

# FINANCIAL INTELLIGENCE AGENCY BERMUDA



2011-2012

FINANCIAL INTELLIGENCE AGENCY

ANNUAL REPORT





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December 2012

The Hon. Mark J. Pettingill, JP, MP  
Attorney General and Minister of Legal Affairs  
Attorney General's Chambers  
4<sup>th</sup> 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 2011 to 31 March 2012.

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

Sincerely

Sinclair White  
Director

**FINANCIAL INTELLIGENCE AGENCY**

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## Director's Report 2011–2012

It is my honour and pleasure to write and present this message on behalf of the Board of Directors and Staff of the FIA Bermuda. There has been a great deal of activity within the FIA that will impact us as we move forward and we continue to keep abreast of the important changes and challenges that Financial Intelligence Units (FIUs) are addressing around the world.

During this reporting period, the FIA Bermuda was elected as the English-speaking representative in the Americas region of the Egmont Group. This is a two-year appointment allowing the Director of FIA Bermuda to represent some 32 Egmont FIUs in the region and to now hold a seat on the overarching Egmont Committee.

The FIA continues to receive support from our Board of Directors, the Ministry of Justice and the National Anti-Money Laundering Committee and we are appreciative of and grateful for their dedication and commitment to the FIA. We continue to work closely with the reporting entities, our foreign FIU colleagues and local partners in our analytical work and the sharing of information and trends.

The Financial Action Task Force (FATF) has recommended that all countries create FIUs as national centres to receive, analyse, store and disseminate financial intelligence. They perform an important function as the pivotal interface between the reporting entities and law enforcement under the Anti Money Laundering (AML) and Anti-Terrorist Financing (ATF) regime in their respective jurisdictions. FIUs, by their nature, are there to provide the vital financial intelligence in support of investigations that are conducted by their relevant competent authorities in combating economic and other crimes as part of the ongoing fight against money laundering, terrorist financing, and the financing of proliferation. Like our counterparts in other jurisdictions, the FIA Bermuda persistently plays our part in the AML/ATF fight by working closely with our partners such as the Bermuda Police Service (BPS), the Bermuda Monetary Authority (BMA), Ministries of Finance and Justice and foreign FIUs.

*“The FIA remains committed to the work it does in the fight against money laundering and the financing of terrorism.”*

The challenge that the FIA will now need to address is ensuring that there are adequate resources in the areas of funding, location and staffing. The political will and support of the Bermuda Government is critical if the FIA is to effectively take on its statutory function, and achieve its goals and objectives prior to Bermuda’s pending Fourth Round Mutual Evaluation. This major task cannot be overly emphasised given the gravity and importance of enhancing and protecting Bermuda’s AML/ATF regime and reputation as a premier international business and financial centre.

The FIA remains committed to the work it does in the fight against money laundering and the financing of terrorism. Nationally and internationally, the FIA will remain steadfast as an active participant at all National Anti-Money Laundering Committee (NAMLC) meetings, the Egmont Group Committee and Working Group meetings and the Caribbean Action Task Force (CFATF) meetings. The FIA will continue to enhance and strengthen its relationship with all reporting entities. This reinforces the need for more comprehensive and thorough dialogue with the Government of Bermuda, local competent authorities, local reporting entities and foreign FIUs. We must all collectively combine our energies and resources in pursuit of those involved in the illegal activities of money laundering and terrorist financing.



**Sinclair H White**

Director

## LIST OF ABBREVIATIONS

ABBREVIATION	DESCRIPTION
AML/ATF	Anti-Money Laundering/Anti-Terrorist Financing
BMD	Bermuda Dollar
BMA	Bermuda Monetary Authority
BPS	Bermuda Police Service
CFATF	Caribbean Financial Action Task Force
CSP	Corporate Service Provider
CTR	Cash Transaction Reports
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 Act	Financial Intelligence Agency Act 2007
FinCEN	Financial Crimes Enforcement Network (USA FIU)
FIU	Financial Intelligence Unit
GBP	British Pound
ISACA	Information Systems Audit and Control Association
JAFIC	Japan Financial Intelligence Centre
MOU	Memorandum of Understanding
MSB	Money Service Businesses/Bureau
NAMLC	National Anti-Money Laundering Committee
OSINT	Open Source Intelligence
POCA	Proceeds of Crime Act 1997
RFI	Request for Information
SAR	Suspicious Activity Report
STR	Suspicious Transaction Report
TCSP	Trust and Company Service Providers
UNODC	United Nations Office on Drugs and Crime
USA	United States of America
USD	United States Dollar

## SARs ANALYSIS – TRENDS

### 1 April 2011–31 March 2012 (the “Reporting Period”)

This report represents the third full year of reporting for the FIA. During the 2011–2012 reporting period (Reporting Period), the FIA received 278 SARs which can be broken down as follows:

#### 278 TOTAL SARs RECEIVED



STATISTICS	TOTAL	PERCENTAGE
Banks (includes a Credit Union)	144	52%
Investment Providers	3	1%
Money Service Businesses (MSB)	107	39%
Corporate Service Providers (CSP)	3	1%
Trust Companies	2	0.7%
Local Regulatory Agency	3	1%
Law Firms	3	1%
Precious Metal Dealers	1	0.3%
Long Term Insurers	12	4%

For this Reporting Period, the SAR report categories have been expanded to include a report from a precious metal dealer and to indicate reports made to the FIA from local regulatory agencies.

SAR reporting figures are similar to the numbers from the previous reporting years, as the FIA received 278 SARs in 2011–2012 and 249 SARs in 2010–2011.

## MAJOR TRENDS IN SAR REPORTING

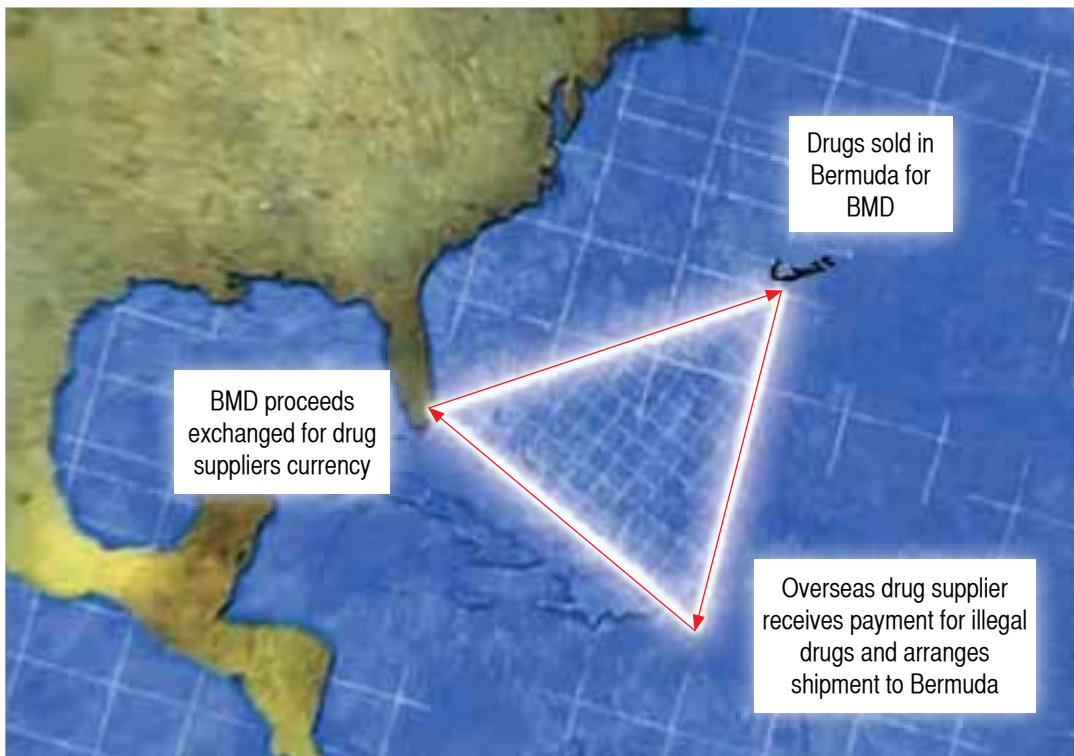
### (1 April 2011 – 31 March 2012) and Three-Year Cash Exchange Analysis

As stated in the FIA's 2009–2010 and 2010–2011 reports, neither firearms/ammunition nor illicit drugs are manufactured in Bermuda on a sufficient scale to supply the local demand. The majority of these illicit items are therefore imported into Bermuda. Accordingly, the Bermudian importer must use the foreign currency of choice (USD) to purchase the illegal goods. The exchange of BMD for a foreign currency is absolutely essential to the trade in illicit drugs and firearms/ammunition. This process creates an exchange triangle of purchasing illegal good for foreign currency (almost always USD), selling the illegal goods (illegal drugs and firearms/ammunition) for BMD in Bermuda, and exchanging the BMD proceeds for the foreign currency to purchase more product.

Bermuda is a small country with a population of about 65,000, and there is no foreign market for BMD. The Bermudian Dollar is the official currency of Bermuda and further to the Bermudian Dollar Parity Order 1981, a rate of exchange parity was established between the US dollar and the Bermudian dollar. There is a nominal exchange rate, usually about 1.0043 and Bermuda has a currency purchase tax of 1%. In addition to direct cash exchanges, there exists the indirect exchange to a foreign currency where MSBs and banks wire monies overseas for a fee. As a result, the exchange of Bermuda currency is not without an additional cost. However the FIA believes that this cost is essential for the operation of Bermuda's illegal economy.

The SAR reporting trend of BMD being exchanged for foreign currency continued into this Reporting Period. These exchanges of BMD are most often for USD. However, during the Reporting Period, the FIA also received **two SARs** concerning exchanges of BMD for GBP, a total of **\$3,416 BMD**.

### THE BERMUDA DRUG TRIANGLE



According to the information available to the FIA, 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.

As the USD is accepted at all local retail outlets, the FIA is also aware of traditional means of currency exchanges through sectors of the economy that have direct contact with overseas tourists. These sections include gas stations, persons directly employed in the tourism industry and retail outlets, although the FIA has little actual information/intelligence on this practice.

## Cash Exchanges During the Reporting Period

The FIA analysed the SARs filed during the Reporting Period and calculated that 78.7% of all SARs received during the period represent foreign currency exchange, compared to 84.7% of the SARs received during the previous Reporting Period.

The exchange of BMD for a foreign currency was conducted either by:

- i) the direct exchange through a bank or MSB or
- ii) the wiring of monies overseas via an MSB accounted for 209 of the 278 reported SARs and 90% of the transactions received by the FIA via SARs during the period.

### I) Direct Cash Exchanges

The FIA received **102 SARs** during the Reporting Period involving direct exchange of BMD for a foreign currency (almost exclusively USD). The total amount involved in the cash exchange was **\$4,049,742.00 BMD** over 2,193 separate transactions, for an average of **\$1,846.67 BMD** per transaction. Further analysis shows that these currency exchanges were conducted by approximately **85** unique subjects.

During the Reporting Period, all cash exchanges were reported by the Bank and Credit Union sector and none were reported by Money Service Businesses. A further analysis of the SARs filed in the Bank and Credit Union sector has shown that 78.7% of SARs submitted during the Reporting Period from this sector represent the direct exchange of BMD cash for USD cash. This trend involves transactions worth **\$4,049,742.00 BMD** being reported to the FIA as suspicious.

Practically speaking, in Bermuda, cash exchanges can only take place at banks if the person has an account with the bank. In order to effect this transaction with BMD cash, the person must deposit the cash into an account and then withdraw it as a foreign currency.

### RED FLAGS

Some indicators in these transactions are as follows:

- Cash exchanges with no indication of foreign travel
- Exchange activity inconsistent with the client's regular business
- Frequent use of ATMs to deposit BMD and withdraw USD cash
- Client presents the bank teller with the exact amount needed for the exchange in BMD, including fees and currency tax to achieve a round number in USD
- Exchanges of large amounts of cash over a short period
- Exchanges at different bank branches within a short time period, often on the same day
- A deposit of cash in one branch and a withdrawal at another branch

### II) Electronic Funds Transfers

All the SARs filed by MSBs follow the money laundering/cash exchange trend. All of the **107 MSB SARs** filed with the FIA during this period involved monies being sent overseas to numerous countries. According to the SARs filed, a total of **\$265,040.00 BMD** was sent abroad in **138** transactions, for an average of **\$1,920.00 BMD** per transaction. During the Reporting Period, the suspicious wires were sent by **94** unique subjects in Bermuda to **105** unique subjects in the receiving countries.

All of the MSB SARs represent currency transfers as the monies begin as BMD and are transferred into the recipient's currency.

## RED FLAGS

Some indicators in these transactions are as follows:

- Same person sending to multiple senders
- Same recipient receiving from multiple senders
- Multiple otherwise unrelated senders sending the same amount on the same day to the same country and city
- No source of funds
- Sender uncertain of recipients details — name, address etc
- Sender acknowledges he/she is sending for someone else.

### Structuring: Smurfing

An analysis of the above trend has shown that the transfer of money overseas seems to involve structuring. Structuring is the practice of executing multiple financial transactions in an identifiable pattern intended to avoid the scrutiny of monitoring persons and software. The FIA believes that structuring plays a great part in the currency exchange SARs filed with the FIA.

As noted previously, there has been a large number of persons using the methods, of direct cash exchange and MSB wires, and a large number of persons receiving the monies through MSBs. Based upon the information filed with the FIA, it seems that the subjects of the SARs usually exchange or wire an amount under **\$2,000.00 BMD**.

This type of structuring where a number of persons are used to launder money in small amounts is often termed smurfing. Smurfing is a method whereby the ultimate recipient of the proceeds of illegal transactions uses a number of other persons, or smurfs, to perform multiple financial transactions to avoid the scrutiny of the reporting entity and law enforcement. The transactions conducted by the smurfs often go completely unreported. In addition, the use of smurfs also creates a greater separation between the illegal funds and the ultimate recipient.

For example, 107 MSB SARs were filed on 94 unique subjects in Bermuda who wired money to 105 separate subjects in the receiving country. And the 102 currency exchange SARs reported by the Banking Sector were conducted by approximately 85 unique subjects.

The use of structuring and smurfing makes it difficult for local and foreign law enforcement to track the monies back to the actual drug traffickers.

However, the number of SARs filed shows that many of the reporting entities are often able to spot smurfing. Most reporting entities have increased their reporting since 2008. The FIA believes that the reporting entities' training and use of sophisticated software has contributed to this increase in filing.

### 3 Years of Historic Cash Exchanges Reported to the FIA

#### 2009–2010

During this period, the FIA received 128 cash exchange SARs for a total of **\$1,941,697.00 BMD** in 668 transactions, an average of **\$2,906.73 BMD** per transaction. The FIA also received 304 MSB SARs at a value of **\$1,471,759.00 BMD** containing 594 transactions, an average of **\$2,477.71 BMD** per transaction.

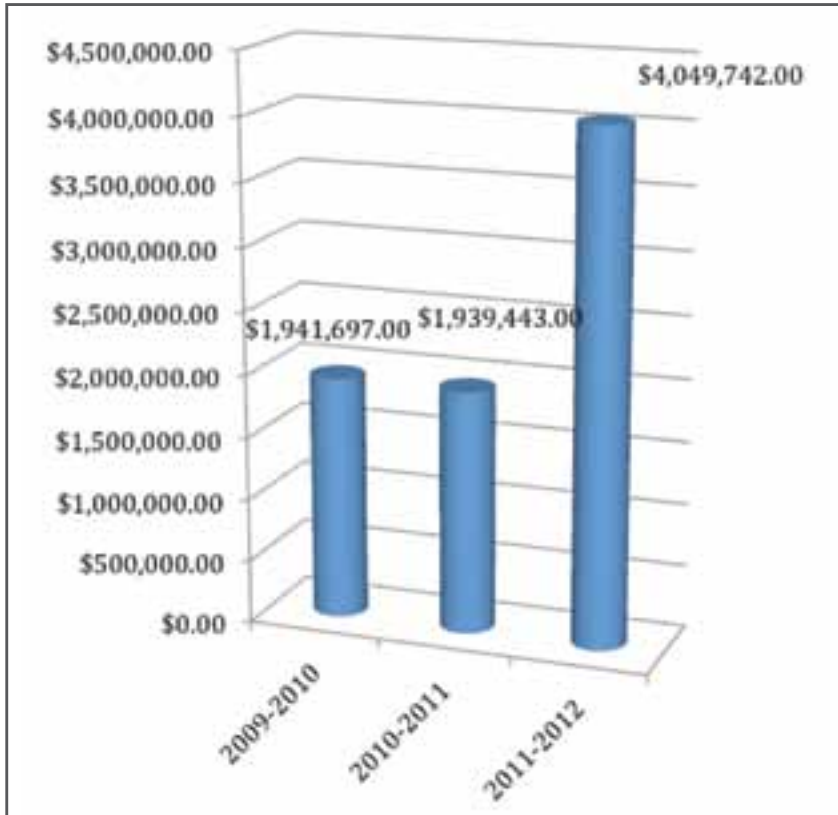
#### 2010–2011

During this period, the FIA received 111 cash exchange SARs for a total of **\$1,939,443.00 BMD** in 473 transactions, an average of **\$4,100.00 BMD** per transaction. The FIA also received 85 SARs from MSBs for a total of **\$296,426.00 BMD** in 145 transactions, an average of **\$2,044.32 BMD** per transaction.

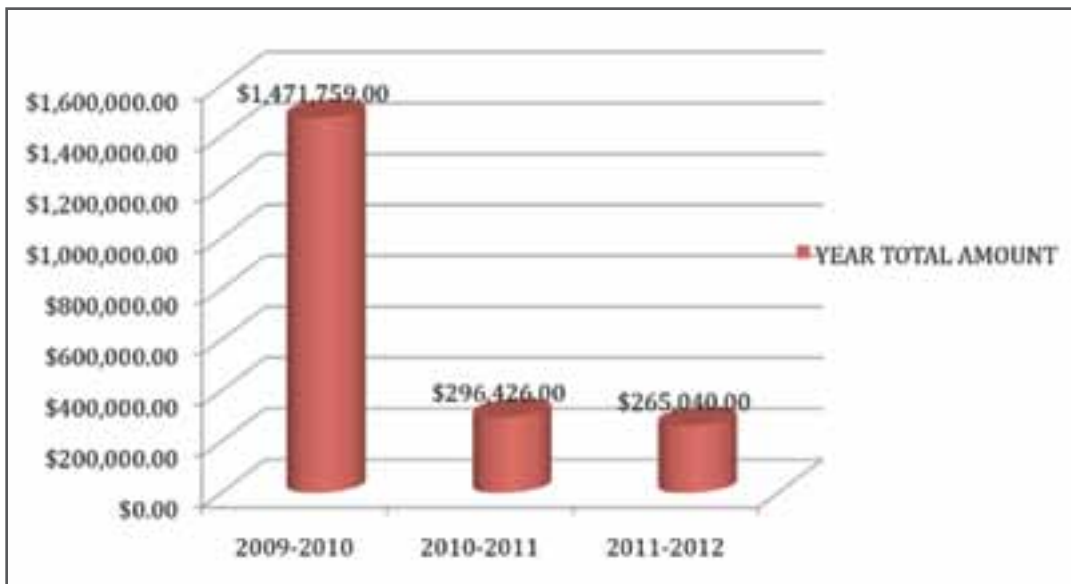
#### 2011–2012

During this period, the FIA received 102 cash exchange SARs for a total of **\$4,049,742.00 BMD** in 2,193 transactions, for an average of **\$1,846.67 BMD** per transaction. The FIA also received 107 MSB SARs for a total of **\$265,040.00 BMD** in 138 transactions, an average of **\$1,920.57 BMD** per transaction.

### THREE YEARS OF CASH EXCHANGES REPORTED TO THE FIA BY REPORTING PERIOD



### THREE YEARS OF MSB WIRES REPORTED TO THE FIA BY REPORTING PERIOD



As Bermuda is a suspicious activity reporting jurisdiction, the FIA only receives what the reporting entity actually deems suspicious and deems pertinent to include in its SAR report. As a result, the FIA believes that a large number of cash exchange and MSB wires related to Bermuda's drug trade go unreported.

## Overall Transfers of Monies Out of Bermuda Since 2008

In addition to the receipt of SARs, through the FIA's information gathering powers under Section 16 of the Financial Intelligence Agency Act 2007 (the "FIA Act"), the FIA has collected details of over **2000** MSB transactions valued at over **\$3 million BMD** in the goAML database. Since 2008, the top ten recipient countries of funds from Bermuda through MSBs are as follows:

RECIPIENT COUNTRY	NUMBER OF WIRES	TOTAL AMOUNT SENT (BMD)
Jamaica	744	\$781,251
USA	372	\$695,342
Dominican Republic	195	\$197,640
Canada	114	\$188,570
Nigeria	110	\$201,354
United Kingdom	81	\$141,803
St. Maarten	50	\$105,580
Trinidad & Tobago	35	\$92,223
Guyana	40	\$35,575
Ghana	27	\$48,510

## Reporting Period Indicators and Trends (Other SAR Filing Indicators)

### FRAUD

The FIA received approximately seven SARs reported to be related to Frauds and Attempted Fraud; four from the Banking Sector, two from Corporate Services, and one from a Law Firm.

Two of these frauds involved Nigerian type advanced fee frauds.

### CORRUPTION

During the Reporting Period, the FIA received 2 SARs related to corruption.

## Disposition of SARs during the Reporting Period

All SARs received by the FIA are analysed and subjected to an initial review, after which they are either filed for intelligence or assigned to a case for further analysis and potential disclosure to the FIA's partner agencies.

During the period, 278 SARs were received. Further to the initial review period, 141 SARs, or 52%, were filed for intelligence purposes and 134 or 48% were attached to a case and assigned to an analyst for potential disclosure.

The SARs received during the period were attached to cases and assigned to an analyst for further analysis 155 times during the period. The difference between the SARs initially filed and disclosed is explained by the fact that although a SAR may be filed for intelligence after receipt, when new information comes to light, such as from a further SAR, open source intelligence or Section 16 information, the SAR may be attached to an intelligence case and assigned. Accordingly, a SAR may be attached to a case for disclosure even after its initial closure.

## Dissemination of Information/Intelligence Received

The FIA is an independent agency with the ability to receive, gather, store, analyse 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, are considered classified information and they are handled and marked as such.

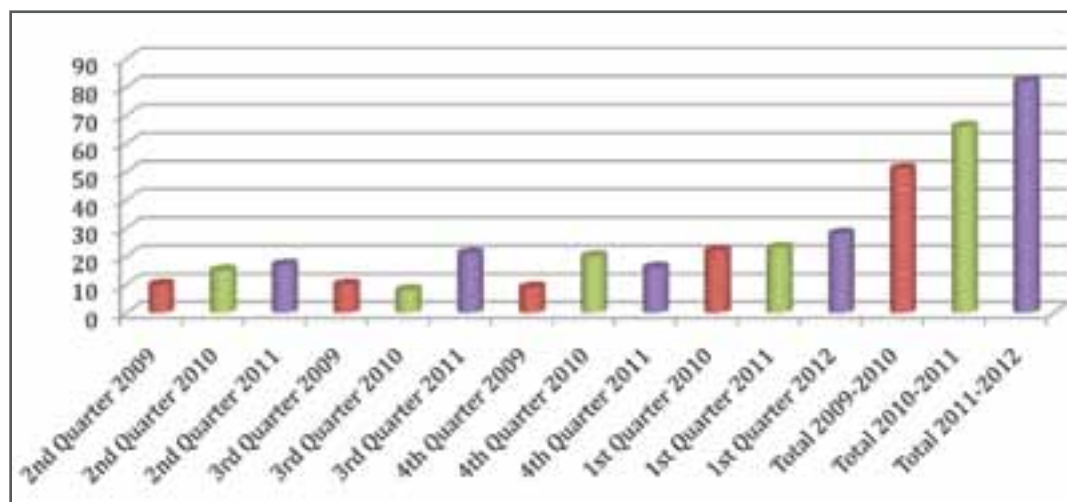
### Disclosure Statistics

STATISTICS	2nd QUARTER 2011	3rd QUARTER 2011	4th QUARTER 2011	1st QUARTER 2012	2011-2012 TOTAL
Disclosures made by FIA	17	21	16	28	82
SARs disclosed	29	47	24	26	126

During the Reporting Period, the FIA made 82 disclosures of classified information/intelligence to its local and foreign partners. These disclosures consisted of information/intelligence received by the FIA via SARs (126 SARs were disclosed), information/intelligence obtained by the FIA further to its information gathering powers under Section 16 of the FIA Act, and open source intelligence (OSINT). Most importantly, all of these disclosures contained analysis conducted by the FIA’s staff in its efforts to provide beneficial intelligence to the FIA’s local and foreign partners.

The following chart illustrates the disclosures per quarter and the total for each of the last three reporting periods.

### DISCLOSURES MADE BY THE FIA



Since the FIA's first full year of reporting the period of 2009–2010, the FIA's disclosures have increased from 51 to 82, or a 60.78% increase. The FIA is seeing the benefit of its extensive use of goAML which has enabled more efficient production of disclosures. The FIA is currently staffed with five analytical staff, two of whom are secondees from the FIA's partners. The FIA will be seeking to add to its analytical staff to enable it to produce more useful and detailed disclosures in the coming year.

## Interaction with Foreign FIUs

During the Reporting Period, the FIA received **23** Incoming Requests for Information (IRI) from foreign FIUs:

COUNTRY/FIU	NUMBER OF INCOMING REQUESTS
USA	5
Anguilla	1
Argentina	3
Austria	1
Bahamas	1
Croatia	1
Curacao	2
Germany	1
Guatemala	1
Kazakhstan	2
Lithuanian	1
Moldova	1
Norway	1
United Arab Emirates	1
United Kingdom	1

In keeping with its EGDMONT FIU agreements, the FIA considers all IRI's from foreign FIUs as containing classified information.

In addition to responses to requests made by other entities to the FIA, the FIA also made a number of spontaneous disclosures of information to its foreign partners. Of the 82 disclosures made by the FIA during the Reporting Period, 28 of the disclosures were made to foreign FIUs, which are listed overleaf.

COUNTRY FIU	NUMBER OF OUTGOING DISCLOSURES/REQUESTS
USA	9
Canada	4
France	1
Luxembourg	1
Latvia	1
Hong Kong	1
Russia	1
San Marino	1
Spain	1
St Vincent	2
South Africa	1
Switzerland	1
United Kingdom	4

## Disclosures Vs. Releases of Statistical Information

In addition to disclosures of classified 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

As Bermuda's current problems of drug-related crime and violence remain a national priority, the FIA plans to continue its analysis of the Bermuda drug triangle and will continue working to create policy recommendations to address the issue of BMD currency exchange in the furtherance of illegal activity.

## THE REVISED FATF RECOMMENDATIONS AS THEY AFFECT FIUs

Recently, the Financial Action Task Force (FATF) completed the revision of its standards previously known as the 40+9 Recommendations. The 40 recommendations along with the nine special recommendations on terrorist financing have now been amalgamated into the 40 Recommendations. The revised standards seek to simplify and clarify the international requirements, thereby, minimising repetitiveness within the standards. The revisions have been made to strengthen global safeguards and further protect the integrity of the financial system by providing governments with stronger tools to take action against serious crimes. Detailed information on the main changes is provided in the media release by the FATF on the 40 Recommendations which can be found on the FATF's website. In particular, there is now greater focus on the use of a risk-based approach to mitigate AML/ATF risks.

### New Recommendation 29

The new standards affect the definition of "FIU" and features like operational independence and organisation, as well as FIUs' activities and powers.

#### I) New Definition of an FIU

The current FATF definition of "FIU", incorporated in the revised Recommendation 29, now reads:

Countries should establish a financial intelligence unit (FIU) that serves as a national centre for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis.

#### II) Receipt Function

FIUs must receive suspicious transaction reports (STRs) concerning suspected money laundering, associated predicate offences and terrorist financing from obliged entities. This is an essential element of the definition itself of "FIU".

In addition to STRs, FIUs can also receive other disclosures concerning information relevant to money laundering, associated predicate offences and terrorist financing. These disclosures are not triggered by the identification of suspicions, on a subjective basis, but are objectively related to specific categories of transactions or activities and can become due when predefined quantitative thresholds are exceeded. Such threshold-based disclosures (as opposed to suspicious-based disclosures) are commonly referred to Cash Transaction Reports — (CTRs), although they are not limited to cash transactions exclusively.

While these threshold-based disclosures are not necessarily mandatory (with the important exception of those concerning the cross-border physical transportation of cash and valuables, according to FATF Recommendation 32), they should be provided for by law when needed to properly feed an effective analytical function of the FIU. This, in turn, depends on the functions and capability of the FIU, which differ from country to country.

While practices of FIUs have greatly developed in recent years and a considerable variety of CTRs have emerged across countries, the revised FATF standards have more explicitly and more clearly recognised these disclosures as an important component of the FIUs' receipt function.

#### III) Analysis Function

The new FATF Recommendations recognise that, based on the information collected through initial disclosures and the additional information obtained from reporting entities and other sources, "analysis" is the way in which FIUs are called on to add value, and to produce intelligence, so as to enable effective investigations and prosecutions of identified cases.

FIUs should conduct the following types of analysis: (REC 29)

- Operational analysis uses available and obtainable information to identify specific targets (e.g. persons, assets, criminal networks and associations), to follow the trail of particular activities or transactions, and to determine links between those targets and possible proceeds of crime, money laundering, predicate offences or terrorist financing.
- Strategic analysis uses available and obtainable information, including data that may be provided by other competent authorities, to identify money laundering and terrorist financing related trends and patterns. This information is then also used by the FIU or other state entities in order to determine money laundering and terrorist financing related threats and vulnerabilities. Strategic analysis may also help establish policies and goals for the FIU, or more broadly for other entities within the AML/ATF regime.

FIUs must be able to consider all information available in a selective manner that focuses on the identification of relevant cases. The capacity to prioritise the disclosures received, select the information available or accessible and forming sensible judgments on activities suspicious of money laundering or terrorist financing become essential elements of the FIUs' analytical function.

Clearly, while "analysis" is the most distinctive feature of an FIU, there may be (and, in fact, there are) several different approaches to its exercise. The distinction with the investigative activities conducted on the same facts varies from country to country, as well as the scope and range of the information available from country to country. This is reflected by the considerable differences that exist in STRs/SARs content and number, in the type of CTRs (if any), and in the FIU's capacity to have access to additional information needed in support of the analysis.

For these reasons, it is not possible to define "analysis" in a precise and prescriptive way and, certainly, there cannot be a one size fits all approach to this function, which is equally valid in order to ensure the achievement of the underlying objectives.

#### **IV) Dissemination (Spontaneous)**

The dissemination of information to competent authorities is an essential element of the definition of "FIU". Such dissemination is done by the FIU upon its initiative when the analysis is completed with a view to allowing competent authorities to conduct appropriate investigations or prosecutions focusing on relevant cases and information.

Like analysis, dissemination has a selective nature. The FIU should activate the dissemination function only for those cases where the analysis conducted indicates that there are grounds to suspect money laundering or terrorist financing.

Therefore, the dissemination function should be carried out by FIUs based on an appropriate selection of the cases with a view to supporting a potential investigation or prosecution. Through its analysis and selective dissemination, the FIU should be able to filter irrelevant cases and information. This is a way in which the FIU adds value to and improves on the effectiveness of the overall AML/ATF regime by allowing law enforcement agencies and prosecutors to focus on relevant cases.

#### **V) Dissemination Upon Request**

The revised FATF standards establish that, in addition to the dissemination spontaneously done as a result of the analysis, FIUs should be able to respond to requests for information by law enforcement agencies (Interpretative Note to Recommendation 29; see also Recommendation 31). Therefore, it is expected that FIUs will be authorised (or even obliged, which would not be in contrast with the FATF provisions) by their respective domestic legislation to provide information about STRs/SARs to competent law enforcement agencies upon request of such agencies.

The possibility for law enforcement agencies to request information from the FIU, and the capacity or obligation for the FIU to provide that information is to a large extent dependent upon the domestic legislation in the framework of the Recommendations.

It is important to keep in mind that while of course FIUs should provide ample cooperation to other authorities in charge of combating money laundering, predicate offences and terrorist financing, indiscriminate access to FIUs' information, obtainable upon simple request and regardless of the outcome of the analysis, would:

- a) Deprive the analytical function of the FIU or the information value (and consequentially limit the added value that the FIU can bring to the identification of cases of money laundering and terrorist financing); and
- b) Compromise the operational independence of the FIU, which would reactively provide information and would not proactively decide, based on its analysis, when a case deserves appropriate follow-up.

Countries will have to empower or authorise their FIUs' capacity to provide information on request by law enforcement agencies and ensure that domestic legislation can well regulate the extent and the modalities of such activity.

## VI) Independence

The revised FATF Recommendations have introduced more specific details on what precisely an FIU's independence entails (see the Interpretative Note to Recommendation 29) under several different respects:

### For the Exercise of the FIU'S functions:

8. The FIU should be operationally independent and autonomous, meaning that the FIU should have the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request and/or disseminate specific information. In all cases, this means that the FIU has the independent right to forward or disseminate information to competent authorities;

### On Governance and Decision Making Processes:

9. An FIU may be established as part of an existing authority. When a FIU is located within the existing structure of another authority, the FIU's core functions should be distinct from those of the other authority";
10. The FIU should be provided with adequate financial, human and technical resources, in a manner that secures its autonomy and independence and allows it to conduct its mandate effectively. Countries should have in place processes to ensure that the staff of the FIU maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled;

### On International Cooperation:

11. The FIU should also be able to make arrangements or engage independently with other domestic competent authorities or foreign counterparts on the exchange of information;

### On Avoiding Undue Influence or Interference:

12. The FIU should be able to obtain and deploy the resources needed to carry out its functions, on an individual or routine basis, free from any undue political, government or industry influence or interference, which might compromise its operational independence.

## VII) Obtaining Information from Reporting Entities

The new FATF Recommendation 29 now explicitly indicates that *"the FIU should be able to obtain additional information from reporting entities"*. This provision is further elaborated in the Interpretative Note to Recommendation 29 (point C(a)5): *"In addition to the information that entities report to the FIU (under the receipt function), the FIU should be able to obtain and use additional information from reporting entities as needed to properly perform its analysis"*.

## VIII) Accessing Information From Other Sources

In addition to the capacity to obtain additional information from reporting entities, FIUs should have access to the widest possible range of financial, administrative and law enforcement information from other sources, including external databases, information/intelligence collected and/or maintained by, or on behalf of other authorities, and commercially held data.

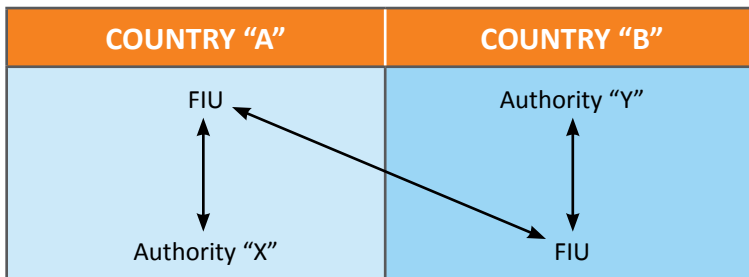
Taking into account the need to properly perform the analytical functions assigned to the FIU, both as regards to operational and strategic analysis, the following factors should be determined: the extent of this access, the authorities that can be requested and the specific types of databases available.

Nonetheless, while flexibility should be maintained, the revised FATF standards mandate that FIUs should have access to information about control and ownership structure of companies, legal persons, trusts and other legal arrangements, as well as access to information about bank accounts held in their countries.

### Recommendation 40: International Cooperation Direct and Diagonal Cooperation

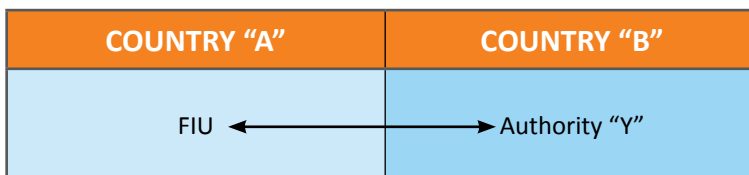
The revised FATF standards have introduced a requirement for countries to permit **Indirect Diagonal Cooperation**. This is a form of exchange of information where the information passes from the requested authority through one or more domestic or foreign authorities before being received by the requesting authority.

#### INDIRECT DIAGONAL COOPERATION



Differently, direct forms of exchange between foreign non counterparts (**Direct Diagonal Cooperation**) are only "encouraged" and, therefore, they are not mandatory.

#### DIRECT DIAGONAL COOPERATION



The FATF standards also establish that, regardless of which pattern is chosen for the exchange, this should always take place "in a secure way and through reliable channels or mechanisms".



Egmont Group Committee

(Inset photo) Signing MOU with Saudi Arabia



## EGMONT GROUP ACTIVITIES

### General Activities

Representatives of the FIA continue to actively participate in the various working group meetings and plenaries for the Egmont Group. The FIA has and continues to participate in many projects within the Egmont Training and Legal Working Groups, including the review of FATF Recommendations as the recommendations affect FIUs, the Donors and Providers Contact Group, and the creation of the Advanced Tactical Analysis Class.

### Regional Representative for the Americas Region

At the 19th Egmont Group Plenary held in Armenia, the FIA was elected as the English-speaking representative of the 33 jurisdictions within the Americas group. As a result, FIA Bermuda now has a seat on the Egmont Committee and will represent that body as an observer at the CFATF Plenaries and ministerial meetings.

### Joint Egmont/World Bank Study on the Power of FIUs to Postpone Suspicious Transactions

Worldwide, FIUs in at least 79 jurisdictions are authorised to postpone suspicious transactions related to money laundering, associated predicate offences, terrorist financing and/or other criminal offences. Despite this significant number, no universal international standards are in place regulating the FIU power to postpone suspicious transactions. Moreover, relatively little information has been compiled to date about the legal arrangements that have been developed to empower FIUs in this area, or about the circumstances, conditions, and challenges of the exercise of this power or the extent and frequency of its use.

Accordingly, in March 2011, the World Bank and the Egmont Group agreed to carry out a joint study of FIUs to gather more information about the legal and operational arrangements, as well as practices and challenges, relevant to the use of this FIU power. FIA Bermuda is a member of the three-person Project Team that is conducting the study as the Egmont representative. It is anticipated that the results of this study will be published in the second half of 2012.

### Training Working Group

The pilot programme of the Egmont Strategic Analysis Course, which was delivered in Qatar, is developing to be a useful tool. FIUs are now required to perform strategic analysis to not only provide other competent authorities with available and obtainable information but also to identify money laundering and terrorist financing related trends and patterns. Strategic analysis is further used by the FIUs or other state entities in order to determine money laundering and terrorist financing related threats and vulnerabilities, helping to establish policies and goals for the FIUs and more broadly for other entities within the AML/ATF regime.

Development work is in progress on the proposed New Financial Products and Legal Entities training product chaired by FIA Bermuda in the Training Working Group. More information will become available once this training product is approved by the Egmont Group.

## Meeting with Japanese FIU

Between 19 and 20 March 2012, a delegation from the Japan Financial Intelligence Centre (JAFIC) visited FIA Bermuda with respect to the future signing of a Memorandum of Understanding (MOU) between the two FIUs. The initiative was concerning the exchange of information relating to money laundering, terrorist financing and the proceeds of criminal conduct. During their short stay, the two Japanese representatives from JAFIC's International Cooperation Unit met with representatives from the BMA and the BPS and discussed matters of mutual interest. It is envisaged that an MOU will be signed in the foreseeable future.



Director presenting coat of arms and FIA Bermuda logo to JAFIC delegation

## CARIBBEAN FINANCIAL ACTION TASK FORCE ACTIVITIES

### General Activities

FIA Bermuda continues to be a part of the Bermuda Delegation attending the CFATF Plenaries which take place twice a year within the region. The FIA's involvement remains active in the fight against money laundering, terrorist financing and proceeds of criminal conduct. The FIA remains committed to its active participation and role as an FIU working closely with its fellow FIUs by sharing information, and discussing matters of importance in the region and the global environs.



Bermuda delegation with the Chairman of CFATF and another delegate

### Steering Group Committee

The Director is a part of the Bermuda delegation on the CFATF Steering Group. Bermuda represents the Overseas Territories in the Steering Group, which is responsible, among other things, for ensuring that the strategic direction, governance and administration of the CFATF is in keeping with the global AML/ATF agenda. The Bermuda team, which consists of the Director and the NAMLC Chair, are active participants in the work and discussions of the Steering Group.

### Training

At the CFATF Heads of FIU Forum, discussions continued on the development of an accreditation training programme for CFATF member FIUs, addressing and not limited to analytical and investigatory modules. The CFATF FIU Training Committee, of which FIA Bermuda is a member, is working with other external organisations to achieve this objective. FIA Bermuda is also part of the CFATF Typologies Working Group looking into human trafficking and the smuggling of immigrants within the region. On completion and upon approval by the CFATF, this typology will be submitted to the FATF.

## TRAINING 2011–2012

### Staff Training

In June 2011, all FIA staff attended a training session hosted by KPMG entitled “Bribery and Corruption: A Briefing Session for the Government of Bermuda.”

In July 2011, the Bribery Act 2010 (‘the Act’) came into force in the UK. The Act provides a modern, comprehensive scheme of bribery offences to cover bribery both in the UK and abroad. Due to the extensive extra-territorial reach of this Act, the offences and penalties have implications for businesses operating in Bermuda.

In October 2011, “Tech Week” was sponsored by the Government of Bermuda and two staff members attended the Disaster Recovery session hosted by E-Delta Logic/Smith Technologies.

The Network Coordinator attended a week long VMware training programme held in March/April 2011, at Gateway, in Bermuda. The training involved the installation, configuration and management of the VMware vSphere virtual server software.

### Egmont Group Presentations and Training Courses

During the week of 19 July 2011, an Egmont Group Plenary was held in Yerevan, Armenia. The Director and Senior Legal Counsel participated in the following training sessions and presentations:

- FIU Collaboration with Law Enforcement
- Trends in Information Technology;
- The Regulation and Supervision of Designated Non-Financial Businesses and Professions (DNFBPs); and
- Executive Training for Heads of FIU in Strategic Analysis.

A presentation was given on trends in information technology with the critical focus placed on a FIU Information Systems Maturity Model (FISMM). This model was developed as a way to evaluate the level of information technology used by an FIU to accomplish its goals as well as its physical and IT security.

The Director of FIA-Bermuda participated in a session organised by the Egmont Group’s Regulatory Project Team on the regulation and supervision of Designated Non-Financial Businesses and Professions (DNFBPs). A number of FIUs in the Egmont Group have been given responsibility for AML/ATF supervision or regulation, particularly for DNFBPs. During the session, several FIUs shared their experiences and lessons learned in the development of effective programmes to regulate or supervise DNFBPs. Participants also learned more about the general trends in the results of recent FATF and FSRB mutual evaluations with respect to DNFBP regulation and supervision. Future meetings are planned.

The Senior Legal Counsel delivered a training session entitled “Information Exchange: Standards, Good Practice and Challenges”. This presentation was given on information exchange covering the Egmont Statement of Purpose, the Interpretive Notes, and The Egmont Principles of Information Exchange and Best Practices commonly known as the Egmont Principles. The presentation will now set the tone for a review of the Egmont Charter and all of the supporting documents.

A training programme was provided for Heads of FIU within Egmont in strategic analysis as a core requirement of an FIU. This training was provided by the Training Working Group. This was an interactive session which involved discussions on the importance and role of strategic analysis within the FIU as the revised recommendations were still in draft.

In March 2012, two members attended a five-day strategic analysis course in Vienna, Virginia. This course was presented in collaboration with Egmont to address the strategic analysis function of FIUs contained within the new FATF recommendations.

### **SAR Filing Training**

The FIA continued to meet with its high volume filers on a quarterly basis to provide feedback on their filings and to determine the ongoing training needs of the filers.

The FIA also met with a number of its industry partners, including both regulated and non-regulated AML/ATF entities, to provide general and familiarisation training to enhance their AML/ATF compliance regime. This will ultimately result in quality SARs being filed with the FIA.

### **goAML Training**

The FIA conducted 13 goAML instructional sessions for reporting entities to assist them in filing SARs electronically. As of 31 March 2012, there are 59 employees of reporting entities registered with goAML.

During this period, the FIA received updates to the goAML software. The FIA continues to see the benefits of the database, increasing the analytical capacity of the unit and the ability to provide more information/intelligence in our disseminations to our partners.



### **Egmont Tactical Analysis Training Course (TATC)**

The Bermuda Police Service (BPS) hosted a fellow police officer from the Montserrat Police FIU. The Officer was also hosted by the FIA, which provided two days of training and an overview of the operations of the FIA, concentrating on its analytical capabilities and functions. The FIA also delivered the Egmont TATC course to the officer and demonstrated the FIA's analytical capacity with goAML.

### **Inter-Agency Training**

The FIA helped present the annual AML/ATF training to BMA staff responsible for conducting onsite AML/ATF examinations. The training was conducted over three days and was attended by approximately 30 staff members.





