



FINANCIAL INTELLIGENCE AGENCY

FINANCIAL

INTELLIGENCE AGENCY BERMUDA

ANNUAL REPORT

2009-10





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September 8th, 2011

The Hon. Michael Scott JP, MP
Attorney General & Minister of Justice
Attorney's General's Chambers
4th Floor, Global House
43 Church Street
Hamilton HM 12

Dear Minister,

It is with pleasure to submit the Annual Report reviewing the work of the Financial Intelligence Agency for the 1 April, 2009 to 31 March, 2010.

The Annual Report is submitted in pursuance of Section 12 of the Financial Intelligence Agency Act, 2007.

Sincerely,

A handwritten signature in black ink, appearing to read "Sinclair White", is written over a large, stylized, light-colored scribble.

Sinclair White
Director

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“ I am particularly delighted at the level of experience that now resides within the FIA and the commitment of our team. ”

Chairman's Report

As Chairman of the Board of Directors (the 'Board') of the Financial Intelligence Agency (FIA), I have great pleasure in submitting my report on the very important activities of the Board for the operating year ending March 2010. This period, April 2009 – March 2010, represents the first full year during which the FIA carried out its legislative obligations and functions.

The FIA's role and functions are a key component of Bermuda's framework, guarding the jurisdiction against the harmful practices associated with money laundering, terrorist financing and proceeds of criminal conduct.

I am particularly proud of the Board and the FIA team's commitment to ensuring that the FIA does its part to assist Bermuda stakeholders, the National Anti-Money Laundering Committee, the Ministries of Finance and Justice, the Bermuda Police Service, the Bermuda Monetary Authority and many others that guard against the serious threats and destructive practices posed by money laundering and terrorist financing within Bermuda.

Commitment by Bermuda's stakeholders has had a significant impact on this activity and has resulted in recognition received by Bermuda from its international colleagues engaged in similar prevention activities within their jurisdictions.

In fact, the hard work that has been undertaken in Bermuda to fortify its AML/ATF framework has not gone unnoticed. For example, when the functions of Bermuda's FIU shifted from a law enforcement financial investigation unit to an independent administrative financial intelligence unit, The Egmont Group of Financial Intelligence Units realized the strength and depth of experience within the new organization and the effectiveness of the model allowed for the continuation of Bermuda's full membership to this prestigious group.

Throughout the year, the Board has been actively engaged with the FIA team to ensure that necessary resources have been appropriated and efficiently deployed to build and maintain the FIA infrastructure.

The accomplishments of the FIA during its first years of operation are numerous and noteworthy.

Major highlights for the Board included supporting the selection of four new and critical staff members to the FIA team, who have helped fortify and deepen the FIA's resources to better serve the Bermuda AML/ATF effort.

The Board was instrumental in the acquisition of the new goAML database. This state-of-the-art system provided by the United Nations Office on Drugs and Crimes creates the intelligence backbone of the FIA and significantly advances the FIA's analytical processes, procedures and reporting skills.

The latter part of the year was marked by an aggressive analysis conducted by the Board and FIA team regarding the oversight and compliance functionality to address the issue of the regulation of the Designated Non-Financial Businesses and Professions (DNFBPs). This project is under active consideration and discussion.

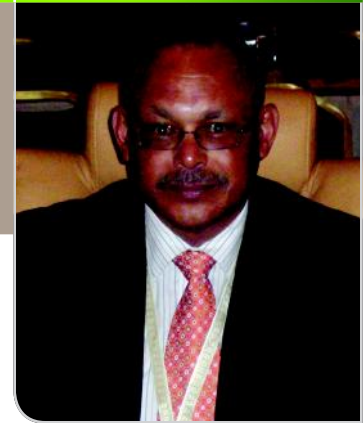
The FIA and its team have come a long way in a short period of time. A significant accomplishment of this nature can only come about through unwavering and honest commitment to a cause, solid commitment by all stakeholders and crystal clear focus on the intended ultimate result.

I am delighted to present this report and to provide my sincere thanks to those that have supported the FIA through the crucial stages of its development. I am particularly delighted at the level of experience that now resides within the FIA and the commitment of our team. There is no doubt in my mind that the FIA is entirely capable of carrying out its functions in a manner that will benefit the country, fortify the AML/ATF framework and be a model for other jurisdictions desirous of following our lead.

Greg Wojciechowski

Chairman of the Board of Directors

“ We must continue our collective effort to aggressively safeguard and protect our national and international financial communities. ”



Director's Report 2009–10

I have the honour and privilege as Director of the Financial Intelligence Agency (FIA) to submit the FIA 2009–2010 Annual Report, ending March 2010. The report, as mandated under Section 12 of the Financial Intelligence Agency Act, 2007, will highlight our activity.

The FIA plays an instrumental role within Bermuda's structure in the prevention of money laundering, terrorist financing and laundering of the proceeds of criminal conduct. In order to succeed with this crucial task, the FIA must remain proactive, vigilant and foster relations with our vital partners such as law enforcement, competent authorities, other Financial Intelligence Units (FIUs) and the reporting financial sectors. We must continue our collective effort to aggressively safeguard and protect our national and international financial communities.

The FIA 2009–2010 Annual Report marks the FIA's first full reporting year. Our steadfast commitment is to build on initiatives that were created from a solid 2008–2009 foundation. This report will inform the reader of the various strategic and operational aims, goals and objectives that the FIA has accomplished during the 2009–2010 year.

A tremendous amount of energy and time has been demonstrated by the committed and dedicated FIA staff. This has enhanced all aspects of our collective ability, expertise and skills, allowing for the production and dissemination of quality and useful financial intelligence products to our partners in an effective and timely manner.

The success of the FIA can only be achieved by working harmoniously with the relevant reporting stakeholders. More effective collaboration with the financial services industry will ultimately result in the FIA fulfilling our mandatory function locally and globally in the fight against money laundering and terrorist financing.

The synergy of the FIA is further demonstrated by our

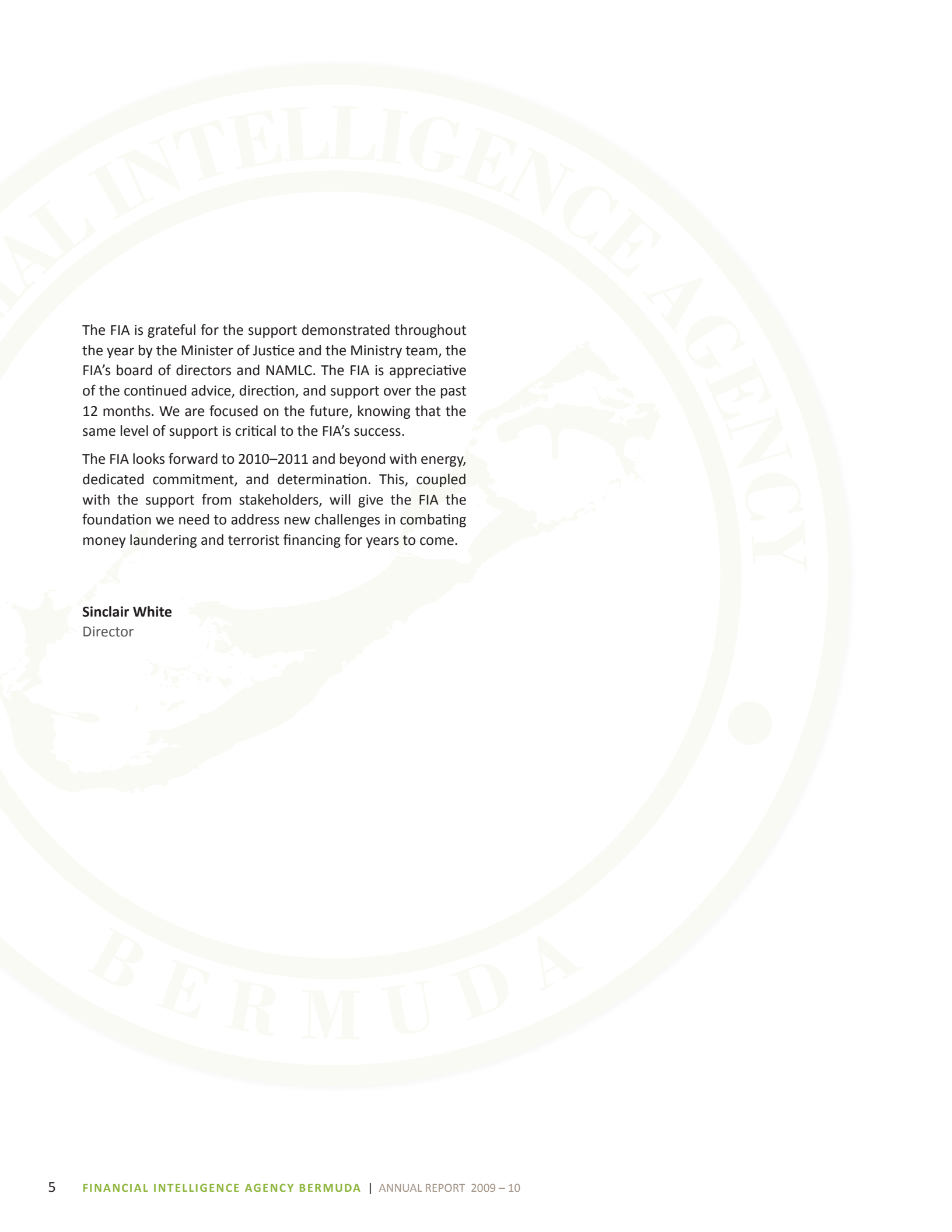
involvement at different levels within the local and global context. Locally, we continue to actively participate in the National Anti-Money Laundering Committee (NAMLC), and internationally, we are involved in various working groups within the Caribbean Financial Action Task Force (CFATF) and the Egmont Group.

Emphasis this year has been placed on training and development programmes in order to ensure that the FIA team is equipped and knowledgeable to meet demands placed on the FIA. The various training courses have allowed the FIA to continue to perform our mandated functions in the prevention of money laundering and terrorist financing.

Legislatively, the FIA senior legal counsel continues to keep a watching brief on all relevant legislation that may have an impact on the mandated functions and operations of the FIA. The legal counsel is the integral link between the operations of the FIA, Bermuda Monetary Authority and NAMLC in making necessary recommendations for changes to legislation to enhance Bermuda's Anti-Money Laundering and Anti-Terrorist Financing Regime ('AML/ATF Regime').

The year 2009 saw the implementation of the goAML software as the intelligence information technology backbone of the FIA. The system provides the FIA with a world-class platform to manage and analyze reported information and to produce intelligence reports that help to more easily recognize patterns and trends. The increased quantity and quality of information/intelligence that is now stored and secured in the goAML database has increased the efficiency of the operation whilst directly benefiting our reporting partners, colleagues and the jurisdiction.

There was much research and deliberation by the FIA team during the latter part of the year regarding the supervision and operation of a potential, new regulated industry called the Designated Non-Financial Businesses and Professions (DNFBPs). This matter is still being addressed.



The FIA is grateful for the support demonstrated throughout the year by the Minister of Justice and the Ministry team, the FIA's board of directors and NAMLC. The FIA is appreciative of the continued advice, direction, and support over the past 12 months. We are focused on the future, knowing that the same level of support is critical to the FIA's success.

The FIA looks forward to 2010–2011 and beyond with energy, dedicated commitment, and determination. This, coupled with the support from stakeholders, will give the FIA the foundation we need to address new challenges in combating money laundering and terrorist financing for years to come.

Sinclair White
Director

List of abbreviations

ABBREVIATION	DESCRIPTION
AML/ATF REGIME	Anti-Money Laundering/Anti-Terrorist Financing Regime
AMLC	Anti Money Laundering Committee (Philippines FIU)
BMA	Bermuda Monetary Authority
BPS	Bermuda Police Service
CFATF	Caribbean Financial Action Task Force
CSP	Corporate Service Provider
CUSTOMS	H.M. Customs
DNFBP	Designated Non-Financial Businesses and Professions
EGMONT	The Egmont Group of Financial Intelligence Units
FATF	Financial Action Task Force
FIA	Financial Intelligence Agency
FinCEN	Financial Crimes Enforcement Network (USA FIU)
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada (Canada FIU)
FIU	Financial Intelligence Unit
IMF	International Monetary Fund
MER	Mutual Evaluation Report
MOU	Memorandum of Understanding
MSB	Money Service Businesses/Bureau
NAMLC	National Anti-Money Laundering Committee
POCA	Proceeds of Crime Act 1997
RFI	Request for Information
SAR	Suspicious Activity Report
SOCA	Serious and Organized Crime Agency (UK FIU)
UNODC	United Nations Office on Drugs and Crimes
USA	United States of America

The Financial Intelligence Agency (FIA)

EGMONT MEMBERSHIP

The 17th Annual Egmont Group Plenary was held in May 2009 in Doha, Qatar and was attended by the Director and the Senior Legal Counsel of the FIA, Mr. Sinclair White and Ms. Susan Davis-Crockwell respectively. Bermuda was formally re-admitted as a full member of the Egmont Group following its successful transition from a law enforcement type FIU to an administrative FIU in November 2008. The Egmont Group commended the FIA on its effective and seamless transition and encouraged other Egmont member jurisdictions that may be considering a similar transition to follow the model that was set by Bermuda.

Representatives of the FIA have and continue to actively take part in both the training and legal working groups of the Egmont Groups.



The Egmont Group Committee, Doha, Qatar, May 2009

SIGNING OF MEMORANDA OF UNDERSTANDING (MOU) WITH EGMONT MEMBERS

Throughout the course of the 2009–2010 period, the FIA has negotiated and signed 16 MOUs with the following Egmont members:

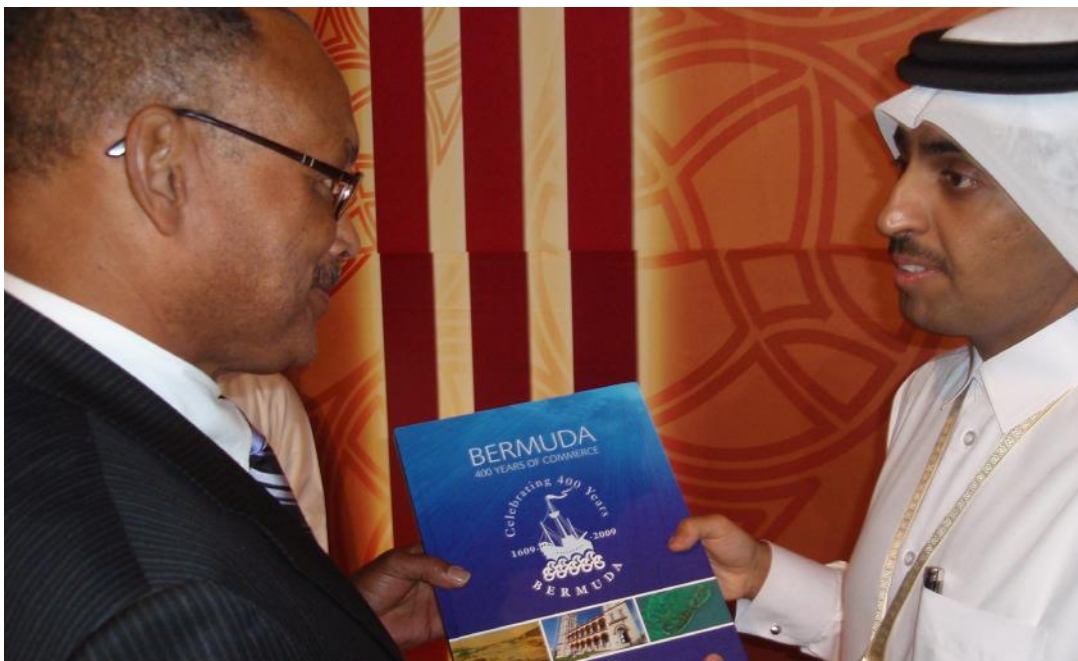
1. Armenia
2. Belgium
3. Canada
4. Indonesia
5. Korea
6. Monaco
7. Montenegro
8. Nigeria
9. Netherland Antilles
10. Philippines
11. Romania
12. St. Vincent and the Grenadines
13. United Arab Emirates
14. United Kingdom
15. United States of America
16. Ukraine



Egmont MOU's signed by (clockwise starting from top right), United Kingdom (SOCA), Canada (FINTRAC), USA (FinCEN) and Philippines (AMLC)

The following nine jurisdictions have confirmed that they do not require a memorandum of understanding to enable them to exchange information with the FIA.

1. Australia
2. Bahamas
3. British Virgin Islands
4. Cayman Islands
5. Germany
6. Hong Kong
7. The Netherlands
8. St. Kitts & Nevis
9. Turks & Caicos Islands



FIA Bermuda presents host FIU Qatar, with the book, Bermuda: 400 years of Commerce

Inter-agency relations

BERMUDA POLICE SERVICE (BPS)

Both the newly established FIA and the BPS were cognizant that the Egmont Group is the formally recognized international body under which FIUs work collaboratively. Pursuant to the Egmont Group policy, two separate entities cannot be operational simultaneously within the source country whilst carrying out its financial intelligence functions. Thus, the transition of financial intelligence functions from the BPS to the FIA required immediacy, allowing for the FIA to fully assume the financial intelligence functions previously performed by the BPS (the 'Transition').

The BPS and the FIA recognized that the success of both organizations implementing and enforcing Bermuda's AML/ATF Regime would be dependent upon both the BPS and FIA working closely together to achieve a common goal — that being AML/ATF investigations that can lead to prosecutions and ultimately cash seizures, confiscations and forfeitures (the 'BPS/FIA Operations').

Accordingly the FIA and BPS entered into a Transitional MOU which provided for the secondment of two BPS officers who possessed broad experience and expertise in administration and law enforcement, and the law relating to financial services and financial regulation. The BPS officers were responsible for training FIA analysts in the manner in which the BPS previously handled the administrative side of financial intelligence functions.

Further, the said MOU also highlighted the desire to solidify and strengthen the BPS/FIA Operation by acknowledging the intention at the conclusion of the Transition period to sign a substantive MOU. Accordingly, this MOU will detail the terms of the ongoing BPS/FIA Operations and more importantly, cooperation.

FUNDING

The FIA has been adequately funded since its inception through grants received from the Government of Bermuda. In April 2009, the House of Assembly approved in the Annual Budget the sum of \$5.5 million to fund the Agency for three years. This money was set aside in the Confiscated Asset Fund, which was established under Section 55A (3)(ac) of the Proceeds of Crime Act, 1997. A signed MOU between the Ministry of Justice and the FIA allows the FIA to draw money from this allocation on a quarterly basis. The FIA must submit its Annual Budget to the Ministry for Legislative approval. Such ongoing funding has enabled the FIA to be properly structured, staffed and provided with technical and other resources to fully and effectively perform its mandated functions.

The FIA moves towards electronic filing of suspicious activity reports (SARs)

Over the years, the implementation of an electronic reporting system in Bermuda for the reporting of SARs has been discussed. One of the initial goals of the newly established FIA was to implement such a system that would enable it to effectively and efficiently fulfil its statutory functions.

The FIA conducted an exhaustive review of the solutions available to FIUs and chose goAML, a product of the Information Technology Service of the United Nations Office on Drugs and Crime (UNODC) in partnership with the UNODC Global Programme against Money Laundering. It is an integrated database and intelligent analysis system intended for use by FIUs worldwide.

As of 4 January 2010, goAML had been implemented in the Palestine Monetary Authority (PMA) and the FIU's of South Africa, Tanzania, Nigeria, Namibia, Kosovo and Bermuda. More implementations are planned at other FIU's in 2010.

On 24 June 2009, a presentation was made to the Bermuda Bankers Association Sub-Committee wherein it was advised of the FIA's plan to implement a new information technology system that would enable the online reporting of SARs.

The goAML solution is executed in three steps: collection, analysis (rule-based analysis, risk-score and profiling) and dissemination (which includes an escalation to local law enforcement, regulatory authorities in Bermuda and foreign FIUs and thereafter seeking feedback). It provides a facility for the rapid exchange of information between the FIA, financial institutions, law enforcement and judicial authorities, while ensuring confidentiality of the data collected. The goAML software is designed as a modular system to fit the needs of any FIU irrespective of size and is able to handle approximately 1.8 million transactions per hour. Some of the benefits of goAML to the FIA are as follows:

- A uniform system for FIUs, which includes data collection, collation, analysis, case workflow and intelligence dissemination.
- Visual representation of transactional link analysis, automated link analysis using addresses, phone numbers, company board membership, etc.
- Support of multilingual user interface enables the user to operate the system in his/her own language.
- Data encryption ensures the safety of data even if the system is physically compromised.
- Fully customizable rule-based analysis enables the design of rules which utilize dynamic fully customizable risk scoring; continuous scanning of data ensures that reported transactions fit the patterns.
- Availability of initial and ongoing user training.
- Fully customizable reporting interface with links to other data analysis screens and drill down functionality enables the FIA team to view data the way they want to be independent of each other.
- Fully automated data profiling that creates baselines for persons, occupation groups, business types and accounts, etc.
- Support of a wide range of data volumes depending on the reporting mandates in individual jurisdictions.
- XML-based reporting standard between reporting entities and FIA guarantees syntactically correct reports from day one.
- Data collection is through the goAML secure website (hosted on the FIA's premises), via offline media (CD-ROM) or on predefined reporting forms.
- Versatile options like dynamic user filtering, grouping of data, export data to MS Excel, watch lists integration, analyst workspace and alert management.

On 18 August 2009, the major reporting institutions, by volume, were provided with the standard XML documentation to enable online reporting. On 10 September 2009, a selection of information technology and money laundering reporting officers from Bermuda's reporting institutions were invited to a meeting at the FIA, which provided the opportunity for the UN representative to introduce the goAML XML schema.

The FIA operated goAML in a test mode from September 2009 through to December 2009 to allow for reporting entities to transition from a paper based to an electronic reporting system. However, in consideration of the differing IT capabilities of the various reporting entities in Bermuda, goAML was also made immediately available in a live version for those reporting entities that had the required IT infrastructure to enable online reporting. The goAML system went live for all users on 1 January 2010 and from that date, paper SAR reporting was discouraged.

SARs may be submitted online, through direct upload of XML data on the FIA's website, or manually by using the FIA's web portal. In the event a paper report is received, these can be manually entered by FIA analysts.

The FIA continues to meet with prospective users to provide hands-on training of the goAML system and the FIA.

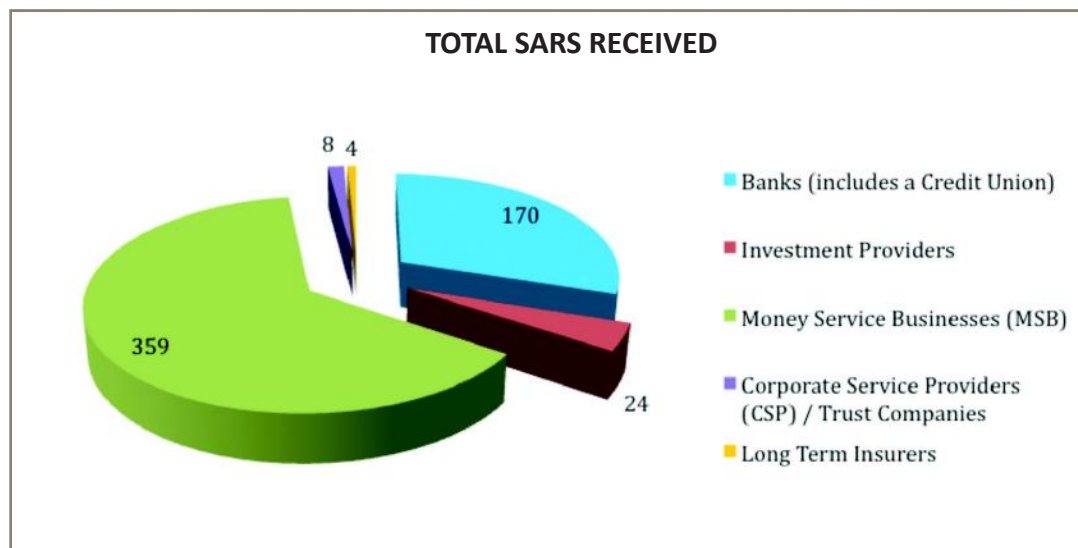
From 1 January 2010 to 31 March 2010, 66 SARs were filed using the goAML electronic filing system and 1,856 transactions were analyzed via the goAML analytical tool. Further, the use of the goAML system as a whole has enabled the FIA to make 22 disclosures during the first quarter of 2010, which represent an increase of 214% over the same period of the preceding year.

A major revision to goAML was implemented in March 2010 to ensure that it continues to be the cutting edge anti-money laundering software that fits the needs of FIUs worldwide. This includes the FIA Bermuda.

SARs Analysis – Trends

1 APRIL 2009 – 31 MARCH 2010 (THE ‘REPORTING PERIOD’)

This report represents the first full year of reporting for the FIA. During the reporting period the FIA received 565 SARs which can be broken down as follows:



STATISTICS	TOTAL	PERCENTAGE
Money Service Businesses (MSB)	359	63.5%
Banks (includes a Credit Union)	170	30.1%
Investment Providers	24	4.3%
Corporate Service Providers (CSP)/Trust Companies	8	1.4%
Long-Term Insurers	4	0.7%

Although the SAR reporting figures cannot as of yet be compared to a full year of a previous reporting year, the reporting figures of the first quarter of 2009 can be compared. Comparing these numbers shows that the two quarters have relatively close numbers of SARs being reported, with 192 SARs reported in the first quarter of 2009 and 195 SARs in the first quarter of 2010.

Since the adoption of the goAML system in September 2009, the FIA has begun the manual entry of all previously received paper SARs, and the electronic entry of all new SARs. The goAML system and database, as it becomes populated, will allow the FIA to perform increasingly sophisticated analysis.

MAJOR TRENDS IN SAR REPORTING (1 APRIL 2009 TO 31 MARCH 2010)

Following an analysis of all of the SARs filed during the reporting period, the FIA surmised that 84.7% of the SARs received during the reporting period represent Bermuda dollars being exchanged for foreign currency through local banks and MSBs for the presumed purpose of facilitating Bermuda's illicit drug and firearms/ammunition trade. As firearms/ammunition are not manufactured in Bermuda, nor are illicit drugs manufactured in Bermuda on a global scale, i.e., cannabis, the majority of these illicit items are being imported into Bermuda. Accordingly, the Bermudian importer must use the foreign currency of choice (US dollars) in the transaction. Therefore, the exchange of Bermuda dollars for a foreign currency is absolutely essential to the trade in illicit drugs and firearms/ammunition.

The conversion process of Bermuda dollars to a foreign currency is most often accomplished in one of two ways: i) the direct exchange through a bank or MSB or ii) the wiring of monies overseas via a MSB. Most of the transactions reported to the FIA during the reporting period were under BMD\$5,000, and commonly involving multiple transactions conducted on the same day at different banks or MSBs, or even at different branches of the same bank.

i) Direct Cash Exchanges

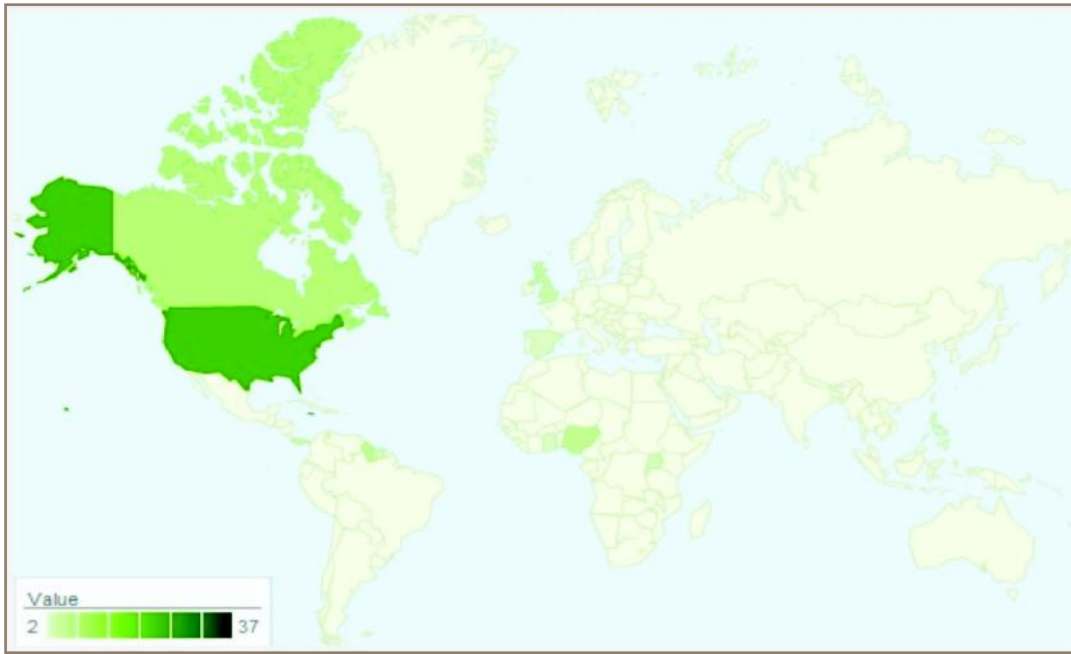
A further analysis of the SARs filed in the bank and credit union sector has shown that 80% of submitted SARs concern the exchange of BMD cash for USD cash. This practice is the largest trend seen by the FIA in the bank and credit union sector.

ii) Electronic Funds Transfers

All the SARs filed by MSBs also follow the money laundering/cash exchange trend. One hundred and one of the SARs filed by MSBs represent currency transfers, and six represent direct MSB cash exchanges. In contrast to the overall average value for SARs, the average reported transaction from MSBs was only BMD\$2,507. The majority of the transactions, 101 of the 107 MSB SARs, involved monies being sent overseas to numerous countries; some SARs involved sending to multiple countries and contained multiple transactions.

The following is a list of the countries to which monies have been sent from Bermuda via MSBs. Between 1 October 2009 and 31 March 2010, the number of SARs involving these countries are as follows (some SARs involve multiple countries):

COUNTRY	NUMBER OF SARs FILED WITH THE FIA INVOLVING THE COUNTRY
1. Jamaica	37
2. USA	27
3. Canada	8
4. Guyana	6
5. Nigeria	6
6. Panama	4
7. United Kingdom	4
8. Suriname	3
9. Uganda	3
10. Ghana	2
11. Philippines	2
12. Sint Maarten	2
13. Spain	2



Intensity map of SARs filed by MSBs from 1 October 2009 to 31 March 2010 involving various countries.

Of the SARs filed by MSBs, 35% involved monies being sent to Jamaica, 25% to the United States, and 7% to Canada.

The FIA has a close working relationship with the USA and Canada, both being Egmont members. Based upon the above numbers the FIA will be pursuing a closer relationship and the possibility of a formal MOU with the Jamaican FIU to facilitate information exchange.

SAR FILING TRENDS

The FIA received no terrorist financing SARs during this period.

The SAR numbers indicate more frequent filing in 2009/2010 compared to the previous annual report. However, comparing the last three quarters of 2009 with the first quarter of 2010, the FIA has seen a decrease in SAR reporting for the first quarter of 2010. The FIA will continue to monitor this trend over the next year, and inform its regulatory counterpart the BMA of the SAR reporting decline.

goAML ANALYSIS

Since goAML was installed in September 2009, the FIA has entered all SARs into goAML received between 1 October 2009 and 31 March 2010. This has enabled the FIA to perform a more detailed analysis of all of the transactions that were reported within each of the SARs filed during this time period.

From 1 October 2009 through to 31 March 2010, the FIA received 187 SARs. These SARs concerned 679 suspicious transactions, representing a total value of BMD\$3,238,369.74. The average value of all reported transactions during the period was BMD\$4,769.00.

The SARs received during this period can be further broken down by reporting sector as follows:

NUMBER	REPORTING SECTOR
106	Money service business
67	Bank and credit unions
6	Investment service providers
5	Long-term insurers
2	Corporate service providers/Trust companies

Of the 187 SARs filed from 1 October to 31 March 2010, 155 or 83% involve what the FIA believe to be the same trends.

DISSEMINATION OF INFORMATION/INTELLIGENCE RECEIVED

The FIA is an independent agency with the ability to receive, gather, store, analyze and disseminate information/intelligence relating to suspected proceeds of criminal conduct, potential money laundering offences and potential terrorist financing offences. As an intelligence agency with no law enforcement or regulatory powers, the receipt of information/intelligence by the FIA must be followed with the dissemination of the same along with FIA added value, to the relevant competent authorities in a timely and secure manner.

The primary operations of the FIA are detailed in Sections 14 and 18 of the FIA Act. These sections clearly show that the work of the FIA is focused on disclosures of information/intelligence to the relevant competent authorities, including the BPS, foreign FIUs, the Minister of Finance, the Minister of Justice and the BMA, so that they may discharge their own statutory functions. Most disclosures are made to the BPS, foreign FIUs and Customs (under the Ministry of Finance).

Substantive disseminations contain classified information that is regularly transmitted to the BPS, Customs and foreign FIUs and is recorded as 'a disclosure' in our quarterly and year-end statistics. These disclosures, consisting of specific details on subjects as well as SAR information obtained from reporting entities, is considered classified information and is handled and marked as such.

During the Reporting Period, the FIA made 51 disclosures of classified information/intelligence to their local and foreign partners. These disclosures consisted of information received by the FIA via SARs (114 SARs were disclosed) as well as information/intelligence obtained by the FIA further to its information gathering powers under Section 16 of the FIA Act. Most importantly, all of these disclosures contained analysis by the FIA's staff in their efforts to provide beneficial intelligence to the FIAs local and foreign partners.

INTERACTION WITH FOREIGN FIUS

During the Reporting Period, the FIA received 18 Requests for Information (RFI) from foreign FIUs:

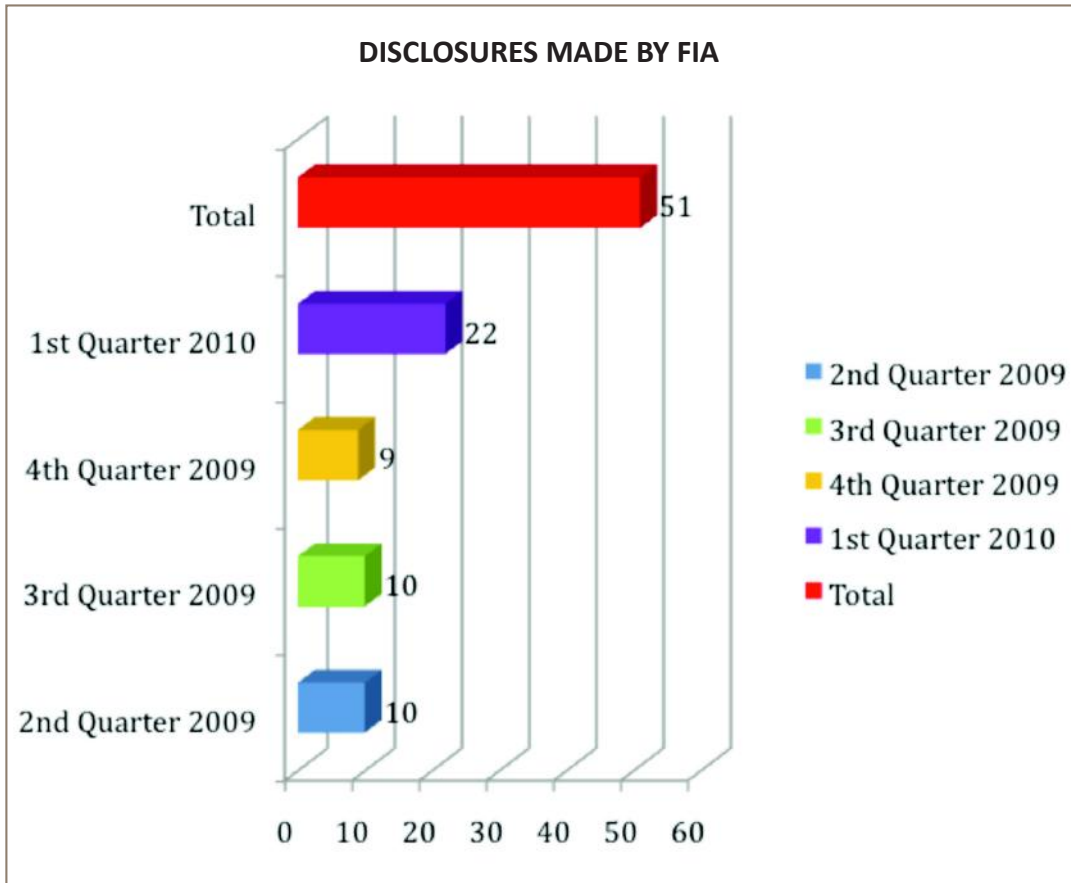
COUNTRY FIU	NUMBER OF RFI's
USA	3
Guernsey	3
Venezuela	2
Bosnia	1
Sri Lanka	1
St. Vincent & The Grenadines	1
Jersey	1
Moldova	1
Taiwan	1
Turkey	1
Nigeria	1
Mauritius	1

In keeping with its agreements with its EGMONT FIU counterparts, the FIA considers all RFIs from foreign FIUs as containing classified information. However, not all RFI's require a disclosure of information by the FIA. In fact, only six (check this number) RFIs required a disclosure of classified information by the FIA.

Of the 51 disclosures made by the FIA during the reporting period 16 of the disclosures were made to foreign FIUs, which are listed below.

FIU	NUMBER OF DISCLOSURES
USA	9
Switzerland	2
Sweden	1
Philippines	1
Cayman Islands	1
St. Kitts & Nevis	1
United Arab Emirates	1

These 16 disclosures included the aforementioned six requests for information, as well as 10 spontaneous disclosures generated by the FIA.



DISCLOSURES VS. RELEASES OF STATISTICAL INFORMATION

The FIA provides quarterly statistics to the BPS, the BMA and NAMLC on SARs received, and reporting trends identified by the FIA. This information, which contains no actual details as to subjects or individual reporting entities, is considered unclassified. Although the release of this statistical information is often restricted, much of the information eventually ends up in public documents such as this annual report. Accordingly, the FIA does not consider the release of statistical information and trends a disclosure under the FIA Act.

MOVING FORWARD

Unfortunately, much of the information received by the FIA is still in paper format, which makes analysis time consuming and less efficient. With the implementation of goAML the FIA intends to gradually make the filing of SARs and the FIAs receipt of information further to Section 16 of the Act a paperless process.

Recent Supreme Court Cases/Rulings

CONSENT TO CONTINUE TO CONDUCT BUSINESS/PROCEED WITH A TRANSACTION

Sections 44 (3)(b)(i) and 45(5)(b)(i) Proceeds of Crime Act 1997 (POCA)

One of the defences to the money laundering offences contained within Sections 44 and 45 of POCA is the making of an authorized disclosure by a financial institution before the act in question can be committed and obtaining the appropriate consent from the FIA.

In essence, if a financial institution receives instructions from its client to pay out money from its account and the nature of the client's activity or the instructions themselves raise suspicion with the financial institution, it should file a SAR with the FIA and request consent under either Sections 44 or 45 of POCA before proceeding. If the FIA consents to the transaction taking place, then, the financial institution is protected from possibly assisting in money laundering if it is later determined that the bank's client was in fact laundering proceeds of criminal conduct.

If the FIA does not consent to the transaction taking place, then the financial institution faces a dilemma. On the one hand, it has an anxious client demanding that the transaction be completed by the financial institution and querying the reason for the delay. On the other hand, the financial institution is suspicious that its client may be engaged in some form of criminal conduct and if it follows through with completing the transaction it will possibly assist the client in retaining, possessing or using the proceeds of criminal conduct, i.e. assisting in money laundering.

The reality for the financial institutions is that once the suspicion is formed and the SAR is filed with the FIA, it will err on the side of caution and not complete the client's instruction to move the funds. This will result in the customer's account being informally frozen by the financial institution until it has received consent from the FIA to conduct the transaction or some formal action has been taken to restrain or freeze the monies in the account.

Now, the financial institution is faced with an increasingly annoyed client querying the status of the transaction and demanding answers for the delay. To make matters worse for the financial institution, it is prevented from informing its client that the reason for the delay is because it has filed a SAR with the FIA and it has not received the requisite consent to continue with the transaction. If the financial institution were to provide this information to its client then, it places itself at risk of committing a tipping-off offence under Section 47 of POCA.

The only apparent option available to the client (who is not aware of the filing of a SAR) would be to bring a civil claim against the financial institution and seek to enforce his/her contractual rights by compelling the financial institution to complete the instructions and possibly pursue damages for breach of contract.

The financial institution is then caught in the middle between its client and facing possible civil liability on the one hand and the FIA and possible criminal liability on the other hand. What is it to do?

This scenario and the remedies that may be available to an aggrieved customer and the resultant breach of contractual liabilities that financial institutions may face was considered for the first time by the Supreme Court of Bermuda in June 2009 in the case of Founding Partners Capital (Bermuda) Limited and the Bank of N.T. Butterfield & Son Limited, Commercial Court No. 113 of 2009.

The Supreme Court considered a claim by a customer against his bank in relation to its failure to process a transaction. In this case, the Bank had filed a SAR with the FIA and was seeking consent under Sections 44 and 45 of POCA to enable it to complete the transaction. Given the circumstances contained in the SAR, consent to the transaction was refused by the FIA and it continued to conduct inquires into the matter.

The client made several demands that the bank complete the transfer and eventually filed suit against the bank in the Supreme Court, seeking both a mandatory injunction (compelling the bank to proceed with his instructions) and a claim for damages arising out of the bank's breach of contractual duty.

Justice Bell ruled that he was unwilling to make an order "...which would have required the Bank to put itself at risk by ignoring an instruction from the regulator and thereby prima facie committing a criminal offence...". He further considered and applied the ruling of Longmore LJ in the judgment of the UK Court of Appeal in the case of *K Ltd v. National Westminster Bank PLC* [2006] EWCA 907 saying that:

"[10] If the law of the land makes it a criminal offence to honour the customers' mandate in these circumstances there can, in my judgment, be no breach of contract for the bank to refuse to honour its mandate and there can, equally, be no invasion (or threat of an invasion) of a legal right on the part of the bank such as is required before a claimant can apply for an injunction. If that is right, there would be no issue to be tried in any later legal proceedings and any application for an interlocutory mandatory injunction has to be dismissed.

[11] It could be said that this puts the matter over-legalistically or over-dramatically in the sense that it is not usually a defence to a claim for a breach of contract that the contract-breaker would, by performing the contract, be in breach of the criminal law. That is not, however, correct. The conventional view is that, if a statute renders the performance of a contract illegal, the contract is frustrated and both sides are discharged from further performance. In a case, however, where statute makes it temporarily illegal to perform the contract, the contract will only be suspended until the illegality is removed. That still means that, during the suspension, no legal right exists on which any claim to an injunction must depend."

This case shows the adoption by the Bermuda Supreme Court of bank-friendly cases seen in the UK over the past decade. Up until 2010, the UK Courts have taken the view that the losses that a customer may suffer as a result of the way that the reporting regime under POCA works in practical terms is the price that Parliament (both in the UK and Bermuda) is prepared to take when fighting the battle against money laundering.

A possible game changer to this 'bank friendly' approach by the UK Courts may come about following the decision of the UK Court of Appeal in the case of *Shah v. HSBC Private Bank (UK) Limited*.

In 2009, HSBC Private Bank (UK) Limited was successful in obtaining summary judgment on a claim brought by one of its customers, Mr. Shah and his wife, who were seeking damages for breach of duty and failure to follow his instructions to process transactions whilst requests for consent under POCA (UK) were pending with SOCA.

The original suit against the bank had been summarily dismissed as the lower Court essentially concluded that in order for Mr. Shah to challenge HSBC's suspicion successfully he would have to prove bad faith on the part of HSBC and that there was no real prospect of success in that regard.

Mr. Shah sought to overturn the decision asserting that:

- The case was not straightforward and therefore not suitable for summary dismissal and should proceed to trial;
- HSBC failed in its duty to file a SAR as soon as possible.

HSBC countered that to obtain summary judgment, it was sufficient for it to just put in facts that a SAR was filed and that a Court would not expect the bank to produce witnesses to give evidence as to its suspicion. Therefore, a trial on the issue would be pointless as it would only ever result in judgment for the bank.

On 4 February 2010, the Court of Appeal allowed, in part, Mr. Shah's appeal against summary judgment. It should be noted that this decision of the Court of Appeal only considered whether Mr. Shah's case was suitable to be argued at trial.

The Court of Appeal recognized the difficult position that banks are in when dealing with POCA; however, the Court made it clear that the normal court proceedings were not to be sidestepped merely because Parliament enacted stringent measures to inhibit the "notorious evil of money laundering".

Any claim by a customer that his bank did not execute instructions is on the face of it a strong claim for breach of contract. However, when a bank says that it suspects money laundering, then a defence to the client's claim begins to emerge.

The Court of Appeal stated that there is no reason why the bank should not be required to prove the fact of suspicion in the ordinary way at trial by way of disclosure first and then, by calling primary or secondary evidence from relevant witnesses. The Court believed that there is a danger of injustice in deciding cases without appropriate disclosure and cross-examination of witnesses.

Where a bank relies upon having made a SAR and awaits the requisite consent under POCA in defence to a damages claim for breach of duty to a customer, the bank can be put to proof at trial of the suspicion of money laundering. The Court confirmed that while the bank does not need to show that the suspicion was based on reasonable grounds, proof is required of the fact of the suspicion provided that the suspicion is not fanciful.

This decision means that customers may obtain disclosure in civil litigation of a bank's internal documents relating to money laundering and require the bank to prove at trial that they held a relevant suspicion.

As this case has yet to go to trial, the true implications of this case remain to be seen .

Case Study

This case involves a subject who has a history of drug activity and is suspected of money laundering to unknown recipients in jurisdictions known for their drug distribution.

After a review of SARs submitted to the FIA, it was identified that within a period of 10 months, subject (A) had used a bank account to conduct over 150 transactions involving currency exchanges of Bermuda dollars to United States dollars, totalling over USD\$155,000. (It is a known fact that Bermuda is not a drug-producing country on a global scale and our dollars are not accepted anywhere other than Bermuda. Thus, to purchase illegal drugs and/or firearms and ammunition, our currency needs to be converted to a known and more widely accepted currency; the majority of the times, this is US dollars.)

A pattern was recognized involving the subject visiting several branches of the same banking institution on the same day and making structured cash deposits in exchange for cash withdrawals in US currency.

Upon analysis of this subject, the FIA was able to determine that this subject had on seven separate days, in particular, visited approximately three to four branches on the same day and exchanged currency totalling between USD\$15,000 – USD\$25,000 per day.

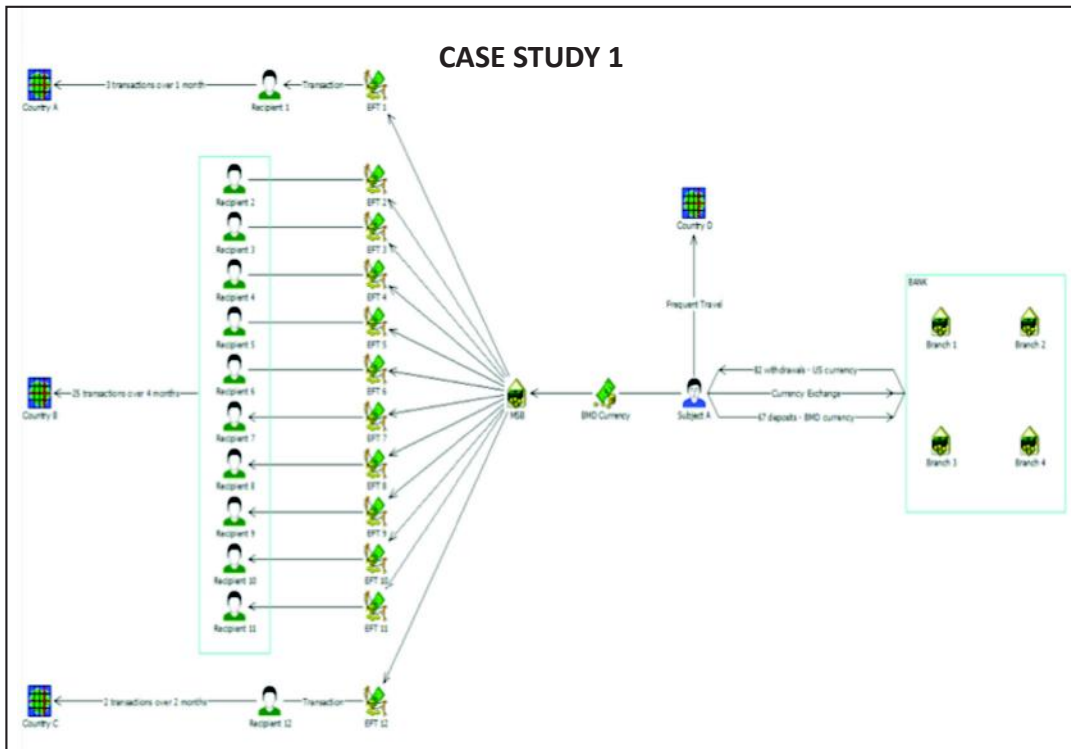
A review of the subject's travel overseas supported the suspicious activity as it was seen that subject (A) was travelling frequently, purportedly transporting US cash overseas for the purchase of illegal drugs and/or firearms. The frequency of subject (A)'s travel did not fit the profile nor was it related to their job as a self-employed labourer.

Further analysis was conducted and it was ascertained that the subject had conducted 30 electronic fund transfers (EFTs) to 12 recipients residing in three different jurisdictions. These transactions had occurred over a four-month period totalling approximately USD\$24,000. This activity was conducted prior to the currency exchange activity previously noted.

These suspicious transactions include EFTs to known drug-producing countries and substantial currency exchanges on the same day at different branches of the same banking institution.

As a result, the FIA was able to collate and analyze valuable information to disseminate a disclosure to local law enforcement, which is still being investigated.

A diagram showing the suspicious activity of the subject is shown overleaf.



MONEY LAUNDERING TECHNIQUES

Structuring can be defined as persons conducting financial transactions (such as currency exchange and electronic funds transfers) in a specific pattern to conceal the beneficial owner and avoid the reporting of suspicious activity required by law. The coordinated use of persons for the purposes of breaking down what would ordinarily be a large value transaction into several lower amounts is a specific type of structuring which is often referred to as **'smurfing'**.

Examples of this money laundering technique being used are as follows:

MONEY SERVICE BUSINESS (MSB) EXAMPLE:

- The ultimate beneficial owner of the monies in question would be disguised as they use several individuals (smurfs) to send funds through an MSB to the same recipient in a foreign jurisdiction. The individuals in question would attend a local MSB and send these monies to another jurisdiction. The amounts could sometimes be the same structured amount or close to it, with the recipient's name deliberately altered. These individuals would at most times attend the MSB immediately after one another or together to conduct their transactions.

BANK EXAMPLE:

- The ultimate beneficial owner of the monies in question would be disguised as several individuals (smurfs) are used to attend banking institutions and give the appearance that they are conducting a currency exchange for their own benefit. It has been noted that subject(s) intend to give the impression that they are alone. The person(s) behind them or even in a different teller line behave similarly or the same. They do not speak or acknowledge each other. Yet, when they leave the institution, it is seen that they both get into the same transportation. This activity may also occur throughout the day at different branches of the same banking institution.

FIA Activities 2009–2010

1. STAFFING WITHIN THE FIA

2009 saw the FIA welcome to its ranks an office administrator, a trainee analyst, a network coordinator and a senior analyst. The additional staff boosted the staffing number to eight, allowing the FIA to be more proactive in carrying out its mandated functions.

The introduction of goAML now allows the FIA to increase productivity and efficiency. The FIA will continue to review staffing levels to ensure that we maintain an optimum level of performance.

2. ATTENDANCE AT EGMONT GROUP AND CARIBBEAN FINANCIAL ACTION TASK FORCE MEETINGS AND PLENARIES

Egmont working group meetings

The FIA continues to attend the Egmont Group's working group meetings, which are typically held in October and March of each year. Staff members within the FIA actively take part in the training and legal working groups.

The FIA is currently involved with a number of projects within the Egmont Group.

- **The development of training packages and materials for FIUs.**
- **Reviewing applications for potential members to the Egmont Group.**

CARIBBEAN FINANCIAL ACTION TASK FORCE

Plenary – Trinidad, 4 – 8 May 2009

During the May 2009 Plenary of the CFATF, the follow-up report for Bermuda in respect of its 2007 Mutual Evaluation Report (MER) was presented by the secretariat. Bermuda was represented by the chairman of the NAMLC along with representatives of the FIA, the Attorney General's Chambers and the BMA. This follow-up report consisted of a detailed analysis by the CFATF secretariat of the actions taken by Bermuda to address not only recommendations in its MER but also for the ongoing monitoring status for Bermuda.

Bermuda's follow-up report was positive with commendation from the Secretariat for the significant amount of work that has been done to progress Bermuda's National Action Plan in light of the MER. Accordingly, it was confirmed that Bermuda was to be placed on regular follow-up and would not require reporting to the plenary until May 2011.

Plenary – Netherlands Antilles, 26 – 29 October 2009

At the October 2009 plenary of the CFATF, it was announced that the CFATF in conjunction with the FATF would be conducting a typologies research project to evaluate the operation and supervision of trust and corporate service providers (TCSP); and to assess the effectiveness of the AML/ATF requirements for TCSPs. The director also attended the CFATF heads of FIU (HoFIU) meeting where a number of important topics (recommendation 26, training for FIUs and typologies) and other matters of mutual interest in the region were discussed. The FIA also signed two MOUs with its Egmont colleagues, those being the FIUs of Netherlands Antilles and St. Vincent and the Grenadines.



Signing MOU with St. Vincent and the Grenadines FIU



Signing MOU with Netherlands Antilles FIU

Financial Action Task Force – Workshop, Cayman Islands, 20 November

Participants from around the region and beyond attended the FATF typologies workshop, which was held in the Cayman Islands in November 2009. Bermuda, represented by the chairman of NAMLC, Mrs. Cheryl Lister, chaired the workshop on TCSPs. During the TCSP workshop, the scope, purpose and intended products of the proposed project were discussed and a preliminary project team was established, along with working groups to address various aspects of the project. Participants in the workshop came from jurisdictions within the Caribbean and North America as well as from international organizations. A key feature of the regional jurisdictions involved in the workshop was the significant role of their financial services sector within their economies; and it was also evident that TCSPs also represented a valuable sub-sector in most of these jurisdictions. Representatives from the TCSP sector were also welcomed and present at the TCSP workshop.

Mrs. Lister, along with several other persons within Bermuda's public sector, took up key roles on the project team. The Director of the (FIA), Mr. Sinclair White; Mr. William Kattan, Director of Legal Services and Enforcement at the Bermuda Monetary Authority (BMA); Mrs. Renee Foggo, Senior Crown Counsel in the Attorney General's Chambers; and Ms. Paula Tyndale, Legal Consultant in the NAMLC Office, will all be involved in carrying this project forward. They will be working alongside their counterparts in several jurisdictions within the Caribbean region, Europe and North America, in addition to a number of international organizations.

It is envisaged that this project will be completed by the summer of 2010 for presentation at the October 2010 FATF Plenary.

3. INDUSTRY TRAINING

Sar filing

From April to July 2009, the FIA focused on providing basic AML/ATF presentations and SAR report writing and filing in Bermuda. The FIA made these presentations to the following business sectors:

- 1 x Law firm
- 2 x Banks
- 3 x Investment service providers and trust companies
- 2 x Money service businesses.

goAML

The FIA has implemented a one-on-one training programme with reporting entities in the use of goAML's web-based online reporting. Since the installation of goAML in September 2009, this training has been provided to the major reporting institutions. As other entities report SARs, it is planned that training will be given on a case by case basis, enabling all reported SARs to be filed electronically. Since the installation of goAML in September 2009, the FIA has conducted 11 one-on-one training sessions with local reporting entities.

In addition to the one-on-one trainings, on 28 September 2009, the FIA's Head of Analysis, Mr. Henry Komansky, gave a presentation at the Bermuda Compliance Summit II, held at the Fairmont Southampton Resort in Bermuda, on the electronic reporting of SARs in Bermuda. He also introduced the 188 compliance officers in attendance to goAML and the electronic filing of SARs.

4. STAFF TRAINING

Tactical analysis training course

A Tactical Analysis Training Course (TATC) offered by the Egmont Group took place from 6 – 12 July 2009, in St. Maarten, Netherlands Antilles. It was graciously sponsored by the Egmont Group and the World Bank.

Bermuda's FIA and the Netherlands Antilles FIU led in the implementation of this course as it was the first one being offered to the Caribbean region. The FIA's Head of Analysis, Mr. Henry Komansky, took part in this course in addition to completing the 'train the trainer' aspect of the TATC. We are pleased to report that Mr. Komansky is now qualified to present the TATC training to other FIA staff members, local law enforcement and other FIUs.

Fintrac compliance training course

The FIA, in collaboration with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), hosted an anti-money laundering/counter-terrorist financing compliance training course at the office of the FIA in October 2009. The training was delivered by instructors of FINTRAC with the participants from the FIA, the BPS, the BMA and the Bermuda Stock Exchange.

goAML

UNODC staff visited Bermuda in September 2009 and installed its software designed specifically for FIUs called goAML. FIA staff was trained in its operation and usage. At the end of March 2010, UNODC visited Bermuda again for further training and installation of a new goAML upgrade to further enhance goAML's features and functionality.

COUNTERING TERRORIST FINANCING GLEISSBACH III

14 – 17 December 2009, Lucerne, Switzerland

In 2007, the so-called Gleissbach process started when more than 100 experts from 33 countries met in Gleissbach, Switzerland to discuss important challenges posed by counter-terrorist financing (CTF) and to develop practical solutions to the main issues in question. This was followed by Gleissbach II held in Davos, Switzerland in 2008 with experts building upon the earlier experiences and discussions.

Gleissbach III again provided a platform for experts to address important issues on CTF, with the main focus being on the regulatory/supervisory community and financial sector. There were extensive discussions and exchange of views on developing a practical course of action.

The FIA was represented at Gleissbach III by the Senior Legal Counsel, Mrs. Susan Davis-Crockwell, and the Head of Analysis, Mr. Henry Komansky.

Certified Fraud Examiner Designation (CFE)

The FIA is committed to enhancing the skills of its staff. Accordingly, a number of members of the FIA team are presently enrolled in the CFE course with a view to completing the same in the near future.

5. FIA TO OVERSEE DNFBPS FOR AML/ATF COMPLIANCE

The latter part of the year was marked by much research and deliberation by the FIA team in considering the viability of appointing the FIA as a supervisory authority to assume oversight and compliance functionality for specified sectors that are defined by the FATF as DNFBPs. This work will continue to be addressed in the 2010 – 2011 reporting period.

The Year Ahead

1. FIAA TO OVERSEE DNFBPS FOR AML/ATF COMPLIANCE

During the year 2010–2011, it is anticipated that the Proceeds of Crime Regulations (Supervision and Enforcement) Act 2008 (SEA) will be amended as part of the ongoing effort to strengthen Bermuda's AML/ATF framework. The purpose of such amendments will be to ensure a high level of compliance with international standards, and in particular with certain important requirements relating to DNFBPs as contained in the FATFs 40+9 Recommendations. In 2007, the International Monetary Fund (IMF) carried out a review of Bermuda's AML/ATF regime against the FATF requirements. In that review, Bermuda received a non-compliant rating in relation to Recommendations 12, 16 and 24, and the IMF made a number of recommendations to assist Bermuda in becoming compliant.

The FIA will work closely with our NAMLC counterparts to bring the necessary amendments to SEA into force, which will allow Bermuda to begin to address the requirements of the FATF Recommendations 12, 16, 17 and 24 and the relevant recommendations made by the IMF examination team in the 2007 Detailed Assessment Report.

It is anticipated that the Amendment Act to SEA will, amongst other things, add the FIA as a new supervisory authority with supervisory powers equal to those granted to the BMA under that Act. It is proposed that the FIA will be given responsibility for specified sectors that are defined by the FATF as DNFBPs. The FIA will have a similar power to impose civil sanctions on persons or entities under our supervision. Appeals from the decisions of both the FIA and the BMA will go to the Appeals Tribunal that is established under SEA.

2. ATTENDANCE AT EGMONT GROUP/CARIBBEAN FINANCIAL ACTION TASK FORCE (CFATF) MEETINGS

Representatives of the FIA will continue to actively participate in the various working group and plenary meetings for both the Egmont Group and the CFATF.

Signing of Memoranda of Understanding with Other Jurisdictions

Whilst the Financial Intelligence Agency Act 2007 enables the FIA to freely exchange information with foreign financial intelligence units without the need to enter into any formal agreement, the FIA does recognize that a number of its foreign counterparts do require some form of written arrangements to enable such information exchange.

Accordingly, as the FIA continues to strengthen its relationship with its international counterparts it is currently negotiating a number of MOUs with Egmont members with respect to the sharing of information. These MOUs will be signed during the 2010/2011 fiscal year.

3. ESTABLISHING POLICE AND CUSTOMS LIAISON POSTS WITHIN THE FIA

The FIA, the Bermuda Police Service and H.M. Customs are committed to solidifying and strengthening their on-going operations. Accordingly they are each working towards to signing a substantive MOU

that will detail the terms of the ongoing operations between the FIA, BPS and H.M. Customs. This will include the creation of both a Police Liaison Officer post and an H.M. Customs Liaison Officer post within the FIA. It is anticipated that an officer from the BPS and H.M. Customs will be assigned to the FIA on a permanent basis in these posts to facilitate direct communication between the three groups.

4. INDUSTRY TRAINING

SAR Filing

The FIA will meet with our high-volume filers on a quarterly basis to provide feedback on their filings and to identify their on-going training needs.

The FIA will continue to work with all of our industry partners to provide the necessary training to enhance their AML/ATF compliance regimes which will ultimately result in quality SARs being filed with the FIA.

goAML

The FIA will continue to work with reporting entities on a one-on-one basis in the use of the goAML web-based online reporting. This training will be provided on an ad hoc basis. The FIA will continue to receive updates to goAML on an annual basis and will ensure that all of the reporting entities will be fully trained on such updates and enhancements as they become available.

5. STAFF TRAINING

Inter-Agency Training

It is anticipated that a number of ‘lunch and learn’ sessions will be sponsored by NAMLC and will look at various pieces of legislation addressing money laundering and terrorist financing. The FIA will participate in these ‘lunch and learn’ sessions.

Plans are being put in place for the FIA staff to attend joint training sessions at the BMA.

International Crime Symposium

Two FIA members will attend the 28th Cambridge International Symposium on Economic Crime to be held in Cambridge, United Kingdom. Speakers will present on the impact of money laundering and terrorist financing on the global economic scale. It will afford the staff the opportunity to network with attending delegates from other jurisdictions. It is envisioned with appropriate budgeted funding, the FIA will send staff annually to this symposium as it will be educational and informative.

TATC/ Strategic Analysis Training

Following the successful completion by the FIA head of analysis of both the tactical analysis training course (TATC) and the ‘train the trainer’ aspect of the TATC, he will present the TATC training to other FIA staff members and local law enforcement.

Information Technology Systems Training

As the FIA continues to receive updates and enhancements to goAML we will secure training for our network coordinator so as to ensure that the FIA’s information technology skill set continues to evolve.

Private Sector Secondments/Work Shadow

From February 2010 to April 2010, a member of staff will be seconded to the advisory section of KPMG, Bermuda. The objective of the secondment is to learn about the function and purpose of legal entities such as corporations, trusts and partnerships, the most common types of company structures in Bermuda; as well as shell companies and offshore structures.



