



# Virgin Islands Money Laundering Risk Assessment 2022



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## Foreword


The Virgin Islands is committed in its fight to combat money laundering and tackling the resulting illicit flows in an effort to maintain and enhance our global reputation. We recognise the importance of identifying, understanding and mitigating the money laundering threats to which the Territory is exposed, that threaten the economic, social and political fabric of our society, as well as the risks inherent in the financial and other services provided in and from within the Virgin Islands. The importance of identifying, understanding and mitigating the risk of ML as a result of the activities carried out in and from within the Virgin Islands cannot be underscored.


This money laundering risk assessment report is the culmination of a joint effort between the Financial Services Commission (“the FSC”) as the regulator/supervisor of financial services and the Financial Investigation Agency (“the FIA”) as AML/CFT supervisor of Designated Non-Financial Businesses and Professions (DNFBPs) in the Virgin Islands. The FSC and FIA are cognisant of the need to comprehensively examine the vulnerabilities within the sectors for which we have supervisory authority and identify the resulting risks. It is against this backdrop that we have conducted this joint ML risk assessment as an update to the individual ML risk assessments conducted by each agency in 2020. As supervisors we remain committed to identifying and responding to such risks, to playing our part in the ongoing global fight to combat ML and maintain our reputation as a place to conduct legitimate and quality business.

This assessment involved not just a critical review of the ML risks posed by each of the sectors under our respective supervisory remits, but also took a close look at the identified ML threats to which the Virgin Islands’ may be exposed, as well as emerging threats and the vulnerabilities within our AML operational framework. This required the involvement of the Territory’s law enforcement agencies who assisted in providing data and other qualitative information to help identify these threats, vulnerabilities and resulting risks. Conducting this assessment has ensured that we will be able to continue to take appropriate action to effectively mitigate and manage these and other emerging risks.

The findings of this risk assessment provide valuable information for our law enforcement agencies, as the results of this exercise will aid them in better addressing the ML threats facing the Territory and identifying the particular ML risks their agencies face. The report also contains relevant information for us as supervisors, as well as the entities we supervise. All entities should therefore review the report carefully and integrate the findings into their own institutional risk assessments and those of their clients where appropriate. The report will help the private sector to better identify the particular ML risks faced and guide them towards the necessary actions to mitigate these risks.

Appropriately identifying and responding to existing and emerging ML risks is vitally important to the VI maintaining the safety of its citizens and enhancing our global reputation as a place to conduct legitimate business. As key agencies in the Territory’s AML operational framework we will continue to foster cooperation and collaboration between the public and private sectors and amongst public sector agencies to safeguard the Virgin Islands’ reputation as a jurisdiction that takes its responsibilities to the global community seriously and to further enhance our reputation as a leading international financial centre.

  
Kenneth Baker  
Managing Director/CEO  
BVI Financial Services Commission

  
Errol George  
Director  
BVI Financial Investigation Agency

## 1. Executive Summary

1.1 This money laundering risk assessment is the third ML-specific risk assessment conducted by the Virgin Islands. In 2020, separate risk assessments were carried out by the Financial Services Commission and the Financial Investigation Agency in relation to the financial and DNFBP sectors supervised by each agency respectively. The resulting reports provided an in-depth review of the risks and vulnerabilities of both the Territory's financial and non-financial sectors as well as provided an overview of the identified ML threats facing the VI.

1.2 This report now provides a consolidated update to the two ML risk assessments conducted in 2020 and covers both the FI and DNFBP sectors as well as a more in-depth review of the Territory's AML operational framework and its vulnerabilities along with the overall ML threats to the jurisdiction.

1.3 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 and Supervisor of DNFBPs
- Royal Virgin Islands' Police Force – Criminal Investigations
- Governor's Office – Extraditions and Mutual Legal Assistance
- Attorney General's Chambers – Mutual Legal Assistance
- Office of the Director of Public Prosecutions – Criminal Prosecutions
- Immigration Department – Illegal Migration
- His Majesty's Customs – Cash Seizures
- International Tax Authority – International Cooperation on Tax Matters
- Supervised entities of the FSC and the FIA – understanding of AML obligations

### **National Threats**

1.4 The domestic money laundering threat stems primarily from drug trafficking which is considered to be the most significant predicate offence and associated cash smuggling, as well as migrant smuggling, and corruption. Other offences identified were fraud (including online fraud) and breach of trust, which constitute elements of corruption. In relation to corruption specifically as an offence, this has become an elevated threat since the 2020 ML risk assessments and as such additional detail has been provided in relation to the current position within the jurisdiction. Other domestic predicates that contribute to ML were primarily considered to be lower threats.

1.5 International fraud, foreign corruption and tax evasion have been identified as the main threats stemming from predicate offences committed overseas, which is consistent with international trends. These predicate offences could have a severe impact on the Territory if proceeds from such offences find their way into the Territory's economy through the use of the products and services offered by the various FIs and DNFBPs.

### **National Operational Framework Vulnerabilities**

- 1.6 The ability to effectively mitigate the threat of ML lies in great part with the law enforcement and supervisory agencies within a jurisdiction. There are, however, vulnerabilities that may limit these agencies ability to effectively mitigate ML risk. The vulnerabilities identified within these key agencies in the VI that impact their ability to effectively mitigate the identified ML threats in the Territory include: sub-optimal levels of resourcing, lack of proper policies and procedures, inefficient data maintenance and insufficient training. Other vulnerabilities identified in relation to specific agencies include potential corruption within, failure to carry out investigations, limited strategic and operational analysis and dissemination of intelligence and proper prioritisation of ML cases.
- 1.7 A key recurring theme in relation to vulnerabilities within the national operational framework is the lack of adequate resources and the impact the current level of resources has on the VI's ability to effectively mitigate its ML risk.

### **Legal Persons and Legal Arrangements**

- 1.8 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 global nature of these entities and their ability to engage in cross border business activities makes them highly susceptible to criminal misuse. Further, 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. Likewise, the sheer volume of legal persons registered in the VI increases the risk of registered agents and supervisors not knowing what types of activities these entities may be engaged in. Similar issues also arise for legal arrangements which are not subjected to specific registration requirements. 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.

### **Emerging Products and Technologies**

- 1.9 A jurisdiction's understanding of the potential ML risk posed by emerging products and technologies is key to its ability to mitigate such risk. In 2020, two (2) pieces of legislation were passed allowing for gaming and betting and the production of cannabis for medical purposes in the VI. Both of which are known to have significantly high inherent ML risk. This risk, coupled with the jurisdiction's inherent vulnerabilities, means that the ML risk of both of these products is likely elevated.
- 1.10 With the increasing use of decentralised finance (DeFi) instruments the VI has also considered the potential ML risk involved in these instruments. The ability for such instruments to facilitate the transfer of funds, and purchase and exchange of financial assets by sidestepping traditional FIs such as banks, brokerages and exchanges comes with a greater risk of such products being misused for illicit gains. Given the findings of the 2020 ML Risk Assessment, which indicated that there is an evolving threat from businesses operating in or from within the Virgin Islands that facilitate the provision of VA products, it is understood that where such businesses operate in a decentralised manner and effectively are providing DeFi services the ML risk is elevated. The ML risk is further elevated where such activities are carried on in an unregulated space where these DeFis are not subject to any AML/CFT obligations. Exposure to ML risk in relation to DeFi, therefore, lies not only with the actual DeFi activities, but also in the VI's ability to identify the BVI entities through which DeFi activity is currently being facilitated, and take the necessary steps to prevent any unauthorised activity.



- 1.11 The introduction of a 7% transaction levy on all MSB transactions in 2020 has resulted in a substantial decline in the total value of transactions processed by MSBs, even after the reduction of this levy to 2.5% in 2022. Individuals trying to avoid paying this transaction levy have resorted to using their bank accounts in the VI (established/new) and their country of origin which enables the transfer of money through regulated institutions which decreases the overall ML risk due to the high level of CDD carried out by banks. Transfers through the use of mobile phones via apps linked to debit/credit cards and bank accounts are also becoming more popular as they facilitate quick transfer of funds, which do not require the use of regulated money services and the incurrence of stipulated fees. However, intelligence has suggested an introduction of the use of a Hawala style system, which is prevalent within the Dominican Republic, Guyanese and St Vincent communities, which are three of the top jurisdictions receiving outgoing money transfers.

### **Inherent Money-Laundering Risk at the Sectoral Level**

#### **Financial Institutions**

- 1.12 The banking sector in the Virgin Islands although small, plays an integral part within the local economy, accounting for approximately 7.8% of GDP. It is also an important part of the financial services sector, with operations at both the domestic and international levels. Most customers are attained through face-to-face contact as majority of customers are resident within the Territory. However, the sector does provide services to non-resident persons, either directly or through the provision of banking services to legal persons and legal arrangements whose BOs and other associated relevant persons non-resident within the Territory. However, the volume of such activities is small. The delivery channels used are primarily face-to-face, including in relation to the on-boarding of clients, although there has been a gradual shift to more non-face-to-face transactions as online services have become more readily available through most of the entities within the sector. The products and services offered are standard banking related products and services and are not of an overly complex nature. Conversely, the volume of transactions conducted is of a substantial nature in the context of the size of the sector relative to the jurisdiction.
- 1.13 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 banking sector to involve high risk jurisdictions. 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. The cash intensive nature of the society and the demographic of the population within the VI enhances the sector's exposure to potential criminality, which ultimately impacts on the level of risk.
- 1.14 Within the financing business sector services provided are limited to small and other short-term loans to connected persons or payment plans for insurance premiums and specialist services of buying bank loans and taking steps to collect the outstanding payments. Services are offered to local residents on a face-to-face basis and delivery channel are simple in nature. Clients and services provided within this sector do not involve high-risk jurisdictions. The threat of ML associated with financing business is mainly in the taking out of loans for the sole purpose of swiftly repaying them using the proceeds of crime while, in some instances, converting the loan proceeds into a tangible legitimate asset. However, given the size of the current financing business sector, the nature of the clientele, and the number and average value of the recorded transactions, this is highly unlikely to be an attractive means of facilitating ML within the Territory.

- 1.15 The money services sector is small with only two participants and the services provided are currently limited to money transfer services. The sector, however, although not highly integrated with other sectors outside of the banking sector, is significant in terms of outflows as it accounts for a large volume of cross-border transactions. 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. 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.
- 1.16 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 products and services offered through domestic insurance companies and intermediaries are limited to relatively vanilla type offerings and the captive insurance sector is small and inherently low risk. Most business is conducted through face-to-face contact, including the payment of premiums and purchasing and renewal of policies and cash transactions are limited to the payment of premiums by some customers. Given the nature of domestic insurance business and the services provided by insurance intermediaries there is little geographical risk involved in this sub-sector of insurance business. With regard to captive insurance business, based on the geographical location of these clients and the nature of the products and services provided there is little exposure to geographical risk within these sub-sectors of the insurance sector.
- 1.17 As the primary gateway to the Virgin Islands' international financial services sector, the TCSP sector can be 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. Further, 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 broad range of products and services provided by TCSPs, particularly with regard to corporate directorships and nominee shareholder services enhances the susceptibility of this sector to misuse, as does the large number of PEPs, relative to other sectors, and other high-risk individuals who utilise products and services offered by TCSPs.
- 1.18 In addition, due to the global nature of the sector's clientele the risk of legal persons and legal arrangements emanating from high-risk jurisdictions is elevated. TCSPs have a large end-user clientele, however many TCSPs also rely on third party introductions when taking on clients and executing transactions, many of which are executed on a non-face-to-face basis. This also 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 BO information and may be subject to penalties for failing to maintain accurate records in relation thereto.
- 1.19 The investment business sector in the VI can be subdivided into sub-sectors of investment funds and investment business, which includes asset and investment managers and advisers, broker/dealers and asset and investment administrators. Both sub-sectors 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. The nature of investment business can involve the movement of large sums of money across multiple borders, which presents ML risks. Due to the nature of investment business, most service providers reside outside the VI and are geographically dispersed, some in high-risk jurisdictions, which in itself provides a high level of inherent risk.

- Investment fund vehicles
- Asset and investment managers and advisers
- Brokers/Dealers
- Asset and investment administrators

1.20 A significant amount of investment business is conducted through non-face-to-face contact given the nature of the business and the technological means by which many of these entities engage in their operations; 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. However, the size and nature of investment business within the Territory provides evidence that the sector is highly susceptible to ML.

1.21 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. With regard to VA and VASPs, in the context of the VI, unregulated BVIBCs operating globally do pose an inherent risk, as these entities may, and do, operate as VA exchanges and ICOs. The VI's vulnerability exists primarily in that the majority of transactions carried out are on a non-face-to-face basis, which offers 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, thereby elevating the risk above other existing FIs.

1.22 The nature of VA business can also involve the movement of large sums of money across multiple borders. The risk posed by VAs/VASPs is also heightened by the fact that clients are geographically dispersed and located in jurisdictions of varying risk including some high-risk jurisdictions. The lack of legislative and supervisory oversight demonstrates a clear vulnerability in the VI's AML structure given the volume of VA business identified as being conducted from within the Territory. However, the recent enactment of VASP legislation and actions taken by the FSC and the FIA to build out the supervisory, enforcement, AML/CFT and compliance regimes for VASPs should aid in mitigating such risk.

1.23 Additionally, compliance deficiencies across 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.

#### *Designated Non-financial Businesses and Professions*

1.24 The legal practitioner sector is the largest DNFBP sector within the Territory. The types of services offered are relatively standard and tend to include providing VI legal opinions and/or advice in connection to real estate transactions; aspects of VI company law; the creation, operation and management of BVI legal persons; and mergers and acquisitions. Legal practitioners provide services to clients globally, which itself

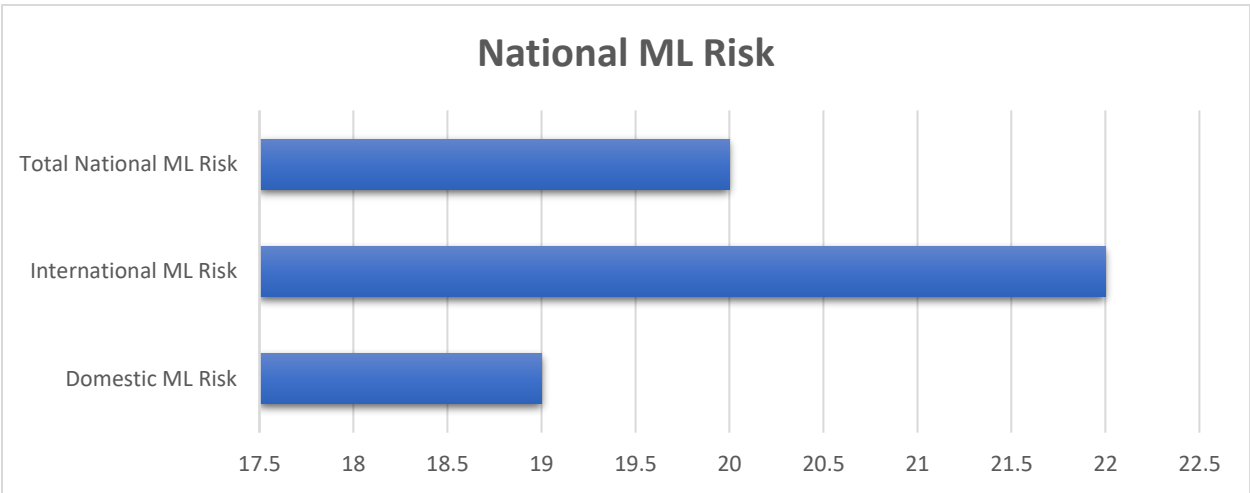
poses a risk as firms may provide services to clients based in jurisdictions considered to be high risk for ML. Given the types of services provided to clients globally, most services are provided virtually or in a non-face-to-face capacity.

- 1.25 The accountancy sector within the VI is of moderate size in terms of the number of firms in operation. Services offered are relatively standard and tend to include the provision of services to clients in connection to transactions involving managing of client monies, securities or other assets, the management of bank or savings accounts, or in connection to transactions involving the creation, operation and/or management of legal persons or legal arrangements, in addition to general audit and accounting functions. The types of customers served by this sector are generally corporate and business clients, and high net worth individuals, with the majority of the work being undertaken for corporate clients. Firms within the sector provide services to clients globally and the majority of services are provided virtually or in a non-face to face capacity. Both scenarios pose a risk to the sector of being exposed to ML abuse from persons globally.
- 1.26 With regard to the real estate sector, in the VI real estate sales include both land and property sales. As such the value of real estate transactions can vary quite significantly. The sector generally only provides sale/purchase services in relation to real estate based in the VI. In addition to the general real estate market, the VI's real estate sector also includes some high-value luxury villas. Real estate agents generally provide services to private individuals. The majority of customers from the domestic market would generally be considered standard/low risk, however, because of the fact that the real estate sector deals with such a wide demographic of clients, including the potential to deal with PEPs/high risk customers, there is some elevated level of risk in this regard.
- 1.27 There are very few jewellers within the Territory. Those that do exist, concentrate on the sale of finished pieces, almost exclusively on a face-to-face basis. There is only one DPMS registered to carry out the buying and selling of gold bullion but has not yet undertaken any business. The primary market for jewellers is cruise ship passengers, although they do also have repeat domestic customers. Sales, therefore, are generally on a face-to-face sales basis. Exposure to criminality comes from the use of cash within this sector. Jewellery stores are allowed to accept cash for the sale of goods and although some stores have a maximum cash threshold in place, some do not.
- 1.28 Vehicle dealers within the VI provide services to both private individuals and businesses, however, the majority of customers are private individuals living and working within the VI and purchasing vehicles for personal use. The buyer market within the VI is, therefore, purely domestic and the geographic risk is limited. Given the nature of this sector most transactions are undertaken on a face-to-face basis. Cash transactions are undertaken, and some dealers have a cash transaction threshold limit ranging from \$5,000 to \$15,000. However, some dealers do not have a maximum cash threshold in place, which places them at higher ML risk, as some dealers are inclined to accept full cash payments on vehicle purchases.
- 1.29 The yacht broker sector within the VI comprises persons who are involved in the business of buying and selling yachts/boats and are long-established businesses within the Territory. Persons purchasing

yachts/boats in the VI will generally do so as investments for the purposes of using them for charters and so the yacht charter side of the business will then manage and maintain the vessels. Yacht brokers provide services to both private individuals and businesses; however, most customers are businesses based outside of the BVI, therefore, the majority of transactions occur on a non-face-to-face basis. Cash transactions are not undertaken within the sector. Payments are sometimes via cheque but almost always via wire transfer and exposure to high-risk jurisdictions is limited.

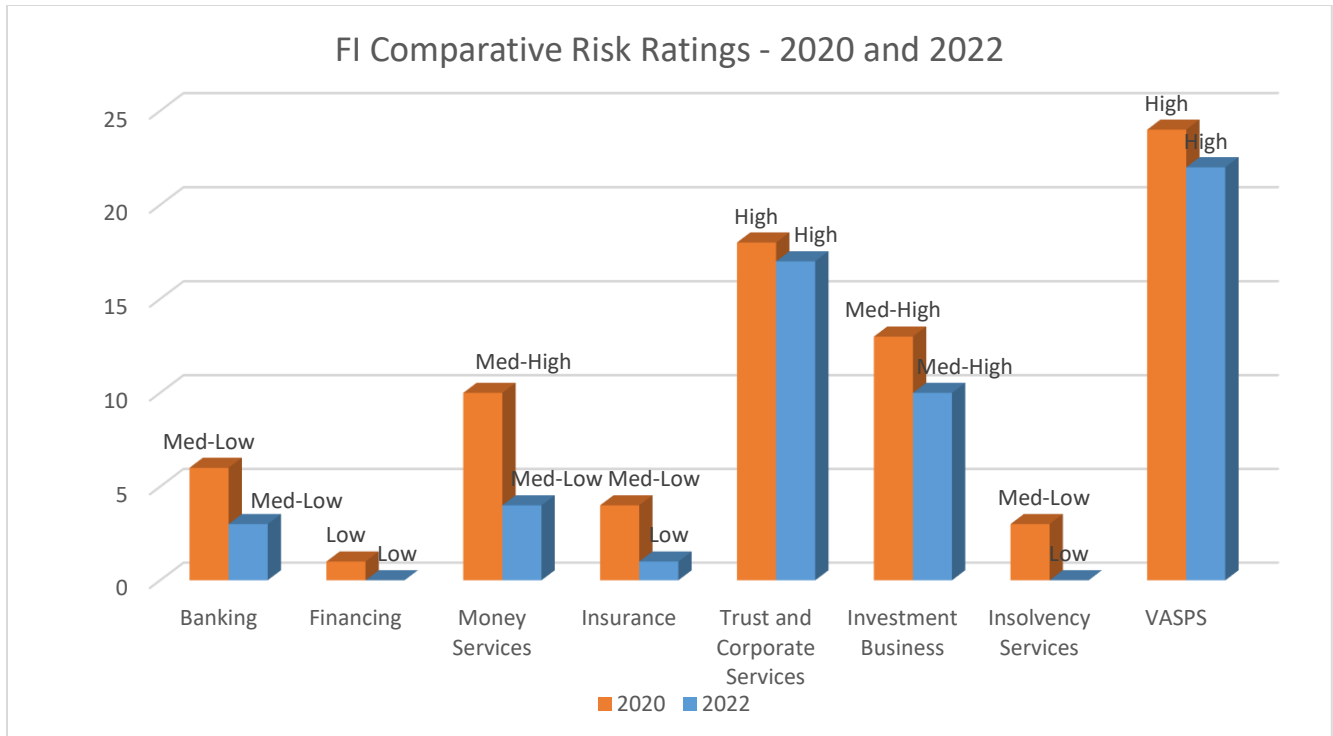
**Comparative Assessment of the 2020 ML Risk Assessments with Current Assessment**

1.30 The overall data sources used were generally the same as those used during the 2020 assessments, however, the quality of the data in this assessment was much improved, which made for better and more critical analysis. Additionally, efforts have been made by the VI to address the recommendations in both the 2016 NRA and the 2020 ML risk assessments, which have helped to mitigate to some degree, the risks identified in the prior assessments. With regard to the measurement of risk at the national level, the existing methodology was modified to take into specific account the impact of the identified threats, along with the particular national vulnerabilities and mitigating factors that would minimise such vulnerabilities. This resulted in a determination that the overall risk of ML to the Virgin Islands is **Medium-High**. The findings outlined in **Chart 1.1** below illustrate the level of risk at the national level.

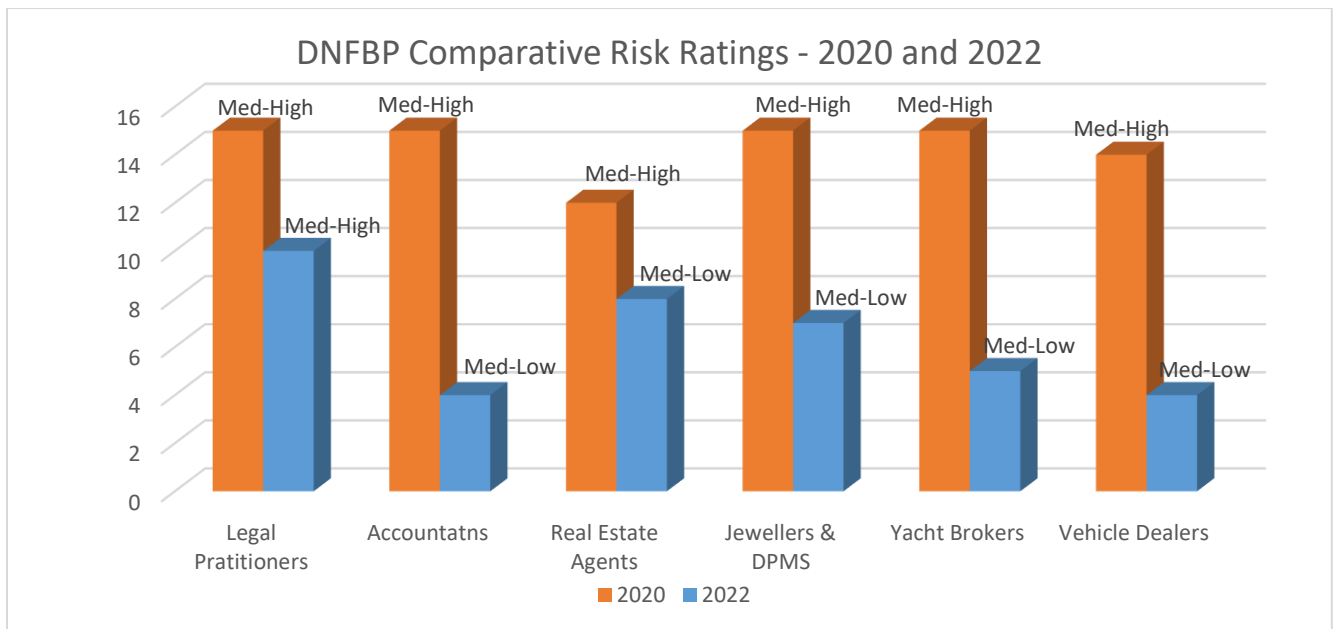


**Chart 1.1: National ML Risk – Domestic and Foreign**

1.31 In addition, the methodology and rating systems used in the 2020 sectoral assessments were used for the assessment of the FI and DNFBP sectors in this current assessment. **Chart 1.2** provides a comparative view of the risks identified within each FI sector between the 2020 Sectoral Assessment and this assessment, while **Chart 1.3** compares the risk ratings within the DNFBP sector between 2020 and 2022.



**Chart 1.2: Comparison of FI Sector Results between 2020 and 2022 Assessments**



**Chart 1.3: Comparison of DNFBP Sector Results between 2020 and 2022 Assessments**

## 2. Introduction

### Jurisdictional Profile

#### Geographical

- 2.1 The Territory of the Virgin Islands is an archipelago of some sixty (60) islands which sit to the north of the Leeward Islands and lie approximately 110 miles west of St. Maarten, a few miles east of the USVI and some 60 miles east of Puerto Rico. Of the approximately sixty islands, islets and cays, twenty 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 the geographical location of the islands the territorial waters between the Virgin Islands and the USVI are heavily trafficked on a daily basis for purposes of commerce. However, the Virgin Islands' borders are quite porous, and the open waterways also lend to more nefarious activities such as drug and people smuggling.

#### Political

- 2.2 The Territory is one of the Overseas Territories of the United Kingdom and is classified by the United Nations as a Non-self-governing Territory of the United Kingdom. The UK maintains responsibility for external affairs and security and retains associated reserve powers in these areas. However, the Territory is internally self-governing, and operates under the Westminster system with a Cabinet style government. Cabinet Ministers are not independently elected to executive office, but rather are appointed from amongst the members of the elected Legislature and are ultimately 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.

#### Socio-economic

- 2.3 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>1</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 32.6% of the Territory's GDP in 2022. The Virgin Islands' economic performance showed an increase in positive growth of the Territory's GDP from \$1.02 billion in 2014 to \$1.38 billion in 2018, before contracting to \$1.30 billion in 2019. However, although the global coronavirus pandemic saw the total closure of the tourism sector for most of the fiscal year 2020, GDP is again showing positive growth. In 2020, GDP stood at \$1.31 billion, before rising to \$1.34 billion in 2021 and \$1.39 billion in 2022.

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<sup>1</sup> This is by virtue of the Legal Tender (Adoption of United States Currency) Act (Cap. 102) of the Laws of the Virgin Islands.

### 3. National Policy and Strategy

- 3.1 The VI's National AML/CFT Policy ("National Policy") and National AML/CFT Strategy 2021-2023 ("National Strategy") were approved by the National Anti-money Laundering Coordinating Council on 18 March 2021 and adopted by the Cabinet of the Virgin Islands on 19 May 2021. The National Policy was developed taking into consideration the identified ML/TF/PF threats, risk levels and potential consequences, along with the recommendations outlined in the initial NRA report. Other relevant issues were also taken in consideration, including subsequent changes to international standards since the conclusion of the NRA exercise. The National Policy provides a framework for minimizing ML/TF risks and strengthening the VI's national AML/CFT regime through the identification of key areas which form the foundation of the National strategy.
- 3.2 The National Strategy is a three-year roadmap designed around the National AML/CFT<sup>2</sup> Policy framework. The National Strategy is meant to be read in conjunction with the National Policy and used by public and private sector stakeholders to implement effective measures to combat the ML, TF and PF risks identified within the local financial sector. It is a cohesive plan which seeks to improve the Territory's AML/CFT regime by addressing its ML, TF and PF risks, thereby ensuring a high level of compliance with International Standards, and protecting the VI's economy against the potential negative impacts of ML, TF and PF.
- 3.3 The National Strategy provides a guide of the actions required to be undertaken in order to improve the VI's effectiveness in mitigating against ML, TF and PF, with the ultimate goal being a more secure and well-regulated international financial centre and economy. The objectives set out in the National Strategy embody the action points identified during the NRA process, as well as other important issues identified within the Territory since the finalisation of the NRA and takes into account recent developments in international standards. The National Strategy was designed to ensure that the standards at the legislative and institutional levels are met in such a way as to achieve effective results.
- 3.4 To effectively implement the National Policy and Strategy a National Strategic Action Plan ("Action Plan") was issued in 2021. The Action Plan details how the VI intends to address each of the key strategic areas outlined in the AML/CFT Policy by delivering on the objectives identified, as well as the related actions outlined in the Strategy. The Action Plan is divided into the following six (6) sections, which align with the National Policy and National Strategy:
- Prevention
  - Detection
  - Investigation and Sanctioning
  - Regulation
  - Articulation
  - National and International Cooperation

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<sup>2</sup> For the purposes of this document any reference to AML/CFT also includes PF



3.5 The most recent update provided on the status of the Action Plan indicated that:

- work on 80% of all issues had commenced, including over 95% of “high priority” issues;
- 82% of the “high priority” action items were completed;
- 43% of Prevention action items were completed;
- 50% of Detection action items were completed;
- 50% of Investigation and Sanctioning action items were completed; and
- 40% of Regulation action items were completed.

3.6 The National Policy and Strategy documents are currently being revised. A decision has been taken to separate the document into two separate ML and TF polices and strategies taking into account the findings of risk assessments conducted by relevant authorities and the implementation of the recommendations emanating from those risk assessments. Additionally, the revised documents will account for any recommendations stemming from this Report. Once updated a revised Action Plan will be drafted to provide the roadmap to address the identified issues.

## 4. AML Legislative Framework

- 4.1 The Virgin Islands' AML/CFT framework emanates from the Proceeds of Criminal Conduct Act and the Drug Trafficking Offences Act. The PCCA represents an all-crimes anti-money laundering legislation. It provides for the recovery of the proceeds of crime; in addition, it also establishes a regime for the registration and enforcement of external confiscation orders.
- 4.2 The DTOA gives effect to the provisions of the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. It establishes the legal framework for the recovery of the proceeds of drug trafficking and creates a regime of international co-operation on drug trafficking, including applications for confiscation, restraint and charging orders.
- 4.3 Issued under the PCCA, the Anti-money Laundering Regulations foster the regulation/supervision of regulated and non-regulated entities by requiring the adoption of specified measures to guard against the activities of money laundering and terrorist financing and ensure the availability of information when requested.
- 4.4 The Anti-money Laundering and Terrorist Financing Code of Practice supplements the Anti-money Laundering Regulations and establishes a framework for compliance with AML/CFT matters including the verification and maintenance of relevant ownership information and other pertinent records, as well as exchange of information with relevant authorities.
- 4.5 With regard to exchange of information, the Criminal Justice International Cooperation Act enables the Virgin Islands to co-operate with other countries in matters pertaining to criminal investigations and proceedings; in addition, the CJICA regulates substances that are considered useful for the manufacture of controlled drugs and also creates a regime of hot pursuit in apprehending vessels and persons concerned with drug offences. This latter regime, however, operates only on a bilateral arrangement, that currently exists between the VI and the USA.

## 5. AML Operational Framework

### The Law Enforcement Framework

- 5.1 The law enforcement framework within the Virgin Islands consists of a number of LEAs, each of which has its own specific mandate with regard to AML. To maximise output and work towards effective outcomes these LEAs also coordinate and cooperate with each other when and where necessary. Such coordination and cooperation is considered necessary to effectively combat ML within the Territory.

#### The Royal Virgin Islands Police Force (RVIPF)

- 5.2 The RVIPF provides visible and responsive policing services within the Territory; upholding the law and ensuring that offenders are brought to justice. The RVIPF is the lead agency for criminal investigations of ML offences and has a wide range of legal powers available to it to conduct ML investigations and to seize criminal assets during the course of a criminal investigation.
- 5.3 The Financial Crime Unit (FCU) of the RVIPF is the dedicated unit within the RVIPF charged with leading the RVIPF's response to money laundering, and as such is the main investigative body for ML and other proceeds of crime. There are procedures in place that allow the FCU to engage in parallel investigations with other Units within the RVIPF. The FCU also receives vital financial intelligence from the FIA and HMC. The FCU is therefore able to conduct financial investigations in collaboration with other units within the RVIPF as well as other LEAs. The source of these investigations varies; however, the bulk of their criminal investigations stem mainly from predicate offences identified by the RVIPF or SAR referrals emanating from the FIA. The FCU also provides support to HMC, FIA and ID to investigate ML offences and cash seizures stemming from operations conducted by these agencies and makes recommendations for prosecutions based on such investigations.
- 5.4 The other Units within the RVIPF that work closely with the FCU include the Major Investigations Team (MIT), The Special Investigations Team (SIT), and the Intelligence Unit (IU).
- 5.5 The Major Investigations Team (MIT) within the RVIPF is responsible for investigating murders, suicides, high-risk missing persons, work-related deaths where gross negligence is suspected, serious crimes committed onboard BVI registered vessels or aircraft and re-investigation of cold cases. The most predominant offence investigated by the MIT is murder. A review of the murders investigated by the MIT within the past ten (10) years suggests that a significant number have a direct nexus to drug trafficking. Based on this link, the offence of Proceeds of Criminal Conduct (PCC) regularly becomes a line of investigation in MIT's murder enquiries. The nexus between murders and PCC often calls for parallel investigations between the MIT and the FCU in order to secure successful results.
- 5.6 The Special Investigations Team (SIT) is another investigative unit whose main focus is intelligence led activity engaged in to identify, disrupt and investigate those facilitating the movement of illegal commodities. As part of its function, SIT also undertakes covert operations. SIT is responsible for investigating drug trafficking, firearms trafficking, human smuggling/trafficking and organized crime

matters; predicate offences which tend to have a nexus to ML offences. The SIT and the MIT work closely together and are supported by the FCU. The FCU, therefore, provides assistance/support to the SIT and also conducts parallel investigations alongside the SIT in relation to ML offences.

- 5.7 The Intelligence Unit (IU) of the RVIPF is responsible for the collation, sanitisation and dissemination of intelligence, and the management of covert activity within the RVIPF. The IU collects intelligence through a variety of intelligence sources. The IU is also responsible for multi-agency intelligence sharing and development within the BVI and with international partners and serves as the RVIPF's dedicated Interpol liaison. The IU and FCU mutually support each other.

#### His Majesty's Customs (HMC)

- 5.8 HMC deprives criminals of assets by detaining, seizing, and forfeiting the proceeds of criminal gains. HMC shares information with the RVIPF in relation to people movement and importation of goods and assists the RVIPF with investigations by initiating the detention of property and cash. HMC is a member of the Caribbean Customs Law Enforcement Council (CCLEC). This membership has aided HMC in developing relationships and cooperation with organisations such as the Caribbean Regional Technical Assistance Centre (CARTAC), Caribbean Regional Drug Law Enforcement Training Centre (REDTRAC), Inter-American Development Bank, World Trade Organization (WTO), World Customs Organisation (WCO) and the Caribbean Community Implementation Agency for Crime and Security (IMPACS). HMC also works closely with US CBP and ICE, and along with the RVIPF, participates in joint operations with these agencies when necessary. In addition, HMC is the current Chair of the VI's Joint Task Force, whose purpose is to provide the VI with a multi-agency capability that can respond appropriately to emerging issues in a cohesive and effective manner.

#### Immigration Department (ID)

- 5.9 The Immigration Department is responsible for the management of persons migrating legally through the Territories Borders as well as the management of illegal persons including their detention and repatriation to the home country. It is also responsible for the handling and processing of applications for Belonger and Residence Status in collaboration with the Board of Immigration and the processing of persons living, working, residing or visiting the Territory to allow for valid work, entry and landing permits to be issued.
- 5.10 The ID has an established working relationship with other LEAs in the VI and works collaboratively to carry out each agency's mandate. Information sharing takes place on a daily basis. Additionally, the ID is a part of CLEA, JTF, & NEOC. Regionally, the ID works closely with ICE and CBP of both the USVI and Puerto Rico, and all IDs throughout the Caribbean region, most notable the St. Maarten, Antigua and Barbuda and St. Kitts and Nevis Immigration Departments. Further, the ID is a part of the CARICOM's Standing Committee of Chiefs of Immigration and Comptrollers of Customs, British Overseas Territory's Immigration Intelligence Forum.

#### Financial Investigation Agency (FIA)

- 5.11 The FIA is responsible for receiving, analysing and disseminating financial intelligence and other information, and assisting in the processing of letters of request. These functions are carried out by the FIA's Financial Intelligence Unit (FIU). The FIU consists of an analysis team responsible for analysing SARs and making relevant disclosures to the RVIPF and other LEAs and conducting strategic analysis; an intelligence team responsible for conducting operational analysis and background checks; and an investigating team responsible for responding to letters of request/international co-operation matters referred to the FIA by the AGC and processing requests for information received from domestic and foreign CAs during the course of their ML/TF/PF investigations.

#### The Office of the Director of Public Prosecutions (ODPP)

- 5.12 The ODPP is the sole prosecutorial authority in the Territory with responsibility for commencing prosecutions, taking over private prosecutions, and discontinuing prosecutions. Every case file submitted by a law enforcement agency is reviewed by the ODPP. Generally, files must be submitted through the Police Prosecution Unit. All proceeds of criminal conduct matters are pursued, and this includes ML related activities. As it relates to ML the ODPP pursue matters involving predicate offences (including drug offences), firearm offences, offences where on the facts it is clear that there has been a profit of criminal activity, or the monies involved were used to fund the commission of an offence.

#### The Attorney General's Chambers (AGC)

- 5.13 The AGC is responsible for reviewing and responding to MLA and the service of documents requests in accordance with the laws of the VI. As the competent authority for Mutual Legal Assistance, the AGC receives, and processes MLA and service of judicial documents requests submitted to the AGC by foreign competent authorities. Generally, there are no restrictions regarding foreign jurisdictions to which assistance may be rendered. However, there are currently international sanctions levied against Russia, which restricts processing requests from Russia.

#### The Office of the Governor (GO)

- 5.14 The Governor of the VI is the competent authority for the purpose of responding to requests for extradition from the VI. The AGC provides advice to the Governor throughout the entire extradition process. In addition, MLA requests are sometimes received by and channelled to the AGC through the GO. The Governor is also the competent authority responsible for the implementation of all international sanctions in the VI.

## The Supervisory Framework

- 5.15 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, not the least being the requirement to file SARs and conduct full and proper CDD, and where appropriate, ECDD. Conduct of due diligence measures includes the identification and verification of BO information. It also includes consideration of the institutional risk that a supervised entity would be exposed to, as well as the customer, product/service, and geographical risks of its clients where applicable.

## Financial Services Commission

- 5.16 In the VI, the FSC is responsible for the regulation and supervision of FIs and TCSPs, which are classified as financial institutions given the importance of these entities to the Territory's economy. 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

- 5.17 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.
- 5.18 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>3</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>4</sup>.

## Supervision

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

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<sup>3</sup> Such guidance includes AML/CFT Guidelines for the Banking Sector, Money Services Business Guidelines, Guidance on Regulation of Virtual Assets in the Virgin Islands, as well as the AMLTFCOP which applies to all sectors

<sup>4</sup> Programmes include Meet the Regulator forums, participation in BVI Finance Breakfast meetings, publication of industry circulars and monthly newsletters, and presentations at industry association meetings

5.20 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.

5.21 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. The FSC has also begun to issue general inspections findings via its newsletter for the benefit of the wider industry.

#### *Enforcement Mechanisms*

5.22 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 \$479,000 in penalties, \$255,000 of which related to AML breaches (see **Table 5.1** below).

	2020		2021		2022		
Sector	AML	Non-AML	AML	Non-AML	AML	Non-AML	Total
-- TCSPs	10,000	0	165,000	17,00.00	75,000	20,000.00	287,000
-- Banking	0	0	0	0	5,000	15,000	20,000
--Insurance	0	0	0	0	0	2,000	2,000
--Investment Business	0	0	0	50,000	0	115,000	165,000
--Money Services	0	0	0	0	0	0	0
--Financing	0	0	0	0	0	0	0
--Other (Unregulated Business)	0	0	0	0	0	5,000	5,000
<b>Total</b>	10,000	0	165,000	67,000	80,000	157,000	479,000

**Table 5.1: FSC Enforcement Actions Taken Between 2020 and 2022**

### Financial Investigation Agency

5.23 The FIA has supervisory responsibility of DNFBPs and NPOs within the Territory for the purposes of AML/CFT. However, for the purposes of assessing ML risk, the focus of this report is on DNFBPs. The FIA, in addition to exercising supervisory responsibility of DNFBPs, is also responsible for the registration of said DNFBPs within the Territory. These functions are carried out by the FIA's Supervision and Enforcement Unit (SEU). The FIA's registration and supervision framework has been developed to ensure that all entities falling under the DNFBP umbrella are registered and are following good principles of governance when it comes to AML/CFT controls. The FIA has put in place a strong registration regime and a risk-based approach to supervision.

5.24 The FIA also engages with the DNFBP sector on a regular basis, via its supervisory process and through outreach, to promote AML/CFT principles and to increase the sector's awareness of same.

### *Registration*

5.25 Following amendments to the FIA Act, the DNFBP registration regime came into effect in February 2022. All DNFBPs are required to register with the FIA and be supervised for the purposes of AML/CFT. The FIA's registration process seeks to ensure that all entities falling under the DNFBP supervisory umbrella are registered, and criminals and their associates are prevented from holding, or being the beneficial owner of, a significant or controlling interest or serving in a management capacity in DNFBPs. DNFBPs are required to provide the FIA with the names of persons holding a significant or a controlling interest in the DNFBP, its directors as well as its senior officers. This information is required at the point of registration and on an ongoing basis within seven (7) days should a change occur. All persons who fall within the categories are also required to meet the FIA's fit and proper test, which includes checks on competence and capability and integrity and reputation. This entails a thorough and detailed review of each application, including all beneficial ownership and management information, as well as further checks to ensure DNFBPs and the individuals associated with them as verified, prior to registration being approved. This process is repeated whenever there is a change in a person holding a significant or controlling interest or a person holding a director or management role. In addition, the FIA also undertakes criminality checks on all applications.

### *Supervision*

5.26 The FIA also operates a risk-based approach to AML/CFT supervision based on standards of best practice and in adherence with FATF Recommendations. Once registered and operational, all DNFBPs go through a risk assessment exercise. This includes a review of the business, its operations and its customer base, as well as any inherent risks the business may pose. This risk assessment process determines the level of supervision each DNFBP receives, which may include routine desk-based monitoring, ongoing event driven monitoring, inspections (thematic as well as full scope) and outreach.

5.27 Results of desk-based monitoring and inspections are shared with the DNFBP who is required to undertake remedial steps. In the case of an inspection, a meeting is held with the DNFBP to explain the outcome of the inspection, as well as the required next steps. DNFBPs under remediation are then monitored via the FIA's ongoing desk-based monitoring process, to ensure that they rectify any deficiencies within the



required time. Failure to effectively remediate, may lead to enforcement action being taken against the DNFBP.

#### *Enforcement Mechanisms*

5.28 As part of its supervisory responsibility, the FIA has access to monetary as well as non-monetary enforcement actions available for use, in the event of non-compliance/breaches by a DNFBP. The FIA has the power to impose a range of sanctions as enforcement actions against DNFBPs. The FIA also has additional powers, which it can and does use in order to ensure compliance with the AML/CFT regime. As part of this framework, the FIA follows its Guidance Notes on Enforcement and Penalties for DNFBPs and NPOs, which were developed to provide DNFBPs and NPOs with guidance on the FIA's enforcement process.

5.29 Although monetary penalties were not issued during the period covered under this report, the non-monetary enforcement actions identified in **Table 5.2** below were taken:

	Compulsory Directives issued	Section 5D Notices issued
Legal Practitioner	3	5
Accountants	-	1
Real Estate Agents	-	2
Jewellers & DPMS	1	2
Yacht Brokers	-	-
Car Dealers	-	-

**Table 5.2: FIA Enforcement Actions Taken Between 2020 and 2022**

## 6. The Assessment

- 6.1 In 2020 the FSC and the FIA conducted sectoral ML risk assessments of the FI and DNFBP sectors as a follow up to the National Risk Assessment that was concluded in 2016. The resulting reports 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.
- 6.2 Since that time the Territory has been working towards addressing the recommendations made in those reports at a national level. The results of the 2020 ML risk assessments have enabled authorities to identify, assess and understand the changes in the ML risks faced by the jurisdiction since the initial NRA was conducted. The Territory has also implemented its National AML/CFT Policy, National AML/CFT Strategy and National Strategic Action Plan in order to apply appropriate risk-based preventative or mitigating measures.
- 6.3 At the supervisory level, the FSC and the FIA have enhanced their supervision and regulation of financial institutions and DNFBPs through increased desk-based and on-site supervision monitoring and as well as outreach. Such outreach included ensuring that FIs and DNFBPs were aware of the findings of the 2020 ML assessments and understood that they needed to take the findings into consideration when carrying out their own assessments to determine what constitutes a high or low risk, what their risk appetite is, and what constitutes appropriate measures to manage and mitigate risks.
- 6.4 In accordance with the National AML/CFT Policy and Strategy the Territory has committed to updating these risk assessments based on intelligence gathering of potential and/or developing risks. Given the ongoing shifts in the global and local AML/CFT landscapes it is now necessary to review the current AML/CFT environment to take into account shifts in threats and vulnerabilities that have occurred since the conclusion of the 2020 ML risk assessments.
- 6.5 The 2020 sectoral risk assessments covered the period 2015 through 2019 for FIs and 2017 through 2019 for the DNFBP sector. This follow-up assessment now looks at the Territory's risk profile resulting from data collected for the period 2020 and 2022. The assessment was carried out jointly between the FSC and FIA and involved the following stakeholders who play a role in the Territory's AML architecture:
- Financial Services Commission – Regulator/Supervisor of FIs
  - Financial Investigation Agency – Financial Intelligence Unit and Supervisor of DNFBPs
  - 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
  - Immigration Department – Illegal Migration
  - His Majesty's Customs – Cash Seizures
  - International Tax Authority – International Cooperation on Tax Matters

- Supervised entities of the FSC and the FIA – understanding of AML obligations
- 6.6 It should be noted that with respect to the public sector entities reviewed, during the assessment focus was placed on those LEAs and CAs that are considered most critical to the AML framework.
- 6.7 The data used in conducting these risk assessments covered not only sector specific data relative to regulation and supervision of the entities within each sector, but also other critical economic and crime data that were key to properly identifying the level of ML risk posed to the VI and follows data sets identified by international standards setters such as the OECD, IMF and FSB for conducting such assessments.
- 6.8 The key sources of data for this exercise included:
- Available macro-fiscal data
  - FSC prudential and statistical returns data including AML/CFT Returns
  - FSC and FIA supervisory and inspection data
  - FSC and FIA enforcement data
  - ODPP prosecutorial data
  - RVIPF crime statistics and intelligence data
  - HMC cash seizure data
  - Forfeiture and confiscation data
  - FIA suspicious activity reports statistics
  - Corporate Registry data on legal persons and legal arrangements
  - Mutual Legal Assistance and other International Cooperation data
  - Migrant detention data
  - Public Sector resource and training data
  - Feedback from FIs and DNFBPs
  - Feedback from Public Sector agencies
- 6.9 The assessment relied on the analysis of both quantitative and qualitative data and was driven primarily by evidence collected from the supervisors and other CAs and LEAs, as well as from the private sector via surveys issued and data extrapolated from annual return filings submitted to the relevant supervisor. Conducting this risk assessment involved making judgments about identified threats, vulnerabilities, and consequences. It focused on current ML threats and vulnerabilities identified at the national level and the impact these threats and vulnerabilities have on the overall ML risk level of the jurisdiction. The level of ML risk was determined by identifying the inherent threats and vulnerabilities and offsetting the potential consequences resulting from the vulnerabilities by any mitigating controls in place. The assessment also considered the specific vulnerabilities associated with each sector in the context of the jurisdiction's ML risk. The level of ML risk within each sector was determined by identifying the inherent vulnerabilities and offsetting the impact of those vulnerabilities by any mitigating controls in place.
- 6.10 To execute this risk assessment, the methodology used to conduct the 2020 sectoral risk assessments was employed to ensure consistency in the capture and analysis of relevant data, and the consequential identification of the level of ML risk to which the jurisdiction is exposed. However, the methodology was

amended to ensure it more clearly reflected the consideration given to the assessment of the ML threats, vulnerabilities, and risk at the national level. It should be noted that residual sector risk ratings are relative to the financial services and DNFBP sectors 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.

## 7. Methodology

- 7.1 ML risk is a function of ML threats, vulnerabilities and consequences, each of which need to be properly understood in order for the correct level of risk to be identified. Such understanding is key in the Territory's ongoing effort of effectively mitigating its ML risk and meeting its international obligations.
- 7.2 In considering the potential ML threats to the jurisdiction, consideration was given to the predicate offences for ML as identified by the FATF and the prevalence of those predicate offences within the Territory. This called for the interrogation of statistical data received from the RVIPF, FIA, HMC and the ODPP, as well as a review of qualitative data collected through the issuance of a survey to the various CAs and LEAs to determine the vulnerabilities relative to the identified threats.

### National ML Risk Rating

- 7.3 The national ML risk rating was calculated as the net risk value, determined by offsetting the identified threats and vulnerabilities that allow such threats to permeate, with any identified mitigating controls in place to minimise such vulnerabilities. The ML threat of each identified domestic and foreign criminal activity was rated against the following four criteria:
- 1) **Sophistication** – the extent to which the threat actors have the knowledge, skills and expertise to launder criminal proceeds and avoid detection by authorities.
  - 2) **Capability** – the extent to which threat actors have the resources and network to launder criminal proceeds (e.g., access to facilitators, links to organised crime etc.).
  - 3) **Scope** – the extent to which threat actors are using financial institutions, DNFBPs and other sectors to launder criminal proceeds.
  - 4) **Proceeds of crime** – the number of crimes and magnitude of the estimated dollar value of the proceeds of crime being generated from profit-oriented crime. Where data is limited or unavailable this criterion was rated high.
- 7.4 A numerical rating between 1 and 4, with 1 signifying lowest risk and 4 signifying highest risk, was assigned to each of the four threat criteria. The sum of these individual ratings determined the total threat rating, which could range between a minimum of four (4) and a maximum of sixteen (16). This numerical rating determined the Territory's threat classification as follows:

	<u>Rating</u>	<u>Scale</u>
a)	High	14 - 16
b)	Medium High	11 - 13
c)	Medium Low	8 - 10
d)	Low	4 - 7

- 7.5 Similarly, the vulnerabilities were assessed based on the following five criteria:

- 1) **Structural elements:** the extent to which elements such as the rule of law, national AML strategies and activities, and frameworks for relationships with regional partners exist.

- 2) **Materiality:** size of proceeds generated from ML and other related offences; complexity of avenues for laundering proceeds of crime; the extent to which ML and other proceeds of crime offences involve domestic and cross-border activities.
- 3) **Sector or product-specific ML vulnerabilities:** extent to which products or services have been misused in known domestic or through international typologies; the level of ML awareness and compliance within sectors, and the relative complexity and reach of money movement through sub-sectors or firms that may be at higher risk for ML.
- 4) **Technical Compliance with FATF Standards relevant to ML:** extent to which the legal framework provides for the ML offence, preventive measures, cross-border controls, LEA powers and expertise, and AML information exchange in accordance with FATF standards.
- 5) **Effectiveness of AML regime and other weaknesses:** extent to which authorities have the capacity to identify and prevent ML; effectiveness of ML-related suspicious transaction reporting, monitoring and analysis; quality of intelligence; effectiveness of international AML cooperation; adequacy of human resources; and timely access to beneficial ownership information.

7.6 These vulnerabilities have been identified taking into consideration the threat environment and the potential consequences of such vulnerabilities going undetected and unmitigated.

7.7 A similar numerical rating between 1 and 4, with 1 signifying lowest risk and 4 signifying highest risk, was assigned to each of the five criteria based on the Territory's inherent vulnerability to the particular criteria. The sum of these individual ratings determined the total vulnerability rating, which could range between a minimum of six (5) and a maximum of twenty (20). This numerical rating determined the Territory's vulnerability classification as follows:

<u>Rating</u>	<u>Scale</u>
a) High	17 - 20
b) Medium High	13 - 16
c) Medium Low	9 - 12
d) Low	5 - 8

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

- 1) Knowledge of AML/CFT obligations
- 2) Risk mitigation policies and procedures in place
- 3) Inter-agency training, coordination and information sharing
- 4) Level of maintenance of CDD and BO information

7.9 Similar to the vulnerability criteria, each of the four (4) 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 eight (8). This numerical rating determined the Territory's mitigating classification as follows:

<u>Rating</u>	<u>Scale</u>
a) High	7 - 8
b) Medium High	5 - 6
c) Medium Low	3 - 4
d) Low	0 - 2

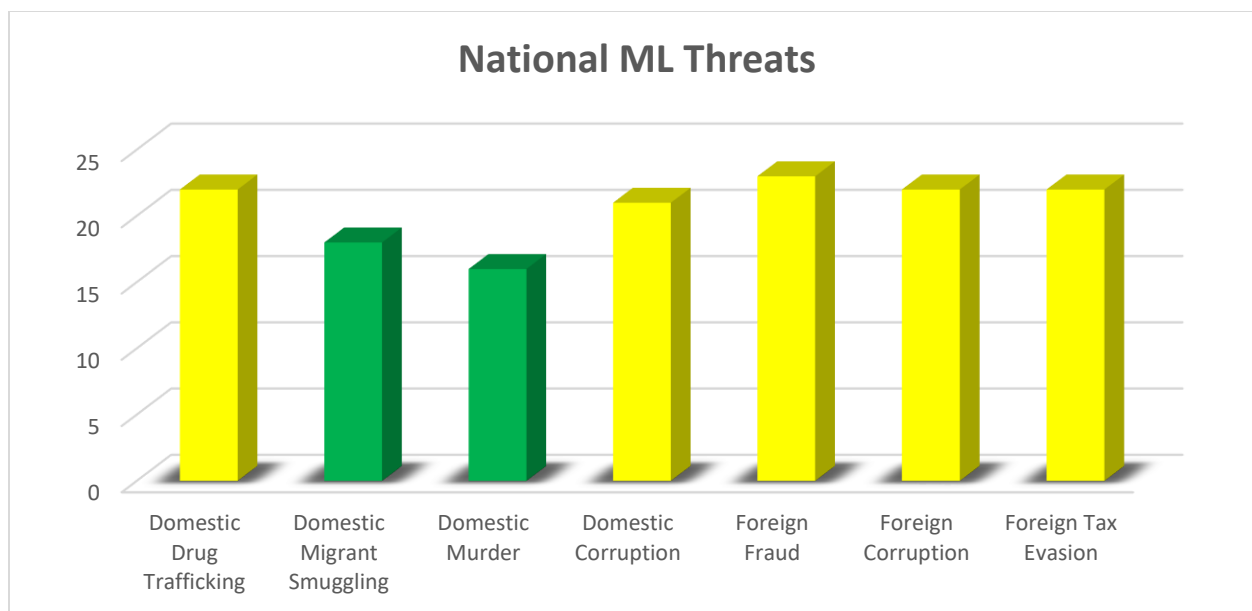
7.10 The total controls rating was then subtracted from the total vulnerability rating to determine the residual vulnerability rating. This rating was then added to the threat rating to determine the overall risk rating. The following point value scales were then applied:

	<u>Scale</u>	<u>Rating</u>
a)	28 – 36	High
b)	19 – 27	Medium High
c)	10 -18	Medium Low
d)	0 – 9	Low

7.11 The resulting risk rating of either low, medium low, medium high or high as outlined in **Chart 7.1** below, was based on the **average** net score received as detailed in **Table 7.1**.

Identified Domestic Threat	Risk Score	Risk Rating
Drug Trafficking	22	MH
Migrant Smuggling	18	ML
Murder	16	ML
Corruption	21	MH
Identified Foreign Threat	Risk Score	Risk Rating
Fraud	23	MH
Corruption	22	MH
Tax Evasion	22	MH

**Table 7.1: National Threats Risk Rating**



**Chart 7.1: National Threats Risk Rating**

#### Sectoral ML Risk Ratings

7.12 At the sectoral level each sector was assessed based on the following identified areas of vulnerability 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).

7.13 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:



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

7.14 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 (used to determine the impact of any outreach and supervision since the last assessment)
- 3) Risk mitigation policies and procedures in place
- 4) Level of maintenance of CDD and BO information
- 5) Actions taken by supervisor

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

7.16 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

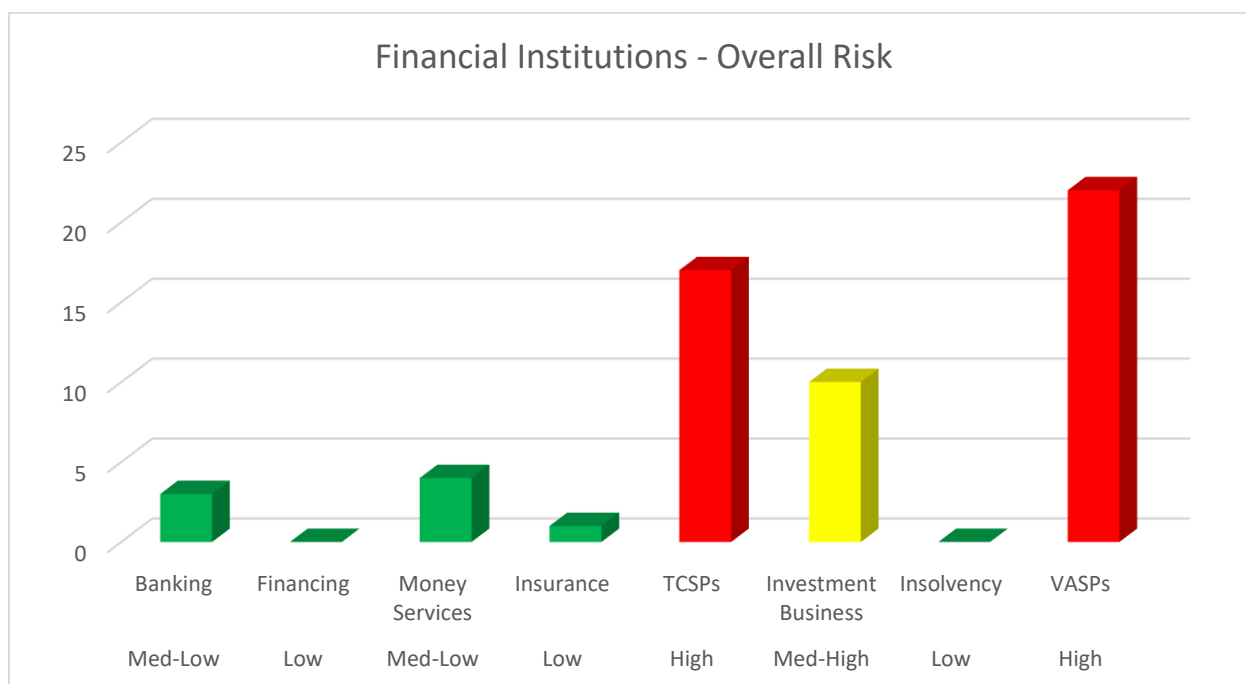
7.17 The resulting risk rating for each sector of either low, medium low, medium high or high as outlined in **Charts 7.2** and **7.3** below, was based on the **average** net score received after applying the mitigating controls to offset the identified vulnerabilities within each sector as detailed in **Tables 6.2** and **6.3**.

FI Sector	Vulnerability	Mitigating Controls	Net Score	Risk Rating
Banking	13	10	3	ML
Financing	7	8	-1	L
Money Services	12	8	4	ML
Insurance	9	8	1	L
TCSPs	22	5	17	H
Investment Business	16	6	10	MH
Insolvency	9	10	-1	L
VASPs	23	1	22	H

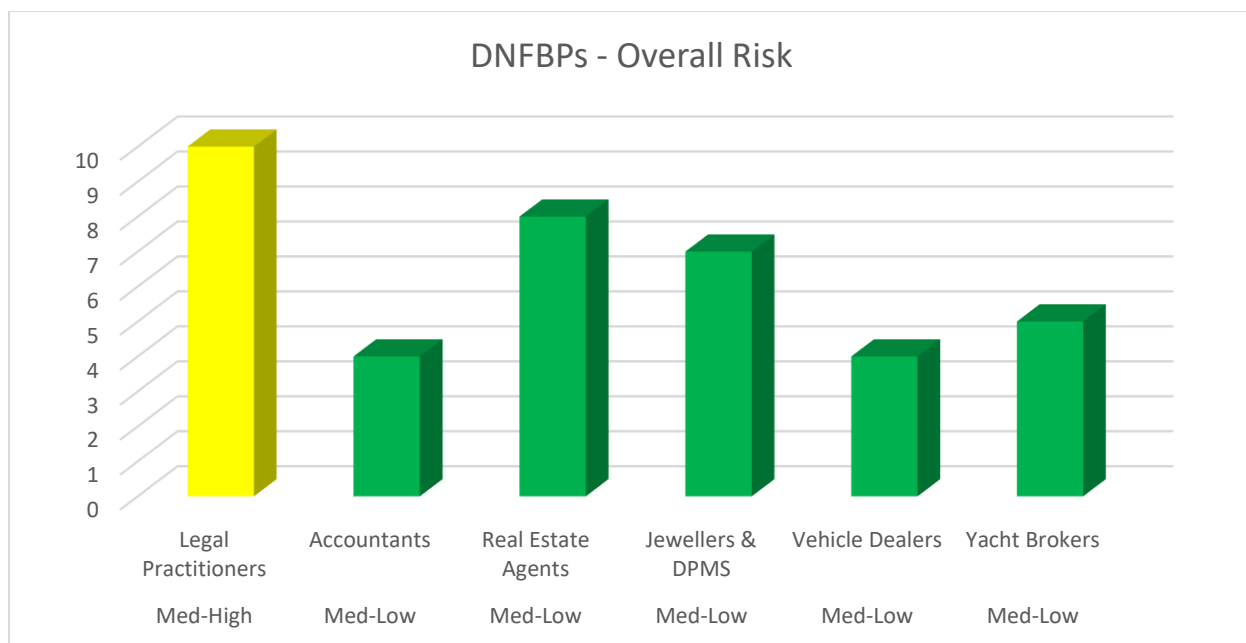
**Table 7.2: FI Sector Risk Scoring and Ratings**

DNFBP Sector	Vulnerability	Mitigating Controls	Net Score	Risk Rating
Legal Professionals	16	6	10	MH
Accountants	11	7	7	ML
Real Estate Agents	13	5	8	ML
Jewellers and DPMS	13	6	7	ML
Vehicle Dealers	11	7	4	ML
Yacht Brokers	9	4	5	ML

**Table 7.3: DNFBP Sector Risk Scoring and Ratings**



**Chart 7.2: Financial Institutions Sector Risk Ratings**



**Chart 7.3: DNFBP Sector Risk Ratings**

*Legal Persons, Legal Arrangements and Emerging Products ML Risk Ratings*

7.18 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. The criteria, however, was adjusted to more accurately reflect the vulnerabilities to which these products may be exposed as follows:

- 1) **Nature and Complexity:** the extent to which the product is required to be registered or incorporated, extent to which the product is utilised including for complex transactions, the nature of ownership of the product.
- 2) **Purpose of Products:** the volume, velocity and frequency of client transactions associated with these products and services, the type of businesses that these products are used to facilitate.
- 3) **Nature of Clientele:** the inherent vulnerabilities associated with the products' clientele profile; extent to which these products are utilised by domestic or international customers
- 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 product has been identified in: reported suspicious activities; criminal proceedings (locally and internationally).

7.19 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 product 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 product's vulnerability classification as follows:

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

7.20 The level of each of the following controls in place for each product to mitigate against the identified vulnerabilities was used to off-set these vulnerabilities:

- 1) Supervisory risk mitigation procedures in place
- 2) Prior risk assessment rating
- 3) Role of TCSP
- 4) Maintenance of BO Information
- 5) Access to information for IC requests

7.21 Similar 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 product's mitigating classification as follows:

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

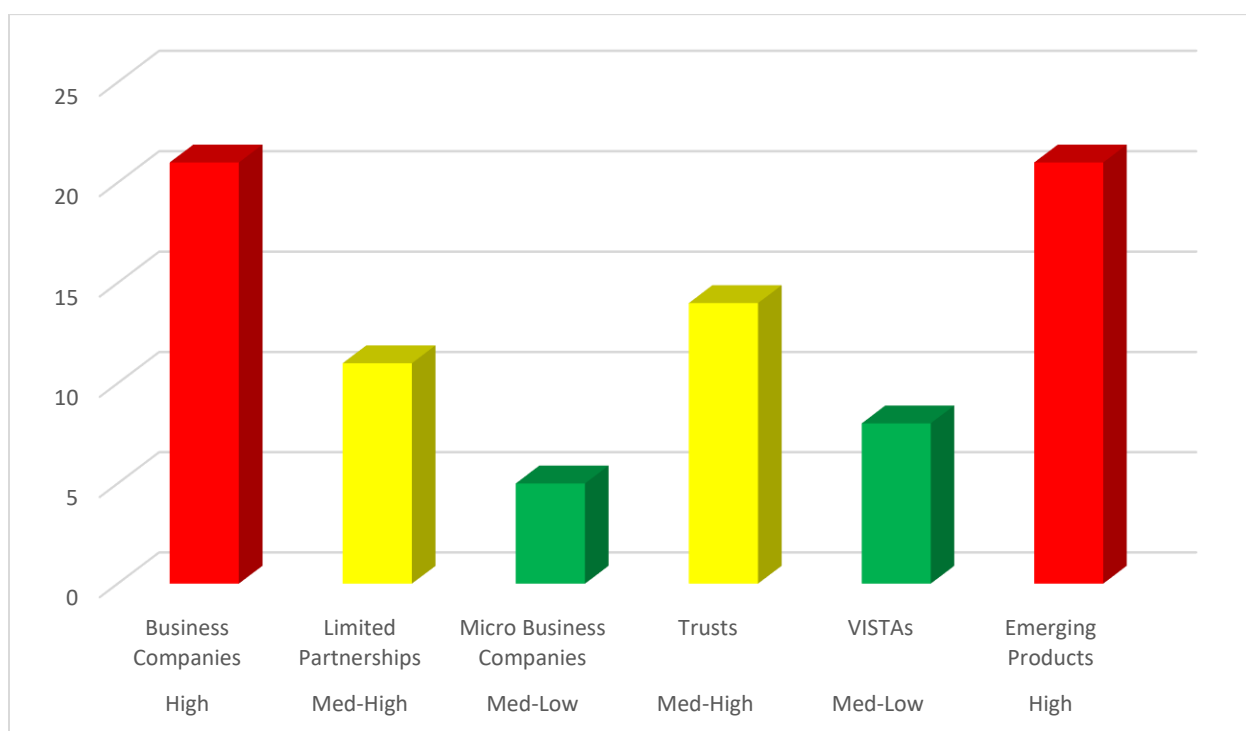
7.22 The total controls rating was then subtracted from the total vulnerability rating to determine the overall risk rating of each product. The following point value scales were then be applied to determine the overall risk rating for each product:

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

7.23 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 7.4** and **Chart 7.4** below<sup>5</sup>.

Product/Service	Vulnerability	Mitigating Controls	Net Score	Risk Rating
Business Companies	23	2	21	H
Limited Partnerships	13	2	11	MH
Micro Business Companies	9	4	5	L
Trusts	17	3	14	MH
VISTAs	11	3	8	ML
Emerging Products	21	0	21	H

**Table 7.4: Risk Scoring and Ratings for Legal Persons, Legal Arrangements and Emerging Products**



**Chart 7.4: Risk Ratings for Legal Persons, Legal Arrangements and Emerging Products**

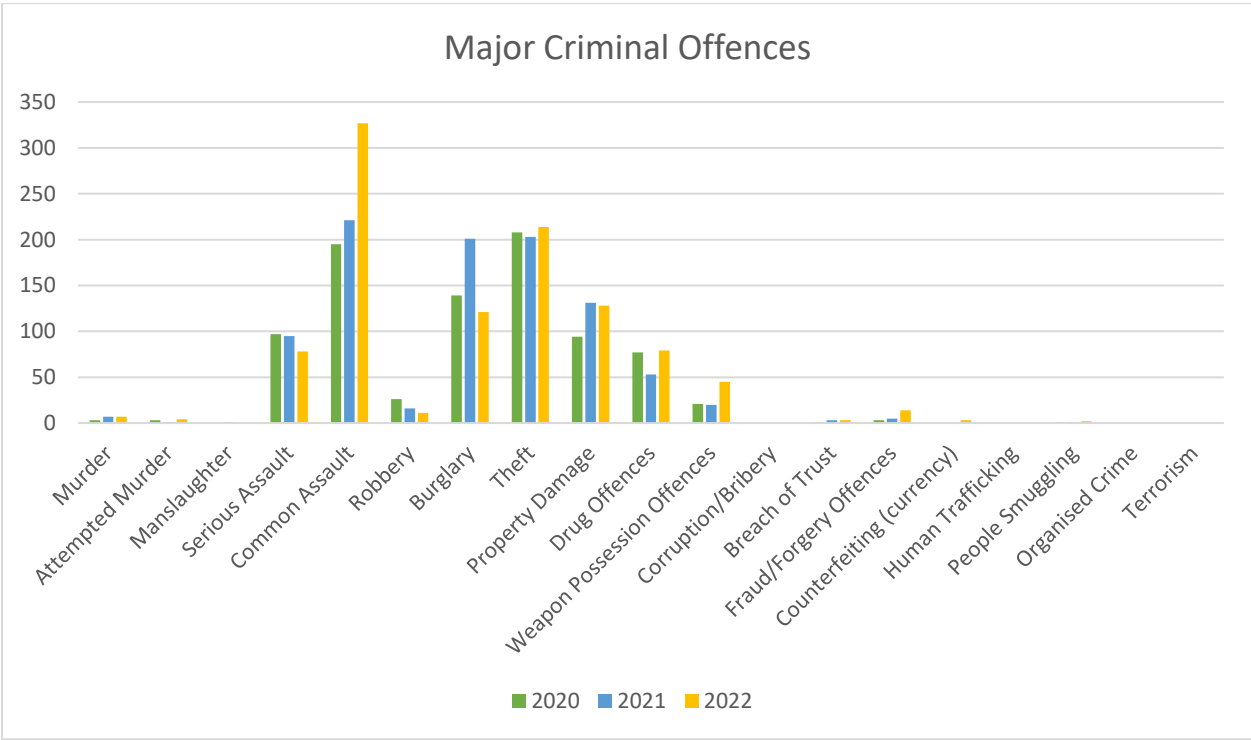
<sup>5</sup> Discrepancies in final scores are a result of rounding out average vulnerability and mitigating control scores

## 8. Money Laundering Overview

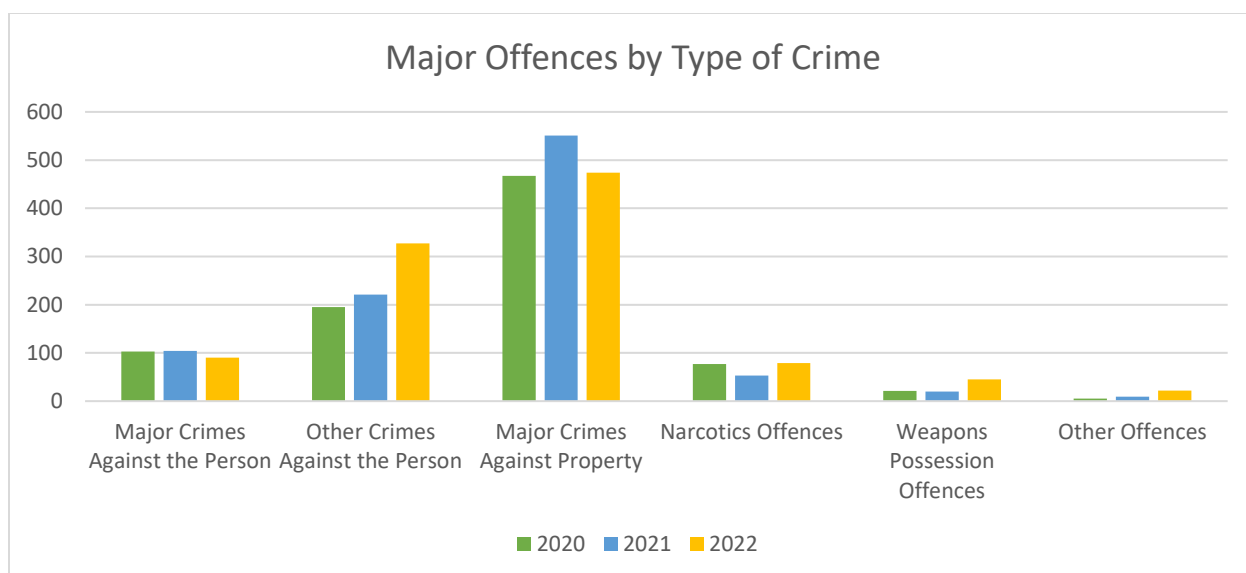
- 8.1 A jurisdiction’s ML risk is considered to be a function of its ML threats and vulnerabilities. ML threats can come directly from people (natural and legal), and criminals generally, or they can be indirect where systems require improvement to detect, mitigate, combat and curtail harmful activity.
- 8.2 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.

### Money Laundering Threats

- 8.3 The crime rate in the Virgin Islands is relatively low, as outlined in **Chart 8.1** below which provides a depiction of the number of criminal offences recorded in the Territory between 2020 and 2022. However, data provided indicates an upward trend in all categories of crimes, with the exception of crimes against property as outlined in **Chart 8.2**.



**Chart 8.1: Number of Major Criminal Offences Recorded: 2020-2022**



**Chart 8.2: Major Criminal Offences by Category of Crime: 2020-2022**

8.4 As noted in **Chart 8.2** above, the majority of reported offences documented by the RVIPF between 2020 and 2022 fell into the following five categories:

- Major Crimes Against the Person
- Other Crimes Against the Person
- Major Crimes Against Property
- Narcotic Offences
- Weapons Offences

#### Major/Other Crimes Against the Person

8.5 Major crimes against the person include murder, attempted murder, manslaughter, and assault including wounding or inflicting grievous bodily harm. In addition, while not classified as a major crime against the person, common assault has also been included in this category for the purposes of this assessment as this offence accounts for the majority of crimes recorded against persons as outlined in **Table 8.1** below. Other more serious crimes of murder and attempted murder are not common, however, there has been an increase in the number of murders that occurred between 2020 and 2022.

Major Crimes Against the Person	2020	2021	2022
Murder	3	7	7
Attempted Murder	3	1	4
Manslaughter	0	1	1
Serious Assault (occasioning actual or grievous bodily harm)	97	95	78
<b>Sub-Total</b>	<b>103</b>	<b>104</b>	<b>90</b>
Other Crimes Against the Person			
Common Assault	195	221	327
<b>Total</b>	<b>298</b>	<b>325</b>	<b>417</b>

**Table 8.1: Major/Other Crimes Against the Person: 2020-2022**

### Major Crimes Against Property

- 8.6 Major Crimes against Property include theft, robbery, burglary, aggravated burglary and damage to property. Crimes recorded in this category related primarily to burglary, theft and criminal damage as similarly reported in the 2020 ML Risk Assessment, most of which have been identified as crimes of opportunity (See **Table 8.2** below). These are generally of low financial value and very rarely involve violence against persons.

Major Crimes Against Property	2020	2021	2022
Robbery	26	16	11
Burglary	139	201	121
Theft	208	203	214
Property Damage	94	131	128
<b>Total</b>	<b>467</b>	<b>551</b>	<b>474</b>

**Table 8.2: Major Crimes Against Property: 2020-2022**

### Narcotics Offences

- 8.7 Narcotics Offences include unlawful cultivation, importation and possession of cannabis and cocaine (including crack cocaine), and possession with intent to supply cannabis and cocaine and most recently ecstasy. Crimes recorded in this category related primarily to unlawful possession, and unlawful possession with intent to supply of a controlled drug, which in most cases was cannabis (see **Tables 8.3a and 8.3b** below).

Narcotic Offences	2020	2021	2022
Unlawful cultivation of cannabis	1	2	3
Unlawful importation of cannabis	0	1	3
Unlawful possession of cannabis	54	38	49
Unlawful possession of cannabis with intent to supply	14	7	15
Unlawful importation of cocaine	0	1	0
Unlawful possession of cocaine	1	1	3
Unlawful possession of cocaine with intent to supply	6	2	5
Unlawful possession of crack cocaine	0	0	0
Unlawful possession of crack cocaine with intent to supply	1	1	0
Unlawful possession of ecstasy with intent to supply	0	0	1
<b>Total</b>	<b>77</b>	<b>53</b>	<b>79</b>

**Table 8.3a: Number of Narcotic Offences Reported: 2020-2022**



<b>Narcotic Offences (Persons Charged)</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Unlawful cultivation of cannabis	2	5	2
Unlawful importation of cannabis	0	1	0
Unlawful possession of cannabis	56	32	28
Unlawful possession of cannabis with intent to supply	22	8	13
Unlawful importation of cocaine	0	1	0
Unlawful possession of cocaine	0	1	2
Unlawful possession of cocaine with intent to supply	11	5	6
Unlawful possession of crack cocaine	0	0	0
Unlawful possession of crack cocaine with intent to supply	1	1	0
Unlawful possession of ecstasy with intent to supply	0	0	2
<b>Total</b>	<b>92</b>	<b>54</b>	<b>53</b>

**Table 8.3b: Number of Persons Charged with Narcotic Offences: 2020-2022**

#### Weapons Offences

- 8.8 Possession of a firearm or ammunition in the VI is illegal unless legal authorisation has been granted by the RVIPF to own and carry a weapon. Most weapons offences recorded, therefore, related to possession of a firearm, possession of a firearm and ammunition, possession of ammunition, being armed with a weapon, possession of a prohibited weapon and discharge of a firearm as outlined in **Table 8.4** below.

<b>Weapons Offences</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Armed with a Weapon	6	10	21
Possession of Firearm	3	1	8
Discharging a Firearm	0	0	2
Possession of Ammunition	0	2	6
Possession of Firearm and Ammunition	11	6	8
Possession of Prohibited Weapon	0	1	0
Possession of a Taser	1	0	0
<b>Total</b>	<b>21</b>	<b>20</b>	<b>45</b>

**Table 8.4: Firearm Offences: 2020 – 2022**

- 8.9 The main source of firearms within the Territory is through illegal importation connected to the movement of drugs and other illegal commodities. Between 2020 and 2022, 42 illegal firearms have been recovered by law enforcement.

#### Other Offences

- 8.10 In addition to the four major categories of offences, other offences such as fraud (including online fraud), smuggling and breach of trust were also recorded during the reporting period. Statistics also indicate an increase in these offences as outlined in **Table 8.5** below.

Other Offences	2020	2021	2022
Corruption/Bribery	0	0	0
Breach of Trust	1	3	3
Fraud/Forgery Offences	3	5	14
Counterfeiting (currency)	0	0	3
Human Trafficking	0	0	0
People Smuggling	1	1	2
Organised Crime	0	0	0
Terrorism	0	0	0
<b>Total</b>	<b>5</b>	<b>9</b>	<b>22</b>

**Table 8.5: Other Offences: 2020 – 2022**

### Proceeds of Domestic Criminality

#### Drug Trafficking

- 8.11 Given its proximity to St. Maarten, the USVI and Puerto Rico, the VI has long been identified as a transshipment point for South American narcotics destined for the US. It is, therefore, not surprising that the major ML threats emanating from domestic criminality relate primarily to drug trafficking and its associated crimes such as cash smuggling and failing to declare. Between 2020 and 2022, cocaine and cannabis valued at approximately \$401,314,826.00 was seized by local authorities. Whilst the RVIPF has achieved recent success in frustrating the importation of drugs and recovering large quantities of narcotics as reflected in the marked increase in the quantity and value of drugs that have been seized (see **Table 8.6** below), there is less known about the criminal proceeds emanating from such supply.

Type of Narcotic	Quantity of Drugs Seized			
	2019	2020	2021	2022
<b>Cannabis</b>	16.8 kg	8.3 kg	34.3 kg	51.716 kg
<b>Cocaine</b>	469.7 kg	2511.8 kg	1514.8 kg	1100.8 kg
<b>Crack Cocaine</b>	0.0 g	68.0 g	60.0 g	0.0 g
<b>Ecstasy</b>	-	-	-	1.6 kg

**Table 8.6: Quantity of Drugs Seized: 2020 – 2021**

- 8.12 However, the illegal movement of cash associated with drug trafficking has also been an ongoing issue for law enforcement agencies within the Territory. Although the closure of the Territory's borders in 2020 due to the COVID-19 pandemic saw less traffic coming through the legal ports of entry between 2020 and 2021, smuggling continued to occur resulting in the value of seized cash linked to proceeds of crime being comparable to pre-pandemic seizure values. For the period 2020 to 2022, \$3,321,607.50 cash was seized

by local law enforcement authorities, of which \$500,998.50 was because of failures to declare at a port of entry, while \$2,820,609.00 resulted from cash smuggling activities.

### *Migrant Smuggling*

- 8.13 Migrant smuggling through the VI of persons attempting to reach US territorial waters has been identified as an issue for the Territory. Human trafficking has also been identified, but to a much lesser extent and is generally connected to the commercial sex trade.
- 8.14 The captains of intercepted vessels are usually residents of other countries transporting persons for cash through Territorial waters on their way to the USVI. The majority of migrants in such instances appear to be Haitian, Cuban, Venezuelan and Dominican Republic nationals. These nationals are from countries that at some point would have qualified for Temporary Protected Status (TPS) in the US once landed. Based on the trends and information received from USVI authorities many of these nationals present themselves seeking to be admitted to the TPS program. Others are simply seeking a way to the mainland US.
- 8.15 Further, there is evidence to indicate that illegal migrants are being brought into the Territory on behalf of persons who engage in activities connected to the commercial sex trade, such as exotic dancing and prostitution. Data indicates that in such instances migrants tend to originate from Cuba, Venezuela, and the Dominican Republic. It can be concluded that the likelihood of the profits made from these services finding their way into the domestic banking system is high.
- 8.16 Between 2020 and 2022, 171 migrants were detained attempting to either enter the Territory illegally in transit to the US or found in territorial waters enroute to the USVI. **Table 8.7** provides a breakdown of the countries of origin of the detained migrants. Of the 171 migrants detained, 144 were successfully repatriated to their home countries.

	2020	2021	2022	Total
Bahamas	1	0	0	1
Brazil	0	6	0	6
Colombia	0	0	2	2
Cuba	0	2	9	11
Dominican Republic	8	0	2	10
France	0	0	1	1
Grenada	1	0	0	1
Guadeloupe	2	0	0	2
Guyana	0	2	3	5
Haiti	0	28	50	78

Peru	0	1	0	1
Romania	0	0	24	24
St. Kitts	0	0	1	1
St. Lucia	1	0	0	1
St. Vincent	1	0	0	1
Trinidad	2	0	0	2
Uganda	1	0	0	1
USA	2	0	0	2
Venezuela	12	7	2	21
Total	31	46	94	171

**Table 8.7: Countries of Origin of Migrants Detained Between 2020 and 2022**

- 8.17 With regard to the spike in Romanian nationals in 2022, it was found, based on information received in all instances, that they were also attempting to reach the USVI in efforts to move on to the mainland US, using the VI as the link to the USVI.

#### Murder

- 8.18 The murder rate in the Virgin Islands is relatively low in comparison to most other Caribbean jurisdictions. The observable trend in such crime points to factions of organised crime operating within the Territory carrying out gang related killings that may be connected with drug trafficking. Of the 17 murders, 7 remain unsolved.

#### Corruption

- 8.19 The 2016 NRA identified corruption within LEAs as a risk that could lead to illegal activities being overlooked or investigations frustrated or circumvented. In the 2020 Risk Assessment, however, data provided did not indicate any SARs being filed in relation to domestic corruption, nor was any data presented to indicate that any investigations had been launched into this particular offence. However, the issue remained and has since become more elevated.
- 8.20 Since the 2020 Risk assessment, a number of high-profile events have brought the issue of corruption to the fore. Extra-territorial corruption cases involving high-level domestic government officials linked to drug trafficking and ML have initiated a number of domestic criminal investigations. These investigations have resulted so far in one person being charged with breach of trust.
- 8.21 Other unrelated investigations stemming from the findings of the 2021 Commission of Inquiry established under the Virgin Islands' Commission of Inquiry Act, Cap. 139 have also resulted in charges of breach of trust being laid against two other public officials. These do not appear to be connected to any form of drug related activities; however, investigations are currently ongoing so the extent to which funds may be

identified in connection with any illicit activity is currently unknown. The GoVI has established an Implementation Unit to monitor and ensure the recommendations within the Commission of Inquiry report are properly and timely addressed.

8.22 Further, within the reporting period there was one other case where public officers were charged with breach of trust related to organised crime. In addition, cases have been brought against former and active police officers and other public officers in connection with various illegal activities including drug trafficking. Most of these cases are ongoing; however, the existence of the cases themselves points to corruption being an ML threat to the jurisdiction.

8.23 It should also be noted that, as part of 2018 UNODC Country Review Report of the United Kingdom of Great Britain and Northern Ireland on its implementation of articles 5-14 and 51-59 of the UN Convention against Corruption, the VI was also assessed. This report, which was issued in 2019, highlighted a number of deficiencies in the VI's implementation of the articles under review and made various recommendations to strengthen the VI's framework against corruption, which the Government of the VI has been working to address. Some of the steps taken to date include the passage of:

- the Contractor General Act, 2021, which establishes the office of the Contractor General for the monitoring and implementation of government contracts, including investigating fraud, mismanagement, waste, or abuse identified in connection with the awarding and implementation of government contracts;
- the Whistleblower Act, 2021, which provides for the manner in which individuals may, in the public interest, disclose information that relates to unlawful or other illegal conduct or corrupt practices of others; and provides for the protection against victimisation of persons who make these disclosures; and
- the Public Procurement Act 2021, which makes provision for the regulation of public procurement to ensure, *inter alia*, fair, equal and equitable treatment of all tenderers of government projects.

8.24 Implementation of the frameworks to operationalise the Contract General and Whistleblower Acts is yet to occur as these legislation have not yet been brought into force. The absence of these frameworks compounds the Territory's struggle to effectively address the issue of corruption. The Public Procurement Act has, however, been largely operationalised as some components of the framework were already in place prior to the passage of the Act. Other components of the administrative framework are being finalised with a view to ensuring transparency and fairness in the public procurement process.

8.25 Other policies currently in place include a Ministerial Code of Conduct which was implemented in 2021 and provides guidance to Ministers of Government on how to conduct themselves in their overarching duty to comply with the law, uphold the administration of justice and protect the integrity of public life. No complaints against any Minister for breaching the Ministerial Code have been recorded. Further, the Official Cabinet Handbook, published in 2009 requires Members of Cabinet to declare their or members of their family's interest in any matter that comes before the Cabinet for consideration. It is then left to Cabinet to collectively decide whether the member should be excused from the discussion.

#### Proceeds of Foreign Criminality

- 8.26 Being an International Financial Centre, the VI is vulnerable to ML through the activities carried out by legal persons and legal arrangements established and/or registered in or from within the Territory. Due to the nature of the VI's international financial services sector the main ML threats stem from proceeds-generating predicate crimes committed abroad as the most significant amount of proceeds is likely to be generated in foreign jurisdictions. Therefore, exposure to transactions involving BVI companies presumably poses a higher ML/TF threat than domestically generated proceeds of crime. 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.

#### Fraud

- 8.27 Fraud committed overseas by or through a BVI legal person or legal arrangement, or by the BO of such entities provides a risk to the Territory from a reputational perspective as well as in relation to the offence itself. Given the volume of BVI registered legal entities the exposure to such transactions poses an elevated level of threat of ML to the VI. Fraud offences committed overseas are dealt with in the jurisdiction in which they take place. However, assistance is provided by the VI by way of MLA if requested.

#### Corruption

- 8.28 Similar to fraud, corruption committed overseas, which may be facilitated through a BVI legal person or legal arrangement, or by the BO of such entities provides a reputational risk to the Territory. More directly, the VI has recognised the risk of BVI legal persons, legal arrangements, FIs and other gatekeepers facilitating the laundering of such proceeds of crime. The value of proceeds generated by foreign corruption, however, is unknown as such cases are dealt with in the jurisdiction in which they take place with assistance provided by the VI by way of MLA if requested. There have been no domestic investigations or prosecutions of a BVI registered entity relative to any offences committed in a foreign jurisdiction.

#### Tax Evasion

- 8.29 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

- 8.30 An important part of any jurisdiction's AML/CFT regime is its ability to seize, freeze, forfeit and/or confiscate the proceeds of criminal activity to ensure criminals are deprived of their ill-gotten gains. In the VI, funds found during the commission of a crime are seized as a matter of policy. Seizure provisions exist within the Police Act (PA), the Drugs (Prevention of Misuse) Act (DPMA), the Drug Trafficking Offences Act (DTOA), the Proceeds of Criminal Conduct Act (PCCA), 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.
- 8.31 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. With regard to other proceeds of criminal conduct offences forfeiture of both cash and other tangible assets can be sought under the PCCA. Forfeiture under the DMPA or the PCCA is not dependent on gaining a conviction.
- 8.32 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. Forfeiture, however, is generally pursued in relation to failures to declare incoming or outgoing cash at the border. 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.
- 8.33 As outlined in **Table 8.8** below, between 2020 and 2022 over \$3.1 million in cash was seized. During that same period over \$3.3 million was successfully forfeited. The value of these forfeitures accounts for cases completed during the period, which includes cases that may have commenced prior to the reporting period.

Year	Total Instances of Forfeiture	Amount Seized & Detained	(\$ ) Value of Forfeited Assets
2020	12	1,568,531.00	1,089,370.00
2021	7	927,975.47	635,000.00
2022	12	652,886.00	1,672,581.00
Total	<b>31</b>	<b>3,149,392.47</b>	<b>3,396,951.00</b>

**Table 8.8: Value of Cash Seized and Detained and Assets Forfeited**

- 8.34 Nine (9) of these seizures came from inbound and outbound failures to make declarations to HMC at a port of entry. The majority of cases, however, were in connection to proceeds of drug trafficking related offences such as cash smuggling, which aligns with the domestic ML threats identified above. While the

value of cash forfeited represents 75% of total cash seized, the value of these seizures represents less than 1% of the value of narcotics seized by authorities within the reporting period. The value of these narcotics demonstrates the possible magnitude of both drugs and cash proceeds that potentially pass through the VI undetected and poses a significant risk to the Territory.

- 8.35 Confiscations are conviction based and can be sought in relation to convictions achieved under the Criminal Code, 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. There were no confiscation cases recorded during the reporting period, which 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. The RVIPF did indicate, however, that 6 files were submitted to the ODPP in the latter part of 2022 where recommendations to pursue confiscation proceedings were made. This demonstrates a positive shift in policy on the part of the RVIPF and an improvement in the Territory's commitment to ensure criminals are deprived of the proceeds of their illicit activity.

### Emerging Threats – Cyber Crime

- 8.36 Cybercrime, also called computer crime, is the use of a computer or a networked device as an instrument to further illegal ends, such as committing fraud, trafficking in child pornography and intellectual property, stealing identities, or violating privacy. Cybercrime, especially through the Internet, has grown in importance as computers and other networked devices have become central to social behaviour, commerce, entertainment, and government<sup>6</sup>.
- 8.37 In the VI there is increasing awareness of the growing threat of cyber-related crime stemming from criminal exploitation of advances in technology and changes in social behaviour. Currently, the main form of cyber-enabled crimes, which are traditional crimes that can be committed without a computer but are enabled by a computer in certain circumstances, that have been identified relate to child pornography on the internet and fraud. In addition, some cyber-dependent crime, which are crimes that can only be committed using computers, computer networks or other forms of information communication technology (e.g., hacking, ransomware, DDoS attacks and malware), has also been identified.
- 8.38 Currently, there have been a minimal number of reported crimes in each category. Nonetheless, intelligence indicates that this is anticipated to grow in the future. The RVIPF currently has limited cyber or digital forensic capabilities to effectively investigate cyber related incidents or crimes. This is a risk that has been identified within its Strategic Crime assessment and one which carries a potential ML risk. A digital forensic hub has been set up in the Cayman Islands which is accessible to support RVIPF investigations, however, there is a cost associated with the use of this hub. In addition, officers have to travel to the Cayman Islands to carry out the forensic work themselves which is also cost prohibitive.

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<sup>6</sup> <https://www.britannica.com/topic/cybercrime>



8.39 The FSC as supervisor has also identified cyber threats as a significant risk factor that supervised entities must account for. The FSC has included this topic in its 2023 Strategic Workplan for further action.

Private Sector Views on ML Threats

8.40 As part of the ML assessment exercise, a survey was distributed to the private sector to gather data on their awareness of ML issues and their understanding of their role in the Territory’s AML architecture. Based on the results of that survey the private sector identified corruption, drug trafficking and fraud as the three largest ML threats to the Territory, which aligns to a large degree with this assessment’s findings of national threats. **Chart 8.3** outlines the predicate offences identified by the private sector as possible ML threats to the VI.

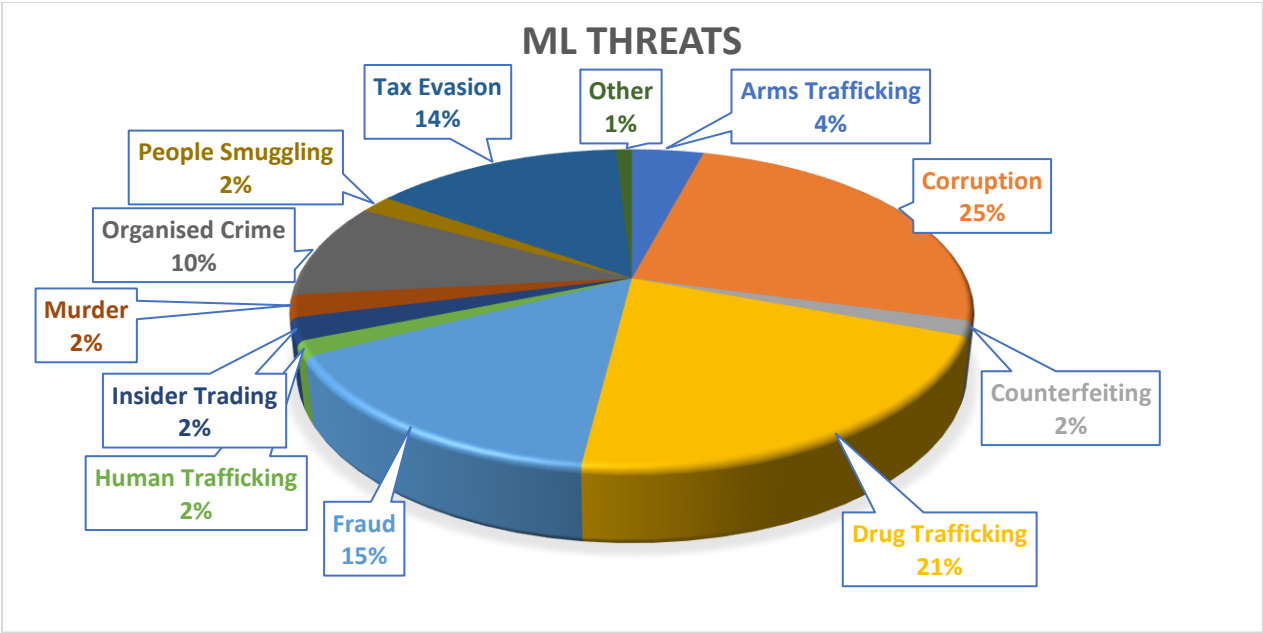


Chart 8.3: Predicate Offences Identified by Private Sector as Possible ML threats to the VI.

## Cooperation Matters

### Inter-agency Cooperation Bodies

8.41 There are several committees established within the VI that aid in fostering inter-agency cooperation.

#### Inter-governmental Committee on AML/CFT Matters (IGC)

8.42 The IGC was established pursuant to section 50(1) of the AMLTFCOP in 2008. The committee serves as a mechanism for fostering cooperation between key public bodies involved in the fight against, or that have some nexus to, ML/TF activities, through a system of dialogue and the sharing of information amongst its members. This system of dialogue has aided inter-agency cooperation through:

- a system of information exchange between member agencies, which has assisted in detecting and preventing ML/TF and related offences;
- the rendering of necessary assistance to member agencies in respect of their law enforcement or regulatory functions; and
- the promotion of cooperation with foreign regulatory, administrative and law enforcement officials in relation to any ML or TF matter.

#### Committee of Law Enforcement Agencies (CLEA)

8.43 CLEA was established by Cabinet in 2017, stemming from a recommendation in the 2016 NRA. CLEA's purpose is to establish and ensure greater coordination and collaboration between law enforcement agencies in the fight against ML, TF and other organized crime through intelligence sharing, the joint pursuit and apprehension of criminals, and the disruption of criminal activity. Deliberations between members of CLEA, which include the ODPP, HMC, FIA, RVIPF and the Immigration Department have aided in strengthening the cooperation and coordination amongst LEAs within the Territory by bolstering the understanding and awareness of AML/CFT matters and how the agencies should work together in investigating such matters, thereby ensuring more effective prosecutions. Other agencies such as the BVIAA and BVIPA which are not considered traditional LEAs are also invited to meetings as necessary if there are cross-cutting issues that require the coordination and cooperation of these agencies in order to be effectively addressed.

#### Council of Competent Authorities (CCA)

8.44 The Council of Competent Authorities was established by Cabinet in 2017 and enshrined into law in 2021 by section 10A of the CJICA. The members of CCA include the FSC, FIA, AGC, ITA and GO who work collaboratively to coordinate and facilitate the execution of local and international cooperation matters, as well as other relevant AML/CFT issues that affect or relate to the Territory. The CCA has been instrumental in establishing a number of sub-committees that have helped in the ongoing development of the Territory's AML/CFT operational and legislative frameworks which have strengthened the Territory's AML/CFT regime.

#### Joint Task Force (JTF)

- 8.45 The JTF was created in July 2020 and was borne out of a recommendation emanating from the National Security Council. It is a multi-agency task force made up of HMC, RVIPF, GO, FIA and Immigration. The mandate of the JTF includes engaging in information and intelligence shares, co-ordinating law enforcement strategy and undertaking initiatives that would enhance crime-fighting initiatives. These include joint law enforcement activities like land and sea patrols and joint operations to reduce crimes such as drug trafficking and cash and human smuggling, which are interwoven with the occurrence of ML and commensurate with the identified risk in the NRA and the 2020 sectoral risk assessments. The JTF has had some success in its operations as it has been responsible for the apprehension of several persons and the seizure of over \$800,000 during the reporting period.

#### Domestic Cooperation

- 8.46 The framework used for fostering inter-agency cooperation in the VI includes information exchange based on the use of various memoranda of understanding. 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. Additionally, there are several bi-lateral inter-agency MOUs such as those established between the FSC and FIA, FIA and HMC, FIA and AGC, and FIA and RVIPF, which facilitate information exchange amongst those agencies.
- 8.47 Cooperation amongst these agencies spans the entire gamut of the VI's AML regime. The VI utilises internal cooperation measures between the HMC, RVIPF and ODPP to investigate and prosecute offences surrounding declarations. Such cooperation is geared towards ensuring the proceeds of crime are removed, usually through seizure and later forfeiture. For example, HMC can seek forfeiture and the pursuit of a criminal investigation via the RVIPF and ODPP. HMC would also seek assistance from RVIPF to undertake the forfeiture and investigative function for any cash seized which is subject to criminal proceedings.
- 8.48 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 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.

#### SAR Filings and Disseminations

- 8.49 Between 2020 and 2022 7,212 SARs were received by the FIA as outlined in **Table 8.9** below.

SAR Type	2020	2021	2022	Total
Ordinary SARs	804	423	497	1724
Virtual Asset SARs	450	756	4282	5488
Total No. of SARs	1254	1179	4779	7212

**Table 8.9: Number of SARs Received Between 2020 and 2022**

- 8.50 This reflects a 201% increase over the number of SARs received between 2015 and 2019. Of that total, 6.7% were related to entities carrying out business within the VI while 17.2% were associated with entities conducting business outside of the Territory. The VI has seen an increase in SARs related to virtual assets since 2018. Between 2020 and 2022 the number of VA-related SARs received annually that were filed by or related to BVIBCs has increased from 450 to 4,282, with a total of 5,488 filed over the reporting period accounting for 76.1% of the total SARs filed. The majority of these VA-related SARs (81%), related to fraud (35%), ML (21%), other suspicious activity (14%) and unknown source of funds (11%).
- 8.51 Similarly, offences most frequently identified in all SARs filings related to ML, fraud, suspicious activity, inability to identify sources of funds and refusal to provide CDD information. These findings align with the findings of the 2020 ML Risk Assessment and indicates that the risk of ML to the jurisdiction by BVIBCs operating outside of the Territory is higher than the risk posed to the jurisdiction by entities operating in the VI.
- 8.52 While the FIA has indicated that it has seen an improvement in the quality of SARs received from financial institutions, it continues to perform outreach in an ongoing effort to sensitise other sectors of the requirement to file SARs and to enhance the quality of SARs being submitted. As such, the FIA conducted targeted outreach to the Association of Compliance Officers in 2022. It also published an e-brochure detailing the 5W's of SAR writing, the objective of which was to maintain the standard of reporting amongst most entities while simultaneously providing guidance to those entities that could benefit from additional guidance. FAQs were also circulated to reporting entities in 2022 providing specific sector guidance. It is hoped that this ongoing engagement will aid reporting entities in continuing to improve on the quality of SARs being reported, which in turn may help the FIA in their analysis and subsequent dissemination to the RVIPF for investigation.
- 8.53 Disseminations to other domestic CAs and LEAs by the FIA as a result of SARs filed usually relate to circumstances where an entity operating in the VI has been identified after the FIA has conducted its own analysis. The 2020 ML Risk Assessment noted that of the 631 "local" SARs received, only 7 disseminations had been received by the RVIPF as a result of the FIA's analysis. Since that time there has been improvement in the level of disseminations made, with 326 disseminations being made between 2020 and 2022, 79 of which were made to the RVIPF FCU. The majority of disseminations to the RVIPF FCU were in relation to possible ML, while the others were fraud related.

- 8.54 Additionally, 52 disseminations were made to foreign FIUs as a result of SARs received relative to suspicions involving BVI entities operating in other jurisdictions. Similar to the domestic disseminations, the reasons for these disseminations primarily related to suspected money laundering and fraud, but also bribery and corruption. The number of disseminations to foreign FIUs has increased by 12% to approximately 17 per year, up from 13 per year during the 2015 – 2019 reporting period. However, the number of such disseminations accounts for only 4.6% of SARs filed involving BVI entities, which continues to draw into question whether sufficient information is being provided to the FIA by reporting entities to allow it to conduct proper analysis, as well as the FIA's ability to adequately analyse reports to allow for additional disseminations to be made.
- 8.55 The FIA also has the ability to make spontaneous disseminations to other LEAs based on intelligence gathering exercises, and there are no impediments to the FIA making such disclosures. In the 2020 ML risk assessment it was reported that 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 correlated with the jurisdictions from which a large portion of the Territory's international cooperation requests emanated. However, during the current reporting period no such disseminations were made as the FIA has indicated that all spontaneous disseminations made are now as a result of information extracted from SAR filings. This raises the issue of whether the FIA has the ability or the capacity to identify such information outside of the analysis of SARs, which may in turn impact the level of disseminations that may be made, both locally and internationally.

#### Investigations

- 8.56 With regard to investigations the RVIPF is the lead agency for the criminal investigation of money laundering offences. The RVIPF FCU effectively acts as the lead investigative agency and benefits from intelligence provided from the Intelligence Unit within the RVIPF and other units such as MIT and SIT, as well as its own pro-active strategy to identify ML offences. In 2022 the RVIPF implemented new policies for managing investigations, setting out the standards alongside a performance framework, and incorporating statistical measurements to assess the effectiveness, timeliness and quality of their work and the wider system. This included new policies and procedures to ensure the FCU pursues all viable relevant predicate ML offences, conducts parallel investigations, and pursues restraint and forfeitures. The goal is to increase the positive outcomes of investigations and increase cases going to the DPP for prosecutions, restraint, forfeiture, and potential confiscations.
- 8.57 Further, the FCU is able to conduct financial investigations in collaboration with other LEAs such as the FIA, HMC and ID. **Table 8.10** below details the number of cases opened by the FCU between 2020 and 2022, the number of proceeds of criminal conduct (ML) charges emanating from these cases and the ML convictions secured.

Year	Cases opened	PCC Charges	Convictions
2020	18	11	3
2021	18	8	6
2022	36	8	9
<b>Total</b>	<b>72</b>	<b>27</b>	<b>18</b>

**Table 8.10: FCU Proceeds of Criminal Conduct Cases**

- 8.58 The FIA provides financial intelligence to the RVIPF through information emanating from SARs and other means to assist and facilitate the investigative needs of the FCU. From 2020 to 2022, twenty-five (25) production orders were sought from the courts based on FIA intelligence, primarily to support investigations into drug trafficking. Fourteen (14) of these orders were based on information contained in SARs disclosures while the remainder were based on other intelligence provided by the FIA. All 25 orders were granted.
- 8.59 In 2020 the ODDP amended and updated its Policy on the Preparation of Case Files and File Reviews which is applicable to the RVIPF. This document outlines and dictates when consultation with the ODPP should occur and specifies that consultation must always occur pre-charge and at the commencement of investigations to ensure that the investigation proceeds in a manner which would more likely lead to proper prosecution and conviction.

#### Prosecutions

- 8.60 In relation to prosecutions, the ODPP uses a vetting procedure where any file submitted by the RVIPF is thoroughly reviewed to ensure that sufficient evidence has been provided to proceed to prosecution. Each file is reviewed using a vetting form which includes a section on the identification of proceeds of crime. All the relevant criteria outlined in the vetting form must be met to enable a case to move forward. The ODPP, therefore, 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. Once the ODPP vets the files, the vetting form is sent to the submitting officer, outlining the case and indicating if further action is needed to progress the matter. All the files submitted to the ODPP during the reporting period have advanced to prosecutions.
- 8.61 Most ML prosecutions relate to the laundering of proceeds of domestic predicate crime; mainly fraud and drug trafficking as identified in the NRA and 2020 Sectoral ML risk assessment. Between 2020 and 2022 there were 65 ML investigations conducted by the RVIPF, in comparison to 64 investigations conducted between 2015 and 2019. This resulted in 24 persons being charged with proceeds of criminal conduct (ML), down 27% from the 2015-2019 period. It has been explained that while only 24 persons were charged with PCC, charges relating to other predicate offences were laid as a result of the 65 investigations conducted. This continues to raise the issue as to veracity with which ML investigations are conducted by the RVIPF.

- 8.62 During the same period 19 case files were submitted by the FCU to the ODPP, all of which were proceeded with during the period. Outcomes of cases concluded during this period saw 16 ML convictions being secured resulting in 17 persons being sentenced. However, four were in relation to cases which commenced prior to the reporting period.

#### International Cooperation

- 8.63 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. It is globally recognised, therefore, 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. 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.
- 8.64 In 2007, the Virgin Islands (VI) issued the *British Virgin Islands Handbook on International Cooperation and Information Exchange – A Guide for Regulators and Judicial and Law Enforcement Officials*. The Handbook was subsequently revised in 2013 and a further revision is currently ongoing. The purpose of the Handbook is to assist jurisdictions in understanding how and under what circumstances cooperation may be provided. The Handbook sets out the legislative basis for international cooperation and provides clear indication of the necessary procedures for making a request to the VI whether criminal, civil or regulatory. It also provides methods and contact details for the relevant agencies responsible for each form of international cooperation. The Handbook provides clear guidance and evidence that there are no impediments to international cooperation.
- 8.65 The VI is also a founding member of the CFATF and is currently undergoing its Fourth Round Mutual Evaluation Process. 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 are reviewed and implemented to strengthen the Territory's international cooperation regime.

#### Attorney General Chambers

- 8.66 Since the enactment of the Criminal Justice (International Cooperation) Act in 1993, the VI has been providing mutual legal assistance upon request to foreign jurisdictions on international cooperation matters. The CA for the handling of such requests is the AG, whose role is to review and respond to MLA requests in accordance with the laws of the VI. Formal MLA requests are handled through the AGC with assistance from the FIA where financial information may be requested. The majority of requests requiring FIA assistance relate to requests where a BVIBC is the subject of the enquiry.

8.67 Generally, there are no restrictions regarding foreign jurisdictions to which assistance may be rendered.

**Table 8.11** below indicates the number of MLA requests received by the AGC between 2020 and 2022.

Year	Number of Requests Received	Number of Requests Declined	Number of Requests on Administrative Hold	Number of Requests Granted
2020	84	12	16	36
2021	80	11	10	51
2022	51	6	3	77

**Table 8.11: Number of MLA Requests Received by the AGC between 2020 and 2022**

8.68 The vast majority of MLA requests received relate to requests for banking documents, company documents<sup>7</sup> and beneficial ownership information<sup>8</sup>.

#### Financial Services Commission

8.69 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, primarily through the FSC. The FSC is an active member of IOSCO, GIFCS, IAIS as well as other regional associations such as ASBA, CGBS, and CAIR. **Table 8.12** below indicates the number of IC requests received by the FSC between 2020 and 2022.

	2020	2021	2022 (as of 30 June)
Total Number of IC requests from foreign CAs	141	104	51
Number of IC requests from foreign CAs processed	129	89	41

**Table 8.12: Number of IC Requests Received by the FSC between 2020 and 2022**

#### Financial Investigation Agency

8.70 Exchange of financial intelligence is facilitated primarily through the FIA's membership in the Egmont Group as all requests for information from foreign FIUs are received via the ESW. In addition, requests for information are received directly from other international law enforcement agencies. The FIA has one bi-lateral MoU signed in 2022 with a non-Egmont member, which allows it to share information with that foreign jurisdiction. **Table 8.13** below indicates the number of requests received by the FIA between 2020 and 2022.

Year	Type of Request	Received	Completed
2020	RFI	225	224
	Interpol	88	86

<sup>7</sup> Company documents includes information regarding the Company itself, including its directors, officers and how it functions

<sup>8</sup> Beneficial ownership information includes all information relating to a beneficial owner (e.g. their identity and verification documents)



<b>2021</b>	RFI	213	213
	Interpol	72	72
<b>2022</b>	RFI	393	358
	Interpol	22	-

**Table 8.13: Number of Requests for Information Received by the FIA between 2020 and 2022**

Royal Virgin Islands Police Force

- 8.71 The RVIPF interacts regularly with its foreign counterparts, which leads to intelligence sharing. **Table 8.14** below indicates the number of IC requests received by the RVIPF between 2020 and 2022.

<b><u>RVIPF</u></b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
No. of incoming requests from foreign LEAs	26	41	15
Incoming requests completed	26	41	15

**Table 8.14: Information Exchanges with Foreign LEAs (Police to Police)**

- 8.72 Additionally, during the reporting period, the RVIPF's SIT has engaged in eight joint investigations stemming from its use of the Ship Rider Agreement between the US and UK to stop and search vessels within territorial waters of the VI and USVI.

His Majesty's Customs

- 8.73 His Majesty's Customs has forged solid working relationships with regional and international counterparts through its membership in the WCO and the CCLEC. **Table 8.15** below indicates the number of IC requests received by HMC between 2020 and 2022.

<b>HMC</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
No. of incoming requests from foreign LEAs	9	2	8

**Table 8.15: Number of IC Requests Received by HMC between 2020 and 2022**

- 8.74 HMC also works closely with US CBP and ICE, and along with the RVIPF, participates in joint operations with these agencies, when necessary, through the utilisation of the Ship Rider Agreement.

International Tax Authority

- 8.75 The CA for tax matters in the VI is the ITA. The VI is a signatory to the MCAA for both the Common Reporting Standard (CRS), which it implemented CRS in 2016, and Country by Country Reports (CBCr), which facilitates the automatic exchange of information under the international standard of automatic exchange. The Territory has 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.

8.76 In addition, the VI is an active member of the OECD's Global Forum and has joined the OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS). Through its membership in the Global Forum the VI was assessed on its transparency in tax information exchange in 2015 and was rated as Largely Compliant, which confirmed 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 beneficial ownership, accounting, and banking information.

8.77 In 2022 however, the VI underwent its *Second Round Global Forum (GF) Peer Review on the Exchange of Information on Request* in which it was rated as only Partially Compliant with the GF standards. Some of the identified gaps related to:

- the lack of availability of accounting records when required to be produced in a timely manner, as there is no obligation for BVIBCs to maintain such records within the Territory; and
- the ability to ensure adequate, accurate and up-to-date BO information is available when a legal person has been struck-off, and within the statutory retention period after the entity ceases to exist.

8.78 Despite this perceived gap, however, the ITA is generally able to produce this information in response to MLA and other international cooperation requests. The identified gap may, however, enhance the threat of fraud and/or ML as a foreign predicate offence due to the inability of RAs to obtain and secure relevant information on beneficial ownership and financial transactions.

8.79 **Table 8.16** below indicates the number of IC requests received by the ITA relative to basic and BO information between 2020 and 2022.

ITA – Legal Persons	2020	2021	June 2022
BO Information	122	184	52
Basic Information	83	183	50
ITA – Legal Arrangements	2020	2021	June 2022
BO Information	4	8	0
Basic Information	4	7	1

**Table 8.16: Number of IC Requests Received by the ITA Relative to Basic and BO information between 2020 and 2022**

### National Money Laundering Risk

- 8.80 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 as identified in section 8 of the report. The ML threat from domestic criminality was considered **Medium-High**, while the ML threat from foreign criminality was also assessed as **Medium-High**. As outlined in section 7, a number of vulnerability and control factors were taken into consideration in determining the overall ML risk level. This analysis resulted in a determination that the overall risk of ML to the Virgin Islands is considered to be **Medium-High**.

## 9. Operational Framework Vulnerabilities

### The Law Enforcement Framework

- 9.1 The ability to effectively mitigate the threat of ML lies in great part with the law enforcement agencies within a jurisdiction. The VI is no exception. This section reviews the vulnerabilities that could negatively impact the ability of the key LEAs to mitigate the threats related to ML and increase susceptibility to risk. The structures each LEA have in place to minimise these vulnerabilities have been reviewed to determine their level of effectiveness.

#### The Royal Virgin Islands Police Force

- 9.2 In relation to ML the RVIPF's key functions surround the identification and investigation of predicate offences as well as the investigation of related financial crimes. The key vulnerabilities identified that may limit the RVIPF's ability to effectively mitigate ML risk include:

- sub-optimal level of resources
- insufficient training
- lack of proper policies and procedures
- inefficient data maintenance
- potential corruption within

#### Resources

##### **Financial Crimes Unit**

- 9.3 The current FCU staff complement is six. Since 2020 the FCU has seen a notable increase in workload (cases opened) as outlined in **Table 9.1** below.

Year	2020	2021	2022 to Aug.
Number of PCC cases opened	18	18	29
No. of FIA reports (SAR) received	11	13	6
No. of Persons Charged with PCC	11	8	5
No. of SAR cases referred as prosecution file to ODPP	0	0	4
No. of Cases referred to ODPP	6	3	10
No. of Persons Convicted of PCC	3	6	8

**Table 9.1: Cases Dealt with By the FCU Between 2020 and 2022**

9.4 The increased workload of the FCU has been challenging, however, the RVIPF is seeking to increase the staff complement of the FCU by the end of 2022. Nevertheless, the FCU has indicated that with the current prioritisation process in place for handling cases, the workload remains manageable.

9.5 Exposure to financial investigation training is critical to the RVIPF's ability to properly pursue ML cases. On-going training for staff members is also critical to ensure the FCU is able to properly identify developing trends and typologies that continue to arise as criminals become more sophisticated in concealing their criminal proceeds.

#### **Major Investigations Team**

9.6 The MIT currently consists of 9 permanent staff, and four contracted Officers from the UK.

9.7 The current staffing level provides challenges in effectively investigating major crimes, particularly given the complexity of some of the crimes committed. Additional human resources may aid in the effectiveness of the MIT in executing its mandate.

#### **Serious Investigations Team**

9.8 The SIT currently consists of 7 permanent staff supported by two contracted Analysts. The SIT is regularly called on to support homicide investigations and takes on manhunts for suspects wanted for the most serious crimes. However, the SIT's capacity to function is limited by a lack of resources.

#### **Intelligence Unit**

9.9 The Intelligence Unit consists of two sub-sections. The Intelligence Office and the Technical Team. Officers within the IU are tasked with other duties such as downloading/managing CCTV, extracting evidence from computer systems, and assisting with telephone downloads.

9.10 Further, and as noted in section 8 above, the RVIPF currently has limited cyber or digital forensic capabilities to effectively investigate cyber related incidents or crimes, which carry a potential ML risk. However, the use of the digital forensic hub set up in the Cayman Islands is accessible to support RVIPF investigations.

#### Training

9.11 Financial investigation and ML related training courses attended by the FCU between 2020 and 2022 are detailed in **Table 9.2** below.

Year	Training	No. of FCU Attendees
2020	Regional Webinar on Integrity, Ethics and Accountability in Law Enforcement	2
	Trade Based Money Laundering Webinar	6

	Financial Investigation and Terrorist Financing Course – Part I (Virtual)	6
	Combatting Financial Frauds through Effective Money Interception Mechanisms	2
2021	Forensic Accounting & Fraud Examination	1
	Advanced Financial Investigations & Terrorism Financing Pt II (Virtual)	6
	Training on Countering Proliferation Finance	1
2022	Countering Proliferation Financing	6
	Financial Investigation and Terrorist Financing mentorship (for use of PCC & related powers including application for production orders).	6
	Information Sharing between FIUs, Supervisory Authorities and LEAs	1
	British Overseas Cyber Conference	1
	Crypto Investigation Training	3
	Financial sanctions, related terrorism & terrorism financing. E-learning	1
	Introduction to Trade based ML (Virtual)	6

**Table 9.2: Training Courses Attended by Officers of FCU 2020 – 2022**

9.12 The RVIPF indicated that it has formalised and implemented a new Training Plan for all Financial Investigators. Which includes ICA accreditation, which will be facilitated through HLSCC, supported by Manchester University. The 4 existing financial investigators are expected to commence the advanced level ICA diploma course in January 2023, with the intermediate level course expected for delivery also in 2023 for the 2 new Financial Investigators, along with the Certified Anti-Money Laundering Specialist (CAMS) Examination. Continuous Professional Development training is due to commence in Nov 2022, and all officers in the FCU are to be provided with additional training in financial investigations, which should include restraint and confiscation. To date the restraint and confiscation training provided has only been to a basic level for most of the financial investigators.

9.13 Further, in an effort to strengthen the approach to strategic and tactical analysis of crime threats, including ML, and the RVIPF is currently reviewing and contextualising the global strategic crime threats in order to assess the current trends and vulnerabilities as it seeks to develop an intelligence collection plan which will enhance its wider understanding of the relevant threats and ML risk.

9.14 Additional training identified to increase effectiveness within the MIT includes courses in exhibit handling/role of an Exhibits Officer, statement taking/witness interviews, Major Incident Room roles and procedures and completion of decision logs. Proper funding for training would be required to allow for these training opportunities to materialise.

9.15 Additional training completed by the IU includes courses in Cyber Crime, PEACE<sup>9</sup> interviewing and leadership.

#### Policies and Procedures

9.16 In 2022, the RVIPF developed new, and revised some existing policies, which set out the relevant processes required to more effectively conduct investigations, including financial investigations, and seize and detain cash and other assets. The updated policies include:

- RVIPF Cash seizure policy
- RVIPF Asset seizure policy
- RVIPF Financial Investigation policy
- RVIPF Financial Investigators Reference Manual
- RVIPF Investigators Manual

9.17 Most of these policy and procedure documents were geared toward ensuring the FCU in particular is better able to identify all relevant predicate ML offences and conduct parallel investigations, as well as seek forfeitures and work with the ODPP in the pursuit of restraint and confiscation. Additionally, the FCU developed new policies and procedures that were approved as force policy which ensure that Threat Based Assessments (TBA) are part of daily considerations and serve to enhance the FCU capability.

9.18 The development of these policies has assisted the FCU in setting their priorities, managing workloads and improving inter-departmental interactions. Prior to the implementation of these policies there were very limited inter-RVIPF case reviews. This has improved significantly and is demonstrated by the increased number of proceeds of criminal conduct cases opened as outlined in **Table 9.1** above.

9.19 In addition to the policy and procedure documents developed for the FCU, the MIT, SIT and IU have all updated their Terms of Reference Policies. The purpose of these policies is to set Standard Procedures (SOP) for the operationalisation of each Unit's Terms of Reference. The SIT is also in the process of developing Covert guidance for that Unit.

#### Data Collection and Maintenance

9.20 Proper record keeping is vital to the RVIPF's ability to understand and assess the current ML and overall crime situation within the Territory. In 2022, the RVIPF filled the vacant post of Statistician and has since made recognisable improvement in the collection and maintenance of its crime data. It has also been able to bring its outstanding IGC submissions up to date.

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<sup>9</sup> PEACE stands for Preparation and planning, Engage and explain, Account, clarify and challenge, Closure and Evaluation

9.21 Also, the RVIPF is unable to provide data on the full proceeds generated from crime generally. Some data exists for crimes related to drug trafficking, however, data related to proceeds from other crimes is not as readily available. This is a significant gap in the data points needed to assess the quantum of financial gains from ML, TF, PF and related crimes. This directly impacts the VI's ability to allocate resources based on risk.

#### Corruption

9.22 Corruption within law enforcement is a key vulnerability to the combatting of ML within any jurisdiction and the VI is no exception. There are policies in place within the RVIPF aimed at mitigating the possibility of corruption within the agency. Officers are held to the Police Code of Conduct Standards and those outlined in the Police Act. They are required to report categories of associations as well as seek permission to engage in any private part time work. Disciplinary matters are handled by the Professional Standards Department.

9.23 However, as noted previously in this report, within the reporting period cases have been brought against former and active police officers in connection with various illegal activities, including drug trafficking. The COP has taken an interest in addressing such behaviour which has resulted in eleven officers currently on suspension for matters ranging from sexual offences, theft, assault, perjury, drugs and breach of trust. Seven of these officers were suspended during the reporting period. These and other disciplinary action taken during the reporting period due to possible criminal conduct are outlined in **Table 9.3** below.

	2020	2021	2022
<b>Interdiction</b>	<b>1</b>	<b>5</b>	<b>1</b>
<b>Compulsory Leave</b>	<b>0</b>	<b>1</b>	<b>0</b>
<b>Dismissal</b>	<b>1</b>	<b>1</b>	<b>0</b>

**Table 9.3: Disciplinary Measures Taken by the RVIPF – 2020 to 2022**



## His Majesty's Customs

9.24 In relation to ML, HMC's key functions surround the protection of the Territory's borders from cash and people smuggling, importation of illegal contraband, and the illegal movement of cash through the Territory's ports of entry. The key vulnerabilities that may limit HMC's ability to effectively mitigate ML risk include:

- sub-optimal level of resources
- lack of documented policies and procedures
- insufficient training
- inefficient data maintenance
- potential corruption within

## Resources

9.25 HMC currently has 94 staff of which 69 are assigned Customs Officers and Customs Trainees. In addition, there are 7 Officers holding senior posts of Assistant Commissioner (4), Deputy Commissioner (2) and Commissioner. Given the multiple islands and ports of entry that HMC has to cover, as well as conducting sea patrols, the lack of a full staff complement impacts HMC's ability to effectively carry out its responsibilities in relation to monitoring the illegal movement of people and contraband and the importation and exportation of goods.

## Policies and Procedures

9.26 In relation to the daily operations of the HMC the most significant ML risk stems from the threats of drug trafficking, people smuggling, human trafficking, trade-based operations and other related financial crimes. Knowing how to properly manage these issues is, therefore, critically important in effectively mitigating these threats and the consequential risks. It was found that while there was a high level of institutional knowledge at the upper levels of the agency, there was an absence of documented Standard Operating Procedures across HMC, which are key in providing guidance to relevant officers in how to conduct their daily operations.

9.27 The official operationalised HMC ML strategy is based on the Virgin Islands National AML/CFT Policy and National AM/CFT Strategy, which they monitor through their AML Action Plan. It is unclear, however, the priority given to such matters, and whether the rank-and-file officers within HMC are aware of and are properly implementing this strategy.

## Training

9.28 HMC staff have been able to attend various training courses in order to improve their skills in preventing or detecting incidences of drugs, weapons and migrant smuggling, human trafficking and cross-border transportation of currency/BNIs in the fight against ML. Additionally, training in primary ML activities such as trade-based ML, has raised awareness and appreciation of such activities. **Table 9.4** below outlines the training undertaken by HMC during the reporting period.

Year	Training	No. of HMC Attendees
2020	AML/CFT with Trinidad and Tobago Police Academy	1
	Introduction to Firearm Trafficking in the Caribbean for Customs	1
	Safe-Handling and Interdiction of Non-Medical Synthetic Opioids	1
	Regional Webinar on Integrity, Ethics and Accountability in Law Enforcement	1
	WCO Introduction to Firearms Trafficking in the Caribbean for Customs	1
2021	Foundation Course in Financial Investigations	6
	Intelligence Awareness Foundation Course	1
	Financial Crime Investigation Training	3
2022	Countering the Financing of Proliferation	3
	Intelligence Awareness Foundation	3
	General Security Awareness	15
	Crypto Asset Management Training	2
	Introduction to Trade-based Money Laundering	9
	Filing Suspicious Activity/Transaction Reports	20
	Stakeholders in Combatting Trade-based Money Laundering	9
	Disaster Victim Identification Investigation	2
	Sanctions Training	1
	MI/TF/PF focusing on Detention, Seizure, Forfeiture, Confiscation, Extradition, International Cooperation and Sanctions	2

**Table 9.4: Training Courses Attended by Officers of HMC Between 2020 - 2022**

9.29 It should be noted that the Government of the VI has recently centralised the funding for all training within the Department of Human Resources (DHR). It is unclear the impact this will have on the availability of

funding for HMC, and other government agencies based on priorities and the manner in which funding will be allocated.

#### Data Collection and Maintenance

- 9.30 The importance of proper data collection and maintenance is buttressed by the need for HMC to be able to properly identify and analyse trends in illegal movement of cash through the Territory as well as other criminal activity. It is also vital in HMC being able to develop effective tactics to deal with such activity. As with most agencies, data collection and maintenance has been problematic for HMC due to a lack of human and technological resources needed to properly identify, collect, process and analyse the required data.

#### Corruption

- 9.31 Possible corruption within HMC is a major vulnerability in the VI's AML architecture given HMC's frontline role in detecting and seizing illegal cash, narcotics and other contraband as well as staving off illegal migration. Within the reporting period no HMC officers were placed on interdiction, however, 8 officers faced disciplinary action for infractions including absenteeism, sexual harassment, suspicion of theft, abandonment of post, and bringing the HMC into disrepute.
- 9.32 Instructions for the conduct of public officers are encapsulated in the Public Service Management Code (PSMC) which is published under the authority of the Governor. Amongst other things, Public Servants are required to declare any interests they may have outside of their assigned posts and must seek approval to engage in any form of private part-time/additional work. In addition to the PSMC, the Services Commission Regulations also address, amongst other things, the disciplining of public officers other than members of the RVIPF. Disciplinary matters are handled by the Department of Human Resources and the Public Service Commission. These policies are in place within the Government service to mitigate the possibility of corruption within government agencies.
- 9.33 In addition, HMC has internal policies currently outlined in their SOP which speak to standards of conduct of officers and issues relative to bribery and corruption. Further, section 7 of the CMDA makes it an offence punishable by a fine of up to \$20,000 or imprisonment of up to two years or both, for an officer to disclose any information or confidential instructions or provide access to records to an unauthorised person. Section 8 of the CMDA also requires customs officers to disclose their interest as owner or agent of any person who owns any vessel or aircraft engaged in trade or if they engage or serve as agent for any person engaged in import services.

## Immigration Department

9.34 The ID's key functions in relation to ML surround the protection of the VI from illegal migration, people smuggling, human trafficking and the entry of undesirable persons at the Territory's ports of entry. The key vulnerabilities that may limit the ID's ability to effectively mitigate ML risk include:

- sub-optimal level of resources
- lack of documented policies and procedures
- insufficient training
- inefficient data maintenance
- potential corruption within

### Resources

9.35 The current staff count within the ID is 68 of which 52 are assigned Immigration Officers of varying ranks. In addition, there are 3 Officers holding senior posts of Assistant CIO, Deputy CIO and CIO. The lack of a full staff complement impacts the ID's ability to effectively carry out its responsibilities, particularly in relation to the monitoring of illegal movement of people given the multiple islands and ports of entry that the ID has to service.

### Policies and Procedures

9.36 The ID has an Office Procedures manual in place which covers all processes administered by the ID relative to enforcement, border control, processing of entry and landing permits and other administrative matters. This document is currently being updated. In addition, the procedures are being revised for the Board of Immigration, which is established under section 14 of the Immigration and Passport Act to provide advisory and consultative functions concerning or connected with the entry of persons into the Territory.

### Training

9.37 The ID has been able to attend various training courses in order to improve their skills by participating in training opportunities funded by other partners. In addition, during the reporting period the MOF earmarked funds specifically for AML/CFT training for LEAs, from which the ID was able to benefit. **Table 9.5** below outlines the training undertaken by the ID during the reporting period.

<u>Year</u>	<u>Training</u>	<u>No. of ID Attendees</u>
<b>2020</b>	Prevention & Detection of Fraud Training	7
	Overview of Disaster Displacement in the Caribbean, Experiences and Frameworks	5
	Migration Practices and Border Management in Disaster Contexts	5

	Protection Needs and Psychosocial Support	5
	Rapid Readiness Assessment	1
	Officer Safety Training	10
	Firearms Training	7
	Case File and Investigations	11
<b>2021</b>	Defence Academy Leadership Masterclass	2
	The Use of PPE	6
	A Leaders Guide to Stress Management for Optimal Functioning for Leaders, Managers and Supervisors	15
	Stress Management for Optimal Functioning for Frontline Officers	14
	Firearms Training	6
	Royal Navy International Maritime Training	3
	Financial Crime Investigation	9
	Intelligence Foundation Awareness	2
<b>2022</b>	Overview of FATF Evaluation Process	4
	Preventing ML/TF/PF	4
	Countering the Financing of Proliferation	6
	National Capacity Building Workshop Cross-border movements during times of Disaster	5
	Operation CARISCA Regional Operational Plan	1

**Table 9.5: Training Courses Attended by Officers of the ID Between 2020 – 2022**

#### Data Collection and Maintenance

- 9.38 The ID significantly improved its record keeping capabilities with the implementation of the Immigration Border Management System and e-Visa system (BMS) in December 2020, which records the movement of persons and any documents presented during that time. The BMS integrates with a Watch List Management System (WMS), which controls the entry of any person flagged. However, the department could benefit from a system to assist with the collection of status applications and to facilitate the processing of those matters.

#### Corruption

- 9.39 Potential corruption within the ID is a major vulnerability in the VI's AML architecture given its frontline role in protecting the VI from illegal migration, people smuggling, human trafficking and other illegal activity. Within the reporting period two officers were reassigned due to charges being brought against them. Another officer was interdicted and has since been released from employment by the Public Services Commission.
- 9.40 As a Government Department the ID is bound by the PSMC and the Services Commission Regulations. Disciplinary matters are handled by the DHR and the Public Service Commission. In addition, the ID intends to develop an internal code of conduct by the third quarter of 2023.

## Financial Investigation Agency

9.41 The FIA's primary functions as an LEA in relation to ML relate to the receipt and analysis of SARs and dissemination of the results of such analysis. Under the FIAA, the FIA also has responsibility for investigating information received relating to a financial offence or the proceeds of a financial offence or an MLA request from a foreign jurisdiction. The key vulnerabilities that may limit the FIA's ability to effectively mitigate ML risk include:

- sub-optimal level of resources
- failure to carry out investigations
- insufficient training
- inefficient data maintenance
- limited dissemination of financial intelligence
- insufficient/limited strategic and operational analysis

## Resources

9.42 There are three sections within the FIU – the analysis team, the investigating team and the intelligence team. The **analysis team** consists of one (1) senior analyst and six (6) analysts and is responsible for analysing SARs, making relevant disclosures, including to the RVIPIF, FSC and other LEAs/CAs and conducting strategic analysis. The Unit currently receives, on average, 12 SARs per day, given the sharp rise in VA-related SARs received by the FIA since 2018. The ability to effectively analyse SARs has been enhanced with the acquisition of commercial analytical tools. These analytical tools enhance the analysis process by allowing large volumes of data or complex material to be assessed and organized in a timely manner, which improves the efficiency and quality of the analysis. A blockchain analytics tool was also acquired in 2022 to assist in the analysis of cryptocurrency SARs.

9.43 The **intelligence team** comprises of one (1) Senior Intelligence Officer who is responsible for conducting background checks and operational analysis on all intelligence gathered. The intelligence generated as a result of the operational analysis is an effective tool used to support or initiate a criminal investigation by the RVIPIF. The background checks, which are requested by various government agencies, are used to verify the fit and properness of persons identified within the request.

9.44 The **investigating team** comprises one (1) Senior investigating Officer, two (2) investigating officers and one (1) International Support Assistant. The investigating team is responsible for responding to letters of request/international co-operation matters when referred to the FIA from the AGC. This team also processes requests for information received from domestic and international CAs during the course of those agencies' investigations and handles disclosures when necessary.

## Investigative Function

9.45 The investigating team, despite the name, does not conduct investigations although the FIA does have the statutory power to do so. Limited investigative measures are undertaken during the analysis stage of SARs. It is considered that, if the investigating team were to carry out further investigations based on analysis

received from the analysis unit, prior to making disseminations to the FCU, the quality and quantity of those disseminations would improve and increase. Improvements in the quality of disseminations to the FCU could result in increased investigations and ultimately, prosecutions. Confiscations and other means to deprive criminals of their ill-gotten gain could also increase. However, the FIA considers that to undertake meaningful investigations it would require more resources.

#### Training

- 9.46 Four (4) analysts and the Deputy Director of the FIU have been certified as cryptocurrency tracing examiners. The analysis team also underwent strategic analysis training in 2022 which was aimed at aiding the FIA in implementing its strategic objectives of adequately dealing with cryptocurrency matters and conducting strategic analysis. **Table 9.7** below outlines the training undertaken by the FIA's FIU during the reporting period.

	2020	2021	2022
Financial Investigation Toolbar and Toolkit Workshop	-	-	7
General AML/CFT	15	5	5
Counter-Proliferation Financing	-	4	6
Cryptocurrency Asset Management Training Course	-	-	14
Cryptocurrency Tracing	-	6	6
Conducting Financial Investigation	-	5	1
Strategic Analysis	-	-	6
Virtual Assets/Virtual Asset Service Providers Workshop	-	6	2
Trade Based Money Laundering	-	-	6
<b>ECOFEL Courses (July to September 2022)</b>			
Strategic Analysis			9
Introduction to Virtual Assets			12
Virtual Assets Analysis			5
Cross Border Transportation of Cash and Money Laundering			1
Operational Analysis			1
Corporate Vehicles and Financial Products			1

**Table 9.7: Formal Training Sessions Attended by FIU Staff**

### Data Collection and Maintenance

- 9.47 FIA depends heavily on data for its tactical, operational and strategic analysis and as such, proper data collection and maintenance is of the utmost importance to the FIA. The FIA has moved to electronic filing of SARs, which has helped to streamline the process by which SARs are received and documented. Maintenance and analysis of data has been problematic due to a lack of human and technological resources, which impacts the FIA's ability to conduct proper strategic and operational analysis.

### Dissemination of Financial Intelligence

- 9.48 Dissemination of financial intelligence to other domestic and foreign LEAs, and to the RVIPF in particular, is a critical component of the investigative process into ML within the Territory. The number of disseminations made to other domestic LEAs is outlined in **Table 9.8** below, while **Table 9.9** details the number of disseminations that have been made to foreign LEAs.

Agency	2020	2021	2022	Total
RVIPF (FCU)	11	44	24	79
FSC	128	73	21	222
Governor's Office	2	2	7	11
Department of Labour	0	1	4	5
Department of Immigration	0	1	4	5
Department of Trade	2	0	0	2
Department of Health	1	0	0	1
Social Security Board	0	0	1	1
Total	144	121	61	326

**Table 9.8: FIU's Domestic Disseminations**

	2020	2021	2022	Total
Total Foreign Disseminations	8	25	19	52

**Table 9.9: Number of Foreign Disseminations Made – 2020 to 2022**

- 9.49 The FIA has indicated that the increased dissemination rate is a direct result of the increase in the staff complement of the FIU, which has allowed it to enhance its capacity to conduct analysis. Increased training has also fostered a greater appreciation among the staff as to the added benefit of incorporating Egmont requests into their daily operations.
- 9.50 However, while there has been a steady increase in disseminations between 2020 and 2022, the overall low number of disseminations relative to the number of SARs filed raises the issue of the level of resources as well as the level of effectiveness in the analysis of SARs. Considering the number of SARs received and analysed by the FIA during the reporting period, the FIA has made a limited number of disseminations to other LEAs. **Table 9.10** illustrates the number of disseminations made annually as a percentage of SARs received.



	2020	2021	2022
No. of SARs Received	1254	1179	4779
No. of Disseminations Made	152	146	80
% of Disseminations Made vs SARs Received	12.12%	12.38%	1.67%

**Table 9.10: Number of Disseminations Made Annually as a Percentage of SARs Received**

*Strategic and Operational Analysis*

- 9.51 The **analysis team** is also responsible for conducting strategic analysis. During the reporting period one strategic intelligence project was initiated, which currently remains ongoing. In addition, a trends and typologies report was prepared in 2022 as a result of the high number of SARs received relating to a particular country. That report resulted in the preparation of a second report which was shared with the targeted jurisdiction (see **Case Study 1** below).

**Case Study 1**

The FIA conducted an ML typology in 2022 as a result of a significant number of VA-related SARs involving citizens of a particular jurisdiction which were filed by BVIBCs operating as VASPs. The study was based on five hundred and three (503) SARs submitted during the first quarter of 2022. The study was also conducted to establish the reason(s) for reporting as well as the type of offences reported in each SAR.

The SARs were filed because the subjects engaged in activities involving a particular gambling cluster although they were based in a jurisdiction where gambling is illegal. All three (3) accounts had activity with the same gambling cluster. The subjects, all males were between the ages of 30-45. All the subjects listed their occupations as being self-employed.

The gaming activity/transactions occurred just over a month after the accounts were established. The transactions which involved alleged criminal proceeds totalled USD \$3,397,263.24. The results of the analysis, including the names and dates of birth of the identified individuals and the type of offences reported in each SAR were shared with the FIU of the targeted jurisdiction.

- 9.52 This lack of strategic analysis by the FIA clearly impacts the timeliness and effectiveness in which it is able to identify new trends and typologies that may arise based on the information being submitted in the various SAR reports. This has a knock-on effect, as such reports are useful in bringing awareness of developing trends and methodologies used to facilitate ML, not only to the FIA and other LEAs, but also to the reporting institutions who are responsible for filing SARs.
- 9.53 As noted above, the **intelligence team** is responsible for conducting operational analysis. Since being operationalised in January 2022, twelve (12) intelligence files have been created. One (1) matter resulted in a dissemination to the FCU, while two (2) others were disclosed to the Intelligence Unit of the RVIPF. These matters remain active.

9.54 There are another ten (10) active matters currently being analysed by the Senior Intelligence Officer. This lack of operational analysis impacts the FIA's ability to provide support to other LEAs in building criminal profiles or charting the operations of a specified target or criminal network.

## The Office of the Director of Public Prosecutions

9.55 The primary functions of the ODPP in relation to ML pertain to the prosecution of predicate offences and proceeds of criminal conduct cases. The key vulnerabilities identified that may impact the ODPP's ability to effectively mitigate ML risk include:

- sub-optimal level of resources
- insufficient training
- lack of prioritisation of PCC (ML) cases
- poor data maintenance
- lack of proper policies and procedures

### Resources

9.56 The ODPP currently has 16 staff of which eight are legal Counsel. Efforts have been ongoing to increase the counsel and staff complement. **Table 9.11** below outlines the number of PCC cases prosecuted and/or concluded during the reporting period and the outcomes.

	2020	2021	2022
Cases Prosecuted	7	8	10
Cases Concluded	7	7	4
Convictions	9	2	4

**Table 9.11: Number of PCC Cases Prosecuted and/or Concluded Between 2020 and 2022**

### Training

9.57 The ODPP has been the recipient of training opportunities provided for by the FCDO and other partners. In addition, the ODPP was able to benefit from the funds earmarked by the MOF specifically for AML/CFT training for LEAs. **Table 9.12** below outlines the training undertaken by the ODPP during the reporting period.

Year	Training	Number of ODPP Attendees
2021	Financial Crime Investigation Training for Prosecutors	10
	Confiscation, Forfeiture and Asset Management Training	19
2022	IMF Training on 4 <sup>th</sup> Round Mutual Evaluation Process	2

	Countering the Financing of Proliferation	2
	Crypto Currency and Financial Investigations	3

**Table 9.12: ODPP Staff Training (2020-2022)**

9.58 Further, specialised prosecutorial training took place in December 2022, which focused generally on ML, TF and PF and more specifically on confiscation, providing guidance to police on financial investigations and deciding when to prosecute. Such training should aid in developing the skills within the ODPP to effectively prepare and prosecute PCC (ML) cases.

#### Prioritisation of ML Cases

9.59 The ODPP has indicated that all PCC matters including ML, like all offenses, are pursued once a two-tier test is met. This two-tier test consists of an evidential test and a public interest test. The evidential test determines whether there is sufficient evidence that would more than likely lead to a conviction, while the public interest test determines whether it is the public interest to commence a prosecution. Once the evidential test has been satisfied the public interest will be assessed. Only when both tests are met will a prosecution commence. While the public interest test takes into account several factors, such as the seriousness of the offence, the level of culpability of the suspect, the circumstances of the offence, the harm caused to the victim, the impact on the community and consideration on whether prosecution is a proportionate and appropriate response, the two-tier test does not provide for the prioritisation of cases based on the seriousness of the offence, type of offender, or the level of risk to the Territory in relation to the offence(s) committed. The ODPP has indicated that all cases are given equal priority irrespective of the offence.

#### Data Collection and Maintenance

9.60 Data collection and maintenance has been challenging for the ODPP due to a lack of human and technological resources needed to properly collect and maintain the required data. This has also made it difficult to reconcile data maintained by the ODPP with that of the RVIPF, particularly with regard asset seizures and forfeitures.

#### Policies and Procedures

9.61 The ODPP does not differentiate between the preparation and presentation of PCC cases and other criminal cases. Prosecutions are handled on a case-by-case basis, with guidance being provided to counsel in how to properly prosecute PCC (ML) cases as needed. Specific written policies and procedures for prosecution of ML cases have not been considered necessary by the ODPP. However, the ODPP has commenced drafting an official strategy and policy to combat ML as well as TF, PF and other related crimes. The policy and strategy are being developed in conjunction with the other LEAs and the CLEA.

## The Attorney General's Chambers

9.62 In relation to ML, the AGC's primary functions relate to MLA and extradition matters. Key vulnerabilities that may limit the AGC's ability to effectively mitigate such risk include:

- sub-optimal level of resources
- insufficient training
- poor data maintenance
- lack of proper policies and procedures

### Resources

9.63 The standard timeline the AGC works towards to respond substantially to an MLA request from a requesting authority is within sixty (60) days of receipt. The lack of a full staff complement has negatively impacted the AGC's ability to respond to such requests in a timely manner as illustrated in **Table 9.13** below.

Year	Time Taken to Respond (in days)
2020	95
2021	157
2022	78

**Table 9.13: Average Time Taken to Respond to MLA Requests Between 2020 and 2022**

9.64 Prior to 2022 there was a considerable delay in the processing of MLA requests due to the loss and re-assignment of staff as well as the impact of the global COVID-19 pandemic. In 2022, however, the AGC took a renewed focus on ensuring the timely management of MLA requests. A dedicated Crown Counsel is now assigned to the processing of MLAs and service of judicial documents. The Crown Counsel is supported by a case manager, another Crown Counsel and an administrative assistant who render support to the processing of MLA and service of documents requests.

9.65 In relation to extraditions, there is one senior counsel within the AGC who is assigned to deal with extraditions, amongst other duties of an international nature. The AGC has received only one extradition request during the reporting period, which is still ongoing<sup>10</sup>.

### Training

9.66 The AGC was able to benefit from training opportunities provided for by the FCDO and other partners. It was also able to benefit from the funds earmarked by the MOF specifically for AML/CFT training for LEAs, allowing the entire staff of AGC to receive training in AML/CFT, MLA, Extradition and Sanctions in 2022. **Table 9.14** below outlines the training undertaken by the AGC during the reporting period.

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<sup>10</sup> On 15 February 2023 the Privy Council refused the accused's application for permission to appeal the Magistrate's decision to extradite. The accused was successfully extradited to the US on 27 February 2023

Year	Training	Number of AGC Attendees
2021	Caribbean Conference on Corruption, Compliance and Cybercrime	1
2022	Financial Sanctions Implementation Forum	1
	MLAT and Extradition	21
	Anti-money Laundering: Current Trends, Prosecutions and Challenges	1
	Countering the Financing of Proliferation	3
	International Cooperation and Mutual Legal Assistance in Criminal Matters	1
	Caribbean Conference on Corruption, Compliance and Cybercrime	1
	FATF Academy Introductory Course	1

**Table 9.14: AGC Staff Training (2020-2022)**

Data Collection and Maintenance

- 9.67 The AGC, has commenced a data cleansing exercise to ensure that its MLA records are accurate. This exercise should also aid in identifying any requests that may not have been adequately handled and should form the basis for more accurate and timely data collection.

Policies and Procedures

- 9.68 The procedure for processing MLA requests is outlined in the AGC's Standard Operating Procedures for Mutual Legal Assistance Requests. This guidance document was created in 2014 as a guide for responding to MLA and the service of document requests. In 2022, the AGC embarked on revising the guidance document to ensure the procedures outlined in the manual were fit for purpose for the current MLA environment. The revised document is in its final stages of completion and should provide clear guidance to counsel and support staff on how to manage and respond timely to MLA requests.
- 9.69 With regard to extraditions, in an effort to improve efficiency between agencies involved in responding to extradition requests, the GO, AGC and ODPP collaborated in 2022 to produce and updated Extradition Manual. The revised Extradition Manual provides clear guidance to the relevant competent authorities involved in the extradition process by outlining the responsibilities of each agency and outlining how to effectively facilitate the process.

### The Office of the Governor

9.70 In relation to ML the GO's key functions relate to MLA and extradition matters. Key vulnerabilities identified that may impact the GO's ability to effectively mitigate risk resulting from such matters include:

- sub-optimal level of resources
- insufficient training
- lack of proper policies and procedures

### Resources

9.71 Staff of the GO that handle MLA and extradition matters are employed by and through the FCDO. Officers receive the MLA requests, which are then forwarded to the AGC for processing. Given the sensitive nature of extradition matters, these are currently handled by the Head of the GO and supported by legal counsel within the AGC. The same staff that handle MLA requests also handle sanctions related matters. Due to the ongoing Russia-Ukraine conflict the number of sanctions related matters has increased significantly, and the GO has had to engage an additional temporary staff to assist with the processing of Compliance Reporting Forms and licence applications. This increase in sanctions matters may have an impact on the GO's ability to ensure timely handling of MLA requests.

### Training

9.72 The main source of funding for training in the GO is through the FCDO, which allows staff to participate in relevant training locally and overseas. Some training is also provided by the FCDO International Academy. The GO also engages in relevant training funded by other external sources whenever possible. **Table 9.15** below outlines the training undertaken by the GO during the reporting period.

Year	Training	Number of GO Attendees
2020	Mutual Legal Assistance: GO processes	2
	Investigating Financial Crime Including Sanctions	1
2021	Maritime Sanctions	1
	Introduction to FATF Mutual Evaluation	2
	Overview of Sanctions	2
	Proliferation Financing	2
	Financial Crime Investigation: Case Management	1
	Seminar on Financial Crime	1
	Licensing Webinar: How to Report to OFSI	1

	Processing Sanctions Applications	1
	Introduction to FATF	2
2022	Financial Sanctions and NGOs	3
	Sanctions and Licensing for OTs Conference	1
	IMF Pre-assessment Training	2
	MLA Workshop	1
	Counter-proliferation Financing	2
	Sanctions Workshop on Regulatory Developments, Risk Typologies and Wider Corporate Transparency Issues	1

**Table 9.15: GO Staff Training (2020-2022)**

Policies and Procedures

- 9.73 The handling of extraditions within the VI has had various degrees of success over the years. There are several agencies involved with extradition within the VI who require firm guidance on what their responsibilities are in relation to such requests, both incoming and outgoing. After considered review it was recognised that the existing extradition manual did not provide sufficient guidance, especially after the new legal framework for extradition was introduced in the VI in 2016. Thus, in an effort to improve efficiency and provide up to date guidance on the handling of such requests, the GO, AGC and ODPP collaborated in 2022 to produce the updated Extradition Manual. As noted above, the revised Extradition Manual provides clear guidance by outlining the responsibilities of each agency and outlining how to effectively facilitate the process.



## The Supervisory Framework

- 9.74 The FSC and FIA as supervisors of FIs and DNFBPs also have a key role to play in effectively mitigating the threat of ML within the Territory. This section reviews the FSC and FIA in their supervisory capacities and the degree to which the identified vulnerabilities would impact their level of susceptibility to risk. This is also achieved by reviewing the structures they each have in place to minimise these vulnerabilities.

### Financial Services Commission

- 9.75 As the supervisor for FIs (including TCSPs) within the Territory, the key vulnerabilities that may limit the FSC's ability to effectively mitigate ML risk include:

- sub-optimal level of resources
- insufficient training
- inefficient data collection and maintenance

### Resources

- 9.76 The responsibility for supervision of FIs lies with the FSC's Authorisation and Supervision Division (ASD). The Authorisation and Supervision Division comprises four (4) units which in 2022 replaced the traditional Investment Business, Insurance, and Banking, Insolvency and Fiduciary Services divisions:

#### ***Authorisation Unit (AU)***

- 9.77 The AU is the centralised unit responsible for authorisation and cessation activities of all regulated entities, products and persons, and receives and processes all pre-licensing and post-licensing applications for consideration and potential approval. The Unit's function is to ensure that all applicants and existing regulated entities satisfy the requirements to carry out regulated activities. On average, the AU processes approximately one hundred and thirty-four (134) applications on a monthly basis.

#### ***Prudential Supervision Unit (PSU)***

- 9.78 The PSU is responsible for monitoring and supervising regulated entities and persons that present a lower level of risk to the financial services sector. It is also responsible for reviewing and processing all post-licensing filings required to be submitted by existing regulated entities and regulated persons. There are currently 576 licensed entities under PSU's portfolio.

#### ***Specialised Supervision Unit (SSU)***

- 9.79 The SSU's function is to monitor and supervise regulated entities and persons with a higher level of risk and systemically important financial institutions. The SSU is responsible for undertaking proactive and enhanced supervision of these entities. Entities supervised by the SSU are assigned a specific relationship manager, who is responsible for ongoing monitoring of the entity. There are currently 105 licensed entities under SSU's portfolio.

#### ***Market Conduct Supervision Unit (MCSU)***

- 9.80 MCSU's function is to promote a fair and transparent market in which all stakeholders within the financial services industry are treated fairly, honestly, and professionally. MCSU is responsible for implementing

consumer protection measures and exercising the FSC's powers in relation to protection against discrimination, consumers' right to be informed, consumers' right to a defined or definable contractual obligation and protection of rights and interests of consumers of financial services generally.

- 9.81 In addition to the four supervisory Units the FSCs Regulatory framework also includes the Compliance Inspection Unit and the AML/CFT Unit.

***Compliance Inspection Unit (CIU)***

- 9.82 The CIU's mandate is to undertake onsite reviews of licensees and assess their compliance with requirements of relevant financial services legislation. The primary focus of the CIU is AML/CFT and prudential inspections. The CIU undertakes full scope and/or thematic examinations of specific entities or sectors based on identifiable risks and assesses or investigates a licensee's level of compliance with laws and guidelines through the planning, preparing and conducting of onsite inspections. Over the reporting period the CIU was able to conduct forty-five (45) inspections (5 full and 40 thematic). This number of inspections carried out was impacted by the COVID-19 pandemic as well as the limited staff assigned to the unit.

***AML/CFT Unit (AMLU)***

- 9.83 The AMLU is responsible for developing and implementing the FSC's AML/CFT supervisory and regulatory strategy and policy. The AMLU is responsible for keeping abreast of the AML/CFT international standards and advising the FSC on how to incorporate changes into the regulatory framework to ensure the jurisdiction's compliance with the standards. The AMLU is also responsible for the monitoring of international sanctions and other restrictive measures, while providing key stakeholders with the relevant information and guidance to promote integrity and stability within the financial services industry in the VI.

***Training***

- 9.84 Staff within the FSC and in particular the ASD are given regular and ongoing training and are encouraged to seek professional certifications as part of their professional development. **Table 9.17** below outlines the training undertaken by the ASD during the reporting period.

Year	Training	No. of ASD Attendees
2020	ICA Specialist Certificate in Money Laundering Risk in New Technology	6
	Intro to Virtual Assets	12
	AML/CFT Foundation Course	29
	Master Compliance Class	46
2021	ComplianceAid: 6th Anti-Money Laundering & Financial Crimes Virtual Conference	3

	Intro to Cryptocurrencies, Verification, Risk, Reporting and Compliance	10
	The New Risk Assessment Framework	38
	2022 Digital Transformation Workshop	2
	ML Sector Assessments training	32
	TCSP and AML Risk	1
	Supervision and Licensing Practices for VASPs	1
	Digital Assets and Block Chain	8
	VASPs, Digital Assets, and the FATF's requirements	32
	Digital Assets Evolution: Regulatory Oversight and Enforcement	1
	GIICS Training- Insurtech and Fintech - the Bermuda Case	2
	Cryptocurrency and Digital Assets	26
	CFATF Supervisors Training (focus on Immediate Outcome 3 and Examinations)	17
	Training on Countering Proliferation Finance	3
	Workshop for Small International Financial Centres	7
	FATF Risk Based Supervision	5
	Annual AML/CFT In-house Training	46
2022	Financial Technology (FinTech) Programme	5
	Targeted Financial Sanctions and Proliferation Financing Workshop	4
	IMF Pre-assessment Training	9
	Countering the Financing of Proliferation	7
	Specialised Supervision Training (Internal)	9
	ACAMS 4th Annual AML & Financial Crime Conference – Caribbean	4
	Understanding the Amendments to the AML Regulations and Code of Practice	45

	A Review of the Findings of the 2020 ML and TF Risk Assessments	10
	Findings of the VI Proliferation Financing Risk Assessment 2022	36

**Table 9.17: FSC-ASD Staff Training (2020-2022)**

Data Collection and Maintenance

- 9.85 The FSC, like other agencies, depends heavily on data to determine the level of supervision and enforcement action that may be required based on identified risk. Supervisory data within the FSC is generally collected based on quarterly or annual prudential or statistical returns as legislatively required. In 2021, the FSC launched its AML Return which captures AML related data from each licensed entity. Analysis of this and other statistical data, however, is stymied by the lack of appropriate human and technical resources needed to conduct the relevant in-depth analysis needed. To address this issue, the FSC, in 2022, began the process of developing a data management system that will centralise the collection of data across the FSC and make it easier for the relevant analysis to be conducted.

### Financial Investigation Agency

9.86 In its capacity as AML supervisor for DNFBPs within the Territory, the key vulnerabilities that may limit the FIA's ability to effectively mitigate ML risk include:

- sub-optimal level of resources
- insufficient training
- inefficient data collection and maintenance

### Resources

9.87 The responsibility for supervision of DNFBPs lies with the FIA's Supervision and Enforcement Unit (SEU). The SEU's mandate is to register all DNFBPs; undertake risk assessments on DNFBPs and NPOs; undertake desk based supervisory reviews; undertake desk based as well as onsite examinations (inspections); undertake outreach on AML/CFT/CPF to the DNFBP and NPO sectors; and issue guidance to the sectors it supervises. Additionally, the SEU's mandate includes undertaking enforcement action for regulatory breaches. At the end of 2022 there were 80 DNFBPs registered with the FIA. An additional 19 applications were being processed.

### Training

9.88 All staff within the SEU are given regular and ongoing training as part of their development and to ensure they are kept abreast of relevant AML/CFT/CPF matters. **Table 9.18** below outlines the formal training undertaken by the SEU during the reporting period.

Year	Training	No. of SEU Attendees
2020	CFATF Assessors Training	1
2021	CFATF Supervisors Training (focus on Immediate Outcome 3 and Examinations)	5
	FIA Introduction to AML (Internally delivered course written specifically for FIA staff)	1
	CFATF Focused FATF Virtual Standards Training Course	1
	ICA Specialist Certificate in Money Laundering Risk in Betting and Gaming	1
2022	CFATF Assessors Training	1
	FIA Introduction to AML (Internally delivered course written specifically for FIA staff)	2
	Introduction to Proliferation Financing	4
	ICA International Advanced Certificate in Money Laundering	1

	Introduction to Compliance in the BVI	1
	Sterling Compliance Annual AMLCFT Conference	5
	IMF Pre-assessment training	2
	Findings of the VI Proliferation Financing Risk Assessment 2022	6

**Table 9.18: FIA-SEU Staff Training (2020-2022)**

9.89 In addition to the above noted formal training, SEU staff are also required to continue with their own personal development, by attendance in online seminars and webinars, as well as ensuring they are up to date on relevant sector specific and technical updates.

*Data Collection and Maintenance*

9.90 The FIA, in its supervisory capacity, relies heavily on data to determine the appropriate level of supervision and enforcement action. Supervisory data within the FIA is generally collected from risk assessment questionnaires and examinations. Risk assessments may be conducted on an ad hoc basis, or as part of sectoral risk assessments. An issue that the FIA has faced in undertaking these exercises is the absence of requested data, as the entities it supervises do not necessarily collect or maintain all of the data being asked for. This is particularly the case for the new DNFBPs who are now registered but were not previously being supervised. Going forward, the FIA is intending to hold further dialogue with its supervised sector to ensure that it accurately records and maintain data, which may be needed for future national as well as sectoral risk assessments. In addition, similar to the steps undertaken by the FSC in 2021, the FIA is exploring introducing an AML Return which would capture AML related data from each supervised entity. However, given the additional resources required to undertake this (human, technical and financial), this remains in its infancy.

### Public Sector Views on ML Exposure

- 9.91 As part of the ML assessment exercise, a survey was distributed to public sector agencies to gather data on their awareness of ML issues and their understanding of their role in the Territory's AML architecture. The results of this survey indicate that 65% of the entities responsible for the Territory's AML Operational Framework feel they have a good understanding of ML, while 38% consider their understanding to be fair. All agencies agree that they have a role to play in the Territory's AML framework; however, only 50% consider that they have a good level of understanding of that role. Further, only 38% of agencies have a documented AML policy and up-to-date AML Strategy and have conducted an internal ML risk assessment. Some of these risk assessments, however, were issued prior to 2018.
- 9.92 Agencies identified drug trafficking, corruption, people smuggling, organised crime and fraud as the largest ML treats to the Territory, which aligns to a large degree with this assessment's findings of national threats. Further, 38% of agencies indicated that between 2020 and 2022 they have identified or gathered data and other intelligence which points to an increased risk of ML to the Territory, while 25% felt that their agency could be used as a means to facilitate ML.
- 9.93 With regard to resources, only 25% of agencies felt that they had sufficient resources to fulfil their mandate in relation to ML. While all agencies felt there is a need for additional AML training, 75% feel that the current level of training is good.
- 9.94 In terms of domestic cooperation, 86% of agencies felt that their level of cooperation regarding information requests received from other agencies was good, while the remaining 14% considered their level of cooperation to be fair. However, all agencies indicated that they felt the quality of information provided is good and the information is useful.
- 9.95 One of the key recurring themes in relation to vulnerabilities within the national operational framework is the lack of adequate resources. It is imperative the VI consider the findings of this report and the impact the current level of resources has on its ability to effectively mitigate its ML risk and make steps towards addressing this issue. In addition, the resources required to ensure efficient data collection also need to be explored.

## 10. Transparency of Beneficial Ownership

### Legal Persons

- 10.1 The types of legal persons that can be formed in the VI are BVI Business Companies and Limited Partnerships. There is also the Micro Business Companies Act which provides for the establishment of Micro Business Companies. However, this act is not currently in force and therefore no such company can be established. Additionally, it is also acceptable for a foreign company to carry on business in the VI through the process of registration. However, if a foreign company continues into the VI it will at that point become a BVIBC.
- 10.2 **Table 10.1** below details the number of active legal persons on the register of companies for the period 2020 to 2022.

Legal Person	2020	2021	2022
BVIBCs	366,298	368,829	349,518
Foreign Companies	66	64	55
Limited Partnerships	1,074	1642	1906
MBCs	0	0	0

**Table 10.1: Active Legal Persons on the Register: 2020-2022**

### BVI Business Companies

- 10.3 Section 5 of the BVIBCA provides for five types of BVIBCs 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.
- 10.4 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. The distinction between the types of BVIBCs that may be established is simply for the purpose of identifying the level of liability its members may be exposed to and the ways in which a BVIBC can raise capital or be financed. **Table 10.2** outlines the number of active companies on the Register of Companies at the end of 2022 by type. Based on this, it is clear that the greatest risk lies with companies limited by shares, given the sheer volume of this type of company on the Register. Generally, companies limited by guarantee are used for charitable purposes.
- 10.5 For the purpose of this ML risk assessment the focus in relation to BVIBCs is primarily on companies limited by shares, as unlimited companies authorised to issues shares, unlimited companies not authorised to



issue shares, companies limited by guarantee that are authorised to issue shares, and companies limited by guarantee not authorised to issue shares do not pose an elevated ML risk.

Company Type	Count
Unlimited Company - Authorised to Issue Shares	244
Unlimited Company - Not Authorised to Issue Shares	7
Company Limited by Shares	348,914
Company Limited by Guarantee - Authorised to Issue Shares	80
Company Limited by Guarantee - Not authorised to Issue Shares	222

**Table 10.2: Number of Active Companies on the Register of Companies at the End of 2022 by Type**

- 10.6 A company limited by shares can be designated as a Segregated Portfolio Company (SPC) or a Restricted Purposes Company (RPC). An SPC is a company that has the ability to create one or more portfolios for the purpose of segregating the assets and liabilities of the company held within one segregated portfolio from the assets and liabilities of the company not held within that segregated portfolio or held within any other segregated portfolio<sup>11</sup>. An SPC is a single legal entity<sup>12</sup>, but it is allowed to issue shares in respect of any segregated portfolio created under its umbrella<sup>13</sup>. A company may only be incorporated or registered as an SPC after written approval of the FSC.
- 10.7 At its incorporation, a company may state that it is an RPC but must define its purpose(s)<sup>14</sup>. There are no restrictions on the purposes for which such companies may be used. These purposes may be changed, but a company has to retain its status of RPC throughout its existence<sup>15</sup>. RPCs are predominantly used as special purpose vehicles, which are usually formed to issue debt instruments.
- 10.8 BVIBCs also have the ability to use nominee shareholders. Persons operating in or from with the VI that act as nominee shareholders of BVIBCs must be licensed as a TCSP pursuant to the BTCA, holding either a Class I, Class III, or Restricted Class III trust licence; or the CMA, holding a company management licence. As a licensee of the FSC, nominee shareholders are subject to the AML/CFT regime and are required to obtain and maintain identification and verification information on the person on whose behalf they are acting. They are also subject to supervision to assess and enhance their compliance with AML/CFT requirements, including the maintenance of basic and beneficial ownership information, as well as the requirement to maintain information on the beneficial owners on whose behalf they were appointed.
- 10.9 BVIBCs may also appoint a corporate director. Pursuant to section 109 of the BVIBCA, all directors of a company, corporate or individual, possess the necessary powers for managing, directing and supervising the business affairs of the company. Persons who wish to provide corporate director services must be licensed with the FSC as a TCSP. Licensed TCSPs that provide corporate directorship services must have at least two individual directors who are subject to FSC's fit and proper test. As a licensee of the FSC, TCSPs

<sup>11</sup> s. 138(1) BVI BCA

<sup>12</sup> s. 138(2) BVI BCA

<sup>13</sup> s. 139 BVI BCA

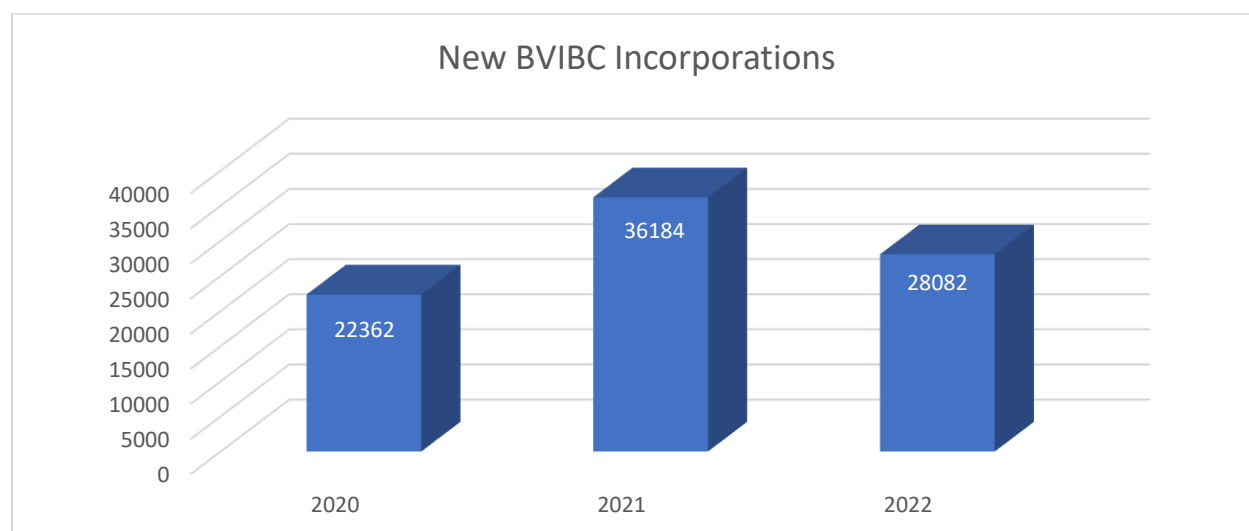
<sup>14</sup> s. 10 BVI BCA

<sup>15</sup> s. 14 BVI BCA

providing directorship services are subject to the AML/CFT regime and are required to obtain and maintain identification and verification information on the person on whose behalf they are acting. They are also subject to supervision to assess and enhance their compliance with AML/CFT requirements, including the maintenance of basic and beneficial ownership information, as well as the requirement to maintain information on the beneficial owners on whose behalf they were appointed.

10.10 It should be noted that the VI does not have a concept of nominee director. However, some TCSPs advertise the provision of nominee type director services. This is a matter that needs to be addressed by the supervisor. Where the TCSP operates on the basis that it provides nominee directorship services this creates additional risk and vulnerability primarily where the TCSP does not perform its AML obligations appropriately or blindly acts on the instructions of a shareholder, director or other controlling person. In these cases, the TCSP is breaching the law and may be operating as a professional enabler.

10.11 In the VI only TCSPs that are categorised as RAs are permitted to form legal persons in the Territory. Further, there is no distinction between a company established to operate in or from within the Territory. At the end of 2022, there were 349,518 active BVIBCs on the Companies Register (i.e., in good standing and in compliance with the BVIBCA). On average, however, less than 1% (3,092) of those operate physically in the VI. The number of new BVIBCs incorporated annually between 2020 and 2022 is outlined in **Chart 10.1** below.



**Chart 10.1: New BVIBC Incorporations: 2020-2022**

10.12 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>16</sup> and copies of all notices and documents filed by the company. The company itself is required

<sup>16</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.

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. Such records include accounts and records (such as invoices, contracts and similar documentation) in relation to (i) all sums of money received and expended by the company and the matters in receipt of which the receipt and expenditure takes place; (ii) all sales and purchases of goods by the company; and (iii) the assets and liabilities of the company<sup>17</sup>.

10.13 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.

10.14 All legal persons incorporated in the VI are also obliged to maintain legal 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

10.15 Currently, 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. At the end of 2022, there were only ten (10) recognised custodians and one (1) authorised custodian approved by the FSC.

10.16 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. Between 2015 and 2019 there was a 14% decrease in the number of companies authorised to issue bearer shares. Since that time there has been a further 2% decrease in total companies authorised to issue bearer shares. At December 31 2022, there were 442 companies authorised to issue bearer shares, of which only 52 were active on the Register.

10.17 As a result of amendments made to the BVIBCA in 2022, as of 1 January 2023 the VI has prohibited the issuance of bearer shares, and the conversion or exchange of registered shares for bearer shares. This requires all authorised or recognised custodians who have custody of existing bearer shares to surrender the shares to the issuing company and give notice of such surrender, by way of a written statement outlining, *inter alia*:

- (a) the full name of the beneficial owner of the bearer shares; and
- (b) the full name of any other person with an interest in the bearer shares, whether by virtue of a charge on the shares or otherwise. Where no other person has an interest in the bearer shares, this should be indicated

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<sup>17</sup> s.5(5)(c) of the Mutual Legal Assistance (Tax Matters) Act (2020 Revision)

10.18 This measure further mitigates the risk of misuse of bearer shares and brings the VI in compliance with international standards.

#### Striking Off and Dissolution from the Register

10.19 A company that is incorporated or registered under the BVIBCA may be struck-off where:

- the company does not have an RA;
- its fails to make a filing that is required under the BVIBCA;
- it was licensed under financial services legislation and has had its licence cancelled or revoked by the FSC;
- the Registrar is satisfied that the company has either ceased to carry on business, or engaged in a licensable activity for which it has not been licensed; or
- failed to pay its annual fee or a late payment penalty.

10.20 The striking off process follows a specified procedure outlined in section 213 (3) - (5) of the BVIBCA. The Registrar must send a notice to the company indicating that, unless the company can show cause to the contrary, it will be struck off the Register on the date specified in the notice. Intention to strike must also then be published by the Registrar in the *Gazette*. If no cause is shown by the company the company will then be struck off by the Registrar. This is followed by publication of another notice in the *Gazette* indicating that the company has been struck off. Recent amendments to the BVIBCA now provide that a struck-off company will be dissolved on the day the notice of strike off is published in the *Gazette*. Further, an application to restore a dissolved company onto the Register can only be made within five years following dissolution.

10.21 When a company is struck-off from the register, it retains its legal personality but is not allowed to engage in or transact in any matters related to its affairs, this includes any potential changes in ownership. In that context, the company and the directors, members and any liquidator or receiver of the company cannot commence legal proceedings, perform any activity in relation to the company, or in any way deal with the assets of the company unless they submit an application for the restoration of the company.<sup>18</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 through to judgement or execution against the company; in addition, the liability of any of the company's directors, members, officers or agents is not affected.<sup>19</sup>

10.22 The number of companies struck from the register of companies from 2020 to 2022 and the reason for striking off is listed in **Table 10.3** below.

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<sup>18</sup> Section 215 (1) and (2) of the Act.

<sup>19</sup> Section 215 (3) of the Act.

<b>Companies Struck/Dissolved from the Register</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Total</b>
Agent Resigned	1,223	1,088	1,679	3,990
Company Consolidated	0	0	2	2
Discontinued out of the VI	848	723	572	2,143
Company Dissolved	9,785	9,478	8,763	28,026
Company Merged	200	137	177	514
Non-payment of Annual Licence Fee	36,347	26,590	20,796	83,733
Non filing of Register of Directors	301	269	332	902
10-year Non-payment	1	0	0	1
7-year Non-payment	41,342	45,208	43,337	129,887
Ceased Business	154	236	304	694
<b>Total</b>	<b>90,201</b>	<b>83,729</b>	<b>75,962</b>	<b>249,892</b>

**Table 10.3: Number of Companies Struck from the Register – By Reason: 2020-2022**

10.23 Prior to the strike-off date specified in the notice filed by the Registrar, the RA is required to update and maintain all company information that the RA is legally required to keep. This includes the register of members, register of directors, and all CDD information required under the AMLTFCOP. Where an RA gives notice of its intent to resign and a new RA is not appointed by the effective date of resignation specified in the notice, the Registrar may strike the company from the Register.

10.24 At any time, up to five years after having been struck off, and upon receipt of an application for restoration the Registrar may restore the company. The Registrar must also be satisfied that certain conditions are met. Such conditions include, *inter alia*, payment of all outstanding fees and penalties as well as a restoration fee; proof that the company was carrying on business or in operation at the date of dissolution; and evidence to satisfy the Registrar that it would be fair and reasonable for the company to be restored. An application for restoration may be filed by the company, a director, a member, a creditor, or the liquidator of the company.

10.25 Additionally, in order for the company to be restored it must also have an RA, and a declaration must be submitted by the RA stating that the company's records, including CDD information, have been updated in accordance with the provisions of the BVBCA. A significant number of these companies are restored to the Register as a result of the payment of outstanding fees and penalties. Once this is done the companies are returned to good standing and are deemed to have never been struck off the register.

10.26 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.

10.27 It is in these contexts that an application would normally be submitted to the Registrar to restore a company to the register and a refusal to restore a company may be the subject of an appeal to the High Court.<sup>20</sup> **Table 10.4** below provides the number of companies restored to the register of companies for the period 2020 to 2022.

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
2020	100	4,144	501	4,745
2021	96	3,773	501	4,370
2022	99	3,096	1,004	4,199
<b>Total</b>	<b>295</b>	<b>11,013</b>	<b>2,006</b>	<b>13,314</b>

**Table 10.4: Number of Companies Restored to the Register by Method of Restoration: 2020-2022**

#### Foreign Companies

10.28 Foreign companies may carry on business in the VI through the process of registration. Foreign companies are registered in accordance with section 187 of the BVIBCA and 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 directors at the time of the application, and a notice specifying the appointed RA. Such registrations are uncommon however, with only 5 such companies being registered between 2020 and 2022. In total, there are 55 active foreign companies currently registered in the VI, 35 of which are licensed entities providing either banking or insurance services and are subject to regulation by the FSC. Based on the types of activities engaged in by both the regulated and non-regulated companies this assessment has not identified any specific ML risk associated with these entities being registered as foreign companies.

#### Limited Partnerships

10.29 Limited partnerships may be formed under the Limited Partnership Act, 2017 (LPA) which replaced the provisions for limited partnerships under the Partnership Act, 1996. There are 3,143 limited partnerships registered in the VI, 1906 of which are currently active. A limited partnership is required to have a written limited partnership agreement that provides for the rights and obligations of the partners. 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

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<sup>20</sup> Section 217 (4) of the Act.

subsequent partners or, where the limited partnership has legal personality, between the limited partnership and each partner, including subsequent partners.<sup>21</sup>

10.30 In order for a limited partnership to be registered, an application in the form of a statement must be filed with the Registrar<sup>22</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 2020 and 2022, 1,218 limited partnerships were registered.

10.31 A limited partnership must maintain a registered office and RA within the VI at all times<sup>23</sup>. 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 maintained<sup>24</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.

10.32 The limited partnership is also required to keep financial records and any other underlying documentation of the limited partnership<sup>25</sup>.

10.33 The LPA does not provide for the establishment of a general partnership. However, the general partners of a limited partnership are required under s.83 of the LPA to maintain, at the RO, or at such other place as the general partners determine, a register containing the name and address, amount and dates of contributions of each partner, and the amount and date of any payment representing a return of any part of any partner's contribution. This register must be updated within 21 business days of any change in accordance with s. 54, and if the register is not maintained at the RO, the general partners must keep a copy at the registered office, which must be updated within 14 days of any change to the original register.

#### Micro Business Companies

10.34 The Micro Business Companies Act (MBCA) was brought into force in 2018 and introduced a new company regime catering to small businesses, particularly start-ups that may find the requirements of incorporation under the BVBCA overly onerous and cost prohibitive. The idea behind the MBC regime was to provide persons who would not ordinarily be able to establish a traditional corporate structure with the ability to legitimise their business. As such, the benefits that could be achieved would make MBCs attractive to a

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<sup>21</sup> Section 7(3) Limited Partnership Act, 2017

<sup>22</sup> Section 8(2) LPA

<sup>23</sup> Sections 18 and 19 LPA

<sup>24</sup> Section 53 LPA

<sup>25</sup> Section 54 Limited Partnership Act, 2017

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.

10.35 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 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.

10.36 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**

10.37 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>26</sup>; and
- 2) have PEPs involved in the activities of, or services provided by the MBC.

10.38 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 understand 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**

10.39 The MBCA restricts an MBC from carrying on any regulated financial service business<sup>27</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

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<sup>26</sup> s.16(1)(a) Micro Business Companies Act, 2017

<sup>27</sup> s.17(1)(a) MBCA



MBC from engaging in a particular type of business activity<sup>28</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**

10.40 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**

10.41 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>29</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, 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>30</sup>.

10.42 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.

10.43 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**

10.44 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

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<sup>28</sup> s.17(3) MBCA

<sup>29</sup> s.21(2) MBCA

<sup>30</sup> s.6(1)(g) MBCA

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.

10.45 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.

10.46 The MBCA, however, was suspended shortly after being brought into force. As a result, MBCs may not be incorporated in the Territory. There is currently no plan to remove the suspension on this legislation. The 2020 ML Risk Assessment found that the ML risk for MBCs was medium-low based on the global nature of the activities that an MBC may be used for. Since the MBCA remains suspended and no additional risk factors have emerged, given the level of identified risk generally associated with an MBC, and the controls in place to mitigate these risks, the ML risk in relation to MBCs was rated as **Medium-Low**.

## Legal Arrangements

10.48 A trust is the form of legal arrangement that may be formed within the VI. Types of trusts include express trusts and VISTAs.

### Trusts

10.49 The general requirements for trusts are detailed in the Trustee Act, which provides for the duties and powers of trustees. Trusts in the VI are generally used for purposes such as inheritance planning and to manage assets for families. 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. Trusts themselves are not required to be registered in the VI making it difficult at times to identify their existing trustees and beneficiaries primarily where they do not have a BVI trustee. This difficulty impacts on ability of the VI to respond to requests for information from international counterparts where the trust does not have a licensed TCSP as its trustee. At the end of 2021 there were 6,227 express trusts under administration valued at approximately \$183.66 billion. In addition, there were 1,540 trusts held under the Virgin Islands Special Trusts Act, 2003 and 1,130 private trust companies established.

10.50 Trust service business on the other hand is a regulated activity under the BTCA and is subject to AML/CFT legislative provisions. Of the 290 licensed TCSPs in the Territory at the end of 2022, 133 have the ability to provide trust business. For those TCSPs that provide trust business they also offer professional trustee, protector, and administrator services.

### VISTAs

10.51 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 service provider, or a BVI Private Trust Company must act as one of the trustees or the sole trustee.

10.52 A VISTA trust is used purely for the holding of shares in a BVIBC. The trust assets of a VISTA, therefore, must be shares in a BVI company, which must be transferred into the name of the trustee(s). A VISTA trust enables a trustee holding the shares in the BVIBC to distance him/herself from the management of the BVIBC, as the VISTA trust removes the trustee's obligation from the prudent investor rule. The trustee therefore has no obligation to oversee the management of the underlying company. The responsibility for managing the company lies with the directors.

10.53 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.

10.54 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.

10.55 VISTAs 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. However, the FSC considers VISTAs to be low risk as they can only 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. The FSC's Risk Assessment Framework used to determine the overall risk of each licensed TCSP includes the assessment of VISTAs under their remit. In addition, monitoring of these products is done as part of the onsite inspection process of the RA by the FSC.

### Assessment of Threats

10.56 The risk to the Territory from Legal Persons and Legal Arrangements, while largely reputational, lies in the threats associated with the illicit activities that may be engaged in by some ethically challenged entities and the Territory's ability to facilitate cooperation with its international partners when such activities are identified and investigated.

### Legal Persons

10.57 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. Given the global nature of these entities and their ability to engage in trans-continental business activities BVIBCs are highly susceptible to criminal misuse. Risk of misuse is elevated where BVIBCs operate in or engage in activities with jurisdictions that have been identified internationally as posing a higher level of ML risk due to their level of effectiveness in implementing required AML regimes, as well as the level of corruption and/or criminal activity identified within the country. Data indicates that BVIBCs 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. The probability of a BVIBC being exposed to/operating within a high-risk jurisdiction is therefore elevated.

10.58 On average, 13 BVIBCs are named each month in negative news articles, however, a number of these reports 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 greatest risk to the Territory include those of opacity, ML and fraud where some form of inappropriate or illegal activity is alleged to have been committed by these companies. 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.

10.59 Criminal and civil MLA requests involving legal persons (outside of those involving tax related matters) are handled by the AGC. During the reporting period the AGC received, on average, 81 MLA requests per year associated with matters involving legal persons and were able to respond to 70% of such requests directly

based on the information provided in the requests. Most of the requests involved matters of ML, fraud/embezzlement, tax evasion and corruption coinciding with the key foreign predicate offences identified by the RVIPF.

10.60 Further, between 2020 and 2022 TCSPs filed 1,125 SARs which involved BVIBCs. This accounted for roughly 65.3% of SARs received that were not related to VA activities, and 15.6% of total SARs. The transactions identified in those SARs were valued at \$505,800,000 and related primarily to issues of fraud and ML. In addition, there was a notable increase in SARs filed by BVIBCs carrying out VA-related activities between 2020 and 2022 (5,488), which reflects 76.1% of the total SARs filed. In 2022, the transactions identified in those SARs were valued at over \$17 billion and related primarily to issues of fraud and ML.

#### Legal Arrangements

10.61 The threat of trusts being misused for ML purposes is two-fold. First, it lies with the trusts themselves, as these legal arrangements can be used as part of more complex structures that may be used as conduits for illegal activities such as fraud and ML. Trusts can also be set up for the purpose of managing shares in a company, which can make it more difficult to determine who the true beneficiaries of the assets managed by these trusts are. These kinds of arrangements often have the purpose of hiding the identity of the ultimate beneficiary(ies) or real owner of an asset. Further, trusts may exist without any written record, and the trust deed may not identify settlor or beneficiary<sup>31</sup>.

10.62 Second, the threat may also lie with the persons/entities that provide trust services, particularly those who act as trustees, as being the legal owners of the trust assets, they may exploit their position to engage in activity relating to the trust assets that may include potential illicit activity. The number of such activities reported, however, is very low compared to those involving legal persons. In fact, during the reporting period the FIA did not receive any SARs filed by trustees or where the subject of the SAR was a trust or trustee. The absence of such filings, given the number of licensed trustees, size of trust assets, number of trusts and the fact that the beneficiaries are so diverse, can itself be seen as a risk that may elevate the threat of ML.

10.63 Criminal and civil MLA requests involving legal arrangements are also less prevalent than those involving legal persons. During the reporting period the AGC did not receive any MLA requests associated with matters involving legal arrangements.

### ML Vulnerabilities

#### Legal Persons

10.64 Legal persons are used globally for a variety of reasons, but particularly to facilitate legitimate international trade. Those legal persons that carry on business in the Territory have not been identified in any intelligence, international cooperation or other typologies that would suggest they are used to conceal the proceeds of crime as described in section 8 above. Those involved in facilitation of

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<sup>31</sup> The Misuse of Corporate Vehicles, Including Trust and Company Service Providers, FATF, 2006

international trade are frequently part of larger, often complex, corporate structures involved in multifaceted international financial transactions across multiple jurisdictions. This presents an intrinsic vulnerability for these entities to be misused for ML based on:

- the high level of non-face to face transactions they engage in,
- the potential for them to engage in large cash transactions, and
- the potential to be used to conceal the source of assets and the identity of BOs, many of which are high risk customers, including PEPs and other high net worth individuals.

10.65 Of the 287 licensed TCSPs, 105 have the ability to act as a Registered Agent for BVIBCs. 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.

#### Requests for Information

10.66 The relevant 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. Information provided is generally up-to-date and where the TCSP has terminated its relationship with the BVIBC, 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.

10.67 Both the FSC and FIA have powers under their respective legislation to compel information. The ITA also has authority to request information under the MLATMA; therefore, the instances in which a TCSP would not respond to such requests are few and far between. In addition, in 2021 the FIAA was amended, now making it an offence not to comply with a request to produce documents, which carries with it, on summary conviction, a fine of up to \$20,000 or a term of imprisonment of up to two years or both. The FSCA also makes it an offence for a person not to comply with such a request. Such an offence carries a fine of up to \$10,000, or three (3) years imprisonment on summary conviction, and \$25,000 or 5 years imprisonment, or both on conviction on indictment. Further, the MLATMA also makes it an offence not to comply with a request for information which, on summary conviction carries a fine of up to \$5,000 or imprisonment for a term not exceeding two years or both, or a fine of up to \$100,000 or imprisonment for a term not exceeding five years, or both on conviction on indictment. These penalties have proven a fair mitigation tool as very few requests for information have gone unanswered.

#### Legal Arrangements

10.68 Legal arrangements are used to a lesser extent to facilitate international trade. However, like legal persons, they can form part of larger, complex, corporate structures carrying out activities on a trans-national basis. Trust structures are also used to segregate ownership of assets, which may allow criminals to distance themselves from their illicit gains. Additionally, trusts are not required to be registered in the VI. These factors increase the vulnerability of such arrangements to potential ML risk.

### Requests for Information

10.69 Requests for information involving legal arrangements are received far less frequently; however, TCSPs are required to keep up to date CDD/BO information on trusts. Requests for information from TCSPs on clients who are trusts are, therefore, generally forthcoming in a timely manner, even in instances where the information may not be held directly by the TCSP. Information provided is generally up-to-date and the provisions for the updating and maintenance of information outlined in paragraph 10.55 above are equally applicable where the TCSP has terminated its relationship with the trust. The powers to compel information described in paragraph 10.54 are also equally applicable to circumstances where information on trusts is being sought.

### Conclusion

10.70 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.

### Legal Persons

10.71 The inherent vulnerabilities of legal persons are 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 availability of non-face-to-face transactions, their use by a significant number of high-risk customers, including foreign PEPs and the nature of the beneficial owners of these products also increases their vulnerability to be misused for ML purposes. As such, while the various control measures currently in place within the TCSP sector have helped to somewhat mitigate the overall risk of legal persons, the inherent vulnerabilities relating to these structures remain Medium-High.

10.72 Legal persons 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 and ML and the value of these transactions is significant. However, while these transactions may not necessarily be indicative of any overtly illegal behaviour on the part of the involved BVIBCs they speak 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 risk to the Territory regardless of whether these activities are eventually found to be of a legitimate nature.

10.73 While no local criminal proceedings for ML have been initiated against any legal persons registered in the VI, 99% 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.

### Legal Arrangements

10.74 The vulnerabilities identified in relation to legal arrangements are also driven by the potential complexity of the available structures and the potential of these structures to be used to conceal the source of assets and the identity of beneficial owners. Additionally, their use by high-risk customers, including foreign PEPs also increases their vulnerability to be misused for ML purposes. However, the various control measures currently in place within the TCSP sector aid in mitigating the overall risk of legal arrangements, more so than with legal persons given the nature of these structures. The inherent vulnerabilities relating to these structures therefore are considered to be Medium-Low.

10.75 As noted above, legal arrangements are not usually the subject of many SARs filed with the FIA. The concern with this lack of filing is whether the legal arrangements themselves are sufficiently aware of the requirements or whether they simply choose not to file. As with legal persons, no local criminal proceedings for ML have been initiated against any legal arrangements registered in the VI. Further, the AGC has not received any MLA requests of either a criminal or civil nature involving legal arrangements.

10.76 To determine the ML risk of each type of legal person and legal arrangement available in or from within the Virgin Islands, each product or service was individually assessed using the risk matrix outlined in the methodology. The results of this assessment concluded the following in relation to the level of risk inherent for each (see **Table 10.5** below):

Product/Service	Risk Rating
BVI Business Company	H
Limited Partnerships	MH
Micro-Business Companies	ML
Trusts	MH
VISTAs	ML

**Table 10.5: Risk Assessment Ratings for Legal Persons and Legal Arrangements**

10.77 Overall, legal persons have been assessed as having an ML risk level of **Medium-High** while legal arrangements have been assessed as having a risk level of **Medium-Low**.



## 11. Emerging Products and Technologies

- 11.1 In 2020, two pieces of legislation were passed allowing for gaming and betting and the production of cannabis for medical purposes in the VI. Both of which are known to 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 2020 Sectoral ML Risk Assessment recommended that the VI conduct an assessment of the ML risk posed by both of these emerging products to ascertain the Territory's level of ML exposure as a result of their introduction into the economy.

### Gaming and Betting

- 11.2 In the VI, gaming and betting activities are covered by the GBCA. In accordance with the GBCA, the Gaming and Betting Control Commission ("the Gaming Commission") is responsible for the regulation and control of the operations of gaming and betting in the VI. This means that any person wishing to undertake any aspect of gaming and betting, as defined in the GBCA, must first obtain a licence from the Gaming Commission. In accordance with the provisions of the AML Regulations and the AMLTFCOP gaming and betting providers are considered DNFBPs and therefore, fall under the supervision and monitoring of the FIA for the purposes of AML/CFT. At the time of writing, the Gaming Commission has not yet been established, hence no person can legally undertake gaming and betting activities currently.
- 11.3 Once the Gaming Commission is established, in accordance with the GBCA, the FIA will commence its process of registration and supervision. It is anticipated that once this step occurs, the Gaming Commission and the FIA would work together to establish protocols to limit vulnerabilities and prevent the abuse of this sector. As the supervisory authority for this sector, the FIA has already taken preparatory steps, including training staff and preparing registration and guidance documentation. However, as no licences can be issued until the Gaming Commission is established, gaming and betting remain illegal, and the FIA cannot begin to monitor these activities for AML compliance. It is difficult at this juncture, therefore, to determine how effective the Gaming Commission and the FIA would be at minimising the risk of ML within this sector.
- 11.4 As identified in the 2016 NRA, while gambling activities currently remain prohibited, there are individuals who engage in the sale of foreign lottery tickets in the VI without the requisite authority. The NRA identified that the foreign lottery tickets that are normally sold in the VI came from the neighbouring USVI, Puerto Rico and the US mainland. There is no evidence to indicate that these lottery tickets are subject to any payment of duty in the VI or that they are intercepted and seized at the ports of entry. This creates a risk for ML, as in a cash-based economy such as the VI, it is not unheard of for money launderers and other criminals to buy with cash, winning lottery tickets from the actual winner and collect a legitimate cheque which is then deposited into the legitimate banking system. However, Puerto Rico lottery tickets, which were the most popular, are no longer sold in the VI as the authorities in Puerto Rico have implemented stringent measures which make it difficult for Puerto Rico lottery tickets to be sold outside of Puerto Rico. Since then, however, authorities have recognised an increase in USVI lottery tickets sales. These tickets are purchased in the USVI and then transported to the VI and sold in bars and along the roadside. That

being said, there is no intelligence that suggests that lottery schemes are being used to facilitate money laundering.

### Gambling

- 11.5 Illegal gambling activity associated with cock fighting (which is itself illegal) and horse racing is also known to occur, as was identified in the 2016 NRA. The issue of pari-mutuel betting is provided for under the GBCA, the intention of which is to minimise the desire to engage in illegal betting and therefore reduce the exposure to ML, as this will now become a licensable and supervised activity. Nonetheless, the nature and extent of these activities should be carefully monitored to determine the extent of the ML risk associated with them.
- 11.6 Other forms of gambling identified in the VI include betting at illegal car races and on card games, as well as sports betting through the installation of sports betting software on computers at selected places, and betting on lottery numbers from various US States (i.e., “keeping numbers”), which is prevalent, particularly within the Dominican Republic communities. There is currently no intelligence to suggest that gambling and/or illegal betting are linked to any form of organized crime within the Territory. However, due to the nature of the gambling activities and those involved, intelligence suggests that these activities are being used as a form of money laundering.

### Medicinal Marijuana

- 11.7 The CLA, which was passed by the House of Assembly in 2020 allows possession of medical cannabis by adults. For possession of between one and 50 grams, a self-declaration form would be required, while medical approval would be necessary for quantities exceeding that range. Possession of one gram or less would essentially be unregulated, and visitors to the VI would be able to possess cannabis under these conditions. The Act also envisions a more permissive framework for CBD. The legislation, however, has yet to receive Royal Assent.
- 11.8 As a BOT, the UK Home Office currently acts as the licensing authority for narcotics in the VI, including medical narcotics. The CLA would change that, giving the VI responsibility for such licensing. As such, the UK has indicated that before the Act can be assented to and become law it must ensure that the CLA is fully compliant with international regulations such as the 1961 Single Convention on Narcotic Drugs to ensure compliance with the country’s international obligations. As a precondition to assent, the BVI and UK governments must first enter into an MOU to transfer relevant powers from the UK Home Office to a domestic Cannabis Licensing Authority (the Authority) which is provided for in the legislation. This necessary safeguard, amongst others, however, is not currently in place.
- 11.9 Given the small quantities provided for in the legislation, and the regulations surrounding the permissible grade of marijuana to be produced, it is questionable whether introduction of this product will increase the risk of ML with drug traffickers. The impact of such legalisation and level of regulation of the product itself is unknown, however, and therefore the risk remains elevated. Adding to the unknown risk is the Territory’s ability to ensure the Authority is properly constituted with persons with the requisite skillsets to ensure proper regulation of the sector.

## Decentralised Financial Products

- 11.10 Jurisdictions must consider the potential ML risk involved with the increasing use of decentralised finance (DeFi) instruments. DeFi is typically based on peer-to-peer payments using blockchain or other technologies, which allow persons to facilitate financial transactions in the absence of traditional intermediaries and trust mechanisms. The ability for such instruments to facilitate the transfer of funds, and purchase and exchange of financial assets by sidestepping traditional FIs such as banks, brokerages and exchanges comes with a greater risk of such products being misused for illicit gains. According to a report published by the FATF, “while it is not possible to determine the exact impact of the growth of DeFi on illicit financing, open-source information suggests that threats for criminal misuse continue”<sup>32</sup>.
- 11.11 Given the findings of the 2020 ML Risk Assessment, which indicated that there is an evolving threat from businesses operating in or from within the Virgin Islands that facilitate the provision of VA products, it is understood that where such businesses operate in a decentralised manner and effectively are providing DeFi services the ML risk is elevated. The ML risk is further elevated where such activities are carried on in an unregulated space where these DeFis are not subject to any AML/CFT obligations. However, internationally, open-source data and engagement with industry suggest that, even where projects publicly brand themselves as DeFi, there continue to be centralised aspects that may be subject to AML/CFT obligations<sup>33</sup>.
- 11.12 In the VI any entity, whether DeFi or not, carrying out activities defined under any regulatory legislation, including the VASPA, that require licencing, must obtain the relevant licence to carry out such activity in or from within the VI. Exposure to ML risk in relation to DeFi, therefore, lies not only with the actual DeFi activities, but also in the VI’s ability to identify the BVI entities through which DeFi activity is currently being facilitated, and take the necessary steps to prevent any unauthorised activity. The FSC currently has mechanisms in place to monitor various activities being undertaken in or from within the VI and is able to identify where persons are engaged in unauthorised activities. However, it is not clear that these activities are sufficient to capture DeFi entities.

## Virtual Assets and Virtual Asset Service Providers

- 11.13 The VA space continues to develop and with it the risk of misuse for ML and other purposes. The regulation of VASPs and the framework the VI has put in place to mitigate the risk of ML within this sector are discussed in Section 12 of this report.

## Other Products

- 11.14 The 2020 ML Risk Assessment identified the introduction of a 7% transaction levy on all MSB transactions in 2020. This has resulted in a substantial decline in the total value of transactions processed by MSBs between 2020 and 2022 (more details are provided in section 12 of this report). The data in the 2020 report indicated a clear risk criterion which could lead to the propagation of the underground movement of funds, as persons attempted to find less costly ways to transmit monies to other jurisdictions. The

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<sup>32</sup> Pp 31 FATF Targeted Update on Implementation of the FATF Standards on Virtual Assets and Virtual Asset Service Providers

<sup>33</sup> Ibid, pp 33

report also considered that it may have encouraged the wider use of the banking sector. Based on intelligence collected since that time it appears that both scenarios have materialised.

11.15 Since the introduction of this levy the RVIPF has seen an increase in individuals using other regulated and unregulated means to avoid the imposed levy. Individuals have resorted to opening bank accounts in the VI and their country of origin which enables the transfer of money through regulated institutions, which decreases the overall ML risk due to the high level of CDD carried out by banks. Transfers through the use of mobile phones are also becoming more popular as they facilitate quick transfer of funds, which do not require the use of regulated money services and the incurrence of stipulated fees. However, intelligence points to an introduction of the use of a Hawala style system<sup>34</sup>, which is prevalent within the Dominican Republic, Guyanese and St Vincent communities, which are also three of the top jurisdictions receiving outgoing money transfers. Intelligence also indicates that a significant amount of money is sent by plane via friends and family traveling home to their various countries of origin. However, the amount of money detected by HMC leaving the Territory, whether declared or undeclared has decreased between 2020 and 2022 (see **Table 11.1**).

	UNDER 10K	OVER 10K
2020	\$508,197.00	\$859,180.00
2021	\$761,656.00	\$740,699.00
2022	\$80,076.00	\$638,615.00

**Table 11.1: Funds Detected by HMC leaving the VI between 2020 and 2022**

11.16 In 2022, the GoVI reduced the levy to 3.5%, but the sector still continues to record a decline in the number and value of transactions. Intelligence suggests that there has been no observable decrease in individuals utilising the underground methods of choice. The VI should consider a further assessment of this imposition of this levy to determine its full impact and its implication on the level of ML risk within the sector.

11.17 The vulnerabilities identified in relation to each of 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**.

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<sup>34</sup> Hawala is an informal method of transferring money without any physical cross-border movement of cash

## 12. Financial Institutions

12.1 Within the Virgin Islands, the following categories of businesses are considered FIs and must be licensed by the FSC in order to carry out business in or from within the VI:

- 1) Banks
- 2) Financing Business
- 3) Money Services Business
- 4) Insurance Business
- 5) Trust and Corporate Service Providers
- 6) Investment Business
- 7) Insolvency Services
- 8) Virtual Asset Service Providers<sup>35</sup>

12.2 In addition to the provisions contained within each of the respective Acts under which these categories of business are licensed, FIs are also fully subject to the requirements of the AMLR and AMLTFCOP. The FSC, via its desk-based supervision and on-site compliance inspection regimes, monitors FI's compliance with these AML/CFT requirements.

12.3 With regard to ML risk, each sector was reviewed based on the six areas of vulnerability identified in the Methodology, taking the level of control factors in place to mitigate each vulnerability into account. The resulting overall risk rating for each sector is outlined in **Table 12.1** below.

Sector	Overall Risk Score	Overall Risk Rating
Banking	4	Medium-Low
Financing Business	-1	Low
Money Services Business	4	Medium-Low
Insurance Business	1	Low
Trust and Corporate Service Providers	17	High
Investment Business	10	Medium-High
Insolvency Services	-1	Low
Virtual Asset Service Providers	22	High

**Table 12.1: Overall FI Sector ML Risk Ratings**

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<sup>35</sup> As of 1 February 2023

## Banking

### Introduction

- 12.4 Banking institutions in the VI are licensed under the BTCA. While the banking sector is small in terms of number of licenced institutions, the level of economic activity within the sector accounts for approximately 25% of economic activity within the wider financial services sector. At the end of 2022, total income within the banking sector was \$108.6 million or approximately 7.8% of GDP, with net interest income standing at \$44.57 million. For the same period, these institutions held assets valued at \$2.80 billion with total deposits of \$2.15 billion, up from \$2.44 billion and \$1.97 billion respectively at the end of 2019. Market share in terms of deposits ranges between 2% and 23% of total deposits, with an average of 14.3% (see **Chart 12.1** below). Loans were valued at \$1.59 billion, \$107 million of which is currently outstanding. This represents an approximate 14% increase in the value of loans serviced by banks in the VI since 2019 and a \$1.1 billion reduction in the value of loans outstanding.

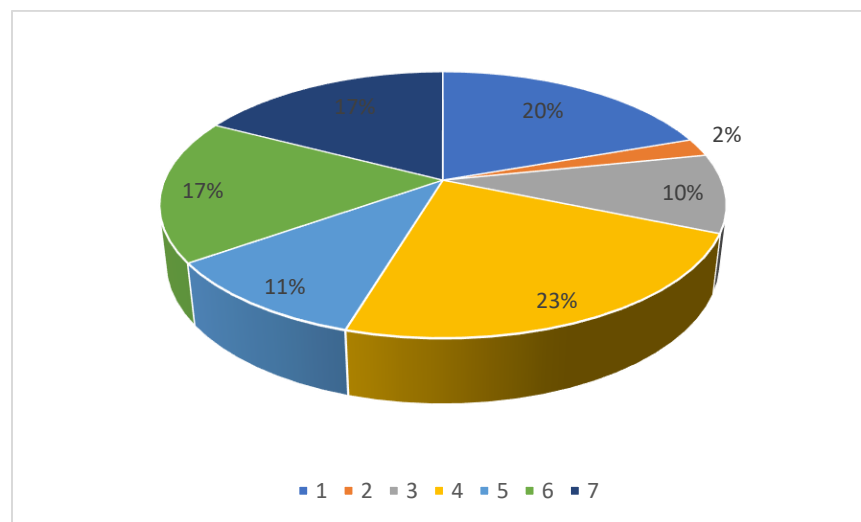


Chart 12.1: Market Share of Deposits by Institution

### Summary of Risk

Sector Characteristics	Medium-High
Products and Services	Medium-High
Nature of Clientele (Customer Risk)	Medium-Low
Geographic Risk	Medium-Low
Delivery Channels	Medium-Low
Susceptibility to Abuse	Medium-Low
Overall Risk	Medium-Low

### ***Sector Characteristics***

- 12.5 There are six commercial banks and one private wealth management institution that make up the banking sector within the VI. One of the commercial banks is domestically owned with the majority shareholder being the Government of the Virgin Islands. The other five commercial banks are subsidiaries or branches of international banking groups established in a range of jurisdictions that have been assessed as having equivalent AML/CFT regimes to the VI. These five banks apply measures commensurate with their group.
- 12.6 Four of these institutions have been rated by the supervisor as having inherently medium-high risk based on their operations, while the other three have been rated as medium-low. With regard to specific AML risk, five institutions have been rated as having medium-high risk with the other two rated as medium-low. However, none of the banks licensed in the VI have been subject to AML/CFT compliance inspections during the reporting period. Furthermore, no issues were raised during the reporting period that required the taking of enhanced supervisory measures by the supervisor.
- 12.7 Nonetheless, the supervisor considers this sector to be largely knowledgeable of its AML/CFT requirements. Furthermore, 75% of the sector itself considers the level of ML risk within the sector to be between medium-low and medium high while the remaining 25% fell evenly between high and low. The sector itself has indicated that it considers itself to have a good understanding of the ML risk affecting the Territory, recognises that it does have a role to play in the Territory's AML framework and understands that role.
- 12.8 Given the size and non-complex nature of the sector, the risk emanating from the characteristics of the sector itself has been rated as **Medium-High**.

### ***Products and Services***

- 12.9 The banking sector 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 integration stages of ML. 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>36</sup>. 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.
- 12.10 The products and services offered by these institutions are predominantly offered on a face-to-face basis and are relatively standard. Such services include:
- checking and savings accounts
  - credit cards

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<sup>36</sup> FATF Specific Risk Factors in Laundering the Proceeds of Corruption, 2012

- residential and commercial mortgages
- auto and personal loans
- time certificates of deposits
- wire transfers that support retail, commercial, wealth management, corporate and international transactions.

12.11 Foreign correspondent banking services are not provided by any bank in the Territory. However, with the exception of the domestically owned bank, each bank has relationships with overseas banks that provide the local entities with correspondent banking services. As such relationships are critical to the provision of many of the services offered by the local banking institutions, these institutions take their AML/CFT responsibilities very seriously to ensure that they can maintain their correspondent banking relationships with their overseas partners. The risk in relation to products and services was therefore rated as **Medium-High**.

#### ***Nature of Clientele (Customer Risk)***

12.12 The banking sector predominantly provides banking facilities to local residents and businesses. However, the sector does provide services to non-resident persons, either directly or through the provision of banking services to legal persons and legal arrangements whose BOs and other associated relevant persons non-resident within the Territory. The value of services provided to non-resident clients supports the idea that most services are provided to local residents and businesses. For instance, the total value of non-resident loans at the end of 2021 was reported at \$60.03 million, down from \$71.12 million at the end of 2019, or just over 4.8% of all total loans currently issued. However, non-resident deposits increased 7.1%, due to the addition of the most recent licensee, to account for 21.3% of all deposits.

12.13 Based on the products and services offered by the banking institutions within the Territory, including the level of non-resident loans and deposits, and data submitted in the mandatory annual AML return filings for all FIs, 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. These characteristics have resulted in the customer risk within the banking sector being assessed as **Medium-Low**.

#### ***Geographic Risk***

12.14 Cross-border transactions engaged in, based on the value of reported incoming and outgoing wire transfers primarily involve transfers to and from North America, Asia, the UK and the Caribbean.

12.15 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. 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. As such, the geographic risk exposure was assessed as **Medium-Low**.

### ***Delivery Channels***

12.16 Most institutions offer some form of online banking; however, a large proportion of business is still conducted face-to-face based on institutions' infrastructure and the products and services offered. Thus, the delivery channels used are primarily face-to-face, including in relation to the on-boarding of clients, although there has been a gradual shift to more non-face-to-face transactions as online services have becoming more readily available within the sector. The risk inherent to the existing delivery channels was therefore rated as **Medium-Low**.

### ***Susceptibility to Abuse***

12.17 Exposure to criminality comes from the universal nature of retail banking transactions, as well as the frequency and speed with which they are conducted. The cash intensive nature of the society and the demographic of the population within the VI also enhances the sector's exposure to potential criminality, which ultimately impacts on the level of risk.

12.18 Banks within the sector understand the need to file SARs and are confident they have the internal structures in place to detect suspicious activities and transactions. Banks filed a total of 499 SARs between 2020 and 2022. The most common reason for filing was unknown source of funds relating to cash deposits via ATM or other options and ATH mobile account-to-account transfers. This accounted for 29.14% of all bank SAR filings and reflects the cash intensive nature of the local economy. 24.19% was associated with suspected ML, while fraud related activity accounted for 18.67%, followed closely by general reporting of suspicious activity which accounted for 18.47% of all bank filings. Transactions identified in these 499 SARs were valued at \$34,155,279 and were related to internationally based business activities conducted primarily by legal persons operating outside of the Territory. While the banking sector is responsible for approximately 6.23% of the total SARs filed between 2020 and 2022, it accounted for 26.04% of non-VA-related SARs filed. The value of the related transactions accounts 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.

12.19 In the 2020 ML Risk Assessment, the FIA indicated that the banks have a good understanding of their risk, which is reflected in their ability to identify such transactions. However, these SARs were not always filed timely based on when transactions occur, which made 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. Since that time, the FIA has seen an improvement in the timeliness of SARs filings by the banking sector.

12.20 While the banking sector is responsible for 6.23% of all SARs filed there have been no criminal proceedings taken against any of the licensees themselves during the reporting period. However, there was one regulatory enforcement action taken in 2022 which resulted in the imposition of an administrative penalty of \$5000 for failing to notify the FSC of the termination of an employee in accordance with the AMLTFCOP.

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. However, this is difficult to determine as none of the entities within this sector have been subject to inspection within the reporting period. The risk emanating from this sector's susceptibility to abuse was therefore assessed as **Medium-Low**.

### **Conclusion**

- 12.21 The banking sector in the Virgin Islands although small in comparison to other jurisdictions, plays an integral part within the local financial services sector, with operations at both the domestic and international levels. Most customers are attained through face-to-face contact as majority of customers are resident within the Territory. A high percentage of transactions are conducted face-to-face, although there has been a gradual shift to more non-face-to-face transactions as online services have becoming more readily available through most of the entities within the sector. The products and services offered, however, are standard banking related products and services and are not of an overly complex nature. Conversely, the volume of transactions conducted is of a substantial nature in the context of the size of both the sector and the jurisdiction. In relation to training, 43% of the sector feel that they could benefit from additional AML training to be better able to fulfil their AML obligations.
- 12.22 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**.

## Financing Business

### Introduction

12.23 Financing Business, under the FMSA, includes the provision of a wide range of credit services including pay day advances, 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. Under the FMSA only FBs that operate physically in the VI are subject to authorisation and supervision.

### Summary of Risk

Sector Characteristics	Medium-Low
Products and Services	Medium-Low
Nature of Clientele (Customer Risk)	Low
Geographic Risk	Low
Delivery Channels	Low
Susceptibility to Abuse	Low
<b>Overall Risk</b>	<b>Low</b>

### ***Sector Characteristics***

12.24 There are currently three licensed FBs in the Territory, one of which was licensed in the latter part of 2022 as has not yet commenced operations. The other two licensees service around 800 clients annually, with approximately 420 transactions executed on an annual basis. The average value of these transactions is \$1.8 million. However, one FB is responsible for approximately 91% of the value of these transactions, while the other licensee is responsible for the remaining 9%.

12.25 FBs are subject to the AMLR and AMLTFCOP and must conduct relevant CDD on their clients. One of the existing FBs has been assigned a medium-low risk rating under the FSC's RBA to Supervision Framework, while the other two have been risk rated as medium-high. In relation to specific AML risk similar ratings have been applied. No AML/CFT compliance inspections have been carried out on this sector during the reporting period. Based on risk assigned by the supervisor, the supervisor primarily supervises the FB sector from a desk-based process as contained in the supervisor's risks-based framework. Based on its engagement, the supervisor considers this sector to have a satisfactory knowledge of its AML/CFT requirements. Feedback from the sector itself also indicated that participants consider the level of ML risk within the sector to be medium-low. Furthermore, the majority of participants felt that they had a good understanding of the ML risk affecting the Territory. The sector also recognised that it has a role to

play in the Territory's AML framework and feels that it has a good understanding of that role. Considering these factors, the risk associated with the sector characteristics of FBs is **Medium-Low**.

#### ***Products and Services***

12.26 The services provided are limited based on the particular entity. For example, one entity provides small, short-term loans to connected persons or payment plans for insurance premiums, a second entity provides only small loans, and the third entity provides specialist services of buying bank loans and taking steps to collect the outstanding payments. Given the nature of these services and the average value of the loans provided, the product and service risk within this sector has been rated as **Medium-Low**.

#### ***Nature of Clientele (Customer Risk)***

12.27 Services are offered to local residents on a face-to-face basis. These clients are in most cases connected to the FB, such as employees, which mitigates the exposure by the sector to misuse. Further, high-risk customers such as PEPs utilising these services are domestic in nature as there is no indication of any foreign PEPs utilising these services. The risk exposure based on the nature of clientele is therefore considered **Low**.

#### ***Geographic Risk***

12.28 Based on the demographics of the customer base, clients and services provided within this sector do not involve high-risk jurisdictions. The geographic ML risk stemming from this sector has been identified as **Low**.

#### ***Delivery Channels***

12.29 All financing business is conducted face to face and delivery channel are simple in nature. The risk for delivery channels has therefore been rated as **Low**.

#### ***Susceptibility to Abuse***

12.30 FBs understand the need to file SARs and have the internal structures in place to detect suspicious activities. However, for the period 2020 – 2022 no SARs were filed by FBs. Given the nature of the current licensees and the products and services offered, as well as the close connection of clientele this is not surprising. In addition, no onsite inspections were conducted on FBs during the reporting period. However, during the reporting period the FSC issued a public statement against a person for carrying on financing business without a licence and imposed a fine of \$5,000. There have been no criminal proceedings taken against any FBs during the reporting period. The risk emanating from the sector's susceptibility to abuse has therefore been rated as **Low**.

#### **Conclusion**

12.31 The threat of ML associated with financing business is mainly in the taking out of loans for the sole purpose of swiftly repaying them using the proceeds of crime while, in some instances, converting the loan proceeds into a tangible legitimate asset. However, given the size of the current FB sector, the nature of the clientele, and the number and average value of the recorded transactions, this is highly unlikely to be

an attractive means of facilitating ML within the Territory. Entities within this sector do feel, however, that there is some need for additional AML training.

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

## Money Services

### Introduction

- 12.33 MSBs in the VI are licenced and regulated under the FMSA and are legally obligated to adhere to the requirements set out in the AMLR and AMLTFCOP. 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 in 2009, only 2 money services licences have been issued and these entities are limited to providing money transfer services.
- 12.34 Under the FMSA, the Post Office, which is a department of GoVI, has been exempted from licensing. However, the Post Office is a relevant person for the purpose of the AMLR and would be required to comply with the requirements of the AMLR and AMLTFCOP. The Post Office does not offer money services business as at the time of this report.
- 12.35 The core markets for MSBs within the VI remain non-resident workers repatriating funds to their home countries and residents sending money abroad primarily for business and educational support purposes. Construction workers, labourers and low-income earners constitute the majority of MSB clients. Jurisdictions to which remittance are sent align with the size of the immigrant populations within the VI, and the main jurisdictions from which the labour force in the VI is sourced. All money services business within the Territory is conducted face to face. High risk customers and PEPs utilising these services are, therefore, resident persons but constitute a very small percentage of the customer base.

### Summary of Risk

Sector Characteristics	Medium-High
Products and Services	Medium-High
Nature of Clientele (Customer Risk)	Medium-Low
Geographic Risk	Medium-Low
Delivery Channels	Low
Susceptibility to Abuse	Medium-Low
<b>Overall Risk</b>	<b>Medium-Low</b>

### ***Sector Characteristics***

- 12.36 The level of economic activity within the MSB sector currently accounts for approximately 4.5% of economic activity within the wider financial services sector. Unsurprisingly, outward money transfers constitute the greatest number of transactions recorded, accounting annually for 90.18% of all

transactions and valued on average at approximately \$47.11 million per annum. This represents a 78.45% reduction in the value of outward transfers when compared to the 2015-2019 reporting period. The average value of outgoing transactions has, however, increased from \$288.00 to \$296.00. Incoming transfers average approximately \$6.71 million per annum or roughly 9.82%, up from 7.32%. Given the demographic composition of the Territory this imbalance between incoming and outgoing transfers is not unexpected.

12.37 The two licensed MSBs are part of large international money transfer organisations with operations throughout the wider Caribbean region and beyond. They currently only provide money transmission services, and this is done through two branches and four representative offices. The small number of the MSBs, coupled with the limited products and services offered reduce the ML vulnerabilities within this sector. However, the cash-intensive nature of the activities, and the size of the annual value of outgoing and incoming transactions are factors that may also impact the level of ML risk within the sector. Additionally, these entities are supported by their parent companies who are in jurisdictions that are subject to increased monitoring by the FATF, which may elevate the risk.

12.38 The supervisor has risk rated the entities within this sector as medium-low under its RBA to Supervision Framework and considers the sector to be largely knowledgeable of its AML/CFT requirements. However, in relation to specific ML risk both entities have been rated as medium-high risk. The entities within this sector have indicated that they have a fair to good understanding of the ML risk affecting the Territory but feel that the level of ML risk within the sector ranges between medium-low and medium-high. They do, however, recognise that they have a role to play in the Territory's AML framework and have a good understanding of that role.

12.39 During the reporting period an inspection was carried out on one MSB. The results of this inspection did not find any severe deficiencies in relation to client identification and verification measures or maintenance of BO information. However, as transactions tend to be one-off there is potentially a higher level of risk associated with CDD/ECDD measures as such verification is generally only conducted on high-risk customers or on transactions above the specified threshold amount. The level of risk mitigating procedures were also found to be adequate, as was compliance with the requirements of the AMLTFCOP. AML deficiencies identified during the compliance inspection process, however, indicate minor weaknesses in sanctions screening procedures, timeliness of SARs filings and identification of PEPs when executing initial transaction, however, systems in place were able to make the identification in subsequent transactions. Desk-based supervision of this sector did not identify any issues during the reporting period that warranted the taking of enhanced supervisory measures. Considering these factors, the risk associated with the sector characteristics of MSBs is **Medium-High**.

### ***Products and Services***

12.40 Currently, MSB activities are limited to money transmission services. This is not a complex product; however, it is cash-intensive and as a result, carries a high inherent risk, thus making the risk exposure for products and services high. In 2020 the GoVI instituted a 7% levy on all money transfer transactions. The result of which was a significant decline in the total value of outward transactions, however, there was a

2% increase in the value of incoming transactions. The number of outgoing transactions also fell by 4% although there was a slight increase in the value of individual outgoing transactions. This levy was reduced to 3.5% in late 2022. As such, there is insufficient data at this time to determine the full impact this fee reduction may have on the sector. However, the sector continued to record a decline in the number and value of transactions at the end of 2022.

- 12.41 The implementation of this levy coincided with the onset of the COVID-19 pandemic which may have compounded the negative impact on the volume and value of transactions executed during the reporting period. However, this has not had a material impact on the relevant risks. The product and service risk within this sector has been rated as **Medium-High**.

#### ***Nature of Clientele (Customer Risk)***

- 12.42 All money services business within the Territory is conducted face to face. MSB customers are generally natural persons as legal persons tend to utilise the banking system to carry out their financial transactions. MSBs mainly serve the expatriate community within the VI, although residents also engage the services primarily for personal business and educational support purposes. There is limited exposure to high-risk customer types, such as foreign PEPs, as PEPs utilising these services are all domestically resident persons. As noted above, expatriate construction workers, labourers and low-income earners constitute the majority of MSB clients. The demographics of the customer base and types are consistent with the current makeup of the labour force within the Territory. The risk exposure based on the nature of clientele is therefore considered **Medium-Low**.

#### ***Geographic Risk***

- 12.43 Expatriate workers make up the majority of the work force within the VI, as such there are customers that hail from countries deemed to be at higher risk for ML, which may elevate the risk within the sector. In the VI the top jurisdictions receiving outward transfers are the Dominican Republic, Jamaica, Guyana and St. Vincent and the Grenadines, which aligns with the size of these immigrant populations within the VI, and the main jurisdictions from which the labour force in the VI is sourced. Although the demographics of the expatriate population are consistent with the receiving countries for remittances, the geographic ML risk stemming from this sector has been identified as **Medium-Low** given the wide range of jurisdictions to which remittances are sent.

#### ***Delivery Channels***

- 12.44 All MSB business is conducted on a face-to-face basis, including the onboarding of customers. In addition, due to the face-to-face nature of the MSB sector there is no use of group entities in the delivery of services. Money transmission services are provided through two branches and four representative offices serving the main islands of Tortola and Virgin Gorda. The risk for delivery channels has therefore been rated as **Low**.

#### ***Susceptibility to Abuse***

- 12.45 Money transfer services are inherently considered to be of higher risk than other financial services business due to the cash intensive nature of the business, volume of transactions engaged in and the ease



in which the transfer of money can be facilitated between jurisdictions. These factors increase the threat of ML within this sector.

12.46 With regard to the reporting of suspicious activities, sector participants understand the need to file SARs and have the relevant structures in place to detect suspicious activities. The FIA received 4 SAR filings from MSBs between 2020 and 2022. Of the 4 SARs filed 33% were directly related to ML suspicions while the remainder of the reports covered a variety of other suspicious activities. SARs filed by MSBs accounted for 0.06% of all SARs filed between 2020 and 2022. The value of the transactions identified in the reported SARs totalled \$29,590, which was less than 1% of total outgoing MSB transactions, and less than 1% of the total value of all reported SARs.

12.47 The number of SARs filed indicates a drastic reduction from the 201 SARs filed between 2015 and 2019. However, at that time the greatest proportion of SARs were filed following the impact of Hurricanes Irma and Maria in 2017 during which time access to normal banking operations was limited. This led to a greater use of MSBs to execute financial transactions. This has since normalised. Making adjustments for 2017, the average number of annual SAR filings within the MSB sector was approximately 12. This is still three times more than recorded during the current reporting period. Given the inherent risk within the sector, the low number of SAR filings can be interpreted as the entities within the sector having strong CDD processes thereby reducing their exposure to potential ML threats, or conversely, raises the issue as to whether MSBs are sufficiently aware of the potential ML threats that emanate from within the sector and can properly identify related suspicious activity.

12.48 No enforcement actions were taken against MSBs during the reporting period. Additionally, there have been no criminal proceedings taken against any MSBs during the reporting period. The risk emanating from the sector's susceptibility to abuse has therefore been rated as **Medium-Low**.

### Conclusion

12.49 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.

12.50 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. Sector participants have, however, indicated that there is need for additional AML training within their organisations.

12.51 The vulnerabilities within the money services sector were assessed as **Medium-Low** while the controls were assessed as **Medium-High**. The result is that the money services sector has been assessed as having an ML risk level of **Medium-Low**.

## Insurance

### Introduction

12.52 Entities seeking to carry out insurance business in or from within the VI must be licensed under the Insurance Act, 2008. Applicants may apply for a licence in one of the classes listed in **Table 12.2** below.

Type of Licence	Scope of Business
<b>Domestic Insurers</b>	
Category A	Licensee must be a BVIBC and may carry on insurance business including domestic insurance business
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
<b>Captive Insurers</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
Category D	Licensee must be a BVIBC and may carry on reinsurance business including open market reinsurance business
Category E	Licensee must be a BVIBC and may underwrite related party business only
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
<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>Insurance Intermediaries</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

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 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
Loss Adjusters	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

**Table 12.2: Number of Insurance Business Licensees by Licence Type**

12.53 Overall, the level of economic activity within the insurance sector accounts for approximately 3.6% of economic activity within the wider financial services sector.

#### **Summary of Risk**

Sector Characteristics	Medium-High
Products and Services	Low
Nature of Clientele (Customer Risk)	Medium-Low
Geographic Risk	Medium-Low
Delivery Channels	Low
Susceptibility to Abuse	Low
<b>Overall Risk</b>	<b>Low</b>

#### ***Sector Characteristics***

12.54 The insurance sector in the VI consists of domestic and captive insurance companies, insurance managers, agents, brokers and loss adjusters. **Table 12.3** 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 2022.

Type of Licence	Number of Licensees (As at Dec 31 2022)
<b>Domestic Insurers</b>	<b>38</b>
Category A	4
Category B	34
<b>Captive Insurers</b>	<b>46</b>
Category C	45
Category D	0
Category E	1
Category F	0
<b>Insurance Managers</b>	<b>6</b>
<b>Insurance Intermediaries</b>	<b>14</b>
Insurance Agents	12
Insurance Brokers	2
<b>Loss Adjusters</b>	<b>3</b>
<b>Total</b>	<b>107</b>

**Table 12.3: Number of Insurance Business Licensees by Licence Type**

#### Domestic Insurers

12.55 Domestic insurers are licensed as either Category A or Category B insurers. Such licensees may be registered as either a BVIBC or a foreign company but must carry on insurance business in the Territory. US based foreign companies account for 35%, while European based companies account for 16%. The remaining 11% is made up of BVIBCs registered in the VI. Total value of premiums held by domestic insurers at the end of 2021 was \$168.88 million whilst claims totalled \$16.77 million. 95% the licensed domestic insurers have been rated as low or medium-low under the supervisor's RBA to Supervision Framework in relation to overall risk, while all have been rated as low or medium-low for specific ML risk. Reasons for elevated overall ratings in the remaining 5% (1 licensee at medium-high) were due to the licensee being considered a systemically important financial institution (SIFI), as insolvency, failure or distress of the licensee would have a significant impact due to the large size of its client base.

#### Captive Insurers

12.56 The majority of captive insurance licensees hold Category C licenses which require them to be incorporated as a BVIBC. This category of licence allows such insurers to carry on non-domestic insurance business, including non-open market reinsurance business. Most of the captive insurers are licensed primarily to provide re-insurance to parent companies or entities within the same group. US based captives account for 96% of the captive market while the remaining business is distributed across South America, Europe and the Caribbean. Most recent data as at the end of 2021 value the gross assets held by captives at \$1.22 billion. For that same period gross written premiums held by captives totalled \$383.96 million while total claims were reported at \$175.34 million. Given the nature and the way in which captive insurers operate they are internationally considered low risk institutions. The supervisor has risk rated 98% of the captive insurers within this sector as low or medium-low in relation to overall risk under its RBA to Supervision Framework, with 96% being rated as low or medium-low in relation to specific ML risk. The other 4% (2 entities) have been rated as medium-high. Reasons for the elevated ratings were due to

ongoing regulatory concerns based on the complex business structure, inherent risky nature of product offerings, regulatory breaches and complaints filed by policyholders.

#### Insurance Managers

12.57 Insurance managers provide management services to captive insurers and act as liaison between these captive insurers and the FSC. At the end of 2021 insurance managers had collected approximately \$962,000 in management fees. All of the licensed insurance managers are considered low risk overall, as well as in relation to their exposure to ML based on the supervisor's application of its RBA to Supervision Framework.

#### Intermediaries (Agents and Brokers)

12.58 Insurance agents and brokers licensed in the VI provide life and health, and property and casualty insurance on behalf of domestic insurers as well as investment related insurance. At the end of 2021 commission income for insurance agents totalled \$14.5 million. Of the 14 licensed agents and brokers thirteen, or 93%, have been risk rated as low or medium low under the supervisor's RBA to Supervision Framework with regard to overall risk as well as specific ML risk. The remaining agent has been rated as having a medium-high risk, in both categories. Its overall elevated risk is due to its [interconnectedness to the domestic insurer which is considered a SIFI](#).

12.59 Between 2020 and 2022 no inspections were conducted on insurance licensees. The supervisor has indicated though, that it finds the level of risk mitigating procedures within the sector to be adequate and no evidence to the contrary was found during their desk-based assessments. Sector participants feel they have a good understanding of the ML risks affecting the Territory and consider the level of ML risk within the sector to be low to medium-low. They also recognise that they have a role to play in the Territory's AML framework and have a good understanding of that role. Considering these factors, the risk associated with the sector characteristics of insurance business is **Medium-High**.

#### ***Products and Services***

12.60 A large portfolio of domestic insurance business in the VI relates to the provision of life and health insurance (50%), and property and casualty insurance business (45%), which applies mainly in relation to persons and property in the Territory. The remaining offerings consist of composite life and health and property coverage.

12.61 While captive insurers provide similar products and services, the breakdown of the type of business is reflectively converse to that of the domestic market with property and casualty insurance making up 89% of the captive business and life and health insurance constituting 11%.

12.62 The product and service risk within this sector has been rated as **Low**.

### ***Nature of Clientele (Customer Risk)***

#### **Domestic Insurers**

12.63 The client base of domestic insurers consists of the insurance intermediaries who represent the foreign based domestic insurers, as well as individual and corporate clients who may engage with the domestic insurer directly when seeking either life and health insurance or property and casualty insurance.

#### **Captive Insurers**

12.64 Clients served by captive insurers are generally corporate in nature and consist of parent companies of the captive or other entities within the same corporate group for which they provide re-insurance coverage. PEPs utilising these services predominantly originate from the US, Hong Kong and China/Macau.

#### **Insurance Managers**

12.65 Insurance managers' clients are captive insurance providers and as such they do not provide services to individual clients. Given the make-up of the captive insurance market there is minimal exposure to high-risk customers.

#### **Insurance Intermediaries**

12.66 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 and consists of individual and corporate clients seeking either life and health insurance or property and casualty insurance. The nature of the insurance business in the Virgin Islands is, therefore, completely localised. As such, PEPs utilising these services are local PEPs consisting of government officials and other individuals holding high level positions in statutory corporations, along with their close associates and family members.

12.67 The risk exposure based on the nature of clientele is therefore considered **Medium-Low**.

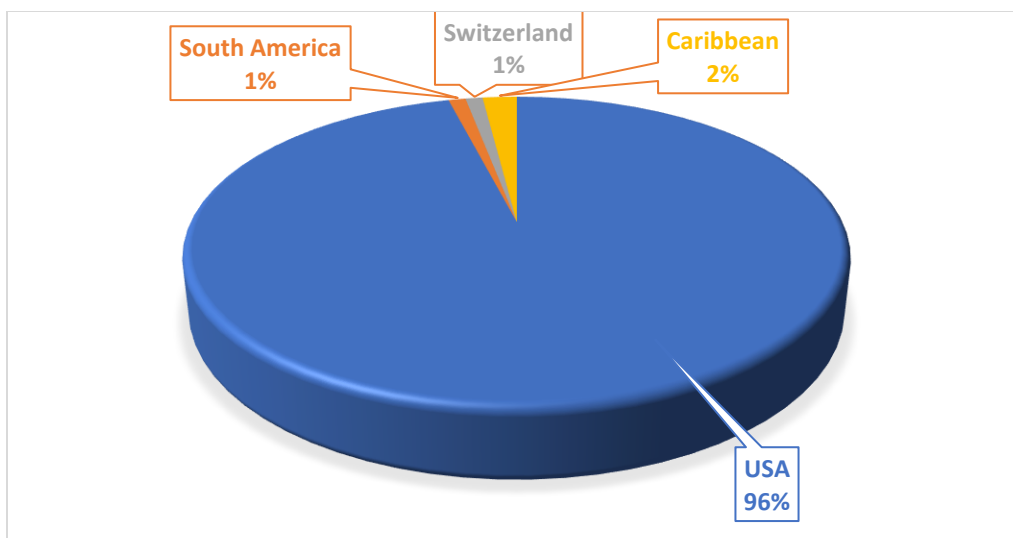
### ***Geographic Risk***

#### **Domestic Insurers and Insurance Intermediaries**

12.68 Given the nature of domestic insurance business and the services provided by insurance intermediaries there is little geographical risk involved in this sub-sector of insurance business as such business is only provided to clients located within the Territory.

#### **Captive Insurers and Insurance Managers**

12.69 With regard to captive insurance business, 96% of clients for captive insurers and insurance managers originate in the US, with the remaining 4% spread across South America, Europe and the Caribbean (see **Chart 12.2** below). Based on the geographical location of these clients and the nature of the products and services provided there is little exposure to geographical risk within these sub-sectors of the insurance sector.



**Chart 12.2: Client Base – Insurance Managers and Captive Insurers**

12.70 The geographic ML risk stemming from the insurance sector has been identified as **Medium-Low**.

#### ***Delivery Channels***

##### ***Domestic Insurers and Insurance Intermediaries***

12.71 Insurance business within the VI is carried out on a face-to-face basis. Business is conducted either at the insurer's office or at the office of the insurance agent that represents a foreign insurer. This includes the payment of premiums and purchasing and renewal of policies.

##### ***Captive Insurers and Insurance Managers***

12.72 Data indicates that there is limited non-face-to-face business conducted by captive insurers and insurance managers. Insurance managers engage in new business with their related captives on a face-to-face basis. However, there is some level of automation in relation to the payment of premiums and renewal of policies.

12.73 The risk for delivery channels has therefore been rated as **Low**.

#### ***Susceptibility to Abuse***

12.74 Sector participants understand the need to file SARs and have the internal structures in place to detect suspicious activities. For the period 2020 to 2022, 23 SARs were filed by entities within the insurance sector. The majority (24%) were in relation to adverse media claims, while 16% identified matters of possible ML. These SARs accounted for less than 1% (0.32) of the total SARs filed during the reporting period. There were no values recorded in relation to any of these reported transactions.

12.75 A total of \$2,000 was imposed in administrative penalties stemming from one penalty action taken in 2022 surrounding failure to seek prior approval to transfer its assets. This action, however, was not due to any non-compliance with AML/CFT related laws, policies or procedures. In addition, two warning

letters, and one public statement were issued between 2021 and 2022. Further, 3 licences were revoked during the reporting period. 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.

12.76 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. Only 8% of all enforcement actions recorded during the reporting period were attributed to the insurance sector and none were in relation to AML breaches. In addition, the value of the imposed administrative penalties accounted for less than 1% (0.43) of the total value of such penalties. The vulnerabilities within this sector, therefore, appear to be relatively low.

12.77 The risk emanating from the sector's susceptibility to abuse has therefore been rated as **Low**.

### **Conclusion**

12.78 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 products and services offered through domestic insurance companies and intermediaries are limited to the relatively vanilla type offerings noted above and the captive insurance sector is small and inherently low risk. Most business is conducted through face-to-face contact and cash transactions are limited to the payment of premiums by some customers. 27% of the sector, however, feels that there is a need for additional training within their organisations.

12.79 Overall, the vulnerabilities within the insurance sector were assessed as Low, while the mitigating factors were identified to be Medium-High. The insurance sector has been assessed as having an ML risk level of **Low**.



## Trust and Corporate Service Providers

### Introduction

12.80 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.

12.81 Entities seeking to operate under the BTCA or CMA may apply for a licence in one of the classes listed in **Table 12.4** below. The table also identifies the number of entities holding licenses in each licence class at the end of 2022.

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).	56
Class II Trust Licence	Trust business only. May not act as RA.	26
Class III Licence	Company management business only. May act as RA.	32
Restricted Class II Trust Licence	Trust business only. Restricted to a maximum 50 trusts under administration. May not act as RA	51
Restricted Class III Licence	Can only provide directors and other officers and nominee shareholders for BVIBCs. May not act as RA.	106
Company Management	Company Management business only (ownership restriction). May act as RA.	16
<b>Total</b>		<b>287</b>

**Table 12.4: Number of TCSP Licensees by Licence Type**

12.82 The TCSP sector is the primary gateway to the Virgin Islands' international financial services sector. 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 VI 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.

12.83 As gatekeepers, TCSPs are obligated to know their clients and understand the businesses they engage in.

### **Summary of Risk**

	<b>CSPs</b>	<b>TSPs</b>	<b>Total Sector</b>
Sector Characteristics	High	Medium-High	High
Products and Services	High	Medium-High	Medium-High
Nature of Clientele (Customer Risk)	High	High	High
Geographic Risk	High	High	High
Delivery Channels	High	Medium-High	High
Susceptibility to Abuse	High	Medium-High	High
<b>Overall Risk</b>	<b>High</b>	<b>Medium-High</b>	<b>High</b>

### ***Sector Characteristics***

12.84 In the VI, TCSPs fall into two general categories:

- Corporate Services Providers – these are TCSPs that engage primarily in company management and administration services including the provision of nominee shareholder and directorship services; and
- Trust Services Providers – these are TCSPs that engage in the providing of trustee and other related services to trusts.

12.85 One hundred and seventy-six (176) TCSPs that operate in the VI are part of larger groups of companies operating either in other international finance centres where they are licensed or authorised, while 22 are part of larger groups operating locally. Thirty-two (32) TCSPs are also affiliated with legal or accounting firms operating within the Territory. Of the 287 licensed TCSPs approximately 57 are independent operators.

### **Corporate Services Providers**

12.86 CSPs that are categorised as RAs are the only entities permitted to incorporate or register BVIBCs and limited partnerships. At the end of 2022, 105 or 36.59% of the 287 TCSPs licensed in the Territory had the ability to provide company management services. This included provision of RA services to 349,518 BVIBCs who are currently active on the Companies Register (i.e., in good standing and in compliance with the BVIBCA), 1906 active limited partnerships and 55 active foreign companies.

12.87 CSPs may also provide services such as directorship services and nominee shareholder services. A larger majority, 73%, of all TCSPs have the ability to offer corporate director services. Further, the same number, 73%, of all TCSPs have the ability to provide nominee shareholder services.

## AML/CFT Obligations

- 12.88 All legal persons incorporated or registered in the VI are required to adhere to the provisions of the PCCA, AMLR and AMLTFCOP. CDD requirements apply 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, circumstances (e.g. source of funds/wealth etc.), and intended nature of the business relationship as appropriate. 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>37</sup>
- 12.89 Further, all RAs are required to update CDD information once every year in respect of high-risk business relationships and on a risk sensitive basis in respect of low-risk business relationships. This places the onus on the RA to determine, based on their own internal procedures, when CDD information for low-risk customers should be updated.
- 12.90 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>38</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>39</sup> Accordingly, so long as the business relationship continues, the RA has a legal obligation to periodically update the CDD information.

## **Trust Services Providers**

- 12.91 At the end of 2022, 133 (or 46%) of the 287 licensed TCSPs were licensed to provide trust related services, with 77 licensed exclusively to provide trust services. The latter accounts for 27% of all licensed TCSPs. At the end of 2021 there were 6,227 express trusts under administration by TSPs valued at approximately \$183.66 billion. In addition, TSPs held 1,540 trusts under the Virgin Islands Special Trusts Act, 2003.

## Trust Services Providers Exemptions - PTCs

- 12.92 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. At the end of 2021 there were 1,130 private trust companies established in the VI.
- 12.93 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.

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<sup>37</sup> Regulation 10 (1) of the Anti-money Laundering Regulations, 2008.

<sup>38</sup> Section 21 (3) of the Anti-money Laundering and Terrorist Financing Code of Practice, 2008.

<sup>39</sup> A fee of \$25.00 is levied for resigning as RA of a company.

12.94 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.

12.95 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.

12.96 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. 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.

12.97 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.

12.98 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.

12.99 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. 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. The FSC may take enforcement action against the RA, as well as the PTC, including revoking the licence of the trust service provider 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.

12.100 PTCs 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. However, the FSC considers PTCs to pose a lower level of risk as they can only be administered by a Class I licensee. These licensees are responsible for conducting all relevant CDD and maintaining CDD and BO information in accordance with AML/CFT requirements. The FSC’s Risk Assessment Framework used to determine the overall risk of

each licensed TCSP includes the assessment of PTCs under their remit. In addition, monitoring of these products is done as part of the onsite inspection process of the RA by the FSC.

12.101 Of the 287 licensed TCSPs, 13% have been risk rated overall as low and 82% as medium low under the supervisor's RBA to Supervision Framework. The remaining 5% have been rated as medium-high. With regard to specific ML risk, 34% of licensees have been rated as low, 64% as medium-low and 2% as medium-high. 96% of the TCSP sector considers itself to have a good understanding of the ML risk affecting the Territory. The other 4% considers its understanding to be fair. Participants do agree, however, that the sector has a role to play in the Territory's AML framework with 96% indicating that they understand that role. Further, 60% of TCSPs consider the level of ML risk within the sector to be medium-high or high, while 40% consider the ML risk to be low or medium-low. The difference in opinion may be due to the products and services provided along with the level of client and geographical risk exposure.

12.102 Between 2020 and 2022 five (5) full compliance and 26 thematic inspections focused on AML related matters were conducted as highlighted in **Table 12.5** below.

TCSP Inspection Types	2020	2021	2022	Total
Full	1	2	2	5
Thematic	1	11	14	26
<b>Total</b>	<b>2</b>	<b>13</b>	<b>16</b>	<b>31</b>

**Table 12.5: Number of Compliance Inspections Carried Out in the TCSP Sector: 2021-2022**

12.103 This number appears low given the number of licensees within this sector; however, **Table 12.6** below reflects that the TCSPs inspected from 2020- 2022 provide services to 243,085 active companies, which represents 70% of the active companies on the companies register. Further, it should be noted that the reduction in the number of inspections carried out in 2020 was as a result of the global COVID-19 pandemic. However, the supervisor indicated that during this period it increased its desk-based monitoring and engaged in constant dialogue with the sector.

Year	Fiduciary (No. of Active)- Full Scope Inspections	Fiduciary (No. of Active Companies)- Thematic Inspections	Total (No of Active Companies- All Fiduciary Inspections)
2022	116,877	46,220	163,097
2021	16,852	53,875	70,727
2020	-	9,261	9,261
<b>Total</b>	<b>133,729</b>	<b>109,356</b>	<b>243,085</b>

**Table 12.6: Number of BVIBCs Covered by TCSPs Inspections**

12.104 The general AML/CFT deficiencies identified by the FSC's compliance inspection process centred on matters of client risk assessment and risk management, compliance with CDD and ECDD measures, internal documentation and reporting of SARs, sanctions screening procedures, maintenance of

transaction records and introduced business. Desk-based supervision of this sector, however, did not identify any issues that required the taking of enhanced supervisory measures. Considering these factors, the risk associated with the sector characteristics of TCSPs is **High**.

### ***Products and Services***

- 12.105 TCSPs offer a variety of services which include company administration, trustee and protector services, and provision of corporate director and secretary and nominee shareholder services. Other services offered include accounting services, ship registration, authorised signatory for bank accounts and assistance with opening bank accounts.

### ***Corporate Services Providers***

- 12.106 **Company Management and Administration** –These services may include RA and/or RO services as well as accounting services, assisting in the establishment of bank accounts and providing authorised signatories for bank accounts. The level of risk involved in the provision of company management services varies depending on the type of services offered and the clients to which these services are offered. Of all licensed TCSPs, 36% provide company management and administration services as RAs.
- 12.107 **Directorship Services** –These services allow the TCSP to act as a director of the underlying BVIBC client with the authority to exercise all the powers conferred to a director by the relevant company. Where a TCSP acts as RA and also provides both RO services and other additional services such as directorships and secretarial services they tend to have a better understanding of their clients’ business and can more easily identify level of risk, which increases the effectiveness of risk mitigation measures. 73% of all TCSPs have the ability of offer directorship services.
- 12.108 **Nominee Shareholders** – Nominee shareholders may include natural or legal persons. Services involve holding shares for the underlying BVIBC client. Provision of such services calls for a level of understanding of the ownership structure and the client’s business activities. This leads to better understanding of the level of risk, which increases the effectiveness of risk mitigation measures. 73% of all TCSPs have the ability to provide nominee shareholder services.

### ***Trust Services Providers***

- 12.109 **Trustee Services** –The provision of trustee services by TCSPs varies in the level of risk involved, based on factors such as the source of assets for, and intended purpose of, the trust. Family type trusts have lower inherent risks as they are not generally complex in nature and the source of funds, and the beneficiaries of the funds are easily identifiable. Trusts used for financing or investment purposes are generally considered a higher risk as their source of funds are typically more complex and diverse.
- 12.110 Given the broad range of products and services provided by TCSPs, particularly with regard to corporate directorships and nominee shareholders services, the product and service risk within this sector has been rated as **Medium-High**.

### ***Nature of Clientele (Customer Risk)***

- 12.111 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. A small portion of the TCSPs business clientele includes other financial institutions, which would require licensing and regulation by the FSC. For example, TCSPs provide RA/RO services to licensed investment business entities, registered mutual funds, banks, insurance companies, financing and money services businesses and other TCSPs. This would result in a reduction of the client risk for those TCSPs. However, given the volume of companies for which services are provided the vast majority of clients are non-resident legal persons and legal arrangements whose BOs and other associated relevant persons are non-resident within the Territory.
- 12.112 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. At the end of 2021, TCSPs reported providing products and services to a total of 14,870 PEPs. The largest percentage (51.9%) of PEPs utilising TCSPs services reside in Hong Kong, followed by China (12.25%) and Singapore (3.61%). The remaining emanate from a total of 145 countries across the globe.
- 12.113 The risk exposure based on the nature of clientele is therefore considered **High**.

### ***Geographic Risk***

- 12.114 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. 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. Given these demographics it is fair to say that there is a higher probability of customers emanating from high-risk jurisdictions within the TCSP sector than any of the other financial services sectors.
- 12.115 The geographic ML risk stemming from the TCSP sector has been identified as **High**.

### ***Delivery Channels***

- 12.116 The level of non-face-to-face business within the TCSP sector is high as many TCSPs rely on third party introductions when taking on clients and executing transactions. In total, licensed TCSPs engage over 8,000 third party introducers. Most of these introducers are in the same group as a TCSP or emanate from jurisdictions not considered to be high-risk. 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. Only 24.46% of TCSPs conduct more than 50% of their business on a face-to-face basis. This includes the onboarding of new clients. Ongoing communication with clients through established referral contacts (e.g., lawyers, accountants and other advisors of the client) is common by TCSPs. E-mail, telephone and online communication through virtual meeting platforms have become more commonly used than in-person meetings. Further, cash transactions are virtually non-existent across the sector. Most payments are made via international wires

or drafts, and these are processed via a regulated financial intermediary. This reduces the risk inherent in this sector.

12.117 The risk for delivery channels has therefore been rated as **High**.

### ***Susceptibility to Abuse***

12.118 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.

12.119 As with all FIs, TCSPs are also obligated to report any unusual or suspicious activities of their clients to mitigate any threats that these activities may pose. The sector had a good understanding of the need to file SARs and have the relevant structures in place to detect suspicious activities and transactions. In the VI, TCSPs are responsible for filing the majority of SARs received by the FIA. Between 2020 and 2022 TCSPs filed 1,125 SARs. This is roughly 15.6% of total SARs received and 65.26% of the total non-VA related SARs received by the FIA. The transactions identified in these SARs were valued at \$505.8 million and accounted for 2.83% 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, ML and sanctions related matters, in addition to failing to provide due diligence information.

12.120 While no local criminal proceedings have been initiated against any licensee within the sector during the reporting period, enforcement actions taken against TCSPs accounted for 13.4% of all enforcement actions taken by the supervisor. This is a stark reduction from the 65.13% reported in the 2020 report. These actions resulted in the imposition of \$297,000 in administrative penalties, \$255,000 of which were related to AML breaches as a result of deficiencies in, compliance with CDD and ECDD measures, testing third party relationships, conducting risk assessments, and maintain records and underlying documentation. The value of the imposed administrative penalties accounted for 60% of the total value of such penalties.

12.121 The risk emanating from the sector's susceptibility to abuse has therefore been rated as **High**.

### **Conclusion**

12.122 The broad range of products and services provided by TCSPs, particularly with regard to corporate directorships and nominee shareholders services enhances the susceptibility of this sector to misuse, as does the large number of PEPs and other high-risk individuals who utilise products and services offered by TCSPs. In addition, due to the global nature of the sectors clientele the risk of legal persons and legal arrangements emanating from high-risk jurisdictions is elevated. Further, 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.

12.123 TCSPs have a large end-user clientele, but also rely heavily on third-party introductions, and many of the transactions executed are done on a non-face-to-face basis. This also 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. Nonetheless, 48% of the sector considers it could benefit from additional AML training within individual organisations.

12.124 The vulnerabilities within the TCSP sector were assessed as **High**, while the mitigating factors were identified to be **Medium-Low**. Overall, the TCSP sector has been assessed as having an ML risk level of **High**.

## Investment Business

### Introduction

12.125 Entities seeking to provide investment business (IB) in or from within the VI must be licensed by the FSC and are subject to the Securities and Investment Business Act, 2010 and the relevant regulations emanating from this. Licenses may be granted in one or more of the categories listed in **Table 12.7** below. The table also identifies the number of entities holding licenses in each licence class at the end of 2022. An approval regime is also maintained for approved investment managers and authorised representatives. At the end of 2022 there were 653 approved investment managers and 53 authorised representatives operating in or from within the Territory. Assets under management in the approved managers regime amounted to USD\$33.7 billion at end of 2021.

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>21</li> <li>24</li> </ul>
2		<ul style="list-style-type: none"> <li>Arranging Deals in Investments</li> </ul>	<ul style="list-style-type: none"> <li>16</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>6</li> <li>228</li> <li>4</li> <li>1</li> <li>19</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>18</li> <li>5</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>15</li> <li>49</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>17</li> <li>39</li> </ul>
7		<ul style="list-style-type: none"> <li>Operating an Investment Exchange</li> </ul>	<ul style="list-style-type: none"> <li>1</li> </ul>

**Table 12.7: Number of Investment Business Licensees by Licence Type**

12.126 Investment management and advisory services make up the majority of the investment business sector. Equity investments and shares made 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.

12.127 In December 2021, investment funds registered in the Virgin Islands had a total net asset value of approximately US\$298 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 in the VI.

### **Summary of Risk**

	<b>Asset &amp; Investment Managers</b>	<b>Brokers/Dealers</b>	<b>Asset Administrators</b>	<b>Custodians</b>	<b>Exchanges</b>	<b>Overall Sector</b>
Sector Characteristics	High	Medium-High	Medium-Low	Medium-Low	Medium-High	Medium-High
Products and Services	Medium-High	Medium-High	Medium-Low	Medium-Low	Medium-High	Medium-High
Nature of Clientele (Customer Risk)	Medium-High	High	Medium-Low	Medium-High	High	Medium-High
Geographic Risk	Medium-High	High	Medium-Low	Medium-High	Medium-High	Medium-High
Delivery Channels	Medium-High	High	Medium-Low	Medium-Low	High	Medium-High
Susceptibility to Abuse	Medium-High	Medium-High	Medium-Low	Low	High	Medium-High
<b>Overall Risk</b>	<b>Medium-High</b>	<b>Medium-High</b>	<b>Medium-Low</b>	<b>Medium-Low</b>	<b>Medium-High</b>	<b>Medium-High</b>

### ***Sector Characteristics***

12.128 In the VI, the investment business sector includes six general categories:

- Investment fund vehicles
- Asset and investment managers and advisers
- Brokers/Dealers
- Asset and investment administrators
- Custodians
- Investment Exchanges

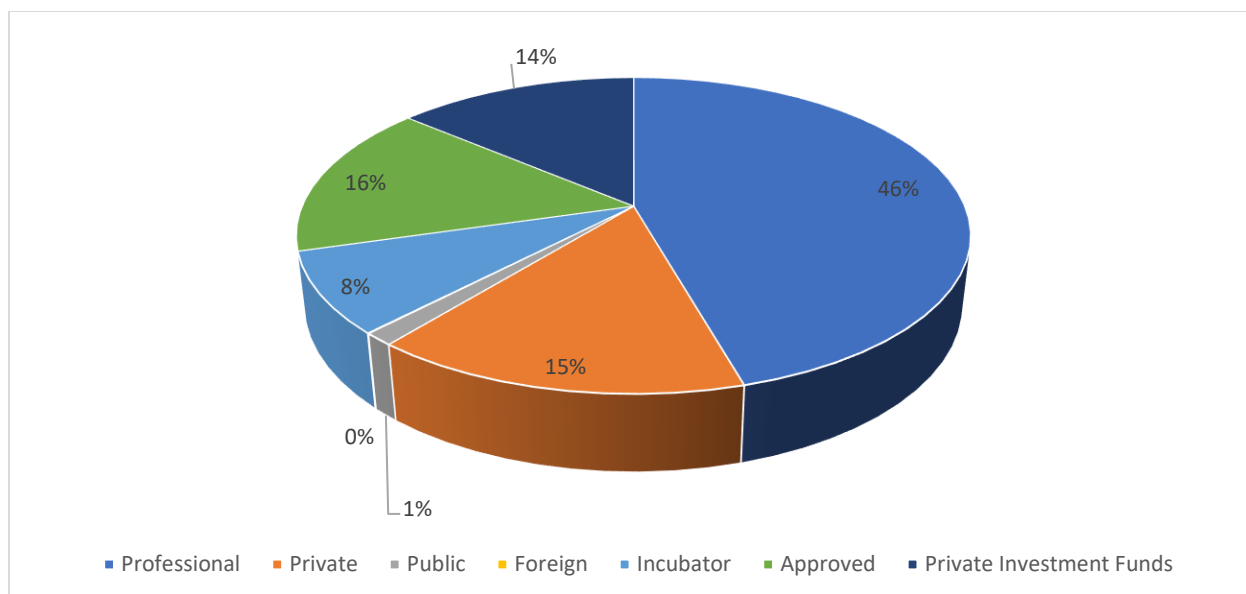
12.129 The transactions involving this sector overall are significantly large, both in terms of number of transactions and aggregate size of those transactions, with clientele geographically dispersed worldwide and engaging in cross-border transactions. There is a rather small group of licensees that provides custody services which is minimal and not consequential, given the limited number of transactions they execute.

### ***Investment Fund Vehicles***

12.130 The scope of regulation of investment fund vehicles 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 either largely institutional investors, or investors with a close personal, business, professional or family connection;
- c) Private Investment Funds: these are similar to private funds, but do not have the right to redemption and are therefore considered closed-ended;
- d) Public Funds: retail products subject to a stringent regulatory regime;
- e) 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;
- f) 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;
- g) 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.

12.131 At the end of 2022 there were 1,884 registered investment funds, consisting of 859 professional, 288 private, 24 public, and 1 foreign fund, as well as 156 incubator funds, 296 approved funds and 260 private investment (close ended) funds as outlined in **Chart 12.3** below. Less than 1% of funds are sourced from domestic investors.



**Chart 12.3: Number of Registered Investment Funds as at 31 December 2022 as Percentage of Total Registered Funds**

### ***Asset and Investment Managers and Advisers***

12.132 IB licenses in this category generally provide fund management, fund advisory and asset management services. This category of IB licensee represents 60.69% of all IB licensees.

12.133 In addition to IB licensees, Approved Investment Managers 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.

### ***Broker Dealers***

12.134 IB licenses in this category generally act as market makers, broker-dealers and securities arrangers. This category of IB licensee represents 13.17% of all IB licensees.

### ***Asset and Investment Administrators***

12.135 IB licenses in this category generally provide administration services primarily to investment vehicles. Such services would include registrar and transfer services, signatory to bank accounts and provision of services related to the investment fund's compliance with AML/CFT legislation. Such services include the provision of MLRO services and client due diligence. This category of IB licensee represents 12.10% of all IB licensees.

### ***Custodians***

- 12.136 For IB licensees that act as custodians, most provide custody services only to persons to whom they also provide asset management or brokerage services. Custody services are generally provided to institutional investors or mutual funds who understand the risk posed. This category of IB licensee represents 13.82% of all IB licensees.

### ***Investment Exchanges***

- 12.137 Since SIBA was enacted only one investment exchange has been authorised. This exchange was approved in 2023 and is effectively a VASP as it provides services in relation to derivatives for VA. At the time of writing of this report this exchange had yet to commence business.

### ***Summary***

- 12.138 Of the 275 investment businesses licensed at the end of 2022, which account for 463 licences<sup>40</sup>, 26.8% have been risk rated as low, 68.5% as medium-low, 4.3% as medium-high, and 0.4% as high risk under the supervisor's RBA to Supervision Framework as well as in relation to specific ML risk. Within the sector itself, 85% of participants feel they have a good understanding of the ML risks affecting the Territory. However, 62% of sector participants consider the level of ML risk within the sector to be low or medium-low, while 37% consider it to be medium-high or high. Nonetheless, there is a general appreciation for the role the sector has to play in the Territory's AML framework; however, 16% of entities within the sector feel their level of understanding of that role is poor to fair.
- 12.139 Between 2020 and 2022, 13 compliance inspections focused on AML related matters were carried out in this sector. The focus of these inspections centred around licensees' duty to conduct client risk assessments, the requirement to update CDD information and perform ECDD, PEPs, implementation of sanction screening procedures and SARs. These inspections found significant deficiencies in complying with the requirements for updating CDD information and performing ECDD. Other, less significant deficiencies were identified in relation to internal identification and reporting of SARs and application of sanctions screening procedures. The inspected entities, however, were found to have a high level of compliance in relation to conducting client risk assessments. During the reporting period desk-based supervision of this sector required the taking of enhanced supervisory measures on seven (7) licensees due to the inherent risk of their business operations given the complexity of their offerings and market volatility, as well as the number and nature of investor complaints received. The regulator is of the opinion that the licensees within this sector have an adequate understanding of their AML/CFT obligations.
- 12.140 When taking all factors into account, the risk associated with the sector characteristics of IB licensees is **Medium-High**.

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<sup>40</sup> One IB licensee may hold multiple licences covering different categories of licences

### ***Products and Services***

- 12.141 The Territory's investment business sector is well developed and offers a sophisticated range of products and services. These include FOREX, cryptocurrencies, commodities, bonds, equities, fund administration services, insurance products, custodial services, mutual funds, segregated portfolios, and closed ended funds.
- 12.142 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. 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.
- 12.143 The product and service risk within this sector has been rated as **Medium-High** given the broad range of products and services available.

### ***Nature of Clientele (Customer Risk)***

- 12.144 The Investment Business sector caters 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. Broker-dealers as a subsector in investment business have a significant number of clients from dispersed geographical regions, a large number of which are retail clients with a moderate amount being institutional clients. The size of transactions for broker-dealers can be small since their clientele includes a significant number of retail clients. The size of such transactions is distinctly different when compared to clients of asset managers and administrators, which are predominantly high net worth and experienced investors who are considered institutional or professional investors.
- 12.145 The inherent vulnerabilities from these entities therefore lies in the clientele and the worldwide nature of the business reach. Clients are often considered to be at an elevated risk for ML, particularly those identified as PEPs. The risk exposure based on the nature of clientele is therefore considered to be **Medium-High**.

### ***Geographic Risk***

- 12.146 Due to the nature of investment business, most service providers reside outside the VI and are geographically dispersed, some in high-risk jurisdictions, which in itself provides a high level of inherent risk. 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.
- 12.147 As with the nature of clientele, the IB sector has significant exposure to geographic risk on several levels. First, the assets held by these entities are not held with financial institutions in the VI and are widely

dispersed geographically including in some high-risk jurisdictions. This is not surprising given the entities profiles. Second, and primarily related to broker dealers, the activities are undertaken, or services are offered to individuals in a significant number of jurisdictions, which increases the risk. For other IB types such as asset management and administration the geographic risk exposure lies more so in where the investments are made than with the clientele.

12.148 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.

12.149 The geographic risk within the IB sector has been identified as **Medium-High**.

#### ***Delivery Channels***

12.150 Overall, across the board in the IB sector most transactions are conducted on a non-face to face basis. This is generally expected given the nature of the business and the technological means by which many of these entities engage in their operations. This is especially true for broker-dealers. These entities operate online platforms for trading which can be accessed worldwide. CDD and other measures are fully electronic. As such, 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. Cash transactions are virtually non-existent across the sector. Most payments are made via international wires or drafts, and these are processed via a regulated financial intermediary. This reduces the risk inherent in this sector.

12.151 The risk associated with delivery channels within this sector has been rated as **Medium-High**.

#### ***Susceptibility to Abuse***

12.152 The exposure of asset managers and advisers is mostly through the investment fund vehicles for which they act, primarily where 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. The location of investments and investors in higher risk jurisdictions and the non-face to face nature of some investment channels also elevates the risk.

12.153 For broker-dealers, the large number of clients, that fact that they operate in high-risk jurisdictions and their business being primarily non-face-to-face increases the risk of them being used for criminal purposes. The use of technological platforms which allows for swift and seamless movement of funds



increase the attractiveness of broker-dealers to the criminal environment. Similar risk in terms of non-face-to-face transactions applies for the area of asset management. For IB licensees that act as custodians, most of these custodians provide custody services only to persons to whom they also provide asset management or brokerage services. Custody services are generally provided to institutional investors who understand the risk posed. Investment administration is less attractive for criminal purposes.

- 12.154 Within the sector 91% of the sector understands the need to file SARs, however, only 87% feel that they have the relevant internal structures in place to detect suspicious activities and transactions. Suspicious activity reporting in the sector is low.
- 12.155 Between 2020 and 2022 only 2 SARs were filed by investment business licensees, relating to potential ML, fraud, failure to provide due diligence information and other suspicious activity. This accounted for a mere 0.03% of the total SARs filed for that period. Such suspicious activity filing is not consistent with the inherent risk posed. In addition, there have been no local criminal proceedings initiated against any licensee within the sector. Supervisors and LEAs should take mitigating measures in this regard.
- 12.156 As a result of inspections and other desk-based monitoring, during the period 2020-2022 a total of \$165,000 was imposed in penalties based on 8 administrative penalty notices issued for carrying on unauthorised investment business services without an appropriate licence. While none of the administrative penalties imposed related to any AML-related breaches, 5 warning letters were issued between 2020 and 2021 based on licensees' non-compliance with AML laws, policies and procedures.
- 12.157 The risk emanating from the sector's susceptibility to abuse has therefore been rated as **Medium-High**.

### **Conclusion**

- 12.158 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.
- 12.159 Products and services offered through this sector are varied with large transaction volumes. The nature of investment business, such as investment management, broker/dealer, custody and fund administration, can involve the movement of large sums of money across multiple borders. The volume of cross-border transactions presents ML risks, given that persons who may seek to facilitate ML may use these entities to move monies through the financial system. Further, a significant amount of business is conducted through non-face-to-face contact and cash transactions are rare.
- 12.160 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. 42% of the sector have indicated that there is a need for additional AML training within their individual organisations. Further, results of compliance inspections and desk-

based monitoring indicate that there is room for improvement in the sector's execution of its AML obligations.

12.161 The vulnerabilities within the investment sector have been assessed as **Medium-High**, while the mitigating controls have been assessed as **Medium-Low**. This has resulted in the Investment Business sector being assessed as having an ML risk level of **Medium-High**.

## Insolvency Services

### Introduction

- 12.162 In order to accept an appointment as an administrator, administrative receiver, interim supervisor, supervisor, provisional liquidator, liquidator (other than in a solvent liquidation) or bankruptcy trustee an IP must be licensed, as provided for under the Insolvency Act, 2003. The Insolvency Act also makes provision for overseas IPs to be appointed jointly with a VI licensed IP in instances where such an application is submitted.
- 12.163 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 in accordance with the AMLR and AMLTFCOP.
- 12.164 Between 2020 and 2022, 248 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.

### Summary of Risk

Sector Characteristics	Medium-Low
Products and Services	Low
Nature of Clientele (Customer Risk)	Medium-Low
Geographic Risk	Medium-Low
Delivery Channels	Low
Susceptibility to Abuse	Low
<b>Overall Risk</b>	<b>Low</b>

### ***Sector Characteristics***

- 12.165 IPs comprise 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.
- 12.166 **Table 12.8** below outlines the number of licensed IPs in the VI between 2020 and 2022.

Insolvency Practitioners	2020	2021	2022
Insolvency Practitioners (Full Licence)	27	26	25
Insolvency Practitioners (Restricted Licence) <sup>41</sup>	0	0	0

**Table 12.8 – Licensed Insolvency Practitioners (2020 – 2022)**

12.167 No inspections were conducted on IPs between 2020 and 2022. 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 their desk-based assessments. The licensing regime and statutory requirements imposed on IPs make the risk associated with this sector's characteristics to be rated as **Medium-Low**.

### ***Products and Services***

12.168 IPs provide administrator, administrative receiver, receiver, interim supervisor, supervisor, provisional liquidator, liquidator (other than in a solvent liquidation) or bankruptcy trustee services. The general nature of insolvency not being on-going business makes it **Low** risk for ML.

### ***Nature of Clientele (Customer Risk)***

12.169 The diversity of the clients involved, which may include international PEPs, and the potential for non-face-to-face business do slightly increase the vulnerability level within the sector. These vulnerabilities are, as previously noted, mitigated by strict statutory reporting requirements. The risk associated with the nature of clientele within this sector is considered **Medium-Low**.

### ***Geographic Risk***

12.170 The insolvency appointments made Between 2020 and 2021<sup>42</sup> related to the winding up/liquidation of non-regulated entities i.e., BVIBCs dispersed across a wide geographic area as outlined in **Table 12.9** below.

Geographic Location	2020	2021	Total
BVI	7	25	32
Caribbean	1	4	5
European Union	31	17	48
Far East	47	58	105
North America	3	2	5
Rest of the World	29	22	51
<b>Total</b>	<b>120</b>	<b>128</b>	<b>248</b>

**Table 12.9 – Number of Appointments by Geographic Location**

<sup>41</sup> 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) its existing case load, and is not taking on any new business.

<sup>42</sup> Prudential returns for IPs are due at end of February annually for the previous year, therefore data for 2022 was not yet due at the time of writing.

12.171 In addition, during that period 305 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, Cayman Islands and the UK (see **Table 12.10 below**). The ability for appointments to involve businesses operating in high-risk jurisdictions slightly increases the vulnerability level within the sector. These vulnerabilities are, however, mitigated by strict statutory reporting requirements.

Geographic Location	2020	2021	2022	Total
United Kingdom	9	12	17	38
Hong Kong	55	81	46	182
Bahamas	3	0	0	3
Bermuda	1	9	3	13
Cayman Islands	9	29	19	57
China	1	1	0	2
Singapore		7	3	10
<b>Total</b>	<b>78</b>	<b>139</b>	<b>88</b>	<b>305</b>

**Table 12.10 – Number of Joint Appointments by Geographic Location**

12.172 The geographic risk within the Insolvency sector has been identified as **Medium-Low**.

#### ***Delivery Channels***

12.173 The potential for non-face-to-face business slightly increases the vulnerability level within the sector. These vulnerabilities are, however, as previously noted, mitigated by strict statutory reporting requirements.

12.174 The risk associated with delivery channels within this sector has been rated as **Low**.

#### ***Susceptibility to Abuse***

12.175 The nature of IP business does not generally lend itself to facilitating ML. As such, 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 fairly well mitigated by statutory reporting requirements. For the period 2020 to 2022, there were no reported instances where a BVI IP was identified as being associated with any entity accused of, or found to be involved with, ML.

12.176 During the reporting period, the number of SARs filed by IPs accounted for less than 1% (0.32) of the total SARs filed within the financial services sector. The nature of the business itself may be the primary factor in this as insolvency business does not involve on-going business, therefore, the potential for illicit activity to occur is severely diminished. Of the 23 SARs filed, the majority were related to instances of suspected fraud and ML (55%). 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.

12.177 Following the FSC's RBA to supervision and assignment of a risk rating of Low for IP business, no onsite inspections were conducted on IPs during the reporting period. As such, no actions requiring enforcement were identified. Additionally, no actions outside of the inspection process were identified that warranted enforcement action being taken.

12.178 The risk emanating from the sector's susceptibility to abuse has been rated as **Low**.

### **Conclusion**

12.179 The insolvency services sector was identified as med-low in the 2020 ML risk assessment. The current size and nature of the sector has not changed, and no observations have been made to evidence the contrary. No criminal proceedings have been taken against any licensee within the sector, and the instances of involvement of this sector in suspicious activities remains low. Similarly, no enforcement actions recorded during the reporting period were attributed to the sector.

12.180 The identified vulnerabilities within this sector have been largely mitigated by the statutory control measures currently in place. The vulnerabilities have been assessed as **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 **Low**.

## Virtual Assets Services Providers

### Introduction

- 12.181 At the time of the 2020 Sectoral ML Risk Assessment VAs and VASPs were rated as high risk for ML. These findings were supported by a review of transactions and economic activities, including company formation and other business activities, which indicated that there is an evolving threat from businesses operating in or from within the Virgin Islands that facilitate the provision of VA products such as initial coin offerings, cryptocurrencies and digital assets or serve as VASPs to provide services for these types of products. The 2020 ML Risk Assessment recommended that steps be taken to address the risk posed by VAs and VASPs, particularly in light of the fact that VAs and VASPs did not fall within the supervisory framework of the FSC although some VASP activities did fall within the existing regulatory framework under SIBA.
- 12.182 Although the FSC is currently in the process of developing a framework to cover all VASPs, it had, even prior to the 2020 ML Risk Assessment, begun taking steps to prepare for supervision of the sector. This has included the following four main actions:
- 1) Regulatory response I – Formation of focus groups
  - 2) Regulatory response II- Issuance of Virtual Assets Legislative Requirements Guidance;
  - 3) Regulatory response III- Designing new laws to cover regulatory gaps
  - 4) Regulatory Response IV- Improving current Supervisory Regime
- 12.183 In July 2020 the FSC published its ***Guidance on Regulation of Virtual Assets in the Virgin Islands*** (“Guidance”). This Guidance provided clarity on the applicability of all relevant legislation and on matters relating to the sector, including VA derivatives, investments, exchanges and initial coin offerings. The guidance provided that where virtual asset products or services provide a benefit or right beyond a medium of exchange, it may be captured under the SIBA. The Guidance also provided a summary of a number of virtual asset-related products including funds, Initial Coin or Token Offerings, and derivatives, and clarified regulatory expectations under current Regulatory legislation. In addition, the Guidance provided assessment criteria to be considered when assessing the applicability of current legislation to VAs/VASPs.
- 12.184 To date, the FSC has authorised one entity to operate an Investment Exchange for the buying and selling of derivatives related to VA.
- 12.185 In August 2020, the Financial Services (Regulatory Sandbox) Regulations 2020 (the “SB Regulations”) came into force, which launched a regulatory sandbox (the “Sandbox”) designed to support and facilitate innovative financial services offerings as well as allow the FSC to:
- 1) monitor the market for new financial services offerings that may require authorisation; and
  - 2) develop regulatory capacity in supervision of this space.
- 12.186 The operation of the Sandbox has assisted the FSC in its understanding of risks related to VAs/ VASPs which has aided in the development of the supervisory approach for these products and services.

Specifically, the lessons learned from operating the Sandbox have contributed to the development of the FSC's supervisory systems for VAs/VASPs.

- 12.187 Further, in August 2022, amendments to the AMLR and the AMLTFCOP came into force, which require, among other things, that persons meeting the definition of a VASP, be considered relevant persons and therefore must comply with the BVI's AML framework from 1 December 2022.
- 12.188 In November 2022 the new Virtual Asset Service Providers Act (VASPA) was passed into law. The VASPA makes provision, *inter alia*, for the registration and supervision of VASPs in relation to transactions involving VAs, the approval of the provision of VA custody services, and the approval of VA exchanges. The VASPA, is scheduled to come into force on 1 February 2023 and once effected, will create a new legal framework and authorisation regime for BVI entities that fall within the definition of a VASP.
- 12.189 Since 2019, the FSC has participated in varying activities to improve its ability to effectively supervise business. In doing this, the FSC has focused its efforts on identifying tools, skills, procedures, and technologies needed to effectively supervise VASPs.
- 12.190 As a priority, significant efforts have been made towards training and capacity building of existing regulators in this area. This has included attendance at many regional, international and virtual conferences and trainings where supervision of VASPs has been a central topic. These trainings/conferences have included workshops led by IOSCO committees, the CGBS and the CGSR, amongst others. Many key FSC staff have also received related certifications from training centres such as the International Compliance Association and the Toronto Centre. Currently the FSC has a team of internal experts who continue to build upon its regulatory approach to proportionate supervision of VASP business.
- 12.191 In addition, the FSC is currently exploring technical support specifically targeted to improving supervisory oversight capabilities and monitoring mechanisms for VASP related business. The FSC has identified and is currently in talks with one such provider who has been identified as a qualified expert for the provision of market intelligence specifically related to VASPs.
- 12.192 The FSC is also in the process of recruiting specific resources to deal with the risk posed by VASPs and the resources needed to supervise such. The FSC's assessment of its needs is based on a survey conducted on the potential size of the VASP industry in the VI in terms of number of participants, which was issued to all licensees that provide RA services requiring them to indicate the number of client companies for which they act that provide services which would be classified as VA related activities/services. The FSC received 100% submission to this survey and was able to analyse the size of the industry in terms of number of potential participants. **Table 12.11** outlines the results of the survey.



Type of Activities/Services	Number of BVIBCs That Provide These Services
Virtual Asset Trading Platforms <sup>43</sup>	112
Virtual Asset Exchanges	41
Virtual Asset Wallet Providers	9
Virtual Asset Custodians	13
Virtual Asset Transfer Services	4
Virtual Asset Brokerage	16
Total	195

**Table 12.11: Number of Client Companies that Provide Services Classified as VA Related Activities/Services**

### **Summary of Risk**

Sector Characteristics	High
Products and Services	High
Nature of Clientele (Customer Risk)	High
Geographic Risk	High
Delivery Channels	High
Susceptibility to Abuse	High
<b>Overall Risk</b>	<b>High</b>

### ***Sector Characteristics***

12.193 Based on the results of the survey discussed at paragraph 12.184 above, there appears to be sizeable virtual asset and virtual asset service business being carried out from within the BVI, and the BVIBCs performing the majority of these activities appear to be concentrated within a certain number of RAs. These entities operate online platforms for trading which can be accessed worldwide.

12.194 The FSC has received requests or enquiries from persons wishing to set up BVIBCs for VA purposes, or to act as VASPs, and specifically to act as VA exchanges; as well as requests for information from the general

<sup>43</sup> One agent reported 62 platforms. This would require further engagement to verify their interpretation.

public on whether particular persons are authorised to issue VA or act as VASPs. Due to the current nature of the sector, VASPs reside outside the VI and are geographically dispersed, some in high-risk jurisdictions. However, as noted in paragraph 12.179 and paragraph 12.180, as of 1 December 2022, VASPs are now considered relevant persons and must comply with the BVI's AML framework. Additionally, the recently passed VASPA is due to come into effect on 1 February 2023, which will bring the sector under the regulatory remit of the FSC.

12.195 Based on this sector's characteristics the ML risk has been rated as **High**.

### ***Products and Services***

12.196 A large portion of virtual asset businesses carried out from within the Territory are in classes of VASPs identified as virtual asset exchanges, virtual asset trading platforms, custodians, brokers, wallet providers and transfer services providers, which pose the greatest level of ML risk, thereby elevating the Territory's level of ML risk in this sector. During the reporting period there was no legislative or licencing/supervisory framework in place to monitor such activities outside of those activities regulated under SIBA, which include virtual asset funds, and the provision of management, administration, or investment advice to VAs where the assets are securities or a fund type product. However, the newly enacted VASPA, recognising that exchanges and custodians may be considered most risky, has built in requirements for added approval to conduct these activities. These actions, once commenced, should aid in providing some level of risk mitigation within this sector.

12.197 In relation to the VA themselves, there is no legislative framework in the VI for authorisation or supervision of these. This is in keeping with FATF standards generally. However, FSC's intelligence and supervisor data indicates that there are significant VA activities such as establishment of tokens and ICOs being carried by companies incorporated in the VI. In terms of the domestic sector, there are no prohibitions on businesses accepting VAs as payment, but currently no business in the VI has indicated that they are accepting VAs as payment.

12.198 The nature of the products offered by VASPs makes the associated ML risk **High**.

### ***Nature of Clientele (Customer Risk)***

12.199 There is little data on the size of the customer base VASPs. This is because the licensing regime is nascent and reporting obligations for VASPs have not yet commenced. However, the FSC, through its intelligence, other open-source intelligence, experience from its sandbox regime and other supervision activities such as investor complaints received and international cooperation requests, and use of technology service providers has developed a general profile of the clients of VASPs. Additionally, anecdotal information from the FIA and RVIPF has assisted in the FSC's profile of the clientele of VASPs.

12.200 Based on the above, the FSC has identified that VASP clientele are predominantly unsophisticated retail clients who invest or trade small sums. These clientele are oftentimes unaware or unable to identify the risk of loss. VASPs also have significant clients who are institutional investors and legal persons that trade substantial sums. The significant majority of customers are concentrated on trading platforms and

exchanges. Some of these are large global players with clients in the tens of thousands and a few in the hundreds of thousands. Based on the clientele it is clear that VASPs operate significantly across jurisdictions and at significant volume where clients can be trading on multiple platforms.

12.201 The risk associated with the nature of clientele within this sector is considered **High**.

#### ***Geographic Risk***

12.202 The nature of VA business can involve the movement of large sums of money across multiple borders. Risk posed by VAs/VASPs is also heightened by the fact that clients are geographically dispersed and located in jurisdictions of varying risk including some high-risk jurisdictions. 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. Further, VASPs are currently not licensed. This makes it difficult to carry out any oversight to determine whether these entities are performing their functions appropriately. Additionally, some of these VASPs 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.

12.203 The geographic risk within the VASP sector has been identified as **High**.

#### ***Delivery Channels***

12.204 Data collected indicates that BVIBCs have issued VAs and facilitated exchange of such assets through non-face to face means, primarily through electronic exchanges and platforms. Full technological delivery of services means that there is an increased risk of transactions having elements of anonymity. The ML vulnerability through VAs, therefore, 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 facilitate transfers that are anonymous or pseudo-anonymous making it difficult to identify beneficiaries of the transactions.

12.205 The risk associated with delivery channels within this sector has been rated as **High**.

#### ***Susceptibility to Abuse***

12.206 The risk of criminality within this sector stems from the nature of the products and services offered, given the growing use of such products and services for payment and investment purposes. This is compounded by the level of anonymity offered while conducting multiple high value payments, the ease in which transactions may be structured and the ability to execute cross-jurisdictional transactions without being traced.

12.207 Both the FSC, through its internal intelligence mechanisms, and the FIA via SARs filings and other intelligence related to VAs/VASPs, have identified instances of fraud, ML and other financial crimes by or through BVIBCs issuing VAs and acting as VASPs to clients alleged to be using the “dark web” and other fraudulent methods to conduct illicit activity, which have raised red flags with both agencies’ enforcement and compliance units. International corporation requests received also revealed that some fraudulent and other financial crimes were alleged to have been committed using VAs.

- 12.208 The number of SARs received in relation to VA activities accounted for 76.10% of all SARs received by the FIA between 2020 and 2022. This demonstrates a 443% increase over the number of VA related SARs received between 2018 and 2019. Further, transactions identified in SARs reported in 2022 were valued at over \$17 billion, which represents 97% of the total value of all reported SARs. The primary reasons for filing related to fraud and potential ML.
- 12.209 While the threat of misuse of these products and services for ML purposes is acknowledged based on intelligence gathered, the high number of SARs received and the value of related transactions identified, it should be noted that a large number of these reported SARs were submitted by one VA Exchange that alleged that clients were using the “dark web” and other fraudulent methods, which effectively made identifying the user/customer untraceable. These SARs were automatically generated based on the Exchange’s internal protocols for flagging suspicious activity. Further, no disseminations were made by the FIA to the RVIPF identifying the possible need for further investigation of any VA related SAR. As such, no prosecutions or seizures have resulted from any VA related SARs filed.
- 12.210 As VASPs were not subject to any regulatory supervision during the reporting period, BVIBCs conducting VA or VASP activities were not subject to the FSC’s enforcement regime. As such, no enforcement action has been taken against any such entities. Nonetheless, the FSC is of the view that these VASPs are undertaking activity not within the standards as required of an FI supervised by the FSC and that once supervised they are likely to have difficulty comply with FSC standards.
- 12.211 A further vulnerability in the mitigation of ML risk within the VASP sector is the FIA’s current ability to conduct analysis on VA related SARs, which impacts its ability to make disseminations to the RVIPF. The FIA currently does not have the resources or the expertise to analyse or investigate VA-related SARs. The FIA, however, has provided some targeted cryptocurrency training to its staff and is in the process of procuring the necessary resources, including technological tools that would assist in analysing VA-related SARs.
- 12.212 Further, the RVIPF also does not currently have the expertise or the resources to conduct investigations into VA-related activity although some officers recently received basic training in crypto investigations. The RVIPF can solicit assistance from UK law enforcement authorities when dealing with complex cases such as these. With regard to the ODPP, the current exposure of prosecutors to such cases is limited, which would impact their ability to successfully prosecute given the complex nature of such cases. The ODPP does, however, have the ability to engage outside specialised counsel to deal with matters that are outside the scope of its expertise.
- 12.213 This lack of expertise and resources to effectively analysis and investigate VA-related SARs and offences and prosecute resulting cases is a vulnerability that may elevate the risk of illegitimate activities going undetected or not being properly investigated, which itself increases the risk of criminals being able to use VASPs and VAs for ML purposes.

12.214 The risk emanating from the sector's susceptibility to abuse has been rated as **High**.

### **Conclusion**

12.215 The lack of legislative and supervisory oversight demonstrates a clear vulnerability in the VI's AML structure given the volume of VA business identified as being conducted from within the Territory. However, there have been actions taken by the FSC and the FIA to build out the supervisory, enforcement, AML/CFT and compliance regimes for VASPs. This has been evidenced by the steps taken by both agencies to shore up their resources (both human and technological) in preparation for the licensing and supervision of VASPs and the increase in SARs received from these entities.

12.216 Once licenced, VASPs will be monitored and supervised by the FSC's Specialised Supervision Unit, which is responsible for monitoring and supervising regulated entities and persons identified as having a higher level of risk. This will involve undertaking proactive and enhanced supervision of these entities, including ongoing monitoring and the development of a supervision plan for each entity. The implementation of these measures should further aid in mitigating the ML risk within this sector if properly implemented. The degree to which, however, cannot be determined at this stage.

12.217 The implementation of the VASPA and the framework to supervise these entities should aid in reducing the current level of risk. However, until this regime is fully implemented and can be properly assessed, based on the treats identified within this sector, the level of ML risk remains elevated. The vulnerabilities within the VASP sector have been assessed as **High**, while the mitigating controls have been assessed as **Low**. Overall, the sector has been assessed as having an ML risk level of **High**. The implementation of the VASPA and the framework to supervise these entities should aid in reducing the current level of risk. However, until this regime is fully implemented and can be properly assessed, based on the treats identified within this sector, the level of ML risk remains elevated.

## 13. Designated Non-Financial Businesses and Professions

13.1 Within the Virgin Islands, the following categories of businesses fall within the definition of a DNFBP and are required to be registered and supervised by the FIA:

- 1) **Legal practitioners, notaries public or accountants** undertaking the provision of services to clients, which involve transactions concerning any of the following activities:
  - buying and selling of real estate;
  - managing of client money, securities, or other assets;
  - management of bank, savings or securities accounts;
  - organisation of contributions for the creation, operation or management of companies; and
  - creation, operation or management of legal persons or arrangements, or buying and selling of business entities.
- 2) **Real estate agents** undertaking the business of acting as a real estate agent when engaged in a transaction for a client concerning the buying and selling of real estate.
- 3) **Dealers in precious metals or precious stones** who engage in the business of dealing in precious metals or precious stones when such transactions involve accepting a cash payment of \$15,000 or more or the equivalent in any other currency.

13.2 In addition, persons engaged in the **business of buying and selling boats, vehicles, jewellery or other high valued goods** such as furniture, machinery and art (relating to paintings and sculptures that are of intrinsic value), when such transactions involve accepting a cash payment of \$15,000 or more or the equivalent in any other currency are captured under the Non-Financial Businesses (Designation Notice), 2008, as amended. These entities are also considered DNFBPs for the purposes of AML supervision and must adhere to the provisions of the AMLR and AMLTFCOP.

13.3 In addition to the registration provisions contained within the FIA Act, DNFBPs are fully subject to the requirements of the AMLR and AMLTFCOP. The FIA, via its ongoing supervision, monitors DNFBP's compliance with these AML/CFT/CPF requirements.

13.4 **Table 13.1** below identifies the number of entities registered as DNFBPs at the end of 2022.

DNFBP Sector	Registered As at End of 2022
Legal Practitioners	33
Accountants	15
Real Estate Agents	13
Jewellers and DPMS	5

Yacht Brokers	7
Vehicle Dealers	7
Other HVGDs	1
Total	80

**Table 13.1: Number of Registered DNFBPs as of December 2022**

13.5 With regard to ML risk, each sector was reviewed based on the six areas of vulnerability identified in the Methodology, taking the level of control factors in place to mitigate each vulnerability into account. The resulting overall risk rating for each sector is outlined in **Table 13.2** below.

Sector	Overall Risk Score	Overall Risk Rating
Legal Practitioners	10	Medium-High
Accountants	4	Medium-Low
Real Estate Agents	8	Medium-Low
Jewellers and DPMS	7	Medium-Low
Yacht Brokers	5	Medium-Low
Vehicle Dealers	4	Medium-Low
Other HVGDs	-	-

**Table 13.2: Overall DNFBP Sector ML Risk Ratings**

## Legal Practitioners (and Notaries)

### Introduction

- 13.6 The legal practitioner sector is the largest DNFBP sector within the VI in terms of the number of firms in operation. At the end of 2022, 33 legal practitioner firms were registered in the Territory. Seven (7) additional applications are pending.
- 13.7 The majority of legal practitioners tend to provide legal advice on only elements of transactions specifically related to VI law. Such legal advice would be in relation to larger transactions which are undertaken elsewhere and, in many instances, the VI advice forms only a small part of the overall transactions. Often the VI legal practitioner is not involved in the transaction itself. Hence the risk exposure to the jurisdiction would be limited.
- 13.8 With respect to the notaries public sector, generally notaries public within the VI are also legal practitioners and will typically be employed with a law firm. Where these legal practitioners are supervised for carrying out relevant business, the services they render in their capacity as notaries public would also be covered, once applicable.

### Summary of Risk

Sector Characteristics	Medium-Low
Products and Services	Medium-High
Nature of Clientele (Customer Risk)	Medium-High
Geographic Risk	Medium-High
Delivery Channels	Medium-Low
Susceptibility to Abuse	Medium-High
<b>Overall Risk</b>	<b>Medium-High</b>

### *Sector characteristics*

- 13.9 The size of legal practitioner firms in the VI varies significantly. Approximately 40% of firms are established global firms who have long-standing offices within the Territory. In this respect, they have in place global compliance systems to ensure compliance with AML/CFT regulatory requirements. They are also monitored by their compliance teams to ensure that protocols are followed to avoid reputational damage to the firm's brand. Generally, firms' compliance functions are also conducted by regional or international compliance teams, however, the majority of these firms have appointed MLROs who are based in the VI.
- 13.10 Smaller firms comprising of sole practitioner firms and firms with less than five (5) employees make up approximately 20% of the sector.



13.11 Overall, 99% of the sector indicated and agreed that their firm has a role to play in the VI's AML framework. 70% noted that their firms had a good or excellent understanding of the ML risk affecting the Territory. Additionally, 22% of sector participants consider the level of ML risk within the sector to be medium-high, while 37% consider it to be medium-low to low.

13.12 Thematic inspections focused on due diligence requirements were carried out on the legal practitioner sector in 2021. Four (4) legal practitioner firms were examined and were found to be non-compliant with provisions of the AMLTFCOP. The findings related to failure to undertake proper risk assessments and failure to undertake proper due diligence. The findings were in line with the findings of the 2020 ML Sectoral Risk Assessment. Since then, the supervisor has conducted outreach within the sector to improve overall awareness and understanding of the AML provisions, including publication of sector-specific guidance notes.

13.13 As a result, sector characteristics are rated as **Medium-Low**.

#### ***Products and Services***

13.14 The types of services offered varies from firm to firm, however, are relatively standard and tend to include the following (non-exhaustive):

- providing VI legal opinions and/or advice/representation in connection to real estate transactions (which can be VI real estate or non-VI real estate);
- providing corporate legal advice in relation to aspects of VI company law;
- providing VI legal advice with respect to the creation, operation and management of BVI legal persons; and
- providing VI legal advice in respect to mergers and acquisitions.

13.15 For the reporting period, some firms also indicated involvement in work which involved virtual assets/cryptocurrency. However, this was limited to an advisory capacity only. For example:

- providing advice in relation to the formation, structuring and regulatory licensing of virtual funds and fund structures;
- providing advice in relation to the launch of a private investment fund for a company involved in cryptocurrency; and
- providing advice to facilitate the setting up of entities which are focused on virtual assets.

13.16 Generally, firms fitting the definition of DNFBPs within the VI do not undertake "transactional work" themselves but rather are involved in transactions from a legal advice perspective only. This is typically for international transactions, such as mergers or acquisitions, which will have a VI element to them. Generally, in these instances, firms will receive instructions from another legal practitioner firm or a financial institution who is leading the global transaction. However, there are exceptions to this, e.g., domestic real estate work. In such cases clients buying and/or selling real estate may seek legal representation. In so doing, a small number of firms have indicated that they may hold client monies in

the form of deposits for real estate transactions, however, this is not the norm as it is general practice that the VI real estate agent holds the deposit until completion.

13.17 As firms do not undertake transactional work themselves directly, this reduces the level of ML risk they may be exposed to. However, given the nature of the work being undertaken, that is, legal advice in connection to creation, operation of companies; mergers and acquisitions; as well as the creation, operation and management of BVI legal persons, there is susceptibility to abuse as criminals and their associates may seek to set up structures (global, complex) in order to hide the proceeds of their crimes. The ML risk to the sector, therefore, remains on the basis that the types of services provided have been known globally to be abused for ML purposes.

13.18 The ML risk emanating from products and services provided by this sector, therefore, has been rated as **Medium-High**.

***Nature of Clientele (customer risks)***

13.19 Due to the nature of services provided, approximately 75% of the sector serves international clients with over 60% of clients being based outside of the VI.

13.20 About 50% of the firms provide advice to clients deemed to be high risk based on the types of services such clients engage in. The services engaged in by clients to which advice is provided include:

- creating, operating or managing legal persons (corporations etc) or arrangements (trusts, partnerships etc);
- buying and selling of real estate;
- organizing contributions for the creation, operation or management of companies; and
- buying and selling of business entities.

13.21 With respect to PEPs, 45% of the firms in the sector indicated having this high-risk category of clients as part of its client profile. However, PEPs remain less than 10% of the sector's overall customer base.

13.22 In assessing the sector's client profile, the potential exposure to clients deemed to be high risk raises the ML risk. The customer/client risk to the legal practitioner sector has thus been rated as **Medium-High**.

***Geographic Risk***

13.23 Legal practitioners provide services to clients globally. Whilst this is an indication of the truly diverse services provided by the legal practitioners operating within the VI, this itself poses a risk as firms may provide services to clients based in jurisdictions considered to be high risk for ML. High risk clients served by this sector generally originate from countries such as Mexico, Russia, Lebanon and Pakistan. Due to the potential of exposure to high-risk jurisdictions, geographic risk is considered **Medium-High**.

### ***Delivery Channels***

13.24 Given the types of services provided and to clients globally, most services are provided virtually or in a non-face-to-face capacity. This is considered normal practice globally for legal practitioner firms. The smaller law firms operating within the Territory do predominantly only provide services to clients based within the VI. However, given the nature of legal services generally, these can be provided on a non-face-to-face basis. As a result, delivery channels risk is considered to be **Medium-Low**.

### ***Susceptibility to Abuse***

13.25 Legal practitioners' exposure to criminality comes from the type of work undertaken and the fact that as professionals they can in themselves become enablers to criminality. Legal practitioners are referred to as the gatekeepers of financial services. For the period 2020 to 2022, 27 SARs were filed by entities within this sector. The majority (30%) were in relation to fraud, while 15% identified matters of possible ML and another 19% related to possible tax evasion. Overall, these SARs accounted for less than 1% (0.35) of the total SARs filed during the reporting period. The value of the transactions reported in these SARs was \$56,221.54, or less than 1% of the total value of all SARs reported.

13.26 62% of the sector indicated having received AML training between 2020 and 2022. 62% of the sector also indicated that persons within their firms had received the relevant training needed to detect suspicious activities and transactions. Given the critical importance of relevant AML training, the responses indicate a vulnerability in this sector, which needs to be addressed.

13.27 Given the types of services provided by the VI's legal practitioner firms to global clients, this places the sector at **Medium-High** risk of being abused for ML.

### **Conclusion**

13.28 The legal practitioner sector is the largest DNFBP sector within the Territory, with a client base that is primarily based outside of the VI. Products and services offered through this sector are relatively standard and tend to include advice and opinions on a variety of matters ranging from real estate to mergers and acquisitions. As the majority of firms do not undertake transactional work themselves directly, this reduces the level of ML risk they may be exposed to. However, given the nature of the work being undertaken there is susceptibility to abuse. Further, a significant amount of business is conducted through non-face-to-face contact.

13.29 Based on the number of SARs reported by the sector the instances of involvement of this sector in suspicious activities in the VI appears to be low. Additionally, no criminal proceedings have been taken against any legal practitioners within the sector.

13.30 Firms have internal control systems in place for the purposes of AML/CFT, which is assessed and tested by the supervisor. While 62% of the sector has indicated that persons within their firms have received relevant training, the level of training provided within this sector could be improved, especially given the legal practitioner sector's overall susceptibility to abuse.

13.31 Given the importance of the legal practitioner sector in the global fight against ML, as well as the identified susceptibility of the sector to the same, the inherent ML risk rating is considered to be **Medium-High**.

## Accountants

13.32 The accountancy sector within the VI is of relatively moderate size in terms of the number of firms in operation comparative to legal practitioners. At the end of 2022, there were 15 accountancy firms registered in the Territory.

### **Summary of Risk**

Sector Characteristics	Medium-Low
Products and Services	Low
Nature of Clientele (Customer Risk)	Low
Geographic Risk	Medium-High
Delivery Channels	Medium-Low
Susceptibility to Abuse	Medium-Low
<b>Overall Risk</b>	<b>Medium-Low</b>

### ***Sector characteristics***

13.33 The size of the accountancy firms in the VI varies significantly. Approximately 35% of firms are established global firms who have long-standing offices within the Territory (including the "Big 4" firms). These have global compliance systems in place to ensure compliance with their AML/CFT regulatory requirements and are also monitored by their compliance teams to ensure that protocols are followed, to avoid reputational damage to the firm's brand. Generally, these firms' compliance functions are also conducted by regional or international compliance teams, however, most have appointed MLROs who are based in the Virgin Islands. The accountancy sector also consists of a number of medium-sized firms as well as smaller firms (i.e., firms with less than 5 employees).

13.34 Overall, 75% of the sector noted that they had a good or excellent understanding of the ML risk affecting the Territory. Additionally, 22% of sector participants consider the level of ML risk within the sector to be high to medium-high, while 40% consider it to be medium-low to low.

13.35 Inherent ML risks of the sector's characteristics are considered to be **Medium-Low**.

### ***Products and Services***

13.36 As with the legal practitioner sector, the types of services offered varies from firm to firm, however, they are relatively standard and tend to include the provision of services to clients in connection to transactions involving managing of client monies, securities or assets and managing bank or savings accounts or in connection to transactions involving the creation, operation and management of legal persons, in addition

to general audit and accounting functions. Overall, the work that qualifies accountancy firms in the VI as DNFBPs forms a very small portion of the accountancy sector's offering.

13.37 In addition, for the reporting period, none of the firms were involved in work which involved virtual assets/cryptocurrency.

13.38 As a result, the inherent ML risk for the products and services being offered by the accountancy sector is considered to be **Low**.

#### ***Nature of Clientele (customer risks)***

13.39 Due to the nature of services provided, approximately 64% of firms within the sector have over 70% of clients based outside of the VI. In addition, during the reporting period 28% of firms provided services to PEPs, however, as with the legal practitioner sector, this remains less than 10% of the sector's overall customer base. It should also be noted that the firms undertaking DNFBP work provide those services almost exclusively to corporate/business clients.

13.40 As a result of these factors, the clientele risk for the accountancy sector has been rated as **Low**.

#### ***Geographic Risk***

13.41 Firms within the sector provide services to clients globally. There appears to be no trend as to any specific geographic area being serviced more than others. Whilst this is an indication of the truly diverse services provided by the accountancy sector operating within the VI, this itself poses a risk to the sector being exposed to ML abuse from persons globally. Of the high-risk clients to whom services are provided, these generally originate from countries such as Brazil, Russia, Belarus and Pakistan. Due to the potential of exposure to high-risk jurisdictions, geographic risk is considered **Medium-High**.

#### ***Delivery Channels***

13.42 Given the types of services which are provided by the sector the majority of services are provided virtually or in a non-face to face capacity. This is considered normal practice for accountancy firms globally. Smaller firms who provide services to clients based primarily within the VI also tend to provide these services on a non-face-to-face basis due to the nature of services provided. Generally, this would be considered to pose a high ML risk, however, given that this is normal practice for this sector, delivery channels risk is rated as **Medium-Low**.

#### ***Susceptibility to Abuse***

13.43 Exposure to criminality comes from a lack of training and awareness of AML within the sector. 56% of the sector indicated having received AML training between 2020 and 2022. 56% also indicated that persons within their firms had received the relevant training needed to detect suspicious activities and transactions. Given the critical importance of relevant AML training, the level of response indicates a vulnerability in this sector as it relates to general awareness of AML. Lack of SAR filings during the review period is also considered an ML risk indicator as it is possible that the sector is not fully aware of their obligations.

13.44 However, given that the work that qualifies accountancy firms as DNFBPs forms a very small portion of their overall offering, the ML susceptibility to abuse risk is reduced and is rated as **Medium-Low**.

#### **Conclusion**

13.45 Following publication of the FIA's 2020 ML Sectoral Risk Assessment report, meetings and discussions were held with members of the accounting profession. As a result, there has been significantly improved engagement, as a concerted effort has been made by the sector to ensure they engage with the supervisor (including participation in sectoral risk assessments). This has enabled the supervisor to build a better picture of the accountancy sector within the VI and to enable a more suitable supervisory approach.

13.46 The accountancy sector in the VI is a moderate size. The work that qualifies accountancy firms in the VI as DNFBPs forms a very small portion of the accountancy sector's offering. It is noted, however, that the majority of work is undertaken on a non-face-to-face basis and to clients internationally. As sector participants undertake a very small amount of work that qualifies them as DNFBPs, this reduces the sector's ML risk exposure. This also goes towards the minimal SARs filings by the sector over recent years, as the sector's involvement in suspicious activity appears to be low.

13.47 Consideration is still given to the nature of the work being undertaken by this sector, and the potential susceptibility to abuse therein. However, the sector's size and amount of DNFBP work carried out has resulted in an inherent ML risk rating of **Medium-Low**.

## Real Estate Agents

### Introduction

13.48 At the end of 2022, 13 real estate agents (REAs) were registered in the VI. Five (5) additional applications are being processed. There has been a noted increase in participants in this sector, with seven (7) new firms entering the market since 2020. These remain small businesses.

### Summary of Risk

Sector Characteristics	Medium-Low
Products and Services	Medium-Low
Nature of Clientele (Customer Risk)	Medium-Low
Geographic Risk	Medium-High
Delivery Channels	Low
Susceptibility to Abuse	Medium-High
<b>Overall Risk</b>	<b>Medium-Low</b>

### *Sector Characteristics*

13.49 The real estate sector comprises entities of varying sizes, with five (5) long-established larger REA firms. 65% of the REAs operating within this sector are small businesses with three (3) or fewer employees, approximately 25% of which undertake real estate activity on a part-time basis, so may undertake one or two transactions per year as supplemental income.

13.50 Real estate firms in the Territory are aware of their AML obligations and the risks cash transactions carry. For the review period, none of the firms reported cash purchases. 42% of firms confirmed they do not take cash in a transaction for sale/purchase (preferred method being cheques or wire transfers). For the remainder that do take cash, the general threshold is between \$5000 -\$10,000 dollars, which is received towards payment of a deposit.

13.51 Regardless of size or the value of transactions, all real estate firms involved in the buying and selling of real estate on behalf of a client are required to fully comply with the provisions of the AMLTFCOP.

13.52 All of the sector indicated that their organisation had a good to excellent understanding of how their ML risk affects the Territory and agreed that their organisation had a role to play in the VI's AML framework. 33% of sector participants consider the level of ML risk within the sector to be medium-high, the remaining 66% rating it to be medium-low to low.



13.53 In 2021 four (4) thematic inspections focused on due diligence requirements were carried out on REAs. One (1) was found to be non-compliant with provisions of the AMLTFCOP; two (2) partially compliant and one (1) largely compliant. The findings related to failures to undertake proper risk assessments and proper due diligence. The supervisor has continued to conduct outreach within the sector to improve overall awareness and understanding of the AML provisions, including publication of sector-specific guidance notes.

13.54 Overall, the sector characteristics are rated as **Medium-Low** risk.

### ***Products and Services***

13.55 The services provided by the real estate sector include:

- property rentals;
- property management; and
- property sales (representing clients for buying and selling).

13.56 For the purposes of this assessment, only the services of buying and selling of real estate, which qualify REAs as DNFBPs is considered.

13.57 Real estate firms in the VI can represent a buyer, a seller or both. The purchase of real estate, due to the value of the land/properties for sale, tends not to be a cash-based activity. Properties are generally purchased using bank financing or personal funds of the client or a mixture of both. As it relates to third party funding, this is minimal, with only three (3) sales transactions occurring over the reporting period where third-party funding was used towards the purchase of a property. The third party in these instances was a family member of the purchaser assisting towards the deposit down payment. Although generally real estate transactions carry a higher ML risk, due to the above factors relative to VI REAs, products and services ML risk is considered Medium Low.

13.58 Real estate sales include both land and property sales. As such the value of real estate transactions can vary quite significantly. Both land and property sales/valuations are based on factors such as size and location. In addition to the general real estate market, the VI's real estate sector also includes some high-value luxury villas.

13.59 For the period, none of the entities were involved in any transactions where virtual/cryptocurrency was involved.

### ***Nature of Clientele (customer risks)***

- 13.60 REAs in the VI generally provide services to private individuals. In respect to 70% of REAs in the VI, over 80% of their client base is comprised of private individuals. Private individuals also make up over 60% of the client base of another 14% reported of REAs operating within the Territory. The majority of REAs provide services to clients based within the VI. This is especially the case for the smaller REAs. Some of the larger REAs in the Territory do also have international clients.
- 13.61 Of the 13 REAs registered in the VI, only one has a client base where over 90% is comprised of business/corporate clients. However, this is in line with that REA's business profile. The majority of these clients are based within the US and Canada. Over the review period some REAs confirmed that they had PEP clients, however, this appears to be a very small portion of their overall clientele (1-2 PEP clients a year).
- 13.62 The majority of customers from the domestic market would generally be considered standard/low risk, given that these are persons living and working in the VI, who would generally apply for bank financing in order to purchase property. In this regard, it is possible that clients may be domestic PEPs. The real estate sector generally deals with a wide demographic of clients, and although it is possible for REAs to provide services to higher risk clients, the nature of clientele for VI REAs is considered to pose a **Medium-Low** risk of ML.

### ***Geographic Risk***

- 13.63 The real estate sector only provides sale/purchase services in relation to real estate based in the VI. Over the reporting period there was only one instance where an REA became involved in the sale/purchase of real estate, which was located outside of the VI, however, this was only approximated to be 5% of that firm's total business for that period.
- 13.64 42% of REAs deal only with clients based in the VI, the remainder deal with clients who are based both outside of and within the VI. including from the USA, UK and the wider Europe area in general. Some REAs also service clients from other Caribbean countries such as the Bahamas and Cayman Islands. None of the REAs provide services to clients from high-risk jurisdictions, although given the high value nature of VI properties, and the potential for ML abuse, this needs to be further verified. There are no restrictions on REAs in this regard. Given that REAs do have international clients, this elevates the ML risk due to the potential of dealing with a customer/client from a higher risk jurisdiction.
- 13.65 With respect to buyers based outside of the VI wishing to purchase real estate within the VI, it should be noted that there are limitations on foreign ownership. Persons who are not deemed BVIIslanders/Belongers are required to apply for a special land holding licence, which must be approved by Cabinet.
- 13.66 Geographic risk to the sector as a whole is, therefore, considered to be **Medium-High**.

### ***Delivery Channels***

13.67 A small number of REAs undertake transactions on a non-face-to-face basis, however, this amounts to less than 10% of their overall work, as generally REAs do meet with their clients during the sale/purchase process. Delivery channels risk is, therefore, rated as **Low**.

### ***Susceptibility to Abuse***

13.68 Exposure to criminality comes from the high susceptibility of the real estate sector to ML abuse generally. Given the luxury real estate property market (villas, etc) which is available in the VI, such properties can be seen as high-value commodities, attracting those seeking to hide criminal proceeds. 89% of REAs confirmed that their organisation has received AML training between 2020 and 2022, however, 67% also indicated a need for additional training. Conversely, all REAs indicated that they understand the need to file SARs as well as the fact that their organisation has the relevant training needed to detect suspicious activity and transactions. It is, however, noted that while it is expected that SARs would be filed given the general nature of the sector, no SARs were filed during the review period. This raises the question as to whether the AML controls in place are being implemented effectively given the characteristics of the sector and the VI's economy.

13.69 Another risk factor which has been considered is the number of new entrants which have entered the market during the review period. Whilst these new entrants remain small businesses, who are yet to undertake sale/purchase transactions, the potential for ML abuse posed by this increase in entrants to the sector also increases the sector's susceptibility to ML abuse risk. This is because the more established REAs have received a significant amount of supervisory engagement in the form of desk-based reviews, inspections as well as various forms of outreach, whereas the entrants to the market have not had the full benefit of this yet.

13.70 Whilst there is no evidence that the REA sector in the VI has been involved in ML, a cautionary approach to risk has been taken, taking into consideration the potential for the real estate market to be abused for ML generally, as well as the failure of the sector to file any SARs for the review period. As a result, the ML risk for the real estate sector's susceptibility to abuse is considered to be **Medium-High**.

### **Conclusion**

13.71 Lack of SARs filings, internally as well as to the FIA, remains an area of concern and adds to this sector's risk profile. However, a significant number of the sector's clientele are persons based within VI. The sector has also not reported providing services to clients based in higher-risk jurisdictions. Additionally, REAs within the VI generally only provide services in relation to real estate based in the VI.

13.72 With regard to the value of properties (which includes luxury real estate), overall, the real estate sector within the VI is still considered to be a moderate size. For 2021, REAs reported 90 transactions of approximately \$97.7 million, however, this is considered to be an anomaly as it included a high value commercial real estate transaction. For the years 2020 and 2019 (included for comparison purposes only),

sales reported amounted to 92 transactions (approximate value \$48.7 million) and 48 transactions (approximate value \$28.6), respectively.

13.73 The sector's inherent ML risk rating is considered to be **Medium-Low**.

## Jewellers and Dealers in Precious Metals and Stones

### Introduction

- 13.74 There are currently six (6) entities falling within the jeweller and DPMS category registered in the VI comprising five (5) jewellery stores and one (1) DPMS (buying and selling gold bullion). It should be noted that the DPMS is a fairly new entrant to the market, and although registered, has not undertaken any business to date. It, therefore, does not form part of this report. The jewellery sector has remained fairly stable over the past five years, with one new entrant to the market in 2021.
- 13.75 There are other, smaller businesses within the VI that sell jewellery; however, their business models are such that they do not fall within the definition of a DNFBP, hence they are not required to be registered or supervised.

### Summary of Risk

Sector Characteristics	Low
Products and Services	High
Nature of Clientele (Customer Risk)	Medium-Low
Geographic Risk	Medium-Low
Delivery Channels	Low
Susceptibility to Abuse	Medium-High
<b>Overall Risk</b>	<b>Medium-Low</b>

### *Sector characteristics*

- 13.76 Four (4) of out of the five (5) registered jewellery stores are long-established stores within the Territory. All of the stores are located at the C.B. Romney Tortola Pier Park, their primary market being cruise ship passengers.

The reliance on the cruise ship passenger/tourism industry for this sector is evident as 2020 saw a real decline in sales transactions being undertaken within this sector due to the COVID-19 pandemic and the halt on cruise passengers arriving to the Territory, with some stores reporting approximately a 60% decrease in sales for 2020, as compared to 2019 (rising to almost a 70% decrease in sales for 2021, as compared to 2019). With the restart of the tourism industry, sales are now picking back up. The jewellery sector does also have percentage of repeat domestic customers.

- 13.77 All of the sector indicated that their organisations had a good to excellent understanding of how their ML risk affects the Territory. Overall, sector characteristics are considered to be **Low** risk.

### ***Products and Services***

- 13.78 All stores sell jewellery, watches and accessories comprising of platinum, gold and silver, which may or may not include diamonds as well as other precious metals and stones. Some stores will also sell customised pieces, based on customer requests. The jewellery and watches sold are high end pieces, with certain stores receiving exclusivity for branded products.
- 13.79 Due to the nature of products sold within this sector, being high-value, attractive and easily transportable goods, which are very susceptible to ML risk, and the use of cash for purchases, the products and services risk is rated as **High**.

### ***Nature of Clientele (customer and supplier risks)***

- 13.80 Most patrons of these jewellery stores are private individuals. Businesses/corporations make up approximately 5-10% of one entity's buyers. Due to the location of these jewellers, as well as their primary target market, the customer base within this sector consists of buyers based both within the VI as well outside. The majority of which comprises of cruise ship passengers as well as other tourists. Due to the diverse nature of the tourism market, the customer base is global, however, the majority of customers are from the US, Canada and Europe. The percentage of repeat domestic customers generally varies between 10-45% of the sector's customer base, depending on the store.
- 13.81 Due to the ML risks which exist within this sector, supplier risk has also been considered. As it relates to suppliers, all businesses confirmed that their suppliers are businesses/corporations, mainly based in the US. As part of their AML obligations, all jewellery stores are required to undertake due diligence and verify any applicants for business with whom they do business. This includes their suppliers.
- 13.82 Clientele risk for this sector is rated as **Medium-Low**.

### ***Geographic Risk***

- 13.83 As with the above, geographic risks arising from both buyers and suppliers have been considered. The buyer market for this sector is domestic as well as international, given the VI's tourism industry. As a result of this international element, there is a possibility that goods are sold to customers from high-risk jurisdictions. For the review period, however, none of the stores indicated dealing with customers from high-risk jurisdictions.
- 13.84 As it relates to suppliers of jewellery sold in the VI, the majority are based in the US. Stores also noted suppliers based in Switzerland. Given that the VI is not a producer of precious metals and stones, it is expected that all such goods for sale would be imported.
- 13.85 Given the nature of the jewellery sector within the VI, geographic risk factors are not considered to be out of the ordinary. The ML risk is, therefore, placed at **Medium-Low**.

### ***Delivery Channels***

13.86 The method of delivery is through face-to-face sales directly with customers who attend the stores to purchase their jewellery items. A small number of stores indicated that, in certain instances, they may have non-face-to-face business, however, this is limited to less than 2% of their overall business and will generally be instances where they already have a relationship with the customer.

13.87 With respect to transactions over \$15,000, these do vary significantly depending on the store and the products they carry. Cash transactions are undertaken within the sector. However, the majority of stores have a cash transaction threshold limit ranging from \$5,000 to \$10,000.

13.88 As a result of this direct interaction with the customer, delivery channels risk is rated as **Low**.

### ***Susceptibility to Abuse***

13.89 Domestically, as it relates to sales of jewellery items, exposure to criminality comes from the use of cash within this sector. Jewellery stores are allowed to accept cash for the sale of goods and although some stores have a maximum cash threshold in place, some do not. Under the law, there is no maximum threshold for cash for the sale of jewellery items, however, all transactions over \$15,000 require due diligence, in accordance with the provisions of the AMLTFCOP. All stores are aware of this requirement. For the review period, there has also been a lack of SARs filed by the sector, which is a cause for concern, given the sector's susceptibility to ML abuse based on the high-value goods supplied.

13.90 This sector is also exposed to criminality from suppliers, however, the requirements of the AMLTFCOP mitigate this risk. To ensure inventories are sourced from reputable suppliers, jewellery stores are required to undertake due diligence on applicants for business, which includes suppliers. As a result, this risk is not considered to pose any immediate ML threat to the sector.

13.91 The inherent ML risk from purchasing jewellery items (items intrinsically of high value) means the susceptibility to abuse risk is **Medium-High**.

### ***Conclusion***

13.92 Given the nature of goods supplied within the sector being of intrinsically of high value, which are easily transferable (such as being used as further payment methods) and therefore, attractive to criminals, the jewellery and DPMS sector represents a high ML risk generally. However, within the VI the sector remains small. The sector's clientele includes both domestic and international (tourism) customers, with the sector's main target market being the tourist industry (which includes both cruise ship passengers and long stay visitors). ML risks emanating from suppliers' risks are mitigated as the majority of these are based within the US, and the sector is required to undertake due diligence on same.

13.93 The sector is also very engaged with the supervisor and is fully aware of its ML risks and AML responsibilities. The overall risk is rated as **Medium-Low**.

## Vehicle Dealers

### Introduction

13.94 At the end of 2022, seven (7) businesses undertaking the buying and selling of vehicles were registered in the Territory. The vehicle dealer sector has remained fairly stable over the past few years comprising of several long-established businesses with no new entrants to the market during the review period.

### Summary of Risk

Sector Characteristics	Low
Products and Services	Medium-Low
Nature of Clientele (Customer Risk)	Medium-Low
Geographic Risk	Medium-Low
Delivery Channels	Medium-Low
Susceptibility to Abuse	Medium-Low
<b>Overall Risk</b>	<b>Medium-Low</b>

### *Sector Characteristics*

13.95 Of the seven (7) registered vehicle dealers, two (2) are large dealers who between them dominate approximately 70% of the market, with the remaining market split between three (3) medium-sized dealers and two (2) small dealers. Sales between these dealers, over the review period, averaged in the region of 550 – 750 vehicles per year. Given that vehicles (cars) are the primary mode of transport within the VI, the car sales figures are not considered to be out of the ordinary.

13.96 Sector responses indicate that organisation's understanding of how ML risks affect the Territory varies from dealer to dealer. Sector participants also rated the level of ML risk within the sector to be medium-low to low. Given the nature of the VI's market and the client base, this is considered appropriate.

13.97 In 2021, three (3) thematic inspections focused on due diligence requirements were carried out on vehicle dealers. Two (2) were found to be non-compliant with provisions of the AMLTFCOP and one (1) partially compliant. These findings were in line with the 2020 ML Sectoral Risk Assessment results. Since the inspections, the supervisor has continued to conduct outreach within the sector to improve overall awareness and understanding of the AML provisions, including publication of sector-specific guidance notes. It is noted that the sector is now much more engaged with the supervisor and aware of the AML/CFT obligations.

13.98 Sector characteristics are considered **Low** risk.



### ***Products and Services***

13.99 Businesses falling within this category generally provide the following products and services:

- buying and selling of vehicles (cars, motorcycles, trucks, etc);
- car rental services (some of the vehicle dealers in the VI also have a rental arm); and
- vehicle maintenance/mechanic services.

13.100 For the purposes of this report, only the business of buying and selling vehicles is covered. The types of vehicles sold within the Territory are both new and used. All vehicles sold are imported. Vehicles sold range from lower end brands such as Kia and Hyundai to high-end brands such as Mercedes, BMW and Audi, and are generally for use by persons residing and working in the VI. With respect to the sales, the car dealerships do not offer financing options directly, but may have relationships with the banks where customers may be referred to.

13.101 Product risk is rated as **Medium-Low**.

### ***Nature of Clientele (customer and supplier risks)***

13.102 Dealers provide services to both private individuals and businesses wishing to purchase vehicles for business use, however, the majority of customers are private individuals living and working within the VI and purchasing vehicles for personal use.

13.103 Due to the ML risks which exist within this sector, supplier risks have also been considered. As the VI is not a manufacturer of vehicles, all goods to be sold are imported. As it relates to suppliers, all but one dealer, utilise suppliers that are businesses/corporations. Private individual suppliers as well as business suppliers are utilised by the other dealer. As part of their AML obligations, all vehicle dealers are required to undertake due diligence and verify any applicants for business with whom they do business. This includes their suppliers.

13.104 Given the general make up of this sector's clientele, as well as the reduced risk from the suppliers, clientele risk is considered to be **Medium-Low**.

### ***Geographic Risk***

13.105 As with the above, geographic risks arising from both buyers and suppliers have been considered. The buyer market within the VI is considered to be purely domestic. For the majority of the sector, customers are based within the VI. One dealer reported, on occasion, supplying to customers based outside of the VI (less than 1% of their business), however, those jurisdictions are not considered to be high risk and generally tend to be nearby countries, such as the US Virgin Islands.

13.106 As it relates to suppliers, dealers noted sourcing inventory from various locations, including the US, China, Japan and India, which is considered normal practice. However due to the exposure from suppliers, geographic ML risk to the sector is rated as **Medium-Low**.

### ***Delivery Channels***

- 13.107 Given the nature of this sector the majority of transactions are undertaken on a face-to-face basis. In addition, cash transactions are undertaken within the sector. Some dealers have a cash transaction threshold limit ranging from \$5,000 to \$15,000. However, some dealers do not have a maximum cash threshold in place, and this places them at higher ML risk. None of the dealers accept/have accepted payments via virtual/cryptocurrency. Bank financing still remains the leading payment method for the purchase of vehicles.
- 13.108 As a result of the use of cash within this sector, the ML risk is elevated. However, the direct (face-to-face) interaction with the domestic customer reduces the ML risk within this sector as it enables the dealers to identify and verify their customers as well as their sources of funds. Delivery channels risk is rated as **Medium-Low**.

### ***Susceptibility to Abuse***

- 13.109 As it relates to this sector, susceptibility to ML abuse is considered to come from the use of cash within this sector. Under the law, there is no maximum threshold for cash for the sale of vehicles, however, all transactions over \$15,000 require due diligence, in accordance with the provisions of the AMLTFCOP. Additionally, there has also been a lack of SARs filed by the sector.
- 13.110 As with the other high valued goods sellers, this sector also has a vulnerability to ML abuse from its supply chain. This risk is, however, reduced as full due diligence requirements apply to all applicants for business of a dealer, which would include suppliers. As a result, the sector's susceptibility to abuse is considered **Medium-Low**.

### **Conclusion**

- 13.111 Overall, the vehicle dealer sector within the VI is considered as small to moderate in size, serving mainly customers based in the VI. Cash is used and accepted within the sector. However, the supervisor has undertaken a significant amount of work with this sector to raise awareness of the ML risks this poses and dealers have put in place AML controls. The sector's overall inherent risk rating is considered **Medium-Low**.

## Yacht Brokers

### **Introduction**

13.112 The yacht broker sector within the VI comprises persons who are involved in the business of buying and selling yachts/boats (effectively every vessel that is used in navigation). At the end of 2022, there were seven (7) businesses falling within this category registered in the Territory.

### **Summary of Risk**

Sector Characteristics	Medium-Low
Products and Services	Medium-Low
Nature of Clientele (Customer Risk)	Low
Geographic Risk	Medium-Low
Delivery Channels	Low
Susceptibility to Abuse	Low
<b>Overall Risk</b>	<b>Medium-Low</b>

### ***Sector Characteristics***

13.113 All of the current brokers registered to undertake this category of business are long-established businesses within the Territory. Given the VI's status as a premier sailing destination, the primary business for each of these brokers remains yacht charters and sailing.

13.114 Of the six (6) registered yacht brokers, two (2) are larger dealers predominantly undertaking the majority of transactions, with the remaining market considered smaller, ad-hoc brokers. The number of yacht/boat sales per year over \$15,000 average between 6-15. Generally, persons purchasing yachts/boats in the VI will do so as investments for the purposes of using them for charters and so the yacht charter side of the business will then manage and maintain the vessels. Sector characteristics is considered to rate as Medium Low.

### ***Products and Services***

13.115 The products and services provided by the yacht broker sector in the VI includes:

- Buying and selling of yachts/boats;
- Yacht charter services; and
- Yacht maintenance/management services.

13.116 For the purposes of this report, only the business of buying and selling yachts/boats is covered. The types of yachts/boats sold within the Territory are both new and used. Generally, the yacht broker sector is considered to carry a higher risk of ML due to the nature of goods being sold, being yachts/boats of higher

value, which have been shown in global typologies to be used for ML purposes. However, given the number of transactions undertaken per year by the VI sector, products and services is rated as **Medium-Low**.

***Nature of Clientele (customer and supplier risks)***

- 13.117 Yacht brokers in the VI provide services to both private individuals and businesses. However, the majority of customers purchasing yachts are businesses.
- 13.118 Due to the ML risks which exist within this sector, supplier risks have also been considered. As it relates to suppliers, all but one dealer utilises suppliers that are businesses/corporations. Private individual suppliers as well as business suppliers are utilised by the other dealer.
- 13.119 As part of their AML obligations, all yacht brokers are required to undertake due diligence and verify any applicants for business with whom they do business. This includes customers as well as suppliers.
- 13.120 The clientele risk for this sector is rated as **Low**.

***Geographic Risks***

- 13.121 The majority of customers within this sector are based outside of the BVI (US, Canada and Europe). As it relates to suppliers, these are also from various locations, including mainly from the US, as well as Canada and Europe. Generally, yacht brokers will have long-standing relationships with their suppliers.
- 13.122 It should be noted that sector participants did not identify dealing with any clients from higher risk jurisdictions. Given this international element and the potential of ML exposure this carries, geographic risk is rated as **Medium-Low**.

***Delivery Channels***

- 13.123 Due to the nature of the business/goods provided, and the location of the clientele, the majority of transactions occur on a non-face-to-face basis. Generally, however, the yacht brokers will have some type of face-to-face interaction with the customer/supplier during the transaction process. Cash transactions are not undertaken within the sector. Payments are sometimes via cheque but almost always via wire transfer.
- 13.124 None of the brokers accept payments via virtual/cryptocurrency. One broker received a request for a yacht to be purchased using Bitcoin, however, they did not proceed with this transaction.
- 13.125 As a result, delivery channel risk is rated **Low**.

### ***Susceptibility to Abuse***

- 13.126 There has been a lack of SARs filings for this sector within the review period, however, given the sector's characteristics, volume of transactions and general types of clientele this is not considered a cause for concern at this stage. It is also noted that brokers have in place policies, processes and procedures in place for AML purposes.
- 13.127 Given the small number of transactions that occur within this sector, as well as the fact that there are virtually no cash transactions, the sector's susceptibility to ML abuse is considered as **Low** risk.

### **Conclusion**

- 13.128 Overall, the yacht broker sector within the VI is considered very small. Given the nature of goods sold, the potential for ML abuse remains. However, the vast majority of the sector's clients are not from higher risk jurisdictions and cash transactions are virtually non-existent. The sector's overall inherent risk rating is considered to be **Medium-Low**.

## Other High Value Goods Dealers

- 13.129 In the VI, other high value goods dealers are defined as persons who engage in the business of buying and selling goods such as high value furniture, machinery and art (relating to paintings and sculptures of intrinsic value). In the VI there are currently two such businesses registered under the DNFBP regime. Both businesses specialise in the sales of machinery and equipment for yachts/boats and may undertake cash transactions over the \$15,000 threshold; however, generally, these transactions are not the norm.
- 13.130 Overall, the Other HVGDs sector is seen as carrying very low risk, given the type of business engaged in. The susceptibility to abuse is possible given that transactions are likely to be cash transactions, however, there is no evidence to suggest that the two registered businesses pose any significant ML risk.

## 14. Other Institutions

### Co-operative Societies and Friendly Societies

#### Introduction

- 14.1 Under the Co-operative Societies Ordinance (CSO), Co-operative Societies (CS) may be set up by members of the said society for their own mutual benefit. A CS may do business with its members or other persons outside of the CS. Under Section 32 of the Ordinance, it may also provide loans to members and other persons. CS by their nature must carry out activities physically in the VI.
- 14.2 The CSO provides for regulations to be made to operationalise the activities of CS. Records indicate that there are currently no CS registered under the CSO.
- 14.3 Since the implementation of the NPO Act, activities covered under the Friendly Societies Act (FSA) are now registrable activities under the NPOA, therefore, friendly societies (FS) will be assessed for TF purposes only and are not covered under this ML assessment. However, records indicate that no FS have been registered under the FSA during the review period and no FS are currently registered including as NPOs.

#### Summary of Risk

Sector Characteristics	Low
Products and Services	Low
Nature of Clientele (Customer Risk)	Low
Geographic Risk	Low
Delivery Channels	Low
Susceptibility to Abuse	Low
<b>Overall Risk</b>	<b>Medium-Low</b>

#### ***Sector Characteristics***

- 14.4 The complexity of the ownership structure of CSs is very simple given that members are natural persons who are effectively the BOs of the CS. Further such membership would be stated in the register of members. In addition, CS are subject to the AMLR and AMLTFCOP and must conduct relevant CDD on their members and clients. Considering these factors, the risk associated with the sector characteristics of CSs is **Low**.

### ***Products and Services***

- 14.5 The services provided are limited to maintaining accounts (savings) and providing loans (credit facilities) to members and/or other persons. As there are no entities established/registered under the CSO the products are currently limited to those identified in the FSA itself. However, the provision of loans and accounts are akin to banking services and potentially carries similar risk as within the banking sector, though such risk would be mitigated in relation to a CS that only offers services to members. Those that offer services to others (general public) would present an elevated level of risk compared to those that only offer services to members. Services would likely be solely local with no cross-border activities. Given the nature of the potential services that may be offered, the product and service risk within this sector has been rated as **Low**.

### ***Nature of Clientele (Customer Risk)***

- 14.6 Services may be offered to local residents in accordance with the CSO. Clients would generally be members of the CS, who would be natural persons resident in the VI. It is possible for a CS to have members or account holders who are high-risk customers such as PEPs. However, these high-risk persons would be domestic in nature. The risk exposure based on the nature of clientele is therefore considered **Low**.

### ***Geographic Risk***

- 14.7 All members and clients would be natural persons resident in the VI. The geographic ML risk stemming from this sector has been identified as **Low**.

### ***Delivery Channels***

- 14.8 All CS business will likely be conducted face to face and delivery channels are likely to be simple in nature. The risk for delivery channels has therefore been rated as **Low**.

### ***Susceptibility to Abuse***

- 14.9 CS are considered relevant business under the AMLR and are subjected to the AMLTFCOP. CS are required to file SARs. As there are no CS registered under the CSO no SARs have been filed in that regard. Under the CSO there is a Registrar responsible for CS. Currently the Director of Agriculture and Fisheries is the Registrar. The risk emanating from the sector's susceptibility to abuse has therefore been rated as **Low**.

### **Conclusion**

- 14.10 There are no CS registered in the VI. Based on findings there is inherent risk with CS. The vulnerabilities have been assessed as **Low**; however, the mitigating controls have been assessed at the low end of **Medium-Low**. Therefore, the CS sector has been assessed as having an overall ML risk level of **Medium-Low**.



## 15. Conclusion

- 15.1 The execution of this ML risk assessment exercise has provided a more in-depth review of the Territory's exposure to ML related matters than the 2020 ML Risk Assessments. The comprehensive nature of this report, which not only looked into the risks relative to the Territory's FIs and DNFBPs, but also at the national threats and vulnerabilities within the national AML operational framework is intended to provide an updated understanding of the current level of exposure to ML and ML related matters facing the Territory.
- 15.2 The results of this exercise will enable the VI to identify, assess and understand any changes in the ML risks currently faced by the jurisdiction. Such risk analysis is important as it assists the jurisdiction in implementing suitable policies and procedures to combat ML. Further, the results of the exercise will help law enforcement agencies and other Competent Authorities to identify the particular ML risks they face, as well as the vulnerabilities within their agencies that enhance the potential for such risks. This in turn will enable them to apply appropriate risk-based preventative or mitigating measures.
- 15.3 Additionally, looking at sectoral ML risk will allow supervisory authorities to effectively shape their supervisory and inspection programmes and identify those sectors that may require enhanced oversight/supervision. The findings of this ML risk assessment also provide a useful foundation upon which both supervisory authorities, as well as the entities they supervise can undertake meaningful risk analyses 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. Such risk analysis is important as it assists in implementing suitable policies and procedures to combat ML and to ensure that the preventative or mitigating measures they have in place to counter ML remain appropriate and effective.
- 15.4 The methods by which ML activities are carried out continue to evolve. This is particularly relevant with regard to the use of virtual assets and provision of services by virtual asset service providers, as well as other emerging products and technologies. The Virgin Islands must, therefore, continue to review its AML regime on an ongoing basis and seek to ensure that it remains robust and adaptable to any developing risks.

## Glossary of Terms

AGC	Attorney General’s Chambers
ACAMS	Association of Certified Anti-Money Laundering Specialists
ACFE	Association of Certified Fraud Examiners
AML	Anti-money Laundering
AMLR	Anti-money Laundering Regulations
AMLTFCOP	Anti-money Laundering and Terrorist Financing Code of Practice
AMLU	Anti-Money Laundering Unit
ARIN-Carib	Asset Recovery Inter-Agency Network for the Caribbean
ASBA	Association of Supervisors of Banks of the Americas
AU	Authorisation Unit
BEPS	Base Erosion and Profit Shifting
BMS	Border Management System
BNI	Bearer Negotiable Instrument
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
CAMS	Certified Anti-Money Laundering Specialist
CARICOM	Caribbean Community
CARTAC	Caribbean Regional Technical Assistance Centre
CBCr	Country by Country Reporting
CBD	Cannabidiol
CBP	Customs and Border Patrol
CCA	Council of Competent Authorities
CCLEC	Caribbean Customs Law Enforcement Council
CCTV	Closed-Circuit Television
CDD	Customer Due Diligence
CFATF	Caribbean Financial Action Task Force
CFT	Countering the Financing of Terrorism
CGBS	Caribbean Group of Banking Supervisors
CGSR	Caribbean Group of Securities Regulators
CIO	Chief Immigration Officer
CIU	Compliance Inspection Unit
CJICA	Criminal Justice (International Cooperation) Act
CLA	Cannabis Licensing Act
CLEA	Committee of Law Enforcement Agencies
CMA	Company Management Act
CMDA	Customs Management and Duties Act
CRS	Common Reporting Standard

CS	Co-operative Society
CSO	Co-operative Societies Ordinance
CSP	Corporate Services Provider
DDoS	Distributed Denial of Service
DEA	Drug Enforcement Agency
DeFi	Decentralised Finance
DHR	Department of Human Resources
DNFBP	Designated Non-financial Businesses and Professions
DPMA	Drugs (Prevention and Misuse) Act
DPMS	Dealers in Precious Metals and Stones
DTOA	Drug Trafficking Offences Act
ECDD	Enhanced Customer Due Diligence
ECOFEL	Egmont Centre of FIU Excellence and Leadership
ESW	Egmont Secure Web
FAQ	Frequently Asked Questions
FATF	Financial Action Task Force
FB	Financing Business
FBI	Federal Bureau of Investigations
FCDO	Foreign Commonwealth and Development Office
FCU	Financial Crimes Unit
FI	Financial Institution
FIA	Financial Investigation Agency
FIU	Financial Investigation Unit
FMSA	Financing and Money Services Act
FOREX	Foreign Exchange
FS	Friendly Societies
FSA	Friendly Societies Act
FSB	Financial Stability Board
FSC	Financial Services Commission
FSCA	Financial Services Commission Act
GBCA	Gaming and Betting Control Act
GDP	Gross Domestic Product
GIFCS	Group of International Financial Centre Supervisors
GO	Governor's Office
GoVI	Government of the Virgin Islands
HMC	His Majesty's Customs
IAIS	International Association of Insurance Supervisors
IB	Investment Business
IC	International Cooperation
ICA	International Compliance Association
ICE	Immigration and Customs Enforcement
ICO	Initial Coin Offering
ICSA	Institute of Chartered Secretaries and Administrators (Chartered Governance Institute)
ID	Immigration Department

IGC	Inter-governmental Committee on AML/CFT
IMF	International Monetary Fund
IMPACS	Implementation Agency for Crime and Security
IOSCO	International Organisation of Securities Commissions
IP	Insolvency Practitioner
ITA	International Tax Authority
IU	Intelligence Unit
JTF	Joint Task Force
LEA	Law Enforcement Agencies
LPA	Limited Partnership Act
MBC	Micro Business Company
MBCA	Micro Business Companies Act
MCSU	Market Conduct Supervision Unit
MIT	Major Investigations Team
ML	Money Laundering
MLA	Mutual Legal Assistance
MLATMA	Mutual Legal Assistance (Tax Matters) Act
MLRO	Money Laundering Reporting Officer
MOU	Memorandum of Understanding
MSB	Money Services Business
NEOC	National Emergency Operations Centre
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
PEP	Politically Exposed Person
PF	Proliferation Financing
PSMC	Public Service Management Code
PSU	Prudential Supervision Unit
PTC	Private Trust Company
RA	Registered Agent
RBA	Risk-Based Assessment
REA	Real Estate Agent
REDTRAC	Caribbean Regional Drug Law Enforcement Training Centre
RO	Registered Office
RVIPF	Royal Virgin Islands Police Force
SAR	Suspicious Activity Report
SEU	Supervision and Enforcement Unit
SIBA	Securities and Investment Business Act, 2010
SIT	Special Investigations Team
SOP	Standard Operating Procedures
SSU	Specialised Supervision Unit
TBA	Threat Based Assessment

TCSP	Trust and Corporate Services Providers
TF	Terrorist Financing
TPS	Temporary Protected Status
TSP	Trust Services Provider
UK	United Kingdom
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
USA	United States of America
USVI	United States Virgin Islands
VA	Virtual Assets
VASP	Virtual Asset Services Provider
VASPA	Virtual Asset Services Provider Act
VI	Virgin Islands
VISTA	Virgin Islands Special Trust Act
WCO	World Customs Organisation
WMS	Watch List Management System
WTO	World Trade Organisation