

NAMMLC QUARTERLY

National Anti-Money Laundering Committee

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FATF Publication: Best Practices Paper on Combating the Abuse of Non-Profit Organisations

At the end of June 2015, FATF published a best practices paper on combating the abuse of non-profit organisations (NPO). That paper is the result of a full revision of a paper of similar title, which was first published in 2002 and later subjected to an update in 2013, in light of the 2012 revision of the FATF Recommendations. In light of the June 2014 publication by FATF of a typologies report on the risk of terrorist abuse in the NPO sector, FATF has now further revised the best practices paper to reflect the findings of that report. An objective of the paper is to facilitate efforts to protect the integrity of the NPO sector, by providing specific examples of ways in which governments, the NPO sector and financial institutions can protect against terrorist financing abuse, through effective implementation of Recommendation 8 in line with Recommendation 1. The point is made that the good practices indicated in the paper

are not mandatory elements of the FATF Standards and are provided as examples only.

Persons are strongly encouraged to read and digest the contents of this best practices paper; and we believe that it will be beneficial to the following persons in particular, among others in general, namely: the principals and employees of NPOs, policy makers for the NPO sector, supervisors of the NPO sector, financial intelligence analysts and experts, as well as compliance officers and relationship managers in financial institutions.

‘One size fits all’ – In discussing the implementation of Recommendation 8 on the NPO sector, FATF emphasises that jurisdictions should not take the ‘one-size-fits-all’ approach; but should take a targeted approach to the NPO sector, bearing in mind FATF’s definition of an NPO in the Standards



GOVERNMENT OF BERMUDA
Ministry of Legal Affairs

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and also identifying and understanding the risk of terrorist abuse in that sector. In other words, it is made clear that Rec. 8 does not apply to the whole NPO sector, but only to NPOs, which fall within FATF's definition, that pose the greatest risk of terrorist financing (TF) abuse. It is reiterated that the 'one-size-fits-all' approach is not appropriate, neither from the perspective of the Government's supervision and monitoring of the sector, nor in the manner in which financial institutions manage their business relationships with their NPO customers. That approach is also not beneficial in the interest of the proliferation of charitable works, as the imposition of onerous anti-TF obligations on NPOs that face low or no risk of TF abuse, can undermine one of the objectives of Rec. 8, that is, to ensure that protective measures do not discourage or disrupt legitimate charitable activities or undermine NPOs' ability to access legitimate resources to fund such activities. In this regard the paper encourages jurisdictions to apply a risk-based approach to the implementation of Rec. 8, so as to enable them to identify and understand the TF risk, and to apply measures proportionate to the identified risks, in order to effectively prevent or mitigate them.

Risk-Based Approach – In addition to exhorting Governments to apply this approach in their implementation of Rec. 8 on the NPO sector, the paper also provides guidance to the NPO sector on risk analysis and the risk-based approach, risk mitigation and general good governance principles. NPOs are strongly encouraged to put in place measures to ensure

that they understand the TF risks to their specific operations and to enable them to take appropriate steps to mitigate the identified risks. One of the approaches indicated as being best able to assist NPOs in ensuring that they are not abused for TF purposes, is to put in place good governance and strong financial management, including having robust internal and financial controls and risk management procedures. It is also emphasised and NPOs are advised to carry out proper due diligence on those individuals and organisations that give money to (donors), receive money from (beneficiaries) or work closely with (partners) the NPO. The paper provides some insight as to what good governance for NPOs entails.

Access to Financial Services – FATF reiterates the importance of ensuring that the implementation of its Recommendations does not adversely and disproportionately affect NPOs. In this section of the paper, FATF refers to recent reports of financial institutions terminating or restricting legitimate NPOs from accessing financial services, or protracting the time taken to process their transactions. This phenomenon, partially known as de-risking, is the subject of work currently being undertaken by FATF to understand and map the underlying reasons for this trend, which is not limited to the NPO sector. It is made clear in the paper that this approach to risk management is not a proper implementation by financial institutions of a risk-based approach and is therefore not consistent with the FATF Standards. It is pointed out that NPOs rely on banking facilities

and other financial services to carry out important humanitarian and charitable services; and therefore, this practice of 'de-risking' has the undesirable potential of driving financial flows underground, frustrating the ability to enhance financial transparency and combat TF; and can undoubtedly have a stultifying effect on the delivery of aid to developing countries and crisis zones where humanitarian needs are acute. Therefore, FATF strongly encourages financial institutions to only terminate or not establish customer relationships on a case-by-case basis, where money laundering (ML) or TF risks cannot be mitigated. In this regard, financial



institutions are also encouraged to properly apply the risk-based approach to the NPO sector, to facilitate access by legitimate NPOs to financial services. To this end, the paper discusses and provides clarification to the financial sector on how this should work. In addition, the paper provides clarification to the NPO sector, with examples, on the steps that they can take to facilitate their own access to legitimate financial services. The financial and NPO sectors are also encouraged to collaborate with a view to exchanging views on the risks facing the sector and individual NPOs; and to working towards more effective risk mitigation measures acceptable to all parties.

The Annexes to the Paper:

Annex 1 – Here countries are provided with specific examples of good practice taken by competent authorities, on the effective approach to protecting the NPO sector from TF abuse. The examples provided come from countries such as: the USA, Canada, United Kingdom, Norway, Spain, France, the Isle of Man, Portugal and New Zealand; and are based on four essential elements, namely:

1. Outreach to the NPO sector;
2. Proportionate, risk-based supervision and monitoring;
3. Effective investigation and information gathering and
4. Effective mechanisms for international cooperation.

Annex 2 – In this annex specific examples are provided of measures taken by some NPOs to mitigate risk, and which may, depending on the circumstances, help to mitigate risk for others. It is of course pointed out, that in practice the unique circumstances and context of each case will determine whether a particular measure can partially or fully mitigate a specific risk. Additionally, persons are encouraged to understand that

the examples provided are not to be used as a checklist of measures to be applied to all NPOs. In this annex, examples provided fall into four categories of good governance for NPOs, namely: Organisational integrity; Partner relationships; Financial transparency and accountability; and Programme planning and monitoring.

Annex 3 – This annex contains a significant listing of representational and self-regulatory organisations around the world that have developed standards and initiatives to help individual organisations ensure accountability and transparency in their operations. The listing is taken from the website of the One World Trust, an organisation that undertook a project to provide an inventory of civil society self-regulatory initiatives worldwide. It is pointed out that the listing is not comprehensive and FATF does not purport to verify/certify the substance of each organisation on the list.

The full paper is available on the FATF website at <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/bpp-combating-abuse-npo.html>



In March 2015 the US State Department published its International Narcotics Control Strategy Report (INCSR) and

to combat money laundering; how effectively the relevant laws are being implemented; the robustness of the licensing and



supervisory process; and the degree of its cooperation in the international fight against money laundering and terrorist financing, particularly in relation to the US. Further, for countries such as Bermuda that are not considered major money laundering countries, given the strong link between inadequate AML regimes and terrorist financing, the measures adopted to address terrorist financing are also evaluated. This assessment is encouraging and validates the actions Bermuda continues to take to strengthen its AML/ATF regime in accordance with global standards.

It should, however, be noted that the report does not reflect the current position with regard to the extension to Bermuda of the United Nations Convention Against Transnational Organized Crime (UNTOC) and the International Convention for the Suppression

of the Financing of Terrorism (SFT). The said conventions were extended to Bermuda by the United Nations by Depositary Notification on the following dates: UNTOC was extended to Bermuda on 5 August 2014 and SFT was extended to Bermuda on 3 October 2014. The link to the report is: <http://www.state.gov/documents/organization/239561.pdf> and the countries and jurisdictions table can be found on page 35 of the report.

once again Bermuda was rated as being in the lowest risk category of countries and jurisdictions monitored for risk factors which potentially contribute to money laundering and terrorist financing. The report seeks to identify “countries and other jurisdictions whose financial institutions and/or non-financial businesses and professions or other value transfer systems engage in transactions involving significant amounts of proceeds from all serious crime”. In essence the INCSR assesses the vulnerabilities and threats that money laundering and terrorist financing pose to US national security.

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The Report uses a classification system comprised of three categories, namely: **Jurisdictions of Primary Concern**, **Jurisdictions of Concern** or **Other Jurisdictions Monitored**. The Report notes that the category in which a country is placed is determined after considering a number of vulnerability factors including: a country’s legal framework



On 27 to 28 May 2015, the Caribbean Financial Action Task Force (CFATF) held its XLI Plenary Meeting in Port of Spain, Trinidad, the permanent seat of the organisation. The meeting was held under the Chairmanship of the Honourable Attorney General Luis Martínez of El Salvador.

Delegates attending the Plenary Meeting focussed on a number of issues, including: the challenges of the Fourth Round of mutual evaluations; financial inclusion; and third party reliance. Technical assistance opportunities for CFATF Members were also discussed through the Donors Forum.

Based on previous ICRG and Plenary decisions, the Plenary also adopted revised procedures for the International Cooperation Review Group (ICRG), for ease of reference and greater transparency. The CFATF also updated its Mutual Evaluation Procedures to reflect changes in timelines and to provide for the possibility of joint assessments between CFATF and another FATF Style Regional Body (FSRB), where the members hold membership with both CFATF and another FSRB.

Also highlighted was that two more jurisdictions exited the CFATF follow-up process, namely, Antigua and Barbuda and Belize. Belize and Grenada also exited enhanced monitoring by the CFATF ICRG, an achievement which attested to their progress in compliance with FATF standards and demonstrates their commitment in the fight against Money Laundering and Terrorism Financing.



CFATF's Fourth Round Mutual Evaluation Process

The Fourth Round Mutual Evaluation Process is based on the FATF Recommendations (2012) and the 2013 Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems. The scope of the evaluations involves a two-tier process to evaluate technical compliance and effectiveness. The technical compliance component is desk based and assesses the country's AML/CFT framework to determine whether the requisite laws, regulations, systems and other required measures are in force and in place. The effectiveness component evaluates whether the country's AML/CFT regime is working in practice; that is, it measures whether the anti-money laundering/countering the financing of terrorism (AML/CFT) laws, regulations and systems are working and how well the country is achieving the defined set of outcomes described in the Methodology. The evaluation process begins at least six months before the onsite visit. At the beginning of this process the country has to complete and submit to the evaluation team a technical compliance update; after which the assessors will commence their desk-based

review on technical compliance. Assessors are also at liberty prior to and during this time to conduct their own research on the country's regime, in order to flag up any areas of concern for closer examination. At least four months before the onsite visit, the country will also have to make a written submission to the evaluation team on the effectiveness of its AML/CFT regime, and will also have to be prepared, in the months leading up to the onsite visit, to communicate with the assessors to respond to any outstanding questions they may have.

The CFATF Fourth Round mutual evaluations commenced in 2014. Trinidad and Tobago is the first member country to be evaluated and is now in the post onsite phase of the mutual evaluation process. Additionally, the onsite mutual evaluation of Jamaica was scheduled for June 2015 and the Mutual Evaluation Report is expected to be presented at the CFATF May 2016 Plenary. Further, The Bahamas has already begun its mutual evaluation, and would have recently completed its technical compliance submission in preparation for the assessors' onsite visit.





The last FATF Plenary under the Australian Presidency was held in Brisbane, Australia, from 24 to 26 June 2015. The Plenary considered a variety of issues, resulting in the adoption and publication of a number of reports, such as revised best practices on combating the abuse of non-profit organisations and guidance for a risk-based approach to virtual currencies. The FATF also issued a statement on ‘de-risking’, and updated statements concerning high-risk and non-cooperative jurisdictions. The FATF also welcomed the Kingdom of Saudi Arabia as an observer to the FATF and discussed the Malaysia’s mutual evaluation report prepared by the Asia Pacific Group (a FATF style regional body). Below is a summary of the key outcomes of the Plenary.

Statement on De-Risking – De-risking, a phenomenon of growing concern, occurs where financial institutions terminate or restrict business relationships with categories of customers for the purpose of eliminating risk associated with such customers. In its statement issued following the Plenary, the FATF has reiterated that its own approach to de-risking is based on its 40 Recommendations which require financial institutions to assess and understand their ML/TF risks and to apply AML/CFT measures commensurate with those risks. However, in examining the emerging de-risking phenomenon, the FATF has indicated that the factors that potentially drive de-risking

are complex and go well beyond anti-money laundering (AML) and counter-terrorist financing (CFT); thus accepting that there is a continued need to improve the evidence base in order to determine the causes, scale and impact of de-risking. While also recognising the fact that issues in the correspondent banking domain feature in the de-risking phenomenon, the FATF has indicated that it will be undertaking work to further clarify the relationship between its standards on correspondent banking, customer due diligence and wire transfers. This work will entail collaboration with the private sector and regulators, and will also involve close examination of the work of key international organisations that play various roles in the banking sector internationally. This work will build on and revise other initiatives previously undertaken by the FATF in relation to the banking sector, on issues such as de-risking, financial inclusion and the risk-based approach. Players in the financial sector, economists and persons in sectors or industries adversely affected by de-risking, should keep an eye out for the conclusion of this work.

Public Statements – FATF issued two public statements respectively identifying jurisdictions with strategic AML/CFT deficiencies in relation to which a call for action applies; and jurisdictions with strategic AML/CFT deficiencies for which they have developed an action plan with the FATF.

Summary of Outcome of FATF Plenary *continued*

Call for Action – FATF continued to identify four jurisdictions against which they have made calls for action. In relation to Iran and the Democratic People’s Republic of Korea, FATF has once again called on its members and other jurisdictions to apply counter-measures to protect the international financial system from the on-going and substantial money laundering and terrorist financing (ML/FT) risks emanating from those jurisdictions. In relation to Algeria and Myanmar, FATF has once again recognised their respective strategic AML/CFT deficiencies and indicated that they have either not made sufficient progress in addressing those deficiencies or have not committed to an action plan developed with the FATF to address those deficiencies. Therefore, once again FATF has called on its members to consider the risks arising from the deficiencies associated with those two jurisdictions. The public statements provide a summary of the AML/CFT challenges in each of these four jurisdictions; and the limited efforts (if any) made by the respective jurisdictions to address the significant deficiencies. This public statement is available on the FATF website at <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/public-statement-june-2015.html>

Action Plans – In this statement, the FATF identified one jurisdiction, namely Indonesia that had been removed from the FATF’s ongoing AML/CFT compliance process. This was based on the significant progress made by Indonesia in improving its AML/CFT regime and putting in place the measures necessary to fulfil its commitments made to FATF in the Action Plan dating back to February 2010. FATF also identified one jurisdiction, namely Iraq, which had failed to make sufficient progress, as the majority of items on the Action Plan agreed with the FATF, had not been addressed. Finally, FATF identified 12 jurisdictions, namely Afghanistan, Angola, Bosnia and Herzegovina, Ecuador, Guyana, Lao PDR, Panama, Papua New Guinea, Sudan, Syria, Uganda and Yemen all of which had made high level political commitments to address their significant AML/CFT deficiencies and have agreed action plans with the FATF. The public statement provided summary updates of the progress made by each jurisdiction against their action plan and FATF indicated its intention to continue to monitor the progress of these jurisdictions. This public statement is available on the FATF website at <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-june-2015.html#Indonesia>

Reports Adopted and Published – The FATF Plenary adopted the following reports:

Revised best practices on combating the abuse of non-profit organisations (Recommendation 8) – [See discussion on this report in the article on page 1]

Guidance for a risk-based approach to virtual currencies

– At the foundation of this guidance is the June 2014 Typologies report on virtual currencies as well as the June 2013 risk-based guidance report on a variety of new payment systems. This latest Guidance report aims to help national authorities understand the ML/TF risks associated with virtual currencies payments products and services (VCPPS), and potentially develop regulatory responses to address them. It also aims to help the private sector better understand and comply with relevant AML/CFT obligations. This report is available on the FATF website at <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/guidance-rba-virtual-currencies.html>

Typologies report on the money laundering/terrorist financing risks and vulnerabilities associated with gold

– This report, which is the joint effort of the Asia Pacific Group (APG) and the FATF, was approved by the FATF Plenary and provides a series of case studies and red flag indicators to raise awareness of the key vulnerabilities of gold and the gold market. The report identifies the features of gold and the gold trade that have made it an alternative means for criminals to transfer value and generate proceeds. Gold is anonymous, has a stable value and is easily transformable and transportable, which have made it an attractive alternative for criminals to store or move and generate value as regulators implement stronger AML/CFT measures to protect the formal financial sector from abuse. The report was very recently published on 20 July and should be a useful tool for AML/CFT practitioners and companies involved in the gold industry. This report is now available on the FATF website at <http://www.fatf-gafi.org/documents/news/ml-tf-risks-and-vulnerabilities-gold.html>

Mutual Evaluation of Malaysia – Although Malaysia’s mutual evaluation report was prepared by the Asia Pacific Group (APG) (a FATF style regional body), the Plenary did discuss Malaysia’s report, as Malaysia is an observer jurisdiction of FATF. The findings and recommendations of the assessment team were discussed and the report will in due course be finalised and published by FATF.



Bermuda Monetary Building

Bermuda Monetary Authority

During the second quarter of 2015 the AML Unit within the Authority completed a total of two onsite visits, covering the banking and trust sector; along with follow up remediation visits for three entities in the banking, trust and investment business sectors. Additionally, during this period the offsite examinations focused on the service providers for Non-Licensed Persons applications; and reviews of AML/ATF Policy and Procedures Manuals received as part of the licensing applications made to the Authority in relation to long-term direct insurance.

The Authority continued with its Outreach Programme and a presentation was given to the corporate service providers in preparation for the new licensing regime for this sector, and preparation has already commenced for additional Outreach sessions to this sector to be conducted in the third quarter.

Also during the quarter, the AML team conducted AML/ATF training for 28 staff of the Authority, as part of the mandatory training programme; and the AML team attended the Transcontinental Trust Bermuda Forum to keep abreast of developments in the trust industry.

Financial Intelligence Agency (FIA)

The FIA reported that during the period 1 April to 30 June 2015 they received a total of 112 Suspicious Activity Reports (SARs). Contained within these SARs were 831 transactions representing a total value of \$131,189,094.00. The SARs filed during this quarter were done by 15 entities across a range of sectors; with the majority from the banking sector, and the remainder filed by law firms, long-term insurers, money service businesses and fund services.

During the said period the FIA made over 50 disclosures, of which the majority were made to local competent authorities and the remainder to foreign counterpart authorities. The majority of the local disclosures were made to the BPS.

The FIA also conducted two training sessions, relative to Money Laundering, Terrorist Financing and the use of goAML (the FIA's operating software), to an Auto Dealership and an entity that addresses scholarships. Additionally during the period one FIA staff member attended a Public Access to Information (PATI) training session for public authorities; and another staff member attended the PATI tracking system training. FIA staff also attended the recent Plenaries of the CFATF and Egmont



Group respectively. The FIA continues to meet with relevant domestic partners in order to strengthen the AML/ATF dialogue and ensure domestic agencies are working in tandem when addressing issues or emerging trends.

HM Customs

During the second quarter of 2015 HM Customs seized \$9,320.00 in accordance with section 50 of the Proceeds of Crime Act 1997. All monies seized were handed over to the Bermuda Police Service's Financial Crime Unit (FCU) for follow-up investigations.

HM Customs continues to share information with the Bermuda Police Service, the Financial Intelligence Agency, US Customs and Border Protection, Canada Border Service Agency and their colleagues in the Caribbean

Ministry of Finance

During the second quarter of 2015 the Ministry of Finance finalised amendments to two Acts, namely The International Cooperation (Tax Information Exchange Agreements) Amendment Act 2015 and The USA-Bermuda Tax Convention

Amendment Act 2015; these amendments passed in both Houses of the Legislature in early July 2015. The amendments to the said Acts sought to: 1) enable USA FATCA and OECD Common Reporting Standard (CRS) under Bermuda law; and 2) clarify that a person in receipt of a Production Order (PO) can apply to the Court for a review of the PO if necessary, but can only seek disclosure of some of the supporting documents filed with the Court, provided the Court approves that the review application can proceed, and the Court will determine which supporting documents may be disclosed. In essence the amendments empower the Court to deal with such disclosures.

Further, during this period the Minister of Finance visited the EU Commission to address its list entitled 'List of Third Country Non-Cooperative Tax Jurisdictions'. The Minister is steadfast in his efforts to have Bermuda removed from the EC's master blacklist and the number of countries that have targeted Bermuda has decreased to nine (from 11). It should be noted that Bermuda has signed Tax Information Exchange Agreements (TIEAs) with countries around the world together with a Multilateral Tax Convention, totalling some 80 treaty partners representing today's international standard for exchange of tax information and cooperation.

Registry General

The Registry General team has been working diligently this period to finalise the Guidance Notes regarding the AML/ATF requirements and training for charities and their compliance officers. It is anticipated that training sessions focused on the Guidance Notes will commence in September 2015. During the second quarter of 2015, the Registry General received seven applications to register new charities and 14 applications to renew/re-register existing charities. The Registrar General approved three new charity applications, deferred the registration for two applicants, and denied three new charity applications. During the period, in accordance with the requirement for registered charities to file their financial statements, the Registry General received 21 financial statements from various registered charities.

Office of NAMLC (the Office)

The on-going initiative to update the legislative framework continued to be a priority of the Office of NAMLC this quarter. Accordingly, work continued on progressing the amendments to the AML/ATF legislation, in order to meet the requirements of the revised FATF standards. To this end, the Draft Bill entitled Proceeds of Crime Amendment Bill 2015 (draft dated 5 July 2015), together with a Consultation Paper on the Combined POCA Bill 2015 dated July 2015, and the document titled NAMLC Response to Industry Comments on the 2014 Consultation Paper, were disseminated to industry for consultation on 17 July 2015. Industry is invited to submit comments on the provisions of the Draft Bill on or before Tuesday, 11 August 2015 (the Consultation Paper is also available at www.namlc.bm). During the quarter, the Office also worked in collaboration with the Ministry of Tourism Development and Transport to provide drafting instructions specific to bringing the casino gaming sector in scope of the AML/ATF laws. To that end, on Friday, 17 July these AML/ATF amendments were laid before the House of Assembly by way of Motion, as a Schedule to the Bill entitled Casino Gaming Amendment Act 2015. This Bill was passed in the House of Assembly on that date.

Further, during this period the Office of NAMLC organised the inaugural meeting of the Supervisory Forum, a new sub-committee of NAMLC chaired by the Chairman of NAMLC, Mrs. Cheryl Ann Lister. The purpose of the Supervisory Forum is to enhance collaboration and coordination between all AML/ATF supervisory authorities and, among other things, to facilitate dialogue, sharing of best practices and establishment of efficiency protocols in areas where the functions of these authorities overlap. The first meeting was successful and all current and anticipated supervisory agencies were represented,

namely: the BMA, the Registrar General, the Registrar of Companies, the Bar/Accountants AML/ATF Board, the FIA, and the Gaming Commission.

Department of Public Prosecutions (DPP)

During the second quarter of 2015, the DPP continued to provide advice and support to the Bermuda Police Service's Financial Crime Unit (FCU) in respect of on-going money laundering investigations; cash seizures; and the preparation of Production Orders pursuant to the Proceeds of Crime Act 1997 (POCA). During this period the following developments occurred: there were on-going proceedings in the Magistrates' and Supreme Court in respect of six (6) matters: there were three (3) convictions for money laundering offences, in one case the defendant is awaiting sentence; in another case the defendant received 3 months imprisonment suspended for 12 months and a confiscation order was obtained for \$35,343.00; and in the third case the defendant received eight and a half (8 1/2) years imprisonment and the DPP obtained a forfeiture order for \$5,000.00 pursuant to section 48A of POCA; there was a conviction for possession of a controlled drug intended for supply which resulted in the DPP obtaining a forfeiture order for the sum of \$4,765.00 pursuant to the Misuse of Drugs Act; and there were two (2) acquittals for money laundering during the period. There was also a notice of appeal served by the defendants in respect of convictions for money laundering during this quarter.

Additionally, during the quarter, a Deputy Director, from the DPP's Office, attended a training course in the Caribbean on money laundering, fraud and the proceeds of crime. Further, recently Mr. Richards joined the DPP's Office to provide assistance in regards to specialist matters and continues to be an asset to the team. The specialist team is also in the process of assigning specific administrative staff to maintain and record information and statistics in respect of seizures and forfeitures.





we are on the web

www.namlc.bm

**Office of the National Anti-Money
Laundering Committee**

4th Floor, Global House
43 Church Street
Hamilton, HM12
Bermuda

Phone: 441-294-9797

E-mail: info-NAMLC@gov.bm

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Government of Bermuda

Ministry of Legal Affairs

The Hon. Trevor Moniz, JP, MP
Attorney General and Minister of Legal Affairs

Editorial Staff

NAMLC Team