

THE ASSESSMENT OF BERMUDA'S NATIONAL MONEY LAUNDERING AND TERRORIST FINANCING RISK

Report



GOVERNMENT OF BERMUDA

National Anti-Money Laundering Committee (NAMLC)

Table of Contents

| | |
|--|-----------|
| Foreword | 4 |
| Executive Summary | 5 |
| Chapter 1: Introduction and Context | 7 |
| Relevant FATF requirements | 7 |
| Bermuda’s Geographical Context | 8 |
| Bermuda’s Political and Juridical Context..... | 8 |
| Bermuda’s Economic and Social Context..... | 8 |
| Chapter 2: Bermuda’s AML/ATF Legislative Framework and Key Agencies | 10 |
| Legislative Framework | 10 |
| Core Legislation | 10 |
| Additional Legislation | 12 |
| Key AML/ATF Agencies | 13 |
| The National Anti-Money Laundering Committee | 14 |
| and the Office of NAMLC..... | 14 |
| The Attorney General’s Chambers (AGC)..... | 14 |
| Bermuda Casino Gaming Commission (BCGC) | 14 |
| Bermuda Monetary Authority (BMA)..... | 15 |
| Bermuda Police Service (BPS)..... | 15 |
| The Department of Customs (Customs)..... | 15 |
| The Department of Public Prosecutions (DPP)..... | 16 |
| Financial Intelligence Agency (FIA)..... | 16 |
| The Ministry of Finance (MoF) | 16 |
| The Ministry of Legal Affairs (MoLA)..... | 16 |
| The Registry General (RG) | 17 |
| Registrar of Companies (RoC) | 17 |
| The Superintendent of Real Estate (SoRE) | 17 |
| The Barristers and Accountants AML/ATF Board (Board)..... | 17 |
| Chapter 3: Bermuda’s AML/ATF Operational Framework | 19 |
| A. Regulation and Supervision | 19 |
| Table 1: The Regulated Sectors | 19 |
| The Bermuda Monetary Authority’s Supervisory Framework..... | 20 |
| Assessment of ML/TF risks and controls | 20 |
| Licensing and Authorisations | 20 |
| Regulation and Information | 21 |
| Off-site and On-site Supervision | 21 |
| Enforcement..... | 21 |
| Monitoring and Reporting..... | 22 |
| The Financial Intelligence Agency’s Supervisory Approach | 22 |
| Outreach and Training..... | 22 |
| Guidance and Communication | 22 |
| Supervision and Oversight..... | 22 |
| Risk Assessment | 23 |

| | |
|--|-----------|
| The Superintendent of Real Estate’s Supervisory Approach | 23 |
| Licensing Framework..... | 23 |
| Risk Assessment | 24 |
| Legislative and Policy Interpretation..... | 24 |
| Reporting Entity Assistance..... | 24 |
| Risk-Based Monitoring and Inspection Programme..... | 24 |
| Enforcement of Compliance..... | 24 |
| The Barristers and Accountants AML/ATF Board’s Supervisory Approach | 24 |
| Outreach and Training..... | 24 |
| Oversight and Supervision..... | 25 |
| Legislation and Guidance | 25 |
| Liaison with Other Relevant Bodies | 25 |
| Risk Assessment | 25 |
| Oversight of Charities | 26 |
| Outreach and Training..... | 26 |
| Risk Assessment | 26 |
| Oversight and Monitoring | 26 |
| Addressing Non-Compliance | 26 |
| B. Transparency and Beneficial Ownership | 26 |
| C. International Cooperation | 28 |
| ASSESSMENT OF INHERENT MONEY LAUNDERING RISKS..... | 30 |
| Chapter 4: Methodology for the Money Laundering Risk Assessment..... | 30 |
| General Methodology and Key Terms | 30 |
| The Risk Assessment Tool | 31 |
| Chapter 5: Bermuda’s National Money Laundering Threats | 32 |
| Introduction | 32 |
| Scope and Process | 32 |
| Predicate Offenses that Generate Proceeds of Crime..... | 34 |
| a) High-threat predicate crimes | 34 |
| b) Medium-high threat predicate crimes..... | 37 |
| c) Medium-threat predicate crimes | 38 |
| d) Low-threat predicates..... | 38 |
| Origin of the proceeds of crime..... | 39 |
| a) Domestic | 39 |
| b) Foreign jurisdictions..... | 39 |
| c) Both domestic and foreign | 39 |
| d) Origin not identified..... | 39 |
| Cross-border Threat Analysis | 40 |
| Summary of Sector-Specific Analysis of Money Laundering Threats | 41 |
| Conclusion | 41 |
| Chapter 6: The Banking Sector | 43 |
| Chapter 7: The Insurance Sector..... | 47 |
| Chapter 8: The Securities Sector..... | 51 |
| Chapter 9: Money Service Businesses (MSBs) | 58 |
| Chapter 10: Bermuda Stock Exchange (BSX) | 60 |

| | |
|--|------------|
| Chapter 11: Trust Service Providers (TSPs) | 62 |
| Chapter 12: Corporate Services Providers (CSPs) | 65 |
| Chapter 13: The Legal Sector | 68 |
| Chapter 14: The Accounting Sector | 71 |
| Chapter 15: The Real Estate Sector | 74 |
| Chapter 16: Dealers in High-Value Goods | 76 |
| Chapter 17: Dealers in Precious Metals and Stones | 78 |
| Chapter 18: The Betting Sector | 80 |
| Chapter 19: The Casino Gaming Sector | 82 |
| TERRORIST FINANCING RISK ASSESSMENT | 85 |
| Chapter 20: Terrorist Financing | 85 |
| Introduction and overview | 85 |
| Chapter 21: Terrorist Financing Risk Assessment | 89 |
| Terrorist Financing Threat | 90 |
| Direction of Funds | 91 |
| Sectoral Analysis of Terrorist Financing Risk | 94 |
| Chapter 22: Conclusion | 99 |
| Inherent Money Laundering Risk Findings | 99 |
| National Threats | 99 |
| Inherent Money-Laundering Risk at the Sectoral Level | 99 |
| Terrorist Financing Risk Assessment | 101 |
| Conducting the Second Iteration of the National Money Laundering Risk Assessment on Money Laundering | 102 |
| Subsequent Events | 102 |
| Appendix A. Glossary | 104 |
| Appendix B. The World Bank Tool | 107 |
| Assessment of Money Laundering Risk | 107 |
| Assessment of Terrorist Financing Risk | 109 |
| Appendix C. International Typologies used as part of Terrorist Financing Risk Assessment | 111 |

Disclaimer: This report is produced by the National Anti-Money Laundering Committee. Although the tools used are the World Bank Models for National Risk Assessments on Money Laundering and Terrorist Financing, the World Bank did not participate in this assessment, nor provide any input into the analysis or conclusions arrived at.

Foreword

Bermuda has taken proactive and positive steps to achieve its reputation as a leading international financial centre, committed to quality and integrity. As part of that, Bermuda has established a strong and robust regulatory regime to combat money laundering and the financing of terrorism and proliferation, that is compliant with the international standards. We have continually and proactively taken steps to assess and enhance our framework and to play a leading role in the global fight to combat money laundering and terrorist financing. In order to maintain and enhance this global reputation, as a country we are aware that we must comprehensively examine our economic, legal and regulatory environments, to best understand the risks we face. That allows us to formulate appropriate policies and strategies to address these risks and to place resources where they can have the greatest impact to combat the scourge of criminality. Bermuda is not willing to be used as a home for criminal activity or a hiding place for illicit proceeds, from either domestic or foreign sources.

This is why I am pleased to publish this Report on Bermuda's national inherent money laundering risks and on the relevant terrorist financing risks. The money laundering risk assessment, undertaken in 2017 is Bermuda's second risk assessment of money laundering, and was a follow-up to the national money laundering risk assessment carried out in 2013. The terrorist financing risk assessment was conducted in 2016 and was Bermuda's first analysis of these risks. These assessments were done in accordance with the international standards established by the Financial Action Task Force. The objective was to better identify, assess and understand the money laundering and terrorist financing risks to which Bermuda is exposed, given our unique economic and geographic context, so that we can ensure appropriate action is being taken to effectively mitigate and manage the risks.

The work carried out involved all of Bermuda's competent and supervisory authorities that have responsibilities for Bermuda's anti-money laundering and anti-terrorist financing regime. The initiative had the full support of the Cabinet and the senior public service executives, who provided the necessary foundational support to facilitate the work. The private sector, who play an important front-line role in this fight, provided necessary data, perspective and insight to facilitate a more comprehensive and credible analysis of the factors that are relevant to the determination of risk. I am grateful for the professionalism and commitment that those involved have demonstrated to ensure that these initiatives were successfully completed.

The outcomes of these risk assessments provide valuable information to stakeholders in the Government, supervisory authorities, and those in the private sector, to support their efforts to address the challenges they face in tackling these illicit flows. It is also a tool for the Cabinet to assist in their work to ensure strong and sustainable growth of the economy and opportunities for all. The results of these national assessments have already been considered by Cabinet and the Action Plan, derived from the findings, has been approved and is already being implemented.

This Government is determined to continually demonstrate Bermuda's long-standing commitment to effectively protecting its borders and addressing these nefarious crimes. I am confident that by appropriately responding to these risks, and with continued cooperation and synergy between the public and private sectors, we will ensure that our regime continues to be effective in addressing these types of criminal activity and that Bermuda remains a great place to conduct legitimate and quality business.

The Hon. E. David Burt, JP, MP

Premier of Bermuda and Minister of Finance

Executive Summary

All jurisdictions must unite in the global battle against money laundering, terrorist financing and the financing of proliferation. The Government of Bermuda has continually expressed and demonstrated its commitment to maintaining a robust and effective regime to combat these risks that meets international standards. But these risks can be nebulous and the landscape in which criminals operate can shift, so jurisdictions must remain vigilant and keep their standards up-to-date.

The Government of Bermuda performed its first national money laundering (ML) risk assessment in 2013, which was followed in 2016 with an assessment of its terrorist financing (TF) risk. In 2017, a wide-reaching, comprehensive update to the 2013 ML risk assessment was conducted. These three national risk assessments have provided an important basis for continued strengthening of Bermuda's framework to combat ML and TF.

This report contains key information on the inherent ML risks resulting from the 2017 analysis and documents the understanding of Bermuda's national TF risk. In addition to providing information about Bermuda's threat and vulnerability profile, this report will highlight the factors that contribute to the strength and effectiveness of Bermuda's AML framework, as well as providing information on steps being taken to further enhance the regime.

In the 2017 ML assessment, Bermuda's overall threat rating for money laundering was placed at medium- high (as compared to medium in 2013). This threat rating does not reflect a change in the national situation, but rather reflects a better understanding and more effective analysis of the threats that exist, owing to more comprehensive information and statistics and the greater level of experience and expertise.

Foreign crimes, such as fraud, corruption, market manipulation/insider trading, international tax crimes and foreign bribery and corruption, as well as drug trafficking in the domestic landscape were assessed to have the highest ML threat. The potential scale of money laundering that can be derived from these offences has a direct impact on Bermuda's financial institutions and other intermediary sectors that provide services to international clients.

For the first time, the national risk assessment exercise in 2017 produced findings on the ML risk for key sectors of the economy. A money-laundering threat ranking was produced for each of these sectors, then a determination was made about the inherent money-laundering risk for these sectors, taking into account the findings on inherent vulnerability. Based on the sectoral threats and the inherent ML vulnerability assessment, the sectors with the highest ML inherent risk are: banking; securities; trust service providers (TSP); and corporate service providers (CSPs). The sectors with medium-high ML inherent risk are: legal, insurance (long-term direct); and money services businesses (MSBs), while dealers in precious metals; real estate; betting; and gaming are medium risk. The Bermuda Stock Exchange (BSX); accountants and dealers in high-value goods have a medium-low ML inherent risk. In addition, it should be noted that the casino gaming sector was given a low threat rating as there are currently no casinos operating in Bermuda.

There was no evidence of terrorism or terrorist financing having taken place in Bermuda, so the assessment of sectoral vulnerability was based on potential risk. For most sectors, as expected, the sectoral TF vulnerability was deemed to be either low or medium-low with only the not-for-profit sector assessed at a medium rating.

To keep the Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) threat and vulnerability levels in check—and to reduce them—the Government of Bermuda has imposed extensive requirements for controls across various sectors. In the private sector, the implementation of those controls is at different stages. Financial sectors that have been subject to AML obligations and supervision for an extended period of time, generally have greater awareness and understanding of AML matters.

Given Bermuda's commitment to safeguarding its financial system from abuse by criminal elements, key action items have been given a high priority to ensure the continued effectiveness of the AML/ATF framework. A number of legislative, institutional and operational changes have already been implemented and the work is ongoing. Along with the significant work done in prior years, a national strategy and action plan, formally documented in 2016, has already shown a positive impact and continues to be reviewed and updated. The results of these risk assessments continue to be incorporated into that ever-evolving plan. Government and other key non-government institutions are also assessing the results of the work done and are appropriately updating and implementing their action plans. Practically, this means that intelligence and law enforcement should focus on financial crimes stemming from the financial services sector and supervisors should focus on those sectors and entities that have the most prominent vulnerabilities.

It is important for the private sector to review the results of these risk assessments and ensure that their AML/ATF activities appropriately reflect the required risk-based approach. AML/ATF efforts should be focused on those threats and vulnerabilities that are most relevant to each sector.

With continued diligence and hard work, Bermuda can continue its international commitment to effectively combat money laundering, terrorist financing and the financing of proliferation.

Chapter 1: Introduction and Context

The Government of Bermuda is determined to continually improve its understanding of ML and TF risk in Bermuda. The Government of Bermuda also continuously strives to strengthen and improve Bermuda's AML/ATF framework and to design policies and strategies to effectively mitigate the risks. However, a country's exposure to, and ability to combat, ML and TF are framed by the unique context of the jurisdiction, the features of which must be considered when analysing these risks. Relevant requirements in this regard and guidance is provided by the Financial Action Task Force (FATF) in relation to these matters, which were taken into account in these assessments.

Competent and supervisory authorities have been actively involved in the assessments that are the subject of this report, and in a coordinated and collaborative way, have carried out the required analysis. This has enabled them to further their knowledge and understanding of Bermuda's ML and TF risks and have the relevant information required to play their part to further strengthen our regime and ensure that appropriate risk-based programmes are being effectively implemented.

Industry has also played a key role in these assessments and have provided critical input into the process. In relation to dissemination of the results to industry, information sessions have been held by the relevant supervisory authorities and written documentation provided on the relevant threats and vulnerabilities. This report, which highlights the results of the ML and TF risk assessments done by Bermuda to date, is therefore a further step in ensuring that financial institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs) are fully aware of this important information to assist in their own risk assessments and the development of appropriate risk-based programmes.

Relevant FATF requirements

The acknowledged international standard setter for AML/ATF matters is the Financial Action Task Force (FATF). Its Recommendations and associated Methodology set out the requirements for the framework and mechanisms that jurisdictions—along with their relevant public and private sector agencies—must have in place to combat money laundering, proliferation and terrorist financing.

FATF Recommendation 1 states, in part:

Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment, countries should apply a Risk-Based Approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This approach should be an essential foundation to efficient allocation of resources across the anti-money laundering and countering the financing of terrorism (AML/CFT) regime and the implementation of risk based measures throughout the FATF Recommendations.

Technical Compliance Criteria 1.4 of the FATF Methodology requires that "Countries should have mechanisms to provide information on the results of the risk assessment(s) to all relevant competent authorities, self-regulatory bodies (SRBs), financial institutions and DNFBPs."

Under the characteristics of an effective system, the FATF's Effectiveness Methodology states that "A country properly identifies, assesses and understands its money laundering and terrorist financing risks, and co-ordinates domestically to put in place actions to mitigate these risks. This includes the involvement of competent authorities and other relevant authorities; using a wide range of reliable information sources."

Bermuda's Geographical Context

Bermuda comprises the Bermudas or Somers Islands, an archipelago of some 150 islands in the Atlantic Ocean, about 570 nautical miles southeast of North Carolina in the USA. Ten of the islands are linked by bridges and causeways to form the principal mainland. Bermuda covers an area of approximately 21 square miles, is some 22 miles long and rarely more than one mile wide and has 60 miles of coastline. Its principal municipal areas are the City of Hamilton (the capital) and the Town of St. George. Bermuda is less than two hours flying time from key northeastern North American cities and there are good airline service providing direct access to the United States of America (USA), United Kingdom (UK) and Canada. Since Bermuda has no direct gateways to any other countries, all passengers flying to Bermuda on commercial flights must transit through major cities in the USA, UK or Canada. Because of its location, most cruise ships come from ports in the USA, but there are occasionally vessels that come from UK ports.

Bermuda's Political and Juridical Context

Bermuda is the United Kingdom's oldest overseas territory with internal self-government, and it exercises a high degree of control over its own affairs, except for defence, internal security, and international affairs.

The Head of State is the British monarch, whose representative in Bermuda is the Governor. The principal bodies that constitute the political decision-making process in Bermuda are the Cabinet and the Legislative branch, which is comprised of the House of Assembly and the Senate. The House of Assembly has 36 members elected from 36 constituencies, representing the public's vote during the General Election. The party in power is the one which holds the majority of the seats in the House of Assembly; and the leader of that party serves as Premier of Bermuda. The Senate, or Upper House, has 11 members and is an appointed body. Five members are appointed on the advice of the Premier, three on the advice of the Opposition leader, and three by the Governor. The Senate does not have any power to veto or amend any legislative proposals presented by the House and can only defer the proposal for up to a period of one year.

The Premier is formally appointed by the Governor and nominates the Cabinet Ministers and designates the portfolios for which they are each responsible. The Government is currently comprised of 11 ministries including the Cabinet Office with responsibility for Government Reform. The Cabinet Ministers are each responsible for the operations and strategy of their particular Ministry and are accountable to the Legislature. General elections are held at most every five years, with the most recent being held on July 18, 2017.

Bermuda's legal system is based on the UK model, consisting of codified legislation and English common law. The court system is made up of Magistrate Courts, the Supreme Court, a local Court of Appeal, with final appeal to the Privy Council in the United Kingdom. Bermuda also has a long-established and transparent legal system as well as an extensive, well-qualified support system of legal professionals.

Bermuda's Economic and Social Context

Bermuda's economy is based primarily on international financial services and tourism, both of which represented a significant portion of Bermuda's 2016 nominal GDP of BD \$6.1 billion, or real GDP of BD \$4.6 billion. The Bermuda dollar is pegged to the US dollar at a fixed exchange rate of US\$1.00=BD\$1.00 (par).

Bermuda has four licensed banks, all serving domestic and international clients. Bermuda's corporate registry has approximately 16,000 registered legal entities, and approximately 1,300 of these are AML/ATF regulated FIs.

According to the 2016 Population and Housing Census Report. Bermuda had a population of 63,779, of which 19,332 residents are foreign born and 9,506 are foreign born workers. The population of foreign workers is drawn from a large number of countries, with the UK, Canada, the USA, Azores/Portugal, Asian countries and Caribbean nations accounting for the largest percentage.

The official language is English, and Bermuda has a high standard of education, coupled with high literacy rates. There is free compulsory education in government schools for students aged between 5 through 18. About 87% of the adult population has graduated from secondary school, and a significant proportion of secondary-school graduates go on to higher education, either in Bermuda or overseas.

Chapter 2: Bermuda's AML/ATF Legislative Framework and Key Agencies

Legislative Framework

Bermuda has a comprehensive suite of legislation to combat money laundering and the financing of terrorism and proliferation.

Core Legislation

Key laws in relation to AML/ATF include:

- i. **Proceeds of Crime Act 1997 (POCA)** – *This Act establishes the criminal offences of money laundering, sets the legal framework for confiscating proceeds of crime and confers investigative power on the police. The Act also confers expansive information-gathering powers to the police relating to investigations and contains provisions empowering the courts to make confiscation orders, forfeiture orders and freezing orders and to impose other penalties. It contains the provisions relating to filing of Suspicious Activity Reports (SARs) and provides the legislative basis for regulations to impose requirements on specified Financial Institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs) for preventive measures in relation to AML/ATF matters. It also contains the legislative basis for the Minister responsible for Justice to give directions in relation to matters that have significant ML/TF risk. It establishes the National Anti-Money Laundering Committee (NAMLC) and establishes the civil recovery regime which provides for the Enforcement Authority to recover funds that are the proceeds of criminal conduct.*
- ii. **Anti-Terrorism (Financial and other Measures) Act 2004 (ATFA)** – *This Act criminalises the financing of terrorism and establishes a series of offences relating to involvement in arrangements for facilitating, raising or using funds for terrorism purposes. The Act also confers information gathering powers on the police and empowers the courts to make orders and impose penalties in relation to investigations relating to terrorism offences. It also contains relevant provisions in relation to TF and Proliferation Financing (PF) matters that appropriately mirror those relating to ML that are contained in POCA.*
- iii. **Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (Regulations)** – *This legislation was established in accordance with POCA and ATFA. The regulations prescribe the preventive measures to be taken by AML/ATF regulated FIs and regulated Non-Financial Businesses and Professions (DNFBPs).*
- iv. **Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (SEA)** – *This Act establishes the supervisory framework whereby supervisory authorities are required to monitor certain persons and take measures to secure compliance by such persons with regulations made under the Proceeds of Crime Act 1997 and the Anti-Terrorism (Financial and Other Measures) Act 2004. The responsibilities and powers of supervisory authorities are prescribed as well as the civil penalties for breach of the Regulations.*
- v. **Criminal Code Act 1904** – *This Act criminalises a wide range of offences, which comprise the majority of the predicate offences for money laundering; and establishes the framework for charge, prosecution and sentencing of all offenders.*

- vi. **Misuse of Drugs Act 1972** – *This Act criminalises a wide range of drug trafficking offences and provides additional police powers for investigating such offences including forfeiture orders.*
- vii. **Bribery Act 2016** – *The Bribery Act amalgamates all bribery offences, including bribery of a foreign public official. The Act also prescribes the procedure for reporting, prosecution and penalties.*
- viii. **Revenue Act 1898** – *This Act provides the regulatory regime for Customs and confers appropriate powers on the Collector of Customs.*
- ix. **Companies Act 1981** – *This Act provides the framework for the incorporation, registration, and winding-up of companies. Other legislation which relate to the establishment and operation of other types of legal entities in Bermuda include the Partnership Act 1902; the Limited Partnership Act 1883; the Exempted Partnerships Act 1992; the Overseas Partnerships Act 1995; the Limited Liability Company Act 2016; and the Segregated Accounts Companies Act 2000. These Acts are reinforced and supported by the Registrar of Companies (Compliance Measures) Act 2017, which confers powers on the Registrar of Companies to better provide for inspection of, and compliance by, certain entities that are registered in Bermuda.*
- x. **Exchange Control Act 1972** – *This Act provides the regulatory framework for exchange controls and includes provisions that allow for the vetting of beneficial owners. This Act and the Exchange Control Regulations 1973 are important components of Bermuda’s long-standing history of knowing and vetting the key players behind companies registered in Bermuda.*
- xi. **Charities Act 2014** – *The Charities Act imposes a registration framework for charities and establishes a risk-based supervisory framework for registered charities, to ensure compliance with regulations that prescribe the AML/ATF obligations on charities: the Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014.*
- xii. **Criminal Justice (International Co-operation) (Bermuda) Act 1994** – *This legislation establishes the framework to enable Bermuda to provide legal assistance, evidence and other material support, to co-operate with other countries in the investigation and prosecution of criminal offences and the detention and recovery of criminal proceeds.*
- xiii. **International Cooperation (Tax Information Exchange Agreements) Act 2005** – *This Act makes general provision for the implementation of tax information exchange agreements entered into by the Government of Bermuda, as authorised by the Government of the United Kingdom, with other jurisdictions and to enable the Minister of Finance to provide assistance to the competent authorities of such jurisdictions under such agreements.*
- xiv. **International Sanctions Act 2003** – *The Sanctions Act allows the Minister responsible for legislative affairs to make the necessary regulations for the international sanctions regime. Other relevant Sanctions related legislation include:*
 - **International Sanctions Regulations 2013** – *These Regulations, whose legislative basis is derived from the International Sanctions Act, provide the mechanism for Overseas Territories Orders for international sanctions measures (United Nations and others) to be brought into force in Bermuda.*
 - **International Sanctions Notice 2017** – *This Notice confers powers by any provision to any of the Orders listed in Schedule 1 to the International Sanctions Regulations 2013 to maintain and publish a list of designated or listed persons constituting the target of financial sanctions and a list of restricted goods.*

Additional Legislation

In addition to the above core legislation, the framework for monitoring and enforcing compliance is strengthened by measures contained in the primary Acts establishing the supervisory authorities which include the:

- i. **Bermuda Monetary Authority Act 1969** – *This Act established the Bermuda Monetary Authority and provides its powers for, among other things, the regulation and supervision of financial institutions and the prevention of financial crime.*
- ii. **Casino Gaming Act 2014** – *This legislation provides for integrated resorts, to allow casino gaming, to establish a Bermuda Casino Gaming Commission and to establish a Problem Gaming Council to address problem gambling.*
- iii. **Financial Intelligence Agency Act 2007** – *This Act established the national Financial Intelligence Unit (FIU) as an independent, autonomous agency to receive reports of suspicious transactions from regulated financial institutions and other persons and to collate, analyse and, as appropriate, disseminate information to law enforcement and other competent authorities for investigation or other action.*
- iv. **Real Estate Brokers' Licensing Act 2017** – *This Act provides for the operation of a licensing regime for the Real Estate industry and establishes the supervisory framework.*
- v. **Bermuda Bar Act 1974** and **Chartered Professional Accountant of Bermuda Act 1973** – These Acts contain provisions relevant to the establishment and operation of the Barristers and Accountants AML/ATF Board and the oversight of persons in the legal and accounting sectors.

In addition, the suite of regulatory legislation can also be used as part of the AML/ATF framework and includes the following pieces of legislation:

- *Banks and Deposit Companies Act 1999*
- *Corporate Service Provider Business Act 2012*
- *Insurance Act 1978*
- *Investment Business Act 2003*
- *Investment Funds Act 2006*
- *Money Services Business Act 2016*
- *Trusts (Regulation of Trust Business) Act 2001*

Key AML/ATF Agencies

The Government of Bermuda has, by statute or delegation, designated the following agencies to play a leading role to address AML/ATF matters:

| Agency | Primary role within the AML/ATF regime |
|--|---|
| National Anti-Money Laundering Committee (NAMLC) | <ul style="list-style-type: none"> AML/ATF advisory and coordinating body The Office of NAMLC acts as secretariat for NAMLC and plays a key role in relation to coordination and development of the national policies, framework and programme. |
| Attorney General's Chambers (AGC) | <ul style="list-style-type: none"> Central authority – Mutual Legal Assistance Civil asset recovery |
| The Bermuda Casino Gaming Commission (BCGC) | <ul style="list-style-type: none"> Supervisory authority for casino gaming <i>In progress</i> – to become the supervisory authority for betting |
| Bermuda Monetary Authority (BMA) | <ul style="list-style-type: none"> Supervisory authority for financial sector Responsibilities in relation to vetting and retaining information on beneficial ownership of legal persons |
| Bermuda Police Service (BPS) | <ul style="list-style-type: none"> Criminal investigations |
| The Department of Customs (Customs) | <ul style="list-style-type: none"> Immigration and customs control at all ports of entry |
| The Department of Public Prosecutions (DPP) | <ul style="list-style-type: none"> Criminal prosecutions Confiscation/forfeiture (conviction based) |
| Financial Intelligence Agency (FIA) | <ul style="list-style-type: none"> Receipt of Suspicious Activity Reports (SAR) and analysis and dissemination of SARs and other financial intelligence Supervisor for dealers in precious metals and stones and other high-value dealers |
| The Ministry of Finance (MoF) | <ul style="list-style-type: none"> Authority for exchange of tax information Domestic tax authority Minister appoints NAMLC Chair |
| The Ministry of Legal Affairs (MoLA) | <ul style="list-style-type: none"> Minister with key responsibilities under POCA, SEA and ATFA <i>In progress</i> – to become the delegated authority for targeted financial sanctions |
| The Registry General (RG) | <ul style="list-style-type: none"> Supervisory Authority for Charities Registrar of births, deaths and marriages |
| The Registrar of Companies (RoC) | <ul style="list-style-type: none"> Registration and regulation of legal entities (company registry) |
| The Superintendent of Real Estate (SoRE) | <ul style="list-style-type: none"> Supervisory Authority for real estate brokers and agents |
| The Barristers and Accountants AML/ATF Board (Board) | <ul style="list-style-type: none"> Supervisory Authority for independent professionals – lawyers and accountants |

The National Anti-Money Laundering Committee and the Office of NAMLC

NAMLC was established by Section 49 of POCA 1997 and advises Government Ministers on AML/ATF matters. Its role is defined as follows:

- Advising Government Ministers in relation to:
 - the detection and prevention of ML/TF and the financing of proliferation;
 - the development of a national plan of action to include recommendations on effective mechanisms to enable competent authorities in Bermuda to collaborate with each other concerning the development and implementation of policies and activities to combat ML/TF and the financing of proliferation.
- Advising the Government Ministers about Bermuda's participation in the international effort against ML/TF and the financing of proliferation, including the development of policies.

NAMLC consists of a Chair, appointed by the Minister of Finance, and the heads of all of the competent authorities that are primarily involved in AML/ATF matters. Through regular meetings of the committee and its working groups, NAMLC works to ensure that AML/ATF matters are appropriately addressed and facilitates coordination, collaboration and cooperation. There are three permanent working groups established: the Legislative and Policy Working Group, the Supervisory Forum and the Operational Working Group. In addition, a Sanctions Working Group has been established to address key matters in relation to the development and implementation of targeted financial sanctions.

The **Office of the NAMLC** is the Secretariat for NAMLC and works with NAMLC agencies and other entities to ensure that the mandate of NAMLC is effectively carried out. It plays a key role, on behalf of NAMLC, in coordinating Bermuda's AML/ATF national and multi-agency activities, including national risk assessments and development of national policies.

The Attorney General's Chambers (AGC)

The AGC, on behalf of the Attorney General, acts as the legal advisor to the Government and is responsible for mutual legal assistance in responding to foreign requests for formal assistance in criminal matters. The AGC also deals with requests (on behalf of the DPP) to other countries to assist Bermuda in ML/TF criminal matters.

The AGC, on behalf of the Attorney General and Minister of Legal Affairs, also plays a key role in relation to civil recovery of assets deemed to be the proceeds of criminal conduct.

Bermuda Casino Gaming Commission (BCGC)

The BCGC was established in 2015, by the Casino Gaming Act 2014, to regulate casinos in Bermuda. The BCGC has developed five key principles which outline the requirements for a casino to be established in Bermuda. These are: suitability; accountability; integrity; collectability of payments and protection of the vulnerable.

Although no casinos are currently in operation in Bermuda, the BCGC has issued two provisional licences. However, entities holding such provisional licences are not able to offer gaming services to the public until a comprehensive assessment of the suitability of relevant persons and entities is undertaken and an operating licence has been issued. BCGC has done considerable work in relation to the development of its AML/ATF framework. Further regulations to the *Casino Gaming Act 2014* will be enacted to provide direction to casinos and their operators on internal control requirements, policies and procedures necessary to manage ML/TF risks.

Bermuda Monetary Authority (BMA)

The BMA was established by the *Bermuda Monetary Authority Act 1969* as the sole financial services regulatory body in Bermuda. In addition to the core financial sectors of banking, insurance and investments, the BMA also supervises persons licensed to conduct trust business, such as Trust service Service Providers (TSPs) and entities licensed to conduct Corporate Service Provider business (CSPs) in Bermuda. The BMA is also responsible for supervising financial entities in order to combat ML and enforce ATF measures in Bermuda.

Through its role as a member of NAMLC, the BMA advises the Government on supervisory and regulatory matters relating to financial entities in order to ensure that robust AML/ATF legislation is in force to effectively carry out its statutory mandate and to meet domestic and international standards and best practices. Further, where appropriate, the BMA develops and issues AML/ATF Guidance Notes to the sectors that it regulates.

The BMA—an independent authority—regulates the following financial entities in accordance with its powers under Bermuda’s AMF/ATF framework:

- Banks
- Credit Union
- Securities Companies (investment businesses, investment funds and fund administrators)
- Insurance: long-term business insurers (i.e., life and non-life insurers), insurance managers and insurance intermediaries (brokers, salesmen and agents)
- Money Service Businesses
- Trust Service Providers
- Corporate Service Providers

The BMA also has a statutory role in the company incorporation process in Bermuda, including, as appropriate, vetting the applications and keeping the registry of beneficial owners of legal entities on behalf of the Minister of Finance.

Bermuda Police Service (BPS)

The BPS is responsible for investigating crimes. The Organised and Economic Crime team deals with offences of ML/TF and with associated predicate offences. The POCA places responsibilities on the BPS to investigate, trace and confiscate the proceeds of criminal conduct.

The BPS’s AML/ATF policy objectives are to:

- ensure that financial investigations become the cornerstone of all major proceeds-generating cases and TF cases
- identify proceeds of crime, trace assets, and initiate asset confiscation measures, and use temporary measures such as freezing/seizing, and restraint powers when appropriate
- initiate ML investigations when appropriate
- uncover financial and economic structures, disrupt transnational networks, and gather knowledge on crime patterns

The Department of Customs (Customs)

The Department of Customs is under the control of the Minister of Finance but is subject to the directions and instructions of the Minister of National Security in relation to import and export prohibitions.

Customs was established under the *Customs Department Act 1952*. Customs has border control and protection responsibilities, the key powers of which are contained in the *Revenue Act 1898*. In relation to the processing of incoming passengers, customs officers carry out the primary traveler screening process for the Department of Immigration.

The Department's main responsibilities are:

- facilitation of legitimate trade
- assessment and collection of duty revenue
- interdiction of drugs and other contraband and the proceeds of crime at our borders

The Department of Public Prosecutions (DPP)

The Department of Public Prosecutions is responsible for public prosecutions, confiscation and conviction-based forfeiture of assets. DPP prosecutes criminal offences, including in relation to ML and TF, and advises the BPS, Government departments and the Criminal Injuries Compensation Board.

Financial Intelligence Agency (FIA)

The FIA was established by the *Financial Intelligence Agency Act 2007* to act as an independent agency authorised to receive, gather, store, analyse and disseminate information relating to ML, suspected proceeds of crime and potential financing of terrorism received in the form of Suspicious Activity Reports (SARs). The reporting of suspicious transactions requirements (Section 46 of the *Proceeds of Crime Act 1997* (POCA)) and tipping off provisions (Section 47 of POCA) apply equally to all persons during the course of their business, trade or profession. The FIA has the authority to share relevant information with the BPS, other domestic competent and supervisory authorities and foreign financial intelligence units.

The FIA is also the supervisory authority for dealers in precious metals and stones and other high value dealers in specified retail sectors.

The Ministry of Finance (MoF)

The MoF supervises the economy of Bermuda and has overall responsibility for providing a framework for the financial management and control of Government activities and finances. The Treaty Management and Administration Unit within the MoF acts as the authority for the exchange of tax information and the Office of the Tax Commissioner, which has responsibility for domestic tax matters, is also a department within this Ministry.

The Ministry of Legal Affairs (MoLA)

The MoLA has administrative responsibility for the Attorney General's Chambers, Judiciary, Department of Court Services, DPP and Legal Aid Office. The Department has overall responsibility for upholding the constitution and legal system of Bermuda, providing legal services together with the efficient delivery and accessibility of justice. MoLA works closely with the Governor and Government House in relation to international sanctions and PF matters. The Minister has key responsibilities and powers in relation to AML/ATF matters under POCA, ATFA and SEA. All Guidance Notes issued by supervisory bodies are subject to approval by the Minister. In addition, the Minister can issue directions to regulated financial institutions in relation to specified matters involving high ML, TF or PF risk. Matters related to the issuing of regulations prescribing preventive measures for the prevention and detection of ML and TF, also fall within the purview of the Minister.

The Registry General (RG)

The RG became the supervisory authority for charities under the *Charities Act 2014*. The applicable AML requirements are detailed under the Charities AML/ATF regulations and as required under FATF, allows for a TF-focused, risk-based approach, both in relation to the requirements imposed and to the monitoring and enforcement of compliance. This agency is part of the Ministry of Home Affairs.

Registrar of Companies (RoC)

The RoC was established in 1970 and supervises all registered entities (i.e. companies, partnerships, and Limited Liability Companies (LLCs)) formed under the following operative Acts:

- *Companies Act 1981*
- *Partnership Act 1902*
- *Limited Partnership Act 1883*
- *Exempted Partnerships Act 1992*
- *Overseas Partnerships Act 1995*
- *Limited Liability Company Act 2016*
- *Segregated Accounts Companies Act 2000*

The *Compliance Measures Act 2017* grants the RoC additional power and responsibilities in relation to monitoring and enforcing compliance with legislation that applies to establishing and operating legal entities registered and/or operating in or from Bermuda.

The RoC is also responsible for:

- revenue collection
- providing publicly searchable records of registered entities
- company investigations and complaint resolution
- company winding-ups/strike offs
- handling certain bankruptcies and liquidations

The Superintendent of Real Estate (SoRE)

The SoRE was designated under SEA as the supervisory authority for the Real Estate sector in Bermuda in September 2016. At the same time, the sector was brought into scope under the AML/ATF framework. Additional powers and responsibilities in relation to AML/ATF supervision of the sector are contained in the *Real Estate Brokers' Licensing Act 2017*. This Act contains the applicable licensing requirements, including those in relation to “fit and proper” criteria to which the sector is subject, as well as a range of enforcement measures for non-compliance with relevant legislation.

The Barristers and Accountants AML/ATF Board (Board)

The Barristers and Accountants AML/ATF Board (the Board) is a self-regulatory body established jointly by the legal and accounting sectors on the basis of their having similar professional codes, client bases and work products. The Board was then established in law under Section 25A of the *Bermuda Bar Act 1974* and Section 8A of the *Chartered Professional Accountants of Bermuda (CPA) Act 1973*. Effective August 10, 2012, the Board was designated as a supervisory authority by order of the responsible Minister, issued under Section 4 of the *Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (SEA)*.

The Board is responsible for supervising Regulated Professional Firms (RPFs) for compliance with the obligations under the AML/ATF Regulations. RPFs is defined to bring into scope accounting firms who are members of CPA Bermuda and legal firms which advise clients in connection with specified activities.

As the Board is not a government agency or a public authority, it is not a member of NAMLC. It does however, work closely with the NAMLC agencies, in addressing matters relevant to the effective development and implementation of the regime. It is a member of the NAMLC Supervisory Forum and actively participates in national initiatives.

Chapter 3: Bermuda's AML/ATF Operational Framework

A. Regulation and Supervision

As highlighted previously, the *Proceeds of Crime (Supervision and Enforcement) Act* provides the legislative underpinning for the AML/ATF supervisory framework for regulated financial institutions and non-financial business and professionals as defined in the Regulations. The supervisory bodies that derive their authority from the provisions detailed in SEA are the BMA, the FIA, the SoRE and the Board. This section provides information on the approach that these agencies take for monitoring and enforcement of compliance with the relevant AML/ATF requirements.

The table below provides information on the nature and size of the regulated sector.

Table 1: The Regulated Sectors

| Sector | Number of Regulated Entities in Sector (as at Dec. 31, 2017) |
|---|--|
| Banking (incl. credit union) | 5 |
| Securities | 892 |
| Insurance | 1485 |
| Money Service Businesses | 2 |
| Gaming | 0 |
| Betting | 2 |
| Real Estate | 53 |
| Dealers in precious metals and stones | 2 |
| Accountants | 5 |
| Lawyers | 23 |
| High-value dealers (Car, boat, motorcycle and antique dealers; and auctioneers) | 0 |
| Trust Service Providers | 28 |
| Corporate Service Providers | 62 |
| Other financials (Bermuda Stock Exchange) | 1 |

The Bermuda Monetary Authority's Supervisory Framework

The BMA is responsible for licensing and supervising with regard to both financial stability (i.e. prudential matters) and conduct-related issues (including AML/ATF) and setting out the AML/ATF control obligations for the sectors it supervises.

Its supervisory framework provides a comprehensive risk-based approach to AML/ATF supervision across those sectors and entities it regulates. The BMA uses the FATF Recommendations and guidance¹ as the basis for developing this risk-based supervisory framework and is committed to continuous engagement with FATF direction in order to maintain a credible deterrent to ML/TF within its scope of responsibilities.

The BMA's AML/ATF supervisory framework comprises the following components:

1. Assessment of ML/TF risks and controls – to inform planning
2. Licensing and authorisations – to effect market entry controls
3. Regulation and information – to guide and inform regulation and regulated FIs
4. Offsite and onsite supervision – to assess the quality of controls for regulated FIs
5. Enforcement – to proportionately address breaches of requirements
6. Monitoring and reporting – to ensure ongoing effectiveness of supervisory actions on compliance

Assessment of ML/TF risks and controls

The BMA conducts, or provides input to, ML/TF risk and control assessments at the national, sectoral and entity level. Each of these risk assessments is used to inform and cross-calibrate the overall results. This ensures that the BMA, and other relevant competent authorities in Bermuda, have a consistent, current and holistic view of ML/TF risks.

The BMA develops its understanding of the ML/TF risks facing sectors under its supervision by conducting an annual risk assessment at both sector and entity levels, using data calls and questionnaires. The risk assessments are structured in three stages: understanding the inherent risk within a sector; assessing the effectiveness of the ML/TF controls in place; and estimating the level of residual risk in that sector. This risk assessment is used to inform the Risk-Based Approach (RBA) to AML/ATF supervision across all stages of the AML/ATF supervisory lifecycle. As the process is repeated in an iterative cycle of risk assessment and supervisory activities, the BMA's understanding of residual risk is continually deepened and refined. The results of these risk assessments informs the annual calendar of supervisory activities and requirements, including the development of the BMA's supervision strategies, priorities and resourcing.

Licensing and Authorisations

A key component of the BMA's RBA to supervision relies on robust market entry controls. This is achieved through the BMA's licensing process. The BMA plays a key "gatekeeper" role in vetting beneficial owners for all companies operating in Bermuda, to address the risk of criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or performing a management function, in a financial institution. The market entry controls for financial institutions are based around the determination of beneficial ownership, assessment of fit and proper shareholder controllers, and granting of licensing or registration. The

¹ 2012 revised FATF Recommendations and FATF Guidance for a Risk-based Approach "Effective supervision and enforcement by AML/CFT supervisors of the financial sector and law enforcement", October 2015

BMA places emphasis—through its licence and registration application process—on ensuring that Bermuda maintains quality-over-quantity of approved financial institutions.

Each of the various regulatory Acts administered by the BMA describes the legislative requirements for the licensing or registration of the respective FIs. All local or overseas FIs (including non-resident insurance companies) are subject to these Acts and are required to apply for and receive a licence, registration or exemption, or where applicable, register an exemption with the BMA before they are able to conduct business in Bermuda.

The licensing process in Bermuda for FIs consists of three stages:

1. **Incorporation:** the BMA conducts vetting as part of the incorporation process, which includes a review of the shareholding and beneficial ownership of the proposed company as well as their suitability, considering any risks to the Bermuda economy.
2. **Licence:** this includes an assessment of controllers—in relation to “fit and proper” criteria, the business plan and governance arrangements, which would include proposed AML/ATF policies and procedures as well as the source of funds.
3. **Ongoing Monitoring:** the BMA conducts ongoing monitoring of minimum licence criteria, assesses changes in beneficial ownership and controller information and terms of the licence.

Regulation and Information

The BMA provides relevant input to NAMLC and, as appropriate, to Cabinet on AML/ATF-related items. The BMA is also responsible for providing comprehensive guidance to industry on (i) how the AML/ATF regulations will be applied; (ii) the expectations of the BMA for individual sector compliance with the regulations and processes, and (iii) enhancing overall understanding of AML/ATF matters, including AML/TF risks. The BMA has implemented a programme of industry outreach and communications that ensures regular updates on these topics and promotes a collaborative dialogue with industry.

Off-site and On-site Supervision

The BMA employs a risk-based approach to on-site and off-site supervision activities appropriate to the level of ML/TF risk of each supervised sector and their component FIs. The BMA’s risk-based framework for AML/ATF supervision is underpinned by the risk profiles of each sector and of their component institutions, as described above. The supervisory plan is revised and implemented by the BMA on an annual basis.

The results of the NRA and the BMA’s annual sectoral risk assessments provide the main input for sectoral risk profiling and supervision planning. This enables the BMA to conduct macro sectoral analysis of risk that can be used to prioritise higher-risk sectors for enhanced supervision. Within each sector, the results of the BMA’s entity-level risk assessment is used to identify entities with higher-risk profiles for enhanced supervision, taking into account the risk profile of the sectors to which they belong.

The reports arising from supervisory reviews are communicated to the FI concerned, and a formal programme of follow-up is implemented to ensure that matters are addressed in an appropriate and timely manner. If serious deficiencies in an FI’s AML/ATF regime are uncovered or remediation deadlines are missed, the RFI may be referred to for enforcement action.

Enforcement

The BMA exercises its powers of enforcement to fulfil its function as a supervisor and regulator of financial institutions in Bermuda, to demonstrate its commitment to adhering to international standards and to foster a

fair commercial environment in Bermuda. The BMA will take action in accordance with the principles set out in its Enforcement Guide, which include exercising powers in a fair, consistent and proportionate manner. A key guiding principle is that the Authority will apply enforcement sanctions that are dissuasive and proportionate to all of the surrounding circumstances, including risk.

Enforcement actions are specifically intended to address and alleviate failures of compliance or breaches of regulations, and to mark them with dissuasive outcomes. Where the nature of the breach is of sufficient seriousness, enforcement measures or—as is more typically the case—a combination of remediation and enforcement measures may be required. During the period covered by the risk assessment, the BMA used its powers to levy civil fines, issue public and private sanctions and take other regulatory action as required.

Monitoring and Reporting

The BMA carries out ongoing monitoring of the effects of the supervisory process, as it is important to ensure that BMA's supervision is improving the compliance of the FIs. The steadily increasing numbers of SARs is one indicator of enhanced compliance in the private sector, demonstrating an understanding of the key driver. .

The Financial Intelligence Agency's Supervisory Approach

Amendments made to the SEA, which came into effect on December 1, 2016, designated the Financial Intelligence Agency as the supervisory authority for dealers in high-value goods (DiHVG, which include jewellery dealers; car, boat and motorcycle dealers; precious metal and stone dealers; antique dealers and auctioneers). DiHVG were brought into scope of the *Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008* (Regulations), subject to the requirement that they be registered with the FIA if they intend to carry out cash transactions equal to or above BD \$7,500, or the equivalent in any other currency. Registered DiHVG must also file Cash Transaction Reports (CTRs) with the FIA whenever they carry cash transactions equal to or above BD \$7,500. Entities that fall within the definition of DiHVG that are not registered with the FIA are not authorised to accept cash above this threshold.

Outreach and Training

Having an effective programme of outreach and training is a key aspect of the FIA's supervisory programme. Prior to the regime being brought into effect, the FIA conducted group training sessions advising the sector of the scope and effect of the forthcoming requirements. In addition, targeted outreach to all dealers in precious metals and stones (and jewellers) was undertaken to ensure all such dealers were aware of the obligations being imposed on the sector. Targeted outreach was also conducted to other DiHVG who were known to have previously carried out large cash-based transactions. This programme of outreach and training is an ongoing and important component of the FIA's supervisory approach.

Guidance and Communication

The FIA issued Guidance Notes to the Dealers in High-Value Goods sector on December 1, 2016. In addition, there is ongoing communication with the entities in the sector on matters that are relevant to their AML/ATF compliance. Persons from industry were involved in the ML risk assessment and communication of the results of the NRA are part of the 2018 plan.

Supervision and Oversight

At the end of 2017 there were two businesses registered with the FIA. As part of the implementation of its new regime, the FIA conducted 16 visits to potential registrants for the DiHVG regime. During these visits, the FIA explained the new regime and all potential registrants were also given a registration package.

All persons who submitted applications for registration were subject to a fit and proper assessment, and only applicants, which met the requirements were considered for registration. This process is seen as an integral part of the supervisory programme.

The FIA completed the first round of on-site visits to registered businesses by December 2017 and the findings of these on-site visits were provided to the registered DiHVGs along with timelines given for remediation of identified deficiencies. The specified timelines were influenced by the nature, scope and assessed impact of the gaps. Given the small number of registrants, the current plan is for annual visits, but it is intended that a more risk-based approach will be developed and implemented.

Ensuring that unregistered entities are not breaching the requirements is another core feature of the FIA's supervisory programme. Requests for information were sent to five unregistered jewellery dealers to determine the level of cash received in 2017 and the information received has been assessed. Follow-up action in relation to these matters, including applying enforcement measures, as necessary, will continue to be an ongoing part of the FIA's programme.

Risk Assessment

The FIA recognises the importance of ensuring that there is a good understanding of the risks in the sector and that this information is kept up to date. Therefore, the FIA has more recently surveyed every known business in the sector to collect additional information that it reasonably requires to carry out its supervisory functions. These data-gathering exercises will be conducted on a regular basis and the information will be used to inform the FIA's supervisory approach and understanding of risks.

The Superintendent of Real Estate's Supervisory Approach

The Superintendent of Real Estate has adopted a comprehensive approach to real estate sector supervision with activities ranging from education to inspection and corrective action. The supervisory framework includes all tools and functions that will help achieve the highest level of compliance within the sector.

The Superintendent of Real Estate has implemented a risk-based approach to supervision that allows for the appropriate focus of resources on high-risk entities. The six key functions that form the basis of the Superintendent's risk-based supervisory framework are:

- licensing
- risk assessment
- legislative and policy interpretation
- reporting entity assistance
- monitoring and inspections
- corrective actions/enforcement

The goal is to achieve high levels of cooperation and compliance, to contribute to an effective system that will minimise the potential for abuse by those involved in ML/TF activities and also to reduce the need for enforcement actions.

Licensing Framework

An updated licensing framework has now been established in legislation that includes fit and proper requirements. On the basis of these requirements, new licences were issued, effective 1 December 2017.

Risk Assessment

SoRE has conducted a risk assessment of the sector and identified the information gaps. In this regard, an assessment matrix was developed and used to update the required statistical return. This return was completed and submitted by all brokers and has been subjected to review by the team of the SoRE.

Legislative and Policy Interpretation

The SoRE has issued Guidance Notes to provide further clarification on the requirements in the relevant Acts and regulations. The team is also implementing coordination mechanisms to ensure that its legislative and policy interpretation is consistent with other AML/ATF supervisory agencies, to the extent deemed appropriate given the nature and scope of the sector.

Reporting Entity Assistance

The development and circulation of Guidance Notes, as noted above, has been a key initiative in this regard. In addition, a number of outreach sessions have been held and an agreed strategy and action plan has been implemented to ensure that there is an ongoing programme to build awareness and understanding of AML/ATF matters, including in relation to ML/TF risks.

Risk-Based Monitoring and Inspection Programme

The team has completed its desk-based review of brokers' AML/ATF policies and procedures and has begun the implementation of its on-site inspection programme. The results of these reviews will be used to address issues of non-compliance, identify compliance trends and allow for the development and implementation of strategies to address common deficiencies.

Enforcement of Compliance

The SoRE has developed policies and procedures to promote and enforce compliance and intends to conduct annual reviews of the impact of corrective action to enhance the supervisory programme.

The Superintendent of Real Estate also has the goal of strengthening stakeholder relationships by actively participating in the AML/ATF Supervisory Forum (with other supervisory agencies) and the NAMLC Operational Working Group; and by collaborating with the Bermuda Chamber of Commerce – Real Estate Division on outreach to industry.

The Barristers and Accountants AML/ATF Board's Supervisory Approach

Outreach and Training

Outreach and training are key activities for the supervisory programme of the Board. Following the designation of the Board as the supervisory authority for entities in the legal and accounting sector, Guidance Notes were developed for each sector and published in 2012, with training and outreach delivered to the sectors thereafter. Training and outreach to RPFs and to the professional community in these sectors continue to be held on an ongoing basis to ensure that the knowledge and understanding of AML/ATF matters are continually strengthened. Information relating to the national and sectoral risks has been disseminated to allow for more effective risk analysis by regulated entities.

Oversight and Supervision

To ensure that entities complied with the requirements to register, discussions were held with firms regarding the nature and scope of their activities. RPFs were required to provide their policy and procedures manuals, and about their activities and the nature of their businesses.

The Board then conducted desk-based reviews involving analysis of the requested information, which was then used as the basis for onsite reviews on all the RPFs. Prioritisation of these inspections was done on the basis of the deemed risks arising from the desk-based review. The result of these inspections was a programme of remediation and ongoing monitoring to address issues of non-compliance. The Board has developed an enforcement plan, but to date no action has been deemed necessary, as firms have been responsive to taking the required actions based on the identified gaps. Work is currently ongoing to enhance the risk-based approach to supervision.

Legislation and Guidance

As noted previously, Guidance Notes were issued for the Legal and Accounting sectors in 2012. This guidance has been subject to comprehensive review and updating, in line with changes in the legislative framework.

The Board continues to review its legislative framework and to recommend changes to enhance it. The work currently being done in this regard will allow for more effective assessment of activities being undertaken by all firms, will strengthen the entry controls and will provide a wider range of sanctions that can be applied for non-compliance.

Liaison with Other Relevant Bodies

Given the concurrent supervision of the Board in relation to RPFs and the BMA in relation to CSPs and TSPs in common ownership with such RPFs, the Board and the BMA have signed a Memorandum of Understanding (MoU) in relation to formalising an effective relation for cooperation and collaboration. Protocols in relation to that MoU are also being developed to ensure appropriate, entity-risk-specific group internal controls, with the standard to be applied where an RPF works jointly with its affiliated CSP or TSP.

The Board meets with the Bar Council and CPA to hold informational meetings, to distribute important announcements and documents and to communicate disciplinary concerns. There is also ongoing and positive communication with the oversight committees of these entities in relation to proposed legislative and framework changes which require the support of the sponsoring agencies.

Risk Assessment

The Board has also taken steps to strengthen its understanding and assessment of the nature, scope and risk of the business undertaken by the regulated sectors through data calls involving details which include:

- the risks of the firm
- the nature of the business
- clients
- transaction amounts
- services provided
- geographical details of the clients

In addition, the Board has reviewed the respective risk-assessments supplied by the RPFs. The analysis of the risk assessments is considered to be a vital component of the supervisory regime, in keeping with a risk-based compliance programme.

Oversight of Charities

Consistent with FATF requirements, the primary focus in relation to charities is their potential abuse as a mechanism for the financing of terrorism. An updated framework for oversight of charities was introduced in 2014 to bring the requirements for and oversight of Bermuda's charitable sector into compliance with FATF standards. The Act appointed the Registrar General as the supervisory authority for charities, as well as imposed a registration framework for charities to ensure compliance with the AML/ATF regulations. The framework was amended in 2016 in response to updates in the FATF standards.

Outreach and Training

The Registry General has issued Guidance Notes for charities on compliance with the AML/ATL Regulations, which are available online on the Government of Bermuda website. Also, the Registry General conducts training for charities' compliance officers on a quarterly basis, which is designed to enhance the knowledge and understanding of the sector of AML/ATF matters.

Risk Assessment

A desktop review was conducted at the end of 2017 to evaluate the risk profile of registered charities. The criteria used for assessing charities' risk profiles included:

- the charities' volume of activities
- international/cross-border activities (foreign sources of funding or where a charity had overseas branches, or was itself a branch of an overseas entity)
- exposure to countries and regions that are vulnerable to terrorism (including, but not limited to, terrorism known to be associated with religious extremism)

These factors were used to create a risk matrix for assigning a risk profile to every registered charity. The Registry General intends to conduct annual risk reviews of registered charities commencing in July 2018, to identify trends in the charitable sector using the same criteria as the 2017 desktop review and assign a risk rating to all charities.

Oversight and Monitoring

The Registry General has implemented a supervisory programme for charities, consistent with its ML/TF risk. High risk charities are now subject to on-site visits to assess compliance with the requirements, which are intended to be conducted on a regular basis.

Addressing Non-Compliance

At the end of 2017, the RG commenced a compliance review of all registered charities to identify non-compliant charities so that appropriate action can be taken. As a result of the compliance review, several charities that were dormant have deregistered, and it is anticipated that several more charities may be forced to close as a consequence. Also, civil penalties have been imposed on five charities for non-compliance (failure to submit annual reports and financial statements within the specified timeline).

B. Transparency and Beneficial Ownership

Bermuda has a long-standing beneficial ownership framework that requires all legal persons to be registered in the company registry and regulated financial institutions to have their beneficial owners (based primarily on

voting shares) vetted by the BMA. This control mechanism has allowed for a focus on quality of applicants, and thus Bermuda has approximately 16,000 registered companies.

The BMA also vets changes in beneficial ownership of all regulated financial institutions and most other legal persons with foreign ownership who represent more than two-thirds of registered persons. Shareholders and controllers of all regulated financial institutions are required to file and appropriately update beneficial ownership information with the BMA, which the BMA monitors. This includes information about controllers as per the FATF definition of beneficial owners. Additionally, all regulated institutions must carry out customer due diligence on all beneficial owners of their clients. This covers a high percentage of the entities formed in Bermuda, including legal arrangements. This information must be retained by regulated entities.

Bermuda's long-standing and comprehensive beneficial ownership framework has resulted in Bermuda being recognised as a leader in this area. However, there were some gaps identified in the framework as part of a recent self-assessment exercise that have been addressed through recent changes to the legislative framework. The definition of beneficial ownership in relation to the incorporation process and ongoing vetting by the BMA in that area, has now been specifically expanded to include those exercising control of a legal person or entity by other means. Further, amendments have been made to require companies to know their beneficial owners and ensure that the relevant information is available in respect of all types of legal persons. The *Companies Act 1981*, the *Limited Liability Companies Act 2016*, and the Partnership Acts have been amended to require companies, LLCs, and partnerships formed under those respective Acts to obtain, hold and file the beneficial owners of the legal person with a central register. Requirements relating to the filing of subsequent changes in beneficial ownership with the BMA have now been expanded to include changes involving resident persons. The required information to be obtained and filed specifically mirrors the FATF definition of beneficial owners.

CSPs have also now been licensed by the BMA and, according to their records, about 75% of the entities formed on the register will be serviced by licensed CSPs and the information on beneficial owners will be retained in Bermuda.

A dedicated compliance unit has been established within the Registrar of Companies and a proactive programme of compliance monitoring against requirements within the relevant legislation relating to legal persons, is now ongoing. Furthermore, there is active liaison and collaboration between the BMA and the RoC to achieve the goal of effective and efficient oversight in this regard.

Bermuda was recently assessed and rated largely compliant overall under the Tax Transparency and Information Exchange Peer Review Assessment that was concluded by the Organization for Economic Co-operation and Development (OECD) in 2017. The OECD conducts peer reviews of its member jurisdictions' ability to cooperate with other tax administrations. Effective exchange of information requires that jurisdictions ensure information is available, that it can be obtained by the tax authorities and that there are mechanisms in place allowing for exchange of that information. The Assessment report indicated that Bermuda exchanged different types of information (ownership, accounting, insurance and banking), including information held in a fiduciary capacity during the period under review. It was also concluded that there were no limitations found in Bermuda's instruments and peers had not raised any issues in this respect. This highlights that Bermuda is recognised as having a strong framework in relation to tax transparency.

Consistent with our commitment to being a leader in relation to international agreements for exchange of information for tax purposes, Bermuda has undertaken the following:

- joined the OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS);

- implemented the OECD Country-by-Country (CBC) automatic exchange of information regime by collecting from Multinational Enterprises headquartered in Bermuda their 2016 fiscal year information by December 31, 2017 to exchange with CBC partner countries by June 2018; 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

Bermuda also became an early adopter to automatically exchange the OECD Common Reporting Standard (CRS) information; and was among the countries that signed the multilateral competent authority agreement (MCAA) for CRS in Berlin in October 2014 and subsequently exchanged 2016 year CRS information.

Bermuda has also signed more than 40 bilateral Tax Information Exchange Agreements (TIEAs) and has joined the Joint Council of Europe-OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention), in which Bermuda's participation entered into force and effect on March 1, 2014. This agreement immediately established a tax information exchange relationship with more than 110 countries.

Bermuda's total portfolio of approximately 16,000 registered legal entities highlights the ongoing commitment that has been made to attracting quality over quantity and this—coupled with the demonstrated commitment to transparency—reinforces the objective that Bermuda will continually strive to be a good place to do good business, but not a place to hide “bad” business.

C. International Cooperation

The Government of Bermuda is committed to cooperating with other countries and with regional and international organisations to combat ML/TF. Bermuda's relevant authorities have, as appropriate, developed strong links with their international counterparts and are active in regional and international bodies, where AML/ATF matters are addressed. Gateway provisions in the required legislation ensure that information can be appropriately shared with counterparts in other jurisdictions.

Through the Mutual Legal Assistance Treaty (MLAT) process and the various tax treaties and agreements that Bermuda has become a signatory to, Bermuda is able to both provide and request information to assist or gain assistance from overseas authorities in investigations and even, through appropriate mechanisms, in the prosecution of relevant crimes.

Through the extensive network of financial intelligence units that are part of the Egmont Group, the FIA is actively involved in exchanging financial intelligence. In addition, through relationships within the Caribbean Action Task Force (CFATF) and other such bodies, the FIA is able to have and utilise information-sharing agreements with non-Egmont FIUs. The BPS interacts on a regular basis with foreign agencies, including the UK's National Crime Agency, the FBI and other such bodies. Customs cooperates with all customs counterparts world-wide through the World Customs Organization (WCO) and regionally through the Caribbean Customs Law Enforcement Council (CCLEC). They also work closely with the following: the United States Customs Border Protection, which has a pre-clearance unit in Bermuda; the Canada Border Services Agency Liaison Officer, who is stationed in New York and meets with Bermuda on a regular basis; and the UK Border Force; and the National Crime Agency (NCA). Agreement has now been reached for the Regional Intelligence Liaison Officer (RILO) post for CCLEC to operate out of Bermuda. The RILO will work closely with Bermuda's Joint Intelligence Unit as well as the regional Caribbean Customs Departments to communicate and disseminate all aspects of intelligence through the CCLEC Organisation.

The sectors supervised by the BMA have a significant impact on Bermuda's economy. The BMA is actively involved in international standard-setting bodies such as the International Association of Insurance Supervisors (IAIS), the International Organization of Securities Commissions (IOSCO), and the Group of International Financial

Centre Supervisors (GIFCS) as well as having strong links with supervisory bodies in key financial centres such as the United States' Securities and Exchange Commission (SEC), the UK's Financial Conduct Authority (FCA) and Prudential Regulatory Authority (PRA) and the European Insurance and Occupational Pensions Authority (EIOPA). The BMA host or attend supervisory colleges in relation to the oversight of entities that have global operations. Through this and other mechanisms, the BMA and other supervisors as appropriate ensure that there is coordinated engagement, where necessary, to strengthen the effectiveness of the regulatory and AML/ATF framework, from a domestic and international perspective.

Bermuda is actively involved in the Caribbean Action Task Force (CFATF) and, through membership in that body, has been able to play a role even in FATF matters. In this regard, Bermuda chaired a joint CFATF/FATF typology report on Money Laundering Using Trust and Company Service Providers, which was published in October 2010. Bermuda will continue its strong and active support of global and regional initiatives in the fight against ML, TF and PF activities.

ASSESSMENT OF INHERENT MONEY LAUNDERING RISKS

Chapter 4: Methodology for the Money Laundering Risk Assessment

General Methodology and Key Terms

The 2017 National Risk Assessment on Money Laundering (the 2017 NRA) began in April 2017 and was led by the National Anti-Money Laundering Committee (NAMLC), with the support and sanction of the Cabinet and Civil Service Executive. The entire project was coordinated by the Office of NAMLC, which provides secretariat services to NAMLC. One dedicated high-level coordinator was appointed to manage the NRA, and an international AML expert was engaged as a consultant to provide technical guidance and support throughout the project. Participants in the working groups included persons from relevant government agencies, supervisory authorities and representatives from the private sector. Persons involved in this initiative had a wide range of experience and expertise, which allowed for comprehensive discussion and analysis.

This NRA, similar to the one undertaken in 2013, is premised on the notion that money-laundering risk is a function of money laundering threat, vulnerability and consequence. This process attempts to identify, analyse and understand money-laundering risks and serves as a first step in addressing them. Performing a risk assessment involves making judgments about threats, vulnerabilities and consequences. These key concepts are explained by the FATF as follows²:

Money laundering: The process is used by criminals to conceal or disguise the origin of criminal proceeds to make them appear as if they originated from legitimate sources.

Threats: These are the predicate crimes that are associated with money laundering. In some cases, specific crimes are associated with specific money laundering methods. Crimes and criminal activity that generate proceeds that can be laundered make up the “threat environment.” Understanding the threat environment is essential to understanding the vulnerabilities that create money laundering opportunities, and to understanding the residual risks.

Vulnerability: Vulnerabilities facilitate or create the opportunity for money laundering. This comprises those things that can be exploited by the predicate crimes or that may support or facilitate these activities. These are weaknesses inherent in a specific financial sector or product; or a weakness in the laws, regulation, supervision, or enforcement framework; or these may reflect the unique circumstances when it is difficult to distinguish legal from illegal activity.

Consequence: Consequence refers to the impact or harm that money laundering may cause and includes the effect of the underlying criminal activity on financial systems and institutions, as well as the economy and society more generally. The consequences of money laundering may be short or long term and also relate to populations,

² FATF Guidance: National Money Laundering and Terrorist Financing Risk Assessment, February 2013

specific communities, the business environment, or national or international interests, as well as the reputation and attractiveness of a country's financial sector.³

The Risk Assessment Tool

The World Bank's risk assessment model was used in this project to allow parity and to make accurate comparisons to 2013, when it had also been used. It should be noted that, although the tool used was designed by the World Bank, they took no part in this assessment and provided no technical input or guidance in the analysis conducted or the conclusions drawn.

The World Bank Model identified seven key areas to assess, as follows:

- i. **Module 1:** National money laundering threat
- ii. **Module 2:** National vulnerability
- iii. **Module 3:** Banking/credit union sector vulnerability
- iv. **Module 4:** Securities sector vulnerability
- v. **Module 5:** Insurance sector vulnerability
- vi. **Module 6:** Other financial sectors vulnerability, namely, money service businesses and the Bermuda Stock Exchange
- vii. **Module 7:** Non-financial sectors vulnerability, namely designated non-financial businesses and professions (DNFBPs) and others, such as:
 - trust service providers
 - corporate service providers
 - casino gaming and the betting sector
 - real estate dealers
 - dealers in precious metals and stones
 - lawyers and accountants
 - dealers and auctioneers specialising in high-value goods like cars, boats, bikes and antiques

Module 1, which evaluates the national threats, requires the Working Group to determine a subjective ranking of the ML threat from the various predicate offences. It also requires the ranking of the money laundering threat to each sector, as well as the identification and ranking of the cross-border threat. Upon ranking all of these threats, the user must determine a single national threat rank.

For the vulnerability assessment (Modules 2 = 7) key features of the national or sectoral AML/ATF framework, or the products offered by each sector, were assessed and a quantitative rating assigned. These ratings were ultimately translated by the tool into the relevant vulnerability ratings.

Additional information on the tool is provided in Appendix B

³ It should be noted, however, that given the challenges in determining or estimating the consequences of ML, countries can opt to focus their risk-assessment efforts primarily on achieving a comprehensive understanding of their money laundering threats and vulnerabilities – which is what Bermuda has done.

Chapter 5: Bermuda's National Money Laundering Threats

Introduction

As a small island jurisdiction with a population of approximately 64,000 people, Bermuda boasts a relatively low crime rate, a high standard of living and high respect for law and order amongst the majority of its resident population.

Quarterly reports on crime statistics, produced by the BPS, indicate a general downward trend in all crimes during the eight-month period of late 2016 and early 2017.

In 2016, a total of 3,587 offences were reported to the police, spanning three categories:

- crimes against the person, such as murder, robbery, assaults, offences against children and all forms of sexual offences: 740 reports (including seven murders and one case of manslaughter)
- crimes against property, which includes thefts, fraud and burglary: 2,428 reports
- crimes against the community, which includes drug trafficking: 419 reports

Grave offences such as murder for hire, kidnapping or other serious offences against the person committed for financial reward are not common in Bermuda. According to local law enforcement, the vast majority of crimes against property reported to the police are considered opportunist crimes of low financial value—the average value of loss for such crimes is in the region of BD \$500—and very rarely do these crimes involve violence against individuals.

Drug trafficking occurs in Bermuda and Bermuda's high cost of living makes it a profitable crime, even though the market is small and finite. Because the island is an end destination, Bermuda escapes much of the criminality associated with highly organised crime syndicates, which is often seen in jurisdictions that participate in drug production and transshipment.

As the national investigative and prosecuting authorities, the Bermuda Police Service and the Department of Public Prosecutions regularly and successfully investigate and prosecute criminals for all types of crimes reported to, and detected by, the Police. The operation of the administration of justice and the functioning of the Courts in Bermuda, from the lowest to the highest, are highly visible and the results of criminal cases are routinely reported in local print and electronic media. This visibility of the law at work contributes to the high degree of respect for law and order which is the norm in Bermuda.

Scope and Process

Bermuda's national money laundering threat was assessed by a working group comprised of representatives from all of the competent and relevant authorities in Bermuda, including law enforcement, prosecutorial, tax and supervisory authorities. Appropriate support was also obtained from other Government agencies with relevant information or knowledge, including the Department of Statistics, the Department of Immigration, the Maritime Department (also called the Maritime Authority), and the Cybercrime Department.

This threat assessment primarily aims to determine the amount of proceeds from crime that criminals launder through Bermuda's financial and non-financial sectors. That aim is impeded by a lack of national knowledge of

the criminal environment which arises from imperfect rates of detection of crime and the inherently secretive nature of criminal activity.

Taking these factors into account, the working group utilised Module 1 of the World Bank’s national risk assessment tool, which requires the use of quantitative evidence of crime and criminal proceeds; but which also facilitates a subjective analysis of the money laundering threat, based on estimates of the undetected proceeds derived from crime.

The module made it possible to estimate a monetary or qualitative understanding of the value that criminals derive from and through crime in Bermuda and the value of proceeds of crime exported to Bermuda from abroad. To make this determination, the working group:

- considered crimes that typically underlie money laundering activities (called “predicate offences”)
- determined or estimated the number of incidences of each of these predicate offences
- tried to ascertain the average value generated by an individual offence.

Each predicate offence was then assigned a money laundering threat ranking of Low, Medium-Low, Medium, Medium-High or High.

In order to rank the money laundering threat, the working group set benchmarks to ensure consistency of ranking across all sectors. For the most part (but not exclusively), domestic crime represents a lower monetary value and is typically seen as a low threat. However, the international proceeds of crime laundered in Bermuda will typically represent large amounts and consequently are a high threat.

The benchmarks were established as follows:

| Rating | BD \$ Amount based on three year period |
|--------------------|--|
| High | + 10 million |
| Medium-High | + 1 million |
| Medium | + 100,000 |
| Medium-Low | + 50,000 |
| Low | under 50,000 |

In carrying out this work, the working group considered the full range of predicate offences as required by the Financial Action Task Force (FATF), while taking account of any peculiarities in Bermuda’s criminal laws and other realities in Bermuda.

To this end, the working group gathered data from the period January 2013 to December 2016 to determine:

- the numbers of cases reported/detected, investigated and prosecuted for each offence, including money laundering
- the numbers of intelligence disseminations provided to law enforcement
- the value of property seized or frozen
- the value of property confiscated through criminal or civil processes
- a case-by-case catalogue of the money laundering cases and the civil asset recovery cases that were based on suspected money laundering

By considering this data in the context of the origin of the crimes that give rise to money laundering in Bermuda and which sectors in the economy featured most prominently, the working group was able to develop an opinion on whether the source of Bermuda's money laundering threat is international, domestic or a mix of the two. The group also identified which sectors are most impacted by the money laundering threat, or that play the most pivotal roles in money laundering in Bermuda.

The working group also identified the eight countries and one region that featured most prominently or frequently in trade in goods and services with Bermuda to perform a cross-border analysis based on foreign investment and the cross-border aspects of criminal cases. These statistics provide the basis on which the working group forms opinions about the international nature, scope and direction of the money laundering threat.

Predicate Offences that Generate Proceeds of Crime

There are 23 categories of offences that are the typical predicates to money laundering. Based on the analysis, the working group concluded that of these, the predicate offences that pose the highest ML threat in Bermuda were drug trafficking (with a domestic and external component) and from primarily external sources - fraud, insider trading/market manipulation, tax crimes and corruption/bribery. It should be noted that the fact that these predicates are high ML threats is not necessarily dissimilar to what would be the situation in other peer jurisdictions.

Aside from the predicates rated as high, the other predicate offences of note were commercial smuggling and domestic tax crime, which were rated as medium-high for money laundering. Thirteen other predicate offences were assessed to represent a low threat for money laundering in Bermuda, with only arms trafficking being rated as medium-low. It should also be noted however, that the threat of money laundering from predicate offences that could not be identified (unspecified predicate offences) was determined to be medium, given the value of money laundering cases which fit this profile.

a) High-threat predicate crimes

These findings are based on statistical evidence of investigated and prosecuted cases, and on the value of proceeds shown to have been generated, deduced from the amount of proceeds confiscated. There is a degree of estimate here, too, as some of the proceeds from those crimes go undetected. These estimates are based on law enforcement's understanding of crime-detection levels.

I. Drug trafficking

All offences under the Misuse of Drugs Act 1972 were considered, ranging from purely domestic drug trafficking—seen at the level of the street dealer—to drug trafficking with an international component, namely, importation and conspiracy to import.

To a significant extent, drugs sold in Bermuda are imported from elsewhere, which means that Bermuda is an end-user destination for drugs. Drugs that arrive in Bermuda are destined for the local market and not for repackaging and transshipment.⁴ Another salient factor is that the **street value of drugs in Bermuda is significantly higher than in other countries**, so there is generally a fairly significant spread between the purchase value of the drug purchased at import and the retail value of the drug within Bermuda.

⁴ This is to be distinguished from the transit in narcotics predicate, which was considered separately from the drug trafficking offences, as those drugs are on-board vessels that transit through Bermuda's ports without ever being landed in Bermuda.

Law enforcement authorities, supported by annual reports produced by the Department of National Drug Control,⁵ have concluded that the annual average value of the drug market in Bermuda is approximately BD \$25,000,000. This estimate is based on an estimated detection rate by law enforcement at the borders of 20%. Over the period 2013–2016, law enforcement detected 1,356 drug trafficking cases through drug seizures, resulting in 364 cases being prosecuted, with convictions resulting in 326 of those cases. Proceeds of crime confiscated from the drug trafficking cases that were prosecuted amounted to approximately BD \$264,000, representing approximately 50% of the property seized or restrained in those cases.

During that same period (2013–2016), 51 money laundering cases were investigated where drug trafficking was the predicate, resulting in 10 cases being prosecuted, with convictions resulting in all those cases. From these cases, proceeds of crime amounting to approximately BD \$2.4 million were confiscated, representing approximately two-thirds of the property originally seized or restrained in connection with the money laundering cases.

THREAT LEVEL: Drug trafficking is still assessed to be a high threat for money laundering, both as a result of the proceeds confiscated in drug trafficking and money laundering cases and of the annual estimate of the value of the drug market in Bermuda.

This ranking remains unchanged since the 2013 National Risk Assessment, though the numbers of drug seizures have declined since 2013. This reduction was partially attributed to the normal ebbs and flows in seizures within a small jurisdiction, but mostly to unusually large drug seizures which took place in 2011, which was the year examined in the 2013 review.

II. Fraud

Measuring fraud in Bermuda is more difficult than measuring drug trafficking, given the fact that law enforcement only recorded composite statistics covering a range of deception-based offences under the Criminal Code 1907. Fraud, forgery, deception and counterfeiting currency are *all* considered within this single category of offence, and data for each offence cannot be separated.

During the review period, police detected or investigated 1,216 instances of these offences, resulting in 104 prosecutions and 86 convictions. There were no seizures or restraint of property in relation to any of these cases, as the law enforcement and prosecutorial experience with these domestic cases showed that they were generally low value, with the value of property defrauded amounting to an average of BD \$5,000 or less.

Although there were 48 disseminations from the FIA to law enforcement relating to suspected fraud occurring in Bermuda, none of these were money laundering cases. Law enforcement estimates that only about 50% of domestic fraud cases are reported. Based on the BD \$5,000 average seen in the actual reported cases, it is estimated that the value of the undetected proceeds of crime resulting from the unreported crime would amount to approximately BD \$12,000,000.

Notwithstanding this estimated figure, law enforcement experience in the actual reported cases suggests that money laundering activity resulting from fraud within Bermuda would be extremely minimal, given the low value of individual cases.

However, there were five civil recovery actions undertaken by Bermuda's Attorney General's Chambers, arising from investigations of money laundering based on suspected fraud, in circumstances where no criminal prosecution in Bermuda was possible. These cases all involved fraud occurring outside of Bermuda, with part of

⁵ A department of government that provides drug abuse prevention, treatment and rehabilitation services; and performs research and develops drug policy for Bermuda.

the suspected proceeds found in Bermuda. From these five cases, approximately BD \$406,000 was confiscated, derived from property valued at over BD \$15,000,000 that was frozen or seized. The estimated undetected proceeds in Bermuda derived from foreign fraud is likely to exceed BD \$20,000,000 over that period based on the experience from these five civil recovery cases when viewed in the context of over 22 mutual legal assistance cases involving foreign fraud and suspected money laundering.

THREAT LEVEL: In light of these factors, fraud still represents a HIGH THREAT of money laundering in Bermuda. International fraud, while probably representing a significantly fewer number of cases than domestic fraud, poses a more significant threat for money laundering because of the much higher value of proceeds involved and the actual use of the financial system in Bermuda to launder those proceeds. This ranking remains unchanged since the 2013 National Risk Assessment, although, as noted, in 2013 there were no separate statistics available on the value of domestic fraud in 2013, and no statistics on the role played by foreign fraud in the Bermudian economic landscape.

III. International tax crimes

There were no cases leading to a prosecution for money laundering during the period in question. There was only one potential case detected and four disseminations from the FIA to law enforcement involving possible foreign tax crime. During this period, foreign tax evasion of income/profit-based taxes was not a predicate for money laundering in Bermuda.

However, there were two civil asset recovery cases undertaken during this period, involving fraud and international tax evasion leading to property valued in excess of BD \$6 million being frozen, and to the confiscation—in one case—of approximately BD \$2.8 million of the proceeds (the other case is still pending). Overall, it is estimated that the undetected proceeds of foreign tax crimes in Bermuda would likely exceed BD \$10 million.

THREAT LEVEL: International tax crimes were assessed to represent a high threat of money laundering in Bermuda. In 2013, it was ranked as medium as there was no statistical information available on the money value of the proceeds of this predicate.

IV. Market manipulation and insider trading

During the review period, 31 requests were received by the financial services regulator from foreign counterparts concerning criminal investigations in their jurisdictions relating to market manipulation and insider trading. There was also a single dissemination from the FIA and one civil recovery case connected to this predicate. The amount of proceeds seized and subsequently confiscated in that civil recovery case amounted to approximately BD \$53,000.

Because the investigations into these activities occurred outside of Bermuda, no information was provided about the value of proceeds involved in the cases. Nevertheless, the usual nature of these offences when criminal action is taken for such offences overseas, the benefit usually ranges in the millions and in many cases, hundreds of millions of dollars.

There is no specific evidence to suggest that Bermuda is the destination for a significant proportion of such proceeds. However, it is estimated that the value of proceeds that might be present in Bermuda, associated with the 31 requests in question, could well exceed BD \$10 million, as it was considered that the proceeds confiscated from the lone civil recovery case was not indicative of the trend for this predicate.

THREAT LEVEL: Market manipulation and insider trading taking place overseas was therefore assessed to represent a high threat of money laundering in Bermuda. In 2013, the threat level for market manipulation was

considered to be medium. Although the statistical information available since that time has only marginally improved, there is a deeper understanding of the nature of the crime that enables a better estimation of the threat posed to an international financial service jurisdiction such as Bermuda.

V. Corruption/bribery

During the review period, there were two civil recovery cases based on foreign corruption/fraud, resulting in over BD \$5.2 million in funds being confiscated. It was estimated that the value of property involved in pending investigations and to date undetected from overseas sources could exceed BD \$10,000,000. In addition, five matters related to potential corruption/bribery were referred by a Commission of Inquiry for investigation, which are still under investigation at the time of writing.

THREAT LEVEL: Considering the evidence available, corruption/bribery was assessed to be a high threat of money laundering in Bermuda, with the primary factor being the activities in this area occurring outside of Bermuda. As noted later in this chapter, there is little actual evidence in relation to domestic money laundering in this regard. In 2013 this threat was rated as medium as there were no investigations and less specific information available from foreign sources.

b) Medium-high threat predicate crimes

I. Commercial smuggling

Although individuals occasionally bring goods into Bermuda without declaring them to avoid paying duties, the money-laundering threat posed by this kind of activity is negligible. The working group focused solely on smuggling of commercial goods into the island, which is believed to occur in more significant numbers and represents higher value. The statistics provided by the Customs Department relate to actions taken for such commercial smuggling using powers under the Revenue Act 1898, rather than under criminal laws.

During the review period, the Customs Department detected and investigated 67 cases of commercial smuggling representing approximately BD \$1.3 million of seized property. The Customs Department estimates that up to BD \$5 million worth of commercial goods are illegally imported into Bermuda and not detected by Customs.

THREAT LEVEL: Commercial smuggling of goods into Bermuda was assessed as a medium-high threat of money laundering in Bermuda. In 2013, this predicate was considered a low threat, as no statistical information was provided because the focus was on criminal investigations and prosecutions. This change is not seen to represent a spike in commercial smuggling since 2013, only that the source of information utilised in this assessment was not considered in 2013.

II. Domestic tax crimes

The Office of the Tax Commissioner provided information on delinquent taxpayers, against whom criminal action could be taken in relation to payroll taxes. Yet in most cases, the tax authority pursued the taxpayer through civil remedies to recoup the lost tax revenue.

Over the review period, 41 cases were successfully pursued and BD \$1,561,079.14 in taxes collected. In that same period, tax authorities identified or referred 646 cases to the Debt Enforcement Unit for action to be taken—some of which were settled before civil action could be taken.

Determining the rating for this predicate was difficult, given the lack of criminal investigation or prosecution and the understanding that in many types of tax delinquency cases, criminal action is not always a reasonable response. It was also difficult to determine what criteria to use to decide what the money laundering implications

were for failure to pay payroll tax. Clear cases can be made for potential money laundering in payroll tax delinquency where employers collect/deduct payroll tax from employees' salary but fails to pay these over to the tax authority. However, the data relating to how many such cases were identified or pursued during the period under review was not available.

THREAT LEVEL: Based on the actual numbers provided for debt collection from delinquent taxpayers, domestic tax crime was assessed to be a medium-high threat for money laundering in Bermuda. This threat rating in 2013 was ranked as low in 2013, based on the limited information provided at the time.

c) Medium-threat predicate crimes

There were two money laundering cases investigated and prosecuted for which convictions were achieved, but where no predicate offence was identified. The total of the proceeds seized or confiscated from these two cases amounted to approximately BD \$843,000. Without knowing the predicate, it is impossible to estimate the value of undetected proceeds in these crimes.

THREAT LEVEL: This type of case is not useful for analyzing threat but based on proceeds alone would be considered medium threat.

d) Low-threat predicates

Of the 22⁶ categories of predicate offences analysed, 10 were assessed to be a low threat of money laundering in Bermuda. These include:

- all violent crimes and crimes against the person⁷, either because of the low numbers for such offences or because there is no associated financial gain for such crimes in Bermuda
- acquisitive crimes (including robbery, theft, handling of stolen goods), because the average value of property gained by criminals is around BD \$500, based on 8,206 reports
- other offences, such as domestic market manipulation/insider trading, piracy of goods and extortion, because there were no reported incidents during the review period
- environmental crime, because the three cases brought to the courts during the review period related to commercial fisheries offences involving low values

Transit in narcotics was a new category that had not been considered in 2013. In the 28 cases in which narcotics transiting through Bermuda's ports were detected, all were destined for other jurisdictions. Although the value of narcotics in such cases was likely to be relatively high and Bermuda's "clean port" status was being taken advantage of by the offenders in question, the money laundering threat to Bermuda from transit in narcotics was non-existent.

⁶ Organised crime is not a specific predicate offense in Bermuda.

⁷ Kidnapping & illegal restraint; Murder & Grievous Bodily Harm; Sexual Exploitation (including all sexual offences, including those against children); Trafficking in Human Beings.

Origin of the proceeds of crime

It was determined that international sources have a significant impact on money laundering in Bermuda. The predicate offences that were rated as high and medium-high threats to money laundering helped solidify this view.

a) Domestic

Based on the criteria used in this assessment, the money laundering threat from domestic crimes was determined to be high, primarily because of domestic drug trafficking (estimated to have a value in excess of BD \$25 million). Drug trafficking features both domestic-only and joint domestic/foreign elements: the drug trade in Bermuda is wholly dependent on imported drugs, but the actual proceeds-generating activity takes place wholly within Bermuda. This aspect of the drug trade has the greatest immediate impact on the money laundering threat, as the actual trafficking of drugs within Bermuda generates the proceeds, which are then laundered within Bermuda and partially sent outside of Bermuda for laundering overseas.

Corruption/bribery and domestic tax crime are also relevant, but it should be highlighted that there is little actual evidence of domestic money laundering from these sources.

b) Foreign jurisdictions

The money laundering threat from predicate offences committed overseas is also assessed as high, as given the nature of our economy, it is likely that that proceeds from such offences will be found in Bermuda's financial industry. The offences that are considered to be sources of such funds include international fraud, international tax crime, foreign corruption/bribery and market manipulation/insider trading (international). It is likely that the estimated undetected proceeds of crime from these offences would exceed BD \$10 million.

c) Both domestic and foreign

Dual-jurisdiction criminality was determined to be medium-high for money laundering, primarily in relation to drug trafficking involving the importation of drugs, or conspiracy to import drugs. The money laundering impact of this crime is, however, significantly less than with domestic drug trafficking; narcotics experts within law enforcement indicate that the mark-up on drugs imported into Bermuda is significant, but the spread from the markup is not realized until the drugs are sold on the streets in Bermuda.

For instance, the wholesale price of cocaine purchased for importation into Bermuda is BD \$4,000 per kilo, which becomes BD \$250,000 per kilo when sold on the streets. This means that even after the wholesale price and any associated commission fees paid to middlemen drug suppliers outside of Bermuda, the majority of the realized proceeds from domestic trafficking remain in Bermuda. Extrapolating from law enforcement experience with cash seizures at the borders, and knowledge of currency conversion practices, experts have concluded that, of the estimated BD \$25 million represented by the domestic drug trade for all drugs annually, only about BD \$5 to \$6 million is sent out of Bermuda to pay foreign suppliers and middlemen.

d) Origin not identified

There were no types of offences in which the origin of the criminality that potentially would give rise to money laundering would not be known. Therefore, this was rated as representing a low money laundering threat to Bermuda.

Cross-border Threat Analysis

Bermuda has a number of economic touch points and a high frequency of international cooperation in criminal matters and financial intelligence with many countries, but more commonality and cooperation with eight countries and one region in particular. For the purposes of examining the cross-border impact of the money laundering threat, the working group examined Bermuda's relationship with:

- United States of America
- United Kingdom
- Canada
- the Caribbean⁸
- Germany
- Netherlands
- Switzerland
- France
- Mexico

The Department of Statistics provided:

- country-by-country data on the inflows and outflows relating to the trade in goods for major trading partners (the USA, UK and Canada)
- aggregate regional data on the inflows and outflows for trade in services
- aggregate estimates on the inflows of foreign direct investment

In addition, the Bermuda Monetary Authority provided data on portfolio investments on a per-country basis.

Through the information provided, the working group was able to conclude that Bermuda's money laundering threat flowed in both directions in relation to the USA, Canada, UK and the Caribbean, with the outgoing money laundering threat arising as a result of the need to pay foreign drug dealers for drugs imported into Bermuda. This analysis was also supported by the two-way direction of the international cooperation requests in relation to those countries and around the Caribbean region. However, in relation to Germany, Netherlands, Switzerland, France and Mexico, the money laundering threat was considered to be only likely to be incoming.

The data provided on portfolio investments confirmed expectations that the United States, followed by the United Kingdom and Canada, were the main sources of, and destinations for, the majority of Bermuda's investment flows. The working group concluded that regionalised remittance data strongly suggests that the inflow of funds into Bermuda is consistent with the origin of Bermuda's international business client base.

THREAT LEVEL: Based on the data available, the working group identified the money laundering threat from these eight countries and the Caribbean region as medium. No cross-border analysis of this nature was conducted in the 2013 NRA.

⁸ Given the nature of drug trafficking in Bermuda and the role of the Caribbean region in drug trafficking in the Americas, the Working Group was of the opinion that disaggregating Caribbean countries in this analysis would not cover the full scale of the problem. Accordingly, it was agreed that using the region in this case was justifiable.

Summary of Sector-Specific Analysis of Money Laundering Threats

To determine which sectors were at highest risk of money-laundering threats, the working group considered all available statistical data and factual details about the actual cases. Intelligence was gleaned from FIA disseminations, which were based on suspicious activity reports filed with the FIA, to aid this analysis. However, before any conclusions can be drawn as to the money laundering threat to the sectors, other factors had to be considered, such as the size of each sector in the economy and the estimated amount of undetected money laundering activities in each sector.

Bermuda's inherent exposure to money laundering predominantly arises from its economy being largely supported by international financial business. Accordingly, the sectors determined to have a high exposure to money laundering threats from foreign predicates are:

- a. the banking sector, which is more likely to be exposed to all money laundering threats in the entire economy
- b. the securities sector
- c. corporate service providers
- d. the TSP sector, which has significant property under management and services a largely international client base

The sectors in the economy determined to have a medium-high exposure to money laundering are:

- a. the money service businesses sector, which is considered to potentially have a high exposure to the threat posed by domestic drug trafficking
- b. insurance (long-term direct) sector, but more specifically, annuities products derived from that sector
- c. lawyers, as they service domestic and international clientele (though on a lesser scale) in real estate services and international clients seeking a gateway into Bermuda's financial sector

Additional information on the threats at the sectoral level is provided later in the report, in the sections that provide the assessment of risks for each sector.

Conclusion

In assessing the factors that contribute to Bermuda's money laundering threat, the working group was able to draw conclusions about the general nature of money laundering risks in Bermuda. Bermuda's money laundering threat is primarily derived from a relatively small number of potential predicate sources. The origin of the money laundering threat to Bermuda is primarily international, as seen from the nature of predicate crimes that underpin it. The exception to that trend is drug trafficking, where Bermuda's status as an end-user destination in the drug trade has domestic implications. Recent matters related to corruption are still under investigation, so provide no concrete evidence of a significant level of domestic laundering derived from corruption within Bermuda.

In 2013, during the last national review of the threats from money laundering, the threat to Bermuda was ranked as medium. The 2017 assessment is both more comprehensive and, based on stronger data and on the basis of more detailed analysis, the threat was rated medium-high. If these same techniques and information had been available in 2013, it is the view that the previous working group would likely not have come to the same conclusion.

Although drug trafficking remains a high threat for money laundering in Bermuda, foreign crimes pose a statistically more significant threat of money laundering to Bermuda's financial system. The financial services sector and its supporting sectors are most likely to be affected by these threats that originate from overseas. Given the nature and size of these sectors, there is potential for significant adverse effect to the sectors and to the economy of Bermuda as a whole.

Chapter 6: The Banking Sector

Summary Findings:

The Banking sector is assessed as having an inherently high risk to ML for two primary reasons. Firstly, the sector plays a central role in Bermuda's economic and financial activity. Secondly, Bermuda's banks have considerable exposure to international businesses and play a vital role in the cross-border transfer of funds.

AML/ATF Supervisory Authority – Bermuda Monetary Authority

Introduction

Bermuda's banking sector consists of five deposit-taking entities—four banks and a credit union—with total income of BD \$795 MM for the sector in 2016 constituting 13% of national GDP.

At the end of 2016, banks had total assets of BD \$23 billion. The majority of the customers and accounts – but not value – are within retail banking. About 93% (87% in dollar value) of the deposit account holders reside in Bermuda and about 96% (87% in dollar value) of the loan account holders reside in Bermuda.

Banks in Bermuda offer a sophisticated variety of financial products and services to a wide range of clients. For the purposes of this ML risk assessment, Bermuda's banking sector is divided into three sub-sectors:

- retail and business banking for local residents
- corporate and transaction banking mostly for international companies domiciled in Bermuda
- wealth management and private banking services for high-net-worth individuals

In addition to meeting the banking needs of the resident population, Bermuda's banks extend their services to the international business sector with investment trustee and financial management services. As an example, Bermuda's banks offer tailored corporate banking packages for the captive insurance market, combining cash management, letters of credit, treasury, custody and investment services to streamline transactions among a captive, its parent, and insurers.

Assessment of Sectoral ML Threats

The banking sector features prominently in money laundering investigations. During the review period, there were 214 money laundering investigations involving the banking sector, including 11 prosecutions with 10 convictions and one civil asset recovery action. Although only approximately BD \$340,000 in proceeds was confiscated in those cases, none of these funds were actually seized from the banks, but rather were cash seizures made in connection with those cases.

The majority of Suspicious Activity Reports (SARs) filed with the FIA during the period under review were filed by banks, and primarily involved low-value currency-conversion transactions, usually from Bermuda

Dollars to US Dollars. This, in the view of law enforcement, is typical activity to support the domestic drug trade, and to a lesser extent, the domestic firearms trade.

In the drug trade, cash is the primary revenue source and also the primary means of paying overseas suppliers, so the banking sector can be involved in converting local currency to US Dollars. The experiences of law enforcement and intelligence authorities in Bermuda strongly suggest that this sector has a higher detection rate for suspicious activity connected to cash-based money laundering, as it takes place in front of tellers and through ATMs.

The threat of money laundering from international tax crimes, international market manipulation and insider trading and international fraud are all likely to have an impact on the banking sector, specifically in the commercial banking and possibly private wealth management segments of the banking business. Undetected money laundering in this sector could potentially be high, and given the scale of the banking sector in the economy and the scale of the money laundering threat from these predicates, the money laundering threat to the sector is also high. This is most true in the banking segments exposed to international business.

Analysis of Sector Inherent ML Vulnerabilities

Globally, banking is generally considered to be exposed to a high level of ML inherent risk. This is due to the sheer size and scope of its role in the financial sector, its high transaction volumes and broad customer base, as well as its complex and international nature, and the availability of products which can be abused to conceal illegal transactions. Banking involves the fast, electronic movement of funds, the transfer of access rights to deposit accounts to third parties, and remote access—all attractive features for ML purposes.

According to the Financial Action Task Force (FATF), 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 parties⁹.

The customer segments that create the most vulnerability to ML are non-resident high-net-worth individuals, managed corporate/trust clients and Politically Exposed Persons (PEPs).

(i) Retail and Business Banking

In most jurisdictions the retail and business banking is considered vulnerable to ML due to the broad range of products offered, the large number of clients involved, and the high transaction volume. In particular, payment service activities carried out by banks can be vulnerable to layering and integration techniques used by criminals for ML. Unscrupulous third-party payment services have been associated with money laundering; as an example, processing payments for illegal gambling sites. Cash transaction thresholds set by the bank can be circumvented by structuring the transaction, a common technique which enables the laundering of substantial volumes of illegal proceeds.

The retail and business banking sub-sector in Bermuda has an inherent ML risk of medium-high. Around 90% of all deposits are made to two of the island's banks. The fact that there are very few deposit-taking institutions in Bermuda—the four banks have 13 branches, and there is one credit union—

⁹ FATF, *Specific Risk Factors in Laundering the Proceeds of Corruption*, 2012

decreases ML risks¹⁰. The banking risk in Bermuda is driven by the number of small businesses, as banks are more likely to approve larger transfers for businesses than for individuals.

Deposit accounts represent the highest risk and challenges for monitoring transactions, because of the large number of accounts, their size and transaction activity. Mortgages are also vulnerable to ML risks, since significant criminal proceeds can be cleaned in a single transaction.¹¹ The sheer size of Bermuda's real estate market (around 17% of GDP in 2016), and the mortgage lending associated with it, makes this sector potentially vulnerable to abuse by criminals. However, the real estate market in Bermuda is not particularly active and is mostly restricted to residents, decreasing its vulnerability.

Another product with high potential of ML risk is safety deposit boxes. Although FATF Recommendation 12 requires a document of reliable personal identification to open a safety deposit box, the owner is not required to disclose the box's contents.¹²

(ii) Corporate and Transaction Banking

From a global perspective, corporate and transaction banking may also be vulnerable to ML risks, due to its international nature and the volume of transactions that come through Bermuda. Products such as correspondent banking have a higher inherent ML risk, as the correspondent often has access to limited information regarding the identity of the underlying parties, or the purpose of the transaction; corporate loans may be abused for ML purposes through the use of collateral or mingling of dirty money during the pay-offs. Trade finance is also vulnerable to high ML risks as it often involves complex transactions with multiple participants, several manual and resource-intensive processes and a lack of transparency. More complex laundering processes within the sub-sector may include using corporate vehicles to conceal beneficial ownership information and may involve overseas jurisdictions.

Corporate and transaction banking in Bermuda is assessed to have a high inherent vulnerability to ML. The vulnerability of the sub-sector is driven by the significant number of international companies domiciled in Bermuda and the high volume of international transactions. Of all cross-border transactions, 91% are between Bermuda and the US, Canada and Europe.¹³ Corporate loans pose one of the highest ML risks. As of 2016¹⁴, BD \$2.3 billion in loans were outstanding and included operating loans, all business loans, working capital and overdrafts.

Although banks in Bermuda rely on correspondent banks overseas to complete and process international incoming and outgoing wire transfers, the overall amount of correspondent banking provided in Bermuda itself is low and does not contribute significantly to the overall ML risk of the sector. Similarly, trade finance represents a very low volume of transactions for Bermudian banks (BD \$300 million in 2016)¹⁵ and therefore is not a key driver of ML risk for this sub-sector.

(iii) Wealth Management and Private Banking

¹⁰ S&P, *Banking Industry Country Risk Report Bermuda*, 2016

¹¹ FATF, *Specific Risk Factors in Laundering the Proceeds of Corruption*, 2012

¹² The Federal Department of Finance in Switzerland published a report detailing the ML/TF risks of safety deposit boxes as an unlimited means of storage with no requirement for asset transparency. Approximately 9,000 bank safety deposit boxes are currently in use in Bermuda.

¹³ BMA, *Financial Stability Department Data*, 2017

¹⁴ Ibid

¹⁵ Ibid

Globally, wealth and private banking are considered to be particularly vulnerable to ML activity because it offers complex services and products embedded in a culture of confidentiality. Private banking can enable criminals to launder proceeds of crimes—such as bribery or corruption—through products targeted at high-net-worth individuals with large transactions and complicated financial arrangements. Additionally, the reporting institution’s desire for lucrative business relationships may make it difficult for compliance officers to convince their boards to turn down dubious customers.¹⁶

Wealth management and private banking in Bermuda are deemed to have a high level of inherent vulnerability to ML as Bermuda’s wealth management and private banking sub-sector has a predominantly international client base.

Wealth management products had a total value of BD \$3.5 billion in 2016.¹⁷ Deposits associated with private banking were BD \$1.0 billion in 2016¹⁸. However, private banking in Bermuda is concentrated, with around 60% of private banking transactions undertaken by one entity.¹⁹ Deposit accounts are deemed to have the highest ML risk in this sub-sector. Mutual funds, securities and brokerage products are also especially vulnerable to ML due to their complexity and significant value. This sector has a high vulnerability to ML.

(iv) Consolidated Banking Sector

Across all sectors, deposit accounts are assessed to have the highest inherent vulnerability because the number of accounts, their volume and the inflows/outflows are the most significant. These factors represent challenges for the consistent execution of transaction monitoring.

Bermuda’s banks have considerable exposure to international businesses and play a vital role in the cross-border transfer of funds. Further, the sector plays a major role in Bermuda’s economic activity. These factors are seen as primary contributors to the overall high ML inherent vulnerability rating for the sector.

Conclusion

The assessed level of inherent ML vulnerability across the banking sub-sectors can be seen in the table below:

Table 1: Overview Inherent Vulnerability of Banking and its sub-sectors

| Sub-sectors of the banking sector | Inherent vulnerability level |
|---------------------------------------|------------------------------|
| Retail and Business Banking | Medium-High |
| Corporate and Transaction Banking | High |
| Wealth Management and Private Banking | High |
| Overall banking sector | High |

The overall inherent vulnerability in the banking sector is high and the ML threat is also considered high. The banking sector’s overall inherent ML risk is therefore high.

¹⁶ FATF, *Specific Risk Factors in Laundering the Proceeds of Corruption*, 2012

¹⁷ BMA, *Banking and Credit Union Vulnerability Report*, 2017

¹⁸ Ibid

¹⁹ Ibid

Chapter 7: The Insurance Sector

Summary Findings:

The Insurance sector is assessed in two distinct groupings of “Long-Term Direct” and “Reinsurance – general and non-life insurance” reflecting the distinct susceptibilities to ML risk of the underlying business conducted by each group.

Long-term direct insurance has a medium-high inherent risk, driven primarily by the nature of the products offered and the predominantly international client base served.

Reinsurance – general and non-life insurance has a medium-low inherent risk. The baseline low risk for this business was raised primarily due to the presence of certain Bermuda-specific products which were assessed to present a relatively higher risk of AML.

AML/ATF Supervisory Authority – Bermuda Monetary Authority

Introduction

The insurance sector is the largest financial sub-sector in Bermuda and has significant international reach. As of 2016, the insurance sector’s US \$632 billion in assets accounted for approximately 72% of the total assets in the financial sector in Bermuda. The sector also accounts for about 28% of Bermuda’s total GDP.

Bermuda has 1,224 registered insurance entities. It is the third-largest reinsurance centre in the world, as well as the largest captive domicile. Bermuda is also the leading jurisdiction for the issuance of catastrophe bonds and the leader in insurance-linked securities (ILS), issuing 71% of global outstanding ILS capacity in 2016.

For AML/ATF risk analysis purposes, licensed insurance entities are grouped into two broad categories, depending on the type of insurance activity that they underwrite:

The first group, long-term direct, is covered by the AML/ATF regulations and comprises long-term insurance entities (international and domestic), insurance managers registered under section 10 of the Insurance Act 1978, and any insurance broker registered under section 10 of the Insurance Act 1978 (only in so far as he or she acts as a broker in connection with long-term business other than reinsurance business) falling within paragraph (a) or (c) of the definition of “long-term business” in section 1(1) of the Insurance Act 1978).

The second group, general business and reinsurance, which is not AML/ATF regulated, includes long-term reinsurance, general business re/insurance entities, insurance brokers not connected with long-term business, insurance agents and insurance salesmen. However, all entities are required under the *POCA Act* to have AML/ATF policies and procedures in place for reporting suspicious activities on AML/ATF to the FIA.

Assessment of Sectoral ML Threats

Long-term direct insurance poses the greatest ML threat within the insurance sector. During the review period, there were 15 investigations involving this sector, though no criminal prosecutions or convictions. However, there were five civil asset recovery cases during the period under review, in which property amounting to approximately BD \$13.3 million was frozen. So far, approximately BD \$5.8 million has been confiscated. The FIA made 24 disseminations arising from Suspicious Activity Reports in which this sector was also featured. Law enforcement and intelligence authorities have noted that, over the past four years, there has been an increase in reporting on the use of annuities for criminal purposes. Notwithstanding this, the Working Group acknowledged that annuities represent a relatively small segment of this specific insurance sector. The ML threat to the long-term direct insurance sector is assessed as medium-high.

In the case of reinsurance, general and non-life insurance, there was no evidence that the institutions or products in this sector were used or could be used successfully in ML cases. The ML threat was assessed to be low.

Analysis of Sector Inherent ML Vulnerabilities

The global insurance sector is recognised as vulnerable to money laundering to varying degrees. The vulnerability arises from the possibility of weak controls and limited regulatory intelligence, which enables criminals to conceal the proceeds of crimes. Specific indicators of ML include purchases of large, single-premium insurance policies, customers who assign policies just after inception and customers who surrender high-value policies early. It is globally recognised that life insurance (“long-term insurance” in Bermuda) is more vulnerable to ML than the non-life insurance (“general business insurance” in Bermuda) and reinsurance sector. Non-life insurance and reinsurance are not particularly vulnerable to ML risks. Insurance managers traditionally have had some vulnerability to ML²⁰. Global insurance intermediaries (brokers, agents and salesmen) have a moderate vulnerability to ML.

In Bermuda, the re/insurance sector is split across several sub-sectors that vary in size, level of inherent vulnerability and extent of ML regulation. The sub-sectors have different levels of vulnerability to ML. The majority of the sector’s Gross Written Premiums, around 99%, is held by general business re/insurance or long-term re/insurance that are perceived as having medium-low vulnerability to ML.

Long-Term Direct Insurance

(i) Long-Term Insurance – International

International long-term insurance has a high ML vulnerability in Bermuda. This is primarily because of its international customer base, making it harder to carry out the necessary due diligence on policyholders. International long-term insurance contributes around 99% of all long-term insurers’ GWP and primarily services global needs through insurance intermediaries. There is significant use of intermediaries in this space, which facilitates the distribution of products globally.

²⁰ FATF, *Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems*, 2013

It is considered more challenging for insurance companies to “know their customers” when they are from overseas or only deal with the insurer via one or more intermediaries, making it more attractive for money launderers. In these instances, the disconnected nature of the relationship may impede verification of a customer’s identity and source of wealth.

(ii) Long-Term Insurance – Domestic

Domestic long-term insurance has medium inherent ML vulnerability in Bermuda. However, the size of the sector is relatively small, transaction volume is low, and there are a small number of long-term policies.

Some of the challenges faced by insurance with international presence, such as difficulty with CDD are mitigated by the domestic nature of its operations. In addition, the majority of products utilised by Bermudian residents are made less risky by being sold directly instead of through intermediaries.

Reinsurance – general and non-life insurance

(i) Long-Term Reinsurance

The long-term reinsurance sub-sector in Bermuda has a medium-low ML risk and is currently not supervised for AML/ATF compliance. The scale of the sub-sector, average transaction sizes and its amount of international business could leave it susceptible to money laundering.

However, there are no known instances of reinsurance companies being abused or misused for ML in Bermuda, and the BMA considers the sector to have medium-low ML vulnerability.

(ii) General Business Re/insurance

General business re/insurance in Bermuda has medium-low inherent ML vulnerability. Although the ML vulnerability of general re/insurance is generally considered low, given the relatively large size and diverse international customer base, the risk rating for Bermuda has been assessed as medium-low.

(iii) Insurance Managers

Bermudian Insurance Managers are assessed to have a medium inherent vulnerability to ML. Insurance managers provide management services to a broad range of insurers, including long-term insurers, which are rated at higher ML vulnerability. They can also play a crucial role in the management of captives, commercial re/insurers and providing corporate services, acting as a point of contact between the regulator and the managed entity. In addition, there are also a number of insurance managers in Bermuda that provide a limited suite of corporate services to their clients under the *Corporate Service Provider Business Act 2012*, including administrative and secretarial services.

(iv) Insurance Intermediaries (Brokers, Agents and Salesmen)

Insurance intermediaries have medium-high inherent vulnerability to ML in Bermuda. That vulnerability is driven by the significant roles these companies/individuals play in the insurance sector, as well as the significance of the product they are distributing.

Intermediaries also act as a gatekeeper, which creates a level of ML exposure since they are the direct point of access between the customer and the sector. Furthermore, international client profiles, a significant number of cross-border transactions, and PEPs in the customer base add a level of complexity to the sub-sector and increase its risk.

Conclusion

The assessed level of inherent ML vulnerability across the insurance sub-sectors can be seen in the table below:

Table 2: Overview of Inherent Vulnerability of Insurance and its Sub-sectors

| Sub-sectors of the Insurance sector | Number of licences | Inherent vulnerability level | AML/ATF regulated as of 2017 |
|---|--------------------|------------------------------|------------------------------|
| Long-term insurance – international | 53 | High | Yes |
| Long-term insurance – domestic | | Medium | Yes |
| Overall long-term insurance sub-sector | 53 | Medium-High | Yes |
| Long-term reinsurance | 111 | Medium-Low | No |
| General business re/insurance | 1067 | Medium-Low | No |
| Insurance managers ²¹ | 113 | Medium | Yes |
| Insurance intermediaries (brokers, agents and salesmen) ²² | 203 | Medium-High | Partially |
| Overall reinsurance – general and non-life insurance sub-sector | 1,547 | Medium-Low | Partially |

With an assessed ML threat of medium-high and the overall inherent ML vulnerability rated as medium-high, the overall inherent risk for long-term direct insurance is medium-high.

For general business insurance, the ML threat is deemed to be low and the inherent ML vulnerability is medium low, resulting in an inherent ML risk of medium-low.

²¹ As at 2016 insurance managers were partially regulated for AML/ATF purposes, this was amend in 2017 to capture the entire subsector.

²² Insurance brokers registered under section 10 of the Insurance Act 1978 (only so far as they act as a broker in connection with long term business other than reinsurance business) are covered by the AML/ATF regulations.

Chapter 8: The Securities Sector

Summary Findings:

The ML threat for the securities sector is high as the clients in this sector are primarily international and there are high dollar values generally managed in the sector. The inherent vulnerability in all segments of this sector is deemed to be medium-high.

AML/ATF Supervisory Authority – Bermuda Monetary Authority

Introduction

Bermuda’s securities sector is well developed and offers a sophisticated range of products. The sector caters to a diverse, international client base with substantial foreign portfolio holdings. The securities sector has the following sub-sectors:

- (i) investment businesses, which include investment managers and investment broker-dealers;
- (ii) fund administrators ; and
- (iii) investment funds.

The investment funds sub-sector includes pooled investment vehicles structured either as mutual fund companies, unit trusts, partnerships or limited liability companies. These funds can apply to the BMA for authorisation as funds, or for an exemption or exclusion from the Investments Fund Act.

Bermuda has 57 licensed investment businesses and 31 licensed fund administrators.²³ There were 890 registered investment funds in Bermuda in 2015²⁴, including funds defined as authorised, excluded or exempted. Authorised funds include 312 authorised institutional funds, 7 authorised administered funds and 160 authorised standard funds.²⁵ The securities sector in Bermuda is primarily regulated by two pieces of legislation: the *Investment Fund Act* (IFA) and the *Investment Business Act* (IBA).

In December 2015, investment funds in Bermuda had a total net asset value of approximately BD \$144 billion, representing 19% of the island’s total financial services sector assets²⁶ and making securities second only to insurance in Bermuda’s financial industry.

Assessment of Sectoral ML Threats

There were nine investigations in which the securities sector was featured. Although there were no criminal prosecutions or convictions involving the sector, there were in fact two civil asset recovery cases in which property amounting to approximately BD \$5.2 million was frozen and, in one case, BD

²³ BMA, Securities Sector Vulnerability Report, 2017
²⁴ Ibid
²⁵ Ibid
²⁶ Ibid

\$52,554.63 was confiscated²⁷. The FIA has also reported that they made 15 disseminations to local law enforcement and foreign counterparts, pertaining to this sector, though the majority of disseminations were to foreign FIUs.

Suspicious activity reporting in the sector is relatively low. However, law enforcement and FIA experience gleaned from the civil asset recovery cases and relevant mutual legal assistance requests and other matters, suggests that the money laundering threat to this sector derives from the marketing of funds in foreign jurisdictions by foreign brokers.

Although many foreign-based funds are managed by local fund administrators, the threat of ML to such funds appears to come mainly from foreign investors. Previous experience has indicated that the threat was not identified on some occasions because of over-reliance on foreign third parties to introduce investors into the funds and to carry out the requisite due diligence. These funds generally involve extremely high dollar values and individual investments into some of these funds can range in the millions. The attractiveness of off-shore funds as an investment vehicle for the proceeds of foreign tax crimes, international fraud or international corruption is believed to be well-established.

The money laundering threat to the securities sector is high.

Analysis of Sector Inherent ML Vulnerabilities

Globally, the worldwide securities industry is considered to have a high ML vulnerability. Securities can be attractive vehicles for criminals due to the complex structure of the products offered. The clients are often high-net-worth individuals and/or PEPs, who are considered an elevated risk for ML. In addition, the large volume of products traded and the variety of strategic investment approaches offer unique opportunities to disguise sources of funds. ML risks significantly outweigh those posed by TF.

In most securities markets, only intermediaries and administrators can engage in financial transactions. Therefore a key consideration in the assessment of ML vulnerabilities of the sector is the gatekeeper role of these entities. Furthermore, the traditionally confidential nature of fund structures may make tracing the source of wealth and the owner's identity more difficult, since a fund offers a private agreement between investors, and the identity of investors may not be known even by the intermediary providing administrative services.

Fund Administrators primarily maintain investment fund accounts and process the issue, conversion and redemption units of a fund, as well as distributing fund dividends to participants. They are typically associated with high vulnerability to ML risks. Risks are primarily driven by the scale of activity, client profile and source of funds. In general, significant assets and a high volume of cross-border transactions.

Globally, investment funds have medium-high vulnerability to ML. Funds can adopt various complicated structures, which can readily be used for layering and integration of criminally obtained funds.²⁸

From the Bermuda-specific perspective, the analysis of inherent vulnerabilities was conducted based on the various sub-sectors, as outlined below:

²⁷ The second case is still pending completion.

²⁸ International Monetary Fund (IMF), Bermuda: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, 2008

(i) Investment Businesses

The investment businesses sub-sector comprises investment managers, investment advisors/agents, custodians and investment broker-dealers. Overall, the inherent ML vulnerability of the investment business sub-sector in Bermuda was rated as medium-high.

Investment managers have medium-high vulnerability to ML, largely in line with the global risk assessment.²⁹ Similarly, investment broker-dealers have medium-high vulnerability to ML in Bermuda, in line with the global risk assessment. The risk posed by the 11 investment broker-dealers in Bermuda, and one entity fulfilling a broker-dealer role joint with investment management business is primarily due to client profile and global reach of the securities sector³⁰.

Total assets managed and administered by investment businesses are dominated by discretionary investment management.

The vulnerability of non-discretionary investment management is perceived to be relatively higher than the discretionary investment management due to the client-driven nature of the relationship in which investment manager primarily provides advice. The international nature of the funds and associated investors may make it harder to determine the source of funds, which increases the exposure to ML.

Of the 311 PEPs associated with investment business licences in 2015, approximately 70% were domiciled outside Bermuda. Bermudian discretionary investment businesses are associated with a lower number of PEPs amounting to just 15.³¹

(ii) Fund Administrators

In Bermuda, the Fund Administrators' sub-sector has a medium-high inherent vulnerability to ML, primarily due to the relatively high volume of cross-border transactions. In 2015, Bermuda-licensed Fund Administrators administered 1,307 funds.³² In aggregate, BD \$156 billion in assets under administration was reported by the 31 fund administrator licensees at the end of 2015.³³ Of the 479 authorised funds in 2015, 56% were administered by Bermudian fund administrators with the remaining 44% administered by a foreign entity.³⁴

The proportion of Politically Exposed Persons (PEPs) and high net worth individuals associated with fund administrators is more modest. In 2015, there were 155 PEPs under the remit of Fund Administrators; 66 associated with authorised funds and 89 associated with other funds.³⁵ However, the vulnerability of this client base is heightened by the greater portion of international nature of these PEPs being foreign with only 6% that currently reside in Bermuda.³⁶ This may increase exposure to ML.

²⁹ Ibid

³⁰ Ibid

³¹ Ibid

³² BMA, Annual Report 2015

³³ Ibid

³⁴ BMA, Securities Sector Vulnerability Report 2017

³⁵ Ibid

³⁶ BMA, *Securities Sector Vulnerability Report, 2017*

Most assets handled by Fund Administrators are sourced from investors outside Bermuda. Of the funds regulated under the IFA, 26% of authorised funds were sourced from domestic investors.³⁷ Similarly, for all other fund categories, only 15% were sourced domestically.³⁸

(iii) Investment Funds

In Bermuda, the investment funds sub-sector has a medium-high inherent vulnerability due to the combination of its international nature and technical complexity. Investment funds in Bermuda are pooled investment vehicles structured either as mutual fund companies, unit trusts or partnership funds. Once incorporated, investment funds can apply to the BMA to become an authorised fund, an exempt fund or an excluded fund. Exempt and excluded funds are required to register as an NLP (non-licensed person) before commencing business activities. Closed-ended funds are typically formed as limited partnerships or companies incorporated with limited liability.

In 2015, there were 890 investment funds in Bermuda³⁹ comprising: 479 authorised funds, 174 excluded and 148 exempt funds.⁴⁰ Of the total 890 investment funds, 76 hold a segregated account company licence.⁴¹ All exempt funds and excluded funds and exempted investment business in Bermuda fall under the jurisdiction of NLPs, but as noted later in this section are still subject to AML/ATF oversight.

The client profile also increases the vulnerability of the Investment Funds sub-sector to ML; investors in funds are typically high net worth individuals and from foreign jurisdictions. A substantial number of funds in Bermuda are owned by investors that are located internationally, which can make verification of client identity and adequate CDD more difficult. The level of political exposure though, was low as of 2015, where of the 8,323 client base of authorised funds administered by the Bermuda licensed administrator, only 58 were foreign PEPs. Of the remaining funds administered by the licensed Bermuda fund administrator, 88 were foreign PEPs of the 2,487 client base.⁴² The layer of anonymity associated with funds as well as a higher-risk client profile compound the vulnerability to ML of funds in Bermuda. The assessment of inherent vulnerabilities across different investment fund types is outlined in Table 4 below.

Table 3: Overview of Inherent Vulnerability of Investment Funds and its types

| Legal persons & arrangements of Funds | Number of entities | Inherent vulnerability level | AML/ATF regulated As of 2017 |
|---------------------------------------|--------------------|------------------------------|------------------------------|
| Authorised Funds | 479 | Medium-High | Yes |
| Non-Licensed Persons (NLPs) | 411 | Medium-High | Yes |
| Closed-ended Funds | N/A | Medium | No |
| Overall Funds sub-sector | 890 | Medium-High | Partially |

³⁷ Ibid
³⁸ Ibid
³⁹ Ibid
⁴⁰ Ibid
⁴¹ Ibid
⁴² Ibid

(a) Authorised Funds

A Bermuda-formed company, trust or partnership that meets the definition of an investment fund as outlined by the IFA must apply to the BMA for authorisation as a fund or, alternatively, apply to the Authority for an exemption from the Act (see section 4 below for more detail on exemptions and exclusions). The IFA requires investment funds, which do not qualify for exemption or exclusion from regulation to be classified as either standard funds, institutional funds, administered funds or specified jurisdiction funds.

In 2015, of the 479 authorised funds in Bermuda, 160 were standard funds, 312 institutional funds, and 7 administered funds.⁴³ Half of the authorised funds are administered by licensed fund administrators, and the rest by CSPs, investment businesses, or foreign entities. The greatest vulnerability to ML lies with authorised funds administered by foreign entities.

Bermuda's authorised funds are perceived as having a medium-high level of vulnerability to ML, primarily due to their client profile and global reach. Only 26% of investors in authorised funds are Bermudian, with the rest domiciled overseas.⁴⁴ The overall number of PEPs is relatively small but most of them are domiciled outside of Bermuda. The proportion of clients with high-risk profiles in conjunction with their international reach adds further complexities to the determination of ownership and the source of funds, and adds to the funds' ML exposure.

(b) Non-Licensed Persons (NLPs)

NLPs are unique to Bermuda and include all financial institutions which are not already licensed under statute (e.g. IFA or IBA) and which are exempt from the requirement to apply for a specific licence (under Section 6 & 7 of the IFA, or Section 13 of the IBA). An investment business or an investment fund will qualify for exclusion or exemption from licensing if it meets certain qualification standards, or is deemed exempt by the Minister of Finance. However, although not subject to the prudential regime, they are brought into scope under the AML/ATF requirements.

In 2015, there were 411 NLPs involved in the investment business and investment funds sub-sector in Bermuda; of which 89 were categorised as investment business NLPs and 322 categorised as investment fund NLPs.

In Bermuda, NLPs have medium-high vulnerability to ML risks, primarily due to client profile (involving high-net-worth individuals, PEPs and sophisticated investors) and the size of investor assets. Registered NLPs often engage with a substantial proportion of international PEPs, although the total number of PEPs in their client base is not large. As suggested by FATF, this client profile may increase exposure to ML.

In 2015, the majority of the assets held by NLPs were from outside of Bermuda. That may complicate the identification of beneficial ownership or source of funds, increasing vulnerability of investment business NLPs to ML.

⁴³ Ibid

⁴⁴ Ibid

Vulnerability is, however, somewhat limited by the legislation applying to exempted individuals. For example, pursuant to the Investment Business (Exemption) Order 2004, the IBA permits exemptions on two grounds. The first is that, investment services can only be provided to one of eight classes including sophisticated private investors, collective investment schemes approved by the BMA, high income private investors, and entities with total assets of not less than BD \$5M, where such assets are held solely by corporate bodies.⁴⁵ Under the second exemption, the investment services cannot be provided to more than 20 individuals at a time.

Vulnerability is further constrained by the fact that although the funds may be exempted or excluded from the licensing requirements under Section 6A & 7 of the IFA 2006, they are, as noted previously, required to register as NLPs with the BMA for AML/ATF oversight. Furthermore, these exempted and excluded funds registered as NLPs are likewise highly concentrated into discretionary funds, which have lower vulnerability to ML.

(c) Closed-Ended Funds

Closed-ended funds are typically formed as limited partnerships or as companies incorporated with limited liability.

Investors in closed-ended funds do not have the right to demand redemption of their holdings in the fund, compared with open-ended funds, where investors can issue and redeem their participating shares on a continuous basis.

Closed-ended funds have medium vulnerability to ML risks. Vulnerability to ML is limited by the operational ability of these funds, given that they can only issue a fixed number of shares to investors, and investors’ units are typically redeemed only at the end of an investment period, factors which limit potential for ML. Furthermore, closed-ended funds with shares listed on the Bermuda Stock Exchange (BSX) are less vulnerable to ML due to the public nature of the trade, and the relatively modest size of the BSX.

Conclusion

The assessed level of inherent ML vulnerability across the securities sub-sectors can be seen in the table below:

Table 4: Overview of Inherent Vulnerability of Securities and its sub-sectors

| Sub-sectors of the Securities sector | Number of licences | Inherent vulnerability level | AML/ATF regulated as of 2017 |
|--------------------------------------|--------------------|------------------------------|------------------------------|
| Investment Businesses | 57 | Medium-High | Yes |
| Fund Administrators | 31 | Medium-High | Yes |
| Investment Funds | 890 | Medium-High | Yes |
| Overall Securities Sector | 978 | Medium-High | Yes |

⁴⁵ BMA, Investment Business Act 2003, Section 13; Investment Business (Exemptions) Order 2004

In Bermuda, the vulnerability of the securities sector to ML is assessed as medium-high, primarily due to international involvement in the sector and the dollar volumes involved, counterbalanced by a relatively small number of high risk individuals in the client base, and through investment managers typically dealing with a low volume of high value customers. Combined with the threat rating of High, the overall inherent ML risk is deemed to be high.

Chapter 9: Money Service Businesses (MSBs)

Summary of Findings:

The Money Service Businesses sector is assessed to have a medium high inherent risk, driven primarily by the intrinsic characteristics of the products offered, the wide access to the products, the transient nature of the customer base and their exposure to cash transactions.

AML/ATF Supervisory Authority – Bermuda Monetary Authority

Introduction

In 2016, the Money Service Businesses (MSBs) sector handled approximately BD \$444 million in transactions.⁴⁶ The core markets for Bermudian MSBs are tourists and Bermuda residents sending money overseas.

The top jurisdictions receiving outward money transfers from MSBs were the Philippines, Jamaica, USA and Portugal.

Outward money transfers constituted the greatest number of transactions.⁴⁷

The *Money Service Business Act 2016*, which came into force on January 31, 2017, regulates MSBs in Bermuda with a licensing regime. Previously MSBs had been regulated under the *Bermuda Monetary Act 1969*. Under Section 2(2) of the 2016 Act, an MSB is broadly defined, encompassing a wide range of services, from money transmissions, cheque cashing, payment services, and operation of a bureau de change.

Assessment of Sectoral Threats

There are only two entities operating as licensed MSBs in Bermuda. During the period under review, there were 46 investigations featuring this money remittance sector. Additionally, there were three prosecutions for ML, all of which resulted in convictions, in which this sector was featured. The FIA also made 54 disseminations to law enforcement based on SARs from this sector.

Law enforcement are of the view that this sector is susceptible to be used to launder the proceeds of drug trafficking. This sector is responsible for a significant number of the SARs filed with the FIA, despite its small size. On top of this, the working group estimated that undetected ML activities in the sector were high. However, given the small size of the sector and its relatively low outflow figures for remittances, the money laundering threat to this sector is medium-high.

⁴⁶ BMA, *Money Service Business Vulnerability Report*, 2017

⁴⁷ Ibid

Analysis of Sector Inherent Vulnerabilities

Globally, MSBs typically have high inherent vulnerability to ML. Several characteristics of the MSB sector make it an attractive vehicle for all stages of the ML process: placement, layering, and integration. The primarily cash-based nature of the sector is the main feature increasing its vulnerability to ML, making it particularly vulnerable at the placement stage of the money laundering process. In addition, the volume and frequency of transactions are typically high.

Although the MSB sector primarily involves direct exchanges of funds, it is also characterised by one-off transactions and less diligent customer identification, providing a level of anonymity within the sector. Criminals may enlist third parties or false identities to prevent the tracking of funds, and this in turn compounds the sector's vulnerability to ML.

In Bermuda, MSBs have been assessed to have a medium vulnerability to ML, primarily due to the limited size of the sector. Compared with other sectors in the financial services area, the amount of money passing through the two MSBs is significantly smaller and has only a modest impact on the financial industry. Globally, Bermuda has significantly fewer MSBs than many other jurisdictions, which reduces its exposure to ML.

Nevertheless, MSBs offer a widely accessible channel through which criminals can engage in ML. The use of an MSB is perceived as easier than opening a bank account. The sector is also particularly vulnerable to specific money-laundering risks related to the exchange of Bermuda dollars into foreign currencies. Criminals can use Bermuda's MSBs to transfer and exchange money through legitimate channels, sending it overseas, which complicates the tracing of the funds.

The products offered by the two MSBs in Bermuda primarily cover the transfer, guarantee, or exchange of money. These services most frequently involve the exchange of cash, which enhances the MSB's vulnerability during the placement stage of ML. The transient, one-off, nature of the customers in an MSB relationship decreases the transparency of the sector and therefore may be particularly attractive to criminals. However, the average outgoing transaction is less than BD \$400,⁴⁸ which limits potential criminal activity to relatively small amounts.

Conclusion

The level of ML vulnerabilities to the MSB financial sub-sector is medium. Given the threat rating of medium high, the overall inherent risk rating is also medium high.

⁴⁸ Ibid

Chapter 10: Bermuda Stock Exchange (BSX)

Summary of Findings:

The Bermuda Stock Exchange is assessed to have a medium low inherent risk, driven primarily by the public nature and transparency of the BSX, its electronic trading, settlement and depository platform coupled with its client profile of institutional clients, which are all licensed entities and have been listed with a listing agent in a predominantly face-to-face process.

AML/ATF Supervisory Authority – Bermuda Monetary Authority

Introduction

The Bermuda Stock Exchange (BSX) is a recognised investment exchange under the *Investment Business Act 2003* and operates as a self-regulatory organization (SRO) subject to regulation by the Bermuda Monetary Authority.

Established in 1971, the BSX is relatively modest in size, but globally respected for its commercially sensible listing requirements.⁴⁹ It is a leading market for the listings of investment funds, debt, insurance-related securities, and small-to-medium enterprise companies. In 2016, the total trading volume was eight million shares with a corresponding value of USD \$49 million.⁵⁰ Total market capitalisation was estimated at USD \$344 billion, of which approximately USD \$3 billion represented the domestic market⁵¹. In 2016, growth in new security listings across most sectors included a record 61 new Insurance-Linked Securities (ILS) listings with a capitalisation value of USD \$6.2 billion.⁵²

Assessment of Sectoral Threats

In the case of the Bermuda Stock Exchange (BSX), the barriers to entry to this sector also represent an impediment to its usefulness as a means of facilitating money laundering resulting in a low threat rating.

Analysis of Sector Inherent Vulnerabilities

Globally, a stock exchange is considered to have a medium-low vulnerability to ML. An exchange provides a public platform for investment broker-dealers to buy and sell securities. Securities issued on a stock exchange include stocks issued by listed companies, unit trusts, bonds, and pooled investment products. The speed in executing transactions on a stock exchange and its global reach provide some

⁴⁹ Bermuda Stock Exchange: *Bermuda Stock Exchange – Uniquely Positioned*, 2017

⁵⁰ BMA, *Annual Report*, 2016

⁵¹ Ibid

⁵² Ibid

exposure to ML. However, the transparency required for listed entities and the public, regulated nature of stock exchanges makes them less attractive to criminals who typically prefer more opaque vehicles.

With a market capitalisation of USD \$344 billion, the BSX is many times smaller than the New York Stock Exchange and the London Stock Exchange, with their market capitalisation of USD \$19.3 trillion and USD \$7.9 trillion respectively. Furthermore, its stock market turnover ratio⁵³ in 2015 was 0.8%, compared with the US at 165.2% and the world average of 47.3%.⁵⁴ The comparatively low stock market turnover ratio limits its potential to launder money and makes it less vulnerable to criminal activity.

Additionally, the public nature and transparency of the BSX is further enhanced by its electronic trading, settlement and depository platform, which is licensed by NASDAQ OMX. This automated trading is specifically designed to support secondary market trading and the settlement of sophisticated listed securities. The BSX is a full member of the World Federation of Exchanges and an affiliate of the International Organization of Securities Commissions. International cooperation as well as high transparency requirements imposed by public companies and automated transactions diminish the sub-sector's exposure to ML. In addition, the client profile includes institutional clients, which are all licensed entities and have been listed with a listing agent in a predominantly face-to-face process. All agents in this sector are regulated institutions. Consequently, the vulnerability of this sector is primarily due to the frequency of international transactions (>95% of all transactions) and risks related to ILS.

Conclusion

In line with global risk assessments, the BSX was assessed to have a medium-low inherent vulnerability to ML. Combined with the threat rating of low, the inherent ML risk to this sector is assessed to be medium-low.

⁵³ Stock Market Turnover Ratio of domestic shares (%) is the value of domestic shares traded divided by their market capitalization. The value is annualized by multiplying the monthly average by 12. Higher percentage turnover indicates higher share liquidity.

⁵⁴ World Bank, *Stocks traded*, 2016

Chapter 11: Trust Service Providers (TSPs)

Summary Findings:

The Trust Service Providers sector is assessed to have a high inherent ML risk. This is due to the global reach of the trusts under operation, the high value of asset transfers, and the risk profile of customers, which includes high-net-worth individuals and PEPs, resident and non-resident.

AML/ATF Supervisory Authority – Bermuda Monetary Authority

Introduction

Bermuda has been in the trust business for the past 50 years, developing a strong international reputation for forming trust structures. Bermuda's main statute governing trustees carrying on trust business is the *Trusts (Regulation of Trust Business) Act 2001* (as amended).

Trusts are administered by trustees, who have the power to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon them by law. In Bermuda, trustees can be licensed trust businesses, private trust companies, or individuals acting in a private capacity. The market has an emphasis on offering services to discretionary trusts for families of high-net-worth individuals.

As of 2016, there were 28 licensed trust businesses in Bermuda. The number of trusts must be reported to the BMA by those TSPs that are licensed or applying for an exemption from licensing.

For the purposes of the risk assessment, the TSP sector is divided into three sub-sectors:

- licensed trust companies
- private trust companies
- private individual trustees

Private trust companies are exempt from the licensing regime of the *Trusts (Regulation of Trust Business) Act 2001*. As well, other trustees may be exempt if they meet the requirements of the *Trusts (Regulation of Trust Business) Exemption Order 2002*.

Assessment of Sectoral Threats

Very few SARs have been filed by the trust sector, with only two investigations in which the sector featured obliquely and no prosecutions or convictions associated with the sector. The portfolio of assets managed by the trust sector is considered to be quite sizeable and the client base is largely international in nature. However, there are also local clients within this sector, and the ML threat presented by local

clients would be lower than that emanating from the international clients. Taking these factors into consideration, the ML threat level is assessed as high.

Analysis of Sector Inherent Vulnerabilities

Globally, trust service providers (TSPs) have medium-high vulnerability to ML. They are often involved in the establishment and administration of legal persons and arrangements and therefore play a key role in many jurisdictions as gatekeepers for the financial sector.

In recent years, a number of studies have explored issues relating to the use or abuse of legal persons or arrangements for illicit purposes. The FATF states that, “whilst the majority of trust structures appear to be established for legitimate purposes, it is clear from research that some trust structures are used, unwittingly or otherwise, to help facilitate the misuse of trust vehicles. Criminal organisations and individuals may use trust structures to assist with illicit activities by seeking professional services and advice on the most appropriate vehicles or jurisdictions to use to further their ill-intended agendas.”⁵⁵

(i) Licensed Trust Companies

The licensed trust companies sub-sector in Bermuda has been assessed to have medium-high inherent vulnerability to ML, which is consistent with the global assessment of vulnerability for this sector. Factors influencing this rating include the global reach of the trusts under operation, the high value of asset transfers and the risk profile of customers, e.g. high net worth individuals and PEPs, both resident and off-shore. It is common for a trust to be managed by one of Bermuda’s licensed trust companies, acting either alone or with one or more individual trustees. A licensed trust company can manage multiple trusts. At present, Bermuda has 28 licensed trust companies, which include those owned by banks, and legal and accounting firms.

(ii) Private Trust Companies

The private trust companies sub-sector is deemed to have a high inherent vulnerability to ML. This is partly based on the lack of information in this sub-sector, which raises its vulnerability in line with FATF guidance. It is however, known that about half of the Licensed Trust Businesses act as a trustee that own shares of a Private Trust Company thereby giving a component of indirect application of AML/ATF obligations through the Licensed Trust Business. The limited oversight however, is insufficient to decrease the potentially high risk profiles of Private Trust Companies generally believed to be sizeable with a largely international client profile.

(iii) Private Individual Trustees

In Bermuda, the ML vulnerability of the private individual trustees sub-sector has been assessed to be potentially high due to the lack of detailed information on the subsector.

Individuals such as relatives, friends or advisers, can act as trustees provided they do not hold themselves out as carrying on business, in which case they are subject to licensing requirements. There is no restriction on the types of trusts which can be managed by such individual trustees.

This sub-sector is perceived to be relatively small, with a large proportion of business activity focused on Bermudian real estate and the client base is largely domestic. This use of trusts for property is

⁵⁵ FATF, *Money Laundering Using Trust and Company Service Providers*, 2010

suspected to have greatly diminished with the removal of the inheritance tax on the primary residence. Nevertheless, where there is a lack of detailed information of a sector it raises the risk profile, so a conservative approach has been adopted to provide the inherent vulnerability rating for Private individual trustees.

Conclusion

The assessed level of inherent ML vulnerability across the Trust Service Providers sub-sectors can be seen in the table below:

Table 5: Overview of Inherent Vulnerability of Trust Service Providers and its Sub-Sectors (2016 Data)*

| Sub-sectors of Trust Service Providers sector | Number of licences | Inherent Vulnerability Level | AML/ATF regulated as of 2017 |
|---|--------------------|------------------------------|------------------------------|
| Licensed Trust Companies | 28 | Medium High | Yes |
| Private Trust Companies | N/A | High | No |
| Private Individual Trustees | N/A | High | No |
| Overall Trust sector | 28 | High | Partially |

With a threat assessment of high, the overall inherent risk is also high.

*Private Trust Companies and Private Individual Trustees are not licensed.

Chapter 12: Corporate Service Providers (CSPs)

Summary Findings:

The Corporate Service Providers sector is assessed to have a high inherent ML risk, driven by the gatekeeper function played by CSPs for international clients, the complexity of the international financial transactions and the large number of companies being managed.

AML/ATF Supervisory Authority – Bermuda Monetary Authority

Introduction

The CSP sector in Bermuda, similar to other jurisdictions, plays a significant role as a financial intermediary.

The assessment of the risks in the CSP sector is based on the categories of licensing under the Corporate Service Provider Business Act 2012, as amended – unlimited licenses and limited licenses. In addition, an assessment of those entities which can be exempted from licensing is also undertaken. At the time that the 2017 National Risk Assessment was being undertaken, there were no CSPs which had been licensed as the legislative and licensing process was still being developed. However, there were almost 100 applications pending in 2017. Subsequently, licenses have been issued and the supervisory regime has been implemented.

Most Bermudian CSPs are owned and/or controlled by a limited number of law firms, accounting firms, or regulated financial institutions. Approximately 60% of the applications for incorporations have been submitted by the five largest CSPs.

According to the data available in 2017, CSPs that have applied for a licence are administering and servicing 14,331 entities, representing 83% of all companies and partnerships formed in Bermuda (17,371).⁵⁶ As it is not mandatory for a company to utilize a CSP, this is a significant percentage of all Bermuda companies and partnerships, illustrating the benefits that will be accrued to the AML/ATF oversight of such companies and partnerships following the implementation of the CSP licencing regime.

Assessment of Sectoral ML Threats

During the assessment period, this sector was featured in one ongoing investigation, but there were not yet any relevant prosecutions and no convictions. There were no disseminations from the FIA that related specifically to this sector and the few SARs filed by this sector all came from one entity.

⁵⁶ BMA, *Corporate Service Provider Vulnerability Report*, 2017

This sector serves as one of the major gateways to Bermuda's international financial services sector and it is believed that the majority of its clients are international. The corporate and legal structures facilitated by CSPs, as well as the other services provided, could be attractive to international criminals who wish to obscure ownership of property, evade foreign taxes or obscure the criminal origins of the property.

In considering all key factors, including the international experience regarding the use of CSPs in money laundering schemes the overall ML threat was rated as high.

Analysis of Sector Inherent Vulnerabilities

Globally, CSPs are deemed to have a high vulnerability to ML risks. One of the key risks is that the sector may be used to create front companies and complex corporate structures that may facilitate ML. CSPs have been found complicit in setting up corporate vehicles that were misused for money laundering.⁵⁷ Similarly, international crime groups have enlisted CSPs as corporate structures used to open bank accounts that facilitated ML-related criminality. CSPs have also been found to act as nominee directors of a large number of companies. In jurisdictions where the enforcement of directors' roles and legal responsibilities is weak, this has created an opportunity for ML.

(i) Limited licence CSPs

Consistent with the global determination, in Bermuda, limited licence CSPs were assessed as having a high vulnerability to ML. During the NRA, it was assumed that most CSPs in Bermuda would be granted a limited licence, which enables provision of all corporate services under the definition of corporate service provider business. However, the final review of beneficial owners and, where applicable, controllers of all client entities must still be approved by the BMA, at incorporation and prior to changes to the share register being made.⁵⁸ As of December 31, 2017 the BMA had issued 62 limited CSP licences.

(ii) Unlimited licence CSPs

It was determined that any CSP issued an unlimited licence would also be assessed to have a high inherent vulnerability to ML. The risk level of this sub-sector is driven by the extended power of the CSPs to undertake the vetting of companies under management in place of the BMA. Given the client profile of such entities with its largely foreign customer base and the types of services that are offered, it is expected that there will be a higher level of vulnerability.

(iii) Exempt CSPs

CSPs can be exempt from licensing in Bermuda if they meet one of the following criteria:

- (1) fund administrators providing registrar and transfer services limited to those activities it overlaps with CSP activity
- (2) companies carrying on corporate service provider business with members of its group only

⁵⁷ FATF, *Money Laundering Using Trust and Company Service Providers*, Oct 2010

⁵⁸ BMA, Ref 2(2)(a) and 2(2)(c)(vii) of *The Corporate Service Provider Business Act 2012*

- (3) companies whose CSPs activities are restricted to providing the services of director and that are owned by one shareholder controller who is the sole employee of the company
- (4) insurance managers who provide CSP services to licensed insurance companies or the parent companies of licensed insurers

Fund Administrators under criterion 1 and Insurance Managers under criterion 4 are already licensed and supervised pursuant to the *Investment Funds Act 2006* and *Insurance Act 1978*, respectively and subject to AML/ATF oversight.

CSPs providing services to their group only (criterion 2) are perceived as having medium vulnerability to ML, as are CSPs providing services to companies with one employee (criterion 3) due to the smaller size of operation.

However, as there is an intelligence gap with respect to the number of exempted CSPs and number of Companies they service, the inherent risk of Exempted CSPs is recognised as medium-high.

Conclusion

The assessed level of inherent ML vulnerability across the corporate service provider sub-sectors can be seen in the table below:

Table 6: Overview Inherent Vulnerability of Corporate Service Providers and its sub-sectors

| Sub-sectors of the CSP sector | Number of licences (as applications in 2017)* | Inherent Vulnerability Level | AML/ATF regulated as of 2017 |
|-------------------------------|---|---------------------------------|---------------------------------|
| Limited licence CSP | 92 | High | Yes |
| Unlimited licence CSP | 4 | High | Yes |
| Exempted CSP | - | Medium-High | Partially |
| Overall CSP Sector | 96 | High | Partially |

*There were 62 limited CSPs licences approved and no unlimited CSP licences as at December 31, 2017.

The inherent vulnerability of CSPs is driven by the complexity of the international financial transactions and the large number of companies being managed.

The three types of CSPs operating in Bermuda were all perceived as having high inherent vulnerability to ML risks especially in light of limited information available at the time of the assessment because they have not yet been subject to an approved licence and supervisory oversight.

With an ML threat assessment of high and an inherent vulnerability assessment of high, the overall inherent ML risk was deemed to be high.

Chapter 13: The Legal Sector

Summary Findings:

The money laundering threat to the legal sector is medium-high, based on two balancing factors. The sector has close affiliations with a significant segment of the CSP sector (which is a high threat); but the money laundering threat to the sector's real estate practice is lower, given the legal barriers to the purchase of Bermudian real estate by foreigners.

The inherent vulnerability rating for the legal sector was medium-high due to the size of transactions facilitated by the legal profession, the profession's role in creating complex legal structures that can provide anonymity, the use of the profession in tax-evasion schemes, the difficulty in accessing transaction records and the use of non-face-to-face channels.

AML/ATF Supervisor - Barristers and Accountants AML/ATF Board

Introduction

Bermuda's legal sector includes 79 law firms registered with the Bermuda Bar Association (as of December 2016). Twenty-three of these law firms registered with the Barristers and Accountants AML/ATF Board on the basis that they provided services which are "specified activities"⁵⁹ as defined in the *Proceeds of Crime Act 1997*.

Of the 23 regulated professional firms, 19 provided services relating to "incorporation services," meaning they organised contributions for the creation, operation or management of companies, legal persons or arrangements or aided in the buying and selling business entities.

Upon further review of the services offered by regulated professional firms, it became clear that these "incorporation services" were being provided under the auspices of a separate legal entity outside of the law firm to which the AML/ATF Board (hereafter "the Board") has supervisory remit.

Information provided by the firms have indicated that

- five firms had clients they classified as a high net value
- five firms had clients ranked by the firms as high risk
- four firms had clients ranked by the firms as medium risk

⁵⁹ Section 49(5) of the *Proceeds of Crime Act 1997* lists the 'specified activities', in respect of which when conducting such activities legal advisors and others should be required to carry out the AML requirements specified in regulations. Specified activities are (a) buying and selling real property; (b) managing of client monies, securities and other assets; (c) management of bank, savings or securities accounts; (d) organisation of contributions for the creation, operation or management of companies; and (e) creation, operation or management of legal persons or arrangements, and buying and selling business entities.

In addition to “incorporation services”, some firms also facilitate buying and selling real property. Eleven law firms conducted real estate transactions regarding purchases of real property; while ten firms conducted real estate transactions regarding the sale of real property. The larger law firms reported that their client base for real property transactions included corporations and trust clients, but these services were being provided by the firm’s corporate service provider affiliate.

Assessment of sectoral threats

There were eight investigations over the review period that featured lawyers, but only one dissemination to law enforcement from the FIA. The level of SAR reporting from law firms has traditionally been low.

This sector consistently indicates that most specified activities—for which lawyers are supervised—are carried out by the CSP affiliates of their law firms instead of by the law practices themselves. However, it was assessed that the demarcation lines between the law firm and its affiliated CSP appear to be blurred.

Lawyers also play a role in the majority of real estate sales and purchases, but the legal barriers to purchasing real estate in Bermuda mean there is a lower exposure to money laundering threats through these transactions, especially compared to corporate and client financial services.

Overall primarily due to the involvement with CSP activities, the threat level was assessed at the same level as for the CSP sector; namely, medium-high.

Analysis of sectoral inherent vulnerabilities

The working group relied heavily upon the input of regulated professional firms and collected data through a data call survey. The information requested through the survey included types of customers, the nature and scope of the services offered, geographic risks, and delivery channel risks. In addition to the survey, several group sessions were held with members of the Bermuda Bar, and with attorneys from local law firms, to collect additional input. This information was then used in the determination of the inherent vulnerability.

The key factors used to determine the inherent vulnerabilities of the legal sectors were:

- the size of transactions facilitated by lawyers
- their client profile
- the ability to create anonymity through complex legal structures
- the difficulty in tracing transactions records
- the existence of money-laundering typologies
- the use of the profession in tax evasion schemes
- the use of non-face to face channels

Size of transactions

The size of transactions facilitated by the legal profession has a medium-high vulnerability. The legal profession is involved in most real estate transactions and legal firms can be involved in the creation of complex legal structures, both of which are likely to involve high monetary values, so the profession

presents an opportunity for substantial amounts of proceeds of crime to be laundered. As previously mentioned, members of this profession believe that this vulnerability is mitigated by the fact that the majority of activities related to the creation of legal entities and some real estate transactions are undertaken by the corporate services affiliates of the legal firms.

Client base

The profession's client base was determined to be overall at a medium risk level, as some of the clientele are politically exposed persons and high-net-worth individuals. Although there is a potential for high risk clientele in Bermuda, it is suggested that CSPs (rather than legal firms) conduct the bulk of specified activities with such clients. However, as noted previously, the distinction between law firms and their wholly owned/affiliated CSPs is not clear and there is not sufficient data to properly assess some of the criteria in this variable.

Level of cash activity

The level of cash activity associated with the legal profession was determined to be low. All firms reported that they either had "no cash" policies in place or that they have a low cash threshold limit.

Creation of legal structures

Lawyers can be retained to advise on the creation of complex legal structures. While the actual transactions are apparently conducted under the affiliate CSP and not by the law firm, the legal advisory service provided by the lawyer is a contributing factor in how the structures are established. It is well known internationally that the global legal profession has been identified in numerous money laundering typologies and tax evasion schemes, all related to the nature of the services provided. Finally, the conduct of non-face-to-face transactions is common place in the profession, especially given the range of international clients serviced by the profession in Bermuda.

Taking all of these factors into account, the inherent ML vulnerability was assessed as medium-high.

Conclusion

The inherent sectoral risk rating for the legal sector is medium-high. When taking into account the medium-high threat rating attributed to the legal sector by the Threats Working Group and the inherent vulnerability rating of medium high, the overall inherent sectoral risk of money laundering in the legal profession is medium-high.

Chapter 14: The Accounting Sector

Summary Findings:

ML threats to the accounting sector were ranked as low.

The accounting sector's inherent vulnerabilities were rated as medium. Varying findings in relation to some inherent vulnerabilities connected to the size of corporate transactions, the user of agents, the possibility to create structures that permit anonymity, the potential for use of the sector in tax evasion schemes and the possibility of conducting non-face-to-face transactions have contributed to this rating.

AML/ATF Supervisor – Barristers and Accountants AML/ATF Board

Introduction

As of December 2016, the accounting sector comprised six firms registered with the Barristers & Accountants AML/ATF Board as Accounting Regulated Professional Firms. In addition, as of 2016, there were 265 members in the Chartered Professional Accountants of Bermuda (CPA Bermuda).

Generally, these six regulated professional firms offer services related to liquidation and receivership, advisory work, audit, assurance and taxes. One firm does not conduct “specified activities”⁶⁰ as defined in the *Proceeds of Crime Act 1997*. Four firms conduct very few specified activities, and these services were only conducted as part of broader liquidation services. The majority of the transactions connected to the liquidations were court-appointed liquidations. One firm owns a Corporate Service Provider (CSP) and a Trust Company (both of which are separate legal entities), which conduct specified activities.

Assessment of sectoral threats

Notwithstanding, the fact that some firms have CSP affiliates/subsidiaries, it was determined that auditors and accountants should be assessed differently from law firms. Overall, a low threat rating was given to this sector. A few SARs have been received from this sector, but these are primarily driven from their findings in their audit practice. For accountants, a primary factor contributing to their threat rating is the fact that the six firms that make up this sector are all affiliated with international firms and the primary business of these firms is auditing. Further, unlike law firms, these businesses have very clear firewalls separating their audit business from the business of their CSP affiliates/subsidiaries.

⁶⁰ Section 49(5) of the *Proceeds of Crime Act 1997* lists the ‘specified activities’, in respect of which when conducting such activities legal advisors and others should be required to carry out the AML requirements specified in regulations. Specified activities are (a) buying and selling real property; (b) managing of client monies, securities and other assets; (c) management of bank, savings or securities accounts; (d) organisation of contributions for the creation, operation or management of companies; and (e) creation, operation or management of legal persons or arrangements, and buying and selling business entities.

Analysis of sectoral inherent ML vulnerabilities

This assessment was carried out using information from a data call from the firms and discussions with representatives from the firms and the sponsoring body. Information obtained through the data call included details on:

- types of customers
- nature and scope of services offered
- geographic risks
- delivery channel risks

The analysis was limited to accounting firms that undertake specified activities. Most of the firms indicated that the majority of specified activities in which accountants prepare for, or carry out, transactions for their clients is conducted by affiliated CSPs, though these are separate legal entities from the accounting firms. This assessment did not examine auditing or bookkeeping activities undertaken by accountants, as these are part of the specified activities as defined by FATF.

Total size of the business

The working group assessed that the size of the accounting business in Bermuda was medium-low. Here the assessment was focused on the total number of providers, as well as the turnover or total value of transactions handled within the sector. Of the registered firms, few provide services within the scope of “specified activities” and the majority of these are in furtherance of liquidations and receiverships. As such, it was determined that outside of liquidations and receiverships, the size of the transactions conducted by accountants within regulated professional firms on behalf of their clients, is not significant compared to other sectors subject to AML obligations in Bermuda.

Client base profile

Although there is a potential for high-risk clientele in Bermuda, the accounting firms under supervision reported—based on their risk assessments—small numbers of medium or high-risk clients. Given the nature of the business activities carried out by the firms, it was therefore assessed the client base for this sector in Bermuda was overall at a low risk level.

Level of cash activity

The level of cash activity associated with the business/profession was assessed as low. All firms reported that they either had “no cash” policies in place or that they had a low cash threshold limit.

Other factors

The working group determined that accountants could potentially be involved in the creation of complex structures that provide anonymity; that in the international sphere accountants have been identified as playing key roles in money laundering typologies and tax evasion schemes; and that in Bermuda they do provide services through non-face-to-face channels. By offering certain types of services, accountants can be retained on matters that could bring them within the scope of mainstream

financial services—though most of these services are often offered under an affiliate CSP corporate entity.

Based on the analysis, the inherent vulnerability was determined to be medium.

Conclusion

When taking into account the low threat rating attributed to the accounting sector by the Threats Working Group and the inherent vulnerability rating of medium, the inherent sectoral risk was determined to be medium.

Chapter 15: The Real Estate Sector

Summary Findings:

Real Estate agents represent a medium-low threat of money laundering to Bermuda. The inherent risks involving the sector's client profile is considered medium-high due to the size of real estate transactions, the inability to identify politically exposed persons and conduct customer due diligence on beneficial owners of transactions involving trusts.

AML/ATF Supervisory Authority – Superintendent of Real Estate

Introduction

Real Estate sales represent approximately 5% of Bermuda's GDP and were valued at BD \$271 million in 2016. The Real Estate sector as a whole was the second-highest contributor to GDP, contributing 16.6% in 2015⁶¹, which represents BD \$983 million in output compared to BD \$962 million in 2014.

As of June 30, 2017, the real estate sector was comprised of approximately 85 licensed brokers and 250 licensed agents. There are two large real estate firms operating on the island who provide full-scale services. The services include: residential and commercial real estate sales; land and valuation surveying; property management and rentals.

The majority of real estate firms are medium-sized or small, sole-proprietorship operators that focus on rentals and engage in residential and commercial sales. Real estate firms have a diverse clientele, including trustees, domestic and international individuals. The purchase of real estate in Bermuda is not a cash-based activity and there are firm policies restricting the use of cash for real estate transactions, as well as limitations on foreign ownership. Indeed, the Bermuda real estate market is small with a limited ability for foreigners to purchase property due to statutory immigration controls.

Assessment of sectorial threats

Although real estate is traditionally a primary target for money laundering in most jurisdictions, this is not the case in Bermuda. The most significant threat for money laundering in Bermuda originates from foreign predicates, and it is difficult for foreigners to enter the economy through the real estate sector.

Analysis of sectoral inherent vulnerabilities

The scope of the analysis is restricted to transactions involving the buying and selling of real estate, as guided by the Financial Action Task Force recommendations, and therefore transactions involving rentals fall outside of the assessment analysis.

Value of transactions

⁶¹ Including residential and commercial sales, rentals and property management, property valuations and other real estate support services

The value of transactions presents a medium-high vulnerability for the real estate sector. Sales of real estate was valued at BD \$271 million in 2016; although not as sizeable as the financial services industry, the amounts involved provide an opportunity for large sums of money to be potentially laundered.

Client profile

Because the real estate sector has among its clients Politically Exposed Persons (PEPs) and high-net-worth individuals, its client profile is rated as a medium risk. Although PEPs and high-net-worth individuals form part of the real estate sectors' client base, real estate firms are not currently capturing this type of client information in their records.

There is also a distinction between local and international high-net-worth individuals. The local high-net-worth segment is considered low risk, as there is low turnover of properties by local owners. On the other hand, international high-net-worth individuals purchasing property in Bermuda are regulated through the legal alien licensing framework and are the subjects of police criminal background checks. On top of this, there are very limited introductions/referrals from high-risk jurisdictions, as there is a requirement to engage a local professional in buying and selling real estate.

Other factors

Other inherent vulnerability factors involve the anonymous use of the product, since real estate brokers are generally not aware of the beneficial owners of transactions involving trusts—this information is retained by lawyers and not shared with brokers.

The majority of real estate firms surveyed indicated that they have no systems in place to support SARs, although most have systems to collate information of their clients for the purpose of drafting Sale and Purchase Agreements and to confirm title.

Furthermore, most businesses and staff in this industry have limited knowledge about money laundering and, consequently, anti-money laundering.

As a result of the analysis of the various factors, a medium-high ML vulnerability rating was determined.

Conclusion

The real estate sector has a medium-high rating for inherent ML vulnerabilities and a medium-low rating for threats, resulting in an overall final ML inherent risk rating of medium.

Chapter 16: Dealers in High-Value Goods

Summary Findings:

Dealers in high-value goods represent a low threat of money laundering to Bermuda. The inherent vulnerability rating of the sector was medium-low because of a low total turnover/value of the retailers in this group, and because their client base has a low risk and a low level of cash activity associated with their businesses.

AML/ATF Supervisory Authority – Financial Intelligence Agency

Introduction

This sector is comprised of various dealers in high-value goods (DiHVG) in Bermuda. High-value goods dealers are defined as car, boat and motorcycle dealers, antique dealers and auctioneers. These are pure retail businesses, as there are no known wholesale importers or exporters in these sectors in Bermuda. The sector contributed less than 1% to the GDP of Bermuda during the relevant period. The yearly value for this sector during the review period was in the range of BD \$30 to 44 million.

The level of cash activity in this sector, in particular, large-level transactions, is minimal. There are less than 30 retailers operating in Bermuda and a low ratio of non-resident clients due to residency restrictions on the licensing of cars and registration requirements for the operation of boats within the jurisdiction. The number of vehicles that can be licensed and operated for commercial purposes is strictly monitored by the Department of Transport Control.

It should be noted that this sector was not in scope of Bermuda's AML/ATF regime for the period covered by the 2017 National Risk Assessment as the sector was brought under the framework with effect from December 1, 2016. Under the requirements, only persons who wish to take more than BD \$7,500 in cash are required to be registered with the FIA. Other entities are expected to have processes and procedures to ensure they do not exceed that limit.

Assessment of sectoral threats

There was no evidence that the institutions' products in this sector were used or could be used successfully for money laundering. Therefore a low threat rating was assigned.

Analysis of sectoral inherent vulnerability

Despite the somewhat disparate nature of the sector, all the sub-groups within this sector were assessed and the findings are deemed to relate to all segments of the sector.

The inherent vulnerability of this sector is assessed as medium-low, based on a low total turnover/value of the business, the client base profile having a low risk and a low level of cash activity associated with the businesses. The sector contributed less than 1% to the gross domestic product of Bermuda during the relevant period and is not a cash-intensive sector.

This sector has very little exposure to dealings with any corporate structures or legal entities, as its clientele are almost exclusively individuals. Further, any transactions with corporate structures or legal entities are conducted via electronic transfers or bank drafts, but not cash. In addition, there is no indication from the sector that their limited dealings with corporate structures or legal entities involve any foreign entities. Accordingly, beneficial ownership information would be easy to obtain if it was required.

Conclusion

Taking into account the low threat rating attributed to high-value dealers sector and the inherent vulnerability rating of medium-low, the overall sectoral ML risk was determined to be medium- low.

Chapter 17: Dealers in Precious Metals and Stones

Summary Findings:

Dealers in precious metals and stones represent a medium-low threat of money laundering to Bermuda. As a result of the low level of cash activity associated with these businesses, the inherent vulnerability level was rated as medium.

AML/ATF Supervisory Authority - Financial Intelligence Agency

Introduction

The Dealers in precious metals and stones sector in Bermuda is comprised wholly of retail businesses. There are no known wholesale importers or exporters in Bermuda and mining activities do not exist. There are less than 30 retailers operating in this sector, and only one retailer offers loose stones for purchase on a regular basis. There is a low ratio of non-resident clients (seasonal transactions) versus annual purchases by residents. During high tourist season (May-October) sales of jewellery increase due to tax-free status of many jewellery items.

The sector contributed less than 1% to the gross domestic product of Bermuda during the relevant period, with a total annual value of between BD \$20 and \$25 million.

The level of cash activity, in particular larger transactions, within the sector is minimal.

Assessment of sectoral threats

Precious metals and stones are potentially attractive to criminals as an easily transportable source of value to remove criminal proceeds from Bermuda. However, in light of the low level of money laundering detected in this sector and the established trend for currency conversion (BD to USD) this is not considered to be a preferred method for drug traffickers in Bermuda. There was also no evidence to support that criminal proceeds were being brought into Bermuda through precious metals and stones. The threat was therefore assessed as low.

Analysis of sectoral inherent ML vulnerability

The assessment resulted in an inherent vulnerability rating of medium, though it was assessed to be on the lowest end of a medium rating.

As most of the clientele is comprised of individual buyers, the sector has very little exposure to corporate structures or legal entities, and what little transactions exist are conducted via electronic transfers and bank drafts rather than cash. There is no indication from the sector that their limited

dealings with corporate structures or legal entities involve any foreign entities. Accordingly, beneficial ownership information would be easy to obtain, if necessary.

As with some other sectors, dealers in precious metals and stones were not within the scope of Bermuda's AML/ATF preventative measures regime for period covered by the 2017 National Risk Assessment. The legislative provisions that bring Dealers in High Value Goods under the scope of AML/ATF supervision came into effect as of December 1, 2016. These provisions apply to dealers in precious metals and stones as well, requiring registration to undertake cash transactions equal to or above BD \$7,500 or the equivalent in any other currency.

Conclusion

The inherent vulnerability rating for dealers in precious metals and stones is medium. Taking into account the threats rating of medium-low, supplied by the National Threats Working Group, the final sectoral ML risk rating is also medium.

Chapter 18: The Betting Sector

Summary Findings:

Notwithstanding the relatively small size of the sector, the national ML threat rating was assessed to be medium, given concerns about the cash-intensive nature of the business. The inherent vulnerability score for the betting sector is medium. The relatively small size of transactions conducted in the betting sector makes it unlikely to be used for significant money laundering. Nonetheless, vulnerabilities related to the sector stem from the widespread use of cash and the presence of some higher-risk clients such as PEPs.

AML/ATF Supervisory Authority – This sector does not fall under the AML/ATF regime (and is not required to be by FATF).

Introduction

Bermuda only has two betting operators in four locations. Companies and corporations are restricted from betting, and individuals must bet at a local shop.

Bermuda's betting industry offers the following products:

- international sports betting
- lottery
- online slot machines

Based on revenue collected from gaming taxes, the estimated income for the entire sector in 2016 was approximately BD \$8 million.

The relatively small size of the industry has allowed the betting sector to develop its own internal sets of anti-money laundering controls. One must appear in person to deposit funds into an account to purchase a lottery ticket or to place a sport bet. This face-to-face aspect allows staff in betting facilities to personally gain insight into individual betting habits. Given the small size of the island, most staff in this sector are aware of individuals that may pose a money-laundering threat.

Assessment of sectoral ML threat

Law enforcement has concerns regarding the potential use of betting shops/crown and anchor tables to legitimise the proceeds of crime. Like MSBs, this is a cash business which has a higher risk unless there is evidence of extended due diligence. Based on the reported figures for the tax paid, it is estimated that the annual revenue is approximately BD \$8 million for the betting shops. However, as regulation or supervision of the betting sector has not advanced since the original Act was put in place, there is no mechanism to confirm the revenue earned in the sector. Therefore, the ML threat was assessed to be medium.

Analysis of sectoral inherent ML vulnerabilities

The entire betting sector was analysed for this assessment, included the four existing gaming houses. This is not a sector that is required by FATF to be regulated but as it was noted as a high risk sector in Bermuda's last AML/ATF evaluation, it was deemed appropriate to undertake a formal risk assessment.

This sector has a small turnover, no anonymous products, is of limited use in tax evasion and fraud schemes, its transactions are traceable, and transactions are all face-to-face.

However, vulnerabilities identified related to the use of cash, accessibility of transaction records, some higher-risk clients and the presence of some money laundering typologies internationally.

Although the level of cash activity is high and betting shops do have some higher-risk clients, such as PEPs, the relatively small transaction amounts diminishes the potential for even moderate sums of money to be laundered via the betting sector. There are limited international typologies involving the betting sector. However, there are some indications that the betting sector has been used by criminals to justify the origins of suspected proceeds of crime. In these cases, law enforcement has indicated that it is not always easy to determine whether betting firms have disbursed funds to clients due to the absence of record-keeping obligations.

No beneficial ownership requirements are in place for the sector, but this does not have a significant impact, as only individuals can open accounts with betting establishments.

In evaluating all of these factors, the overall inherent vulnerability rating was assessed as medium.

Conclusion

When taking into account the medium threat rating attributed to the betting sector and the inherent vulnerability rating of medium, the overall sectoral risk was determined to be medium.

Chapter 19: The Casino Gaming Sector

Summary Findings:

The ML threat level for this sector was considered at the time of the analysis to be Low, given that no casinos have yet been established.

The final potential inherent ML vulnerability rating for the gaming sector of high is conditionally offered based on the international experiences in this area.

AML/ATF Supervisory Authority – Bermuda Casino Gaming Commission

Introduction

At present, there is no active casino gaming industry in Bermuda. In December 2014, the *Casino Gaming Act 2014* (the Act) was passed, and various amendments to, and provisions of, the Act have been brought into force during 2015 through to 2017. The Act allows for a maximum of four licences to be issued for integrated resort casinos to operate on the island, and there is a three-stage application process for each.

The Bermuda Casino Gaming Commission (the Commission) is the competent authority responsible for casino gaming licensing and AML supervision for casino operators. Any resort casinos permitted to operate on the island will not only be regulated by the industry-specific statute and supporting regulations setting out AML obligations, but they will be subject to the provisions of the *Proceeds of Crime (AML/ATF) Regulations 2008*, which contains customer identification and due diligence requirements.

There is political will to permit casino gaming in Bermuda, and the Commission has drafted a number of industry-specific statutory instruments in anticipation of casinos being licensed to open and operate on the island. To date, these instruments are in draft form, awaiting approval through the legislative process.

The first step in the application process is to apply for site designation. During the review period, there were two applications for designated site orders. One was granted in 2016 and the other was granted in January 2017. Two further applications have been received by the Minister responsible for gaming, both awaiting the required legislative approvals.

The second stage of the application process is to file for a casino licence. This stage started in April 2017, when the Commission published a notice starting the statutory three-month period to file for the casino licence. An international casino operator submitted a joint application with one of the entities granted approval for a site designation, the first ever in Bermuda. On September 22, 2017, there was a

public hearing of the application, after which the Commission—satisfied that all applicable requirements were met—awarded a provisional casino licence to the applicant and the hotel.

The third and final stage of the application process is the suitability stage. Only at the conclusion of this final stage can a casino licence be granted, allowing for the opening and operation of a casino. As noted previously, no application has reached that stage and no casino is yet operational.

Assessment of sectoral ML threat

Although the ML threat in this sector would normally be considered high, as no casino has yet established an operation in Bermuda, the threat was rated as low.

Analysis of sectoral inherent ML vulnerability

Despite no operating casinos during the assessment period, it was agreed that real and potential ML vulnerabilities would still be assessed in anticipation of opening the first casino in Bermuda.

For the analysis of the inherent vulnerabilities key areas of focus were:

1. anticipated client base and profiles on the basis that many casino patrons will be visitors from other jurisdictions
2. anticipated use of cash and wire transfers within this industry
3. other factors present in this sector in other jurisdictions that may feature in the anticipated Bermuda sector and render the sector vulnerable to money laundering

The potential inherent ML vulnerability of the Bermuda casino gaming sector was assessed as high. This overall rating is driven by the fact that the total size of the business was not analysed and a significant proportion of patrons will possess the characteristics that typically increase the vulnerability of an economic sector to money laundering, specifically:

- politically exposed persons (both domestic and international)
- high net worth individuals
- non-residents
- foreign personal or business interests
- persons with criminal antecedents

Bermuda's proposed model for casino operations is to have integrated casinos and resorts, so the expectation is that casinos in Bermuda will be patronised by a significant number of international clients. One mitigating factor is that the vast majority (approximately 85%) of visitors to Bermuda are from the eastern seaboard of the US. There is no evidence to suggest at this time that having a casino operating in Bermuda will change that demographic and attract a larger proportion of patrons from high-risk jurisdictions.

Further, there is no indication to date that any casino licensed to open and operate in Bermuda will be void of the typical characteristics that increase the attractiveness of using the sector for money laundering. Four features make the gaming sector particularly vulnerable to money laundering:

- casino gaming is predominately a cash-intensive business
- it involves frequent exchanges of cash for casino chips or tickets
- there are a high number of electronic transactions into and out of casino deposit accounts
- the industry facilitates the movement of monies into and out of a jurisdiction's financial sector

These factors all increase the inherent vulnerability rating. Several other features of the anticipated Bermuda gaming sector also increased the inherent vulnerability of the sector to money laundering. These include:

- the existence of extensive typologies and examples of the use of a casino gaming sector for money laundering and for tax and fraud schemes
- the use of agents, allowing for "casino marketing arrangements," where an agent introduces customers to a specific casino operator in exchange for a commission
- the potential of non-face-to-face interaction with patrons

Conclusion

Based on the low threat rating attributed to the gaming sector and the potential inherent vulnerability rating of high, the potential inherent sectoral ML risk rating is medium.

TERRORIST FINANCING RISK ASSESSMENT

Chapter 20: Terrorist Financing

Introduction and overview

The Bermuda Government is committed to combatting terrorism and terrorist financing, and to supporting regional and global efforts to do the same. Bermuda implemented its first anti-terrorist financing (ATF) legislation in 2004 and has since reinforced that legislation with enhanced legal and supervisory frameworks and a determination to have an ATF regime that meets international standards and allows us to play an effective role in combatting these nefarious crimes.

In 2016, the Government of Bermuda's National Anti-Money Laundering Committee (NAMLC) formed a working group to conduct a terrorist financing risk assessment in the jurisdiction. The findings from that working group's efforts form this section of the NAMLC Report.

Importantly, there is no evidence of terrorism or terrorist financing having taken place in Bermuda. Still, no jurisdiction can be considered immune from either terrorism or the financing of terrorism. The evolving nature of terrorist acts seen internationally reinforces the fact that Bermuda's ATF regime must remain relevant and effective.

The TF assessment for Bermuda involved identifying terrorism and TF threats; and then assessing TF vulnerabilities. Based on the available data and an analysis of international TF typologies that might hypothetically occur in Bermuda, the current levels of terrorism and TF threats in Bermuda is assessed to be Medium-Low. Sectoral vulnerabilities based on perceived potential risk has been assessed and for most sectors it has been determined that the TF risk is low or medium-low, with only the not-for profit sector rated at a potential level of medium.

To paint a complete picture of the sectoral risk, the working group also assessed the strength of the country's defence mechanisms, including its:

- comprehensive legal and institutional frameworks
- coordinated and effective intelligence and law enforcement efforts
- robust financial, regulatory and supervisory frameworks
- timely international cooperation
- inter-agency coordination
- consistent outreach to sectors that are more vulnerable to TF (such as non-profit organisations and money remitters)

Over the years, Bermuda has undertaken a significant amount of work to develop a robust ATF regime. It has a strong legislative and institutional framework and effective cooperation between domestic and foreign competent authorities. Overall, the work that has been done to address terrorist financing

matters has been positive. Bermuda is continuing its work to update and further strengthen this framework to ensure that it takes into account changes in the marketplace, methods used in relation to terrorism and terrorist financing, international requirements in this regard and any gaps that are identified in the legal, institutional and operational frameworks.

Criminalising Terrorist Financing

Bermuda's *Anti-Terrorism (Financial and Other Measures) Act 2004* (ATFA) is the primary legislation for criminalising terrorist financing. The ATFA criminalises three forms of fundraising for the purpose of financing terrorism. A person commits an offence if he/she does any of the following (with the intention or suspicion that the money or other property will be used for terrorism or terrorist financing):

- invites other persons to provide money or other property
- receives money or other property from other persons
- provides money or other property himself.

Targeted Financial Sanctions

Bermuda implements targeted financial sanctions as required by UNSCR 1267(1999)—and its successor resolutions (including UNSCR 1988(2011) and 1989(2011))—through UK legislation extended to overseas territories by sanctions-related Orders in Council (hereafter “Orders”).

The process of implementing these Orders has been enhanced significantly over the years, with the Bermudian and UK authorities cooperating and coordinating processes to allow for simultaneous implementation of the Orders in Bermuda. As a result, in 2016, there were three orders made by the UK and extended to its overseas territories, which Bermuda was able to bring into force on the same day that they were enacted by the UK. Additionally, when the UK amends the Orders that are already in effect in Bermuda, the amendments come into force in Bermuda automatically and with immediate effect.

Bermuda Intelligence, Law Enforcement, Prosecutorial and Asset Recovery Agencies

In Bermuda, five agencies cooperate on TF-related enforcement – the Financial Intelligence Agency, the Bermuda Police Service, the Department of Public Prosecutions, the Customs Department and the Attorney General's Chambers. Because of the relatively small size of Bermuda, there are close ties and strong working relationships between agencies (both formally and informally) allowing for effective domestic cooperation.

International Cooperation

It was highlighted earlier in this report that Bermuda's Attorney General is the Central Authority for mutual legal assistance requests and as such receives requests for assistance from foreign countries in connection with criminal proceedings that have been instituted, or criminal investigations that are being conducted. Bermuda provides legal assistance in criminal matters to any country, provided criminal proceedings or a criminal investigation has commenced and the proceedings or investigation concerns a criminal offence in that country. The Attorney General can, therefore, assist a foreign country in

relation to TF that has occurred in that foreign country, furthering Bermuda’s commitment to the international fight against terrorism financing. In addition, a number of other agencies, including the FIA with their membership in the Egmont Group, play a key role in ensuring effective international cooperation.

Regulatory and Other Controls

As noted previously in this report, Bermuda has a strong legislative framework that imposes requirements and establish systems that mitigate the level of TF threat in regulated financial entities and designated non-financial entities. The supervisory bodies have extensive regulatory and supervisory toolkits, to ensure that they can effectively monitor and enforce compliance with the relevant provisions. The relevant supervisors are; the BMA, for regulated financial institutions – which in Bermuda include trust and corporate service providers; the Financial Intelligence Agency, for dealers in precious metals and precious stones and other high value dealers; the Superintendent for Real Estate for the real estate sector; and the Barristers and Accountants AML/ATF Board for lawyers and accountants in independent practice. Along with the Registrar General which oversees charities, they cooperate and collaborate with each other and the other AML/ATF competent authorities to appropriately and effectively address TF matters.

What is Terrorist Financing?

The Financial Action Task Force (FATF) defines a “terrorist act” by reference to widely adopted international conventions⁶². Consequently, the FATF defines terrorist financing as any financing of terrorist acts, and of terrorists and terrorist organisations. This can involve the provision of funds from criminal activity as well as funds from legitimate origins.

Bermuda’s Anti-Terrorism (Financial and Other Measures) Act 2004 (ATFA) defines terrorist financing in broad terms, including commissioning funds, directly financing, organising or directing funds, using or possessing money or property, or any other funding arrangements that contribute to terrorism.⁶³ Further details in this regard can be gained from the ATFA definitions for “terrorism”⁶⁴ and “terrorist property.”⁶⁵

How Bermuda Assessed its Terrorist Financing Risk

In keeping with the FATF requirements for jurisdictions to identify and assess their exposure to TF risk, in June 2016, a working group was formed by NAMLC with the aim of conducting Bermuda’s first TF National Risk Assessment to gain a deeper understanding of Bermuda’s TF risks. With the support and sanction of the Cabinet and Civil Service Executive, the entire project was coordinated by the Office of NAMLC, which provides secretariat services to NAMLC. The working group included persons with relevant experience, understanding and expertise in these matters to be able to appropriately inform the discussions and analysis. Representatives were drawn from judicial, prosecutorial, law enforcement,

⁶² Page 125, General Glossary, International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, The FATF Recommendations, February 2012

⁶³ ATFA Section 2

⁶⁴ ATFA Section 3

⁶⁵ ATFA Section 4

financial intelligence, asset recovery, immigration, border control and supervisory agencies. In addition, the working group sought input from the private sector via consultation with representatives of the main financial sectors, as well as the legal, accounting and non-profit sectors. The private sector's involvement was essential to ensuring a comprehensive assessment of Bermuda's TF risks as they are key players in the detection and prevention of TF.

As it is understood that globally terrorism has both local and international roots and targets, the investigation into its threat to Bermuda looked at the potential for domestic terrorism and the threat of the jurisdiction being used as a transit point for people intent on committing terrorist acts abroad. Additionally, the features of terrorist funds were examined, namely:

- The directions of terrorist funding, meaning whether funds are generated in the home jurisdiction and used for terrorist operations elsewhere, whether funds are generated abroad and used for terrorist operations in Bermuda, or whether Bermuda is a transit point for terrorist funds
- Sources of financing, either from legitimate sources or from criminal activities
- Which channels are being used to move terrorist funds

To determine the overall risk of terrorist financing in Bermuda, the working group reviewed available quantitative and qualitative information concerning terrorist acts and terrorist financing, including law enforcement data, intelligence information, and terrorist research. Given the very limited empirical evidence of TF in Bermuda, the working group adopted an additional approach to assessing the TF risk, which involved the examination of hypothetical TF scenarios that were drawn from a wide range of international TF typologies, and the assessment of the possibility of such scenarios occurring in Bermuda. The analysis of these TF scenarios took into account all relevant socioeconomic, financial, institutional, legal and regulatory factors within the jurisdiction that might influence whether or not the scenarios could occur and the sectors most likely to be affected if they did occur. In order to carry out this assessment, a shortlist of 20 relevant TF typologies were selected from credible international sources such as FATF and the Egmont Group. The typologies covered both traditional TF techniques and emerging TF risk. The working group used the 20 typologies to develop hypothetical scenarios to cover a wide array of features seen in the typologies, while being relevant to the distinctive and relevant aspects of Bermuda. The working group then used these scenarios to assess the level of terrorism threats and related TF risk in Bermuda.

Chapter 21: Terrorist Financing Risk Assessment

To understand the overall risk of terrorist financing in Bermuda, the working group needed to first know the threat of terrorism in the jurisdiction. A review of intelligence reports over recent years as well as an investigation into whether any of the major international terrorist groups have connections with Bermuda revealed that the overall risk of terrorism in Bermuda is **low**.

Since 2009 in Bermuda, there have been 15 intelligence reports and general international alerts potentially related to terrorism. Only three of these intelligence reports merited domestic investigation. Following these investigations, it was determined that there was no evidence to indicate that there was any actual or potential terrorism activity in Bermuda.

Table 1 – Intelligence Reports and General International Alerts on Potential Terrorist Threats recorded in Bermuda since 2009

| | Investigated | International Assistance requested | International Assistance Received | International Assistance request sent | Total |
|----------------------|--------------|------------------------------------|-----------------------------------|---------------------------------------|-----------|
| Domestic | 3 | - | - | - | 3 |
| Regional | - | - | - | - | - |
| Global | - | - | - | 7 | 7 |
| International Alerts | - | - | 5 | - | 5 |
| Total | 3 | - | 5 | 7 | 15 |

In addition to the intelligence reports, the working group examined if there were any indications that Bermuda was being used by any of 13 notable international terrorist groups, either as a staging jurisdiction or as a conduit for TF activities. The level of terrorist threat posed by Foreign Terrorist Fighters (FTF) and self-radicalised (lone wolf) terrorists was also considered.

Based on the information reviewed by the working group, it was determined that there are no known terrorist groups, organisations and/or terrorist fighters or self-radicalised terrorists operating within, or targeting Bermuda. The terrorist groups were selected for review based on intelligence from the appropriate authorities and open source data on the scope and global outreach of these groups, including previous targets (and financing support) to North America region countries (US and Canada) as well as the UK⁶⁶. These terrorist groups selected for review were:

⁶⁶ As noted, Bermuda is part of the North America region and is a UK Overseas Territory

1. Islamic State of Iraq and Syria (ISIS)
2. Al Qaeda in the Arabian Peninsula (AQAP)
3. Al Qaeda Core
4. Al Qaeda in the Islamic Maghreb (AQIM)
5. Al Shabaab
6. Hamas
7. Hezbollah
8. Jabhat Al-Nusra
9. Khalistani extremist groups
10. Haqqani Network
11. Abu Sayyaf
12. Turkestan Islamic Movement (TIM – formerly ETIM)
13. Al-Qaeda in the Indian Subcontinent

The Working Group (WG) also examined possible links to FTF and self-radicalised (lone wolf) terrorists.

To further assess the potential threat, the working group reviewed the global outreach of each of the 13 groups and looked at, among other characteristics:

- the potential to target, or operate in, Bermuda
- techniques used by the groups for raising and transferring funds
- the potential for these groups to be affiliated with Bermuda

There is no indication, or even anecdotal evidence, to suggest that Bermuda is being used by any of these international terrorist groups or by lone-wolf terrorist operators.

However, the following three main issues emerged when considering broader contextual issues about the terrorism threat level of Bermuda, in particular Bermuda's vulnerability to FTFs and self-radicalised terrorists.

- Bermuda has a highly diversified population of guest workers from all over the world, working predominately in the international business and hospitality sectors
- Most Bermudian undergraduate and postgraduate students travel overseas to undertake their studies (mostly to the US, Canada and the UK)
- The WG determined that the terrorism threat profile of Bermuda can potentially shift, and dramatically so, during high-profile events, such as the America's Cup, or when high-profile guests visit the jurisdiction

Bermuda remains vigilant and continuously monitors any demographic, or other, changes that could increase the terrorism threat and vulnerability in Bermuda.

Terrorist Financing Threat

To determine the overall threat of TF involving Bermuda, the working group reviewed the limited data on TF that was available in relation to Bermuda along with the scenarios developed from the typologies. In assessing the threats along the three axes identified—the direction of funds, the sources of funds and

the channels of funds—most threats in Bermuda are medium-low, and a few are low. Overall, the working group concluded that the level of TF threat is medium-low.

Since 2009 there have been 22 intelligence reports and international assistance requests pertaining to potential terrorist financing. The intelligence reports included international and domestic requests made to the Financial Intelligence Agency (FIA) from foreign Financial Intelligence Units (FIUs) and local law enforcement, but also includes spontaneous disclosures made by the FIA to foreign FIUs and local law enforcement, and international requests sent by the FIA to foreign FIUs.

For requests made by agencies outside of Bermuda, no further actions were requested by the relevant jurisdictions. Following investigation of these reports and requests, no evidence was found of activities and/or sectors in Bermuda being used to support and/or finance terrorism activities within, or beyond, the jurisdiction.

Table 2 – Intelligence Reports and International Assistance Requests of Potential TF Reports in Bermuda Since 2009

| | Investigated | International Assistance requested | International Assistance Received | International Assistance request sent | Total |
|--|--------------|------------------------------------|-----------------------------------|---------------------------------------|-----------|
| Direction of Funds | | | | | |
| Funds generated in Bermuda, for operations in a foreign jurisdiction | 7 | - | - | 4 | 11 |
| Funds generated in a foreign jurisdiction, for operations in foreign jurisdictions (transit point) | - | 3 | - | 8 | 11 |
| Total | 7 | 3 | 3 | 12 | 22 |
| Source | | | | | |
| Legal income/Donations | 7 | - | 3 | 4 | 14 |
| Unknown | - | - | - | 8 | 8 |
| Total | 7 | 3 | 3 | 12 | 22 |
| Channels | | | | | |
| Banking | 5 | - | - | 2 | 7 |
| Insurance (Long-term Direct) | - | - | 2 | 7 | 9 |
| Money Service Providers | 2 | - | - | 3 | 5 |
| Real Estate | 0 | 1 | - | - | 1 |
| Total | 7 | 3 | 3 | 12 | 22 |

Additionally, and in view of the limited empirical data, the working group considered several hypothetical scenarios that were developed for the purpose of this exercise, taking into account factors that were relevant in the Bermuda context.

Direction of Funds

In any jurisdiction, there are four potential directions that TF flows:

1. Funds are generated in the home jurisdiction for terrorist operations within the home jurisdiction
2. Funds are generated in the home jurisdiction for terrorist operations in a foreign jurisdiction
3. Funds are generated in a foreign jurisdiction for terrorist operations in the home jurisdiction
4. Funds are generated in a foreign jurisdiction for terrorist operations in a different foreign jurisdiction, and the home jurisdiction operates as a transit point

The conclusion of the working group's analysis of these flows is as follows:

i) Funds generated in the home jurisdiction, for operations within the home jurisdiction

As there are no known terrorist organisations and/or individual terrorists operating in Bermuda, and accordingly, no domestic terrorist acts requiring finance, the TF threat in Bermuda was considered to be low in relation to funds generated in the home jurisdiction for terrorist operation within the home jurisdiction.

ii) Funds generated in the home jurisdiction, for operations in a foreign jurisdiction

The level of TF threat in Bermuda was assessed to be medium-low in relation to funds generated in the home jurisdiction to support terrorist operations in a foreign jurisdiction.

Of the 22 intelligence reports and international requests recorded in Bermuda, 11 related to transactions where funds had been generated in Bermuda and subsequently sent to high-risk jurisdictions. However, there is no evidence to indicate that any funds were generated in Bermuda to support and/or finance terrorist activities inside, or outside, the jurisdiction. Nonetheless, the WG identified that there is still a need for ongoing education of the public in relation to traditional and emerging TF methods. This is reinforced by the recent incidents of phishing fraud in Bermuda. These incidents were initiated from outside Bermuda and targeted residents in Bermuda, but were not deemed to be connected to TF. However, considering the experience of local law enforcement regarding foreign phishing attacks, this technique might moderately impact Bermuda's exposure to TF risk.

iii) Funds generated in a foreign jurisdiction for operations in the home jurisdiction

As there are no known terrorist organisations or individuals in Bermuda, there would be de facto no financing for such activities required in Bermuda at this time. The risk for this type of terrorist financing is therefore rated low.

iv) Funds generated in a foreign jurisdiction and transiting Bermuda for operations in foreign jurisdictions

The level of TF threat in this area is considered medium. This rating is due to the relatively large size of the international business sector and the associated significant number of international transactions.

While the majority of the international transactions processed are associated with the international businesses domiciled in Bermuda, given the high volumes, the jurisdiction could be attractive to terrorists attempting to conceal and/or move funds through Bermuda.

Source of Funds

Potential domestic and foreign sources of TF in Bermuda are limited, though potential sources of TF in Bermuda could be from legitimate sources such as salaries, business incomes and/or donations.

Given the nature of Bermuda's financial sector, it is possible that foreigners might attempt to use Bermudian financial products as part of a scheme to route funds to terrorist organisations. However, there are no intelligence reports or any other available evidence suggesting this has occurred.

A further potential source of funds was identified in relation to the illicit drugs trade. Bermuda has a relatively large number of gang-related drug dealers and a relatively high rate of drug use, but no material capacity for the domestic production of drugs. Since essentially all drugs are imported, it is possible that a portion of the imported drugs could be linked to financing terrorism.

The working group also assessed the Non-Profit Organisation (NPO) sector to determine the potential for such organisations, including those not required to be registered (e.g. churches) to be manipulated to raise funds for terrorist operations. Although 45% of the global TF cases involve NPOs⁶⁷, it was determined that in the Bermuda context this potential threat is largely offset by the fact that the majority of Bermuda NPOs focus exclusively on domestic charity work; less than 10% of Bermuda NPOs have overseas beneficiaries.

Channels

The recorded intelligence reports, international requests and a review of some hypothetical scenarios highlight several channels that could be potentially utilised for transmitting terrorist funds. Insurance⁶⁸, Banking and MSBs were deemed to be the most pertinent in the Bermuda context based on the 22 intelligence reports and international requests. Nine of these related to long-term direct insurance, and seven to banking, five to MSBs.

- **Banks:** Bermuda's status as an International Financial Centre (IFC) with a significant commercial insurance/reinsurance industry means that its banks undertake a high volume of international transactions on a daily basis. Accordingly, it is relevant to consider the TF threat to the Bermuda banking sector. It should be noted that the majority of the global TF typologies highlight that the banking sector is one of the main channels utilised by terrorists. Nonetheless, the WG concluded that the TF threat to Bermuda banks being used as channels to move terrorist funds is medium/low because there are only four licensed banks in Bermuda, none of which carry out correspondent banking services.

⁶⁷ EGMONT Report: FIUs and Terrorist Financing Analysis – A review by the EGMONT Group of sanitized cases related to Terrorist Financing.

⁶⁸ Throughout this paper insurer/insurance includes reinsurers/reinsurance. Distribution channels are the weakest link for ML (and maybe TF) in this sector.

- **MSBs:** Bermuda has a growing community of guest workers who remit funds to their home countries on a periodic basis by using Money Service Businesses. Some of these guest workers are from jurisdictions regarded to be high risk for terrorism or TF, so it is possible that funds sent to support terrorist operations might be disguised as funds being sent to support family members. In Bermuda, wire transfers and MSBs are two of the channels used for money laundering, so they could also be potentially used for TF. However, the TF threat to this sector is reduced since there is no evidence of radicalisation in Bermuda, and no evidence that the influence of foreign terrorist organisations extends to Bermuda. With regard to MSBs, the level of TF threat is medium/low.
- **Physical transportation of cash:** There is also always a potential for moving terrorist funds physically, in cash, across international borders. In international typologies, this channel is used by self-radicalised individuals. In Bermuda it is possible that such persons could use this method to take funds out of the country for the purposes of TF, but as previously noted, there is no evidence of self-radicalisation in Bermuda. The use of cash couriers is known in Bermuda as a method for laundering the proceeds of drug trafficking. However, in those cases the empirical evidence shows that the couriers are typically not the primary criminals, but merely mules who rarely know the source or purpose of the funds. Therefore, although this method is used for ML in Bermuda, in these circumstances, the level of TF threat to Bermuda from this channel is considered medium-low.
- **Insurance companies:** The composition of the Bermuda insurance market reduces the risk of it being used as a channel for TF. Over 95% of the Bermuda insurance market is composed of general business and long-term reinsurance entities. Insurance products for these entities typically have no cash surrender values and no payouts are made once policies mature. Therefore, they do not provide the sufficient functionality and flexibility to be likely vehicles for the movement of terrorist-related funds.

Sectoral Analysis of Terrorist Financing Risk

As there is no terrorist activity in Bermuda and no known terrorist organisations or lone-wolf operators active in the jurisdiction, the sectoral analysis is based on potential risk.

Banking

In Bermuda, terrorist funds are most likely to be moved through the banking system, though the risk would have to be based on the presence of radicalized residents making use of Bermuda's international banking products. At present, there is no evidence of any radicalized residents in Bermuda.

The banking sector in Bermuda offers sophisticated financial products and the country is home to many businesses that operate in the international marketplace. Some of the financial products offered are potentially vulnerable to TF if they are not sufficiently monitored and/or controlled. The banking sector requires careful monitoring, but the TF risk to the Bermuda banking sector is lowered by the fact there are only four licensed banks in Bermuda, none of which act as a correspondent bank.

The automated AML/ATF monitoring systems used by the banks are adequate. The results of the on-site and off-site examinations of the banking sector show that the banks have a good understanding of the

risks related to TF and that there's an open dialogue with the supervisory authorities and enforcement agencies.

Overall, the working group assessed the level of TF risks within the banking sector to be medium-low.

Money Service Business (MSBs)

There are only two registered MSBs in Bermuda, both of which are affiliated with well-regulated global institutions. Since 2009 there have only been two TF-related intelligence reports related to MSBs; both were investigated and no evidence was found to indicate that the sector had been used to support or finance terrorist activities.

The key threat identified within the MSB sector is the potential of diaspora communities located in Bermuda sending funds to high-risk jurisdictions under the guise of familial support. Some of Bermuda's growing community of guest workers—who use MSBs to periodically remit funds to their home countries—are nationals of countries regarded to be high risk for terrorism and TF. Therefore, there is a potential risk that funds sent to support terrorist operations might be disguised as funds being sent to support family members, or that such legitimate funds might be diverted by terrorist sympathisers in the recipient country.

This sector requires continued close monitoring, though a number of factors mitigate the TF risks of MSBs. First, MSBs are licensed as financial institutions and therefore fall under the supervision of the BMA. Second, similar to banks and other financial institutions, all persons using these services are treated as clients, meaning legislation requires MSBs to complete a risk assessment and full customer due diligence prior to conducting client transactions. Third, since 2009, the annual supervisory onsite examination of the MSB sector has shown a continued improvement in the ability of MSBs to monitor client transactions.

The nature and structure of the MSB sector in Bermuda clearly mitigates the threat of TF. Overall, the level of TF risks within the MSB sector is **low**.

Corporate Service Providers (CSPs)

There are approximately 100 corporate service providers in operation in Bermuda. These companies offer services associated with the formation and management of companies, partnerships and other legal arrangements, which can be used by terrorist financiers to establish companies with complex structures that conceal the ultimate beneficial owners and thereby facilitate the movement of terrorist funds.

In Bermuda, there is no evidence of such misuse of CSPs. Additionally, the CSP sector is currently being brought under the regulatory umbrella of the BMA, which will see CSPs subject to direct AML/ATF regulation. However, the majority of CSPs are already subject to a certain degree of AML/ATF policies and procedures and systems and controls, as most CSPs in Bermuda are owned or controlled by law firms, accounting firms, or regulated financial institutions that are already subject to AML/ATF regulation.

Companies and partnerships can be structured in a way that disguises the identity of the beneficial owners and thereby potentially facilitates terrorist financing. However, Bermuda's regulatory and legislative regime—coupled with the fact that there has been no TF activity detected in the CSP sector—resulted in a determination that the TF risk is medium-low.

Long-term (direct-life) Insurance

Long-term (direct-life) insurers represent less than approximately 1% of the total assets in the Bermuda insurance market. The potential TF threat to this sector is primarily in the form of cyber-attacks for the purpose of TF. The intelligence reports and international requests that were reviewed by the WG showed no evidence to indicate that this sector had been used to support or finance terrorist activities.

Overall, the level of TF risks within the long-term (direct) insurers is **low**.

General Business (Non-Life) Insurance and Reinsurance

General Business (non-life) insurance and reinsurance do not fully fall within scope of the Proceeds of Crime (POC) Regulations, since they are traditionally considered low risk for ML/TF. Given that Bermuda is an insurance-based IFC, there is a considerable amount of funds initiated in, and flowing through, these firms. However, insurance products for these entities typically have no cash surrender values and no payouts are made once policies mature. Therefore, they do not provide the sufficient functionality and flexibility to be likely vehicles for the movement of terrorist-related funds.

Furthermore, only a handful of these entities underwrite business lines that expose them to kidnapping claims and the WG did not find any evidence of misuse of insurance policies for payments related to such claims that benefit terrorists. A key TF threat within General Business insurance and reinsurance includes potential cyber-attacks for the purpose of TF.

Overall, the level of TF risks within General Business insurers and reinsurers was considered to be low.

Lawyers and Accountants

There is no evidence of any specific TF threats to the legal and accounting professions in Bermuda. Lawyers and accountants are subject to comprehensive AML/ATF requirements and subject to supervision by the AML/ATF Board. The Barristers & Accountants AML/ATF Board is obligated to file suspicious activity reports with the FIA and is also able to specifically cooperate with the BMA on supervisory matters, since some aspects of their supervisory remits overlap in relation to certain entities.

The level of TF risk within the legal and accounting professions was determined to be low.

Non-Profit Organisations (NPOs)

The key potential threats identified within the NPO sector are:

- charities with overseas operations that send funds overseas and later divert these funds for terrorist financing
- unregistered churches, including small house churches, receiving donations that are sent overseas to support terrorists under the guise of charitable funds
- members of the public carrying out public fundraising for terrorist financing under the guise of a charity

Funds donated to churches during religious services do not constitute public fundraising under the *Charities Act 2014* and therefore are not subject to any regulatory oversight for AML/ATF purposes. Though this is a potential risk, it is estimated that in Bermuda, 317 charities (94%) focus on domestic charity work - they raise funds in Bermuda and perform all of their charitable activities within the local community. Only 20 (6%) of registered charities engage in charitable work or activities (cross-border flows) outside of Bermuda. Furthermore, churches that engage in public fundraising for charitable purposes, other than during religious services, must either register as charities or form charitable arms that are registered charities.

Subsequent to the completion of the NRA, a sectoral risk assessment to assess the level of ML/TF risk in the NPO sector was performed and a risk based approach to address this sector has been implemented.

Although there is no data on terrorist financing in the NPO sector, there are TF vulnerabilities in this sector. Accordingly, the TF risks within the NPO sector is assessed as **medium**.

All Other Regulated Sectors

The key TF threats identified in other regulated sectors (trust companies, investment funds, fund administrators, non-licensed investment entities, gaming, high-value dealers and the BSX) are:

- potential cyber-attacks
- phishing through the use of e-mail and fax

Complex trust structures with foreign controllers or beneficiaries introduce TF vulnerabilities to Bermuda, but these service providers are regulated by the BMA as financial institutions and subject to comprehensive prudential and AML/ATF regulation.

Similarly, investment funds, fund administrators and licensed investment companies are regulated by the BMA and thus subject to comprehensive regulation. Even non-licensed investment companies, which are not subject to comprehensive prudential requirements, are within the scope of the AML/ATF regime and fall under the umbrella of the BMA.

The abuse of the real estate sector for TF is very low due to the nature of the real estate market in Bermuda.

Overall, the TF risk in these sectors is assessed as medium-low.

Other Unregulated Sectors

The working group also reviewed private trust companies and betting shops and lending occurring outside of the banking sector. Efforts are underway across the relevant authorities to comprehensively review these sectors, with a view to appropriately update the regulatory framework and level of regulation.

Overall, the TF risks in the private trust companies and betting shops and lending outside of the banking sector are assessed to be low, given the nature of their operations.

Conclusion

The methodology used by the working group involved identifying TF risks by assessing separately: (i) terrorist and TF threats; and (ii) TF vulnerabilities. The terrorism threat in Bermuda was assessed to be low, owing to an absence of evidence of domestic terrorism, terrorist organisations and individuals, and a lack of evidence of foreign terrorist organisations exercising influence in Bermuda. The terrorist financing threat was ranked slightly higher (medium-low) as there are some channels of TF funding that Bermuda has higher levels of exposure to, given the nature of Bermuda's international financial services sector.

In the absence of terrorist activity in Bermuda and no known terrorist organizations or terrorists operating in/from the jurisdiction, an assessment of potential TF risk was undertaken. With the exception of the not-for-profit sector which was rated as medium TF risk, all of the other sectors were rated at either medium-low or low TF risk.

In order for Bermuda to effectively contribute to the international ATF efforts and operate as a quality IFC, the relevant Bermuda agencies, in conjunction with the private sector, must continue to:

- a. rigorously assess the terrorism and TF threats
- b. ensure a strong ATF framework in line with international standards

While there is no evidential support for Bermuda being a source of TF, no jurisdiction can be considered immune. Continuing international acts of terrorism demonstrate that terrorist activities and TF are constantly evolving. Bermuda needs to ensure that its ATF regime remains robust and is able to adapt appropriately to any, and all, risks.

Chapter 22: Conclusion

Inherent Money Laundering Risk Findings

National Threats

The overall threat level of medium-high takes account of the ratings from the two subcategories with data, namely domestic money laundering and money laundering from abroad.

- The domestic money laundering threat is a medium-low threat, with drug trafficking considered to be the most significant predicate in this regard. Other domestic predicates that could contribute to money laundering in Bermuda were primarily considered to be low-threat.
- Threats from abroad are more severe. This area is viewed as high threat, which is consistent with international trends. International fraud, international tax crimes, foreign corruption and international market manipulation/insider trading—the core predicates of this category—are all high threat. The international financial services sector in Bermuda is therefore particularly at risk.

Inherent Money-Laundering Risk at the Sectoral Level

The findings from this ML risk assessment provide a useful foundation upon which both supervisory authorities and the regulated sectors can undertake meaningful risk analyses. Risk analysis is important; looking at sectoral and institutional money laundering risk allows supervisory authorities to shape their inspection programmes. It also assists regulated institutions in implementing policies and procedures that are suitable for the task of combating money laundering.

As noted in the table below, of the 15 sectors assessed, four were rated as high-risk for money laundering, while three were rated as medium-high.

| Sector | Threat Rating | Inherent Vulnerability Rating | Inherent Money-Laundering Risk Rating |
|---|---------------|-------------------------------|---------------------------------------|
| Banking | High | High | High |
| Securities | High | Medium-high | High |
| Insurance (long-term direct) | Medium-high | Medium-high | Medium-high |
| Reinsurance (general and non-life insurance) | Low | Medium-low | Medium-low |
| Money Service Businesses | Medium-high | Medium | Medium-high |
| Gaming | Low | High | Medium |
| Betting | Medium | Medium | Medium |
| Real Estate | Medium-low | Medium-high | Medium |
| Dealers in precious metals and stones | Medium-low | Medium | Medium |
| Accountants | Low | Medium | Medium-low |
| Lawyers | Medium-high | Medium-high | Medium-high |
| High-value dealers (Car, boat, motorcycle and antique dealers; and auctioneers) | Medium-Low | Medium-low | Medium-low |
| Trust Service Providers | Medium-high | High | High |
| Corporate Service Providers | High | High | High |
| Other financials (Bermuda Stock Exchange) | Low | Medium-low | Medium-low |

As previously highlighted, Bermuda's money laundering is largely imported, which is why the sectors with high exposure to international business have higher risk ratings. The banking, securities, trust and corporate service provider (CSP) sectors are rated as having inherently high risk. The banking sector is considered high risk because of their exposure to the potential threat of money laundering from international predicates, both directly, from their own international clients, and indirectly, from their domestic commercial clients in the international business sector.

The trust service provider sector is assessed as having inherently high risk, due to the global reach of the trusts under operation, the high value of asset transfers, and the risk profile of customers, which includes high-net-worth individuals and PEPs, both resident and non-resident.

In the CSP sector, the gatekeeper function played by CSPs for international clients meant that both the threat and inherent vulnerability for money laundering were high, resulting with an overall inherently high-risk rating.

The securities sector's inherently high-risk rating is driven primarily by the level of international involvement in the sector, high-risk individuals in the client base, and the growing importance of this sector in Bermuda.

The legal sector, which offers products and services to international clients, has increased exposure to being used to harbour the proceeds from foreign crimes. Therefore, they were rated as having medium-high inherent risk.

Long-term direct insurance has a medium-high inherent risk, driven primarily by the nature of the products offered and the predominantly international client base served.

The MSB sector is also rated medium-high, driven primarily by the intrinsic characteristics of the products offered, the wide access to the products, the transient nature of the customer base and their exposure to cash transactions.

The casino gaming sector is rated as medium, and though this may seem odd in light of international experience with casino gaming, it should be noted that this is a prospective rating no casino gaming takes place in Bermuda. However, the assessment was primarily focused on potential vulnerabilities to better adapt legislative controls and supervisory focus for this sector when operations are licensed. Therefore, the sectoral working group took some account of the type of gaming expected to be permitted, given the legislative framework. The absence of casino operations is reflected in the sectoral threat rating.

Terrorist Financing Risk Assessment

As expected, there is no evidence of terrorism or terrorist financing in Bermuda. Notwithstanding, the overall TF threat in Bermuda was assessed to be medium-low. Bermuda has moderately higher levels of exposure to some channels of TF funding, given the nature of Bermuda's international financial service sector and the experience of local law enforcement and intelligence authorities with methods frequently used in money laundering cases. However, this heightened exposure is offset by the absence of evidence of TF occurring in Bermuda, or the use of Bermuda's financial systems for the movement of terrorist funds.

On the basis that there was no evidence of terrorism or terrorist financing in the jurisdiction, the analysis of sectoral vulnerability was done of *potential* TF risk. The not-for-profit sector was rated medium risk, while the banking, trust and corporate service providers, securities (investment funds, fund administrators, non-licensed investment entities), gaming and high-value dealers sectors were all rated as medium-low. All other sectors reviewed, including MSB, insurance (captive and commercial including long-term (direct-life)), legal and accounting, private trust companies and betting were rated as low. In relation to the real estate sector it was concluded that the abuse of this sector for TF is very low.

Conducting the Second Iteration of the National Money Laundering Risk Assessment on Money Laundering

Compared with 2013, there was a marked improvement in the quality and availability of data required for the NRA, and enhanced participation from AML/ATF authorities and other government agencies. In many of the sectoral groups that make up the financial sector, lessons learned from 2013 had already resulted in data calls being incorporated in the annual returns required from regulated institutions, though this is not yet implemented across all financial sectors. In the case of non-financial sectors, data calls had to be undertaken during the NRA.

The 2017 NRA saw active participation from the private sector in all sectors. In some cases the private sector participation occurred at the working group level; in others the participation was at the results validation stage, but was nevertheless still meaningful. This latter approach was taken in sectors subject to more mature supervisory regimes, where data was already in hand and could be used early in the process to populate the input variables for those sectoral assessments. In those sectors, the preliminary scores were generated by data and later validated through outreach to, and discussion with, industry representatives.

Subsequent Events

While the assessment period of this report is from January 2013 to December 2016, the data collection period commenced in 2015 and continued through 2017. The following represents a documentation of the regime changes and progress made by the authorities during 2017:

1. New legislation enacted in February 2017 allows the Registrar of Companies to implement a regime for monitoring compliance with obligations relating to legal persons under the *Companies Act* and other relevant corporate legislation.
2. Cabinet has taken a more focused approach to monitoring progress in the enhancement of the AML/ATF regime, through implementation of various accountability measures such as the establishment of a special Cabinet Committee and invocation of a reporting mechanism for the National Anti-Money Laundering Committee to report on their activities.
3. Legislative amendments to the *Proceeds of Crime Act 1997* made income/profit-based foreign tax evasion a predicate for money laundering in Bermuda, which now allows for the filing of Suspicious Activity Reports when there is a suspicion that such activities are taking place.

4. National-level training was offered to senior government executives and Cabinet Ministers, to enhance their understanding of the AML/ATF regime and the international standards. Training was also conducted for supervisory authorities and for other operational agencies involved in the AML/ATF regime.
5. The new *Real Estate Brokers' Licensing Act 2017* was enacted in October 2017 and required real estate agents and brokers to submit applications for licences by November 15, 2017. Among other things, this new Act imposes new fit and proper requirements on licensees and their associates. There will also be requirements for submission of relevant information in relation to compliance with the AML/ATF requirements.
6. A risk analysis of the types and categories of legal persons that can be incorporated in Bermuda has been conducted and a report is being finalised to enhance the effectiveness of the Registrar of Company's compliance programme.
7. CSPs now have more supervision, following legislative amendments. Accordingly, the supervisory framework for CSPs is now operational, and licences have been issued to a number of corporate service providers, starting in 2017.
8. Legislative changes came into effect in early November 2017 in relation to the High-Value Dealers regime that will allow for more effective "policing of the perimeter" of this sector. These changes allow the supervisor—the Financial Intelligence Agency—to get information about, and take action against, entities that have not registered.
9. Amendments to legislative requirements in relation to beneficial ownership continue. In addition to imposing specific requirements for legal persons in relation to holding and filing accurate beneficial ownership information, the exchange control filing, and the vetting framework has been expanded to ensure that the definitions of beneficial ownership are fully in line with FATF requirements.
10. Other legislative amendments addressed a range of gaps in the regime, with the key aims to strengthen the CDD requirements in relation to legal persons and legal arrangements, to implement a risk-based regime for non-profit organisations and to empower the supervisor accordingly.
11. Changes have also been made to TF related legislation to address gaps in relation to designations of persons.
12. AML/ATF authorities have reviewed the findings of the NRA and determined appropriate action steps, both at the national and agency level. Work is ongoing to update policies and action plans and to take appropriate steps to address identified gaps.
13. In early 2018, a public/private sector initiative was launched to highlight to raise awareness of AML/ATF matters and to highlight to the public the importance of them playing their role in the fight against money laundering and terrorist financing. Key issues highlighted include the requirements in relation to the filing of SARs and the need to appropriately address CDD requirements. This initiative titled the "Good Business" campaign which has a website at: www.goodbusiness.bm.

Appendix A. Glossary

| | |
|---------------|--|
| AGC | Attorney General Chambers |
| AML | Anti-Money Laundering |
| AML/ATF Board | Barristers and Accountants AML/ATF Board |
| ATFA | Anti-Terrorism (Financial and Other Measures) Act 2004 |
| ATF | Anti-Terrorist Financing |
| BMA | Bermuda Monetary Authority |
| Board | Barristers and Accountants AML/ATF Board |
| BPS | Bermuda Police Service |
| BCGC | Bermuda Casino Gaming Commission |
| BPS | Bermuda Police Service |
| CDD | Customer Due Diligence |
| CFATF | Caribbean Financial Action Task Force |
| CSP | Corporate Service Providers |
| Customs | Department of Customs |
| DPP | Department of Public Prosecutions |
| EFTs | Electronic Funds Transfers |
| EU | European Union |
| FATF | Financial Action Task Force |

| | |
|-----------------|---|
| FCO | Foreign and Commonwealth Office |
| FIA | Financial Intelligence Agency |
| FIU | Financial Intelligence Unit |
| FTF | Foreign Terrorist Fighters |
| GDP | Gross Domestic Product |
| IFC | International Financial Centre |
| MoF | Ministry of Finance |
| MoLA | Ministry of Legal Affairs |
| MoU | Memorandum of Understanding |
| MSB | Money Services Providers |
| MVTS | Money Value Transfer Systems |
| NAMLC | National Anti-Money Laundering Committee |
| NPO | Non-profit Organisation |
| NRA | National Risk Assessment |
| OECD | Organized & Economic Crime Department |
| PEP | Politically Exposed Person |
| PF | Proliferation Finance |
| POCA | Proceeds of Crime Act 1997 |
| POC Regulations | Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 |

| | |
|-------|--|
| RG | Registry General |
| RoC | Registrar of Companies |
| SAR | Suspicious Activity Report |
| SoRE | Superintendent of Real Estate |
| TAFA | Terrorist Asset-Freezing etc. Act 2010 |
| TF | Terrorist Financing |
| TFS | Targeted Financial Sanctions |
| TSPs | Trust Service Providers |
| UK | United Kingdom |
| UN | United Nations |
| US | United States |
| UNSCR | United Nations Security Council Resolution |
| WB | World Bank |
| WG | Working Group |

Appendix B. The World Bank Tool

Assessment of Money Laundering Risk

As noted in the body of the report, the World Bank Model identified seven key areas to assess for Money Laundering, as follows:

MODULE 1 - National money laundering threat

MODULE 2 - National vulnerability

MODULE 3 - Banking/credit union sector vulnerability

MODULE 4 - Securities sector vulnerability

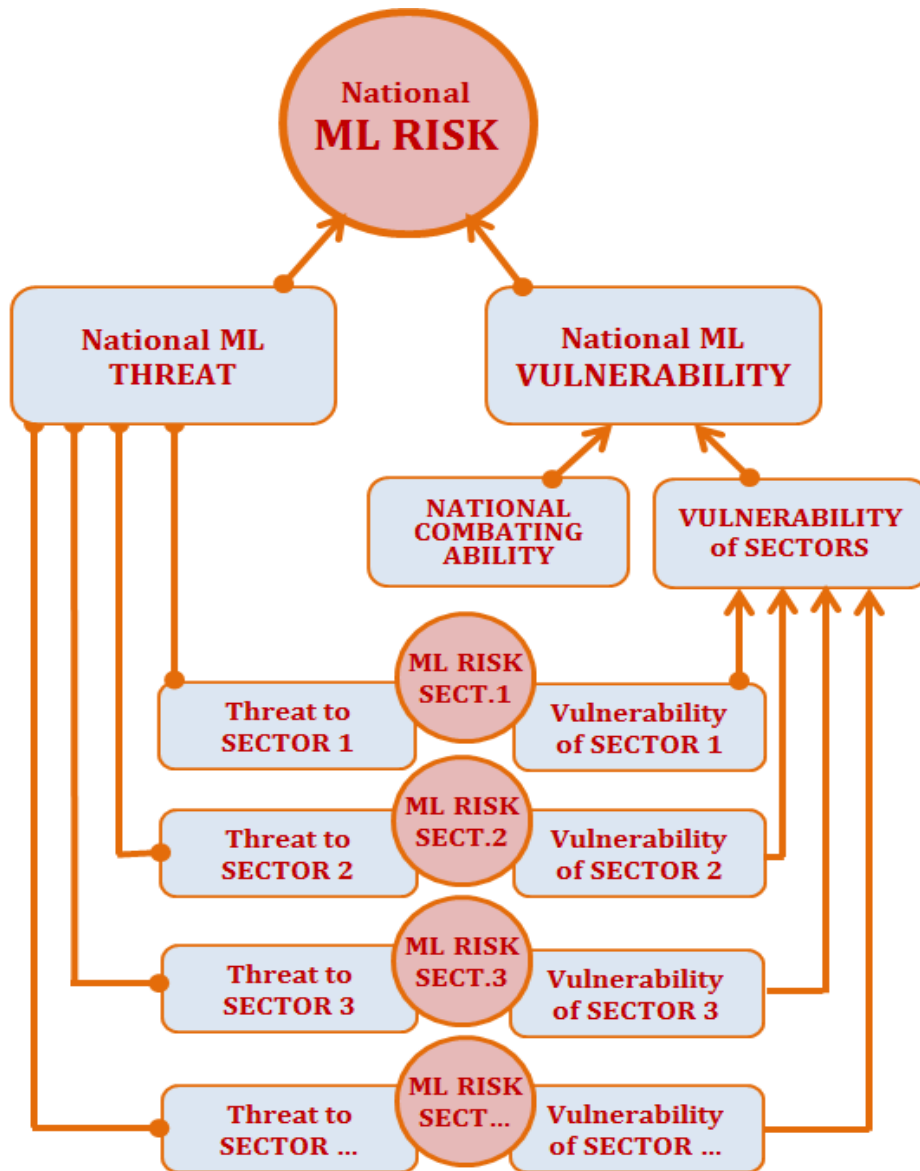
MODULE 5 - Insurance sector vulnerability

MODULE 6 - Other financial sectors vulnerability, namely, money service businesses and the Bermuda Stock Exchange

MODULE 7 - Non-financial sectors vulnerability, namely designated non-financial businesses and professions (DNFBPs) and others, such as:

- Trust Service Providers
- Corporate Service Providers
- Casino Gaming and the Betting Sector
- Real Estate Dealers
- Dealers in precious metals and stones
- Lawyers and Accountants;
- Dealers and Auctioneers specialising in high-value goods (cars, boats, bikes and antiques)

The figure below illustrates the relationships between the modules.



The World Bank Model produces ratings and scores to determine the overall risk. The general process is as follows:

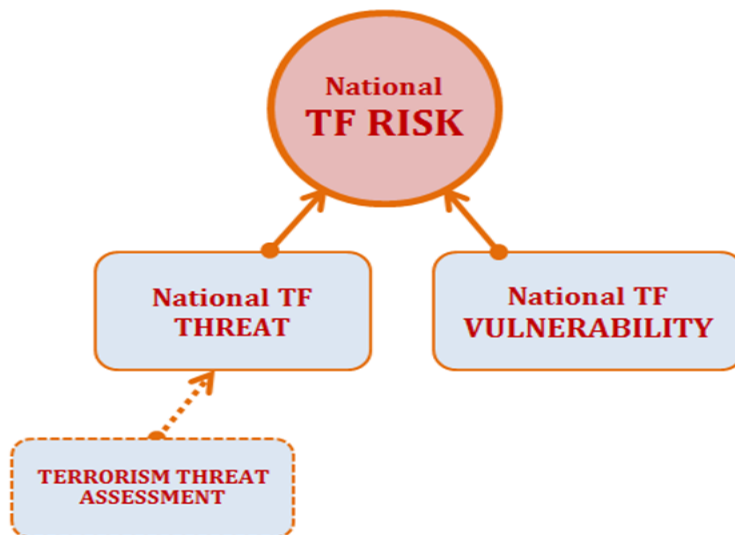
- i. Each of the modules to assess vulnerability (Modules 2 – 7) is broken down into what are called “input variables” and “intermediate variables.” Each input variable assesses various key features of the sectoral or national AML framework, or the products offered by each sector, and requires a quantitative assessment to be made by the working group. The working group assigns scores for these input variables, which are then input into the World Bank Model tool, which uses its built-in algorithms to calculate the intermediate variables.

- ii. The combination of input and intermediate variables generates a single quantitative score for each vulnerability module (Modules 2 – 7). These scores translate into the vulnerability rankings of low, medium-low, medium, medium-high or high. This applies for both sectoral and national vulnerability assessments.
- iii. The quantitative scores for each sector are combined with scoring on the national combating capability, to generate a single quantitative score that indicates the national vulnerability level, which can be plotted to a national vulnerability rank to determine an overall ranking of low, medium-low, medium, medium-high or high.
- iv. Module 1 of the assessment tool is an exception and doesn't operate on quantitatively determined input variables. Instead, the module requires the Working Group to determine a subjective ranking of the ML threat from the various predicate offences into low, medium-low, medium, medium-high or high. The module also requires the ranking of the money laundering threat to each sector, as well as the identification and ranking of the cross-border threat, using the same ranking levels. Upon ranking all of these threats, the user must determine a single national threat rank.

Assessment of Terrorist Financing Risk

Bermuda's TF NRA was carried out using an assessment framework developed by the World Bank Group (WB). The WB tool provides a systematic method to identify, assess and evaluate TF threats and vulnerabilities to enhance understanding of TF risk. The WB tool can be modified as necessary to take account of the salient features of each country. For example, in the case of Bermuda the tool was modified to reflect Bermuda's status as an International Financial Centre (IFC) and the fact that Bermuda has not experienced any terrorism and TF cases.

Figure 1 – WB TF Risk Assessment Tool



Source - World Bank

The WB tool involves an overall assessment of TF risk that is based on an examination of three factors:

- i. **Terrorist Threat Assessment** – This part of the tool assesses the level of terrorist threat in the jurisdiction by reviewing quantitative and qualitative information concerning terrorist acts e.g. enforcement data, intelligence sources, and terrorist research. For Bermuda, threats of domestic terrorism were assessed, as well as the threat of the jurisdiction being used as a transit point for persons who are intent on committing terrorist acts abroad.
- ii. **National Terrorist Financing Threat** – The level of the terrorist threat directly influences the level of terrorist financing. Accordingly, this part of the tool analysed potential TF threats by examining certain features of terrorist funds, namely the direction of the movement of terrorist funds, the source of terrorist funds and the channels through which terrorist funds are transferred:
 - a) **Directions** – assess whether funds are generated in the home jurisdiction and used for terrorist operations elsewhere, or whether funds are generated abroad and used for terrorist operations in the home jurisdiction. Another possibility could be that terrorist funds simply pass through the jurisdiction.
 - b) **Sources** – assess the source of funds. Financing may come from legitimate sources or from criminal activities.
 - c) **Channels** - examine which channels are being used to move terrorist funds.

National Terrorist Financing Vulnerability – This part of the tool assesses the strength of the Country’s defense mechanisms, including the controls and measures adopted to detect and combat TF. Examples include: legal and institutional framework; intelligence and law enforcement efforts; financial regulatory and supervisory framework; international cooperation; inter-agency coordination; and outreach to sectors that are more vulnerable to TF, such as Non-Profit Organisations (NPOs) and money remitters.

Appendix C. International Typologies used as part of Terrorist Financing Risk Assessment

The typologies below have been extracted from various FATF documents. FATF compiled the case studies from several FATF members and the cases demonstrate several ways and or sectors that can be utilised to divert funds to support terrorist activities.

The list has been put together to facilitate the Working Group's preliminary discussion in determining and narrowing down the focus of the TF assessment to only those methods/sectors that are relevant to Bermuda.

The objective of the next meeting will be to review, in general, these typologies and select up to six typologies which members of the Working Group consider to be most relevant and have a high likelihood of happening in Bermuda. Therefore, the initial review of these typologies should focus only on assessing and determining which sectors and or methods have the potential to have a high susceptibility to abuse in Bermuda.

1. Diversion of Funds by Actors to NPOs

An individual (Mr. A) established a charitable foundation under the pretext of collecting donations for Syrian refugees, people in need of medical and financial aid, and construction of mosques, schools and kindergartens. However, Mr. A was the leader of an organised scheme in which donations were sent to a group of individuals related to Mr. A (Group A) instead of the foundation's account. In most cases, the first stage involved money being sent through money remitters and then transported in cash. The money was then transferred either to credit card accounts or to e-wallets. The members of Group A placed the relevant information (that funds are being collected for the declared purposes) on the Internet, but, in fact, the funds were sent as an aid for terrorists and their families and meant to be used as a financial support for terrorist activities. This information was discovered through investigations conducted by the FIU based on regular monitoring of entities on their domestic list of designated terrorist entities and related persons or on information provided by law enforcement. Analysis of the collected information allowed the FIU to identify the relation between different cases: common payers and recipients and similar modus operandi in collection and distribution of funds. Further cooperation with law enforcement authorities allowed the FIU to establish the direct link between Mr. A and ISIL's activity. This resulted in several criminal investigations related to Mr. A. In addition, Mr. A was listed on the domestic list of designated terrorist entities, with the relevant freezing procedures performed. Under the court decisions, the assets of the Group A members were frozen.

2. Diversion of Funds by Actors Internal to NPOs

A domestic NPO was established to provide a place of religious worship for a diaspora community that had come from an area of conflict, and to raise and disburse funds for humanitarian causes.

The national NPO regulator became suspicious when the NPO's mandatory reporting indicated that it had sent funds to organisations that were not legally prescribed beneficiaries. These funds were sent ostensibly in response to a natural disaster that had affected the diaspora community's homeland. One

of the beneficiary organisations, however, was believed to be the domestic branch of an international front organisation for a foreign terrorist group operating in the diaspora community's homeland.

The regulator audited the NPO and discovered that it had sent funds to five organisations or individuals that were not legally prescribed beneficiaries. This included USD \$50,000 sent to the international front organisation through the domestic branch, and USD \$80,000 sent directly to the front organisation's headquarters branch located in the area of conflict.

While the audit was ongoing, the regulator received two leads from the public regarding the NPO. Both leads cited concerns regarding the opacity of the NPO's leadership, and that decisions to send funds overseas had circumvented normal accountability procedures set out in the NPO's governing documents. One of the leads indicated that a shift in the demographic of the diaspora community had meant a new faction had gained control of the NPO's board of directors. This faction was more sympathetic to the cause of the foreign terrorist organisation. While these issues had already been noted through the regulator's audit, the leads supported the regulator's concerns regarding the NPO's management.

The NPO leadership replied to the regulator's concerns by stating that the urgent need to respond to a natural disaster had led the NPO to bypass some internal procedures and to work with whichever organisations could operate in the affected areas. Taking this into consideration, the NPO retained its registration but was forced to pay penalties. The NPO also entered into a compliance agreement with the regulator that would enforce strict due diligence and accountability standards.

3. Use of Funds transfers near territories where ISIL operates

According to sensitive financial information, terrorist financing risks were discovered regarding the use of both Electronic Funds Transfers (EFTs) via banking channels and other transfers via Money Value Transfer Systems (MVTs) to areas located near territories where ISIL operates or designated individuals. The location of the receipt of these transfers were often located in areas known to be a funding, logistical and smuggling hub for foreign terrorist fighters and terrorist organisations. In some of these cases, social media have suggested that beneficiaries of funds transfers may have links to terrorist or radical groups. In other cases, excessive cash deposits were made in the US with subsequent wire transfers to beneficiaries in areas located near territories where ISIL operates. Risks identified also included lack of information of the purpose of the wires, the relationship of the receivers or the reason funds transfers were conducted in multiple transactions over short time periods.

4. Facilitator for a network of potential foreign terrorist fighters

An individual holding several bank accounts received numerous wire transfers from a large number of people. The funds received are then transferred to another individual's bank account, who buys plane tickets and insurance on a regular basis. However, the use of his credit card doesn't show any travel abroad.

5. Continued access to bank accounts by FTFs

According to sensitive financial information, terrorist financing risks were discovered regarding foreign cash withdrawals via ATMs that were made by unknown individuals in areas located near territories where ISIL operates. These withdrawals were taken from US-based bank accounts using a check card. Another terrorist financing risk identified was the existence of large deposits into bank accounts followed by immediate foreign cash withdrawals in areas located near to territories where ISIL operates.

This information reveals the terrorism financing risks posed by the continued ability of the individuals who are believed to have travelled to areas occupied by ISIL to reach their bank accounts in their home countries.

6. Non-repayment of a personal loan

An individual received two personal loans totaling Jordanian Dinar (JOD) 7,500. After he stopped making repayments, the bank tried to call the individual, and his employer, who mentioned that the individual had been away from work for a long period of time.

After requesting information from its counterpart, the FIU was told that this individual travelled to country (H) and then on to a country bordering the conflict zone. The FIU of country (H) referred the case to the competent general prosecutor for a suspicion of conducting terrorist financing. The competent general prosecutor seized his and his family's moveable and immovable assets.

7. Use of offshore banks and international business companies, offshore Trusts

In one case a terrorist organisation used a foreign based trust for raising, collecting and transferring funds to India through banking/cash couriers/non-banking channels for its distributions to active cadres, other beneficiaries of the terrorist organisation and families of terrorists. In this case extensive use of e-mail network was cracked and evidence collected. A charge sheet has been filed against 10 accused persons in the court. Two accused persons have been arrested.

8. Explicit calls for funds on social networks

In a Facebook group on recipes for women, one of the users placed a call for funds in 2013. A fighter in Syria was mentioned (no name indicated) who urgently needed "equipment, food and pharmaceuticals". There was time to collect funds until "Thursday", in order to "dispatch" the requested material by "Friday". The user also provided the details of an account held with a German bank where the funds were to be sent. It is unknown if the author of the Facebook call for funds is also the person responsible for this initiative. The owner of the account is a convert, who is suspected of coordinating this advertising campaign.

9. Abuse of non-profit organisations/direct debit instructions/Private donations

A European national asked his bank for a direct debit instruction from his account to a non-profit organisation in another European country. The reference that accompanied this direct debit instruction referred to the sponsoring of an individual. Information collected by the FIU showed that this non-profit organisation was known to be closely linked to certain groups that financed terrorist acts. Furthermore, the name of the individual that was to be sponsored was also mentioned on the United Nations list of persons and organisations suspected of being linked to terrorist groups.

10. Insurance fraud simulating traffic accidents

Since 2007, members of this plot committed several sporadic frauds to obtain benefits without raising suspicion, such as faking traffic accidents and hiring bogus policies. Compensations provided by insurance companies were quickly withdrawn in cash.

An increase in the number of frauds was observed in 2012, and a chronological overlap was established between the most obvious cases of fraud (involving members of a terrorist cell) and terrorists sent to

join terrorist organisations like Movement for Unity and Jihad in West Africa (MUJWA or MUJAO) and ISIL.

It was clear that the individuals needed to obtain funds quickly, because they disregarded the need to keep their operations secret by faking numerous and rough traffic accidents which exposed them to detection.

11. Use of the banking sector to transfer international donations for TF

An ongoing investigation in India alleges that Hizb-ul-Mujahideen (HM) has been receiving funds originating from Pakistan through different channels in support of its terrorist activities in India. HM is claimed to be actively involved in furthering terrorist activities in India and has raised over Indian Rupees (INR) ₹800 million within the past eight years. This group has been designated as a terrorist organisation by India, US and the EU.

Funds raised in other countries are also reportedly being transferred or diverted to trusts and front organisations of HM in Pakistan. Once the money reaches India, it is distributed through various conduits at various places to the active terrorists and families of killed HM terrorists. It is further alleged that the banking sector was extensively used for transfer of funds to various bank accounts for the aforementioned activities. Funds have also been moved via money value transfer services (MVTs).

The funds are mainly used to financially support members of active and killed militants of the organisation, including family members. HM allegedly incurs expenditure on mobile communication, medical treatment of militants, arms and ammunitions, clothing and other military equipment.

12. Complicit MVTs Agent

An individual raised funds for Al-Shabaab from within the Somali diaspora in Missouri and elsewhere and used a variety of licensed money service businesses (MSBs) with offices in the United States to remit the money to Somalia in general support of Al-Shabaab fighters. The co-conspirator, who worked for one of the MSBs involved, helped the individual avoid leaving a paper trail by structuring transactions into low dollar amounts and by using false identification information. The MSB worker and other conspirators used fictitious names and phone numbers to hide the nature of their transactions.

13. Cash Smuggling

A passenger from an EU member state arrived in İstanbul Sabiha Gökçen Airport with four large pieces of luggage and two sport bags. Upon the suspicion by the competent authorities at the airport, he was interviewed and found to be in possession of €3,500 Euros. The passenger stated that he was visiting and would go back to his homeland in a weeks' time. Upon search of his luggage, many pairs of tracking boots, jeans, ISIL labelled t-shirts and sweatshirts and torches were found. He was denied entry and was added to the Turkish no-entry list.

14. Vishing fraud

Courier and vishing frauds (a type of telephone scam) have been seen as a TF method. The funds have been used to finance travel to Syria and Iraq and also to sustain individuals who have travelled to these areas to fight with ISIL. UK based extremists have adopted the organised crime group tactic of targeting vulnerable individuals with phone calls purporting to be either police or banking officials. They are informed that their account(s) have been compromised in some way and are persuaded to either

transfer money into accounts controlled by the suspects or to physically withdraw the cash. A courier from the criminal network is then dispatched to the victims' home address and picks up the cash.

London-based networks are known to have targeted individuals in Devon, Cornwall, Dorset, Kent, Bedfordshire and London. The method as to how the victims are selected is to date unclear but it may be as simple as online telephone directories filtered to regions for a retirement age demographic.

It is known that such networks have defrauded victims out of hundreds of thousands of pounds. Evidence shows that some money is being transferred overseas using Money Service Businesses (MSBs) to the Middle East by suspects, although the final destination of these funds is still under investigation. The amounts sent are in the low thousands for each transaction or below the GBP £500 limit so suspects do not have to provide further identification.

15. Promotion of virtual currency to fund terrorism

On August 28, 2015 Ali Shukri Amin was sentenced to 11 years in prison to be followed by a lifetime of supervised release and monitoring of his internet activities for conspiring to provide material support and resources to the ISIL.

Amin pleaded guilty on June 11, 2015. He admitted to using Twitter to provide advice and encouragement to ISIL and its supporters. Amin, who used the Twitter handle @Amreekiwitness, provided instructions on how to use bitcoin, a virtual currency, to mask the provision of funds to ISIL, as well as facilitation to ISIL supporters seeking to travel to Syria to fight with ISIL. Additionally, Amin admitted that he facilitated travel for a Virginia teenager, who travelled to Syria to join ISIL in January 2015. This teenager, was charged on 10 June 2015, in the Eastern District of Virginia with conspiring to provide material support to terrorists, conspiring to provide material support to ISIL and conspiring to kill and injure people abroad.

Amin's Twitter account boasted over 4,000 followers and was used as a pro-ISIL platform during the course of over 7,000 tweets. Specifically, Amin used this account to conduct twitter-based conversations on ways to develop financial support for ISIL using online currency, such as bitcoin, and ways to establish a secure donation system or fund for ISIL.

For example, Amin tweeted a link to an article he had written entitled "Bitcoin wa' Sadaqat al-Jihad" (Bitcoin and the Charity of Jihad). The article discussed how to use bitcoins and how jihadists could utilise this currency to fund their efforts. The article explained what bitcoins were, how the bitcoin system worked and suggested using Dark Wallet, a new bitcoin wallet, which keeps the user of bitcoins anonymous. The article included statements on how to set up an anonymous donations system to send money, using bitcoin, to the mujahedeen.

16. PayPal accounts used for fundraising

A charity, set up in 2010, whose chairman is specialised in e-marketing, offers on its website several options to make donations by credit card, PayPal, cash transfers, checks.

Over a year and a half, bank accounts of this charity received numerous donations by cheques and wire transfers below EUR 500. Of the €2 million Euros collected, EUR 600,000 came from a few PayPal transactions from another country.

Personal PayPal accounts were also used to collect funds, then to be withdrawn by cash, or transferred to other accounts.

17. Inciting terrorist violence via the Internet

Three British residents used illicit funds to pay for websites promoting martyrdom through terrorist violence. The three men were sentenced in 2007 in the UK to jail terms ranging from six-and-a-half years to ten years. All three pleaded guilty to "inciting another person to commit an act of terrorism wholly or partly outside the United Kingdom which would, if committed in England and Wales, constitute murder." These are the first people to be convicted in the UK of inciting terrorist murder via the Internet. Two of the men registered dozens of Internet domains through Web hosting companies in the US and Europe. The sites facilitated communications among terrorists through online forums, hosted tutorials on computer hacking and bomb-making, and hosted videos of beheadings and suicide bombings in Iraq. The sites were paid for with funds stolen from "hacked" credit card accounts, with the money laundered through online gambling sites.

Commentary: This case demonstrates the full scope of terrorist exploitation of the Internet. The three men involved took advantage of the web's global reach and multimedia capability for terrorist recruitment, training, and tactical coordination. They also used the web for terrorist financing through online financial fraud and money laundering.

18. A small, self-funded network launches major attack

The official report into the July 7, 2005 attacks on the London transport system stated that:

"Current indications are that the group was self-financed. There is no evidence of external sources of income. Our best estimate is that the overall cost is less than GBP8,000."

"The bombs were homemade, and that the ingredients used were all readily commercially available and not particularly expensive".

"The group appears to have raised the necessary cash [for overseas trips, bomb making equipment, rent, car hire] by methods that would be extremely difficult to identify as related to terrorism or other serious criminality."

Terrorist A "appears to have provided most of the funding. He had a reasonable credit rating, multiple bank accounts (each with just a small sum deposited for a protracted period), credit cards and a GBP 10,000 personal loan. He had two periods of intensive activity – firstly in October 2004 and then from March 2005 onwards. He defaulted on his personal loan repayments and was overdrawn on his accounts."

Terrorist B "made a number of purchases with cheques (which subsequently bounced) in the weeks before 7 July. Bank investigators visited his house on the day after the bombings."

Commentary: Though Terrorist B was not specifically identified as a terrorist until after an attack took place, this case demonstrates that financial intelligence on its own was sufficiently accurate to prompt investigation by financial institutions.

19. Terrorist organisation financed using proceeds of drug trafficking

During a drugs investigation in relation to cocaine importation from South America to Europe, the FIU found out that the organisation involved in the drug trafficking used money transfers to send funds from the Netherlands to Paraguay and Brazil to invest in drugs and profits to Lebanon. Police investigations indicated that the profits were used to fund a terrorist organisation.

20. Criminalizing Ransom Payments

The United Kingdom's (UK) Terrorism Act 2000 prohibits the provision of funds to terrorists under any circumstances (s15). It also prohibits the entrance into an arrangement as a result of which funds may be made available to terrorist (s17). The threshold – reasonable cause to suspect – is intentionally low.

These offences have extraterritorial effect. However, two recent cases highlighted a lack of clarity in the law as it related to insurance payments, meaning there was potential for UK insurance/reinsurance firms to find themselves in a position where they are called upon to reimburse to insured parties for payments, (such as ransom payments), where they know or have reasonable cause to suspect that the funds have gone to terrorists. Existing UK terrorist finance legislation, while comprehensive, is not explicit on whether or not such reimbursements were prohibited in law. This clearly went against the UK Government's clear stance on kidnap for ransom. To put beyond doubt that such reimbursements are illegal, the UK Government introduced a measure in the CT and Security Bill, currently before Parliament, making it an offence for insurers (or reinsurers) to reimburse a payment which they know or have reasonable cause to suspect has been made in response to a terrorist demand.