Anti-money laundering and counter-terrorist financing measures

Virgin Islands (British)

Mutual Evaluation Report

February 2024

The Caribbean Financial Action Task Force (CFATF) is an inter-governmental body consisting of twenty-four member states and territories of the Caribbean Basin, Central and South America which have agreed to implement common countermeasures to address money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. For more information about the CFATF, please visit the website: www.cfatf.org

This report was adopted by the Caribbean Financial Action Task Force (CFATF) at its November 2023 Plenary held in Noord, Aruba.

Citing reference:

CFATF (2023). Anti-Money Laundering and Counter-Terrorist Financing Measures – Virgin Islands (British), Mutual Evaluation Report,

https://www.cfatf-gafic.org/documents/4th-round-meval-reports

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EXECUTIVE SUMMARY

1. This report summarizes the anti-money laundering/combating the financing of terrorism (AML/CFT) measures in place in the Virgin Islands (VI) as at the date of the onsite visit of March 15–30, 2023. It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of VI's AML/CFT system and provides recommendations on how the system could be strengthened.

Key Findings

a. The overall understanding of money laundering (ML) and terrorist financing (TF) risks in the VI is fair and narrow, particularly with respect to the design of VI legal persons and legal arrangements, and their misuse abroad. The relevant authorities and key reporting institutions broadly view the illicit activities of the foreign beneficial owners as having an insufficient nexus with the territory and do not consider that VI entities are directly involved in such activities. This understanding of the risks that VI entities play in the layering and integrating phase of ML and TF activities abroad has cascading negative effects on the overall effectiveness of the AML/CFT system.

b. Financial intelligence is used by several competent authorities and other public sector agencies in their operations. However, regarding competent authorities such as the Financial Services Commission (FSC), Financial Investigation Agency (FIA)-Supervisory and Enforcement Unit (SEU), and other authorities such as the Ministry of Natural Resources, Labour and Immigration (MNRLI), this use is mainly for the purpose of conducting background checks, regulatory due diligence, and compliance instead of the investigation of ML/FT cases.

c. There have been challenges regarding the quality of the FIA's Analysis and Investigations Unit's (FIA-AIU) intelligence, which impacted the Royal Virgin Island's Police Force's (RVIPF) Financial Crime Unit's (FCU) use of the FIA-AIU's disseminations to progress ML and TF investigations. The FCU and FIA lately have sought to work collaboratively to address these issues, resulting in eight investigations which have recently commenced exploiting financial intelligence from the FIA.

d. Overall, the number of investigations, prosecutions, and convictions for ML is low for a significant corporate and financial center such as the VI. Most ML cases comprise simple cases of possession of cash proceeds derived for drug trafficking. This limited outcome is due to the lack of comprehensive financial investigations aiming at identifying, locating, and seizing the proceeds of ML and predicate offences. This is due in part to the insufficient staff resources available to the FCU until recently, the perceived weaknesses in FIA disseminations, and differences in views as regards the required legal nexus between the illicit activities of British Virgin Island Business Companies (BVIBCs) allegedly committed abroad and maintaining related investigations and prosecutions within the VI. The authorities have not initiated any (i) large-scale ML investigations, (ii) cross-border investigations, (iii) investigations with respect to the potential criminal activities of BVIBCs reportedly involved in foreign predicates, or (iv) investigations relating to third-party laundering. The recent increase of investigative staff, as well as the consequences of the Commission of Inquiry (CoI) report on corruption are commendable and have prompted authorities to take a more forceful approach to ML.

e. Significant amounts of cash were seized and forfeited during the period under review,[1] mainly derived from drug trafficking. However, confiscation is not treated as a policy objective, and there

[1] Based on the available data, the team has focused on the outcomes achieved over approximately the past five years. This is referred to in this report as the "period under review."

were no investigations aiming at identifying and locating criminal assets in the jurisdiction and abroad. Forfeiture is largely limited to cash seized on arrested persons, and criminal confiscation procedures have not been used so far. In addition, the regime for asset management is only nascent.

f. The VI identified and investigated a small number of TF cases and did not prosecute or convict TF activities over the assessed period, which is broadly consistent with the low TF-risk profile of the territory. On the other hand, the FCU demonstrated some preparedness to identify, prioritize, and investigate TF cases, although there is a need to improve financial investigations capacity.

g. United Nations Security Resolutions (UNSCRs) have immediate legal effect in the VI, and a framework is in place to implement targeted financial sanctions (TFS) for TF and proliferation financing (PF) without delay. However, variances in the frequency of screening by reporting entities, the lack of sufficient mechanisms for the identification of potential targets for designation and sanctioned assets, and inconsistent understanding among reporting entities of legal obligations undermine effective implementation of TFS. Additionally, supervisory activities are not sufficiently rigorous to ensure that effective implementation of TFS is taking place.

h. While TF risk is recognized as being low, the authorities have not identified the subset of nonprofit organizations (NPOs) that are vulnerable to TF abuse nor the specific TF threats facing the NPO sector in VI, spreading limited resources over a large number of NPOs, most of which are unlikely to pose a TF risk. The FIA's supervisory approach does not appear to be sufficiently robust, risk-based, and aimed at potentially mitigating the specific risk of TF.

i. All banks and some legal practitioners demonstrated a good understanding of their ML risks and AML/CFT obligations. Such understanding is, however, very heterogenous in the trust and company service providers (TCSP) sector and insufficient in certain segments of the investment business sector, which constitute the most important sectors in the VI in terms of materiality and are most exposed to ML/TF risks. In addition to observed weaknesses in the ML risk understanding and mitigating controls implemented by other financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs), the measures employed by the entities continue to be rather rule-based and not sufficiently aligned with ML/TF risks.

j. While improvements in the implementation of customer due diligence (CDD) measures by the FSC-supervised entities are positive, there are remaining obstacles that undermine effective implementation of CDD and enhanced due diligence (EDD) measures in both the financial and non-financial sectors. The application of the recently amended beneficial ownership requirements by all sectors, including the TCSP and investment business sectors, is itself an improvement, but generally remains too focused on determining ownership. Accordingly, a fully adequate understanding of the concept of control over a legal person and arrangement is yet to be demonstrated. Considering VI's profile as an international business incorporation and financial center, serious deficiencies in the implementation of CDD requirements, including beneficial ownership requirements and EDD measures by VI's TCSP and investment business sectors, have a major negative impact on VI's overall level of compliance with preventive measures. Furthermore, important deficiencies in suspicious activity reports (SARs) also continue to exist.

k. Reliance on professional business introducers (both intra-group and third parties) for CDD and record-keeping purposes is a widely used practice in VI's TCSP sector. While such reliance is permitted under the FATF Standards, the sector insufficiently demonstrated that associated ML/TF risks are adequately identified, fully understood, mitigated, and monitored. The very recent introduction of a supervisory regime for virtual asset service providers (VASPs) is a positive step, but, at the time of the assessment, there was no evidence yet, that preventive measures are already being implemented by the VASPs that are operating in and from the VI.

l. A supervisory framework is in place at both supervisory agencies with the FSC's being most developed. However, effective risk-based supervision could only be demonstrated to a limited extent. While the FSC collects a broad range of data for risk identification, its risk model is not effectively supporting the assessment of the most important ML/TF risks, nor prioritization of its supervisory activities targeting those higher risk licensees. The FSC carries out the most onsite inspections in the TCSP sector, as the sector with the highest ML/TF risk. However, the number of inspections is still very low for TCSPs, extremely low for investment businesses, and low for banks. The inspections do not ensure that (residual) risks from ownership and control structures of clients and active companies are effectively covered by licensees, nor concerning business introductions. The FIA's institutional risk assessments are developing but are not systematically and consistently conducted and lead to only a basic understanding of institutional ML/TF risk. Remediation of identified deficiencies is effectively achieved through remedial action plans (RAP) in the TCSP sector but to a lesser extent in the investment business sector. The FIA increasingly applies this instrument including in response to identified deficiencies in AML/CFT controls. Where penalties are imposed by the FSC, those cannot be considered effective, proportionate, and dissuasive in most cases, and no monetary penalties have been imposed by the FIA. Market entry controls do not effectively prevent criminals and associates from owning, controlling, and/or managing (applicant) licensees in any sector, nor is the potential criminal history of relevant foreign persons systematically verified.

m. The VI's system for holding adequate, accurate, and up-to-date basic and beneficial ownership information for legal persons and arrangements is dependent on information collected by TCSPs, providing registered agent services. Therefore, the overall effectiveness of this system is impacted by shortcomings in the effective implementation of CDD and other preventive measures taken by the registered agents, and the ability of supervisors to effectively supervise TCSPs and other gatekeepers. Basic information is held by the Registrar of Companies, in the Virtual Integrated Registry and Regulatory General Information Network (VIRRGIN) platform, but this information is only accessible to the public based on search requests submitted via email, at a fee, and is not directly accessible to all competent authorities (domestic and international). Information on directors may not be available to the registry for several months and was not publicly available until January 2023. TCSPs can be licensed to provide nominee shareholder services and director services, but authorities have not sufficiently implemented measures to mitigate the possible misuse of such arrangements. Bearer shares have been immobilized and most recently prohibited, which is a positive development. Recent amendments to the legal framework are equally commendable and can support efforts to ensure the availability of up-to-date beneficial ownership information in the VI, going forward.

n. The VI generally provides mutual legal assistance (MLA) within a reasonable timeframe and its quality is generally good. However, the scarce outgoing requests for MLA and other forms of international cooperation concerning ML is not consistent with the overall medium-high ML risk of the country, particularly with respect to the risks posed by international activity carried out by the VI's corporate and financial sector. Additionally, competent authorities seek and provide other forms of international cooperation promptly to foreign counterparts, and some demonstrated the good quality of the information provided. Despite this, staffing issues and case management capabilities may occasionally impact the timeliness of the cooperation provided by the Attorney General's Chambers (AGC) and the RVIPF. With respect to the provision of basic and beneficial ownership information of legal persons and arrangements, while the VI demonstrated a willingness to assist in this regard, limitations in the effectiveness of the beneficial ownership regime have the potential to impact the quality and usefulness of the information available for exchange.

As a contextual factor, the resources and capabilities of the VIs' authorities in the fight against ML and TF have been severely impacted over the past five years due to Hurricanes Irma and Maria, which in 2017 caused near total devastation of the country, subsequently followed by the impact of the COVID-19 pandemic.

Risks and General Situation

2. The VI is a very small jurisdiction with a low level of domestic predicate crimes. The main domestic proceeds-generating crimes are drug trafficking, smuggling, and domestic corruption. The VI's significant corporate and financial services sector faces a high-threat from foreign proceed-generating crimes, including corruption, fraud, tax evasion, and ML. Domestic TF and PF risks are broadly low; however, these threats are considered elevated at the international level, particularly, through the misuse of VI entities.

3. The TCSP sector and the services offered to establish legal persons and legal arrangements to foreign customers present the greatest ML/TF risks. Limitations in the transparency of beneficial ownership constituted a significant vulnerability during the period under review, and important deficiencies in the definition of beneficial ownership were only fully addressed during the onsite visit. Large-scale reliance on professional business introducers without implementing adequate safeguards to protect against ML/TF risks is also a vulnerability. Resource constraints, including caused by external events such as the hurricanes and the pandemic, are a significant vulnerability and impacts effectiveness of law enforcement and supervision. Virtual assets (VAs) and VASPs are identified as emerging and high risks, which mostly relate to entities established in the VI and conducting virtual activities outside the country.

Overall Level of Compliance and Effectiveness

Assessment of risk, coordination and policy setting (Chapter 2; IO.1, R.1, 2, 33 & 34)

4. The overall understanding of ML/TF risks among competent authorities, as demonstrated during the assessment, is fair and narrow, notably with respect to mitigation. The authorities have conducted several written risk assessments (the most recent one being the 2022 ML Risk Assessment (MLRA)). The most significant threats identified were coming from foreign criminal activities (such as tax evasion, corruption, and fraud) through the misuse of VI entities. However, the authorities view that the illicit activities committed abroad by foreign beneficial owners do not have a sufficient nexus with the country, and VI entities are not directly involved in the foreign predicate offenses. The authorities have not demonstrated a sufficient appreciation of the vulnerabilities of such legal persons and legal arrangements specific to the VI context, and their risk potential for contributing to the concealment of foreign criminal proceeds and their ownership outside the country (e.g., forming part of complex corporate structures), which has negatively impacted possible mitigation measures. The FSC has an insufficient understanding of the inherent vulnerabilities of licensed TCSPs when it comes to ownership and control of their clients and active VI entities, including the complexity of the VI's corporate formation practices and the role played by TCSPs and other gatekeepers. During the onsite visit, the assessors were provided with the most recent 2022 MLRA (which was a more streamlined version of the previous 2016 National Risk Assessment (NRA)), and assessors are encouraged by the authorities' commitment as evidenced by the publishing of the results of the 2022 risk assessment in June 2023.

5. The activities of the competent authorities are narrowly focused and do not fully respond to and mitigate the identified risks in the country, especially the associated risks from the misuse of VI legal persons and legal arrangements, in light of the VI's profile as a corporate and financial center. Threats from foreign crimes that misuse VI legal persons and legal arrangements are not effectively addressed since law enforcement efforts are largely directed at investigating domestic drug trafficking threats and associated crimes. Efforts to investigate and detect proceeds from foreign predicate offenses and those facilitated by

legal persons and legal arrangements created in the VI (including TCSPs responsible for establishing them) are not reflective of the heightened threat level. There have been no ML convictions arising from financial intelligence received from the FIA-AIU. The supervisory authorities (FSC and FIA-SEU) were not able to demonstrate that their activities are consistent with the identified risks. The assessment team viewed the FSC's supervisory activities and resources as being insufficient to cover the elevated risks assessed from the TCSP sector.

6. The 2021 National AML/CFT Policy and Strategy responds broadly to the ML/TF risks in the 2016 NRA. However, it needs to be updated in light of the new risk assessment and targeted towards the mitigation of the significant risks from the misuse of legal persons and legal arrangements. Through the AML/CFT Implementation Unit (IU), the authorities are monitoring and reporting on progress made to address vulnerabilities in the 2016 NRA. Once the AML/CFT Policy and Strategy is updated and aligned after the dissemination of the 2022 MLRA (which was made publicly available after the onsite visit), the authorities are encouraged to continue this practice of monitoring progress on the action items moving forward. Various competent authorities such as the FSC, RVIPF-FCU, and ODPP have operational policies and guidelines that make reference to addressing the domestic risks, but their implementation is not yielding adequate results in substantially mitigating them.

7. The VI has several coordinating bodies, which provide a good basis for domestic AML/CFT policymaking, but coordination at the operational level is limited. The coordinating bodies include high-level public officials and have overlapping membership with key AML/CFT agencies (such as the FSC, FIA, and the RVIPF), which is a positive element in terms of facilitating cooperation and information sharing. The Joint Anti-Money Laundering and Terrorist Financing Advisory Committee (JALTFAC) includes private sector representatives, which facilitates awareness-raising as to risks. There are shortcomings with respect to sharing information or intelligence among law enforcement agencies (LEAs), owing to governance vulnerabilities. The authorities have exerted good efforts to disseminate results of the risk assessment (including the published 2022 MLRA) but overall understanding of risks among the private sector is heterogenous. The authorities published and made accessible the risk assessment. The authorities engage in awareness-raising activities with the private sector through emails, seminars, outreach events, and videos. The private sector, however, had a more limited engagement in the conduct of the 2022 MLRA as compared to the 2016 NRA, but the authorities intend to conduct similar awareness-raising activities. Nevertheless, the assessment team notes the shortcomings on integrating risks identified in the NRA in the institutional risk assessments of the private sector, especially in light of the vulnerabilities from heavy reliance on professional business introducers, and accuracy of foreign beneficial ownership information of VI legal persons and legal arrangements.

Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)

8. Financial intelligence is being requested and used by some VI competent authorities in their operations. The FIA-AIU is well equipped with human resources, relevant equipment, and software to conduct its functions of receiving, requesting, analyzing, storing, and disseminating intelligence. The primary user of the FIA's intelligence is the FSC, which uses intelligence mostly in conducting its regulatory compliance functions. Financial intelligence is disseminated by the FIA to the FCU (police), however, it is ultimately not being used to prosecute ML and TF. There has been a recent effort by the FCU to incorporate financial intelligence into its investigations resulting in the referral of four cases to the ODPP, which, if continued, should have a long-term positive impact on effectiveness, but not yet. The use of financial intelligence from the FIA by the FCU during the review period has been limited. Challenges identified by the FCU regarding the quality of the FIA's intelligence disseminations are being addressed in the form of monthly meetings between the FCU and the FIA.

9. The FIA is not receiving SARs (suspicious activity reports) consistent with the VI-assessed ML/TF risk. While there have been SARs received from some higher risk sectors such as VASPs, the majority of

these SARs would have been reported by one entity. This phenomenon is further described in Chapter 5, Immediate Outcome (IO.) 4.

10. ML investigations are limited to a few cases per year of possession of proceeds of criminal conduct (PCC), mainly in the form of cash found during routine operations or when suspects were apprehended. Subsequent investigations were very limited in scope and did not seek to identify the source of the cash seized or the nature of the predicate offence. The RVIPF is working to be more expansive in their investigations. The RVIPF makes limited use of financial intelligence. During the period under review, no investigation was carried out regarding the misuse of VI business companies involved in international ML schemes, and no complex, third-party, or cross-border ML case was investigated.

11. The limited investigatory actions of the FCU have been affected by constrained resources, insufficient investigative powers, limitations in financial intelligence, conflicting domestic views as to the basis to prosecute BVIBCs, their beneficial owners and related registered agents with respect to overseas illicit activities, and weak domestic co-ordination and intelligence gathering, among others.

12. Prosecution of PCC offences is usually carried out before the Magistrate's Court. That court is subject to limitations in the sentences and thresholds in confiscation that this court may order. Between 2017 and 2022, 24 cases were prosecuted, including 19 cases for PCC and 5 other cases labelled as ML because cash was seized and forfeited. The cases were mainly related to drug trafficking, although the predicate offence investigations were very limited. No prosecution involved legal persons, legal arrangements, financial institutions (FIs), or designated non-financial businesses and professions (DNFBPs). Positively, there were convictions in all but one of the cases prosecuted. At the same time, the level of penalties proved to be very low, both in terms of imprisonment and fines. In this context, PCC cases brought to court are not consistent with the risk profile of the jurisdiction, in particular as it relates to foreign offences and domestic corruption or the misuse of legal persons or arrangements, except with regard to drug trafficking.

13. Significant seizures and forfeiture of cash were achieved during the period under review, for a total amount of US$5.7 million seized and US$4.4 million forfeited. The biggest seizures concern the interception of speed boats between the United States Virgin Islands (USVI) and the VI coasts. During the period under review, no other asset or instrumentality was forfeited, except for two boats and one car. The same factors that affect the RVIPF's limited investigations also affect the jurisdiction's confiscation activities. There has been no attempt to identify and locate the proceeds of predicate offences committed abroad. Until recently, no investigation was carried out to locate proceeds located abroad, and no MLA request was made to foreign authorities to this effect. Mechanisms for confiscation of property of an equivalent value have not been used so far, but six recent case files for confiscation were filed with the ODPP recently. While commendable, the existence of cash forfeiture cases only is not consistent with the risk profile of the jurisdiction, as they mainly relate to drug trafficking cases. No forfeiture was ordered for the proceeds of corruption or in ML cases involving VI legal persons.

Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5–8, 30, 31 & 39.)

14. The VI complies with the requirements of Recommendation (R.) 5; on the other hand, LEAs responsible for the investigation of TF cases face challenges in connection with resources, powers, and the capacity to conduct financial investigations, inter agency co-ordination issues, and differences in views with respect to the nexus between the activities of BVIBCs and domestic investigations and prosecutions.

15. Considering the context of the country, the VI assessed the exposure of several FI and DNFBP sectors to the risk of supporting foreign terrorist activity as medium-low, while the domestic TF risk for all sectors was considered low, which is a reasonable conclusion, in the view of the assessment team.

16. Consistent with its TF risk profile, the VI identified and investigated a small number of TF cases between 2018 and 2022. Whereas the FIA-AIU and the RVIPF-FCU regard TF cases as a high priority, there is still value in continuing to train their staff in the identification of TF cases and increasing

investigative capacity in line with the findings related to IOs.6 and 7. The country did not prosecute or convict TF cases over the period under review. The ODPP and the Magistrate's Courts are not specifically trained on TF. The VI did not establish a counter-terrorism strategy between 2018 and 2022. Moreover, the legal framework of the VI sets out potential alternative measures applicable where a TF conviction is not possible, but its effectiveness could not be assessed.

17. The VI is not effectively implementing TFS for TF or PF, despite an overall legal framework that meets many of the required elements. No assets have been identified or frozen under UNSCRs 1267, 1988, 1713, or 2231 and relevant successor resolutions. Until recently, no competent authority had any formal mechanism for identifying persons meeting designation criteria and some agencies were lacking effective systems for detection of persons or assets subject to sanctions. Law enforcement and other competent authorities do not proactively ascertain whether designated persons or sanctioned assets may be located in the territory, not even in instances in which a BVIBC has been implicated in a sanctions evasion scheme. Almost all leads on sanctions are generated abroad (e.g., press reports and foreign intelligence) and no domestic investigations have been opened despite 67 international SARs on TF, 8 inquiries from the UN Panel of Experts on North Korea, and several criminal proceedings in another jurisdiction involving foreign owners of BVIBCs. These leads have also not led to any designation or freezing activity.

18. While UNSCRs legally take immediate effect in the VI, due to the jurisdiction's main reliance on the U.K. system in practice for the communication of these designations, TFS for TF and PF are not implemented in practice within the territory without delay. Throughout the review period, the authorities received notifications of new UN designations through the U.K. Foreign Commonwealth Office (FCO). As a result, up to or more than 24 hours would have passed before the competent authorities were made aware of and able to communicate on new designations. While not a legal requirement, in practice, most reporting entities rely on updates from competent authorities and the U.K. list for running sanctions screenings. Notably, after the assessment, competent authorities have taken steps to rely directly on the UNSC communications and less on the United Kingdom, which should have a positive impact in the longer term.

19. Finally, limited monitoring activities by supervisory authorities are not sufficient to provide assurance that reporting entities are effectively implementing TFS for TF and PF. FIs demonstrate a stronger appreciation of TFS than DNFBPs and generally have commercial screening systems in place. Ambiguities and inconsistencies between the domestic and United Kingdom frameworks (e.g., in reporting channels and the scope and timing of the freeze obligation) can potentially create confusion as to the applicable procedures. Supervisors vary in the extent to which they monitor compliance with TFS obligations.

20. The VI has not identified the subset of NPOs that are vulnerable to TF abuse. While the FIA understands the general threat of TF posed to NPOs through internationally recognized typologies, it does not appear to have identified the specific risks faced by VI's NPO sector. The primary characteristic identified by the FIA as being potentially risky from a TF perspective, is the collection and transmission of money outside of the territory. The only risk assessment in the NPO sector that has been conducted by the FIA is the institutional risk assessment exercise that is intended to guide the FIA in its supervisory approach. Further, the FIA has not yet developed a risk-based inspection plan for NPOs as it is awaiting the results of a TF Risk Assessment that is scheduled to be issued later this year. As such, the FIA cannot be said to be currently applying risk-focused and proportionate oversight measures to the body of NPOs relevant for the assessment of IO.10.

21. While the authorities have carried out outreach to NPOs and issued guidance and training, this support has not been focused on TF. However, NPOs report good engagement with the FIA, and those interviewed also appear to be relatively cognizant of general TF risks that their sector could face and had compliance systems in place to identify high-risk donors. In other cases, NPOs interviewed also had measures to mitigate risks (related both to TF and other types of criminal activity) posed by the potential recipients of their charitable work.

Preventive measures (Chapter 5; IO.4; R.9–23)

22. All banks and some legal practitioners demonstrated a good understanding of their ML risks and AML/CFT obligations. Such understanding is very heterogenous in VI's TCSP sector and insufficient for many investment businesses, which is not aligned with these sectors' overall ML risk profiles set out in VI's risk assessments. TF risk understanding across the financial and DNFBP sectors was largely confined to the low domestic TF threat with limited attention being given to the foreign TF threat and especially, the potential for misuse of BVIBCs for TFS evasion. While all FIs and DNFBPs interviewed conducted an institutional risk assessment, the scope and depth of such assessments varied significantly, as did the application of corresponding risk mitigation measures. In addition, the results of these assessments were insufficiently used to drive the application of a risk-based approach (RBA).

23. No difficulties were observed in the implementation of record-keeping requirements by FIs and DNFBPs. While improvements in the implementation of CDD and EDD measures by FSC-supervised entities are positive, there are several remaining obstacles to effective implementation. One of these obstacles lies in TCSPs' frequent reliance on professional business introducers for CDD and record-keeping purposes without sufficient evidence of safeguards to protect against associated ML/TF risks. In addition, while all banks, a minority of investment businesses and some legal practitioners, and a few of the larger TCSPs implement identification and verification requirements that are tailored to the customer's risk profile, implementation of CDD and EDD requirements by other FIs and DNFBPs often remains rather rule-based without adequately taking into account ML/TF risks. There are also remaining deficiencies in the application of the recently amended beneficial ownership requirements by all types of FIs and DNFBPs because the focus is too often on determining ownership thresholds with insufficient attention being given to establishing the person(s) who may ultimately own or control the customer.

24. As a result of information sharing by the FSC and the FIA, all FIs and DNFBPs were familiar with the FATF's lists of jurisdictions subject to a call for action (i.e., blacklist) and of jurisdictions with strategic deficiencies in their AML/CFT regimes (i.e., grey list). FIs have tools in place enabling them to ensure that wire transfers are accompanied by required information on the originator and the beneficiary. TF-related freezing and prohibition obligations are implemented to varying degrees by FIs and DNFBPs, and implementation does not appear to be effective and timely in all cases.

25. Reporting of suspicious activities is driven by a limited number of TCSPs and one bank who filed an overwhelming majority of reports. The absence of reporting by nearly 50 percent of licensed TCSPs and the entire investment business sector is inconsistent with these sectors' risk profile. While the quality of SARs has been gradually improving, they only partially correspond to the main ML/TF threats to the VI. All FIs have programs against ML/TF in place and established relevant internal policies and procedures, but these were often not yet up to date nor implemented on a risk-sensitive basis. There is no evidence that the recently regulated VASP sector implements any of the preventive measures.

Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)

26. While fit and proper requirements are in place for all sectors, they are not effectively applied to beneficial owners of (applicant) licensees due to the application by the authorities of a limited concept of beneficial ownership. Legislation was recently amended to reflect a broader concept in line with the standards, but effective implementation needs to follow. Furthermore, supervisors did not demonstrate that they apply effective mechanisms to validate information on the criminal history (and absence thereof) by applicants. Identification of unauthorized financial services businesses is undertaken with a principal focus on reducing reputational damage due to persons and entities purporting to act as FSC-licensed entities or BVIBCs for fraudulent purposes. Limited measures are taken to ensure that unregulated VA-related services are actively identified by the FSC to ensure proper registration and supervision. Following the introduction of the registration requirement on DNFBPs in 2022, the FIA is in the process of registering DNFBPs.

27. Supervisors demonstrated a limited understanding of ML/TF risk in their sectors and of individual regulated entities, with the FIA being more basic in its risk understanding. The FSC's sectoral risk understanding reflects to some extent the high threat level of foreign proceeds of crime being laundered through BVIBCs, and the inherent vulnerabilities of the TCSP and investment business sectors. However, there seems to be a limited appreciation that illicit activities and the layering and integration of proceeds of crime by foreign beneficial owners of VI-established legal persons and arrangements are taking place abroad, and this is the source of a nexus in the VI, thus not generating adequate supervisory attention. The understanding of TF risk is lagging behind supervisors' ML risk understanding.

28. The FSC gathers a wide range of data from the TCSP and investment business sectors to support its identification, analysis, and understanding of ML/TF risk at entity level of those sectors. However, this does not provide the FSC with sufficient information on beneficial ownership and business introductions. The information collected from the banking sector is less robust on ML/TF inherent vulnerabilities. The risk matrix the FSC applies for the purpose of calibrating the residual risks of every entity includes an assessment of both inherent risks and vulnerabilities and quality of internal controls. However, it only provides for an adequate institutional risk profile to a limited extent, since it does not sufficiently support the analysis and understanding of the risks associated with beneficial ownership and business introduction, which is considered an important vulnerability from a sectoral perspective. Overall, the risk matrix does not adequately mirror the data collected.

29. Additionally, the assessment of AML/CFT controls of individual entities under the model does not consider the specific sectoral vulnerabilities of legal persons and arrangements being misused in (international) schemes either, where it is not sufficiently targeted to provide for an adequate identification of appropriate mitigants in place. Therefore, the collection of such data depends on other sources such as inspections, which are limited in number and do not adequately address relevant risks. In addition, because the model's overall risk rating includes a broad range of risks beyond ML/TF risks, an isolated use of the AML/CFT segment is insufficient, while the limited attribution of weight to this risk segment further limits the FSC's institutional ML/TF risk understanding. The FIA's risk matrix is (i) limited in its set up—it includes a limited set of inherent risk factors—and (ii) does not reflect a risk calibration on periodically collected data points on inherent vulnerabilities and implemented controls.

30. Neither the FSC nor the FIA could adequately demonstrate effective risk-based supervision. Their supervisory engagements with individual entities since 2018 are not prioritized or driven on the basis of ML/TF risk, which may be impacted also by the aforementioned deficiencies concerning an adequate identification and understanding of ML/TF risks. The FSC's onsite supervisory engagements are mostly directed at the high-risk TCSP sector, but not necessarily at the highest-risk licensees within that sector. The most intensive supervisory tools—the full and thematic onsite compliance inspections—are not typically used to target the highest risk licensees, in the TCSP and investment business sectors. The supervisory coverage of inspections and desk-based reviews focus on a broad set of internal controls and preventive measures, but do not target (residual) risks from ownership and control structures of clients and introduced business. The FSC's offsite engagements do provide the licensee with feedback where needed allowing it to address identified deficiencies.

31. The FSC effectively uses RAPs to ensure compliance following inspections at TCSPs, but to a lesser extent regarding the investment business and banking sector. The FSC has a wide range of enforcement actions available for breaches of any financial services legislation, it uses them to a limited extent, and, while an increased use is demonstrated in recent years, the penalties imposed are not considered effective, proportionate, and dissuasive. The FIA increasingly applies remedial actions, including in response to identified deficiencies in AML/CFT controls.

32. The FSC's supervisory actions have had some demonstrated effect on its higher risk sectors' compliance with the AML/CFT requirements. An increased level of compliance amongst TCSPs demonstrates that, particularly through FSC's engagements and its continuous and open relationship with

the sectors, it has contributed to the improvement of licensees' compliance with basic due diligence measures. The extent to which the FSC's supervisory activities lead to improvements in important aspects of internal controls, the risk-based character of controls and measures was not demonstrated. The FIA was able to demonstrate its actions have a positive effect on DNFBPs seeking to register and apply for approval for their directors and senior officers, but not on entities' compliance with their wider AML/CFT obligations.

33. The supervisory authorities provide general guidance on compliance with AML/CFT obligations to the different financial and DNFBP sectors. However, the issued guidance is not particularly tailored at VI's higher risk sectors, their specific product and service offerings, and related vulnerabilities in an international context. The TCSP, VASP, and investment business sectors—who are in need of clear and adequate support to improve their understanding of the AML/CFT regime in the VI, given their ML/TF risks and context—are not specifically targeted by the FSC for these purposes. The supervisors' activities regarding the publications of the previous sectorial risk assessments (SRAs) of 2020/2021 clearly supported the different sectors in their understanding of the outcomes of those risk assessments.

Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)

34. While the VI has taken steps towards assessing the risk of misuse of legal persons and arrangements, including through the 2020 SRA and recently published 2022 MLRA, there is a narrower understanding of risks posed by VI-created legal entities. Limitations in risk understanding, including in relation to the nexus between the VI-created legal entity and its foreign beneficial owners for enforcement, the understanding of complex legal structures and their impacts, and the inherent risks arising from the frequent reliance on professional business introducers to collect and verify beneficial ownership information without the proper mitigation measures, have an overall impact on the ability of competent authorities and the private sector to effectively mitigate against the misuse of these entities.

35. Basic information is held by the Registrar of Corporate Affairs through the VIRRGIN platform. This information is available to some competent authorities but is not easily accessible to the public who can only access it through submission of a search request via email to the Registrar and payment of a fee. In addition, director information was only required to be publicly available at the beginning of 2023 and is not collected during incorporation and may not be available to the Registry for several months.

36. The VI's system for holding adequate, accurate, and up-to-date basic and beneficial ownership information of legal persons and arrangements is primarily dependent on information collected and held by TCSPs, providing registered agent services. Therefore, the overall effectiveness of this system is impacted by shortcomings in the effective implementation of CDD and other measures taken by the registered agents (including reliance on thresholds and risk-based nature of updating information), and the ability of supervisors to effectively supervise TCSPs and other gatekeepers. Recent amendments to the legal framework can support efforts to ensure the availability of up-to-date beneficial ownership information in the VI.

37. Legal arrangements (express trusts, trusts established under the VI Special Trusts Act (VISTA)) are not required to be registered, but some information is collected from TCSPs offering professional trustee services through annual returns. Notwithstanding, challenges remain in ensuring adequate, accurate, and up-to-date information is held on trusts and their beneficial owners, and it is not clear to what extent the information collected on trusts is being factored into the authorities' risk-based supervision of TCSPs.

38. TCSPs can be licensed to provide nominee shareholder services and director services but it is unclear to what extent authorities are able to effectively mitigate against the risks of such services being offered by TCSPs for illicit purposes. In a positive development, bearer shares were immobilized and have now been prohibited.

39. While limited administrative fines have been issued, authorities have not imposed effective, proportionate, or dissuasive sanctions against registered agents to date.

40. While competent authorities were able to demonstrate their ability to furnish basic and beneficial ownership information in a timely manner in the context of international cooperation requests (subject, however, to other limitations highlighted in relation to IOs.3 and 5), they do not proactively seek international cooperation, and the VI has not investigated or prosecuted any cases of misuse of legal persons and arrangements.

International cooperation (Chapter 8; IO.2; R.36–40)

41. Minor deficiencies in the implementation of the TF and Merida Conventions need to be addressed. Legislation to respond to MLA and extradition requests meets most requirements, but revisions are needed for timely asset freezing and sharing agreements. Some agencies have good legal frameworks for international cooperation, while others have a limited legal basis for cooperation.

42. The VI received a number of MLA requests over the period under review. Most of these focused on ML, which is consistent with its corporate and financial center profile, and its vulnerability to ML through the activities carried out by legal persons and legal arrangements and the potential inflows of proceeds of crime generated abroad.

43. The two outgoing MLA requests over the period under review and their nature were not consistent with the overall medium-high ML risk of the VI. The VI did not submit MLA requests or engage in other forms of international cooperation in relation to TF over the period under review, which is broadly consistent with the overall low TF risk profile of the country. In addition, the VI received only one extradition request, did not request any, and did not engage in the sharing or repatriation of assets.

44. The VI generally provided MLA within a reasonable timeframe, but staffing issues and the use of a predominantly manual system to manage requests occasionally impacts the timeliness of the execution of requests. While the assessment team could not confirm the quality of the MLA provided due to information gaps, it assessed that VI's assistance contributed to exchanging useful information over the period under review.

45. Competent authorities sought and provided other forms of international cooperation in a timely manner to varying extents, and the quality of the assistance provided by some but not all agencies was duly demonstrated. Notably, some agencies face resource limitations in terms of staff and technological tools which impact the management of requests for assistance.

46. Several competent authorities engage in the exchange of basic and beneficial ownership information of legal persons and arrangements. In some instances, these authorities provide this information based on agreements or on an ad hoc basis. Although the VI demonstrates a willingness to assist in this regard, technical and operational limitations related to maintaining accurate and up-to-date beneficial ownership information impact the quality and the usefulness of the basic and beneficial ownership information available to competent authorities for exchange with international counterparts.

Priority Actions

a. The authorities should deepen their overall understanding of risks, particularly with respect to VI legal persons and legal arrangements, through a comprehensive analysis of their potential for misuse, especially abroad. This should include conducting typologies and country risk assessments of professional business introducers relied upon by TCSPs, and designing mitigating measures appropriate to its profile as a corporate and financial center.

b. The FCU and FIA should coordinate and cooperate to determine how the FIA's intelligence analysis can be improved and better used to support the FCU's investigations of ML and TF to

ultimately achieve an effective use of the FIA's analysis products in FCU investigations. These two authorities should also work together to ensure intelligence disseminated is in line with the VI's assessed risks.

c. There should be enhanced operational cooperation and information sharing between all competent authorities to build trust, as this is critical to investigating ML and TF and their associated predicate offences. This can be achieved, for example, by establishing task forces and joint investigations.

d. The necessary resources should be made available to investigative and prosecutorial authorities to deal with large-scale and cross-border cases of ML and predicate offences related to serious crime (such as corruption) as well as those committed by BVIBCs and those involving VAs.

e. The law should be amended to provide for the full range of powers to carry out financial and complex investigations (including powers to obtain information directly from public bodies and reporting entities) as well as effective, proportionate, and dissuasive sanctions for ML, whether such ML relates to drug offences or other crimes.

f. Operational LEA co-ordination can be improved by enhancing intelligence collection and establishing task forces and joint investigatory teams.

g. Confiscation should be a fundamental objective of serious and organized crime policies, and action should be taken to identify and locate criminal proceeds laundered in the jurisdiction (including non-cash assets) as well as assets located abroad. The necessary legal powers should be granted to investigators and prosecutors to achieve effective and speedy confiscation of proceeds, either located in the jurisdiction or abroad.

h. The VI should promote collaboration between LEAs and the FIA to improve the analytical processing of TF cases and increase the chances that the dissemination of cases to the RVIPF-FCU results in TF criminal investigations.

i. The VI should improve the effectiveness of TFS, including by increasing awareness and understanding of reporting entities of specific TFS obligations under various laws and overseas orders and expanding the coverage of this issue in supervisory programs. Authorities should, as a policy, proactively follow up on lead information, including from overseas and from public sources, that may prompt a domestic designation of persons or entities that meet the designation criteria for TF and TF TFS.

j. The VI should conduct a risk assessment of the NPO sector specifically aimed at identifying the subset or types of NPOs within its broader NPO sector that are at risk of TF abuse and identify the specific TF threats faced by the NPOs registered in the VI.

k. While the VI is a very small jurisdiction, the size of the TCSP sector (and related services) is large, even on a global scale. The resources of competent authorities that are dealing with the TCSP sector (e.g., supervisors) and related services (e.g., company registry), or with the ML vulnerabilities of the sector (e.g., law enforcement), should be proportional to the size and complexity of the sector.

l. The VI should ensure that FIs and DNFBPs, especially the high(er) risk TCSP and investment businesses, take targeted measures to strengthen their ML/TF risk understanding and implement an adequate risk classification of their customers to drive the application of CDD and EDD measures, and effectively implement sufficient safeguards to protect against ML/TF risks associated to their reliance on professional business introducers for CDD and record-keeping purposes.

m. The VI should take relevant supervisory actions (issuing guidance, delivering training, conducting inspections, and, where necessary, imposing proportionate and dissuasive sanctions) to ensure that all FIs and DNFBPs, especially the high(er) risk TCSP and investment business sectors, understand the concept of control over a legal person or arrangement and adequately implement beneficial ownership requirements in line with the 2023 amendments to the AMLTFCOP.

n. The VI should take targeted supervisory action to ensure that all categories of FIs and DNFBPs strengthen their customer and transaction monitoring systems to allow for the proactive identification and timely submission of SARs commensurate with the ML/TF threats to the VI.

o. The FSC should continue to raise awareness of VASPs operating in or from the VI about their ML/TF risks and AML/CFT obligations and ensure that VASPs implement preventive measures.

p. The supervisors should enhance their market entry controls ensuring the beneficial owners of (applicant) licensees are subjected to fit and proper tests and adopting more robust and comprehensive measures to verify that directors, senior officers, and beneficial owners are not criminals or their associates, at licensing/registration stage and on an ongoing basis.

q. The FSC's risk-based supervisory framework should be enhanced by ensuring that: (i) it enables an adequate understanding of licensees' vulnerabilities from beneficial ownership issues, and (ii) institutional ML/TF risk profiles are developed sufficiently independently of prudential risks allowing for prioritization of AML/CFT supervisory engagements based on an adequate ML/TF risk understanding.

r. Supervisors should increase the number of onsite inspections and better prioritize them on the basis of institutional ML/TF risks, while applying a better focus on the effectiveness of controls implementing the obligations to obtain and hold accurate and up-to-date information on beneficial owners, given the risk context of the licensee. Based on the outcomes of those inspections, the full set of remedial actions including dissuasive and proportionate monetary sanctions should be applied by both supervisors in case of AML/CFT breaches.

s. The VI should take steps to ensure that competent authorities can obtain adequate, accurate, and current basic and beneficial ownership information, in a timely manner. This includes steps to improve the accessibility to basic information held by VIRRGIN, (for example, by making this information available online) and putting in place a beneficial ownership register of persons of significant control (as provided for in BVIBC Act (BVIBCA)), with a designated public authority responsible for receiving, holding, and verifying information to ensure that it is adequate, accurate, and up to date, with appropriate sanctioning powers.

t. The VI should actively seek AML international cooperation from other jurisdictions in keeping with the VI's risk profile and to support investigations into cross-border ML and TF that may involve BVIBCs, and ensuring that relevant competent authorities, such as the AGC and the RVIPF receive appropriate resources to process requests.

Effectiveness & Technical Compliance Ratings

Table 1. Effectiveness Ratings

IO.1	IO.2	IO.3	IO.4	IO.5	IO.6	IO.7	IO.8	IO.9	IO.10	IO.11
ME	ME	LE	LE	ME	LE	LE	LE	ME	LE	LE

Note: Effectiveness ratings can be either a High—HE, Substantial—SE, Moderate—ME, or Low—LE, level of effectiveness.

Table 2. Technical Compliance Ratings

R.1	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	R.10
LC	C	LC	LC	C	LC	LC	NC	C	LC
R.11	**R.12**	**R.13**	**R.14**	**R.15**	**R.16**	**R.17**	**R.18**	**R.19**	**R.20**
LC	LC	C	LC	LC	LC	LC	LC	LC	C
R.21	**R.22**	**R.23**	**R.24**	**R.25**	**R.26**	**R.27**	**R.28**	**R.29**	**R.30**
C	LC	LC	PC	LC	PC	C	PC	C	C
R.31	**R.32**	**R.33**	**R.34**	**R.35**	**R.36**	**R.37**	**R.38**	**R.39**	**R.40**
LC	LC	C	LC	LC	LC	LC	LC	C	LC

Note: Technical compliance ratings can be either a C—compliant, LC—largely compliant, PC—partially compliant or NC—non-compliant.

MUTUAL EVALUATION REPORT

Preface

This report summarizes the AML/CFT measures in place as of the onsite visit. It analyzes the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its onsite visit to the country from March 15–20, 2023.

The evaluation was conducted by an assessment team consisting of: Carolina Claver, Senior Financial Sector Expert, IMF (team leader); Robin Sykes, Senior Counsel, IMF (deputy team leader); Dwayne Baker, Director, Turks and Caicos Islands Financial Intelligence Agency (law enforcement expert); Francisca Fernando, Counsel, IMF (legal expert); Kathleen Kao, Senior Counsel, IMF (legal expert); Jonathan Pampolina, Senior Counsel, IMF (legal expert); Marijn Ridderikhof, Consultant (financial sector expert); Hector Sevilla, Deputy Executive Director, CFATF (legal expert); Jean-François Thony, Consultant (law enforcement expert); and Lia Umans, Consultant (financial sector expert). Ian Carrington (IMF Regional Technical Assistance (TA) Advisor) participated in the onsite mission, with Luisa Malcherek (IMF Financial Sector Expert) providing research support and Rafaela Calomeni, Rosemary Fielden, and Grant Riekenberg (all IMF) extending administrative support. The report was reviewed by Aseem Dalal, Deputy Commissioner, Ministry of Finance, Government of India**;** Nathalie Dusauzay, Director, Financial Sector Supervision Unit, Ministry of Finance, Saint Lucia; David Shannon, Director, Mutual Evaluations Quality & Consistency, Asia-Pacific Group; Maurene Simms, Deputy Governor, Banks and Financial Institutions, Bank of Jamaica; and the FATF Secretariat.

The VI previously underwent a FATF Mutual Evaluation in 2008, conducted according to the 2004 FATF Methodology. The 2008 evaluation and 2010 Second Follow-Up Report, 2011 Third Follow-Up Report and 2012 First Biennial Report have been published on the Caribbean FATF (CFATF) website and are available at https://www.cfatf-gafic.org/cfatf-documents/follow-up-reports-2/virgin-islands.

The 2008 Mutual Evaluation concluded that the country was compliant with 14 of the 40 Recommendations, largely compliant with 12, and partially compliant with 14. Out of the nine Special Recommendations, the VI was compliant with four Recommendations, largely compliant with three, partially compliant with one, and non-compliant with one. The VI was rated compliant on 7, largely compliant on 7, and partially compliant on 2 of the 16 Core and Key Recommendations.

In its 2011 Third Follow-Up Report, the VI had achieved a rating of C or LC on all Core and Key Recommendations, thereby moving from regular follow-up to biennial updates.

The assessment team is immensely grateful to the authorities of the Virgin Islands, for their continuous support and well-organized onsite visit. To undergo a mutual evaluation is challenging for any country, but especially so for small jurisdictions with relatively limited resources and which have been impacted by multiple catastrophes, such as the Virgin Islands. The assessment team recognizes the commitment and exemplary support provided by the authorities throughout the process.

Chapter 1. ML/TF RISKS AND CONTEXT

47. The Territory of the Virgin Islands (subsequently "Virgin Islands") (VI) is one of the Overseas Territories (OT) of the United Kingdom. It is located within the VIs' archipelago a few miles east of the United States Virgin Islands (USVI), some 60 miles east of Puerto Rico (United States), and approximately 110 miles west of Sint Maarten (Dutch Antilles). It consists of approximately 60 islands, islets, and cays, 20 of which are inhabited. The main islands are Tortola, Virgin Gorda, Anegada, and Jost Van Dyke. The capital, Road Town, is on Tortola, which houses the majority of the VIs' population of approximately 32,000. The VI is home to residents from over 110 different countries and territories who make up approximately 70 percent of the local labor force. Virgin Islanders are British OT citizens and, since 2002, also British citizens.

48. The VI is internally self-governing and operates under the Westminster system with a Cabinet-style government. The United Kingdom maintains responsibility for external affairs and security and retains associated reserve powers in these areas. The Governor is appointed by the U.K. Government. The Premier is appointed by the Governor after general elections, as head of the political party receiving the majority of votes. The Ministers of Cabinet are appointed from among the members of the legislature and are not independently elected to executive office. They are accountable to the House of Assembly (i.e., the VI's Parliament). The House of Assembly consists of 13 elected members, the Attorney General, and a non-elected Speaker selected by the elected members of the House.

49. The VI is a common law jurisdiction. U.K. laws are extended to the VI by way of Orders in Council, which exist in conjunction with domestic statutes, orders, and civil procedure rules. VI law provides that, in the absence of a relevant local provision or where there is a legislative conflict, English law or procedure shall apply. The judicial framework of the VI is similar to that of most English-speaking Caribbean countries and comprises four levels of Courts—the Magistrate's Court, the High Court and the Court of Appeal, which are both part of the Eastern Caribbean Supreme Court (ECSC), and the Judicial Committee of the Privy Council which sits in London (see Immediate Outcome (IO.)7).

50. After the introduction of the corporate and financial services industry in the late 1970s, the VI today is one of the world's leading corporate and financial centers with the U.S. dollar as the official currency. The primary sectors of the economy are tourism and corporate and financial services, with the latter sector contributing approximately 32.6 percent of the VIs' gross domestic product (GDP), as of 2022. The VI is classified by the World Bank as a high-income country. Its GDP grew from US$1.30 billion in 2019 to US$1.39 billion in 2022.

51. During the period under review, the VI has faced external challenges beyond their control that have negatively impacted the country's ability to effectively implement the Financial Action Task Force (FATF) standards. In September 2017, the VI was struck consecutively by the two category 5 hurricanes Irma and Maria, causing extreme flooding and extensive destruction of properties and infrastructure. Total damages to the VI were assessed at US$2.3 billion, significantly exceeding the VI's 2017 GDP of US$1.3 billion. Tortola suffered the most significant damage with 85 percent of buildings destroyed and infrastructure severely damaged. The VI government imposed a state of emergency and three-month long civilian curfew. Land- and sea-based infrastructure of the tourism sector suffered severe destruction with the total cost estimated at US$1.1 billion. While some financial service providers had to temporarily relocate to other jurisdictions, the financial sector overall proved resilient and only saw a six percent decrease in active companies registered at the end of 2017.

52. The VI's economy has been further impacted by the COVID-19 pandemic when the VI closed its borders in March 2020 and implemented a month-long 24-hour lockdown, domestic curfews, and business and tourism restrictions. Airline passengers were allowed entry in December 2020 while seaport travel reopened in January 2021. These restrictions and those of other countries significantly hampered the tourism sector's recovery after the 2017 hurricanes. Tourism had declined by 72 percent in December 2020

and has still not reached pre-pandemic levels. The restrictions also impacted the financial sector, which has seen an overall decrease in incorporations and revenue. The authorities' activities over this period of time should therefore be viewed in the context of extreme challenges in maintaining government services, severely competing financial priorities and devastated infrastructure, which impacted both the legislative agenda as well as the effectiveness of governmental authorities under all 11 Immediate Outcomes.

1.1. ML/TF Risks and Scoping of Higher-Risk Issues

1.1.1. Overview of ML/TF Risks

ML/TF Threats

53. Domestically, the main predicate crimes posing a higher ML threat to the VI are drug trafficking and associated cash smuggling, migrant smuggling, and corruption. Illicit trafficking in drugs in the territorial waters between the VI and the USVI, including the associated illegal movement of cash, poses a significant threat. Real estate agents, legal practitioners, and accountants can be used to conceal the proceeds from such activity. VI law enforcement agencies (LEAs) have noted an increase in the number of incidents and the quantity of drugs seized at ports of entry and at sea over the past years. Most cases of human smuggling to and through the VI originate from Haiti, Dominican Republic, Cuba, and Venezuela and are mostly destined for the USVI.

54. Since the 2020 sectoral risk assessments (SRAs) were conducted, the threat of domestic corruption, in particular, has intensified. Governance vulnerabilities among law enforcement institutions and possible negative consequences of corruption involving government officials have been noted in the 2016 national risk assessment (NRA) and 2022 Money Laundering Risk Assessment (MLRA). A Commission of Inquiry (CoI) established under the Commission of Inquiry Act (Cap. 139) in 2021 also examined the governance arrangements and corruption vulnerabilities of the public sector. Corruption cases involving LEAs and high-profile cases like the April 2022 arrest of the former Premier and the Managing Director of the VI Ports Authority on drug trafficking and money laundering (ML) charges have emphasized the issue.

55. The VI's corporate and financial services sector and the companies incorporated in the VI face a high threat from proceeds-generating predicate offences committed overseas, involving the use of British Virgin Islands Business Companies (BVIBCs). VI legal persons and arrangements, including corporate vehicles and professional facilitators, are exposed to misuse from abroad (e.g., the laundering of proceeds of foreign predicates, using VI companies). Potential abuse can arise from criminal activity such as foreign corruption, international fraud, tax evasion, and ML. The illicit use of virtual assets (VAs) for criminal activities presents an emerging but high ML/terrorist financing (TF) threat in the VI through transactions involving unregulated BVIBCs operating as VA service providers (VASPs) and financial institutions (FIs) conducting VA-related business but not being registered as a VASP.

56. The VI faces a low TF/proliferation financing (PF) threat from domestic sources, whereas the possible cross-border TF threat is considered higher. There are no known terrorist groups, organizations, or individuals operating in or targeting the VI, or available data suggesting potential funding of overseas terrorist organizations by VI residents. As per the authorities' own risk assessment, the VI is potentially exposed to a high foreign TF/PF threat through the possible misuse of corporate vehicles for the facilitation of cross-border trading activities and transactions, including those involving VASPs or VA products.

ML/TF Vulnerabilities

57. Geographically, the VI is a transit point for illicit drugs, human trafficking, and cash smuggling into the United States. Porous borders, heavily trafficked waters, and proximity to the USVI and Latin America expose the VI to illicit activities, which are not matched with current intelligence, investigatory, and prosecutorial capacities. Information provided by the authorities indicates that the extent of the influence

of organized crime gangs is currently unknown, even though recent investigations have identified significant cases of firearms trafficking and seized significant quantities of drugs between the VI and the USVI.

58. The VI's corporate services sector is vulnerable to exposure to illicit transactions, particularly involving trust and company service providers (TCSPs)[2] and the companies they administer, as these entities and their ownership structures can be used to facilitate the conduct of ML/TF and foreign illicit activities.

59. Shortcomings in anti-money laundering/combating the financing of terrorism (AML/CFT) supervision and regulation of FIs and designated non-financial businesses and professions (DNFBPs) and a lack of law enforcement resources represent a significant ML/TF vulnerability. In view of the international dimension of crimes affecting the VI, the authorities have initiated measures to improve data collection and analytical systems to support the systematic identification of ML threats, and the detection and investigation of domestic and foreign predicate crimes. However, there have not been significant results that reflect these efforts.

60. Public sector corruption presents an acute vulnerability in the VI due to the identified institutional shortcomings and ineffective implementation of prevention measures. Successful investigation and prosecution are hindered by a lack of resources and inefficient data collection.[3] The 2021 CoI report points to possible corruption and abuse of office by elected public officials and law enforcement officers, a lack of good governance standards, and insufficient capability to deter, investigate, and prosecute corruption offences. Highly vulnerable institutions include His Majesty's Customs (HMC), RVIPF, the Department of Immigration (DOI), and the VI Ports Authority. Specific reports of alleged corruption and bribery relate to officials' implication in human and drug trafficking operations and awards of high-value public contracts.[4]

1.1.2. Country's Risk Assessment & Scoping of Higher Risk Issues

61. The VI completed its first NRA in 2016, covering both ML and TF analysis. It was published in 2017, reviewing the period from 2011 to 2014. It was updated by separate 2020 ML and TF risk assessments for the financial services, DNFBP, and non-profit organizations (NPO) sectors and a 2022 PF risk assessment. During the onsite visit, the authorities provided the assessment team a copy of the 2022 MLRA covering both financial services and DNFBP sectors for the period from 2020 to 2022. A sanitized version of the MLRA was published on the Financial Services Commission's (FSC) and on the Financial Investigation Agency's (FIA) website on June 6, 2023 (outside of the scope of this assessment). The methodology for these risk assessments relies to some extent on available quantitative and qualitative inputs but could be further improved (see IO.1).

62. The 2022 MLRA was completed just prior to the onsite visit. It was carried out jointly by the FSC and FIA, involving the main AML/CFT-related competent authorities and LEAs. It draws on quantitative and qualitative data collected from supervisors, competent authorities, LEAs, and private sector surveys and return filings. The overall resulting ML threat to the VI is assessed as medium-high, with a higher ML threat emanating from foreign crimes.

63. In addition to the 2022 MLRA, the Royal Virgin Island's Police Force (RVIPF) also conducted a Strategic Terrorism and Crime Assessment (STCA) in November 2022. The STCA represents the RVIPF's first assessment of strategic crime threats impacting the jurisdiction and its vulnerabilities. The assessment is informed by VI LEA's operational experiences and data collected related to threats including organized

[2] TCSPs are currently qualified as FIs (not DNFBPs) in the VI.

[3] 2022 MLRA.

[4] This issue is also referenced in the CoI report, and in domestic and international media reporting.

crime, terrorism, firearms, ML, and cybercrime, but also highlights limitations of available data sources. The STCA reinforces some of the findings of the 2022 MLRA, in particular, misuse of the TCSP sector and the VI's geography as a transit point for illicit drug, human, and cash trafficking. It also identifies potential for routing of terrorist funds through the VI's financial system. The assessment furthermore points to significant shortcomings affecting the VI's law enforcement response to the identified threats, including: lack of understanding of the scale of organized crime groups in drug trafficking and related money flows; lack of investigative capacity commensurate with the VI's position as a corporate and financial center and resulting sectoral risks; siloed agency culture impeding the collection and exchange of financial and criminal data; internal corruption; and need for improved intelligence sharing with international counterparts.

64. The findings of the 2022 MLRA acknowledge the VI's role as an international business incorporation and financial center and related risks. Proceeds from crimes committed abroad in particular are found to enter the financial services sector through the use of the products and services offered by the various FIs, especially TCSPs. LEAs and supervisory authorities have insufficient capacities to mitigate these risks, specifically with regards to resources, training, data maintenance, and established policies and procedures. The TCSP sector and legal persons and arrangements, as well as VASPs and emerging products (gaming and betting and domestic cannabis production for medicinal purposes) are rated as high risk, while the banking sector is identified as medium-low risk. For DNFBPs, legal practitioners were rated as medium-high risk for ML, while all other sub-sectors received a medium-low rating (see Chapter 2).

65. The VI's first sectoral TF Risk Assessment (TFRA) 2020 was jointly conducted by the FSC and FIA, covering FIs, DNFBPs, and NPOs. It is based on data collected between 2015 to 2019 from different competent authorities, LEAs, and private sector entities (FIs and DNFBPs), similar in scope to data used in the 2020 MLRAs. The TFRA acknowledges the TF threat to the VI given its role as a corporate and financial center and the use of TCSPs, BVIBCs, and other legal arrangements to facilitate business globally. The TFRA assesses the domestic TF threat within the VI as low and the overall TF threat for the purposes of supporting foreign terrorist activity as medium-low, while TF risks from international trade and movement of funds are seen as medium-high. Sectoral risks for different types of FIs are generally rated lower, while the risk emanating from emerging products, including VAs and VASPs, is high. The foreign TF threat for emerging products, is significantly higher than the domestic one and also more elevated for TCSPs, money services business, and investment business. Among DNFBPs, the real estate sector faces the highest TF risk. The FSC and FIA also published a separate PF Risk Assessment in 2022, which considers both domestic and international risks.[5]

Scoping of Higher-Risk Issues

66. On the basis of a scoping exercise prior to the assessment, with input from VI and external reviewers, assessors examined higher risk issues that the mission would focus on, without prejudice to other topics of a lesser risk, and without prejudice to the final views by the assessors.

67. Notably, in light of the scoping, the risks arising from corporate and financial services and, in particular, the misuse of corporate vehicles and professional facilitators were deemed high risk. The team focused on the risks of misuse of VI corporate vehicles and professional facilitators and the authorities' understanding thereof. This included the nature and extent of services offered to legal persons and arrangements owned or beneficially owned by international customers and the authorities' supervisory efforts (particularly for TCSPs and professional facilitators including lawyers, accountants, and real estate agents). Investment businesses were also considered as high-risk (see "Weighting" section). The team also specifically examined emerging ML/TF risks related to the misuse of VAs through corporate vehicles and operations of VASPs in the VI and the authorities' mitigating measures. The team also focused on the

[5] The assessment team note that the conduct of the PFRA is not a requirement under the current FATF methodology (see Chapter 2).

different sectors' understanding of beneficial ownership-related requirements and on the authorities' international cooperation for the effective exchange of beneficial ownership information.

68. Assessors explored the implementation and supervision of AML/CFT preventive measures by FIs, DNFBPs, and VASPs. This included their ML/TF risk understanding, application of customer due diligence (CDD) and enhanced due diligence (EDD) measures, including the identification of beneficial owners, implementation of financial sanctions provisions, compliance with reporting obligations, and international information exchange.

69. The capacity of law enforcement and the financial intelligence unit (FIU) to identify and respond to complex financial crime was also examined. Assessors explored the FIU's and LEAs' responses to VI's role as a leading corporate and financial center and geographic transit point. They sought to understand the authorities' efforts, resources, and capacity constraints investigating and prosecuting complex ML offences and related predicate crimes, including those involving international cooperation.

70. Assessors also considered public sector corruption and governance risks. They examined the impact of public sector corruption on the effectiveness of relevant AML/CFT agencies, and the effectiveness of authorities' measures to mitigate internal corruption weaknesses.

Areas of Lesser Risk and Focus

71. Due to their relatively lower level of risks, the assessors devoted less attention to domestic TF/PF misuse of VI entities, the insurance sector, and financing businesses (which include a range of services such as payday loans, consumer finance loans and financing lease arrangements).

1.2. Materiality

72. The VI is an international business incorporation and financial center, well established in banking and legal services, trust and company management, captive insurance, company incorporations and re-registrations, and mutual funds administration. The TCSP sector with 282 TCSPs is the most material sector and primary gateway to the VI's financial services sector, accounting for approximately 67 percent of its economic activity in 2022. This is followed by the banking sector, which comprises 7 institutions and accounted for 25 percent of economic activity in 2022. The banking sector held US$2.86 billion in assets at the end of 2022. In that same period, 2 licensed money service businesses (MSBs) generated 4.5 percent of economic activity with outward money transfers of approximately US$47 million and US$4.7 million in assets.

1.3. Structural Elements

73. The VI has a stable political and institutional system required for a functioning AML/CFT system and is internally self-governing. Under the VI Constitution, the proper functioning of rule of law is a responsibility of the Governor and the United Kingdom. The VI's Constitution is enacted by the United Kingdom through an Order in Council made by the U.K. Privy Council, representing a legal instrument with the force of law. The U.K. Government is therefore empowered to amend and repeal the VI's Constitution in order to preserve good governance. In June 2022, the United Kingdom passed the "Virgin Islands Constitution (Interim Amendment) Order 2022," which allows for the imposition of direct rule and suspension of the VI's House of Assembly and ministerial government. To date, the Order has not been brought into force, and the VI remain s responsible for its own internal self-governance.

1.4. Background and Other Contextual Factors

74. Since its last mutual evaluation (ME), the VI has taken positive steps towards technical compliance by introducing new legislation and enacting several amendments to its AML/CFT institutional structures

and regulatory and legislative framework. This includes amendments related to the legal framework of individual FI sectors, the Criminal Code, TFS, gaming, and betting. Recent changes, such as amendments to the Anti-Money Laundering Regulations (AMLR) and the AMLTFCOP in 2022 and the VASP Act, which came into force in February 2023, also focused on adapting the AML/CFT regime to VA-related requirements.

75. The VI House of Assembly brought into law 16 pieces of legislation relevant to the AML/CFT framework shortly before and during the onsite visit, which included amendments to existing laws and regulations. The amendments affected the assessors' review process of IOs.3 and 4 and several Recommendations (Rs.), including those on ML and confiscation, preventive measures, transparency of beneficial ownership of legal persons and arrangements, and powers and responsibilities of competent authorities. As a result, the passage of these laws positively impacted some technical compliance ratings, but also challenged the VI's ability to prove the effective implementation of the recently enacted laws.

76. The size of the VI's financial services sector exceeds the availability of resources to authorities (e.g., supervisory, law enforcement). Public sector corruption and governance vulnerabilities among law enforcement institutions in the VI have affected the capacity of key AML/CFT agencies. As a positive step to investigate and mitigate this, the former Governor of the VI established an independent inquiry in January 2021 to review the VI's governance and make recommendations for improvement (based on the VI CoI Act). The CoI report points to possible corruption and abuse of office by elected public officials and law enforcement officers. This was followed by the high-profile arrests of the former Premier and the Managing Director of the VI Ports Authority by U.S. authorities in April 2022 discussed above (see "Overview of ML/TF Risks").

77. The VI's porous borders and heavily trafficked waters challenge authorities' investigatory and prosecutorial efforts and expose the jurisdiction to risks from illicit drug trafficking, human trafficking, and cash smuggling into the United States. Trafficking is facilitated by long coastlines which are difficult to patrol and a high volume of commercial maritime and air traffic. The RVIPF has identified a known facilitation route from Venezuela to the USVI via the VI, however the understanding of the true scale of facilitation networks and logistics are hampered by disconnects in domestic and international intelligence sharing. An additional contextual factor is the understaffing of LEAs such as the RVIPF, Attorney General's Chambers (AGC), and Office of the Director of Public Prosecutions (ODPP) and judiciary, which affects the investigation and prosecution of ML and predicate crimes in the VI and those committed abroad.

1.4.1 AML/CFT strategy

78. The VIs' National AML/CFT Strategy 2021–2023 was approved by the National AML/CFT Coordinating Committee (NAMLCC) and the Cabinet in 2021 to guide all relevant competent authorities and LEAs. It is designed as a three-year roadmap around the VI's National AML/CFT policy framework set out in the VI's National AML/CFT Policy. The Strategy is intended to be used by public and private sector stakeholders to implement effective measures to combat the ML/TF/PF risks identified under the NRAs. The AML/CFT Policy focuses on six key areas, which are reflected in the Strategy and divided into several objectives and corresponding actions. The focus areas include prevention, detection, investigation, and promotion of cooperation. The NAMLCC is responsible for the implementation and monitoring of the Strategy and Policy, which is monitored through the Ministry of Finance's (MoF) AML/CFT Implementation Unit (IU) and ultimately reported to the Cabinet.

1.4.2. Legal & institutional framework

Policy Co-Ordination Bodies

79. The VI's AML/CFT framework includes several co-ordination and domestic advisory bodies, whose mandates vary. They serve as policy development institutions for reviewing and adapting VI's AML/CFT policies and activities.

80. The ***National AML/CFT Coordinating Committee (NAMLCC)*** is the main national coordinating body on AML/CFT issues in the VI. It is responsible for providing policy guidance on all AML/CFT matters, developing and coordinating AML/CFT strategies, and ensuring compliance with all relevant standards. The NAMLCC was established by the Cabinet in 2016 and enshrined into law in 2021 pursuant to section 26B of the Proceeds of Criminal Conduct Act (PCCA). The NAMLCC is chaired by the Premier and membership includes the Governor, Deputy Governor, the Attorney General, the Managing Director of the FSC, the Financial Secretary and representatives of Joint Anti-Money Laundering and Terrorist Financing Advisory Committee (JALTFAC), Inter-governmental Committee on AML/CFT matters (IGC), Council of Competent Authorities (CCA), and Committee of Law Enforcement Agencies **(**CLEA). Its Secretariat, the AML/CFT IU, is situated within the MoF.

81. The ***Joint Anti-Money Laundering and Terrorist Financing Advisory Committee (JALTFAC)*** is a key institution in the VI's overall AML/CFT strategy. It is statutorily established under the PCCA and is responsible for advising the FSC on ML/TF prevention. JALTFAC is required to encourage dialogue with the private sector and promote the exchange of information on ML/TF matters. JALTFAC is chaired by the FSC and currently has a total of 15 members from the public and private sector.

82. The ***Inter-governmental Committee on AML/CFT Matters (IGC)*** serves as a mechanism for promoting public awareness of AML/CFT issues. It is intended to foster cooperation between key public AML/CFT bodies through information sharing, including promoting cooperation with foreign regulatory, administrative, and law enforcement officials on ML/TF matters. The IGC was established pursuant to the powers granted to the FSC and FIA under the AMLTFCOP (Section 50(1)). The IGC is chaired by the FSC, and its membership comprises the main AML/CFT government agencies.

83. The ***Council of Competent Authorities (CCA)*** was established by the Cabinet in 2017 and enshrined into law in 2021 under the Criminal Justice (International Cooperation) Act (C(JI)CA), section 10A. It serves to facilitate coordination between the VI's competent authorities for the execution of domestic and international cooperation matters. The CCA's role was expanded in 2019 to allow the CCA to assist in providing necessary resources to facilitate the preparation for the ME. New functions include making recommendations to the NAMLCC on issues relevant to NRA recommendations and compliance with the FATF Recommendations and Methodology. The CCA is chaired by the FSC and includes the AGC, FIA, FSC, International Tax Authority (ITA), and GO.

84. The ***Committee of Law Enforcement Agencies (CLEA)*** was established by the Cabinet in 2017. It is tasked with ensuring AML/CFT coordination through intelligence sharing, the joint pursuit and apprehension of criminals, and the disruption of criminal activity. CLEA is chaired by the ODPP and its membership comprises the DOI, FIA, HMC, and the RVIPF. The VI Airports Authority, VI Ports Authority, and Magistrate's Court are also invited to meetings on an as needed basis.

85. The ***AML/CFT Implementation Unit (IU)*** was established by the Cabinet and serves as the Secretariat to the NAMLCC. It is also tasked with the effective implementation of AML/CFT recommendations contained in the NRA and ongoing monitoring to determine the level of effectiveness across all relevant stakeholders. The IU is also responsible for assisting with training needs on AML/CFT issues. It is currently staffed by two officers, an Implementation Coordinator who serves as Head of the Unit, and one analyst.

Ministries and Governmental Bodies

- ***The Ministry of Finance (MoF)*** holds overall responsibility for providing a framework for the financial management and control of government activities and national finances. It also has administrative responsibility for HMC and the Department of Inland Revenue.

- ***The Governor's Office (GO)*** is the VI's competent authority on extradition and international sanctions. It is a member of CCA and NAMLCC, and exchanges information regularly with the FIA, FSC, and RVIPF, to stay informed of ML/TF risks identified in the jurisdiction. The GO's standard operating procedures cover MLAs, Sanctions Reports, Extradition, Sanctions Licenses, and UN Panel of Expert requests. The GO is also guided by U.K. and VI government sanctions policy and strategy.

Criminal Justice and Operational Agencies

- The ***Office of the Director of Public Prosecutions (ODPP)*** is the sole prosecutorial authority in the VI. The ODPP has a Senior Crown Counsel (Financial) tasked with ML/TF/PF prosecutions. The ODPP also has a designated counsel dedicated to pursuing freezing, seizure, and forfeiture opportunities. The ODPP is a quasi-judicial authority and has the sole responsibility of commencing prosecutions, taking over private prosecutions, and discontinuing prosecutions.

- The ***Attorney General's Chambers (AGC)*** is a member of the NAMLCC and CCA. It receives MLA requests and leads on extradition requests to support VI's international cooperation on these matters. The AGC exchanges information regularly with key agencies including the GO, FIA, RVIPF, and FSC to improve cooperation, coordination, and understanding of ML/TF risk in the VI.

- The ***Magistrate's Court*** is supervised by the GO and its magistrates are appointed by the Governor on the recommendation of the Judicial and Legal Services Commission of the ECSC. Most ML and predicate offences are adjudicated by the Magistrate's Court. Alongside the RVIPF Financial Crimes Unit (FCU) and the ODPP, it maintains statistics on ML/TF investigations, prosecutions, and convictions via their case management systems.

- The ***Supreme High Court,*** which hears criminal cases on indictment, and the Court of Appeal, which is responsible for hearing appeals from the Magistrates' Court, and the High Court, are part of the **Eastern Caribbean Supreme Court (ECSC)**. In the VI, the final court of appeal is the ***Judicial Committee of the Privy Council***, which sits in London.

- The ***Asset Seizure and Forfeiture Committee (ASFMC)*** is responsible for the management of property forfeited to the Crown. It is chaired by the Financial Secretary and composed of the Managing Director of the FSC, the Commissioner of Police, the Commissioner of Customs, the Director of the FIA, the Director of the ITA, and the Permanent Secretary in the Premier's Office. It is mainly responsible for the custody and management of seized and forfeited assets and the sharing of the proceeds deposited in the Asset Seizure and Forfeiture Fund.

- The ***Royal Virgin Islands Police Force (RVIPF)*** is the lead agency for the criminal investigation of domestic and international ML offences. Within the RVIPF, the FCU is the main investigative body for ML and proceeds of crime, charged with leading the RVIPF's response to ML. The RVIPF-FCU receives vital financial intelligence from the FIA and HMC and responds to formal MLA requests received via the AGC. The FCU also makes and responds to other police-to-police international cooperation requests related to financial crime.

- ***His Majesty's Customs (HMC)*** is responsible for border protection and detaining, seizing, and forfeiting the proceeds of criminal gains. HMC shares information with the RVIPF in relation to people movement and importation of goods and initiates detention of property (vessels) and cash. HMC also utilizes the Ship Rider Agreement with the United States Coast Guard (USCG), which allows HMC and the USCG to patrol common territorial waters and share information and resources in order to combat illicit trans-national criminal groups and activities. HMC also communicates with the USVI Fusion Center on enforcement matters.

- The ***Department of Immigration (DOI)*** is the primary LEA responsible for immigration/emigration, the identification and detention of illegal immigrants, prevention of entry of unauthorized persons, and deportation of persons. The DOI has minor investigative powers pursuant to the Immigration and Passport Ordinance.

- The ***Registry of Corporate Affairs (ROCA)*** is responsible for maintaining the registry of all legal persons formed or registered in the VI under the BVIBCA, 2004, Partnership Act, 1996, and the Limited Partnership Act, 2017. ROCA is also responsible for company winding-ups/strike-offs and the collection of associated revenue.

- The ***International Tax Authority (ITA)*** is the competent authority for all practical aspects of tax information exchange, negotiating tax information exchange agreements (TIEA) and MLA requests. It existed within the Ministry of Finance since 2012 and was established as a statutory body in 2018 pursuant to the ITA Act, 2018.

- The ***Joint Task Force (JTF)*** was created in 2020 to co-ordinate joint law enforcement efforts including land and sea patrols to counter crimes such as drug trafficking and cash and human smuggling. The JTF is involved in information and intelligence sharing and coordinating law enforcement strategy. The JTF is currently chaired by HMC and comprises the GO, the DOI, and the FIA.

- The ***Non-Profit Organizations Board (NPOB)*** is the authority charged with the registration of NPOs within the VI. The functions of the NPOB include receiving and determining applications for registration, facilitating the development of the NPO sector, and promoting an understanding of the role of NPOs within the VI.

Supervisory Authorities

- The ***Financial Services Commission (FSC)*** is responsible for the regulation, supervision, and inspection of banks, financing and MSBs, TCSPs (including registered agents), insolvency practitioners (IPs), insurance businesses, investment businesses, and VASPs. The FSC supervises their compliance, provides guidance, and performs outreach to licensees in accordance with the AMLR and the AMLTFCOP, as amended. The FSC also maintains a list of other entities for the benefit of market participants and the public, which includes corporate compliance officers (COs) (the FSC approves their licenses), registered trademark agents, and legal advocates and auditors. The FSC's Enforcement Division (ED) is responsible for handling all intelligence referrals from the FIA to the FSC. The FSC also engages in international cooperation to seek information for regulatory purposes.

- The **Financial Investigation Agency (FIA)** serves as the VI's FIU and is responsible for the AML/CFT supervision of DNFBPs and identified high-risk NPOs. It consists of two operational units, the Analysis and Investigations Unit **(AIU)** and the **SEU**. As the FIU, the FIA-AIU receives and analyses SARs and disseminates financial intelligence. The FIA-SEU supervises legal practitioners, accountants undertaking relevant business in accordance with the AMLR,[6] real estate agents, high-value goods dealers (HVGD), dealers in precious metals and stones (DPMS), and NPOs. It is a member of the Egmont Group of Financial Intelligence Units.

- The **Gaming and Betting Control Commission (GBCC)** has not yet been established and would need to be established before any gaming licenses could be issued.

1.4.3 Financial sector, DNFBPs, NPOs and VASPs

Financial Institutions

86. The banking sector in the VI is comparatively small but an integral part of the financial services sector due to its domestic and international operations and substantial volume of transactions. The sector comprises six commercial banks and one private wealth management institution, serving predominantly local customers. Services to non-resident customers are provided either directly or through banking services to legal persons and legal arrangements whose beneficial owners and other associated relevant persons are non-resident within the VI. The level of economic activity within the banking sector accounted for approximately 25 percent of economic activity within the wider financial services sector at the end of 2022. Total income within the banking sector was US$108.6 million or approximately 7.8 percent of GDP. For the same period, banks held assets valued at US$2.86 billion with total deposits of US$2.15 billion. The market share of deposits ranged from 2 percent to 23 percent of total deposits, with an average of 14 percent per bank.

87. Five of the banks operate as subsidiaries or branches of international banking groups, while the sixth commercial bank is domestic and owned by the Government of the VI (majority shareholder). The FSC has designated all banks as systemically important FIs. No bank in the VI provides foreign correspondent banking services, but each bank has relationships with overseas banks that provide the local entities with correspondent banking services. Cross-border transactions by banks, based on the value of reported incoming and outgoing wire transfers, primarily involve transfers to and from North America, Asia, the United Kingdom, and the Caribbean.

88. Banks' exposure to high-risk customers and politically exposed persons (PEPs) is concentrated on customers resident in the VI, such as government officials and other high-ranking individuals along with their close associates and family members. Foreign PEPs are predominantly connected to an account operated by a legal person for which the PEP may be the beneficial owner or director, even though legal persons without operations in the VI would generally not hold accounts in the VI.

89. The investment business sector in the VI comprised 132 entities, 684 approved investment managers, and 53 authorized representatives as of March 2023, however accounted for less than 5 percent of economic activity within the wider financial services sector. Assets under management by approved managers amounted to US$33.7 billion at end of 2021. For the same period, investment funds registered in the VI had a total net asset value of approximately US$298 billion. The investment business sector includes investment

[6] These transactions are related to the (i) buying and selling of real estate; (ii) management of client money, securities, or other assets; (iii) management of bank, savings, or securities accounts; (iv) organization of contributions for the creation, operation, or management of companies; and (v) creation, operation, or management of legal persons or arrangements, or buying and selling of business entities.

fund vehicles, asset administrators, broker/dealers, managers, and investment advisors. Transaction numbers and volumes are large, serving an international customer base. Products and services offered are varied and assets are dispersed globally, leaving this sector highly susceptible to ML risks.

90. There are currently three licensed financing businesses in the VI, who serve approximately 800 local customers per year. A total of 420 transactions were conducted in 2022 with an average transaction value of US$1.8 million. One financing business is responsible for approximately 91 percent of the value of these transactions, while the other licensee is responsible for the remaining 9 percent. The two licensees provide small short-term loans while the third licensee had not commenced operations at the time of the onsite visit and has since surrendered its license.

91. The MSB sector in the VI counts two providers and is not highly integrated with other sectors outside of the banking sector. The sector currently accounts for 4.5 percent of economic activity within the VI's financial services sector. MSBs account for a large volume of cross-border transactions due to the VI's largely non-resident worker customer base. Outward money transfers account for 90.18 percent of all MSB transactions between 2020 and 2022 and were valued at US$47.1 million per annum. A significant 78 percent decrease in the value of transactions compared to the 2015–2019 reporting period was attributed primarily to the onset of the COVID-19 pandemic and to a 7 percent government-issued levy in 2020. The authorities observed that the introduction of the levy led to an increase in the use of bank accounts, but also *hawala*-style unregulated operators, which can increase risk to the jurisdiction (see also Technical Compliance Annex, R.14).

92. One hundred and seven insurance business licensees were operating in the VI in March 2023, accounting for approximately 4.1 percent of economic activity within the wider financial services sector. The insurance businesses include 38 domestic insurers, 46 captive insurers, 6 insurance managers, 14 insurance intermediaries (agents and brokers), and 3 loss adjusters. A large portfolio of insurance business relates to life and health insurance, and property and casualty insurance business. The majority of customers for captive insurers and insurance managers are from the United States, while the customer base for domestic insurers consists of insurance intermediaries representing foreign-based domestic insurers, as well as individual and corporate customers. The customer base for insurance intermediaries is fully domestic. The total value of premiums held by domestic insurers at the end of 2021 was US$168.88 million, while gross written premiums held by captives totalled US$383.96 million. The captive insurance sector held US$1.22 billion in gross assets at the end of 2021. Products and services offered through domestic insurance companies and intermediaries are relatively standard. Most business is conducted through face-to-face contact and cash transactions are limited to the payment of premiums by some customers.

93. The VI's insolvency services sector is comparatively small, consisting of 25 fully licensed IPs as of December 2022. These comprise mainly accountants and legal practitioners, often part of accountancy firms or law firms. Between 2020 and 2022, 248 insolvency appointments were made, most of which related to the liquidation of non-regulated BVIBCs. Insolvency appointments are geographically widely dispersed, including Asia, the European Union (EU), and the VI. VI-licensed IPs also carried out 305 joint appointments with overseas practitioners related to entities with centers of operation in Hong Kong, the Cayman Islands, and the United Kingdom.

94. The VI's financial services sector is organized in several industry associations, which work with regulators and governments to represent their members' interests. They include the VI associations for banks, compliance officers, insurance managers, insurance, registered agents, investment funds, and restructuring and insolvency specialists.

Table 1.1: VI FIs and VASPs

Type	No.	No. licensed/registered	Total Assets ($ million, as of March 2022)	FATF Glossary Activities	Subject to AML/CFT	AML/CFT Supervisor
Banks	7	7	2,800	1-7(a), 10	Y	FSC
Investment Business	132	132	145	8-11	Y	FSC
Financing and Money Services Businesses (Class A)	2	2	50.57	4	Y	FSC
Financing and Money Services Businesses (Class C)	3	3	4.5	6	Y	FSC
Approved Managers	684	684	33.7		Y	FSC
Captive Insurance	46	46	1,22	12	Y	FSC
Domestic Insurers	38	38	168.88	12	Y	FSC
Insurance Agents	12	12	14.5		Y	FSC
Insurance Brokers	2	2	N/A		Y	FSC
Insurance Managers	6	6	0.962		Y	FSC
Insurance Loss Adjusters	3	3			Y	FSC
VASPs*	1	1	N/A		Y	FSC

Source: VI authorities (as of March 2023).

Note: * One VASP is currently licensed under a VI Securities and Investment Business Act (SIBA) license but has not yet commenced operations (as of April 2023).

95. Trading in foreign exchange has been excluded from the AML/CFT framework, except for the obligation to file SARs (see R.26).

DNFBPs

96. The VI considers and supervises as DNFBPs some categories (namely vehicle dealers, yacht brokers, and HVGD) which are not covered under the FATF standard. The TCSP sector is described under this section, although they are treated as FIs under the VI's framework, and licensees are supervised by the FSC. The sector is the most material sector in the VI and serves as the primary gateway to its financial services sector. TSCPs accounted for 67 percent of all economic activity within the VI's financial sector in 2022. Annual fees collected and due to the government from the TCSP sector amounted to US$195 million as of end-2021 (which comprises more than 55 percent of public revenues).[7] TCSPs in the VI qualify as FIs and are regulated and supervised by the FSC. However, the activities of these TCSPs meet the definition of DNFBPs in the FATF Glossary. In line with the FATF Methodology, TCSPs are therefore considered as DNFBPs for the purposes of this assessment. As of March 2023, 282 TSCPs were operating in the VI (53 Class I, 27 Class II, 33 Class III, 47 Restricted Class II, and 105 Restricted Class III trusts, and 17 company management businesses). They offer a wide variety of services including company administration, trustee and protector services, accounting services, ship registration, incorporations through the provision of registered agent services, and provision of directors and nominee shareholder services.

97. As of March 2023, 103 or 36.52 percent of the 282 TCSPs had the ability to provide company management services (this included provision of registered agent services), while 127 (or 45 percent) were licensed to provide trust-related services, with 74 licensed exclusively to provide trust services (accounting for 26 percent of all licensed TCSPs). Seventy-three percent of all licensed TCSPs can provide nominee shareholder services and have the ability to offer director services. The FSC has classified the top 10 TCSPs

[7] FSC, 2021 Annual Report and BVI, 2022 Budget Estimates.

that provide company incorporation services as systemically important FIs. The TCSP sector presents a high risk due to its large international customer base and non-face-to-face transactions.

98. Forty legal practitioners and notaries public and 15 accountants were registered in the VI as of March 2023. The legal practitioner sector constitutes the largest DNFBP sub-sector in the VI, with the majority serving customers of whom 60 percent are based outside of the VI. The international customer base of legal practitioners and accountants includes high-risk customers from countries such as Belarus, Brazil, Mexico, Russia, Lebanon, and Pakistan. The size of the legal firms varies significantly, with approximately 40 percent of firms being established global firms. Most legal practitioners offer legal advice (rather than actual transactional work) including related to the creation, operation, and management of VI legal persons, VAs and cryptocurrency (such as advice to facilitate the setting-up of entities focused on VAs), and real estate. The accountant sub-sector also serves a predominantly global customer base virtually.

99. Seventeen real estate agents were registered in the VI as of March 2023. The sector comprises several smaller businesses with VI-based clients and five larger firms also catering to international customers. In 2020, the sector reported 92 transactions with a value of US$48.7 million, followed by 90 transactions worth US$97.7 million (including a high-value commercial real estate transaction) in 2021. Authorities have observed a recent increase in the number of new market entrants, highlighting the need for extended supervisory engagement. In addition to the general real estate market, the VI's real estate sector also includes high-value luxury properties, posing possible ML/TF risks. The majority of customers are private individuals, with international customers from the United States, United Kingdom, several EU countries, and Caribbean countries. Authorities noted one to two PEP clients served by real estate agents per year. Prospective buyers of VI real estate who are not deemed Belongers are required to apply for a special land holding license, which must be approved by Cabinet.

100. The VI has seven vehicle dealers and the sector has remained stable without new market entrants in the past years. Two large dealers cover 70 percent of the market, which sees sales between 550 to 750 imported vehicles per year to VI residents and businesses. Six of the seven dealers use business suppliers. General cash transaction thresholds range from US$5,000 to US$15,000, but some dealers do not have maximum thresholds in place.

101. Seven yacht brokers currently operate in the VI with the primary business of yacht charters and sailing. On average, 6 to 15 sales over US$15,000 per year are conducted to mostly business customers. Cash transactions are not undertaken, and one broker declined a requested transaction in Bitcoin.

102. Five jewellers and one DPMS are currently registered in the VI. Four jewellers are long-established businesses predominantly catering to cruise ship passengers and other tourists. The sector saw a 70 percent decline in sales in 2021 due to the impact of the COVID-19 pandemic and sales are starting to increase again since 2022.

103. The VI has two HVGD. They specialize in the sales of machinery and equipment for yachts and boats and may undertake cash transactions over the US$15,000 threshold, which are reported to not be the norm.

104. Gaming and betting activities are currently not permitted in the VI. The Gaming and Betting Control Act (GBCA) entered into force in July 2021, but the foreseen Gaming Commission for the purpose of licencing gaming and betting activities has not been established. The Commission would enable the FIA to commence registration and supervision of this sector. Betting and gaming therefore remain illegal without appropriate license. The VI's Premier's Office issued a public notice in September 2022 to this effect, yet the authorities have identified some prohibited related activities taking place within the jurisdiction.

105. The VI's DNFBP sector is organized in several industry associations, which work with regulators, supervisors, and governments to represent their members' interests. They include the VI associations of

professional accountants, bar association, association of registered agents, chartered secretaries, and trust and estate practitioners.

Non-Profit Organizations

106. As of March 2023, 110 NPOs were registered in the VI. These encompassed a variety of organizations, including religious, community, and sporting associations. Pursuant to the NPO Act, supervision and monitoring of NPOs for AML/CFT purposes is the responsibility of the FIA-SEU. Of the current NPOs registered, 9 are rated by the FIA-SEU as high risk, 52 as medium risk, and the remainder were rated as low risk or new NPOs. Since 2009, no entity seeking to carry out non-profit activities outside of the VI may be incorporated as a BVIBC.

Table 1.2. Overview of VI DNFBPs

Type	No.	No. licensed/registered	FATF Glossary Activities	Subject to AML/CFT	AML/CFT Supervisor
TCSPs Class I*	53	53	f)	Y	FSC
TCSPs Class II	27	27	f)	Y	FSC
TCSPs Class III	33	33	f)	Y	FSC
TCSPs Restricted Class II	47	47	f)	Y	FSC
TCSPs Restricted Class III	105	105	f)	Y	FSC
Company Management Business	17	17	f)	Y	FSC
Authorized Custodians	1	1		Y	FSC
Legal Practitioners[8]	40	40	e)	Y	FIA
Accountants	15	15	e)	Y	FIA
Real estate agents	17	17	b)	Y	FIA
Vehicle dealers	7	7	N/A	Y	FIA
Yacht brokers	7	7	N/A	Y	FIA
Jewellers	5	5	e)	Y	FIA
DPMS	1	1	c), d)	Y	FIA
HVGD	2	2	N/A	Y	FIA
Casinos	0	N/A	a)	Y	FIA

Source: VI authorities (as of March 2023).

*Note: Depending on the class of license, TCSPs cover different scope of business. See Table 1.3 below for description of classes of licenses.

Table 1.3. Class of License and Provision of Registered Agent Services

Class of License	Scope of Business	Number of Licensees
Class I Trust License	Trust business and company management business, without restrictions. May act as a registered agent.	53
Class II Trust License	Trust business only. May not act as a registered agent.	27
Class III Trust License	Company management business only. May act as a registered agent.	33
Restricted Class II Trust License	Trust business only. Restricted to a maximum of 50 trusts under administration. May not act as a registered agent.	47
Restricted Class III License	Can only provide directors and other officers and nominee shareholders for BVIBCs. May not act as a registered agent.	105
Company Management	Company Management business only (ownership restriction). May act as a registered agent.	17

[8] Includes notaries public.

Total		**282**

Source: VI authorities (as of March 2023).

VASPs

107. As of December 2022, VASPs are subject to the VI's AML/CFT regulations and AMLTFCOP. Under the VASP Act (VASPA) that came into force in February 2023, VASPs are subject to supervision by the FSC. Any person currently conducting VA service business is required to be registered as a VASP by July 31, 2023, while any new business (i.e., a person incorporated or conducting business from February 2023 onwards) must be registered immediately. Currently, the FSC is in the process of implementing regulatory and supervisory frameworks to monitor compliance by all entities acting as VASPs. Prior to the enactment of the VASPA, only one entity had obtained a license under the SIBA to operate as an investment exchange for the buying and selling of derivatives related to VAs, while evidence at the time of the onsite visit suggests that VASP operations were taking place in or from the VI. Even though the actual size of the VASP sector is currently unclear, it poses a high emerging ML/TF risk, including due to unregulated BVIBCs operating as VASPs for international customers. Upon collection of statistical information, the FSC learned about 195 entities which may have been carrying out VASP-related services, without identifying the individual providers as captured under the VASPA (see Chapter 6).

Weighting

108. The weighting of regulated sectors is based on their respective importance in the VI's context. These weightings inform the conclusions throughout the report, with positive and negative findings weighted more heavily for important sectors. The assessment team assigned the highest importance to TCSPs (company management business, trust business, and other TCSPs), as they represent the most material economic sector with a large international customer base and serve as primary gateway to the VI's financial services sector. This is followed by the investment businesses sector, which is also highly susceptible to ML risks due to a large volume of transactions for an international customer base and globally dispersed assets. VASPs were also given a high importance, as they have only very recently come under supervision and pose a high emerging ML/TF risk, due to unregulated BVIBCs or FIs not registered as VASPs providing VA-related activities for international customers. Banks were considered to be of a medium level of importance, as the provision of banking services to legal persons and arrangements created and managed in the VI is not a central part of their business, and the customer base and products are largely domestically focused. Legal professionals, accountants, and real estate agents were also weighted as a medium level of importance due to their role as professional facilitators and potential misuse related to the TCSP sector. Less importance was given to MSB, financing, insurance, and DPMS in view of the respective sizes of the sectors, contribution to the VI's overall economic activity and the composition of their customer bases.

1.4.4. Preventive measures

109. Preventive measures for all supervised entities in the VI are set out in the AMLR and the AMLTFCOP (both were revised in 2020 and amended in 2022 and 2023). Section 4(1)(ca) of the Financial Services Commission Act (FSCA, revised in 2020) grants the FSC the responsibility of supervising and monitoring the compliance of FIs and TCSPs with the requirements of the AMLR and AMLTFCOP. Section 5C of the Financial Investigation Agency Act (FIAA, revised in 2022) grants the FIA responsibility of monitoring DNFBPs' compliance with the AMLR and AMLTFCOP. Section 8 of the AMLTFCOP also outlines the responsibilities of the FSC and the FIA respectively in monitoring the compliance of FIs and DNFBPs. The AMLR and AMLTFCOP cover most activities of FIs and DNFBPs required under the FATF standard and preventive measures such as CDD, record keeping, PEPs, correspondent banking relationships (CBR), and STR. Trading in foreign exchange is, however, out of the scope of the AML/CFT regime (except for STR) and licensing and registration (see also R.26). Additional applicable laws include the FSC and FIA Acts, PCCA, DTOA, Counter-Terrorism Act (CTA), PF (Prohibition) Act, and more recently the

VASP Act of 2022 and the GBCA. The FSC and FIA also provide guidance to supervised entities on their obligations with regards to AML/CFT preventive measures, including FSC AML/CFT guidance for different FIs and FIA guidance notes on AML/CFT/CPF requirements for different types of DNFBPs.

1.4.5 Legal persons and arrangements

Legal Persons

110. **Business companies**: These can take the form of companies (i) limited by shares; (ii) limited by guarantee but not authorized to issue shares; (iii) limited by guarantee and authorized to issue shares; (iv) unlimited and not authorized to issue shares; and (v) unlimited and authorized to issue shares. In addition, companies limited by shares can also be designated as segregated portfolio companies, restricted purpose companies, and companies limited by shares or by guarantee can be designated as a private trust company.[9] A foreign company can be continued as a company incorporated under the BVIBCA at which point, that company is considered a BVIBC and holds all the legal obligations and rights of a BVIBC as if it was incorporated under the BVIBCA. From a materiality perspective, BVIBCs consist of the vast number of incorporations in the VI, totalling 349,468 BVIBCs as of end-2022 (see Table 1.4) registered with the Corporate Registry, of which 0.350 percent are regulated FIs. On average, however, less than 1 percent of BVIBCs (3,092) incorporated annually operate physically in the VI, over 99 percent are used overseas. In 2022, 28,077 new BVIBCs were incorporated (see Table 7.1 in Chapter 7).

111. **Foreign companies** are registered under the BVIBCA for the purpose of carrying on business in the VI. The foreign company maintains its establishment and domicile in the jurisdiction in which it was incorporated and is not considered a BVIBC and does not have the full set of legal requirements and rights of a BVIBC. There are currently 55 foreign companies registered in the VI, including 35 licensed entities under the FSC's supervision.

112. **Limited Partnerships** can be created under the Limited Partnerships Act (LPA) 2017. Prior to 2017, limited partnerships were created under the Partnerships Act 1996. Limited Partnerships can no longer be created under the Partnership Act 1996, and those created under this Act must re-register voluntarily under the LPA or will be automatically re-registered by the end of a 10-year transitional period. Only 52 limited partnerships have voluntarily re-registered to date. A foreign limited partnership can be continued as a limited partnership under the LPA, at which point it is considered as a limited partnership formed in the VI. Additionally, a limited partnership may merge or consolidate with a foreign limited partnership. Limited partnerships under the LPA can elect to be registered with or without legal personality. Accordingly, this assessment will cover limited partnerships registered with legal personality.

113. **Micro-Business companies**: This is a company limited by shares and established under the Micro-Business Companies Act 2017. This Act has currently been suspended but not repealed, and no micro-business companies have been created to date. The suspended law can be lifted by notice of the relevant Minister.

114. **Cooperatives and Friendly Societies**: These structures can be established by Cooperatives Societies Act 1979 or the Friendly Societies Act 1928. Friendly societies are now deemed as NPOs under the NPO Act 2012, but the 1928 law still applies to their processes for creation. There is limited information available on the existence of cooperatives and friendly societies.

[9] A VI SPC is a legal entity with separate portfolios, where the assets and liabilities of each individual portfolio are segregated from each other and from the general assets and liabilities of the company; A VI restricted purposes company is a company limited by shares that is registered as having restricted purposes (as set out in the BVIBA); a private trust company is a limited company set up to provide trust business, including unremunerated trust business.

Legal Arrangements

115. **Legal Arrangements** are primarily express trusts and VISTA trusts (see Table 1.5).

116. **Express trusts:** Express trusts are created under common law principles. Accordingly, there are no specific laws governing the establishment of these trusts, though some general obligations on trustees exist in the Trustee Ordinance (Cap. 303). Express trusts are not required to be registered in the VI. Based on submission of annual returns by TCSPs and as reported in the 2022 MLRA, authorities report that there are around 6,277 express trusts set up in the VI, holding trust assets worth approximately US$183.66 billion (data available up to 2021 only).

117. **VISTA Trusts:** The VI allows for the establishment of special trusts under the VISTA which are set up only to hold shares in BVIBCs. Based on submission of annual returns, authorities report about 1,540 VISTA trusts set up in the VI (data available up to 2021).

Table 1.4. Total Number of Legal Persons and Arrangements on the Register of Companies at the End of Each Year*

	2018	2019	2020	2021	2022	2023 (up to end of March)
Legal Persons						
VI Business Companies						
Company limited by shares	379,744	360,919	342,718	351,268	348,915	341,258
Unlimited Company—authorized to issue to shares	261	238	227	238	244	239
Unlimited Company—not authorized to issue shares	8	7	8	8	7	8
Company limited by guarantee—authorized to issue shares	71	70	79	76	80	79
Company limited by guarantee—not the authorized to issue shares	182	182	189	202	222	213
Total Number of BVIBCs	**380,266**	**361,416**	**343,221**	**351,792**	**349,468**	**341,797**
BVIBCS with special designations						
Segregated Portfolio Company	97	91	102	118	142	120
Restricted Purposes Company	34	35	33	33	34	35
Private Trust Company	1,094	1,080	1,080	1,141	1,130	1,109
Foreign companies continued as BVIBCs						
	356	369	384	569	343	50
Limited Partnerships						
Limited Partnerships (formed under LPA and Partnerships Act)	940	978	1,074	2,066	1,902	1,846
Foreign limited partnerships continued as VI Limited Partnerships						

	356	369	12	1	2	0
Other legal persons						
Foreign Companies registered in the VI	60	63	66	64	55	51
Micro-business companies—*suspended legislation*	0	0	0	0	0	0
Cooperatives	No information available					
Friendly Societies	No information available					

***Note:** These figures only cover trusts administered by a TCSP (see section 7.2.6 in Chapter 7).

Table 1.5. Legal Arrangements Information Compiled on the Basis of Annual Returns Only

	2018	2019	2020	2021	2022
Express Trusts	7,148	6,683	6,628	6,227	*Data not yet available.*
VISTA Trusts	1,324	1,530	1,326	1,540	*Data not yet available.*

1.4.6. Supervisory arrangements

118. The VI has two competent AML/CFT supervisory authorities: the FSC, which oversees all FIs and TCSPs, and the FIA, which supervises DNFBPs and all higher-risk NPOs.

119. The FSC was established in 2002 pursuant to the FSCA with responsibility for the regulation and supervision of the financial services sector. It supervises the following sectors: (i) banking, (ii) insurance, (iii) fiduciary services (TSCPs), (iv) investment business, (v) financing and MSBs, (vi) insolvency services, and (vii) VASPs. The FSC is responsible for ensuring compliance in accordance with the AMLR and the AMLTFCOP. This includes the compliance with identification and verification obligations, record-keeping requirements, third-party relationships, reporting of suspicious activities, internal control systems, and identification and handling of PEPs and other high-risk individuals. The FSC has signed various Memoranda of Understanding (MoUs) and Multilateral Memoranda of Understanding (MMoUs) for the international exchange of information and provision of assistance on AML/CFT matters.

120. The FIA was established in 2004, pursuant to the FIAA, 2003, as an autonomous LEA and the VIs' FIU. In 2008, following an amendment to the AMLTFCOP, it was given responsibility for the supervision of DNFBP sectors. The FIA is responsible for the AML/CFT supervision and monitoring of the following entities classified as DNFBPs in the VI: (i) legal practitioners, notaries public and accountants, (ii) real estate agents, (iii) DMPS, (iv) HVGD, (v) vehicle dealers, and (vi) persons engaged in the business of buying and selling boats. Under provisions of the FIAA, the FIA applies a risk-based approach to supervise NPOs at a high risk of ML/TF/PF. However, it has not identified the subset of NPOs that fall within the FATF's definition of NPOs and did not focus on NPOs at risk for TF, which is the only requirement in the standard (not ML, nor PF).

121. As of December 2022, VASPs are subject to the requirements of the AMLR and the AMLTFCOP. With the entry into force of the VASP Act in February 2023, the FSC has the responsibility to supervise all VASPs.

1.4.7 International cooperation

122. The AGC is the central authority responsible for reviewing whether MLA requests, received directly or through the GO, meet the domestic legal requirements, for transmitting them to the respective executing agencies (i.e., the FIA, RVIPF, High Court, VI Shipping Registry, or dealing with the request itself), and

for submitting the respective response to the foreign competent authority. The FIA-AIU plays a key role in the execution of MLA requests. The investigating officers of the FIA-AIU are responsible for responding to MLA requests transmitted by the AGC. Upon receipt of the request, an investigation is initiated, additional information is requested from relevant sources, including the FIA-SEU, and the results are sent to the AGC; additionally, the Governor, AGC, and the ODPP are the main responsible competent authorities for the execution of extradition requests, while the FIA, RVIPF-FCU, HMC, ITA, and FSC engage in responding to and submitting requests for other forms of international cooperation. These authorities deal with significant international ML/TF risks and threats, including the country's potential use to launder crime proceeds from other countries, having the United States, the United Kingdom, and Puerto Rico among its key international partners.

Chapter 2. NATIONAL AML/CFT POLICIES AND COORDINATION

2.1. Key Findings and Recommended Actions

Key Findings

a) The authorities have undertaken positive steps to identify and assess ML, TF, and PF risks, including through the recently published 2022 MLRA. The risk assessments reasonably concluded that VI legal entities and legal arrangements have the highest risks in the country. However, given VI's status as a corporate and financial center, the overall risk understanding by the competent authorities is fair and narrow on the nexus of VI entities and illicit activities of their foreign beneficial owners (including on the specific vulnerabilities in the VI context of heavy reliance on professional business introducers, complexity of the corporate formation practices, and weaknesses in the TCSPs and other gatekeeper sectors). This has cascading and negative impact on the overall effectiveness of the AML/CFT regime.

b) The National AML/CFT Policy and Strategy as well as the operational policies among relevant public agencies are broadly aimed at addressing the identified risks. The national policy, however, was based on the 2016 NRA and has yet to be updated with the latest risk assessments, including the recently published 2022 MLRA. It also does not fully target risk mitigation measures on the misuse of VI legal persons and legal arrangements.

c) The AML/CFT activities of the competent authorities are narrowly focused and do not fully respond to and mitigate the identified risks of misuse of VI legal persons and legal arrangements. Supervision over TCSPs and other gatekeepers is not aligned with the identified risks of misuse of VI entities, especially as regards beneficial ownership information. Law enforcement efforts as well as financial intelligence disseminations are not effectively directed towards the threats from foreign predicate crimes, particularly through the misuse of VI legal persons and legal arrangements.

d) Domestic AML/CFT policy making and understanding of risks among competent authorities are supported by the existence of several coordinating bodies with overlapping memberships (including participation from the private sector stakeholders). However, at the operational level, information-sharing and cooperation are not being fully leveraged to mitigate the identified risks, owing to domestic corruption risks (i.e., trust issues among LEAs, reluctance in sharing sensitive information, and culture of competition).

e) The authorities exerted good efforts at disseminating the results of the risk assessments (although the 2022 MLRA was just recently disseminated in June 2023), but the overall awareness of risks of the private sector is heterogenous.

Recommended Actions

a) While the authorities have reasonably identified VI legal persons and legal arrangements as carrying the highest risks, the overall understanding of risks should be deepened, through comprehensive analysis of the potential for misuse of VI entities (including assessment of country risks of professional business introducers and typologies of complex

corporate formation practices and their misuse in the VI context) and design mitigating measures appropriate to its profile as a corporate and financial center.

b) The National AML/CFT Policy and Strategy (including the AML/CFT policies in the operational levels) should be updated to reflect the findings of the 2022 MLRA (specifically targeting the identified risks from misuse of VI legal persons and legal arrangements) and their efforts on monitoring and publishing progress on the identified action items should continue.

c) The authorities should enhance the collection and analysis of quantitative data obtained from supervisory activities (especially on beneficial ownership information) and obtain adequate qualitative inputs from private sector stakeholders (specifically from the TCSP and other gatekeeper sectors) through periodic engagements in an efficient manner to inform their risk assessments, including through the provision of sufficient resources and seeking additional expertise.

d) The multiple and overlapping coordinating bodies should be further leveraged to improve consistency and overall understanding of ML/TF/PF risks (especially with the private sector through the JALTFAC), including updating and monitoring progress on the National AML/CFT Policy and Strategy. To build trust among agencies, the existing legal foundations for coordination and collaboration at the operational levels should be maximized through joint operations.

e) The authorities should disseminate the findings of the latest 2022 MLRA with the private sector and proceed with conducting awareness-raising activities (similar to what has been done for the 2016 NRA and subsequent SRAs) and issue typologies and guidance on key and emerging risks (e.g., misuse of VI legal persons and legal arrangements).

123. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are Rs.1, 2, 33, and 34, and elements of R.15.

2.2. Immediate Outcome 1 (Risk, Policy, and Coordination)

2.2.1. Country's understanding of its ML/TF risks

124. The authorities have undertaken positive steps to identify and assess ML, TF, and PF risks. The authorities completed the NRA in 2016, but the full version was distributed among relevant public authorities only, owing to the sensitivity of some of its content. A sanitized version was made publicly available in July 2017. The NRA relied on data from 2011 to 2014 and analysed vulnerabilities and consequences at the sectoral level. However, the NRA discussions of the factors contributing to threats were sparse, specifically when it comes to the nature, materiality, and relevance of predicate crimes (domestic and foreign) and their proceeds. In 2020, the FSC issued the SRA on ML covering FSC-supervised sectors (namely, FIs, and TCSPs). Similarly, the FIA issued its SRA covering the NPOs and DNFBPs. In contrast to the 2016 NRA, these two 2020 SRAs included additional data on the threats from the proceeds of domestic and foreign criminality. In addition, a separate TF RA (2020) and PF Risk Assessment (2022) were issued and published by the authorities, which took into account both domestic and international risks.[10] During the onsite visit, the authorities provided the assessment team with the 2022

[10] The assessment team notes that the conduct of the PF risk assessment is not a requirement under the current FATF methodology.

MLRA and confirmed their intention to publish a sanitized version in the future.[11] On February 8, 2023, the NAMLCC issued a policy statement, where the authorities committed to updating the risk assessments as well as the AML/CFT policies and strategies at least every two years.

125. Beyond these written outputs, the overall understanding of ML/TF risks among public authorities as demonstrated during the assessment, however, is fair and narrow. The FSC and the FIA, as the main drivers of the country's risk assessment exercise, were able to demonstrate a general understanding of the broad risk factors facing the country.

126. Nevertheless, there is a narrow understanding that legal persons and legal arrangements established in the VI are not directly involved in the predicate crimes. The authorities fail to fully appreciate the vulnerabilities of such legal persons and legal arrangements specific to the VI context and their potential for contributing to the concealment of foreign criminal proceeds and their ownership outside the country (especially when they form part of complex corporate structures). The authorities see the illicit activities of the VI entities abroad and their foreign beneficial owners have limited nexus in the VI. This narrow understanding that foreign predicate crimes are committed by the foreign beneficial owner without the direct involvement of VI entities has cascading negative impacts on risk mitigation efforts. In particular, this affects the implementation of preventive measures by TCSPs that heavily rely on foreign professional business introducers, the quality of information on foreign beneficial owners of VI legal persons and legal arrangements, the extent of prioritization of supervisory activities over the highest-risk TCSPs, degree of proactivity in seeking international cooperation, and absence of domestic criminal enforcement concerning the misuse of VI entities.

127. With respect to the TCSP sector, there was insufficient understanding by the FSC of the inherent vulnerabilities of licensed TCSPs specific to the VI context when it comes to ownership and control of their clients and active VI entities. Some of the key contributing factors to this are the heavy reliance on professional business introducers for CDD requirements, high level of non-face-to-face interactions of TCSPs with their customers, and the involvement of VI entities in complex corporate structures. Thus, the risk that VI entities can contribute to the layering and integration phases of ML/TF activities abroad is not adequately internalized by key stakeholders, including majority of TCSPs, which failed to demonstrate sufficient understanding of their ML/TF risks at the sectoral level. There is also inadequate understanding of the level of risks of the country in which professional business introducers are operating (e.g., geographical elements contributing to the vulnerabilities of the professional business introducers and quality of supervisory regime to which these introducers are subject to). Given their status as a corporate and financial center, the authorities' risk assessment would benefit from deeper understanding of the inherent risks of international business activities of VI legal persons and legal arrangements, especially when they are part of complex corporate structures. In addition, the understanding of country risks in which professional business introducers relied upon by VI TCSPs are operating should be developed further by the authorities. Major improvements are needed to enhance the overall risk understanding of the complexity of the VI's corporate formation practices and the role played by TCSPs and other gatekeepers such as legal practitioners and accountants (see Chapter 7).

128. LEAs also had a limited view of the ML/TF risks (focused mostly on domestic threats posed by drug trafficking and smuggling). Outside of their agency's own area of competence, they were not able to demonstrate their overall understanding of risks at the national level, particularly with respect to VI entities, despite being identified as the most significant risk. LEAs have conflicting views on whether the activities of VI entities (particularly, BVIBCs) should trigger domestic investigative and international cooperation requests (see Chapters 3 and 8).

[11] On June 9, 2023, the FSC and FIA published on their websites the 2022 MLRA.

129. As regards foreign proceeds of crime and misuse of VI legal persons and legal arrangements, the authorities reasonably identified their high susceptibility to criminal misuse, given these entities' global nature and engagement in trans-national business activities. However, aside from these broad assertions, the authorities were unable to articulate to the assessors a detailed understanding of the various typologies used to launder foreign proceeds of crime and misuse of VI legal persons and arrangements (e.g., inherent vulnerabilities of VI entities as opposed to others, operating as part of complex legal structures, or country risk assessment where the VI entities operate or their beneficial owner is a national or residence). A comprehensive analysis of the key features of VI legal persons and legal arrangements and potential for misuse abroad should help deepen their overall understanding. This will also be useful input in designing mitigating measures appropriate to the VI's status as a corporate and financial center, on improving accuracy, adequacy, and up-to-date basic and beneficial ownership information (see Chapter 7), better prioritization of onsite supervision of the TCSP sector (see Chapter 6), and enhancing information exchange with foreign authorities (see Chapter 8).

130. The methodology for the authorities' risk assessments relies, to a fair extent, on available quantitative and qualitative inputs. Pre-assessment questionnaires and statistics from agencies were used in the 2016 NRA as well as quantitative inputs to determine vulnerabilities in the respective sectors. Qualitative information from in-person interviews of stakeholders required extensive resources and efforts and were also leveraged to analyse risks. A broad range of public agencies as well as private sector stakeholders contributed to the 2016 NRA. The authorities are continuing to enhance their system to collect and analyse statistical data, particularly on estimating proceeds of crimes by the LEAs (RVIPF, FIA-AIU, HMC) and through AML/CFT returns filed by reporting institutions with the FSC and the FIA-SEU, which should help them better analyse and understand risks. Ongoing dialogue among public and private stakeholders should continue to be fostered to keep the risk assessment timely and to help identify any emerging risks (including on VAs).

131. The latest 2022 MLRA was a more streamlined risk assessment exercise and mostly relied on analysis of quantitative data. Not all public agencies participating in the 2016 NRA were as similarly involved in the 2022 MLRA. In addition, information from the private sector was obtained through responses to questionnaires and analysis of prudential and AML returns, as opposed to deeper involvement through in-person interviews and discussions utilized in the 2016 NRA. While the identification of the misuse of VI legal persons and legal arrangements as the highest risks may not have changed, the risk assessment could have benefited from granularity of the institutional risk assessments and responses from the private sector (including through interviews and validation of their responses to questionnaires). Given the extensive nature of the NRA exercise and the need for active participation and inputs from a broad range of stakeholders, the assessors are of the view that the policy to update the NRA every two years can be onerous in light of the country's risk context and capacity constraints. Alignment of the policy with the FATF guidance (i.e., within the next three to five years) may alleviate resource constraints and allow the authorities to deepen risk understanding on the misuse of VI entities. Consideration should also be given to seeking adequate resources and expertise to facilitate the analysis of quantitative and qualitative data and conduct discussions to validate findings to mitigate capacity constraints (possibly through technical assistance).

132. The risk assessments have reasonably identified the significant threat from foreign criminal activities (such as tax evasion, corruption, and fraud) through the misuse of VI entities. Given its status as a corporate and financial center, the threat from predicate offenses committed overseas is viewed by the authorities as high, particularly arising from the more than 300,000 BVIBCs on the register. The 2020 SRA and 2022 MLRA assessed that among the various legal persons and legal arrangements that can be created in the VI, the BVIBCs and emerging products (i.e., those offering VAs or VASPs) have the highest risks. (See Table 2.1). International fraud, foreign corruption (e.g., foreign PEPs), and tax evasion as well as ML committed in other jurisdictions are the most relevant predicate offenses for VI. The authorities particularly noted the elevated risks that BVIBCs as well as their beneficial owners may be exposed to or operating

within jurisdictions identified as high risks. However, as noted above, the authorities do not generally consider that there is a sufficient nexus between the illicit activities of the beneficial owner undertaken abroad, and the BVIBC or the country, including in the context of domestic investigations and prosecutions.

Table 2.1. VI Risk Assessment of Legal Persons and Legal Arrangements

Entity	2020 SRA	CHANGE	2022 MLRA
BVIBCs	H		H
Emerging Products (VA/VASP)	H		H
Trusts	MH		MH
Limited Partnerships	MH		MH
Private Trust Companies (PTCs)	MH		N/A
VISTAs	MH	↓	ML
Micro Business Companies	ML	↓	L

133. The VI has an overall low crime rate, and drug trafficking (including associated crimes of smuggling cash, firearms, and humans) and corruption were adequately identified as the most relevant domestic threats. In absolute terms, the general low crime rate is underpinned by the small population (around 30,000 inhabitants), but proportionally domestic crime levels are also low. In addition, crimes against property (including robbery, burglary, and theft) are usually of low financial value.

134. With respect to drug trafficking, the authorities reasonably identified the country's vulnerability as a transhipment point for narcotics from South America destined for the United States (i.e., porous borders among isolated islands and areas with proximity to the USVI and Puerto Rico and capacity constraints to secure them, including lack of modern equipment such as radars). Organized criminal organizations use the same drug routes and methods to smuggle cash (proceeds of drug sales), migrants (those moving from South America to get to the United States, Canada, and Europe), and firearms. However, the imbalance between incoming and outgoing cash smuggling seems to indicate that, in some instances, illicit drug proceeds are repatriated in the hands of local drug trafficking organizations and are not transiting. Under the RVIPF 2022 STCA, an important portion of illicit cash proceeds flowing into the jurisdiction is considered to be reinjected into the local economy including through small businesses (see Chapter 3). Thus, these activities are seen to be generating proceeds domestically as well. What is less understood by the authorities are the methods of laundering of some of these proceeds by local criminals domestically, as there have been no investigative actions targeting ML through small businesses.

135. As regards domestic corruption, the 2016 NRA noted that if not investigated and left unchecked, this can have negative consequences. The 2021 VI CoI report has enhanced the authorities' risk understanding in relation to corruption and lack of good governance, as the report identified some key governance vulnerabilities, including ignoring principles of good governance in important areas of government and abuse of discretionary powers by elected officials. The assessment team views these governance vulnerabilities at the senior level as well as in law enforcement institutions to have negative cascading effects on the effective implementation of anti-corruption and AML/CFT measures (e.g., corruption and bribery in customs can facilitate smuggling of illicit goods and impede effective enforcement). Bribery and abuse of power at the highest levels create concerns about the capacity for effective law enforcement, especially in a small jurisdiction. In particular, the lack of trust among LEAs themselves (i.e., reluctance in sharing sensitive information) and culture of competition can impact the reliability of investigations and law enforcement action (see Chapter 3, IO.7).

136. The authorities have also reasonably assessed as low, the domestic TF and PF threat, but recognize the risks coming from the misuse of VI entities. The VI's exposure to TF at the domestic level is considered low since terrorists or terrorist organizations are not known to be operating in or targeting the VI. However, the risks that VI entities are being misused for TF is rightfully deemed elevated, since most BVIBCs are

created for the purpose of cross-border businesses (e.g. import/export and trading). These risks involve the potential of misusing BVIBCs to evade sanctions and designations, facilitate corporate layering when transacting with sanctioned persons, and non-verification of the beneficial owner/s, who could be designated persons. Similarly, PF risks in the domestic context is minimal, but shifts when it comes to VI entities (increased risks). As noted earlier, BVIBCs can be misused to facilitate business transactions or international trade involving either sanctioned persons or organizations (e.g., in August 2020, a BVIBC pleaded guilty in a U.S. court for conspiring to commit ML to evade U.S. sanctions against North Korea and agreed to pay a fine of US$673,714). Use of cryptocurrencies to facilitate PF was also identified as a key risk. Finally, PF risks in the VI context for shipping registration and shipping-related activities are twofold, either through the misuse of VI-flagged vessels, or ownership (including beneficial ownership) of a foreign vessel through a BVIBC.

137. With respect to vulnerabilities, TCSPs were justifiably assessed as having the highest ML risks (see Table 2.2). As noted in Chapter 1, the TCSP sector is one of the most significant sectors in the economy and generates more than half of VI public revenues. TCSPs' company formation and management services are broadly characterized by lack of face-to-face engagement with clients (most of whom are overseas and unrelated to VI) and heavy reliance on professional business introducers, which impact the sector's vulnerabilities (see Chapter 5). VASPs were also assessed as having high risks. Notably, one BVIBC, which operates as a VASP, has been generating significant "cryptocurrency" SARs filed with the FIA-AIU on its clients (most of whom are located outside the VI).

138. The risk ratings in the 2022 MLRA have decreased for some reporting institutions since the 2020 SRA, except for investment businesses which remain at medium-high risk. Banking was assessed as having medium-low risk in the 2020 SRA and 2022 MLA. For DNBFPs (except for TCSPs and legal practitioners), the risk ratings in the 2022 MLRA have also decreased with most of them (i.e., accountants, real estate agents, vehicle dealers, yacht brokers and dealers, and jewellers/precious metals and stones dealers) now assessed as medium-low risks. Compared to the 2020 SRA, the 2022 MLRA provides greater granularity on the risks from sector characteristics, products, customers, geographic, delivery channels, and susceptibility to abuse, which reasonably justifies the downgrades in these DNFBPs. Further differentiation of the overall level of risks of most DNFBP sectors can be enhanced through the development of more robust institutional risk profiles feeding into the FIA-SEU's sectoral risk assessment (SRA).

139. The lower risk assessment for the financing business appears reasonable (1 of the 3 licensed entities captures 90 percent of the business and provides services exclusively to local clients). Given the lower risk assessments, the assessment team gave lower focus to the insurance and insolvency sectors. The 2022 MLRA noted the factors contributing to the risk assessment for the insurance sector (i.e., 107 licensed entities inclusive of 38 domestic insurers, 46 captives, 23 managers and other intermediaries, and captive insurance involving PEPs and US$1.2 billion gross asset value for captive insurance) and insolvency sector (diversity of client base, including PEPs, and involvement of such insolvent BVIBCs in high-risk jurisdictions).

Table 2.2. Assessment of ML Risks by Sector

SECTOR	2016 NRA[12]	CHANGE	2020 SRA	CHANGE	2022 MLRA
Entities Regulated by FSC					
TCSPs	M	↑	H		H
VASPs	N/A		H		H
Investment Business	M		MH		MH
Money Services	H	↓	MH	↓	ML
Banking	M		ML		ML
Insurance	M		ML	↓	L
Insolvency	L	↑	ML	↓	L
Financing	N/A		L		L
Entities Regulated by FIA					
Legal Practitioners	L	↑	MH		MH
Accountants	L	↑	MH	↓	ML
Real Estate Agents	H		MH	↓	ML
Vehicle Dealers	N/A		MH	↓	ML
Yacht Brokers and Dealers	N/A		MH	↓	ML
Jewelers/Precious Metals and Stones Dealers	M		MH	↓	ML

2.2.2. *National policies to address identified ML/TF risks*

140. The 2021 National AML/CFT Policy and Strategy responds to the key ML/TF risks in the 2016 NRA but has not been updated in light of the new risk assessments. The Policy and Strategy features six key areas of focus: (i) prevention, (ii) detection, (iii) investigation and sanctions, (iv) regulation, (v) articulation (public outreach and capacity building), and (vi) promotion of co-operation. Key authorities responsible for implementing the AML/CFT regime as well as the various coordinating bodies are also identified, including their specific mandates. The AML/CFT IU, which is the secretariat of the NAMLCC, monitors and reports on the steps taken by the agencies to address the vulnerabilities identified in the 2016 NRA. The 2021 Final Progress Report on the Implementation of the 2016 NRA summarized the overall progress made (68 percent of recommendations being completed and largely completed, but broadly aimed and not specifically directed to the significant risks). This nevertheless provided a good basis for setting action items under the AML/CFT Policy and Strategy.

141. The assessment team was not notified of other national policies that were informed by the 2016 NRA. The 2021 Policy and Strategy, however, refers to the 2016 risk ratings and were developed prior to the conclusion of the 2020 SRAs and 2020 TF Risk Assessment. Thus, the Policy and Strategy would need to be updated to reflect the most recent risk assessments (i.e., the 2022 MLRA), including with respect to changes in the risk ratings for the TCSP (medium to high), legal practitioners (low to medium-high), and money services and real estate agents (both from high to medium-low). More specifically, the Policy and Strategy should be more focused on identifying key risk mitigation measures to target the significant risks from misuse of VI legal persons and legal arrangements in the context of its profile as a corporate and financial center. The authorities are encouraged to continue their practice of monitoring implementation and action items once the AML/CFT Policy and Strategy is updated with the 2022 MLRA.

[12] The rating system for the 2016 NRA differed with the subsequent risk assessments (where the 2020 SRA and 2022 MLRA provided for risk ratings of low, medium-low, medium-high, and high).

142. Various public agencies issued operational policies and guidelines that are aligned with the identified risks. The FSC's 2020 AML/CFT Policy and 2020–23 AML/CFT Strategy underscored the need to ensure effective risk-based supervision of the TCSP sector, given the inherent risks in the company formation business. The RVIPF-FCU's 2022 Financial Investigation Policy emphasized the need to conduct parallel financial investigations and prioritize allocation of resources against the highest threats, taking into consideration national or SRAs. Under the ODPP's 2023 Policy Guidelines, benefits (cash as well as properties) derived from investigated crimes are to be assessed by prosecutors, and consideration made for forfeiture and confiscation based on the evidence presented. Although these operational policies are in place, their implementation in practice is not delivering significant outcomes in terms of mitigating the significant risks (see discussions on objectives and activities of competent authorities later on).

2.2.3. Exemptions, enhanced and simplified measures

143. Trading in foreign exchange is excluded from the AML/CFT framework for licensing and registration purposes as well as preventive measures (except for reporting suspicions), which is not based on a demonstrated assessment of lower risks (see R.26.1). The 2016 NRA, the 2020 FSC SRA, and the 2022 MLRA make no assessment as to the risks of these activities that would justify their exclusion for licensing and registration. The authorities were not able to demonstrate the justification for the exclusion as well as the risk assessment underlying the decision for the exclusion. However, the assessment team takes into account that such services of trading in foreign exchange is offered by banks and investment businesses (which are subject to licensing and AML/CFT preventive measures), and the limited overall impact of this scope limitation (see Chapter 5).

144. The assessment team made no finding as to the extent of how the risk assessment supported the application of specific measures in higher risk or lower risk scenarios because such specific measures have not been implemented in the VI. In particular, no enhanced measures are required or applied in cases of higher risks scenarios identified in the risk assessments (except for the requirements for EDD measures for higher-risk customers as discussed in Chapter 5). Similarly, no simplified measures are required or applied to low-risk scenarios identified in the risk assessment (except for the provision of simplified measures for low-risk customers).

2.2.4. Objectives and activities of competent authorities

145. Overall, the activities of the competent authorities do not fully respond to the identified risks in the country. In particular, the activities undertaken by the competent authorities are not commensurate with the identified risks associated with the misuse of VI legal persons and legal arrangements, especially in the context of VI's status as a corporate and financial center.

146. Law enforcement efforts are mostly directed at domestic drug trafficking threats and associated crimes, but threats from foreign crimes (particularly through the misuse of legal persons and legal arrangements) are not effectively addressed. During the review period, criminal investigations have been focused on investigating domestic predicate offenses without sufficient parallel financial investigations. Seizures of cash were not supplemented with further financial investigations as to their origins or underlying schemes, nor has there been effective seizure and confiscation of instrumentalities (e.g., vessels or vehicles). However, policies have recently been put in place to intensify efforts to follow-the-money and undertake financial investigations (specifically, the RVIPF-FCU Financial Investigation Policy, which was updated in August 2022). Efforts to investigate and detect proceeds from foreign predicate offenses and those facilitated by legal persons and legal arrangements created in the VI (including TCSPs responsible for establishing them) are few relative to the heightened threat level. Most criminal cases during the review period with respect to BVIBCs are related to their failure to disclose tax information upon request of the ITA for purposes of international tax information exchange.

147. Analysis of SARs and financial intelligence dissemination are not fully aligned with VI's risk profile. TCSPs, which is the sector with the highest ML/TF risk, filed most of the SARs during the review period. However, reporting levels within the TSCP sector vary considerably. While the top 10 TCSPs responsible for providing services to the majority of BVIBCs are filing most of the SARs, more than half of TCSPs have made no SARs filings at all. This is not wholly consistent with the identification of the elevated risks in the TCSP sector. SARs from the banking sector were next in terms of number filed with the FIA-AIU, even though the sector was rated as medium-low in the 2020 SRA and 2022 MLRA. Reporting in the banking sector is mainly concentrated in one bank, which is part of an international group, accounts for 23.11 percent of market share, and is responsible for 69.7 percent of SARs filed in the sector.

148. With respect to the type of underlying suspicious activities, a significant portion of the SARs involved persons that are not domiciled or a resident of the VI ("international SARs") and related to suspected stand-alone ML, which corresponds to the country's status as a corporate and financial center. Domestic SARs involving persons domiciled or residents of the VI, however, are focused on fraud and stand-alone ML, even though drug trafficking, cash and migrant smuggling, and corruption were identified as the key domestic threats. There was a significantly disproportionate number of SARs related to VAs, owing to one BVIBC. This BVIBC informed the FIA-AIU that due to regulatory developments with a foreign regulatory authority, it had to submit SARs with the FIA-AIU, with respect to suspicious activities related to its European clients that were conducted outside of the VI. While there have been financial disseminations made by the FIA-AIU to the RVIPF-FCU, there has been no ML convictions arising from financial intelligence received from the FIA-AIU.

149. The supervisory authorities (FSC and FIA-SEU) were not able to demonstrate that their activities are consistent with the identified risks. The FSC recognized the inherent risks from the company formation business and the need for supervising the TCSP sector. The supervisory activities of the FSC (particularly, its onsite inspections) were assessed as being inadequate to cover the appropriately elevated risks assessed from the TCSP sector, especially in the context of the number of TCSPs (105 registered agents) and more than 300,000 BVIBCs. The FSC was unable to demonstrate that supervisory engagements are driven on the basis of ML/TF risks and that resources are appropriately allocated for mitigation of selected licensees (i.e., 36 onsite examinations of TCSPs over a period of 5 years) (see Chapter 6). The FSC does not adequately supervise on a risk-based approach the quality of AML/CFT controls of TCSPs to verify the accuracy, adequacy, and up-to-date beneficial ownership information (including in light of the inherent vulnerabilities arising from heavy reliance on professional business introducers) is not aligned with the identified risks of misuse of VI legal persons and legal arrangements. On the other hand, the FIA-SEU's constrained understanding of the potential involvement of legal professions in providing legal advice to BVIBCs in setting up complex legal structures (separate from the licensed activities of corporate establishment and company management by registered agents) is not consistent with the assessment of medium-high risks among DNFBPs that the FIA-SEU supervises.

2.2.5. National coordination and cooperation

150. The existence of several coordinating bodies provides a good basis for domestic AML/CFT policymaking and enhancing risk understanding. The NAMLCC is the highest AML/CFT/CPF decision-making body and includes key senior public officials such as the Premier/Minister of Finance, Governor, the head of the FSC, and Attorney General. The overlapping membership of key AML/CFT agencies (FSC, FIA, RVIPF) in the other coordinating bodies such as the IGC, CCA, and CLEA contributes to efforts to discussing and having consistency in approaches and implementation. The monthly meetings are utilized to inform and decide on key AML/CFT/CPF issues such as developing national action plans, assessment of risks, and AML/CFT/CPF-related legislative reforms. The JALTFAC is particularly relevant as it involves the participation of the private sector and allows for the discussion and dissemination of AML/CFT policies (including updates on legislative reforms). The coordinating bodies meet on a regular basis (either monthly or quarterly). To enhance overall effectiveness of the VI's AML/CFT regime, their meetings and

activities should be leveraged to further strengthen understanding of risks (including updating the National AML/CFT Policy and Strategy, and monitoring its progress), provide updates on key developments, and discuss opportunities for cooperation, specifically with respect to deepening the risk understanding of VI legal persons and legal arrangements. With respect to PF, coordination among the agencies has been limited to the conduct of the 2022 PF Risk Assessment. While the Data Protection Act (DPA) provides exemptions to its application with respect to other laws (including on AML/CFT), the authorities should strengthen cooperation with the Information Commission on data privacy issues, moving forward.

151. At the operational level, inter-agency coordination is not being fully utilized to deepen understanding of ML/TF/PF risks and foster greater collaboration. As noted in Chapter 3, effective cooperation and coordination particularly among LEAs is being negatively impacted by governance vulnerabilities (i.e., reluctance in sharing sensitive information and culture of competition among agencies). However, there are good legal foundations for domestic coordination. The IGC's MMoU among the various public agencies provides for an overall mechanism for exchanging information (spontaneously or upon written request) on any matter concerning a criminal activity or suspicious criminal activity and provides that information obtained or provided shall be kept confidential. In addition, separate bilateral MoUs for information exchange and cooperation are also in place.[13] In response to the recommendations of the CoI Report on governance vulnerabilities and to mitigate the heightened threats from smuggling (including of drugs, cash, and humans) in the various ports, an MoU between RVIPF, DOI, HMC, VI Ports Authority, and VI Airports Authority became effective in October 2022. Aside from exchanging information, the RVIPF was designated the lead agency for the security of the ports, which requires them to have access to the containers inside the main cargo port at their request. Such joint operations should improve responsiveness to domestic criminal and suspicious activities at the ports. Regular monthly meetings between the FIA (AIU) and RVIPF-FCU are also helping to facilitate financial intelligence disseminations (prioritization under the traffic light matrix, completeness of information submitted and protecting confidentiality through a chain of custody).

2.2.6. Private sector's awareness of risks

152. The authorities have exerted good efforts to disseminate the results of the various risk assessments to reporting institutions, except for the 2022 MLRA (which was provided to the assessment team at the onsite visit and subsequently published on June 9, 2023). The 2016 NRA and the various SRAs (i.e., the 2020 FSC SRA, 2020 FIA SRA, 2020 TF RA, and 2022 PF RA) are published and made accessible to the reporting institutions, including through the websites of the FSC and FIA. In addition, reporting institutions participated in the 2016 NRA, through the submission of pre-assessment questionnaires and interviews. The authorities regularly distributed information on emerging risks through email and various seminars and outreach events, including videos for a targeted audience created by the FSC and made available on its website. With respect to the 2022 MLRA, the private sector had a more limited engagement in this latest exercise (i.e., interviews or focus group discussions were not conducted, as compared to what was done in the 2016 NRA). The assessment team notes, however, the authorities' intention to conduct awareness raising activities with the private sector similarly to the previous NRA and SRAs.

153. While some reporting institutions demonstrated awareness of the key findings of the 2016 NRA and various SRAs, overall understanding of risks among the private sector (especially with respect to the misuse of VI legal persons and legal arrangements) as relevant for their business is heterogenous and should be improved. During the onsite visit, reporting institutions cited the relevant threats (e.g., drug trafficking) and vulnerabilities (e.g., misuse of legal persons and legal arrangements) identified in the various national and SRAs. However, most of the reporting institutions were unable to demonstrate how these risks were

[13] Such as the 2009 FIA-RVIPF MoU, updated in 2020; 2012 FIA-HMC MoU, updated in 2020; 2007 FIA-FSC MoU; and 2015 AGC-FIA MoU.

integrated in their institutional risk assessments. Some registered agents frequently rely on professional business introducers to conduct CDD (including collection of basic and beneficial ownership information), without adequate assessment of the risks of the ultimate customer or beneficial owner (see Chapter 5). The risks are aggravated by the lack of face-to-face interaction between TCSPs and beneficial owners. In this regard, the JALTFAC should be further leveraged as a mechanism for enhancing awareness-raising within the private sector to deepen understanding of key and emerging risks. Typologies, specifically on the potential misuse of VI entities for foreign illicit proceeds, and assessments of country risks where professional introducers are operating, could be particularly useful to sensitize TCSPs on the risks.

Overall Conclusions on IO.1

154. Despite good efforts to identify and assess risks (including through the most recent 2022 MLRA), overall understanding of risks in the VI is fair and narrow, specifically with respect to the elevated risks of misuse of VI entities abroad, which negatively impact the authorities' ability to mitigate the ML/TF risks, which the assessment team weighted heavily. The risk understanding of the complexity of the VI's corporate formation practices and the vulnerabilities of the TCSPs and other gatekeepers needs to be improved in a major way, especially in light of the VI's status as a corporate and financial center. The priorities and activities of the competent authorities are also narrowly focused, and do not fully respond to and mitigate the identified risks of misuse abroad of VI legal persons and legal arrangements. Policies and application of mitigating measures are negatively impacted by the narrow understanding that VI legal persons and legal arrangements are not directly involved in foreign predicate crimes and have insufficient nexus to the country. The national AML/CFT policy and strategy, the presence of various coordinating bodies, and proactive outreach to the private sector, however, provide good foundations for deepening overall risk understanding in the country moving forward.

155. The VI is rated as having a moderate level of effectiveness for IO.1.

Chapter 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

3.1 Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

a) Financial intelligence is used by several competent authorities in their operations to varying degrees. Regarding entities such as the FSC, FIA-SEU, and the MNRLI for example, this is mainly with an emphasis on the conduct of background checks, regulatory due diligence, and compliance. With regard to the FCU, it has recently increased its use of financial intelligence produced by and disseminated to it by the FIA–AIU. The FCU also relies on financial intelligence generated from its own sources. Other agencies such as the ITA and Customs do not use financial intelligence to a substantial extent.

b) The FIA has demonstrated that it is providing intelligence to competent authorities. There have been no prosecutions or convictions arising from its disseminations. However, intelligence disseminated to the FCU by the FIA-AIU during the previous year resulted in eight ML investigations four of which were sent to the ODPP (in December 2022) for a decision regarding prosecution.

c) There have been challenges regarding the quality of the FIA's intelligence (including the age of the information provided) which impacted the FCU's ability to progress ML and TF investigations. The FCU and FIA have sought to work collaboratively to address these issues, resulting in increased requests in 2022 from the FCU. A significant improvement over the previous four years where requests ranged from zero to three.

d) The VI has several committees for cooperation and coordination on the exchange and use of information/financial intelligence among competent authorities. However, there have been no demonstrated operational outcomes regarding ML and TF arising from those bodies.

e) Limited reporting of suspicious activities from some higher risk entities and weak or uneven levels of reporting levels in other sectors impacts the FIA's analysis. As a result, the financial intelligence generated is not representative of the VI's risk profile. There has been limited strategic analysis conducted by the FIA. During the period under review, there was one completed strategic analysis product based on BVIBCs involved in cryptocurrency-related business.

Immediate Outcome 7

a) Few significant ML cases have been prosecuted in the period under review. Most of them are related to the arrest of offenders in possession of cash. No in-depth investigation was made to trace and identify the origin of the assets and of the predicate offence, for predicate offences committed abroad or for the identification of assets located abroad, investigators lacking the legal powers and the resources to do so. No complex ML investigations were carried out, notably with regard to cases related to the misuse of VI-registered corporate vehicles in international ML schemes. No third-party ML cases were investigated or prosecuted either, neither domestic nor foreign. Lack of operational information-sharing and trust between agencies is likely to be a contributory factor. However, this limited performance also must be analysed against the severe situation that the territory has faced following the 2017 hurricanes and the 2020 pandemic.

b) The Governor may order the interception of telecommunication or electronic data surveillance for the purpose of criminal investigations, but investigators do not have an adequate legal

framework to effectively conduct controlled deliveries, undercover operations, or to request witness statements or financial information directly from regulated entities and other holders of financial information. Other factors explain the low effectiveness in investigating and prosecuting significant ML cases. They include limited staff resources in prosecution and investigation authorities, divergences among authorities as to the basis to investigate financial crimes committed abroad and involving BVIBCs, recent utilization of financial intelligence from the FIA, lack of use of MLA to pursue cross-border cases, cascading effects of deficiencies in IOs.1, 2, 4, 5, and 7.

c) Investigations and prosecutions are consistent with risks and threats in relation to drug-trafficking or cash-smuggling predicate offences, but several other high-risk areas like corruption, tax evasion, or corporate vehicles involved in cross-border ML have not been subject to any investigations or prosecutions, except for 3 corruption prosecutions in 2021, and 12 investigations (under the likely impetus of the CoI) in 2022.

d) Sanctions, partly due to the thresholds for penalties before the lower court, cannot be considered as proportionate, effective, or dissuasive. This is in part due to the rational choice of the ODPP to prosecute before the Magistrate's Court, which has a consequence on the level of sanctions as thresholds on penalties and confiscation apply.

e) A positive, but very recent, development relates to investigators making better use of FIA dissemination reports thanks to better coordination between the FCU and the FIA. Additionally, production orders are being utilized to deepen investigations into the origin of illicit proceeds. Stand-alone investigations are now carried out on corruption cases, and some MLA requests were made to further investigations abroad. More generally, there is a clear shift in policies in the recent past to improve the fight against ML in the law enforcement and justice system, that the statistics do not yet reflect.

Immediate Outcome 8

a) There are two types of procedures for confiscation in VI: the forfeiture procedure and the confiscation procedure. Most cases reported to the assessment team relate to forfeiture cases of cash money uncovered during the arrest of the offender or the interception of a boat as part of drug trafficking enforcement efforts. The criminal confiscation procedure, which is a procedure of confiscation in equivalent value, was used only very recently, and cases were still under review by the ODPP during the onsite visit. Few non-cash assets have been forfeited so far.

b) Confiscation has not been set as a national policy objective by the VI authorities, although it is prioritized at the operational level by RVIPF to some extent. The Commissioner of Police has issued guidelines on cash seizure and asset seizure in 2022, and the ODPP issued a policy guideline in January 2023 for prosecutors on seeking forfeiture and confiscation but no overarching policy to steer government agencies' action and establish confiscation as a priority objective was set to date.

c) The deficiencies identified in IOs.1, 2, 4, 5, and 7 have a cascading effect on the ability of investigative and prosecutorial authorities to adequately seize and confiscate criminal assets. As a consequence, no investigation was carried out to identify proceeds located abroad, in particular relating to BVIBCs, and forfeiture cases are not fully consistent with VI's risk profile as assets from high risk or high threat like corruption, tax evasion, or misuse of corporate vehicles have not been seized, forfeited, or confiscated so far. An ASFMC was created but is not fully operational yet.

d) On a positive note, VI has achieved successes in the seizure and forfeiture of significant amounts of cash on the occasion of the arrest of cash couriers by sea. Efforts are now underway to extend the scope of forfeiture and confiscation beyond cash proceeds to other types of predicate offences

like corruption. Requests under the confiscation procedure to allow for extended confiscation were recently filed with the ODPP.

Recommended Actions

Immediate Outcome 6

a) Recent efforts between the FIA and the FCU aimed at improving the quality of FIA reports and strengthening cooperation should be furthered. The FCU should make greater use of financial intelligence from the FIA by systematically incorporating it in their investigations of suspected ML/TF and predicate offences. The FIA should improve the timeliness of its disseminations to the FCU and provide supporting documents and information that would assist the FCU to develop ML investigations based on FIA intelligence reports.

b) The FIA, in cooperation with the relevant competent authorities and on the basis of the most recent sectoral risk ratings, should conduct targeted ML and TF outreach and awareness raising, particularly to those sectors rated as High and Medium-High Risk for ML and TF where SAR reporting is negligible or non-existent and to improve the quantity and quality of SAR reports.

c) The VI should build upon its existing structures for cooperation and cooperation on ML and TF matters such as the CLEA to ensure that information critical to the effective development of ML and TF investigations is shared in a timely manner. LEAs should provide feedback to each other on the status of intelligence and information exchanged.

d) The FIA should more consistently develop and publish strategic analysis products which align with the VIs ML/TF risks which will help the financial services sector, DNFBPs, NPOs, and policy makers to enhance their knowledge and awareness of ML/TF risks faced by the VI.

e) The FIA should increase its requests for international assistance to increase its analysis of international cases in keeping with the VIs assessed risk and the prevalence of international SARs. The prevalence of international SARs also suggests that the FIA should be increasing its disseminations to the FCU on possible cross-border illicit activities conducted by BVIBCs.

Immediate Outcome 7

a) The law should be amended to grant LEAs the power to request relevant information relating to ML investigations directly from regulated entities and other holders of financial information, as is the case for the FIA. Authorities may consider establishing special mechanisms to investigate unexplained wealth, given corruption concerns.

b) The law should be amended to provide express legislative provisions to regulate the use of controlled deliveries, undercover operations, and electronic surveillance techniques, such as electronic mailboxes in accordance with international treaty requirements.

c) ML provisions under DTOA and PCCA should provide for the same level of penalties for drug trafficking and other predicate offences proceeds, for a single application of ML provisions for all types of ML. Proportionate and dissuasive sanctions should be provided for ML offences on summary conviction, and/or specific rules of procedures should be set for placing organized crime/serious ML offences before the High Court to ensure the proportionality of penalties. Adequate resources should be granted to the ODPP and judicial authorities to effectively deal with complex ML cases.

d) Authorities should set up policies to investigate more systematically international ML schemes involving BVIBCs, to determine whether an element of the crime has been committed or related

crimes were committed within the jurisdiction which could lead to prosecution and confiscation. Joint investigations and establishing task forces can improve coordination and information sharing among LEAs and reduce trust deficits.

e) Authorities should set up policies to investigate systematically, in the case of possession of proceeds of crime, the origin of the assets in order to determine whether the arrested person is part of a broader scheme involving criminal organizations, professionals, facilitators, or gatekeepers.

f) Authorities should put more focus in their efforts on ML related to the other identified ML predicate risks, notably domestic corruption and potential laundering through cash intensive business laundering. Pursuit of corruption-related ML should extend to domestic and cross-border investigations and prosecutions for corruption-related ML and international cooperation to identify and locate proceeds of these crimes.

g) The staff levels in the FCU should be increased with officers trained in financial, ML, and terrorist investigations to effectively carry out its mandate to pursue and investigate ML, TF crimes, and conduct parallel financial investigations.

h) Authorities should consider reforming the jury designation process in order to widen the pool of jurors.

Immediate Outcome 8

a) Confiscation should be set for implementation as a key objective of all AML/CFT strategies and policies through overarching guidance and instructions to steer government authorities and agencies across the board and ensure adequate coordination and cooperation.

b) The appropriate legal means should be given to LEAs and prosecutorial authorities to identify, locate, seize, and confiscate all proceeds of crime domestically or internationally. This includes an appropriate legal framework to carry out advanced financial investigative and extended confiscation techniques.

c) The authorities should pursue more cases for criminal confiscation and cross-border confiscation.

d) The appropriate staff resources should be granted to investigative and prosecutorial authorities to effectively seize and confiscate illicit proceeds, and training should be provided to enhance professional skills in this area.

e) The ASFMC should become fully operational and assume the management and disposal of seized and confiscated assets as a matter of priority to relieve LEAs from the management and storage of seized or confiscated properties.

f) Authorities should make greater use of formal and informal international cooperation to identify, locate and seize illicit proceeds abroad.

156. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6–8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R.3, R.4 and R.29–32 and elements of Rs.2, 8, 9, 15, 30, 31, 34, 37, 38, 39, and 40.

3.2 Immediate Outcome 6 (Financial Intelligence ML/TF)

FIA Overview

157. The FIA is the FIU of the VI. It is governed by a Board of Directors which is not involved in the daily operations of the FIA. The operational head of the FIA is also a member of the FIA Board of Directors. The AIU of the FIA is responsible for analysing SARs (referred to as tactical analysis) and conducting strategic analysis. It consists of 15 employees.

158. During the review period the FIA-AIU gradually increased its staff complement from 6 in 2018, consisting of 2 investigating officers, 3 analysts and 1 administrative and support staff, to 15 consisting of 3 investigating officers, 7 analysts and 3 administrative and support staff in 2022. The posts of International Support Assistant and Senior Intelligence Officer were also added during that period. The skills set of the FIA staff is diverse, consisting of persons with backgrounds in law, accounting, and policing. Of the 15 employees, 8 are International Compliance Association (ICA)-certified and 1 is Association of Certified Anti-Money Laundering Specialists-certified. The FIA-AIU facilitates continuous training of its staff, demonstrated by participation in various online Egmont Centre of FIU Excellence and Leadership (ECOFEL) courses as well as attendance at CFATF, UN Office on Drugs and Crime courses, and with other training facilitators/entities to name a few. Additionally, weekly in-house training sessions are conducted within the AIU to explore and discuss various ML/TF-related topics. External presenters are often invited to facilitate these sessions.

159. The FIA has both direct and indirect access to open source and closed source information which it uses to carry out its functions. The FIA has direct access to VIRRGIN, the companies register for the VI. The Deputy Director and the Senior Officer of each team within the AIU all have access to, and can search, the Overseas Territories Regional Criminal Intelligence System (OTRCIS).[14] OTRCIS stores information from all competent authorities subscribing to it. For the VI, this allows the AIU to readily access material uploaded by the RVIPF and HMC without the need to make a separate request to those agencies, thus minimizing the potential for tipping off. The FIA highlighted that it is the first British Overseas Territory FIU to have direct access to the OTRCIS system. Through a designation by the Minister of Finance under s.13 of the Beneficial Ownership Secure Search System Act (BOSSSA), two FIA staff have direct access to the Beneficial Ownership Secure Search System (BOSSS) portal which is used to store beneficial ownership information on VI-registered companies. This process is described in greater detail at IO.2. The FIA also uses commercially available sources such as World Check to obtain information on subjects of its inquiries.

160. The FIA is empowered under relevant Acts and the IGC MoU as described under R.29 to receive, request, gather, and store information necessary for the conduct of its functions. The competent authorities in the jurisdiction use financial intelligence to varying degrees, with the Financial Crimes Unit (FCU) only recently enhancing its use of the FIA's disseminations, discussed below at 3.2.1. and 3.2.3.

161. Section 4 Notices are an important mechanism used by the FIA to access information from the financial sector. The FIA can use this method to directly access information from reporting institutions. This yields important intelligence, and the RVIPF frequently requests assistance from the FIA through the use of this power to advance investigations. FIs and DNFBPs are generally responsive to these requests.

162. The FIA uses various commercial analytical tools to undertake its work. Data produced via the use of such tools are used to generate trends and patterns. FIU staff use iBase which is an application that allows the capturing, configuring, and displaying of complex information. Information input and maintained in iBase can be subjected to searches thereafter.

[14] The VI was the first overseas territory to be granted access to OTRIS.

163. As described in the FIA's Standard Operating Procedures (SOPs), upon receipt of a SAR, the Deputy Director of the FIA-AIU or, in his/her absence, the Director assesses its quality and assigns a risk rating of either high, medium, or low depending on various factors. The SOPs provide guidelines for the assessment of risk which include factors such as ML/TF indicators, pattern of activity, previous SARs, jurisdiction, and appearance on sanctions lists to name a few. The Senior Analyst then assigns it to an analyst who also considers the SAR quality and commences their analysis. Analysis consists of reviews of financial activity patterns, links to associates, prior criminal history, identification of property and assets, adverse findings following open-source intelligence (OSINT) research and the collection of information.

164. Upon completion of analysis, the analyst makes a recommendation regarding disposal of the case. This can include a determination that the report be disseminated to a competent authority or LEA. There have been issues regarding the quality of the FIA's disseminations which is further described below.

165. SAR processing times vary. Data received showed that there has been a steady reduction in the time required to process a SAR, from a majority of SARs taking 300 plus days in 2018 to process, to the majority taking 1 to 5 days in 2022. This improvement was attributed to the increase in the staff complement within the AIU, the continuous formal and informal training opportunities afforded to staff as well as the acquisition of analytical tools that improved efficiency within the FIU. This is a positive trend considering the myriad sources from which information is required to be gathered by the FIA in order to effectively conduct its analysis.

Table 3.1. Average Processing Time for Ordinary SARs (2018 to 2022)

Year	1–5 Days	16–24 Days	25–49 Days	50–99 Days	100–199 Days	200–299 Days	300+ Days	Unassigned	Total number of SRTs received
2018	107	0	1	5	22	1	139	168	**443**
2019	234	0	5	5	20	12	104	67	**447**
2020	407	26	35	50	44	26	31	185	**804**
2021	224	69	29	56	15	5	3	22	**423**
2022	274	16	47	39	43	0	0	78	**497**

166. The FIU is well resourced and has modern and secure facilities and the necessary technical resources to carry out its work.

3.2.1 Use of financial intelligence and other information

167. In addition to the disseminations which it receives from the FIA-AIU (which are being utilized on a limited basis as discussed in paragraph 166), the FCU, which is the VI law enforcement agency that receives all FIA ML and TF disseminations, has access to various databases to support its investigations. The FCU primarily utilizes OTRCIS which holds intelligence, crime reports, and other related LEA data obtained from VI agencies and across the OTs. In addition, the FCU has access to information that can be used for intelligence and evidential purposes from Interpol and various key stakeholders and OSINT. However, as described in IO.7, it does not have the legal power to request financial information from FIs or TCSPs directly. The FCU must make such requests through the FIA.

168. The FCU applies a grading and risk rating system for intelligence. With regard to prioritization, ML and TF matters are prioritized over other matters if the subject matter that is the subject of the intelligence can impact national security or may have international ramifications. The management and prioritization of investigations are made on a Threat-Based Assessment basis, which also considers the FCU's capacity, capabilities, and general resources.

169. During the review period 2018–2021, the FCU made very few requests for financial intelligence from the FIA. Table 3.2 outlines the requests made by the FCU of the FIA.

Table 3.2. Requests for Information Made by the FCU to the FIA

Year	Received	Pending	Completed
2018	3	0	3
2019	0	0	0
2020	1	0	1
2021	0	0	0
2022	24	0	24

170. The FCU attributes the lack of requests to the FIA for financial intelligence to the FCU having its own direct access to financial intelligence. This reflects the FCU's view, that for the majority of the period under review, it did not consider that the intelligence produced by the FIA added significant value to intelligence to which it already had access and ultimately to its work in general. Additionally, the FCU reported that, in some instances, the intelligence provided by the FIA was dated which impacted its use. There were also issues regarding the limited content of the intelligence reports and a lack of supporting material such as the location of the financial assets of subjects to aid the FCU in the conduct of possible ML/TF investigations. Notwithstanding the FCU's statement regarding the use of its own intelligence, this did not result in its own development of ML cases that advanced to prosecution. However, as shown in Table 3.2, the situation improved in 2022 following the introduction of regular meetings of the FIA-AIU and the FCU which may be attributed to the provision of supporting material by the FIA to the FCU which was previously highlighted by the FCU as a deficiency.

171. The FIA and the FCU recognized the need to address challenges regarding the use of the FIA's financial intelligence in FCU investigations and started to collaborate in this regard in 2021. They instituted a series of monthly meetings which are designed to track the progress of investigations from FIA disseminations as well as requests from the FCU to the FIA. The meetings also provide a platform where issues experienced by financial investigators regarding FIA intelligence can be examined. There were eight such meetings in 2022. Since January 2022, disseminations made by the FIA to the FCU are accompanied by supporting documentation. The provision of supporting material better facilitated FCU investigations. A sample of the FIA's intelligence reports showed the incorporation of key elements such as relevant subject identification and other bio information, financial activities and business-related activities, financial statements analysis, link charts, association matrices, and suggestions on investigative leads.

172. As shown in Table 3.2, the FCU submitted 24 requests for intelligence to the FIA in 2022. This represents a significant increase over the average of one per year during the period 2018–2021. The FCU attributed this, in part, to an increase in staff which allowed it to pursue additional financial investigations. In 2022, the FCU sent four ML investigations to the ODPP for advice and further direction. The forwarding of four ML investigations (stemming from dissemination) to the ODPP demonstrates that the collaboration between the FIA and FCU has begun to show improved usefulness of the FIA's disseminations for the FCU. Another positive observation is that the FCU utilized financial intelligence from the FIA in cases of cash seizure and other cases where predicate offences were investigated. There were also other investigations conducted with FIA information, but these did not reach the threshold for prosecution.

173. Notwithstanding these recent improvements, over the entirety of the review period, the FCU made limited use of the FIA's intelligence products. The FCU indicated that it has relied upon its own financial intelligence, however it was not able to demonstrate that this yielded significant results, given the lack of any major ML investigations being developed independent of FIA intelligence during the review period.

174. The following case study demonstrates how information gathered through requests made to the FIA and other government agencies was used to enhance SAR analysis.

Box 3.1. Case Study 6.2: Demonstrating FIU-FCU Collaboration

The FIA received a SAR which reported unusual cash deposits being made into the subject's bank account. Open and closed sources of information were explored, including issuing Section 4 notices to multiple FIs to retrieve the individual's financial history and other relevant data. Several public entities also provided information, including HMC, the Department of Motor Vehicles, the Department of Trade, Consumer Affairs and Investment Promotion, and the Social Security Board. Recourse was also had to OSINT.

At the conclusion of the analysis, no legitimate source of income could be identified to explain the high cash deposits being made, by the subject, a government employee. An Information/Disclosure form was prepared and disseminated to the FCU on October 11, 2021.

The FCU commenced an ML investigation. Information was obtained via recourse to the IGC MMoU, by employing a series of investigative tools and techniques, including applying for and executing search warrants and production orders.

Upon examination of various bank accounts belonging to the subject, the significant deposits exceeding the subject's monthly income were identified. There also appeared to be suspected co-mingling of transactions between shared accounts with the subject's partner. Two importations of high-powered boats were also identified, and it was noted that the partner had no declared income in the VI.

In August 2022, a file was prepared and is to be submitted to the ODPP for advice in respect of contemplated prosecution. This accords with RVIPF/ODPP protocols, namely the Case File Submission and File Reviews Policy.

An MLA application is also being considered relating to foreign transactions as well as potential restraint/confiscation proceedings.

175. Despite the above example of collaboration, there is, limited evidence to support a finding that the work of the FIA generally supports the operational needs of LEAs. Other LEAs such as HMC and Immigration do not conduct ML or TF investigations, and do not utilize the FIA's financial intelligence for ML/TF investigatory purposes. The FSC uses the financial intelligence products of the FIA on a more regular basis mainly for the conduct of supervisory due diligence and background checks such as requests for BOSSS searches, tax information from the ITA, and requests for background checks from the DOI.

3.2.2. Reports (STRs etc.) received and requested by competent authorities

176. The FIA receives SARs via AMLive from reporting entities. AMLive is a secure electronic platform specifically configured for the receipt and processing of SARs. SARs are also filed by completing a downloadable form from the FIA's website which is then submitted either to a designated email address; or hand-delivered to the FIA.

SARS by Sector

177. The quality and volume of the output of the FIA is affected particularly by the input it receives from the FIs and DNFBPs in the form of SARSs. Table 3.3 outlines the levels of reporting by sector over the period.

Table 3.3. Number of SARs Filed by Sector

Category	Reporting Entity	2018	2019	2020	2021	2022	Total
Financial Institutions	Banks	77	120	106	200	143	646
	Financing Business	0	0	0	0	0	0
	Insolvency Practitioners	1	14	10	7	6	38
	Insurance Business	4	4	6	7	10	31
	Investments Business	0	0	0	1	1	2
	Money Services	22	1	1	0	3	27
Total (Financial Institutions)		104	139	123	215	162	744
DNFBPs	Accountants	2	9	0	0	0	11
	Dealers in Precious metals and stones	0	2	0	0	0	2
	Lawyers	7	14	11	13	13	58
	Other (HVGD)	0	0	0	0	0	0
	Real Estate Agents	0	0	0	0	0	0
	TCSPs	324	269	656	190	279	1,718
Total (DNFBPs)		333	294	667	203	292	1,789
Grand Totals		437	433	790	418	455	2,533

178. Table 3.3 shows the breakdown of SAR filings to the FIA by sector regarding supervised entities. The total number of SARs including those from unsupervised entities is shown in Figure 3.1. That data is further divided to show SARs with a domestic vs international component. The filings show that most SARs filed during the 2018–2022 period were from TCSPs (67.8 percent), followed by banks (25.5 percent), lawyers (2.3 percent), insurance business (1.2 percent), and money services (1.1 percent). All other categories were below one percent, while financing business, real estate agents, and other HVGDs made no reports. The SARs received by the FIA are not well aligned with the VIs assessed risk profile. It was noted that while banks and TCSPs made the largest number of reports, there were significant variances between institutions, in some instances where one TCSP was the dominant reporter of SARs. (See analysis under Core Issue 4.5 of IO.4 which highlights for example that 77.3 percent of SARS filed by TCSPs were filed by just 10 entities, and that 66.2 percent of TCSPs have never filed a SAR). While investment business is rated as medium-high risk in the 2022 MLRA, these entities only filed two SARs over the review period.

179. The FIA advised that it provides feedback on every SAR received. The feedback is provided to the reporting entity on the status of their report, including whether a summary of the report was disclosed to a relevant authority or that no further action is being taken at the time. Regardless of the future conduct of the matter, the reporting entity is urged to continue monitoring the transactions or any related suspicion. Sample feedback forms provided to the assessment team confirmed this. However, the FIA did not demonstrate that it was taking appropriate measures to ensure that all FIs and DNFBPs were making reports to the FIA in the appropriate cases. This largely relates to the DNFBP sector, for which the FIA is also the supervisor, although some FIs (including a significant number of TCSPs) are also not reporting. The FIA did indicate that reporting issues have been identified in the 2020 risk assessment. However, it was indicated that the COVID-19 pandemic did interfere with their outreach efforts to the industry to remedy these issues.

International vs. Domestic SARs

180. The FIA classifies SARs as domestic and international. SARs classified as domestic refer to those where the natural person(s) relevant to the SAR narrative is resident or domiciled in the VI; while SARs are classified as international where the natural person(s) to whom the report relates is not domiciled or resident within the VI. Figure 3.1 shows SARs by domestic vs. international domicile.

Figure 3.1. Domestic vs International SARs

Year	Domestic SARS	International SARs	Total SARs
2022	142	4,637	4,779
2021	207	972	1,179
2020	120	1,134	1,254
2019	134	1,156	1,291
2018	1,06	504	610

181. Figure 3.1 is consistent with the risks identified by the VI in the 2022 MLRA, which highlighted that the international nature of the corporate vehicles incorporated in the VI make them vulnerable to being exposed to or abused for ML and TF purposes abroad. These statistics should be a catalyst for the authorities (intelligence agencies and investigators) to consider in more depth the pursuit of the cross--border criminal activities that could be linked to these transactions and vehicles.

Ordinary SARs v. Cryptocurrency SARs

182. For statistical purposes, the FIA distinguishes SARs as either those filed related to VAs or ordinary SARs which consist of those regarding suspicion of ML and TF. In 2018, the FIA started receiving SARs related to VAs and in particular, cryptocurrency (2022=4,282; 2021=756; 2020=450; 2019=844; 2018=167). There was a total of 6,499 cryptocurrency SARs filed during the review period. Cryptocurrency SARs are risk rated. The more urgent cryptocurrency SARs, particularly those relating to TF or sanction-related matters, are subjected to further analysis on a priority basis. The authorities indicated that, to date, while such SARS are related in some way to BVIBCs, none has contained information relating to activities or transactions taking place within the VI. There were no cryptocurrency investigations conducted by the RVIPF incorporating the use of financial intelligence and financial intelligence analysis.

183. The FIA has been proactive in training and preparing its staff to analyse and generally deal with VA-SARs. The Deputy Director of the AIU and four analysts were certified by CipherTrace as cryptocurrency tracing examiners. Several virtual courses were conducted by the entire analyst team of the FIA's AIU, including ECOFEL courses as well as a week-long seminar run by an external agency. The FIA also acquired blockchain analytics software to assist in this respect. These efforts yielded positive results with cryptocurrency SARs being analysed and resulting in disseminations both to local law enforcement and to foreign FIUs.

184. Table 3.4 shows SARs by type of suspicion reported. The table shows that the top five domestic offences underlying suspicions reported were stand-alone ML, suspicious activity, fraud, other, and drug trafficking. In comparison, the top five international offences underlying STRs were stand-alone ML, fraud, other suspicious activity, other, and corruption/ bribery. At the domestic level, the type of offence underlying suspicious transaction reporting is inconsistent with the drug trafficking, cash smuggling, human trafficking, and corruption cited as the most significant domestic predicate crimes (2022 MLRA). The misalignment between the types of reports being submitted to the FIA and identified risk suggests a need for a revision and strengthening of the outreach and awareness-raising undertaken by competent authorities to reporting entities with respect to the reporting of suspicions.

Table 3.4. SARs Received by the FIA by Reason for Suspicion (2018–2022)

SARs/STRs BY PRIMARY REASON FOR SUSPICION

Suspicion Reported	Domestic					International					Total				
	2018	2019	2020	2021	2022	2018	2019	2020	2021	2022	2018	2019	2020	2021	2022
Organized Crime	0	0	0	0	0	3	1	5	5	9	3	1	5	5	9
Terrorism	0	0	0	0	0	2	8	2	1	3	2	8	2	1	3
Human Trafficking	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Sexual Exploitation	0	0	0	0	0	0	0	0	0	89	0	0	0	0	89
Drug Trafficking	0	0	2	3	4	2	1	4	4	18	2	1	6	7	22
Arms Trafficking	0	0	0	0	0	0	0	0	0	3	0	0	0	0	3
Trafficking in stolen goods	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Corruption/Bribery0	0	0	0	1	0	26	28	54	16	5	26	28	5	17	5
Fraud	9	30	10	65	20	144	63	165	57	1,591	153	93	175	122	1,611
Counterfeiting of Currency	0	0	0	1	0	5	23	27	2	0	5	23	27	3	0
Counterfeiting and piracy of products	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Environmental Crime	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Murder, grievous bodily injury	0	0	0	3	0	1	1	0	0	0	1	1	0	3	0
Kidnapping	0	0	0	0	0	1	0	0	0	1	1	0	0	0	1
Robbery/Theft	0	0	0	2	0	0	5	4	4	57	0	5	4	6	57
Smuggling	0	0	1	1	0	1	3	2	3	1	1	3	3	4	1
Tax Crimes	0	0	0	0	0	22	32	28	7	18	22	32	28	7	18
Extortion	0	0	0	0	0	0	0	2	1	0	0	0	2	1	0
Forgery	1	0	0	1	1	3	1	1	2	23	4	1	1	3	24
Stand-alone Money Laundering	52	69	62	58	15	178	811	439	88	1,102	230	880	501	146	1,117
Self-Laundering	0	0	0	0	0	1	0	0	0	53	1	0	0	0	53
3rd Party Laundering	0	0	0	0	0	0	0	0	0	15	0	0	0	0	15
Terrorist Financing (International)	0	0	0	0	0	2	2	7	4	52	2	2	7	4	52
Insider Trading	0	0	0	0	0	7	2	10	4	3	7	2	10	4	3
Piracy	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Sanctions/Breach of Int'l Sanctions	0	0	0	0	0	8	5	33	4	48	8	5	33	4	48
Suspicious Activity	16	18	37	65	101	1	1	63	721	716	17	20	100	786	817
Other	28	17	8	7	1	97	169	288	49	828	125	186	296	56	829
Totals	**106**	**134**	**120**	**207**	**142**	**504**	**1,156**	**1,134**	**972**	**4,637**	**610**	**1,291**	**1,254**	**1,179**	**4,779**

185. The authorities must consider the reasons why, in some cases, the SARs being reported are not consistent with the findings of the 2022 MLRA and whether this could suggest flaws in the MLRA's findings or gaps in the understanding of reporting entities of indicators of the higher risk predicate offences.

186. The FIA's power to request information from reporting institutions and other private persons is a critical mechanism for obtaining information. Sources from which the FIA can obtain information include cross-border reports on currency and bearer negotiable instruments (BNIs), law enforcement intelligence, criminal records, supervisory and regulatory information, and information with the companies' registry. To a large extent, however, the use of this power to request information seems to be the most valuable form of assistance that the FIA renders to law enforcement authorities. Table 3.5 outlines the status of requests made to FIs and DNFBPs over the period under review.

Table 3.5. Number of Section 4 Requests Issued and Responses Received

Reporting Year	Requests Issued	Responses Received	Requests Not Responded To
2018	732	628	104
2019	475	419	56
2020	481	380	101
2021	682	564	118
2022	561	557	4
Totals	2,931	2,548	383

187. The rate of compliance with the FIA's requests improved from an average of 84 percent during the period 2018 to 2021 to 99 percent in 2022. In instances where there have been sanctions for failure to respond within the deadline, the FIA imposed administrative fines. As of October 2022, this was initiated on nine occasions resulting in the imposition of fines in five cases, which were paid. Given the recent nature of this enforcement action, the impact on overall compliance or reporting quality was not discerned.

188. The FIA is also empowered to obtain information from public entities in furtherance of its duties. Over the period under review there was a significant increase in these requests during the period 2021–2022. The FIA made on average 61 requests per annum during the period 2018–2020. This increased significantly to 296 in 2021 and 212 in 2022. The top five agencies that received the most requests were the Department of Trade and Consumer Affairs, VI Social Security Board, the DOI, the RVIPF, and the Department of Labour.

Table 3.6. FIA AIU Requests for Information to Public Bodies 2018–2022

	2018	2019	2020	2021	2022	Total
BVI SSB	1	0	0	69	45	**115**
Civil Registry & Passport Office	1	2	0	1	4	**8**
Department of Immigration	2	5	8	49	34	**98**
Department of Labor	4	5	9	23	22	**63**
Department of Land Registry	0	0	6	17	15	**38**
Department of Motor Vehicles	1	3	3	14	6	**27**
Department of Trade and Consumer Affairs	5	8	30	66	39	**148**
Department of Treasury	0	0	0	2	1	**3**
Financial Services Commission	4	2	3	21	19	**49**
Governor's Office	2	0	0	0	3	**5**
His Majesty's Customs Dept	0	2	4	18	8	**32**
Department of Inland Revenue	0	0	0	0	1	**1**
Royal Virgin Islands Police Force	54	9	5	10	8	**86**
Virgin Islands Shipping Registry	0	0	2	4	5	**11**
Ministry of Transportation	0	0	0	1	1	**2**
High Court Registry	0	0	3	0	0	**3**
Accountant General	0	0	0	1	1	**2**
Magistrate's Court	1	0	0	0	0	**1**
Total	**75**	**36**	**73**	**296**	**212**	**692**

3.2.3 Operational needs supported by FIU analysis and dissemination

189. The FIA makes disseminations to several competent authorities. As shown in Table 3.7, very few disseminations were made in 2018 and 2019. The highest number of disseminations were made in 2020. Domestic disseminations declined somewhat in the subsequent years. The largest number of disseminations

over the review period were made to the FSC, the FCU, and the Governor's Office (GO) respectively. It is noteworthy that the FIA made more than three times the number of disseminations to the FSC than it made to the FCU, a clear indication that its disseminations are supporting regulatory and supervisory purposes much more than they are supporting ML/TF investigations. It should also be noted that the nature of the FIA's disseminations is not in keeping with the main risks in the jurisdiction. For example, the FIA has only disseminated seven disclosures in relation to international SARs to the FCU despite the fact that international SARs constitute the vast majority of SARs during the period under review. These disseminations all occurred in 2022.

Table 3.7. FIU's Domestic Disseminations

	2018	2019	2020	2021	2022	Total
RVIPF (FCU)	1	0	11	44	12	**68**
FSC	7	1	128	73	6	**215**
Governor's Office	0	1	2	2	7	**12**
Department of Labor	0	0	0	1	3	**4**
Department of Immigration	0	0	0	1	3	**4**
Department of Trade	0	0	2	0	0	**2**
Department of Health	0	0	1	0	0	**1**
Social Security Board	0	0	0	0	1	**1**
Total	**8**	**2**	**144**	**121**	**32**	**307**

190. As indicated previously in this chapter, the FCU has made very little use of the FIA's intelligence over the review period. The FCU indicated that the quality of intelligence received was insufficient with respect to information provided and was not accompanied by supporting documentation. Other concerns seen based on analysis of data and information provided by VI authorities included "lack of up-to-date financial information" and "insufficient information to commence investigation." According to the FCU, the FIA indicated that the lack of information in the SARs hindered additional research and analysis, which suggests quality issues with the SARs. The FIA indicated that it has done a great deal of work with the FIs and DNFBPs to improve the quality of the reports in recent years, particularly through the use of its feedback forms. However, this does not explain the continued low levels of reporting in some sectors.

191. It is a positive step that the monthly meetings have already been initiated to address this serious deficiency. In 2022, four investigations that emanated from intelligence provided from SARs were submitted to the ODPP for review. The FCU advised that the current disseminations from the FIA are more useful, resulting in additional investigations in progress.

Strategic Analysis

192. The requirement that the FIA conduct strategic analysis is founded in legislation (FIAA) as discussed under R.29. Strategic analysis is further detailed in the FIA's SOPs where the structure, work plans, composition of project teams, information gathering, resources required, and analysis process are described. The FIA has produced limited strategic analysis products during the review period. The strategic analysis consisted of a review of SAR filings following an unusual pattern of reporting activity. The analysis was captured in its 2019 and 2020 annual reports. The analysis detected a connection to increased reporting and BVIBCs involved in cryptocurrency-related business which did not fall under a regulatory framework at the time. The strategic analysis conducted on this VA was aligned with the high-risk rating in the 2020 SRA. The resulting findings of the strategic analysis informed recommendations as to internal policies for the FIA namely training and acquisition of blockchain analysis software, the formation of the regulatory framework for cryptocurrencies and providers of such services. Further, the analysis was able to be used to

support requests for increased budgetary allocations to address the emerging risk. The funding permitted staff training in cryptocurrencies and TA in the development of the VASP Act.

193. During the onsite visit, authorities shared information regarding a significant strategic analysis product that is in progress which deals with emerging risks in a sector that is not covered under the AML/CFT framework and rated medium-high risk in the 2020 SRA. The assessment team was satisfied by the demonstration that the FIA-AIU has the technical expertise and resources to conduct such analysis, even though the analysis is not final or published. There is, however, a need for improved consistency in the FIA-AIU's approach to developing strategic analysis products to ensure that the requirement to identify ML, TF, and related trends and patterns is achieved as required under this IO and in alignment with its SOPs which states that at least one strategic analysis product should be produced annually.

FCU use of FIA analysis

194. During the latter stage of the review period, the FCU was able to use FIU intelligence more frequently to support some of its work, although the disseminations to the FCU remain at low levels (68 over the review period). Based on the FIA's financial intelligence, the FCU sought 29 production orders of which 14 were issued in 2022.

195. While the FIA is able to use the technical expertise of its staff and appropriate software to conduct analysis, it is apparent that the use of these resources is not resulting in significant outcomes in the context of law enforcement investigations. It remains to be seen whether the cases emanating from FIA disseminations, particularly those provided in the four months prior to the onsite visit, following enhanced coordination between the FIA and the FCU, will result in prosecutions in the courts and result in convictions.

FSC use of FIA analysis.

196. The FSC has recorded a total of 262 intelligence disseminations from the FIA between 2018 and 2022. Those disseminations stem mainly from allegations of ML, fraud, AML breaches, and sanctions violations related to VI companies operating abroad. All intelligence provided pointed to possible breaches of laws in a foreign jurisdiction. During the review period, five disseminations received by the FSCs Enforcement Division (ED) resulted in a notification to the Supervisory Unit, eight to the Compliance Inspection Unit, and one which led to enforcement action in the form of an administrative penalty for conducting unauthorized financial services business. The FSC has demonstrated that it routinely requests information from the FIA which supports its operational needs.

Other Competent Authorities use of FIA analysis

197. Other competent authorities such as the GO are notified of matters related to potential breach/evasion of sanctions as the Governor is the competent authority for sanctions within the VI. The GO also utilizes the FIU's Domestic Feedback form and has confirmed the usefulness of disseminations made to them, although there has been limited action taken by the GO on these (see discussions under IO.10). Similarly, SARs relating to international tax matters are disclosed to the ITA.

Box 3.2. Case Study 6.5

In 2021, the FIA received a SAR concerning an individual offering a loan facility. After the FIA's analysis of the SAR, the FIA was of the view that the individual may have been operating in violation of the Financing and Money Services Act (FMSA) and made a direct referral as intelligence to the FSC for its consideration and action. Through its supervisory power to demand information, the FSC issued a Notice requiring the individual to provide details of the specific transaction, as well as any other loan/financing transaction(s) performed.

The individual attempted to categorize the transactions simply as "loans to friends and acquaintances" which had caused some financial losses over the years. Contrarily, the FSC observed that the individual, within a six-year period, financed a number of loans valuing over US$1,000,000, where it was also evident that the recipients of the loan funding had no familial relationship to the individual. The FSC's investigation concluded that the individual had in fact breached the FMSA by carrying on financing business without authorization to do so.

In determining the appropriate enforcement action, due consideration was given to the individual's co-operation in the investigation and the fact that the breach was the individual's first offence. Notwithstanding, a financial penalty of US$5,000 was imposed for the breach of the FMSA, in addition to a cease-and-desist order, and an order to wind down the business with quarterly reporting to the FSC.

198. Various competent authorities request SAR-related information from the FIA which feeds into their operations. Table 3.8 shows requests received by the FIA from domestic competent authorities.

Table 3.8. Requests received by FIA from Domestic Competent Authorities

Local Request for Information (RFI)						
	2018	2019	2020	2021	2022	Total
Attorney General's Chambers	3	0	0	1	0	**4**
RVIPF	22	8	3	0	24	**57**
Financial Services Commission (FSC)	1	1	1	2	0	**5**
Governor's Office	1	5	5	3	4	**18**
His Majesty's Customs	0	1	1	2	0	**4**
ITA	0	1	1	0	0	**2**
Total	**27**	**16**	**11**	**8**	**28**	**90**

199. The data shows that apart from the RVIPF and the GO, other agencies do not make a significant number of requests for information to the FIA. These agencies do not have legislative authority to conduct ML and TF investigations but refer all such cases to the RVIPF.

3.2.4. Cooperation and exchange of information/financial intelligence

200. The FIAA bestows the Director with full discretion to disseminate information to any competent authority in the territory. There are no statutory, administrative, or other barriers that prevent the sharing of information and financial intelligence. The FIA demonstrates its commitment to cooperation through the use of MoUs. The IGC's MoU encourages and facilitates information sharing and co-operation amongst its members.

201. The FIA's participation in a number of the national committees facilitates coordination and cooperation with a wide range of competent authorities. As indicated previously, there is room for improvement to achieve more effective use of these cooperation arrangements, in particular as it relates to

receiving feedback from other competent authorities about how financial intelligence provided has been used in their work and improvement in operational outcomes regarding ML and TF arising from those committees.

202. Where the FIA requires international assistance to gather information to conduct its analysis on behalf of local LEAs, requests are made via the Egmont Secure Web (ESW). Table 3.9 shows the number of requests made by the FIA via the ESW by country for the period 2018–2022. Of note is that the limited number of international requests do not correlate to the higher risk of international SARs presented in Figure 3.1 which showed that the international risk of suspicious activities was higher than the domestic levels.

Table 3.9. FIA requests to Foreign FIUs

Requests Issued to Foreign FIUs						
Country	**2018**	**2019**	**2020**	**2021**	**2022**	**Total**
United States	0	0	2	2	10	**14**
Brazil	4	4	2	0	0	**10**
United Kingdom	1	1	0	0	4	**6**
Cyprus	0	0	0	0	4	**4**
Singapore	3	0	0	0	0	**3**
Switzerland	2	1	0	0	0	**3**
Barbados	1	2	0	0	0	**3**
Dominica	1	0	1	0	0	**2**
France	1	0	1	0	0	**2**
Cayman Islands	0	1	1	0	0	**2**
Jersey	0	1	0	0	1	**2**
*Other *Other*	6	5	7	2	2	22
Total	**19**	**15**	**14**	**4**	**21**	**73**

*Denotes countries where only one request was made over the five-year review period. These include Andorra, Antigua and Barbuda, Argentina, Aruba, Belize, Bulgaria, Dominican Republic, Ghana, Hong Kong, India, Israel, Italy, Lebanon, Luxembourg, Monaco, Nigeria, St. Lucia, St. Maarten, Ukraine, Ireland, Peru, and Trinidad and Tobago.

Box 3.3. Example of Sharing Information with a Foreign FIU

In July 2022, the FIU prepared a trends and typologies report given the high number of SARs received related to a particular country. This sought to analyze any trends associated with the increased cryptocurrency SARs the FIA received in respect of select countries. The report was disclosed to the country's FIU, via the ESW, on July 22, 2022. Not long thereafter, that country's FIU responded seeking permission to disclose the intelligence to their police force (on August 9, 2022) as well as their tax authority (August 11, 2022). This permission was granted. It is unknown if any other results were achieved with the VI information.

203. The FIA has entered agreements both internationally and domestically which set out the terms for the sharing and exchange of information. The FIA does not require MoUs to share, exchange, request, receive requests or disseminate information and intelligence to other FIUs. The FIA has signed international MoUs with the following countries: Israel (2009); Australia, Canada, Russian Federation, Republic of Moldova, Republic of North Macedonia, Romania, Montenegro (2011); Taiwan, Province of China (2014); and Guyana (2022). Feedback regarding the sharing and exchange of information is assessed in detail in IO.2.

204. Domestically, the FIA has signed MoUs with the FSC (2007); the RVIPF (2009); IGC (2014); the AGC (2015); and HMC (2020).

205. The RVIPF, HMC, and FIA, all subscribe to OTRCIS. (See earlier discussion under this immediate outcome).

Overall Conclusions on IO.6

206. The FIA demonstrated that it performs the gathering, analysis, and dissemination of financial intelligence and other information to support LEAs. Sporadic reporting by a small number of reporting entities (see IO.4) limits the effectiveness of the FIA's analysis. The predicate offences underlying the SARs received during the review period are not sufficiently aligned with the VI's risk profile. The FIA showed that it produces quality intelligence reports; however, this is a recent improvement and has not resulted in a demonstration by LEAs of its effective use in ML/TF cases. Financial intelligence was not (until very recently) demonstrably used in an ML/TF investigation or prosecution (see IO.7), meaning that FIA analysis and dissemination is not supporting the operational needs of competent authorities. Additionally, most disseminations are to regulatory agencies for operational needs and have not resulted in enforcement actions. The FIA has only carried out one strategic analysis.

207. There have been limited requests for financial intelligence by the FIA to international counterparts regarding the pursuit of ML/TF matters. This is inconsistent with the VI's assessed risk as evidenced by the high number of international SARs when contrasted with domestic SARs.

208. The VI is rated as having a low level of effectiveness for IO.6.

3.3 Immediate Outcome 7 (ML investigation and prosecution)

General overview

209. Two LEAs have powers to investigate ML offences in the VI, the RVIPF and the FIA. HMC and the DOI have power to investigate predicate offences related to their activities. HMC and the DOI provide the police with newly identified cases for further action. The FIA also does not conduct criminal investigations, although it has the power to do so; however, it may be requested to exercise its statutory powers to obtain financial information to assist the RVIPF in conducting investigations. In practice, criminal investigations are carried out by the RVIPF only. Prosecutions of criminal cases are initiated and conducted under the sole authority of the ODPP. Criminal cases are adjudicated either by the Magistrate's Court or the High Court of the ECSC.

The Judicial system

210. All but one case related to ML and predicate offences have been adjudicated in the Magistrate's Court. In criminal matters, the Magistrate's Court hears criminal cases in summary proceedings, which imposes limits on the level of penalties and confiscations it can order. There are currently three sitting magistrates, two in Tortola and one in Virgin Gorda, with one additional part-time magistrate. The ECSC comprises the High Court, which hears criminal cases on indictment, and the Court of Appeal, which is responsible for hearing appeals from the Magistrates' Court and the High Court. The Judicial Committee of the Privy Council in the United Kingdom is the final appellate court for the VI.

211. ML cases are generally heard in the Magistrate's court due to the size of the jury pool in the territory and due to the fact that the summary processes are more expeditious. Additionally, there is also the additional risk of tampering with the jury due to the small size of the jurisdiction as alluded to by the ODPP in its evidence before the CoI. The decision as to whether the matter should be tried summarily (before the Magistrate) or on indictment (before the High Court) rests with the ODPP.

The Office of the Director of Public Prosecution (ODPP)

212. The DPP is assisted by a team of prosecutors and administrative staff and is not accountable to any supervisory body in the discharge of prosecutorial decisions. Fully staffed, the ODPP should include 13 counsels and 10 administrative staff. Due to budgetary constraints, the DPP has not received permission to fill all established positions, and the team is currently comprised of the Director, the Principal Crown Counsel, 2 Senior Crown Counsels, 5 Crown Counsels, and 7 paralegal and administrative personnel, totalling 16 staff. The DPP indicates that limited resources are the principal obstacle to improving the effectiveness of the office.

213. The ODPP does not have the power to open an investigation, but it engages very early in the investigation process in significant cases with the RVIPF to provide guidance and support a successful prosecution. Once a file is formally submitted, the ODPP may require further investigation to be conducted. While the ODPP does not have supervision over the LEAs, it may issue guidance in relation to investigations and prosecution procedures (e.g., Policy No. 1 of 2023 on Prosecution of PCC).

214. Despite staff constraints, the ODPP's counsels received adequate training in the period under review, on issues such as (i) AML/CFT strategies (10 participants); (ii) the foundations of PCC (7); (iii) investigations, prosecutions, extradition, confiscation, and asset management (19); (iv) PF (2); and (v) cryptocurrencies (3).

The RVIPF

215. The RVIPF is the lead LEA in the jurisdiction. The FCU is the primary police unit responsible for investigating ML/TF cases. It is comprised of six officers led by a Detective Inspector. It suffers from a relatively high staff turnover, and the police leadership has acknowledged that the unit requires strengthening and increased resources.

216. Historically, the public's trust in the local police has been very low according to the Commissioner of Police,[15] and it is very difficult to get information from the public, even in the case of serious crimes. This has been attributed to political interference[16] (elected officials intervening in individual cases recurrently), but also due to internal corruption within the RVIPF, as highlighted by the CoI report.[17] However, following his appointment in 2021, the new Commissioner of Police has made it his priority to reduce the trust gap, and several initiatives were taken, including the establishment of community policing teams.

217. FCU officers receive regular substantive training on all issues related to their area of work, including financial investigations, PF, integrity, ethics and accountability, trade-based ML, and crypto investigations.

The FIA and other agencies

218. The FIA, while having more extensive powers than the police to access financial information, does not conduct criminal investigations on its own initiative. It may exercise these powers based on the request of the police, and, in addition, it may also spontaneously disseminate financial information. The FIA has never submitted a case based on its investigations to the ODPP. The FIA's main involvement relates to its capacity as the FIU and the forwarding of intelligence to the other competent authorities whether upon

[15] See for example CoI, par. 12.21

[16] See for example NRA 2016, para. 1074: "*significant risk appears to relate to the possibility of political and other interference with respect to some of the LEAs given the lack of proper policies and procedures and adherence to such procedures and policies in the due execution of mandates."*

[17] According to this report, "*There is little doubt that, whilst the majority of the RVIPF are reliable, honest, and dedicated officers, there is a significant minority who are not. The Commissioner of Police and the Governor each accept that there is a vein of endemic corruption running through the force.*"

request or spontaneously. HMC considers that its role is to mainly prevent cross-border contraband and smuggling, and hands over all cases of proceeds of crime or suspicion of ML/FT to the RVIPF. The DOI also passes such cases to the RVIPF.

219. Law enforcement domestic cooperation is facilitated through a variety of coordination mechanisms which have been outlined in Chapter 1. The most relevant for LEAs are the quarterly meetings of the CLEA and the weekly meetings of the JTF, the latter being chaired by Customs. An MoU was signed in 2014 under the IGC to facilitate the exchange of information among LEAs and competent authorities. However, the Commissioner of Police has indicated that the exchange of information, while improving, continues to be limited due to the lack of trust among agencies and the risk of investigation leaks.[18] Other agencies have complained that they do not receive investigative updates on matters they have referred to other bodies.

3.3.1. ML identification and investigation

220. Most, if not all, ML cases are identified through an investigation initially opened on the predicate offence. Until recently, no case of ML was prosecuted based on a suspicion of ML by an individual or an organization irrespective of the existence of a predicate offence, nor has any case of third-party ML been investigated. Generally, the investigations commence with the arrest of an individual usually on drug charges and/or the seizure of cash or drugs. If there are elements requiring an investigation on the proceeds, the FCU opens a parallel financial investigation which is carried out by the FCU, in coordination with the Investigative Unit. If cash has been seized, a forfeiture proceeding is initiated by the ODPP leading to a forfeiture order by the Magistrate.

221. In 2022, however, several ML investigations were initiated because of FIA dissemination reports or other intelligence through stand-alone investigations and at the end of 2022, the ODPP had received four case files of ML investigations initiated by FIA dissemination reports, which are currently under review. This recent development demonstrates a positive shift in ML investigations strategies.

Box 3.4. Case Study: Drug Trafficking Case Involving ML Proceeds

In 2020, the RVIPF instigated an intelligence-led operation involving several units within the RVIPF into drug trafficking which identified local police involvement. A drug drop onto a beach was identified where 2 vehicles collected 63 large canvas-wrapped bales and transported them to an inland location. The bales were seized which were found to contain 2.353 tons of cocaine valued at US$235,300,000. Two firearms were also recovered, and three persons (two serving police officers and one former police officer) were arrested and charged with drugs, firearms trafficking, and PCC pending trial. An additional person fled, but after sharing intelligence, he was arrested transporting about 300 kilograms of cocaine to Puerto Rico. He is being held in the USVI.

Table 3.10. Statistics on ML (Proceeds of Crime) Investigations by the FCU

Year	2018	2019	2020	2021	2022
Number of PCC cases opened	10	18	18	18	36
No. of persons charged with PCC	11	11	11	8	8
No. of Cases referred to ODPP	8	9	6	3	12

[18] See also Virgin Islands STCA, Royal Virgin Islands Police Force, Nov. 2022, p.38.

222. The FCU does not have direct legal power to request the production of financial information by FIs or by TCSPs. To gather financial information such as the details of bank accounts or company registration of suspects, the FCU issues a request to the FIA which is empowered to obtain such information. Depending on the information received, the FCU would then apply to the High Court Judge[19] for a production order to gain access to the same documents, to make this intelligence acceptable as evidence. However, until recently, the authorities had a weak rate of success in obtaining production orders in High Court. Discussions were held between the FCU and the FIA in late 2021 and subsequent regular coordination meetings took place since then. The subsequent improvement of the quality of the intelligence forwarded by the FIA, allowed the FCU to successfully apply for 14 production orders during 2022. Almost half over the orders obtained over the period under review. A mechanism is in place to allow the FCU to access the VIRRGIN database, but it is not the case for the BOSSS database.

Box 3.5. Case Study Use of Financial Investigation Techniques

In March 2021, an individual was arrested as a result of an RVIPF intelligence-led operation, and 535.5 kilograms of cocaine were found in his vehicle inside duffle bags. The drugs, valued at US$53,530,000, were seized. A parallel ML investigation was formally instigated following information obtained from the FIA in August 2021, although informal enquiries had been conducted prior to this. No social security contributions were identified has having been paid by the subject since 2007, and no revenue was declared for a business that they claimed to operate. Gross earnings during the period 1997 to 2007 averaged under US$5,000 per year.

The ML investigation utilized search warrants, information sharing arrangements under the IGC MMoU and production orders granted under the PCCA, which also identified that the subject had imported 29 (mainly pre-owned) vehicles from December 2019 to March 2021 on behalf of their declared "business." The prices of the vehicles ranged from US$1,000 to US$34,000 with a total value of over US$130,000 (plus customs costs of nearly US$36,000 and agents' fees (to be determined)). Eight of these vehicles are potentially subject to further investigations and potential seizure for future confiscation proceedings, subject to ODPP support. The FCU have instigated formal requests, through HMC, with the U.S. authorities to identify the relevant information required to support a formal MLA request as soon as possible.

The accused pleaded guilty to possession of a controlled drug, which is a predicate offense. The plea of guilty triggers confiscation. The matter is listed to continue with trial in late March 2023.

223. The police lack an adequate legal framework to regulate the use of advanced investigations techniques, which may affect its ability to conduct complex investigations, except for the general power of the Governor to order the interception of telecommunications, and electronic data surveillance and approve undercover activities. Legislation does not allow for other advanced investigative techniques such as controlled deliveries, although the authorities indicate that undercover operations occur in practice. To conduct investigations in ML cases, the FCU utilizes the traditional methods of policing such as obtaining search warrants, witness statements, surveillance, informants, and OSINT. The police also do not have power to identify whether defendants have accounts with FIs. The PCCA was amended during the onsite visit to provide for account monitoring orders.

224. The FCU relies on the FIA to get financial intelligence information from FIs in the course of their criminal investigations. Until recently, relations between the FIA and the FCU were cordial but not fully productive. The FIA was disseminating reports to the police that were considered non-actionable due to the lack of substantive information (including supporting documentation). In 2020, only 1 of the

[19] Production orders are issued at High Court level, even for cases pending before the lower court.

11 dissemination reports resulted in an investigation. The police, due to lack of resources and their own intelligence functions, were not requesting much information from the FIA to support their investigations.

225. The FCU does not automatically open an investigation on all reports received from the FIA. It first reviews the information forwarded by the FIA and decides whether an investigation is warranted, as detailed in IO.6 analysis. For the first time in 2022, eight criminal investigations were opened on the basis of FIA reports, four of which having been referred to the ODPP in 2022. The ODPP is currently reviewing these cases in order to take a decision on prosecution.

226. A limited number of ML investigations result in a prosecution, as shown in Table 3.11 below. The ODPP coordinates on a regular basis with the FCU to guide investigators in the search for evidence. Once the case is referred to the ODPP, instructions may be given to further the investigation when the evidence is deemed to be inadequate. Eventually, the ODPP decides whether to submit the case to the Court. The DPP's decision is taken on the basis of a two-tier test: (i) whether there is sufficient evidence that would more than likely lead to a conviction; and (ii) whether it is in the public interest to commence a prosecution.

227. The ODPP indicated that there has been historically a reluctance[20] on the part of law enforcement to get involved in financial investigations, including cross-border cases. This may explain why there has been an inadequate number of prosecutions over the years and why the investigations do not reflect the key ML and TF risks faced by the territory. The DPP indicated that her ability to aggressively prosecute financial crimes, was limited, in part, by the quantity, nature, and the quality of the cases that were referred to her office. There are also several jurisdictional factors that affect the decision to prosecute, including, but not limited to: whether the conduct constitutes an offence in the VI, the location and interests of victims, the location of other defendants, whether there are criminal proceeds taking place already, the prospects of multiple prosecutions, the location of the evidence and public interest, among others.

228. The RVIPF on the other hand, indicated that in the past, the ODPP has expressed the opinion that cases involving the potential criminal activity committed by BVIBCs in overseas jurisdictions do not have a sufficient nexus to the VI and therefore are not prosecutable in the VI. Hence, in their view, there was little value in investigating these types of offences. This is also concerning given the fact that the VI, through the FIA in particular, does receive intelligence about ML connected to BVIBCs, in the form of international SARs and spontaneous disseminations provided by partners **Error! Reference source not found.** as well as incoming requests for MLA regarding the activities of BVIBCs. This situation impacts the lack of requests made by the RVIPF for MLA to support cross-border investigations. However there has been better progress with respect to domestic ML offences in recent years, even though those cases are very simple in nature, as indicated previously.

229. To enhance the effectiveness of police investigations, the Commissioner of Police has issued several policy instructions such as the Investigator's Manual (2018), the Financial Investigation Reference Manual (rev. 2022), the Financial Investigation Policy (rev. 2022), the Cash Seizure Policy (2022), and the Asset (Property) Seizure Policy (2022). These instruments provide a solid basis for investigators to carry out financial investigations and assist in setting priorities, managing workloads, and improving interagency cooperation and exchange. Performance frameworks have also been set up through statistical measurement of the timeliness, effectiveness, and quality of the FCU's work, according to the authorities. However, implementation of these measures is hard to measure, given the recent issue of these instruments.

[20] The ODPP did not elaborate on the law enforcement reluctance to get involved in financial investigations. However, besides the lack of resources, this reluctance by investigators is not specific to VI. Financial investigations are complex, time-consuming, require a specific expertise, have a very low success rate, and are not rewarded by media attention like a spectacular seizure of drugs would be.

Table 3.11. Investigations, Prosecutions, and Convictions of Proceeds of Crime Conduct

Year	2018	2019	2020	2021	2022	Total
Investigation cases	10	18	18	18	36	100
Cases referred to the ODPP	8	9	6	3	12	38
Prosecution cases concluded	8	4	2	2	3	19
Convictions (number of cases per year)	6	4	6	6	1	23
Convictions (number of persons)	9	7	3	6	9	34

3.3.2. Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

230. Most investigations relate to domestic ML or predicate offences. There are two main dimensions to ML in the VI. One is linked to VI as a small island jurisdiction of approximately 30,000 citizens, and transit point for drug trafficking and smuggling. The other dimension relates to the VI as a prominent corporate and financial center that incorporates BVIBCs that have been associated with international investigations and/or prosecutions for ML-related cases. Investigations within the VI are mainly carried out as they relate to the domestic dimension of predicate crimes, and none of the approximately 349,000 business companies registered in the jurisdiction have been subject to a PCC investigation.

231. The 2022 MLRA considers drug trafficking, cash smuggling, human trafficking, and corruption to be the most significant domestic predicate crimes in the VI, whereas international fraud, foreign corruption, and tax evasion constitute the main threats for non-domestic predicate offences. Legal persons and arrangements, together with emerging products and technologies, including VAs, are considered as major vulnerabilities.

232. The VI is highly vulnerable to drug trafficking. The VI offers a particular attraction for drug trafficking, due to the number of isolated islands and areas, the lack of modern equipment, such as radars to detect suspicious boat traffic, and the potential for corruption within agencies in charge of controlling movements, such as the Police, Customs, or Port Authority.[21]

233. In effect, drug trafficking proceeds constitute the main target of parallel investigations and are the principal source of cash seizures. Figures do not necessarily reflect this because, statistically, the number of drug-related crimes fall far behind occurrences of theft and burglary, which most often do not require a financial investigation because of the low value of proceeds and the lack of assets of offenders. Also, since the PCC offence does not require the determination of the exact nature of the predicate offence, RVIPF data do not always mention the type of predicate offence behind ML/PCC offences. However, a closer look at the 25 PCC conviction cases in Table 3.11 show that the underlying predicate offence appears to be drug trafficking in 12 instances, one case relates to possible migrant smuggling, one to cheque forgery, the other cases being undetermined (although there is reason to believe that a significant portion is drug-related). Regarding the 35 pending investigations with FCU, 9 relate to drug trafficking, 2 relate to arms trafficking, 2 relate to fraud offences, and 21 are unspecified PCC offences.

234. Corruption is considered by the 2022 MLRA as both a significant threat for the jurisdiction and also a major vulnerability which has a cascading effect on all AML/CFT prevention, detection, and suppression efforts, in relation to the investigations and arrest of perpetrators and confiscation of criminal proceeds. Whereas the integrity of the judicial system, including the ODPP, is considered to be very high, the same

[21] The Head of the VI Port Authority was arrested in Miami in 2022 for alleged drug trafficking and ML, together with the former Premier.

is not true for some LEAs, according to the CoI report.[22] One of the immediate consequences of this is that, while cooperation has improved, there is still an ongoing lack of trust among law enforcement themselves, which are reluctant to exchange sensitive information (including on corruption cases) because of the risk that such intelligence may be leaked. The RVIPF's STCA speaks to a culture of competition as opposed to one of collaboration between agencies It may also impact the reliability of investigations and more generally law enforcement action, although there is no available data to make a determination in this regard.

235. In 2021, 3 prosecutions for "breach of trust" were undertaken, and (under the likely impetus of the CoI report and directives issued by the Governor in response to the CoI report) 12 investigations in 2022. Regarding pending investigations, the FCU does not have any ongoing corruption-related investigation, as all such cases are now referred to the RVIPF Headquarters Investigation Unit which was created after the publication of the CoI report. This unit, composed of 13 to 15 RVIPF investigators (including investigators seconded by the U.K. government and embedded in the RVIPF), has been tasked with investigating all potential corruption cases that the CoI has uncovered, but also all newly identified cases in the public sector. Currently, 12 corruption cases are being investigated, some of them relating to large international corruption schemes in public tenders.

236. Clearly linked with drug trafficking, inward cash smuggling in the VI is significant, and the number and the volumes of cash seizures achieved during the period under review reflect the magnitude of the phenomenon. The 2022 MLRA highlighted that "the illegal movement of cash associated with drug trafficking has also been an ongoing issue for law enforcement agencies within the Territory."[23] It is correlated with the volume of drugs seized,[24] and it gives an indication of the financial flows generated by drug proceeds. However, the vast majority of case studies provided by the authorities relate to cash smuggled into the jurisdiction, and a few cases only to cash smuggled out of VI. The imbalance between incoming and outgoing cash smuggling seems to indicate that in some instances, illicit drug proceeds are repatriated in the hands of local drug trafficking organizations and are not transiting. According to investigators, a part of it is hidden, and sometimes buried by traffickers. However, since cash seizures are only a very limited portion of actual proceeds, this explanation cannot account for all cash likely smuggled into VI.

237. The RVIPF Strategic Assessment Report suggests that an important portion of illicit cash proceeds flowing into the jurisdiction is reinjected into the local economy, either directly or through small businesses, in particular through the tourism sector, or in cash-based businesses. However there have been no criminal investigations into these types of entities and the sources of their funding and whether beneficial owners may have a link to drug trafficking. Despite the attention given by the RVIPF Strategic assessment to this issue, the assessment team did not find evidence that it has triggered any operational intelligence or policy action to address ML through cash-based small businesses.

238. According to the VI MLRA 2022, "exposure to transactions involving VI companies presumably poses a higher ML/TF threat than domestically generated proceeds of crime."[25] The RVIPF STCA 2022 analyses this threat in greater detail: "The [TCSP] sector is attractive to international criminals who wish to obscure ownership of property, evade foreign taxes or conceal the criminal origins of their property due primarily to the nature of products offered. […] The inherent vulnerability of legal persons and legal arrangements is driven by the complexity of the available structures and the complexity of the international financial transactions they engage in, which heighten the risk of these structures being used to facilitate ML. The potential of these structures to be used to conceal the source of assets and the identity of beneficial

[22] See footnote 17.17

[23] See VI 2022 ML Risk Assessment, para. 8.11 and 8.12

[24] In a number of cases, the interception of boats by LEAs result in the discovery of both cash and drugs.

[25] VI MLRA 2022, para. 8.27

owners, the availability of non-face-to face transactions, and their use by a significant volume of high-risk customers, including foreign PEPs increases their vulnerability to be misused for ML purposes."[26]

239. However, no investigation has been carried out so far within the territory in relation to BVIBCs or other legal arrangement for ML crimes during the period under review. Several large-scale international embezzlement or scam cases involving BVIBCs are regularly reported as being investigated in other jurisdictions, for which VI authorities receive intelligence information as part of informal or formal requests for information or otherwise. International cooperation is provided, but authorities do not use this information to initiate domestic investigations. The RVIPF suggests that the lack of successful cases against VI business companies is explained by the position taken by the ODPP of the lack of VI's jurisdiction to prosecute ML crimes committed abroad by business companies owned by non-residents.[27] · As such the police are of the view that there was little value in investigating these types of crime. The DPP, however, made it clear that she was ready to prosecute all cases involving BVIBCs or TCSPs, if investigators presented sufficient evidence that a ML offence had been committed.

3.3.3. Types of ML cases pursued

240. Twenty-four cases of ML were reported to be prosecuted during the period under review, including 19 cases with proceeds of criminal conduct charges. All but one resulted in a conviction. A close review of each of the cases demonstrates that the vast majority of cases related to the discovery of cash, either on an arrest at the airport (six cases), the interception of a vehicle (three cases) or the interception of a boat (seven cases). Other cases include intelligence received relating to suspected trafficking in migrants (one case), contraband (one case), forged cheques (one case), or as part of a drug trafficking investigation (three cases), but except in one case (forged cheques), all ML charges were retained in relation to the discovery of cash.

241. The offence of "possession of Proceeds of criminal conduct" was laid in 18 of the 24 cases, and "failing to declare monies to Customs" in 11 instances. One charge was brought for concealment of PCC but in five cases, no PCCA-related offences were charged. These figures show that most of the cases brought to court under DTOA and PPCA and reported by the authorities for the purpose of the assessment as "money laundering cases" were in fact mainly cases of mere possession of illicit cash proceeds. No in-depth investigation was carried out to determine whether the possession of cash proceeds was part of a broader scheme involving other actions aiming at converting or transferring property or disguising or concealing the true nature, source, location, disposition, movement, or ownership of the proceeds of crime.

242. Most of those cases can be considered technically as incidents of simple stand-alone ML (limited to possession of illicit property), and typically involving arrests at the airport or the interception of boats. The predicate offence which generated the profits was not ascertained, and an investigation was not carried out to determine the nature of the predicate. In the cases of ML charges based on an initial investigation on the predicate offence, ML investigations based on possession of illicit property (seven cases) were conducted together with the investigation on the predicate offence, and the suspect was prosecuted and convicted for both charges.

243. No ML cases involving professionals, facilitators or gatekeepers, and third-party ML have been investigated. However, in the case of cash smuggling, persons arrested in a number of cases were simply couriers and, as such, may be considered as third-party launderers, however the police did not mount any ML investigations to ascertain the parties behind the transactions. In the few cases where an investigation was undertaken both for the predicate offences and ML, offenders were self-launderers.

[26] RVIPF STCA 2022, p.33

[27] The ODPP appears to differ with respect to prosecutorial responsibility, to include only those with a physical presence within the Territory, Strategic Assessment op.cit., p.39.

244. Among the cases brought to court, no ML investigation has sought to identify foreign connections to the offence, including on the predicate offence, or has ventured to trace assets located abroad. The lack of MLA requests from the VI also supports this conclusion. However, during the months preceding the onsite visit, a number of more proactive ML investigations have been initiated and are still ongoing, with the objective of seeking confiscation and tracing assets abroad.

Box 3.6. Case Study Common Type of Proceeds of Crime Investigation

On October 19, 2019, two individuals entered the territory from the USVI via a power boat captained by one of them. They filled out a customs declaration form declaring various items. The Customs officer received and inspected the form and noted that both suspects had signed it. The officer asked the men if they had any other items to declare, to which they replied in the negative.

A search of the vessel by Customs officials uncovered a bag containing a large sum of monies hidden in the bow of the boat. Both men denied knowledge of the monies when questioned. They were arrested for engagement in smuggling and possession of PCC. A count of the monies revealed a total of US$845,550.

The charges against one of the suspects were dropped, and the other suspect was found guilty in the Magistrate's Court for engaging in smuggling. US$845,550 was forfeited to the Crown in 2020.

A joint financial investigation was instigated between the USVI and VI which did not identify sufficient assets to merit further international cooperation and assistance.

3.3.4. Effectiveness, proportionality, and dissuasiveness of sanctions

245. As stated above,[28] the DPP brings most ML-related offences before the Magistrate's Court, but such policy has a drawback, as penalties that the Magistrate's Court may order are significatively lower than those for convictions on indictment. Both the ODPP and the LEAs seem to be satisfied with the level of penalties ordered by the Magistrate's Court.

246. During a meeting with the magistracy, it was acknowledged that the limited threshold on penalties before the Magistrate's Court was a real issue, and that, in some cases, it was not appropriate for some of the more serious crimes to be prosecuted before the lower court. The representative corroborated the ODPP views that the difficulty of gathering a jury independent from external pressure and influence was an impediment to prosecutions before the High Court. It was also pointed out that there are inconsistencies between penalties provided for by the DTOA and PCCA,[29] and legal issues resulting from the existence of two different legal bases for the prosecution of ML, depending on whether the predicate offence is drug trafficking or another predicate offence.

247. The review of the ML cases already completed generally shows a very low level of penalties. Apart from four cases where perpetrators received more than three years of imprisonment, sanctions are in most cases lower than one year, and in some cases limited to fines.[30] The investigations did not seek to identify the origin or the destination of the assets and the circumstances in which they were in the possession of the offender, or to identify his actual role in the laundering process or in the criminal organization that may have been behind the offence. Therefore, sanctions can be considered as commensurate to the relatively simple cases brought to the Court, (i.e., persons found with unexplained cash). However, they are neither dissuasive nor proportionate to the threat, in particular laundering the proceeds of drug trafficking. They

[28] See para. 210211.

[29] See TC Annex, criterion 3.9.

[30] Going as high as US$170,000 in one instance.

are not effective, either, as prosecutions fail to aim at dismantling criminal organizations or their ML operatives.

248. No sanctions were ordered against legal persons, as no investigations or prosecutions were carried out against them, despite the fact that the legal framework does not prevent the authorities from prosecuting a legal entity for a criminal conduct, even if it occurs abroad.

3.3.5. Use of alternative measures

249. Forfeiture of cash seized as part of ML investigations is the alternative measure used by authorities. Forfeiture proceedings are considered to be civil in nature, as the evidence standard is, as in civil cases, on the balance of probabilities. They are, however, heard by the Magistrate in charge of criminal matters who considers whether such proceeds may have an illicit origin. Forfeiture can take place in parallel of the investigation and prosecution, or be ordered on conviction, on the basis of balance of probabilities.

Box 3.7. Case Study Example of Forfeiture Case

On February 4, 2021, a large quantity of money was discovered at the Deep Water Harbour port in a barrel that was brought on a vessel from Anguilla. As a result of investigations, the captain was arrested on suspicion of possession of PCC. The monies when counted amounted to US$300,060. An interview was conducted with the captain who was later discharged from police custody. In July 2022, the monies were forfeited to the crown. No charges were brought against the captain, as there was no evidence linking him to the barrel or other cargo.

250. In the case of cash seizures at the airport or on vessels, when a ML conviction may not be secured, the prosecution has, in a certain number of cases, only prosecuted the offence of failing to declare to Customs cross-border movements of cash, and convictions were granted on this alternative basis. The Commissioner of Customs also has the power to levy administrative penalties for failure to declare and has done so. No other alternative measure has been applied in cases where ML prosecution were not feasible.

Overall Conclusions on IO.7

251. The VI has a legal framework allowing for the investigation and prosecution of ML crimes, but several factors including lack of resources, limited information-sharing, lack of express legal investigative powers, low summary penalties, and a lack of focus on the key risks in the jurisdiction impact the effectiveness of the system. Despite lack of resources and corruption issues, law enforcement is generally committed to effectively addressing crime problems, and the Prosecution and the Judiciary have dedicated and highly professional personnel. However, ML investigations have resulted so far in a few cases per year of simple possession of PCC in the form of cash. Investigations are usually limited to requesting available information with the FIA and forfeiting cash monies seized. No domestic investigation of complex ML schemes has been carried out. Equally, no investigations regarding VI business companies and those incorporating them have been carried out, even when international investigations conducted abroad have provided evidence of their possible involvement in large-scale ML or other financial crime. The police and ODPP have yet to come to a common understanding and approach to this issue. Investigations generally aim at drug trafficking-related proceeds, which is considered as one of the main domestic threats, but do not proceed to investigate the broader financial aspects of these crimes. The authorities have also not come to an understanding of the risks presented by associated cash smuggling and a coordinated approach to this problem. Corruption of public officials, also identified as high risk, has not been addressed in financial investigations until very recent times, and has been triggered by external events. Sanctions are not effective, dissuasive, and proportionate to the

threats. Both investigatory and prosecutorial authorities suffer from a significant lack of resources and lack the capacity to handle complex ML cases. In this context, the assessment team has noted that authorities have recently shown a strong awareness of the need to address ML crime.

252. The VI is rated as having a low level of effectiveness for IO.7.

3.4. Immediate Outcome 8 (Confiscation)

Background

253. There are two main procedures in the VI to confiscate criminal proceeds: the **forfeiture procedure** and the **confiscation procedure**. Unless otherwise specified, when the general term "confiscation" is used within the DAR, it covers both the forfeiture procedure and the confiscation procedure under VI law.

254. The forfeiture procedure aims at depriving defendants of proceeds of crime and instrumentalities uncovered during a criminal investigation. It uses civil "balance of probabilities" evidential standards in the course of a criminal procedure, and it may be ordered by the Magistrate or the High Court Judge in charge of criminal cases. A request for forfeiture may be submitted in parallel or instead of a criminal prosecution or upon a defendant's conviction, and it can therefore be considered as a non-conviction-based mechanism. Forfeiting assets under this civil forfeiture regime does not require a conviction. Only cash proceeds of crime and, in the case of the DTOA, instrumentalities, are subject to forfeiture. It will not apply to property of corresponding value.

255. The confiscation procedure is carried out as part of the criminal prosecution, and the ODPP must give notice to the defendants that confiscation will be sought. This procedure requires an assessment of the amount of criminal proceeds generated by the predicate offence, undertaken by investigators. On this basis, the prosecution may request a restraint order against assets belonging to the offender or associated with the criminal activity even in hands of third parties (although the latter case has never occurred). In theory, confiscation may be undertaken against any asset belonging to the offender, including those of legitimate origin—and as such, it is a mechanism of confiscation in equivalent value—but the prosecutors have not sought to make such applications to the court. For the first time, the RVIPF recently submitted to the ODPP six applications for confiscation. The ODPP filed three applications with the court. The other three were returned to the FCU for further investigation, namely, to seek MLA to identify assets abroad. The ODPP reported that in several earlier cases, it was impossible to seek confiscation because the files submitted did not meet the required evidentiary standards. If an application for confiscation is made before the Magistrate's Court, a US$150,000 threshold applies, and the Magistrate must refer the case to the High Court for confiscation over the threshold.

256. The ability of LEAs to effectively investigate on illicit proceeds is necessarily hampered by the deficiencies identified in the investigation process outlined in IOs.7 and 2, in particular with regard to investigative issues and limitations in staff resources, as well as the inadequate recourse to international cooperation.

3.4.1. Confiscation of proceeds, instrumentalities, and property of equivalent value as a policy objective

257. The 2021 AML/CFT National Policy as well as the 2021–2023 National Strategy define the main policy objectives of the VI as being prevention, detection, investigation and sanction, articulation, and promotion of cooperation. Confiscation is not referred to as a policy objective and is not mentioned as a tool to achieve any of these objectives. The 2022 MLRA states that forfeiture and confiscation are "an important part of any jurisdiction's AML/CFT regime" and that "in the VI, funds found during the commission of a crime are seized as a matter of policy." It does not, however, set as a policy objective to

search and trace with a view to seizing and confiscating property which are not found during the commission of an offence, but which might be identified during the wider criminal investigation.

258. At the beginning of 2023, the ODPP issued financial policy guidance and procedures for prosecutors for pursuing ML offences and seeking forfeiture or confiscation. The DPP indicated that, during face-to-face meetings with the heads of LEAs, policy guidance on investigations was provided orally. The RVIPF issued a number of policy documents on ML matters, as indicated above, including a policy on asset seizure and on cash seizure. While being a procedural manual rather than a policy, it shows that these matters are considered as priority areas for the RVIPF.

259. Despite these very important but operational-oriented documents, the authorities did not demonstrate the development of overarching policies to steer government agencies' action towards confiscation as the main objective of the fight against profit-making and ML crimes. The various agencies involved in the AML/CFT sphere appear to define their own priorities independently of each other. The numerous coordination committees and mechanisms have not issued policy guidance on forfeiture and confiscation and the asset management framework is still to become fully operational (see paras. 267 and 268).**Error! Reference source not found.**

3.4.2. Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad

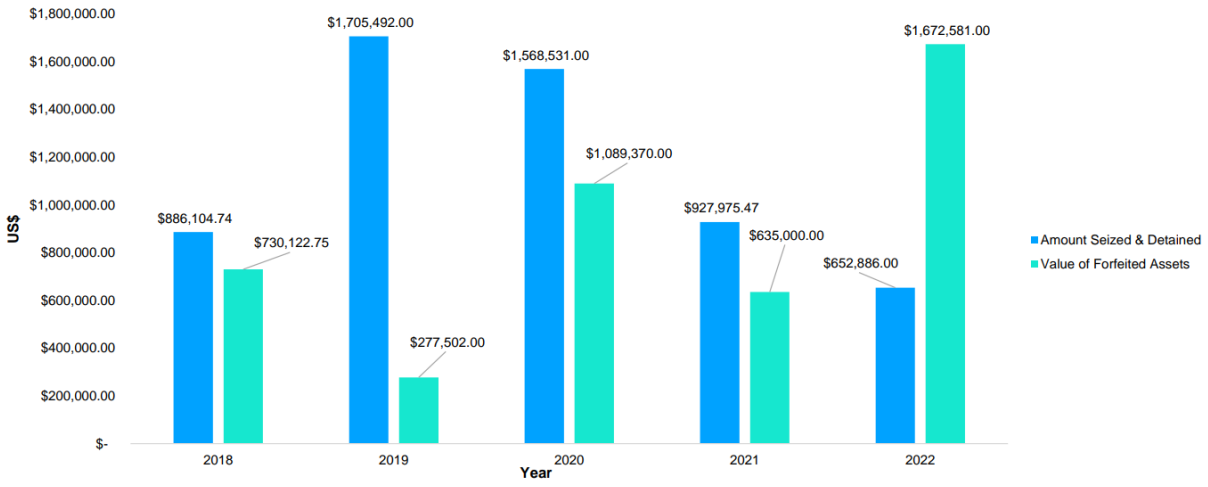
260. There was a total of 43 forfeiture cases in VI during the period under review, according to police statistics. All cases of PCC prosecuted before the Magistrate's Court resulted in forfeitures, based on discovery of cash proceeds during the arrest, rather than resulting from in-depth financial investigations. For the first time, the police recently submitted to the ODPP six applications for a confiscation procedure, all relating to domestic predicate offences. The decision to apply for a confiscation procedure is taken in consultation with the ODPP. After analysis of the case, the ODPP takes the decision and instructs the investigators on evidence to be gathered to this end. At the time of the onsite visit, three of these cases had been submitted to the Court.

Table 3.12. Statistics on Forfeitures for the Reporting Period[31]

Year	Total Instances of Forfeiture	Amount Seized & Detained	($) Value of Forfeited Assets	Description of Forfeited Items
2018	10	886,104.74	730,122.75	Cash
2019	6	1,705,492	277,502	Cash
2020	12	1,568,531	1,089,370	Cash
2021	7	927,975.47	635,00	Cash
2022	8	652,886	1,672,581	Cash
Total	**43**	**5,740,989.21**	**4,404,575.75**	

[31] The amounts seized and the amount forfeited do not match because forfeiture decisions do not always occur in the year during which they were seized.

Figure 3.2. Cash Seized, Detained, and Forfeited in VI (Police Statistics)



261. In all the cases prosecuted so far, assets other than cash were only seized and forfeited in three cases. Assets forfeited included two boats, including one on which a significant amount of cash was found (US$805,370), and one car in which some drugs were found. Drugs are destroyed by order of the Magistrate without the need to go through a confiscation or forfeiture procedure. Firearms are also automatically confiscated by law and destroyed by LEAs without undergoing any confiscation process. In all other cases, despite a number of interceptions of boats at sea, none of the means of conveyance, instrumentalities, or other proceeds were forfeited. The RVIPF advised that, in many of these cases, the conveyance was found to be rented or reported stolen, and, as such, confiscation was not pursued.

262. An inventory of all vessels under RVIPF or HMC custody was prepared during the onsite visit by the ASFMC at the request of the assessment team, which shows that 30 vessels are currently seized or detained by LEAs, but application for forfeiture or confiscation has been filed only in the three cases mentioned in para. 255. A number of investigations or prosecutions are still on-going, and authorities indicate that they are waiting for the outcome of the investigation before filing for forfeiture or confiscation. Some of these vessels were actually abandoned (five) or sunk (two) boats or a recovered wreck (one).

263. The forfeiture procedure can be considered as a mechanism to alleviate the burden of proof of the illicit origin of the assets, as the Magistrate will consider on the balance of probabilities, if the justifications given by the defendant regarding the origin of the assets are relevant to the case. The confiscation procedure can be considered as a mechanism of confiscation in equivalent value, to the extent to which the confiscation order can be recovered against any asset belonging to the offender, irrespective of its origin. Confiscation is also assessed on the balance of probabilities standard but is ordered upon conviction only. There is an offence of illicit enrichment in the current legislation (Criminal Code, section 94). Such an offence, although not a requirement under the standard—and therefore not taken into account for the rating—is a very effective way to overcome the difficulty of evidencing the illicit origin of the assets, especially in corruption matters, and the international conventions recommend states to consider adding them into their legal system.

264. The confiscation of assets from foreign predicate offences is limited to the seizure of cash from drug trafficking as mentioned earlier. Since ML has not been investigated on a substantial basis until recently, no investigation aimed at confiscating the assets from foreign predicate offences has been conducted, either. There are two types of foreign predicate offences of concern in VI: those derived from organized crime activities like drug trafficking, firearm trafficking, or migrant smuggling, and those occurring in the context of the corporate and financial center and the misuse of corporate vehicles. According to the RVIPF STCA, assets from foreign organized crime predicate offences are suspected to be laundered and integrated in the

local economy, notably through cash-based small businesses. However, as described earlier, no effort has been carried out until recently, to identify, locate, and seize all illicit profits domestically, and police action was limited to seizing and forfeiting cash assets.

Box 3.8. Case Study Forfeiture of Cash Found at Sea

On June 16, 2020, two males were on board a twin-engine speed boat travelling from the direction of the USVI towards the VI. When the officers observed the vessel entering VI waters, they began to chase. Despite the use of sirens, the vessel did not stop until it was outrun by the law enforcement vessel. Officers searched the vessel, and one of them observed two black duffle bags on the rear seat of the vessel. It was revealed that both bags contained a total of US$805,370. The suspects were charged with the offences of illegal entry, possession of PCC, failing to declare monies, and engagement in smuggling. Charges of PCC were not instigated by the ODPP. In 2021, they pleaded guilty to the other three offences. They were found guilty and sentenced. The US$805,370 was forfeited under the Customs Management and Duties Act.

265. Regarding assets from foreign predicate offences committed in the framework of the misuse of VI corporate vehicles, no investigation has been carried out so far either on the domestic elements of the ML offence or to identify or locate illicit profits or to investigate persons associated with such companies and beneficial owners.

266. The tracing, seizing, and confiscating of assets located abroad would be applicable to the two types of crimes mentioned above, as well as offences committed domestically, for which illicit proceeds have been transferred to other jurisdictions. For example, this could include the case of the proceeds of large-scale domestic corruption, to which the CoI made reference. Whatever the type of situation, no investigation has been carried out until recent times to identify and locate such assets in foreign countries. Two requests for MLA were issued by the VI in the entire period under review, but none were made in relation to the confiscation of foreign-based assets. No informal cooperation was sought as well, except in one case detailed in case study 3.6 above, and there is no example provided by the authorities where the FIA made an enquiry to a foreign counterpart based on the request of the RVIPF with respect to potential property held abroad.

267. The ASFMC was created by Law 20 of 2020 and has been operational since October 2021. It is mainly responsible for the custody of management of seized and forfeited assets and the sharing of the proceeds deposited in the Asset Seizure and Forfeiture Fund, which amount to date to US$4,418,831. The Act creating the ASFMC provided for a schedule on the share of assets to which each authority may be entitled. It does not provide for restitution to victims. The ASFMC has met three times since it was created and decided to establish an ad hoc committee to revise the schedule, set up management and distribution guidelines, and propose amendments to the Act. The works of the ad hoc committee should be completed by the end of the first half of 2023.

268. The ASFMC has not yet commenced the management of seized or forfeited assets, other than cash. Such assets continue to be in the custody of LEAs which undertook the seizure or restraint. During the meeting with the ASFMC, interviewees were not in a position to give an indication of the volumes of assets being held, as no inventory of such assets had been submitted to the Committee. This inventory was provided later to the assessment team, at its request. One inventory lists 30 boats, 1 related to a PCC case, 1 to a firearms offence, 5 to drug trafficking cases, and 6 in relation to possible migrant smuggling. Some of these are not functioning. The other inventory lists nine vehicles, two scooters, four cases of electronic devices (phones, laptops, tablets), one case of cash, and four cases of pieces of jewelry, with no indication of their value except for two cars. As indicated above, most of them were not actually forfeited at this point.

3.4.3. Confiscation of falsely or undeclared cross-border transaction of currency/BNI

269. The forfeiture of falsely/not declared or disclosed cross-border movements of currency is one of the strengths of the VI law enforcement action. The cases concern mainly cash, rather than other BNIs, and seizures occur either at the airport or in the waters of the islands. Most of them are carried out by HMC at the airport, and by the Police Marine Unit and HMC Marine Task Force with regard to maritime interventions. All border authorities, including the port and airport authorities and the DOI, signed an MoU in October 2022 to strengthen their cooperation in the security and safety of seaports and airports and foster the exchange of information. In addition, law enforcement cooperation was strengthened by the creation of a JTF, chaired by HMC, with the aim of coordinating joint law enforcement activities like land and sea patrols and joint operations to reduce crimes such as drug trafficking and cash and human smuggling.

270. The RVIPF has now positioned police officers in each airport and seaport to support the operations of the other LEAs. Normally, when cash is seized by HMC from a passenger at the airport, the case is directly handed over to the FCU for investigation. The Commissioner of Customs also has the power to investigate customs offences and to levy administrative penalties. The airport authority, which oversees airport security checks, is responsible for screening and searching baggage and persons at the various checkpoints but does not have the power to arrest or to make a search. It will alert HMC if anything is found that would require further search or investigation, which, in turn, will hand the case to the FCU for investigation. The presence of a police officer allows immediate action in the case of discovery of unlawful goods or undeclared assets.

271. Travelers are required to declare all cross-border movements of cash over US$10,000. Figures show a significant decrease of cash movement declarations during the period under review, correlated with a decrease in cash seizures at the airport. This trend is probably due in part to the consequences of the pandemic, and it is likely that figures will stabilize as commerce and tourism are now back to normal.

Table 3.13. Number of Cross-Border Currency and BNI Declarations to Customs

Year	Incoming Declarations		Outgoing Declarations	
	Under $10K	Over $10K	Under $10K	Over $10K
2018	0	0	231	86
2019	0	8	255	73
2020	0	1	61	19
2021	0	0	78	27
2022 (as of September 30)	0	0	10	18

272. Seizures at the airport concern either outgoing or incoming visitors, although figures show a greater movement of incoming cash, except in 2018 where an exceptional seizure of US$577,000 was made on an outgoing Ecuadorian national leaving the island. Case studies show that the persons arrested were of various nationalities (United States, Ecuador, Venezuela, Spain, etc.). Although there is no clear indication as to the origin of the cash, it is likely that significant important amounts are related to drug trafficking. Seizures at sea, primarily undertaken by the Marine Unit of the Police, are predominantly incoming cash from the USVI. They are likely to be the proceeds of the substantial drug trafficking from Latin America through the VI, and then through the USVI and destined for the U.S. market. Despite the limited powers of investigations of the police and its limited resources, authorities report to have successfully conducted a number of operations using proactive investigative techniques.

Table 3.14. Seizure of Non-declared/Falsely Declared Outgoing Cash and BNIs by HMC

Year	Number of Seizures	Value of Seizures
2018	9	$809,707.50
2019	1	$10,300
2020	3	$52,561
2021	1	$12,604.50
2022 (as of September 30)	0	$0

273. The systematic forfeiture of currencies uncovered under the conditions described above is without any doubt an effective, proportionate, and dissuasive response to cash smuggling, and it may explain the limited nature of the other penalties imposed on offenders. It is difficult to ascertain, in part, the reasons for the significant drop in cash seizures at the airport[32] or more generally in terms of seizures. Authorities consider that this is due to the fact that offenders have realized that the improved security measures at the airport will lead to easier detection. Also, there is a decrease in overall seizures because offenders are aware of increased border patrols by VI and USVI law enforcement due to increase collaboration and cooperation, including joint patrols and operations, according to VI authorities.

3.4.4. Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

274. In cases in which the authorities were able to establish the nature of the predicate offence that generated the forfeited assets, drug trafficking was the offence most often identified. In one case, the assets were in relation to migrant smuggling. No forfeiture or confiscation was ordered against a BVIBC or TCSPs, in part because those companies do not hold assets in the territory, but also because no investigation has ever been conducted in relation to BVIBCs, or those agents or gatekeepers who might have knowingly provided support to the establishment of fraudulent corporate vehicles, e.g., TCSPs who would have registered them knowing that they were established for criminal purposes (although authorities claim that no evidence of such was found in the cases they became aware of). The deficiencies identified in relation to the access to information on beneficial ownership would have, in any event, affected authorities in carrying out in-depth identification of assets detained by the ultimate beneficial owners (UBO) of these entities.

275. More generally, the limited results observed in forfeiture and confiscation can be analysed as being the result of the cascading effect of the deficiencies identified with regard to the other aspects of the AML/CFT framework. Low understanding of risks and deficiencies in the supervision of the entities result in inadequate reporting and therefore financial intelligence to carry out criminal investigations. The deficiencies identified regarding international cooperation result in the limited ability of investigators to identify and locate assets detained abroad.

276. Five investigations in the context of arms smuggling were reported by the authorities as being under investigation. However, as of the onsite visit, no decision was made regarding the cash seized during the investigation. The matters are currently before the courts, and the monies have been detained pending forfeiture/confiscation. No forfeiture or confiscation was pursued in any case of corruption to date, although the CoI identified "gross failures in governance" afflicting "all recent Government ministries." Since the beginning of the work undertaken by the CoI, several investigations into potential corrupt behaviour/practices have been initiated.

277. The authorities recognize the growing concerns regarding the use of VAs for criminal purposes. The capacity of LEAs to conduct investigations to trace, locate, and seize VAs is limited and impacted by

[32] See Table 3.12 "Statistics on forfeitures for the reporting period" above.

failing to have adequate resources and skills to do so. However, authorities indicate that training, including cryptocurrency-related certification, was undertaken by the LEAs to address it. No investigation has been carried out relating to crypto assets to date.

278. In conclusion, confiscation, as carried out until recent times in the form of forfeiture of cash monies, was not consistent with the VI's risk profile except for drug trafficking, and to a lesser extent arms smuggling. A recent trend to conduct more in-depth investigations to trace assets is being noted, and the traditional scope of cash forfeiture in the framework of drug trafficking seems to be expanding to other forms of crimes, such as firearms or corruption. It is too early to draw conclusions as to whether, in the future, confiscation policies will align more clearly with the current risk profile of the territory, regarding the risks associated with the cross-border activities of BVIBCs.

Overall Conclusions on IO.8

279. Confiscation of criminal proceeds, instrumentalities, and property of equivalent value has not been implemented as a policy objective in the VI, although the ODPP and RVIPF have focused on this at operational level. Efforts have been focused so far on the seizure and forfeiture of cash, and the investigations conducted on the arrest of a suspected offender have not sought to identify, trace, and locate illicit proceeds, in part due to the limited police investigative powers and resources, as evidenced by the absence of requests for production orders until 2022. No step has been taken to identify illicit proceeds located abroad, either through the FIA, through informal police cooperation or through formal MLA requests. Additionally, as a result, no confiscation procedure has been applied for until 2022 with a view to extending confiscation beyond assets seized on the arrest of the offender, or to seek value-based confiscation.

280. Confiscation is consistent with the risk profile of the territory as it relates to drug trafficking and arms smuggling, but it does not address other high risks or threats like the domestic threat of corruption and the international threats posed by BVIBCs VI-registered legal persons and arrangements, but also tax evasion and vulnerabilities posed by cash-based businesses. The capacity of LEAs to trace VAs is limited, and no such investigation has been carried out during the period under review. The creation of ASFMC in 2020 has not yet provided the expected support since it has not yet taken responsibility for custody and management of seized and forfeited non-financial assets.

281. On a more positive note, the successes achieved by VI in the seizure and forfeiture of cash derived from drug trafficking deserve to be noted. Also, as for ML investigations, a positive trend was noticed by the assessment team to extend the scope of forfeiture and confiscation beyond cash proceeds to other types of predicate offences like corruption. It is too early though to assess the positive impact of the new impetus given to confiscation by the authorities.

282. The VI is rated as having a low level of effectiveness for IO.8.

Chapter 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

4.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

a) The technical limitations and effectiveness shortcomings described in IOs.1, 4, 5, 6, and 7 negatively impact the country's capacity to identify or investigate TF cases. The FIU-AIU produced a small number of TF-related intelligence reports over the period under review that prompted TF investigations by the RVIPF-FCU that are in an early stage, waiting on additional intelligence, including from the FIA.

b) The small number of TF cases identified and the absence of cases prosecuted and convicted broadly aligns with the country's low domestic and foreign medium-low TF risks.

c) The ODPP did not prosecute TF cases during the period under review and, consequently, the Magistrate's Court did not impose penalties in this regard.

d) The VI has a set of alternative measures in law to disrupt TF activities where it is not practicable to secure a TF conviction, although these were not needed to be used over the period under review.

Immediate Outcome 10

a) A legal framework is in place in the VI for implementation of TFS for TF without delay and UNSCRs have immediate effect in the VI by law. Competent authorities also expeditiously notify reporting entities of new listings and de-listings. However, practical impediments (e.g., relating to screening practices by reporting entities, communication of designations) impact timely and effective implementation.

b) No assets have been identified or frozen under UNSCRs 1267, 1988 (and successor resolutions), or 1373. While national coordination mechanisms exist, competent authorities have never considered any person or entity for designation or proposal for designation (to another jurisdiction under 1373 or to the UN under 1267). Until recently, no competent authority had any formal mechanism for identifying persons meeting designation criteria.

c) Varying obligations under different legal provisions have the potential to cause confusion among reporting entities as to their TFS obligations. However, to date, no legal challenges have arisen.

d) Limited supervisory oversight has not been sufficient to provide assurance that reporting entities are effectively implementing TFS for TF.

e) The VI have not identified the subset of NPOs that are vulnerable to TF abuse. While the FIA understands the general threat of TF posed to NPOs through internationally recognized typologies, it does not appear to have definitively identified the specific TF risks faced by VI's NPO sector. The FIA's oversight of the NPO sector is not effectively applying a risk-based approach, nor is it targeting NPOs vulnerable to TF.

Immediate Outcome 11

a) A legal framework is in place to implement TFS for PF without delay in the VI. UNSCRs have immediate effect in the VI by law. Competent authorities expeditiously notify reporting

entities of new listings and de-listings. However, practical impediments (e.g., relating to screening practices by reporting entities, communication of designations) impact timely and effective implementation.

b) No assets have been identified or frozen under UNSCRs 1713 or 2231. National coordination on PF is nascent, and some agencies lack effective systems for detection of persons or assets subject to sanctions.

c) Understanding of PF TFS obligations varies among competent authorities, with most exhibiting an overall understanding of the sanctions regime but lacking in-depth understanding of the specifics of the applicable legal framework.

d) Competent authorities and law enforcement do not appear to be sufficiently proactive in ascertaining whether designated persons or sanctioned assets may be in the territory in instances in which a BVIBC has been implicated in a sanction evasion scheme. No domestic inquiries or investigations have been opened despite, for example, eight inquiries from the UN Panel of Experts on North Korea and several criminal proceedings in another jurisdiction involving foreign owners of BVIBCs.

e) The level of supervisory oversight does not provide sufficient assurance that reporting entities are effectively implementing TFS for PF. Supervisors vary in the extent to which they monitor compliance with TFS obligations. The FIA has not commenced its supervisory oversight of sanctions compliance by DNFBPs, whilst the FSC has only begun integrating examination of sanctions handling in its supervision of FIs.

Recommended Actions

Immediate Outcome 9

a) Establish a CFT strategy that includes the investigation and prosecutions of TF cases and the confiscation of TF-related assets as outcomes that support national counter-terrorism strategies.

b) The ODPP, RVIPF-FCU, and FIA-AIU should work together to improve the analytical process of TF cases conducted by the FIA-AIU to increase the chances that the dissemination of cases to the RVIPF-FCU result in TF criminal investigations.

c) TF trends and techniques should be monitored by the FIU-AIU and the RVIPF-FCU.

d) Increase the FIA-AIU's specialized training concerning the identification and analysis of TF cases to enhance the benefits of the analytical tools at its disposal.

e) Ensure that the ODPP and Magistrate's Court receive specialized training on the prosecution and adjudication of TF matters.

Immediate Outcome 10

a) Address the shortcomings identified in R.6 in the domestic legislative framework to ensure alignment with the standard.

b) Improve national coordination, including by establishing formal delegations of statutory functions, where needed; developing formal mechanisms; and leveraging existing inter-agency working groups to identify potential targets for designation.

c) Provide training based on the recently updated Sanctions Guidelines detailing the specific obligations outlined in the various pieces of legislation that comprise the TFS framework.

d) Improve oversight of implementation of TFS obligations by reporting entities, including by providing detailed feedback on sanctions handling and testing the effectiveness of screening systems.

e) Conduct a risk assessment of the NPO sector specifically aimed at identifying the subset or types of NPOs within its broader NPO sector that are at risk of TF abuse and identify the specific TF threats faced by the NPOs registered in the VI.

f) Develop and execute a risk-based supervision and inspection plan with supporting inspection manuals and procedures for the NPO sector and, in particular, the subset of NPOs that are at risk for TF abuse.

Immediate Outcome 11

a) Improve coordination among authorities on PF to better and more proactively investigate the involvement of VI structures, persons, or service providers in the evasion of sanctions related to PF and identify assets and funds held by designated persons/entities.

b) More rigorously monitor the implementation of TFS for PF by FIs and DNFBPs, including by integrating examination of sanctions handling regularly in inspections and testing the effectiveness of screening systems.

c) Should undertake outreach and provide guidance to FIs and DNFBPs on sanctions evasion typologies related to PF and explain statutory requirements where assets are identified.

283. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9–11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5–8, 30, 31 and 39, and elements of R.2, 14, 15, 16, 32, 37, 38 and 40.

Immediate Outcome 9 (TF investigation and prosecution)

4.2.1. Prosecution/conviction of types of TF activity consistent with the country's risk-profile

284. In the VI's Financial Services Sector TF RA 2020, the FSC and the FIA regarded that the exposure of several FI and DNFBP sectors to the risk of supporting foreign terrorist activity was medium-low, while the domestic TF risk for all sectors was considered low. Between 2015 and 2019, the period reviewed in the mentioned TF risk assessment, there were no known terrorist groups, organizations, foreign terrorist fighters, or self-radicalized terrorists operating in or targeting the VI. No information or intelligence suggested the potential funding of overseas terrorist organizations by individuals residing in the territory. On the other hand, while the VI's Financial Services Sector TF RA 2020 considered that the abuse of companies registered in the VI to facilitate TF was an important risk, the FIA received few SARs that associated TF with legal persons and arrangements in the VI.

285. The ODPP did not prosecute TF cases between 2018 and 2022, which generally is consistent with the domestic TF risk profile of FIs and DNFBPs. Additionally, the ODPP's staff received at least two AML/CFT trainings between 2018 and 2021 that covered the prosecution of TF, among other topics. While the ODPP staff would benefit from receiving more specialized training (e.g., regarding gathering TF-related information and evidence, financial investigative techniques, or presenting complex cases to judges), the current preparation is acceptable given that the county's low TF risk profile does not make specialised training a pressing matter.

286. Consequently, the Magistrate's Courts did not process TF cases during the period under review. While the Magistrate's Court has a good understanding of the seriousness of TF offences, it does not have specialized training in this regard; however, it can resort to the United Kingdom to commission more

experienced, skilled judges that could deal with TF cases, which is an alternative that may help to address limitations in knowledge and experience.

4.2.2. TF identification and investigation

287. The VI identified and investigated a small number of TF cases between 2018 and 2022, which is broadly consistent with its TF risk profile. While the FIA-AIU and the RVIPF-FCU regard TF cases as a high priority, there is still value in continuing training staff to identify TF cases. Both agencies are not carrying out other activities that could assist in the identification of cases such as conducting analysis of TF trends and techniques that could potentially take place in the territory or that may take advantage of its status as a corporate and financial center. The FCU does have capacity limitations as outlined in IO.7 with respect to its capacity to carry out ML investigations, which would similarly apply to TF investigations.

288. The assessment team has also identified several weaknesses that could impact the competent authorities' ability to identify and investigate TF cases. These weaknesses are related to various aspects of the framework including issues relating to the investigation of overseas activities of BVIBCs, limitations in developing and using financial intelligence, the limited use of international cooperation and incomplete understandings of TF risks (particularly with respect to legal persons and arrangements) among others.

Prioritization of TF cases

289. The FIA-AIU and the RVIPF-FCU have adequate policies and procedures to prioritize TF investigations. The FIA's SOP (approved in 2019 and revised in July 2022) advises that SARs whose narratives include a suspicion of TF should be risk-rated as high (para. 8.4.5) and are accorded "top priority" (para. 8.4.4). A high-risk rating signals the analysts to immediately and urgently analyse the SAR. Similarly, cryptocurrency SARs which pertain to TF are rated as "high" and thus prioritized.

290. The threat-based approach (TBA) employed by the RVIPF-FCU also regards TF cases as a high-priority. According to the Financial Investigation Policy (approved in 2011 and last revised in February 2023), the RVIPF-FCU will adopt a TBA by risk assessing, grading, and prioritizing new investigations to ensure the allocation of appropriate resources against the highest threats, whilst capturing and disseminating intelligence to other agencies. Accordingly, an investigation is likely to be rated high risk when it involves suspicion of TF and would be treated as a top priority due to the seriousness of the offences and the potential harm and reputational impact on the VI as a corporate and financial center. Such investigations would take precedence over investigations involving predicate offences.

Identification of TF cases

291. Between 2018 and 2022, the FIA received 67 SARs related to TF from TCSPs, from which 17 were classified as "TF Ordinary SARs" and 50 as "TF Crypto SARs."[33] These reports were based on adverse international media regarding individuals abroad linked to BVIBCs, but the FIA did not find indications of TF activities happening in the VI or being committed by means of a BVIBC.

292. Two case studies demonstrate the FIA's ability to conduct analysis aimed at identifying TF cases. In these cases, the FIA used blockchain analytics software, additional information obtained from reporting entities, and conducted searches on private databases of PEPs and high-risk individuals, and OSINT. One of these case examples resulted in disseminations to both the FCU and a foreign FIU and the other a dissemination to a foreign FIU only.

293. The FIA-AIU disseminated a total of three TF financial intelligence reports in 2022 to the RVIPF-FCU based on the TF SARs mentioned above. The FCU sought additional information from the FIA to

[33] The only category of VAs identified in such SARs was cryptocurrency.

progress the investigation, which, at the time of the onsite visit, was still being gathered, and the RVIPF had only reviewed open sources. As a result, these investigations are still in an early stage.

294. The RVIPF-FCU did not start any evidence-focused TF investigations over the period under review. However, it started intelligence-focused TF investigations. According to the RVIPF's recently issued Financial Investigation Policy, once the RVIPF-FCU receives a request for investigation from another RVIPF unit or a request from outside the VI, such as a foreign police force or INTERPOL, it would conduct a "'necessary and proportionate test" to determine the appropriate sources to obtain additional intelligence or evidence required to conduct a criminal investigation. This approach is also used in TF cases. One of these sources of intelligence is the FIA. Using the FIA is likely to be the preferred route for new investigations, due to the initial investigation stage being intelligence-focused rather than evidence-focused.

295. The RVIPF recognizes that there is a need to strengthen its strategic and tactical approach, including regarding the investigation of terrorism and TF. The RVIPF commissioned an independent review of its intelligence capability, which highlighted analysis, intelligence collection, policy, and processes development as areas which could be strengthened. These deficiencies may impact the identification and investigation of TF cases.

296. In addition, the deficiencies identified in relation to the RVIPF and the FIA at para. 287, among other issues, may impact this authority's capacity to identify and investigate TF cases.

Training

297. The 2016 NRA highlighted the training of LEAs and competent authorities to detect, investigate, and prosecute TF as an area for improvement (paras. 12.1 and 13.5). This finding was later replicated in the 2020 Financial Services TF Report (para. 2.5). These findings do not seem to have been fully addressed in the case of the FIA.

298. The staff of the FIA received four training courses regarding TF during the period under review, two in 2018, one in 2019, and another in 2020 that were provided by the FSC, CFATF, the World Bank, and one private vendor. Based on this information, the TF training received throughout the period under review was limited, and there is still opportunity to continue specializing the FIA-AIU's staff concerning, for example, the analysis of SARs related to TF, skills in gathering information, and financial investigative techniques.

299. On the other hand, the RVIPF-FCU received preparation courses on TF. In 2019, one RVIPF-FCU officer participated in a Countering Proliferation Financing and Terrorist Financing Course in the Cayman Islands; in 2020 and 2021, six officers participated in an online *Financial Investigation and Terrorist Financing Course* (Parts I and II); and, in 2022, six officers received preparation through a *Financial Investigation and Terrorist Financing Mentorship* (for use in relation to PCC and related powers including application for production orders), and three officers participated in a *Crypto Investigation Training* that included TF contents. These programs of study suggest that the RVIPF is prepared to deal with TF investigations, although the RVIPF expressed limitations to analyse intelligence reports related to VAs, which consequently includes reports grounded on TF crypto SARs. As noted in IO.7, RVIPF-FCU officers receive regular substantive training on issues that include financial investigations.

TF trends and techniques

300. During the period under review, the FIA and the RVIPF did not actively monitor trends and techniques related to TF, nor did they gather any intelligence indicating that individuals or organizations were engaged in TF activities using the territory. However, as a starting point, the FIA-SEU conducted a general monitoring of the NPO sector, which helped them gain a broad understanding of the funds flowing in and out of NPOs, as well as their origin and destination. This information could be integrated into future monitoring efforts to detect TF trends and techniques in this sector. For more detailed information, please refer to section 4.3.2 of this report.

4.2.3. TF investigation integrated with—and supportive of—national strategies

301. The VI did not establish counter-terrorism strategies between 2018 and 2022. Therefore, even if the VI had completed TF investigations, these would not be part of a strategic effort against terrorism.

302. Nevertheless, the authorities did make efforts that would assist in addressing the threat of terrorism in the country. Firstly, the National AML/CFT Strategy 2021–2023 highlighted the need to develop legislation to meet international standards on counter-terrorism and TF measures, together with other objectives and key areas that cover both ML and TF, i.e., strengthening the of FIA's and LEAs' training, structure, and resources aimed at detecting, investigating, and prosecuting ML and TF; regulating and applying civil forfeiture as an additional means of sanctioning; and improving inter-institutional collaboration. These objectives can potentially deter terrorist and TF activities, and some were addressed in relation to TF over the period under review.

303. An initial step has been taken by the RVIPF, which in late March 2023 approved the *Standard Operation Procedures for Identification of Targets for Designation*, whose objective is to identify and designate individual terrorists and terrorist organizations, although, due to its recent issue, the RVIPF had not started using it at the time of writing this report.

304. In addition, in November 2022, the RVIPF issued a Terrorism Threat Assessment, which states that it is unlikely to have a terrorist attack mounted by an international terrorist group in the VI. The assessment found that the territory is more likely to be subject to a lone wolf, espionage, or cyber-attacks, or that the territory is used for TF purposes. Regarding the latter, the RVIPF recognized the potential for routing terrorist finances through the VI's banking system. However, to date, this is not the case and, as such, the RVIPF has initiated no investigation concerning terrorism, and no TF investigation has been conducted to support the same.

4.2.4. Effectiveness, proportionality and dissuasiveness of sanctions

305. As noted in the analysis of technical compliance of R.5, the penalties available for natural and legal persons convicted of TF are considered proportionate and dissuasive. In addition, the Magistrate's Courts do not have any impediments to adjudicate TF cases, and there is no need for TF sentencing guidelines considering the TF risk levels of the country.[34]

4.2.5. Alternative measures used where TF conviction is not possible (e.g., disruption)

306. The legal framework of the VI sets out two alternative measure applicable where a TF conviction is not possible. Section 81 of the CTA provides measures such as the forfeiture of terrorist cash in civil proceedings. Over the period under review, there was no need to apply any of these measures. The second, less disruptive measure is found in section 40 of the British Nationality Act 1981, which provides for the Secretary of State of the United Kingdom to decide whether a person should be deprived of the British citizenship, if such deprivation is found to be conducive to the public good, having been satisfied that the person has conducted himself in a manner which is seriously prejudicial to the vital interests of the United Kingdom or any OTs. However, this measure is limited to those that obtained the British citizenship by virtue of the provisions of the Act or to those that are citizens of the Republic of Ireland and that obtained the British citizenship by means of a certificate of naturalization only.

Overall Conclusions on IO.9

[34] Current guidelines refer to TF as an aggravating factor only, especially for "dishonesty offences," i.e., the offences of theft, robbery, burglary, and aggravated burglary are committed with the purpose of funding terrorism.

307. The VI identified and investigated a small number of TF cases and did not prosecute or sanction TF cases over the period under review, which is consistent with the low-risk TF profile of the country. Authorities are also not actively monitoring TF trends and typologies. The FIA-AIU and the RVIPF-FCU have significant limitations that affect their capacity to identify and investigate TF cases, although there are measures in place to prioritize these cases. The ODPP has trained staff that can deal with TF cases and, although the magistrates do not have similar preparation, this is regarded as a minor deficiency considering that the VI can seek assistance from the United Kingdom to appoint experienced judges.

308. The VI is rated as having a moderate level of effectiveness for IO.9.

Immediate Outcome 10 (TF preventive measures and financial sanctions)

4.3.1. Implementation of targeted financial sanctions for TF without delay

309. International sanctions obligations are extended to the VI by a combination of U.K. law (through Orders-in-Council (OICs)), the stated purpose of which is to ensure compliance with relevant UNSCRs), and domestic legislation.[35] The Governor of the VI is the responsible competent authority with the responsibility for enforcing OICs relative to all international sanctions under both the domestic and U.K. frameworks.

310. A legal framework is in place to allow for timely implementation of TFS for TF, although some impediments may exist in practice (see discussion in subsequent paragraphs). Pursuant to domestic legislation, UNSCRs have immediate effect in the VI. The VI authorities also have a highly efficient system of notifying reporting entities of new listings and de-listings. In practice, over the period under review, this notification system hinged on updates from the U.K.'s Office of Financial Sanctions Implementation (OFSI) but would still generally occur within 24 hours of a U.N. update (see discussion under R.6). As of April 23, 2023, all competent authorities receive updates directly from the U.N. so that communications will be even more expeditious.

311. Over the period under review, the VI have not proposed a designation, either alone or jointly, or frozen any assets under UNSCRs 1267, 1988, or 1373 to other jurisdictions, either directly or through the United Kingdom. No competent authorities report having identified or considered any potential targets for designation. No assets belonging to designated persons have been located in the VI, and therefore no freezing actions have been taken.

312. Varying obligations contained in different legal provisions have the potential to cause confusion in the implementation of TF/TFS by reporting entities, particularly with respect to reporting channels and obligations. However, to date, no legal challenges have arisen.

313. Legal variances also appear to impact the ability of competent authorities to effectively carry out their functions. For instance, the GO was not able to clearly outline the key legal requirements of the system and how the domestic and U.K. frameworks interrelate. Further, the GO does not carry out all of its statutorily mandated tasks. According to the GO, these tasks have been informally delegated to the FIA and FSC, although such delegation has not been formally documented.[36] The FIA and FSC exhibited a stronger understanding of legislative requirements, although neither agency appeared to focus on the specificities of the framework in monitoring compliance of reporting entities (see below).

[35] CTA Schedule 4.

[36] Delegations by the GO are required to be documented in writing under the CTA (section 3(1)). In May 2023, following the onsite, the GO issued a formal delegation in S.I. 2023 No. 53.

314. Insufficient inter-agency cooperation may impede the jurisdiction's ability to identify persons who may meet the criteria for designation under UNSCRs 1267, 1988, or 1373 and weaken the preventive effect of TFS. Individual agencies have some systems in place, but efforts are not sufficiently formalized or systematically coordinated to maximize the utility of TFS. While the responsibility of identifying possible targets lies with the GO, it does not take an active or leading role in this exercise. The GO reports that it relies on the RVIPF to identify potential targets for designation, although the RVIPF reports that it has never opened any investigation into sanctions evasion or considered any person or entity as a potential target for designation. As of March 24, 2023 (during the onsite visit), the RVIPF issued an SOP on the identification of possible targets for designation; prior to this, no formal policy or procedure was in place outlining practice in this area. The FIA also plays a role in identifying potential targets for designation through its analytical work, although no formal mechanism exists to ensure effective action is taken on intelligence where warranted.

315. Where the FIA receives intelligence on possible instances of sanctions evasion and is of the view that a potential breach has been established, it sends a formal analysis report to the GO. No intelligence received by the FIA has related to TF-TFS and therefore has not resulted in a consideration of a target for designation or the opening of any investigation. Since 2022, four formal analysis reports have been forwarded to the GO (although none of these related to TF). The GO also has the authority to instruct the FIA or the RVIPF to investigate potential sanctions evasions and has done so in seven instances (although none of these related to TF-TFS). In six of these instances, the FIA did not find sufficient information supporting a sanctions breach; one resulted in a dissemination by the FIA to the FCU for investigation and the FSC for the compliance failure. No additional action by either agency appears to have been taken. An inter-agency group, the CCA and its sanctions sub-committee provide a forum for the discussion of sanctions issues but are not leveraged to consider possible targets for designation as the authorities consider that task to be outside the committees' remit.

316. The focus of the authorities remains on assisting foreign law enforcement efforts rather than on investigating the role of VI entities, individuals, and service providers in alleged sanctions evasion schemes. Almost all leads on TF-related sanctions breaches originated from sources abroad (e.g., press reports, information requests from foreign counterparts, and foreign intelligence). The VI has received 76 international SARs on TF, and several requests for information from foreign counterparts. The authorities contend that generally these leads relate to the foreign beneficial owners of BVIBCs, and therefore no individuals or assets involved in alleged sanctions evasion activity are located in the VI. For example, the FSC automatically screens each sanctions list against its VIRRGIN database of director information each time a designation is made; in the context of TF-TFS, no supervisory or law enforcement actions have been taken against any BVIBC, nor have any actions been taken to ascertain the responsibility of TCSPs involved in the formation of flagged companies. Further, as the VIRRGIN database contains only information on directors and not beneficial owners, this automatic process would not be expected to detect instances where BVIBCs are owned or affiliated with designated individuals.

317. Compliance with and understanding of TF/TFS obligations varies among reporting entities. DNFBPs exhibited a broad appreciation of sanctions, but limited understanding of specific legal obligations under the various sanctions regimes, including the obligation to file a compliance reporting form (CRF) with the Governor and immediate actions to be taken following a positive hit. FIs interviewed onsite were generally more knowledgeable about TFS, but none were able to distinguish between the obligations imposed under the different pieces of legislation. The lack of a detailed understanding casts doubts on the ability of FIs and DNFBPs to properly implement the appropriate reporting and freezing requirements.

318. Reporting entities vary widely in the frequency of screening, from daily to undefined intervals throughout the business relationship. From a 2021 desk-based sanctions-themed survey of 18 TCSPs, the FSC found that 42 percent of sampled licensees performed ongoing screening on a daily basis, or upon receiving the updated designated persons listing from the FSC, with the remaining 58 percent screening their client lists either quarterly, annually, at intervals associated with the client's risk rating, or at no

specifically defined interval. Reporting entities also varied in the type and nature of their screening systems, with some employing commercial screening software and screening against multiple lists (United Kingdom, OFAC, EU, etc.) and others screening manually or outsourcing sanctions screening to a third party.

319. In addition, limitations in CDD and the availability of accurate and up-to-date beneficial ownership information and potential inaccuracies in basic company information during the review period likely hinders the identification of designated persons involved in BVIBCs and who may indirectly hold or control their related assets and funds (see IOs.4 and 5).

320. There is limited supervision of TFS obligation compliance of FIs and DNFBPs. The FSC conducted a desk-based sanctions-themed survey of the TCSP sector in 2021 but has only begun examining sanctions handling in other sectors. The FIA has not carried out any supervisory testing of the DNFBP's compliance with their TFS obligations (see IO.3). Competent authorities have only recently updated (in March 2023) the Sanctions Guidelines to include detailed explanation of the various competing legal provisions that comprise the VI's TFS framework.

4.3.2. Targeted approach, outreach and oversight of at-risk non-profit organizations

321. The registration of NPOs in the VI is governed by the Non-Profit Organisations Act 2012 (NPO Act). The NPO Registration Board (NPO Board) is the competent authority for the registration of NPOs within the VI. NPOs must register with the NPO Board in accordance with the NPO Act, 2012. The functions of the NPO Board include receiving and determining applications for registration, facilitating the development of the NPO sector, and promoting an understanding of the role of NPOs within the VI. Supervision of NPOs is the responsibility of the FIA in accordance with the FIAA and the NPO Act. NPOs are also obligated to adhere to the provisions of the AMLTFCOP insofar as they relate to NPOs.

322. Since the NPO Act came into force in 2012, 368 NPOs have been registered. As of March 23, 2022, there were 110 NPOs listed on the NPO Register. The types of NPOs registered within the VI are shown in Table 4.1.

Table 4.1. Number of NPOs Registered in the VI by Category as of March 20, 2022

Sector	Number of NPOs in Sector
Churches or Religious Organizations	44
Community Organizations	9
Sporting Associations	19
Youth Organizations	6
Service Clubs or Associations	25
Performing Arts Companies/Groups	1
Foundations	3
National or Country Associations	3
Total	110

323. The VI NPO sector is composed primarily of small organizations that mainly operate domestically. Of the NPOs active at the time of the assessment, 50 percent were categorized as religious organizations with the remaining having primarily community-focused objectives. Approximately 40 percent of the 110 active VI NPOs either receive funds from abroad or send them abroad. The majority of NPOs within the sector have been long established (with an average of about 20–30 new NPOs being formed annually). A considerable number of NPOs operating within the territory are considered small and do not receive large donations (above US$10,000). In 2022, only 29 registered NPOs solicited any donations exceeding US$10,000 (largely due to grants received during COVID-19).

324. The VI has not yet identified the subset of NPOs that are vulnerable to TF, based on their characteristic or activities. The 2020 TF sectoral risk assessment found the NPO sector in the VI to be at a

relatively low risk of abuse for TF (low for domestic TF and medium-low for foreign TF) based on the absence of any evidence that internationally recognized typologies have occurred in the VI. For instance, the TF RA recognizes that religious affiliation is a common characteristic of NPOs misused for TF but observes that no evidence exists to indicate this is a risk factor in the VI. Similarly, the TF RA noted that no VI NPOs have been found to be sending funds to sham NPOs. The TF RA contains little analysis of the data collected within the VI NPO sector in relation to TF. Beyond stating that a small number of NPOs send money to jurisdictions where the risk of terrorism is elevated, no characteristics of VI NPOs are identified as creating a vulnerability to TF. However, neither are the few NPOs sending money to jurisdictions with a slightly elevated risk of TF definitively identified as the subset of NPOs in the VI that are vulnerable to TF abuse.

325. The FIA undertakes sustained outreach with the NPO sector, although until recently, such trainings were on the AML/CFT framework generally and did not sufficiently target TF-specific issues. In 2020, due to COVID-19, the FIA held outreach sessions online in the form of a series of webinars. In April 2021, the FIA took part in "Compliance Fundamentals of NPOs—AML/CFT Training" session held by the VI Chamber of Commerce. In June 2021, the FIA took part in an NPO community fair to raise awareness of its supervisory function and ML/TF risks. In 2022, the FIA-issued Guidance Notes on AML/CFT for NPOs, although the guidance primarily focused on the application of preventive measures (e.g., CDD) and did not distinguish between specific measures to address TF risk and those aimed at addressing ML risks. Further, the FIA reports continuous monitoring of the NPO sector, but has been focused on misuse more generally (e.g., fraud) rather than TF. However, towards the end of 2022 and early 2023, the authorities issued guidance notes and webinars specifically on TF and PF.

326. While NPOs interviewed appeared to be broadly aware of the threat TF generally poses to NPOs and had in place extensive internal controls, these did not appear to be aimed primarily at mitigating TF risks. While NPOs generally are reported to run sanctions screenings, and the main due diligence measures in place (identifying donors where donations exceeded US$10,000) would appear to be more relevant to ML than TF. NPOs interviewed onsite reported attending webinars and events held by the FIA.

327. The VI cannot be said to have an effective system of targeted risk-based NPO supervision for the purpose of combating TF. Pursuant to the NPO Act, the FIA-SEU is responsible for the supervision and monitoring of all registered NPOs for the purposes of AML/CFT generally. In accordance with the FIAA, the FIA may supervise any NPO where it is satisfied that the NPO presents a ML, TF, or PF risk. The FIA risk profiles every registered NPO for the purpose of determining which NPOs will be subject to inspection. However, this risk classification does not target those NPOs most at risk of TF abuse. The institutional risk assessment takes into account numerous factors, not all of which are relevant to TF (see R.8.3 for a more detailed discussion of the risk classification), and which appear to identify the risk an NPO has generally to misuse (for any illicit activity). Over the review period, of 110 registered NPOs, 12 were categorized as high-risk, 52 as medium-risk, and 49 as low-risk. At present, the FIA does not have an inspection plan for the NPO sector, and the majority of supervisory work undertaken by the FIA-SEU with NPOs is desk-based supervision. Finally, not all high-risk NPOs have been subject to a full inspection over the review period due to resource constraints, although some medium-risk NPOs have undergone a full inspection. Finally, it should be noted that the FIA's supervisory approach to the sector is not focused on TF but broader misuse (related to ML, for instance, and other types of crime). As such, the effectiveness of the FIA's current supervisory approach in mitigating TF risks is uncertain oversight of the NPO sector is not effectively applying a risk-based approach, nor is it sufficiently focused on mitigating TF risks within the VI NPO sector.

4.3.3. Deprivation of TF assets and instrumentalities

328. To date, there have been three TF investigations, but no TF prosecutions; as such, there have been no restraints, confiscations, or deprivations of assets related to TF during the review period.

4.3.4. Consistency of measures with overall TF risk profile

329. The absence of freezing actions and designations under the VI's TF sanctions regime is consistent with the VI's TF risk profile in terms of the threat of domestic TF (see IO.9) but does not necessarily accurately reflect the foreign TF threats faced by the VI. Given that the VI is a corporate and financial center, the absence of any leads or suspicions relating to TF activity with a nexus to VI may not be due solely to the VI's lower risk exposure but could also result from inadequate implementation of TFS in the jurisdiction. It cannot be determined whether the lack of any measures is truly warranted by the risk profile of the jurisdiction or a result of the inability to mobilize resources and mechanisms (where they exist) and inadequate understanding of the TFS regime. As discussed above, competent authorities and law enforcement are not proactive in gathering or pursuing TF-related intelligence relating to TF committed abroad involving BVIBCs (see IO.9). Limitations in accurate and up-to-date beneficial ownership information also likely impedes effective implementation of TFS.

330. With respect to NPOs, as the VI has not yet identified the subset of NPOs at risk of being abused for TF, nor has it assessed the specific TF threats faced the NPO sector drawing from all available information specific to the risks within the VI and on an ongoing basis, the authorities cannot be said to be taking targeted, risk-based measures commensurate with the VI's overall TF risk profile. With only limited supervisory staff available to focus on these issues, the supervisory framework ultimately has a low impact on mitigating TF risks in the NPO sector.

Overall Conclusions on IO.10

331. The VI is not effectively implementing TF/TFS, nor has it been demonstrated that relevant authorities and stakeholders have sufficient readiness to implement TF/TFS without delay. The VI has not proposed any designations, nor have any assets been identified or frozen under UNSCRs 1267, 1988, and relevant successor resolutions. Until recently, no competent authority had any formal mechanism for identifying persons meeting designation criteria. Competent authorities and law enforcement do not appear to be acting proactively to ascertain whether designated persons or sanctioned assets may be located in the territory. Although TFS for TF have immediate legal effect in the VI, deficiencies in the frequency of screening and understanding of obligations by reporting entities are likely to undermine the effectiveness and timeliness of TFS implementation.

332. The VI has not identified the subset of NPOs that are vulnerable to TF abuse. While the FIA understands the general threat of TF posed to NPOs through internationally recognized typologies, it does not appear to have identified the specific TF risks faced by the VI's NPO sector. The only risk assessment that has been conducted by the FIA in the NPO sector is the institutional risk assessment exercise. The FIA has not yet developed a risk-based inspection plan for NPOs as it is awaiting the results of a TF Risk Assessment that is scheduled to be issued later this year. As such, the FIA cannot be said to be currently applying risk-focused and proportionate oversight measures to such NPOs. However, the FIA has been undertaking supervisory activities and conducting outreach to the NPO sector to strengthen the sector's ability to protect itself from misuse of TF. NPOs also appear to be generally aware of TF risks and are applying some TF-specific mitigation measures.

333. The VI is rated as having a low level of effectiveness for IO.10.

4.4. Immediate Outcome 11 (PF financial sanctions)

4.4.1. Implementation of targeted financial sanctions related to proliferation financing without delay

334. The VI uses a combination of supranational and national mechanisms to implement PF-related TFS (see R.7.1). As with TFS relating to TF, international sanctions obligations are extended to the VI by way

of OICs and through domestic legislation, giving immediate effect to relevant UNSCRs.[37] The Governor is the competent authority responsible for ensuring implementation of provisions arising under the VI's sanctions regime for PF.

335. A framework is in place to allow for timely implementation of TFS for PF, although impediments exist in practice (see discussion in subsequent paragraphs). The VI's system for implementing TFS for PF is largely identical to that for TF (see IO.10, para. 307). As with TFS for TF, UNSCRs have immediate effect in the VI and are expeditiously communicated to reporting entities.

336. Being a corporate and financial center and a hub for company formation and administration, the VI is exposed to illicit activities linked to sanctions evasion by foreign actors. As no manufacturing sites or research centers producing dual use and proliferation-sensitive goods are physically located in the territory, the VIs' exposure to PF sanctions evasion from a domestic perspective is considered low. However, the prevalence of BVIBCs being created for the purposes of cross-border business and international trade activities, and their susceptibility to being misused, elevates their vulnerability to PF. As a result, the 2022 PF RA found the risk of misuse of BVIBCs to facilitate the financing of weapons of mass destruction (WMD) to be high. The most common typology implicating VI structures in foreign sanctions evasion schemes (as documented by the UN's Democratic People's Republic of Korea (DPRK) Sanctions Committee) has a BVIBC as the registered owner of a vessel flying a flag of convenience, which has been used to facilitate illicit trade with a North Korean entity. Common typologies also generally rely on vulnerabilities in collecting accurate and up-to-date beneficial ownership information as a part of company formation and poor detection of deceptive shipping practices in the respective jurisdictions involved.

337. Although systems are in place with the aim of preventing the misuse of BVIBCs for PF-related sanctions evasion, measures do not appear to be sufficiently rigorous to effectively prevent sanctioned persons from establishing or acquiring companies in the VI. The FSC, which is responsible for the maintenance of the Companies Registry, automatically screens each sanctions list against its VIRRGIN database of director information for possible matches each time a new designation is made and when transactions are filed; however, as noted under IO.5, shortcomings in the VIRRGIN system, such as missing or out-of-date director information could impact the effectiveness of this screen.

338. The FIA also screens each sanctions list against the BOSSS database for possible matches in relation to the beneficial owners of BVIBCs. However, the BOSSS database reflects only beneficial owners with a 25 percent or higher ownership stake in an entity and contains information that is not verified by any public entity (see IO.5).

339. Not all relevant agencies are yet playing a role in implementation of measures to combat PF sanctions evasion. Individual agencies are only broadly aware of general sanctions obligations. Several agencies, including the DOI, HMC, and the Shipping Registry report receiving regular notifications from the GO relating to sanctions (on a bi-weekly basis). However, not all agencies are currently carrying out regular sanctions screening, and some have only nascent screening systems; for instance, the HMC is not yet conducting any screening against the lists it receives from the GO, and the DOI has a significant backlog of names to screen (see further discussion below, paras. 340–341). Additionally, while the Shipping Registry does screen against its register, it does not collect beneficial ownership information on corporate entities registering as owners of vessels. As such, the VI cannot yet be considered to be effectively implementing TFS for PF without delay.

4.4.2. Identification of assets and funds held by designated persons/entities and prohibitions

340. To date, the VI has not identified any funds or other assets belonging to a person or entity designated as a result of their connection to PF-related activities associated with DPRK or Iran. Even though VI

[37] PFPA, section 8(1).

structures have been implicated in alleged and confirmed sanctions evasion, the authorities have not come across any evidence that assets associated with designated persons and individuals are located in the territory (as BVIBCs that are not domiciled in the VI generally do not maintain assets in the VI).

341. The VI authorities are of the view that illicit acts (including sanctions violations) linked to BVIBCs do not concern the VI as the beneficial owners of BVIBCs are usually foreign and therefore would not trigger domestic investigations and prosecutions (see IO.7). As with TFS for TF, the reactive nature of the VI's approach to sanctions implementation is likely a contributing factor to the lack of detection. The VI also did not take any other action, such as designating the BVIBCs involved or their beneficial owners, consulting with the Foreign, Commonwealth, and Development Office to propose a designation (in the United Kingdom or to the relevant UN sanctions committee), or adding the company information to existing VI, U.K., or UN designations. The authorities also did not take any criminal law enforcement measures related to companies linked to sanctions evasion (e.g., investigate the owners/nominee owners or shareholders/nominee shareholders of the company, as well as the TCSP who established the BVIBC, for possible sanctions breaches), or supervisory actions to determine whether any compliance breaches had occurred (e.g., if the TCSP indeed had knowledge of the customer and/or identify of the beneficial owner), including in one instance where a BVIBC pled guilty to ML related to sanctions evasion in a foreign jurisdiction (see below).

342. As with the TFS for TF regime, while some systems for detecting sanctioned individuals or assets are in place, the effectiveness of such systems is uncertain. Competent authorities do not appear to be sufficiently proactive in investigating the role of VI entities or related persons in PF-related sanctions evasion. On one hand, going beyond what is required by the standard, VI law requires the reporting of suspicious transactions related to PF and, indeed, over the period under review, the FIA received three SARs related to potential instances of PF, one of which concerned an alleged breach of sanctions related to crypto-activity and two of which pertained to PF-related activity alleged to be perpetrated by BVIBCs. The FIA issued two disseminations, but no further investigatory action was deemed warranted. On the other hand, indications that BVIBCs have been misused for circumventing DPRK sanctions have not resulted in much domestic action. The authorities have also received requests for information relating to BVIBCs potentially involved in sanctions evasion from foreign authorities. Notably, in one instance, the authorities received an MLA request relating to criminal proceedings in the United States where a BVIBC ultimately pled guilty to ML charges related to evasion of sanctions on DPRK (see discussion under IOs.2 and 9). The U.S. FIU has also requested cooperation on sanctions evasions matters, pursuant to which the FIA has provided information on specific BVIBCs. While information has been shared with the relevant foreign authority in all cases, little domestic action has been taken (MLA was requested of the United States to determine whether to pursue a case against the BVIBC referenced above and that determination is still ongoing). The FIA also received 8 requests (concerning 60 BVIBCs) from the UN Panel of Experts on North Korea (an organ of the UN Security Council) where BVIBCs were suspected of being associated with ships reportedly conducting illicit trade activities with North Korea. No inquiries or investigations were initiated with respect to any of the 60 BVIBCs.

343. Border control agencies and law enforcement should contribute to efforts to identify individuals and assets associated with sanctions evasion and prevent abuse of trade-related activities for PF; however, while some effort has been made to integrate sanctions screening as a part of border controls by the DOI and HMC, these measures have not yet been completed. In 2020, the Immigration Border Management System and e-Visa system was integrated with a Watch List Management (WMS) system that is set up to flag any individual on the U.K. sanctions list. In the event a match occurs upon entry inspection, all officers at any of the ports of entry will be alerted. However, this system currently relies upon the manual population of the U.K. sanctions list by immigration officers, which has been ongoing since early 2022 and is not yet complete. The DOI receives notifications of new designations from the GO and reports that new designations are added to the system as it works through the backlog. Discussions are underway to extend the WMS to the HMC. The GO also provides the HMC with copies of updated U.K. sanctions lists twice a

week, but the HMC does not yet use the U.K. sanctions list in any of its activities, nor does it flag any goods destined for or originating from Iran or North Korea (although the latter is in line with the VI's trade profile). As discussed under IO.10, as of March 2023, the RVIPF has in place a standard operating procedure on the detection of sanctioned assets. To date, the RVIPF has not come across any leads related to sanctions evasion.

4.4.3. FIs and DNFBPs' understanding of and compliance with obligations

344. Understanding of obligations arising from relevant UN sanctions regimes relating to proliferation of WMDs varies widely among reporting entities. FIs and DNFBPs have been made broadly aware of sanctions obligations, although inconsistencies in the underlying framework have resulted in lack of clarity. For instance, both the CTA and the PF Prohibition Act (PFPA) address PF of WMD, despite containing different obligations. Most DNFBPs were generally cognizant of the obligation to report to the FIA, although most were not familiar with specific reporting requirements or applicable legal provisions. Conversely, most FIs were aware of the reporting channel to the GO, with a few also recognizing the need to report to the FIA (although primarily in the context of SARs). The legal uncertainty can be seen in the fact that although three PF-related SARs were filed over the review period, no reports have been made under the PFPA. No reporting entities interviewed onsite could articulate all the relevant reporting channels (which includes compliance reporting to the GO and the FIA). Additionally, some reporting entities interviewed onsite mistakenly believed their legal obligations to be linked to the U.K. sanctions regime.

345. Compliance with TFS obligations also appears to vary among reporting entities. The frequency of ongoing screening varies, with some screening on a more frequent regular basis, while others do so on a less frequent basis (sometimes once a month or less frequently) (see above discussion in IO.10). The size of the firm is one determinant of the screening timing. Most FIs rely on commercial databases and automated screening procedures for these purposes. No DNFBPs interviewed onsite reported having had positive hits against any sanctions lists, but several FIs reported positive hits against various sanctions lists. Only one reporting entity reported having a hit against a sanctions list related to PF. Two FIs reported having had false positives against any sanctions lists. No CRFs have been filed with the GO under the PF sanctions regime.

346. It should be noted that between 2018–2022, the FIA received three SARs pertaining to PF, which indicates that at least some reporting entities are broadly aware of compliance obligations (see discussion above); however, as noted above, no commensurate CRF under the PFPA has been filed.

4.4.4. Competent authorities ensuring and monitoring compliance

347. Monitoring of compliance with TFS for PF has been limited in scope. Over the period under review, the FSC mainly monitored compliance by TCSPs through desk-based reviews of sanctions policies and procedures as part of its pre-inspection process. Pursuant to a sanctions checklist, the FSC has examined the frequency of screening, whether procedures were in place for dealing with an existing client that subsequently becomes a designated person, adherence to reporting obligations where a designated person was identified, and training. The FSC has only begun integrating examination of sanctions handling into its oversight of other FIs and has not yet tested the screening systems of FIs onsite. The FIA has never conducted a thematic inspection relating to sanctions compliance and has only ever considered a supervised entity's sanctions policies as a part of its pre-inspection desk-based review.

348. The FSC's review of sanctions handling revealed significant shortcomings in some sectors. Failures identified by the FSC related to timeliness of screening intervals for clients as it was determined that this frequency did not facilitate adequate mitigation of the identified risk. Additional findings included failures to adequately detail what to do if a hit is found, failing to identify reporting obligations to the relevant competent authorities, and failing to provide adequate training to staff.

349. Supervisory actions are not sufficiently rigorous to improve the compliance of reporting entities. In a sample of inspection reports that included an examination of sanctions handling, the FSC did not rate any TCSP on its sanctions handling nor did it provide specific guidance (in all cases, corrective actions required an examination of the entity's sanctions policies to ensure that they were in line with the Sanctions Guidelines). Aside from requiring corrective actions, no penalties were imposed.

Overall Conclusions on IO.11

350. The VI is not effectively implementing TFS for PF. The VI is exposed to potential illicit activities linked to sanctions evasion by foreign actors. However, no assets potentially subject to sanctions have been identified in the VI and no domestic investigations into potential sanctions evasions initiated, despite implication of multiple BVIBCs in alleged sanctions evasion schemes. This impacts heavily on the assessment. Understanding of TFS obligations varies among competent authorities, with most exhibiting an understanding of the sanctions regime generally but lacking in-depth appreciation of the underlying legal framework. Identification of BVIBCs that may have a designated person or entity in its ownership structure is difficult due to issues in the regime for identifying beneficial owners in the VI. Even where reporting entities employ commercial screening systems, deficiencies in frequency of screening and actions following a positive hit are likely to undermine the effectiveness and timeliness of TFS implementation. Similar to competent authorities, reporting entities exhibited a broad awareness of the VI's sanctions regime but lacked a detailed understanding of specific legal obligations (including the actions to be taken immediately upon a positive hit and appropriate reporting channels). Finally, oversight of compliance with TFS obligations is limited to review of procedures and policies and not in relation to reporting compliance and does not include inspection plans relating to PF compliance or testing of screening systems onsite.

351. The VI is rated as having a low level of effectiveness for IO.11.

Chapter 5. PREVENTIVE MEASURES

5.1. Key Findings and Recommended Actions

Key Findings

a) All banks and some legal practitioners have a good understanding of their ML risks and AML/CFT obligations. Such understanding is however very heterogenous in the TCSP sector and insufficient in certain segments of the investment business sector, which constitute the most important sectors in terms of materiality and are most exposed to ML/TF risks. A majority of DNFBPs (other than TCSPs) only have a basic understanding of their ML risks and AML/CFT obligations.

b) A minority of investment businesses and some legal practitioners, a few of the larger TCSPs, and all banks have developed adequate risk classification practices driving their CDD and EDD measures. Mitigation measures applied by other FIs and a majority of DNFBPs remain rather rule-based and are not yet sufficiently aligned with their exposure to ML/TF risks.

c) While improvements in the implementation of CDD measures and record-keeping requirements by FSC supervised entities are positive, there are several remaining obstacles to effective implementation by all categories of FIs and DNFBPs, except banks. One of them finds its origin in TCSP's quite heavy reliance on professional business introducers for CDD and record-keeping purposes. While such reliance is permitted under the FATF Standards, there is insufficient evidence that there are adequate safeguards in place to mitigate associated ML/TF risks, fully in line with the requirements of R.17. In addition, the implementation of CDD measures by a majority of FIs and DNFBPs is not yet entirely adequate because these measures are insufficiently tailored to the customer's risk profile. Moreover, the application of the recently updated beneficial ownership requirements by all FIs and DNFBPs, including banks, is too focused on determining ownership thresholds, with insufficient attention being given to the concept of control through other means.

d) A minority of investment businesses and some legal practitioners, a few of the larger TCSPs, and all banks demonstrated a good implementation of EDD measures arising from specific higher risk scenarios identified through their institutional risk assessments. The application of EDD measures by all other Fis and DNFBPs is however insufficiently driven by an adequate consideration of ML/TF risks. As a result of information sharing by the FSC and the FIA, all Fis and DNFBPs were familiar with the FATF's lists of jurisdictions subject to a call for action and jurisdictions with strategic deficiencies in their AML/CFT regimes, and of the requirement to apply EDD measures when called upon by the FATF. However, implementation of TF-related freezing and prohibition obligations varies and is not effective and timely in all cases.

e) The level of SARs in the VI is largely driven by a limited number of TCSPs and one international bank who filed an overwhelming majority of reports. There is no reasonable explanation for the absence of reporting by nearly 50 percent of TCSPs and the entire investment business sector, despite these sectors' ML/TF risks. While the quality of SARs has been gradually improving, they only partially correspond to the main ML/TF threats to the VI. A relatively large number of SARs are filed because of adverse media screening, attempts of fraud, and failure to complete CDD rather than spontaneous detection of suspicious activity. While all Fis and DNFBPs interviewed introduced programs against ML/TF and established relevant internal policies and procedures, these were often not up to date and not fully implemented on a risk-sensitive basis.

f) While there is evidence that VASPs are operating in or from the VI and the provisions of the AMLTFCOP apply to VASPs since December 1, 2022, there is no evidence that, at the time of the onsite visit a few months later, they already implemented the preventive measures.

Recommended Actions

a) Continue to promote awareness among the high(er)-risk Fis and DNFBPs of their sector-specific ML/TF risks and their AML/CFT obligations and ensure that they have sufficiently documented and nuanced institutional risk assessments tailored to their own business and activities, and implement risk-sensitive internal controls, policies, and procedures in line with the AMLTFCOP.

b) Ensure that Fis and DNFBPs, especially higher risk sectors such as TCSPs and investment businesses, adopt sufficiently detailed risk classification practices, to drive the risk-based application of CDD and EDD measures.

c) Take targeted supervisory actions (issuing guidance, delivering training, conducting inspections and, where necessary, imposing proportionate and dissuasive sanctions) to ensure that TCSPs who rely on professional business introducers for CDD and record-keeping purposes adequately identify, understand, mitigate, and monitor the ML/TF risks associated with such reliance.

d) Conduct outreach, provide additional guidance, and strengthen supervisory engagement and, where applicable, remedial actions to ensure that Fis and DNFBPs, especially entities in the high(er)-risk TCSP and investment businesses sectors, properly understand the concept of control over a legal person and arrangement, and adequately implement beneficial ownership requirements in line with the 2022 and 2023 amendments to the AMLTFCOP.

e) Continue ongoing supervisory engagement and outreach to ensure that Fis and DNFBPs adequately understand their freezing and prohibition obligations, have relevant TFS procedures in place and implement TFS without delay.

f) Take targeted actions (i.e., continue to conduct education, and outreach, issue sector-specific typologies, and apply remedial actions and/or sanctions for failure to comply with the reporting obligation) to ensure that FIs and DNFBPs, especially entities in the high(er)-risk TCSP and investment business sectors, and in other sectors where SAR reporting is negligible or non-existent, improve the quantity and quality of SAR reports, in line with the ML/TF threats to the VI.

g) Continue to raise awareness of VASPs operating in or from the VI about their ML/TF risks and AML/CFT obligations and ensure that VASPs implement all relevant legal requirements, including the travel rule requirements.

352. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are Rs.9–23, and elements of Rs.1, 6, 15 and 29.

5.2. Immediate Outcome 4 (Preventive Measures)[38]

[38] TCSPs in the VI qualify as FIs and are regulated and supervised by the FSC. However, the activities of these TCSPs meet the definition of DNFBPs in the FATF Glossary. In line with the FATF Methodology, TCSPs are considered as DNFBPs for the purposes of this assessment.

353. The assessment team weighted the implementation of preventive measures based on the respective importance of regulated sectors in VI's context. The assessment team assigned the highest importance to TCSPs, followed by investment businesses and VASPs. A medium level of importance was assigned to banks, legal practitioners, accountants, and real estate agents, while less importance was given to MSBs, financing businesses, and DPMS. Due to their relatively lower level of risks, the assessors also devoted lesser attention to the insurance sector and the referrals to Fis in the analysis of preventive measures therefore do not extend to insurance businesses. The details of the weighting of each sector are found in paras. 85 to 105 of Chapter 1.

354. The VI significantly strengthened its AML/CFT legislation (AMLTFCOP) in 2022 to improve its compliance with the 2012 FATF Standards and introduced new obligations for all Fis and DNFBPs, which came into force on August 1, 2022. At the time of the onsite visit with private sector entities (i.e., nearly eight months later), all categories of relevant businesses interviewed were still adapting to the new requirements, and many of them were in the process of updating their AML/CFT policies and procedures accordingly. During the onsite visit, the AMLTFCOP was further updated to address some of the remaining technical deficiencies, including an important deficiency in VI's beneficial ownership requirements. A minority of investment businesses and some legal practitioners, a few of the larger TCSPs, and international banks knew about the content of the March 2023 amendments and indicated that these changes would be integrated in their AML/CFT policies and procedures. However, a large majority of Fis and DNFBPs were not aware that further amendments to the AMLTFCOP were made in March 2023 to strengthen preventive measures for all categories of relevant businesses.

355. The conclusions under IO.4 are based on written documentation (including processes and procedures, case examples, and statistics) provided by the VI's authorities and private sector entities, meetings with the FSC, the FIA, and other relevant authorities. The assessment team also met face-to-face with a representative sample of private sector entities and a few industry groups. These meetings included TCSPs which in total represent a significant share of the market, investment businesses, banks, MSBs, financing businesses, legal practitioners, real estate agents, accountants, and jewelers. Significant differences were observed in ML/TF risk understanding, the application of corresponding mitigation measures and the implementation of preventive measures more generally, both between and within the various categories of Fis and DNFBPs interviewed. There is evidence that VASPs are operating in or from the VI. These VASPs qualify as a relevant business in the VI, and the requirements of the AMLTFCOP are applicable to them as of December 1, 2022. However, at the time of the onsite visit (just a few months later), it did not appear that these VASPs were implementing preventive measures which negatively impacts the assessment of effectiveness for each of the core issues in this chapter. The authorities indicated that just one entity had obtained a license under the SIBA to operate as an Investment Exchange for buying and selling of derivatives related to VA but clarified that this entity had not yet started its activities. On February 1, 2023, the FSC issued guidance to sensitize VASPs on regulatory issues, reporting obligations and, to some extent, ML/TF threats and vulnerabilities to the sector (see Chapters 1, 2, and 6).

356. The activity of trading in foreign exchange does not qualify as a FI in the VI and is therefore not subject to AML/CFT measures (except reporting of suspicious transactions—R.20). This exclusion is not based on an assessment of risks (see Chapter 2). However, since this activity is exclusively conducted through banks and investment businesses, which for their other activities are subject to AML/CFT preventive measures, the overall impact of this scope limitation on the effective implementation of preventive measures is limited.

5.2.1. Understanding of ML/TF risks and AML/CFT obligations

357. All Fis and DNFBPs interviewed were familiar with the 2016 NRA and the 2020 ML and TF SRAs through their engagement with the FSC and the FIA, in particular, recent AML/CFT awareness raising initiatives. None of the Fis and DNFBPs interviewed had been closely involved in the 2022 MLRA work, which could have strengthened their ML/TF risk understanding (see Chapter 2). Some of them said to have

contributed via the completion of a questionnaire while others had no recollection of being associated whatsoever to the process.

358. Despite relevant supervisory efforts, ML risk understanding in VI's financial sector is quite diverse and insufficient in certain segments of the investment business sector considering this sector's overall ML risk profile, as set out in the 2020 ML SRA and 2022 MLRA. All banks demonstrated an adequate understanding of their ML risks and were able to offer details on how ML risks derive from their own specific mix of business and customers. Similarly, a minority of investment businesses that are part of an international group exhibited a very good ML/TF risk understanding. These investment businesses and all banks differentiated between the risks related to customers, geographic factors, products, services, transactions, and delivery channels and were nuanced in referring to the ML threats to their business and the VI more generally. They were also able to elaborate on their institution's inherent ML/TF risks, the mitigation measures applied, and the existing residual risks. Risk understanding by other categories of Fis is clearly less developed but overall acceptable and in line with the results of the 2020 ML SRA and the 2022 MLRA for these sectors. These sectors explained the ML risks they see associated with customers and products, and, where relevant, also geographic risks.

359. However, ML risk understanding by other investment businesses interviewed did not appear to be sufficiently developed and only partially corresponds to the findings of the 2020 ML SRA and 2022 MLRA. These businesses cited proceeds of drug and human trafficking as the most important ML threats and referred to ML/TF risks associated with the use of cash, in line with the risk assessment's findings. However, they did not refer to corruption as another important domestic ML threat nor to any of the foreign ML threats to which they are potentially exposed considering the nature of their business and clientele. They could not clearly explain their own institution's inherent and residual ML/TF risks nor, more generally, how legal persons and arrangements can be misused for laundering the proceeds of crime, including through the investment business sector. In their responses, they exclusively focused on customer risks and remained silent about the inherent vulnerabilities of the products and services they offer. While examples of institutional risk assessments reviewed show that there is nevertheless a focus on products and services in determining inherent and residual ML risks, they had difficulties in explaining how these risks could materialize in practice. These businesses further explained that their exposure to ML and proceeds of crime is limited because they do not accept cash, and assets under their management are always transferred through other domestic or foreign regulated Fis. While they would verify that the FI of the originator is regulated for AML/CFT purposes, they would generally not undertake an independent verification of the source of funds. They expect that the FI of the originator has already adequately verified the source of funds in line with international standards. However, they did not clearly demonstrate to have given sufficient thought to significant differences in the implementation of preventive measures by private sector entities around the globe, as identified by AML/CFT assessment reports adopted by the FATF's Global Network.

360. ML risk understanding by TCSPs is quite diverse, and only a few of the TCSPs interviewed demonstrated an adequate risk understanding, at their own institutional level and at sectoral level, consistent with the findings of the 2020 ML SRA and 2022 MLRA.

361. All other TCSPs interviewed acknowledged the inherent vulnerabilities of legal persons and legal arrangements and their potential misuse for ML, and they indicated that the main ML threats are foreign corruption and fraud, a statement that is only partially in line with the 2020 ML SRA and 2022 MLRA. They also referred to ML vulnerabilities of certain trade-based activities that can be performed by legal persons they set up and manage. These TCSPs specified that, in the past, the TCSP sector in the VI was clearly vulnerable to ML because of a lack of transparency associated with the use of bearer shares and nominee services, and less stringent CDD measures, including beneficial ownership requirements. They referred to various improvements in the VI's AML/CFT regime which they believe led to a strong legal and regulatory framework for the sector. They consider that it is therefore now very difficult to launder money through the TCSP sector and the VI more generally. While they recognized that BVIBCs are still being used in ML schemes, they believe that this is not due to a lack of transparency of the corporate vehicles

they create and manage in the VI but rather to remaining weaknesses in foreign jurisdictions' AML/CFT regimes (see Chapter 2). Although the VI's strengthened legal framework should be acknowledged, several of the important amendments are recent (August 2022 and March 2023—i.e., during the onsite visit) and effective implementation of relevant controls by a majority of TCSPs could not yet be established.

362. Reliance on professional business introducers, including for CDD and record-keeping purposes, as permitted by the FATF Standards, remains a widely used practice in the sector, but a majority of TCSPs interviewed did not demonstrate that they adequately identify, fully understand, mitigate, and monitor associated ML/TF risks. Moreover, according to their AML/CFT returns filed with the FSC, only 2 percent of TCSPs believe their business presents a high ML/TF risk, while 49 percent consider their ML/TF business risks to be low. This risk perception does not correspond to the results of the 2020 ML SRA and 2022 MLRA, which identify the ML/TF risks at sectoral level as high.

363. Some legal practitioners showed a well-developed ML risk understanding. Even though the FIA organized training sessions to enhance risk understanding, other DNFBPs had difficulties in citing any ML threats beyond drug and human trafficking. These businesses and professions considered VI's cash-based society to present a significant vulnerability for ML but were unable to explain how cash could potentially enter the VI's financial and DNFBP sectors, which is illustrative of their basic ML risk understanding.

364. TF risk understanding within both the financial and DNFBP sectors was largely confined to the low domestic TF threat with very little attention given to the foreign TF threat and the potential for misuse of BVIBCs for TF sanctions evasion. A few Fis referred to the vulnerabilities associated with the physical cross-border transportation of cash and donations to NPOs, but none of them elaborated on the TF vulnerabilities associated with BVIBCs.

365. Overall, a minority of investment businesses and some legal practitioners, a few of the larger TCSPs, and all banks have a good understanding of their AML/CFT obligations although there is room for further improvement of their understanding of the beneficial ownership requirements, especially the concept of control over a legal person and arrangement needs further strengthening.

366. The level of understanding of the CDD requirements by other TCSPs and investment businesses interviewed varied significantly, as illustrated below. While TCSPs quite heavily rely on professional business introducers for CDD and record-keeping purposes, a majority of TCSPs did not demonstrate that they apply adequate controls to mitigate ML/TF risks associated with this reliance, as required by R.17. While they verify whether the introducer is subject to CDD and record-keeping requirements, they did not show that they fully satisfy themselves that the introducer effectively implements these requirements in line with Rs.10 and 11. Moreover, the understanding of the beneficial ownership requirements by TCSPs and investment businesses is generally too narrowly focused on the 10 percent ownership threshold in the AMLTFPOC rather than on the natural person who ultimately owns or controls the legal person. In addition, these TCSPs and investment businesses appeared to heavily rely on statements from other domestic and foreign regulated entities setting out what the source of funds is without considering the pertinence of undertaking an independent verification. The FSC disagrees with this finding and indicates that based on a review of past and current reliance practices by TCSPs, it has observed significant improvements over the past few years. While a few of the TCSPs demonstrated recent improvements in the application of adequate controls, the assessment team cannot discount the information obtained from a majority of TCSPs interviewed that points to significant remaining weaknesses in the implementation of the reliance provisions.

367. All other types of Fis and DNFBPs showed a rather basic understanding of their AML/CFT obligations. For instance, they could not clearly define the measurable difference between normal CDD and EDD measures and how this would translate into applying increased controls. This finding is in line with the results of the FIA's thematic inspections, which identified weaknesses across the range of preventive measures, although the authorities indicate that some improvements have been observed following FIA's outreach to the DNFBP sector.

5.2.2. Application of risk mitigating measures

368. While all FIs and DNFBPs interviewed were familiar with the legal obligation to conduct an institutional risk assessment to drive the application of an RBA, the scope and depth of such assessments varied significantly as did the application of corresponding risk mitigating measures. Some of the smaller Fis and a larger number of DNFBPs (except TCSPs and legal practitioners) indicated that they rely on external AML/CFT consultants for the conduct of their institutional risk assessments and the development of AML/CFT controls because of a lack of required expertise and resources inhouse.

369. A minority of investment businesses and some legal practitioners, a few of the larger TCSPs, and all banks have developed an adequate risk classification system that drives their CDD and EDD measures. They also have tools in place to detect atypical behavior and activities, which are then subject to further scrutiny. These FIs and DNFBPs comprehensively explained how they built their institutional risk assessments and were able to offer details on how their own specific mix of business translates in inherent ML/TF risks at the institutional level. They also provided details on measures specifically tailored to mitigating these inherent risks.

370. Banks consistently referred to VI's TCSP sector as a high-risk sector which they often consider presenting an unacceptable ML risk. TCSPs indeed indicated that they limit their transactions through banks operating in the VI who they described as not being very accommodating to their business models. Some TCSPs even reported that they are no longer holding any accounts in the VI because banks had simply terminated existing business relationships or declined to establish new ones. Similarly, some of the banks indicated that they do not establish any new relationships with other types of DNFBPs and VASPs because of DNFBPs' role as gatekeepers or the cash intensive nature of their activities, and the lack of adequate regulation and supervision of VASPs. However, this approach was not fully supported by the results of an RA and does therefore not necessarily correspond to the concept of an RBA.

371. Risk classification of customers across the financial sector (except for banks and a minority of investment businesses—see above) is primarily based on the results of initial checks against databases held by private commercial firms (e.g., World Check, LexisNexis, SafetyNet, etc.), FATF public lists, and Google searches. While such checks can be considered as a logical first step, it was insufficiently demonstrated that they are adequately completed with additional measures looking into specific risk factors arising from the entities' institutional risk assessments. These FIs often classified a relatively large proportion of their customers as presenting low risk but could not always offer convincing underlying factors to illustrate this determination. While investment businesses looked beyond the ML/TF risks of their customers and focused on product and transactional risks as part of their institutional risk assessments, this was done in isolation without sufficient consideration given to how customer risks interact with product and transactional risks and how this interaction translates in the institution's overall inherent risks. This approach results in risk mitigation measures, and AML/CFT measures more generally, being applied in a rather mechanical and rule-based way to comply with legal requirements without adequately taking account of ML/TF risks with a view of effectively mitigating them. In addition, these FIs seem to believe that customer risks are duly mitigated when relying on statements (e.g., certificates of good standing) issued by other domestic or foreign-regulated entities without sufficient consideration being given to the effective implementation of preventive measures by these regulated entities.

372. Similarly, mitigation measures applied by a majority of TCSPs are insufficiently tailored to addressing business-specific ML/TF risks and generally not aligned with the sector's ML risks identified through the 2020 ML SRA and 2022 MLRA. A majority of the TCSPs interviewed classified a relatively large proportion of their customers as low risk with some of the larger TCSPs indicating that up to 75 percent of their customers qualify as low risk. While a few of them specified that this low-risk category also included many institutional investors, others made this classification based on other unexplained factors.

373. As mentioned before, reliance on professional business introducers is a common practice in the TCSP sector, and all businesses reported using the reliance provisions for onboarding their customers and conducting CDD, as permitted by the AMLTFCOP and the FATF Standards. The larger TCSPs indicated working with up to 100 introducers both within the same international group and third parties not affiliated to the group which can involve multiple jurisdictions. These introducers are mainly based in Asia, the Caribbean, the European continent (in particular, Cyprus, Liechtenstein, Monaco, and Switzerland), North America, including Delaware, and South America. Degrees of reliance vary between 28 percent (lowest percentage reported) and 75 percent (highest level reported) of their clientele. A few TCSPs (those with lower reliance levels) mentioned that they had reduced their network of professional business introducers over the past few years because of observed deficiencies in introducers' implementation of preventive measures and/or their AML/CFT regulation and supervision. They indicated to always request CDD documents from their current network of introducers for independent verification and record-keeping to mitigate ML/TF risks associated with such reliance. Others, including the TCSPs with the highest reliance levels, indicated that no independent verification would be needed because they were confident that the introducer has conducted CDD, including identification of beneficial owners, and verified identities and the source of funds, in line with international standards. Some of them also referred to third parties from "FATF compliant jurisdictions" or "white-list countries" as a mitigating factor and interpreted not being included in the FATF's public statements as an indicator of adequate regulation and supervision combined with effective implementation of preventive measures across all supervised entities in those jurisdictions. This interpretation of what constitutes equivalent measures implemented by introducers without appropriate consideration being given to any additional risk mitigation measures that could be justified is of concern.

374. Significant deficiencies were noted in DNFBPs' (other than TCSPs') understanding of risk which impacts negatively on their implementation of risk mitigation measures. Their risk classification is centered around customer-related factors such as country of residence and economic or personal activity without taking adequately account of other factors, such as the type, scope, and frequency of services delivered. Like some of the FIs, DNFBPs conduct (or ask an independent third party to conduct) adverse media screening as the main source for the risk classification of their customers. Knowing a customer personally would also be a determining factor and some of the DNFBPs indicated that they would therefore always classify locals, including domestic PEPs, as low-risk customers. While some legal practitioners and a few of the accountants interviewed showed a better understanding of the requirement to apply risk mitigation measures, implementation of such measures across the DNFBP sector remains nevertheless quasi exclusively rule-based. This finding is in line with the FIA's appreciation of the awareness of risk mitigation measures amongst DNFBPs which is said, with some exceptions, to be rather basic albeit gradually improving. The authorities clarified that the FIA has held outreach sessions on how to undertake institutional risk assessments for all types of DNFBPs under its supervision, and they are confident that this targeted outreach will translate into improved implementation going forward.

5.2.3. Application of CDD and record-keeping requirements

375. No difficulties were noted regarding the retention of documents relating to transactions and information obtained as part of due diligence measures. In addition, a review of AML/CFT manuals of a range of FIs and TCSPs shows that the legal requirements on record-keeping are well explained in view of implementation.

376. Even though improvements in the implementation of CDD measures by FSC supervised entities is a welcome development and should be acknowledged, information collected during onsite interviews points to remaining obstacles to effective implementation of CDD measures, despite the FSC's constructive engagement with these entities (see Chapter 6). One of these obstacles finds its origin in TCSPs' quite heavy reliance on professional business introducers at the time of onboarding a customer and subsequently, for keeping CDD information and records up to date. All TCSPs interviewed indicated that for an overwhelming majority of their customers (more than 90 percent), onboarding is non-face-to-face and often

through professional business introducers (including intra-group and third parties). In many instances, TCSPs would meet the introducer in person to determine the scope of services to be delivered, but they would usually not meet the customer.

377. While reliance is permitted by the FATF Standards, a majority of TCSPs did not demonstrate that ML/TF risks through business introducers are adequately identified, fully understood, mitigated, and monitored, in line with the requirements of R.17. This is largely due to their interpretation of what constitutes effective implementation of preventive measures and adequate AML/CFT regulation and supervision globally (see 5.2.1 and 5.2.2) which negatively affects the effectiveness of implementation of their own CDD and record-keeping measures. Another obstacle lies in an imperfect understanding of the beneficial ownership requirements by TCSPs, especially the concept of control over a legal person and a legal arrangement did not appear to be adequately implemented by most of the entities interviewed. The application of beneficial ownership requirements is often too focused on the 10 percent threshold for determining ownership, rather than on establishing the person(s) who may ultimately own or control the customer. While AML/CFT policies and procedures reviewed include a referral to natural persons exercising control over a legal person, they are most often silent about what exercising control means and how this can be determined. This weakness in implementation is not surprising considering that remaining important deficiencies in VI's beneficial ownership requirements, including the concept of control over a legal person, were only addressed through the August 2022 and March 2023 amendments to the AMLTFCOP.

378. Moreover, except a minority of investment businesses and some legal practitioners, and all banks, FIs, and DNFBPs (other than TCSPs—see above) interviewed did not demonstrate that their CDD process is a dynamic process driven by an adequate consideration of risk. Their implementation of CDD measures is rather static in nature and consists of the collection of a specific dataset and supporting documentation from the customer, including self-declarations on beneficial ownership and PEP status. These entities indicated that the information obtained is then checked against databases held by private commercial firms and FATF public lists and completed with Google searches. While such checks are an evident and welcome first step, they are, without appropriate consideration and weight given to other risk factors, insufficient to determine whether EDD measures are required, or the business relationship or occasional transaction should be declined (see 5.2.2). In addition, when these FIs and DNFBPs receive funds from a customer through a domestic or foreign regulated entity, they would generally not conduct any independent verification of the source of funds considering that the originating FI will have conducted CDD on the ordering customer and verified the source of funds, in line with the FATF requirements. An in-depth understanding of the concept of source of wealth was not uniformly demonstrated, especially by DNFBPs. The FSC provides that it has reviewed current practice by the entities under its supervision and disagrees with the above findings. However, considering deficiencies identified in FCS's supervisory practices (see Chapter 6) and information directly obtained from a representative sample of FIs and DNFBPs, the assessment team cannot discount the information that was communicated during onsite interviews.

379. A minority of investment businesses and some legal practitioners and international banks demonstrated an adequate understanding of their beneficial ownership requirements, even though there is room for improvement in their interpretation of the concept of control. Other FIs and DNFBPs were less articulated and nuanced in explaining the VI's v requirements and referred to the identification of shareholders who hold more than 10 percent of the capital as set out in the register of members. They did not elaborate on the difference between direct and indirect ownership, nor did they cite control through other means. In addition, some of the AML/CFT manuals reviewed refer to a 20/25 percent ownership threshold, which might be an incorrect referral to the 25 percent threshold as set by the BOSSS requirements (see Chapter 7). They further explained that for the identification and verification of the beneficial owner, they would rely, where possible, on statements from other FIs and DNFBPs, regulated both in the VI and abroad. Real estate agents do not consider themselves responsible for the identification and verification of the beneficial owner of a legal person in cases where real estate is acquired in the name of a legal person.

They believe that this is the role of the lawyer or TCSP who set up and represents the corporate vehicle. Their own role in identifying and verifying the customer is usually limited to taking copies of identification documents and proof of residence of any natural persons involved.

380. All FIs and DNFBPs demonstrated a good understanding of identification and verification requirements for trusts and other types of legal arrangements and of the various parties that need to be identified and verified (settlor, trustee, protector, and beneficiaries).

381. Regarding the application of CDD to existing customers, all FIs and DNFBPs indicated that the customer's risk profile determines the frequency of updating the know your customer (KYC) and beneficial ownership information. They referred to the general practice of reviewing KYC and beneficial ownership information in customer files every year for high-risk customers and at least every four years for all other customers, consistent with the legal requirements. For the clientele onboarded through reliance on business introducers, a majority of TCSPs said that they are confident that the relevant professional introducer takes care of this responsibility, and they expect the group member or third party to inform them about any intermediate changes, including in beneficial ownership. However, they would not systematically check whether relevant updates do indeed take place periodically. FIs and DNFBPs indicated they also review customer information based on an event triggered by rule-based and automated ongoing monitoring. However, considering the above-mentioned weaknesses identified in ML/TF risk understanding, identification of beneficial owners, and heavy reliance on statements and supporting information obtained from domestic and foreign regulated entities, doubts exist as to whether inconsistences between actual knowledge of the customer and results of automated monitoring can be accurately identified by all entities. In addition, since some of the TCSPs and investment businesses classify a relatively large proportion of their customers as low risk and relevant updates would therefore only take place once every four years, the adequacy and accuracy of customer identification and beneficial ownership information required to be held by these businesses and to be provided to competent authorities upon request can be questioned.

382. All FIs and DNFBPs confirmed that inability to comply with CDD measures would result in not establishing the business relationship or carrying out an occasional transaction, or in terminating an existing business relationship. They also indicated that they would consider filing an SAR with the FIA. While over the period 2018–2022, 223 SARs were filed because of failure to complete CDD, an overwhelming majority of them were filed by one TCSP who filed in 2020, 194 such SARs (see 5.2.5.).

5.2.4 Application of EDD measures

383. Except for a minority of investment businesses and some legal practitioners, a few of the larger TCSPs, and all banks, FIs, and DNFBPs did not generally demonstrate an adequate understanding of EDD measures arising from specific higher-risk scenarios identified through their institutional risk assessments. This appears to be a direct result of the significant deficiencies in ML/TF risk understanding and the application of adequate risk mitigation measures identified above (see 5.2.1 and 5.2.2). The cited exceptions demonstrated that they apply EDD measures corresponding to the various types of risks identified in relation to individual customers, their geographic location, their use of specific products and/or services, and the associated distribution channels, as well as transaction patterns.

Politically exposed persons

384. In view of the application of EDD measures to PEPs, a minority of investment businesses and some legal practitioners, a few of the larger TCSPs, and all banks screen their (potential) customers at the time of onboarding and subsequently, daily to determine whether the (potential) customer is or has become a PEP. Consistent with national legislation, these relevant businesses do not differentiate their EDD measures between domestic and foreign PEPs and apply EDD measures to family members and close associates of PEPs. They continue to consider the customer as a PEP for a minimum period of 12 months after the customer has ceased to be entrusted with a prominent public function, at which time the risk classification of the customer is updated depending on the outcomes of a customer risk assessment. Legal practitioners

indicated that they apply the rule "once a PEP, always a PEP" and would treat the customer as high risk during the entire business relationship.

385. To determine whether a potential customer is a PEP, other types of FIs and a majority of TCSPs and legal practitioners primarily rely on the customer's self-declaration and their screening against commercial databases at the time of onboarding. In relation to the nature of EDD measures, these relevant businesses predominantly referred to the requirement to obtain senior management approval to establish the relationship and more generally, the requirement to obtain further information, which would extend to the source of funds. However, they could not always clearly define the measurable difference between normal CDD and EDD measures in terms of additional information obtained and increased controls applied even though a review of AML/CFT manuals shows that some of these manuals provide the necessary clarification. Additional information about the PEP would nevertheless include certificates of good standing and information on the source of funds issued by regulated third parties in the VI and abroad. An adequate understanding of the concept of source of wealth was not uniformly demonstrated. Moreover, not all FIs and TCSPs demonstrated that becoming a PEP is a factor that is consistently considered for purposes of ongoing monitoring, which also corresponds to previous FSC's supervisory findings, which, according to the FSC, led to corrective measures and improved compliance. However, onsite interviews revealed that deficiencies persist and customers who become a PEP during the business relationship could still not be subject to any EDD measures for several years if they were classified as low-risk customers at the time of onboarding (see findings set out in 5.2.2). Their PEP status would only be identified at the time of updating CDD information and, in instances of reliance on third parties, only if the third party adequately implements PEP requirements.

386. While DNFBPs (other than TCSPs and legal practitioners) were aware of the requirement to apply EDD to PEPs, their family members and close associates, their implementation of relevant measures varied significantly. DNFBPs rely on self-declarations but not all of them would undertake actions to confirm the truthfulness of such declaration (e.g., by screening collected information against commercial databases). This implies that these DNFBPs could potentially establish a business relationship with a foreign PEP without being aware that they are dealing with a PEP. In addition, as mentioned before, some of the DNFBPs indicated that while they would apply EDD measures to domestic PEPs at the time of onboarding, they would nevertheless classify these customers as low risk and subsequently update their CDD information every four years, in line with legal requirements. These DNFBPs would not always verify the source of funds for domestic PEPs as they are confident that the source of funds is not illicit simply because they know the domestic PEP personally. In case of doubt, they would refuse to establish the business relationship although they clarified that this has not yet happened. Finally, the FIA also identified deficiencies in the implementation of EDD measures by relevant businesses across the DNFBPs under its supervision.

Correspondent banking

387. Banks in the VI do not provide any correspondent banking services and are exclusively operating as respondent banks to banks abroad.

New technologies

388. The FSC verifies compliance with the requirement to conduct a risk assessment prior to the introduction of new technologies as part of its supervisory program for all entities under its supervision, but it has not recently seen any introduction of new technologies specifically related to products and services nor of technologies that provide new delivery mechanisms. The only exception is the VASP sector, which was not yet supervised at the time of the onsite visit (see Chapter 6). This might explain why an adequate understanding of the legal requirement was not uniformly demonstrated, and the matter was not consistently dealt with in the AML/CFT manuals reviewed. Some of the AML/CFT manuals provide clear direction on how to deal with the matter, but others are limited to a citation of the relevant AMLTFCOP provision or do simply not mention anything about the requirement.

389. As a result of information sharing by the FSC and the FIA, all FIs and DNFBPs were familiar with the FATF's lists of jurisdictions subject to a call for action (i.e., blacklist) and of jurisdictions with strategic deficiencies in their AML/CFT regimes (i.e., grey list). They receive an e-mail from the FSC or the FIA when these supervisors have updated their own websites to reflect amendments to the FATF's lists. A minority of investment businesses and some legal practitioners, a few of the larger TCSPs, and international banks also proactively consult the FATF's website following each plenary meeting. FIs dealing with non-residents, other TCSPs and legal practitioners, and accountants would generally include the information from both lists as relevant factors for the risk-classification of their customers and consider it as part of their customer acceptance procedures (see above). In addition, some of these FIs and DNFBPs would use this information as a trigger for initiating ongoing monitoring. EDD measures would be applied accordingly. A limited number of TCSPs mentioned they had started terminating reliance agreements with third parties established in some of the countries mentioned on the FATF's lists while a few others indicated that they would gradually seek to do so. While all FIs and DNFBPs welcomed the receipt of the FSC's and FIA's e-mails containing this information, some of the DNFBPs indicated that they are overwhelmed by the number of e-mails received from the FIA, including on sanctions screening and other topics, and admitted that it was at times challenging to keep abreast of all information received and to implement related EDD requirements.

Rules relating to wire transfers

390. FIs generally have tools in place enabling them to ensure that wire transfers are accompanied by accurate and required information on the originator and the beneficiary. All FIs indicated that they reject incoming transfers with incomplete originator and beneficiary information.

Targeted financial sanctions

391. Implementation of TF-related freezing and prohibition obligations by FIs and DNFBPs does not appear to be effective and timely in all cases. Some of the larger investment businesses and legal practitioners, a few of the larger TCSPs, and banks implement daily filtering measures to identify persons and entities subject to TF-related TFS, including automatic cross-checks against commercial databases. These commercial databases are said to be updated one day after (amendment to) the UN designation, but this is not verified by FIs and DNFBPs themselves. A majority of other FIs and some DNFBPs would conduct sanctions screening against their customer base upon receipt of updated sanctions lists from the FSC and the FIA albeit not necessarily immediately upon receipt. However, most FIs and DNFBPs would usually consult sanctions lists when onboarding a customer or prior to executing occasional transactions to avoid dealing with a designated person or entity. They also indicated that they conduct other periodic cross-checks against TF-related sanctions lists, but the frequency of such actions varies significantly (i.e., between weekly and annually). These findings are supported by the results of a 2021 desk-based sanctions-themed review of 18 TCSPs conducted by the FSC which identified that less than half of these TCSPs undertook sanctions screening daily or upon notification by a competent authority. All FIs and DNFBPs referred to good cooperation with the FSC and the FIA on subjects relating to TFS. This is a result of awareness-raising initiatives on TFS and other types of engagement by both supervisors. For more details on implementation of TF-related freezing obligations, see Chapter 4.

5.2.5. Reporting obligations and tipping off

392. Consistent with the requirements of Rs.20 and 23, the FIA receives SARs from all categories of FIs and DNFBPs as defined by the FATF. The FIA refers to this type of SARs received from FIs and DNFBPs supervised in the VI as "ordinary SARs." As mentioned in the analysis of IO.6 (see Chapter 3) and of Rs.20 and 23 (see the Technical Compliance Annex (TCA)) and in line with national legislation, any person who knows, suspects, or has reasonable grounds to know or suspect that another person is engaged in ML, associated predicate offenses, and TF, based on information or other matter, that came to his/her attention in the course of his/her profession, business, or employment is also required to report suspicions to the FIA.

This broad formulation of the longstanding reporting obligation adequately covers VASPs, even prior to December 1, 2022, when the range of other preventive measures were extended to VASPs. During the period under review (2018 to 2022), the FIA received an important number of SARs from BVIBCs incorporated in the VI but regulated and operating as VASPs (by offering cryptocurrency-related activities to customers) exclusively outside the VI. The authorities confirmed that the only nexus with the VI is the incorporation of the BVIBC and none of the activities or transactions reported did themselves in any way relate to the VI. The FIA refers to these reports as "cryptocurrency SARs" considering that cryptocurrency is the only type of VA in respect of which SARs have been received. These BVIBCs however do not qualify as FIs or DNFBPs in the VI as they are not regulated or supervised in the VI. During the period under review, the FIA did not receive any SARs from VASPs operating in or from the VI even though the reporting obligation already applied to them. Cryptocurrency SARs received from BVIBCs operating outside the VI are not considered for assessing the effective implementation of preventive measures, including the reporting obligation in line with Rs.20 and 23, in the VI. The statistics and analysis below are therefore not fully comparable with the statistics included in the analysis of IO.6 (see Chapter 3, 3.2.2).

Table 5.1. SARs Reported by Type of FI and DNFBP

FI/DNFBP	2018	2019	2020	2021	2022	TOTAL
Banks	77	120	106	200	143	646
Investments Business	0	0	0	1	1	2
Insurance Business	4	4	6	7	10	31
Insolvency Practitioners	1	14	10	7	6	38
Money Services	22	1	1	0	3	27
Financing Business	0	0	0	0	0	0
TCSPs	324	269	656	190	279	1,718
Real Estate Agents	0	0	0	0	0	0
Legal Practitioners	7	14	11	13	13	58
Accountants	2	9	0	0	0	11
Jewelers	0	2	0	0	0	2
Other HVG Dealers	0	0	0	0	0	0
TOTAL	**437**	**433**	**790**	**418**	**455**	**2,533**

393. The level of SARs in the VI is driven by a limited number of FIs and DNFBPs who filed the majority of reports. SARs are almost exclusively submitted by TCSPs (67.8 percent) and banks (25.5 percent), counting together for 93.3 percent of SARs filed (see Table 5.1). While the overall level of reporting by TCSPs can be expected considering the materiality of the sector and the outcomes of both the 2020 and 2022 ML RAs (i.e., the ML risks in the TCSP sector are rated as high), reporting levels within the TSCP sector vary considerably. A large majority of SARs from the TCSP sector (i.e., 77.3 percent of the 1,718 filed SARs filed by the sector) were filed by 10 TCSPs providing services to 71 percent of active registered BVIBCs. Seven of these entities are under specialized supervision by the FSC due to their identified higher risk and systemic importance to the territory. However, a more in-depth analysis shows that 44.8 percent of the 1,718 SARs from the sector were submitted by one single business, who represents only 6.6 percent of the market share. In 2020, that business even accounted for 76.2 percent of all SARs submitted by the sector. The authorities explained that the 2020 SARs were mainly triggered by alerts generated by an upgrade of that entity's automated transaction monitoring system while 38.8 percent of them were filed because of failure to complete CDD. This trend prompted the TCSP to refine the relevant parameters which led to a very important decrease in the number of SARs in the following years, even though this business continues to submit significantly more SARs than any other TCSP (i.e., 67 percent and 36.6 percent of all SARs from TCSPs in 2021 and 2022, respectively, compared to its 6.6 percent market share). The in-depth

analysis also shows that almost 50 percent of TCSPs have never submitted a SAR. While according to the FSC, their market share and their exposure to ML/TF risks are more limited, it is difficult to justify that they never identified any suspicions whatsoever since they became subject to the reporting obligation. SARs from the banking sector were next in terms of number filed with the FIA, which aligns with the systemic importance of the banking sector and the volume of transactions processed. While all banks filed SARs, reporting by the banking sector is mainly concentrated in one international bank with a market share of 23.11 percent which submitted on average 69.7 percent of all SARs filed by the sector. The authorities clarified that this reporting behavior can be attributed to this bank's size, nature, type of clients and product and services offered which makes it more vulnerable for ML.

394. Reporting of suspicions by investment businesses is almost non-existent and entirely inconsistent with the sector's ML risks while the complete absence of reporting by real estate agents is not justifiable compared with the volume of transactions on the real estate market. This reporting behavior seems to be largely due to significant deficiencies in ML/TF risk understanding by these sectors. As mentioned in 5.2.1 above, these FIs and DNFBPs believe that their ML risks are limited simply because assets under their management or funds used for investments, including real estate investments, are transferred through FIs who themselves are subject to AML/CFT obligations, including suspicious transaction reporting, in or outside the VI. In the financial sector, the number of SARs submitted by MSBs has declined in response to outreach conducted by the FIA but also following the devastation of the 2017 hurricanes, which led to a significant decrease in the VI's economic activity and the migrant work force who use MSB services to transfer money to their home country (see 2022 MLRA). While the FIA indicates that this outreach specifically targeted defensive filings, the sector itself indicated that it was surprising to learn that the FIA considered that SARs submitted were of limited use. However, this targeted feedback prompted them to stop reporting similar suspicious behavior and transactions which results in a low number of SARs from the sector. More importantly, there is no reasonable explanation for the absence of reporting by other DNFBPs (except legal practitioners) which has been observed since the end of 2019.

395. A relatively large number of SARs are filed because of adverse media screening, attempts of fraud, and failure to complete CDD rather than spontaneous detection of suspicious activity. This finding is in line with the FIA's assessment that most SARs received were reactive. There is no evidence (e.g., statistics from the FIA or information provided by FIs and DNFBPs) that indicates that the requirement to report attempted transactions is adequately implemented, which is likely to result in little opportunities for freezing, seizing, and, ultimately, confiscating funds and other assets (see Chapter 3, 3.2.2).

396. While the quality of SARs has been gradually improving, they only partially correspond to the main ML threats to the VI. Upon receipt of a SAR, the FIA classifies it either as a "domestic SAR" or as an "international SAR" (see Chapter 2, 2.2.5 and Chapter 3, 3.2.2). The suspicions for filing an international SAR are largely aligned with the foreign ML threats to the VI, even though the absence of SARs related to third-party ML is not entirely consistent with the VI's profile as an international business incorporation and financial center. More importantly, the suspicions identified in domestic SARs generally do not correspond to the main domestic ML threats. For instance, no domestic SARs were filed because of suspicion of corruption and a very low proportion of domestic SARs related to drug and human trafficking while these were identified as the main domestic ML threats. Out of a total of 2,533 SARs received from FIs and DNFBPs in the VI, only 17 were filed in relation to TF. However, this low number can be largely explained by the limited domestic TF risk, although it also partly reflects an incomplete TF risk understanding by FIs and DNFBPs (see 5.2.1).

397. All categories of FIs and DNFBPs generally understand the risks associated with tipping-off. All FIs, TCSPs, accountants, and legal practitioners also demonstrated that they implement adequate practical measures to prevent tipping-off, but other categories of DNFBPs did not show elements of effective implementation.

5.2.6. Internal controls and legal/regulatory requirements impending implementation

398. All FIs and DNFBPs interviewed introduced programs against ML/TF and established relevant internal policies and procedures. However, these did often not yet reflect the 2022 amendments to the AMLTFCOP even though these crucial changes were already more than seven months in force at the time of the onsite visit. A minority of investment businesses and some legal practitioners, a few of the larger TCSPs, and all banks demonstrated that they adequately implement internal controls on a risk-sensitive basis. Risk-based implementation by other FIs and DNFBPs suffers from deficiencies in their understanding of the ML/TF risks and AML/CFT obligations (see 5.2.1 and 5.2.2). The quality and comprehensiveness of their policies and procedures vary within both the financial and DNFBP sectors, as also witnessed by the FSC's and FIA's relevant findings. Examples from some larger TCSPs and legal practitioners are well-written overall but remain often too high level without sufficiently detailed guidance to deal with practical implementation challenges. Such guidance was also missing in the examples reviewed from the banking sector and financing businesses, which otherwise set out in detail all of the preventive measures. The AML/CFT policies of other DNFBPs were less developed, as can be expected considering the size of their business and the limited complexity of their operations. FIs and DNFBPs belonging to an international group coordinate and cooperate with group compliance departments for conducting institutional risk assessments, developing AML/CFT policies and sharing of AML/CFT information in accordance with R.18. These FIs and DNFBPs indicated that information sharing already extended to relevant SAR information even though the limitation in the legal requirements was only addressed in March 2023.

399. All FIs and DNFBPs interviewed indicated that they organize relevant AML/CFT staff training, of which the scope and frequency depends on the size of the entity. Larger entities organize mandatory in-house training, in person and/or online, for all employees and provide more targeted training for front-line staff. In principle, staff are trained at the time of onboarding and subsequently at regular intervals although smaller FIs and DNFBPs admit that the latter is more challenging to achieve. Some of them have recourse to external consultants to deliver the training. Based on compliance reports, the FSC confirms that the majority of FIs and TCSPs provide AML/CFT training while the FIA states that its supervised entities' commitment to staff training is improving.

Overall Conclusions on IO.4

400. Except for the banking sector, strategic deficiencies in ML/TF risk understanding by a wide range of entities within all categories of FIs and DNFBPs hinder the effective application of risk mitigation measures. Important deficiencies were also observed in the implementation of CDD and EDD measures in all sectors, except the banking sector. Reliance on professional business introducers with insufficient application of mitigating controls by TCSPs further affects the adequacy of CDD and EDD measures by the sector. The understanding of the concept of control over a legal person and arrangement was insufficiently demonstrated, including in the TCSP sector, which is of particular concern considering the VI's profile as an international business incorporation and financial center. SAR filing is mainly reactive, only partially in line with ML/TF threats and concentrated within a limited number of entities. While the regime for VASPs is a recent positive step, there was no evidence that, at the time of the onsite visit, preventive measures were being implemented by VASPs operating in the VI.

401. Considering the ML/TF risk profiles and materiality of the TCSP and investment business sectors, and the ML/TF risk profile of the emerging VASP sector, serious weaknesses in/absence of implementation of preventive measures by these sectors have been heavily weighted to determine the VI's level of effectiveness for IO.4.

402. The VI is rated as having a low level of effectiveness for IO.4.

Chapter 6. SUPERVISION

6.1. Key Findings and Recommended Actions

Key Findings

a) Directors and senior officers of (applicant) licensees are within the scope of supervisors' controls to prevent criminals and associates from entering the financial and DNFBP sectors, but the beneficial owners to a limited extent. The concept of beneficial owner applied by the FSC is limited, while relevant sectoral legislation was recently amended to include a sufficiently broad concept of beneficial owner. Market entry controls are not consistently implemented across the sectors. The supervisors could not adequately demonstrate that they are implementing adequate measures to fully establish the criminal background and to verify self-declarations of any type of applicant for fit and proper testing. VASPs are currently, to a very limited extent, systematically identified, registered, and brought under the FSC's supervision. The FIA is in the process of finalizing the registration of DNFBPs following the introduction of the registration requirement in the first half of 2022.

b) The FSC's sectoral ML/TF risk understanding is developing but lacks further substantiation where it concerns an adequate understanding of TCSPs' and investment businesses' vulnerabilities with respect to ownership and control of their clients, including business introduction. Where it seeks to better understand the risks associated with providing certain services—e.g., private trust companies (PTCs)—the FSC should focus on identifying relevant inherent risks and vulnerabilities. The domestic risk exposure of the banking sector is not adequately analyzed and understood. The FIA's understanding of risks is developing but more limited than FSC's with a need to enhance its understanding of domestic ML/TF risks.

c) A supervisory framework is in place for both supervisors. Under the FSC's risk-based supervisory framework, the different returns that are submitted by licensees provide the FSC with a broad range of relevant data supporting the identification and understanding of institutional risks in the TCSP and investment business sectors, but not in the banking sector. Data on vulnerabilities and effective implementation of controls concerning the beneficial ownership of licensees' clients and active companies, and reliance on business introducers is currently not sufficiently nor systematically collected, while these are important factors for the FSC's risk assessment given the characteristics of VI service providers. Therefore, its Risk Assessment Model (RAM), while well-developed from a broader risk perspective, is limited in providing an adequately supported and weighted ML/TF risk rating. Furthermore, the RAM is not consistently aligned with data collected, and its over-all risk rating includes a broad range of prudential risks, with limited weight attributed to ML/TF risks. An isolated use of the AML/CFT & Financial Crime segment of the RAM does not adequately reflect all relevant (A)ML/(C)FT risk factors. The FIA's institutional risk assessments are developing but are not systematically and consistently conducted and lead to a basic understanding of institutional ML/TF risks.

d) The FSC could demonstrate effective risk-based supervision to a limited extent. Engagement with the TCSP sector as a whole is prioritized as a high-risk sector. However, prioritizing and selecting individual entities for onsite engagements commensurate with their risk profiles was not effectively demonstrated. Risk-based supervision by the FIA is basic, and its supervisory actions not demonstrated to be effectively risk-based.

e) The number of inspections at TCSPs is considered very low, extremely low for the investment businesses, and low for the banking sector. Onsite inspections in the investment business sector are somewhat more focused at higher-risk licensees when compared to other sectors. Although all banks are considered high or extreme high risk under the RAM since 2019, this has not led to any on-site supervisory engagement.

f) While the onsite inspections conducted by the FSC seem to be thorough in some aspects, these do not adequately consider the ML/TF risk profile of the licensees. The supervisory coverage of inspections and desk-based reviews focuses on a broad set of internal controls and measures, but adequate coverage of (residual) risks from ownership and control structures of clients and the frequent reliance on business introducers is not sufficiently demonstrated. Offsite engagements are used to collect data for the FSC's risk identification purposes and to provide targeted feedback to licensees for risk mitigation purposes, where this concerns review of compliance manuals.

g) The FSC effectively uses remedial action plans (RAPs) to ensure compliance following its inspections at TCSPs, but to a lesser extent regarding the investment business. Enforcement action is used to a modest extent but used more often. Penalties are increasing, but cannot be considered proportionate, and dissuasive in most cases. The FIA increasingly applies remedial action including in response to identified deficiencies in AML/CFT controls, but a small range of tools is used to a limited extent, and no monetary penalties have been imposed on the DNFBP sector for non-compliance.

h) The FSC's supervisory actions have had some positive effect on the sectors' compliance with the AML/CFT requirements, and the FIA demonstrated that its actions influence DNFBPs seeking to register and apply for approval for their directors and senior officers. However, such effect on compliance by DNFBPs is only demonstrated to a limited extent.

i) General guidance is provided by the supervisors on compliance with AML/CFT obligations by the different sectors and the outcomes of the SRAs (2020), but issued guidance is not targeted at the VI's higher risk sectors, their specific product and service offerings and related vulnerabilities in an international context.

Recommended Actions

a) The FSC should subject the complete relevant range of beneficial owners of licensees—in line with amended regulatory legislation—to propriety tests and should therefore adopt more robust and comprehensive measures including through the use of updated application forms, self-declarations and targeted procedures and guidance. The FSC and the FIA should implement measures to adequately identify and verify potential foreign criminal background of directors, senior officers, and beneficial owners at licensing/registration stage and on an ongoing basis.

b) The FSC should set up and implement an adequate mechanism to proactively identify unregistered VASPs and ensure and enforce registration requirements and subsequent supervision.

c) The FSC should develop and strengthen its understanding of ML/TF risks by ensuring that it has an adequate understanding of TCSP's vulnerabilities from beneficial ownership and introduced business reliance. The FSC should therefore expand upon and include in its returns relevant data points—including inherent vulnerabilities beyond the currently limitedly included factors—when collecting information for risk identification purposes. The RAM should adequately reflect and weight those factors calibrating residual ML/TF risk.

d) The FSC's risk-based supervisory framework should allow for an institutional ML/TF risk categorization considering an adequate range of ML/TF-related risk factors—inherent ML/TF vulnerabilities and AML/CFT controls related—allowing for the prioritization of supervisory engagements based on an adequate residual ML/TF risk understanding of its licensees. The FIA should implement a mechanism to conduct institutional risk assessments systematically and periodically, while including an adequately broad set of data points, allowing it to apply risk-sensitive supervisory programs and intervention strategies. Additional resources should be considered supporting its risk-based supervision.

e) Supervisors should increase the use of, better prioritize and scope their onsite inspections on the basis of sectoral and institutional ML/TF risks, and periodically develop and implement explicit sector-wide AML/CFT-targeted supervisory plans. In the context of the on-site inspections, supervisors should focus more on the effectiveness of controls implementing the obligations to establish and adequately understand the ownership and control structure of clients and active companies, mitigating the risks of TCSPs' reliance on business introducers, and obtaining and holding accurate and up-to-date information on beneficial owners, while considering the risk context of the licensee.

f) The full set of remedial actions including effective, dissuasive, and proportionate monetary sanctions should be applied by the supervisors in case of AML/CFT breaches, where applicable. The range of administrative sanctions available to the FIA should be extended.

g) More targeted guidance should be issued to assist higher risk sectors in identifying and understanding their ML/TF risks.

403. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are Rs.14, 15, 26–28, 34, 35 and elements of Rs.1 and 40.

6.2. Immediate Outcome 3 (Supervision)

404. As detailed in Chapter 1, when considering the effectiveness of the VI's risk-based AML/CFT supervision system, the assessment team assigned the highest importance to TCSPs (company management business, trust business, and other TCSPs), followed by investment business (IB), and VASPs given their risk profile. Banks, legal professionals, accountants, and real estate agents were considered to be of a medium level of importance. Less importance was given to MSB, financing, insurance, and HVGD.

405. Some TCSP activities, such as acting as a partner of a partnership, or similar position in relation to other legal persons; provision of business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or legal arrangement, and arranging for another person to act as a trustee of an express trust, were, until the onsite, not covered under sectoral legislation for market entry control purposes (ex., Company Management Act (CMA) or Bank and Trust Companies Act (BTCA)), but were subject to AML/CFT obligations. Authorities note this exemption is not based on risk-based considerations but was a technical omission. Performing the equivalent function for another form of legal arrangement is not covered by the amendments that came into force during the onsite visit and this activity is still exempted. Since TCSPs are not considered DNFBP but FI under the VI's regulatory and supervisory system, the term DNFBP will not include TCSP activities.

6.2.1. Licensing, registration and controls preventing criminals and associates from entering the market

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406. As part of its market entry controls in all sectors, the FSC has measures in place to identify and assess the beneficial owners of an applicant for a license to some extent. Directors and senior officers of an applicant are assessed for fitness and propriety. Where the FSC relies on self-declaration by the applicant and any of its senior officers of possible conviction or prosecution, the beneficial owner of a person holding a significant or controlling interest in an applicant for a license is not adequately included under such self-declaration. Only with respect to the approved investment managers is the holder of a significant interest included. When applying for a license as a financial services business provider, information on the ownership or group structure must be submitted and the self-declaration of possible conviction or prosecution is required to be appended for anyone not yet approved by the FSC. Other means of control, other than through voting rights exercisable directly or indirectly, are not to be identified under applied forms. Only regarding a trust owning the applicant, the beneficiaries of the trust need to be named just as any other party who controls and/or exercises significant influence over the trust. If any of the listed shareholders of the applicant are corporate shareholders, the beneficial owners of the shares need to be provided, but the concept of beneficial owner is left open for interpretation. Limited concepts of "controller" and "controlling interest" were applicable under the sectoral legislation considering market entry controls until the beginning of 2023 (banking and trust companies sectors) and the onsite visit by the assessment team in March 2023 (other sectors).[39] The application form nor relevant guidance[40] provide any clarity on the revised concept of beneficial owner either. Interviews with authorities lead the assessors to conclude that the understanding is only limited to the 10 percent ownership threshold. The FSC could not adequately demonstrate that the person holding or being the beneficial owner of a significant or controlling interest in any sector is adequately tested by the FSC for propriety. Interviews with the private sector confirmed the absence of such practice.

407. The FSC's ongoing supervisory framework seeks to prevent criminals and their associates from holding positions as director or senior officer in licensees on a continuing basis. However, it only monitors changes in ownership without adequate test on fitness and propriety on the complete range of beneficial owners as required under the standards. The fit and proper assessments conducted at the license application stage are also undertaken as part of ongoing supervision. Licensees accordingly must seek the FSC's prior approval for the appointment of additional directors, senior officers, and COs as well as of changes in ownership. As with licensing applications, an application must be submitted on behalf of a beneficial owner (under limitations as expressed above), any proposed director, senior officer, and CO. Supporting documentation must include a self-declaration on criminal history and a relevant certificate evidence criminal record ("police clearance certificate") where applicable (see below). The FSC's ongoing assessment is identical to the assessment for an application for licensing. Notwithstanding the FSC's enforcement of identified infringements of the notification requirement, it was not demonstrated that a change of ownership is only approved following an adequate assessment of the propriety of such person. In addition, the FSC can only report one refusal in all sectors in the last five years.

[39] See criteria 26.3 and 28.4 sub b. Limited concepts of "controller" and "controlling interest" were applicable until the introduction of a sufficiently broad definition in the sectoral legislation which were published and entered into force during the onsite visit of the assessment team, and—with respect to the banking and trust companies' sectors—three months before this onsite visit to the VI.

[40] Such as the Guidance on Application for Registration of a VASP (February 1, 2023) and the Guidelines for the Approved Persons Regime (December 2013).

408. With respect to the assessment of directors, senior officers, and beneficial owners (under limitations as mentioned above), the FSC did to a limited extent demonstrate that it applies effective mechanisms to validate information on (absence of) criminal history by applicants. Every application must, to the extent possible, be accompanied by a police report attesting to a proposed senior officer's criminal record (where such exists) or clean record (where no crime is attributed).[41] In addition, the FSC notes that a police record must be obtained from every jurisdiction to which a proposed senior officer's criminal record (where such exists) relates. However, when asked, the private sector participants, a large majority, could not refer to the guiding principles in this respect, and most responded by indicating the applied criterion as understood is to only provide a police record from the jurisdiction of residence. In addition to seeking to clarify any information from the applicant, the FSC assesses these persons by conducting open searches on the internet, using third-party databases, and through its intelligence mechanisms, such as internal reports, and its MoU with the FIA. The FSC's assessment also involves enquiring into entities/groups with which the individual may be affiliated. In instances where a proposed beneficial owner (under limitations discussed above), director, senior officer, or CO is an employee, director, or affiliate of an entity or group regulated in another jurisdiction, the FSC notes that it utilizes international cooperation mechanisms such as "regulator to regulator" requests, and MoUs to ascertain whether these persons are or have been subject to disciplinary actions or criminal investigation.

409. Over the course of the last five years, the FSC reported 146 international cooperation requests with 123 responses received, of which 104 related to propriety. Of those, 53 responses related to the TCSP sector and 38 to the IB sector relating to both applicant and post-applicant stage and concerning directors, senior officers, and beneficial owners (under limitations as mentioned above). Additionally, the FSC indicated that the majority of beneficial owners are connected or operate in jurisdictions such as Hong Kong, Singapore, United States, United Kingdom, Cyprus, Cayman Islands, and Channel Islands, and that it relies on the fact that beneficial owners may be regulated entities in those jurisdictions and therefore subject to regulation and supervision. The FSC would verify this through checks on the relevant regulators' websites as well. This is an insufficient instrument to replace the FSC's own responsibility, while this further indicates a lack of appreciation of the concept of beneficial ownership. The fact that withdrawals of applications (86 in all sectors since 2018) have never been due to propriety-related issues but were fitness related; and considering the extremely low number of refusals (in total 3 refusals; 2 insurance, and 1 financing sector, all in 2018) out of 1,115 applications in all sectors (de facto zero) for appointment of directors, senior officers, and COs since 2018 make it more challenging to consider FSC's mechanism to be effective.

410. The FSC states it applies automated third-party tools to identify PEP status when testing relevant persons—limited to the limited concept of beneficial owners as mentioned above—as well as screening for TFS purposes. No hits with sanctions lists were reported and over a period of 5 years, 17 PEPs were identified—9 directors, 2 senior officers, and 2 beneficial owners.

Table 6.1. Number of Fit and Proper Tests Undertaken by the FSC on Beneficial Owners of Licensees

Year	Sector	No. of Entities Seeking Change, Post-Licensing	Total No. of UBO Subject to Fit and Proper Assessment Post-Licensing	No .of Applications for Licensing	Total No. of UBOs Subject to Fit and Proper Assessment for New Licensees
2018	Investment Business	15	38	6	11
	TCSPs	32	35	5	11
	Banks	0	0	0	0
	Totals	**47**	**73**	**11**	**22**

[41] According to the Approved Person Regime Guidelines (2013)

2019	Investment Business	23	42	7	10
	TCSPs	19	20	121	239
	Banks	0	0	0	0
	Totals	**42**	**62**	**128**	**249**
2020	Investment Business	9	27	3	25
	TCSPs	28	40	10	9
	Banks	2	4	2	6
	Totals	**39**	**71**	**15**	**40**
2021	Investment Business	9	20	5	14
	TCSPs	29	28	10	42
	Banks	0	0	0	0
	Totals	**38**	**48**	**15**	**56**
2022	Investment Business	12	36	11	28
	TCSPs	31	53	10	14
	Banks	0	0	0	0
	Totals	**43**	**89**	**21**	**42**

411. Identification of unauthorized financial services businesses is undertaken with a principal focus on reputational damage due to persons and entities purporting to act as FSC licensed entities or BVIBCs for fraudulent purposes. From 2018 to 2022, the FSC reported 12 cases of persons or entities undertaking financial services business without an appropriate license to do so, resulting in issuing 1 strongly worded letter, 2 warning letters, and 7 fines totalling US$100,000 (average of US$14,286 per entity). In the period under review, the FSC also issued 72 public statements against persons that were carrying on or intending to carry on authorized financial services business, or a person holding himself/herself out as being a licensee, without holding a license. Most of the entities purported to be VI companies and/or they were registered and/or licensed in the VI (mostly investment business), representing 83 percent of the cases.

412. The FSC is currently in the process of developing its supervision of VASPs, preparing the operationalization of supervision by July 31, 2023. However, limited measures are taken to ensure that unregulated VA-related services are actively identified by the FSC and facilitate proper registration and supervision. While these businesses are subject to the requirements of the AMLR and the AMLTFCOP as of December 1, 2022, and the VASPA that came into force as of February 1, 2023, a transition period is applied until July 31, 2023 to allow those VASPs that were carrying out the relevant services at the date the Act came into force to apply for FSC registration before they will be considered conducting unauthorized business and may be subject to enforcement measures. Prior to the VASPA coming into force, the FSC took steps to collect statistical information on VASPs operating in or from within the VI by conducting a survey addressing all registered agents to determine the potential size of the VASP sector including the types of VAs, VASPs, and related activities. The survey results were part of the basis for the risk assessment conducted on VASPs in the 2022 MLRA, and the FSC learned about 195 entities that may have been carrying out VASP-related services without identifying the individual service providers undertaking the activities as captured by the VASPA. Following disseminated information from the FIA, it was indicated that 13 entities were entities which had filed crypto-related SARs and therefore should be considered VASPs. Those entities are monitored by the FSC to ensure they register before the transition period expires. Furthermore, the FSC reported it responded to some complaint reports and enquiries it received, which contained information on potential unauthorized VASPs. In addition, one cryptocurrency exchange is licensed under the Financial Services (Regulatory Sandbox) Regulations 2020—to operate as an investment exchange for the buying and selling of derivatives related to VA. This will be converted into a VASP license once an application for registration is approved. Except for the latter entity, VASPs are allowed to carry on their activities without any form of supervision or monitoring until July 31, 2023.

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413. Following the introduction of the registration requirement on DNFBPs—as of February 25, 2022 with a deadline by May 31, 2022—the FIA is in the process of registering DNFBPs. Through the introduction of the registration requirement, the FIA seeks to prevent criminals and associates from holding, managing, or being the beneficial owner of a DNFBP. In preparation for the implementation of the registration requirements, the FIA initiated a program of public outreach to inform the sector. At the time of the onsite, 100 applications were received from both DNFBPs active before the introduction of the registration requirement and new applicant DNFBPs with a total of 87 DNFBPs being registered (see Table 6.2). Of the 100 received, 4 have since been withdrawn. The assessment team noted the limited resources of FIA to ensure effective and speedy processing of the applications including assessments for fitness and propriety. The SEU of the FIA consists of one deputy director, one Senior Compliance Examiner, four examiners, and one compliance assistant responsible for all AML/CFT regulatory and supervisory functions, including market entry.

Table 6.2. DNFBP registrations, as of March 27, 2023

	Legal Practitioners[42]	Accountants	Real Estate Agents	Yacht Brokers	Vehicle Dealers	Jewelers & DPMS	Other HVGDs	Total
Applications Received	41	17	19	7	7	7	2	100
Applications Approved	36	16	16	6	7	5	1	87
Application withdrawn/entity no longer operating	1	0	2	0	0	1	0	4
Pending approval	4	1	1	1	0	1	1	9
Fit and Proper Tests Completed	107	64	39	17	27	13	1	268

414. The FIA's fit and proper assessments include directors, senior officers, and persons holding a significant or controlling interest, including beneficial owners as required under the standards. As part of the registration process, all DNFBPs must declare all persons within their organization who would fall under any one of the four categories: being director, senior officer, person holding significant interest, and person holding controlling interest. The FIA's Guidance Notes on Fit and Proper Test (February 25, 2022)[43] apply a sufficiently broad concept of beneficial ownership, as caught under the definition of holders of a significant and controlling interest. To assess applicant's fitness and propriety a self-declaration by all four categories is required,[44] and a police certificate in respect of a criminal history record or the absence thereof must be submitted "from every jurisdiction to which the interest of a proposed director, senior officer, or persons holding significant or controlling interests relate." In addition, the FIA states that it undertakes its own screening of all individuals declared by using an online screening tool. Within the FIA, the SEU also has an information-sharing agreement in place with the AIU, which allows it to ask the AIU to confirm whether any adverse information is held on individuals, which may render them not fit and proper.

415. Where the FIA relies on a self-declaration by applicants it was not demonstrated that police information was requested yet from foreign authorities to conduct a verification of (absence of) criminal records. A verification would only be possible following very recent amendments to the legal framework (March 2023) allowing the FIA to engage in such international cooperation. Where an applicant is found

[42] This includes lawyers, notaries, and other legal professionals.

[43] See paragraphs 2.5 and 2.6.

[44] See FIA Form A.1.a, section 2.

not to be fit and proper, the FIA has the power to issue a notice declaring that they are not fit and proper and require the DNFBP to remove them from their organization. A notice to remove has not yet been issued to any person/organization, and the FIA has found no reason to issue one.

416. The FIA seeks to identify PEP status and/or TFS designation of applicants. The FIA reports applying screening practices using automated third-party screening tools that would allow the identification of a PEP and/or TFS designation. Such a hit would typically lead to seeking senior-level review, but no written procedure is in place.

417. The FIA works with the Department of Trade to monitor compliance with the trade licensing requirements to identify those not registered with FIA as well as undertaking its own monitoring. The Department of Trade also informs any DNFBP that is seeking to obtain a trade license, that it needs to register at the FIA. Since the launch of the DNFBP registration in February 2022, and as of the date of the onsite, the FIA has become aware of 11 potentially unregistered DNFBPs—4 from notices from the Department of Trade, 2 which were previously supervised but failed to register, and 5 from public awareness. Once the FIA becomes aware of a potentially unregistered DNFBP, it reaches out to the DNFBP formally asking them to contact the FIA as a matter of urgency and to rectify their registration.

6.2.2. Supervisors' understanding and identification of ML/TF risks

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418. The FSC demonstrates a limited level of understanding of ML/TF risks in the sectors it regulates. Its ML/TF risk understanding of the TCSP, and investment business sectors is developing but lacks an adequate substantiation based on a sufficient understanding of its licensees' risk exposure when it comes to ownership and control of their clients and active companies and regarding the introduced business practices. The 2022 MLRA—as finalized and shared by the authorities during the onsite visit (see Chapter 1)—is based, to a greater extent, on an understanding of the inherent weaknesses of the service providers than was the case with the 2020 FSC SRA. The high threat level of foreign proceeds of crime being laundered through BVIBCs, and the inherent vulnerabilities of the TCSP and investment business sectors is caught under the assessment. However, during the interviews, the FSC's risk understanding was demonstrated to be somewhat narrower. There seems to be an insufficient appreciation of the nexus between the illicit activities taking place abroad and the risk of VI-established legal persons and arrangements in contributing to the layering and integration of proceeds of crime by their foreign beneficial owners (e.g., through complex corporate structures). There does not appear to be a full appreciation of the risk that licensees effectively may contribute to ML/TF on a global scale. The Commission's understanding of TF risk is lagging behind its ML risk understanding. While the VI identified in the 2020 TF RA and 2022 PF RA its exposure to foreign TF/PF threats through the possible misuse of corporate vehicles or transactions, including those involving VASPs or VA products, the FSC has demonstrated a limited understanding of the TF vulnerabilities of the VI such as the lack of adequate regulation and supervision of VASPs (see above).

419. The FSC has sought to better understand the risks related to the provision of certain services by TCSPs and investment businesses. For instance, as a follow-up to the 2020 FSC SRA, the FSC conducted a thematic review on PTCs. This was targeting the level of compliance by relevant Class I licensees in 2022, which are the only type of TCSPs licensed to provide services to PTCs. In addition, the FSC sought to get a better understanding of the size of the PTC sector in terms of the number of trusts for which they act, and the services provided (i.e., unremunerated or related services). The findings were factored into the supervision risk framework through updating the risk assessment of the relevant Class I TCSPs.

420. The domestic ML/TF risk exposure of the banking sector is not adequately reflected in the FSC's analyses and understanding of risk. The banking sector is considered medium/low risk following the 2022 MLRA, but it remains unclear to what extent the FSC identifies and understands the exposure of the

banking sector and the whole financial sector to identified domestic ML threats such as corruption, "breach of trust," and drug trafficking. The main arguments used all seem to refer to materiality of the sector, without an adequate reflection on risks.

421. The FSC has set up a risk-based supervisory framework, the "Risk-based Approach to Supervision Framework"[45] (RAF or "the Framework"), setting out the processes, methodology, and parameters for the FSC's supervision. The RAF seeks to target risk in the broadest sense, as the risk of non-compliance with any regulation, including the AML/CFT obligations. Supporting the identification, analysis, and understanding of institutional ML/TF risks, the FSC collects a wide range of data on licensees' inherent vulnerabilities and implemented controls on an ongoing basis through the (sectoral) annual returns used in the TCSP and investment business sectors combined with the (cross-sectoral) AML/CFT returns. Such data include product and services related data (e.g., ratio offered per risk category); and delivery channels (e.g., ratio business relationships established face-to-face, and reliance on third parties for introduction [Y/N]). According to the FSC's framework, information is collected, beyond the returns, from various sources to create the profile of the licensee including (i) a licensee's business plan, (ii) CO reports, (iii) operational manuals, (iv) due diligence checks, (v) compliance inspection reports, (vi) compliance history, and (vii) enforcement data, where available.

422. However, the data collected does not provide the FSC with sufficient information for an adequate risk profiling of a TCSP where information on the beneficial owner(s) of clients and active companies and on relevant controls is collected to a limited extent. Information on the beneficial ownership is limited to one data point in the sectoral annual return for the TCSPs on the originating jurisdiction of beneficial owners of a company or the settlors of a trust, broken down per end-used clients and introduced clients. The investment business returns do not contain such data point. A broader range of information regarding reliance on business introducers is included in the cross-sectoral AML/CFT returns, both aimed at inherent risk identification—e.g., data on the total number of third-party agreements, and on the percentage of such agreements being group related and the percentage of licensee's business that has been introduced—as well as concerning controls in place (e.g., program in place for regular testing of sourced AML/CFT documentation). Where the collection of such essential data is not adequately captured under the returns, the FSC depends on other sources such as findings from onsite and offsite inspections. However, those are very limited in number and do not systematically provide the FSC with required information on the supervised population, while attention to such sectoral vulnerabilities is limited (see section 6.2.3).

423. The range of information collected from the banking institutions through the quarterly returns focus primarily on prudential data and cover ML/TF inherent vulnerabilities to a very limited extent. For example, no data points on the (i) background and activities of clients (except for PEP status), (ii) higher risk products/services, (iii) traceability of payments accepted, and (iv) the geographical exposure of clients (e.g., nationality and/or residency), nor their beneficial owner(s) are included. The cross-sectoral AML/CFT returns do not adequately cover such items either.

424. Under the RAF, the information is collected and brought together in the risk matrix or RAM for the purpose of calibrating the residual risks of every entity in each sector. Such continuous collection of relevant data ensures making the risk matrix dynamic instead of a static reflection of risk. However, the tool only provides for an adequate institutional ML/TF risk profile to a limited extent. The risk matrix collects and weights a range of data points concerning and combined per different segment, such as the AML/CFT and Financial Crime segment. This segment, in turn, consists of different sub-categories reflecting some inherent vulnerabilities ("AML Risk profile") on geographic exposure, customer exposure, and distribution channels. This set up is not consistently applied within the Framework, where it explicitly considers that

[45] January 2017, amended August 2022.

the AML/CFT & Financial Crime segment should only consider AML/CFT controls in place, while the Business Model segment should consider the inherent vulnerabilities.[46]

425. Overall, while the returns provide the FSC with a wide range of data on TCSPs, as the highest risk sector, the risk matrix is not properly aligned with the data collected including where it concerns TCSPs' products and services-related vulnerabilities. It remains unclear to what extent the FSC includes such data in its calibration of institutional risk using the RAM as it does not detail the different trust and company formation and management services and activities an entity may be licensed to undertake, or even the size of such service or activity relative to the overall provision of services, as gathered through the returns.

426. On the other hand, while this is consistent with the identified limitations regarding the collection of relevant information through the returns, the assessment of AML/CFT controls of licensees under the RAM does not give adequate consideration to the specific sectoral vulnerabilities of legal persons and arrangements being misused in (international) schemes. From a risk-based supervisory perspective, it is essential to identify and understand licensee's implemented controls that ensure it adequately establishes the ownership and control structure of its clients and actively collects accurate and up-to-date beneficial ownership information including in situations of reliance on business introducers. However, the relevant factors applied in the risk matrix are relatively broad and are not sufficiently targeted to provide for an adequate identification of effective mitigants in place beyond the effective verification of individuals. Regarding the analysis and understanding of reliance on professional business introducers, the RAM contains datapoints on controls in place, such as the adequacy of the written agreement, and testing of introduced relationships. However, it does not reflect on the effective implementation of an adequate range of controls under such agreements, nor does it reflect licensee's ultimate responsibility for the full range of CDD measures as applicable. Relevant inherent vulnerabilities are limited to the percentage of licensee's business introduced by third parties.

427. In addition, since the RAM's overall risk rating includes a broad range of risks beyond ML/TF risks, and the limited attribution of weight to the ML/TF risk segment, the FSC's institutional understanding is further limited. The risk matrix contains different segments including AML/CFT & Financial Crime, each with its calculated score and an overall risk score. The weight of the AML/CFT & Financial Crime segment is limited to 35 percent of the overall risk. In addition, an impact assessment is applied whereby several criteria are considered, such as size, complexity, and impact on jurisdictional reputation. This leads to a composite rating per licensee including the overall risk rating and the impact rating using the heatmap (see Figure 6.1). The use of this heatmap results in the so-called "bucket prioritization," allowing the FSC to set up a supervisory plan at an entity level. An isolated use of the AML/CFT & Financial Crime segment score for AML/CFT risk-based prioritization does not adequately include considerations and weighting of relevant inherent risk factors, such as licensee characteristics. Where considered under the model, ML/TF inherent risk factors are included under other different segments as well and so are the risk factors related to the relevant internal controls.

428. The outcomes of the bucket placement (see Figure 6.1) further confirm assessors' doubts as to whether the RAM as used by the FSC adequately establishes institutional ML/TF risks while sufficiently reflecting sectoral vulnerabilities. The fact that the bucket prioritization under this model results in placing 100 percent of the entities from the banking sector[47] (a medium-low sector) in buckets 4 (extreme risk), and 3 (high risk) together, as compared to 3.5 percent of the TCSPs (a high-risk sector), as average over the

[46] See sections 5.10 and 5.11 of the RAF.

[47] Average was calculated over the years 2019–2023 since it appears this model was not applied to the banking sector in 2018, and/or relevant data on the bucket placement of the banking sector could not be provided for this year.

years 2018 to 2023 (see Table 6.3), provides an indication that this model is not adequately supporting ML/TF risk understanding by the FSC.

Figure 6.1. Heatmap Used to Composite Rating and Bucket Placement

Risk/Probability of distress / *Impact*	Critical	Extreme	High	Moderate	Low
High	Bucket 5	Bucket 4	Bucket 4	Bucket 3	Bucket 3
Medium	Bucket 4	Bucket 4	Bucket 3	Bucket 2	Bucket 2
Low	Bucket 3	Bucket 3	Bucket 2	Bucket 1	Bucket 1

429. This has led to the following risk distribution over the sectors since 2018 (table shortened to include only highest risk sectors).

Table 6.3. Risk Distribution 2018–2022[48]

Sector	Bucket 1 (Low)	Bucket 2 (Moderate)	Bucket 3 (High)	Bucket 4 (Extreme)	Bucket 5 (Critical)
2018					
TCSPs Totals	79	76	15	1	0
Investment Business Totals	279	186	42	12	0
Banking Totals	0	0	3	4	0
2019					
TCSPs Totals	154	91	13	1	0
Investment Business Totals	260	239	6	2	0
Banking Totals	0	0	3	4	0
2020					
TCSPs Totals	153	132	4	1	0
Investment Business Totals	337	129	9	3	0
Banking Totals	0	0	3	4	0
2021					
TCSPs Totals	154	124	4	0	0
Investment Business Totals	354	94	6	3	0
Banking Totals	0	0	3	4	0
2022[49]					
TCSPs Totals	163	118	6	0	0
Investment Business Totals	218	169	9	3	0
Banking Totals	0	0	3	4	0

[48] Up to June 2022.

[49] The legislation allows for the structure of investment business licensees to hold multiple categories of licenses. As a result, the overall total number of risk assessments and bucket placement will be greater than that of the number of licensees within any given year.

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430. The FIA demonstrates to a limited extent that it adequately identifies and maintains an understanding of ML/TF risks in and between the sectors it supervises for AML/CFT purposes. The FIA's approach to risk classification is based on the outcomes of the SRA 2020 (ML) showing that all DNFBP sectors were assigned the same risk level (medium/high) due to a limited availability, collection, and analysis of the data obtained during the period 2015–2019. The 2022 MLRA categorizes the legal professions sector as medium/high risk while all other sectors are considered medium/low risk. The FIA attributes the rating for the legal professions to a large extent to the size of the sector and the potential vulnerability of sector's role as gatekeepers. However, this is merely based on concerns regarding potential reputational risks—considering the limited role in international "transactional work"[50]—but does not adequately consider other key factors such as the legal professions' potential involvement in providing legal advice to VI-established legal persons and arrangements. The FIA does not consider the identified domestic threats of illicit trafficking in drugs and related illegal movement of cash and the potential role of real estate agents and legal professionals in developing an understanding of risks.

431. The FIA could not adequately demonstrate it systematically and consistently conducts risk assessments of individual DNFBPs which leads to a limited understanding of the ML/TF risks of entities in this sector. The FIA applies a risk matrix to understand the risk presented by individual DNFBPs. However, this matrix is considered to be very basic since it (i) is limited in its set up and (ii) does not reflect the calibration of risk using periodically collected sets of data on inherent vulnerabilities and implemented controls. The FIA uses a risk assessment questionnaire to gather relevant information from DNFBPs on some inherent vulnerabilities, controls in place (e.g., CO/ML Reporting Officer (MLRO), monitoring system on PEPs, and record-keeping procedures in place), and on the DNFBP's understanding of sectoral threats and vulnerabilities. There is no indication that such questionnaires are applied systematically, while only a few DNFBPs interviewed referred to such questionnaires when asked about the type of returns they are to submit. Regarding the limited set-up of the risk matrix, the assessment team noted the inherent risk factors included in this model being limited to four risk drivers: (i) the level of transaction activity (low, moderate, or significant); (ii) the business undertaking cash transactions (yes, no, or some); (iii) the level of non-face-to-face business (very little, some, or very high), and (iv) the volume of transactions conducted with PEPs, high-risk clients, or in high-risk jurisdictions (no, some or high).

432. The institutional risk assessments conducted do not adequately assess entities' control systems and controls. The assessments of a legal practitioner, an accountant, and a real estate agent that were shared with the assessment team, all lack a sufficient level of detail. They do not properly include adequate quantitative and qualitative elements that enable the development of institutional (entity) risk profiles. For example, CDD measures are considered under one broad "risk driver" allowing only for very broad rating arguments. This broad approach does not allow the FIA to adequately consider and assess deficiencies or inadequacies per type of CDD measure (e.g., whether measures used to verify the client's identity or the identity of its beneficial owner are effectively implemented), nor does it allow the FIA to include considerations concerning AML/CFT controls being used s but not being effectively implemented. Another example is the risk driver considering the AML/CFT policies and procedures of the entity. This provides three levels of rating: existence of comprehensive, some, or no AML/CFT policies, without any further self-assessment of the elements of such policies—e.g., based on, and updated following periodically conducted entity risk assessments, or a reflection of the scope of such policies being broad enough.

[50] See 2022 MLRA section 13.14–13.18.

433. In addition to the limited number of institutional risk assessments conducted (see Table 6.4) and the questionnaires on which those assessments are based, the FIA does not systematically rely on other sources of information for risk identification and understanding beyond the FIA examiners' experience and knowledge of the DNFBPs. This further limits the development of adequate risk profiles.

Table 6.4. DNFBP Risk Assessments Undertaken (2020–2023)[51]

	2020	2021	2022	2023 (as at March30)
DNFBPs				
Legal Practitioners	24	2	20	2
Notaries	1	0	0	0
Real Estate Agents	7	5	11	0
Accountants	3	0	10	2
Jewelers/DPMS	5	1	3	2
Yacht Brokers[52]	10	1	4	0
Car Dealers	9	0	5	0
Total	**59**	**9**	**53**	**6**

Figure 6.2. Risk Distribution per DNFBP Sector (2023)

	Legal Practitioner	Accountants	Real Estate Agents	Yacht Brokers	Vehicle Dealers	Jewellers & DPMS
High	8	-	7	3	2	4
Medium	19	11	6	2	4	1
Low	3	3	1	-	-	-

434. The FIA's sectoral questionnaires were set up to collect a broad range of data for risk identification purposes but do not adequately reflect the factors included under the risk matrix. The questionnaires collect client related information to some extent, such as (i) the number of clients located within or outside of the VI, (ii) geographical risk exposures, (iii) the level of non-face-to-face business, and (iv) financial transactions with individuals and organizations outside of the VI. The questionnaires do not seek to obtain information on the ownership and control of clients allowing the risk assessment to adequately consider the risks stemming from beneficial ownership of entity's clientele. The FIA clarified that the questionnaires collecting data per sector were intended for assessing the risks of individual entities as part of the 2022 MLRA and are not used for an ongoing assessment of institutional risks. The risk profiles for all DNFBP entities were updated following the most recent exercise. The FIA indicated that it seeks to utilise its resources on the basis of risk and to apply those resources to relevant higher-risk entities but considers that more would be needed to fully carry out its functions.

[51] Following the DNFBP Registrations process, and 2022 SRA data collection exercise, the SEU is currently in the process of updating risk assessments.

[52] Yacht brokers and vehicle dealers are mentioned here as part of the FIA's supervised businesses, but not included in assessment team's weighting/rating since those are out of scope of the FATF standards.

6.2.3. Risk-based supervision of compliance with AML/CFT requirements

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435. The FSC demonstrated effective risk-based supervision to a limited extent. Its supervisory engagements with individual licensees consist of full inspections, thematic inspections, and desk-based activities. Also impacted by the identified deficiencies concerning an adequate identification and understanding of ML/TF risks at the sectoral and institutional level (see previous section), FSC's engagements are, to a limited extent, demonstrated to be prioritized or driven on the basis of ML/TF risks. The FSC is currently operating under its 2020–2022 AML/CFT Strategy and could not submit any detailed program or plan indicating risk-based selection of individual licensees for engagements over the past five years. Similarly, when considering the risk categorization applied to the different sectors under the SRA 2020 (ML)[53] the FSC's supervisory strategy does not provide any direction in terms of a more intensive or prioritized approach towards the higher risk as compared to the lower risk sectors and licensees. The strategy is considered by the assessment team to be a more general instruction to build a risk-based supervisory framework and infrastructure following the NRA (2016) without setting out adequate supervisory coverage and activities directed at more concrete engagements and prioritization with individual entities, as well as ensuring that higher-risk areas are adequately targeted. Similarly, it was not demonstrated that such AML/CFT strategy and programs are adequately applied and implemented. Therefore, it is unclear to what extent the FSC's Framework or RAF has been consistently and effectively implemented over the last five years.

436. Where the Framework provides for a general roadmap for risk-based AML/CFT supervision of licensees from all sectors with suggested intervention strategies per priority bucket, the FSC did not demonstrate that it is consistently applied. Following the bucket placement of an individual licensee in bucket 3 ("High risk—actions taken will be focused on fixing deficiencies and/or regulatory concerns") or 4 ("Extreme risk—immediate and severe supervisory action required"), a supervision plan can be set up for the entity in question (Entity Compliance Overview) in accordance with the suggested intervention strategy per bucket. Bucket 1 is "Lowest risk—routine acceptance of risk;" bucket 2 is "Moderate risk—actions taken will be focused on increased monitoring of licensee," and bucket 5 is "Entity is listed as critical and not suitable for licensing purposes."

437. No instrument is demonstrated that would provide the FSC with an overview of all supervisory activities as suggested by the Framework (following the bucket placements or following an isolated use of the AML/CFT & Financial Crime segment of the RAM), as a tool to effectively set up, schedule, and allocate resources for mitigation at selected licensees during a supervisory cycle. There is no overarching supervision plan aggregating the individual supervision plans of licensees in buckets 3 and 4 or following an isolated use of the AML/CFT & Financial Crime segment. According to the FSC, the intervention strategies are meant to be flexible, allowing the FSC to apply strategies most likely to be effective in specific cases, noting that each licensee's circumstance may not be addressable by a predetermined set of actions. Regarding licensees placed in buckets 1 and 2, no individual supervision plan is produced at all. This makes it very difficult for the assessment team to understand how the FSC gets an overview of licensees from these buckets for targeted selection for general offsite engagements or monitoring of developing trends. This is even more difficult to understand because of the fact that the individual intervention strategies are suggested but are neither mandatory nor consistently applied. For example, licensees placed in bucket 1 should—according to the framework—not be part of thematic inspections. Such a tool is suggested for entities placed in bucket 2 and upwards. The statistics on conducted thematic inspections show a different practice followed by the FSC when selecting licensees for thematic inspections. Out of all licensees selected for thematic inspections, 27 percent of those licensees were licensees placed in bucket 1 (see Table 6.5). It

[53] TCSPs and VASPs ("emerging risks") were assessed as high risk, investment businesses and MSBs as medium risk, and banking as medium/low risk.

is not possible to link the activities of the FSC in current or previous cycles directly to the outcomes of the risk assessment (the bucket prioritization).

438. Individual supervision plans provide general information of the licensee's risk profile, such as ownership structure, licensing/approval and business activities, the ratio of high-net worth individuals, a list of products and services offered, details on board of directors, pending and previous enforcement actions, financial stability-related information, and the risk rating/bucket placement of the entity. Furthermore, recommendations are included: e.g., desk-based review of SAR reporting as a priority for 2023; staff training on SAR, tipping-off, and PEPs; and a request for placement on the 2023 inspection schedule. Those recommendations may lead to programming the suggested or different engagement in a collaborative process bringing the relevant FSC divisions and units together. The FSC states that in this process the outcomes of the RAF/RAM, reflections on the returns, information from complaints, media reporting, etc., are discussed in order to schedule and establish the scope of an engagement. No records of actual examples were provided to demonstrate this process to the assessment team.

439. The onsite supervisory engagements since 2018 are mostly directed at the highest risk sector, the TCSP sector, but not per se at the highest-risk licensees within that sector (as identified under the RAM). Over a period of 5 years, the FSC has conducted 36 onsite examinations—both full and thematic compliance inspections—at TCSPs, an average of 7 inspections per year out of a population of 257 entities.[54] This means 2.7 percent of the total population of this sector is included on an annual basis in a thematic and/or full inspection. As only 10 full inspections of TCSPs have been conducted since 2018, the FSC has undertaken, on average, 2 full inspections of these entities per year. This annual average represents 0.8 percent of all TCSPs. This number of full inspections reviewed against an isolated use of the AML/CFT & Financial Crime segment—while such use is insufficient from an RBA perspective, see previous section—leads to an average of 11 percent of all higher-risk entities in this sector being subjected to full scope onsite inspections, which can still be considered low. The FSC noted it has 45 staff members available for AML/CFT supervision spread over different divisions and units, each allocating around 65 percent of his/her time to such supervision functions. Available resources were considered sufficient for risk-based supervision of FSC's supervised population.

440. While limited in number, the most intensive supervisory tools—the full and thematic onsite compliance inspections—are, to a limited extent, used to systematically target the highest-risk licensees. When considering the RAM, the TCSPs selected for the compliance inspections were to a very large extent from buckets 1 (low risk) and 2 (moderate risk). Out of the 36 TCSPs subjected to such inspections, 33 (91.6 percent) were placed in these lower-risk buckets. This is different when the AML/CFT & Financial Crime segment of the RAM is considered in isolation: 80 percent of the selected TCSPs for a full onsite is considered medium-high and high risk which supports a risk-based selection of licensees to some extent, while applying this segment in isolation is of limited use (see above). Due to its intensive use of resources, the tool is typically reserved for higher-risk entities. The Framework suggests the use of full inspections (every two years) from bucket 3 (high risk) and upwards, which is *de facto* once every 10 years (considering a risk rating based on an isolated use of the segment). Of the 10 full inspections conducted since 2018, 3 were conducted on bucket 3 licensees and the remaining 7 on low and moderate risk TCSPs, while on average, 9 licensees were placed in buckets 3 (high risk) or 4 (extreme risk) during this period. There is no information on whether and to what extent onsite inspections are triggered by information provided by foreign supervisory authorities, beyond the inclusion—in theory—of "the extent of importance of the area to legal and regulatory assistance requirements" as a factor for weighting under the RAM.

441. The onsite inspections in the investment business sector are somewhat more focused at higher-risk licensees since 47 percent of the licensees inspected are placed in bucket 3 or 4, and the remaining 53 percent in the lower buckets. The limited number of onsite inspections in the banking sector are all

[54] Average number of TCSPs licensed in the years 2018–2022.

conducted at higher-risk licensees. Two banks from bucket 3 were fully inspected in 2018, and one bank placed in bucket 4 was fully inspected in 2019. The fact all banks are considered high or extreme high risk has not led to more intense or more frequent supervisory engagements since 2019.

442. Considering the higher-risk licensees (from bucket 3 upwards) in all sectors, current practice indicates that the chance of being selected for an onsite inspection (full or thematic) would be once every 4.8 years when both buckets 3 and 4 were considered.

443. The FSC notes that 81 percent of all active companies (281,814) are clients of the TCSPs selected for these inspections. However, the assessment team believe such argument does not necessarily refer to risk of selected licensees but to an element of size. The observation remains that only three higher risk (or bucket 3) licensees were included for inspection, while elements of size and number of clients is already considered under the bucket prioritization, as part of or combined with licensees' risk profiles. Furthermore, the FSC sampled, in total, 1,080 client files when conducting the compliance inspections at selected TCSPs since 2018. This is 0.4 percent of all active companies of these TCSPs and may not necessarily be a representative sample given the total universe of active companies on the companies register that are served by the selected service providers.

Table 6.5. Compliance Inspections Broken Down per Risk Categorization ("Bucket Placement")

(F: full inspection; T: Thematic inspection)

Bucket Placement	2018		2019		2020[55]		2021		2022		Total
	T	F	T	F	T	F	T	F	T	F	
TCSPs											
Bucket 1	0	2	0	1	1	1	3	0	3	0	11
Bucket 2	0	0	0	1	0	0	8	1	11	1	22
Bucket 3	0	0	0	1	0	0	0	1	0	0	3
Bucket 4	0	0	0	0	0	0	0	0	0	0	0
Total	0	2	0	3	1	1	11	2	14	2	36
Investment business											
Bucket 1	0	0	0	0	2	0	1	0	0	0	3
Bucket 2	0	0	0	0	2	0	1	0	2	0	5
Bucket 3	0	0	2	0	2	0	0	0	0	0	4
Bucket 4	0	0	0	0	2	0	1	0	0	0	3
Total	0	0	2	0	8	0	3	0	2	0	15
Banking											
Bucket 1	0	0	0	0	0	0	0	0	0	0	0
Bucket 2	0	0	0	0	0	0	0	0	0	0	0
Bucket 3	0	2	0	0	0	0	0	0	0	0	2
Bucket 4	0	0	0	1	0	0	0	0	0	0	1
Total	0	2	0	1	0	0	0	0	0	0	3

[55] The FSC notes that the total number of inspections in 2020 decreased to 10 due to delays experienced as a result of COVID-19. The FSC noted that this impacted its ability to undertake foreseen on-site inspections and amended its inspection plan/schedule to undertake inspections on a fully virtual basis. During 2021, the FSC noted that it was able to conduct 16 inspections even though there were still lingering effects from COVID-19.

Financing and Money Services											
Bucket 1	0	1	0	0	0	0	0	0	0	0	1
Bucket 2	0	0	0	0	0	0	0	0	0	0	0
Bucket 3	0	0	0	1	0	0	0	0	1	0	2
Bucket 4	0	0	0	0	0	0	0	0	0	0	0
Total	0	1	0	1	0	0	0	0	1	0	3
Insurance											
Bucket 1	0	0	6	1	0	0	0	0	0	0	7
Bucket 2	0	0	0	0	0	0	0	0	0	0	0
Bucket 3	0	0	0	0	0	0	0	0	0	0	0
Bucket 4	0	0	0	0	0	0	0	0	0	0	0
Total	0	0	6	1	0	0	0	0	0	0	7

444. The selection of the potential themes of the thematic inspections are demonstrated to be determined in a risk-sensitive manner. The 2020 MLRA already identified SAR reporting as an issue across sectors, whether it be lack of, or timeliness of, reports, low numbers in proportion to inherent risk of sector, or issues with quality. On this basis, this particular topic was selected for inspection across all sectors and was a topic of focus for thematic inspections in 2022. Another example is ECDD. This theme was selected given the inherent risk characteristics of clients that fall within this category (e.g., PEPs, clients in high- risk jurisdictions) and FSC's data and intelligence on licensees' understanding of ECDD. This theme was carried out from late 2020 to 2021. However, considering the absence of (targeted) risk-based supervisory programs or plans and limited demonstration of FSC's risk-sensitive considerations for selection of entities subject to inspection, it is unclear whether the licensees chosen for thematic examinations are the most appropriate given their risk profiles (RAM or isolated AML/CFT segment). Considering all conducted thematic onsites at TCSPs against the bucket placement under the RAM, no higher-risk TCSPs are included (buckets 3 and 4). Only when reviewed against an isolated use of the AML/CFT segment (which is of limited use, see previous section) an average of 45 percent of the medium-high TCSPs is selected for a thematic onsite and the remaining 55 percent come from medium-low risk TCSPs. The selection of investment businesses for thematic inspections seems to be more risk sensitive: 13 out of 15 licensees from a medium-high and high-risk categorization under the AML/CFT segment solely.

445. The inspections seem to be thorough and seek to reflect the business profile of the licensee, but not necessarily its ML/TF risk profile. This engagement commences with a pre-inspection questionnaire for a full inspection requesting data and a list of all clients across all business lines and risk categorizations. The requested data includes: (i) the number of BVIBCs managed and trusts administered, (ii) the proportion of the client base that was introduced by third parties, (iii) the main geographic location per category, and (iv) whether client monies are held. Furthermore, a list of questions regarding a fair range of internal controls and other mitigants is included. However, the pre-inspection questionnaire does not target data on beneficial ownership of TCSPs' clients and active companies, nor on relevant CDD controls, and to a limited extent on introduced business. Such data is also not systematically collected through other supervisory activities (see above). A review is conducted on the policies and procedures including the compliance manual of the licensee to develop an inspection plan to guide the approach of the on-site phase. However, it doesn't seem to the assessment team that an inspection plan developed under such approach, is adequately tailored to the ML/TF risks arising from selected licensees and the sectors. The only differentiating element in this phase is the analysis conducted for the selection of clients to be included in the sample testing. The sample files are analysed, and follow-up questions prepared for interviews with relevant staff of the licensee. A sample size could be up to 50 depending on the profile of the licensee. During the following onsite visit, the interviews are conducted, systems tested, and the correspondence is reviewed to establish the extent to which the licensee collects relevant information from the client.

446. The supervisory coverage of inspections and desk-based reviews focus on a broad set of internal controls and preventive measures, but do not adequately target (residual) risks from ownership and control

structures of clients and active companies, and the frequent reliance on professional business introducers. It has not been sufficiently demonstrated that the type of findings emanating from failings identified via either desk-based reviews or onsite inspections systematically include issues surrounding establishing ownership and control of clients and active companies and relevant controls to identify and take reasonable measures to verify the identity of the beneficial owners. The latter measure, verification of identity of individuals including beneficial owners, is included to a certain extent—although the applied scope of the concept of beneficial ownership by licensees does not seem to be considered systematically and consistently. Attention is directed more at governance and internal control-related issues, such as responsibilities of the Board and Senior Management; the requirement to establish a system of internal controls; the internal audit and compliance/MLRO functions; and preventive measures to some extent: CDD/EDD (e.g., mechanisms in place ensuring CDD information is kept up to date, and EDD for high-risk customers and PEPs); and third-party business relationships. While it is important to review internal controls and preventive measures as described, the actions taken do not include an adequate focus on measures in place to ensure that beneficial ownership information is obtained and updated as necessary.

447. The FSC's offsite engagements are focused on the collection of data for risk identification purposes and on providing the licensee with feedback where needed, allowing it to address identified deficiencies. Offsite engagements can be desk-based reviews as the first step in the FSC's supervisory approach, providing the necessary data for regulatory analysis and conclusions made regarding a licensee's inherent risk, operational risk, and likely emerging risks. The desk-based tools used to conduct this analysis primarily include: the sectoral returns, the AML/CFT returns, and CO reports. The licensee will generally be provided with targeted feedback for mitigation purposes. Furthermore, a desk-based inspection can be initiated given the bucket placement of a licensee. The FSC reports it undertook 7 such inspections in 2020/21 at Class I Trust licensees previously inspected between 2014 and 2016 and required the licensees to self-assess a sample of 50 active and inactive BVIBCs on conducted CDD measures, including maintenance of basic and beneficial ownership information, but not on establishing the ownership and control structure of (introduced and end-user) clients. Furthermore, between 2018 and 2022, the FSC reports 6 stand-alone desk-based assessments or reviews of which details are not known, nor are the risk profiles of those, in total, 13 licensees. In 2022, three Compliance Manuals from TCSPs were reviewed, 10 in 2021, and 18 in 2020. In respectively, two (2022), three (2021), and two (2020) cases deficiencies were identified, and licensees were provided feedback. With regard to the banking and MSB sectors, a desk-based review on SARs filing and internal procedures took place in 2022 including all banks and MSBs.

448. Licensees are required to submit their compliance manuals to the FSC for approval, both at the initial stage of licensing and subsequently where changes are made. Where it is found that an entity's compliance manual does not meet the legislative requirements or is not appropriate for the type of business undertaken, the manual is not approved, and feedback is given to that entity.

449. It is not clear to what extent the FSC cooperates with foreign counterparts on onsite and/or offsite engagements with licensees, including those with branches or subsidiaries operating in the VI, beyond the exchange of information on AML/CFT through supervisory colleges.

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450. The supervision of DNFBPs is fairly recent and evolving as the registration process is ongoing, and to a limited extent conducted on a risk-sensitive basis. Beyond an assessment at registration (see previous section as well), the risk-based supervision framework as applied by the FIA does not include a systematic identification and understanding of the ML/TF risks faced by entities in this sector. As a result, supervisory engagement with DNFBPs is not systematically directed at the highest-risk entities, and, consequently, the FIA does not employ a consistent risk-sensitive supervision program. According to the SOPs Manual ("the Manual"), the only risk-informed programmed activity, following the registration of a DNFBP, is the risk assessment and completion of the risk matrix using the following approach:

- If the DNFBP is new, it will be given an additional period (up to a year) before it may complete and return its questionnaire allowing it to first set up its business or conduct its activities. The FIA will not include such a DNFBP in its supervisory program for a specified period notwithstanding its risk rating.
- If the DNFBP is rated low or medium risk, the FIA/SEU will send an email advising the DNFBP of its regulatory obligations, and
- If the DNFBP is rated high risk, it will receive an email advising it of its regulatory obligations, and it will be requested to submit its compliance manual for review (desk-based supervision review), usually within one month.

451. The desk-based review of the compliance manual of such high-risk rated DNFBP is performed making use of an internal checklist, which covers all preventive measures and controls as required. The DNFBP is provided with a similar checklist when preparing for such a review. The FIA/SEU reports that the following desk-based reviews were conducted: "around nine DNFBPs in 2020, around 18 DNFBPs in 2021, around 10 DNFBPs in 2022, and seven DNFBPs in 2023 (to end March)." Overall, of the desk-based reviews conducted in 2020, 2021, and 2022, approximately 90 percent of these would have been on DNFBPs rated as high risk, the remaining 10 percent being medium risk. Legal practitioners, real estate agents, and yacht brokers were included in most of the reviews (around six to seven included per sector).

452. Other than a series of compliance inspections occurred in the second quarter of 2015, inspections by the FIA only started in 2021, following the results of the SRA 2020, and were focused on all sectors given the fact they were all considered medium-high risk. No inspections were conducted in 2022 and 2023 (as of the onsite visit). In addition to the desk-based supervision review, as part of its ongoing supervision of DNFBPs, the FIA may undertake inspections, the purpose of which is to test compliance with the AML/CFT/CPF legislation. Inspections can be either offsite or onsite, depending on the supervisory focus and what the FIA considers appropriate, based on the circumstances and resources available. No risk factors are explicitly and systematically applied hereto. However, according to the supervision manual, the selection of an offsite or onsite inspection should be done on the basis of risk and, as a rule, only the high-risk DNFBPs will be subject to an inspection. In exceptional circumstances, a medium-rated DNFBP may be selected. Inspections can be themed, full, or event driven. The most recent set of inspections in 2021 were undertaken offsite due to the COVID-19-related restrictions, however, they followed a similar structure as the one implemented during an onsite inspection. The SEU chose the files to be reviewed and requested those to be sent by the DNFBP. The 2021 inspections were themed inspections, which focused solely on due diligence requirements within the AML Code, because of the findings of the SRA 2020 indicating a general need to ensure proper CDD needs to be undertaken. The FIA included high-risk DNFBPs following desk-based review of internal control systems in place and a single medium-risk DNFBP following intelligence on possible questionable transactions.

Table 6.6. Number of DNFBP Offsite and Onsite Inspections Conducted (2021–2023)

	2021	2022	2023 (Q1)
Legal Practitioners	4	0	0
Notaries	0	0	0
Real Estate Agents	4	0	0
Accountants	0	0	0
Jewelers and DPMS	2	0	0
Yacht Brokers	2	0	0
Car Dealers	3	0	0
Total	15	**0**	**0**

6.2.4. Remedial actions and effective, proportionate, and dissuasive sanctions

453. The FSC effectively uses RAP to ensure compliance following inspections at TCSPs, but to a lesser extent regarding the investment business. Following its onsite inspections, the FSC issues a report with findings including corrective actions the licensee needs to take to address identified deficiencies within a set timeframe. The licensee is to provide written periodic reports on its progress in correcting the deficiencies and the process is monitored via desk-based reviews. The nature and intensity of the post-inspection monitoring of a licensee will vary and depend on the inspection findings. The FSC and the licensees interviewed indicated that the FSC's approach is strict and focused on completely remediating reported issues. Additional remedial and/or enforcement actions are considered where a licensee does not meet the RAP. When the data on TCSPs successfully concluding their RAP within the set time frame (75 percent—see Table 6.7) was examined, it became clear that the RAP is an effective tool for correcting deficiencies identified in the context of the inspections. In these instances, it precludes the need to use enforcement tools. This is particularly true in the TCSP sector (80 percent of the inspections of TCSPs result in the development of a RAP for the licensee).

454. Banking institutions, while not being subjected to inspections since 2019, succeeded in completely addressing identified deficiencies under their RAPs within the set timeframes. This is to a much lesser extent true regarding the investment business (25 percent). Entities in this sector seem to require pressure from the FSC (potentially) applying sanctions before successfully dealing with identified shortcomings in a timely manner. It appears that a RAP is, to a lesser extent, an effective tool to ensure compliance by investment businesses, and more intrusive steps are needed in this sector.

Table 6.7. Number of RAP or Monitoring Reports Concluded and Remaining (2018–2022)

Sector	Average # inspections (annually)	% of average inspections (leading to a RAP)	Average successful concluded RAP*	Average remaining remedial action plan
TCSPs	7	80%	75%	25%
Investment business	3	80%	25%	75%
Banks	0.6	67%	100%	0%

*: RAPs have been closed successfully within the initial set period.

455. Although considered by the FSC to be the first step in remediation, the strongly worded letter is used to a very limited extent. Such letters are issued following onsite inspections and seek to remedy identified unintentional breaches. Between 2018 and 2022, the FSC issued 11 strongly worded letters following 54 compliance inspections in the TCSP, investment business, and banking sectors. Of those 11 strongly worded letters, only 5 were specifically related to AML/CFT breaches and were issued across the 3 sectors with an average of 1 per year.

Table 6.8. Use of Strongly Worded Letters (Relating to AML/CFT) in All FSC Sectors

Year	Sector	Number of Strongly Worded Letters Issued
2022	—	0
2021	TCSP	1
2020	TCSP	1
	Investment business	1
2019	—	0
2018	Insurance business	1
	Bank	1
Total		**5**

456. The FSC uses enforcement actions to a limited extent, and the penalties imposed are not considered to be effective, proportionate, and dissuasive in most cases. The FSC has a wide range of enforcement actions it may consider in taking action against a licensee for breach of any financial services legislation. This includes: (i) revocation or suspension of a licensee's license, (ii) the issuance of a directive, (iii) the issuance of a warning letter, and (iv) the imposition of fines or administrative penalties. As a matter of general principle, the FSC will publish all decisions taken by its Enforcement Committee with respect to enforcement actions on the Commission's website.

457. While monetary penalties are increasing in value since 2021, the FSC appears to be reluctant to apply the available range and maximum of sanctioning measures available. On an annual basis during the period 2018 to 2022, the FSC issued on average three warning letters, one directive, and three administrative penalties, (see Table 6.9). An outlier in this regard are the sanctions imposed on the TCSP penalized with four penalties and fines in 2021 totalling US$135,000 which may be considered proportionate and dissuasive given identified breaches. This TCSP was subject to a fine of US$35,000 for breaching sections 7(1) and (2), and 7B of the AMLR (third-party reliance); a US$20,000 penalty for breaching section 19(2) of the AMLTFCOP (CDD); a US$40,000 penalty for breaching section 20(2) of the AMLTFCOP (EDD/CDD); and a US$40,000 penalty for breaching sections 21(1) and (2) of the AMLTFCOP (updating CDD information). Overall, the FSC's sanctioning practices are not considered to be effective and dissuasive considering the average fine being just above US$17,000 nor proportionate to the nature and severity of the breaches.

Table 6.9. Enforcement Action for AML/CFT Breaches in all FSC Sectors (2018–2022)

Sector	Warning Letters	Directives	Administrative Penalties/Fines	Total Value of Administrative Penalties/Fines
2018				
TCSPs	7	0	2	$10,000
Insurance	3	0	0	N/A
Money Services	1	0	2	$15,000
Total	**11**	**0**	**4**	**$25,000**
2019				
TCSPs	2	1	0	N/A
Total	**2**	**1**	**0**	**N/A**
2020				
TCSPs	1	0	2	$10,000
Investment Business	2	0	0	N/A
Total	**3**	**0**	**2**	**$10,000**
2021				
TCSPs	1	1	4*	$135,000

			1	$30,000
Investment Business	3	0	0	N/A
Total	**4**	**1**	**5**	**$165,000**
2022				
TCSPs	2	0	6	$75,000
Bank	**0**	**0**	**1**	**$5,000**
Total	**2**	**0**	**7**	**$80,000**
2023 (March 31)				
TCSPs	0	0	2	$65,000
Total	**0**	**0**	**2**	**$65,000**
Average/Year	**3.5**	**0.3**	**3**	
Average penalty/fine value				**$17,250**

** Four penalties/fines imposed on same TCSP.*

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458. The FIA applies more remedial actions since 2022, but a very limited range of tools is used, the numbers are low, and sanctions cannot be considered effective, proportionate, and dissuasive. The tools used are applied for failures to submit questionnaires, with respect to identified deficiencies in AML/CFT controls and concerning outstanding information for registration applications. In 2022, three Compulsory Directives were issued to DNFBPs—two legal practitioners and one jeweller—for failure to complete and submit remediation actions within the set timeframe. Compulsory directives are tools for the FIA to direct entities to take certain actions under the threat of a monetary penalty up to US$75,000, where it considers necessary to ensure compliance or remedy a contravention relating to AML/CFT/CPF. Two entities that received directives complied with the directions contained in the directives and completed the actions required. One entity did not, and the FIA is in the process of taking the matter to enforcement. In 2023, the FIA issued two compulsory directives for failure to complete and submit the SRA questionnaire following the two entities' failure to comply with Section 5D notices issued. One entity complied and submitted the questionnaire, and one failed to meet the deadline. As a result, the matter will be brought to enforcement.

459. Section 5D Notices are a tool under the FIA Act to require a DNFBP to provide specified information or produce specified documents within a certain timeframe, under a threat to take enforcement action in accordance with Section 5J of said Act in case of failure to respond or to adhere to the actions laid out in the Section 5D Notice. Since the amendment to the FIA Act and the publication of the FIA's enforcement guidelines, seven Section 5D Notices have been issued (see Table 6.10). Four more Section 5D Notices were issued in 2023. To date, six notices have been issued for failure to complete and submit the SRA questionnaire and five notices regarding outstanding information for registration applications. No enforcement actions in accordance with Section 5J of the Act were reported to assessors.

Table 6.10. Remedial Actions Taken in all FIA sectors (2020–2023/Q1)

Sector	Compulsory Directive				Section 5D Notice			
	2020	2021	2022	2023 (Q1)	2020	2021	2022	2023 (Q1)
Legal practitioners	0	0	2	1	0	0	3	4
Notaries	0	0	0	0	0	0	0	0
Real estate agents	0	0	0	1	0	0	1	0
Accountants	0	0	0	0	0	0	1	0
Jewelers	0	0	1	0	0	0	2	0
Total	**0**	**0**	**3**	**2**	**0**	**0**	**7**	**4**

6.2.5. Impact of supervisory actions on compliance

460. The FSC's supervisory actions have had some positive effect on TCSPs', investment businesses', and banks' compliance with the AML/CFT requirements. The FSC's supervisory actions, including the issuance of compliance inspection reports, RAPs, requirement of corrective actions, and the issuance of enforcement actions have contributed to the improvement of examined licensees' compliance with AML/CFT requirements. An improved implementation of CDD and EDD measures reflects the positive impact of FSC's supervisory actions, particularly through its engagements and its continuous and open relationship with the sectors. This was confirmed through the interviews with the private sector representatives. However, as noted under 5.2.3, there is room for improvement with respect to the implementation of CDD measures by TCSPs, which could not yet be considered adequate. The FIA could demonstrate its actions have an effect on DNFBPs seeking to register and apply for approval for their directors and senior officers. As the assessment team did not see the results of FIA's desk-based reviews and inspections, it was not able to conclude that the FIA's activities have had a positive impact of entities' compliance with their AML/CFT obligations. Following the interviews, the assessment team understands that the interviewed DNFBPs have mixed experience concerning interactions with the FIA/SEU, mostly indicating that the FIA requested information through the SRA exercise and some incidental correspondence. Those DNFBPs that were included in the 2021 inspections mentioned such engagement as a trigger to improve compliance.

6.2.6. Promoting a clear understanding of AML/CFT obligations and ML/TF risks

461. The supervisory authorities provide general guidance to the different financial and DNFBP sectors on compliance with AML/CFT obligations. Promotion of a clear understanding of the AML/CFT obligations is done through the explanatory notes to the AMLTFCOP and published sectoral guidance material. Several examples include: "AML/CFT Guidelines for the Banking sector (2020);" "A Money Services Business Guide to the Prevention of ML/TF Activities in and from the VI (2016);" FATF publications on ML/TF risks for the TCSP sector and applying a risk-based approach, from the FSC; and quick sheets on legal requirements per sector by the FIA. Beside the guidelines, the websites also feature basic guidance in the form of outreach video content on various general cross-sectoral AML/CFT-related topics.

462. However, the issued guidance is not particularly tailored to VI's higher-risk sectors, their specific product and service offerings, and related vulnerabilities in an international context. The TCSP, VASP, and investment business sectors, while in need for clear and adequate support to improve their understanding of the AML/CFT regime in the VI and its unique features, given their ML/TF risks, are not specifically targeted by the FSC for these purposes. During the assessment team's onsite visit, a new "TCSP Guide to the Prevention of ML, TF and PF (2023)" was published on the website of the FSC. However, the effect of this more tailored publication was not noticeable, since no interviewed private sector participant was aware of this publication. The VASP-related guidance published by the FSC is targeting regulatory concerns more than it seeks to provide guidance on the relevant threats and vulnerabilities to the sector.

463. In some cases, the FSC published the overall outcomes of (thematic) inspections, through its newsletter (e.g., FSC December 2020 on inspections conducted in 2019 by the Compliance Inspection Unit), but those are very general, whereas more details are included in sectoral reports that seek to present findings of a round of reviews, such as the "Investment Business Sector Report 2020/2021," and the "Fiduciary Services Sector Report (Maintenance of Transaction Records) 2021/2022." Those reports could merely be regarded as providing aggregated feedback on the results of the methodology, or on the methodology used in the inspections and the cumulative findings underlining the need to comply with particular legal requirements. Guidance, best practices, and expectations is only to some extent provided and shared through those reports.

464. The supervisors' activities regarding the publications of the SRAs in 2020/2021—publications and a series of webinars—clearly supported the different sectors in their understanding of the outcomes of those risk assessments. Most outreach activities conducted as referred to by the private sector relate to those activities. This clearly supported the sectors in better understanding the ML/TF risks to their sectors in the VI in a general sense.

465. In addition, some outreach activities were reported by the FSC, such as virtual discussions with sector representatives in 2021 on the introduction of the AML/CFT returns outlining the reasons for the collection of the information and describing the type of information that should be submitted. Additionally, a presentation was also delivered in the same year to a local industry conference focused on the common AML/CFT shortcomings in the domestic insurance industry. Some more years back, in 2018 and 2019, the FSC sought to enhance the regulatory compliance of its licensees by requiring risk-based selected licensees—the directors and compliance officers—to participate in a Master Course in Compliance Training. This course covered general financial services topics, including AML/CFT compliance functions. The FIA conducted a series of outreach sessions—presentations—to DNFBPs since 2018 on the registration requirements and AML/CFT requirements.

Overall Conclusions on IO.3

466. Market entry controls in the VI are in place but are deficient where it concerns assessing the background of the beneficial owners of (applicant) licensees, particularly when foreign. Limited actions to detect unregulated VASPs were taken since the sector has only been recently regulated. The FIA is in the process of registering DNFBPs, and supervision is recent.

467. The assessment team weighted TCSP and investment business supervision higher than other sectors given the VI's context and risk profile. The VI has a supervisory framework in place covering all sectors (except for forex trading) reflecting an RBA to a limited extent. The FSC's supervisory framework is more advanced than the FIA's. In its sectoral risk understanding, the FSC is more developed than the FIA and seeks to assess risks applying a wide range of risk factors. However, given the risk profile and characteristics of the most important sectors, this assessment is considered limited. There does not appear to be a full appreciation of and response to the risk that licensees—and TCSPs in particular—effectively may contribute to ML/TF on a global scale, including through business introducers. The banking sector's ML/TF risk exposure is not adequately reflected in its analysis and understanding. At TCSP entity level, the FSC collects a broad range of data, which lacks sufficient information on the ownership and control of clientele and active companies and relevant controls as implemented. The RAM is a broad risk assessment tool to provide the FSC with an overall institutional risk profile but falls short in assigning the relevant weight to ML/TF risks. The FIA's risk assessments are being developed but do not systematically and consistently set up institutional risk profiles, leading to limited risk understanding.

468. Most of the FSC's onsite engagements are directed at the highest-risk sector, the TCSPs, but not per se at the highest-risk entities within that sector. These engagements also do not adequately consider licensees' ML/TF risk profiles. The absence of an adequate institutional ML/TF risk identification and understanding impacts the risk-sensitivity of the FIA's supervisory engagements, which are limited in number. RAPs are effectively used by the FSC following inspections at TCSPs but to a lesser extent in the investment business sector. Enforcement actions are used more often with increasing penalties in recent times but still considered very limited when regarded over a longer period of time, and penalties imposed are not considered to be effective, proportionate, and dissuasive in most cases. The FIA's remedial actions are increasingly applied including in response to identified deficiencies in AML/CFT controls. No sanctions breaches were reported. Some demonstrated effect on compliance was observed, mostly due to the FSC's open and constructive relationship with

licensees. The FIA's actions have an effect on DNFBPs registering and applying for approval for management functions, but not on compliance with AML/CFT obligations. General guidance to different sectors is provided on compliance with the AML/CFT obligations but such is not risk-based tailored to the sectors.

469. The VI is rated as having a low level of effectiveness for IO.3.

Chapter 7. LEGAL PERSONS AND ARRANGEMENTS

7.1. Key Findings and Recommended Actions

Key Findings

a) Authorities have taken steps to strengthen the legal framework in relation to legal persons and arrangements, including through amendments made with respect to the BVIBCA which came into force in January 2023 and further amendments introduced to the BVIBCA, Partnerships Act, LPA, AMLTCOP, and AMLR which came into force in March 2023—which have improved previously existing technical compliance gaps.

b) Authorities are making ongoing efforts to identify and assess the ML risks of legal persons but have not fully assessed their TF risks. More broadly, they do not have a comprehensive understanding of how the features of VI-incorporated legal entities can be misused within the VI and abroad, in line with VI's risk profile.

c) The VI's system for holding adequate, accurate, and up-to-date basic and beneficial ownership information is dependent on information collected by TCSPs, providing registered agent services. Therefore, the overall effectiveness of this system is impacted by shortcomings in the effective implementation of CDD and other preventive measures taken by the registered agents, and the ability of supervisors to effectively supervise TCSPs and other gatekeepers (see IOs.3 and 4).

d) Beneficial ownership information collected and held as part of ongoing CDD obligations, is not always adequate, accurate, and up-to-date, given the predominant reliance on ownership thresholds to identify beneficial owners, the risk sensitive basis through which such information is required to be updated (i.e., the frequency with which information is updated is dependent on the reporting entities risk assessment of their client and can range between one to four years), and the inherent risks arising from frequent reliance by TCSPs on professional business introducers to collect and verify this information.

e) Registered agents are responsible for providing basic information to the Registrar, but this information is not easily accessible to the public (search requests can only be made by email, upon payment of a fee, and need some information in advance) nor is it directly accessible to all competent authorities (domestic and international).

f) Information on directors is not required to be collected at the stage of incorporation and therefore may not be available to the Registry for several months, without any limits to what the company can do meanwhile and was not publicly available until January 2023.

g) While TCSPs can be licensed to provide nominee shareholder services and director services, existing mechanisms, and ongoing efforts to prevent their abuse are insufficient.

h) Bearer shares were immobilized and have now been prohibited.

i) Trusts are not required to be registered in the VI but some information on trusts held by TCSPs acting as professional trustees is collected through annual returns. Notwithstanding, challenges remain in ensuring adequate, accurate, and up-to-date information is held on trusts and their beneficial owners.

j) The VI has not investigated or prosecuted cases of misuse of legal persons and arrangements and are unable to demonstrate that they have applied effective, proportionate, or dissuasive sanctions against legal entities, their beneficial owners, or registered agents.

k) Competent authorities have demonstrated their capacity to furnish basic and beneficial ownership information in a timely manner in the context of international cooperation requests, as far as this information is available, but do not proactively seek international cooperation themselves.

Recommended Actions

a) In line with the March 2023 amendments in the BVIBCA, the legal framework should be extended to request that changes to beneficial ownership information for all legal persons and legal arrangements should be reported in a timely manner, and there should be dissuasive penalties against legal entities for failure to do so.

b) In line with the VI's policy decision to establish a Register of Persons of Significant Control, and, as required by the BVIBCA, authorities should put in place a register of persons of significant control, with a designated public authority responsible for receiving and holding adequate, accurate, and up to date beneficial ownership information, with appropriate sanctioning powers.

c) Authorities should have a more efficient system to ensure that basic information, including director information collected from registered agents and held in the Registry (VIRRGIN platform), is publicly available (for example, basic information should be available online in a format that is easily accessible and searchable by all competent authorities and the public, domestic, and overseas).

d) Information on directors should be required to be submitted at the incorporation stage to the Registrar. Penalties for missing information should be effective, proportionate, and dissuasive. Certificates of good standing should not be issued until such information is available to the Registrar. Director information held by the Registry should clearly distinguish when TCSPs are providing director services for the legal person, in either an individual or corporate director capacity and include information on their nominators.

e) Nominee shareholders, including when TCSPs provide such services, should be required to be identified as nominees in the register of members, and the register of members should include accompanying information on their nominators.

f) In line with IO.3 findings, authorities should ensure that information collected through annual returns by supervised entities supports their effective supervision of TCSPs providing trusts services and assist them on focusing their supervisory efforts on ensuring that TCSPs hold adequate, accurate, and up-to-date information on trusts and their beneficial owners (see also IO.3 Recommended Actions)

g) Authorities should have explicit powers to take administrative, civil, or criminal actions when false/misleading information is found to have been submitted and also based on any findings of misuse in the context of supervisory activities or by the FIA-AIU.

h) Authorities should enhance sanctioning powers for relevant competent authorities to take action against legal persons and arrangements and registered agents who fail to fulfill their legal obligations and step-up overall efforts to use a range of proportionate and dissuasive sanctions against legal persons, legal arrangements, and registered entities who fail to fulfill their legal obligations.

i) Authorities should enhance their understanding and raise awareness of ML/TF risks of misuse of VI legal persons. In particular, they should enhance their risk understanding on how the

features of VI-created entities can be misused to facilitate ML and TF activities in the VI and abroad, including to launder foreign proceeds of crimes.

470. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24–25, and elements of R.1, 10, 37 and 40.[56]

7.2. Immediate Outcome 5 (Legal Persons and Arrangements)

471. An overview of the types of legal persons and arrangements is included in Chapter 1.

472. BVIBCs comprise the largest proportion of legal persons incorporated in the VI (there are 348,258 active BVIBCs as of the end-of March 2023), and 99 percent of all BVIBCs in the VI are incorporated to support international business and other activities abroad (see Table 1.4). Authorities note they incorporate around 30,000 BVIBCs per year (see Table 7.1). These pose the highest risks to the VI, also as identified by the authorities. Other legal persons include foreign companies which can also be registered in the VI if they are undertaking specific business activities in the VI (55 to date), limited partnerships established under the LPA 2017, as well as those still in existence under the previous Partnerships Acts.

473. The Micro-business Companies Act is currently suspended, and none have been created to date. There is limited information on the existence, if any, of cooperatives and friendly societies. However, given the VI's assessment of the low risk of micro-business companies and cooperative and friendly societies, which the assessment team agrees with, this write-up does not focus on such entities.

474. Legal arrangements primarily include express trusts established under common law principles (6,227 set up to 2021) and VISTA trusts (1,544 set up as of 2021), noting that these numbers do not capture trusts set up by non-professional trustees.

Table 7.1. BVIBCs Incorporated per Year

Year	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
2017	8,695	7,621	7,639	8,538	32,493
2018	9,798	9,126	9,575	8,916	37,415
2019	7,214	6,365	6,975	5,596	26,150
2020	5,275	4,725	6,254	6,108	22,362
2021	7,732	9,114	9,523	9,809	36,178
2022	8,075	6,630	6,686	6,686	28,077
2023	5,830	4,518			10,348

475. TCSPs play a key role in the formation of legal persons and arrangements in the VI. The corporate laws specifically refer to "registered agents," who are persons who hold a license under the CMA; or licenses under the BTCA that authorize them to provide registered agent services to incorporate and establish legal persons. Separately, TCSPs can also provide nominee shareholder and director services for which they require a separate license. For consistency, Chapter 7 refers to TCSPs broadly to capture all class of licenses and refers to registered agents who are TCSPs that hold Class I, Class III, and Company

[56] The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives, and scope of the standards.

Management licenses. Of the 282 TCSPs licenses granted to date, 103 licensees can provide services as registered agents. (See Table 1.3)

476. Authorities have taken steps to strengthen the legal framework in relation to legal persons and arrangements. More specifically, these include important amendments made with respect to the BVIBCA which came into force in January 2023 and further amendments introduced to the BVIBCA, Partnerships Act, LPA, AMLTCOP, and AMLR which came into force in March 2023. Such changes had a positive impact on technical compliance (see R.24/R.25), but due to their recent nature, these changes were not assessed to have a measurable impact on the level of effectiveness.

7.2.2 Public availability of information on the creation and types of legal persons and arrangements

477. General information on legal persons and legal arrangements can be found on the FSC's website: Corporate Structures | British Virgin Islands Financial Services Commission (bvifsc.vg). More specifically, this includes information on the characteristics of BVIBCs, micro-business companies (currently suspended law), limited partnerships, and express trusts and VISTA trusts, and general requirements for setting up these legal entities (e.g., the need to maintain a registered office and agent in the VI). There is no information available on the FSC website about companies designated for specific purposes, such as restricted purpose companies or PTC. The website also mentions the role played by TCSPs in the formation of legal persons and some of steps required for company and partnership formation, including with respect to their role in the disclosure and vetting of beneficial ownership information.

478. The different types, forms, and features of legal persons, as well as processes for their creation, incorporation, and for obtaining and recording basic information are also outlined in their respective corporate laws, which are also available online, through the FSC website.

479. There is also no publicly available information on cooperatives and friendly societies, and how these can be set up or their governing laws.

7.2.3. Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

480. Authorities have, to an extent, identified ML risks and vulnerabilities of legal persons and arrangements, including through the 2020 FSC SRA and the more recently finalized 2022 MLRA. Neither risk assessment considers the risks of limited partnerships (created under the Partnerships Act, which are still in existence and have not yet re-registered).

481. The risk assessments include risk ratings, notably identifying BVIBCs as high risk. While there is no granular assessment of the risks of different types and forms of business companies (i.e., companies limited by shares, by guarantee, unlimited), BVIBCs are predominantly companies limited by shares and classified overall as high risk (see Table 7.2).

482. The 2020 FSC SRA analysis of ML risks was primarily focused on outlining rules and control measures in place for these legal entities with little information on their specific threats and vulnerabilities. The 2022 MLRA by the FSC and FIA goes further into assessing the risks of legal persons and arrangements, including with respect to some threats and vulnerabilities of these legal entities, demonstrative of authorities' ongoing efforts to improve their understanding. The 2020 and 2022 risk assessments identify that key issues for the misuse of legal persons and legal arrangements arise from the possibility of the complexity of available structures and international transactions they engage in, the availability of non-face-to-face transactions, and high-risk clients such as foreign PEPs. However, the analysis of threats, specific to the VI context, in particular, could be further improved in the risk assessments (e.g., to better understand allegations of misuse as reported in the press, or to further analyse ML requests received). In addition, at the time of the onsite, the 2022 MLRA had not been disseminated to other authorities

or the private sector which resulted in an uneven understanding of risks and corresponding mitigation measures.

Table 7.2. Risk Ratings of Legal Persons and Arrangements (2022 MLRA—Ratings)

Legal Person & Arrangements	Risk Rating (2022)
BVI Business Companies	High
Limited Partnerships	Medium High
Micro-business Companies	Medium Low
Trusts	Medium High
Virgin Islands Special Trusts	Medium High * *previously rated as Medium Low in the 2020 risk assessment*

483. Notwithstanding any findings in the risk assessments, the assessment team found that, in general, competent authorities did not fully recognize the role that can be played by VI-incorporated entities in facilitating the conduct of ML/TF, in particular, in relation to foreign ML/TF activities or the threat of foreign proceeds of crime being laundered through BVIBCs. In the absence of any investigations or prosecutions against BVIBCs or registered agents in the VI, either with respect to domestic ML activities or foreign ML activities, authorities were unable to provide any cases to demonstrate comprehensive efforts taken to address these risks. Competent authorities recognized that allegations of misuse of BVIBCs are reported on average 10–12 times a month in international media reports but following review by the FSC, they were of the view that these threats are largely unsubstantiated. There was also a significant difference in risk understanding across private sector representatives.

484. Accordingly, the assessment team finds that competent authorities and the private sector do not have a comprehensive risk understanding of the complexity of the VI's corporate formation practices and the role played by TCSPs and other gatekeepers (legal practitioners and accountants). This includes an uneven understanding across competent authorities and private sector in relation to issues such as (i) how beneficial owners could control BVIBCs even though they may hold less than 10 percent ownership in the BVIBCs; (ii) inherent risks arising from the frequent reliance placed by some TCSPs on professional business introducers; (iii) the role played by legal practitioners and accountants in providing advice and supporting transactions for setting up of complex legal structures, which include VI-incorporated legal entities; (iv) the possible misuse of director services provided by TCSPs (including risks of them operating as nominee directors in practice); (v) the obfuscation of ownership structures as a result of nominee shareholder services that can be provided by TCSPs; (vi) the possible misuse of shelf companies provided by some TCSPs; or (vii) the establishment of complex, multi-jurisdictional structures that involve BVIBCs and VI trusts.

485. The 2020 financial services TF RA considers the risks of TCSPs to an extent, and notes that given the large number of BVIBCs and other legal arrangements, operating in and from within the VI, the threat of misuse of entities internationally is considered to be greater than at the domestic level. However, authorities have not focused on the specific TF risks and vulnerabilities of all types of legal entities nor does the risk assessment contain any risk ratings in relation to the TF risks of legal persons.

486. With respect to trusts, authorities did not fully recognize how such arrangements can be used as part of layering of complex structures or present any typologies of their possible misuse or related mitigating strategies taken by the authorities. Private sector representatives noted that the most common use of the trusts was in relation to succession planning, and asset protection. According to the 2022 MLRA, there is currently US$183.66 billion in trust assets managed by VI professional trustees which is systemically significant.

487. The VI legal framework allows for the creation of VISTA trusts which are set up for the only purpose of holding shares in a BVIBC and PTCs which are companies that can be set up to act as a trustee and are not required to be licensed. Overall, authorities demonstrated a limited risk understanding as to how

such arrangements could be misused, by introducing layering in corporate structures which could result in the creation of complex structures aimed at obfuscating ownership and control structures of legal entities. However, a 2022 thematic inspection on PTCs demonstrates authorities' ongoing efforts to understand the size of the PTC sector, the trust assets they hold under management, and possible risks arising from PTCs.

7.2.4. Mitigating measures to prevent the misuse of legal persons and arrangements

488. Issues related to risk understanding, as discussed above, have an impact on the authorities' ability to effectively implement measures to prevent the misuse of legal persons and arrangements.

489. All BVIBCs and limited partnerships (set up under the LPA 2017) are required to have a registered agent in the VI, who is licensed and supervised by the FSC. Failure to do so will result in the legal person being struck from the Register of Corporate Affairs. The registered agent is responsible for collecting basic information of the entities they incorporate and submitting this information to the Registrar of Corporate Affairs (under the respective corporate laws) and are required to collect and hold beneficial ownership information as part of their CDD obligations under the relevant AML/CFT legislation. TCSPs providing trust services are licensed and supervised by the FSC, and registered agents are required to hold information on trusts as part of their CDD obligations under the relevant AML/CFT legislation.

490. Competent authorities and LEAs depend on the information collected and held by registered agents. As such, the system places huge reliance on registered agents, including the extent to which they hold adequate, accurate, and up-to-date information on legal persons as part of CDD information. However, given shortcomings identified in IOs.3 and 4, reliance on registered agents alone can raise challenges in being able to effectively prevent the misuse of legal persons and arrangements.

491. Legal practitioners and accountants, including those operating in the VI and abroad can support company formation and management services, by advising on the creation, operation, and management of legal persons and arrangements. Some of the law firms in the VI own or are affiliated with other members of a business group which perform services that are supervised as TCSPs. In general, some private sector representatives demonstrated a good understanding of the possible misuse of legal persons and entities. However, the FIA, as the relevant supervisory authority for such DNFBPs, had a more limited risk understanding, including on the potential involvement of legal practitioners in providing legal advice to BVIBCs, (identified as a risk in the 2022 MLRA) thus impacting their ability to effectively supervise these sectors and to ensure that these DNFBP sectors adequately collect CDD information on their clients (see IO.3 findings)

492. One particular area of concern arises from the frequent reliance on professional business introducers by some TCSPs and other gatekeepers, including some of the larger firms that form part of international groups. While reliance on third parties is permitted under the standards, the practice in VI is for registered agents to rely heavily on professional business introducers. The frequency of such reliance on third parties to conduct CDD, some of whom may be in the VI and others who are not, to collect and verify basic and beneficial ownership information, pose an inherent risk of the information not always being accurate and up-to-date, and raises challenges with verifying information due to the non-face-to-face nature of the transactions. See shortcomings elaborated further in Chapters 5 and 6 (IOs.3 and 4).

493. The legal framework also allows for TCSPs to provide nominee shareholder services as part of their company management activities. According to information provided by the authorities, based on prudential returns submitted by the TCSPs, the provision of such services has decreased to around 1,300 entities in 2021 (data not available for 2022) (see Table 7.3).

494. The legal framework allows for TCSPs to provide director services as part of their company management services. According to information provided by the authorities, such services are provided to about 10,000 companies or less on average (see Table 7.4). Authorities and some private sector representatives are of the view that given that directors have fiduciary obligations and are required to

operate in good faith, they cannot be considered as nominee directors. Taking into account the significant number of companies for which TCSPs provide director services, it is very likely that some TCSPs act on the basis of direct and indirect instructions of other persons, thereby acting in effect as nominee or resident directors. As such, authorities' views are not consistent with the FATF's understanding of the concept of nominee director.[57] The 2022 SRA also noted that some TCSPs advertise the provision of nominee director services (para 10.10, 2022 SRA).

495. Amendments in March 2023 now require TCSPs and other entities and professionals providing nominee shareholder and director services to provide this information to legal persons and for them to disclose their nominator information to the legal person but not to any registry.

496. Information on nominee shareholder arrangements and director services provided is collected from TCSPs as part of their fiduciary annual returns and can be a good source of information for authorities, but it is not clear to what extent such information is accounted for in authorities' risk-based supervision framework.

Table 7.3. TCSPs Nominee Shareholder Services*

Year	Number of Services
2018	3,869
2019	3,166
2020	1,773
2021	1,344

Table 7.4. Known Number of Companies for Which TCSPs Act as "Director"*

Year	# of Companies
2018	10,464
2019	11,306
2020	11,514
2021	7,209

**Data for 2022 is not yet available as the 2022 prudential returns are not yet due.*

497. Authorities had immobilized bearer shares by requiring all physical bearer shares and information that identify the owner(s) of those shares be held with a custodian, who is a person approved by the FSC or a recognized custodian. At the end of 2022, there were only 10 recognized custodians (outside of the VI) and 1 authorized custodian (within the VI). As of January 1, 2023, the issuance of new bearer shares was prohibited, with a requirement that existing bearer shares held by custodians be surrendered to the company on or before the effective date of July 1, 2023. In addition, by July 1, 2023, all existing bearer shares, if they are not already redeemed, converted, or exchanged, were deemed to be converted to registered shares. This initiative will support ongoing measures to mitigate the misuse of legal persons and arrangements.

498. As of December 2022, there were 442 companies authorized to issue bearer shares, of which only 52 were active on the Register. Twelve companies out of the 52 authorized have so far issued bearer shares totalling 11,472,813 shares. Authorities reported that 99.1 percent of these shares were issued by two publicly listed companies listed on two foreign stock exchanges. Prior to the changes in the law prohibiting

[57] The FATF defines a nominee as an individual or legal entity that routinely exercises the functions of the director in the company on behalf of and subject to the direct or indirect instructions of the nominator (who is another individual or legal person that issues instructions to act on their behalf in the capacity of a director or shareholder, sometime also referred to as shadow directors or silent partners).

bearer shares, it is not clear to what extent authorities were able to monitor compliance of the foreign custodians.

499. The authorized custodian in the VI reported that they only hold a very limited number of bearer shares in relation to two specific companies, which are only being held since they are part of an ongoing litigation case. Information on these bearer shares has been regularly communicated to the FSC, and there were measures in place to surrender these bearer shares by the July 1 deadline.

500. With respect to legal arrangements, express trusts are not required to be registered. Until March 2023, only professional trustees were required by law to hold information as part of their CDD requirements. Supervisory authorities are able to collect information on the trusts created by TCSPs as a result of information collected through fiduciary and AML annual returns, but this does not include information on trusts set up by non-professional trustees and it is not clear to what extent such information is accounted for in authorities' risk-based supervision framework.

501. Competent authorities have conducted some outreach and training to the private and public sectors on some of these issues to raise their awareness on the ML/TF risk of legal persons and arrangements, including sessions and webinars held with the VI Association of Compliance Officers and VI Finance on issues related to assessing and mitigating risk, completion of prudential and statistical returns, sanctions compliance, 2022 amendments to the AMLTFCOP, etc.

7.2.5. Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

Basic information

502. Under the relevant corporate laws, registered agents are obliged to obtain and maintain basic information, but deficiencies existed with respect to information held on foreign companies and limited partnerships, (some of which have since been addressed through the March 2023 amendments). They are also responsible for providing this information to the Registrar of Corporate Affairs through the VIRRGIN, which provides online electronic access to the services of the Registry.

503. In order to incorporate a legal person (company or a limited partnership), registered agents are required to submit an application through VIRRGIN, with accompanying memorandum and articles of association with most basic information required of a legal person. The electronic portal only accepts an application if all information required through the portal is included, helping to ensure completeness of information provided. The task of verifying and approving the incorporations falls on nine staff in the Registrar's office, who check this information against the memorandum submitted before incorporating a legal person, noting that incorporations can be done in a matter of a few hours. Given the high level of VI-incorporated legal entities (30,000 or so annually), this is an insufficient number of staff. Table 7.5 identifies the number of times the Registrar has rejected an application or requested more information (defected transactions). For the period under review, authorities note that they have not come across fields that had been completed in compliance with technical system requirements, but with false data (e.g., obviously fake names).

Table 7.5. Number of Defected and Rejected Transactions Over the Period Under Review

Year	No. of Defects Count	No. of Rejected Transactions
2018	689	404
2019	648	205
2020	683	225
2021	789	368
2022	607	373
2023	103	60

504. BVIBCs must elect to reserve company names during the pre-incorporation stage. These company names can be accompanied by a range of suffixes (e.g., a limited company can elect for suffixes such as "Limited," "Corporation" or "Incorporated," "Société Anonyme" or "Sociedad Anonima," or their respective abbreviations). While there are legitimate business reasons for using different suffixes, including familiarity of entity names for foreign owners and ease of using BVIBCs in foreign jurisdictions, the assessment team is of the view that this can also raise potential risks where it gives the impression that the VI legal entities have been created in a jurisdiction where some of these suffixes are more commonly used or is in line with the requirements of entities established in a foreign jurisdiction. The assessment team is of the view that this could potentially further frustrate efforts by foreign competent authorities since at first glance, the BVIBC could be mistaken for a legal entity incorporated in another jurisdiction.

505. For BVIBCs, information on directors does not have to be provided at the outset if no director has been appointed, and under the legal framework have up to (6 months + 21 days) to submit this information. If this information is not provided within this timeframe, the system automatically alerts the Registrar and a penalty of US$100 is levied against the company and an additional 90 days available to provide this information or else the company could be struck off. Before striking a company, the Registrar will also publish notice of the intention to strike the company off the Register in the Gazette. As such, information on directors does not have to be immediately available and may not be available to the Registry for up to 10 months (as permitted by the law). Furthermore, under the existing law, the Registrar can issue a certificate of good standing for the legal person—which is an automated process through the system—even if this information on directors is not available in the registry (section 235, BVIBCA). This creates possible risks that the certificate of good standing might be used by the company to open banks accounts abroad and undertake business activities, while director information is not available for the company.

506. Based on data shared by authorities, most provide this information within the period allowed under the law (see Table 7.6). In addition, TCSPs can provide director services (both as corporate directors and as individuals), but the Registry does not distinguish these directors from others.

Table 7.6. Number of Companies Which Did Not File Register of Directors (ROD) at Incorporation

Year	No. of companies that did not file ROD during the year in which they were incorporated	Number filed subsequently within the period allowed	Number that did not file	Number struck for non-filing of ROD
2018	2,382	2,015	367	366
2019	1,442	1,347	95	94
2020	1,445	1,356	89	87
2021	1,908	1,764	144	140
2022	1,158	960	198	0*)
Total	8,335	7,442	893	

* According to authorities, companies incorporated in 2022 had not the met the criteria for being struck off at the time of the onsite

507. Basic information held by the Registrar is required to be publicly available for inspection under the legal framework, the Registry of Companies, Foreign Companies, and Limited Partnerships, but it is not accessible online, which makes it more challenging for the public to easily access this information. In order to search for basic information, a member of the public has to complete a search and document request form. The request form is sent via e-mail to the Registrar, who provides the information requested. In order to complete the document, a person needs to be able to provide the company number and/or company name. In addition, there are fees charged for each search: US$50 (previously US$30) for company information and an additional US$75 for information on the list of directors (if available). The table below notes the number of searches by the general public—and while this indicates that there have been a number of searches, it raises an additional question about the sufficiency of resources and effectiveness of the system, noting that on average more than 60 search request are received by email daily that have to be responded to (for example for years 2021, 2022). See Table 7.7 below.

Table 7.7. Number of Public Searches Requested from VIRRGIN

Year	No. of Searches done by general public
2018	11,876
2019	13,674
2020	12,862
2021	16,096
2022	17,473
2023 (end of March)	5,282

508. There is currently no option to search this information in person at the Registrar's office, but the authorities note that there are plans currently underway to provide online access to the Register which would be a significant improvement to help facilitate access to this information.

509. Search requests for limited partnerships is initially limited to information on the registered agent, and the transaction history associated with the limited partnership but do not include information on the names of the partners. Such information would have to be requested as follow-up information.

510. The assessment team is of the view that the high fees (US$50/US$75 per search) and other formalities that need to be observed have a negative impact on the effective availability of basic company information.

511. Only some competent authorities, such as the FIA, FSC, AGC (since 2022), and ITA, but not others have direct access to information held in the VIRRGIN. Mechanisms are in place for other LEAs to request this information. There are also limitations in some of the information that competent authorities can get from the Registry (e.g., they can access the names of directors, but no further information on the directors such as their address or other details), which is not sufficient to support LEAs investigations.

512. Prior to the January 2023 amendments, the list of directors contained in a company's ROD was not publicly available which was an important deficiency. Information was only available from the Registrar on the order of a court or written request of a competent authority. Table 7.8 outlines the number of requests received by the Registrar before the law was changed. Authorities report that this information was typically made available to competent authorities within 24 to 48 hours. Given the deficiencies with the filing of directors' information noted above, it is not clear if they were able to always provide this information.

Table 7.8. Competent Authorities' Requests for ROD

Agency	2018	2019	2020	2021	2022
Financial Investigation Agency	0	0	0	30	36
Financial Services Commission	1	2	5	1	1
International Tax Authority	0	0	0	2	4
Attorney General	0	0	0	28	43
Total	**1**	**2**	**5**	**61**	**84**

513. Competent authorities and LEAs indicate that, in general, they have no issues in getting access to basic information, including information on the register of members, from registered agents. They have also been able to provide such information to support international cooperation requests. See also IO.2.

Beneficial ownership information

514. Under their AML/CFT obligations, TCSPs, are expected to carry out CDD measures to identify beneficial ownership information of their customers and the frequency of updating this information is based on the reporting entities' assessment of the risks of their client. This was the only source for holding beneficial ownership information in the VI until March 2023. Reliance on a single approach to holding beneficial ownership information raises effectiveness concerns, especially since the overall effectiveness of this system is impacted by shortcomings in the effective implementation of CDD and other measures taken by the registered agents, and the ability of supervisors to effectively supervise TCSPs. See IOs.3 and 4.

515. As outlined in IO.4, assessors noted significant differences with the private sector's understanding of the concept of beneficial ownership and implementation of beneficial ownership requirements. In practice, this is primarily based on identifying persons who hold a 10 percent ownership threshold; information primarily collected through self-declaration forms for direct client relationships or through professional business introducers; verification of status of the beneficial owner, when this is done, is primarily focused on checking against shareholder information (register of members) and the structure chart of the legal person but very few noted that they collect other documents to establish and verify other means and mechanism of control or could demonstrate an understanding of instances when beneficial owners might exercise control through other means other than ownership. As also identified earlier, the frequent reliance on professional business introducers to collect and verify beneficial ownership information, while not always being able to check the extent to which these introducers are properly undertaking their CDD obligations, and the non-face-to-face interaction with the beneficial owners raises additional challenges. As such, this raises the inherent risks that beneficial ownership information held in the VI may not always be adequate or accurate.

516. The AML/CFT legal framework requires the private sector to hold updated CDD information, including beneficial ownership information, on a risk-sensitive basis, whereby higher risk customers must be updated on at least an annual basis, while lower risk customers need only to be updated within every four years, as determined by the respective TCSP. As noted in IO.4 above, most TCSP representatives indicated that they did not consider a large portion of their clients to be high risk, so this information would not be updated on an annual basis. Some did note their practice of updating information on a more ongoing basis if there were trigger events or their clients requested any transactions. Notwithstanding, this raises challenges with ensuring there is up-to-date beneficial ownership information in the VI on an ongoing basis.

517. The March 2023 amendments now require companies and foreign companies to hold beneficial ownership information themselves and to file any changes to beneficial ownership information with the registered agent in 15 days but does not apply to other legal persons or legal arrangements, and there are no subsequent penalties that can be applied against companies for failing to do so. This measure had not

been effectively implemented at the time of the onsite visit (given that the changes to the law were made at the time of the onsite visit) and effectiveness could therefore not be measured. Nevertheless, the legislative changes can positively support the efforts to ensure that beneficial ownership information held by the registered agents is up to date, going forward.

518. To get access to this information, competent authorities can request this information directly from TCSPs and DNFBPs. In general, authorities indicated that they typically can get this information in a day or two, though taking note of challenges identified in IO 6.

519. Notwithstanding, competent authorities were able to demonstrate their capacity to furnish basic and beneficial ownership information in a timely manner with respect to international cooperation requests and have responded to several requests for such information during the period under review, as further elaborated under Chapter 8. In addition, the VI's engagement in bilateral initiatives such as FIN-NET, the BOSSS, and the Register of Overseas Entities, have further supported the timeliness with which they can provide basic and beneficial ownership information. However, authorities have not proactively sought international cooperation with respect to basic and beneficial ownership information (see IO.2.). Furthermore, limitations in the adequacy and accuracy of beneficial ownership information noted above may impact the quality of the information shared.

520. One example of possibly different information being shared on beneficial ownership is in relation to the information provided through BOSSS. Pursuant to the BOSSS Act, registered agents are required to submit beneficial ownership information for BVIBCs and LPs for input into BOSSS on an ongoing basis. This system is only used for the purpose of facilitating international cooperation requests, primarily from the U.K. National Crime Agency, but is accessible to other authorities on request. Under the BOSSS Act, registered agents are only required to submit beneficial ownership information of persons (defined with a 25 percent ownership threshold) which is different to registered agents' requirements to hold beneficial ownership information in the context of their AML/CFT CDD obligations (10 percent ownership threshold), resulting in two different thresholds being applied within the country. No competent authority is responsible for monitoring this system or for verifying the information that is being uploaded by the registered agent. See discussion further in IO.2.

521. The BVIBCA has provisions for the setting up of a beneficial ownership registry of persons of significant control as to be further established through regulations. Authorities have prepared draft regulations in relation to this and report ongoing efforts to implement such a registry.

7.2.6. Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

522. Given that express trusts and VISTA trusts are not required to be registered, the administration of these trusts is based on common law requirements and the VISTA Act (for the latter). The majority of express trusts and VISTA trusts are managed by licensed TCSPs who are required to hold information on trusts as part of their CDD requirements under the AML/CFT law. The VI recently amended the AML/CFT requirements in August 2022 (to enhance the information requirements related to trusts) and in March 2023 (to introduce requirements for all trustees, including non-professional trustees). TCSPs indicated that the trust assets they manage are predominantly held outside of the VI.

523. Based on discussions with private sector representatives, most indicated that they collect the requisite information and beneficial ownership information on trusts as outlined in law. The possibility under the VI legal framework, to have VISTAs (trusts that own shares in a BVIBC) and conversely, PTCs (BVIBCs that can operate as trustees) can add additional layers to corporate structures, making it more challenging to be able to get adequate, accurate, and current basic and beneficial ownership of these more structures.

524. Even though trusts are not required to be registered, information collected as part of the annual fiduciary returns provide a good source of information for authorities to identify trusts held by TCSPs and the total value of the trust assets that they manage. However, authorities did not adequately demonstrate how they leverage this information in the prioritization and conduct of their supervisory activities with respect to individual TCSPs, or how they use such information to test the extent to which TCSPs hold adequate, accurate, and current information on trusts (see IO.3).

525. Authorities have carried out a thematic inspection in 2022 related to PTCs which is a welcome initiative. The findings of the assessment noted that the majority of PTCs provide unremunerated trustee services. Under the VI legal framework, this means they do not have to be licensed and, as such, are not obliged entities under the AML/CFT laws for carrying out CDD measures. The inspection also collected information on the trust documents held by PTCs. Authorities noted that average assets under management per trust amounted to US$13 million. Coming out of such thematic inspections, the authorities confirmed that they would continue ongoing monitoring of the relevant Class 1 TCSPs offering such services, and the findings of the 2022 MLRA will be factored into their risk assessment of the relevant Class 1 TCSPs going forward.

7.2.7. Effectiveness, proportionality, and dissuasiveness of sanctions

526. While the Registrar has no direct powers available to take any action if information provided to the Registrar is false, misleading, or on the basis of any findings of misuse of the legal person, they can apply to the Court for an Investigation Order which may be made if it appears to the Court that persons concerned with the incorporation, business, or affairs of a company, or any of its affiliates have acted fraudulently or dishonestly. No such orders have been applied for.

527. The Registrar of Corporate Affairs can take actions to impose penalties or strike a legal person from the Registry in some circumstances, but some offences only attract very nominal fees. For example, failure to file a copy of the register of directors with the Registrar within the prescribed timeframe for BVIBCs is only a fee of US$100 (slightly higher fees are prescribed for companies set up before 2017, with some escalation clauses, but this does not have an impact on current overall effectiveness). The imposition of penalties is done automatically through the system, and authorities have provided statistics in relation to this. In particular, there were a significant number of penalties issued in 2018 and 2019 (because higher penalties were applicable for existing companies at the time the new law came into place). While the overall value of penalties leveraged has remained high, compared to the number of penalties issued, the average value of the penalties remains very low (only US $340 in 2022) (see Table 7.9).

Table 7.9. Penalties Levied for Failure to File Registers of Directors

Year	No. of Penalties	Penalty Value	Average Penalty Value
2018	14,829	$25,042,050	$1,688
2019	6,314	$9,148,735	$1,448
2020	4,542	$3,737,050	$822
2021	4,461	$2,543,300	$570
2022	4,118	$1,426,100	$346
TOTAL	**34,264**	**$41,897,235**	**$1,222**

528. The Registrar has the power to strike BVIBCs and LPAs for specific reasons as prescribed in the law, including non-payment of annual fees (which according to authorities constitutes the majority of entities struck off) or resignation of the registered agent (see Table 7.10). Prior to January 2023, a company could remain struck off for a period of seven years before it would be considered dissolved, which would mean that the company would be immobilized and would not legally be allowed to perform transactions. This was most recently changed such that a company is now considered dissolved from the date the

Registrar publishes the notice of striking-off. As a result, under the old framework, a BVIBC struck from the register could continue to retain some legal personality with restrictions for another seven years.

529. The assessment team notes that the number of BVIBCs being struck off overall remains very high at around 60,000 (in 2018), and still high at 30,000 (2022) companies annually. See Table 7.11

530. In addition, the legal person can be restored to the register within five years (previously seven years prior to January 2023). At the time of restoration, a company's registered agent must make a declaration that the company's records (both basic and beneficial ownership information) have been updated. In earlier years, larger numbers of companies were restored (e.g., in 2018, around 8,000 companies were restored to the Register), while this has decreased to 3,607 companies being restored in 2022. Irrespective, this is still a significant number of companies that have been restored.

Table 7.10. Legal Persons Struck from the Register (Agent Resigned)

Year	No. BVIBCs	No. of LPs
2018	1,915	8
2019	1,123	17
2020	1,223	17
2021	1,088	8
2022	406	4
TOTAL	**5,755**	**54**

Table 7.11. Number of BVIBCs Struck Off and Restored

	Year				
	2018	2019	2020	2021	2022
Number of Companies Struck Off	61,261	54,709	48,861	38,522	32,609
Number of Companies Restored	8,047	5,708	4,861	4,308	3,607

531. Given the important role played by TSCPs in collecting and holding information, the FSC has the power to take enforcement action against its licensees that fail to comply with their obligations. However, enforcement actions taken against TCSPs are insufficient to date. See IO.3.

532. In addition, the FIA can also impose sanctions for not providing information on basic and beneficial ownership information in the context of a Section 4 Notice. While criminal penalties are available, none of have been applied to date. Between 2018–2022, the FIA took six enforcement actions which resulted in six administrative fines on registered agents, each in range of US$10,000–12,000, with a total value of US$64,000, all between August and October 2022. See IO.6.

533. With respect to legal arrangements, given that there are no registration requirements for express or VISTA trusts, the only available sanctions are against TCSPs licensed to provide trusts services. Information provided by the authorities did not distinguish enforcement actions taken by the FSC or FIA with respect to information requirements related to trusts or in relation to the provision of trustee services specifically.

534. No cases have ever been investigated by the RVIPF or prosecuted with respect to the misuse of legal persons and arrangements or against TCSPs and other gatekeepers (e.g., lawyers, accountants) for their failure to comply with basic and beneficial ownership information requirements.

535. Therefore, for the reasons outlined above, in particular the nominal fees applied for missing information on directors, the lack of enforcement or penalties issued against TCSPs who are responsible for holding basic and beneficial ownership information, and in the absence of any criminal actions taken

against legal persons and arrangements, their beneficial owners, or TCSPs, assessors are not convinced that implementation of sanctions to date has been effective, proportionate, or dissuasive.

Overall Conclusions on IO.5

536. The VI's system for holding adequate, accurate, and up-to-date basic and beneficial ownership information is dependent on information collected by registered agents. Therefore, the overall effectiveness of this system is impacted by shortcomings in the effective implementation of CDD and other measures taken by the registered agents, and the ability of supervisors to effectively supervise TCSPs and other gatekeepers. Basic information is not easily accessible to the public and beneficial ownership information held in the VI may not always be adequate, accurate, or up to date for the reasons outlined above. Authorities are able to respond to international cooperation requests in a timely manner and provide information (if available) but do not seek information themselves. More generally, competent authorities and private sector representatives did not share a comprehensive understanding of risks of misuse of VI legal entities, in line with the VI's risk profile, including on issues such as the risk of misuse of nominee arrangements, the misuse of complex legal structures that can be created in the VI and the inherent risks arising from reliance on professional business introducers in the VI context, and could not demonstrate that they have taken sufficient mitigation measures to address these risks. This has an overall impact on their ability to effectively mitigate against the misuse of VI incorporated legal entities. Authorities did not demonstrate that they impose effective, proportionate, or dissuasive sanctions against legal entities or registered agents, and no investigations or prosecutions related to the misuse of legal entities have been carried out to date.

537. The VI is rated as having a moderate level of effectiveness for IO.5.

Chapter 8. INTERNATIONAL COOPERATION

8.1. Key Findings and Recommended Actions

Key Findings

a) The AGC generally provides MLA in a timely manner despite its limited human resources. In addition, in the absence of specific international cooperation feedback concerning the quality of the MLA obtained from the VI, indirect findings suggest that the AGC, with the support of other competent authorities, facilitates information of good quality.

b) The AGC received only one extradition request over the period under review, which was successfully completed. The VI did not submit requests for extradition or to identify and seize assets.

c) The VI did not submit MLA requests or other forms of international cooperation in relation to TF, which is broadly consistent with the overall low domestic TF risk of the country. On the other hand, although the VI considered that its position as an international business incorporation and financial center could be exploited to support as medium-low risk, the competent authorities did not identify transnational TF cases that required the use of MLA.

d) The limited number of outgoing requests and their nature for all types of MLA and other forms of international cooperation requests submitted over the period under review is not consistent with the overall medium-high ML risk of the country. This could also be affected by the differing views on the legal basis to prosecute the activities of BVIBCs abroad successfully in the VI.

e) The quality of other forms of international cooperation provided could only be assessed in relation to the FIA-AIU and the FSC, whose assistance is regarded generally as good. On the other hand, the GO, FIA-AIU, LEAs, and the FSC provided other forms of international cooperation in a timely manner to varying extents.

f) The FIA-AIU sought other forms of international cooperation in very few instances, and, except for corruption-related crimes, such requests do not fully reflect the ML threats of the country. The RVIPF-FCU engaged in a wide range of other forms of international cooperation with key VI partners to tackle multiple offences, including drug trafficking, which is one of the main proceed-generating offences in the VI, while HMC requested international cooperation in a limited number of occasions, which related to drug trafficking in several instances.

g) The AGC, FSC, FIA, and ITA demonstrated the capacity to furnish basic and beneficial ownership information promptly. The VI has also engaged in initiatives of international key partners aimed at obtaining beneficial ownership information (i.e., the exchange of notes and the Register of Overseas Entities with the United Kingdom), which is indicative of its willingness to support efforts related to the transparency of legal persons. However, the basic and beneficial ownership information available for international cooperation is subject to limitations as noted in IOs.3, 4, and 5, which potentially impacts the quality and the usefulness of the information provided.

Recommended Actions

a) Actively seek international cooperation from other jurisdictions in keeping with the VI's ML and TF risk profile. Increasing investigations of transnational crime should result in increasing requests for assistance.

b) The AGC should increase its staff allocation, which would facilitate the continuation of operations in the face of disruptive events such as the resignation of limited key personnel. Similarly, the VI should further enhance the capacity of the RVIPF-FCU to provide other forms of international cooperation by providing it with additional human and technological resources.

c) Enhance the adequateness and accuracy of the beneficial ownership information exchanged with foreign counterparts and ensure it is kept up to date by addressing the deficiencies found in IOs.3, 4, and 5.

538. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are Rs.36–40 and elements of Rs.9, 15, 24, 25, and 32.

8.2. Immediate Outcome 2 (International Cooperation)

8.2.1. Providing constructive and timely MLA and extradition

Mutual legal assistance

Legal, institutional, and operational framework

539. The VI has clear procedures in place to execute incoming MLA requests. These procedures are set out in the C(JI)CA, PCCA, ATO, DTOA, and MLA (USA) Act. Moreover, in 2014, the AGC issued the *Guidance for the Standard Operating Procedures for Mutual Legal Assistance Requests*, which provides general information on the procedures related to MLA requests that this competent authority follows. Notwithstanding, the AGC does not have written guidance to assist foreign competent authorities regarding how to present MLA requests.

540. In 2007, the FSC released the *Handbook on International Co-operation and Information Exchange*, which was last updated in 2013. While some of the information may be outdated, it still offers authorities valuable insights into the requirements for international cooperation applications. The Handbook highlights that the VI's approach to international cooperation is based on reciprocity. It is important to note that the execution of treaties is not necessary for the authorities to provide assistance.

MLA requests

541. The AGC is responsible for reviewing whether MLA requests, received directly or through the GO, meet the domestic legal requirements, transmitting them to the respective executing agencies (i.e., the FIA, RVIPF, High Court, VI Shipping Registry, or dealing with the request itself), and submitting the respective response to the foreign competent authority.

542. The FIA-AIU plays a key role concerning the execution of MLA requests. The investigating officers of the FIA-AIU are responsible for responding to MLA requests transmitted by the AGC jointly with the FCU of the RVIPF. Upon receipt of the request, an investigation is initiated, additional information is requested from relevant sources, including the FIA, and the results are sent to the AGC.

543. From 2018 to December 2022, the AGC received 443 MLA requests from 69 countries. Beneficial ownership information and company documents (including information about directors and officers) are most frequently requested, while ML and fraud constitute the main offences emanating from MLA requests.

The 443 requests related to 20 offences: ML, fraud, tax evasion, embezzlement, corruption, bribery, conspiracy, misuse of public office, theft, forgery, drug trafficking, defrauding another, obtaining property by deception, terrorism, smuggling, perjury, illicit gains, blackmail, possession of firearms, and human trafficking. There were no MLA requests received in relation to TF during the period under review, and the territory did not engage in the sharing or repatriation of assets.

544. These MLA requests generally referred to more than one offence. In this sense, countries submitted 527 requests relating to the offences enumerated in the paragraph above. Information on ML offences was requested on 201 occasions (38.14 percent), while information relating to fraud was requested 113 times (21.44 percent). All other offences individually accounted for less than 50 requests (less than 10 percent).

545. ML was the offence for which the VI received most MLA requests, which is consistent with (i) its corporate and financial center profile, (ii) its vulnerability to ML through the activities carried out by legal persons and legal arrangements, and (iii) the inflows of proceeds of crime generated abroad. The latter is inclusive of fraud, which was the offence for which the second highest number of requests were received.

546. The VI received relatively fewer requests related to the other significant predicate offences in the context of the VI's risk profile. This includes tax evasion with 42 requests (7.97 percent) and corruption with 29 requests (5.50 percent), which are proceeds generating crimes that may also be concealed by misusing legal persons and arrangements.

547. These incoming MLA requests also referred to more than one type of assistance. From this perspective, the AGC handled a total of 696 requests from which 294 requests referred to obtaining company documents[58] (42.24 percent), 217 related to beneficial ownership information (31.18 percent),[59] and 85 concerned banking documents (12.21 percent). One hundred requests (14.37 percent) focused on obtaining evidence (e.g., agreements, contracts, witness statements, financial statements, samples of drugs, pictures, videos, court transcripts, etc.) (18 requests), conducting interrogations (25 requests), gathering immigration records (15 requests), and shipping registry information (15 requests), conducting searches (2 requests), and executing restraint orders and confiscating assets (3 requests). The VI did not have experiences related to the repatriation or sharing of assets.

Quality of the information provided

548. One of the jurisdictions that provided international cooperation feedback asserted that it did not have enough experiences to draw meaningful conclusions on the effectiveness of the information received, while others did not provide relevant feedback. In addition, despite the effort of the AGC to obtain feedback by including a query in this regard in its responses to MLA requests, it did not receive observations on the quality of its cooperation. Considering the lack of information on the quality of the assistance provided by the VI, the assessment team is unable to reach a full conclusion in this regard, although it recognizes that the AGC, has taken action to ensure that MLA requests are properly formulated, which contributes to the successful provision of the information to the requesting foreign authorities. There are no records of follow-up requests from requesting countries of attempts to obtain more comprehensive submissions from the VI.

Timeliness

549. On average, the authorities responded to requests within a reasonable period of time. The AGC responded to requests for assistance in 56 days on average in 2018, 68 days in 2019, 95 days in 2020, and 157 days in 2021.

[58] Including information concerning its directors, officers, and how they function.

[59] Including identity and identification documents of beneficial owners.

550. For the years 2020 and 2021, the average time to process the requests increased due to changes in key personnel and the measures adopted domestically to cope with the COVID-19 pandemic. In 2022, the response time decreased to 78 days. At the time of writing this report, only two MLA requests from 2022 were pending processing by the AGC.

551. Agencies executing MLA requests generally contributed to the provision of timely assistance. For example, statistical data from 25 requests during the period 2019 to 2021, coming from 8 jurisdictions, show several instances where the FIA-AIU provided the requested assistance in 13 days and, on one occasion, in 22 days. In 7 instances, the authorities took 6 months to respond to the requests, and, exceptionally, it took 12 months to respond to another request. In general, the FIA-AIU and other agencies try to provide assistance in a matter of days. The complexity of the requests and the timeliness of response from sources of information were issues that influenced response times.

552. Staffing issues may impact the timeliness of the provision of MLA. On one occasion, the AGC received a restraint order request in February 2019 from the Crown Prosecution Service of England and Wales. The AGC applied for the order in February 2020, but it was rejected by the court. The counsel responsible for the request resigned and, due to staffing and recruiting issues, the AGC was not able to assign a new counsel to the matter until February 2021. A new application was filed based on the interim injunction test. The order was finally granted in December 2021, almost three years after the assistance was initially requested.

Refusals

553. The number of requests refused varied throughout the period under review. In 2018, 35 requests (34.65 percent) were refused; 44 in 2019 (44.44 percent); 16 in 2020 (23.53 percent); and 17 in 2021 (21.79 percent). In 2022, 15 requests (15.46 percent) were refused, making this the lowest number of refusals over the period. There were various reasons for such refusals, including: (i) the company sought was not registered in the VI; (ii) there was no clear nexus between the evidence sought and the offence under investigation; (iii) the information provided on the nature of the investigation for which evidence was required was insufficient; (iv) insufficient information on the nexus between the persons or entities registered in the VI and the alleged offence;[60] and, in one instance, (v) the request did not come from a Central Authority. These reasons for refusals were in line with the legislation of the VI, and there are no indications in the international cooperation feedback that countries received unreasonable refusals to their requests. In addition, no requests have been declined based on dual criminality requirements. In the same vein, one jurisdiction that provided international cooperation feedback noted that the VI has not been able to assist in non-conviction-based asset recovery cases as this is not in line with the fundamental principles of law of the country.

554. The AGC demonstrated a proactive approach and took informal actions to reduce the number of refusals of incoming MLA requests over the period under review. Firstly, the AGC started reaching out to requesting foreign competent authorities by phone, explaining the reasons the request was not compliant with domestic requirements and explaining how to correct them. Secondly, it changed the approach to MLA requests that required financial information about a legal person without reference to a specific FI, which previously would have been treated as a "fishing expedition." In this second case, the AGC started to review corporate information with the intention of identifying specific FIs connected to the legal person and, eventually, channeling the request to the relevant entity.

555. In 2020, the AGC imposed an administrative hold on MLA requests emanating from one country. This was due to the failure of the authorities of the concerned country to assist in respect of two matters

[60] A request would have to show some connection between the alleged crime and the company on which the request is focused. The connection between the company and the offence must be clearly stated and must not be apparent; it is understandable that the nexus presented is intricate, but it must not be apparent only.

which resulted in court proceedings being instituted against the Attorney General. In both cases, several attempts were made to obtain the cooperation of the authorities to obtain assistance to enable the Attorney General to defend judicial review proceedings emanating from the decision to execute the MLA request. In the absence of responses and of clear assurances that assistance would be provided in the event of future legal challenges, a decision was made to place requests from this country on administrative hold. As a result, no requests from this country are transmitted nor executed by the VI, which is a measure consistent with the principle of reciprocity.

Extradition

Legal, institutional and operative framework

556. The Governor and the AGC have a clear procedure to execute extradition requests. The Extradition Act 2003 (Overseas Territories) Order 2016 (the Extradition Order) and the VI Extradition Manual issued in 2022 by the GO, AGC, and ODPP outline the process for the extradition of a person from the VI pursuant to a request from a foreign country. While extradition requests may be refused under the circumstances outlined in sections 80 to 96A of the Extradition Act, there were no instances in which such refusals took place during the period under review. In addition, the Extradition Order and the VI Extradition Manual facilitate provisional arrest in case of urgent requests. An extradition process is expedited if the requested person consents to be extradited. A provisional warrant was issued in relation to the one extradition request during the review period.

Extradition requests

557. The VI received only one extradition request from one of its international partners during the period under review which was completed in 2023. This request related to the offences of conspiracy to launder money and conspiracy to conceal and smuggle money. The person who was the subject of the request sought leave to appeal to the Judicial Committee of the Privy Council, and leave was denied on the basis that the appeal did not raise an arguable point of law.

Timeliness

558. According to the authorities, the extradition process can take anywhere between a few months to several years depending on whether the requested person consents to or challenges the extradition through court proceedings. This seems to be in line with other jurisdictions in the region, given the different levels of appeal.

Prioritization, staffing and case management

559. The AGC applied informal criteria for the prioritization of the MLA and extradition requests received throughout the period under review. It determined whether each request was a pressing matter based on its characteristics and did not cover considerations related to ML/TF risk. For example, if several months elapsed between the date of the request and date on which the AGC received it, the request would be prioritized. Also, if the matter was presently before a court or there was a risk of dissipation of funds, the AGC prioritized the request. While formal and risk-based criteria to prioritize requests is the best approach, there is no evidence that the current practice has caused problems in the provision of MLA.

560. The limited number of counsels responsible for MLA within the AGC and extradition requests has the potential to negatively impact the provision of MLA although there is no evidence that in practice this is a major issue for the provision of MLA as requests are processed generally in a timely manner. The AGC currently has a Crown Counsel dedicated to processing MLA requests who is supported by a consultant. Additionally, another Crown Counsel and an administrative assistant render support to the processing of MLA requests. There is one Senior Counsel within the AGC to deal with extradition requests, among other matters. The temporary unavailability of this staff, due to resignations or other circumstances, may generate delays in processing of requests.

561. Recruitment processes and compensation are key issues as well. The process can take up to six or seven months. Compensation is considered as very low, and several declined the job offer either because of the low salary or because they have found alternative employment.

562. In addition, the AGC staff only received training regarding MLA and extradition on two occasions during the period under review. Both of these occurred in 2022. The staff received training in March 2022 concerning "Mutual Legal Assistance and Extradition" and in June 2022 regarding "International Cooperation and Mutual Legal Assistance in Criminal Matters."

563. The AGC uses two electronic systems to record MLA requests, while the case management system is mostly manual. The first one is used by the AGC's Records Unit to manage documents, i.e., to store digital versions of the requests and send them securely to agencies that will execute the MLA request. This Records Team can use this first system to provide a list of all MLAs received by AGC. Requests received in hard copy are scanned and uploaded to the system by the Records Team. Upon receipt of a request, an electronic cabinet is created in the system, and the matter is assigned to Counsel by email. The Counsel receives weekly reports from the Records Team requesting the status of matters (i.e., pending, completed, ongoing, etc.). Dates are not set for follow-up in the system; however, the Counsel is responsible for setting his/her own reminders for follow-ups. The second system is used to enter the data from requests and conduct data queries (e.g., when the requests were sent, what authority made the request or what offence is identified in the request). This second system is also used to track the processing stage of requests manually. While there is no evidence that a more automated case management system is necessary, the AGC would benefit from incorporating one should the volume of incoming and outgoing requests increases.

8.2.2. Seeking timely legal assistance to pursue domestic ML, associated predicates, and TF cases with transnational elements

564. The VI sought MLA only on two occasions between 2018 and 2022. In 2018, the AGC sent a successful request to one of its key international partners seeking information in relation to the whereabouts of an individual in relation to an investigation of murder. Moreover, in 2020, the AGC submitted a request to the foreign authorities seeking various banking and court records in relation to an investigation regarding suspected sanctions breaches under the DPRK (Sanctions) Overseas Territories) Order 2012. This last request was granted, and the results were received in August 2022. These requests did not include identifying and seizing assets.

565. The limited number of outgoing requests and their nature are not consistent with the overall medium-high ML risk of the territory. The 2020 Financial Services Risk Assessment and the 2022 MLRA indicate that the VI is significantly exposed to the proceeds of predicate offences committed abroad and the potential abuse of legal persons and arrangements established or registered in or from within the territory to launder proceeds generated in foreign jurisdictions. Therefore, the submission of one request relative to a murder case and another related to sanctions breaches are not in line with the results of risk assessments. This may indicate that the investigation of ML cases with transnational components is not a priority and that competent authorities do not fully appreciate how the financial services sector of the country could be misused.

566. The lack of MLA requests relative to TF is broadly consistent with the overall low domestic TF risk of the territory. While the VI Financial Services Sector Terrorist Financing Risk Assessment 2020 found that the abuse of companies registered in the VI to facilitate TF was an important risk; however, the FIA and the RVIPF did not identify cases in this regard over the period under review.

567. The VI did not submit requests for extradition or to identify and seize assets between 2018 and 2022.

8.2.3. Seeking other forms of international cooperation for AML/CFT purposes

568. The low volume of requests for other forms of international cooperation apart from MLA submitted by the competent authorities is not consistent with the risk profile of the territory. The FIA-AIU and LEAs seldom exchange financial intelligence, law enforcement, or other information, for AML/CFT purposes, which is a tendency probably grounded on the low operational priority given to transnational cases and the lack of appreciation of the risks posed by the international activities of BVIBCs.

FIA-AIU

569. The FIA-AIU submitted 73 requests for international cooperation to 33 FIUs through the ESW between 2018 and 2022. The most active year was 2022, when the FIA submitted 21 requests. The FIA submitted most of its requests to three jurisdictions, from which two are key international partners, which totalled 30 outgoing requests, while the other 30 countries received fewer than 6 requests individually. The international cooperation feedback received from 16 jurisdictions also demonstrates the modest number of requests received from the VI. Two jurisdictions that responded to the call for international cooperation feedback noted that the FIA did not provide its views on the usefulness of the information provided spontaneously on some occasions.

570. The FIA-AIU sought assistance concerning 11 offences. Typically, one request referred to more than one offence; in this sense, requests concerning these offences totalled 97, from which 46 requests referred to ML, 13 to misappropriation, 11 to fraud, 10 to corruption, and 9 to bribery. These offences accounted for most of the assistance sought. The other seven offences were drug trafficking, organized crime, bulk cash smuggling, counterfeiting, terrorism, TF, and scams, for which the FIA sent from one to two requests only. In addition, seven requests referred to background information, three related to TFS, two to high cash transactions, and one concerned immigration status. Based on the understanding that drug trafficking, smuggling, and domestic corruption are the main domestic proceeds-generating crimes in the VI, the types of crime for which the FIA-AIU sought information are not in line with ML threats of the country.

571. The FIA-AIU received more spontaneous disclosures than it submitted requests. The FIA-AIU received 349 spontaneous disclosures from 29 counterparts during the period under review. One jurisdiction submitted 211 (60.46 percent) of these disclosures and another 39 (11.17 percent). The remaining jurisdictions submitted 16 or fewer disclosures (less than 5 percent) individually. These spontaneous disclosures did not result in any dissemination to domestic law enforcement. This volume of disclosures outnumbers the 73 outgoing requests the FIA made, which indicates the limited proactivity with which it seeks international cooperation and that international partners are identifying potential activities of concern in the country to a greater extent than the FIA.

LEAs

572. The RVIPF-FCU submitted 18 requests for assistance to foreign police forces during the period under review. Four of these requests were sent in 2020, 10 in 2021, and the others in 2022. The RVIPF-FCU sent most of the requests to the two neighbouring jurisdictions to obtain intelligence concerning suspects that were not in the VI. These requests triggered the submission of MLA requests.

573. Beyond formal requests submitted to counterparts, the RVIPF engages in informal cooperation. For instance, the RVIPF seeks *ad hoc* operational assistance to support criminal investigations in the absence of specialized domestic investigators.

574. The RVIPF works with international key partners daily, using police-to-police communication, and focusing on migrant smuggling, human trafficking, drug smuggling, ML, cash smuggling, commodity smuggling, proliferation and transportation of firearms, and border protection and security. The liaison normally commences with the sharing of intelligence in relation to subjects who were operating cross-border with a neighbouring country. Depending on the urgency of the intelligence, the timeline of the

investigation, or the location of the criminal activity, a lead LEA is identified to coordinate the investigations. Much of the communication between the LEAs is by email and voice/message communication systems.

575. Case examples from 2021 and 2022 show that the RVIPF requested support from of its key international partners, which provided crime intervention capabilities, sharing of intelligence, conducting joint operations in relation to drug trafficking, firearms trafficking, murder, and robbery, mostly based on an MoU with one international key partner. This cooperation led to the apprehension of suspects, drugs and firearms seizures, the initiation of a parallel financial investigation, and prosecutions that were still ongoing at the time of writing this report.

576. In addition, the RVIPF also participates in a foreign task force, which meets at four to six monthly intervals. During the period under review, the RVIPF attended regular online meetings to support intelligence sharing and operational activity concerning drug trafficking, human trafficking, ML, proliferation, and illegal trafficking of firearms.

577. Another key partner of the VI assisted RVIPF operations through the deployment of personnel and assets to assist with the investigation of serious and organized crime in the territory. This cooperation resulted in the detection and charging of persons involved in serious crimes after prolonged periods of proactive operations. It also included training in various areas such as the gathering of sensitive intelligence and advice regarding technical and legal matters.

578. The RVIPF-FCU can obtain assistance from its international partners to conduct queries and investigations related to TF. In this regard, the RVIPF-FCU can seek assistance and guidance from a foreign intelligence network if necessary. This includes the 5-Eyes Community, which may hold intelligence that is not normally shared with LEAs and supports the RVIPF-FCU's intelligence and investigations. Communication with this intelligence network is made through the GO. The FCU did not use this resource to conduct TF investigations during the period under review. On the other hand, recently, the RVIPF sought international cooperation from another key partner to ascertain the potential links between a drug trafficking and ML scheme and a terrorist organization. However, the information obtained did not confirm the involvement of the organization in question, although this demonstrates the RVIPF capacity to react quickly to leads.

579. The HMC is a member of the Caribbean Customs Law Enforcement Council (CCLEC)[61] and requested assistance on four occasions between 2019 (three requests) and 2021 (one request) from two CCLEC partners. Two of the requests for assistance resulted in the discovery of drugs in vessels by the HMC. The other requests focused on general queries for information on vessels.

580. Beyond the CCLEC, the HMC submitted 26 other requests between 2018 and 2022 to various foreign authorities, which covered general information about vessels and persons of interest, transportation of large undeclared sums of cash, and support in the apprehension of individuals and vessels suspected of drug trafficking and human smuggling, while it submitted 31 requests specifically to foreign LEAs. Occasionally, these requests were relevant for LEAs in other countries.

Supervisors

581. The FSC made 151 requests for information from counterparts between 2018 and 2022. The FSC also advised that it engaged regularly in supervisory colleges with regional counterparts and with

[61] The CCLEC, among other objectives, promotes the cooperation between Customs administrations in the Caribbean to fight customs offences, such as commercial fraud; the illicit trafficking in narcotic drugs; psychotropic substances; firearms; biological, chemical, and nuclear substances; the diversion of essential or precursor chemicals; and ML.

supervisors who have branches or subsidiaries operating in the VI. At these colleges, there is the exchange of supervisory information including AML/CFT.

582. The FIA-SEU did not seek cooperation from foreign competent authorities as DNFBP and NPO supervisor during the period under review nor were any requests for assistance made to the FIA-SEU. At the onsite visit, the FIA indicated that it did not identify any situation that required international cooperation.

8.2.4. Providing other forms international cooperation for AML/CFT purposes

Governor's Office

583. The Governor sanctions all operations that U.S. Drug Enforcement Agency carries out in the VI, although this is not the result of a formal agreement. In addition, any request by a foreign LEA to operate in the territory would be considered and authorized as appropriate by the Governor in accordance with his responsibilities under Section 60 of the VI Constitution. That provision states that the Governor is responsible for, among other things, external affairs and internal security. Details of such operations are confidential.

FIA-AIU

584. The FIA receives RFIs from foreign FIUs via the ESW. The FIA received 1,314 requests for assistance from counterparts in the period 2018–2022. From these requests, 42 were related to TF.

585. The FIA-AIU also received requests for assistance from INTERPOL member countries indirectly through the RVIPF. In this sense, the FIA-AIU received 247 indirect requests from INTERPOL from 2018 to 2022. All these requests were executed, and the information sought was disseminated to the RVIPF for onward transmission to the requesting country.

586. The FIA-AIU furnished high-quality international cooperation for AML/CFT intelligence-sharing purposes, subject to timeliness issues outlined below. Five jurisdictions provided feedback on the international cooperation experience with the FIA, stating that the information received was useful, detailed, complete, and of good quality. In particular, one of the VI's key international partners indicated that its law enforcement found that the information received from the FIA was either excellent or good and, because of the intelligence, it has provided new leads for investigations, verified existing information, and supported international letters of request.

587. In September 2022, the FIA submitted International Feedback Forms to FIUs via the ESW asking them to detail their experience with the FIA during 2022. Twelve of 13 respondent FIUs indicated that they were satisfied with the assistance received; 11 said that the information received was timely and relevant; 8 indicated that the information received was new to them; and 7 expressed that the information provided new subjects or leads.

588. In general, the FIA-AIU provided timely responses to these requests for information. Of the 1,314 requests received from foreign FIUs, 795 (60.50 percent) were completed in 1 to 15 days, 217 (16.51 percent) in 16 to 24 days, 223 (16.97 percent) in 25 to 49 days, 60 (4.57 percent) in 50 to 99 days, and the remainder 19 (1.45 percent) in 100 to 300 days. However, it is unclear how promptly the indirect requests channelled through INTERPOL were processed.

589. However, the international cooperation feedback provided mixed responses about the timeliness of responses. Five jurisdictions considered that the FIA provided information in a timely manner, while other six indicated that requests were completed (i) after several months, (ii) often following reminders, or that (iii) there were several requests still pending response at the time of providing their feedback.

590. The FIA indicated that, in general, delays in responding to cooperation requests both from counterparts and non-counterparts arose from the need to obtain further information or clarification in

respect of requests. For instance, delays occurred where the entity in respect of which information was sought was not registered in the VI or where the nexus between the investigation under consideration and the entity registered in the VI was not apparent. In the latter cases, the FIA reverted to the requesting country to seek further information to allow the request to be processed.

591. The FIA also disclosed information spontaneously to its foreign counterparts. The FIA made 100 spontaneous disclosures to 37 countries between 2018 and 2022. Twenty-seven of these disclosures were sent to 1 of its international key partners, 5 received between 5–9 disclosures, and the remaining 32 countries received between 1–4 disclosures.

592. These disclosures covered more than one offence or circumstance. In this sense, disseminations referred to 7 offences that were referred to 88 times and to other circumstances on 56 occasions. Twenty-four disclosures referred to fraud, 20 to tax crimes, 16 to ML, 16 to TF,[62] 8 to corruption, and 2 to embezzlement and child abuse linked to VAs. Thirty-five disclosures referred to breaches with respect to TF/PF-sanctioned individuals, 18 to international sanctions, 3 to gambling with VAs, and 9 other disseminations related to VAs over the period under review.

593. Lastly, the FIA also engaged in a cooperation arrangement relating to persons designated by one key international partner. In June 2022, the FIA entered an informal arrangement with the FIU of this partner to periodically notify the latter about persons designated who had interest in VI companies, when this came to the FIA's attention. This arrangement is based on the fact that most companies registered in the VI often operate and hold assets in foreign jurisdictions, including this partner. The arrangement requires that the FIUs of both countries perform internal checks and, if assets are located within their jurisdiction, take active steps to freeze them.

594. In July 2022, the FIA provided the first set of information to this partner, which covered (i) the name of the relevant BVIBCs; (ii) the company's registration number; (iii) names of individual or entities who had an ownership interest (including beneficial owners) and that were subject to sanctions, (UN and unilateral designations) of which FIA was aware; and (iv) the status of the company. By the time of writing this report, the FIA had not received confirmation of receipt of the information or feedback on the usefulness of the information provided and, consequently, exercised its discretion to redirect its resources to other operations and initiatives.

LEAs

595. The RVIPF-FCU responds to police-to-police international cooperation requests relating to financial crime, while other units within the RVIPF are responsible for requests that are not related to financial crime investigations. In this regard, the RVIPF developed informal processes with six jurisdictions from the Caribbean and three from other regions that facilitate police-to-police information-sharing mechanisms. Such informal processes enabled the spontaneous sharing of information that can serve either an intelligence or evidential purpose. On occasion, the results of informal international cooperation requests served as the basis for formal requests.

596. The VI received 102 informal requests throughout the period under review through the RVIPF-FCU. These requests were made mainly through direct contact with the FCU's Detective Inspector, telephone calls, or via e-mail, and were usually completed and returned to the requester via the same medium within 14 working days. The requests were generally focused on company information, criminal

[62] As referenced in section 4.2.2 concerning IO.9, the FIA provided spontaneous disseminations to foreign FIUs in relation to TF. In this regard, FIA made two disseminations via the ESW as the activities were germane to Armenia and Egypt, respectively. In both cases the jurisdictions to whom the FIA issued disseminations reverted seeking permission to further forward the information to their LEAs.

record checks, identification information, tax evasion, ML, human trafficking, arms trafficking, counterfeit currency, and contact information for third parties.

597. The RVIPF also participates in International Intelligence Managers Meetings, which were held quarterly and involved multiple Caribbean and U.S. agencies. The authorities advise that these meetings encourage intelligence sharing and allow relationship building to support the regular communication between the different jurisdictions.

598. The RVIPF-FCU recognizes the need to formalize arrangements with foreign LEAs and, in this sense, indicated that regular informal operational practices to share intelligence or gain operational support from key partners would be strengthened by the introduction of formal arrangements via MoUs.

599. The RVIPF appears to have very limited resources to devote to requests it receives from INTERPOL. The RVIPF explained that the INTERPOL Sub-Bureau annexed to National Central Bureau Manchester placed in the VI consists of one computer with access to the INTERPOL databases, which is managed by one RVIPF officer who is also responsible for other tasks. This arrangement may lead to a limited response capacity, both in terms of assisting and solving technical difficulties. Indeed, the RVIPF officer's access to INTERPOL databases was down for a substantial period between July 2021 and November 2022 due to technical problems, and some information was deleted from the system during the process of re-instating it.

600. In relation to the above, the international cooperation feedback received from the police of one East Asian country indicated that it only received a response to one out of eight requests it submitted to the RVIPF via INTERPOL during the review period (six in 2019, three in 2020, one in 2021, and one in 2022). Currently, the RVIPF can only identify three requests from this agency during the period under review (two from 2019 and one from 2020).

601. HMC, on the other hand, received 12 requests for assistance between 2018 and 2022, 3 from CCLEC members and the remainder from one of its key partners. In general, the requests sought to obtain information about (i) vessels and cargo suspected of being involved in drug trafficking, (ii) the identification and other information about migrants, (iii) the movement of persons of interest, (iv) the transportation of large sums of cash, and (v) the chasing of vessels. In almost all instances, assistance was provided the same day it was requested, and on only one occasion was it provided in 15 days, which indicates the promptness with which the HMC provides its support. Box 8.1 describes a successful cooperation example between the HMC and authorities of the United States.

Box 8.1. Example of International Cooperation

In September 2022, HMC received information from counterparts in Grenada concerning a vessel that departed from that jurisdiction enroute to the VI. The vessel appeared to be carrying narcotics. This information was subsequently disseminated through the JTF. Assistance was also sought through the U.S. Customs and Border Protection, the USCG, and the U.S. Immigration and Customs Enforcement. HMC and RVIPF Marines placed vessels and personnel strategically to intercept the target once it entered the territorial waters. The USCG pursued and stopped a speed boat. The boat stopped approximately 23 miles east of Virgin Gorda. Whilst being pursued, the vessel's crew discarded 10 or more bales of suspected cocaine. Once stopped, four bales of cocaine were recovered from and near the vessel. Two VI citizens and one Venezuelan national were on board. The vessel and personnel were subsequently taken to the USVI for further investigations.

602. Under the CCLEC arrangements, the HMC maintains a working relationship with French, Dutch, and British OTs. HMC enforcement teams travelled to other jurisdictions on several occasions, conducted training missions, and made significant seizures with the use of its K-9 Unit. It also conducted maritime operations with the foreign authorities, which resulted in seizures. Strong relationships with these territories

also resulted in numerous successful investigations and operations which were conducted with the utilization of data recorded in the Regional Clearance System.

Supervisors

603. The FSC received 656 requests from foreign competent authorities between 2018 and June 2022. The FSC responded to 607, refused 19, and 32 were still being processed at the time of writing this report. These requests referred to beneficial ownership[63] of legal persons 175 times, to basic information on legal persons[64] on 134 occasions, to fit and proper details in 154 instances, to financial or trading[65] information 98 times, and to other types of assistance on 70 occasions. In the case of the 32 requests outstanding, there is still 1 request pending from 2018, 4 from 2019, 10 from 2020, 11 from 2021, and 6 up to June 2022.

604. One of the VI's key international partners resorted the most to the FSC for assistance with 221 requests (33.43 percent), followed by other 14 countries from different regions, which jointly submitted 269 requests (40.70 percent), while the remaining 79 countries asked for assistance sporadically throughout the period under review. With respect to refused requests, 19 requests were declined either because they were not submitted by a competent authority, or the requesting authority did not respond to requests for further information needed to process the request.

605. Separately the FSC received 298 international cooperation requests from the International Organization of Securities Commissions (IOSCO) members between 2018 and 2022. Most requests received by the FSC under the IOSCO MMoU refer to information required for investigations concerning ML and predicate offences such as market manipulation and insider trading. The response time for processing these requests was 20.5 days on average throughout the period under review. According to the international cooperation feedback, nine countries requested assistance from the FSC occasionally throughout the period under review. Insurance and stock market supervisors from these jurisdictions found that the information provided by the FSC was helpful and complete and was provided promptly.

606. The FSC also provided information related to criminal matters through FIN-NET.[66] The FSC received 203 requests relative to criminal matters between 2018 to 2020 via FIN-NET, a number significantly higher than for 2021 to June 2022, when only 14 requests were received.[67]

607. The FIA did not receive international cooperation requests in its capacity as DNFBP and NPO supervisor during the period under review.

8.2.5. International exchange of basic and beneficial ownership information of legal persons and arrangements

[63] Beneficial ownership information included all information relating to a beneficial owner (e.g., their identity and verification documents).

[64] Corporate information includes information regarding the company itself, including its directors, officers, and how it functions.

[65] Information regarding the company's financial position including supporting transactional information.

[66] FIN-NET is an information sharing network that facilitates exchange of information and intelligence between United Kingdom financial regulators, the FSC, and other OT and Crown Dependency regulatory authorities.

[67] This decrease was due to, in 2021, the FSC decided to record FIN-NET referrals separately from incoming international cooperation requests data as most of the referrals relate to criminal offences in the United Kingdom which did not have connection to the VI. Accordingly, the figures for 2021 and 2022 reflect the current volume of incoming international cooperation requests relating to criminal matters.

AGC

608. Where MLA requests are related to information on legal persons, the AGC can access the VIRRGIN to verify whether the concerned entity is a VI company but cannot retrieve information related to its directors and shareholders. The AGC obtains the latter by transmitting the request to the FIA, which subsequently requests the information from registered agents, who provide it in about two weeks. Similarly, the AGC can obtain this information by requesting it from the Registrar of Corporate Affairs. The AGC received 294 requests for basic information and 217 requests concerning beneficial ownership between 2018 and 2022.

FSC

609. As indicated in the previous section, the FSC received requests that referred to beneficial ownership of legal persons 175 times and to basic information of legal persons in 134 occasions between 2018 and June 2022. The FSC provided three case examples where it demonstrated its capacity to provide basic and beneficial ownership information to facilitate criminal investigations into ML, fraud, the provision of false and misleading information to the market, and the offering of financial services without the required registrations. These cases are presented below.

Box 8.2. FSC International Cooperation Case 1

A former VI licensee made an application to be registered as a regulated fund in another jurisdiction. The foreign regulatory authority that was assessing the application made an international cooperation request for due diligence information concerning the former licensee and indicated that it required the information urgently. The FSC conducted internal inquiries and provided information about the former VI licensee's licensing details and the circumstances that led to the cessation of the VI licensee. The information was provided to the requesting authority within 48 hours of receipt of the request.

Box 8.3. FSC International Cooperation Case 2

Over a three-year period, Company X issued several potentially misleading announcements concerning its share capital, ownership, financial prospects, and future business activities. It was suspected that the announcements were issued as part of a pump-and-dump scheme. Several suspects were being investigated by a foreign regulatory authority for offences relating to the making of misleading statements and/or impressions as to the price or value of investments in Company X.

As part of its investigations, the foreign regulatory authority learned that one of the suspects may have acquired shares in Company X via a nominee company. The nominee company was a VI company that had initially owned almost 900,000 shares in Company X (approximately 8 percent of Company X's shareholding). Thereafter, the suspect notified Company X that he had reduced his shareholding to less than three percent of Company X's shareholding. One year after the notification, the VI company was involuntarily liquidated. The appointed liquidator then sold approximately two million shares in Company X which were owned by the VI company.

The foreign regulatory authority made an international cooperation request to obtain corporate and beneficial ownership information concerning the VI company and information from the VI company's liquidator for further information concerning the share sale. The foreign regulatory authority indicated that the information would help determine who owned the VI company during the period under investigation; the links between the company and any of the suspects under investigation, and whether the sale of Company X's shares by the liquidator demonstrated that any of the suspects engaged in the suspected offences.

The foreign regulatory authority requested provision of the information within 48 hours. The FSC reviewed the request as a matter of urgency, and upon being satisfied that the statutory gateway provisions under section 49A of the FSC Act were met, issued a section 32 notice to the VI company's registered agent to provide the requested information within 48 hours. The information was received from the registered agent within the requested timeframe, and the FSC was able to provide the information to the foreign regulatory authority within 48 hours.

Box 8.4. FSC International Cooperation Case 3

A foreign regulatory authority had received several complaints that Company Z (based in jurisdiction A) was soliciting people in the foreign regulatory authority's jurisdiction (jurisdiction B) to invest in an asset management service. Such business was recognized as financial services business in jurisdiction B, where Company Z was not registered to conduct business. The foreign regulatory authority launched an investigation to determine whether Company Z was conducting financial services business without the required registrations and was misappropriating investors' monies.

A VI company was suspected of being involved in the operations of Company Z. Thus, the foreign regulatory authority made an international cooperation request for corporate and beneficial ownership information for the VI company, including (i) the register of directors, (ii) the register of members, (iii) beneficial owner(s) details; (iv) addresses and contact information for directors, members, and beneficial owners; (v) due diligence information; and (vi) the address where underlying documents were held.

Upon being satisfied that the requestor was a competent authority, the FSC required the VI company's registered agent to produce the information. The registered agent provided the documents within four days of being required to do so by the FSC, and the information was shared with the requesting authority. The information revealed that, by connection, three other VI companies may also have been involved in Company Z's operations.

The foreign regulatory authority made a follow-up request for the corporate documents and beneficial ownership information for the three VI companies. The FSC issued additional notices to obtain similar information from the respective registered agents and shared same with the requesting authority once received.

610. In a small number of cases, requests for information received via FIN-NET referred to a connection to a legal person in the VI. These were followed up with communication to the referring LEA, inviting them to submit a formal written request[68] to the FSC setting out the particulars of the matter under investigation, the nexus to the VI entity and any non-public documents being requested from the FSC. This typically occurred two or three times each year.

611. The FSC's internal service standards call for all international requests to be responded to within 21 days. On average, this goal was met in 2019 and 2021, while in 2018 and 2020, it required around one month to provide the information. The following reasons were given to explain why it might take the FSC more than 21 days to respond to a request: (i) the volume of information requested was high; (ii) the information requested was complex; (iii) the data had to be produced under a notice; and (iv) the need for the recipient of a notice to obtain information and data from third parties outside the VI.

612. The FSC, in most instances, received the requested response from registered agents within the time stated in the notices to produce information. Until 2019, the response time to notices to produce information

[68] Upon receipt of the formal request, these are now registered as an incoming IC request from U.K. law enforcement.

was seven days. In most cases, the response time has since been further reduced to between 24 and 48 hours When registered agents experience difficulties in providing the information promptly, the registered agent typically requests an extension of time providing reasons to the FSC. The FSC reviews the request and conveys its decision to the registered agent. In very complex cases, it may be necessary to allow a second extension of time, provided that the FSC is satisfied that the registered agent is acting expeditiously, and that there are good reasons for the delayed response which are outside the control of the registered agent.

613. There were no legal or court challenges to notices to produce information during the period under review. However, occasionally, recipients of notices challenged the notices directly with the FSC at the administrative level. These challenges were successfully addressed by corresponding with the recipient. In this regard, the FSC informed that, in 2022, two VI law firms acting for seven registered agents questioned the reasonableness and proportionality of the notices having regard to the very extensive volume of data required and argued that some of the information requested was confidential based on the laws of the foreign requesting authority. The challenge led to discussions with the requesting authority and correspondence with the law firms, which resulted in the FSC obtaining extensive information from the licensees and disclosures of information to licensees. This process assisted the FSC to help the registered agents understand the volume and breadth of the data to be produced.

614. The FSC provided a letter from a Middle Eastern country's FI supervisory authority praising the rapidness and comprehensiveness of the beneficial ownership information obtained from the FSC in relation to one case that arose in 2020. In addition, case examples in Boxes 8.2 and 8.3 demonstrate that the FSC was able to provide basic and beneficial ownership information within 48 hours when these were presented as urgent.

615. The FSC also supported the United Kingdom, one of its international key partners, to obtain information for its Register of Overseas Entities, as explained in the following box:

Box 8.5. Register of Overseas Entities

The FSC aided HMRC in implementing the Register of Overseas Entities. This new U.K. register requires offshore companies owning U.K. properties to declare their ownership by February 2023. Most overseas entities owning U.K. properties are based in the VI. The U.K.'s Offshore Intelligence Division asked for help from the FSC to identify people associated with VI companies who needed to register their beneficial ownership. The FSC arranged videoconferences with HMRC, U.K. Companies House, and GO to facilitate the process. The FSC provided HMRC with information on 7,413 VI companies that owned real property in England and Wales. This aided HMRC in notifying the companies of their registration obligations and potential penalties. The data proved beneficial to the HMRC.

FIA-AIU

616. Between 2018 and 2022, the FIU processed 1,314 requests for information, out of which 426 requests were related to basic and beneficial ownership information. The considerations mentioned in section 8.2.4 regarding the quality and timeliness of the information also apply to this subset of requests. The information provided was generally of high quality. On the other hand, the assessment team observes that, while feedback on international cooperation from some countries indicated that the information was not provided promptly in some cases, statistics provided show that the information was transmitted in a timely manner in most cases. Technical compliance issues in the legislative framework (prior to recent amendments) and implementation issues discussed in IO.5 could affect the accuracy of the information on beneficial ownership information provided by the FIA.

617. In addition to this, the BOSSS Act, 2017 facilitates the exchange of beneficial ownership information between the United Kingdom and VI.[69] The Act established the BOSSS to hold registered agents' information and obligates them to collect and identify their beneficial owners. The BOSSS Act

provides that a designated LEA listed in Schedule 2 of the Act is entitled to request that a search be conducted. Currently, the NCA of the United Kingdom is the only foreign agency listed.

618. The FIA has used the BOSSS to respond to 544 international requests from the NCA for beneficial ownership information from 2018–2022. No requests were refused or are pending. Ninety-two of these requests were originated by the U.K. FIU and routed by the NCA.

619. Feedback on the information obtained by means of the BOSSS does not highlight deficiencies. During the onsite visit, interviews revealed that there is a lack of supervisory controls to ensure the information is kept accurate and updated by registered agents, which has the potential to impact the quality of the information provided.

620. Requests for information under the BOSSS Act must be responded to within 15 days, unless urgent. Urgent requests require a response within one hour, but none were received between 2018 to 2022. International BOSSS requests typically take three days to respond to. The exchange of notes process for beneficial ownership is very expedited, with a typical response time of 2–3 days and many being answered within 24 hours.

ITA

621. Between 2018 and June 2022, the ITA received 668 requests for basic information and 782 for beneficial ownership information of legal persons, i.e., a total of 1,450 requests. Regarding legal arrangements, the ITA received 24 requests for basic information and 24 for beneficial ownership information in the period under review. In respect of the requests for information concerning legal persons, the ITA responded to 1,154 requests (79.86 percent), did not provide information in relation to 281, and 4 requests are still pending. The reasons for which the ITA did not provide information included: (i) the entity name did not exist in the VI; (ii) the requesting jurisdiction was placed on administrative hold; (iii) the cases related to Mossack Fonseca Companies, and the information was no longer available; (iv) the relevance standard was not met; and (v) the registered agent failed to comply with the notice to produce information.

622. In relation to the remaining requests, five were withdrawn by the foreign requesting competent authority, and 58 could not be executed because the information requested related to years prior to which beneficial ownership information was required to be kept onshore. In this last case, while the registered agent s made attempts to contact the client, these were unsuccessful as the taxable periods were prior to 2012, and the related companies had long been struck off.

623. Regarding the usefulness of the information provided by the ITA, requesting foreign competent authorities rarely provide feedback, but the ITA was able to share a sample of six cases where the information was useful to (i) recover taxes, (ii) impose administrative penalties, (iii) identify the tax liability of individuals, and (iv) arrive at the right tax outcome. In one additional case, the information led to findings which indicated violations of ML legislation in the requesting country. Despite the latter, requesting countries have not used this information to investigate or prosecute ML or predicate offences. International cooperation feedback from six countries confirmed that the VI provided valuable information on beneficial ownership for investigative and tax purposes.

624. The timeliness within which the ITA provided basic and beneficial ownership to foreign competent authorities varied throughout the period under review. According to the standards to respond to Exchange of Information Upon Requests (EOIRs), the ITA should be able to respond to a request in full within 90 days from the date on which the ITA acknowledges receipt of an EOIR. Where the ITA is unable to respond in full within that period, it should provide status updates to the respective foreign competent authority.

625. In this regard, the data from 2018 shows that responses were provided to 178 requests (84.76 percent) over periods longer than 90 days and, in several cases, beyond a year. This trend continued in 2019 and 2020. In 2021 and up to June 2022, the ITA was able to improve these response times change.

In 2021, responses were given to 86 requests (63.24 percent) within the target timeframe and, from January to June 2022, 33 requests (80.49 percent) were also successfully addressed within 90 days.

International cooperation feedback

626. One key international partner indicated that its anti-fraud agency made over 30 beneficial ownership requests in the past 4 years. The VI proactively shared sanctions-related beneficial ownership information, supporting the freezing of assets under non-UN regimes. The same mechanism would theoretically support sharing of information pertinent to identifying and freezing assets of designated persons and entities according to UN regimes.

627. Another country sent 289 requests for legal assistance in criminal cases through INTERPOL channels and received 137 responses which included company registration and beneficial ownership information. There are three successful cases of cooperation within the investigations of crimes committed in this country.

Overall quality of the basic and beneficial ownership information

628. The assessment team did not receive feedback from countries regarding the quality of beneficial ownership information provided by the authorities of the VI. The FSC brought to the attention of the assessment team at least one instance in which a foreign regulator found the information it provided helpful in pressing criminal charges. However, further substantive evidence of the quality of the basic and beneficial information was unavailable.

629. Additionally, the findings in IOs.4 and 5 show that the VI has deficiencies in implementing beneficial ownership requirements, which could impact the quality of the information they share with international partners. FIs and DNFBPs generally failed to collect enough information to determine if beneficial owners control assets through means other than ownership. Additionally, the reliance of TCSPs on professional business introducers for CDD and record-keeping purposes with limited safeguards did not ensure that beneficial ownership information was accurate and up to date. The BOSSS Register also has a limitation in that it needs personnel to be responsible for monitoring the accuracy of its information. The lack of these controls could result in the provision of inadequate, accurate or outdated information.

630. Considering the findings outlined above, the assessment team concludes that sufficient information indicates that the beneficial ownership information provided by the VI may not be accurate, complete, and valuable for international cooperation purposes in all instances.

Overall Conclusions on IO.2

631. The provision of international cooperation by the VI is generally timely and prioritized, both through formal and informal channels. Although the quantity of the international cooperation was limited for most competent authorities, the AGC, FIA, and the FSC demonstrated their capacity to provide assistance of good quality.

632. However, competent authorities seek MLA and other forms of international cooperation to a negligible extent, which is not in line with the ML risk profile of the jurisdiction. This is different in the case of TF, where the few instances of cooperation are broadly in line with the VIs' TF risk profile. The limitation of resources in many competent authorities has the potential to hamper the ability to provide international cooperation. The AGC and RVIPF-FCU have recorded examples of the difficulties this circumstance has caused.

633. The VI has provided basic and beneficial ownership information of legal persons and arrangements and the engagement of the VI in bilateral initiatives such as FIN-NET, the BOSSS, and the Register of Overseas Entities. Deficiencies discussed under IOs.5, 3, and 4 with respect to the understanding and implementation of beneficial ownership obligations and the availability, accuracy, and use of basic beneficial information, have the potential to negatively impact the effectiveness of the related international cooperation. However, jurisdictions with whom information was shared did not cite this as an issue.

634. The VI is rated as having a moderate level of effectiveness for IO.2.

Technical Compliance Annex

This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerological order. It does not include descriptive text on the country situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Recommendation 1 Assessing Risks and Applying a Risk-Based Approach[69]

OBLIGATIONS AND DECISIONS FOR COUNTRIES

This is a new Recommendation.

Risk assessment

***Criterion 1.1 (Met)*—**The VI carried out an assessment of ML/TF risks at the national level, which was completed in 2016 and published in 2017. The methodology involved examining ML/TF/PF threats, vulnerabilities, and consequences, and considered quantitative and qualitative data (through pre-assessment questionnaires and onsite interviews). The publicly accessible version of the 2016 NRA provides analysis on the risks emanating from the different AML/CFT-related institutions and for each sector. However, it lacks an overall analysis of threats from proceeds-generating crimes at the national level and instead presents specific threats on a per institution basis. Complementing the 2016 NRA, the authorities have also conducted several SRAs: (i) financial services sector in 2020; (ii) NPO and DNFBP sectors in 2020; (iii) TF in 2020; and (iv) PF in 2022, which analyze the ML/TF/PF threats related to these sectors, but is limited to quantitative data, and is not complemented with qualitative assessments from key stakeholders at the national level. During the onsite assessment, the authorities shared the 2022 MLRA, which was a more streamlined exercise than the 2016 NRA (based on quantitative data and survey questions to reporting institutions). The 2022 MLRA provides an updated analysis of threats (domestic and foreign) as well as vulnerabilities in various sectors (e.g., law enforcement, financial, and DNFBPs). After the onsite mission, the 2022 MLRA was published in June 2023 and made available on the FSC website.

***Criterion 1.2 (Met)*—**The NAMLCC is the authority responsible for coordinating actions to assess risks. It was formally established by Cabinet in 2016 and enshrined into law in 2021, through the amendment of the PCCA (Section 26B(2)).

***Criterion 1.3 (Met)*—**On February 8, 2023, the NAMLCC issued a policy commitment to update the ML, TF, and PF risk assessments as well as its national AML/CFT policy and strategy at least every two years. The authorities provided to the assessment team a copy of the completed 2022 MLRA during the onsite visit. Since the 2016 NRA and prior to the 2022 MLRA, the authorities have also conducted SRAs for ML/TF/PF in 2020 and 2022.

***Criterion 1.4 (Met)*—**Mechanisms are available for sharing the results of the risk assessments through publication and other awareness-raising activities. A sanitized version of the 2016 NRA and all four SRAs were published and made available on the websites of the FSC and FIA. Portions of the complete 2016

[69] The requirements in this recommendation should be assessed taking into account the more specific risk-based requirements in other Rs. Under R.1, assessors should come to an overall view of risk assessment and risk mitigation by countries and FIs/DNFBPs as required in other Rs. but should not duplicate the detailed assessments of risk-based measures required under other Rs. Assessors are not expected to conduct an in-depth review of the country's assessment(s) of risks. Assessors should focus on the process, mechanism, and information sources adopted by the country, as well as the contextual factors, and should consider the reasonableness of the conclusions of the country's assessment(s) of risks.

NRA were also shared with each of the government departments and relevant competent authorities, based on what related to them. In addition, the FSC and FIA disseminated the findings of the NRA and SRAs either through monthly newsletters, emails, or webinars. The findings of the SRAs are also presented to relevant government agencies and private sector stakeholders, through the IGC and JALTFAC. The recently completed 2022 MLRA was published on June 9, 2023, after the onsite mission.

Risk mitigation

Criterion 1.5 (Mostly met)—The National AML/CFT Strategy reflects a general approach to the allocation of resources based on risks, however, its application could be improved, when it comes to resources being allocated and measures being implemented to prioritize the high-risk areas identified in the NRA, specifically when it relates to the misuse of VI entities and the supervision of the TCSP sector.

Criterion 1.6 (Mostly met)—There are no exemptions for covered FIs and DNFBPs based on lower risks from any of the requirements outlined in the 40 Recommendations, and they are all required to comply with the AMLTFCOP (Sections 4(1) and 5(1)). However, trading in foreign exchange is not covered by the AML/CFT framework, as discussed in Criterion 26.1, and there has been no demonstration that the exclusion of this activity is based on proven low ML/TF risks.

Criterion 1.7 (Mostly met)—Following the 2023 amendments to the AMLTFCOP, covered FIs and DNFBPs are required to take into account higher risks identified in the NRA and other risk assessments conducted by competent authorities (Section 12(2)(ba)). There is a broad requirement for covered FIs and DNFBPs to apply appropriate risk mitigation measures and controls based on the level of risks identified in the institutional risk assessment (Section 12(2)(c)).

Criterion 1.8 (Mostly met)—Those covered FIs and DNFBPs are allowed to apply simplified due diligence (SDD) measures, if they determine that customers or transactions carry low risk in terms of the business relationship (AMLTFCOP, Section 19(6) and (7)). The 2023 amendments to the AMLTFCOP requires that these SDD measures should be commensurate with the lower risk factors identified (Section 19(7)).

Criterion 1.9 (Mostly met)—Given the scope issues identified in Criterion 26.1 (on trading in foreign exchange), not all FIs and DNFBPs have obligations related to R.1 and not all are being monitored in this respect.

OBLIGATIONS AND DECISIONS FOR FINANCIAL INSTITUTIONS AND DNFBPS

Risk assessment

Criterion 1.10 (Mostly met)—Covered FIs and DNFBPs are obliged to carry out an institutional risk assessment of their overall business, taking into consideration relevant risk factors such as customers, products, services or transactions, delivery channels, and countries to which they are exposed (AMLTFCOP, Section 12(1) and (2)), including: (i) documenting records of the risk assessment; (ii) considering all relevant risk factors, and apply the appropriate risk mitigation measures based on the level of risks identified; (iii) regularly reviewing and updating on an ongoing basis and where there are any changes in the relevant risk factors; and (iv) having appropriate mechanisms in place to provide risk assessment information to the FSC or FIA, on request.

Risk mitigation

Criterion 1.11 (Mostly met)—Under the AMLTCOP, as amended in 2023, covered FIs and DNFBPs are required to:

a) maintain a written system of internal controls approved by senior management, which provides appropriate AML/CFT policies, processes and procedures to assess, manage and mitigate identified ML, TF, and PF risks (Sections 11(1) and 11(2));

b) establish mechanisms to monitor the implementation of their internal controls (including through an independent audit function), and enhance controls as necessary (Section 11(3A), as amended by S.I. 23/2023); and

c) implement enhanced controls and apply enhanced measures to manage and mitigate higher risks identified (Section 11(2)(c) and Section 11(3A)(c)).

Criterion 1.12 (Mostly met)—Those FIs and DNFBPs covered by the legal framework are permitted to take SDD measures where low risks have been identified through an NRA, or a risk assessment conducted by a competent authority. The application of SDD measures is not permitted when there is a suspicion of ML/TF/PF or a higher-risk scenario applies (AMLTFCOP, Sections 19(7), 19(8) and Regulation 6 (2a and 2b) (Amendment) of the AMLR). The regulations also institute the requirement for FIs and DNFBPs to apply for permission to use SDD information. As noted above, some FIs and DNFBPs are not covered by the AML/CFT framework, creating a scope deficiency.

Weighting and Conclusion

The VI completed its NRA in 2016, and conducted subsequent SRAs, which have been publicly disseminated. The recently completed 2022 MLRA, which includes an overall analysis of threats (domestic and foreign) at the national level, was shared with the assessment team during the onsite and has subsequently been published on June 9, 2023. The deficiency with respect to the scope of FIs (trading in foreign exchange) covered under the AML/CFT framework as explained in Criterion 26.1 impact full compliance with some criterion under R.1.

Recommendation 1 is largely compliant.

Recommendation 2 National Co-operation and Co-ordination

The VI was rated compliant on national cooperation (former R.31) in its Third Round MER.

Criterion 2.1 (Met)—The VI has a National AML/CFT Policy and a National AML/CFT Strategy that are informed by the NRA and periodically reviewed by the NAMLCC. Approved by the VI Cabinet, the 2021 National AML/CFT Policy and the National AML/CFT Strategy for 2021–23 take into account the risks identified in the 2016 NRA. The NAMLCC is responsible for reviewing compliance with both documents, suggesting modifications, and for their periodic review. In the February 2023 policy statement, the NAMLCC committed to updating the national AML/CFT policy and strategy at least every two years.

Criterion 2.2 (Met)—NAMLCC is statutorily established as the main national coordinating body on AML/CFT issues (PCCA, Section 26B(2)). The NAMLCC is responsible for developing and coordinating AML/CFT policies informed by the risks identified across the various sectors within the VI (NAMLCC Rules of Procedure, paragraph 3.1(b)).

Criterion 2.3 (Met)—The VI have several mechanisms for cooperation, coordination, and information sharing among authorities both at the policymaking and operational levels (namely, the NAMLCC, IGC, JALTFAC, CCA, CLEA). The NAMLCC plays a key role as the focal point for national policy coordination and guidance on AML/CFT matters. There is an MoU for information sharing established in 2014 among the IGC members. Some of these mechanisms also extend membership and participation to relevant private sector stakeholders (e.g., JALTFAC).

***Criterion 2.4 (Met)*—**The cooperation and coordination mechanisms cited in criterion 2.3 also apply to combating the financing of proliferation of WMD, which is covered under the AML/CFT National Policy and National Strategy.

***Criterion 2.5 (Met)*—**Under the DPA of 2021, the Information Commissioner is tasked to monitor compliance by public bodies with the requirements of the Act and provide advice on their obligations (Section 26(a) and (b)). This provides the legal basis for cooperation and coordination among relevant authorities with the Information Commission, particularly, as personal data processed and disclosed for prevention or detection of crime or for the purpose of investigation is exempted from the key provisions of the DPA (Sections 19 and 22).

Weighting and Conclusion

The VI have a National AML/CFT Policy and Strategy that is informed by the 2016 NRA. The VI authorities are committed to updating the National AML/CFT Policy and Strategy at least every two years. The NAMLCC is the main national coordinating body on AML/CFT, and there are various other mechanisms to enable inter-agency cooperation at both policy and operational levels (including with private sector stakeholders). The DPA provides for a mechanism for the Information Commission to monitor compliance and provide advice to relevant authorities on data protection.

Recommendation 2 is rated compliant.

Recommendation 3 Money laundering offence

In the Third Round MER, R.3 incorporated Rs.1 and 2, both of which, in the case of the VI, were rated "LC." The main shortfalls identified were the following: market manipulation and insider trading were not criminalized; some scheduled chemicals were not banned, in accordance with the Vienna Convention; the low number of ML convictions showed limited implementation of the legal framework.

***Criterion 3.1 (Met)*—**The current statutory framework for criminalization of ML in the VI, is contained in the revised edition of the PCCA and in the DTOA. The key difference between the two statutes is that the criminalization of ML under the PCCA is linked to laundering the PCC (which comprises indictable offences). Under the DTOA, the laundering offences are linked to drug trafficking offences as the predicate offences. With respect to the Vienna Convention, section 35 of the DTOA, fully implements the requirements of Article 3(1)(b) and (c) of the Convention by providing a definition of the offence of the laundering of the proceeds of drug trafficking in line with the Convention's requirements.

Under section 33 of the DTOA (the offence of facilitating, by concealment, the removal, transfer, acquisition, retention, use, or control of proceeds of drug trafficking), there are two mental elements: (i) knowing that the transaction facilitates acquisition, retention, use, or control of proceeds, and (ii) knowing that the other person involved carries on or has carried on drug trafficking or has benefitted from those offences.

With respect to the Palermo Convention, the VI laws fully address the requirement of Article 6(1). The definition of the offence of ML under Sect. 29 and 30 of the PCCA is consistent with the provisions of the convention. The Criminal Code section 19(1) covers the ancillary offences of aiding and abetting, counselling, enabling (facilitating). The Code also criminalizes conspiracy at section 345-349 and attempt at section 350.

***Criterion 3.2 (Met)*—**The offence of ML applies to all offences (section 2(5)(d) PCCA). Table 1 outlines the FATF Listing of Designated Offences and the domestic equivalents under the Laws of the VI.

Table 1. FATF Listing of Designated Offences

Designated categories of offences	Relevant legislation
Participation in an organised criminal group and racketeering	Section 20 of the Criminal Code
Terrorism including Terrorism Financing	Sections 3 and 4 of Terrorism (United Nations Measures) (Overseas Territories) Order 2001 Sections 6 to 8 of Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 Sections 5 to 8 of the Counter-Terrorism Act, 2021
Trafficking in human beings and migrant smuggling	Section 214 and 215 of the Criminal Code
Sexual exploitation, including sexual exploitation of children	Section 214 of the Criminal Code
Illicit trafficking in narcotic drugs and psychotropic substances	Sections 5 to 7 of the Drugs (Prevention of Misuse) Act
Illicit arm trafficking	Section 3 of the Firearms Importation Prohibition Proclamation 1967 (SO 18/1967)
Trafficking in stolen and other goods	Section 242 of the Criminal Code
Corruption and Bribery	Section 79 to 103 of the criminal code
Fraud	Parts 14 & 15 of the Criminal Code, Section 93 of the Criminal Code
Counterfeiting currency	Section 250(1)©, sections 263 to 275 of the Criminal Code
Counterfeiting and piracy of products	Section 45 of the Criminal Code
Environmental crime	Part X of the Fisheries Act 1997
Murder, grievous bodily harm	Sections 148 and 163 of the Criminal Code
Kidnapping, illegal restraint and hostage-taking	Section 207 to 212 of the Criminal Code
Robbery and theft	Sections 224 and 225 of the Criminal Code
Smuggling	Sections 43 to 45 of the Customs Management and Duties Act, 2010 and 78 of the Criminal Code
Tax crimes	Section 236A of Criminal Code
Extortion	Section 240 of the Criminal Code
Forgery	Section 248 to 262 of the Criminal Code
Piracy	Section 21 of the 1956 Copyright Act (UK) which is extended to the Territory no. 2185 of 1962. Copyright (VI) Order 1962.
Insider Trading, & Market Manipulation	Sections 88 and 91 of Securities and Investment Business Act, 2010

***Criterion 3.3 (Not applicable)*—**The VI does not apply a threshold approach or a combined approach that includes a threshold approach.

***Criterion 3.4 (Met)*—**Pursuant to the PCCA, an ML offence, which covers the offences outlined in sections 28 to 30 of the PCCA, extends to any property, whether in whole or in part, directly or indirectly, represents the PCC. Under the PCCA, the definition of property extends to a range of property and includes money and all other property, real or personal, including things in action, VAs, and other intangible or incorporeal property. There is no limitation on the value of the property. In addition, the offences of ML relate to property whether in whole or in part, directly or indirectly represents the PCC. Similar provisions exist in under the DTOA. The offences of drug ML pursuant to sections 33 to 35 of the DTOA also relate to property whether in whole or in part, directly or indirectly represents the proceeds of drug trafficking.

***Criterion 3.5 (Met)*—**The provisions of sections 28 to 30 under the PCCA and 33 to 35 of the DTOA do not require a person to be convicted of a predicate offence in order to be convicted for an ML offence.

***Criterion 3.6 (Met)*—**Under the PCCA, the term "criminal conduct" includes "a conduct that would constitute an offence if it had occurred in the Territory," implicitly referring to conducts committed outside the jurisdiction. The definition of drug trafficking in the DTOA, involves doing or being concerned in the

drug-related criminal activities referenced in section 2 "whether in the Territory or elsewhere." These provisions ensure that predicate offences extend to offences that occurred in another country. However, the law does not expressly exclude the proceeds of conduct that does not constitute an offence under the domestic law of the State where it is committed, as required by the conventions.

Criterion 3.7 (Met)—Both section 29(1)(a) of the PCCA and section 34(1)(a) of the DTOA relate to ML offences committed by the person committing the predicate offence (i.e., self-laundering).

Criterion 3.8 (Met)—Under the VI laws, the case of *R v. Anwoir* [2008] EWCA Crim 1354 establishes that intention in ML cases can be inferred from objective factual circumstances.

Criterion 3.9 (Partially Met)—The table below summarizes the criminal sanctions that can be applied to ML-related offences under the DTOA and the PCCA statutes, as effected by the March 21, 2023, amendments to the DTOA and the PCCA. These addressed some of the inconsistencies in the penalties for similar offences between both statutes.

Act	Offence	Section	Summary conviction		Conviction on indictment	
			Fine (up to)	*Imprisonment (up to)*	*Fine (up to)*	*Imprisonment (up to)*
PCCA	Failing to comply with Code of Practice	27(4)	$200,000 * (admin penalty) $150,000	3 years		
PCCA	Assisting and facilitating the laundering by another person	28 (1) and (8)	$250,000	2 years	$500,000	14 years 10 years
DTOA	Assisting and facilitating the laundering by another person	33 (1) and (9)	$300,000 or 3x the value of the drugs	7 years No less than 3 years	$600,000 or 3 times the value of the drugs	15 years No less than 5 years
PCCA	Acquisition, possession or use of criminal proceeds (self-laundering)	29 (1) and (11)	$250,000	2 years	$500,000 $750,000	14 years
DTOA	Acquisition, possession or use of criminal proceeds (self-laundering)	34 (1) and (11)	$500,000 or 3 times the value of the drugs	5 years	$1,000,000 or 3 times the value of the drugs	15 years
PCCA	Concealing, disguising, converting or transferring	30 (1) and (4)	$250,000	2 years	$500,000	10 years
DTOA	Concealing, disguising, converting or transferring	35 (1) and (6)	$300,000	7 years No less than 3 years	$600,000	15 years No less than 5 years
PCCA	Failure to disclose a suspicious transaction	30 (1) and (10)	$150,000	3 years	$500,000	5 years
DTOA	Failure to disclose a suspicious transaction	36 (1) and (10)	$150,000	3 years	$500,000	5 years
PCCA	Tipping-off	31 (1) and (9)	$250,000	2 years	$500,000	5 years
DTOA	Tipping-off	37 (1) and (8)	$50,000	5 years	$100,000	15 years
PCCA	Prejudicing an investigation	34B (2) and (5)	$50,000	3 years	$10,000	5 years

** Text underlined and in red reflects amendments made in 2023.*

However, there are still significant differences in the penalties applied for drug trafficking-related ML and the laundering of proceeds from other serious predicate offences which potentially may be just as harmful as drug trafficking. The consequence of the existence of two parallel regimes is that it implies a *de facto* obligation to prove the exact nature of the predicate offence in order to know which regime applies. Also, the maximum imprisonment sanctions provided by law for non-drug trafficking-related ML (two to three

years on summary conviction) are inadequate given the fact that they mostly relate to organized crime activities or international ML. These penalties are neither proportionate to the seriousness of the offence nor dissuasive with respect to these crimes. The Palermo Convention defines a serious crime as an offence punishable by more than four years imprisonment. Since the VI only prosecutes non-drug related ML on summary conviction, it does not consider it as a serious offence.

Criterion 3.10 (Met)—Criminal liability and sanctions apply to legal persons. Pursuant to section 36(1) of the Interpretation Act, the definition of person includes a body corporate. Parallel civil or administrative penalties can be applied in cases of ML breaches by legal persons and notwithstanding the liability of the legal person, any managing officer of the company may also be subject to such administrative sanctions (Sect. 57 (2) AMLTFCOP, Sect. 27(5) PPCA). Administrative sanctions appear to be proportionate and dissuasive (see R.35)

Criterion 3.11 (Met)—The DTOA section provides for the offence of assisting another person to retain the benefit of drug trafficking. Similarly, section 28 provides for the offence of assisting another to retain the benefit of criminal conduct. The Criminal Code section 19(1) covers the ancillary offences of aiding and abetting, counselling, enabling (facilitating). The Code also criminalizes conspiracy at section 345-349 and attempt at section 350. Section 21 of the Criminal Code deals with the offence of counselling. Section 351 (1) of the Criminal Code establishes the offence of inciting another to commit an offence.

Weighting and Conclusion

The definition of the offence of ML under VI law is fully consistent with the requirements of the Vienna and the Palermo Conventions. The VI has adopted a "all offences" approach to predicate offences, and all offences listed under the FATF standard are covered. The definition of assets is also fully in line with the requirements of the Conventions and the Recommendations. However, penalties for drug trafficking-related ML offences differ significantly from penalties for ML relating to other types of predicate offences. The existence of two parallel and inconsistent regimes of ML offences weakens the whole sanction legal framework. Also, to the extent to which all ML crimes are generally prosecuted on summary conviction, the penalties provided by law for such offences cannot be considered as proportionate and dissuasive. This shortcoming can be considered as moderate/minor.

Recommendation 3 is rated largely compliant.

Recommendation 4 Confiscation and Provisional Measures

In its Third Round Mutual Evaluation, the VI was rated compliant with R.3 on its Confiscation framework. The PCCA, the DTOA, the Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002 (AT(FOM)(OT)O) and the Terrorism (United Nations Measures) (Overseas Territories) Order (T(UNM)(OT)O) establish the framework for tracing, investigatory, confiscatory, and freezing measures as well as procedures for dealing with and disposing of confiscated property.

Criterion 4.1 (Met)—

(a) Section 34A of the PCCA and section 50 of the DTOA allow for the confiscation of real property, conveyances, and any article, money, or valuable consideration shown to relate to the offence, including proceeds of crime and property laundered.

(b) Section 6 of the PCCA and section 5 of the DTOA allow for confiscation based on a person's benefit from relevant criminal conduct and from drug trafficking offences, which would include proceeds and income. Section 34A of the PCCA and section 50 of the DTOA deal with the confiscation of instrumentalities.

(c) Section 76 (1) of the CTA allows the Judge or Magistrate to order the forfeiture of property to the Crown, if the court is satisfied that the property is terrorist property.

Under section 2 of the CTA, terrorist property includes property owned or controlled, directly or indirectly, by a designated terrorist entity; property that is used in, intended, or allocated for use in the financing of terrorism, terrorist acts, or by terrorist organisations and includes proceeds of acts carried out for the purposes of a terrorist act and any property derived or generated from such property.

In addition, article 15 of AT(FOM)(OT)O addresses forfeiture of property used or intended to be used the financing of terrorism, terrorist acts or terrorist organisations.

Confiscation of property of corresponding value is possible through the combined application of Section 6, 17, and 19 of PCCA and 5, 18, and 21 of the DTOA. After assessing the amount of illicit proceeds generated by the offence, the Court issues a Confiscation Order which is an order to the defendant to pay the amount so assessed (Sect. 5 (4) DTOA and 6(3) PCCA). This amount may be recovered through the realisation of any property held by the defendant, which may be subject to a restraint order (Sect. 17 PCCA and 18 DTOA). The Court may appoint a receiver whose role will be to recover the amount determined by the confiscation order on any realisable property (Sect.19 PCCA and 21 DTOA). The only limitation is that the Court may not issue a confiscation order of an amount greater to the property identified as "realizable" at the time of the prosecution (Sect.6 (8) PCCA and. Sect. 10 (3) DTOA.

Criterion 4.2 (Largely met)—

a) Section 36 of the PCCA and 40 of the DTOA give the RVIPF and the FIA the ability to apply to the Court for a production order, when conducting an investigation into ML or drug ML or a confiscation investigation. Section 37 of the PCCA and 41 of the DTOA further allows the RVIPF and the FIA to apply to the Court for a warrant to enter and search premises when investigating ML or drug ML or a confiscation investigation. A confiscation investigation is defined pursuant to section 34B(1)(a) of the PCCA and 37(1)(a) of the DTOA, as an investigation into whether a person has benefitted from his/her criminal conduct, or to the extent or whereabouts of his/her benefit from his/her criminal conduct. Further, section 9(1) of the T(UNM)(OT)O gives the Governor the authority to request any information for ensuring compliance or detecting evasion of the Order. In addition, article 17 and Schedule 4 of the AT(FOM)(OT)O allow a police officer to apply to a judge for an account monitoring order, for the purpose of a terrorist investigation, tracing terrorist property, and to enhance the effectiveness of the investigation. The PCCA Amendment, 2023 and the DTOA Amendment, 2023, entered into force on March 21, 2023, have granted the power to apply for an account monitoring order in ML and drug-related ML cases.

b) Under section 17 of the PCCA and section 18 of the DTOA, a prosecutor may apply for a restraint order, preventing a person from dealing with any realisable property that is or may become subject to confiscation, or is suspected of being proceeds of crime. Sections 5 and 6 of the AT(FOM)(OT)O allow the High Court to make restraint orders, which prohibits a person from dealing with property in respect of which a forfeiture order has been or could be made. Section 7(1) of Schedule 2 of the AT(FOM)(OT)O, allows a constable to seize any property subject to a restraint order for the purpose of preventing it from being removed from the territory. The application for a restraint order may be made *ex parte* (Section 17 (4)(b) PCCA.

c) The laws in the VI do not provide measures to void actions that can prejudice the country's ability to freeze, seize, or recover property subject to confiscation, although a restraint order will apply to all realizable property held by any specified person (including a third party) even after the property has been transferred after the issue of the order.

d) Pursuant to the Police Act, the RVIPF conducts criminal investigations. In addition, the PCCA and the DTOA allow the RVIPF and the FIA to conduct ML or drug ML investigations and confiscation investigations. As detailed in criterion 4.2, the RVIPF and FIA have the powers to require

information via production orders and search and seize information via search warrants. The T(UNM)(OT)O gives the Governor the authority to direct any person to furnish information. In addition, article 17 and Schedule 4 of the AT(FOM)(OT)O allow a police officer to apply to a judge for an account monitoring order, for the purpose of a terrorist investigation, tracing terrorist property, and to enhance the effectiveness of the investigation. Further, section 21 (e) of the Police Act gives police officers the right to stop, search, and detain—(i) any aircraft, vessel, boat, vehicle, cart, or carriage in or on which he or she suspects that any stolen or unlawfully obtained or any smuggled goods may be found; and (ii) any person whom he or she reasonably suspects of having or conveying in any manner, anything stolen or unlawfully obtained or any smuggled goods. In addition, pursuant to section 90 of the Telecommunications Act, the Governor may make written requests and issue orders to telecommunications networks and providers of telecommunications services, to intercept communications for law enforcement purposes.

Criterion 4.3 (Met)—Section 34A (3) of the PCCA and 50 (3) of the DTOA prevent the Court from ordering any property to be forfeited unless an opportunity has been given to the person claiming to be the owner or otherwise interested in the property to show cause as to why the order should not be made. Section 17(4) of the PCCA requires a restraint order to provide for notice to be given to persons affected by the order. Subsection (6) further allows any person affected by a restraint order to apply to discharge or vary the order.

Section 15(7) of the AT(FOM)(OT)O requires the court to give a person other than the convicted person that claims to be the owner or otherwise interested in anything which can be forfeited by an order an opportunity to be heard before making a forfeiture order. Paragraph 6(2) of Schedule 2 of the AT(FOM)(OT)O also gives affected persons the ability to make an application before the Court for the discharge or variation of a restraint order. Paragraph 9 of Schedule 3 of the AT(FOM)(OT)O makes provision for a person who claims ownership of the whole or part of an amount of terrorist cash which was seized, and in respect of which a forfeiture order was made, to apply to the magistrate's court for the cash or such part of the cash to be released.

Criterion 4.4 (Met)—Under section 17(7) of the PCCA, the High Court may appoint a receiver to take possession of any realizable property and to manage or otherwise deal with the property for which he or she is appointed, in accordance with the court's directions, where a restraint order is issued. The court's directions may allow the receiver to sell or dispose of frozen or seized property prior to the making of a final confiscation order.

Sections 19 (3) and (4) of the PCCA allow the Court, where a confiscation order is made, to appoint a receiver to enforce any charge imposed on realisable property or on interest or dividends payable in respect of such property. Such enforcement is subject to such conditions or exceptions as may be specified by the Court. Section 7(2) of Schedule 2 of the AT(FOM)(OT)O requires property seized to be dealt with in accordance with the High Court's directions.

In addition, the Asset Seizure and Forfeiture Act 2020 (ASA) establishes an ASFMC which aim is to manage seized or restrained property, to manage and dispose of forfeited assets, and to share the proceeds of the disposition of such assets with the LEAs which participated in the investigations (Sect. 3) Assets are placed under the control of the Committee on the application made by the Attorney General for a Management Order to the Court. The Committee has the power to sell or destroy any seized asset even before it is forfeited. There is no indication as to whether this Committee is operational.

Weighting and Conclusion

Save and except for the power to void contracts and the limitation on some investigative powers available to the police, the VI laws generally comply with the requirements of the standards. A minor shortcoming stems from the absence of a legal mechanism to void fraudulently established transfers or conversion of assets.

Recommendation 4 is rated largely compliant.

Recommendation 5 Terrorist Financing Offence

The VI was largely compliant with the requirements of this Recommendation during the Third Round MER. The remaining deficiency was that the effectiveness of the legal framework could not be assessed in the absence of investigations and convictions for TF. No TF prosecutions had been initiated in the VI by the time of issuance of its last Third Round Follow-Up Report in 2011. Since the last MER, the VI amended the Criminal Code in 2013, 2014, and 2021 and enacted the CTA in 2021. In February 2016, the FATF amended R.5 to require countries to criminalize the financing of travel for terrorist purposes.

Criterion 5.1 (Met)—The VI criminalizes TF in sec. 8 of the CTA. Where the CTA does not cover specific elements of the TF offence, authorities can rely on the OIC related to TF issued by the United Kingdom, specifically the AT(FOM)(OT)O and T(UNM)(OT)O.[70] Furthermore, the CTA, the AT(FOM)(OT)O, and T(UNM)(OT)O set out the following offenses: prohibition on making property, or financial or related services, available to a designated terrorist entity (sec. 10 of the CTA); fund-raising (art. 6 of the AT(FOM)(OT)O); funding arrangements (art. 8 of the AT(FOM)(OT)O); the collection of funds with a terrorist purpose (art. 3 of the T(UNM)(OT)O); making funds available (art. 4 of the T(UNM)(OT)O); and contravening a freezing of funds notice (art. 5(9) of the T(UNM)(OT)O).

The VI has criminalized TF in line with the TF Convention by means of sec. 8 of the CTA. The material elements of the offense cover the provision or collection of funds with the intention that these are used to carry out "terrorist acts." The country's definition of "terrorist acts" covers acts which constitute offences within the scope of and as defined in the terrorism treaties listed in the TF Convention as required in article (art.) 2.1(a) of the TF Convention and the terrorist acts referred to in art. 2.1(b) of the TF Convention. In addition, for an act to constitute TF, it is not necessary that the funds are used to carry out a terrorist act. Moreover, the ancillary offenses provided for in art. 2.5 of the Convention are covered in the CTA. The definition of "economic resources" and "funds" in the CTA and the T(UNM)(OT)O include "property" and "terrorist property" in line with the Convention's definition of "funds" (secs. 2, 5(1) and (3), and 8(1), 1A, and (3) of the CTA; arts. 3, 5 and 6 of the AT(FOM)(OT)O; arts. 2, 3, 4, and 6 of the T(UNM)(OT)O and secs. 19(1), 21(1), 305345(1), and 351 of the Criminal Code).

Criterion 5.2 (Met)—The TF offense in sec. 8 of the TCA extends to any person who willfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used, or in the knowledge that they are to be used, in full or in part to carry out a terrorist act. Moreover, the definition of "funds" in the CTA and the T(UNM)(OT)O and the definition of "property" and "terrorist property" included in the AT(FOM)(OT)O is in line with the FATF's definition of "funds or other assets" (secs. 2, 8(1) and (3), and 10 of the TCA; art. 6 of the AT(FOM)(OT)O; and arts. 3 and 4 of the T(UNM)(OT)O).

[70] The offences "collection of funds" of the CTA, "fund-raising" of the AT(FOM)(OT)O, and "collection of funds"" of the T(UNM)(OT)O, in general, aim at criminalizing the same conduct. Similarly, the offences of "terrorism financing" in the CTA and "making funds available" of the T(UNM)(OT)O cover the provision of funds for terrorist purposes. The AT(FOM)(OT)O and T(UNM)(OT)O, which are OIC-issued by the United Kingdom, should take precedence over the CTA as a locally enacted legislation; however, sec. 126 of the CTA sets out that where any act or omission constitutes an offence under the CTA and these Orders, the offender is liable to be prosecuted and punished under either of them, but is not liable to be punished twice for the same offence. According to the authorities of the VI, this arrangement was not challenged by the United Kingdom when the CTA was passed in 2021 and is in line with secs. 2 and 3 of the Colonial Laws Validity Act 1865. In addition, in the view of the assessment team, adjust the scope of the OIC to the context of the VI.

Criterion 5.2bis (Met)—TF offences include financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training (sec. 8(c) of the CTA).

Criterion 5.3 (Met)—The TF offence extend to any funds from a legitimate or illegitimate source (sec. 2 of the CTA, arts. 3 and 5 of the AT(FOM)(OT)O and art. 2 of the T(UNM)(OT)O).

Criterion 5.4 (Met)—The TF offence does not require that the funds or other assets (a) are used to carry out or attempt a terrorist act(s) or (b) be linked to a specific terrorist act(s) (sec. 8(3)(a) and (b) of the CTA).

Criterion 5.5 (Met)—The intentional element of the TF offence can be inferred from objective factual circumstances based on Common Law practice (*R v. Anwoir and others [2008] EWCA Crim 1354*).

Criterion 5.6 (Met)—TF is subject to proportionate and dissuasive sanctions. A person who commits TF is liable on summary conviction to a term of imprisonment not exceeding 10 years, or to a fine not exceeding US$500,000, or both. On conviction on indictment, to a term of imprisonment not exceeding 20 years or a fine not exceeding US$1,000,000, or both (sec. 8(2) of the CTA). These penalties are in line with those for other serious criminal offences in the VI where the penalty for TF is in the middle of the imprisonment range, e.g., ML, conspiracy to murder, abduction with intent to remove from the territory or to confine in the territory, human trafficking, and acts likely to spread disease have 14 years of imprisonment as the maximum penalty, while genocide, murder, manslaughter ,and causing grievous bodily harm with intent are punished with imprisonment for life. Considering the range of years of imprisonment and the value of the fines applicable to offenders, these penalties are likely to have a deterrent effect (sec. 8 of the CTA and secs. 160, 163, 166, 169, 175, 208, 214, and 325 of the Criminal Code and secs. 28(8), 29(11) and 30(4) of the PCCA).

Criterion 5.7 (Met)—The word "person" includes corporations (whether aggregate or sole) and unincorporated bodies of persons; hence, the fines of US$500,000 on summary conviction or not exceeding US$1,000,000 on conviction on indictment detailed in c.5.6 apply to legal persons as well (sec. 36 of the Interpretation Act (Cap. 136)). These sanctions are proportionate and dissuasive. Additionally, there are no provisions that preclude parallel criminal, civil, or administrative proceedings with respect to legal persons.

Criterion 5.8 (Met)—In the VI, it is an offence to (a) attempt to commit the TF offence (sec. 8(1A)(a) of the CTA); (b) participate as an accomplice in a TF offence or attempted offence (sec. 8(1A)(b) of the CTA); (c) organise or direct others to commit a TF offence or attempted offence (sec. 8(1A)(c) of the CTA); and (d) contribute to the commission of one or more TF offence(s) or attempted offence(s), by a group of persons acting with a common purpose ((sec. 8(1A)(d)(i) and (ii) of the CTA).

Criterion 5.9 (Met)—TF offence is a designated ML predicate offence (secs. 5 and 28-30 of the PCCA).

Criterion 5.10 (Met)—The TF offense set out in sec. 8 of the CTA is applicable, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located, or the terrorist act(s) occurred/will occur (sec. 8(3) of the CTA).

Weighting and Conclusion

Recommendation 5 is rated compliant.

Recommendation 6 Targeted Financial Sanctions related to Terrorism and Terrorist Financing

In its Third Round MER, the VI was rated Compliant on SR.III and no deficiencies were noted.

The VIs' TFS regime relating to TF is captured in the domestic framework (CTA), the Sanctions Guidelines (Updated March 2023)), and the Procedures or Addressing Possible Financial Sanctions Breaches and Freezing and Unfreezing of Assets and implemented through the U.K. regulatory framework. Relevant UNSCRs implemented by the VI include UNSCRs 1267 (1999) (and its successor resolutions) and 1373 (CTA, Schedule 5). The U.K.'s Sanctions and AML Act 2018, empowers Ministers to issue regulations for, *inter alia*, meeting UN or other international obligations. U.K. Regulations are extended to the VI via Overseas Territories Orders, which have direct legal effect in the VI.

U.K. regulations OICs relevant to the UNSCR 1267/1989 (Al-Qaida) and 1988 sanctions regimes are: the Afghanistan (Sanctions) (EU Exit) Regulations 2020 (Afghanistan sanctions order) and the ISIL (Da'esh) and Al-Qaida (UN Sanctions) (EU Exit) Regulations 2019 (ISIL sanctions order). U.K. regulations are implemented in the VI by way of Overseas OIC, namely the Afghanistan (Sanctions) (Overseas Territories) Order 2020 and the ISIL (Da'esh) and Al-Qaida (UN Sanctions) (Overseas Territories) Order 2020. U.K. regulations relevant to UNSCR 1373 are: the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020 (CT(S)(OT)O) and the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (CTSR), and the Terrorism (UN) (Overseas Territories) Order.

Identifying and designating

Criterion 6.1 (Mostly met)—

a) ***(Met)—***The VIs' domestic framework, the CTA, and the Financial Sanctions Guidelines, and relevant OICs identifies the Governor as the competent authority with responsibility to propose the listing of a designated terrorist entity (in coordination with relevant domestic agencies, such as the FIA, FSC, and the Foreign, Commonwealth and Development Office (FDCO) (CTA, Schedule 4 and Sanctions Guidelines, arts. 150 and 153). The Governor cannot make a proposal directly to the relevant UNSC Committee but is able to submit a proposal through the FDCO (CTA, Schedule 4).

b) ***(Partly met)***—Neither domestic law nor relevant OICs define a mechanism or process for the detection and identification of targets for designation. The CTA states that the Governor must reasonably suspect or believe that the target is involved in one or more terrorist acts but does not articulate any procedure beyond that (CTA, Schedule 4, section 11(2)). The only applicable procedure described in the Sanctions Guidelines is the requirement that a Designation Impact Assessment (DIA) form must be filled out after a target has been identified for designation. As of March 2023, the RVIPF is the only agency that has standard operating procedures for identifying persons meeting designation criteria (in its SOP for Identification of Targets for Designation (RVIPF sanction Designation Policy).

c) ***(Met)***—In determining whether to make a proposal for designation, the VI applies an evidentiary standard of proof of reasonableness (CTA Schedule 4, section 11(2)). The CTA does not contain any requirement for an existing criminal proceeding to be a precondition for a proposal.

d) ***(Met)***—The CTA (Schedule 4, section 11(3)(a)) requires the Governor to follow the procedures and standard forms for listing, as adopted by the relevant UNSC Committee. As noted above, the Governor does not propose designations to directly to the relevant UN body, but through the FCDO.

e) ***(Met)***—The CTA (Schedule 4, section 11(3)(b)) requires the Governor to provide as much relevant information as possible on the proposed entity, in particular, sufficient identifying information to

allow for an accurate and positive identification. Section 11(3)(d) requires the Governor to specify whether the status as a designating state may be made known.

Criterion 6.2 (Mostly met)

a) ***(Met)***—The VI is able to designate persons or entities meeting the specific criteria for designation under UNSCR 1373 on its own motion and pursuant to a request from another country. In the national framework, the CTA empowers the Governor (in consultation with the Secretary of State) to make interim or final designations (sections 38(1) and 40(1)) of a terrorist or associated entity if the UNSC has advised that measures should be taken or if the Governor believes it necessary to protect the public interest. Where a request to make a final designation from another country has been received, the CTA (section 40(5)) allows the Governor to make a final designation if he considers it appropriate and reasonable under the circumstances to do so. The (CT(S)(OT)O) also empowers the Governor, in consultation with the Secretary of State, to designate persons for the purpose of asset freezes (sections 5(1) and (2)).

b) ***(Partly met)***—Aside from identifying the relevant authority responsible for designations, neither domestic law nor the relevant OICs contain any mechanism or process for the detection and identification of targets for designation under UNSCR 1373. The only applicable procedure described in the Sanctions Guidelines is the requirement that a DIA form must be filled out after a target has been identified for designation. However, although as of March 2023, the RVIPF has developed standard operating procedures on this subject.

c) ***(Partly met)—***The Sanctions Guidelines describe the procedure for the GO to determine whether a request for designation is supported by sufficient facts to conclude, based on reasonable grounds, that the designation criteria for UNSCR 1373 have been met (sections 195–199). However, no timeframe for this determination is stipulated.

d) ***(Met)***—In determining whether to make a proposal for designation under UNSCR 1373, the VI applies an evidentiary standard of proof of reasonableness pursuant to section 38(1) and 40(1) of the CTA. Sections 38(1) and 40(1) of the CTA require the Governor to reasonably suspect a direct or indirect connection to terrorist acts, or persons controlled or acting on behalf of persons connected to terrorists acts in order to make a designation. The CTA does not contain any requirements that designations must be linked to criminal proceedings. A similar provision exists in the CTSR, as amended and extended by CT(S)(OT)O. Section 6(1)(a) requires the Governor to have reasonable grounds to suspect that a person meets the criteria for designation (as laid out in section 6(2)–(5)). These criteria are similar to those established under section 40(1) of the CTA and are consistent with the designation criteria set out in UNSCR 1373. No pre-requisite exists for any criminal proceedings to have commenced against that person or in relation to that activity.

e) ***(Met)***—When requesting another country to give effect to the actions initiated under the VIs' freezing mechanisms, the authorities have advised that the same DIA form for domestic designations and designations to the UN would need to be filled out by the VI (as the requesting state). This form requires identifying information and information/evidence supporting the designation.

Criterion 6.3 (Met)—

a) ***(Met)—***For a final designation or a proposal to the UN, the CTA allows the Governor to collect or solicit information to identify entities that meet the stipulated criteria (sections 38(4) and (40(2)).

b) ***(Met)***—The national framework, the CTA (Schedule 4, section 11(4)) and the Terrorist Freezing Act 2010 (Schedule 2, section 3) allows to Governor—while his proposal is being considered—to operate *ex parte* against an entity that has been identified as a designated terrorist entity.

Freezing

Criterion 6.4 (Met)—With respect to UNSCRs 1267/1989 and the 1988 sanctions regimes, pursuant to the applicable overseas orders, any designation made by the UNSC, or its Committees takes immediate effect in the U.K. and, by extension, the VI (PFPA, section 8(1)). Consequently, obligations to freeze and report are triggered as soon as a UN designation has been made.

Criterion 6.5 (Partly met)—

a) ***(Partly met)—***The domestic framework requires any person to freeze, without delay and without providing prior notice, the funds and economic resources directly or indirectly held—in whole or in part, wholly or jointly owned, or directly or indirectly controlled by, derived or generated from, or belonging to a person acting on behalf of a designated terrorist entity "if the person knows or has reason to suspect" that a designated entity is dealing with such funds or resources (CTA (Schedule 4, section 2(1)). OICs relating to UNSCRs 1267, and successor resolutions, and 1373 contain no affirmative obligation to freeze, but similarly contain prohibitions against knowingly or recklessly dealing with funds or economic resources owned, held, or controlled by a designated person or making funds and economic resources available to or for the benefit of designated persons. Given the *mens rea* of knowingly or recklessly, the prohibitions contained in the VI frameworks are narrower than that required by the standard.

b) ***(Met)***—The domestic framework extends the obligation to freeze to all types of economic resources required under this criterion, (see CTA Schedule 4, section 2(1)). The funds or economic resources are not required to be tied to a terrorist act, threat, or plot.

c) ***(Partly met)—***Neither the domestic nor applicable U.K. framework contains a sufficiently broad prohibition on making funds or other assets available to designated persons and entities. The national framework contains prohibitions from dealing with designated assets, but only where the person knows or has reason to suspect that a designated person is dealing with such funds. (Schedule 4, sections 2–6). Relevant OICs contain similar prohibitions against persons from knowingly making funds and economic resources (directly or indirectly) to designated persons and for the benefit of designated persons, including entities owned or controlled directly or indirectly by designated persons (unless subject to exemptions or licenses) (sections 9–12 of the ISIL and Afghanistan Sanctions Orders and sections 12–15 of the CTSR). The *mens rea* of knowledge or reason to suspect is not in keeping with the standards.

d) ***(Mostly met)***—The National AML/CFT Strategy requires publication of notices of designation within 24 hours. Relevant competent authorities in the VI are required to communicate designations to FIs and DNFBPs immediately. Pursuant to section 12(1) of Schedule 4 of the CTA, the supervisory authorities (FSC and FIA) must immediately after a designation is made by the GO, the UN (under a relevant UNSCR), or the U.K. communicate a designation (in a medium deemed appropriate) to all relevant entities under their supervision. However, the CTA (sections 39 and 41) only requires the GO to notify of its own designations. The FIA and FSC are also required to maintain a publicly available and updated list of all designated terrorist entities (CTA section 12(3)). Both the FIA and FSC also publish new designations on their websites within six hours of receiving notices from the OFSI (and generally within 24 hours of notification by the UN). Once designations have been posted, the FSC and FIA notify all supervised entities by email, alerting them of the postings and informing them of required actions. The GO also publishes notices in the VI Gazette; however, the Gazette is only published on a weekly basis. The authorities advise that the GO has amended its procedures to publish notices by way of an extraordinary gazette as soon as they are received. While guidance is provided to FIs and DNFBPs on freeze obligations, no clear guidance appears to be provided to other persons who may be holding targeted funds or assets.

e) ***(Met)***—The CTA requires FIs and DNFBPs to report to the Governor any actions taken in accordance with the prohibitions contained in the CTA, as well as any attempted transactions (Schedule 4, section 13(5)).

f) ***(Met)***—The domestic regime protects the rights of bona fide third parties. A person who freezes the funds or economic resources of a designated entity or refuses to make funds or economic resources available to a designated entity, acting in good faith in accordance with the Act, is not held liable unless it was proven that the fund economic resources were frozen or withheld as a result of the freezing party's negligence (CTA Schedule 4, section 2(5)).

De-listing, unfreezing and providing access to frozen funds or other assets

Criterion 6.6 (Mostly met)—

a) ***(Mostly met)***—The VI has procedures for petitioning the Governor for a de-listing but does not include procedures for the Governor to propose a de-listing of his own volition. Chapter 10 of the Sanctions Guidelines lays out the procedure for petitioning the Governor to submit a de-listing request to the relevant UN sanctions committee. A de-listing request under UNSCR 1267 and successor resolutions must contain information, such as why designation criteria are not or are no longer met (Sanctions Guidelines, section 163). If the Governor agrees with the delisting request, he will pass the petition onto the FCDO Sanctions Unit for further legal and policy assessment. The FCDO will make a determination as to whether to carry the delisting request forward to the relevant UNSC Sanctions Committee for consideration (Sanctions Guidelines, section 205). Where a person has been de-listed, the asset freeze obligation ceases to exist. The Sanctions Guidelines requires institutions to remove the name of the person/entity from the institution's list of persons/entities subject to financial sanction; unfreeze the assets of the person/entity (as applicable) and re-activate all relevant accounts; notify the person/entity that the assets are no longer subject to an asset freeze; and immediately notify the FIA and the FSC of the actions which have been undertaken upon completion (section 224). The Procedures for Addressing Possible Financial Sanctions Breaches and Freezing and Unfreezing of Assets also describes the actions that must be taken by supervisors to disseminate de-listing and un-freezing notices related to designations under the CTA.

b) ***(Mostly met)***—A less prescriptive procedure exists for requesting de-listing under UNSCR 1373. Section 165 of the Sanctions Guidelines permits a designated person (or someone acting on their behalf) to submit a petition for de-listing to the Governor. Where the Governor agrees with the delisting request, he may confer with the Secretary of State in determining whether to revoke the designation. However, as with Criterion 6.6(a), no procedure exists for the Governor to propose a de-listing of his own accord. Section 224 of the Sanctions Guidelines lays out the procedure for un-freezing the assets of a de-listed person/entity. The Procedures for Addressing Possible Financial Sanctions Breaches and Freezing and Unfreezing of Assets also describes the actions that must be taken by supervisors to disseminate de-listing and un-freezing notices related to designations under the CTA.

c) ***(Met)***—For designations under UNSCR 1373, the CTA allows a designated person or entity to make an appeal to the court of any decision to make or vary an interim or a final designation, renewal of a final designation, or variation of a designation (Schedule 4, section 20(2)). If a petition for delisting under the Sanctions Guideline is declined, the designated person may appeal such decision to the Supreme Court (section 217).

d) ***(Met)***—The CTA authorizes the Governor to develop procedures for the facilitation of a review by the 1988 Committee of designations made under UNSCR 1988 (Schedule 4, sections 11(5) and (6)(c)). This procedure is captured in the Sanctions Guidelines section 204 and 205 (see above 6.6(a)).

e) ***(Met)***—The CTA authorizes the Governor to develop procedures to inform designated terrorist entities on the Al-Qaida Sanctions List of the availability of the United Nations Office of the Ombudsman, pursuant to UNSCRs 1904, 1989, and 2083 to accept de-listing petitions (Schedule 4, sections 11(5) and (6)(d)). The Sanctions Guidelines explaining that requests seeking to challenge or remove a designation from a UN listing under the ISIL (Da'esh) and Al-Qaida Sanctions List can be made directly by submitting a delisting petition to the UN Office of the Ombudsperson to the ISIL (Da'esh) & Al-Qaida (1267/1989/2253/2368) Sanctions Committee are publicly available (section 207).

f) ***(Met)***—Sections 218–221 of the Sanctions Guidelines lay out the procedure for addressing false positives. Where a person is the subject of a false positive hit, the first recourse is to contact the institution instituting the asset freeze with supporting documentation. If a resolution cannot be reached with the relevant institution, the matter should be brought to the FIA. The FIA will determine whether the person/entity concerned correctly matches the designated person/entity from the sanctions list and instruct the relevant institution accordingly. Where the FIA is unable to make a determination, it will inform the GO, which will liaise with the FCO (if the claim is deemed to have merit) to request an authoritative finding in relation to the identity of the person/entity. Upon receipt of a response from the GO, the FIA will inform the relevant institution and person/entity of the results.

g) ***(Mostly met)***—The FIA and FSC are required to communicate the de-listing of a designated entity and the unfreezing of funds and other assets to all relevant institutions they supervise through a medium deemed appropriate (CTA, Schedule 4, section 12(2)), but only as soon as is reasonably practicable. In practice, however, the FIA and FSC expeditiously issue alerts where de-listings have been made, usually within a matter of hours and generally within 24 hours of the de-listing by the U.N. As required by the CTA (Schedule 4, section 12(3), the FIA and FSC also maintain a publicly available and updated list of all designated terrorist entities, as well as entities that have been de-listed. Guidance on unfreezing assets can be found in the Procedures or Addressing Possible Financial Sanctions Breaches and Freezing and Unfreezing of Assets.

Criterion 6.7 (Mostly met)—The Overseas Territories Orders relating to Afghanistan and ISIL and Al-Qaida allow the Governor to grant licenses, to allow for access to frozen funds and assets for: basic needs (for a designated person or their family member(s); legal fees and disbursements; fees and services charges for routine holding or maintenance of frozen funds or economic resources; to satisfy prior court judgements or arbitration decisions against a designated person or entity; to satisfy prior contractual obligation of the designated person; and to enable an extraordinary expense of a designated person to be met (Schedule 2, section 3–5). While the domestic framework contains only very limited exceptions (e.g., crediting a frozen account with interest or other earnings due on the account) (Schedule 4, section 8) and an authorization for the Governor to issue general licenses (Schedule 4, section 9), the Overseas Orders would be a sufficient basis for the granting of licenses in line with the requirements under UNSCR 1452. For designations under UNSCR 1373, article 19A of the CT(S)(OT)O contains general language on exemptions (asset freeze obligations shall not apply where a license has been granted), but this provision is not sufficiently detailed to ensure that the requirements under UNSCR 1452 are met.

Weighting and Conclusion

The VI has minor shortcomings in the legal and regulatory framework governing the implementation of TFS relating to TF. While the jurisdiction has identified a competent authority for proposing designations, no mechanisms or processes exists for the identification of targets for such designations. Further, no procedures are in place to allow for a prompt determination of whether the designation criteria for UNSCR 1373 have been met. Further, in some instances, prohibitions are only required where a person was knowingly or recklessly dealing with funds or economic resources belonging to or associated with a

designated individual or entity. Further, procedures for the Governor to initiate a de-listing of his/her own accord do not appear to exist.

Recommendation 6 is rated largely compliant.

Recommendation 7 Targeted Financial Sanctions related to Proliferation

Given that the requirements for the implementation of TFS related to proliferation were added to the FATF Recommendations when they were revised in 2012, their implementation was not evaluated in the previous round of ME of the VI.

U.K. regulations relevant to UNSCR 1718 (2006) and 2231 (2015) are the DPRK (Sanctions) (EU Exit) Regulations 2019 (DPRKR) and the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019 (ISNR). These U.K. regulations are extended to the VI by way of Overseas Orders in Council, namely The DPRK (Sanctions) (Overseas Territories) Order 2020 (the DPRKR Order) and the Iran (Sanctions) (Nuclear) (Overseas Territories) Order 2020 (the Iran Order). Similar to the VIs' TFS regime for TF, the VIs' TFS regime relating to PF is captured in the domestic framework as well as by way of U.K. regulations with direct legal effect. The main applicable domestic legislation is the PFPA, which allows for UNSCRs made by the UN and its Committees to take immediate effect, and the CTA, which is the primary domestic law governing TFS for TF, but also extends to UNSCRs related to PF.

Criterion 7.1 (Met)—The VI TFS regime for PF is the same as described above for TF. Pursuant to section 8(1), the designation of a person or entity by the UNSC or its Committee under UNSCR applies in the VI with immediate effect from the date of designation and has the immediate effect of imposing prohibitions.

Criterion 7.2 (Partly met)—The Governor is the competent authority to implement TFS relating to PF under both national law and relevant OICs. The PFPA grants the Governor a broad range of powers, including the legal authority to designate a person or entity (section 9). The PFPA also identified the FIA as a competent authority, responsible for, *inter alia*, implementing enforcement measures where a person subject to the PFPA contravenes a prohibition or fails to meet an obligation (Part V). Section 5A of both the DPRKR and the ISNR give the Governor the authority to implement the provisions of the orders, including to designate persons for asset freezes.

a) ***(Partly met)—***The VIs' domestic framework and relevant OICs prohibits persons from dealing with assets of or related to a designated person or making assets available to a designated person or entity or a person related to a designated person or entity. The OICs define "dealing with" as moving, altering, transferring, allowing access, or taking any other action that results in a change in the amount, location, or ownership of the funds. The definition is sufficiently broad to be equated to an obligation to freeze, as defined in the FATF glossary. The prohibition does not require prior notice and takes immediate effect (section 8(1)(b)). However, the prohibition only applies where a person has knowledge or reasonable suspicion that he/she is dealing with a designated person (Schedule 4, section 2(1) CTA, section 15 PFPA, Section 13 of DPRKR and 12 of ISNR), or is acting recklessly (section 15 PFPA). Due to the addition of a specific *mens rea*, the prohibition is narrower than that required by the standard. The term "person" under both the national and U.K. frameworks refers to natural and legal persons.

(b) ***(Met)***—The prohibitions under the PFPA and relevant OICs apply to assets owned, controlled, or held directly or indirectly, wholly or jointly by a designated person or entity, on behalf of a designated person or entity, or at the direction of a designated person or entity (PFPA section 15, DPRKR section 13, ISNR section 12). The funds or economic resources are not required to be tied to a particular act, plot, or threat of proliferation.

c) ***(Partly met)***—Neither the PFPA nor applicable OICs contain a sufficiently broad prohibition on making funds or other assets available to designated persons and entities. Section 16(1) of the PFPA

prevents persons from knowingly or recklessly making assets available (either directly or indirectly) to a designated person or entity; to a person or entity owned or controlled by a designated person or entity; to a person or entity acting on behalf of a designated person or entity; or for the benefit of a designated person or entity, unless otherwise authorized (under sections 54 or 55 laying out exemptions). The *mens rea* of knowingly or recklessly is not in keeping with the international standards. Similarly, under regulations 15 to 17 of the DPRKR and 13 through 16 of the ISNR, as amended and extended by the DPRK and Iran Orders, unless exempted, a person commits an offense where he/she makes funds or economic resources available to or for the benefit of designated persons where he/she knew or had reasonable suspicion that he/she was doing so. No offense would be committed if a person did not have knowledge or reason to suspect that the funds or economic resources were being made available to or for the benefit of a designated person.

d) ***(Mostly met)***—Section 13 of the PFPA requires the Governor to, without delay, use any necessary means to notify FIs and DNFBPs, along with a number of public bodies, including the FIA, the FSC, the Attorney General, and the tax authority. The notice is required to contain the date, duration, and grounds for the designation, the information relied upon in making the designation, the prohibitions prescribed, the avenues for appealing, and the procedures for applying for an exemption (section 13(2)). The PFPA does not define the time period meant by "without delay," but the CTA defines this phrase as not exceeding 24 hours. The FIA and FSC also communicate designations to supervised entities generally within hours of an update (see discussion under 6.5(d)). Section 38 of the PFPA also tasks the FIA with the responsibility to provide guidance and feedback to ensure compliance with the Act. However, there are no provisions governing whether the FIA is responsible for providing guidance to persons other than FIs and DNFBPs. There are also no mechanisms for communicating or issuing guidance to persons and entities not under FIA supervision, but which may be holding targeted assets.

e) ***(Mostly met)***—Both national law and relevant OICs require FIs and DNFBPs to report to competent authorities information relating to possible PF offenses or related funds; however, reporting requirements to report on compliance actions taken are not sufficiently robust. The PFPA does not contain requirements to report on specific freezing actions. The PFPA contains two distinct reporting requirements, one of the holding of an asset that belongs or is connected to a designated person or entity (including on any attempted transactions) (section 34(1) and another of actual and attempted transactions where the amounts exceed US$10,000 (section 37(1)(a)). Any account opening or attempted account opening by a designated person or entity is required to be reported (section 37(1)(c)). Under the U.K. framework, section 99 of the DPRKR and 46 the ISNR require relevant institutions to inform the Treasury as soon as practically possible where they know or suspect that a customer is a designated person or if the institution acquired knowledge of or reasonable suspicions about a designated person or a person who has committed an offence under the Regulations in the normal course of business. In such cases, the institution is required to report the details of any funds they hold that belong to a suspected designated person but not on any attempted transactions. Neither the domestic law nor the orders require reporting on any compliance actions taken.

f) ***(Met)***—The rights of bona fide third parties are protected in the domestic framework, which precludes a person from being subject to civil or criminal liability, action, claim, or demand for anything done or omitted to be done in good faith (PFPA, section 68).

Criterion 7.3 (Met)—Under the PFPA, the FIA is tasked with enforcement of the Act (section 38). The FIA's functions under PFPA include the monitoring of PF risks (and the adoption of appropriate mitigation measures), the issuance of guidance and feedback, and the performance of any other duties needed to ensure compliance with the Act, and the imposition of penalties for failure to comply with the requirements of the PFPA. In the performance of its functions under PFPA, the FIA is also empowered to request information or documentation, enter premises, and conduct onsite inspections (sections 39–41). Contravention of

prohibitions or other breaches of compliance are punishable with a warning or civil penalty, not to exceed US$100,000, unless approved by a court (sections 45–47). However, penalties will not be applied where the FIA is satisfied that the person took all reasonable steps and exercised all necessary due diligence (section 47(2)).

Criterion 7.4 (Met)—

a) ***(Met)***—Procedures for petitioning the Governor to submit a delisting request in accordance with UNSCR 1730 are contained in Chapter 10 of the VI Sanctions Guidelines.

b) ***(Met)***—A person or entity whose asset has been frozen may apply to the Governor to unfreeze the asset (PFPA, section 61). If satisfied that the applicant is not a designated person and that frozen funds are not associated with PF, the Governor shall issue a direction to unfreeze the asset and have it returned to the applicant and cause a copy of the direction to be provided to any person or entity in possession, custody, or control of the frozen asset (section 61(2) – (3)). Sections 128–130 of the Sanctions Guidelines lay out the procedure for addressing false positives (see above 6.6(f)).

c) ***(Met)***—Exemptions in line with the conditions described in UNSCRs 1718 and 2231 are provided in the domestic framework. Sections 54 and 55 of the PFPA outline the authorizations that the Governor may grant in relation to frozen assets, including for the payment of basic and necessary extraordinary expenses, payment of reasonable professional fees and expenses associated with the provision of legal services, and payment of fees associated with account management. The procedure for applying for such a license or exemption is contained in Chapter 6 of the Sanctions Guidelines. Applicants must complete the form "Model Licence Application Form (Asset Freeze)" (requiring information such as amount of funds/value, nature of any economic resource, payer/payee information, and reason for the transaction(s)). The completed application must be submitted to the GO, which will determine whether to grant the license. Although the exemptions in the applicable U.K. framework (sections 81 of the DPRKR and 37 of the ISNR) do not meet the exemption conditions laid out in UNSCRs 1718 and 2231 relating to payments for basic and extraordinary needs and essential services, the PFPA would be sufficient in this regard.

d) ***(Mostly met)***—As noted above, the primary mode of communicating updates (including de-listings) on designations to FIs and DNFBPs is through alerts linked to OFSI updates and the websites of the FIA and FSC. De-listing notices are published on the websites of the FIA and FSC within six hours of being published on the website of the OFSI. Both the FIA and FSC provide links to the U.K. OFSI consolidated list of designated persons on their websites (FIs and DNFBPs are asked to subscribe directly to OFSI list). In addition, the FIA and FSC issue alerts where de-listings have been made. However, no other mechanisms for communicating de-listings beyond publication on the aforementioned websites have been developed. The FSC and FIA have both undertaken outreach to FIs and DNFBPs. Additionally, the FIA has issued guidance on PF and highlighting red flag indicators. The FSC has prepared a video explaining sanctions, licenses, and obligations under the applicable sanctions regimes; this video is posted on the FSC's website. However, it is unclear whether any guidance or outreach to other persons that may be holding targeted assets (other than FIs and DNFBPs) has taken place.

Criterion 7.5 (Met)—With regard to contracts, agreements or obligations that arose prior to the date on which accounts became subject to TFS:

a) ***(Met)—***The domestic framework contains exemptions permitting frozen accounts to be credited with interest, other earnings due, and payments arising under contracts, agreements, or obligations that were concluded prior to freezing. Section 16(4) of the PFPA permits the payment, including by way of interest or other earnings, to an account containing frozen assets, if such payments are also frozen. Under the U.K. framework, regulation 81(3) of the DPRKR and the 37(4) of the ISNR

allow a relevant institution to credit a frozen account with interest or other earnings due on the account as long as the account remains frozen.

b) ***(Met)***—Both the domestic and U.K. frameworks permit payments under a contract commenced prior to designation under certain circumstances. Under the PFPA, the Governor may authorize a payment due under a contract or agreement concluded by, or an obligation that arose before, the date of designation as long as the payment is not for the benefit of a designated person (section 54(2)(g)). Section 55(2) of the PFPA prevents the Governor from granting any authorisation under section 54, if such authorization would violate a provision of a counter-proliferation Resolution. Section 56(2) of the PFPA requires the Governor to seek any approvals required by, and make any notifications required to, the UNSC or its Committees. Regulation 81(5) of the DPRKR and the 37(5) of the ISNR allow for the transfer of funds where those funds are transferred in discharge or partial discharge of an obligation that arose before the date on which the person became a designated person. While the U.K. framework does not require any pre-notification, the domestic framework is sufficient in this regard.

Weighting and Conclusion

The VI has minor shortcomings in the legal and regulatory framework governing the implementation of TFS relating to PF. While the jurisdiction has identified a competent authority for proposing designations, no mechanisms or processes exist for the identification of targets for such designations. Further, in some instances, prohibitions are only required where a person was knowingly or recklessly dealing with funds or economic resources belonging to or associated with a designated individual or entity. The reporting of actual and attempted transactions is required to be filed only when exceeding US$10,000, and the PFPA does not define "without delay."

Recommendation 7 is rated largely compliant.

Recommendation 8 Non-profit organisations (NPOs)

In its Third Round MER, the VI was rated Partially Compliant on SR.VIII as the authorities had not assessed the adequacy of laws and regulations applicable to NPOs or put in place a supervisory program to identify AML/CFT non-compliance and violations, neither had the authorities undertaken periodic assessments of the sector's potential vulnerabilities to terrorist activities or conducted any outreach to educate the sector on TF risks.

Criterion 8.1 (not met)—

a) ***(Not met)***—The VI has not identified the relevant subset of entities that fall within the FATF standard (those that primarily engage in raising and disbursing funds) or features and types of NPOs that are likely to be at risk of TF abuse. In the authorities' view, all NPOs formed in the VI fall within the FATF definition. The definition of NPO in the NPO Act (which governs the registration of NPOs in the VI) defines an NPO as "body of persons whether incorporated or unincorporated, established solely or primarily for the promotion of charitable, religious, cultural, educational, social or fraternal purposes […] and which raises or disburses funds in pursuance of its objectives." However, within the population of registered NPOs, those whose primary purpose is to raise or disburse funds have not been identified. Further, the VI has not identified the specific features and types of NPOs that are vulnerable to TF. While the authorities have conducted a 2020 national TF RA that included the NPO sector, it appears to have been based primarily on international TF typologies relating to NPOs, without identifying specific TF threats to or vulnerabilities in the VI NPO sector. For instance, the TF risk assessment considers some attributes of the VI NPO sector

(e.g., the proportion of NPOs sending or soliciting funds in an amount exceeding US$10,000 annually), it does not indicate how these may lead to a heightened TF risk (e.g., whether large donations or grants exceeding US$10,000 have been linked to TF threat).

b) ***(Not met)—***The VI has not identified the nature of threats posed by terrorist entities to the subset of NPOs which are at risk for TF. The 2020 TF risk assessment highlighted generally accepted avenues for and typologies of misuse in the NPO sector (for instance, through deception, whereby terrorists or terrorist organizations create sham NPOs or solicit funds under the guise of legitimate benevolent activities or causes); however, the risk assessment also recognized that these typologies have not been seen in the VI. Similarly, the risk assessment included a description of the general nature of TF threats (relating to the use of funds to aid recruitment, training, or facilitation of terrorist activities), without correlating the relevance of these threats to the jurisdiction, based on country-specific information. Conclusions appear to be primarily based on whether international typologies have been witnessed in the VI.

c) ***(Met)—***The adequacy of measures, laws, and regulations concerning the NPO sector were also reviewed during the 2016 NRA exercise. The NRA concluded that sections 4 and 5 of the AMLTFCOP should be reviewed to reduce the compliance burden on smaller NPOs that are not at a high risk of ML/TF. The NRA also recommended that the NPO Act be reviewed to reduce the burdens that have prevented most NPOs from being able to register with the NPO Board. Following this review, the NPO Act was amended in October 2022.

d) ***(Not met)***—The VI does not periodically reassess the NPO sector with an eye to identify potential vulnerabilities to TF or to ensure the effectiveness of mitigation measures. While the NPO sector was covered in the 2020 TF RA, it has not been reassessed for TF risk.

Sustained outreach concerning terrorist financing issues

Criterion 8.2 (Partly met)—

a) ***(Met)***—Policies to promote accountability, integrity, and public confidence in the administration and management of NPOs are contained in Schedule 1 of the AMLTFCOP (on Best Practices for Charities and Other Associations Not for Profit), which outlines guiding principles, including on the transparent and accountable use of funds and management and oversight of operations. Additionally, the NPO Act tasks the FIA with conducting outreach to NPOs with the dual objectives of raising awareness of ML and TF risks and to promote transparency, accountability, integrity and public confidence in the administration and management of organizations (section 18).

b) ***(Mostly met)***—The FIA is tasked with conducting outreach to NPOs to raise awareness of TF risks (NPO Act, section 18). Until recently, outreach covered AML/CFT obligations generally and appeared to be more focused on CDD obligations and did not appear to have meaningful coverage of TF risks and mitigation measures. However, in early 2023, the FIA held a webinar on TF and issued a guidance note on TF risks for NPOs.

c) ***(Not met)***—The FIA works with NPOs to develop and refine best practices through the context of the FIA's supervisory activities; however, aside from advising NPOs of general TF risks, FIA guidance does not appear to be focused on TF mitigation. Moreover, as the FIA has not yet identified the specific TF threats facing VI NPOs and the specific TF vulnerabilities present in the sector, no best practices in this area have yet been developed,

d) ***(Met)***—NPOs are encouraged to conduct transactions through regulated financial channels where possible. The Best Practices for NPOs in Schedule 1 of the AMLTFCOP recommends that NPOs maintain registered bank accounts to keep funds and use formal channels for transferring funds locally or oversees and performing other financial transactions to the extent feasible and necessary (para. C(a)(iii)).

Targeted risk-based supervision or monitoring of NPOs

Criterion 8.3 (Not met)—As the VI has not yet identified the relevant subset of NPOs under the FATF standard, the FIA's supervision cannot be said to be focused on NPOs at risk of TF abuse. In accordance with the FIAA, the FIA may supervise any NPO where it is satisfied that the NPO presents a ML, TF, or PF risk. The VI has taken steps to promote effective supervision and monitoring of NPOs, but not in the context of TF (supervisory resources are also directed at detecting and mitigating against ML and other illicit activity, such as fraud). As such, it is unclear whether the bulk of the FIA's supervisory activities would not appear to fall within the scope of R.8. Further, as the FIA has not developed an inspection plan to guide its supervisory activities, its supervision is not yet fully in line with an RBA. All registered NPOs fall within the FIA's supervisory remit, and as such, the FIA conducts an institutional risk assessment of all NPOs to determine their risk profile. It should be noted that these individual risk assessments do not specifically target TF risk; they include the type of NPO and nature operations, management structure, whether any foreign activities are undertaken, involvement of PEPs, adequacy of AML/CFT controls, types, and volumes of transactions, whether the NPO deals in large amounts of cash, and the organization's approach to compliance. The assessment of risk factors and any red flags supports an NPO's risk rating (which would not necessarily reflect its exposure to TF). Where the FIA determines that an NPO has a high-risk rating, the FIA reviews the NPO's compliance manual and undertakes a comprehensive desk-based review of the NPO's policies, processes, and procedures. Based on the results of the review, the FIA will determine whether an onsite inspection of the NPO is warranted. However, in practice, the FIA's supervisory activities have not been entirely guided by the risk matrix. Not all NPOs rated as high-risk have been subject to a full inspection. In light of the foregoing, the VI has not been able to demonstrate that supervisory measures are truly risk-based or are targeting NPOs at risk of TF.

Criterion 8.4 (partly met)—

a) ***(Not met)***—While the FIA is responsible for monitoring the compliance of NPOs with relevant legislation, the activities undertaken by the FIA do not incorporate risk-based monitoring of NPO compliance within the scope of R.8. Further, risk-based measures cannot be said to be applied to the subset of NPOs at risk for TF, as this subset has not yet been identified (as discussed under 8.3).

b) ***(Met)***—Competent authorities in the VI are able to apply effective, proportionate, and dissuasive sanctions for violations by NPOs or persons acting on behalf of NPOs. Pursuant to section 25(1) of the NPO Act, the FIA may impose an administrative penalty on a person who fails to comply with the requirements of the NPO Act. These penalties range between US$1,000 and US$20,000 depending on the type of infraction. Section 27 of the NPO Act, allows the FIA to consider varying factors (such as nature and seriousness of the contravention and any prior contraventions) in determining the proportionate penalty for a specific breach by a specific NPO. In addition, pursuant to section 15(1) of the NPO Act, the NPO Board may de-register an NPO where it has contravened any provision of this Act or the relevant legislation. Penalties are also available under the FIAA. Pursuant to section 5I of the FIAA, the FIA has the power to issue a directive where it considers it necessary to ensure compliance or remedy a contravention by an NPO of the FIAA or any other enactment relating to ML, TF, or PF. Section 5J of the FIAA allows the FIA to take enforcement action against NPOs in the form of warnings; recommendations to the government to suspend, revoke, or withdraw the NPOs registration; or the imposition of administrative penalty as prescribed, or where not prescribed, up to US$75,000.

Effective information gathering and investigation

Criterion 8.5 (Met)—

a) ***(Met)***—With respect to effective co-operation, co-ordination, and information-sharing among relevant counterparts, both the NPO Board and the FIA are members of the IGC and party to the

MoU on information sharing. Additionally, the FIA is periodically invited to NPO Board meetings to provide updates and discuss any pertinent matters.

b) ***(Met)***—The FIA has investigative expertise and capabilities to examine NPOs suspected of either being exploited by or actively supporting terrorist activity or organizations. Following any information that an NPO is suspected of being exploited by, or actively supporting, terrorist activity or a terrorist organization, FIA investigating officers have the power to investigate. Upon conducting the investigation, if the suspicion is substantiated, then this information will be disseminated to the RVIPF or other relevant LEAs with instructions for further action. To date, no such investigations have been warranted.

c) ***(Met)***—Access to information on the administration and management of NPOs (including financial and programmatic information) is obtainable in an investigation. Where it reasonably believes that an NPO is connected to TF or ML activities, the FIA may initiate an inquiry and compel the production of information or any records the NPO is required to maintain and which are necessary to enable the FIA to discharge its functions (NPO Act, sections 20(1)–(2)). In addition, pursuant to section 5 of the FIAA, the FIA has the power to request documents and information and apply for search warrants.

d) ***(Met*)**—Mechanisms exist to facilitate the sharing of information where an NPO is suspected to be involved in TF activity. Where the FIA reasonably believes that there is a risk of TF activities (including the clandestine diversion of funds intended for a legitimate purpose to terrorist activities) being carried out by, or through, an NPO, it may initiate an inquiry (NPO Act, section 20). The FIA may share information gathered under such an inquiry with other authorities via the IGC MoU in order to take preventive or investigative action. Additionally, the FIAA permits the FIA to disclose any information in its possession to any LEA in the VI. The FIA is also allowed to share information in its possession with any other institution in the VI if such disclosure is for the purposes of detecting or preventing the commission, or facilitating the investigation, of an offence (section 5A(1)(b)).

Effective capacity to respond to international requests for information about an NPO of concern

Criterion 8.6 (Met)—For international requests for information on NPOs suspected of TF or involvement in other forms of terrorist support, the Attorney General is the point of contact in accordance with section 8 of the C(JI)CA and pursuant to section 4 of the MLA(USA) Act.

Weighting and Conclusion

The VI has major shortcomings in its approach to and regulation and supervision of NPOs. The VI has not yet identified the subset of NPOs that are at risk for TF, including the main features that would put them at risk of TF, which is a fundamental requirement of R.8. Nor has the VI yet identified the main TF threats posed to NPOs formed in the jurisdiction. While the FIA oversees compliance of the sector with relevant legislation, the failure to identify the subset of NPOs at risk of TF and the TF threats faced by VI NPOs bear a substantial negative impact on the FIA's supervision over the sector and call into question the relevance of FIA supervisory activities to CFT and whether same is risk based. While the authorities do a substantial amount of outreach promoting accountability and integrity, and work with NPOs to develop good practices generally, this work does not appear to be focused on TF, as required by R.8. Information sharing, cooperation, and coordination among relevant bodies appears to be good, although mechanisms have not yet tested, and while no investigations into an NPO have yet been warranted, the FIA appears to have the necessary investigative capacity.

Recommendation 8 is rated non-compliant.

Recommendation 9 Financial Institution Secrecy Laws

In its Third Round MER, the VI was rated compliant with the former R.4.

***Criterion 9.1 (Met)*—**There are no financial secrecy laws in the VI. Information can be obtained by LEAs through the production of a court order (see R.31). The FIA and the FSC have the power to require FIs to provide documents and information excluding information that is subject to legal professional privilege, that is relevant for the performance of their functions (FIAA, s. 4(2)(d) and 5D, and FSCA, ss. 30 and 32). The FIAA contains sanctioning provisions for failure to provide the FIA with the requested information while the FSC is authorized to apply for a search warrant in such instances (FIAA, s. 4(4) and FSCA, s. 33). The DPA contains exemptions that apply to its application, including situations where the processing of personal data is needed for the prevention or detection of crime or for the purpose of investigations (DPA, s. 22(2)(a)(i)). The FIA and FSC are empowered to share information with other competent authorities, both domestically and internationally (FIAA, ss. 5A(1) and 5A(2), PCCA, ss. 28(5) and 29(6), and FSCA, s. 33C). The AMLTFCOP provides for various cooperation and information exchange mechanisms between domestic AML/CFT competent authorities, including through the IGC (s. 50), and members of the IGC are party to the ICG's MoU, which constitutes the formal basis for the exchange of information and intelligence between competent authorities, both individually and collectively, spontaneously and upon request (see R.2). LEAs can exchange information maintained by FIs and DNFBPs with foreign competent authorities. There are generally no impediments to the exchange of information between FIs where this is required by Rs.13, 16, or 17. FIs that are part of a financial group are obliged to implement group-wide policies and procedures, including policies and procedures for AML/CFT-PF sharing of information within the group (AMLTFCOP, s. 53A).

Weighting and Conclusion

The VI's legal framework satisfies the requirements of R.9.

Recommendation 9 is rated compliant.

Recommendation 10 Customer due diligence (CDD)[71]

In its Third Round MER, the VI was rated partially compliant with the former R.5 on CDD. Main shortcomings were the lack of a requirement to verify that any person purporting to act on behalf of customers that are legal persons or legal arrangements was so authorized, and to identify and verify the identity of that person; the application of SDD measures in certain situations where no lower risks had been identified; the non-enforceability of the requirement to adopt risk management procedures specifying the conditions under which a customer might utilize the business relationship prior to verification; and the lack of effectiveness due to the recent implementation of the relevant AML/CFT measures. The CDD Recommendation has been strengthened with the revision of FATF standards in 2012.

The activity of trading in foreign exchange does not qualify as an FI in the VI and is therefore not subject to AML/CFT measures (except reporting of suspicious transactions—R.20), unless undertaken by a relevant business with a banking or an investment business license. This creates a scope issue with

[71] TCSPs in the VI qualify as FIs and are regulated and supervised by the FSC. However, the activities of these TCSPs meet the definition of DNFBPs in the FATF Glossary. In line with the FATF Methodology, TCSPs are considered as DNFBPs for the purposes of this assessment.

a very minor negative impact on compliance with the individual criteria of R.10, except c.10.12 and c.10.13.

Criterion 10.1 (Mostly met)—FIs are prohibited from keeping or maintaining an anonymous account or an account in a fictitious name, whether on its own behalf or on behalf of a customer or otherwise. Where an FI permits the use of numbered accounts, it is required to keep and maintain such accounts in accordance with the requirements of the AMLR and the AMLTFCOP (AMLTFCOP, s. 34(1)(b) and (2)).

When CDD is required

Criterion 10.2 (Mostly met)—FIs are required to undertake CDD measures when:

a) establishing a business relationship (AMLTFCOP, s. 19(4)(a));

b) effecting a one-off transaction which involves funds of US$15,000 or above or such lower threshold as the FI may establish, including where the transaction is carried out in a single operation or in several operations that appear to be linked or such lower threshold as the entity or professional may establish (AMLTFCOP, s. 19(4)(b));

c) effecting a one-off transaction that is a wire transfer involving funds of US$1,000 or above, including where the transaction is carried out in a single operation or in several operations that appear to be linked or such lower threshold as the FI may establish;

d) there is a suspicion of ML, TF, or PF, irrespective of any exemption or threshold including where an applicant for business or a customer is considered as posing a low risk; and where a business relationship or transaction presents any specific higher risk scenario (AMLTFCOP, s. 19(4)(c) and (d)); and

e) the FI has doubts about the veracity or adequacy of previously obtained customer identification data (AMLTFCOP, s. 19(4)(e)).

Required CDD measures for all customers

Criterion 10.3 (Mostly met)—FIs are required in their dealings with an applicant for business or a customer, irrespective of the nature or form of the business, to inquire into and identify the applicant for business or customer, and verify the identity of these parties, including the beneficial owners, using reliable and independent source documents, data, information, or evidence. These requirements also specifically extend to legal persons and legal arrangements (AMLTFCOP, ss. 19(3)(a) and (c) and 19(5)). An applicant for business means the party intending to enter into a business relationship or a one-off transaction with a FI while a customer means a party that has already entered into a business relationship or one-off transaction with a relevant person (AMLTFCOP, s. 2(1)).

Criterion 10.4 (Mostly met)—FIs are required to verify that a person who acts or purports to act on behalf of an applicant for business or a customer is so authorized and to identify and verify that person's identity (AMLTFCOP, s. 19(3)(f)).

Criterion 10.5 (Mostly met)—FIs are required to identify an individual who is the beneficial owner of an applicant for business or a customer and verify the identity using reliable and independent source documents, data, information, or evidence through such inquiry as is necessary to verify the identity of the beneficial owner (AMLTFCOP, ss. 24(1)(b), 21(1)(c) and s. 19(3)(c)). The beneficial owner is defined as the natural person who ultimately owns or controls an applicant for business or a customer or on whose behalf a transaction or activity is being conducted, which is consistent with the definition in the FATF Glossary. It further elaborates on the concept of a beneficial owner of legal persons, trusts, and legal arrangements. Control for the purposes of the definition of beneficial owner means having an influence over the activities of an applicant for business or customer with or without any ownership interest (AMLTFCOP, s. 2(1)).

Criterion 10.6 (Mostly met)—FIs are required to understand and obtain information on the purpose and intended nature of the business relationship (AMLTFCOP, s. 19(3)(b)).

Criterion 10.7 (Mostly met)—FIs are required to conduct ongoing CDD on their business relationships by:

a) scrutinizing the transactions undertaken by each customer throughout the course of that relationship, for the purpose of making an assessment of consistency between the transactions undertaken by the customer and the FI's knowledge of the customer, the customer's business, and risk profile, including the source of funds where necessary (AMLTFCOP, s. 21(1)(a)); and

b) reviewing and updating CDD information, including information on beneficial ownership (i) on a risk sensitive basis, prioritizing the review and update of customers that present a higher risk; and (ii) upon certain trigger events as determined by senior management of the FI (AMLTFCOP, s. 21(1)(c)).

Specific CDD measures required for legal persons and legal arrangements

Criterion 10.8 (Mostly met)—The AMLTFCOP obliges FIs to understand the nature of the business and the ownership and control structure of a legal person and a trust (or other type of legal arrangement) (ss. 25(2)(c) and 28(1c).

Criterion 10.9 (Mostly met)—For purposes of the identification and verification of a legal person, FIs are required to obtain proof of existence of the legal person and information regarding (i) the full name and any trading name of the legal person; (ii) the official registration or other identification number of the legal person; (iii) the date and place of incorporation, registration or formation of the legal person and the legal form of the legal person; (iv) the address of the registered office in the country of incorporation of the legal person and its mailing address, if different; (v) where applicable, the address of the registered agent of the legal person to whom correspondence may be sent and the mailing address of the registered agent, if different; (vi) the legal person's principal place of business and the type of business engaged in; (vii) the powers that regulate and bind the legal person, as well as the names of the relevant persons having a senior management position in the legal person; and (viii) the ownership and control structure of the legal person, including direct and indirect ownership (AMLTFCOP, s. 25(2)(a)).

With respect to legal arrangements, FIs are required to undertake identification and verification measures by obtaining proof of existence of the legal arrangement and the following information (i) the name and legal form of the legal arrangement; (ii) the date and country of establishment of the legal arrangement; (iii) where there is an agent acting for the legal arrangement, the name and address of the agent; (iv) the nature and purpose of the legal arrangement; (v) the powers that regulate and bind the legal arrangement, as well as the names of relevant persons having a senior management position in the legal arrangement; and (vi) the ownership and control structure of the legal arrangement (AMLTFCOP, ss. 28(1)(a) and 28(2A)).

Criterion 10.10 (Mostly met)—FIs are required to identify and verify the identity of each beneficial owner of the legal person ((AMLTFCOP, ss. 25(2)(b)(ii)). The definition of beneficial owner specifies that for a legal person whose securities are not listed on a recognized exchange, the beneficial owner is the natural person who ultimately owns or controls, whether directly or indirectly, 10 percent or more of the shares or voting rights in the legal person; as well as the natural person who otherwise exercises control over the management of the legal person ((AMLTFCOP, s. 2(1)). In addition, FIs are always required to identify and verify the identity of each director of the legal person or any similar position in the legal person responsible for the management of the legal person. (AMLTFCOP, ss. 25(2)(b)(i)).

Criterion 10.11 (Mostly met)—The definition of beneficial owner specifically provides that, in case of a trust, the following parties qualify as a beneficial owner: (i) any natural person, characteristics, or class of persons entitled to a vested right in the trust, and (ii) the trustee, the settlor, the protector (if any), or any other person who has control over the trust (AMLTFCOP, s. 2(1), definition of beneficial ownership, (c)(i) and (ii)). The definition of beneficial owner also provides that in case of any other type of legal arrangement,

the following parties qualify as a beneficial owner: the natural persons in equivalent or similar positions or who exercise similar controls to those detailed in case of a trust (AMLTFCOP, s. 2(1), definition of beneficial owner, (d)). FIs are required to identify and verify the identity of (i) the beneficial owner of a trust or other type of legal arrangement; and (ii) any person acting or purporting to act on behalf the trust, or the settlor of the trust (AMLTFCOP, ss. 28(1)(b) and 28(2A).

CDD for Beneficiaries of Life Insurance Policies

Criterion 10.12 (Met)—Fis are required to undertake CDD measures on a beneficiary as soon as the beneficiary is identified or designated:

a) for a beneficiary that is identified as a specifically named natural person, legal person, or legal arrangement, taking the name of the person, legal person, or legal arrangement (AMLTFCOP, s. 19(4A)(a)); and

b) for a beneficiary that is designated by characteristics or class or by other means, obtaining sufficient information concerning the beneficiary to satisfy the FI that it will be able to establish the beneficiary at the time of payout (AMLTFCOP, s. 19(4A)(b)).

An FI may verify the identity of the beneficiary of a life insurance policy after the relationship has been established, if it takes place at or before the time of payout (AMLTFCOP, s. 23(2Ba)).

Criterion 10.13 (Met)—Fis must consider the beneficiary of a life insurance policy as a relevant risk factor in determining whether EDD is required (AMLTFCOP, s. 20(5)). Where the beneficiary of a life insurance policy that is a legal person or legal arrangement presents a higher risk, the FI must perform EDD, at or before the time of payout, including reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary (AMLTFCOP, s. 20(6)).

Timing of verification

Criterion 10.14 (Mostly met)—Fis must verify the identity of an applicant for business or a customer with respect to a relationship or transaction, including the beneficial owner, before or during the course of establishing a business relationship or engaging in a transaction (AMLTFCOP, s. 23(1)(b)). Verification is permitted after the establishment of the business relationship, where it is necessary not to disrupt the normal conduct of business. In such instances, verification must be completed as soon as reasonably practicable and ML/TF risks that may be associated with that business relationship are effectively monitored and managed (AMLTFCOP, s. 23(2)(a) and (c)).

Criterion 10.15 (Mostly met)—Fis are only permitted to allow a customer to utilize the business relationship prior to verification in order not to disrupt the normal conduct of business on the condition that they have adopted appropriate risk management procedures, having regard to the context and the circumstances in which the business relationship is being developed (AMLTFCOP, s. 23(2)(b)).

Existing customers

Criterion 10.16 (Mostly met)—For existing customers, Fis are required to apply CDD requirements on the basis of materiality and risk and conduct CDD at appropriate times, taking into account whether and when CDD measures were previously undertaken, and the adequacy of data obtained (AMLTFCOP, s. 21(4)).

Risk-Based Approach

Criterion 10.17 (Mostly met)—FIs are required to apply EDD in their dealings with an applicant for business or a customer who, or in respect of a transaction, which, presents a higher risk for ML, TF, PF,

and other financial crimes identified by the FI, irrespective of the nature or form of the relationship or transaction (AMLTFCOP, s. 20(2)).

***Criterion 10.18 (Mostly met)*—**If an FI, having regard to the ML/TF/PF risks identified by a VIs' NRA, or an RA conducted by a competent authority, LEA, or any other authority with responsibility relating to ML/TF/PF in the VI, makes a determination that a customer poses a low risk, it may apply SDD measures commensurate with the lower risk factors identified (AMLTFCOP, s. 19(7)). SDD is not permitted if the FI suspects ML, TF, or PF; or a higher risk scenario applies (AMLTFCOP, s. 19(8)).

Failure to satisfactorily complete CDD

***Criterion 10.19 (Mostly met)*—**FIs are required to not open an account, establish a business relationship, or carry out a transaction; or to terminate any existing business relationship with the customer, if they are unable to carry out the required CDD or, as the case may be, EDD requirements in respect of the applicant for business or the customer (AMLTFCOP, s. 23(2C)). In addition, when the FI discovers or suspects, upon subsequent verification, that the applicant for business or the customer is or may be involved in ML, TF, or PF, it is required to terminate any existing business relationship with the customer and submit a SAR to the FIA ((AMLTFCOP, s. 23(2C)).

CDD and tipping-off

***Criterion 10.20 (Mostly met)*—**Where FIs suspect that a transaction relates to ML, TF, or PF, and believe that performing CDD will tip-off the applicant for business or the customer, the FI shall not conduct CDD; and in lieu of conducting CDD, file an SAR with the FIA (AMLTFCOP, s. 19(9)).

Weighting and Conclusion

VI's legal framework provides for all criteria under R.10 but there is a deficiency in the scope of FIs which has a minor negative impact on compliance with R.10.

Recommendation 10 is rated largely compliant.

Recommendation 11 Record Keeping

In its Third Round MER, the VI was rated largely compliant with the former R.10 on record-keeping requirements. Shortcomings were that record retention of identification data was limited to five years after the last transaction on the account rather than the termination of the account; and there was no requirement for account files and business correspondence to be maintained for at least five years following the termination of an account or business relationship.

The deficiency in the scope of FIs has a minor negative impact on compliance with the individual criteria of R.11.

***Criterion 11.1 (Mostly met)*—**FIs are required to maintain a record of a business relationship or a transaction, any attempt to establish a business relationship or a transaction which has not been completed, or any other matter required to be maintained under the AMLR and the AMLTFCOP ((AMLTFCOP, s. 42(2)). The AMLR require FIs to maintain records of all transactions (both domestic and international) carried out by or on behalf of a customer for a period of five years from the date when all transactions relating to a one-off transaction, or a series of linked transactions were completed; or from the date when the business relationship was formally terminated (AMLTFCOP, s. 45(1) and (2) and Regulations 9(1)(a)) and 10(1)).

***Criterion 11.2 (Mostly met)*—**FIs are required to establish and maintain all records obtained through CDD measures, account files, and business correspondence for a period of five years following the termination

of a business relationship or the date of completion of a one-off transaction or a series of linked transactions (AMLR, Regulations 8 and 10(1) and AMLTFCOP, ss. 44(h) and 45 (1) and (2)). The AMLTFCOP obliges FIs to maintain internal SARs and supporting documentation, including the decisions of the Reporting Officer in relation to SARs and the basis for the decisions for a period of at least five years from the date the internal reports were made, or the decisions were taken (AMLTFCOP, s. 45(1)(c) and (d)). The AMLR require FIs to maintain a record of all STRs it made to the FIA for as long as may be required by the FIA and all inquiries relating to ML received from the FIA (Regulations 9(1)(b) and 10(2)). These should be maintained in a register (Regulation 12(1)).

***Criterion 11.3 (Mostly met*)—**The AMLTFCOP sets out the information on transactions that FIs are obliged to keep on record, including sufficient details for the transaction to be properly understood (s. 44(i)). This should permit the reconstruction of individual transactions. In addition, the AMLR require FIs to maintain records of transactions carried out by or on behalf of a customer, such as records sufficient to identify the source and recipient of payments from which investigating authorities will be able to compile an audit trail for suspected ML (Regulation 9(1)(a)).

***Criterion 11.4 (Mostly met)*—**FIs are required to maintain records of a business relationship or transaction, any attempt to establish a business relationship or transaction which has not been completed, or any other matter required to be kept under the AMLR and AMLTFCOP in a form that it can be easily retrievable and promptly provided when requested by the FIA, the FSC, an LEA, or any other person that is entitled to access them. (AMLTFCOP, s. 42(2)). Moreover, FIs are obliged to ensure that any records required to be maintained pursuant to the AMLR are capable of retrieval without undue delay and in the manner provided in the AMLTFCOP (Regulation 11(1)).

Weighting and Conclusion

VI's legal framework provides for all criteria under R.11 but there is a deficiency in the scope of FIs which has a minor negative impact on compliance with R.11.

Recommendation 11 is rated largely compliant.

Recommendation 12 Politically Exposed Persons (PEPs)

In its Third Round MER, the VI was rated largely compliant with the former R.6 on PEPs because effective implementation of measures with respect to PEPs could not be assessed due to the recent enactment of the AMLTFCOP.

The deficiency in the scope of FIs has a minor negative impact on compliance with the individual criteria of R.12.

***Criterion 12.1 (Mostly met*)—**The AMLTFCOP defines a PEP as an individual who is or has been entrusted with prominent public functions or is a member of senior management of an international organisation, including members of his/her immediate family, or persons who are known to be close associates of such individuals (s. 2(1)). Building on this definition, s. 22(4) contains further details to clarify the concepts of foreign, domestic, and international organizations PEPs, fully in line with the FATF Glossary.

a) FIs are required to have, as part of their internal control systems, appropriate risk-based policies, processes, and procedures for determining whether an applicant for business or a customer, or their beneficial owner, is a PEP (AMLTFCOP, s. 22(1). This requirement applies to any type of PEPs, including foreign PEPs, as it does not make a distinction between foreign, domestic, and international organization PEPs). In relation to an applicant for business or a customer, or a beneficial owner of an applicant for business or a customer that is a foreign PEP, FIs are, in addition to the application of general CDD measures (cf. R.10), required to:

b) Ensure that senior management approval is sought for establishing or maintaining a business relationship with a foreign PEP (AMLTFCOP, ss. 22(1A)(b)).

c) Take such reasonable measures as are necessary to establish the source of funds and source of wealth of an applicant for business or a customer, or a beneficial owner of an applicant for business or a customer that is a foreign PEP (AMLTFCOP, ss. 22(1A)(a)).

d) Ensure a process of enhanced ongoing monitoring of the business relationship with a foreign PEP (AMLTFCOP, ss. 22(1A)(c)).

Criterion 12.2 (Mostly met)—

a) The measures to be put in place to determine whether an applicant for business or a customer, or their beneficial owner, is a PEP apply to all types of PEPs, including domestic and international organization PEPs (cf. introduction to c.12.1 and AMLTFCOP, s. 22(1)).

b) Where an FI determines that the business relationship or the transaction with a domestic PEP or an international organization PEP presents a higher risk, the measures cited in c.12.1 (b) to (d) apply as if the domestic PEP or international organization were a foreign PEP (AMLTFCOP, s.22(1B)).

Criterion 12.3 (Mostly met)—The definition of a PEP (AMLTFCOP, s. 2(1)) and the clarification in s.22(4A) of foreign, domestic, and international organization PEP specifically extends to family members and close associates of these PEPs. This implies that measures for foreign PEPs set out in c.12.1 and measures for domestic PEPs set out in c.12.2 equally apply to their family members and close associates.

Criterion 12.4 (Mostly met)—In the case of a life insurance policy, FIs are required to take reasonable measures, no later than at the time of payout to: (i) determine whether the beneficiary and, where applicable, the beneficial owner of the beneficiary is a PEP (AMLTFCOP, s. 22(4)(a)); (ii) inform senior management of the higher risk before payout of the policy proceeds (AMLTFCOP, s. 22(4)(b)); and (iii) conduct enhanced scrutiny on the whole business relationship with the policy holder and if necessary, consider making a SAR (AMLTFCOP, ss. 22(4)(a), (b) and (c)).

Weighting and Conclusion

VI's legal framework provides for all criteria under R.12 but there is a deficiency in the scope of FIs which has a minor negative impact on compliance with R.12.

Recommendation 12 is rated largely compliant.

Recommendation 13 Correspondent banking

In its Third Round MER, the VI was rated largely compliant with the former R.7 on correspondent banking because effective implementation of measures with respect to correspondent banking could not be assessed due to the recent enactment of the AMLTFCOP.

Criterion 13.1 (Met)—In relation to cross-border correspondent banking, FIs are required to:

a) (i) undertake CDD measures and, where necessary, EDD measures in respect of the respondent bank in order to fully and properly understand the nature of the respondent bank's business; (ii) determine from such documents or information as are available regarding the reputation of the respondent bank and whether it is appropriately regulated; and (iii) establish whether or not the respondent bank is or has been subject of a regulatory enforcement action or any ML/TF or other financial crime investigation (AMLTFCOP, s. 35(1)(b)). This requirement mirrors the text of c.13.1(a) with "appropriately regulated" being the VIs' equivalent of the "quality of supervision" in the FATF Standard;

b) make an assessment of the respondent bank's AML/CFT systems and controls to satisfy themselves that they are adequate and effective (AMLTFCOP, s. 35(1)(c));

c) ensure that senior management approval is obtained before entering into a new CBR (AMLTFCOP, s. 35(1)(d)); and

d) ensure that the respective AML/CFT measures of each party to a CBR are fully understood and properly recorded (AMLTFCOP, s. 35(1)(f)).

Criterion 13.2 (Met)—Where a correspondent bank provides customers of a respondent bank with direct access to its services, whether by way of payable through accounts or by other means, it shall ensure that it is satisfied that the respondent bank: (a) has undertaken appropriate CDD and, where applicable, EDD in respect of the customers that have direct access to the correspondent bank's services and (b) is able to provide relevant CDD information and verification evidence to the correspondent bank upon request (AMLTFCOP, s. 36(a))(b)).

Criterion 13.3 (Met)—FIs are prohibited from entering into or maintaining a correspondent relationship with a shell bank (AMLTFCOP, s. 34(1)(a)). They are also prohibited from entering into or maintaining a relationship with a respondent bank that provides correspondent banking services to a shell bank (AMLTFCOP, s. 35(1)(a)).

Weighting and Conclusion

VI's legal framework provides for all criteria under R.13.

Recommendation 13 is rated compliant.

Recommendation 14 Money or Value Transfer Services (MVTS)

In its Third Round MER, the VI was rated non-compliant with former SR.VI among other things due to the absence of requirements to register and/or license MVTS operators and to maintain a current list of the names and addresses of licensed and/or registered MVTS operators, and no system in place for monitoring MVTS operators and ensuring that they comply with the FATF Recommendations.

Criterion 14.1 (Mostly met)—Any person carrying on, or holding himself/herself out as carrying on, MSB is required to be licensed (s.7(2) FMSA). However, the meaning of MSB under the FMSA (s.6) does not include the transfer or transmission of other stores of value (as prescribed by the FATF Glossary) beside money in any form. A VI business company or a foreign company may apply for a license and needs to meet set criteria (s.9(2) and (3)). As part of it banking activities a holder of a banking license is allowed to carry on such activities (s.3(1) FMSA).

Criterion 14.2 (Partly met)—There are some indications that the FSC does actively seek to identify persons performing unlicensed MVTS business, but there are no reports of cases of identified unauthorized MVTS businesses in the period 2018–2022 while intelligence suggest the use of a hawala-style system.

Criterion 14.3 (Met)—The FMSA is considered a financial services legislation under Schedule 2 of the FSCA, and as such, MVTS are considered licensees of the FSC and are monitored for AML/CFT compliance (s.4(1)(ca) FSCA), except for those carrying on the transfer or transmission of other stores of value. MVTS are included under the FSC's Risk-Based Approach to Supervision Framework.

Criterion 14.4 (Met)—Under the FMSA an agent or franchise holder of a person carrying on MSB is required to be licensed as a MSB (s.6 (b)).

Criterion 14.5 (Met)—MSB that use agents are required to include the agents in their AML/CFT programs and be monitored for compliance with these programs (s.53B AMLTFCOP as amended March 2023).

Weighting and Conclusion

The VI requires MVTS service providers to obtain a license and monitor for AML/CFT compliance except for the transfer or transmission of other stores of value beside money in any form. The authorities have to a limited extent demonstrated actions to identify unauthorized MVTS. No proportionate and dissuasive sanctions are applied.

Recommendation 14 is rated largely compliant.

Recommendation 15 New Technologies

The VI was rated partially compliant with the former R.8 in its Third Round MER, due to the absence of specific requirement for FIs to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in ML/TF. The requirements related to VAs and VASPs (criteria 15.3–15.11) were only introduced following the VIs' Third Round MER.

New technologies

Criterion 15.1 (Mostly met)—FIs are required to identify and assess the ML/TF risks that may arise in the development of new products and new business practices, including new delivery channels and systems, and the use of new or developing technologies for new and pre-existing products or services (s.12(3)(a) AMLTFCOP). However, the authorities are not required or instructed to identify and assess such risks. The VI MLRA evidences the identification by the authorities of ML/TF risks arising from the development of new products and new business practices Specifically, Chapter 11 of the MLRA outlines the risks posed by emerging products and technologies, including decentralised finance instruments, and the production of cannabis for medical use sectors. The TF risk of casinos and VAs/VASPs (see c.15.3 (a))—as new products to the VI—is assessed under the Financial Services Sector TF Risk Assessment 2020 (section 11).

Criterion 15.2 (Met)—FIs need to undertake required risk assessment prior to the launch or use of such products, practices, and technologies, and FIs are required to take appropriate measures to manage and mitigate the risks identified (s.12(3)(a) and (b) AMLTFCOP).

VAs and VASPs

Criterion 15.3 (Mostly met)—

a) As part of the VIs' Financial Services Sector MLRA 2020, the VIs' Financial Services Sector 2020 TF RA, and the VIs' 2022 MLRA, the jurisdiction identified and assessed the ML/TF risks emerging from VA activities. Taking into account a range of relevant data and other information the inherent vulnerability of VA and VASPs is assessed as high. With limited mitigating measures, their overall ML risk is, therefore, also assessed by the authorities as High.

b) The National AML/CFT Policy and Strategy 2021–2023 (March 2021) seeks to improve the VI's AML/CFT regime by addressing its ML and TF risk by providing a three-year roadmap. The National Strategy called for legislation for the regulation and supervision of VA and VASPs to be developed to ensure the proper framework is in place to manage and mitigate the ML/TF/PF risks associated with these new technologies in keeping with FATF standards. This was achieved through the enactment of the VASPA 2022 which came into force February 1, 2023. "Enhancing monitoring and supervision of FIs, which now includes VASPs and DNFBPs" is explicitly included under the National Strategy as the first objective under the area of "regulation." While the FSC's Strategic Action Plan to Implement the AML/CFT Policy and 2022–2022 Strategy does not contain

any action item explicitly addressing the VASP sector, Strategic Area 1 on Supervision indicates that "the established Risk Assessment Framework will continue to be monitored and assessed with a view to ensuring it provides for all licensees to be properly risk profiled and assessed." Also "The Commission's Risk Assessment Framework will be enhanced to include specific AML/CFT assessment criteria for determining overall risk levels of regulated entities, the effectiveness of which will be monitored, assessed and periodically reviewed to determine the appropriate levels of off-site and on-site monitoring." In both instances, since VASPs are now regulated entities, these objectives apply to them as well as all other FIs. The FSC is currently in the process of developing a framework in place for the supervision of VASPs, preparing the operationalization of supervision by July 31, 2023, and staff has undergone relevant training. The VI's assessment of VASPs as presenting a high risk does not match applying such transitional period in which unauthorized and not-supervised VASPs can operate while not actively being brought under supervision by the FSC.

c) The AMLR (2022) introduce the concepts of VAs and VASPs in accordance with the FATF Glossary, and VASPs are subject to the requirements of the AMLR and the AMLTFCOP as entity/professional as of December 1, 2022. All entities and professionals are required to identify, assess, and take effective action to mitigate their ML/TF risks as required by criteria 1.10 and 1.11 (ss.11 and 12 AMLTFCOP).

Criterion 15.4 (Partly met)—

a) The criterion—in particular footnote 46 of this Recommendation—is met where it requires VASPs being legal persons created in the VI to be registered by the FSC when carrying on the business of providing a VA service in or from the VI (s.5(1) VASP Act), and where it requires VASPs being natural persons to be registered in the VI as the jurisdiction where its place of business is located. Due to the applicable transition period, the VASP Act was not in full effect at the time of the onsite visit for existing companies. It came into effect for these companies on July 31, 2023.

b) Pursuant to section 7(1)(d) of the VASP Act, for the FSC to approve an application for the registration of a VASP, the proposed VASP, its directors, senior officers, and (beneficial owners of) persons with a significant interest or controlling interest in the proposed VASP, must meet the fit and proper criteria as outlined in Schedule 1A of the Regulatory Code. Further, a director or senior officer may not be appointed without the FSC's prior approval (s.11(3)). The FSC's approval cannot be granted unless the proposed director or senior officer satisfies the aforementioned fit and proper criteria (s.11(4)(a)). Persons seeking to sell, transfer, charge, or otherwise dispose of its significant or controlling interest, persons seeking to acquire such interest, and VASP seeking to effect any change in (beneficial ownership of) significant or controlling interests are required to seek the FSC's prior approval (s.21). The FSC may only approve such acquisition if the person acquiring the significant or controlling interest satisfies the aforementioned fit and proper criteria (s.21(6)). Due to the applicable transition period, the VASP Act was not in full effect at the time of the onsite visit for existing companies. It came into effect for these companies on July 31, 2023.

Under Schedule 1A of the Regulatory Code (Guidance Note on Fit and Property Test) in assessing honesty, integrity, and reputation, the FSC will consider, among other things, whether the regulated person or other person concerned has been convicted, or is connected with a person who has been convicted, of any offence, particularly an offence involving dishonesty, fraud, or other financial crime, or has been subject to any pending criminal proceedings that may lead to a conviction by any court in the VI or elsewhere.

Criterion 15.5 (Partly met)—VASP activities by service providers active on February 1, 2023—when the VASP Act entered into force—can be carried out without registration until July 31, 2023 due to the transitional period applied under the VASP Act. Limited measures are taken to identify and sanction entities that have not registered out of scope of the transitional period.

Criterion 15.6 (Mostly met)—

a) Since VASPs are subject to the requirements of the AMLR and the AMLTFCOP as entity/professional as of December 1, 2022, the FSC has the responsibility to monitor compliance by VASPs with the requirements of the AML/CFT regime (s.8(1) AMLTFCOP). The FSC has responsibility for regulating, supervising, and monitoring VASPs under the FSCA and the VASP Act (s.3(1)(b) VASP Act and s.4(1) FSCA). However, VASPs existing on the date this Act came into force are not subject to adequate regulation and risk-based supervision or monitoring ensuring their compliance with VI's AML/CFT requirements since a transitional period is applied, allowing them to submit an application for registration within six months after the Act comes into force (until July 29, 2023).

b) Registered VASPs are subject to supervision by the FSC, and this supervisory authority has and may exercise any of the powers under FSCA and the VI's AML/CFT legislation (s.4(2) VASP Act). The comments made under Recommendation 27 equally apply.

Criterion 15.7 (Met)—Explanatory Notes are included in the AMLTFCOP providing guidance on applying the AML/CFT requirements to all relevant entities and professionals under this Code, which includes VASPs. Furthermore, targeted guidelines are issued per FSC's *Virtual Assets Service Providers Guide to the Prevention of Money Laundering, Terrorist Financing and Proliferation Financing (1 February 2023)* assisting in applying the national AML/CFT measures and, in particular, in detecting and reporting suspicious transactions in the context of their peculiar activities and organisation.

Criterion 15.8 (Mostly met) —

a) Comments made under R.35 concerning FSC's sanctioning powers are equally applicable to VASPs failing to comply with the AML/CFT requirements. Identified deficiency concerns doubts as to whether available monetary sanctions are proportionate and dissuasive vis-à-vis larger (international) entities.

b) See comments included under criterion 35.2.

Criterion 15.9 (Mostly met)—

a) The occasional transactions designated threshold is above US$1,000 in relation to VASPs (reg. 6(3) under (c) AMLR).

b) An originating VASP is required to obtain and maintain complete originator and beneficiary information on each transfer of VAs and submit the information to the beneficiary VASP or obliged entity, with the transfer (s.41C(1) AMLTFCOP). S.41C(3) requires that the originator information is accurate as well. It is specifically required that the information accompanies the transfer simultaneously, either directly attaching the information to the transfer or providing the information indirectly and in a secure manner (s.41C(6), and the beneficiary VASP must make the information available to the FSC or the FIA, within three days of request (s.41C(7)).

c) Beneficiary VASPs are required to obtain and maintain complete originator and beneficiary information on each transfer of VA (s. 41D(1)(a)) and to verify the accuracy of the beneficiary information (s.41D(3), and it must make the information available to the FSC or the FIA, within three days of request (s.41D(7)). LEAs are able to compel immediate production of such information pursuant to s.36(1) PCCA.

d) Other requirements of R.16 apply on the same basis as set out in this recommendation, such as monitoring of the availability of information by beneficiary VASPs (s.41D(1)(b)) and taking freezing action and prohibiting transactions with designated persons and entities relevant to UNSCRs 1267 and 1373, as requirements apply to any natural or legal person, as outlined in legislation cited under R.6.

e) Since any person conducting VA service business is required to be registered as a VASP, therefore, FIs conducting such business are subject to the same obligations when sending or receiving virtual asset transfers as mentioned above.

Criterion 15.10 (Partly met)—Currently, the communications mechanisms outlined in Criteria 6.5(d), 6.5(e), and 6.6(g) are applicable to VASPs. The mechanism for communicating designations as referred to under c.7.2(d) applies to VASPs, where s.13(2) of the PFPA includes VASPs as designated persons or entities because the VASP Act can be considered a financial services regulation. Identified deficiencies under criteria 6.5(d) and 6.6(g) equally apply under this criterion. The reporting obligations referred to under criterion 7.2(e) is applicable to VASPs following s.34 (1) of the PFPA, since any natural or legal person who holds an asset of a designated person or entity must report the holding of that asset to the FIA. However, identified shortcomings concerning the implementation of c.7.2(e) are equally applicable under this criterion. Currently, the monitoring referred to under Criterion 7.3 applies to VASPs (see s.4(1)(a) PFPA). Criterion 7.4(d) is not met since no mechanism are demonstrated and no reports to VASPs submitted.

Criterion 15.11 (Met)—The FSC is required to take appropriate steps to cooperate with foreign regulatory authorities and persons, in or outside the VI, who have functions in relation to the prevention or detection of financial crime, including ML (s.33C(1)(a) FSCA). Section 33D(1)(a) of the FSCA further gives the FSC the authority to issue a section 32 Notice for information requested via a foreign regulatory request. In issuing a section 32 Notice, pursuant to section 32 (1)(a), the FSC may request information that is held or required to be held by its licensees. As part of their AML/CFT obligations and obligations under the BVIBCA, registered agents are required to obtain and maintain information in relation to their customers (i.e., BVIBCs or LPs). As such, where the FSC receives a foreign regulatory request in relation to a BVIBC or LP that is a VASP, the FSC may request information on the VASP from the registered agent.

Weighting and Conclusion

Many of the criteria under R.15 are met or mostly met. Identified deficiencies relate to the following issues. The authorities are not required or instructed to identify and assess the ML/TF risks arising in the development of new products and new business practices including new delivery mechanisms but have demonstrated adequate relevant initiatives to identify and assess such risks beyond VA/VASPs. The main issue is applied transitional period—not considered risk-based given the sector's high-risk profile—allowing unauthorized VASPs to operate without registration, supervision, and fear for sanctions until July 31, 2023. No action reported by the authorities against persons carrying out VASP activities without proper license or registration, and no systems or framework for regulating and risk-based supervision or monitoring on compliance by VASPs with VI's AML/CFT requirements have been set up and implemented until the aforementioned date. Shortcomings are identified regarding the communication mechanisms and reporting obligations concerning TFS.

Recommendation 15 is rated largely compliant.

Recommendation 16 Wire transfers

In its Third Round MER, the VI was rated largely compliant with the former SR.VII on wire transfers because penalties and sanctions applicable for obligations of SR.VII in ss. 37 to 41 of the AMLTFCOP were not dissuasive.

Ordering financial institutions

Criterion 16.1 (Met)—

a) The ordering FI is obliged to ensure that every transfer of funds (regardless of the amount) is accompanied by required originator information, including (i) the name of the originator; (ii) the account number or, where the originator does not have an account, a unique identifier that allows the transaction to be traced back to that originator; and (iii) the originator's address, or the customer identification number, or the national identity number, or the date and place of birth (AMLTFCOP, ss. 39(1) and 37(1)). The ordering FI is obliged to verify the required originator information for accuracy, except for transfers not made from an account and that do not exceed US$1,000 (AMLTFCOP, ss. 39(3) and (4)—see c.16.4 below).

b) The ordering FI is obliged to ensure that every transfer of funds (regardless of the amount) is accompanied by required beneficiary information, including (i) the name of the beneficiary and (ii) the beneficiary's account number, or a unique identifier in the absence of an account number, (AMLTFCOP, ss. 39(1) and 37(1)).

Criterion 16.2 (Met)—In the case of a batch file transfer from a single originator, where some or all of the beneficiary FIs are outside the VI, the ordering FI should ensure that the batch file contains required originator and required beneficiary information that is fully traceable within the beneficiary's country; and the individual transfers bundled together in the batch file carry the account number of the originator or a unique identifier (AMLTFCOP, s. 39(2)).

Criterion 16.3 (Met)—

a) The VI does not apply a *de minimis* threshold, and the ordering FI is required to ensure that every transfer of funds (regardless of the amount) is accompanied by required originator information, as defined in c.16.1(a) (AMLTFCOP, s. 39(1)). This implies that the originator information accompanying a transfer of funds of less than US$1,000 is broader than the originator information required by this criterion.

b) The ordering FI is required to ensure that every transfer of funds (regardless of the amount) is accompanied by required beneficiary information, consistent with this criterion (MLTFCOP, s. 39(1)—c.16.1(b)).

Criterion 16.4 (Met)—The required originator information does not need to be verified for accuracy by the ordering FI in the case of a transfer of funds not made from an account that does not exceed US$1,000, including several operations that appear to be linked, and where the ordering FI does not suspect that the originator is engaged in ML, TF, PF, or other financial crime (AMLTFCOP, s. 39(5)). The full range of CDD measures, including identification and verification, applies when establishing a business relationship, and this implies that for wire transfers made from an account, the originator information should be verified at the time of establishing the business relationship and as part of ongoing CDD.

Criterion 16.5 (Met)—Where the ordering and beneficiary FIs are both situated in the VI, a transfer of funds needs only be accompanied by the account number of the originator or a unique identifier that allows the transaction to be traced back to the originator, where the originator does not have an account number. In such instances, the ordering FI is required—upon request from the beneficiary FI, the FIA, or the FSC—to make the required originator information available within three working days, excluding the day on which the request was made (AMLTFCOP, ss. 39(7) and (8)). Where the ordering FI fails to comply with such request within the three working days period, the beneficiary FI may notify the FIA or the FSC (depending on which authority supervises the ordering FI), which shall require the ordering FI to comply with the request immediately (AMLTFCOP, s. 39(9)). Where an ordering FI fails to comply with an instruction from the FIA or the FSC or to comply with their request, it commits an offence which is liable

to be proceeded against under s. 27(4) of the POCCA (AMLTFCOP, ss. 39(10). LEAs should be able to compel immediate production of such information (cf. R.31).

Criterion 16.6 (Met)—See c.16.5 above.

Criterion 16.7 (Met)—The ordering FI is required to keep records of required originator and required beneficiary information that accompanies the transfer of funds for a period of at least five years from the date of the wire transfer (in the case of a wire transfer not made from an account) and from the date that the business relationship terminated, in the case of a wire transfer made from an account (AMLTFCOP, s. 39(6)).

Criterion 16.8 (Met)—The ordering FI is prohibited from executing a transfer of funds where the transfer of funds does not comply with the requirements specified above at c.16.1 to 16.7 (AMLTFCOP, s. 39(12)).

Intermediary financial institutions

Criterion 16.9 (Met)—An intermediary FI is required to ensure that any information on the originator and the beneficiary that accompanies a transfer of funds is kept with that transfer (AMLTFCOP, s. 41(2)).

Criterion 16.10 (Met)—An intermediary FI may use a system with technical limitations which prevents the information on the originator and the beneficiary from accompanying a cross-border transfer of funds, where the intermediary FI will make the transfer of funds to another FI in the VI. In such instances, the intermediary FI is required to keep records of all the information on the originator and the beneficiary that it has received for a period of at least five years from the date the transfer was completed (AMLTFCOP, ss. 41(3) and (6)).

Criterion 16.11 (Met)—An intermediary FI is required to put in place effective procedures, consistent with straight-through processing, for the detection of wire transfers that lack required originator and required beneficiary information (AMLTFCOP, s. 41(7)).

Criterion 16.12 (Met)—Where an intermediary FI becomes aware, when receiving transfers of funds, that the full originator or full beneficiary information is missing or incomplete, the intermediary FI is required, relying on its risk-based policies and procedures, to determine whether to execute, reject, or suspend a transfer and take the appropriate follow-up action, which may include (i) requesting the missing information from the ordering FI, (ii) rejecting future transfers of funds from the ordering FI, (iii) restrict or terminate its relationship with the ordering FI, and (iv) determining whether the transfer of funds or any related transactions should be reported to the FIA as a suspicious transaction or activity (AMLTFCOP, s. 41(8)).

Beneficiary financial institutions

Criterion 16.13 (Met)—The beneficiary FI is required to put in place effective procedures, including post-event monitoring or real-time monitoring where feasible, for the detection of any missing or incomplete required originator or required beneficiary information (AMLTFCOP, s. 40(2)).

Criterion 16.14 (Met)—The beneficiary FI is required to verify the identity of the beneficiary on the basis of documents, data, or information obtained from a reliable and independent source (AMLTFCOP, s. 40(3A). In the case of a transfer to an account, the beneficiary FI may deem verification of the beneficiary to have taken place if it has complied with the provisions of the AMLR and the AMLTFCOP relating to the verification of the identity of the beneficiary in connection with the opening of that account (AMLTFCOP, s. 40(3B)).

Criterion 16.15 (Met)—Where the beneficiary FI becomes aware, when receiving transfers of funds, that required originator or required beneficiary information is missing or incomplete, the beneficiary FI is required to have risk-based policies and procedures, to determine whether to execute, reject, or suspend the transfer and undertake the appropriate follow-up action, which may include (i) requesting the missing

information on the originator, (ii) rejecting future transfers of funds from the ordering FI, (iii) restricting or terminating its relationship with the originator FI, (iv) determining whether the transfer of funds or any related transactions should be reported to the FIA as a suspicious transaction or activity, and (v) taking any other reasonable measures to mitigate risks of ML, TF, or PF involved (AMLTFCOP, s. 40(4)).

Money or value transfer service operators

***Criterion 16.16 (Met)*—**A PSV that holds a Class A license pursuant to the FMSA (2020), i.e., an MVTS provider, is required to comply with all relevant requirements of R.16 (see analysis above and below) in the countries in which it operates directly or through its agents (AMLTFCOP, s. 37(3)).

***Criterion 16.17 (Met)*—**An MVTS provider that controls both the originator and the beneficiary side of a transfer of funds is required to:

a) consider the information from both the originator and the beneficiary sides of the transfer of funds in order to determine whether an STR should be filed ((AMLTFCOP, s. 41A(a)); and

b) file an STR in any country affected by the suspicious transfer of funds and make relevant transaction information available to the FIA and the FIU of any country affected by the suspicious transfer (AMLTFCOP, s. 41A(b)).

Implementation of Targeted Financial Sanctions

***Criterion 16.18 (Partly met)*—**Deficiencies identified in the analysis of c.6.5(a) and (b) impact compliance with c.16.18.

Weighting and Conclusion

The VI's legal framework largely provides for all criteria under R.16. There is one minor deficiency which is that deficiencies identified regarding the implementation of TFS (see c.6.5(a) and (b)) have a minor impact on VI's compliance with c.16.18.

Recommendation 16 is rated largely compliant.

Recommendation 17 Reliance on Third Parties

In its Third Round MER, the VI was rated partially compliant with the former R.9 on third parties and introducers because FIs were not required to immediately obtain from all third parties the necessary information on certain elements of the CDD process (i.e., customer identification data, including of legal persons and arrangements; beneficial ownership information; and information on the purpose and intended nature of the business relationship).

The deficiency in the scope of FIs has a minor negative impact on compliance with the individual criteria of R.17.

***Criterion 17.1 (Mostly met)*—**According to Regulation 7(1) of the AMLR, FIs are permitted to rely on the introduction of an applicant for business and associated performance of elements of CDD by a third party if they are satisfied that the third party has taken measures to (i) obtain and verify the identity of the applicant for business using reliable, independent source documents, data, or information; (ii) obtain and verify the identity of the beneficial owner of the applicant for business, such that the FI is satisfied that it knows who the beneficial owner is; (iii) understand, where the applicant for business is a body corporate, the ownership and control structure of the body corporate; and (iv) understand and, where appropriate, obtain information on the purpose and intended nature of the business relationship. The ultimate

responsibility for CDD measures remains with the FIs relying on a third party (AMLR, Regulation 7(7)). FIs relying on a third party are required to take the measures set out in (a) to (c) of this criterion (AMLR, Regulations 7(2)(a), (b) and (c)).

***Criterion 17.2 (Mostly met)*—**Where FIs wish to rely on an introduction by a third party, they shall have regard to information that is available on the level of risk in the country or territory where the third party is incorporated, registered, or formed and operating (AMLR, Regulation 7(3)).

***Criterion 17.3 (Mostly met)*—**The VIs' requirements set out in detail in c.17.1 and c.17.2 shall not apply where the FI and the third party are part of the same group and that group:

a) applies at the group level CDD measures (AMLTFCOP, Part III, which includes the measures relevant for the implementation of both the R.10 and R.12 requirements) and record-keeping requirements (R.11) and programs against ML (R.18, c.18.1) that are at least equivalent to those specified in the AMLR and the AMLTFCOP (AMLR, Regulation 7(5)(a)).

b) is regulated, supervised, or monitored for compliance with those requirements and programs by a foreign-regulated authority or other equivalent body with responsibility for regulating, supervising, or monitoring compliance with such requirements and programs (AMLR, Regulation 7(5)(b)); and

c) has AML policies and procedures to adequately mitigate the risks posed by any higher risk country or territory (AMLR, Regulation 7(5)(c)).

Weighting and Conclusion

VI's legal framework provides for all criteria under R.17 but there is a minor deficiency in the scope of FIs which has a negative impact on compliance with R.17.

Recommendation 17 is rated largely compliant.

Recommendation 18 Internal Controls and Foreign Branches and Subsidiaries

In its Third Round MER, the VI was rated partially compliant with the former R.15 on internal controls, compliance, and audit and partially compliant with R.22 on foreign branches and subsidiaries because FIs were not required to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies, and controls; the absence of a requirement to pay particular attention that consistent AML/CFT measures be observed by branches and subsidiaries in countries which did not or insufficiently apply the FATF Recommendations; the absence of a requirement to inform home country supervisors when a foreign branch or subsidiary was unable to observe appropriate AML/CFT measures because prohibited by local laws, regulations or other measures; and effectiveness could not be assessed because of the recent enactment of the AMLTFPOC.

The deficiency in the scope of FIs has a minor negative impact on compliance with the individual criteria of R.18.

***Criterion 18.1 (Mostly met)*—**FIs are required to establish and maintain a written and effective system of internal controls, approved by senior management, which provides appropriate policies, processes, and procedures for forestalling and preventing ML and TF, having regard to the ML and TF risks and size of the FI's business (AMLTFCOP, s. 11(1)), including:

a) providing for an AML/CFT compliance function and review program and designating an individual or individuals at the level of the FI's senior management who is responsible for managing AML/CFT compliance (AMLTFCOP, s. 11(3)(c) and (d));

b) assessing the competence and probity of their employees at the time of their recruitment and at any subsequent change in role, and subject their competence and probity to on-going monitoring (AMLTFCOP, s. 49(1));

c) providing for appropriate and periodic training to be given to all key staff, including front office staff (AMLTFCOP, s. 11(3)(o)). In addition, s. 47 further outlines AML/CFT training requirements;

d) in relation to internal controls:

i. establishing mechanisms to monitor the implementation of internal controls;

ii. establishing and maintaining an independent audit function that is adequately resourced to test compliance, including sample testing, with their written system of internal controls and produce an independent audit report of any compliance testing; and

iii. implementing enhanced controls where higher risks are identified (AMLTFCOP, s. 11(3A)).

Criterion 18.2 (Mostly met)—Financial groups are required to implement group-wide policies, procedures, and controls against ML and TF which are applicable to all branches and subsidiaries of the financial group which should include:

a) policies, procedures, and controls establishing internal control systems, CDD and record-keeping requirements, and employee training;

b) policies and procedures for sharing information required for the purposes of CDD and ML and TF risk management;

c) the provision, at group-level, compliance, audit, and/or AML/CFT functions, of customer, account and transaction information from branches and subsidiaries when necessary for AML/CFT purposes, including information and analysis of transactions or activities which appear unusual, if such analysis was done. Information and analysis of transactions or activities which appear unusual shall include STRs and their underlying information and the fact that STRs have been filed. Branches and subsidiaries of a financial group should receive this information where relevant and appropriate for the management of ML and TF risk; and

d) adequate safeguards on confidentiality and use of information exchanged (AMLTFCOP, s. 53A).

However, these provisions are not sufficiently broad to cover all elements of c.18.1, as required by the chapeau of c.18.2 (i.e., c.18.1, a)—compliance management arrangements (including the appointment of a CO at the management level and b)—screening procedures to ensure high standards when hiring employees).

Criterion 18.3 (Mostly met)—FIs regulated in the VI with branches, foreign subsidiaries, agencies, or representative offices operating in foreign jurisdictions are required to ensure that these branches, subsidiaries, agencies, or representative offices operating in those other jurisdictions observe standards that are at least equivalent to the AMLR and the AMLTFCOP (AMLTFCOP, s. 53(1)). FIs are, in particular, obliged to ensure that this requirement is observed by their branches, subsidiaries, agencies, or representative offices that operate in foreign jurisdictions which do not, or which insufficiently apply AML/CFT-PF standards equivalent to those of the AMLR and the AMLTFCOP, to the extent permitted by the laws in the jurisdictions in which they operate (AMLTFCOP, s. 53(1A) and (3)). FIs are required to inform the FIA or the FSC (depending on by which authority they are supervised) if any of the FI's branches, subsidiaries, agencies, or representative offices operating in a foreign jurisdiction is unable to observe such appropriate AML/CFT measures because prohibited by the laws, policies, or other measures of the foreign jurisdiction (AMLTFCOP, s. 53(3A)). In such instances, they are required to apply appropriate additional measures to manage the ML/TF risks (AMLTFCOP, s. 53(3B)).

Weighting and Conclusion

The VI's legal framework largely provides for all criteria under R.18. The deficiency in c.18.2, i.e., the requirement to implement group-wide programs against ML/TF, is not sufficiently broad to cover all elements of c.18.1. In addition, the deficiency in the scope of FIs has a minor negative impact on the VI's overall compliance with R.18.

Recommendation 18 is rated largely compliant.

Recommendation 19 Higher Risk Countries

In its Third Round MER, the VI was rated partially compliant with the former R.21 on special attention for higher risk countries because there were no effective measures to ensure that FIs were advised of concerns about weaknesses in the AML/CFT systems of other countries nor were there requirements for FIs to examine transactions with no apparent economic or visible lawful purpose from countries which did not or insufficiently apply the FATF Recommendations and to make the findings of such examinations available to assist competent authorities and auditors.

The deficiency in the scope of FIs has a minor negative impact on compliance with the individual criteria of R.19.

Criterion 19.1 (Mostly met)—Where a business relationship or a transaction involves a natural or legal person, including an FI, located in or from a country that is either considered high risk or identified as a high-risk country (including a country identified as having higher risk by the FATF) or that has international sanctions, embargos, or other restrictions imposed on it, FIs are required to consider the applicant for business or the customer to present a higher risk and perform EDD, proportionate to the risks. The explicit referral to the identification of a country identified as higher risk by the FATF ensures that the requirement applies when this called for by the FATF (AMLTFCOP, s. 20(4)(c) and Interpretation Act, s. 36(1). The AMLTFCOP defines high-risk countries (s. 2(1)).

Criterion 19.2 (Mostly met)—The AMLTFCOP contains a (non-exhaustive) prescribed set of counter-measures that FIs may be called upon to apply (s. 54(2)).

a) Where the FATF, CFATF, or any other similar organization advises that measures should be undertaken in relation to a jurisdiction, and

b) where the FIA or the FSC forms the opinion that a jurisdiction with which the VI engages in business or the provision of any service through an FI or DNFBP poses a significant ML/TF/PF risk (i.e., independent of any call by the FATF to do so), the FIA or the FSC may require FIs to apply counter-measures, proportionate to the risks, in relation to that jurisdiction ((AMLTFCOP, s. 54(1A)(b)).

Criterion 19.3 (Mostly met)—The AMLTFCOP provides a legal basis for the FIA and the FSC to issue advisories to inform FIs of the weaknesses in the AML/CFT system of a jurisdiction and that transactions with individuals, legal persons, and legal arrangements in the jurisdiction may run the risk of ML/TF/PF ((AMLTFCOP, s. 54(1A)(a)). The FSC posts notices on its public website informing FIs of the publication of the FATF's periodic public statements on High-Risk Jurisdictions subject to a Call for Action and on Jurisdictions under Increased Monitoring and similar statements by the CFATF. The notices outline the content of the relevant public statements and provide links to the original statements as well as to each of the countries named in the statements. It also advises persons to apply EDD measures as appropriate based on the instructions provided in the public statements. At the time of the onsite visit, the FSC had begun issuing industry circulars to inform licensees of the publication of the relevant public statements and encouraging them to apply EDD.

Weighting and Conclusion

VI's legal framework provides for all criteria under R.19 but there is a deficiency in the scope of FIs which has a minor negative impact on compliance with R.19.

Recommendation 19 is rated largely compliant.

Recommendation 20 Reporting of Suspicious Transactions

In its Third Round MER, the VI was rated largely compliant and compliant with the former R.13 and SR.VI on STR, respectively because insider trading and market manipulation did not qualify as predicate offences for ML and the requirement to report suspicions did not extend to these two predicate offences.

Criterion 20.1 (Met)—Any person who knows, suspects, or has reasonable grounds to know or suspect that another person is engaged in ML, or in drug ML, based on information or other matter, that came to his/her attention in the course of his/her profession, business, or employment commits an offence if the information or other matter is not reported to the FIA as soon as reasonably practicable after it comes to his/her attention (PCCA, s. 30A and DTOA, s. 36). The ML offences in the PCCA and the DTOA refer to property derived from criminal conduct and proceeds of drug trafficking, respectively, and all serious offences in the VI constitute predicate offences for ML (cf. R.3). A similar obligation to report knowledge or suspicions of TF or terrorist acts is included in the CTA (s. 60). Since the obligation to report applies to any person, the deficiency in the scope of FIs does not have an impact on compliance with R.20. The AMLTFCOP further requires that a reporting officer makes reports of every suspicious customer or transaction relevant to ML, TF, and PF relating to his/her FI promptly and in writing, including in electronic form, to the FIA (s. 17(1)).

Criterion 20.2 (Met)—Employees of FIs are required to report to their reporting officer any suspicious activity or transaction, including any attempted activity or transaction, regardless of the amount (AMLTFCOP, ss.18(1) and (2)). The reporting officer is required, on receipt of such report, to determine whether the information contained in the report supports the suspicion and, if so, submit the report to the FIA (AMLTFCOP, s.18(4)). In addition, the reporting officer is also required to report suspicions to the FIA where he is uncertain as to whether the details of the internal report substantiate the suspicion (AMLTFCOP, s.18(6)).

Weighting and Conclusion

VI's legal framework provides for all criteria under R.20.

Recommendation 20 is rated compliant.

Recommendation 21 Tipping-off and Confidentiality

In its Third Round MER, the VI was rated largely compliant with the former R.14 on protection and no tipping off, because the tipping off offence was limited to situations after an STR had been made to the FIA.

Criterion 21.1 (Met)—The FIAA provides protection against civil, criminal, and disciplinary proceedings to FIs, their directors, and employees who transmit information or submit reports to the FIA in good faith (s. 8(2)). The PCCA, DTOA, and CTA also offer similar protection and these provisions are sufficiently broad to extend to FIs, their directors, officers, and employees (PCCA, s. 30A(4) and DTOA, s. 36(4); and CTA, s. 63(1) and (2)). Since the protection applies to any person, the deficiency in the scope of FIs does not have an impact on compliance with R.21.

Criterion 21.2 (Met)—The PCCA and the DTOA make it an offence for any person to disclose to any other personal information or any other matter in relation to a SAR that he or she knows or suspects is being made or has been made to the FIA, and which is likely to prejudice any investigation which might be conducted following the SAR (PCCA, ss. 31(2) and (3) and DTOA, ss. 37(2) and (3)). The CTA also provides a similar offence in relation to SARs concerning TF and TF acts (CTA, s.60(4)). The relevant legal requirements do specify that a person does not commit an offence if the disclosure of information was made in accordance with information sharing obligations under a financial group's group-wide programs against ML and TF as prescribed in section 53A of the AMLTFCOP (PCCA, s. 31(6A), DTOA, s. 37(6A), and CTA, s. 60(4A)).

Weighting and Conclusion

Recommendation 21 is rated compliant.

Recommendation 22 Designated Non-Financial Businesses and Professions (DNFBPs): Customer Due Diligence

In its Third Round MER, the VI was rated partially compliant with the former R.12 on CDD measures for DNFBPs because deficiencies identified in measures for CDD, PEPs, new technologies and non-face-to-face business, and unusual transactions were also applicable to DNFBPs. In addition, effective implementation of these measures could not be assessed due to the recent enactment of the AMLTFCOP and the AMLR.

TCSPs in the VI qualify as FIs and are regulated and supervised by the FSC. However, the activities of these TCSPs meet the definition of DNFBPs in the FATF Glossary. In line with the FATF Methodology, TCSPs are considered as DNFBPs for the purposes of this assessment.

Criterion 22.1 (Met)—(a) Casinos are subject to the AMLR and the AMLTFCOP when they execute transactions of US$3,000 or more, in line with the FATF Standard. The business of gaming and betting within the meaning of the VI GBCA, 2020 (which includes casinos) qualifies as a relevant business/entity or professional when a financial transaction is equal to US$3,000 or more or the equivalent in any other currency (AMLR, s. 2(1)(l)). The AMLTFCOP specifically requires an entity or professional licensed or registered pursuant to the VI GBCA to undertake CDD when effecting a one-off transaction involving funds of US$3,000 or the equivalent in any other currency, including where the transaction is carried out in a single operation or in several operations that appear to be linked (s. 19(4)(bb)).

(b)–(e) All of the other DNFBPs as defined in the FATF Glossary, and their activities set out in c.22.1 are included in the definition of relevant business in the AMLR (s. 2(1)). A person that is engaged in a relevant business qualifies as an entity or professional for the purposes of the AMLTFCOP (AMLTFCOP, s. 2(1)). Therefore, when performing these activities, relevant DNFBPs are required to undertake the CDD measures set out in R.10.

Criterion 22.2 (Met)—The record-keeping requirements set out in the analysis of R.11 also apply to DNFBPs in the situations specified in c.22.

Criterion 22.3 (Met)—The PEP requirements set out in the analysis of R.12 also apply to DNFBPs in the situations specified in c.22.1.

Criterion 22.4 (Mostly met)—The new technologies requirements set out in the analysis of R.15 also apply to DNFBPs in the situations specified in c.22.1. The deficiency identified in c.15.1 has a minor negative impact on compliance with c.22.4.

Criterion 22.5 (Met)—The reliance on third-parties requirements set out in the analysis of R.17 also applies to DNFBPs in the situations specified in c.22.1.

Weighting and Conclusion

VI's legal framework provides for all criteria under R.22 but the deficiency in c.15.1 has a minor negative impact on compliance with R.22.

Recommendation 22 is rated largely compliant.

Recommendation 23 DNFBPs: Other Measures

In its Third Round MER, the VI was rated partially compliant with the former R.16 on other measures for DNFBPs because deficiencies identified in measures for STR, protection and no tipping-off, internal controls, compliance and audit, and special attention for higher-risk countries were also applicable to DNFBPs. In addition, effective implementation of these measures could not be assessed due to the recent enactment of the AMLTFCOP and the AMLR**.**

***Criterion 23.1 (Met)*—**The requirements to report suspicious transactions set out in the analysis of R.20 apply to any person in the course of his/her trade, profession, business, or employment and apply to DNFBPs in the instances specified in c.23.1.

***Criterion 23.2 (Mostly met)*—**The internal control requirements set out in the analysis of R.18 also apply to DNFBPs in the situations set out in c.23.1. The deficiency identified in c.18.2 also applies to c.23.2.

***Criterion 23.3 (Met)*—**The higher-risk countries' requirements set out in the analysis of R.19 also apply to DNFBPs in the situations set out in c.23.1. The FIA, as the supervisor for DNFBPs (except casinos) posted the relevant FATF and CFATF statements on its public website. The FIA issues an alert to DNFBPs when new statements are posted on its website and provided DNFBPs with some clarification to assist them with the implementation of preventive measures.

***Criterion 23.4 (Met)*—**The tipping-off and confidentiality requirements set out in the analysis of R.21 also apply to DNFBPs in the situations set out in c.23.1.

Weighting and Conclusion

VI's legal framework largely provides for all criteria under R.23. The deficiency identified in the analysis of R.18 has a limited impact on compliance with R.23.

Recommendation 23 is rated largely compliant.

Recommendation 24 Transparency and Beneficial Ownership of Legal Persons

The VI was rated as partially compliant for R.33 (now R.24) in its Third Round MER. The main deficiency identified in the report was the inability to assess whether information on beneficial ownership was being adequately and accurately maintained by registered agents due to the low number of FSC inspections. In addition, at the time of the assessment, business companies incorporated before 2005 had not yet been required to place bearer shares with authorized or recognized custodians until December 2009.

The relevant corporate laws (namely the BVIBCA, LPA, Partnerships Act (PA), Co-operatives Societies Ordinance and Regulations, Friendly Societies Ordinance and Regulations) and respective AML/CFT legislation (AMLTCFOP and AMLR) provide the basis for the TC analysis of R.24. The Micro-Business Companies Act is currently suspended, and no entities have been set up under this Act. As such, this Act is not considered as being in force at the time of the onsite visit and is not taken into account for the purpose of this TC analysis. It is noted that this suspension can be lifted by an order of the Minister. Co-operatives and Friendly Societies are not significant corporate entities in the VI. NPOs can be created in the VI, but

these are not considered as separate legal entities. Authorities introduced recent amendments to the relevant corporate laws, including the BVIBCA, LPA which came into force in January 2023. In March 2023, they made subsequent amendments to these laws and re-introduced previously repealed provisions in the Partnership Act (PA).

Criterion 24.1 (Met)—The different types, forms, and features of the legal persons, as well as their processes for creation and incorporation and for obtaining and recording basic information are outlined in their respective corporate laws (BVIBCA, LPA, PA, Co-operatives Societies Ordinance and Regulations, Friendly Societies Ordinance and Regulations). As of March 2023, there are requirements for obtaining and recording beneficial ownership information for companies and foreign companies. Beneficial ownership requirements also form part of the CDD requirements of entities and professionals, under the AMLTCFOP and AMLR. Information on types, forms, and basic features of companies, and partnerships and the obligations of TCSPS, acting as registered agents, to collect basic and beneficial ownership information is also described through the FSC website (*Corporate Structures | British Virgin Islands Financial Services Commission (bvifsc.vg*)).

Criterion 24.2 (Partly met)—Authorities have not fully assessed the ML/TF risks associated with all types of legal persons created in the country. The 2022 MLRA assesses the ML risks of legal persons (BVIBCs, Limited Partnerships, Micro-Business Companies, Co-operative Societies, and Friendly Societies) with some risk ratings. However, authorities have not assessed the TF risks of legal persons.

Basic Information

Criterion 24.3 (Mostly met)—

There are some minor gaps in basic information held on legal persons in the VI. Information held by the Registries is intended to be available for public inspection (as outlined in the BVIBCA (s. 230), LPA (s. 110) and PA (s. 97)). More specifically:

All business companies incorporated or foreign companies continued as VI business companies in the VI are registered in the Register of Companies which includes submission of a memorandum stating the company name, legal form and status, address of the registered office, name of the registered agent, and includes basic regulating powers (memorandum and articles) (BVIBCA, s. 6, 7, 9 for business companies, s. 181, 182 for foreign companies continued under this Act). Information on the list of directors is not required at the outset but within six months after its incorporation, a company must appoint one or more persons as its first directors (BVIBCA, s. 113) and must file a copy of its ROD with the Registrar within 21 days after the appointment of its first directors or 21 days after its continuation (BVIBCA, s. 118 (B)). If information on directors is not provided within this timeframe, there is an additional 90 days available to provide this information. These requirements also apply to foreign companies continued under this Act.

All foreign companies registered in the VI are registered in the Register of Foreign Companies which records its name, evidence of its incorporation, certified copy of its constitution (i.e., basic regulating powers), list of directors (BVIBCA, s. 186, 187). There are no explicit requirements in law to collect information on its legal form or status, but this information is likely to be contained in the evidence of its incorporation and its constitution. While the Register holds the information of their registered agent, which could act at the registered office of the foreign company operating in the VI, there is no explicit requirement to hold information on the address of its registered office abroad.

Limited Partnerships established under the LPA are registered in the Register of Limited Partnerships, which records the name of the limited partnership, the address of the registered office, the name of the registered agent, and the name and address of each general partner (LPA, s. 9.) It does not include information on basic regulating powers. These requirements also apply to foreign limited partnerships continued as VI limited partnerships and when foreign limited partnerships merge or consolidate with a VI limited partnership (LPA, s. 74, 75). As of March 2023, limited partnerships under the PA are registered in the Register of Limited Partnerships which records the name of the limited partnership, objects and purpose

of the partnership, address of the registered office, name and address of the registered agent, names and addresses of the general partner, and information on the legal form and status of the partnership, including term of existence (PA, s. 53, 55).

Co-operative Societies are registered with the Registrar of Societies, and an application for registration includes the by-laws of the Society which states the name of the society, registered address, objects of the society, and information on legal form, status, and other basic regulating powers (Co-Operatives Societies Ordinance, s.6, Co-Operatives Societies regulations s.4 and 36). Friendly Societies are registered with the Registrar of the High Court and an application for registration includes the name of every member of the committee and a copy of its rules, which includes name and place of office, and basic regulating powers (Friendly Societies Ordinance Act, s. 7 (2), Schedule I). This broadly captures the basic information required. The Register of Companies and Foreign Companies, Register of Limited Partnerships and documents retained by the Registrar are available for inspection (BVIBCA, s. 230, 233, LPA, s. 110, PA s. 97). As of January 1, 2023, the ROD for Companies was also permitted for inspection upon request (BVIBCA, s. 118 (B)) while previously the ROD was only available to the Court or on written request by a competent authority.

The Register of Co-operative and Friendly Societies is not available for inspection.

Criterion 24.4 (Mostly met)—There are minor gaps in the legal requirements for information held within the VI on companies and other types of legal persons. More specifically:

All companies incorporated or continued as a VI business company are required to keep the memorandum, which includes basic information as set out in criterion 24.3 at the office of its registered agent. Companies are also required to keep a register of its members (BVIBCA s. 96 (1)). The register of members includes the number of each class and series of registered shares held by each shareholder, including the nature of the associated voting rights and other details depending on the form of the business company (BVIBCAs. 41(1)). Since March 2023, similar requirements apply for foreign companies registered under this Act (BVIBCA s. 187 A&B).

General partners of a limited partnership are required to maintain a register of general partners and a register of limited partners. These registers (original or a copy) must be maintained at the office of the registered agent (LPA, s. 53). The Registrar maintains the name and address of the registered agent. (LPA, s. 8 (2)). Similar requirements were re-introduced in March 2023 for limited partnerships under the Partnerships Act (PA, s. 54). While there are no explicit requirements in law to keep basic information of limited partnerships at the office of the registered agent, given that the registered agent is responsible for submitting this information to the Registrar, it is expected that they hold this information, also as part of their record-keeping obligations.

Co-operative Societies are required to keep a register of its members containing the name, address, occupation, and statement of shares and a copy of its by-laws containing basic information as set out in criterion 24.3 at the registered address of the society (Co-Operatives Societies Ordinance, s.13, Co-operatives—Societies regulations s.6). There are no requirements for Friendly Societies to maintain the information required under criterion 24.3 or to maintain a register of its members at a specific location notified to the Registrar.

Criterion 24.5 (Partly met)—The BVIBCA, LPA set out requirements for updating some of the information referred to in criteria 24.3 and 24.4. Changes to the memorandum only take effect from the date the notice of amendment is registered by the Registrar, or another date as ordered by the Court. Companies are required to notify any changes to the register of members or directors to the registered agents in 15 days and changes to the register of directors should be notified to the Registrar within 30 days (BVIBCA, s. 13 (2), 96, 118 (B)). However as noted in criteria 24.3, information on directors can be missing from the Registry for up to 10 months (6 months+21days+90 days), which does not ensure the timely availability of this information. As of March 2023, foreign companies registered in the VI are required to notify the

registered agent of any changes made to the register of its members or list of directors and change in location of original registers within 15 and 14 days respectively of any change occurring (BVIBCA, s.187(B)). A foreign company is required to file a notice of change within one month with the Registrar (BVIBCA s.188).

Changes in relation to general partners of a limited partnership under the LPA should be filed within 14 days (LPA s.10). As of March 2023, changes to the memorandum of limited partnerships under the PA should be registered with the Registrar (PA, s.57) and the limited partnership should inform the registered agent of any changes in location of records and underlying documentation (PA, s.81(4)).

For Co-operative Societies, any changes to the by-laws should be forwarded to the Registrar, but there is no timeframe in which this needs to be done (Co-operatives Societies Ordinance Regulation, s. 37) and for friendly societies, any amendment to rules is not valid until the amendment has been registered (Friendly Societies Ordinance Act, s11).

Authorities have not shared any further information on verification measures or applicable sanctions to ensure that this information is accurate and updated on a timely basis.

Beneficial Ownership Information

Criterion 24.6 (Mostly met)—The mechanisms to ensure that information on the beneficial ownership of a company is obtained by that company and available at a specified location in their country is fragmented:

(a) and (b) As of March 2023, there are requirements for companies and foreign companies registered in the VI to collect and maintain up-to-date beneficial ownership information and file this information with its registered agent (BVIBCA, s. 96 1A, 187B). These requirements do not apply to limited partnerships under the LPA or PA. There is no requirement for the company registry to hold beneficial ownership information.

c) The VI primarily relies on existing information held by FIs and DNFBPs in the context of CDD. VI business companies, foreign companies, and limited partnerships are required to maintain a registered agent who must be licensed under the BTCA or CMA—(BVIBCA s, s. 91, 189, LPA, s. 19). As part of their requirements under the AMLTFCOP, an entity or a professional is required to undertake CDD in their dealings with an applicant for business or a customer (AMLTFCOP, s. 19 (2)). They are required to identify where an individual is the beneficial owner of an applicant for business or a customer and verify the identity using reliable and independent source documents, data, information, or evidence (AMLTFCOP, s. 19(3), 21(1)(c), 24(1)(b), 25(2)(b)). They are expected to hold this information under their record-keeping requirements (see criterion 24.9 below). There are some minor gaps in the information held by companies as required under 24.3. The VI does not have a stock exchange.

There are no requirements to hold beneficial ownership information of Co-operative Societies or Friendly Societies.

Criterion 24.7 (Partly met)—As of March 2023, companies and foreign companies are required to file any changes to beneficial owners or any information related to their interests, with the registered agent, within 15 days of the occurrence of the change (BVIBCA s, 96(3A), 187B)). There are no similar requirements for limited partnerships under the LPA or PA.

For existing information referred to under criterion 24.6 (c) (i), where CDD information is used, there are also requirements to verify the identity of the beneficial owners (AMLTFCOP, s. 24, 25). Entities and professionals are required to conduct ongoing CDD on its business relationships by reviewing and updating CDD information, including information on beneficial ownership, but this is only to be done on a risk-sensitive basis or upon certain trigger events as determined by senior management which is insufficient to ensure that information is accurate and up to date as possible (AMLTFCOP, s. 21 (1) (c)). There is no beneficial ownership information held on Co-operative Societies or Friendly Societies.

Criterion 24.8 (Mostly met)—Every business company, foreign company, and limited partnership in the VI is required to have a registered agent (BVIBCA, s 91, 189, LPA, s. 19). Registered agents are required

to hold basic and beneficial ownership information of their clients as part of their AML/CFT obligations (see criterion 24.4, and 24.6), and competent authorities have compulsory powers under various laws, which can include powers to request information from relevant persons, including registered agents (see criterion 24.10). There is no beneficial ownership information held on Co-operative Societies or Friendly Societies.

Criterion 24.9 (Mostly met)—A company and limited partnership under the LPA is required to maintain records for a period of five years (BVIBCA s. 98(1), LPA, s. 54) As of March 2023, these record-keeping obligations also apply for beneficial ownership information maintained by the company. There are no record-keeping requirements for foreign companies registered in the VI. As of March 2023, limited partnerships under the PA are required to maintain some basic information for a period of five years (PA s. 83 (2)). The Registrar of Corporate Affairs is required to retain every qualifying document/information for a period of at least five years from the date of dissolution of the company (BVIBCA, s. 230 (4)) and as of March 2023, the Registrar of Limited Partnerships is required to retain every qualifying document filed for a period of five years (LPA, s.108 (7)). Where entities and professionals, which include TCSPs, collect beneficial ownership information as part of CDD, they are required to maintain records for a period of at least five years from the date when all transactions were completed; or from the date when the business relationship was formally terminated (AMLTFCOP, s. 45(1) and (2) and AMLR, Regulations 9(1)(a)) and 10(1)).There are no record keeping requirements for Cooperative Societies or Friendly Societies.

Other Requirements

Criterion 24.10 (Met)—Basic information held by the Registrars of Corporate Affairs is available for inspection, but this information is not directly accessible to all competent authorities. Competent authorities, including the FSC, FIA, and police officers, have a range of powers to obtain information held by relevant parties, including from registered agents who hold basic and beneficial ownership information. This includes powers to request any information, application to the Court for an order in relation to materials, warrants to enter and search premises (see for example, FSCA, s. 32, FIAA, s. 4 (2), PCCA, s. 36, 37, (C(JI)CA) s. 8, (8), MLA (United States) s. 6)).

Criterion 24.11 (Mostly Met)—As of January 1, 2023, the issuance of new bearer shares, including bearer share warrants is prohibited in the VI, with a requirement that existing bearer shares held by custodians be surrendered to the company on or before the effective date of July 1, 2023 (which was after the date of the onsite visit). In addition, by July 1, 2023, all existing bearer shares, if they are not already redeemed, converted, or exchanged, will be deemed to be converted to registered shares (BVIBCA, S. 35, 37, 38, Part IV, Schedule 2).

Criterion 24.12 (Partly met)—

a) As of March 2023, entities or professionals offering nominee shareholder and director services are required to inform the legal person if they are accepting instructions from another person and disclose the identity of the nominator/person from whom they are accepting instructions (AMLTFCOP, s. 25A) but there is no requirement to have this activity recorded in any relevant registry.

b) While TCSPs are licensed and can provide services as nominee shareholders and directors, and are subject to AML/CFT requirements, the law does not require that any other person who acts as a nominee, to be licensed to do so as a "nominee" nor that they should maintain information identifying their nominator. There are no other mechanisms identified by the country to ensure that nominee shares and directors are not misused.

Criterion 24.13 (Mostly met)—Sanctions are available with respect to failure to comply with requirements of R.24. Some of these are not always proportionate or dissuasive, for example, failure to file a copy of the register of directors is only a penalty of US$100 (BVIBCA, Schedule I), which is not dissuasive, but could result in the company being eventually struck off if such information is not provided within a specified period of time (up to 10 months). Other penalties/fines are only applicable following a conviction/summary

conviction, e.g., with respect to bearer shares, maintaining a register of members, having a registered agent, maintaining records, failure to notify of changes, failure to file beneficial ownership information, and range from US$1,000–$50,000 depending on the type of offence (BVIBCA, s. 31, 38, 41, 91, 96, 97, 98, 186, 188, 189). For limited partnerships, these range from US$5,000–$50,000 under LPA, s. 10, 19, 54, and US$100–10,000 under the PA. s.54, 81,99, 113. A Registrar may strike the name of a company from the Register, if the company does not have a registered agent or has failed to file any return, notice, or document filed under the BVIBCA (BVIBCA S..213). Additionally, for beneficial ownership information, a registered agent that fails to comply with any of its requirements under the AML Regs and AMLTFCOP is subject to enforcement action of the FSCA which includes issuance of warning letters, revocation and suspension of licenses, conduct of investigations, application for insolvency and imposition of administrative penalties, among others. (FSCA, s. 37, Enforcement Committee Guidelines). The PCCA (s. 27(4)) specifies that any person that contravenes a provision of the AMLTFCOP can also be liable on summary conviction to a fine not exceeding US$200,000 or a term of imprisonment not exceeding three years or both. Offences under the Co-operative Societies Act only attract a fine of US$250 upon summary conviction (Co-Operatives Societies Ordinance Act, s.64), and for Friendly Societies, there is a general penalty of US$96 (Friendly Societies Ordinance Act, s.84).

Criterion 24.14 (Met)—Basic information held by the Registrar of Corporate Affairs, can be accessed directly by some competent authorities (the FSC, FIA, AGC, and the ITA) through the VIRRGIN electronic platform. In addition, other domestic competent authorities and foreign competent authorities may request basic information on legal persons from the Registrar. Competent authorities can take steps to cooperate with foreign competent authorities and can use their investigative powers to obtain basic and beneficial ownership information held by registered agents, on behalf of foreign counterparts (FSCA, s. 32, 33, 49A, FIAA s. 4). This also includes information on shareholders since the registered agent maintains the register (or a copy) of members (BVIBCA s.96).

Criterion 24.15 (Met)—As of March 2023, there are provisions in law for authorities to receive and provide feedback to foreign authorities on the use and usefulness of the assistance received (FSCA s. 33G(1), FIAA s. 5A(3), C(JI)CA s. 4(8)).

Weighting and Conclusion

VI's legal framework only partly complies with the criteria under R.24. Authorities have not fully assessed the TF risks associated with legal persons created in the country. Director information is not collected at the outset when a company is incorporated which impacts the timely availability of this information. Beneficial ownership information collected in the context of CDD requirements is only updated on a risk-sensitive basis which does not ensure that information is adequate, accurate and up to date. While as of March 2023, companies and foreign companies registered in the VI are required to hold beneficial ownership information and to provide this information to the registered agent, these requirements do not apply to other legal persons (e.g., limited partnerships). There are no record-keeping requirements for foreign companies registered in the VI. The requirement to surrender existing bearer shares only came into place after the date of the onsite visit. Mechanisms in place with respect to nominee shares and directors do not capture nonprofessional nominee arrangements. There are gaps in the requirements for Co-operative Societies or Friendly Societies, and no beneficial ownership information is held with respect to these entities, but these are not considered high-risk entities.

Recommendation 24 is rated partially compliant.

Recommendation 25 Transparency and Beneficial Ownership of Legal Arrangements

The VI was rated as largely compliant for R.34 (now R.25) in its Third Round MER. The main deficiency identified in the report was the inability to assess whether information on trusts was being adequately and accurately maintained by registered agents due to the low number of FSC inspections.

***Criterion 25.1 (Met)*—**Trusts can be created and operated in the VI. The VI does not have any laws governing trusts, save for the VISTA Act which governs the establishment of a trust holding company shares. Trusts are established via common law and are not formed on the basis of any specific laws. As of March 2023, the AMLTFCOP law includes requirements under S28A of the AMLTFCOP for every person that acts as a trustee in the VI (AMLTFCOP, s4).

a) A trustee, including a trustee that is an entity or a professional is required to obtain and maintain information on the beneficial owners of a trust for which he or she acts as a trustee, which include the settlor, trustees, protector, beneficiary, or class of beneficiaries or any other natural person exercising ultimate effective control over the trust (AMLTFCOP, s28A, s.2 (1)). This information is required to be accurate and up to date and updated on a timely basis (AMLTFCOP, s28A (4)). Professional trustees who are licensed under the BTCA, are required to identify and verify the beneficial owners of the trust (AMLTFCOP, s. 28 (1) (b),).

b) All trustees must obtain the name and address of any regulated agent or service provider to the trust, including any investment advisor or manager, accountant, and tax advisor (AMLTFCOP, s28A, s.3, s38(1A)).

c) All trustees are required to maintain this information for a period of at least five years after his/her involvement with the trust ceases or when the business relationship is formally ended for professional trustees (AMLTFCOP, s. 28A(5), 45, AMLR s. 10).

***Criterion 25.2 (Partly met)*—**Information held by all trustees is required to be accurate and up-to-date and updated on a timely basis, but no further explanation or provisions are included in the law on how this is ensured (AMLTFCOP, s28A (4)). Separately, professional trustees are required to review and update CDD information, including information on beneficial ownership (AMLTFCOP, s. 21(1)), but this is only to be done on a risk-sensitive basis or upon certain trigger events as determined by senior management, which is insufficient to ensure that information is kept up to date as possible and updated on a timely basis.

***Criterion 25.3 (Met)*—**A trustee, including a trustee that is an entity or a professional, when acting on behalf of a trust, shall disclose his/her status as a trustee to an entity or professional (i.e. FI or DNFBP) when establishing a business relationship or carrying out a one-off transaction with that entity or professional, on behalf of the trust for which he or she acts as trustee (AMLTFCOP, s. 28A(1)).

***Criterion 25.4 (Met)*—**Trustees are not prevented by law or enforceable means from providing competent authorities with trust-related information or from providing FIs and DNFBPS any information on the beneficial ownership and asset of the trusts held or managed under the terms of the business relationships.

***Criterion 25.5 (Met)*—**Competent authorities, including the FSC, FIA, and police officers, have a range of powers to obtain information held by trustees, including when the trustee is an entity or professional, and other parties within the scope of the AML law. This can include any information they hold on (i) the beneficial ownership of the trust, (ii) the residence of the trustee if the trustee is a client of an entity or professional under the AML law (AMLTFCOP, s. 24(2)), and (iii) the assets held or managed by the FI or DNBFP in relation to any trustees with which they have a business relationship or undertake an occasional transaction. Powers available to the competent authorities include powers to request information by notice in writing, apply to the court for an order or warrant to enter and search (see for example, FSCA, s.32, FIAA, s. 4 (2)), PCCA, s. 36, 37, C(JI)CA s. 8, (8), s. 6).

Criterion 25.6 (Mostly met)—(a) Trusts are not required to be registered in the VI, and there is no basic information held on trusts by registries or by other domestic authorities. (b) and (c) Where beneficial ownership and other information on trusts is collected in the context of CDD, competent authorities have a range of powers to access information held by trustees and can share this information, including information related to trusts with foreign counterparts in accordance with their domestic laws (for example FSCA, s. 32, 49A, FIAA s. 4, MLA (USA)).

Criterion 25.7 (Met)—

(a) Authorities have not shared information on how trustees are legally liable for failure to perform the duties relevant to meeting their broader obligations as trustees.

(b) For professional trustees only within the scope of the AML law, an entity or professional that fails to comply with any of its requirements under the AML Regs and AMLTFCOP is subject to a range of enforcement action (FSCA, s. 37(1)). The range of enforcement actions available under the FSCA includes revocation or suspension of a license, initiation of investigations, application to the Court for insolvency (where the licensee is a company), issuance of a warning letter, imposition of administrative penalties pursuant to the AMLTFCOP which can range between US$60,000–$100,000 depending on the violation (FSCA, s. 37(2), AMLTFCOP, Schedule 4).

Professional and non-professional trustees are also liable for failing to obtain and maintain information in accordance with s.28A of the AMLTFCOP under s.27(4) of the Proceeds of Criminal Conduct Act, which makes them liable to a fine not exceeding $150,000 or a term of imprisonment no exceeding 2 years or both (AMLTFCOP, s28A(6)).

Criterion 25.8 (Partly Met)—Administrative and criminal sanctions are available when a professional trustee fails to grant the FSC with timely access to information under the AMLTFCOP, (FSCA ss. 32, 54 and 56). These do not extend to non-professional trustees since the application of s27(4) of the Proceeds of Crime Act is only with respect to obtaining and maintaining information in accordance with s28A (2) (3) (4) and (5) of the AMLTFCOP.

Weighting and Conclusion

VI's legal framework mostly complies with the criteria under R.25. Recent measures introduced to the AMLTFCOP in March 2023 have extended the requirements to all trustees. Minor shortcomings exist that there are no sanctions available to nonprofessional trustees for failing to grant competent authorities with timely access to information. In addition, while information held by trustees is required to be accurate and up to date and updated for professional trustees, the requirement to review and update CDD information, including information on beneficial ownership (AMLTFCOP, s. 21(1)) is only to be done on a risk-sensitive basis or upon certain trigger events as determined by senior management which is not sufficient to ensure information is adequate, accurate, and up to date.

Recommendation 25 is rated largely compliant.

Recommendation 26 Regulation and Supervision of Financial Institutions

In its previous MER, the VI was rated partially compliant with the former R.23. MVTS operators were not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements, and effective supervision by FSC was limited by quantitatively inadequate human resources.

Criterion 26. 1 (Mostly met)—The FSC is established pursuant to s.3 of the FSCA and following s.4(1) of the FSCA and s.8(1) of the AMLTFCOP. One of the FSC's functions is to regulate, supervise, and monitor compliance by licensees, and by such other persons who are subject to them, with the PCCA, AMLRs, and AMLTFCOP and with such other enactments and guidelines relating to AML/CFT. Licensees are persons

and/or entities conducting as a business one or more of the activities as included under the definition of FIs in the FATF Glossary pursuant to the BCTA, FMSA, Insurance Act (IA), and the SIBA, except for trading in foreign exchange.

Market Entry

Criterion 26.2 (Met)—Core principle FIs are required to be licensed by the FSC pursuant to the BTCA, the IA, and the SIBA. It is prohibited to carry on any kind of banking, insurance, or investment business in or from within the VI without a license to do so (s.3(1) BTCA; s.4(1) IA; s.4(1) SIBA).

As it relates to the investment business activities of investment management and investment advice, a person managing or advising on assets up to US$400 million or investing or advising a closed-ended fund valuing up to US$1 billion may be approved to conduct such activities pursuant to the Investment Business (Approved Managers) Regulations (Reg. 12) instead of being licensed under SIBA. Other FIs that conduct financing businesses such as financial lending and financial leasing, and MSBs, including MVTS as far as it concerns the transmission of money in any form (see c.14.1), or money or currency changing services, are required to be licensed pursuant to s.7(1) and (2) of the FMSA. Credit unions are registered with the Department of Agriculture (s.7 of the Co-operative Societies Ordinance (Cap. 267)). Establishment of a shell bank in the VI is prohibited and no license shall be granted to a shell bank (s.16A BTCA).

Criterion 26.3 (Mostly met)—Directors, senior officers, and beneficial owners as included under the concept of "significant owners" and "controller"[72] of FIs are required to satisfy the FSC's fit and proper criteria at the time of application and on an ongoing basis (ss.2, 15 sub (c) and 16 of the Regulatory Code). Schedule 1A of the Regulatory Code clarifies that where in the FSC Act or any financial services legislation an assessment of fitness and propriety of a person is required, the criteria on the fit and proper test included under this Code will be applied accordingly, unless otherwise excluded.

Under Schedule 1A of the Regulatory Code (Guidance Note on Fit and Property Test) in assessing honesty, integrity, and reputation, the FSC will consider among other things, whether the regulated person or other person concerned has been convicted, or is connected with a person who has been convicted, of any offence, particularly an offence involving dishonesty, fraud, or other financial crime, or has been subject to any pending criminal proceedings that may lead to a conviction by any court in the VI or elsewhere. Assessors consider this to include associates of criminals. Pursuant to sectoral legislation, FIs are required to seek the FSC's approval prior to effecting changes in significant or controlling interests, while such approval shall only be granted if the FSC is satisfied that such person meets the fit and proper criteria (s.14(5) BTCA, s.14(5) FMSA, s.21(5) IA, and s.11(5) SIBA). Concerning insurance companies, under the IA, this is applicable with respect to a VI insurer but not regarding a foreign insurer. The latter shall seek to obtain prior approval, but the FSC is not required under s.22 to refrain from approving a person obtaining a significant interest not meeting those criteria. Under the IA and—with respect to securities and investment business—the SIBA regimes, directors and other senior officers must be approved by the FSC prior to their appointments while such approval can only be granted to an individual meeting the fit and proper criteria (s.19(1) and (2) IA, and s.10 SIBA). This condition to get the FSC's prior approval based on the individual meeting those criteria is not explicitly required for banking and trust companies under the BTCA (see s.19(2) BTCA) but section 4(3)(d) requires an applicant, its directors, and senior officers to satisfy the

[72] The concept of "controller" was introduced in Schedule 1A of the Regulatory Code in 2019, in its fit and proper test. The concept of "controlling interest" are introduced in the Regulatory Code and the SIBA per amendments published and entered into force during the onsite visit of the assessment team to the VI (s.2 Regulatory (Amendment) Code 2023 and s.2 Securities and Investment Business (Amendment) Act 2023). Where this concept was already included under respective financial services legislation, this was extended to include a person who has an influence over the activities of the licensee without a significant interest, and a person who gives instructions to a director or senior officer of the licensee to which that director or senior officer is accustomed to acting (s.2 Insurance (Amendment) Act 2023, and s.2 Banks and Trust Companies (Amendment) Act 2022).

Commission's fit and proper criteria. In relation to Approved Investment Managers, the FSC must be satisfied that the applicant is fit and proper (reg. 7(1)(iii) of the Investment Business (Approved Managers) Regulations).

The FSC does not have the power to direct the removal of a person who has a significant interest not meeting criteria of fitness and propriety but may attach conditions to a BTCA, IA, SIBA, and FMSA license (s.40B and Schedule 2 of the FSC Act) and to approved managers. If the FSC considers that such a person no longer meets such criteria, it would impose a condition on the regulated person to the effect that the person concerned should not have a significant interest in the regulated person under threat of enforcement action (s.13 Schedule 1A of the Regulatory Code (Guidance Note on Fit and Property Test)).

Furthermore, with respect to a post office conducting MBS, the requirement to seek prior approval from the FSC for the appointment of directors and senior officers and having them to meet the fit and proper criteria does not apply (ss.3(3)(b), 13 and Schedule 1 of the FMSA). The authorities did not provide any other relevant information seeking to ensure that such persons meet equivalent standards of fitness and propriety.

Risk-based approach to supervision and monitoring

Criterion 26.4 (Partly met)—

a) Core principle FIs are regulated and supervised in line with the core principles where relevant for the application of consolidated group supervision for AML/CFT.

b) MVTS and money currency changing services—except for the post office—are considered licensees of the FSC and regulated and supervised for compliance with the AMLTFCOP (ss.2 and 4(1)(ca) FSCA; s.6 FMSA, and s.8(1) AMLTFCOP). The AMLTFCOP does not require the FSC to conduct its monitoring activities having regard to the ML/TF risks in the sectors it monitors. Licensees of the FSC, including MSBs are included under the FSC's Risk-Based Approach to Supervision Framework. This Framework sets out the FSC's strategic approach to the risk-based regulation of its licensees and in particular the processes, methodology, and parameters within which the FSC's RBA to supervision will operate.

Criterion 26.5 (Partly met)—In the absence of a requirement instructing the FSC to determine the frequency and intensity of its onsite and offsite supervision on the basis of risk, the "Risk Based Approach to Supervision Framework" (amended 2022) ("the Framework") outlines the FSC's strategy for an RBA and sets the details of the RBA including such determination (paragraphs 3.9; 3.18, and 5.45). The FSC's Framework seeks to be a tool for the identification, assessment, and treatment of risk. However, it fails to adequately consider the ML/TF risks associated with the FI or group, the ML/TF risks present in the country and the characteristics of the FIs or groups in order to determine the extent of FSC's engagements since it is designed and set up to provide for an overall prudential risk rating per entity, including non-AML/CFT related risks such as credit risk while the composite risk rating equally weights the different risks or even assigns a relatively low weight to ML/TF risk (35 percent), and an isolated use of the AML/CFT segment does not include all relevant risk factors necessary for a solid ML/TF risk assessment Therefore, by applying this framework, the frequency and intensity of AML/CFT examinations may as well be dictated by the assessment of non-ML/TF risks because of the overall risk rating applied when suggesting supervisory actions for each risk categorized entity by placing it in so-called priority buckets. Furthermore, the risk assessment predominantly aims to determine the likelihood of an entity not complying with their regulatory requirements, without an adequate assessment of a sufficient range of inherent risks to ML/TF and with an emphasis on the entity's controls in place. Where the framework describes the data resources used to identify risk, main gaps can be found in absence of any reference to collecting relevant and accurate information directly from FIs on their actual client base, product offering and service provision, used delivery channels and geographic exposure. ML/TF risks present in the jurisdiction, the sector, the diversity,

and the number of FIs are not factors considered in the framework. No reference is made in the framework to supervisory engagements at group level or to assessment of risk at group level, where applicable.

Criterion 26.6 (Partly Met)—According to the Risk Assessment Framework, reviews of assessments of licensee's risk profile should be undertaken on a periodic basis, at least annually following onsite and offsite engagements, and when there are significant changes in the operation or financial landscape of a licensee. Such review is not explicitly required when there are major events or developments in the management of the licensee. Events or developments at group level, where applicable, are not triggers for review of such assessment.

Weighting and conclusion

Trading in foreign exchange is not covered under VI's sectoral legislation. With regard to the prevention of criminals and their associates from entering the financial sector, several deficiencies are identified: the foreign insurers seek prior approval for persons owning or controlling a significant or controlling interest. The AMLTFCOP does not require the FSC to conduct its monitoring activities on MVTS having regard to the ML/TF risks in the sectors it monitors. The determination of supervisory engagements is insufficiently based on ML/TF risks of an FI or group, and the FSC is not held to review the assessment of an FI's risk profile when there are major events or developments in the management of the entity or group.

Recommendation 26 is rated partially compliant.

Recommendation 27 Powers of Supervisors

In its Third Round MER, the VI was rated compliant with former R.29.

Criterion 27.1 (Met)—One of the FSC's functions is to supervise and monitor its licensees' compliance with the AMLTFCOP, as well as any other legislation and guidelines that relate to AML/CTF (s.4(1) sub (ca) FSCA and s.8(1) AMLTFCOP). In order to monitor and ensure compliance, the FSC is empowered to conduct inspections of licensees, to request relevant information to perform its supervisory duties, and to remedy non-compliance with AML/CFT requirements, including imposing sanctions.

Criterion 27.2 (Met)—The FSC has the power to conduct inspections of its licensees, for the purpose of monitoring and assessing compliance with financial services legislation, AML/CFT-related legislation, and to establish compliance with matters arising from the FSC's execution of international cooperation obligations. This includes inspecting the premises and business, whether in or outside the VI (s.35(2) and (2A) FSCA).

Criterion 27.3 (Met)—The FSC is authorised to inspect the procedures, systems and controls, and the assets, including cash, belonging to or in the possession or control of a relevant person; to examine and make copies of documents belonging to or in the possession or control of a relevant person, and to seek information and explanations from the officers, employees, agents, and representatives of relevant person, whether verbally or in writing (s.35(2) FSCA). Such powers to compel production of any information is not predicated on the need to require a court order. A relevant person is required to provide specified information or information of a specified nature or description or to produce specified documents or documents of a specified nature or description to the FSC (s.32 FSCA).

Criterion 27.4 (Met)—The FSC is specifically authorised to take enforcement action against licensees for breaches of AML/CFT requirements, the FSCA, a financial services legislation, the Regulatory Code, or a practice direction (s.37(1)(a)(i) and (ii) FSCA). The assigned range of powers that the FSC may apply where it is entitled to take enforcement action against an FI include the power to revoke or suspend the licensee's licence; to issue a directive imposing a prohibition, restriction, or limitation on the financial services business that may be undertaken by the licensee (ex., s.40); to issue a warning letter against the licensee; to impose such administrative penalties on the licensee as may be provided for the regulations or

pursuant to the AMLTFCOP or any other enactment under which the FSC has power to impose an administrative penalty; to require the person to pay for costs and expenses incurred by the FSC in the conduct of any investigation or the taking of enforcement action against the person as the FSC thinks fit; and to issue an order prohibiting the person from taking up employment within the financial services industry for such period as the FSC may specify in the order or for an indefinite period (s.37(2)). Regarding the power to impose an administrative penalty, s.57(1) of the AMLTFCOP outlines that a person who contravenes or fails to comply with the provisions specified in Schedule 4 of the AMLTFCOP is subject to the penalties prescribed. As described under R.35, "persons" is to be understood to include both the entity as well as any relevant (other) natural or legal person.

Weighting and Conclusion

All criteria under this recommendation are met.

Recommendation 27 is rated compliant.

Recommendation 28 Regulation and Supervision of DNFBPs

In its Third Round MER, the VI was rated partially compliant for former R.24. While DNFBPs like real estate agents, lawyers, other independent legal advisers, accountants, and DPMS were covered by the AML/CFT regime, there were no effective systems for monitoring and ensuring compliance with AML/CFT requirements. Deficiencies identified regarding sanctions and sufficient resources for the FSC were also applicable to the supervision of TCSP.

Regulation 2(1) of the AML Regulations (AMLR) defines the following DNFBPs as relevant business for AML/CFT regulation and supervision: gaming and betting in the situation covered under R.22; real estate agents; DPMS in the situation covered under R.22; legal practitioners, public notaries, or accountants in the situations covered under R.22; TCSPs when providing most of the services as included in the FATF Glossary (see c.28.2). Furthermore, as defined under the Non-financial Business (Designation) Notice 2008, persons engaged in the business of buying and selling jewelry, vehicles, boats, and other high-value goods such as furniture, machinery, or art for transactions involving a cash payment of US$15,000 or more or the equivalent in another currency, are considered DNFBPs as well.

Casinos

Criterion 28.1 (Partly met)—

a) Pursuant to the GBCA, persons operating in the gaming and betting sectors are required to be licensed by the GBCC (s.29). According to the Act, "gaming" means to play a game, whether on the computer, by electronic means, the internet, or otherwise for a prize or winnings in money or money's worth and includes, but is not limited to, lottery, raffles, and scratch cards (s.2 sub (a) of the VI Gaming and Betting Control (Amendment) Act, 2021) (GBCA). Casino activities, including internet casinos, meet the definition of gaming under the act.

b) An applicant for a license, whether individual or corporate entity, shall be assessed by the GBCC to be fit and proper as a condition for granting a licence (s.40 GBCA), and at the occurrence of specified events including, but not limited to, new appointment (s.7(1) of Schedule 3). A person who is, or is to be, an owner, director, shareholder, associate, trustee, committee member, manager, or key employee of the licensee must be adjudged to be a fit and proper person to hold the intended position (s.2 of Schedule 3). The Act lacks sufficient clarity to establish if any situation in which ownership/control is exercised through a chain of ownership or by means of control other than direct control, nor if an operator of a casino is included. Furthermore, where a person that needs to be assessed for fitness and propriety is "a corporate entity with minimum percent share stake

holding in the licensed operation," the fitness and propriety of its owners, directors, managers and controlling stakeholders shall be assessed by the GBCC (s.3(2) of Schedule 3). However, no clarification is provided on such minimum percentage. Again, the relevant concept of "controlling stakeholder" is insufficiently including any beneficial owner because it is defined as being an individual or corporate entity entitled to control at least one-third of the voting power in the general meeting and controls 25 percent or more of the voting power (s.3(3) of Schedule 3). The criteria applied in the fit and proper assessment include general elements such as the integrity, fairness, honesty, and reputation of assessed person, with referral to criminal history (Schedule 3). However, the VI is currently in the process of setting up the GBCC, while gaming and betting operators are considered relevant business and categorised as a DNFBP. As a result, gaming and betting operators will fall under the supervisory remit of the FIA. Therefore, the fitness and propriety requirements applied by the FIA under s.5C of the FIAA are applicable as well (see c.28.4 b) as well) and identified deficiencies are equally relevant for casinos, while casino operators are out of scope for the FIA under s.5C(6) FIAA.

c) The activities of gaming and betting are considered relevant business (reg.2(1)(l) AMLR) and subject to supervision by the FIA for compliance with the AML/CFT requirements (s.8(2) AMLTFCOP).

DNFBPs other than casinos

Criterion 28.2 (Met)—Pursuant to sections 4(ca) of the FSCA and 8(1) of the AMLTFCOP, the FSC is designated as the competent authority responsible for monitoring and ensuring compliance by its licensees, TCSPs.[73] The service to act as—or arranging to act for another person to act as[74]—a trustee of an express trust is covered and licensed under the concept of trust business under the BTCA (s.2). The FIA is designated as the competent authority of all other DNFBPs, pursuant to sections 5C of the FIAA and 8(2) of the AMLTFCOP.

Criterion 28.3 (Met)—All categories of DNFBPs are considered relevant persons under the AMLR and subject to the AML/CFT requirements of the AMLR and the AMLTFCOP. The TCSPs are, as company management business and/or trust business—except for some services (see c.28.2)—subject to AML/CFT monitoring by the FSC and all other DNFBPs are subject to monitoring by the FIA. In addition, both the FSC and the FIA are empowered under section 9(1) and (2) of the AMLTFCOP to undertake compliance inspections on DNFBPs to assess compliance with requirements of AML/CFT legislation.

Criterion 28.4 (Partly met)—

a) Sections 5C of the FIAA, 8(2) and 9(2) of the AMLTFCOP designate the FIA as the competent authority to monitor DNFBPs' compliance with AML/CFT laws and regulation, where sections 4 of the FSCA and 8(1) and 9(1) of the AMLTFCOP designate the FSC as such with respect to TCSPs. As part of their duties described under aforementioned sections, the supervisors are expected to review the DNFBPs' risk assessments, policies and procedures, processes, and control systems to assess DNFBPs' compliance with the requirements of the AML Regulations, the AMLTFCOP, and any other code, guideline, practice direction, or directive that the supervisor issues, including any other enactment that applies to such an entity (s.9 AMLTFCOP).

[73] The CMA 2023 extended the scope of company management activities by including: acting as a partner of a partnership, or a similar position in relation to other legal persons, and the provision of business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement under ss.2 and 9B(2) of the CMA.

[74] The BTCA 2023 added in March 2023 the previously missing services of arranging for another person to act as a trustee of an express trust to the definition of a trust business under the BTCA (see s.2 sub c).

The FIA has the following powers to perform its monitoring functions under the FIAA: the power to require the DNFBP to provide a regular report or declaration on its compliance with any AML/CFT-related law (s.5C(8)(b); the power to request documents and information from the DNFBP (s.5D), and the power to have a person being examined under oath (s.5G). However, the powers to enter the premises of a DNFBP under supervision and to search, take possession of any documents or information, to take copies of extracts of such documents or information, and to require any person on the premises to provide an explanation of any document or information is predicated on the need to require a Magistrate's order (s.5E).

With respect to the TCSPs, the FSC has the powers as discussed under R.27 since the company management business and trust business are consider licensees under the financial sector legislation.

b) TCSPs—company management business and trust business—are licensed as FIs by the FSC and subject to the same fit and proper requirements for FIs as detailed in c.26.3, the deficiencies as identified under c.26.3 apply.

Pursuant to section 5C(6) of the FIAA, the FIA—before or at the time of registration—must satisfy itself that the directors, senior officers, and persons with a significant interest or controlling interest in a DNFBP are fit and proper. Section 5C(4) requires DNFBPs to notify the FIA whenever there is a change in directors, senior officers, or persons holding a significant interest or controlling interest. However, the FIAA does not prescribe FIA's prior approval based on criteria for fitness and propriety. The definition of controlling interest as included under s.5C(13) seeks to explicitly include any person who ultimately controls the DNFBP, including exercising ultimately effective control over the DNFBP.

The criteria for FIA's fit and proper test are outlined in its "Guidance Notes on Fit and Proper Test for Directors, Senior Officers and Persons holding Significant or Controlling Interest within DNFBPs and NPOs (February 25, 2022)." In assessing the honesty, integrity, and reputation of such persons, the FIA is required to consider, among other things, whether this person has ever been convicted, or is connected with a person who has been convicted, of any offence, particularly an offence involving fraud, dishonesty, or other financial crime, or is subject to pending criminal proceedings that may lead to a conviction which strongly bring into question his/her integrity or reputation (paragraph 3.2.1.1). Where the FIA determines that fitness and propriety are absent from such person, s.5C(8) grants the FIA the powers to require the DNFBP to remove the said person and issue an order declaring that the said person is not fit and proper to hold such office and shall cease to hold any office within the DNFBP.

c) The FIA has the power to impose an administrative penalty under s.57(1) of the AMLTFCOP on a person who contravenes or fails to comply with the provisions specified in Schedule 4 of the AMLTFCOP. The FIA is also entitled to take enforcement actions against a person for breach of compliance with AML/CFT requirements pursuant to section 5J(1) of the FIAA. Section 5J(2) of the FIAA further prescribes the enforcement actions that the FIA can take against a DNFBP, being: (i) the issuance of a warning; (ii) the recommendation to the government department or institution by which the person is licensed, registered, approved, authorized, or otherwise established to suspend, revoke, or withdraw the person's license, registration, approval, authorization, or other form by which the person is established; and (iii) imposing an administrative penalty in the amount prescribed under the FIAA or any other enactment or, where a penalty is not prescribed, in an amount not exceeding US$75,000. A recommendation to a licensing, authorizing, or registration authority to suspend, revoke, or withdraw a license, authorization, or registration cannot be considered a sanction because it has no punitive effect per se. The FIAA does not define "person" but seems to use this term to include both the DNFBP as well as any relevant natural person. This is confirmed by s.36 of the Interpretation Act.

Regarding the power to impose an administrative penalty, s.57(1) of the AMLTFCOP outlines that a person who contravenes or fails to comply with the provisions specified in Schedule 4 of the AMLTFCOP is subject to the penalties prescribed. See recommendation 35.

All DNFBPs

Criterion 28.5(Not met)—For TCSPs, the FSC's supervisory practices under c.26.5 apply. The deficiencies identified under c.26.5 apply accordingly. For the other DNFBPs, no requirements nor any framework ensuring the FIA to conduct supervision on a risk-sensitive basis could be identified. Therefore, the determination of the frequency and intensity of supervisory engagements on the basis of risk, while taking into account the risk profile of those DNFBPs is not ensured.

Weighting and Conclusion

The scope of the measures to prevent criminals and associates from holding or controlling (or being the beneficial owner of) a significant or controlling interest or being the operator of a casino is too limited. ML/TF risk of individual TCSPs is not adequately taken into account under FSC's risk-based supervision framework when determining supervisory engagements with individual entities. This has an increasing effect on the weighting of the deficiencies given the risk and context of the TCSP sector in the VI. The FIA does not have adequate powers to enter premises of supervised entities, to search, and take possession and/or copies of documents or information since this is predicated on the need to require a Magistrate's order. It is not required to get FIA's approval based on fitness and propriety prior to appointing directors, senior officers, or persons holding a significant or controlling interest. The FIA also lacks sufficient powers of enforcement where it cannot revoke, withdraw, or suspend a license, authorization, or registration. The FIA is not required to conduct supervision on a risk-sensitive basis, nor is such approach systematically applied.

Recommendation 28 is rated partially compliant.

Recommendation 29 Financial Intelligence Units (FIU)

In its Third Round MER, the VI was rated largely compliant for this recommendation (previously R.26). The deficiency was the absence of typologies in the FIA's annual reports.

Criterion 29.1 (Met)—The FIA established under Section 3 of the FIAA, is the FIU of the VI. It consists of two divisions. One division is responsible for supervision of NPOs (s.18(1) NPOA) and DNFBPs, excluding TCSPs and casinos (sections 5C of the FIAA and 8(2) of the AMLTFCOP). The other division, under section 4 of the FIAA, can receive, obtain, investigate, analyse, and disseminate information relating to a financial offence or the proceeds of a financial offence. This includes an offence under any financial services legislation or an offence relating to ML, including drug ML, TF, or the breach of any international or domestic sanction prescribed by or under any enactment (s. 2(1) FIAA). The requirement to report suspicious activity relating to TF is found under section 60 of the CTA.

Criterion 29.2 (Met)—

a) ***(Met)—***Section 26(A) of the PCC (Amendment) Act 2021 designates the FIA as the authority for receipt of reports of suspicious transactions and other reports relating to ML and TF under the PCCA or any other enactment.

b) ***(Met)—***The FIA is designated as the authority to receive any other disclosure in relation to ML or TF (s. 26(A) PCC (Amendment) Act 2021). Such disclosures include cross-border transportation of cash, declarations of cash above US$10,000.00, under-declarations of cash, failure to declare cash, explanations given by persons regarding cash declarations, or under-declarations or failure to declare (s. 87(5A) CMDA (Amendment) Act 2021).

Criterion 29.3 (Met)—

a) ***(Met)—***Section 7(2) of the AMLTFCOP permits the FIA to seek further information from reporting entities or professionals.

b) ***(Met)—***Section 4(2)(i) of the Financial Investigation Agency (Amendment) Act 2021 requires FI, DNFBPs, NPOs, or other persons, in writing, to produce such documents or other information, excluding documents or other information subject to legal professional privilege, that the agency considers relevant to the performance of its functions. The FIA can access databases of entities such as the Registrar of Companies online registry system. The FIA accesses open-source information via World Check and covert methods. Through the IGC MoU, it can request information from members regarding AML/CFT.

Criterion 29.4 (Met)—

a) ***(Met)—***Section 4(2)(e) of the FIAA, sets out the requirement that the FIA conduct operational analysis by using available and obtainable information to identify specific targets, follow the trail of particular activities or transactions, and determine links between the identified specific targets and possible PCC, ML, TF, PF, and related trends and patterns.

b) ***(Met)—***Section 4(2)(f) of the FIAA, sets out the requirement that the FIA conducts strategic analysis, which uses available and obtainable information to identify ML, TF, and PF, and related trends and patterns. Available and obtainable information includes data that may be provided by domestic competent authorities and foreign financial investigation agencies.

Criterion 29.5 (Met)—Section 4(1) of the FIAA permits the FIA to disseminate information which relates or may relate to a financial offence or the proceeds of a financial offence; or a request for legal assistance from an authority in a foreign jurisdiction which appears to the Agency to have the function of making such requests. The FIA can disseminate upon request the information to local competent authorities (s. 4(2)(a) FIAA Amendment Act 2021, including the Police (FIA/RBVIPF MoU)). Such disseminations are required to be done by dedicated, secure, and protected channels (FIU SOPs).

Criterion 29.6 (Met)—

a) ***(Met)—***Confidentiality requirements are set out in policy in the form of the FIA's SOP which describes the requirements for handling, storing, dissemination, protection of, and access to information. Section 9(1) of the FIAA sets out the requirements regarding confidentiality for any person obtaining information in any form as a result of his/her connection with the Agency. Unlawful disclosure is an offence punishable upon summary conviction to a fine or term of imprisonment not exceeding one year or both. Section 10 of the FIAA mandates members of the Board, director, and staff of the FIA to subscribe to an oath of confidentiality taken before a Magistrate, Additional Magistrate, Registrar of the High Court, or a Justice of the Peace.

b) ***(Met)—***The FIA Vetting and Security Policy and Procedure requires that all final candidates for posts within the FIA be subject to background checks. Those checks include professional background and criminal history checks. Additionally, staff are required to take an oath of confidentiality before a Magistrate or Registrar before commencement of work at the FIA. As part of the orientation process staff are made aware of information and IT security protocols and building safety and security requirements.

c) ***(Met)—***The FIA SOP details the limits of access to the FIA's facilities. The FIA Information Technology Security Policy describes the requirements and limits for access to its IT systems. Within that policy staff clearance levels, data storage, virus, malware, ransomware, firewalls, and other IT security requirements are detailed.

Criterion 29.7 (Met)—

a) ***(Met)—***The FIAA permits the FIA to carry out its functions freely without interference. It receives a budgetary subvention from the VI government and the FSC, which is administered by the director. The Director of the FIA is in charge of the daily management of the Agency. There is a Board of Directors, comprised of public officials of which the Director of the FIA is a member. The functions of the Board under s. 4A of the FIAA include approval of the budget and issuance of policy directions. There are limitations of the Board's powers at paragraph 11 of Schedule 1 of the FIAA restricting it from interference in the management of the daily operations of the FIA, which are restricted to the director. The director is therefore unencumbered in his/her ability to make decisions regarding the analysis, requesting, and/or forwarding or dissemination of information.

b) ***(Met)—***The FIA has the ability to make arrangements and engage independently with other domestic competent authorities or foreign counterparts on the exchange of information. Primarily, the general powers of the FIA, contained at section 4(1) of the FIAA, include exchanging and disseminating financial intelligence and other information for international cooperation purposes, investigative and analytical purposes.

c) ***(Met)—***The FIA which is the FIU in the VI does not exist within the structure of another authority. The Head of the FIA is the director. The FIA is a stand-alone agency created as a body corporate by virtue of Section 3(2) of the FIAA.

d) ***(Met)—***Under Section 17(1) of the FIAA the FIA is permitted to hire its own staff. These appointments are made by the FIA's own Board which acts independently of government or industry influence.

Criterion 29.8 (Met)—The FIA has been a member of the Egmont Group since 2004.

Weighting and Conclusion

Recommendation 29 is rated compliant.

Recommendation 30 Responsibilities of Law Enforcement and Investigative Authorities

In its Third Round MER, the VI was rated compliant for this recommendation (previously R.27).

Criterion 30.1 (Met)—Section 4(1) of the Police Act empowers the RVIPF to enforce all laws that it is required to enforce. Those laws include ML and TF offences. As described in the RVIPF Financial Investigation Policy and the Financial Investigation Reference Manual the FCU of the RVIPF has primary responsibility for the investigation of fraud, ML offences, and TF offences. This investigative authority is extended to predicate offences captured under the DTOA, the C(JI)CA, and the PCCA regarding ML offences. Under the DTOA and the PCCA the FIA is another authority that can conduct investigations into ML/TF and predicate offences. Other LEAs such as HMC has ML and TF investigative powers pursuant to the CDMA, the PCCA, and the DTOA. The Department of Immigration also has minor investigative powers in this regard pursuant to the Immigration and Passport Ordinance.

Criterion 30.2 (Met)—Section 5(A) of the PCC (Amendment) Act 2021 permits a police officer or the FIA to conduct a ML/TF investigation in parallel to an investigation into the criminal conduct of a financial offence.

Criterion 30.3 (Met)—Under sections 36 and 37 of the PCCA and sections 40 and 41 of the DTOA police officers are authorized to apply to the court for orders that facilitate the identification and tracing of the proceeds of crime. Sections 95, 97, and 103 of the CMDA provide Customs officers with the powers to

search, seize, detain, or remove anything which appears to the officer may be liable for forfeiture. Regarding restraint, a prosecutor under section 17 of the PCCA and section 18 of the DTOA may apply for a restraint order on property that is or may become subject to confiscation or is suspected of being the proceeds of crime. Section 7(1) of the AT(FOM)(OT)O permits a constable to seize any property subject to a restraint order for the purpose of preventing it from being removed from the VI.

***Criterion 30.4 (Not applicable)*—**There are no non-LEAs in the VI with the responsibility for pursuing financial investigations of predicate offences.

***Criterion 30.5 (Met)*—**There are no anti-corruption authorities in the VI designated to investigate ML/TF offences arising from or related to, corruption offences under R.30.

Weighting and Conclusion

Recommendation 30 is rated compliant.

Recommendation 31 Powers of Law Enforcement and Investigative Authorities

In its Third Round MER, the Virgin Islands was rated compliant for this recommendation (previously R.28).

Criterion 31.1(Mostly met)—

a) ***(Met)*—**Section 36(1) of the PCCA permits a police officer in investigating ML to apply to the court for an order in relation to particular material or material of a particular description. Similarly, pursuant to section 40 of the DTOA, a police officer may apply for such material in a drug or drug ML investigation. Regarding the import and export of goods, section 102 of the CDMA permits a Customs officer to require any person concerned to provide information in relation to the goods and any relevant documentation. Section 5(2) of the Immigration and Passport Act (IPA) permits any Immigration Officer to summons any person it is allowed to interrogate under section 5(10)(c) of the IPA and may require any such person to produce any document upon which he may be interrogated. Pursuant to section 9 of the T(UNM)(OT)O, the Governor can direct any person to furnish any information by explanation or in documentation to determine compliance with or detect evasion of this law.

b) ***(Met)*—**Section 37 of the PCCA permits a police officer to apply to the court for an entry and search warrant for the purposes of a ML investigation. Section 41 of the DTOA permits a police officer to apply to the court for an entry and search warrant for the purposes of a drug trafficking and a drug trafficking ML investigation. Additional provisions for stop and search are found at section 21 of the Police Act which permits police officers to stop, search, and detain any aircraft, vessel, boat, vehicle, cart, or carriage in which he or she suspects stolen or unlawfully obtained or any smuggled goods may be found. This also applies to any person suspected of such unlawful activity. Pursuant to section 95 of the CMDA a magistrate can authorize a customs officer to enter and search any building or place. Section 95 of the CDMA permits a customs officer to stop and search a person suspected of possessing anything which is liable to forfeiture. Section 5(1)(b) of the IPA permits any Immigration Officer to search without a warrant any such vessel or anything contained therein or any vehicle being landed in the territory from any such vessel.

c) ***(Partly met)*—**Powers to take witness statements are provided for under s.6(2) of C(JI)CA, however these only relate to international cooperation cases. No provisions for the taking of witness statements other than under the C(JI)CA were provided.

d) ***(Met)*—**Pursuant to section 37(5) of the PCCA, section 42(5) of the DTOA, a police officer can seize and obtain evidence. Pursuant to section 95(1)(a) of the CDMA, a Customs officer can seize

anything that may be liable to forfeiture, and, at section 102(2) of the CDMA, a Customs officer can seize and detain any invoice, bill of lading, or other book or document as evidence.

Criterion 31.2 (Mostly met)—

a) ***(Mostly met)—***There is no statutory provision for the conduct of undercover operations in the VI. The RVIPF may only conduct such operations when authorized by the Governor. Authorities indicated to the assessment team that the common law allows for such operations and submitted a court ruling from the High Court (*R v. Andreas Norford, 2021*) which admitted as evidence an audio recording made covertly by law enforcement in a murder case. However there lacks an appropriate implementing legal framework in the VI as was pointed out by the judge in his ruling. The need for an implementing mechanism is further supported by legislation currently being drafted in the VI to provide such a legal framework.

b) ***(Met)—***Section 90 of the Telecommunications Act permits the Governor to make written requests and issue orders to telecommunications networks and providers of telecommunications services, to intercept communications for law enforcement purposes.

c) ***(Met)—***Section 14L of the Computer Misuse and Cybercrime Act Amendment Act 2019 permits the accessing computer systems.

d) ***(Not met)—***There is no statutory provision in the VI for the conduct of controlled delivery. Authorities indicated that the legal basis to authorise controlled deliveries is common law. The use of controlled delivery was explained to the assessment team in the form of reference to law enforcement operations but not legal judgements that addressed the point directly. The example provided demonstrated extraterritorial application in the form of international cooperation with another country. Its use in cases under VI judicial jurisdiction was not demonstrated. No case law supporting the use of controlled delivery in the VI was provided.

Criterion 31.3 (Met)—

a) ***(Met)—***Pursuant to a production order issued by a Magistrate under section 36 of the PCCA and section 40 of the DTOA, the RVIPF, and the FIA can identify whether natural or legal persons hold accounts. Further the FIA can require an FI, DNFBP, NPO, or other person, in writing to produce such documents or other information, excluding documents and information subject to legal professional privilege for the performance of its functions (s. 4(2)(I) FIAA). Documents and information are required to be provided within five business days (s. 4(4) FIAA).

b) ***(Met)—***A police officer may identify assets without prior notification to the owner (s. 36(6) PCCA).

Criterion 31.4 (Met)—Pursuant to the MoU between the FIA and RVIPF, the RVIPF can request information from the FIA. Further the IGC MoU permits all competent authorities such as Immigration and Customs, (which investigate associate predicate offences), to make requests to the FIA for the information that it holds.

Weighting and Conclusion

There are general provisions that empower law enforcement and investigative authorities in the VI to carry out the functions described under R.31. There are limitations, in the absence of enabling legislation to take witness statements other than under the CJIA for international cooperation cases and the conduct of controlled deliveries.

Recommendation 31 is rated largely compliant.

Recommendation 32 Cash Couriers

In its Third Round MER, the VI was rated compliant for this recommendation (previously SR.IX).

Criterion 32.1(Met) **—**Section 87(2)(d) of the CMD (amendment) Act 2021 requires persons to make inbound and outbound declarations of cash—defined as coins, notes, traveller's cheques, money orders, cheques, stocks, and bonds in any currency exceeding US$10,000. Under section 87(2A) of the CMD (Amendment) Act 2021 this extends to means other than baggage, including mail or cargo.

Criterion 32.2 (Met)—

a) ***(Not applicable)*****—**See (b) below**.**

b) ***(Met*****)—**Section 87(2)(d) of the CMDA requires a person entering or departing from the VI, to make a declaration of anything contained in the person's baggage or carried with the person which, in relation to cash, exceeds US$10,000. The declaration is made in writing.

c) ***(Not applicable)*****—**The declaration system in the VI is a written one.

Criterion 32.3 (Not applicable)**—**The VI uses a declaration system, not a disclosure system.

Criterion 32.4 (Met**)—**Section 87(3) of the CMDA requires that a person entering or about to depart from the VI shall answer the questions the proper officer may put to the person with respect to the person's baggage and anything contained in or carried with the person and shall, if required by the proper officer, produce that baggage and anything contained in it for examination at the place the Commissioner may direct. This includes the power of a Customs officer to question persons regarding a false declaration or failure to declare currency or BNIs.

Criterion 32.5 (Met)**—**Section 115(1) of the CMDA makes it an offence to provide HMC with information that is untrue in a declaration, notice, certificate, other document, or in a statement to a question asked by a Customs officer. The person is liable on summary conviction to a fine not exceeding US$10,000 or to imprisonment for a term not exceeding two years or both. In addition, any goods in relation to which the document or statement was made are liable to forfeiture. The fine and duration of sentence are proportionate and dissuasive.

Criterion 32.6 (Met)**—**Section 87(5A) of the CMDA requires the Commissioner of Customs to make reports to the FIA regarding suspicious cross-border transportation incidents as well as any explanations of the suspected person referred to upon detection of the suspicious incident.

Criterion 32.7 (Met)**—**The CLEA was created in 2017 to ensure greater coordination and collaboration in intelligence sharing among LEAs, and the pursuit and apprehension of criminals. The CLEA is comprised of the FIA, RVIPF, ODPP, HMC, and Immigration. Further, there is a bilateral MoU between the HMC and the FIA which assists in the facilitation of cooperation in the exchange of information regarding the cross-border transportation of currency and BNIs. There is also a duty on HMC to report information in this regard to the FIA (s.87(5A) CMDA).

Criterion 32.8 (Met)—

a) ***(Met)*****—**A police officer or a customs officer is empowered by section 37(A)(2) of the PCCA to seize and detain any cash being imported or exported from the VI if he or she has reasonable grounds to suspect that the cash directly or indirectly represents PCC. Cash includes coins, notes in any currency, cheques, and any other monetary or type of BNI (s. 37A(1)(a)). The provision for cash seizure is also available to police and customs officers at section 48(1) of the DTOA. Cash can be seized for an initial period of 72 hours (s. 48(3) DTOA and s. 37A(4) PCCA), longer (three months), and further (s. 48(4) DTOA) by order of a Magistrate up to a period not exceeding two years. Cash may not be released under any power conferred by s. 48 until any proceedings in pursuance of the application, including and proceedings on appeal are concluded.

b) ***(Not met)***—There is no provision to stop or restrain currency or BNIs where there is a false declaration. As such, there is no specification regarding a reasonable time for restraint regarding false declarations as required under this criterion.

Criterion 32.9 (Met)—

a) ***(Met)***—Reports of declarations made by the Commissioner of Customs to the FIA pursuant to section 87(5A) of the CMDA can in turn be shared by the FIA under section 4(1) of the FIAA to facilitate international cooperation. The provisions in the FIAA are consistent with the requirements under Rs. 36 to 40.

b) ***(Met)***—Assessment at sub-criterion 32.9(a) applies.

c) ***(Met)***—Assessment at sub-criterion 32.9(a) applies.

Criterion 32.10 (Partly met)—Section 87(5C) of the CMDA requires the Commissioner to establish appropriate safeguards and policies to ensure that information collected or received under this section in respect of declarations, under-declarations or non-declarations of cash is properly maintained and used so as not to restrict (i) trade payments between the territory and other countries for goods and services; or (ii) the freedom of capital movements in any way, save as may be required under an enactment. However, there is no accompanying provision in the Cash Seizure Policy provided that outlines the safeguards for information collected or received pursuant to the requirements under this recommendation.

Criterion 32.11 (Met)—A person commits an offence if he converts or transfers any property that represents the PCC from the VI (S. 30(1)(b) PCCA) and S. 35(1)(b) DTOA)). Fines range from US$10,000 to $500,000. Terms of imprisonment range from 6 months to 14 years with combinations of both fines and imprisonment. The fines and imprisonment are both dissuasive and proportionate. The provisions are consistent with the requirements of R.4 and enable the confiscation of such currency and BNIs.

Weighting and Conclusion

The VI has a declaration system in place with provisions that account for the seizure and detention of currency and BNIs. There is no provision that ensures the strict safeguarding of information collected through the declaration system. There is no provision to stop or restrain currency or BNIs where there is a false declaration. As such there is no specification regarding a reasonable time for restraint regarding false declarations.

Recommendation 32 is rated largely compliant.

Recommendation 33 Statistics

The VI was rated largely compliant on statistics (former Recommendation 32) in its Third Round MER. No records on ML investigations or number of production orders or search warrants were maintained by the police.

Criterion 33.1 (Met)—Competent authorities maintain statistics on matters relevant to the effectiveness and efficiency of the VIs' AML/CFT system. These statistics are reported to the IGC Secretariat on a quarterly basis.

a) ***(Met)***—The FIA maintains statistics on the number of STRs received and disseminated, which are also published in the FIA's Annual Reports.

b) ***(Met)***—The RVIPF FCU, ODPP, Magistrate Court and Supreme Court maintain statistics on ML/TF investigations, prosecutions, and convictions via their case management systems. The

RVIPF-FCU's Financial Investigation Policy mandates the maintenance of AML/CFT/CPF statistics and the provision of monthly statistics to the IGC and RVIPF management.

c) ***(Met)***—The RVIPF-FCU, ODPP, Magistrate Court, and Supreme Court maintain statistics on property frozen, seized and confiscated via their case management systems.

d) ***(Met)***—All relevant competent authorities maintain information on MLA (maintained by the AGC) and international requests for co-operation made and received. The FIA publishes in its Annual Reports statistics on the number of requests for information received from foreign FIUs and LEAs, as well as outgoing requests for information (disaggregated by entities, countries, and sectors).

Weighting and Conclusion

The authorities maintain appropriate statistics on their AML/CFT systems.

Recommendation 33 is rated compliant.

Recommendation 34 Guidance and Feedback

In its Third Round MER, the VI was rated largely compliant for former R.25 since FIA annual reports did not include results of disclosure and information on typologies. Due to the recent enactment of the AMLTFCOP on February 22, 2008, its effective implementation was not yet assessed at that time.

Criterion 34.1 (Mostly met)—The AMLTFCOP includes explanatory notes providing comprehensive guidance to assist FIs and DNFBPs in applying the AML/CFT requirements. The AMLTFCOP (Sch. 3) also provides guidance on indicators for suspicious transactions by sector for various sectors and types of transactions. In addition, the FSC has published on its website sector-specific guidance assisting its licensees in complying with AML/CFT requirements. Guidelines have been issued for the banking, insurance, money services, VASPs, and TCSPs sectors. At sectoral level, feedback is only provided to the investment business sector through an Investment Business Sector Report outlining the findings of onsite inspections of this sector conducted between 2020 and 2021. In addition, guidance specifically addressing the TCSP sector was published on March 21, 2023, including guidance on detection and reporting of suspicious transactions.

The FIA in 2019 (revised in 2021) issued "Guidance Notes on Suspicious Transaction Reports" and publishes supporting material such as FAQs on its website. The guidelines predominantly focus on the relevant legal requirements and procedures to file STRs and to a certain extent on detecting suspicious transactions by providing a list of red flags. The FIA also issued sector-specific STR FAQs for each of the DNFBP sectors (September 2022), as well as for FIs. However, this material does not specifically address the TCSP sector. The FIA also issues typologies within their annual reports to a limited extent, which provides some guidance to FIs and DNFBPs on scenarios that lead to ML/TF.

In February 2022 (revised February 2023), the FIA issued sector-specific guidelines for the different DNFBP sectors through extensive sets of Guidance Notes on AML/CFT/PF requirements as well as "Quicksheets" for legal practitioners, accountants, real estate agents, and HVGD to assist in applying the AML/CFT measures. The guidance notes provide information and guidance on reporting suspicious activity and suspicious transactions, including information on unusual versus suspicious transactions, as well as reporting and the procedures DNFBPs should put in place. Corresponding webinars have also been held and available to view from the FIA's website. Furthermore, the FIA's SRA Reports on ML and on TF from 2020 are communicated through its website and may support the sectors in providing feedback on inherent risk-related information in the sectors but predominantly address vulnerabilities stemming from inadequate AML/CFT controls and measures in place in the sectors. A webinar was organized to present the outcomes of the SRAs to the sectors (available to view from the FIA's website). The SRA report on TF is jointly

produced with the FSC. The FIA's "Themed Examinations Key Findings Report: Due Diligence (2021)," sharing key findings of the themed examinations held on this topic. Following the findings of the thematic examinations, the FIA also held two webinars on "Due diligence requirements for DNFBPs."

The FIA also has mechanisms in place to provide feedback to reporting entities on the quality of STRs submitted. This is provided for at section 8.8 of the AIU's SOPs. There is a standard feedback letter issued to the entities which advises whether or not the report filed led to a disclosure to relevant authorities. The relevant templates are mentioned in paragraph 8.8.2 of the SOPs. In addition, the senior analyst is tasked with monitoring the quality of reports which did not lead to dissemination. This then informs the outreach to be conducted: see paragraph 8.8.3 of the SOPs.

Weighting and Conclusion

The FSC and the FIA both have frameworks in place that allow for the provision of guidance and feedback to FIs and DNFBPs. Guidance is given to all FIs and DNBFPs through explanatory notes within the AMLTFCOP and additional guidance provided by both the FIA and the FSC to aid entities and professionals in complying with AML/CFT requirements. The FIA guidelines predominantly focus on the relevant legal requirements and procedures to file STRs and to a certain extent on detecting suspicious transactions by providing a list of red flags. Where the FIA also issued sector specific STR FAQs this material does not specifically address the TCSP sector.

Recommendation 34 is rated largely compliant.

Recommendation 35 Sanctions

The VI was rated partially compliant in its Third Round MER under former R.17, because sanctions imposed in the AMLR and the AMLTFCOP were not dissuasive.

Criterion 35.1(Mostly met)—*R.6*: A person who contravenes freezing requirements, or who makes funds or financial services or other related services available to a designated person commits an offence and is liable on summary conviction, to a term of imprisonment of five years or to a fine not exceeding US$100,000, or both; or on conviction on indictment, to a term of imprisonment of seven years or to a fine not exceeding US$250,000, or both (paragraphs 2(1);2(4); 3(1) and 3(3) of Schedule 4 of the CTA). A person who makes funds or financial services or other related services available for the benefit of a designated person commits an offence and is liable on summary conviction, to a term of imprisonment not exceeding five years or to a fine not exceeding US$100,000, or both; or on conviction on indictment, to a term of imprisonment not exceeding seven years or to a fine not exceeding US$250,000, or both (paragraphs 4(1) and 4(4) of Schedule 4 of the CTA). Similar liabilities exist for making economic resources available to, and for the benefit of, designated persons pursuant to paragraphs 5(3) and 6(4) of Schedule 4 of the CTA. These sanctions can be considered dissuasive and proportionate.

R.8: Administrative penalties for contraventions of the NPOA range from US$1,000 to $20,000 depending on the nature and seriousness of the contravention, recidivism, level of negligence, and financial capacity of the offender (ss.25 and 27, and Schedule 3 of the NPOA). An NPO that has contravened the NPOA is also liable to de-registration. These sanctions can be considered dissuasive and proportionate.

Rs. 9 to 21: As mentioned under c.27.4, the FSC is specifically authorized to take a range of enforcement actions against licensees for breaches of AML/CFT requirements, under the FSCA, a financial services legislation, the Regulatory Code or a practice direction (s.37(1)(a)(i) and (ii) FSCA). This includes the power to revoke or suspend the licensee's license under s.38; to issue a directive imposing a prohibition, restriction, or limitation on the financial services business that may be undertaken by the licensee s.40; to issue a warning letter against the licensee; to impose such administrative penalties on the licensee as may be provided for the regulations or pursuant to the AMLTFCOP or any other enactment under which the

FSC has power to impose an administrative penalty; to require the person to pay for costs and expenses incurred by the FSC in the conduct of any investigation or the taking of enforcement action against the person as the FSC thinks fit; and to issue an order prohibiting the person from taking up employment within the financial services industry for such period as the FSC may specify in the order or for an indefinite period (s.37(2)).

Regarding the power to impose an administrative penalty, s.57(1) of the AMLTFCOP outlines that a person who contravenes or fails to comply with the provisions specified in Schedule 4 of the AMLTFCOP is subject to the penalties prescribe varying from US$50,000 for an individual for not complying with s.43(1) and (2)—failure to ensure required contents of record, or to ensure that the manner of keeping records does not hinder monitoring of business relationships and transactions—to US$75,000 for a corporate body for non-compliance with the requirement to pay special attention to business relationships or transactions connected to a jurisdiction that does not apply or insufficiently applies FATF Recommendations as required under s.52. The available sanctions can be considered to be proportionate and dissuasive.

Rs. 22 and 23: DNFBPs are also subject to the administrative penalties under the AMLTCOP. In addition, the FIA may take enforcement actions against DNFBPs pursuant to the FIAA (s.5J(1) and (2)): (i) the issuance of a warning, and (ii) imposing an administrative penalty in the amount prescribed under the FIAA or any other enactment or, where a penalty is not prescribed, in an amount not exceeding US$75,000 and may issue a directive under s.51 FIAA. The FIAA does not define "person" but seems to use this term to include both the DNFBP as well as any relevant (other) natural or legal person. This is confirmed by s.36 of the Interpretation Act. The FIA has a more limited range of sanctions available (also see c.28.4c).

In addition, section 27(7) of the PCCA allows both the FSC and the FIA to impose administrative penalties for breaches of the AMLTFCOP that have been deemed offences. The penalties for offences range from US$50,000 to $75,000, as outlined in Schedule 4 of the AMLTFCOP. Those can be considered proportionate and dissuasive.

Criterion 35.2(Met)—Where a body corporate fails to comply with the requirements of the AMLTFCOP, every director, partner, or other senior officer of the body corporate shall be proceeded against as if the director, partner or other senior officer committed the offence and is liable on conviction to the penalty prescribed, unless this person can show that neither he or she knew nor connived in the commission of the offence (s.27(5) and (6) PCCA).

Weighting and Conclusion

The range of administrative sanctions available to the FIA with respect to the DNFBPs under its supervision is limited.

Recommendation 35 is rated largely compliant.

Recommendation 36 International Instruments

The VI was largely compliant with the requirements of this Recommendation during the Third Round MER, as the United Kingdom had not extended the Palermo and TF Conventions to the Territory and the Territory had not prohibited all chemicals scheduled under the Vienna Convention. From these deficiencies, the VI amended the Schedule 2 of the C(JI)CA in 2009 to include a complete list of prohibited chemicals.

Criterion 36.1 (Met)—The United Kingdom has extended the Vienna, Palermo, TF, and Merida Conventions on behalf of the VI (declarations on the extension of the Vienna, Palermo, TF, and Merida Conventions).

Criterion 36.2 (Met)—The VI fully implements the relevant articles of the Vienna and Palermo Conventions with the provisions of the DPMA, DTOA, C(JI)CA, Extradition Act 2003 (Overseas Territories) Order 2016, MLA(United States) Act, CC, and PCCA.

The TF Convention is implemented with provisions from the previously mentioned laws and the CTA, T(UNM)(OT)O, AT(FOM)(OT)O, the Afghanistan (Sanctions), (Overseas Territories) Order 2020 and the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (Overseas Territories) Order 2020.

The relevant articles from the Merida Convention are mostly implemented with provisions from the CC, PCCA, DTOA, CTA, CDMA, AMLTFCOP, AMLRs, the Interpretation Act (Cap 136), FSCA, FIAA, C(JI)CA and Extradition Act 2003 (Overseas Territories) Order 2016; however, there are no provisions that address Articles 29, 30, 44(9) and (17), 48(1)(c) to (f), 50, 52(2), (5) and (6), 53-55 and 57 of this Convention.

Weighting and Conclusion

The United Kingdom has extended the Vienna, Palermo, TF, and Merida Conventions to the VI and the country has enacted domestic legislation to implement their relevant provisions; notwithstanding, there are some deficiencies regarding the implementation of the TF and Merida Conventions. Considering that the VI has introduced legislation to cover most of the relevant Articles from these Conventions, the remaining shortcomings are regarded as proportionally minor.

Recommendation 36 is rated largely compliant.

Recommendation 37 Mutual Legal Assistance

The VI was rated compliant with the requirements of this Recommendation during the Third Round MER.

Criterion 37.1 (Mostly met)—The VI provides wide range of MLA as indicated in the following table:

Table 37.1. Types of MLA provided by the VI

Act	Scope	Type of MLA
C(JI)CA	All crimes	• Service of overseas process (sec. 2(3)(b). • Obtaining documentary evidence, statements and witness testimony (secs. 6(3) and 8). • Conduct searches in premises and seizure of evidence found there (sec. 6(7) of the C(JI)CA). • Registration and enforcement of foreign forfeiture orders (sec. 6). The Criminal Justice (International Cooperation) (Enforcement of Overseas Forfeiture Orders) Act complements the C(JI)CA in this regard with secs. 4 and 7-10.
PCCA	All indictable offences other than drug trafficking offences save for the purposes of the making of a confiscation order	• Registration and enforcement of foreign forfeiture orders (sec. 33 of the PCCA). This is complemented with sec. 19 of the Proceeds of Criminal Conduct (Enforcement of Overseas Confiscation Orders) Order.
ATO	Terrorism financing	• Registration and enforcement of foreign forfeiture orders (sec. 11 of Schedule)
DTOA	Drug offences	• Registration and enforcement of foreign forfeiture orders (secs. 38 and 39). This is complemented with the provisions of the Drug Trafficking Offences (Enforcement of Overseas Confiscation Orders) Order.
MLA (USA) Act	Any conduct punishable by more than one year's imprisonment / Racketeering / Narcotics trafficking / Specific types of fraud / Insider trading /Fraudulent securities practices / Foreign corrupt practices	• Compel witness or for production of evidence (sec. 6). • Authentication of official documents (sec. 7) • Transfer of persons in custody (sec. 11) • Service of notices and documents (sec. 14)

The Criminal Justice (International Cooperation) (Enforcement of Overseas Forfeiture Orders) Act, mentioned in the first row of the table above, is applicable to "drug trafficking offences" and "any offence corresponding or similar to an indictable offence which Part III of the C(JI)CA applies," but Part III of the C(JI)CA does not set out offences, which makes legislation unclear.

It should be noted there is no legal basis that allows the VI to provide this range of MLA rapidly.

Criterion 37.2 (Mostly met)—The Attorney General and the DPP transmit and execute MLA requests related to investigations and to obtaining statements or other relevant evidence for criminal proceedings (secs. 6 and 8 of the C(JI)CA and sec. 4 of the MLA(USA)A). The Attorney General is also the central authority for foreign forfeiture and confiscation requests and treaty-based requests with the United States (sec. 6 of the C(JI)CA, sec. 33 of the PCCA, sec. 19 of the PCC (Enforcement of Overseas Confiscation Orders) Order, and sec. 4 of the MLA(United States)A). Additionally, The Governor of the VI is the central authority specifically responsible for the enforcement of foreign forfeiture or restraint orders applicable to terrorist property (sec. 11 of Schedule 2 of the AT(FOM)(OT)O).

The Attorney General has processes for the timely execution of MLA requests, although these do not include an approach to prioritize them (secs. 9.2 to 9.6 of the GC's SOPs for MLA approved in March 2023).[75] In addition, the FIA must provide responses to requests transmitted by the Attorney General between 7 and 14 days of receipt, which indicates that all requests are treated the same, and there are no criteria for prioritizing them, although this timeframe should be short enough to ensure the rapid provision of assistance in most cases. If the FIA receives a request from the United States, it must assign a Senior Investigating Officer or any person senior to his/her position, which facilitates the speed with which these requests are processed as there are less administrative steps required in respect thereof (e.g., there is no need for a witness statement to be prepared by an investigating officer) (Section XIV of the FIA's SOPs). As indicated in criterion 40.2(d), the ODPP, RVIPF, HMC, and the GBCC do not have criteria to prioritize requests, which has a potential impact on the way they handle MLA requests.

The case management system used by the AGC consists of a combination of software to record and transmit requests and manual procedures to monitor and analyze them. The FIA and FSC uses software to store digital copies of documents related to MLA requests and to manage the requests for information. However, other competent authorities do not maintain case management systems to manage these requests.

Criterion 37.3 (Met)—MLA is not prohibited or made subject to unreasonable or unduly restrictive conditions (sec. 6(2)(b) of C(JI)CA; art. 3 of the Schedule to the MLA (United States) A; section 4.1.9 of the *Handbook on International Co-operation and Information Exchange*; section 1 of AGC's Guidance for the SOP for MLA Requests).

Criterion 37.4 (Met)—

a) (***Met***)**—**In general terms, the VI does not refuse MLA requests on the sole ground that the offence is also considered to involve fiscal matters. The only exception to this is that the Governor cannot provide assistance on requests relating to a fiscal offence if criminal proceedings have not yet been instituted in the requesting country, unless the request comes from a Commonwealth country or territory or a country or territory that is party to a treaty that the United Kingdom is a party and made applicable to the VI, there is dual criminality, or, where there is no dual criminality, the duty arises from a treaty (sec. 5(3) of the C(JI)CA).

b) (***Met***)**—**As explained in R.9, FIs are not subject to secrecy or confidentiality requirements and, therefore, these could not be put forward as a basis to refuse a request for MLA. Additionally, if an MLA request is based on the MLA (United States) Act, any person, including FIs and DNFBPs,

[75] For additional information on how the AGC prioritizes requests in practice, please see section 8.2.1 of the body of this report.

are protected from legal action if they divulge any confidential information or gives any testimony in conformity with a request. Communications between a professional legal adviser and his or her client are subject to legal privilege and cannot be subject to seizure for the purpose of MLA. which is in line with the requirements of this criterion (sec. 6 of the C(JI)CA; sec. 9 of the MLA (United States) Act; and sec. 6.8 of the *Handbook on International Co-operation and Information Exchange*).

Criterion 37.5 (Met)—Officers of all competent authorities are required to maintain the confidentiality of MLA requests (sec. 58 of the Service Commissions Regulations 2014). In addition, the Attorney General must maintain the confidentiality of MLA requests that he receives from the United States and the information contained in them to protect the integrity of the investigation or inquiry (art. 12 of the Schedule to the MLA (United States) A).

Criterion 37.6 (Mostly met)—In general, where MLA requests do not involve coercive actions, the VI does not make dual criminality a condition for rendering assistance. The only circumstance where the request would not be granted is set out in the C(JI)CA, i.e., if no proceedings have been instituted in the case of a fiscal offence and the requesting country is not a Commonwealth country nor has a treaty that provides for the rendering of assistance for the purposes of criminal proceedings or investigations with the VI, then the assessed country requires the concurrence of dual criminality regardless of whether coercive actions are involved (sec. 5(3) of the C(JI)CA).

Criterion 37.7 (Met)—Dual criminality is only required for MLA when the request for assistance relates to a fiscal offence. In such a case, the requirement is satisfied regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence (sec. 5(3)(b) of the C(JI)CA).

Criterion 37.8 (Mostly met)—

a) ***(Mostly met)—***The Attorney General can direct a police officer to interrogate and take statements for the purpose of giving effect to a request, the production of records held by FIs, DNFBPs, and other natural or legal persons to satisfy an MLA request and to apply to a judge or Magistrate for a warrant authorising the police officer to enter and search those premises and to seize any such evidence found there; however, the legislation does not cover the searching of persons and seizing evidence in cases not related to searches in premises (secs. 6(3), (7) and (9) of the C(JI)CA and the joint reading of sec. 8(3) of the C(JI)CA and sec. 36 of the PCCA).

b) ***(Mostly met)—***The Attorney General can direct a police officer to conduct an investigation for the purposes of giving effect to a request for assistance. As such the powers and investigative techniques available to the RVIPF according to the analysis of R.31 can be utilised in conducting an investigation as directed by the AGC in response to a request for assistance from a foreign authority.

Weighing and Conclusion

The VI has central authorities and extensive legislation to provide a wide range of MLA, which does not include unduly restrictions or criteria for refusal; however, the legislation in place does not ensure the timely provision of MLA. On the other hand, dual criminality is a requirement if a country requests information relative to a fiscal offence but does not have an MLA treaty with the VI, which is a minor deficiency considering the specific case to which this limitation applies. In addition, there are some limitations with respect to investigative powers that can impact the ability to provide MLA.

Recommendation 37 is rated largely compliant.

Recommendation 38 Mutual Legal Assistance: Freezing and Confiscation

The VI was rated compliant with the requirements of this Recommendation during the Third Round MER. Currently, the Recommendation cover requirements related to identifying, freezing, seizing, or confiscating property of corresponding value. Since the MER, the VI enacted the ASA, 2020.

***Criterion 38.1 (Mostly met)*—**The VI has the authority to act in response to requests by foreign countries to freeze, seize, or confiscate (i) laundered property from; (ii) proceeds from; (iii) instrumentalities used in; (iv) instrumentalities intended for use in ML, predicate offences, or TF; or (v) property of corresponding value (secs. 3, 4, 6 17(3) and (8), 32 and 33 of the PCCA as amended by the PCC (Enforcement of External Confiscation Orders) Order). There are no provisions that ensure that expeditious action in response to MLA requests nor on the identification of the types of property referred to in the sub-criteria.

***Criterion 38.2 (Met)*—**The VI does not execute requests for cooperation relative to non-conviction-based confiscation proceedings and related provisional measures as the PCCA and the DTOA require that confiscations are based on sentences, which is in line with the requirements of this criterion (sec. 6 of the PCCA and sec. 5 of the DTOA).

***Criterion 38.3 (Partly met)*—**

a) ***(Partly met)*—**The VI does not have legislative arrangements for co-ordinating seizure and confiscation actions with other countries; notwithstanding, the RVIPF-FCU can arrange cooperation in this regard through the Asset Recovery Inter-Agency Network for the Caribbean.

b) ***(Met)*—**The Attorney General can initiate the application of a mechanism to manage and dispose of frozen, seized, or confiscated property. On an application made by the Attorney General on behalf of the government of a requesting country, the High Court may register an external confiscation order, whose enforceability enables the use of a restraint order applicable to any realisable property (secs. 17, 32, and 33 of the PCCA). Receivers can realise any realizable property in such manner as the Court may direct (sec. 19(4) of the PCCA) In addition, the Attorney General can apply to a judge for the management of seized and confiscated property; once granted, the property is entrusted to the ASFMC,[76] which has the power to sell or destroy the property (secs. 4(1), 5, 7, 8 and 9 of the ASA, 2020)

***Criterion 38.4 (Met*)—**The VI can share confiscated property with other countries when two conditions are met: the confiscation is, directly or indirectly, the result of coordinated law enforcement actions, and the sharing arrangements are based on agreements with the government of a foreign state (sec. 13 of the ASA, 2020). At the time of writing this report, the VI had not signed agreements in this regard; hence, the country is not able to share assets with other countries. However, no provisions of the legislation prohibit or obstruct the ability of the authorities to share assets in this way on an ad hoc basis**.**

Weighting and Conclusion

The VI has a good framework applicable to freezing, confiscating, and disposing of realizable property in response to requests for MLA but has weaknesses regarding taking expeditious action (such as a legal basis for carrying out joint cross-border confiscation operations).

Recommendation 38 is rated largely compliant.

[76] The Committee is comprised by the Financial Secretary, the Managing Director of the FSC, the Commissioner of Police, the Commissioner of Customs, the Director of the FIA, the Director of the ITA, and the Office of the Premier.

Recommendation 39 Extradition

The VI was rated compliant with the requirements of this Recommendation during the Third Round MER. Since the MER, the United Kingdom extended the provisions of the Extradition Act 2003 by means of The Extradition Act 2003 (Overseas Territories) Order 2016 to the VI.

Criterion 39.1 (Met)—

a) ***(Met)—***ML and TF are extraditable offences provided that the conduct would constitute an extradition offence if it occurs in an extradition territory; the conduct would constitute an offence under VI law , punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in the VI; and the conduct is punishable under the law of the extradition territory (sec. 137(3) and Schedule 2 of The Extradition Act 2003 (Overseas Territories) Order 2016).

b) ***(Met)—***The AGC can use the same systems and procedures established for processing MLA requests to execute extraditions; additionally, the processes for the execution of extradition requests ensure these are processed in a timely manner. Although procedures do not set out criteria to prioritize requests, this is regarded as a minor deficiency in view of the low number of requests received by the country and that generally extraditions take years to be completed (Sections 72, 74, 75, 93, 105, 108, 110 and 114 and Schedule 3 Part 2 of the Extradition Act 2003 (Overseas Territories) Order 2016 and the Extradition Manual).

c) ***(Met)—***The VI does not place unreasonable or unduly restrictive conditions on the execution of requests; thereon:

   i. The Governor can refuse to issue a certificate if the requested person has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, or such fear makes the person unwilling to avail to the protection of the requesting country or to return to it when this was its former country of residence. The Governor can also deny an extradition if the requested person has been granted leave to enter or remain in the VI if extraditing him or her would be in breach of his/her right to life or his/her right not to be subjected to torture or to inhuman or degrading treatment or punishment (sec. 70(1), (2) and (8) of the of The Extradition Act 2003 (Overseas Territories) Order 2016).

   ii. Judges may deny extradition based on the rule against double jeopardy, extraneous considerations,[77] the passage of time,[78] hostage-taking considerations,[79] and forum.[80] Judges can also refuse an extradition request if the person's extradition would be incompatible with the

[77] In The Extradition Act 2003 (Overseas Territories) Order 2016, the term "extraneous considerations" refers to the extradition request being made for prosecuting or punishing the requested person on account of his or her race, religion, nationality, gender, sexual orientation, or political opinions. It also refers to the conclusion that, if extradited, the requested persons might be prejudiced at his or her trial or punished, detained, or restricted in his or her personal liberty for the same reasons referred to previously.

[78] The "passage of time" after an offence has happened can become a cause of refusal if the trial against the requested person would be unjust or oppressive.

[79] The term "hostage-taking considerations" refers to situations in which, if the requested person is extradited, he or she would not be able to communicate with the territory which is entitled to exercise rights of protection in relation to him or her.

[80] The term "forum" refers to the country in which the prosecution should take place according to where the substantial measure of the requested person's relevant activity was performed.

Human Rights Convention (secs. 79-84 and 87 of the of The Extradition Act 2003 (Overseas Territories) Order 2016).

Criterion 39.2 (Met)—The VI extradites its nationals; there is no barrier under the VI legislation preventing the extradition based on nationality.

Criterion 39.3 (Met)—The VI requires dual criminality for extradition. This requirement is satisfied regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence and it is punishable with a minimum of one year of imprisonment (secs. 137 and 138 of The Extradition Act 2003 (Overseas Territories) Order 2016).

Criterion 39.4 (Met)—The VI legislation provides for a simplified extradition procedure when the requested person consents to be extradited. In such a regard, formal extradition hearings are not required, and the case is sent immediately to the Governor for a final decision (sec. 127 of The Extradition Act 2003 (Overseas Territories) Order 2016).

Weighting and Conclusion

Recommendation 39 is rated compliant.

Recommendation 40 Other Forms of International Co-operation

The VI was rated compliant with the requirements of this Recommendation during the Third Round MER. The previous MER focused on the FSC and the FIA only, while the present report identifies a broader set of competent authorities as relevant for the analysis of this Recommendation, i.e., the RVIPF, HMC, ODPP, ITA, and the GBCC. Particularly, the ITA is an authority created in 2018, which was not considered in the previous round.

General Principles

Criterion 40.1 (Mostly met)—The competent authorities of the VI can provide a reasonable range of international cooperation in relation to ML, predicate offences, and TF.

a) **The FIA and the FSC (as supervisors)**: In relation to FIs, the FSC conducts examinations or may appoint an examiner or apply for a commissioner to be appointed to conduct an examination under oath on behalf of a foreign regulating authority (sec. 33D of the FSCA). The FSC has set out a turnaround of 21 days for processing incoming international cooperation requests (section on Service Standard for Processing Incoming International Cooperation Requests of the FSC's *International Cooperation Guide*). There are no provisions that allow the FSC to exchange information spontaneously. Concerning DNFBPs, the FIA can disclose information, upon request in writing or on its own volition, to any foreign authority that exercises a power or performs a function similar to that of the agency in relation to a DNFBP; additionally, it can request the production of information, excluding information subject to legal professional privilege to be shared with foreign authorities (secs. 2(1), 4(1)(b) and (2)(d), and (5A) of the FIAA).

b) **The FIA (as FIU):** In addition to the power to disseminate and request the production of information referred previously, the FIA can freeze accounts upon request from a foreign FIA or an LEA and spontaneously disclose information revealed to or in possession of the agency (sec. 4(2)(c) and 5A of the FIAA). Additionally, the FIA can cooperate under the framework established by the Egmont Group. Statistical data shows that the cooperation provided by the FIA can be regarded as generally expedited.

c) **Customs**: HMC can cooperate with any foreign LEA, upon request or spontaneously, for the investigation of offences (sec. 142A(1) of the CDMA). HMC is also a signatory to the regional CCLEC MoU which is used to share information, upon request and spontaneously, concerning offences against customs laws; moreover, HMC and the U.S. Coast Guard patrol common territorial waters and share information and resources in order to combat the illicit trafficking in drug or psychotropic substances (Agreement between the Government of the United States and the Government of the United Kingdom concerning Maritime and Aerial Operations to Suppress Illicit Trafficking by Sea in Waters of the Caribbean and Bermuda or "Ship Rider Agreement with the U.S."). There are no provisions that require the rapid provision of information.

d) **RVIPF:** The RVIPF provides information to other foreign police agencies via INTERPOL, which are aimed to be processed in four weeks (section "Timescales" of the *Interpol Policy* issued by the RVIPF in March 2023). The RVPF is also able to cooperate with the U.S. Coast Guard to suppress illicit drug trafficking based on the Ship Rider Agreement with the United States On the other hand, the RVIPF-FCU engages in informal assistance with several jurisdictions with which it does not have MoUs, which can lead to future MLA requests.

e) **ODPP:** There is no information on the types of international cooperation that the ODPP can provide, and whether this can be provided rapidly and both upon request and spontaneously.

f) **ITA:** The ITA provides assistance concerning tax matters, including information relevant to the investigation or prosecution of tax matters and legal and beneficial ownership of legal persons and arrangements and NPOs, based on TIEAs subscribed by the VI with 28 jurisdictions. The VI can initiate the spontaneous exchange of information in the TIEAs and has done so with at least one jurisdiction. All TIEAs set out a timeframe of 90 days to execute an RFI. The ITA also has powers to issue requests for information, apply for search warrants, allow foreign competent authorities to conduct interviews and tax examinations in the Territory, and service documents (secs. 5, 6, 7 and 10 of the MLA (Tax Matters) Act).

g) **The Gaming and Betting Control Board**: The Board (which is not yet in operation) does not have a framework to provide international cooperation.

Criterion 40.2 (***Partly met***)**—**

a) ***(Mostly met)*—**The FSC has a lawful basis to assist foreign regulatory authorities (sec. 33D of the FSCA and 39 bilateral and multilateral MoUs signed with foreign supervisors). The cooperation of the FIA with other supervisors and FIUs is based on the FIAA (sec. 4(1)(b), 4(2)(C) and 5A of the FIAA). The ITA exchanges information based on the MLA(TM)Act. The RVIPF can cooperate based on the Ship Rider Agreement with the United States, while HMC is a party to the same agreement and the CCLEC MoU, which also seems to be basis that allows to cooperate with a limited set of foreign authorities. In addition, HMC also can cooperate with foreign LEAs according to the provisions of the CDMA (sec. 142A(1) of the CDMA). There are no provisions that set out the legal basis for the GBCC or prosecutors to provide cooperation.

b) ***(Met)*—**There are no laws authorizing competent authorities to use the most efficient means to cooperate, but there are no restrictions either. In addition, the FSC and the FIA can cooperate directly with foreign regulatory authorities and FIUs, respectively (sec. 33D of the FSCA, MoUs signed by the FSCA with foreign supervisors, and (sec. 4(1)(b) of the FIAA); the RVIPF can exchange information via the INTERPOL network and engages in police-to-police exchanges in the initial stage of in investigations to exchange intelligence; the ITA can cooperate based on TIEAs; and HMC has become a member of regional customs organizations for the exchange of information relevant for the identification of offences.

c) ***(Mostly met)*—**The FSC uses encrypted email for cooperation. The FIA has access to the ESW for the exchange of information and its databases utilize firewalls for the protection of information.

The RVIPF communicates with international police forces through INTERPOL via the I-24/7 secure link on an encrypted virtual private network via encrypted email. For its part, HMC shares information with other customs agencies through CCLEC and the World Customs Organization, although no information was provided regarding how information is secured when using these channels. The ITA uses encrypted emails, secured network databases and registered courier services to exchange information (section 3.2.1 of the *Exchange of Information Manual* of the ITA). There are no provisions gateways, mechanisms, or channels in this regard in relation to the ODPP and the GBCC.

d) ***(Mostly met)***—The FIA has procedures for the timely execution of requests (Section XIII of the FIA's SOP) and follows the Egmont Principles for the prioritization or timely execution of requests. The FSC prioritizes requests based on whether the foreign competent authority requests the assistance be provided within 72 hours or less time (section on "Service Standard for Processing Incoming International Cooperation Requests" of the *International Cooperation Guide* of the FSC, issued in March 2023). The ITA, on the other hand, executes incoming requests according to the timeframes agreed in the TIEAs with other jurisdictions. The ODPP, RVIPF, HMC, and the GBCC do not have criteria to prioritize requests for assistance.

e) ***(Partly met)***—The FIA (para. 6.10 of the FUI's SOPs), the FSC (section on "Confidential Nature of IC Requests" of the *International Cooperation Guide* of the FSC), and the ITA (sections 3.5 and 5.2 to 5.4 of the ITA's *Exchange of Information Operations' Manual*) have clear processes for safeguarding the information received. The GBCC, RVIPF, the ODPP, and HMC do not have processes for safeguarding information received or available to the competent authorities.

Criterion 40.3 (Partly met)—The FSC and the FIA are parties to bilateral or multilateral agreements or arrangements to cooperate with foreign counterparts (sec. 33D of the FSCA and sec. 4(1)(b) of the FIAA). Regarding tax matters, the VI is party to 28 bilateral TIEAs. There are no provisions that require the the ODPP, RVIPF, HMC, or the GBCC to enter into bilateral or multilateral agreements or arrangements to cooperate.

Criterion 40.4 (Met)—The AGC, the FSC, the FIA, and HMC are obliged to provide feedback on information received if requested (sec. 4(8) of the C(JI)CA, sec. 33G of the FSCA, sec. 5A (3) and (4) of the FIAA, and sec. 142A(3) of the CDMA). If the GO receives a request for feedback from a foreign competent authority concerning information provided to domestic public agencies, this must be channelled to the relevant authority (sec. 5(4B) of the C(JI)CA). There are no legal limitations that would prevent the LEAs from providing feedback on the use and usefulness of information obtained through cooperation upon request.

Criterion 40.5 (Met)—

a) ***(Met)***—The FSC can provide assistance relating to matters of taxation if lawfully required by a competent authority acting pursuant to an enactment (sec. 33C(3) of the FSCA). The FIA does not refuse requests for assistance on the grounds that the request is considered to involve fiscal matters. The ITA's role is specifically to provide information related to fiscal matters (MLA (Tax Matters) Act and TIEAs). There are no legislative restrictions that impede the ODPP, the RVIPF, the HMC and the GBCC from executing requests that involve fiscal matters.

b) ***(Met)***—The VI does not have laws that require FIs or DNFBPs to maintain secrecy or confidentiality; therefore, this is not a condition that prevents the domestic competent authorities from obtaining and exchanging this information with foreign competent authorities. In particular, the FIA cannot obtain information subject to legal professional privilege and, hence, would not be able to share it with foreign counterparts, which is in line with this sub-criterion (sec. 4(2)(d) of the FIAA).

c) ***(Met)*—**The legislation does not require competent authorities to refuse a request for assistance on the grounds that there is a domestic inquiry, investigation or proceeding underway.

d) ***(Met)*—**There are no restrictions that relate to the type and nature of requesting counterparts.

***Criterion 40.6 (Partly met)*—**The FSC can refuse to provide assistance if it is not satisfied that the foreign regulatory authority is subject to adequate legal restrictions on disclosure of the information, and that it will not, without the written permission of the FSC, use the information for any other purpose that the purpose for which it was initially provided (sec. 33D(7) of the FSCA). Additionally, the 41 MoUs signed by the FSC with foreign supervisors provide for controls and safeguards to ensure that information exchanged is used by the authorities for the purpose for which the information was sought or provided. The FIA also has controls and safeguards to ensure that information exchanged with foreign competent authorities is used only for the purpose for, and by the authorities, for which the information was sought or provided (secs. 9(1) and 10 of the FIAA and FIA's SOPs). In the case of the ITA, any information transmitted by or to a Member State shall be used only for the purpose for which it was provided (sec. 20 of the MLA (Tax Matters) Act) and the conditions to implement this requirement are reflected in each TIEA. The RVIPF, ODPP, HMC, and the Gaming and Control Board do not have the safeguards and controls required in this criterion.

***Criterion 40.7 (Mostly met)*—**The MoUs signed by the FSC with foreign supervisors provide for maintaining the confidentiality of any request for cooperation and the information exchanged. In addition, the staff of the FSC and the FIA is subject to confidentiality oaths that cover all information that comes to their knowledge (sec. 9 of the FIAA and sec. 48 of the FSCA), while the officers of HMC and the ITA are subject to criminal sanctions if they disclose confidential information related to international cooperation requests (sec. 7 of the CDMA and sec. 9 of the MLA (Tax Matters) Act). The TIEAs signed by the ITA also provide for the confidentiality of the information, including ensuring the protection of personal data in accordance with the safeguards specified domestic laws. The ODPP, the RVIPF, and the GBCC are subject to general requirements of confidentiality that are broad enough to cover information exchanged in the context of international cooperation (sec. 9 and Appendixes 1 and 2 of the Public Service Management Code). However, except for the FSC, there are no provisions that require competent authorities to refuse to provide information if the requesting competent authority cannot protect the information effectively (sec. 33D(7) of the FSCA).

***Criterion 40.8 (Partly met)*—**The FSC and the ITA can require information and documents and conduct examinations on behalf of foreign counterparts and exchange with their foreign counterparts all information that would be obtainable by them if such inquiries were being carried out domestically (sec. 33D(1) of the FSCA and secs. 5, 6, 7, and 10 of the MLA (Tax Matters) Act). The FIA can provide foreign FIUs with information disclosed to it or in its the possession; additionally, the FIA can compel the production of information domestically, that may be used to fulfil a request from a relevant FIU (secs. 4(1)(b) and (2)(d) and 5A(2) of the FIAA). There are no provisions applicable to the ODPP, the RVIPF, the HMC and the GBCC in this regard.

Exchange of Information between FIUs

***Criterion 40.9 (Met)*—**The FIA has an adequate legal basis for providing cooperation on ML, associated predicate offences,[81] and TF, regardless of whether their counterpart FIU is administrative, law enforcement, judicial, or other in nature (secs. 4(1) and 5A(2) of FIAA).

***Criterion 40.10 (Met)*—**Upon request, the FIA must provide feedback to a foreign FIA on the use and usefulness of the information, document, or other material received, including the outcome of any analysis conducted in relation to such information (sec. 5A of the FIAA). Additionally, there is evidence that the

[81] According to sec. 2(1) of the FIAA, the term "financial offences" includes an offence under any financial services legislation or an offence relating to ML, including drug ML, and TF.

FIA provides feedback whenever requested by foreign counterparts. In certain instances, foreign counterparts supply the FIA with feedback forms to which the FIA replies, detailing the use of the information and the outcome of the analysis conducted. The FIA also provides feedback via informal channels, having discussions on a particular matter where the foreign counterparts provided assistance.

Criterion 40.11 (Met)—

a) ***(Met)—***FIA can exchange information that has been disclosed to it pursuant to any financial services legislation or is in its possession by virtue of a written requirement to produce such information; this includes STRs in relation to a ML or TF and additional information from reporting entities[82] (secs. 4(2)(a) and (d) and 5A(2) of the FIAA and sec. 26A of the PCCA).

b) ***(Met)—***The FIA has the power to exchange any other information that it can obtain or access, directly or indirectly, at the domestic level, subject to the principle of reciprocity (sec. 4(1)(b) FIAA).

Exchange of information between financial supervisors[83]

Criterion 40.12 (Met)—The FSC has a legal basis for providing cooperation with its foreign counterparts (regardless of their respective nature or status), including supervisory information related to or relevant for AML/CFT purposes (sec. 33C(1) of the FSCA).

Criterion 40.13 (Met)—The FSC can exchange domestically available information, including information held by FIs, in a manner proportionate to their needs (sec. 33D of the FSCA).

Criterion 40.14 (Met)—(a) to (c) The provisions in the FSCA are broad enough for the FSC to exchange regulatory information, general information on the financial sectors, prudential information (including with other supervisors that have a shared responsibility for FIs operating in the same group), and AML/CFT information with foreign counterparts (sec. 33D(1) of the FSCA).

Criterion 40.15 (Met)—The FSC can conduct inquiries on behalf of foreign counterparts (secs. 33D(1) of the FSCA). Additionally, the authorisation of foreign counterparts to conduct inquiries themselves in the VI is provided for in most of the bilateral and multilateral MoUs that the VI is a party to.

Criterion 40.16 (Met)—The FSC ensures that it has the prior authorisation of the requested financial supervisor for any dissemination of information exchanged, or use of that information for supervisory and non-supervisory purposes, unless the requesting financial supervisor is under a legal obligation to disclose or report the information. In such cases, at a minimum, the FSC must inform the requested authority of this obligation (bilateral and multilateral MoUs signed by the FSC).

Exchange of information between law enforcement authorities.

Criterion 40.17 (Met)—The RVIPF can provide criminal information and intelligence to foreign police authorities when requested via INTERPOL (*INTERPOL Policy* issued by the RVIPF in March 2023 and para. 2 of the MoU between the FIA and the RVIPF). Additionally, sec. 142A(1) of the CDMA allows the HMC to cooperate with foreign LEAs to investigate any offence, and the provisions of the CCLEC MoU enable the HMC to exchange domestically available information with foreign counterparts to investigative offenses against Customs laws. There are no restrictions for the use of the information provided by the RVIPF and the HMC for intelligence or investigative purposes relating to ML, associated predicate offences or TF, including the identification and tracking of the proceeds and instrumentalities of crime.

[82] This excludes information subject to legal professional privilege.

[83] This refers to financial supervisors which are competent authorities and does not include financial supervisors which are SRBs.

Criterion 40. 18 (Mostly met)—The RVIPF can obtain the information requested by foreign counterparts by applying the investigative techniques described in criterion 31.2 with the specific limitations mentioned there. If the RVIPF does not hold the information needed, the request is forwarded to the relevant domestic competent authority, e.g., requests related to financial matters are forwarded to the FIA. The RVIPF seeks to manage and exchange data following the INTERPOL's rules on the processing of data, VI DPA and supporting guidance (sections "Performance" and "Data Sharing" of the *INTERPOL Policy* issued by the RVIPF in March 2023). There are no provisions in this regard concerning the HMC.

Criterion 40.19 (Partly met)—The Ship Rider Agreement with the United States allows the RVIPF to form boarding and search teams for investigative purposes, although the scope of this agreement is limited to the United States. On the other hand, the VI has demonstrated that it has formed joint investigative team with other agencies from the USVI. However, the absence of provisions establishing bilateral or multilateral arrangements to enable joint investigations is another deficiency.

Exchange of information between non-counterparts

Criterion 40.20 (Partly met)—The FSC cannot exchange information indirectly with non-counterparts as it is authorized to cooperate with "foreign regulatory authorities" only, i.e., authorities that exercise a function similar to the one exercised by the FSC or a regulatory function that relates to companies or financial services business (sec. 33D of the FSCA). The FIAA uses a language broad enough to allow for the FIA to cooperate indirectly, i.e., the FIA can execute a request for assistance from an authority in a foreign jurisdiction which appears to have the function of making such requests. Additionally, the FIA is subject to the Egmont Principles of Information Exchange between FIUs with respect to indirect cooperation with foreign non-counterparts (sec. 4(1)(b) of the FIAA). The ITA exchanges information with the jurisdictions and foreign competent authorities with which the VI signs TIEAs. The FSC and the FIA do not have provisions that ensure that the competent authority that requests information indirectly always makes it clear for what purpose and on whose behalf the request is made. On the other hand, there are no legal provisions that authorize GBCC, RVIPF, prosecutors, and HMC to exchange information with non-counterparts.

Weighting and Conclusion

The legislation applicable to RVIPF, FSC, FIA, HMC, and ITA cover most of the general principles that should govern the provision of forms of international cooperation different from MLA. However, some of these agencies have deficiencies concerning the rapid provision of assistance, safeguarding the information exchanged, conducting inquiries on behalf of foreign counterparts, and exchanging all information that would be domestically obtainable. The FIA and the FSC meets all the requirements expected from the exchange of information between FIUs and financial supervisors, respectively. In relation to the exchange of information between LEAs, the RVIPF can apply a range of investigative techniques to assist foreign police services. Additionally, the FIA is the only authority able to exchange information with non-counterparts.

Recommendation 40 is rated largely compliant.

SUMMARY OF TECHNICAL COMPLIANCE – KEY DEFICIENCIES

Annex Table 2. Compliance with FATF Recommendations

Recommendations	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	• Scope deficiency of financial institutions (trading in foreign exchange) impacts full compliance with some criterion under R.1.
2. National cooperation and coordination	C	• The recommendation is fully met.
3. Money laundering offences	LC	• The existence of two parallel and inconsistent regimes of ML offences weakens the legal framework for penalties. • Penalties provided by law for such offences cannot be considered as proportionate and dissuasive.
4. Confiscation and provisional measures	LC	• Minor shortcoming related to the absence of a legal mechanism to void fraudulent transfers or conversion of assets.
5. Terrorist financing offence	C	• The recommendation is fully met.
6. Targeted financial sanctions related to terrorism & TF	LC	• No mechanisms or processes exists for the identification of targets for designations or for promptly determining whether the designation criteria for UNSCR 1373 have been met. • In some instances, prohibitions are only required where a person was knowingly or recklessly dealing with funds or economic resources belonging to or associated with a designated individual or entity.
7. Targeted financial sanctions related to proliferation	LC	• No mechanisms or processes exists for the identification of targets for designations. In some instances, prohibitions are only required where a person was knowingly or recklessly dealing with funds or economic resources belonging to or associated with a designated individual or entity. • No obligations exist to report on compliance actions taken.
8. Non-profit organisations	NC	• The VI has not yet identified the subset of NPOs that are at risk for TF, including the main features that would put them at risk of TF. • The VI has not yet identified the main TF threats posed to NPOs formed in the jurisdiction. • The FIA's supervision over the NPO sector does not appear to target NPOs most at risk of TF and is not sufficiently risk based.
9. Financial institution secrecy laws	C	• The recommendation is fully met.
10. Customer due diligence	LC	• Scope issue: the activity of trading in foreign exchange does not qualify as a FI in the VI and is therefore not subject to AML/CFT measures.
11. Record keeping	LC	• Scope issue: the activity of trading in foreign exchange does not qualify as a FI in the VI and is therefore not subject to AML/CFT measures.
12. Politically exposed persons	LC	• Scope issue: the activity of trading in foreign exchange does not qualify as a FI in the VI and is therefore not subject to AML/CFT measures.
13. Correspondent banking	C	• The recommendation is fully met.
14. Money or value transfer services	LC	• The transfer or transmission of other stores of value beside money in any form is not included. • Actions to identify unauthorized MVTS could only to a limited extent be demonstrated. • No proportionate and dissuasive sanctions are applied.
15. New technologies	LC	• The applied transitional period for VASP registration and supervision is not risk based and allows unauthorized VASPs to operate without supervision and fear for sanctions until July 31, 2023. • No action reported against persons carrying out VASP activities without proper license or registration, and no systems or framework for regulating and risk-based supervision or monitoring on compliance by VASPs. • Shortcomings are identified regarding the communication mechanisms and reporting obligations concerning TFS.
16. Wire transfers	LC	• Deficiencies identified regarding the implementation of TFS (c.6.5(a) and (b)) have a minor impact on VI's compliance with Recommendation 16 (c.16.18).
17. Reliance on third parties	LC	• Scope issue: the activity of trading in foreign exchange does not qualify as a FI in the VI and is therefore not subject to AML/CFT measures.
18. Internal controls and foreign branches and subsidiaries	LC	• Scope issue: the activity of trading in foreign exchange does not qualify as a FI in the VI and is therefore not subject to AML/CFT measures. • The requirement to implement group-wide programs against ML/TF is not sufficiently broad to cover all elements of c.18.1.
19. Higher-risk countries	LC	• Scope issue: the activity of trading in foreign exchange does not qualify as a FI in the VI and is

		therefore not subject to AML/CFT measures.
20. Reporting of suspicious transaction	C	• The recommendation is fully met.
21. Tipping-off and confidentiality	C	• The recommendation is fully met.
22. DNFBPs: Customer due diligence	C	• The recommendation is fully met.
23. DNFBPs: Other measures	LC	• The deficiency identified in the analysis of R.18 has a minor impact on compliance with R.23.
24. Transparency and beneficial ownership of legal persons	PC	• Authorities have not fully assessed the TF risks associated with legal persons. • Director information is not collected at the outset when a company is incorporated which impacts the timely availability of this information. • Beneficial ownership information collected in the context of CDD requirements is only updated on a risk-sensitive basis which does not ensure that information is adequate, accurate and up to date. • There are no record keeping requirements for foreign companies registered in the VI. • Mechanisms in place with respect to nominee shares and directors do not capture nonprofessional nominee arrangements.
25. Transparency and beneficial ownership of legal arrangements	LC	• There are no sanctions available to nonprofessional trustees for failing to grant competent authorities with timely access to information. • While information held by trustees is required to be accurate and up to date and updated for professional trustees, the requirement to review and update CDD information, including information on beneficial ownership (AMLTFCOP, s. 21(1)) is only to be done on a risk-sensitive basis or upon certain trigger events as determined by senior management which is not sufficient to ensure information is adequate, accurate and up to date.
26. Regulation and supervision of financial institutions	PC	• Trading in foreign exchange is not covered under VI's sectoral legislation. • foreign insurers do not need prior approval for persons owning or controlling a significant or controlling interest. • directors and senior officers of a post office are not required to meet and be tested under the fit and proper criteria. • the FSC is not required to conduct its monitoring activities on MVTS having regard to the ML/TF risks in the sector. • determination of supervisory engagements is insufficiently based on ML/TF risks of an FI or group, and • the FSC is not held to review the assessment of an FI's risk profile when there are major events or developments in the management of the entity or group.
27. Powers of supervisors	C	• The recommendation is fully met.
28. Regulation and supervision of DNFBPs	PC	• The scope of the measures to prevent criminals and associates from holding or controlling (or being the beneficial owner of) a significant or controlling interest or being the operator of a casino is too limited. • ML/TF risk of individual TCSPs is not adequately taken into account under FSC's risk-based supervision framework when determining supervisory engagements with individual entities. • The FIA does not have adequate powers to enter premises of supervised entities, to search, and take possession and/or copies of documents or information since this is predicated on the need to require a Magistrate's order. • It is not required to get FIA's approval based on fitness and propriety prior to appointing directors, senior officers, or persons holding a significant or controlling interest. • The FIA lacks sufficient powers of enforcement where it cannot revoke, withdraw or suspend a license, authorization or registration. • The FIA is not required to conduct supervision on a risk-sensitive basis, nor is such approach systematically applied.
29. Financial intelligence units	C	• The recommendation is fully met.
30. Responsibilities of law enforcement and investigative authorities	C	• The recommendation is fully met.
31. Powers of law enforcement and investigative authorities	LC	• There are limitations, in the absence of enabling legislation to take witness statements other than under the CJIA for international cooperation cases. • There is no statutory provision in the VI for the conduct of controlled delivery.
32. Cash couriers	LC	• There is no provision that ensures the strict safeguarding of information collected through the declaration system.

		• There is no provision to stop or restrain currency or BNIs where there is a false declaration. • There is no specification regarding a reasonable time for restraint regarding false declarations.
33. Statistics	C	• The recommendation is fully met.
34. Guidance and feedback	LC	• The FIA guidelines focus only to a certain extent on detecting suspicious transactions. • Where the FIA also issued sector specific STR FAQs this material does not specifically address the TCSP sector.
35. Sanctions	LC	• The range of administrative sanctions available to the FIA with respect to the DNFBPs under its supervision is limited.
36. International instruments	LC	• There are no provisions that address some Articles of the Merida Convention.
37. Mutual legal assistance	LC	• No legal basis allows the VI to provide MLA rapidly. • Some competent authorities do not have criteria for the prioritization of MLA requests and a case management system. • Certain powers and investigative techniques are not available for MLA requests.
38. Mutual legal assistance: freezing and confiscation	LC	• No provisions for quick action on freezing and confiscation assistance requests or identifying property types under c38.1. • No legislative arrangements for coordinating seizure and confiscation actions with other countries.
39. Extradition	C	• The recommendation is fully met.
40. Other forms of international cooperation	LC	• Some competent authorities have deficiencies concerning the rapid provision of assistance, safeguarding the information exchanged, conducting inquiries on behalf of foreign counterparts, and exchanging all information that would be domestically obtainable. • The FIA is the only authority able to exchange information with non-counterparts.

Annex C. Glossary of Acronyms

ACAMS	Association of Certified Anti-Money Laundering Specialists
AGC	Attorney General's Chambers
AIU	Analysis and Investigation Unit
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
AMLR	Anti-Money Laundering Regulations, 2008
AMLTFCOP	Anti-Money Laundering and Terrorist Financing Code of Practice, 2008
ASA	Asset Seizure and Forfeiture Act 2020
ASFMC	Asset Seizure and Forfeiture Management Committee
AT(FOM)(OT)O	Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order, 2002
BNI	Bearer Negotiable Instruments
BOSSS	Beneficial Ownership Secure Search System
BOSSSA	Beneficial Ownership Secure Search System Act
BTCA	Bank and Trust Companies Act
BVIBC	British Virgin Island Business Company
BVIBCA	BVIBC Act
CBR	Correspondent Banking Relationships
CCA	Council of Competent Authorities
CCLEC	Caribbean Customs Law Enforcement Council
CDD	Customer Due Diligence
CFATF	Caribbean Financial Action Task Force
CJICA	Criminal Justice (International Cooperation) Act
CLEA	Committee of Law Enforcement Agencies
CMA	Company Management Act
CMCA	Computer Misuse and Cybercrime Act
CO	Compliance Officer
COI	Commission of Inquiry
CRF	Compliance Reporting Form
CT(S)(OT)O	Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020
CTA	Counter-Terrorism Act
CTSR	Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019
DIA	Designation Impact Assessment
DNFBPs	Designated Non-Financial Businesses and Professions
DOI	Department of Immigration
DPA	Data Protection Act
DPMS	Dealers in Precious Metals and Stones
DPP	Director of Public Prosecutions
DPRK	Democratic People's Republic of Korea
DPRKR	DPRK Regulations 2019
DPRKR Order	DPRK (Sanctions) (Overseas Territories) Order 2020
DTOA	Drug Trafficking Offences Act
ECOFEL	Egmont Centre of FIU Excellence and Leadership
ECSC	Eastern Caribbean Supreme Court
ED	Enforcement Division
EDD	Enhanced Due Diligence
EOIR	Exchange of Information Upon Request
ESW	Egmont Secure Web
FATF	Financial Action Task Force
FCU	Financial Crime Unit
FDCO	U.K. Foreign, Commonwealth and Development Office
FI	Financial Institutions
FIA	Financial Investigation Agency
FIAA	Financial Investigation Agency Act
FIU	Financial Intelligence Unit
FMSA	Financing and Money Services Act
FSC	Financial Services Commission

FSCA	Financial Services Commission Act
GBCA	Gaming and Betting Control Act
GBCC	Gaming and Betting Control Commission
GO	Governor's Office
HMC	His Majesty's Customs
HRMC	H.M. Revenue and Customs
HVGD	High-Value Goods Dealers
IA	Insurance Act
IB	Investment Businesses
ICA	International Compliance Association
IGC	Inter-governmental Committee on AML/CFT matters
IMF	International Monetary Fund
IO	Immediate Outcome
IOSCO	International Organization of Securities Commissions
IP	Insolvency Practitioners
IPA	Immigration and Passport Act
Iran Order	Iran (Sanctions) (Nuclear) (Overseas Territories) Order 2020
ISNR	Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019
ITA	International Tax Authority
IU	Implementation Unit
JALTFAC	Joint Anti-Money Laundering and Terrorist Financing Advisory Committee
KYC	Know Your Customer
LEA	Law Enforcement Agency
LPA	Limited Partnerships Act 2017
ME	Mutual Evaluation
ML	Money Laundering
MLA	Mutual Legal Assistance
MLRA	Money Laundering Risk Assessment
MLRO	Money Laundering Reporting Officer
MoU	Memorandum of Understanding
MMoU	Multilateral Memorandum of Understanding
MNRLI	Ministry of Natural Resources, Labour and Immigration
MoF	Ministry of Finance
MSB	Money Service Businesses
MVTS	Money or Value Transfer Services
NAMLCC	National AML/CFT Coordinating Committee
NCA	National Crime Agency
NPO	Non-Profit Organizations
NPOB	Non-Profit Organizations Board
NRA	National Risk Assessment
ODPP	Office of the Director of Public Prosecutions
OFSI	Office of Financial Sanctions Implementation
OIC	Orders-in-Council
OSINT	Open-Source Intelligence
OTs	British Overseas Territories
OTRCIS	Overseas Territories Regional Criminal Intelligence System
PA	Partnership Act
PCC	Proceeds of Criminal Conduct
PCCA	Proceeds of Criminal Conduct Act
PEP	Politically Exposed Person
PF	Proliferation Financing
PFPA	Proliferation Financing Prohibition Act
PTC	Private Trust Companies
R.	Recommendation
RA	Risk Assessment
RAF	Risk-based Approach to Supervision Framework
RAM	Risk Assessment Model
RAP	Remedial Action Plans
RBA	Risk-Based Assessment
RFI	Request for Information

ROCA	Registry of Corporate Affairs
ROD	Register of Directors
RVIPF	Royal Virgin Islands Police Force
SAR	Suspicious Activity Reports
SCC	Senior Crown Counsel (Financial)
SDD	Simplified Due Diligence
SEU	Supervisory and Enforcement Unit
SIBA	Securities and Investment Business Act
SOP	Standard Operating Procedures
SRA	Sectoral Risk Assessment
SSC	CCA Sanctions Sub-Committee
STCA	Strategic Terrorism & Crime Assessment
STR	Suspicious Transaction Reporting
TA	Technical Assistance
TBA	Threat-Based Approach
TC	Technical Compliance
TCSP	Trust and Company Service Providers
TF	Terrorist Financing
TFS	Targeted Financial Sanctions
TIEA	Tax Information Exchange Agreements
T(UNM)(OT)O	Terrorism (United Nations Measures) (Overseas Territories) Order
UBO	Ultimate Beneficial Owners
U.K.	United Kingdom
U.S.	United States
USCG	U.S. Coast Guard
USD	U.S. Dollar
UNSC	United Nations Security Council
UNSCR	United Nations Security Resolutions
USVI	U.S. Virgin Islands
VA	Virtual Assets
VASP	Virtual Asset Service Providers
VI	Virgin Islands
VIRRGIN	Virtual Integrated Registry and Regulatory General Information Network
VISTA	VI Special Trusts Act
WLS	Watch List Management
WMD	Weapons of Mass Destruction

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February 2024

Anti-money laundering and counter-terrorist financing measures – Virgin Islands (British)

Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Virgin Islands (British) as at the date of the on-site visit March 13th - April 3rd 2023. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Virgin Islands (British) AML/CTF system and provides recommendations on how the system could be strengthened.