

FINANCIAL Intelligence Agency

2013/2014

Annual Report



FINANCIAL Intelligence Agency

2013/2014

Annual Report

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Design and pre press production:

Department of Communication and Information

Printed in Bermuda by: Bermuda Blueprinting Ltd. – February 2016

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December 2015

Attorney General and Minister of Legal Affairs
Attorney 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 2013 to 31 March 2014.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Sinclair White". The signature is stylized and cursive.

Sinclair White
Director

FINANCIAL INTELLIGENCE AGENCY

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Sinclair White – Director

DIRECTOR'S REPORT

2013/2014

I am pleased to present the 2013 – 2014 Annual Report of the Financial Intelligence Agency (FIA) Bermuda. This report will highlight the continued success in the operations and functions of the FIA. During this Reporting Period FIUs' have faced more difficult and indeed challenging times in the commitment of their resources in the fight against money laundering, terrorist financing and associated predicate offences. We have seen the Financial Action Task Force (FATF) and FATF-Style Regional Bodies (FSRBs) raise their awareness to be more effective at addressing such illegal activities. One of the most important ways of making this an effective and efficient regime is to have the ability to collect, analyse and disseminate qualitative financial intelligence and relevant information, which can then be used by law enforcement, other foreign FIU's and competent authorities in dealing with such illegal activities and their predicated offences.

This Annual Report has shown new reporting from different entities, such as Law Firms and Investment Providers. The FIA also saw an increase in reporting from the Long Term Insurers sector, however, there was a notable decrease in reporting from the Banks and MSBs. The downturn may be attributed to the ongoing vigilance of these two sectors as it relates to their Customer Due Diligence and Compliance. This report will also highlight new trends and patterns developing in Bermuda and identify suspicious indicators. The intelligence gathered has been regularly shared with our local law enforcement and relevant Competent Authorities. Most importantly, we have shared such information with the Reporting Entities via meetings scheduled throughout the year.

One of the concerns and challenges being faced is with regards to training and development of FIA staff. We continue to look for cost effective ways to address this issue by reaching out to local and international organizations who can provide beneficial training to not only the FIA but to all those involved in money laundering and terrorist financing from an analytical or investigative perspective. As a member of the Egmont Training Working Group, this organization will be producing training material in the near future covering such areas as Securing an FIU and its Information Technology: Corporate Vehicles and Financial Products and Supervisory and Regulatory Responsibilities.

“This report will also highlight new trends and patterns developing in Bermuda and identify suspicious indicators.”

On the Information Technology side, the FIA noted that there was a serious need to increase our storage capacity for goAML, the email server and file server. A comprehensive analysis was done and completed and its findings were discussed. In conclusion, it was determined that the FIA needed, as a priority, more memory and storage. The FIA now has an additional storage array four times the size of its original capacity. Our memory capacity has also been doubled. This will allow us for continued growth over the next five to ten years. This upgrade was implemented prior to our goAML visit this Reporting Period.

It will be remiss of me to not thank the FIA Board of Directors, the National Anti Money Laundering Committee (NAMLC) and most importantly the Ministry of Legal Affairs for their support and words of encouragement. The FIA has now completed five (5) years of providing productive intelligence to our partners in the combating of money laundering and terrorist financing, and dealing with the proceeds of criminal conduct. To this end, we have seen the introduction of new provisions under POCA relative to Civil Recovery of the Proceeds of Unlawful Conduct.

We still have a lot of work to do but through the collective support and communication, cooperation and coordination of all relevant authorities and partners we shall succeed.

A handwritten signature in black ink, appearing to read 'S. White', enclosed within a large, stylized, circular flourish.

Sinclair H White

Director

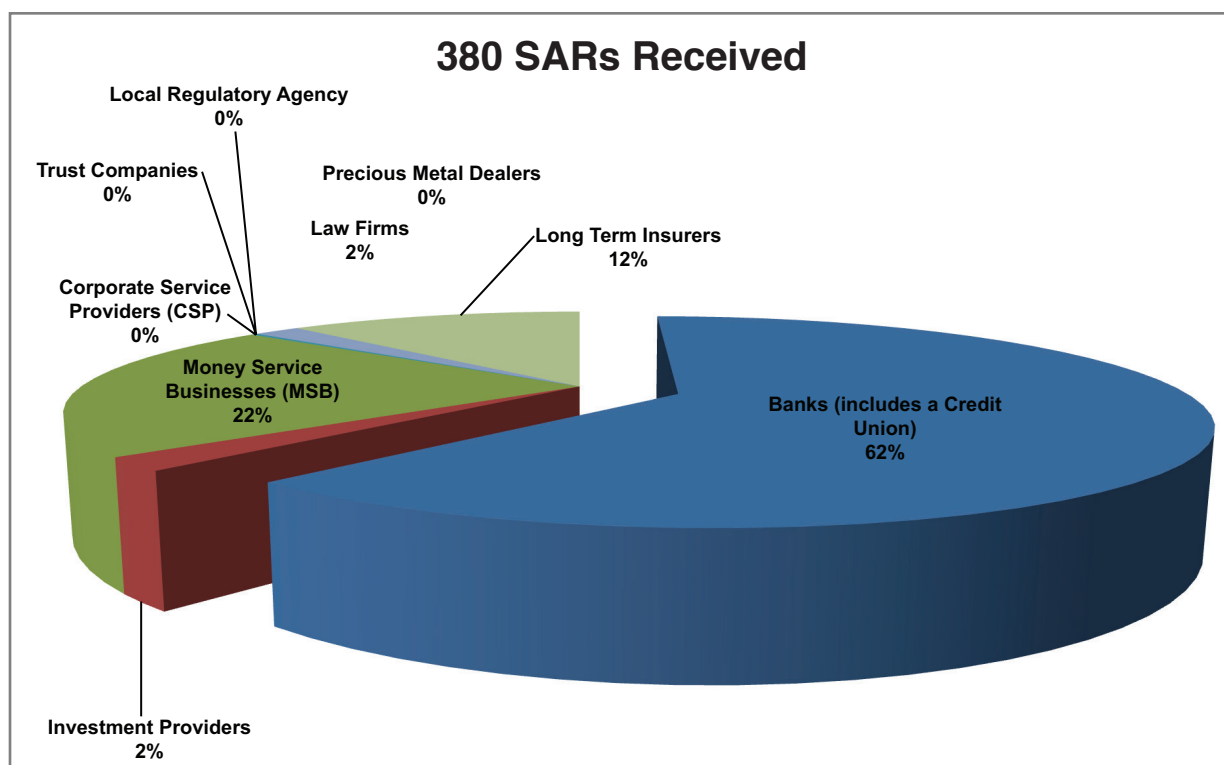
FIA STATISTICS

1st April 2013 – 31st March 2014 (the “Reporting Period”)

SARs RECEIVED

This Annual Report represents the fifth full year of reporting for the FIA. This has allowed the FIA to review its data over the past years and provide some insight into the types of SARs being filed, to identify specific trends and patterns, and review the Disclosures that have been forwarded to our partners.

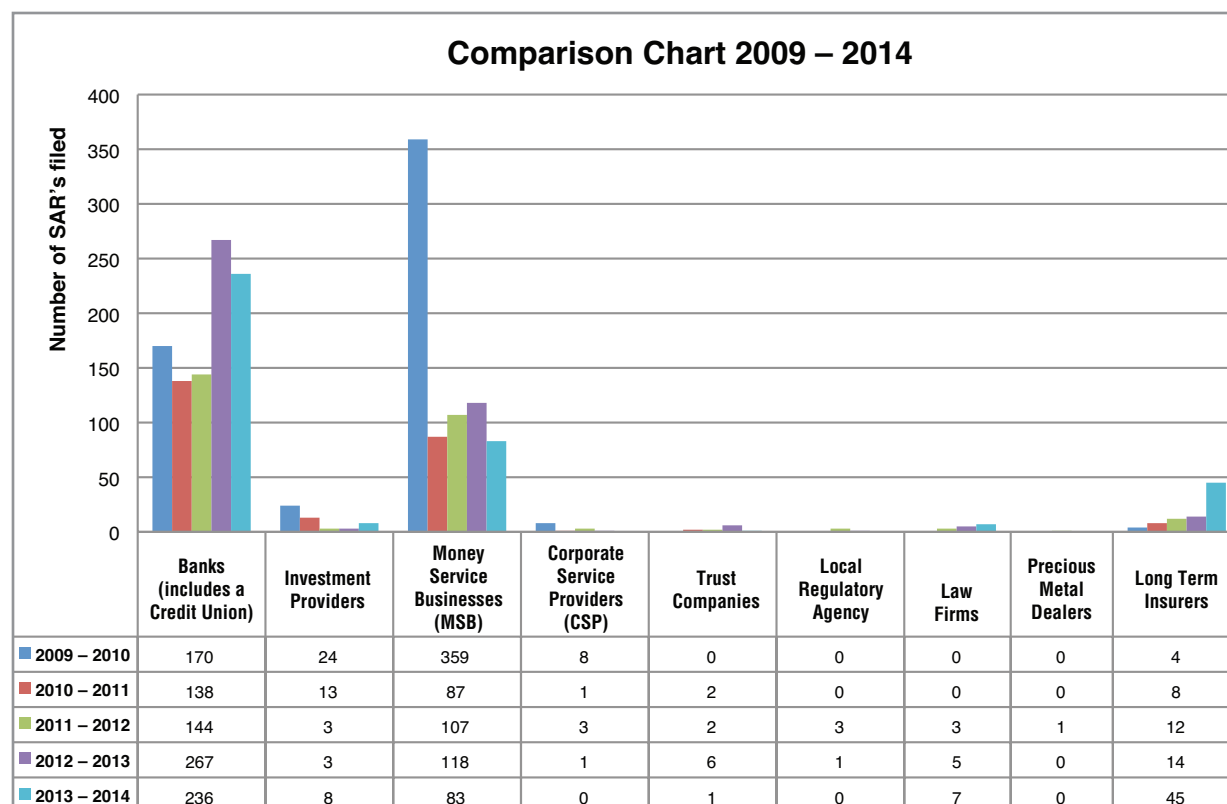
During the 2013-2014 Reporting Period, the FIA received **380 SARs**, which can be broken down as follows:



COMPARISON CHARTS OF SAR REPORTERS & SUMMARY/ANALYSIS

STATISTICS	TOTAL	PERCENTAGE
Banks (includes a Credit Union)	236	62%
Investment Providers	8	2%
Money Service Businesses (MSB)	83	22%
Corporate Service Providers (CSP)	0	0%
Trust Companies	1	0%
Local Regulatory Agency	0	0%
Law Firms	7	2%
Precious Metal Dealers	0	0%
Long Term Insurers	45	12%

Overview of this graph shows the major contributor of SARs filed during this period were the Banks (which includes a Credit Union). Following this sector are the MSBs and Long Term Insurers. The weight of the SARs filed to date and the quality received have been well prepared and useful and consequently utilised in numerous disclosures to our partners (i.e. BPS, Foreign FIU's).



A review of this comparison chart shows that the total SARs filed during this Reporting Period have decreased from the last Annual Report of 2012 – 2013. However, the total SARs filed is still a substantial amount over the previous reporting years. This decline in SAR filing can be attributed to a decrease in reporting from two main sectors i.e. Banks (including Credit Union) and Money Service Businesses (MSBs). Of interest it can be seen that other sectors have been identifying matters of concern and increasing their reporting to the FIA, especially after meetings and/or training with the FIA. Of note, the Long Term Insurers have increased their reporting by approximately 200%.

MAJOR TRENDS IN SAR REPORTING

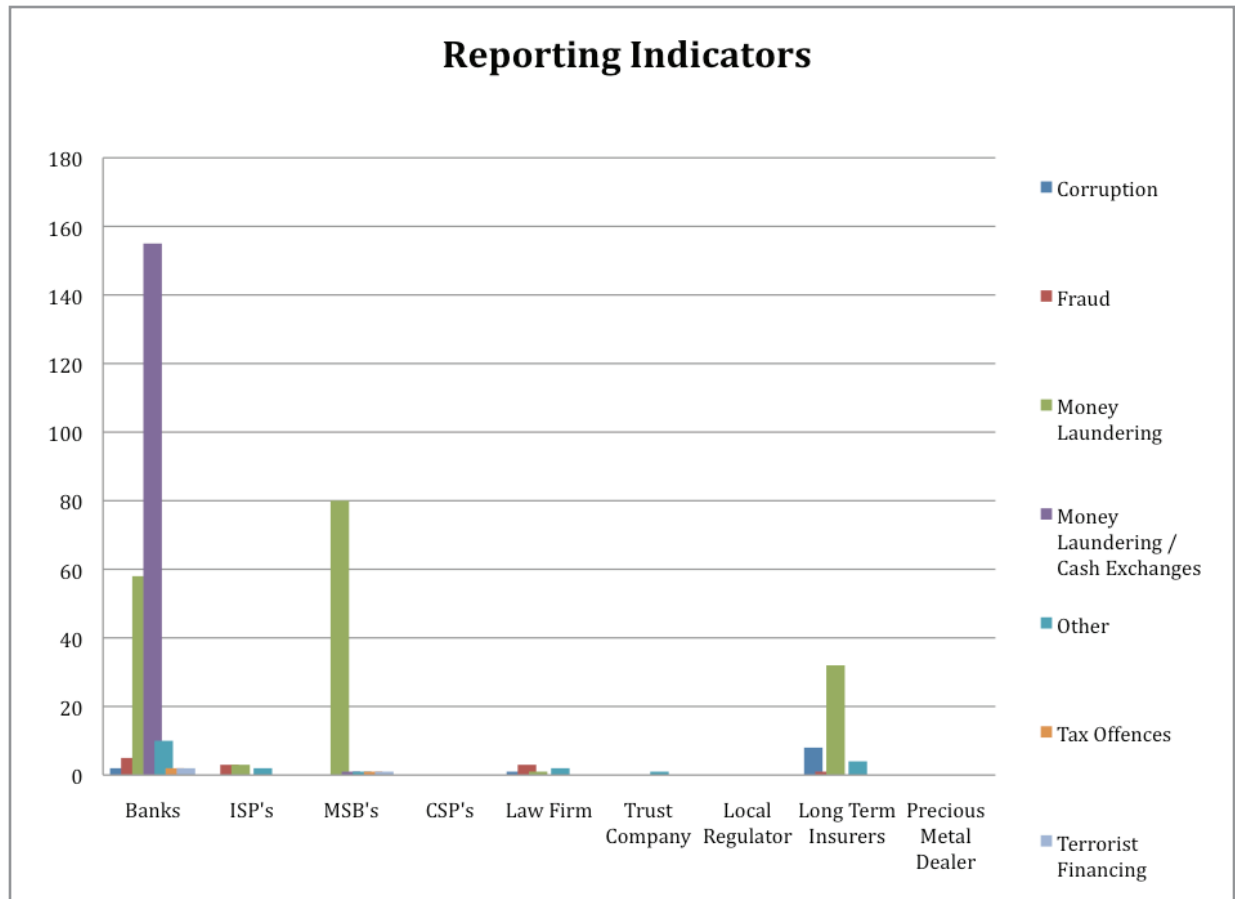
With respect to the Banks, the MSBs and other Reporting Entities, the FIA have delivered training and have had continued discussions/meetings with them concerning Know Your Customer (KYC), Reporting Indicators, AML/CFT and SAR reporting. Following these discussions, the quality of SARs filed has improved and the premise of what is being reported has expanded. While the major trend of previous reports being identified continues to be foreign cash exchange, the percentage of SAR filings related to that activity has decreased. The FIA believes that this can be attributed to these two sectors i.e. Banks and MSBs, which have increased the closure of accounts and the decline of business during their initial KYC checks. Subjects that have been identified due to irregular activity in their accounts amongst other matters are subject to having their accounts closed.

Previous SARs that were filed by these two main Reporting Entities appeared to be repetitive as the subjects noted were at most times filed on numerous occasions. With the closure of accounts, these Reporting Entities have had to identify the new subjects that seemingly continue the practice of changing Bermuda cash to a foreign currency.

On review of the SARs filed during this period, the following subjects appear to have been targeted by drug traffickers and other criminals to conduct this activity. Subject profiles are as follows:

- Special needs persons
- Elderly
- Unemployed persons
- RAGS (Retroactive Gangsters) – older/seasoned criminals who have been known drug users/dealers and have previous criminal convictions with the BPS i.e. Theft, burglary, etc
- Young persons who have just finished school and have very minimal funds in their personal accounts and/or joint bank accounts

INDICATORS AND TRENDS



REPORTING INDICATORS	BANKS	ISP'S	MSP'S	CSP'S	LAW FIRM	TRUST COMPANY	LOCAL REGULATOR	LONG TERM INSURERS	PRECIOUS METAL DEALER
Corruption	2	0	0	0	1	0	0	8	0
Fraud	5	3	0	0	3	0	0	1	0
Money Laundering	58	3	80	0	1	0	0	32	0
Money Laundering/ Cash Exchanges	155	0	1	0	0	0	0	0	0
Other	10	2	1	0	2	1	0	4	0
Tax Offences	2	0	1	0	0	0	0	0	0
Terrorist Financing	2	0	1	0	0	0	0	0	0

SARs filed with the FIA tend to follow one of five main suspicious indicators which the FIA have listed as Corruption, Fraud, Money Laundering, Money Laundering/Cash Exchanges, Tax Offences and Terrorist Financing. There are other indicators that are used to identify suspicion in a SAR and these reflect and depend on the type of business of the Reporting Entity. See reference list below.

Table (A)

INDICATOR REFERENCE LIST – SAR REPORTING			
1	Advanced Fee Fraud	36	Human Trafficking
2	Arms/Military	37	Immigration Related
3	ATM	38	Inadequate/Evasive Explanation
4	Bank Tellers	39	Insider Trading
5	Bribery	40	Insolvency Related
6	Cash Exchanges BMD/CAN	41	Investment Related
7	Cash Exchanges BMD/EURO	42	Lending/Loan Related
8	Cash Exchanges BMD/GBP	43	Market Abuse
9	Cash Exchanges BMD/USD	44	Money Transfer
10	Cash Purchase	45	Morality Related
11	Cash: In/Out International	46	MSB
12	Cash: In/Out Local	47	No Source of Funds
13	Charities	48	On-Line/Internet Banking
14	Cheque Related	49	Other
15	Consent Request	50	PEP Foreign
16	Corruption	51	PEP Local
17	Counterfeit Goods	52	Phishing
18	Credit Cards	53	Previous Rejected Transactions
19	Criminal History	54	Proliferation Financing
20	Dormant/Inactive Account	55	Real Estate
21	Drafts/Managers Cheques	56	Sanctions List
22	Drug Trafficking/Activity	57	Securities or Brokerage
23	Early Redemption	58	Smurfing
24	Elder Abuse	59	Stored Value Cards
25	Electronic Transfers	60	Structuring
26	Exact Funds (including Fees)	61	Tax Evasion
27	False Documents	62	Terrorism Related
28	Fraud	63	Theft
29	Gambling: Casino/Other	64	Third Party (sending on behalf of another)
30	Gambling: Internet/On-Line	65	Travel
31	Gang Related	66	Use of Corporate Vehicles
32	Gift Clubs	67	Use of Insurance Products
33	High Risk Country	68	Use of Trusts
34	High risk recipient	69	Watch Lists
35	High Tech Crimes	70	Wires

Of the Reporting Indicators, refer to the summaries of a few of the above shown Reporting Indicators, which are relative to the SARs filed during this Reporting Period.

CORRUPTION

The FIA have received **11 SARs** that referenced corruption from the Banking (includes a Credit Union), Law Firm and Long Term Insurer sectors to the total amount of **\$11,152,328.00 BMD**. There were no patterns identified but the common indicators between the three included:

- Client had no Bermuda connections
- Client was suspected to be involved in criminal activity current and/or previous
- Illegal activity was identified involving Clients after a request for withdrawal or during the account opening process
- Clients had political ties to their countries – Politically Exposed Persons (PEPS)
- Many of these Clients originated from a specific jurisdiction

FRAUD

The FIA have received **12 SARs** that reference Fraud from four sectors namely, Banking (includes a Credit Union), Law Firm, Long Term Insurer and Investment Service Provider. The total amount involved was **\$11,470,053.00 BMD**. Again there were no patterns identified but the common indicators between most included:

- Non-Bermudian clients
- Involved Investments
- False documents
- Inadequate explanations
- Theft
- Fraudulent Cheques
- Phishing
- Hacking into client email accounts

CASH EXCHANGES DURING THE REPORTING PERIOD

Upon reviewing the SARs filed during this Reporting Period, it was noted that the main reporting indicator identified by three of the sectors was Money Laundering. Yet again, the cash exchanges were the most common as they contributed to almost half of the SARs filed with the FIA.

Whilst this trend is more common in the conversion of Bermuda dollars to US dollars, some of the SARs reported included cash exchanges to GBP (Pounds Sterling), Euros and Canadian dollars.

The FIA analysed the SARs filed during the Reporting Period and calculated that **41.1% of all SARs** received during the period represent foreign currency exchange, via the Banks.

The exchange of BMD for a foreign currency either by:

- i) the direct exchange through a bank or MSB or
- ii) the wiring of monies overseas via a MSB

accounted for **236** of the **380** reported SARs and **62.1%** of the transactions received by the FIA via SARs during the period.

Do note as mentioned previously, although the percentages are lower compared to the last Reporting Period the volume of SARs involved has drastically increased. After a review of the SARs and with discussions and meetings held with the Reporting Entities, it was identified that this decline can be related to the closure of accounts and refusal of business to those clients that warrant a risk as it relates to Money Laundering and other criminal matters.

i) Direct Cash Exchanges

The FIA received **156 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 **BMD\$4,537,111.00** in **2,145** separate transactions, for an average of **\$2,115.20** per transaction.

During this Reporting Period the majority of the cash exchanges was reported by the Bank and Credit Union sector and one was reported by the Money Service Business sector.

ii) Electronic Funds Transfers

During this Reporting Period **83 SARs** were filed by MSBs and they fell under 3 classifications. The majority of the SARs filed (**80**) related to Money Laundering. The 3 remaining SARs involved cash exchanges, other activity and the Terrorist Financing. As previously mentioned, **80 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 **BMD\$315,797.00** was sent abroad in **204** transactions for an average of **BMD\$1,548.02**.

Please note that the MSB SARs are representative of currency transfers as the monies begin as BMD and are transferred into the recipient's currency.

OVERALL TRANSFERS of MONIES OUT OF BERMUDA 2013 – 2014

During this Reporting Period the FIA have received numerous SARs relating to EFTs which were sent to numerous jurisdictions. In the chart below see the 36 countries identified:

DESTINATION COUNTRY	DESTINATION COUNTRY
Australia	Panama
Bahamas	Philippines
Barbados	Romania
Benin	Russian Federation
Canada	St Maarten
Cayman Islands	Suriname
China	Togo
Colombia	Trinidad & Tobago
Costa Rica	Tunisia
Curaçao	Turkey
Dominican Republic	Turks & Caicos Islands
Ecuador	Uganda
France	United Kingdom
Georgia	United States Of America
Ghana	Uruguay
Guinea	British Virgin Islands
Guyana	
Jamaica	
Kenya	
Kyrgyzstan	

REPORTING PERIOD INDICATORS AND TRENDS (OTHER SAR FILING INDICATORS)

Suspicious Activity Indicators

A review of the SARs filed during this Reporting Period has assisted in identifying other patterns of suspicious behaviour taking place in Bermuda. See listed indicators below:

- Funds are deposited on BMD bank accounts while accounts were being used overseas. This activity was then followed by structured ATM withdrawals overseas
- Persons with dual citizenships/residency are used to carry out money laundering e.g. Bermudian/Jamaican, Bermudian/American, Jamaican/Bermuda expat (work permit), Jamaican/Bermudian (through marriage). The dual citizenship allows for:
 - ▶ The transfer of funds to foreign accounts
 - ▶ The apparent legitimization of suspect activity
 - ▶ Increased and ignored travel between the countries.
 - ▶ Use of local debit and credit cards in foreign countries, incurring high FCPTs
- Persons are travelling with the multiple debit cards and credit cards of others.
- Overseas money/drug mules from the same area/region are identified according to recipient information
- Bogus home addresses of recipients of EFTs via MSBs as well as the addresses are presented by overseas visitors to the island e.g. addresses for vacant lots, addresses for commercial zones, non-existent addresses
- Numerous IDs (bank, telecommunications etc.) are presented and bank accounts are created with various names e.g. with hyphen, without hyphen, with maiden name, with married name. As Bermuda does not have a national unique identifier, it is difficult to track the activity and associations of persons
- Foreign workers were used to facilitate money laundering. Funds are placed on foreigners' BMD bank accounts and when workers travel home, funds that have been deposited by locals are then withdrawn already in desired foreign currency
- Dormant bank accounts suddenly become active and are used for in and out cash exchanges
- Blocked senders of MSBs are still sending money through MSBs via smurfs.

CASE STUDIES 2013 – 2014

Case 1

Within a week, two Bermudian subjects had over \$10,000.00 BMD deposited on their bank accounts while they were traveling to various countries in the Caribbean. Once the funds were deposited on their accounts, a high number of withdrawals were made via ATMs in the Caribbean. Reviews of their banking activity revealed no evidence of income and no living expenses. Their accounts were primarily used to receive cash deposits from unknown persons and withdraw funds overseas where the subjects resided for extended periods of time. The countries in which the subjects resided are deemed high risk countries with a high prevalence of money laundering linked to the illicit drug trade. Based on these red flags, the subjects are suspected of conducting money laundering and/or facilitating money laundering on behalf of others for the illicit drug trade.

Case 2

Over the period of 3 years, the subject solicited her associates to act as smurfs, exchanging \$200,000.00 BMD for \$200,000.00 USD from unknown sources via their local bank accounts. It was revealed that some of her associates were undergoing financial difficulties, which were discussed with the subject. The subject then petitioned their assistance in facilitating money laundering on her behalf in order to receive extra money. Further checks revealed that her associates also sent funds via Money Service Business. It was also identified that all of the subject's bank accounts had been closed due to suspect activity and her associates were needed to conduct the first and second stages of money laundering: placement and layering.

Case 3

SARs were filed by a local bank on the activity of several subjects. All of the subjects are suspected of conducting money laundering and based on their activity it is suspected that they are jointly involved in criminality. Commonalities of suspect activity of the subjects were as follows:

- Subjects used outgoing wires to send large amounts to recipients in the Caribbean and the same state in the USA
- Subjects deposited funds prior to making outgoing wires via their local bank accounts
- Verification of the source of funds could not be determined.
- Account balances were typically low before and after the suspect activity, which involved outgoing wires and in & out exchanges of BMD cash for USD cash.
- One of the recipients of funds via a Money Service Bureau (MSB) was commonly held by the subjects. The spelling of the surname of the subject was slightly varied, possibly to avoid detection.

Due to these commonalities, it is suspected that the subjects are facilitating money laundering via their local bank accounts and Money Service Businesses in order to coordinate illicit drug trade.

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 Reporting Period **380 SARs** were received. **145 SARs (38.2%)** were filed for intelligence purposes and **235 SARs (61.8%)** were attached to a case and assigned to an analyst for potential disclosure.

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 Request for Information Notice, the SAR may be attached to an intelligence case. Accordingly, a SAR may be attached to a case for disclosure even after its initial closure.

REQUEST FOR INFORMATION POWERS

As it relates to the FIA utilising its Request for Information powers under Section 16 of the FIA Act, **482** "Notice to Provide Information" letters were sent to **16 separate entities** during this Reporting Period. This power is only utilised when the FIA have escalated a SAR to be a case requiring further analysis.

DISSEMINATION OF INFORMATION/INTELLIGENCE RECEIVED

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 FIU's, 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 HM Customs.

Substantive disseminations contain classified information that is regularly transmitted to the BPS, HM 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 Entites, are considered classified information and they are handled and marked as such.

DISCLOSURE STATISTICS

During this Reporting Period, the FIA made **184 Disclosures** of classified information/intelligence to local and foreign partners. These Disclosures consisted of information/intelligence received by the FIA via SARs (**354 SARs** were disclosed), information/intelligence obtained by the FIA further to its request for information 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’ in its efforts to provide beneficial intelligence to the FIA’s local and foreign partners.

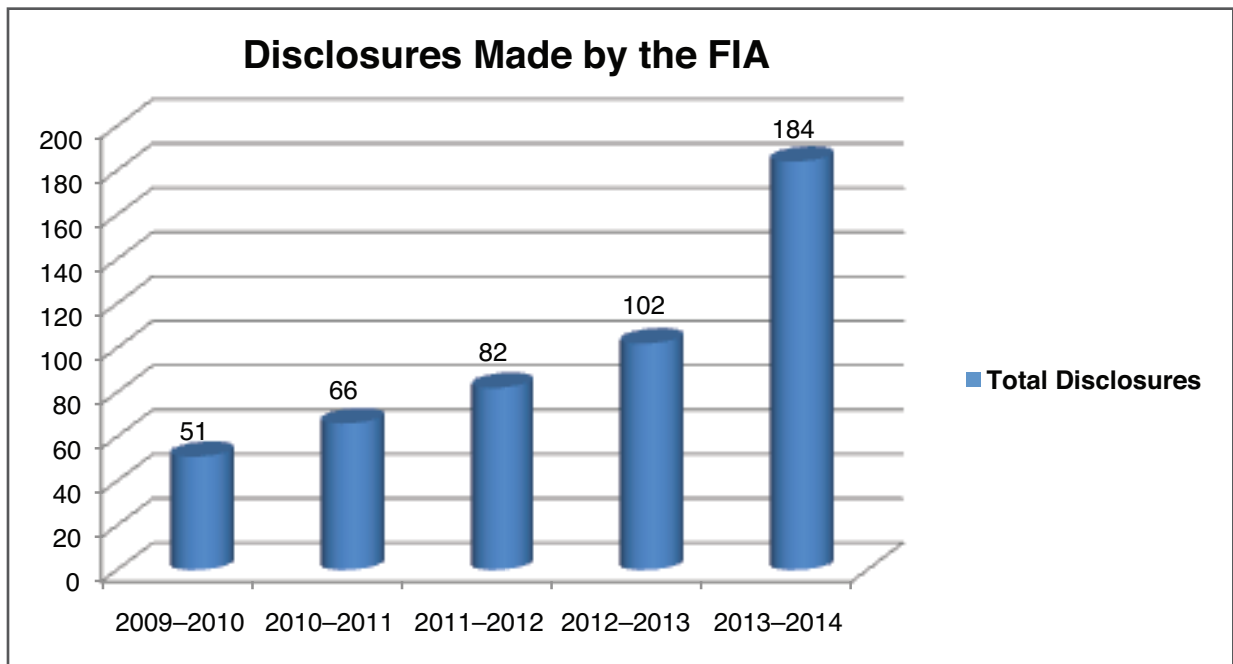
Charts below compare the total Disclosures made and SARs filed between this Reporting Period and the FIA Annual Report for 2012 – 2013

STATISTICS	2ND QUARTER 2013	3RD QTR 2013	4TH QUARTER 2013	1ST QUARTER 2014	2013 – 2014 TOTAL
Disclosures Made by FIA	35	55	63	31	184
SARs Disclosed	56	78	156	64	354

STATISTICS	2ND QUARTER 2012	3RD QUARTER 2012	4TH QUARTER 2012	1ST QUARTER 2013	2012 – 2013 TOTAL
Disclosures Made by FIA	25	26	32	19	102
SARs Disclosed	39	51	77	32	199

The following chart illustrates the disclosures per quarter and the total for each of the last 4 Reporting Periods and current Reporting Period.

Since the FIA’s first full year of reporting the 2009 – 2010, the FIA’s disclosures have increased from 51 to 184, which is an increase of 260.78%. The FIA is seeing the benefit of extensive use of goAML, which has enabled, more efficient production of disclosures.



Interaction with Foreign FIUs

During the Reporting Period, the FIA received **21** Incoming Requests for Information (IRI) from foreign FIUs

COUNTRY/FIU	NUMBER OF INCOMING REQUESTS
Belgium	1
Bulgaria	1
Czechoslovakia	1
USA	5
Canada	1
France	4
Indonesia	1
Italy	1
Japan	1
Jersey	1
Montenegro	1
United Kingdom	1
Switzerland	1
Scotland	1

In keeping with 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 foreign partners. Of the **184 Disclosures** made by the FIA during the Reporting Period, **47** of the Disclosures were made to foreign FIUs, which are listed below.

COUNTRY FIU
Argentina
Bolivia
Cayman
Canada
Germany
India
Israel
Italy
Kyrgyz Republic
New Zealand
Nigeria
Panama
Spain
Switzerland
Taiwan
Turkey
Uruguay
United Kingdom
United States of America

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 Entites, is considered unclassified. Although the release of this statistical information is often restricted, much of the information is eventually included 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

The FIA will continue working with our counterparts both locally and overseas in every capacity from initiation within Disclosures to the assistance provided from the Incoming Requests for Information in the global fight against AML/CFT.

Thorough SAR analysis will continue to be conducted as patterns, trends and suspicious indicators are recognized and shared with the reporting sectors, allowing them the ability to initiate better risk management for their businesses.

FIA ACTIVITIES

Egmont

The Director and the Senior Legal Counsel of the FIA attended the EGMONT Plenary in Johannesburg, South Africa. On the agenda were the revisions to the Egmont Charter and its relative supporting documents, which have an impact on all FIUs. The Senior Legal Counsel has been an active member of the advisory panel that has been tasked with the revising the Egmont constitutional documents. These revisions will see a dynamic change to the manner in which Egmont operates and the expectation that it will have from its members. The Heads of FIUs (HoFIU's) also looked at the proposed Support and Compliance documents to address non-compliance issues within an FIU. Whilst this document was approved in principle, there were a few important implementation matters that require further details prior to the implementation of this document.

The Senior Legal Counsel delivered training sessions during the plenary, covering the Group's membership procedure. She has been acting as the interim Vice Chair of the Legal Working Group for the past year. She was then formally nominated, and approved by the Heads of FIU, as the Vice Chair of the Legal Working Group during the South Africa meetings.

The Egmont Group has now grown to be 139 members strong.

MOU's

The FIA do not require an MOU to enable it to exchange information with any foreign financial intelligence unit (FIU). When the FIA receive a request to enter into an MOU with an FIU that does require such agreements in order to exchange information, it will negotiate and conclude these MOUs in a timely manner.

At present, the FIA has 40 signed MOU's with different jurisdictions, allowing the free flow of intelligence. At the same time, the FIA has established 13 confirmations from FIUs where an MOU is not required, but the sharing of information is allowed as per their legislation.

CFATF

Representatives from the FIA continue to play an active role with CFATF.

The Director and the Senior Analyst have been involved in the Accreditation Working Group, which will see training for all FIU analysts and financial investigators. The Senior Analyst was also involved in the Typologies Working Group, addressing human trafficking and the smuggling of illegal immigrants in the CFATF region. The final draft report of this project was presented at the November 2013 CFATF plenary, which was held in Freeport, Bahamas.

TRAINING

The FIA analytical staff attended a local training session conducted with the Bermuda Police Service (BPS) on its IT system. With access to this IT system, the FIA can now directly input disclosures to the BPS.

The FIA continues to provide GOAML Training and SAR filing with financial institutions, company and trust service providers, law firms and other domestic competent authorities.

The FIA took part in KPMG's AML Industry Specific Round Tables, which were specific to the Insurance, Investment/Funds and Trusts sectors. From this introduction, the FIA and KPMG have partnered in joint training sessions for the benefit of the Reporting Entities. Hopefully, this will develop into a promising partnership.

The FIA staff received an upgrade to the goAML system along with user and administrative training. The upgrades received have so far been beneficial, allowing the analysts to retrieve the necessary data quicker and more fluently. As a result of these upgrades, training was delivered for the regulated institutions that utilize goAML on a daily basis.

The Director was invited by the International Monetary Fund (IMF) to attend its Mutual Evaluation Assessor training, which was held in Washington DC, USA between 8th and 10th January, 2014. This training was to provide insight as to how the 4th round of evaluations are to be conducted by assessors with regards to the following changes to: the FATF's 40 Recommendations; the methodology for assessing technical compliance with the revised recommendations; the effectiveness of the AML/CFT systems and its impact on all countries. It also provided invaluable insight with respect to the manner in which Bermuda will ultimately be assessed against these revised FATF Recommendations methodology.

In March 2014, there was a Bilingual Strategic Analysis Course in Miami, Florida, USA. The training course was hosted by FinCEN and CICAD with funding provided by the US State Department and UK-FCO. This course was organized in part by FIA Bermuda, USA FIU (FinCEN), Canada's FIU (FinTRAC) and the Inter-American Drug Abuse Control Commission (CICAD). The CFATF/GAFISUD Secretariats also played a logistical role in the development of this course. This was attended by 26 CFATF and GAFISUD FIU members. Bermuda's representatives was from the BPS as the FIA had two of its staff participate in this course the year before. The course was an overwhelming success.

NATIONAL RISK ASSESSMENT

The FIA continued the work with Bermuda's National Risk Assessment (NRA) in all areas. The Senior Legal Counsel is the Co-Chair for Group, which considered the National Vulnerability and Combating Ability. The Senior Analyst was involved in Group 2, which concerned all aspects of AML/CFT within the financial sectors and the Director is the Chair of Group 3, which reviewed the national vulnerability for the Designated Non-Financial Business and Professions.

The 2013 pilot run of the NRA was successfully concluded. The NRA concept, as an on-going exercise, has been set in motion. The completion of the pilot run enabled all authorities involved in the NRA to identify and assess risks at the national level in addition to identifying key gaps in the data currently available.

A key conclusion to derive from the 2013 pilot run of the NRA was that it facilitated dialogue and shared understanding among the various public sector agencies involved in the NRA as well as between public agencies and the private sector.

By documenting the data collection process for the NRA, it has now provided a sound platform for integrating apparently disperse pieces of information into a cohesive single model. The initial exercise was also extremely useful in raising awareness for the public agencies on the extent to which data to support the informed assessments is a highly resource intensive enterprise.

LEGISLATION

Proceeds of Crime Amendment Act No 1

In recent years, there have been substantial amendments made to Bermuda's AML/CFT legislation to ensure that Bermuda is able to effectively play its role in the global fight against money laundering and terrorist financing and to have a high level of compliance with the relevant international requirements. In this regard, due consideration has been given to the matters raised in Bermuda's Mutual Evaluation Report (MER), which detailed the results of the AML/CFT review conducted by the International Monetary Fund (IMF) in 2007. Notwithstanding the significant work that has been done to update our framework, there remain a number of outstanding issues in relation to the gaps identified in the MER in relation to Bermuda's regime. To comply with the requirements for completing the third round of AML/CFT assessments, the National Anti-Money Laundering Committee (NAMLC) has identified the outstanding legislative matters noted by the assessors of the IMF and the Caribbean Financial Action Task Force (CFATF) and is proposing to address them in the upcoming Parliamentary session.

Furthermore, the Financial Action Task Force (FATF) adopted revised Recommendations for combating money laundering and the financing of terrorism and the proliferation of weapons of mass destruction. As part of this revision, FATF has restated the 40 Recommendations + 9 Special Recommendations as a set of consolidated 40 Recommendations. Countries are now in the process of reviewing their legislative and technical provisions to ensure that their framework reflects these changes. Although the revised FATF Recommendations are not substantially changed in many areas, there is a need to ensure Bermuda's legislative framework is appropriately updated. Accordingly, these instructions set out amendments to be made to determine whether Bermuda's regime needs these revised requirements directed by FATF.

To comply with the CFATF requirements relating to the third round assessments and fulfill the commitment that Bermuda was required to make to CFATF, the following amendments were required to be enacted before November 2013:

1. Technical Amendments to address the recommendations of the Evaluators of the 2007 Mutual Evaluation Report

POWERS OF LAW ENFORCEMENT AND INVESTIGATIVE AUTHORITIES: Amend Section 49 of the Proceeds of Crime Act 1997 to specifically identify NAMLC as playing a role in the development of anti-terrorist financing policy.

ONGOING MONITORING AND RECORD-KEEPING (REGULATIONS 7 AND 15 OF POCA REGULATIONS): Under Regulation 16, entities must have systems in place to monitor complex transactions or unusually large or complex transactions. However, the assessors have recommended that the regulations make it clear that there is a duty to monitor complex transactions or unusually large transactions and documents pertaining to the investigations of such reviews are kept for 5 years. Presently, Regulation 15 requires records on beneficial ownership to be kept for 5 years. Therefore, it is necessary to impose an obligation to examine and investigate any complex, unusually large or unusual pattern of transactions under Regulation 7 and under Regulation 15 to impose an obligation to keep records of the findings of such investigations for five years.

- ▶ Amend Regulations 7 and 15 to clarify that all documents related to investigations of complex or unusually large or unusual patterns of transactions are recorded and kept for five years.

INTERNAL CONTROLS (REGULATION 18): Under Regulation 18, there is requirement to ensure that staff members responsible for AML compliance are trained. The assessors have directed that the scope of persons who are Relevant Employees be more clearly stated to capture all staff members who play a role in the monitoring and implementation of the AML regime of the business.

- ▶ Amend Regulation 18 to expand the scope of persons who are subject to AML/ATF training (Relevant Employees) to include any person who plays a role in implementing and monitoring compliance with the AML/ATF requirements. Additionally, the regulations are to be amended to require that all shortlisted/potential Relevant Employees are screened to ensure they meet standards for "fitness and propriety".

ENHANCED DUE DILIGENCE (EDD) (REGULATION 11): Regulation 11 describes the type of due diligence that is carried out if there is no simplified due diligence (SDD). This enhanced due diligence is done on a risk basis. However, the assessors have directed that EDD **must be** carried out if the customer is from a country that has been identified by FATF as high risk. “High risk” means a country that is identified by FATF as higher risk.

- ▶ Regulation 11 is amended to capture this overriding requirement that directs circumstances when there must be enhanced due diligence carried out.

RELIANCE ON THIRD PARTIES (REGULATION 14): Under Regulation 14, an entity may rely on a third party to carry out customer due diligence if the third party meets the requirements set out in Regulation 14(2). However, the assessors have directed that the competent authority, being the Bermuda Monetary Authority, must itself assess the risk of the country where the third party is resident. This level of country risk must be measured. As well, when there is reliance, the Bermuda entity must immediately obtain the identity information. At the present time, the guidance notes only direct that the records must be “available”.

- ▶ Amend the third party reliance in relation to CDD measures as follows: (i) a relevant person must obtain information sufficient to identify customers, and (ii) the Bermuda Monetary Authority must satisfy itself that reliance is appropriate given the level of risk for the jurisdiction in which the party to be relied upon is usually resident.

TIPPING-OFF AND CONFIDENTIALITY (SECTION 47 OF POCA 1997 AND SECTION 10A OF ATFA 2004): Under section 47 of POCA and section 10A, the offence of tipping off is defined. FATF has directed that the offence should specifically cover “disclosure of filing a SAR” and the content.

- ▶ Amend the offence of “tipping-off” to explicitly cover any disclosure of the filing and on the content of a SAR.

International Conventions:

a) THE UNITED NATIONS INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM (SFT)

The FATF is concerned about activities related to funding terrorist organisations and individuals themselves and not just “terrorism” generally. As well the FATF has directed that all the acts related to terrorism are covered. Further, we are required to have the UK extend to us the SFT in order to satisfy two of the former 40 +9 Recommendations. In order to achieve this, we must incorporate the provisions of the conventions into the domestic framework. The Mutual Evaluation Report confirmed that most of the provisions were already included, but the ones noted below need to be incorporated.

- ▶ Under the Anti-Terrorism (Financing and Other Measures) Act 2004, amend the definition of the offence of fund raising for terrorism to be extended to cover the financing of “terrorist organisations”, the financing of “individuals participating in terrorist activity” as it currently only refers to the financing of terrorist acts.
- ▶ All of the acts covered by the list of nine conventions referred in the SFT are to be included in the definition of terrorism (section 2 ATFA 2004). The 2008:36 ATFA Amendment appears to have amended three of the nine conventions into the definition in section 3(2); Conventions listed below in the SFT Annex as 1, 3 and 7. In order to satisfy the requirements of the MER 2007, the acts of the remaining conventions are to be included in the definition. The SFT Annex is as follows (emphasis added to the remaining acts):
 1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.
 2. Convention for the Suppression of **Unlawful Acts against the Safety of Civil Aviation**, done at Montreal on 23 September 1971.

3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
4. International Convention against the **Taking of Hostages**, adopted by the General Assembly of the United Nations on 17 December 1979.
5. Convention on the **Physical Protection of Nuclear Material**, adopted at Vienna on 3 March 1980.
6. Protocol for the Suppression of **Unlawful Acts of Violence at Airports Serving International Civil Aviation**, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
8. Protocol for the Suppression of **Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf**, done at Rome on 10 March 1988.
9. International Convention for the Suppression of **Terrorist Bombings**, adopted by the General Assembly of the United Nations on 15 December 1997.

b) UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (PALERMO CONVENTION)

The FATF also requires that Bermuda have the Palermo Convention extended to us. We will provide the additional amendments required to effect this by Tuesday 11 June 2013.

Confiscation: Amend Section 48A to cover forfeiture of property, which constitutes instrumentalities intended for use in the commission of money-laundering or predicate offences. The FATF Recommendations require that Countries adopt measures to enable their competent authorities to freeze seize or confiscate instrumentalities used in or intended for use in money laundering or predicate offences (Recommendation 4).

2. CONSISTENCY OF LEGISLATION

There are inconsistencies between POCA 1997 and ATFA 2004 that must be regularized. To ensure consistency between these pieces of legislation, the following amendments were made:

Penalties for failure to file a SAR: There are different penalties under both Acts in relation to the failure to file a SAR. It is therefore proposed that the penalties in ATFA 2004 be amended in line with the penalties in POCA 1997;

- ▶ Amend Section 9(9) of the ATFA 2004 (in line with POCA 1997) to increase the penalties for failure to file a SAR:
 - On summary conviction: from \$10,000 or imprisonment for 6 months or both to \$15,000 or 3 years or both; and
 - On indictment: from \$100,000 or 5 years or both to an unlimited fine or 10 years or both.

Use of guidance: Under both Acts, the court, in determining whether a person has committed certain types of offences, may consider whether a defendant followed any guidance issued by the relevant supervisory authority. In POCA 1997 this defence extends to the failure to file a SAR, however, in ATFA 2004 this defence is not available. ATFA 2004 was amended to include this offence in the list of offences that the court may consider in relation to whether guidance has been followed.

- ▶ It is proposed to amend Section 120 of ATFA 2004 to include in the list of offences the offence of failing to file a SAR (section 9).

3. ANALYSIS OF THE REVISED FATF RECOMMENDATIONS

To ensure Bermuda's legislation incorporates FATF recommendations, as revised amendments as set out in the section were included.

Aiding foreign jurisdictions

There are no express provisions in Bermuda legislation in relation to Bermuda authorities acting on the freezing or seizing orders made by the authorities of an overseas jurisdiction. In practice, the Ministry of Legal Affairs has in the past taken action to apply to the court to seize goods during the provision of mutual assistance. To ensure clarity, the Criminal Justice (International Cooperation) (Bermuda) Act 1994 (CJICBA 1994) was amended to specifically provide the legal authority to carry out such orders as follows:

- ▶ Amend the CJICBA 1994 to remove any impediments to the statutory power to assist an overseas jurisdiction seeking assistance to freeze and seize assets.

Direct reporting of SARs – Revised Recommendation 20

Section 46 of POCA 1997 and Section 9 of ATFA 2004 provides for the offence of failure to file a SAR. This provision is not a "direct offence" but rather an "indirect offence", in that if the person fails to report it is an offence. FATF Recommendation 20 now requires that there must be a direct reporting obligation.

- ▶ Amend Section 46 of POCA 1997 and Section 9 of ATFA 2004 to impose a direct obligation to report suspicious transactions.

Mutual legal assistance – Revised Recommendation 37

Under Recommendation 37 it is required that countries maintain the confidentiality of requests for mutual legal assistance received from foreign authorities. The CJICBA 1994 does not clearly provide for the confidentiality of such requests.

- ▶ Amend the CJICBA 1994 to maintain the confidentiality of requests for mutual legal assistance received from foreign authorities.

Proceeds of Crime Amendment Act No 2

Further amendments to the Proceeds of Crime Act 1997 were recently passed to make provision for the establishment of an Enforcement Authority (i.e. the Attorney General) which will be responsible for instituting civil proceedings before the Supreme Court for the purpose of recovering property that is, or represents property obtained through unlawful conduct, and for connected purposes.

Conduct is unlawful conduct if it is unlawful under the criminal law of Bermuda. A criminal conviction is not required. The Supreme Court will decide on a balance of probabilities (i.e. the civil standard of proof) whether it can be proved by the Enforcement Authority that any matters alleged to constitute unlawful conduct have occurred or that any person intended to use any cash in unlawful conduct.

A person obtains property through unlawful conduct (whether his own conduct or another's) if he obtains property by or in return for the conduct.

The impact that this amendment will have on the FIA is the ability for a person to disclose to the FIA (in good faith) his suspicion or belief that property is recoverable property or any other information or matter on which that suspicion or belief is based. Such disclosure shall not be treated as a breach of any restriction upon the disclosure of information however imposed.

Consequential amendments to the FIA Act will be passed enabling the FIA to extend its existing powers under the FIA Act to this new form of disclosure.

LIST OF ABBREVIATIONS

AML/ATF	Anti-Money Laundering/Anti-Terrorist Financing
ACAMS	Association of Certified Money Laundering Specialists
BMA	Bermuda Monetary Authority
BMD	Bermuda Dollar
BPS	Bermuda Police Service
CAMS	Certified Money Laundering Specialist
CFATF	Caribbean Financial Action Task Force
CSP	Corporate Service Provider
CUSTOMS	H.M. Customs
EGMONT	The Egmont Group of Financial Intelligence Units
EFT	Electronic Funds Transfer
FATF	Financial Action Task Force
FIA	Financial Intelligence Agency
FIU	Financial Intelligence Unit
IMF	International Monetary Fund
IRI	Incoming Requests for Information
KYC	Know Your Customer
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
UNODC	United Nations Office on Drugs and Crimes
UK	United Kingdom
USA	United States of America
USD	U.S.A. Dollar

