deficiencies in verification procedures, compliance with CDD, BO and internal controls measures, and the reporting of SARs. The value of the imposed administrative penalties accounted for 86.56% of the total value of such penalties.
- 13.18 Additionally, MLA requests of both criminal and civil natures received by the AGC generally involve BVIBCs serviced by TCSPs acting as RAs within the Territory. Most of the requests involve matters of ML, fraud and tax evasion coinciding with the key foreign predicate offences identified by the RVIPF. TCSPs generally respond to requests for information to facilitate these MLA requests in a timely manner, indicating their understanding of the importance of their role and the need to maintain up-to-date information.
- 13.19 Overall, the sector has demonstrated a satisfactory level of understanding of its requirements relative to general CDD and BO identification and verification, identification of sources of wealth and funds of its clients, and record keeping measures as well as requirements relative to establishing and maintaining third party relationships. The supervisor has also indicated that it finds the level of risk mitigating procedures within the sector to be adequate. However, while the control measures currently in place

within the sector have helped to somewhat mitigate the overall risk, the inherent vulnerabilities within this sector remain high.

13.20 The assessment of the vulnerabilities resulted in a rating of High, while the mitigating controls were assessed as Medium-Low. Overall, the TCSP sector has been assessed as having an ML risk level of **High**.

## 14. INVESTMENT BUSINESS

### Introduction

- 14.1 The Investment Business Sector in the VI largely consists of investment fund vehicles, asset administrators, broker/dealers, managers and investment advisors who provide management and advisory services related to varying types of investment assets. The transactions involving this sector overall are significantly large, both in terms of number of transactions and aggregate size of those transactions, with clientele geographically dispersed worldwide and engaging in cross-border transactions. There is a rather small group of licensees that provides custody services which is minimal and not consequential, given the limited number of transactions they execute. **Table 14.1** sets out the investment business activities carried out within the VI and the number of various licensees providing those services as of December 2019.
- 14.2 Entities operating within the investment business sector in the Virgin Islands are primarily subject to the Securities and Investment Business Act, 2010 and the relevant regulations emanating from this.

Category	Sub-Category	Licensable Activity (Investment Business)	No. of Entities Licensed to Provide Investment Business Services
1	A B	<ul style="list-style-type: none"> <li>Dealing in Investments as Agent</li> <li>Dealing in Investments as Principal</li> </ul>	<ul style="list-style-type: none"> <li>22</li> <li>28</li> </ul>
2		<ul style="list-style-type: none"> <li>Arranging Deals in Investments</li> </ul>	<ul style="list-style-type: none"> <li>22</li> </ul>
3	A B C D E	<ul style="list-style-type: none"> <li>Managing Segregated Portfolios (Excluding Mutual Funds)</li> <li>Managing Mutual Funds</li> <li>Managing Pension Schemes</li> <li>Managing Insurance Products</li> <li>Managing Other Types of Business</li> </ul>	<ul style="list-style-type: none"> <li>7</li> <li>316</li> <li>4</li> <li>1</li> <li>47</li> </ul>
4	A B	<ul style="list-style-type: none"> <li>Provide Investment Advice Excluding Mutual Funds</li> <li>Provide Investment Advice for Mutual Funds</li> </ul>	<ul style="list-style-type: none"> <li>32</li> <li>9</li> </ul>
5	A B	<ul style="list-style-type: none"> <li>Custody of Investments(Excluding Mutual Funds)</li> <li>Custody of Investments (Mutual Funds)</li> </ul>	<ul style="list-style-type: none"> <li>12</li> <li>0</li> </ul>
6	A B	<ul style="list-style-type: none"> <li>Administration of Investment (Excluding Mutual Funds)</li> <li>Administration of Investment (Mutual Funds)</li> </ul>	<ul style="list-style-type: none"> <li>18</li> <li>51</li> </ul>
7		<ul style="list-style-type: none"> <li>Operating an Investment Exchange</li> </ul>	<ul style="list-style-type: none"> <li>0</li> </ul>

**Table 14.1: Number of Investment Business Licensees by Licence Type**

14.3 An approval regime is also maintained for approved investment managers and authorised representatives. At the end of 2019 there were 281 approved investment managers and 49 authorised representatives operating in or from within the Territory. Approved managers generally provide management services primarily to institutional and high net worth individuals. These entities are required to file annual returns and financial statements with the FSC as part of their mandatory reporting requirements. Other protective safeguards against ML threats and vulnerabilities include the imposition of a threshold for assets under management. Where this threshold is met, the approved manager must either reduce the amount or seek a licence under the relevant provisions of SIBA. Assets under management in this regime amounted to USD\$7 billion at end of 2019.

14.4 Due to the nature of the investment business, most service providers reside outside the VI and are geographically dispersed, some in high risk jurisdictions. However, all entities subject to authorisation in this subsector are required to have a local authorised representative who will act as a liaison between the entity and the FSC.

14.5 The Territory's investment business sector is well developed and offers a sophisticated range of products catering to a diverse, international client base with substantial foreign portfolio holdings primarily in the Asian-Pacific countries, North America, Europe, Latin America, the Caribbean, Middle East, and Africa. Products and services offered include FOREX, cryptocurrencies, commodities, bonds, equities, fund administration services, insurance products, custodial services, mutual funds, segregated portfolios, and closed ended funds. For the purpose of assessing risk, the sector is divided into the following sub-sectors:

- Investment service providers – includes provision of investment management/advice, broker-dealer services, assets administration and custody services; and
- Investment fund vehicles – includes mutual funds and closed-ended private investment funds.

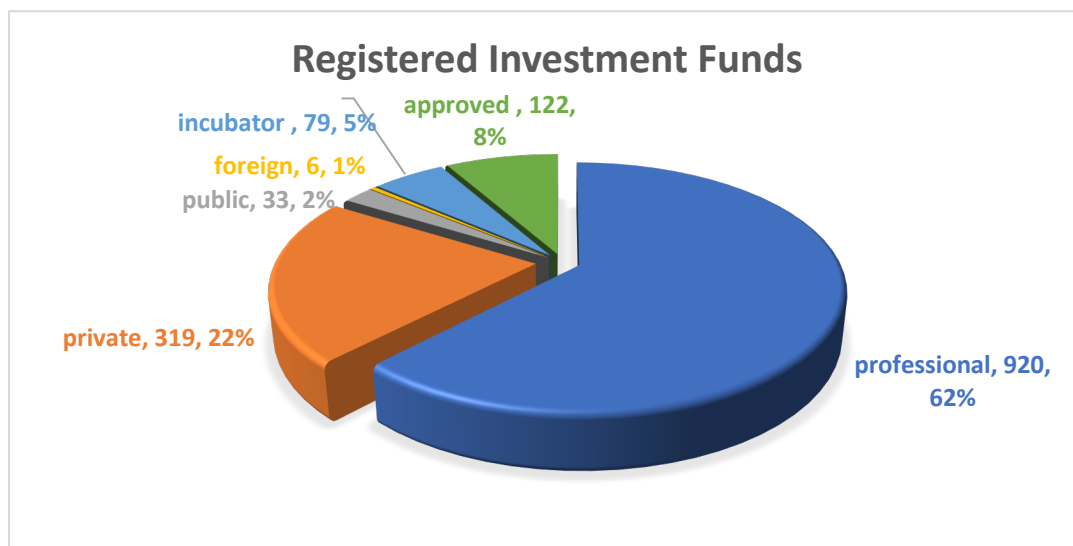
14.6 The scope of regulation encompasses the authorisation of:

- a) **Professional Funds:** made available only to professional investors who are high net worth individuals and are largely institutional investors;
- b) **Private Funds:** must have no more than 50 investors, or only make a private invitation to subscribe for or purchase fund interests. Investors in these funds are also wither largely institutional investors, or investors with a close personal, business, professional or family connection;
- c) **Public Funds:** retail products subject to a stringent regulatory regime;
- d) **Foreign Funds:** retail products subject to regulation in their home jurisdiction that provide an equivalent level of investor protection to the Public Funds regime. Designed to give retail investors in BVI access to a wider range of diversified investment opportunities whilst ensuring high standards of investor protection;



- e) **Approved Funds:** for managers who want to establish a private offering to a small group of investors (maximum of 20 investors; fund's net assets may not exceed US\$100 million). Investors in these funds are a combination of institutional investors and those with clear personal and professional business connections;
- f) **Incubator Funds:** for start-up managers wishing to develop a track record and test a fund's viability. Without the grant of an extension of a maximum of one year, these funds can only operate for two years, after which they must convert to a Private, Professional or Approved Fund or alternatively wind down their operations. Incubator funds allow for a maximum of 20 investors who must each subscribe US\$20,000. The Fund's overall net assets may not exceed US\$20 million.

14.7 At the end of 2019 there were 1,479 registered investment funds, consisting of 920 professional, 319 private, 33 public and 6 foreign funds, as well as 79 incubator funds and 122 approved funds as outlined in **Chart 14.1** below. Less than 1% of funds are sourced from domestic investors.



**Chart 14.1: Number of Registered Investment Funds as at 31 December 2019 as Percentage of Total Registered Funds**

14.8 In December 2019, investment funds registered in the Virgin Islands had a total net asset value of approximately US\$182 billion. However, the level of economic activity within the investment business sector accounts for less than 5% of economic activity within the wider financial services sector.

14.9 Investment management and advisory services which makes up the majority of the investment business sector accounted for \$8 billion in total assets under management at the end of 2019. Broker-dealers as a subsector in investment business has a significant number of clients from dispersed geographical regions. A significant number of the clientele are retail with a moderate amount being institutional clients. These entities operate online platforms for trading which can be accessed worldwide. CDD and other measures are fully electronic. The inherent vulnerabilities from these entities therefore lies in the clientele and the

worldwide nature of the business reach. Additionally, full technological delivery of services means that there is an increased risk of transactions having elements of anonymity. This leads to a high level of inherent vulnerabilities.

#### Assessment of Threats

- 14.10 The nature of investment business, such as investment management, broker/dealer and fund administration, can involve the movement of large sums of money across multiple borders. The volume of cross-border transactions also presents ML risks, given that persons who may seek to facilitate ML may use these entities to move monies through the financial system.
- 14.11 Additionally, some foreign based funds are managed and administered by licensed VI entities and therefore there is a threat posed by foreign investors in those funds. Risk posed by investment business is also heightened by the fact that most clients are geographically dispersed, and some are from high risk jurisdictions. Further, the significant majority of BVI funds have functionaries (i.e. managers, advisers, custodians, prime brokers and administrators) that are not licensed or based in the BVI. This makes it difficult to carry out any oversight to determine whether these functionaries are performing their functions appropriately. Additionally, some of these functionaries may not be licensed or be required to be licensed in the jurisdictions in which they operate, which also heightens the level of risk within the sector.
- 14.12 The exposure of investment fund vehicles to criminality may arise from investors who see products such as these as a vehicle in which to invest their proceeds of crime so as to generate investment returns and integrate the proceeds of crime into legitimate investments and financial services. Additionally, the activities of the funds themselves (e.g. where investments are made in high risk countries, particularly those with a high risk of bribery and corruption), and where the possibility that they may be controlled by parties who wish to use the fund for criminal purposes (e.g. market abuse or fraud) also give rise to potential criminality.
- 14.13 Through the pooling of investors' assets, there are opportunities for persons who may seek to launder money. Additional risk which increases the attractiveness of investment funds to criminality in the fund is the fact that CDD and other due diligence are often contracted to a third party who is often in another jurisdiction which may apply deferent AML/CFT requirements. Also, there are some differences in what is defined as securities or investments across regulators and therefore some products may not be subject to an AML regime at all. This leads to increased AML risk where jurisdictions' laws are not equivalent and may create a potential gap to be utilised by criminals. Those illicit proceeds can then be reacquired through redemptions out of a mutual fund to appear as legitimate investment proceeds. This risk may be even more pronounced where the fund is more closely held or held privately whereby a select group of investors or the manager may have significant control.
- 14.14 Criminals' attractiveness to utilising investment funds for the proceeds of crimes such as foreign tax crimes, fraud or corruption have been well documented. However, under VI legislation an investment

fund is required to carry on all due diligence requirements to undertake full customer due diligence on all investors, as well as have an MLRO in place.

14.15 Suspicious activity reporting in the sector is low. Between 2015 and 2019 only 2 SARs were filed by investment business licensees, relating to one case of potential tax evasion and a failure to certify due diligence information. This accounted for a mere 0.08% of the total SARs filed for that period. The value of reported SARs, recorded as \$5,100, was negligible in relation to the total value of SARs for the reporting period. Such activity filing is not consistent with the inherent risk posed. Supervisors and law enforcement agencies should take mitigating measures in this regard.

#### ML Vulnerabilities

14.16 Products in the investment business sector can be attractive vehicles for criminals due to the complex structure of the products offered which can increase the opportunity for regulatory arbitrage by criminals. Clients are often considered to be at an elevated risk for ML, particularly those identified as PEPs. In addition, the large volume and value of the products traded and the diversity of strategic investment approaches offer unique opportunities to disguise the true nature of the investment, the investor and sources of funds. Globally including by the FATF, the worldwide securities industry is considered to have a high ML vulnerability.

14.17 In the Virgin Islands' context, the 2016 NRA concluded that the investment business sector was at a medium risk for ML/TF. This, however, was due to the sample size available for the NRA process. Additionally, the 2016 NRA did not specifically look at the risk posed by the investment funds sector.

14.18 Most investment business service providers reside outside the VI, which in itself provides a high level of inherent risk. During 2015-2019 only 12 compliance inspections focused on AML related matters were carried out in this sector.

14.19 The general AML deficiencies identified by the FSC's compliance inspection process were in relation to licensees' duty to conduct risk assessments on their clients and the requirement to update CDD information and perform enhanced CDD. As a result of these inspections and other desk-based monitoring, during the period 2015-2019 a total of \$289,570 was imposed in penalties based on the issuance of 127 administrative penalty notices. Most of the penalties related to late submission or non-submission of accounts. Only 9 of those were related to AML breaches, the penalties for which totalled \$42,500. Those 9 breaches accounted for 8.49% of all AML/CFT related enforcement actions recorded during the reporting period. The value of the imposed administrative penalties relating the AML breaches accounted for 5.31% of the total value of such penalties. The regulator is of the opinion that the licensees within this sector have an adequate understanding of their AML/CFT obligations.

14.20 Investment funds asset distributions are widely geographical. However, the majority of assets are invested in the United States, Virgin Islands, Cayman Islands, Japan and Jersey C.I. From this data many investment funds are entities which do not directly execute investments but invest through other entities and funds.

For example, the assets in Virgin Islands, Cayman Islands and Jersey are primarily shares of investment funds domiciled in those jurisdictions and not direct foreign investments in those jurisdictions. Additionally, equity investments and shares make up the majority of assets held. A significant number of investments are made through recognised exchanges with specified listing rules which positively impacts the vulnerability to ML and other financial crimes. Further, a number of investment funds have been approved for listing on relevant exchanges as well.

### Conclusion

- 14.21 The size and nature of investment business within the Territory provides evidence that the sector is highly susceptible to ML. This sector is relatively large and can be subdivided into sub-sectors of investment business and investment funds. Both sub-sectors are large and include a wide cross-section of clientele. Assets are also widely dispersed globally. Products and services offered through this sector are varied with large transaction volumes. Further, a significant amount of business is conducted through non face-to-face contact, however, cash transactions are rare.
- 14.22 Based on the number of SARs reported by, or involving SIBA licensees, the instances of involvement of this sector in suspicious activities in the VI is low. Additionally, no criminal proceedings have been taken against any licensee within the sector. Reporting of SARs does not equate to the level of universally accepted risk posed in this sector. Only 3 of all AML/CFT related enforcement actions recorded during the reporting period were attributed to the investment sector, with the value of the imposed administrative penalties accounting for only \$42,500 of the total value of all such penalties.
- 14.23 The sector has demonstrated a satisfactory level of understanding of requirements relative to general CDD and BO identification and verification, and the identification of sources of wealth and funds of its clients. The regulator has indicated that it finds the level of risk mitigating procedures within the sector to be adequate and no evidence to the contrary was found during the assessment. Overall, the inherent vulnerabilities within this sector are high but have been somewhat mitigated based on the control measures currently in place.
- 14.24 The vulnerabilities within the investment sector have been assessed as High, while the mitigating controls have been assessed as Medium-High. This has resulted in the TCSP sector being assessed as having an ML risk level of **Medium-High**.

## 15. INSOLVENCY SERVICES

### Introduction

- 15.1 Under the Insolvency Act, 2003, only licensed IPs are eligible to accept appointments as administrators, administrative receivers, interim supervisors, supervisors, provisional liquidators, liquidators (other than in a solvent liquidation) or bankruptcy trustees. However, there are provisions to enable an overseas insolvency practitioner to be appointed jointly with a VI licensed insolvency practitioner.
- 15.2 As a regulated person, an IP is also subject to requirements of maintaining the appropriate systems and controls to mitigate against the threats of ML/TF.
- 15.3 The number of licensed IPs in the VI is outlined in **Table 15.1** below and comprises mainly accountants and legal practitioners. These practitioners tend to be part of accountancy firms or law firms, although their legal obligations, including AML/CFT obligations, relate only to them in their personal capacities and are not transferred to the firms.

Insolvency Practitioners	2015	2016	2017	2018	2019
Insolvency Practitioners (Full Licence)	25	26	27	33	28
Insolvency Practitioners (Restricted Licence)	1	0	0	0	0

**Table 15.1 – Licensed Insolvency Practitioners (2015 – 2019)**

- 15.4 A restricted IP's licence is issued when an IP has given notice to the FSC that it is basically winding up and/or in the process of disposing of or transferring (i.e. to another IP) it's existing case load, and is not taking on any new business.
- 15.5 Between 2016 and 2019, 467 insolvency appointments were made. In the vast majority of cases, these appointments were related to the winding up/liquidation of non-regulated entities i.e. BVIBCs dispersed across a wide geographic area as outlined in **Table 15.2** below.

Geographic Location	2015	2016	2017	2018	2019	Total
BVI	0	6	19	24	12	61
Caribbean	0	0	2	6	4	12
European Union	27	19	13	15	20	94
Far East	23	25	34	23	36	141
North America	4	9	2	6	2	23
Rest of the World	12	24	40	35	25	136
<b>Total</b>	<b>66</b>	<b>83</b>	<b>110</b>	<b>109</b>	<b>99</b>	<b>467</b>

**Table 15.2 – Number of Appointments by Geographic Location**

- 15.6 In addition, during that period 172 joint appointments between VI licensed IPs and overseas practitioners were carried out. The majority of these appointments related to entities with their centres of operation in Hong Kong, UK and Bermuda.

#### Assessment of Threats

- 15.7 For the period 2015 to 2019, 10 SARs were filed by IPs. This accounted for less than 1% (0.42) of the total SARs filed within the financial services sector. The majority of the SARs were related to instances where there was a lack of proper CDD information available (60%), while the other instances involved PEPs or possible instances of fraud. None of these SARs carried any monetary value. Further, no criminal prosecutions, convictions or confiscations involving entities within the local insolvency services sector were recorded during the period. The nature of the business itself may be the primary factor in this. The threat of ML associated with insolvency business is low and comes primarily in the possibility of potential collusion between the IP and the client, however, this is mitigated by statutory reporting requirements.

#### ML Vulnerabilities

- 15.8 The general nature of insolvency not being on-going business makes it low risk for ML. Where the vulnerability level increases slightly, is in the diversity of the clients involved which may include international PEPs and the potential for non-face-to-face business. Further, appointments may also involve businesses operating in high risk jurisdictions. These vulnerabilities are again mitigated by statutory reporting requirements.
- 15.9 There were five AML themed onsite inspections conducted on IPs in 2016 resulting in one enforcement action being taken against a licensee. This breach was in relation to inadequate record keeping practices and resulted in the imposition of a \$5000 penalty. The main deficiencies identified as a result of these inspections were in relation to deficient internal audit practices and IT policies and processes required to manage, mitigate and prevent ML occurrences.

#### Conclusion

- 15.10 The insolvency services sector was identified as low risk during the initial NRA exercise. The current size and nature of the sector does not provide any evidence to the contrary. The instances of involvement of this sector in suspicious activities is low and no criminal proceedings have been taken against any licensee within the sector. Less than 1% of all AML/CFT related enforcement actions recorded during the reporting period were attributed to the sector, with the value of the imposed administrative penalties also accounting for less than 1% of the total value of such penalties.
- 15.11 The vulnerabilities within this sector, however, have been more clearly identified during this exercise as outlined in paragraph 15.8 above. Such identification has raised the level of vulnerability for this sector, however, this has been largely mitigated by the control measures currently in place.

15.12 The vulnerabilities within the insolvency sector have been assessed as Medium-Low, while the mitigating controls have been assessed as High. Overall, the insolvency services sector has been assessed as having an ML risk level of **Medium-Low**.

## 16. RECOMMENDATIONS AND CONCLUSION

- 16.1 The recommendations outlined below, if properly implemented, should aid, not only in improving the effectiveness of the FSC as a supervisor, but also enhance the level of effectiveness of the Territory's wider AML/CFT regime. For ease of reference these recommendations have been grouped into recommendations that should be addressed at the national level and those that are specific to the FSC as the supervisory authority for financial institutions. There is some overlap in the recommendations and where this evident the recommendations have been listed under each.

### National AML/CFT Recommendations

16.2 The Territory should:

1. continue to implement the recommendations from the 2016 NRA
2. continue to monitor the implementation of the recommendations in the NRA
3. ensure that the findings of the NRA and this Report are considered when making changes or assessing the effectiveness of the AML/CFT regime
4. ensure all relevant CAs and LEAs are adequately resourced
5. address challenges faced by law enforcement agencies in identifying, investigating, and prosecuting ML and other financial crimes, including all predicate offenses
6. ensure the approval, issuance, and implementation of the Territory's AML/CFT Policy and Strategy
7. ensure that the National strategy clearly prioritises key areas of ML/TF risk
8. ensure that NAMLCC meets on a regular basis and considers pertinent issues relevant to setting policy for AML/CFT compliance
9. ensure that relevant AML/CFT data is maintained, collected and analysed to ensure the Territory can demonstrate that it is effective in the investigation and prosecution of ML, provision of international cooperation, and analysis and dissemination of SARs
10. finalise and implement legislative and other amendments to the AML/CFT regime to ensure full technical compliance with FATF Recommendations
11. ensure that the NRA and Sectoral Assessments are kept up to date, having regard to changes in the identified vulnerabilities and controls

### Supervisor Specific AML/CFT Recommendations

16.3 The FSC should:

1. ensure the implementation of its AML/CFT Policy and Strategy, having regard to the findings of this report
2. ensure timely and effective outreach to financial institutions on the findings of this report, including how the report's findings should be utilized in the development of their own AML/CFT policies and procedures
3. ensure that it takes necessary steps, such as increased desk based and onsite monitoring, to demonstrate that financial institutions are carrying out and implementing the requirements of its AML/CFT regime
4. ensure that steps are taken to address the risk posed by emerging technologies with specific reference to VAs and VASPs



5. continue to implement the recommendations from the 2016 NRA
6. continue to monitor the implementation of the recommendations in the NRA
7. ensure that the findings of the NRA and this Report are considered when making changes or assessing the effectiveness of the AML/CFT regime
8. ensure that relevant AML/CFT data is maintained, collected and analysed to ensure the FSC can demonstrate that it is effective in its supervision and enforcement of licensees and provision of international cooperation

- 16.4 The findings from this ML risk assessment provide a useful foundation upon which both supervisory authorities and the regulated sectors can undertake meaningful risk analyses. The results of this exercise will enable authorities to identify, assess and understand any changes in the ML risks faced by the jurisdiction since the initial NRA was conducted, in order to apply appropriate risk-based preventative or mitigating measures.
- 16.5 Further, the results of the exercise will help both regulated and relevant persons as defined in the AMLR, to identify the particular ML risks they face when carrying out their own assessments, as these businesses are also required to have regard to such findings in determining what constitutes a high or low risk, what their risk appetite is, and what constitutes appropriate measures to manage and mitigate risks.
- 16.6 Such risk analysis is important as it assists regulated institutions in implementing suitable policies and procedures to combat ML. Additionally, looking at sectoral and institutional ML risk allows supervisory authorities to effectively shape their inspection programmes and identify those licensees that may require more specialised supervision.

## *GLOSSARY OF TERMS*

AGC	Attorney General's Chambers
AML	Anti-money Laundering
AMLR	Anti-money Laundering Regulations
AMLTFCOP	Anti-money Laundering and Terrorist Financing Code of Practice
ASBA	Association of Supervisors of Banks of the Americas
BO	Beneficial Ownership
BTCA	Banks and Trust Companies Act
BVI	British Virgin Islands
BVIBC	BVI Business Company
BVIBCA	BVI Business Companies Act
CA	Competent Authority
CAIR	Caribbean Association of Insurance Supervisors
CBC	Country by Country
CBP	Customs and Border Patrol
CCLEC	Caribbean Customs Law Enforcement Council
CDD	Customer Due Diligence
CFATF	Caribbean Financial Action Task Force
CFT	Countering the Financing of Terrorism
CGBS	Caribbean Group of Banking Supervisors
CI	Channel Islands
CJICA	Criminal Justice (International Cooperation) Act, 1993
CMA	Company Management Act, 1990
CMDA	Customs Management and Duties Act, 2004
DNFBP	Designated Non-financial Businesses and Professions
DPMA	Drugs (Prevention and Misuse) Act
DPRK	Democratic People's Republic of Korea
DTOA	Drug Trafficking Offences Act
ECDD	Enhanced Customer Due Diligence
EU	European Union
FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
FB	Financing Business
FI	Financial Institution
FIA	Financial Investigation Agency
FMSA	Financing and Money Services Act, 2009
FOREX	Foreign Exchange
FSB	Financial Stability Board
FSC	Financial Services Commission
FSCA	Financial Services Commission Act 2001
GDP	Gross Domestic Product
GIFCS	Group of International Financial Centre Supervisors

GO	Governor's Office
IAIS	International Association of Insurance Supervisors
ICE	Immigration and Customs Enforcement
IGC	Inter-governmental Committee on AML/CFT
IMF	International Monetary Fund
IOSCO	International Organisation of Securities Commissions
IP	Insolvency Practitioner
LEA	Law Enforcement Agencies
LPA	Limited Partnership Act
MBC	Micro Business Company
MBCA	Micro Business Companies Act
MCAA	Multilateral Competent Authorities Agreement
ML	Money Laundering
MLA	Mutual Legal Assistance
MLA(TM) A	Mutual Legal Assistance (Tax Matters) Act
MLAT	Mutual Legal Assistance Treaty
MLRO	Money Laundering Reporting Officer
MNEs	Multinational Enterprises
MOU	Memorandum of Understanding
MSB	Money Services Business
NGO	Non-governmental Organisation
NPO	Non-profit Organisation
NRA	National Risk Assessment
ODPP	Office of the Director of Public Prosecutions
OECD	Organisation for Economic Cooperation and Development
PA	Police Act
PCCA	Proceeds of Criminal Conduct Act, 1997
PEP	Politically Exposed Person
PF	Proliferation Financing
PTC	Private Trust Company
RA	Registered Agent
RO	Registered Office
RVIPF	Royal Virgin Islands Police Force
SAR	Suspicious Activity Report
SIBA	Securities and Investment Business Act, 2010
TCSP	Trust and Corporate Services Providers
TF	Terrorist Financing
UK	United Kingdom
UN	United Nations
VASP	Virtual Asset Services Provider
VA	Virtual Assets
VI	Virgin Islands
VISTA	Virgin Islands Special Trust Act
WCO	World Customs Organisation

