Asia/Pacific Group on Money Laundering

ASIA/PACIFIC GROUP ON MONEY LAUNDERING

BRUNEI DARUSSALAM ME2

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

Brunei Darussalam

14 July 2010

Brunei Darussalam is a member of the Asia/Pacific Group on Money Laundering. This 2nd evaluation was conducted by that body and adopted by its Plenary on 14 July 2010.

List of abbreviations

ACB	Anti-Corruption Bureau
AGC	Attorney General's Chambers
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
ATA	*Anti Terrorism (Financial and Other Measures) Act 2002 (revised 2008)*
BIFC	Brunei International Financial Centre
CCID	Commercial Crime Investigations Division
CCROP	*Criminal Conduct (Recovery of Proceeds) Order 2000*
CDD	Customer Due Diligence
CPC	*Criminal Procedure Code*
CTRs	Cash Transaction Reports
DNFBP	Designated Non-Financial Businesses and Professions
DTROP	*Drug Trafficking (Recovery of Proceeds) Act 2000*
FATF	Financial Action Task Force
FID	Financial Institutions Division (Ministry of Finance)
FIU	Financial Intelligence Unit
FT	financing of terrorism
IBCs	international business companies
IBCO	*International Business Companies Order*
IDC	identity card
IGCA	*Interpretation and General Clauses Act* (cap.4)
ILPs	International Limited Partnerships
INRD	Immigration and National Registration Department
IOSCO	International Organisation of Security Commissions
ISD	Internal Security Department
ITO	*International Trusts Order*
KYC	Know Your Customer
LEAs	law enforcement agencies
MACMO	*Mutual Assistance in Criminal Matters Order*
MCRU	Money Changer and Remittance Unit (Ministry of Finance)
MDA	*Misuse of Drugs Act* (chapter 27)
ML	Money Laundering
MLA	mutual legal assistance
MLO	*Money Laundering Order 2000*
MoF	Ministry of Finance
MOU	Memorandum of Understanding
NAMLC	National Committee on Anti Money Laundering and Combating Terrorism Financing
NCB	Narcotics Control Bureau
NCCT	Non-Cooperative Countries and Territories
NCTC	National Committee on Transnational Crime
NPOs	Non-Profit Organisations
PCA	Prevention of Corruption Act
PEP	Politically Exposed Person
POC	Proceeds of Crime
RATLO	*Registered Agents and Trustees Licensing Order 2000*
RBPF	Royal Brunei Police Force
RCED	Royal Customs and Excise Department
ROC	Registry of Companies
ROS	Registrar of Societies
SROs	self regulatory organisations
STRs	suspicious transaction reports
TCSPs	trust and company service providers
UNCAC	UN Convention Against Corruption
UNSCR	United Nations Security Council Resolution

TABLE OF CONTENTS

PREFACE

Information and Methodology Used for the Evaluation of Brunei Darussalam

The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Brunei Darussalam was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by Brunei Darussalam, and information obtained by the evaluation team during its on-site visit to Brunei Darussalam from 11 – 23 January 2010, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Brunei Darussalam government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

This report is Brunei's second assessment using the FATF 2004 Assessment Methodology. Brunei's 1st Mutual Evaluation in 2005 was the APG's first use of the FATF's 2004 Assessment Methodology and only the 3rd ever global use of the assessment methodology. The APG Team notes that the FATF's assessment rules and the APG's own quality control procedures have developed since 2005, which is reflected in variations between the two reports. This report represents the current level of implementation of laws, standards, rules and other actions by Brunei Darussalam to combat money laundering and the financing of terrorism.

The evaluation was conducted by an assessment team consisting of APG experts in criminal law, law enforcement and regulatory issues and the APG Secretariat. Team members included:

Legal expert: Mr Pita Bulamainaivalu, Public Prosecutor / Principal Legal Officer, Office of the Director of Public Prosecutions, Fiji

Financial experts: Mr Syahril Ramadhan, Senior Staff of Compliance Department, PPATK, Indonesia; and Abdul Rahman Abu Bakar, Manager, Financial Intelligence Unit, Bank Negara Malaysia

Law enforcement expert: Mr Shaun Mark, Specialist Financial Analyst, Australian Federal Police

APG Secretariat: Mr David Shannon, Principal Executive Officer; and Ms Jennifer Ford, Project Officer

APG experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Brunei Darussalam as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Brunei Darussalam's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

[1] As updated in February 2009

Executive Summary

1. Brunei Darussalam (Brunei) is a low-crime jurisdiction with a very narrow private sector base and faces relatively low risks of money laundering (ML) and terrorism financing (TF). Vulnerabilities include proximity to relatively high-crime regions and some vulnerabilities of possible misuse of Brunei legal persons through the 'offshore' international financial centre. Authorities have focused on tackling predicate offences of corruption and narcotics trafficking, but have not yet sufficiently taken into account money laundering associated with these and other predicate crimes. There have been no investigations or prosecutions for ML since the offence was introduced 10 years ago, and no investigations/prosecutions for TF since the offence was introduced in 2002.

2. Sources of significant proceeds of crime include drugs and fraud. Further sources of proceeds of crime include gambling, vice and fuel smuggling.

3. Brunei has not yet pursued ML or forfeiture of assets directly linked to proceeds of crime and the authorities lack systematic focus on the concept of 'follow the money' to tackle profit-driven crime. The authorities have little information on the volume and techniques of laundering the proceeds of crime in Brunei, or on the potential channels of TF.

Key Findings

4. Brunei has criminalised ML and TF. Law enforcement authorities experience serious difficulties gathering evidence for the ML offences for legal, procedural and capacity reasons. A number of key predicate offences are missing. A wide range of TF acts is criminalised. There is however limited criminalisation of financing of terrorist organisations, other than proscribed ones, and sanctions for TF are low. There are limited measures to freeze and confiscate terrorist property outside of those available in relation to freezing assets under United Nations Security Council Resolutions (UNSCRs) 1267 and 1373. Implementation of UNSCR 1267 and 1373 is not well supported by regulation and procedure. Law enforcement and prosecution authorities have powers to prosecute ML and TF, but have not made use of these tools to date.

5. Brunei set up its Financial Intelligence Unit (FIU) in 2007, but gaps remain in the legal framework to support receipt of suspicious transaction reports (STRs). Brunei has taken steps to make the FIU operational, however the FIU requires more resources, a higher inflow of STRs and a greater emphasis on analysis and dissemination of STRs to law enforcement for investigation to perform its core functions effectively. At the time of the onsite visit, no STRs had been disseminated since the FIU began operations.

6. Brunei has required its financial sector to adopt basic anti-money laundering/combating the financing of terrorism (AML/CFT) preventive measures for over ten years. Preventive measures are lacking in scope (activities and obligations). More comprehensive rules remain in draft form. Brunei is taking significant steps to improve regulation, oversight, and supervision of the financial sector. More stringent examination is needed in some sectors.

7. Some progress on transparency of information has been achieved but access to beneficial ownership information for natural and legal persons is not ensured. Brunei has a strong system of measures to ensure transparency of Non-Profit Organisations (NPOs) to prevent abuse for TF purposes.

8. Brunei has a strong legal framework for mutual legal assistance (MLA), but capacity to engage in MLA and administrative cooperation is impaired for legal and procedural reasons. Brunei actively cooperates with regional partners, in particular Malaysia and Singapore, and other ASEAN countries, through less formal channels.

9. Concrete results (e.g. prosecutions, confiscation etc) are not yet forthcoming from the AML/CFT regime and are not commensurate with the risks and threats facing Brunei. To ensure efficient deployment of resources, both in the public and private sectors, and effectiveness, Brunei should prepare as soon as possible a ML/TF risk-analysis, adopt at a high level a national AML/CFT strategy, and consolidate its institutional framework.

Legal Systems and Related Institutional Measures

10. **Brunei has criminalised ML through the Drug Trafficking (Recovery of Proceeds) Act 2000 (DTROP) for the proceeds of drug offences, and through the Criminal Conduct (Recovery of Proceeds) Order 2000 (CCROP) for other predicates offences.** The ML offences defined by DTROP and CCROP provide a broad definition of the physical elements, but the coverage of predicate offences remains very narrow as only those offences with a maximum penalty of more than five years are included as predicates. The law does not require prior conviction for a predicate offence. Criminal liability for legal persons is clear and there is established practice of prosecuting legal persons directly for offences committed on their behalf. Administrative sanctions are not applied when the officers of a legal person are found criminally liable. Effective implementation of the ML offence has not been demonstrated and authorities find difficulties gathering evidence for and prosecuting the ML offences for legal and procedural reasons. There have been no investigations or prosecutions for ML.

11. **Brunei has partially criminalised TF in the Anti-Terrorism (Financial and Other Measures) Act (ATA) 2002 (revised 2008) and has acceded to the UN International Convention on the Suppression for the Financing of Terrorism**. 'Funds' is narrowly defined in relation to TF acts. It is not clear that collection for terrorists and terrorist organisations is covered as the law criminalises to 'make available' funds. The provision and collection of funds for the purposes of terrorist acts and terrorists is covered but is not covered for a terrorist organisation. The sanction for TF is too low. TF is not a predicate offence for the ML offence under CCROP. Effective implementation of the TF offence is not demonstrated, given capacity constraints. There have been no investigations or prosecutions for TF.

12. **CCROP and DTROP provide a conviction-based proceeds of crime recovery regime.** CCROP is inhibited as it only refers to the benefits of an offence, not instruments. There is no definition of "proceeds of crime", notwithstanding that instrumentalities can be covered under the Criminal Procedure Code (CPC). A significant problem is that provisional measures and confiscation under CCROP only apply to proceeds of crimes whose maximum penalty is above 5 years. CTROP and CCROP are severely hampered by legal complexities and procedural gaps. The CCROP regime is supplemented by recovery provisions relating specifically to corruption proceeds contained in the Prevention of Corruption Act (PCA), and general provisions contained in the CPC. In practice there is an absence of capacity to implement provisional measures and confiscation powers in the DTROP and CCROP. The assessors recommend a review of the DTROP and CCROP forfeiture regime to address procedural complexities, as well as providing training to develop capacity to apply the laws.

13. **The results achieved by the AML/CFT criminalisation and forfeiture regime are not commensurate with the, albeit, relatively low ML and TF risks facing Brunei.** Both DTROP and CCROP have been available in Brunei for 10 years, however the level of prosecutions and convictions is not commensurate with the prevalence of proceeds of crime.

14. **Brunei has the legal basis to implement UNSCR 1267, and has taken steps towards implementation in the financial sector, however the regime does not extend to freezing without delay**. Freezing pursuant to UNSCR 1267 is enabled by the ATA, which allows the Minister for Finance to issue binding direction to any financial institution to facilitate the discharge of obligations binding on Brunei by virtue of UNSCRs. The ATA contains provisions for sanction in the event of non-compliance. Ministry of Finance disseminates instructions to freeze the assets of listed persons to all financial institutions. At this stage however the authorities have not issued directions on what

practical steps would be taken to freeze property in the case of a match with a 1267-listed entity. Implementation of UNSCR 1267 is not well supported procedurally, and limited guidance has been provided to financial sector entities concerning implementation of 1267 freezing obligations.

15. **Brunei is able to implement UNSCR 1373 through the ATA, but has not yet used the ATA to proscribe terrorists or freeze related assets.** Freezing pursuant to UNSCR 1373 could be done using powers under the ATA to "proscribe" entities considered to be "concerned in terrorism". In addition to criminalising financing of proscribed entities, the ATA provides that binding regulations may be issued to facilitate the forfeiture and seizure of funds and assets of any natural or legal person proscribed as a terrorist. No such regulation has been issued. Sanctions are set out in the ATA for non-compliance with seizing provisions. Brunei would be able to give consideration to requests of other jurisdictions to proscribe entities and freeze funds and assets under ATA powers. Brunei has not yet however proscribed any entities, despite potential threats from regional terror organisations. No guidance has been provided to financial sector entities concerning implementation of the freezing obligations.

16. **Brunei set up a financial intelligence unit administratively in February 2007; it currently remains constrained from effectively fulfilling its mission.** The Brunei FIU is not clearly mandated by statute to receive STRs. Statutes require that STRs should be reported to the police; however administrative instructions were given for financial institutions (FIs) to report STRs to the FIU. The FIU has a clear legal basis to analyse and disseminate STRs related to ML, but not to TF. The capacity of the FIU is still lacking, notably in relation to staffing, database and analysis systems, and access to information to undertake analysis. All these factors hamper its ability to effectively analyse STRs and provide useful disseminations to law enforcement. At the time of the onsite visit the FIU had not yet disseminated any STRs to law enforcement, although it has constructively shared information and facilitated access to information by law enforcement agencies (LEAs) in predicate offence investigations. Assessors have concerns that the lack of dissemination relates to the FIU seeking 'evidence' of, rather than 'reasonable suspicion' of ML or TF before disseminating to law enforcement.

17. **The agencies designated by DTROP, CCROP and ATA to investigate ML and TF have the necessary powers, although ML/TF investigations have not yet been undertaken.** The Royal Brunei Police Force can investigate ML in relation to all predicates and TF. Specialist law enforcement agencies, notably Narcotics Control Bureau (proceeds of narcotics), Anti-Corruption Bureau (corruption), and Customs (smuggling) may also investigate ML related to the predicate offences under their jurisdiction.

18. **The current lack of capacity to understand and implement the legal regime for ML/TF investigation and prosecution gives rise to practical difficulties in implementation.** The investigative and prosecution agencies have not effectively pursued ML and TF, even if the key tools are available to do so. The assessors recommend more efforts to assess the typologies of ML and TF in Brunei, a stronger mobilisation to investigate and prosecute ML and TF, and a clearer policy on the prosecution of ML and TF.

19. **Brunei has not yet implemented an effective regime to cover cross-border transportation of currency and bearer negotiable instruments.** An amendment to the Money Laundering Order (MLO) 2000 is required before draft procedures for cross-border reporting can be implemented.

Preventive Measures—Financial Institutions

20. **AML/CFT preventive obligations are only very lightly addressed in the MLO. Draft guidelines and notices setting out detailed preventative measures have been in circulation with the financial sector since 2006, but have not been issued and had no binding legal status at the time of the on-site.** This lack of binding regulatory instructions has hampered financial institutions from implementing Customer Due Diligence (CDD) and record-keeping obligations in the financial

sector. All entities undertaking financial activities as defined by the Financial Action Task Force (FATF) are covered by the preventive measures set out in the MLO.

21. **The MLO and sector-specific statutes provide the supervisory authorities with wide legal powers to issue binding notices/rules for AML/CFT preventative measures, but to date such binding instructions have not been issued.** The assessors recommend that Brunei expeditiously issue the draft Know Your Customer/Customer Due Diligence (KYC/CDD) Guidelines as binding instructions to cover the key building blocks of preventive measures. The Ministry of Finance (MoF) intends to issue separate CDD regulations for each category of institution it covers, but this has not taken place, despite draft versions being in circulation for many years.

22. Based on the general obligations in the MLO and on 'best practice' guidance contained in the draft KYC/CDD Guidelines circulated to financial institutions, a number of sectors have been implementing AML/CFT controls.

23. Brunei is pursuing limited onsite supervision for AML/CFT, which has so far covered some of the banking sector and one insurance company. Similar inspections had not yet commenced for other sectors at the time of the onsite visit.

24. **Financial institution secrecy is not an impediment to the effective implementation of the AML/CFT regime in Brunei.**

25. **The MLO sets out satisfactory record keeping requirements**, in particular allowing for the reconstruction of individual transactions.

26. **At the time of the onsite visit banks and remittance companies were not required to obtain and maintain full originator information for both domestic and cross-border wire transfers regardless of the amount.**

27. **CCROP and DTROP create obligations to report ML-related STRs to the police**. **ATA requires that TF-related STRs be reported to the police.** In 2007 an administrative instruction was given by MoF to all financial institutions to report STRs to the FIU, rather than to the police. The scope of the STR reporting obligation under CCROP and ATA is limited by the very narrow range of predicate offences and the definition of "property". What constitutes a suspicion is defined in a satisfactory way. The assessors note that banks seem to adopt a "confirmed suspicion" approach – which may provide some explanation of the low level of STRs being reported.

28. **While there are broadly satisfactory safe harbour and tipping-off provisions in place, financial institutions raised concerns about the legal basis for reporting to the FIU rather than the police.**

29. **Brunei has issued guidelines for reporting STRs and has shared examples of 'red flags' for suspicion via industry briefing sessions and STR reporting forms.** A draft STR reporting form has been issued to financial institutions, which includes 'red flags' indicators of suspicion relevant to each sector. To ensure quality STR reporting, it will be necessary to issue consistent industry-specific guidance for STR reporting.

30. **The level of STR reporting under CCROP, ATA and MLO by financial institutions is very low**. Reporting has so far been limited to only a handful of banks. Several factors appear to explain the very low level of reporting. The reporting entities appear to lack an understanding of the ML and TF risks facing Brunei; authorities have not provided sufficient guidance on ML and TF typologies specific to Brunei; some institutions appear to have concerns about the legal framework and safe harbour provisions; and supervisors have not sufficiently emphasised compliance with the reporting obligations. Overall, few financial institutions have implemented automated systems to detect unusual and suspicious transactions; those that have adopted automated systems have done so only recently.

31. **The MLO sets out limited requirements for financial institutions on internal controls and audit.** An Administrative Notice was issued in 2007 which reiterated the requirement to appoint compliance officers. Compliance Officers for all banks and finance companies were appointed as far back as early 2008. Further progress by financial institutions on the compliance with internal controls is needed.

32. **Monitoring, supervision and enforcement of compliance with AML/CFT requirements is undertaken by MoF, but only to a limited degree and only for 'onshore' banks at this stage.** For securities, insurance, remittance and international financial sectors, supervision and enforcement for AML/CFT measures have not taken place at the time of the onsite visit. The Financial Institutions Division (FID) of MoF is implementing a program of comprehensive risk-based supervision for the insurance sector commencing in early 2010, which is intended to include AML/CFT.

33. **Sector specific legislation provides FID and the Brunei International Financial Centre (BIFC) with a wide range of powers to undertake effective supervision and enforcement.** Both authorities have the authority to conduct off-site and on-site inspections and to review and access policies, books and records. They can compel the production of or obtain access to all relevant records, documents and information without a court order. BIFC and FID issue licenses for the financial institutions under their purview and enforce comprehensive fit and proper reviews, both on the promoters and the senior management of the concerned financial institutions. MoF aims to satisfy itself that the natural persons ultimately exercising control of financial institutions are fit and proper.

34. **MoF can impose sanctions on financial institutions, as well as their directors and senior management.** These powers have not yet been used either for AML/CFT or for prudential purposes.

35. **MoF has taken steps to bring informal remittance services (hawala/hundi) under a regulatory framework and strengthened its oversight of money changers through the annual licensing regime.** This regime is currently undergoing further strengthening through a review of the relevant legislation. Informal remittances appear to be a relatively small portion of the overall remittance market in Brunei. Bringing the informal sector into regulated channels remains a priority for the authorities.

36. **Supervision of the 'offshore' international financial centre is undertaken by the BIFC, which includes some basic elements of CDD controls included in international financial sector specific legislation**.

37. **Both FID (including the FIU) and BIFC have staff of quality and integrity, although significant gaps remain in the AML/CFT expertise of supervisory staff**. The AML/CFT supervision function for each sector is undertaken by respective units in the FID and BIFC with the assistance of the FIU. At present the FIU lacks capacity (manpower and expertise) to undertake this function. FID and BIFC need to further develop capacities to undertake their AML/CFT mandate, including more operational training for their supervisory staff tailored to the specific ML/TF challenges of Brunei.

38. **In the absence of comprehensive controls, progress has stalled in recent years in fostering the implementation of AML/CFT preventive measures.** The absence of detailed instructions and the lack of supervision outside of the banking sector do not provide a good basis to protect the financial sector against ML/TF abuses. Enforcement action has not yet been taken by MoF. It is the assessors' view that more needs to be done to ensure the effectiveness of the control mechanisms in terms of scope of the obligations and implementation. The assessors are particularly concerned by the common perception that customer identification measures are a sufficient protection.

Preventive Measures—Designated Non-Financial Businesses and Professions

39. **Brunei has incorporated trust and company service providers (TCSPs) into the AML regime for preventative measures and STRs, however other Designated Non-Financial Businesses and Professions (DNFBPs) are not yet included.** All operating DNFBPs are subject to TF-related STR reporting obligations, but implementation has not yet been supported. Casinos are not authorised in Brunei. Other DNFBPs identified by the FATF are present in Brunei, and generally undertake the activities covered by the FATF standards.

40. **TCSPs are required to undertake CDD on their clients when establishing trusts or incorporating international business companies.** It is not clear that this CDD information is made available to regulatory authorities on request without first gaining permission from the customer.

41. **Brunei plans to include other DNFBPs in its AML/CFT regime in the short term.** There will be a need for a carefully designed approach to include DNFBPs under the AML/CFT regime, given the lack of capacity of regulators and self regulatory organisations covering these sectors.

Legal Persons and Arrangements & Non-Profit Organisations

42. **Brunei's legal framework for corporate entities requires the registration of all forms of legal persons, but the registration data available with the Registrar of Companies is limited to formal ownership and does not require beneficial ownership information to be included. Registration data for international business companies is not available to the BIFC in the absence of permission from the company. Such data does not extend to beneficial ownership information in the meaning of the FATF standards.** Information held with the corporate entities and provided to the Registrar is verified by the Registry of Companies (ROC), with a reasonable level of compliance. This information is available to law enforcement as needed. However, its value to law enforcement is undermined by the absence of beneficial ownership information. Secrecy provisions in the Registered Agents and Trustees Licensing Order (RATLO) 2000 may prevent authorities gaining access to information on ownership and control of international business companies.

43. **The information required to be included in the trust agreement on trustees, settlors, and beneficiaries does not cover the concept of beneficial ownership.** Brunei recognises international trusts through the International Trusts Order 2000. Brunei does not recognise domestic trusts through statute, but rather recognises common law express trusts. It is set out that international trusts must include a RATLO licensed party. Secrecy provisions in the RATLO may prevent authorities gaining access to information on ownership and control of international trusts.

44. **Brunei has a strong system of oversight of NPOs, which reduces the exposure of NPOs to abuse for TF**. Brunei is yet to undertake a formal review of its NPO sector; however the Societies Order was reviewed and reissued in 2005 to improve the legal framework. Regulatory powers to cover the sector are generally broad. Levels of compliance by NPOs to provide information on their management, operation and finances remain low; however the Registrar of Societies (ROS) is undertaking a program to de-register dormant and non-compliant societies. Progress is being made to centralise available regulatory information across the sector.

National and International Co-operation

45. **There is a sound basis for domestic coordination on AML/CFT matters; however more needs to be done to turn inter-agency cooperation into action at the policy level.** The National Committee on Anti Money Laundering and Combating Terrorism Financing (NAMLC) has clear Terms of Reference. So far the NAMLC has not defined a clear strategy, based on a risk-assessment, to prioritise the implementation of the AML regime. There is no impediment to domestic cooperation and coordination at the operational level. There are clear mechanisms to coordinate and cooperate to develop and implement effective policies to combat TF.

46. **Brunei has an overarching comprehensive mutual legal assistance (MLA) regime through the Mutual Assistance in Criminal Matters Order (MACMO), but it is rarely used in practice.** Brunei has set up the MLA Secretariat within the Attorney General's Chambers which has very clear procedures for countries to request MLA of Brunei. In relation to making requests, MLA appears to be hampered by the gaps in the criminalisation of ML and the narrow range of property covered. Agencies cite procedural delays as contributing to the lack of use of the MACMO regime by Brunei agencies. Brunei has received very few requests for assistance.

47. **MLA is not subject to undue restrictions or grounds for refusal and Brunei takes a very open approach to cooperating with the international community.** Dual criminality is not an impediment to Brunei providing MLA under the MACMO. Brunei is able to provide records of financial institutions based on an administrative order. All other intrusive measures require a court order, which can be obtained based on a request by the Attorney General.

48. **While MACMO is available for a wide range of MLA, actions to give effect to foreign requests to freeze, seize or confiscate the proceeds and instrumentalities of predicate offences, ML and TF rely on the CCROP and DTROP.** Those statutes face significant limitation for MLA, as provisional measures and confiscation only apply to proceeds of crimes whose maximum penalty is above 5 years and assistance can only be given to designated countries. All ASEAN countries have been designated for this purpose.

49. **ML, TF and predicate offences are all extraditable offences in Brunei.** Extradition is supported by the Extradition Order (2006) which is a treaty-based system which incorporates elements of the Harare Scheme for extradition. Brunei may extradite a person accused or convicted of an extraditable offence to a Commonwealth country, a country with which Brunei has entered into an extradition treaty, or any country that the Attorney General may decide is an extradition country for the purpose of a particular extradition request. In addition, Brunei has special arrangements for extradition with Malaysia and Singapore set out in the Extradition (Malaysia and Singapore) Act (Chapter 154), which provides for a simplified 'backed warrant' procedure to expedite extradition between the three countries. Brunei makes regular use of this system, although statistics were not available.

50. **Brunei has capacity to provide other forms of international cooperation and actively pursues this avenue, in particular with its closest neighbours Malaysia and Singapore through special arrangements, and with all its South East Asian neighbours through ASEAN.** Law enforcement agencies appear to engage in the widest range of international cooperation. BIFC is a party to the International Organisation of Security Commissions (IOSCO) MoU.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on Brunei Darussalam

1. Brunei Darussalam (Brunei) is situated on the Island of Borneo in South East Asia. Its population is estimated at 406,000 with a total land area 5765 sq. km. The capital of Brunei is Bandar Seri Begawan. Malay is the official language, with English widely spoken.

2. Brunei Darussalam (the "Abode of Peace") gained independence from the United Kingdom on 1st January 1984. Brunei adopts a national philosophy of Malay Islamic Monarchy. Brunei's 1959 constitution includes His Majesty the Sultan of Brunei as the head of state, who under constitutional emergency powers has ruled with full executive authority since 1962.

3. A Council of Cabinet Ministers consisting of 14 members is appointed by His Majesty the Sultan of Brunei to deal with executive matters. The Sultan presides over the cabinet as Prime Minister and also holds the position of Minister of Defence and Minister of Finance.

4. Brunei's economy is dominated by revenues from its substantial crude oil and natural gas reserves. In 2008 the oil and gas sector accounted for 70% of Brunei's Gross Domestic Product (GDP); the government sector accounted for 19.3%. Oil and natural gas remain the major domestic exports. Brunei is pursuing a policy of economic diversification beyond hydrocarbons to include agriculture, forestry, fishing, aquaculture, tourism and finance. The creation of an international financial centre in 2000 reflects the policy of diversification.

Legal System

5. Brunei's legal system is based on English traditions of common law, with an independent judiciary, a body of written common law judgements and statutes, and legislation enacted by the Sultan. Where there is any lacuna in the civil and commercial laws of Brunei, the principles and rules laid down by English common law on identical matters are referred to as persuasive guidance. Procedural matters and rules of the higher courts in Brunei are dealt by the Supreme Court Act (Cap 5) and its corresponding rules, with the most recent revision in 2001. Brunei courts also rely on the 1999 version of the English Supreme Court Practice for guidance on the interpretation of the Orders and Rules of the Brunei Supreme Court Act, where they are materially the same as the English ones. [2]

6. Brunei also has a separate system of Islamic courts that apply Shari'a law in family and other matters involving Muslims.

7. Magistrates' courts try the majority of cases. More serious cases go before the High Court, which sits for about 2 weeks every few months. The Intermediate Court, established in 1991, has extensive civil and criminal jurisdiction, but does not deal with capital offenses. Brunei has an arrangement with the United Kingdom whereby UK judges are appointed as the judges for Brunei's High Court and Court of Appeal. For criminal cases the final appellate court is the High Court. Final appeal can be made to the Judicial Committee of the Privy Council in London in civil cases.

8. The Constitution does not specifically provide for an independent judiciary. However, in 1996 in a landmark legal decision, the appellate-level High Court ruled that the court has powers independent of the prosecution and ordered a discharge in a car theft case under review, which amounted to an acquittal under the Criminal Procedure Code. In general the courts appear to act independently. Procedural safeguards include the right to defence counsel, the right to an interpreter,

[2] Brunei – legal media group – www.legalmediagroup.com

the right to a speedy trial, and the right to confront accusers. There have been no publicised instances of government interference with the judiciary or trials of political opponents.

9. The hierarchy of courts in Brunei follows the model of inferior court, superior court and appeal court.

10. Land titles in Brunei are governed by the Land Code (Cap 40) 1951. All land titles are required to be registered with the Land Office. The rights to own title under the Code is also subject to the rights of the Government as specified under subsection 2 of section 9 of the Code.

i) Respect of principles such as transparency and good governance

11. Brunei has taken some steps to improve transparency and accountability as a measure to combat corruption, but institutions to foster transparency and good governance are not well developed. There are not yet well developed institutions to foster administrative accountability or whistle blowing, although Section 30 of the PCA provides legal protection of informers. Brunei does not yet have an ombudsman or similar accountability structures.

12. In 2009, Anti-Corruption Bureau (ACB) set up Integrity and Good Governance Centre in combating corruption, which has a role to instil integrity and enhance good governance in the public service. A seminar on Integrity was held for senior government officers in March 2010. A similar seminar is planned for the Private Sectors in August 2010.

13. The absence of an operating legislature in Brunei reduces the levels of administrative accountability in Brunei.

14. Independent organisations concerned with identifying corruption problems rate Brunei as relatively free of corruption. The 2009 Transparency International (TI) Corruption Perception index ranks Brunei as 39th globally, on par with South Korea and equal 7th highest in the Asia/Pacific Region[3]. The TI Global Corruption Barometer Survey 2009 ranked Brunei as 3rd most effective Asian country (behind Singapore and Hong Kong) in relation to effectiveness of government in combating corruption.

ii) A culture of AML/CFT compliance shared and reinforced by government, financial institutions, DNFBPs; trade groups, and self-regulatory organisations (SROs)

15. Brunei has a developing culture of AML/CFT compliance, and one which is supported by the banking sector's dominance of wholly owned subsidiaries of foreign banks. These foreign-owned institutions generally follow the higher AML/CFT standards of their home regulator.

16. The government has not yet included DNFBPs, industry trade groups, or self regulatory organisations (SROs) in the framework or culture of AML/CFT compliance. Overall, Brunei has a limited range of SROs and weak industry trade groups, reflecting the relatively small non-government/ non-mining sector.

iii) Appropriate measures to combat corruption;

17. Brunei pursues an agenda of combating corruption. Brunei has implemented significant measures to combat corruption through the Anti-Corruption Bureau (ACB). The ACB enforces a 'zero tolerance' approach to corruption by officials and is at pains to pursue cases involving even small gratuities. ACB has pursued a number of high-level cases, but the preponderance of its work focuses on petty corruption by low level officials. The majority of prosecutions have involved bribery in amounts of less than B$500. The largest corruption case pursued by ACB was recently

[3] Corruption Perceptions Index 2009 Regional Highlights: Asia-Pacific http://www.transparency.org.au/documents/CPI%202009%20Regional%20Highlights%20Asia%20Pacific_en.pdf

concluded, although it had taken eight years to conclude and did not include money laundering charges.

> ***High-Level Corruption Prosecution***
>
> On 17 February 2010, a former government Minister was found guilty of 11 corruption charges and sentenced by the High Court to seven years in jail and almost $5 million in restitution and court costs. The Official was convicted of corruptly awarding over $300 million in government contracts to a private company and accepting personal bribes of approximately $11 million from its Managing Director.
>
> The case was the first corruption trial to be heard in Brunei's High Court. The case had been marked by significant delay in bringing the matter to court due to the complexity and sensitivity of the case. The ACB investigation took 3 years, with the results being submitted to the Attorney General's Chambers in 2002. Formal charges were laid against both defendants in May 2004.The trial had begun in February 2005, but was vacated due to ill health of the presiding judge. The new trial began in September 2009.

18. Brunei Darussalam ratified the UN Convention Against Corruption (UNCAC) in December 2008 and is moving towards fulfilling its obligation under UNCAC.

iv) A reasonably efficient court system to ensure that judicial decisions are properly enforced

19. The process of litigation and time taken for a case to reach trial is reasonable and may take anywhere between six and 18 months to reach trial stage.

20. There are some significant delays in Brunei's court system, in particular with a number of high court cases. There appears to have been a shortage of judicial staff and lack of capacity with prosecution officials.

vi) A system for ensuring the ethical and professional behaviour on the part of professionals such as accountants, auditors and lawyers

21. Brunei is taking steps to strengthen ethical and professional behaviour on the part of professionals. A number of professional societies and associations are established to promote best practice.

1.2 General Situation of Money Laundering and Financing of Terrorism

Risks

22. Brunei is a low-crime jurisdiction with a small population, a very narrow private sector base and faces moderate money laundering and terrorism financing risks. Vulnerabilities include proximity to relatively high-crime regions and some vulnerabilities of misuse of Brunei legal persons through the 'offshore' international financial centre, although the assessors are not aware of any cases of misuse of legal persons or arrangements incorporated in Brunei.

23. Authorities have focused on tackling predicate offences of corruption and narcotics trafficking, but have not yet sufficiently taken into account money laundering associated with these and other predicate crimes.

Risks of money laundering

24. Comprehensive crime statistics were not provided. Main sources of proceeds of crime in Brunei include:

- drug trafficking
- fraud (in particular bank fraud and pyramid investment schemes)
- illegal gambling
- vice
- fuel smuggling and related fiscal offences

25. The assessment team also highlights intellectual property crimes as a significant source of proceeds of crime in Brunei.

26. Law enforcement agencies in Brunei identify that cross-border currency transfers represent a possible risk of ML.

27. No estimates have been compiled of the amount of money laundered in Brunei.

28. Authorities report that drug trafficking from international drug syndicates is considered to be a major source of illegal proceeds; however the drug trade in Brunei is relatively small on an international scale[4].

29. ***Drug trafficking*:** There is a domestic market for drugs in Brunei, but in regional and absolute terms it is small. There are indicators of vulnerabilities for Brunei being used as a transhipment route for drug trafficking, although this is relatively rare. One recent case involved a 'block' of heroin being seized in Brunei, destined for foreign markets. A small number of recent cases have included Brunei citizens becoming involved in drug smuggling between countries other than Brunei and being arrested outside of Brunei. Brunei authorities have used the Criminal Law (Preventive Detention) Act, Chapter 150 to detain local drug traffickers in two cases.

30. ***Investment fraud and illegal deposit taking*:** Authorities note that the relatively small size and isolation of Brunei and the high levels of trust in Brunei society may in fact increase the opportunities for fraud. There have been a number of cases and one ongoing high-profile case of investment fraud and illegal deposit taking.

Investment Fraud/Illegal Deposit Taking (IDT)

Brunei citizens have been the victim of a number of investment frauds in recent years. The highly publicised case of alleged illegal deposit taking by a Pan Phoenix Dina Sdn Bhd is still before the courts. The same company is facing similar charges for alleged investment fraud in Malaysia.

In April 2009, the Malaysian media reported that two directors of Pan Phoenix Dina Sdn Bhd were charged with money laundering activities apart from the existing charge of IDT (2008) in Malaysia involving Malaysian Ringgit 33 million.

Authorities raised concerns that due to social factors and lack of awareness amongst the public that the rate of investment fraud in Brunei is higher than reported figures.

31. ***Illegal gambling*:** gambling is illegal in Brunei and is routinely prosecuted, although individual cases appear to involve small proceeds of crime. Authorities continue to highlight illegal gambling as a source of proceeds of crime.

[4] United Nations Office On Drugs And Crime Vienna *World Drug Report*, 2009, p287, , United Nations New York, 2009

32. ***Vice*:** authorities continue to highlight prostitution as a source of proceeds of crime.

33. ***Piracy / intellectual property offences:*** Studies by international industry groups[5] continue to highlight the very high rate of piracy and intellectual copyright crimes in Brunei which generate significant proceeds of crime. Criminalisation regimes are such in Brunei that a number of areas of piracy may not be fully criminalised or little enforcement action is forthcoming.

Intellectual property crimes

The International Intellectual Property Alliance (IIPA) reported in 2009 that piracy dominates the market for music, videos and software. IIPA reports that piracy levels remained very high, with the situation worsening in 2008. Both optical discs and "burned" CD-Rs are readily available throughout the country. The IIPA had included Brunei on its Watch List for 2009, but Brunei was not listed in 2010.

Intellectual Property offences derive from the Emergency (Copyright) Order 1999. The Royal Brunei Police Force (RBPF) does not have ex-officio authority under the order, which is based on a complaint based system requiring IP rights holders to support investigations by providing expert report on the authenticity of the alleged infringed product, the presence of the right holder present evidence in court, etc.

The RBPF CCID has urged rights holders ranging from music industry to pharmaceutical companies, to come forward and make formal police complaints in order to initiate appropriate action.

The Recording Industry Association of Malaysia (R.I.M) has cooperated closely with RBPF since 2009 on an Anti-Piracy Campaign in Brunei with excellent results. RBPF is pursuing cooperation with rights holders for IP derived from other jurisdictions.

34. Authorities do not view not intellectual property crimes as a significant source, citing few reported intellectual property rights cases in 2009 – 2010 and the 2009 conviction of a company under the Emergency Copyright Order. A joint effort was made in an anti-piracy campaign coordinated between the Recording Industries of Malaysia (RIM), AGC and RBPF in 2009. Assessors note independent reports of levels of IP crime and the apparent mainstream market availability of pirated audio visual goods and software in the Brunei domestic market.

35. ***Fuel smuggling:*** Due to the very low cost of fuel in Brunei, fuel smuggling and related revenue leakage appear to have been a source of proceeds of crime. Smuggling routes include land transport to Malaysia, mostly through frequent small volume operations. Sea-based smuggling represents a serious concern as it can involve large volumes of fuel. In recent years Brunei has initiated a range of measures to curb land-based smuggling and has prosecuted a number of persons involved, including ongoing prosecution of customs officials for related corruption. Additional controls have been introduced to combat sea based smuggling. These measures have resulted in a decline in cases. Despite the proceeds of the crimes, Brunei has only prosecuted one high-seas fuel smuggling case.

[5] International Intellectual Property Alliance (IIPA) Report on Copyright Protection and Enforcement - special 301: Brunei Darussalam, February 17, 2009 www.iipa.com

Fuel Smuggling – the *Lewek Swan* at sea

In September 2007, the sea vessel *Lewek Swan* twice transferred amounts of 80,000 (totalling 160,000) metric tonnes of diesel fuel to an 'unidentified vessel'. The captain and crew were paid MYR208,000.

The incidences were investigated by the Commercial Crime Investigation Department of the Royal Brunei Police Force. All defendants admitted to having 'a common intention to commit the theft of diesel fuel' and receiving their respective shares of the proceeds of the crime.

The defendants were subsequently charged and sentenced under the Penal Code, section 406, and all monies ordered to be seized under the Criminal Procedure Code.

Custodial sentences were later reduced under appeal.

Risks of terrorism and terrorist financing

36. Brunei has not been subject to any terrorist activity and no reports have been received of terrorist groups or individuals operating in or using Brunei. The tight level of security and political control in Brunei mitigate the risk of terrorism however studies of the operation of the SE Asian terrorist group Jemaah Islamiya (JI) indicate that Brunei is within the envisaged operational realm of JI. During the late 1990s / early 2000s JI's structure included regional cells that were intended to cover a range of countries in the region. The Jemaah Islamiya cell 'Mantiqi 3' covered the Philippines, Brunei and Eastern Malaysia, and the Indonesian provinces of Kalimantan and Sulawesi. While Jemaah Islamiya was active in the Philippines, Malaysia and Indonesia, there is no evidence of their activity in Brunei.

37. Concerns have been raised of possible vulnerabilities through collection of funds via unauthorised foreign individual charity collectors that may be utilised for terrorist causes. Authorities have acted swiftly in cases where unauthorised charity collectors are identified in Brunei.

ML and TF techniques

38. Authorities observe that the drug trade in Brunei is generally small, and proceeds obtained generally end up as personal household income, rather than being laundered through complex ML schemes.

39. To date, there have been no reported cases of terrorist financing in Brunei and no investigations into terrorist financing.

Vulnerabilities

40. A number of vulnerabilities to ML and TF in Brunei are noted, although it has not yet conducted a risk assessment. These include:

- the proximity of Brunei to other countries with significant ML and TF risks;
- the absence of cross-border currency reporting requirements;
- The presence of an 'offshore' sector (albeit a small one) with relatively weak AML/CFT controls;
- Weak AML/CFT controls and institutional capacity to enforce AML/CFT compliance;
- The small size of Brunei and the high levels of trust may increase vulnerabilities to financial fraud;
- The size of the overseas foreign worker population.

41. Potential future AML/CFT vulnerabilities include a possible expansion of the 'offshore' international financial sector.

42. Authorities note the possible vulnerabilities to collection of funds through unauthorised charity collectors on the streets. Authorities indicate that any charity collectors operating without the approval from the Ministry of Home Affairs will be stopped immediately and investigated by the relevant agencies. The small size of Brunei assists law enforcement agencies to identify and detect unauthorised charity collectors. The authorities consider that the possibility of funds collected via this method for any terrorist causes would be very low.

1.3 Overview of the Financial Sector and DNFBP

43. Financial service providers in Brunei include banks, insurance companies, finance companies, securities, mutual funds, money changing and remittance businesses. In 2007 financial services comprised of just fewer than 3% of Brunei's GDP. Given that the non-oil and gas sector of the economy only represents 30% of GDP, financial services represent approximately 10% of non-oil and gas GDP.

44. A regulatory and legal framework supports 'offshore' international financial service activities administered by the BIFC. The authority under related legislation is the Permanent Secretary of the Ministry of Finance.

Banks

45. Banks are the most active financial service provider in Brunei. There are seven (7) banks licensed under the Banking Order 2006 and one bank under the Islamic Banking Order 2008. One statutory trust fund (Tabung Amanah Islam Brunei (TAIB)) is established to carry out Islamic banking activity. There are two local banks in Brunei, namely Bank Islam Brunei Darussalam (BIBD) and Baiduri Bank Berhad. The remaining banks are foreign conventional banks being branches of foreign-owned banks, including HSBC (Hong Kong), United Overseas Bank Ltd. (Singapore), RHB Bank (Malaysia), Maybank (Malaysia), Citibank N.A. (USA) and Standard Chartered Bank (UK). The authority under this legislation is the Permanent Secretary of the Ministry of Finance.

46. There are five (5) international banks operating from Brunei, which are regulated under the International Banking Order 2000. One of these licensed banks is dormant.

Insurance

47. There are currently 12 insurance companies licensed in Brunei, consisting of six (6) non-life, three (3) life and three (3) Takaful (Islamic) operators, which offer shariah compliant 'life-equivalent' insurance products.

48. One (1) international life insurance company and two (2) international insurance brokers are licensed under the International Insurance and Takaful Order, 2002.

Finance Companies

49. There are four finance companies in Brunei licensed under the Finance Companies Act. Three of the finance companies are conventional and one provides Islamic finance.

Money Changing and Remittance Business

50. There are 22 licensed remittance operators in Brunei. The major destinations for remittances are to Indonesia, Philippines and Singapore. There are 27 money changers licensed in Brunei. The most common currency exchanges involve Malaysian Ringgit.

51. Other financial institutions providing financial services in Brunei, whose business is relatively small in comparison with the above, are companies licensed under the Securities Order 2001, Mutual Funds Order 2001, Moneylenders Act and Pawnbrokers Act.

Securities

52. Fourteen (14) investment advisers, one (1) dealer and one (1) representative are licensed under the Securities Order, 2001. One (1) investment adviser is registered under the International Business Companies Order, 2000.

Mutual Funds

53. Five (5) fund operators are licensed under the Mutual Funds Order, 2001. One operator is registered under the Companies Act, Chapter 39.

DNFBPs

Trust and company service providers (TCSPs)

54. There are 12 registered agents and licensed trust companies under the RATLO, 2000, which offer trust and company services.

Casinos

55. Casinos are illegal and do not operate in Brunei. There is no legislation in place to outlaw use of online gaming by persons resident in Brunei.

Lawyers

56. There are approximately 25 law firms in Brunei with approximately 100 members of the Brunei Law Society.

Accountants

57. Twelve accounting firms operate in Brunei, including the Big Four.

Real Estate

58. There are less than 10 Real Estate companies operating in Brunei.

Precious metals and stones

59. The market for precious metals and stones is not developed in Brunei.

1.4 Overview of commercial laws and mechanisms governing legal persons & arrangements

60. The Companies Act 1984 Cap 39 provides the legal framework for establishing and administering companies in Brunei. There are approximately 7000 local and 700 foreign companies registered under the Companies Act, Chapter 39.

61. The International Business Companies Order 2000 provides for the setting up of international business companies (IBCs). More than 9,700 companies are registered under International Business Companies Order 2000.

Companies

62. Shareholders need not be Brunei citizens or residents and a subsidiary company may hold shares in its parent company.

63. All companies, including branches of foreign companies, are required to:

- Ensure at least half of company directors are Bruneian (citizens/permanent residents)
- Hold a general meeting annually
- Keep 'proper books of account' (Section 121)
- Appoint authorised auditors (Section 131)
- Submit annual financial statements accompanied by a Directors' Report to the Economic and Development Department, Prime Minister's Office
- File annual returns of directors, members and shareholders with the ROC
- Submit annual tax returns to the Ministry of Finance.

64. Companies may take the following forms:

- A *Sole Proprietorship* is personally liable for the obligations of their businesses. Generally, registration approval is not granted to foreigners.
- A *Partnership* may consist of individuals, local companies and branches of foreign companies. The maximum number of partners is twenty. One partner must be a citizen or a permanent resident. The ROC may approve foreign individuals to register as a partnership. Sole proprietorships and partnerships are not subject to income tax.
- *Private Companies* (Sendirian Berhad or Sdn. Bhd.) may be one of four types: limited by shares; limited by guarantee; limited both by shares and guarantee; and unlimited companies. Private companies must restrict the right of members to transfer shares, limit its membership to fifty and not offer the public subscription for shares or debentures.
- A *Company* (Berhad / Bhd.) may be limited or unlimited; may issue freely transferable shares to the public; and must have at least seven shareholders. A subsidiary company may hold shares in its parent company.
- *Foreign companies* operating in Brunei may incorporate as a local company or register as a branch of the foreign company. The branch must have a registered office in Brunei and appoint a local agent. The ROC only requires particulars of the articles of association and the details of the authorised local residents in Brunei. Foreign companies are subject to corporate tax of 30%.

65. Registration and incorporation occurs when the articles of association are lodged with the ROC. Companies are required to keep a public register of members at their registered office.

66. Firms engaging in particular businesses are required to be apply for a separate "miscellaneous license" from various authorities depending on the type of businesses:

- Cafes, eating houses, boarding/lodging houses or other places of public resort
- Hawkers
- Petrol Station
- Retail shops
- Timber store and furniture factories
- Workshops

International Business Companies

67. *International Business Companies* (IBCs) are incorporated under the International Business Companies Order (IBO) 2000, and do not carry out business in Brunei. IBCs may be formed by an agent registered under s.3 of the RATLO, 2000. Such IBCs may be a company limited by shares; by guarantee; limited by life; and with unlimited liability. All shares in an IBC shall be registered with par value or shares with no par value; no shares in an IBC may be issued to bearer.

68. An IBC may be formed for any legal object or purpose. IBCs are incorporated by registration at the Registry of International Business Companies. RATLO registered agents are required to process the statutory documents such as the memorandum of association, articles of association and certificate of due diligence. Sections 46 and 47 of the Order details the keeping of a shares register by IBCs at their registered office containing specified particulars. The register must be available for inspection during business hours upon written request to a director, liquidator or the Authority.

69. An IBC shall be managed by a board of directors of any nationality, who may be individuals or a body corporate. Foreign companies may register as a 'foreign international company' if they have a place of business in, or carry on business from, Brunei.

International Limited Partnerships ("ILPs")

70. Under the IBC Order, an ILP consists of one or more general partners (of which one partner shall be an IBC, a trust corporation, or a wholly owned subsidiary thereof, or a partnership which is an ILP) and any number of limited partners. An ILP may be formed for any lawful purpose. It may not carry on business with any persons resident in Brunei. A partnership interest cannot be held by a person resident in Brunei.

71. Every ILP must maintain a registered office in Brunei at the registered office of a trust corporation; and keep accounts and records sufficient to show the ILP's transactions and financial position. ILPs must keep a register of the limited partners. The register of limited partners is available for inspection under prescribed conditions.

Non-Profit Organisations

Cooperative Societies

72. Cooperative Societies are not-for-profit membership organisations formed under the Cooperative Society Order. Registered Cooperative Societies may hold movable and immovable property, enter into contracts, institute and defend suits and other legal proceedings.

Societies

73. Under section 2 of the Societies Order, a 'society' includes any club, company, partnership or association of 10 or more persons, whatever its nature or object, and every branch of such club, company, partnership or association. A 'society' does not include for-profit companies, any registered trade union, or any school.

74. Societies must gain permission from the Societies Registrar to be affiliated or connected with any society outside of Brunei.

75. Under Section 21(c) of the Societies Order there are conditions under which societies may sue and be sued in the name its members has declared to the Registrar and registered as the public officer of the society for this purpose or, in the case of no such registered person, in the name of any person registered as an officer of the society.

76. Societies must submit annual reports which include information on amendments to the society's rules, a list of office-bearers, the address of society/place of business, a list of any ex-State affiliations or associations, and annual financial information.

Non-profit companies

77. The Companies Act provides for a non-profit organisation (NPO) to register as a guaranteed company. By limiting the board's guarantee, the company is committed to not-for-profit financial activity. Guarantee status of an NPO is indicated at registration, there is no further proof of NPO status required although the Companies Act states that His Majesty must be satisfied that the "limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object".

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

78. The Brunei government has stated that it regards combating ML to be a top priority. This is significant in the context of Brunei's efforts to strengthen their financial system and legal framework in order to enhance foreign direct investments and promote Brunei's credentials as a financial centre.

79. Brunei introduced the Money Laundering Order (MLO) in 2000 and the Anti Terrorism (Financial and Other Measures) Act (ATA) 2002 (revised 2008). Both the MLO and ATA are undergoing review to further strengthen the legal framework; however draft orders have not been passed into law. Regulatory authorities have drafted regulatory instructions and guidelines since 2007; however these have not been issued to have binding effect.

80. Brunei has had inter-agency coordination mechanisms for AML/CFT since 2000. The NAMLC serves to develop national policies on AML/CFT measures, review AML/CFT-related statutes, and facilitate inter-agency coordination. The NAMLC is chaired by the Permanent Secretary, Ministry of Finance with the FIU as the Secretariat. All relevant government agencies are included on the NAMLC.

b. The institutional framework for combating money laundering and terrorist financing

Ministry of Finance

81. The Ministry of Finance is the lead ministry for AML/CFT activities in Brunei.

Financial Institutions Division (FID), Ministry of Finance

82. FID's role is to regulate and supervise domestic and international banking and insurance and other domestic financial services institutions. The FID has responsibility for administering the Financial Intelligence Unit.

Brunei International Financial Centre (BIFC), Ministry of Finance

83. BIFC's role is to regulate and supervise entities licensed under RATLO, 2000, SO, 2001 and MFO, 2001. It also administers the Registry of International Business Companies and International Limited Partnerships.

Brunei Currency and Monetary Board (BCMB), Ministry of Finance

84. The Brunei Currency and Monetary Board has a role in relation to payment systems and the currency.

Royal Brunei Police Force (RBPF)

85. The RBPF Commercial Crime Investigations Division (CCID) is within the Criminal Investigation Department and is designated to investigate serious offences including money laundering, terrorist financing, cheating (fraud), criminal breach of trust, forgery, counterfeiting, copyright and trade mark and cyber crime offences. CCID only looks into serious cases where the offences relate to amounts greater than B$50,000 and also offences committed by civil servants. CCID handles all counterfeiting regardless of the amount involved.

86. The RBPF Major Crime Division is within the Criminal Investigations Department and is designated to investigate serious crimes such as house breaking, vice and gambling offences. The Anti-Vice and Gambling Suppression Unit conducts investigations into gambling, prostitution, and customs and excise matters. RBPF Major Crime and the Royal Customs and Excise Department cooperate on investigations into fuel smuggling.

87. The RBPF is charged with cooperating on international investigations through Interpol/ASEANAPOL counterparts.

Registrar of Societies (ROS)

88. The ROS is set up under the Societies Order 2005 as a function of the RBPF. The Commissioner of Police is designated as the Registrar of Societies and is responsible for practical oversight of the ROS.

The Anti-Corruption Bureau (ACB)

89. The ACB is established by the Prevention of Corruption Act (PCA) and is designated to investigate corruption offences and ML related to corruption. Part 3 of the PCA identifies the offences and s19 provides for power of investigation to the Bureau in any case relating to offence under section 165, 213 to 215 of the Penal Code; offence under the Act; any seizable offence under any written law which may be disclosed in the course of an investigation under the Act. Money laundering is classified as a seizable offence. A seizable offence is classified as an offence punishable by imprisonment for three years or more. In these cases money laundering can be investigated by the ACB if it is identified in the course of an investigation.

The Immigration and National Registration Department (INRD)

90. The INRD is responsible for immigration affairs and national registration, processing and issuing passports and manned immigration checkpoints throughout Brunei.

The Royal Customs and Excise Department (RCED)

91. Customs (RCED) is a department within the Ministry of Finance. RCED has a role in investigating predicate offences, and a role in monitoring cross-border movements of currency. The RCED investigates and enforces customs offences under the Customs Order 2006.

Attorney General's Chambers (AGC)

92. AGC is responsible for prosecutions, legislative drafting and other key law ministry functions. The AGC provides advice on legal aspects related to AML/CFT including reviewing and amending legislation. AGC conducts prosecutions and make applications for restraint (freezing), confiscation and any other orders under relevant legislation. AGC is the central authority for MLA and has established the MLA Secretariat to give effect to MLA, including extradition.

Registry of Companies (ROC)

93. The ROC is established within the AGC. The ROC is responsible for incorporating and administering proprietorship under Business Names Act and companies under Companies Act. Identification documents are obtained in respect of directors and shareholders prior to registering the company. The Ministry of Finance works closely with the Registry where there is a suspicion on individuals involved with illegal activities (e.g. individuals intending to carry out financial activities without licence from the Ministry).

Narcotics Control Bureau (NCB)

94. The NCB is the designated law enforcement agency that investigates all narcotic offences including possession, traffic and importation/exportation. The NCB is designated to investigate drugs-related ML as defined under DTROP. NCB, police and customs are equally empowered to conduct narcotic investigations.

Internal Security Department (ISD)

95. The ISD are tasked with gathering intelligence information relating to suspected ML and TF activities; sharing information on any suspicious acts relating to ML and TF activities directly to the FIU; and carrying out further investigation when requested by the FIU.

Ministry of Foreign Affairs and Trade (MOFAT)

96. The Ministry of Foreign Affairs and Trade continues to coordinate and ensure implementation of relevant UNSCR by disseminating the list of names to relevant agencies including the FIU for appropriate action. The FIU then relays the information to the relevant financial institutions in Brunei Darussalam.

c. Self Regulatory Organisations

Law Society

97. The Legal Profession Act (Cap 132) regulates the legal profession in Brunei and authorises the constitution of the Law Society in Brunei. The Law Society is established by virtue of the Legal Profession (Law Society of Brunei Darussalam) Order 2003. Under s36 of the Order, the Council, with approval of the Chief Justice, may make rules regulating the professional practice, etiquette, conduct and discipline of advocates and solicitors.

Accountants

98. The professional association for accountants namely, Brunei Institute of Certified Public Accountants (BICPA) is a society registered under the Societies Order and has no statutory basis or disciplinary powers. The objective of the Institute is to promote the profession of accounting and it has not issued any code of conduct or guidelines to regulate members' conduct. Upon admission, members are required to provide proof of qualifications and membership of an approved overseas professional accounting association. Members are expected to follow the standards of the accounting associations of which there are 70 members in the Institute. A law to promulgate the regulating of the accounting profession is still being finalised.

Approach concerning risk

99. Brunei has not adopted an overall risk-based approach to application of AML/CFT preventive measures. Brunei is currently moving towards risk-based supervision of the insurance sector as part of large-scale reforms of the insurance sector

100. Brunei has not yet conducted any studies to determine the threats of ML or TF and associated vulnerabilities of Brunei's financial system.

d. Progress since the last mutual evaluation

101. Brunei has made some small progress since the first APG Mutual Evaluation, particularly in the broader regulatory framework, but significant gaps remain in specific AML/CFT measures.

102. Gaps in the legal and regulatory framework had not been addressed at the time of the onsite visit. Amendments to the MLO and ATA were in draft, and draft CDD/KYC rules had been prepared, but had not been promulgated.

103. While Brunei has established an FIU, it has not yet disseminated any STRs. The rates of STR dissemination have dropped since the first Mutual Evaluation.

104. Brunei has not been able to use the long-standing ML and TF offences to 'follow the money' to investigate and investigate ML case and to freeze and confiscate proceeds of crime.

105. Brunei has passed comprehensive legislation and established procedures for giving effect to mutual legal assistance. Brunei continues to demonstrate a strong commitment to international cooperation, in particular with regional partners through non-MLA channels.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

2.1 Criminalisation of Money Laundering (R.1, 2 & 32)

2.1.1 Description and Analysis

106. Brunei Darussalam (Brunei) criminalises money laundering (ML) pursuant to sections 20 and 22 of the *Drug Trafficking (Recovery of Proceeds) Act* (DTROP), and sections 21, 22 and 23 of the *Criminal Conduct (Recovery of Proceeds) Order* (2000) (CCROP).

107. DTROP specifically provides for the recovery of the proceeds of drug trafficking offences under the *Misuse of Drugs Act* (cap.27) (MDA) or a corresponding law. The terms "drug trafficking offence" and "drug trafficking" are clearly defined under section 2 of DTROP.

108. CCROP, on the other hand, according to sections 21(10) and 5(9)(a) provides for the recovery of the proceeds of "criminal conducts" other than drug trafficking offences with an imprisonment term of not less than five (5) years or for life or which is a capital offence.

109. The *Money-Laundering Order* (2000) (MLO) does not separately define or criminalise ML; instead it cross-references the DTROP and CCROP provisions.

110. Sections 20 and 22 of DTROP state:

Assisting another to retain the benefits of drug trafficking

20. (1) Subject to subsection (2), if a person enters into or otherwise concerned in an arrangement whereby –

(a) the retention or control by or on behalf of another (call him "A") of A's proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or

(b) A's proceeds of drug trafficking –

(i) are used to secure funds that are placed at A's disposal; or

(ii) are otherwise used for A's benefit,

knowing or having reasonable grounds to believe that A is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking, he is guilty of an offence.

(4) A person guilty of an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years, to a fine or both.

(5) In this section, a reference to any person's proceeds of drug trafficking includes a reference to any property which in whole or in part directly or indirectly represents in his hands his proceeds of drug trafficking.

Concealing, transferring etc. proceeds of drug trafficking

22. (1) Any person who -

(a) conceals or disguises any property which is, or in whole or in part directly or indirectly represent, his proceeds of drug trafficking; or

(b) converts or transfers that property or removes it from Brunei Darussalam,

for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in his case of a confiscation order is guilty of an offence.

(2) Any person who, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking-

(a) is in possession of that property;

(b) conceals or disguises that property; or

(c) converts or transfers that property or removes it from Brunei Darussalam,

is guilty of an offence.

(3) Any person who, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, acquires that property for no, or for inadequate, consideration is guilty of an offence.

(4) In paragraph (a) of subsection (1) and paragraph (b) of subsection (2), a reference to concealing or disguising any property includes a reference to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(5) For the purpose of subsection (3), consideration given for any property is inadequate if its value is significantly less than the market value of that property, and there shall not be treated as consideration the provision for any person of services or goods which are of assistance to him in drug trafficking.

(6) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding 14 years, to a fine or both.

111. Sections 21, 22 and 23 of CCROP state:

Assisting another to retain benefit of criminal conduct

21. (1) Subject to subsection (3), a person who enters into or is otherwise concerned in an arrangement whereby –

(a) the retention or control by or on behalf of another (call him "A") of property which is the proceeds of A's criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or

(b) property which is the proceeds of A's criminal conduct is used –

(i) to secure funds that placed at A's disposal; or

(ii) for A's benefit to acquire property by way of investment,

knowing or suspecting that A is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct, is guilty of an offence.

(2) In this section, a reference to any person's proceeds of criminal conduct includes a reference to property which in whole or in part directly or indirectly represents in his hands his proceeds of criminal conduct.

(9) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding 14 years, a fine or both.

(10) In this Order, "criminal conduct" means conduct which constitutes an offence to which this Order applies or would constitute such an offence if it had occurred in Brunei Darussalam.

Acquisition, possession or use of property representing proceeds of criminal conduct

22. (1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.

(2) In proceedings against a person for an offence under this section, it is a defence to prove that he acquired or used the property or had possession of it for adequate consideration.

(3) For the purpose of subsection (2) –

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

(4) The provision for any person of services or goods which are of assistance to him in criminal conduct shall not be treated as consideration for the purpose of subsection (2).

(6) For the purpose of this section, having possession of any property shall be taken to be doing an act in relation to it.

(12) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding 14 years, a fine or both.

Concealing, transferring, etc., proceeds of criminal conduct

23. (1) A person is guilty of an offence if he –

(a) conceals or disguises property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct; or

(b) converts or transfers that property or removes it from Brunei Darussalam,

for the purpose of avoiding prosecution for an offence or of avoiding the making or enforcement of a confiscation order.

(2) A person is guilty of an offence if, knowing or having reasonable grounds to suspecting that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he –

(a) conceals or disguises that property; or

(b) converts or transfers that property or removes it from Brunei Darussalam,

with intent to assist any person to avoid prosecution for an offence or to avoid the making or enforcement of a confiscation order.

(3) In subsection (1), the reference to concealing or disguising property includes a reference to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(4) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding 14 years, a fine or both.

Criminalisation based on the Vienna and Palermo Conventions

112. Sections 20 and 22 of DTROP broadly meet the physical and mental elements of *Article 3 of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention),* however there is no provision for 'use' of property. Additionally, the offence of "conceal or disguise" any property or proceeds is conditional on prosecutors showing that it is done "for the purpose of avoiding prosecution or making or enforcement of a confiscation order". This is not consistent with UN Convention.

113. There are some gaps in Sections 21, 22 and 23 of CCROP in terms of the requirements of Article 6 of the UN Convention Against Transnational Organised Crime (*Palermo Convention).* These chiefly relate to CCROP's coverage of predicate offences and property as described below.

Predicate offences

114. Brunei adopts a combined list (proceeds of drug trafficking offences) and threshold approach to include the predicate offences for money laundering. Due to the problems with the threshold set out below, predicate offences do not include a range of offences in each of the Financial Action Task Force (FATF) designated categories of offences.

115. DTROP criminalises laundering the proceeds of a range of predicate 'drug trafficking offences' under section 2(1)(a – b) of DTROP:

(a) sections 3, 3A, 4, 5 or 11 of the MDA

(b) section 126 of the Customs Act in connection with a prohibition or restriction on importation or exportation by virtue of section 5 of the MDA;

116. Further, the DTROP definition of **"**drug trafficking**"** *means doing or being concerned in any of the following, whether in Brunei Darussalam or elsewhere –*

(a) trafficking a controlled drug, in contravention of s. 3 of the MDA or a corresponding law;
(b) possession of a controlled drug, for the purpose of trafficking in contravention of s. 3A of MDA or a corresponding law;
(c) manufacturing a controlled drug in contravention of s.4 of MDA or a corresponding law;
(d) importing or exporting a controlled drug in contravention of s.5 of MDA or a corresponding law;
(e) the cultivation of cannabis, papaver somniferum or erythroxylon in contravention of s. 8 of MDA or a corresponding law

117. CCROP adopts a threshold approach to cover predicate offences, but does not comprise all offences which are punishable by a maximum penalty of more than one year's imprisonment. The predicate offences under CCROP (see ss.2, 5(9)(a), 21(10), 22 & 23), is a "criminal conduct" other than a drug trafficking offence, with an imprisonment term of not less than five years or for life or which is a capital offence.

118. The threshold of only those offences with a sanction of more than five years imprisonment included as predicate offences is too high and results in many offences being excluded as predicate offences for ML. A significant number of designated offences are not included as predicate offences due to the five year threshold. For example, criminal breach of trust and cheating under Penal Code ss.405-406 and 415-417; engaging in terrorist acts or financing proscribed under sections 3, 4, 5, 6, 7, 8 and 13 of the *Anti-Terrorism (Financial and Other Measures) Act* (cap.197); etc.

119. Not all categories of predicate offences have offences of at least one year. There are significant gaps in offences relating to piracy of goods and intellectual property. Offences under the Copyright Order are limited to a maximum of six months. There are some minor gaps with environmental offences. For example, the Fisheries Order 2009 establishes offences relating to environment-related fisheries offences, but available penalties are limited to a term of no more than one year.

Property and Proceeds of Crime

120. Neither DTROP nor CCROP define the term **'**proceeds'**.** CCROP s2(4) indicates that a reference in the Order is used in both laws to mean the benefits, financial or otherwise, gained directly or indirectly from the commission of drug trafficking offences or other criminal conducts.

121. Section 2 of DTROP defines the terms "property":

"Property" *includes money and all other property, moveable or immoveable, including things in action and other intangible or incorporeal property.*

122. Sections 2(9) and 2(1)(a)-(e) of DTROP applies to property situated in Brunei and elsewhere. Section 2(2) of CCROP provides that CCROP applies to property regardless of whether it is situated in Brunei or elsewhere.

123. CCROP does not define "property". Section 3 of the *Interpretation and General Clauses Act* (cap.4) (IGCA) which is a law of general application, defines "moveable property" and "immoveable property" to essentially mirror the definition of "property" under DTROP, which is in keeping with the international standards.

Autonomy of the offence

124. There are no provisions under DTROP and CCROP specifically requiring that a person be charged or convicted of a predicate offence in order to prove that property is the proceeds of crime (POC) or ML.

125. Sections 20 and 22 of the DTROP do not make it mandatory that a predicate drugs offence be proved before charging or prosecuting an ML offence under DTROP. Brunei authorities highlight that as DTROP is a conviction-based statute focused on recovering POC, a conviction for a predicate drugs offence is mandatory prior to securing a confiscation order securing a conviction for any offence under DTROP.

126. CCROP does not require, under sections 21, 22 and 23, that a conviction for a predicate offence should be obtained before a ML offence can be prosecuted.

127. Brunei authorities may consider including clarifying provisions to DTROP and CCROP to reiterate that proving a predicate offence is not a prerequisite for the ML offence.

Predicate offences committed abroad

128. DTROP applies to property situated in, and to drug trafficking done within, Brunei and elsewhere (see section 2(9) and 2(1)(a)-(e)(i)-(ii)).

129. CCROP applies to property situated in Brunei and elsewhere, and to criminal conduct which would have constituted an offence if done within Brunei (ss.2(2) & 21(10)). The predicate offence definition therefore covers conduct which may not be criminalised in another jurisdiction, but which constitutes an offence if done in Brunei

130. The Penal Code, which covers the majority of predicate offences, establishes a clear liability in Brunei for offences committed outside of Brunei. Persons who commit an offence outside of Brunei shall liable the same manner as if such act had been committed within Brunei (s3).

Application to persons who commit the predicate offence

131. DTROP and CCROP do not preclude charging a person with both the predicate and ML offences, and the manner in which the relevant charges are to be framed must comply with sections 152-173 of the CPC.

132. Self-laundering is expressly criminalised by DTROP (s22(1)) and CCROP (s23(1)).

Ancillary offences

133. Section 5A of the Penal Code extends appropriate ancillary offences of *abetment* and *conspiracy* to the ML offences under DTROP and CCROP. Similarly, s511 of the Penal Code establishes a comprehensive offence of *attempting* which is applicable to ML. Section 120 of the Penal Code (*Concealing design to commit offence punishable with imprisonment*) addresses *facilitating*, and provides for a penalty of ¼ of the maximum sentence if the main offence was committed, and 1/8 of the offence if it was not committed. However, 'counselling' to commit ML is not criminalised under DTROP, CCROP or the Penal Code.

134. Sections 2(1)(c-g) of DTROP sets out some ancillary offences applicable to the DTROP ML offence provisions.

> *(c) section 120A of the Penal Code of criminal conspiracy to commit any of the offences in paragraphs (a) and (b);*
> *(d) attempting to commit any of those offences;*
> *(e) at common law of inciting another to commit any of those offences;*
> *(f) abetting the commission of any of those offences.*

Recommendation 2

Criminal Liability for natural persons

135. DTROP and CCROP apply the ML offence to natural persons. Both statutes expressly require proof of a mental element to commit ML including the ancillary offences, or that property is the POC. The term 'knowing' is used consistently by both laws.

136. DTROP s20(1) allows the intentional element to be inferred from objective factual circumstances. DTROP s22, on the other hand, is limited to 'knowing'.

137. CCROP s21(1), which is limited to retention or control of POC, includes the mental elements of knowledge or 'suspicion'. This is an even lower threshold to prove than 'reasonable grounds to suspect. Section 22(1) of CCROP is limited to 'knowledge'.

138. To achieve consistency it is advisable that in all cases prosecutors are able to rely on objective factual circumstances to prove the mental element of the ML offence.

139. Nothing in the DTROP and CCROP nor any fundamental principles of law preclude prosecutors from relying upon objective factual circumstances to invite an inference of that mental element.

140. Provisions in the CCROP create an issue which undermines the scope of liability for both natural and legal persons. Section 23(1) of CCROP criminalises acquisition, possession or use of property representing proceeds of criminal conduct. However, s23(2)&(3) establish a defence to liability in the case that 'adequate consideration' is paid, ie not significantly less than value of the property. This concept of "adequate consideration" is not provided for in FATF Recommendations and creates an easily exploitable loophole in criminal liability.

Criminal liability for legal persons

141. The term **'**person' is not defined under DTROP and CCROP. Despite this, both legal and natural persons can be held liable for ML offence under those laws. Section 3 of the IGCA, further echoed by sections 11 and 5A of the *Penal Code* (cap.22), defines "person" as "including any company or association or body of persons, corporate or unincorporated; and this interpretation shall apply notwithstanding that the word "person" occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation." Section 12 of the MDA clearly establishes corporate criminal liability for legal persons in drug offences, including those which are predicate to the ML offence in DTROP.

142. Brunei has some precedent with applying criminal liability to legal persons in practice. Matters before the courts include an instance in which a legal person has been charged with the offence of illegal deposit taking. Previously a criminal conviction was obtained against a legal person for a case prosecuted under the Labour Act

Effective, proportionate and dissuasive criminal, civil or administrative sanctions

143. The penalty for a person convicted of ML under DTROP and CCROP is imprisonment term not exceeding 14 years, a fine or both, and confiscation of the POC. A maximum fine or a range is

not set out in either statute. No specific maximum fine is prescribed for legal entities convicted of ML.

144. For legal persons, civil or administrative sanctions such as revocation of business licence (e.g. *Banking Order*, s21(1)) and deregistration (e.g. *Societies Order*, 2005, s31) are available to be used parallel to any criminal sanction.

145. The assessors were informed that in practice when assessing the appropriate fine(s), the Brunei judiciary is usually guided by case precedents set in the UK, Singapore, Malaysia, and other relevant jurisdictions. Strictly abiding by the doctrine of *stare decisis*, the judiciary via its rulings over the years have somewhat set sentencing tariffs and guidelines which legal advocates generally rely upon and use to persuade the courts.

146. To avoid confusion, it is recommended that DTROP and CCROP specifically prescribe a maximum fine for legal persons convicted of ML and such fine must be significant, effective, proportionate and dissuasive.

Effectiveness, including statistics of investigation and prosecution of ML

147. At the time of the on-site visit the Assessment Team was informed that there had been neither investigations nor prosecutions for ML, notwithstanding the number of investigations and convictions on predicate offences such as drug trafficking, corruption, fraud and other criminal conduct.

148. In some cases prosecutors have pursued POC confiscation, but did not pursue ML charges. For instance, in *Public Prosecutor v. Hanip Bin Hj Sapar* Criminal Trial No. 9 of 2002, the High Court of Brunei, having convicted the Defendant for drug trafficking offences in violation of the MDA, confiscated the sum of $8 271, being POC.

149. The team was informed by the Brunei authorities that the lack of investigation and prosecution of the ML offences under DTROP and CCROP is mainly attributed to a lack of knowledge and competency with those statutes and manpower. All investigation authorities acknowledged the need to improve capacity to investigate and prosecute ML provisions and possibly set up well resourced financial investigation units capable of investigating ML in conjunction with predicate offences.

150. Effectiveness can be addressed by more specialised training and skills development to increase knowledge, competency, manpower, etc, to utilise AML offences to 'follow the money' from a range of predicate offences. The team notes that the AGC Criminal Justice Division has held talks and workshops on the DTROP, CCROP and MLA regime in Brunei Darussalam to promote awareness and understanding amongst the Law Enforcement Agencies and Deputy Public prosecutors. It also has held a briefing to NCB officers on the DTROP and MDA.

151. A challenge for the effectiveness of possible future ML prosecutions is the remaining backlog of cases in the courts which leads to extensive delays with criminal trials.

Recommendations and Comments

152. There is a need to pursue ML offences in parallel with predicate offence investigations to prosecute the financial aspects of profit driven crime in Brunei.

- To address significant gaps in the legal framework, it is recommended that:
  - CCROP be amended to lower the threshold for predicate offences to those with a maximum custodial term of one year or more
  - DTROP be amended to include 'use' of property which is proceeds of drug offences.

- DTROP and CCROP clearly stipulate who is to be held responsible for any ML offences alleged to have been committed by the legal entity
- Include effective, proportionate and dissuasive fines for offences under DTROP and CCROP, especially for legal entities
- The term 'proceeds of crime' should be defined within DTROP and CCROP to include benefits derived directly or indirectly from the commission of the predicate offences; proceeds of such crimes; and instrumentalities
- Criminalise the act of 'conceal or disguise' without the condition of proving that it is done for the purpose of avoiding prosecution or making or enforcement of a confiscation order
- CCROP should be amended to remove the defence of 'acquiring property for inadequate consideration' when proving possession, use or transfer of POC
- Clarify within DTROP and CCROP that a conviction for a predicate offence is not a prerequisite for prosecuting or convicting the ML offence
- DTROP and CCROP should be amended to utilise a common standard of proof for ML.
- Clarify, including by demonstrating case law, that the ancillary act 'counselling' to commit ML is criminalised either through the *Penal Code* (cap.22)
- Brunei authorities should make greater use of the ML offence to prosecute both predicate offences and ML.

2.1.2 Compliance with Recommendations 1, 2 & 32

	Rating	Summary of factors underlying rating[6]
R.1	**PC**	• Not all serious offences are included as predicate offences for ML, as the threshold for predicates is those offences with a penalty of more than five years. • 'Use' of property which is proceeds of drug offences is not covered. • The act of concealing and disguising proceeds of crime is made conditional on proving that it was for the purpose of avoiding prosecution or making or enforcement of a confiscation order, which is not in keeping with the Convention • The autonomy of the ML offence is still to be shown in practice. • Despite almost 10 years on the statute books, effective implementation of the ML offence has not been demonstrated.
R.2	**PC**	• Proportionate and dissuasive financial penalties are not available to sanction legal persons. • A defence of 'acquiring property for inadequate consideration' is included when proving possession, use or transfer of proceeds of crime, which is not in keeping with the international standards. • Effective implementation has not been demonstrated.
R.32	**PC**	This is a composite rating

[6] These factors are only required to be set out when the rating is less than Compliant.

2.2 Criminalisation of Terrorist Financing (SR.II & R.32)

2.2.1 Description and Analysis

Legal Framework

153. The legal framework to criminalise TF is found under the Anti-Terrorism (Financial and Other Measures) Act (ATA) 2002 (revised 2008). The ATA provides a sanction of five years imprisonment, fine $100,000 or both for criminal offences of TF in sections 3, 4 and 5:

- Prohibition against provision or collection of funds for terrorists (section 3)
- Prohibition against dealing with property of terrorists (section 4)
- Prohibition against provision of resources and services for benefit of terrorists (section 5)

154. Under the ATA the Minister of Finance has the power to declare a person a "terrorist". A terrorist is defined as any person who —

(a) commits, or attempts to commit, any terrorist act;

(b) prepares for any terrorist act;

(c) participates in or facilitates the commission of any terrorist act;

(d) promotes or encourages any terrorist act; or

(e) is otherwise concerned in any terrorist act,

and includes any person declared in an order made under section 11 to be a terrorist;

155. A new Anti-Terrorism order is currently being drafted to introduce provisions to be consistent with the UN International Convention for the Suppression of the Financing of Terrorism.

Criminalisation of TF consistent with Article 2 of the Terrorist Financing Convention

156. The ATA criminalises funding for 'terrorist acts', which is defined under section 2(1) of as the use or threat of action (whether in Brunei Darussalam or elsewhere)

(a) where the action —

(i) involves serious violence against any person;

(ii) involves serious damage to property;

(iii) endangers any person's life;

(iv) creates a serious risk to the health or safety of the public or a section of the public;

(v) involves the use of firearms or explosives;

(vi) involves releasing into the environment or any part thereof, or distributing or otherwise exposing the public or any part thereof to —

(A) any dangerous, hazardous, radioactive or harmful substance;

(B) any toxic chemical; or

(C) any microbial or other biological agent or toxin;

(vii) is designed to disrupt any public computer system or the provision of services directly related to communications infrastructure, banking any financial services, public utilities, public transportation or public key infrastructure;

(viii) is designed to disrupt the provision of essential emergency services; or

(ix) involves prejudice to public security or national defence;

(b) where the use or threat is intended or reasonably regarded as intending to —

(i) influence the Government or any other government; or

(ii) intimidate the public or a section of the public.

157. Section 2(3) of the ATA indicates that for the purposes of this section, a reference to the public includes a reference to the public of any country or territory outside Brunei.

158. While the definition of a *terrorist act* in Brunei extends acts intended to influence domestic and foreign governments and public, it is not clear if it extends to an international organisation.

Definition of funds / property

159. The ATA refers to both 'funds' and 'property' in its criminalisation of TF. The ATA narrowly defines 'funds' at s2(1) to "includes cheques, bank deposits and other financial resources". Property is not separately defined in the ATA, and the generally applicable IGCA definition of 'property' (s3) would be relied upon. The definition of property is broad enough to cover all forms of property as envisaged in the TF convention. Section 5 of the ATA covers provision of the narrowly defined 'funds', but goes wider to include "*(a)* funds or any other financial assets or economic resources; or *(b)* other financial or related services". The terms "financial assets" or "economic resources" are not further defined in the ATA or IGCA and common interpretation would be relied upon. In each case in which the ATA makes reference to funds, property, financial assets and economic resources, it would appear to include those from a legitimate or illegitimate source. There is a need to streamline the use of the terms 'funds' and 'property' in the ATA to ensure that provisions consistently cover all species of funds used for TF, in keeping with the international standards.

160. The draft Anti-Terrorism order proposes to make consistent the terms "property" and "funds' in line with the definition of "funds' in the UN Terrorist Financing Convention.

Provision or collection of funds for a terrorist act(s)

161. Section 3 of the ATA criminalises provision and collection of 'funds' for terrorist acts:

> No person shall in Brunei Darussalam, and no citizen of Brunei Darussalam and no company incorporated or registered under the Companies Act (Chapter 39) shall outside Brunei Darussalam, —
>
> *(a)* provide funds to any person by any means, directly or indirectly; or
>
> *(b)* collect funds for any person by any means, directly or indirectly,
>
> if he knows or there are reasonable grounds for him to suspect that the funds will be used to commit any terrorist act or facilitate the commission of any terrorist act.

162. The terms of s.3 criminalises the provision and collection of funds with the knowledge or reasonable grounds to suspect that the funds will be used to commit a terrorist act or facilitate the commission of such act. It does not clearly cover provision or collection with the unlawful intention that they should be used in full or in part. As s3 is limited to the ATA definition of 'funds', it does not extend the offence to the widest range of funds as envisaged in the TF Convention.

Provision or collection of funds for use by individual terrorists and/or terrorist organisations

163. The definition of "terrorist" in the ATA, when read with the definition of 'person' in the IGCA, appears to be wide enough to encompass both individual terrorists and a terrorist organisation as envisaged in the FATF standards. Section 2(1) of the ATA defines a 'terrorist' as any person who:

(a) commits, or attempts to commit, any terrorist act;
(b) prepares for any terrorist act;
(c) participates in or facilitates the commission of any terrorist act;
(d) promotes or encourages any terrorist act; or
(e) is otherwise concerned in any terrorist act.

164. As discussed in section 2.1 of this report on corporate liability for the ML offence, the definition of 'person' in Brunei includes natural persons and any group of persons. Additionally, s2(e) provides a 'catch all' which would appear to cover instances of individuals or a group of

persons participating as an accomplice in terrorist acts, organising or directing others to commit terrorist acts; or contributing to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act. It may be supportive of future prosecutions to clarify that financing terrorist organisations is specifically criminalised.

Provision

165. Section 5 of the ATA covers provision to 'prohibited persons' and goes beyond the narrow definition of 'funds' to also include provision of other financial assets, or economic resources. Section 5.1 states that:

> No person shall in Brunei Darussalam, and no citizen of Brunei Darussalam and no company incorporated or registered under the Companies Act (Chapter 39) shall outside Brunei Darussalam, make available any —
>
> *(a)* funds or any other financial assets or economic resources; or
>
> *(b)* other financial or related services,
>
> for the benefit of any prohibited person.

166. Section 5(2) defines "prohibited person" to include any (a) terrorist; (b) person owned or controlled by any terrorist; or (c) person acting on behalf of or at the direction of any person referred to in paragraphs (a) or (b).

Collection

167. Collecting 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 by a terrorist organisation or by an individual terrorist does not appear to be covered by the ATA or any other statute.

Dealing in terrorist property

168. Section 4 of the ATA criminalises dealing with property of a terrorist:

- directly or indirectly, dealing in any property that is owned or controlled by or on behalf of any terrorist or any other person owned or controlled by any terrorist, including funds derived or generated from property owned or controlled , directly or indirectly, by any terrorist or any other person owned or controlled by any terrorist;
- directly or indirectly, entering into or facilitating, any financial transaction relating to a dealing in property referred to in the above paragraph; or
- provide any financial services or any other related services in respect of any property referred to in the above paragraph, to or for the benefit of, or on the direction or order of, any terrorist or any other person owned or controlled by any terrorist.

169. In relation to ss3-5, it is apparent that the TF offences would not require that the funds were actually used to carry out or attempt a terrorist act(s) or to be linked to a specific terrorist act(s).

Punishment for attempting to commit offences

170. Section 511 of the Penal Code addresses attempt provisions, which would be applicable to the ATA:

> Whoever attempts to commit an offence…or attempts to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code or by such other written law, as the case

may be, for the punishment of such attempt, be punished with such punishment as is provided for the offence:

> Provided that any term of imprisonment imposed shall not exceed one half of the longest term provided for the offence.

Terrorist financing as a predicate offence for ML

171. Under the ATA, the offence of TF is only punishable with imprisonment of not more than five years; as such it is not a predicate offence to the CCROP. See s2.1 for detailed discussion of thresholds for predicate offences.

Location of the offence

172. Under the ATA, it is irrelevant if the financing of terrorism occurs in a separate jurisdiction from that of the terrorist act or the terrorist organisation. In each offence provision of the scope of the offences covers persons (including legal persons) in Brunei, as well as citizens of Brunei and those persons incorporated under the Brunei Companies Act acting outside of Brunei.

173. A gap in coverage is that the offence does not apply to Brunei legal persons incorporated under the International Business Companies Order (IBCO).

Proof of the mental element, corporate criminal liability and effective sanctions

174. The law does not prohibit the inferences from objective factual circumstances the existence of the intentional element for the purpose of proving the offences of financing of terrorism. Section 3 requires proof of knowledge of reasonable grounds to suspect. Section 4 makes no mention of the element of knowledge and would suggest strict liability.

175. In keeping with the ML offence, criminal liability for TF extends to both the natural person and the legal person and where there exist administrative sanction; the same is not precluded from being imposed parallel to any criminal sanction.

176. The criminal sanctions for the offences of financing of terrorism is currently an imprisonment term not exceeding five years and a fine not exceeding B$100,000 or both. The available prison term is not a proportionate or dissuasive penalty. The financial penalty for legal persons, in particular, is neither proportionate nor dissuasive.

177. It should be noted that the proposed amendment to the Anti-terrorism Order proposes to increase the penalty of imprisonment for a term not exceeding 15 years or both.

178. A range of administrative sanctions are available under various sector specific licensing regimes. In relation to NGOs involved in TF, s31 of the Societies Order provides for the Minister to declare unlawful any society or branch thereof and the license shall be revoked.

Effectiveness (including statistics for Rec 32)

179. No investigations or prosecutions have been carried out by the RBPF under the Anti Terrorism Order 2001 as there has been no reported or suspected case of terrorist activities in Brunei.

2.2.2 Recommendations and Comments

- Brunei should amend the ATA and related statutes to:
  - Extend the definition of a terrorist act in Brunei to those acts intended to influence an international organisation.
  - Streamline the use of funds/property in the ATA to ensure that provisions consistently cover all species of funds used for TF, in keeping with the international standards.

- Clarify that financing terrorist organisations is specifically criminalised.
- Extend the TF offence to collecting funds to be used by a terrorist organisation or by an individual terrorist.
- Include TF as a predicate offence for the ML offence.
- Increase available sanctions for the TF offence to effective, proportionate and dissuasive levels.
- Extend corporate liability to include Brunei legal persons incorporated under the International Business Companies Order (IBCO) undertaking TF offences outside of Brunei.

- Brunei should ensure that adequate capacity is available to investigate possible TF offences.

2.2.3 Compliance with Special Recommendation II & 32

	Rating	Summary of factors underlying rating
SR.II	**PC**	• Collection of funds for organisations and individuals is not clearly criminalised. • The definition of funds is very narrowly defined for provision and collection related to terrorist acts. • Available sanctions are not effective, proportionate or dissuasive. • TF is not a predicate for ML. • Corporate liability does not clearly extend to Brunei legal persons incorporated under the International Business Companies Order (IBCO) who commit TF offences outside of Brunei. • Implementation is unlikely due to low capacity

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3 & 32)

2.3.1 Description and Analysis

Legal Framework

180. Brunei has a number of laws that specifically deals with the confiscation, freezing and seizing of criminal proceeds and instrumentalities. These laws are the:

- *Drug Trafficking (Recovery of Proceeds) Act* (cap.178) (DTROP)
- *Criminal Conduct (Recovery of Proceeds) Order* (2000) (CCROP)
- *Misuse of Drugs Act* (cap.27) (MDA)
- *Criminal Procedure Code* (cap.7) (CPC)
- *The Prevention of Corruption Act (cap.131) (PCA)*

181. DTROP specifically provides for the recovery of the proceeds of drug trafficking offences under the MDA or a corresponding law. The terms "drug trafficking offence" and "drug trafficking" are clearly defined under s2 of DTROP. DTROP does not extend to instrumentalities of drug offences.

182. CCROP, on the other hand, according to sections 21(10), 5(3) and 5(9)(a) covers 'benefits from an offence' and provides for the recovery of the proceeds of "criminal conducts" other than drug trafficking offences with an imprisonment term of not less than five years or for life or which is a capital offence.

183. Section 25 of the MDA provides for the forfeiture of limited instrumentalities of conveyance proven to have been used in drug trafficking offences violating the MDA. This complements DTROP by enabling the confiscation of these instrumentalities.

184. Section 357 of the CPC provides for *inter alia* the confiscation of proceeds of crime including instrumentalities proved to be used or intended to be used in any criminal conduct including a drug trafficking offence. Thus the CPC complements the DTROP, MDA and in particular the CCROP by enabling the confiscation of instrumentalities given that CCROP and DTROP only covers benefits, financial or otherwise, gained directly or indirectly from the commission of drug trafficking offences.

185. Apart from the MDA and CPC, the DTROP and CCROP contain confiscation, freezing, search and seizure provisions which are specific to ML. However these do not apply to TF, as it is not a predicate offence for ML. See section 2.4 for an analysis of provisional measures and confiscation for TF.

186. The Prevention of Corruption Act (cap.131) (PCA) provides powers of asset tracing, restraint, freeze and seize and confiscation in relation to corruption matters, including related ML. Section 23 of PCA provides Special Powers of Investigation for Officers of the Bureau. PCA is currently under review to extend the powers of investigation to include powers of confiscation and freezing or proceeds of corruption offences under CCROP.

Confiscation of property

<u>DTROP</u>

187. Section 3 of the DTROP enables the confiscation of 'benefits' of laundered properties derived from drug trafficking offences. Section 3(3) defines persons having benefited as "a person who has at any time (whether before or after the commencement of this Act) received in any way whatsoever any payment or other reward in connection with drug trafficking carried on by him or another".

188. Section 5 of DTROP sets out the basis for assessing the proceeds of drug trafficking, including direct and indirect proceeds.

> 5. (1) Subject to section 32, for the purposes of this Act —
>
> *(a)* any payment or other reward received by a person at any time (whether before or after the commencement of this Act) in connection with drug trafficking carried on by him or another is his proceeds of drug trafficking; and
>
> *(b)* the value of his proceeds of drug trafficking is the aggregate of the values of the payment or other rewards.
>
> (2) The court may, for the purpose of determining whether the defendant has benefited from trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the following assumptions, except to the extent that any of the assumptions are shown to be incorrect in the defendant's case.
>
> (3) Those assumptions are that —
>
> *(a)* any property appearing to the court —
>
> (i) to have been held by him at any time since his conviction; or
>
> (ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him, was received by him, at the earliest time at which he appears to the court to have held it, as a payment or reward in connection with drug trafficking carried on by him;
>
> *(b)* any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him; and
>
> *(c)* for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.
>
> (4) Subsection (2) does not apply if the only drug trafficking offence in respect of which the defendant appears before the court to be sentenced is an offence under sections 20 or 22.
>
> (5) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the court shall leave out of account any of this proceeds of drug trafficking that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

189. Section 3(2)&(4) and s7 determine that at the time the court is sentencing a person on drug trafficking offences, the courts shall determine whether he has benefited from drug trafficking, the assessed to be the value of his proceeds of drug trafficking and determine the amount to be recovered

190. For example, in *Prosecutor v. Hanip Bin Hj Sapar* Criminal Trial No. 9 of 2002, the High Court of Brunei Darussalam having convicted the Defendant for drug trafficking offences in violation of the MDA, confiscated the sum of $8,271 being the proceeds of crime.

191. However, sections 25 and 357 of the MDA and CPC respectively permit the confiscation of instruments of ML.

CCROP

192. Section 5 of the CCROP enables confiscation of the proceeds or benefits and pecuniary advantages of laundered properties derived from criminal conducts other than drug trafficking offences. Laundered proceeds of corruption offences can also be confiscated under the CCROP.

CPC

193. Section 357(2) of the CPC, however, permits the confiscation of instruments of ML. It states "[w]hen an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fits for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its

custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

194. Property is stated to "include that which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."

195. It is clear from the terms of s357 that both proceeds and instruments of crime can be confiscated, as well as property of corresponding value. However, instrumentalities intended for use are not covered.

196. A confiscation order pursuant to s357 of the CPC can apply to property held in the names of third parties.

197. Confiscation under the DTROP and CCROP can only be made post-conviction. Brunei does not have a civil forfeiture regime.

MDA

198. Section 25 of the MDA provides for the forfeiture of limited instrumentalities of conveyance including ships, hovercraft, aircraft or vehicles proved to have been used in drug trafficking offences violating the MDA. Intended instrumentalities are not covered.

PCA

199. The CCROP and CPC provide for confiscation of instrumentalities and proceeds of crime derived from corruption offences set out in the PCA. The PCA contains an additional 'catch all' provision at s.12(1) whereby any current or former public officer who is proven to be in possession of unexplained property commits an offence. Section 12(2) provides for pecuniary resources or property under his control is subject to confiscation upon conviction. Section 12(2) covers property and property of corresponding value:

> 12. (2) In addition to any penalty imposed under subsection (1) the court
>
> may order a person convicted of an offence under subsection (1) to pay to the
>
> Government —
>
> *(a)* a sum not exceeding the amount of the pecuniary resources; or
>
> *(b)* a sum not exceeding the value of the property, the acquisition of which by him was not explained to the satisfaction of the court and any such sum ordered to be paid shall be recoverable as a fine.
>
> (3) Where a court is satisfied in proceedings for an offence under subsection (1) that, having regard to the closeness of his relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused, or acquired such pecuniary resources or property as a gift, or loan without adequate consideration from the accused, such pecuniary resources or property shall until the contrary is proved, be deemed to have been under the control or in the possession of the accused.

Provisional measures, including freezing and/or seizing

DTROP

200. Section 11(1) empowers the High Court, upon application by the prosecution on reasonable cause to believe that a person has benefitted from drug trafficking, to make a restraint order prohibiting any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

> "Realisable property" is defined under section 2(1) to mean –
>
> (c) any property held by the defendant; and
> (d) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act,
>
> except those instruments the subject of forfeiture under section 25 of the MDA.
>
> "Property" includes money and all other property, moveable or immovable, including things in action and other intangible or incorporeal property.

201. Given the definition of "property", s11(1) therefore enables the restraint of property which is an instrument of ML.

202. A restraint order under DTROP can be made at the investigation stage prior to the laying of any drug trafficking charge(s).

203. A restraint order (s11(5)) –

(e) may be discharged or varied in relation to any property; and
(f) shall be discharged when proceedings for the offence have been concluded.

204. Seizure power for the RBPF is prescribed under section 26(5) of the DTROP.

CCROP

205. Like s11(1) of the DTROP, s10(1) of the CCROP enables the High Court to issue a restraint order against realisable property.

206. Instruments of ML can also be restrained under s10(1) of the CCROP.

207. A restraint order under CCROP can be made at the investigation stage prior to the laying of any criminal charge other than a drug trafficking charge provided the Court is satisfied that proceedings will be instituted against the defendant within seven days of the application for the said order.

208. A restraint order (s10(6)) –

(g) may be discharged or varied in relation to any property; and
(h) shall be discharged when proceedings for the offence have been concluded.

209. Seizure power for the RBPF is prescribed under s29(5) of the CCROP.

PCA

210. Section 23B of the PCA empowers the Public Prosecutor to serve a written notice to an alleged suspect or defendant accused of committing corruption or related offences directing that person not to dispose or otherwise deal with any property specified in such notice without the consent of the Public Prosecutor. Such notice, if necessary, can also be served on banks and deposit-taking companies with the same directives. The notice can remain in force for a period of 12 months commencing from the date of service. Violation of the notice attracts a fine of $50,000.00 or the value of the property disposed or otherwise dealt with, whichever is greater, and to imprisonment for three years.

211. Seizure power for the Officer of the ACB or RBPF is prescribed under s 21 of the PCA.

CPC

212. The CPC confers a power upon police officers to seize property pursuant to section 363. However the context indicates that the power is restricted to seizure of physical objects like under sections 11(9) & 10(10) of the DTROP and CCROP respectively. The CPC does not contain any provisions for freezing of property.

213. The initial applications for restraint orders under the DTROP and CCROP can be made ex parte.

214. As noted the PCA under sections 20, 21 and 23B provide for search, seizure and restraint powers.

Powers to identify and trace property

DTROP

215. Sections 24 and 27 enable the police and prosecution to obtain production orders from the Court pertaining to investigative and evidentiary materials and information held by public bodies. Failure to comply is punishable under s25. Travel documents of suspected drug traffickers can be ordered by the Court to be surrendered to the Narcotics Bureau under s28. The offence of prejudicing investigation is prescribed under s29. However, the DTROP does not prescribe for the securing of any monitoring orders.

CCROP

216. Section 28 and 29 enables the police to obtain production orders regarding investigative and evidentiary materials even those contained in a computer. It is an offence to cause any prejudice to the investigation (s28(9)). The offence of 'tipping-off' is punishable under s25. However, the CCROP does not prescribe for the securing of any monitoring orders.

PCA

217. Section 23 of the PCA empowers the Public Prosecutor or the Director of the ACB to provide written authorisation to any Officer of the ACB enabling such officer to investigate and inspect documents specified under s23(1)(a), and to require from any person the production of materials specified under s23(1)(b). Section 23A empowers the Public Prosecutor to gather investigative and evidentiary materials and information from any person specified under s23A(a)-(e) and any violation attracts penalties prescribed under s23A(2).

218. Every person required by any Officer of the ACB or a police officer to give any information on any subject is legally bound to provide the information pursuant to s22.

219. Travel documents can be surrendered according to s23C. Legal professional privilege is secured under s24.

220. The investigative powers under the PCA are wide any may also enable Officers of the ACB and the police to monitor financial institutions' customer accounts of individuals suspected of corruption offences and ML.

CPC

221. Relevant provisions within the CPC include:

- the power to summon persons to produce documents or other things – s56
- the power to search pursuant to a search warrant – s59
- the power to search premises suspected of containing stolen property, forged documents – ss61, 391
- the power to compel the attendance of witnesses and to examine them – ss52-55, 381

Rights of bona fide third parties

DTROP

222. Section 8 provides for the protection of the rights of third parties in instances prior to and after the granting of a confiscation order.

223. Before and after the granting of a confiscation order the interested third party can apply, notify the Public Prosecutor, and must satisfy the Court that (ss8(2)-(3) & (5)):

(i) he was not in any way involved in the defendant's drug trafficking; and

(j) he acquired the interest –

(i) for sufficient consideration; and

(ii) without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time he acquired it, property that was involved in drug trafficking.

224. Any third party who had knowledge of the application for the confiscation order before the order was made, or appeared at the hearing of that application are generally not allowed to make the said application except with leave of the court.

225. A good demonstration of this is the case of *Prosecutor v. Hanip Bin Hj Sapar* Criminal Trial No. 9 of 2002, where the High Court only confiscated the sum of B$8,271.82 out of the sum of B$20,000.00 and the latter amount returned to the Defendant's mother and daughter due to the court believing their evidence to the effect that that sum of money was not proceeds of the drug trafficking offence.

CCROP

226. Unlike s8 of the DTROP, there is no equivalent provision under the CCROP.

227. Notwithstanding the lack of such provision, interested third parties can rely on the CPC, for instance, under ss357(2), 359, 362, 363, etc, for the appropriate remedy.

PCA

228. The PCA does not have any provision on the protection of the rights of bona fide third parties.

CPC

229. Section 357(2) empowers the Court to return any property to the proper claimant.

230. The Court under s359 can order that payment be made to a bona fide purchaser for value of money found the accused.

231. Section 362 enables the Court to order that any person who has been dispossessed of any immoveable be restored its possession.

232. Seized property by the police can be by order of a magistrate returned to its owner under s363.

Effectiveness – provisional measures and confiscation

233. There are severe procedural constraints with implementing CCROP and DTROP. In discussions with investigation and prosecutions agencies, all sides highlighted a lack of understanding with practical application of relevant CCROP and DTROP provisions. There is very low capacity to implement relevant provisions.

234. RBPF and AGC indicated that there is some experience of utilising the CPC in relation to seizing and confiscating instrumentalities of crime.

235. The ACB has experience in applying restraining provisions under powers available in the PCA. The trend in ACB cases has been towards relatively small rather than very serious corruption cases, and the PCA is currently under review.

Rec 32 – Statistics of provisional measures and confiscation

236. At the time of the onsite visit, there were neither any prosecution nor restraining and confiscation of properties pertaining to the ML offences under the DTROP and CCROP.

237. The Assessment Team was told however that there have been a number of restraints and confiscation done with regard to drug trafficking offences. One restraint case had been pursued under DTROP in 2002 (*Prosecutor v. Hanip Bin Hj Sapar* Criminal Trial No. 9 of 2002).

238. Authorities indicate that restraint action had been taken in relation to corruption cases involving violations of the PCA. There were no statistics provided by the AGC and ACB on this regard.

239. At the time of the onsite visit prosecution authorities were considering applying CCROP provisions to ongoing matters involving illegal deposit taking.

240. RBPF did not provide statistics of use of the CPC for seizing and confiscation of instrumentalities in relation to predicate offences.

2.3.2 Recommendations and Comments

- CCROP should apply to the proceeds and instrumentalities of all offences, not just those narrow range of offences that constitute predicate offence for ML – ie those whose maximum penalty is above five years.
- Given that the CCROP and DTROP are severely hampered by legal complexities and procedural gaps, the assessors recommend a review of both statutes to address procedural complexities, as well as provide focused training to develop capacity to apply the laws.
- Intended instrumentalities should be clearly covered for confiscation.
- Brunei should actively engage in the investigation and prosecution of ML offences including restraining and confiscation of POC.
- There is a need for further training of investigators and prosecutors on POC provisions.
- The DTROP and CCROP need to clarify further the procedures of acquiring restraint and confiscation orders. Current practitioners heavily rely on the practice borrowed from Singapore and other jurisdiction and also the High Court Rules.

2.3.3 Compliance with Recommendations 3, 30 & 32

	Rating	Summary of factors underlying rating
R.3	**PC**	• CCROP has a very narrow range of property subject to confiscation, as it is limited to proceeds from offences with a custodial sentence of more than five years. • Intended instrumentalities are not clearly covered. • Very significant procedural shortcomings inhibit effective implementation of CCROP and DTROP • While the CPC, MDA and PCA are utilised, there has been a complete lack of use of CCROP or DTROP to restrain and confiscate laundered proceeds of crime.
R.32	**PC**	Statistics on the use of powers to freeze, seize and confiscate proceeds of crime and instrumentalities are not well kept.
R.30	**PC**	Investigation and prosecution authorities lack specialist capacity to implement CCROP and DTROP provisions.

2.4 Freezing of funds used for terrorist financing (SR.III & R.32)

2.4.1 Description and Analysis

Legal Framework

241. The ATA sets out the legal framework for implementing UNSCR 1267 and 1373. Section 12 of the ATA provides the legal basis:

> *Directions to discharge Brunei's international obligations:*
>
> 12. (1) The Minister may issue such directions to any financial institution or any class of financial institution as he considers necessary in order to discharge or facilitate the discharge of any obligation binding on Brunei by virtue of a decision of the Security Council of the United Nations relating to terrorism.
>
> (2) Any financial institution to which a direction has been issued shall comply with it notwithstanding any other duty imposed on it by any written law, rule of law or contract; and in carrying out any act in compliance with that direction the financial institution shall not be treated as being in breach of any such written law, rule of law or contract.
>
> (3) No financial institution shall disclose any direction issued to it if the Minister has notified it that he is of the opinion that any such disclosure would be against the public interest.
>
> (4) A financial institution which fails or refuses to comply with a direction issued to it, or which discloses a direction issued to it in contravention of subsection (3), is guilty of an offence and liable on conviction to a fine not exceeding $20,000.
>
> (5) In this section, "financial institution" means any person engaging in any relevant financial business as defined in section 4 of the MLO.

242. Under the proposed draft Anti-Terrorism Order, the Minister of Finance will be empowered to make regulation in respect of the freezing of funds and assets and where the application for restraint or seizure order is made by the Attorney-General to the Judge, ex parte. Under the same draft, the Minister will be empowered to issue directions, not only to any financial institution or class of institutions, but also to any person or any class of persons in order to discharge any obligation binding on Brunei relating to terrorism.

Implementing UNSCR 1267

243. Section 12 of the ATA provides that the Minister of Finance may give directions to discharge Brunei's international obligations arising from binding decisions of the UN Security Council relating to terrorism, including actions to freeze assets obligations under UNSCR 1267. Section 12(1) indicates that such directions may be issued to any financial institution or any class of financial institution considered necessary by the Minister. Section 12(4) provides for offences and monetary sanctions for failure to comply with directions issued under s12. This would allow the authorities to issue directions for ongoing internal controls to monitor transactions and customers in relation to 1267. Authorities indicated that s12 could provide for provision for the seizure and forfeiture of financial assets or economic resources of persons.

244. To date no such directions have been issued under s12 of the ATA.

245. Section 14 of the ATA further provides that the Minister may make such regulations necessary to implement the Act, including directions issued under s12. To date no such directions have been issued under s12 of the ATA.

246. The Ministry of Finance (MoF) has issued instruction letters to all regulated financial institutions in Brunei informing them that the UNSCR 1267 consolidated list has been updated and requiring financial institutions to check customer databases and immediately report any matches to

the MoF. In addition to all financial institutions (including onshore and offshore), the BIFC has also issued such instructions to trust and company service providers operating in the international financial sector.

247. No instructions have been issued for ongoing internal controls to monitor for 1267 entities. Brunei FIU has circulated draft KYC/CDD guidelines to all banks, which have some relation to implementation of UNSCR 1267. The draft guidelines call on banks to maintain a database of entities on the 1267 consolidated list for the purpose of account monitoring for identifying suspicious transactions. The guidelines call on banks to file an STR with the FIU in the case of any match with the 1267 list. These guidelines are in draft form and do not create any binding obligations.

248. In practice Brunei financial institutions and trust and company service providers (TCSPs) appear to take steps to check their customer databases when updated 1267 lists are received. Financial institutions are aware of the need to check for matches and immediately notify the MoF any matches. Authorities indicate that on-site inspection of banks have included compliance with instructions to check for 1267 entities. On-site inspections of insurance companies were yet to commence at the time of the on-site visit.

249. There have been no instances of any Brunei financial institution finding a match with entities on the consolidated list.

250. Authorities indicate that in the case where a match is made, the Minister would issue a direction under s12 of the ATA to freeze the funds of the identified individual. While this is untested, the team has some concerns that this may take some time and could cause undue delays in the process.

251. Brunei should issue directions unders12 of the ATA to provide for obligatory freezing without delay in the case of any possible match with a 1267 listed entity holding assets in Brunei.

Implementing UNSCR 1373

252. In addition to ss12 and 14 above, s11 of the ATA provides for the Minister to designate any person, including legal persons, to be a terrorist for the purpose of the Act. Section 11(1) limits the designation to persons concerned in any terrorist act.

> *Power to declare person a terrorist*
>
> 11. (1) The Minister may by order published in the *Gazette* declare any person named and described therein to be a terrorist for the purposes of this Act:
>
> Provided that he may make such an order in respect of any person only if he believes that such person has been concerned in any terrorist act.

253. Section 14 of ATA allows the Minister to make such regulations as he considers necessary or expedient for the carrying into effect the provisions of the ATA. Authorities indicated that this could include provision for the forfeiture and seizure of financial assets or economic resources of persons declared by the Minister to be a terrorist under s11.

Considering and giving effect to freezing mechanisms in another jurisdiction

254. Sections 11, 12 or 14 of the ATA would provide the legal basis for Brunei to consider and give effect to actions initiated under the freezing orders of another jurisdiction. Section 11 would allow for Brunei to designate persons including legal persons, as terrorists. The ATA would not appear to preclude designation of non-Bruneian persons concerned with terrorist acts outside of Brunei against a government or population other than Brunei's. Sections 12 and 14 could respectively be used to issue directions and regulations to freeze assets of such designated terrorists.

255. Brunei has not yet examined or given consideration to other jurisdictions any request to initiate freezing under the freezing mechanisms of other jurisdictions. At present Brunei has not established any procedures to consider or give effect to such requests from other jurisdictions.

256. The decision whether to act upon any actions initiated by other jurisdiction would be determined by the Minister who can issue directions under s12 of the ATA.

Scope of funds or other assets covered by provisional measures

257. Section 12 of the ATA provides some freezing powers in relation to a range of types of property. Section 12 allows for the direct application of obligations set out in UNSCR 1267 and 1373, regardless of other criminalisation regime. Despite this, s12 has never been applied.

258. The Minister may make such regulations as he considers necessary or expedient for the carrying into effect the provisions of the order including provision for the forfeiture and seizure of financial assets or economic resources of persons declared by him to be a terrorist under s11.

Communicating actions taken under freezing orders

259. It is not clear the extent to which Brunei would be in a position to adopt effective systems for communicating to the financial sector freezing actions taken in relation to 1267 and 1373.

Clear guidance to financial institutions and other entities which may hold targeted funds

260. Brunei has not issued provided clear guidance to financial institutions and entities that may be holding terrorist assets regarding their obligations in taking actions under freezing mechanisms. Existing draft guidelines are limited to reporting STRs, which do not advance the mechanisms required under SRIII. Draft KYC/CDD guidelines to all banks call on banks to maintain a database of entities on the 1267 consolidated list for the purpose of account monitoring for identifying suspicious transactions. The guidelines call on banks to file an STR with the FIU in the case of any match with the 1267 list. These guidelines are in draft form and do not create any binding obligations.

Procedures for unfreezing, providing access to funds or considering inadvertently affected parties

261. The ATA provides for limited measures for unfreezing in a timely manner, except for a general power available for the minister to revoke an order to designate a terrorist under Section 11.

> Section 11: Power to declare person a terrorist.
>
> 3) An application may be made to the Minister to revoke an order made in respect of any person under subsection (1) by —
>
> (a) that person; or
>
> (b) any other person affected by the making of an order in respect of that person.
>
> (4) The Minister, shall, after giving an applicant under subsection (3) an opportunity to be heard, make a decision which shall be final and shall not be called in question by any court on any ground whatsoever.

262. Directions under Section 12 and regulations under s14 have not yet been issued. Such regulations and directions but could cover issues related to:

- procedures for considering de-listing requests and for unfreezing the property of de-listed persons or entities in a timely manner consistent with international obligations.
- Unfreezing the property of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.

- Authorising access to property that was frozen pursuant to UNSCR 1267 and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.
- Establishing appropriate procedures through which a person whose property has been frozen can challenge that measure with a view to having it reviewed by a court.

Mechanisms for judicial review of freezing orders

263. No regulation has been made under s14 in relation to the procedure through which measures can be reviewed by the court under the existing Act.

Confiscation and provisional measures of terrorist-related funds in other circumstances

Confiscation

CPC

264. Given that the CCROP cannot be relied upon for terrorist financing (see the discussion of thresholds at section 2.3), the CPC (s357) contains general provision for confiscation of property upon conclusion of an inquiry or investigation. Section 357 of the CPC enables the confiscation of both proceeds and instruments of crime. Intended instrumentalities for TF are not covered.

Freezing / seizing and tracing

CPC

265. The CPC confers a power upon police officers to seize property pursuant to s363. However the context indicates that the power is restricted to seizure of physical objects. The CPC contains only limited provision for freezing property. CPC s357 makes provision for a court to make orders, pending the conclusion of a trial, for 'the proper custody' of property regarding which an offence appears to have been committed or which appears to have been used for the commission of an offence. There is thus provision in the CPC for a species of freezing order, although the context indicates that it is restricted to physical property.

ATA

266. In the absence of any regulation by the Minister pursuant to s14 of the ATA, there is no section in the ATA which authorises freezing or seizure of property on the ground that it constitutes proceeds of terrorist acts. Despite the lack of provision, investigating authorities would have to rely on the CPC as discussed at Recommendation 3.

Protection for the rights of bond fide third parties

267. Persons affected by the Minister's order under s11 of the ATA can apply to the Minister for revocation but the Minister's decision is final and cannot be reviewed by the courts.

268. Under s357 of the CPC any innocent third party entitled to the property can apply for modification of the confiscation order or even appeal.

Monitoring and enforcing compliance

269. Sector specific statutes (Banking Order, International Banking Order, etc) provide the legal framework for monitoring and enforcing compliance with regulatory instructions. In addition, s12 of the ATA sets out powers for enforcement of compliance in relation to directions issued to any financial institutions to discharge UNSCR obligations. In the absence of ATA s12 regulations, no enforcement action has been taken.

Effectiveness (including Rec 32, terrorist financing freezing data)

270. There has been no property frozen pursuant to UN Resolution relating to TF.

271. Although there is no freezing regulation issued pursuant to the ATA yet, the Ministry of Finance issues circulars to its financial institutions on any updated list under the UN Resolution for the institutions to report to the Ministry if the names of persons on such list are their customers. The MoF letters variously include the URL address of the 1267 Committee website, or attach the consolidated list. Such letters are issued at least four times a year at the time that the UN consolidated list is updated.

272. Authorities indicate that on-site inspection of banks, international banks and international insurance have included compliance with instructions to check for 1267 entities. On-site inspections of insurance companies were yet to commence at the time of the on-site visit. To date, no institutions have reported of any customers on the list.

2.4.2 Recommendations and Comments

- Brunei should issue directions under s12 of the ATA to provide for obligatory freezing without delay and without prior notice in the case of any possible match with a 1267 listed entity holding assets in Brunei.
- Brunei should utilise ss12 and 14 to support implementation of 1373 with appropriate legal and procedural frameworks.
- Brunei should consider giving effect to actions initiated under the freezing orders of another jurisdiction.
- Brunei should issue directions and regulations under ss12 and 14 to freeze assets of designated terrorists when giving effect to actions initiated under the freezing orders of another jurisdiction.
- Brunei should provide clear guidance to financial institutions and entities that may be holding terrorist assets regarding their obligations in taking actions under freezing mechanisms.
- Brunei should issue directions under s12 and regulations under s14 to address:
  - procedures for considering de-listing requests and for unfreezing the property of de-listed persons or entities in a timely manner consistent with international obligations.
  - Unfreezing the property of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.
  - Authorising access to property that was frozen pursuant to UNSCR 1267 and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.
  - Establishing appropriate procedures through which a person whose property has been frozen can challenge that measure with a view to having it reviewed by a court.
- Brunei should enhance supervision and monitoring of financial institutions to ensure compliance with obligations to implement measures relating to SRIII.

2.4.3 Compliance with Special Recommendation III & 32

	Rating	Summary of factors underlying rating
SR.III	**PC**	• Statutory powers to give directions to financial institutions regarding freezing funds of 1267 entities without delay have not been issued. • Implementation of 1373 is not supported by appropriate legal and procedural frameworks • Brunei has not given clear guidance to financial institutions and entities that may be holding terrorist assets regarding their obligations in taking actions under freezing mechanisms. • Brunei has not addressed procedures for considering de-listing requests and for unfreezing the property of de-listed persons or entities in a timely

		manner consistent with international obligations. • Establishing appropriate procedures through which a person whose property has been frozen can challenge that measure with a view to having it reviewed by a court.
R.32	**PC**	• Statistics of regulatory instructions given in relation to SRIII are not well kept.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)

2.5.1 Description and Analysis

Legal Framework

273. The Brunei Darussalam Financial Intelligence Unit (FIU) was established on 28 February 2007 under a duly gazetted administrative instruction from the Finance Ministry. The legal framework that sets out the FIU's functions is provided with the appointment of the Permanent Secretary of the Ministry of Finance as Supervisory Authority under s15 of the MLO and the appointment of the Permanent Secretary of Ministry of Finance and the Director of Financial Institutions Division as the Reporting Authority under s20 of the CCROP. Ministry of Finance administrative instructions to reporting parties designate the FIU as the agency to receive STRs. Together the Supervisory Authority and Reporting Authority exercise statutory powers of the FIU to disseminate STRs. The function of the Supervisory Authority and the Reporting Authority is delegated to the FIU, however the decision making for core FIU functions is not delegated but is retained by the above designated Authority.

274. The FIU is managed by the Head of the FIU who is responsible for the two staff who perform the core functions of the FIU. The Head of the FIU reports directly to the Director of the Financial Institutions Division (FID) who in turn reports to the Permanent Secretary, Ministry of Finance.

275. The MLO allows for the reporting of STRs to the police and the CCROP allows for the dissemination of STRs by the Supervisory Authority. Administrative instructions were given in 2007 by the Supervisory Authority that all STRs should be reported to the FIU. Under MLO s16, where (1) the Supervisory Authority obtains any information and (2) is of the opinion that any person has or may have been engaged in ML, the Supervisory Authority shall report it to the police.

276. The ATA s8 obliges 'any person', which includes all natural and legal persons in Brunei to report TF-related STRs the Commissioner of Police and any other person that the Minister may designate. At the time of the on-site visit the Minister had not designated any other person, including the FIU, to receive TF-related STRs.

277. Authorities have drafted an amendment to the MLO which would require STRs to be reported to the Supervisory Authority or a police officer. Issuing the amended MLO has been delayed.

The FIU as a National Centre for receiving STRs and other information

278. The appointment of the Supervisory Authority under the MLO (Minister and Permanent Secretary, Ministry of Finance) and the Reporting Authority under CCROP (Permanent Secretary and Director FID, Ministry of Finance) establishes the FIU.

279. The FIU has been established administratively as a department within the Ministry of Finance under the FID. The FID is the regulator and supervisor of domestic and international banks, insurance, and other domestic financial service providers. The Head of the FIU reports directly to the Director of the FID, who in turn reports to the Permanent Secretary of the Ministry of Finance.

280. The MLO and CCROP require reporting institutions to submit STRs relating to ML to a police officer. The ATA requires TF-related STRs to be reported to the Commissioner of police. No statute requires reporting institutions to report STRs to the FIU. Ministry of Finance administrative instructions given to all reporting institutions requires all STRs to be provided to the FIU. In keeping with the regulatory instruction, currently STRs are only being reported to the FIU.

281. A Standard Operating Procedure for the receipt, analysis and dissemination of STRs has been formulated by the FIU which guides its work practices. The core functions of the FIU are the receipt, analysis and dissemination of STRs.

282. Decision making for core FIU functions are not delegated to the Head of the FIU but are retained by the Minister of Finance, Permanent Secretary and the Director FID.

Receipt of STR and other Information

283. Obligations to file STRs have been extended to all financial institutions. These have applied to banks, the insurance sector, money remitters and money changers and trust and company service providers since 2000. However at the time of the on-site visit, only banks had reported STRs to the FIU. Following the onsite visit it was reported that one STR was received from an Investment Adviser licensee in December 2009. The FIU does not currently receive cross-border currency reports.

284. STRs are hand delivered to the FIU. At the time of delivery a receipt is provided to the reporting institution. The STRs are then classified as Confidential/Secret and the STR is recorded in the FIU log book and entered into a stand-alone database. When each STR is received it is reviewed by the Head of the FIU and assigned for analysis. After the STR has been assigned to an analyst, they will report their findings and recommended actions to the Head of the FIU who reports these findings and recommendations to the Director of the FID. The recommended actions and the STR are then forwarded by the Director of FID to the Permanent Secretary and the Minister of Finance II for approval and further advice on the next course of action.

285. The process to authorise FIU analysis appears to be somewhat bureaucratic, however in the assessors' view this is not the reason for the lack of disseminations of STRs to law enforcement agencies.

286. STRs received prior to February 2007 have not been entered into the FIU database. Paper STRs and are stored in a secure cabinet.

287. The FIU does not receive threshold transaction reports (those greater than B$5000) which are provided by Money Changers and Money Remitters to the Money Changer and Remittance Unit of the FID. While these reports are kept on a stand-alone database in the FID, the FIU does not receive the reports and does not access the database of reports held by the FID as part of its analysis function.

Analysis of STRs received

288. Analysis of the STRs received by the FIU is conducted by the two staff of the FIU. Analysts are seeking sufficient information to indicate ML or TF to allow dissemination of an STR to the relevant LEAs.

289. Inquiries conducted by FIU analysts are not standardised, but include searches that are considered relevant to each STR. Inquiries that can be conducted include requests to financial institutions for customer records under sector-specific regulatory powers. The FIU may make inquiries with LEAs to obtain criminal records and intelligence holdings. It is not clear whether comprehensive analysis including the matching of data received from banks under s32 of the Banking Order 2006, with Customs, immigration, ROC and other Government records is conducted.

290. The FIU analysis function is conducted manually, and there is no automated cross-referencing. The FIU does not cross-reference STRs with other databases maintained by the MoF, including Cash Transaction Reports (CTRs) submitted by money changers and Funds Transfer Reports submitted by money remitters, which are maintained by the Money Changer and Remittance Unit in FID. No systematic electronic cross referencing of STRs received prior to the formation of the FIU is conducted, however some manual cross referencing is conducted.

291. Under the FIU standard operating procedures, if the analysis conducted provides evidence of ML or TF then the analyst will recommend that the STR is disseminated. It appears that unless the FIU analysis shows evidence of ML or TF, the FIU is of the opinion that LEAs will require the FIU to conduct further inquiries. The MLO states that the STR can be disseminated if there is the opinion that the information indicates that any person has or may have been engaged in ML. The evaluation team has concerns that the burden of proof that FIU analysts are seeking, i.e. evidence of ML/TF, is too high which results in no STRs being disseminated.

292. Analysts report findings and recommended actions to Head of FIU who then reports to the Director FID. The recommended actions and the STR are then forwarded by the Director of FID to the Permanent Secretary and the Minister of Finance II for approval and further advice on the next course of action.

Dissemination of STRs to law enforcement agencies

293. The MLO provides powers for the FIU to directly disseminate STRs to the police. The CCROP allows the FIU to disseminate to all LEAs and foreign LEAs. Dissemination under CCROP to agencies other than the RBPF requires the FIU to seek consent from the Attorney General prior to dissemination.

294. CCROP ss21(8)b and 22(9)b give the FIU the option to disseminate information to any LEA in Brunei in relation to a broad range of criminal conduct. However, ss21(6) and 22(7) place a barrier to direct dissemination, with the Reporting Authority requiring the consent of the Attorney General before disseminating information related to ML to the police. Sections 21(7) and 22(8) override this in cases where the Reporting Authority is required to disclose information. This requirement only relates to s16 of the MLO, which is FIU dissemination to the RBPF.

295. There is no clear legal authority for the FIU to disseminate TF-related STRs to LEAs under the ATA.

296. Under the FIU standard operating procedures, if the analysis conducted provides evidence of ML or TF then the analyst will recommend that the STR is disseminated. It appears that unless the FIU analysis shows evidence of ML or TF, the FIU is of the opinion that LEAs will require the FIU to conduct further inquiries. The MLO states that the STR can be disseminated if there is the opinion that the information indicates that any person has or may have been engaged in ML. The evaluation team has concerns that the burden of proof that FIU analysts are seeking, ie evidence of ML/TF, is too high, which results in no STRs being disseminated.

297. If there are grounds to suspect ML or TF then the Director of the FID will make a recommendation and seek approval from the Permanent Secretary. After approval by the Permanent Secretary and maybe the Minister of Finance (who is also the head of state), the STR can be disseminated to the relevant LEAs.

298. In MLO s16(1) the threshold for dissemination is that the Supervisory Authority is of the 'opinion' that information indicates a person may have been engaged in ML. This should be the threshold to meet prior to the decision to disseminate rather than 'evidence of' as contained in the SOP.

299. It should be noted that between early 2007 and April 2010, no STRs were disseminated from the FIU to LEAs. Prior to the formation of the FIU, ie between 2005 and 2007, 18 STRs were disseminated to the RBPF. Only five of those STRs were subsequently investigated by the RBPF, however none were found to involve ML activities as none of the persons identified in the STR were recorded on police indices.

FIU to provide guidance to Financial Institutions

300. The FIU has drafted STR reporting forms specific to the banking, insurance and money changing sectors to ensure appropriate information is reported. The FIU has conducted awareness raising workshops on the use of these forms by financial institutions. These forms are currently available to report STRs to the FIU.

301. The FIU has drafted STR forms for lawyers and accountants in preparation for their mandatory obligations once the amendments to the MLO come in to force.

302. The FIU has also assisted the securities regulator, Brunei International Financial Centre (BIFC), to develop an STR form specific to that industry. BIFC has forwarded the draft STR form to investment advisers licensed under the Securities Order for feedback.

303. Other STR forms will be developed progressively depending on the risk and level of activity in other financial sectors and DNFBP sector. Other financial sectors currently report STRs in their own format. The FIU recognises the need to consult with these professions on an agreed format for reporting and guidance.

304. The reporting institutions are aware that they are required to hand deliver all STRs directly to the FIU. The reporting institutions will receive an acknowledge receipt for the delivery of the report.

305. These sectors have advised that the FIU does not as a general rule provide feedback if the reporting is adequate. The FIU will return the STR to the reporting institution if the STR has inadequate information. The FIU has a good rapport with the designated AML/CFT compliance officers and communicates well in exchanging information as and when needed taking into account the small number of the financial institutions in Brunei.

Access to information on timely basis to FIU

306. There is no legal impediment to receiving information from Customs and Immigration or information relating to drug offenders lists, drivers licence records, and land and property records.

307. The FIU makes requests to other government departments including the Registrar of Companies.

308. The FIU does not access remittance transactions reports over B$5,000 which are held by the FID, although there is no legal impediment for them to do so.

309. The FIU does not have a drug offenders list however they can obtain information through the National Committee on Anti Money Laundering and Combating Terrorism Financing (NAMLC), or on an ad hoc basis from LEAs to determine whether a person who is the subject of an STR is recorded on police databases.

310. Exchange of information is facilitated through National Anti-Money Laundering Committee (NAMLC), whose Terms of Reference set out a role for them to facilitate coordination and exchange of information between members as well as with counterpart committees both regionally and internationally.

311. The FIU use open source information when they receive an STR as part of the analysis function.

Additional information from Reporting Parties

312. The FIU has no direct powers to request additional information from reporting parties, but this is available through the relevant regulatory authority under various sector-specific orders. The enabling provisions to obtain additional information from reporting parties are set out in the following table.

Table: Powers to obtain additional information from reporting parties

Statute	Section	Covered sectors
Banking Order 2006	Section 32	Domestic banking
Islamic Banking Order 2006	Section 31	Islamic banks
International Banking Order 2000	S 15	international banks
International Insurance and Takaful Order 2002	S 38	International insurance Conventional & Islamic insurance
Mutual Funds Order 2001	Section 27	Mutual funds
Securities Order 2001	Section 79	Securities
International Business Companies Order 2000	Section 106	Trust and company service providers

313. Such provisions do not exist in the Finance Companies Act, however at the date of the assessment all finance companies are wholly owned by the banks and this may be covered by the Banking Order 2006.

314. When seeking further information from reporting parties which are licensed trust and company service providers, s35(2)(e) of the Registered Agents and Trustees Licensing Order 2000 (RATLO) only lifts secrecy in the context of an investigation or prosecution. The operation of an administrative FIU may not meet the definition of 'investigation' and as such there may be issues in obtaining further material if it is required by the FIU.

315. The procedure for accessing customer records under the BO and other sector-specific statutes is based on the provision of a notice requiring the financial institution to provide such further documents as required including account opening documents, bank statements and other documents that the bank may hold. Information is generally received within 14 days.

Dissemination of information

316. Section 16(1) of the MLO provides for the supervisory authority to disclose information to a police officer if the Authority is of the opinion that information indicates a person may have been engaged in ML.

317. In ss21(8) and 22(9) of the CCROP the Reporting Authority is authorised to disseminate any information including STRs to any LEA in Brunei or to foreign LEAs in order to report the commission of an offence, initiate a criminal investigation, assist with any investigation or criminal proceedings or generally to give effect to the CCROP. In instances of dissemination to LEAs other than the RBPF, ss21(6) and 22(7) require the Attorney General to first give their consent taking into account the purpose for which the disclosure is to be made and the interests of third parties and the Attorney General may impose such conditions as they see fit. The FIU has not sought to disseminate any STRs and has therefore not sought the consent of the Attorney General.

318. There is no authority under the ATA for the FIU to disseminate TF-related STRs.

319. LEAs do make request to the FIU to obtain information from financial institutions for investigation and intelligence gathering purposes.

320. The NAMLC Terms of Reference suggest the FIU can report the suspected ML and TF activities to LEAs and for investigation and information.

321. No disseminations of STRs had been made by the FIU as at the time of the assessment. One STR was disseminated in April 2010. It is unclear whether the absence of disseminations is due to work practices and or the level of suspicion that the FIU requires before they disseminate an STR. In the assessor's view the Director FID does permit analysis to be conducted, however the depth of the analysis and the threshold of evidence being sought by the analysts has led to their being no recommendations to disseminate by the FIU.

FIU to have operational independence

322. In statute the Supervisory authority is the Permanent Secretary and the Reporting Authority is the Permanent Secretary and the Director of the FID. The function of the Supervisory Authority and the Reporting Authority is being delegated to the FIU however the decision making for core FIU functions is not delegated but is retained by the above designated Authority.

323. At all stages of the analysis of the STRs, instructions and approval is sought from either the Director of the FID or Permanent Secretary.

324. Approval to disseminate STRs to the police under the MLO will be given by the Permanent Secretary. Approval to disseminate STRs to other LEAs and foreign LEAs under the CCROP is dependent on the Attorney General. As this has never been used it is not clear whether this undermines the FIU's autonomy of dissemination.

325. The FIU maintains operational independence from other regulatory units under FID but still works closely with them in terms of requesting information and supervising financial institutions' AML/CFT measures.

Security of information held by FIU

326. STRs received by the FIU are dealt with in strict confidence. Hard copies are stored in a secured room and STRs are inputted into the FIU database, which is currently a stand-alone computer.

327. The FIU staff work from locked office space and the door to the stand-alone computer room is password protected.

328. Backup of the data on the stand-alone computer is not currently performed. While at the time of the assessment there was a very low number of reports, once the amendments to the MLO in force and other regulatory obligations come into force, there may be a large increase in the volume of reports. Any loss of data that is not backed up may have serious ramifications for the FIU to be in a position to conduct its core functions in a timely manner.

329. Customer information held by the FIU is protected under sector-specific legislation.

330. Information is disseminated only for the purpose of investigation or prosecution, of an offence alleged or suspected to have been committed under any written law.

FIU to publicly release periodic reports (26.8)

331. The FIU does not publicly release reports on its activities at this time.

332. Reporting sectors have advised that the FIU does not, as a general rule, provide feedback if the reporting is adequate. The FIU will return the STR to the reporting institution if the STR requires further information.

Membership of the Egmont Group of FIUs

333. The FIU has made preliminary approach to several Egmont members to be sponsored. At the time of the assessment the FIU is not a member of Egmont.

Egmont Principles of Exchange of Information among FIUs

334. CCROP provides for the Reporting Authority to share information with foreign LEAs on a proactive basis. This mechanism requires the FIU to gain consent from the Attorney General prior to information sharing with foreign FIUs.

335. The FIU has indicated that it would seek to share information on the basis of reciprocity.

336. Brunei FIU has entered into MoUs concerning cooperation in the exchange of information related to ML and TF and predicate offences with FIUs of Malaysia and Indonesia.

Adequacy of resources

337. The FIU is lead by the Head of the FIU. The Head of the FIU is responsible for two staff undertaking the core functions of the FIU. The Head of the FIU reports directly to the Director of the FID who in turn reports to the Permanent Secretary and the Minister of Finance.

338. The FIU comes under the budget of the FID. The budget of all government departments including Ministry of Finance are being controlled and monitored by the Expenditure Department of the Ministry of Finance. Therefore, the purchases of any one-off items or any other assets by the FIU needs go through the standard process for approval from the Expenditure department.

339. At the time of the assessment the FIU were seeking to upgrade their computer system and software. It is the opinion of the assessors that when the amendments to the MLO are made, there will be an increase in the receipt of reports including CTRs and Cross-border Reports and there will be a pressing need for more robust tools for data management and analysis.

340. At the time of the assessment the FIU is comprised of three staff including the Director, and does not have separate divisions due to the number of staff. The staff multi-task to conduct the core functions of the FIU. The staff of the FIU also carries out AML/CFT supervisory functions for banks and it is anticipated that in the short term they will also participate in the supervisory functions of the insurance sector. Longer term the staff of the FIU will be involved in the supervision of all sectors covered by the MLO.

Integrity of FIU staff

341. Staff of the FIU are required to sign a declaration under the Official Secrets Act. Staff are also given training on aspects of the Act, including the secrecy provisions which they are required to comply with. The training is conducted by the Internal Security Department.

342. Staff of the FIU hold accounting and business qualifications, including degree qualification that were obtained from universities in the UK.

343. At the time of their employment, staff of the FIU are subject to criminal background checks by RBPF, NCB and the ISD in Brunei.

Training for FIU staff

344. Staff of the FIU have attended a number of courses on AML/CFT. The FIU have attended numerous workshops and training sessions on AML/CFT since 2005. Relevant workshops include,

Anti Money Laundering Seminar, The Imperatives for Offshore Financial Institution, Alternative Remittance Systems Workshop for FIU, AML/CFT Workshop for Financial Sectors Supervisors and Regulators Money Laundering and Investigation Techniques, Terrorism Financial Training, Alternative Remittance Systems (ARS): A Workshop for FIUs, Study Visit to FIU Bank Negara Malaysia (BNM), Workshop on Strengthening Domestic Cooperation and Coordination in Brunei, Anti-Money Laundering & Countering Financing Of Terrorism, APG's AML/CFT Assessment Training Workshop 2008, Anti Money Laundering Compliance for Institutions, Work Attachment in Financial Intelligence Unit, BNM, Counter Terrorism Financing Analysis Workshop By AUSTRAC and Regional Basic Analytical Skills Workshop.

345. Staff of the FIU have benefitted from work attachment programmes with the FIU of Malaysia to understand the model and overview of the operations, AML/CFT measures and compliance, STR analysis and process & procedure of AML investigation. An attachment to the Malaysian FIU and Bank Negara Malaysia Special Investigations Unit was focused on information gathering and financial analysis, investigation and prosecution techniques relating to illegal deposit taking (as a predicate offence) and ML.

Analysis of Effectiveness (including R.32 Statistics)

Table: Suspicious Transaction Reports – receipt and dissemination

Year	STR Received	STR Disseminated	STR resulting in prosecution
2005	5	5	-
2006	3	3	-
2007	12	10	-
2008	6	-	-
2009	13	-	-
2010	3	1	
Totals	**42**	**19**	**0**

346. The FIU conducts analysis of STRs received, including obtaining further records from institutions. There is no cross-referencing of the STRs with other information held by the Ministry of Finance, including data maintained by the Money Changers and Remittance Unit. It is not clear to assessors whether the analysis conducted enables the staff of the FIU to establish a suspicion of ML or TF activity which results in the STR not being disseminated.

347. At the time of the onsite visit and immediately thereafter, no STRs have been disseminated from the FIU to LEAs. Prior to the formation of the FIU, ie between 2005 and 2007, 18 STRs were disseminated to the RBPF. Analysis of STR and other information is conducted by the staff of the FIU. It is the opinion of the assessors that there are weaknesses in the analysis function, and that the analysis of STRs does not result in a clear opinion on any ML or criminal activity. Further the burden of proof to find evidence of ML may be too high when compared to what is required under the MLO.

348. The absence of clear legal authority for the FIU to receive STRs related to ML or TF undermines effectiveness.

349. The FIU's database of STR information does not include analytical tools such as excel or other analysis tools to link additional data to STRs.

350. It is the opinion of assessors that the current level of staff in the FIU is appropriate for the amount of STRs that are received. However the FIU has increasing AML/CFT supervisory roles and it is anticipated that requirements of the FIU will significantly increase when the draft MLO (Amendment) Order is passed, which will introduce cross-border reporting requirements. It is hoped

that the FIU will also receive the B$5000+ threshold reports as soon as possible. When the MLO (Amendment) Order is passed, consideration should be given to increase staffing within the FIU.

2.5.2 Recommendations and Comments

- The MLO should be amended to provide clear legal authority for the FIU to receive STRs relating to ML.
- The FIU should be gazetted to provide a legal authority for the FIU to receive STRs that relate to TF.
- The ATA should be amended to allow the FIU to disseminate TF-related STRs.
- STRs should be disseminated to LEAs when analysis indicates an opinion/suspicion that it related to ML or TF.
- RATLO should be amended to ensure that the FIU is able to obtain further information from trust companies reporting STRs through the BIFC prior to a formal 'investigation' commencing
- The FIU should undertake further training of its staff in the analysis function.
- The FIU should implement suitable analysis tools and a database to assist with the analysis function of the STRs and other information.
- The FIU should ensure that the FIU database has a secure data backup system.
- The FIU should consider increasing staffing to ensure that it can meet the demands of the increased reporting and demands of supervision.
- The FIU should be provided with a clear statutory basis to proactively exchange information with foreign FIUs.

2.5.3 Compliance with Recommendations 26, 30 & 32

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**NC**	• The FIU has no clear legal authority to receive STRs related to ML or TF. • The FIU has no authority to disseminate TF-related STRs. • Under CCROP the FIU is unable to disseminate STR-related information without the permission of the Attorney General. • There are weaknesses in the analysis function, including a lack of matching STRs with other data. • The FIU does not access sufficient direct and indirect financial, administrative and law enforcement information in analysis of the STRs. • RATLO may impede the FIU from receiving additional information from trust company reporting parties. • No disseminations of STRs have been made to law enforcement agencies in Brunei since the formation of the FIU. • FIU data is not backed up to ensure secure storage of data. • The FIU does not publicly release periodic reports.
R.30	**PC**	• Inadequate human resources in the FIU to perform core functions. • Inadequate analytical resources applied to support FIU functions.
R.32	**PC**	Composite rating

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 & 32)

2.6.1 Description and Analysis

Designated authorities to investigate ML, TF and predicate offences

351. The Anti-Terrorism (Financial and Other Measures) Act 2002 (Revised 2008), Criminal Conduct (Recovery of Proceeds) Order 2000, Drug Trafficking (Recovery of Proceeds) Act, Misuse of Drugs Act, Prevention of Corruption Act, Internal Security Act , Criminal Procedure Code, Customs Order 2006 set out responsibilities for investigation of ML, TF and predicate offences.

Table: Designation of Authorities for predicate, ML and TF Investigations

Agency	Legislation	ML	TF	Predicates
RBPF	CCROP ATA Penal Code Various specialist statutes which create criminal offences (commercial crime, property crime, etc)	x	x	All predicates
NCB	DTROP	x		Narcotics offences
ACB	Prevention of Corruption Act	x		Corruption offences
Customs (RCED)	Customs Order			Customs offences
Immigration (INRD)	Immigration Act, Passport Act			Immigration and passport offences
Forestry Ministry	Forest Act			Forestry offences
ISD	Internal Security Act			Internal Security offences

352. The authorities that have been mandated to investigate the predicate offences, ML and TF, are national agencies whose power extends across Brunei. The agencies are the Anti Corruption Bureau (ACB), Narcotics Control Bureau (NCB), Royal Brunei Police Force (RBPF), Royal Customs and Excise Department (RCED), Immigration and National Registration Department (INRD).

353. Only RBPF, ACB and NCB are designated to investigate ML. The NCB have all the powers of police officers under the CPC when investigating offences under the MDA and DTROP. The ACB can exercise all special powers relating to police investigations into a seizable offence (punishable by three years or more), including ML, given by the CPC.

354. The RBPF, ISD and the Royal Brunei Armed Force are the leading agencies responsible for combating terrorism and the RBPF is the sole agency mandated to investigate TF.

355. The relevant legislation in relation to the investigation and prosecution of ML offences and the freezing and confiscation procedures are found in CCROP and DTROP. Currently, under DTROP and CCROP, only the police (and those exercising police powers) are empowered to investigate ML offences. It is anticipated that an amendment to the CCROP will be made and will empower other LEAs to investigate ML offences where the predicate offences fall within the purview of their office.

356. The ISD has the power to arrest and detain, pending further inquiries, any person for a period not exceeding 28 days under s55 Internal Security Act (Cap 133) if that person has acted or is about

to act or is likely to act in any manner prejudicial to the security of Brunei. A person may also be arrested and detained under s55 Internal Security Act (Cap 133) if there are grounds, which would justify acting in any manner prejudicial to the security of Brunei. Evidence believed to be related with investigations conducted by the ISD can be searched and seized under Section 19 Public Order Act (Cap 148).

357. The Minister of Home Affairs shall make an order under ss3(1)(a) or 3(1)(b) Internal Security Act (Cap 133), if His Majesty the Sultan and Yang Di-Pertuan is satisfied that it is necessary for the person arrested under s55 Internal Security Act (Cap 133) to be detained or restricted for any period not exceeding two years to prevent that person from acting in any manner prejudicial to the security of Brunei or any part thereof or to the maintenance of public order or essential services. The orders may, with the approval of His Majesty, be extended for a further period or periods not exceeding two years at a time.

358. It should be noted that while crime rates in Brunei are generally low, there are numerous offences conducted that generate large proceeds of crime. See section 1 of this report for details. Prosecutions of serious narcotics offences are low, however this may be due to the LEAs not pursuing financial investigations of those behind serious offence, rather only arresting those in possession of the narcotics. Financial investigation of these offences may uncover a larger incidence of serious crime.

359. The RBPF is the primary LEA in Brunei. CCID investigates ML and TF and a range of predicate offences including criminal breach of trust (fraud), forgery, counterfeiting, copyright and trade mark and cyber crime offences. The Major Crime Division investigates house breaking, fuel smuggling, customs offences, vice and gambling offences.

360. Various other LEAs have a role in investigating ML and predicate offences. The ACB is the designated agency to investigate corruption and related ML offences. The NCB is designated to investigate narcotic offences, predicate drug trafficking offences under DTROP and related ML offences under DTROP. The RCED investigates predicate offences under the Customs Order.

361. At the time of the assessment none of the LEAs mandated to investigate ML or TF have the specialist skills or knowledge to conduct a financial investigation for the purpose of recovery of assets, ML or TF. The CCID have commenced setting up a specialist team headed by an officer with banking, finance and accounting skills. The ACB have staff with accounting skills that are called upon to assist with the more complicated matters. The ACB is setting up a specialised team to include a financial investigations component. The ACB has two officers studying forensic accounting who will be utilised in financial investigations of corruption offences. The NCB conducts only limited financial investigations as a matter of course and lacks specialist expertise to conduct ML, financial, or POC investigations. The NCB have used the provisions in the DTROP on one occasion, with limited success. Due to procedural and technical complexities, NCB has prioritised using Section 25 of MDA instead of DTROP in forfeiting instrumentalities that have direct link to the predicate drug offence.

Ability to Postpone / Waive Arrest of Suspects or Seizure of Property

362. The is no explicit provision under Brunei laws that will prohibit the agencies investigating ML from seeking the postponement or waiving the arrest of the suspected persons and or the seizure of the proceeds of the crimes for the purpose of identifying persons involved in ML.

363. There is no enabling legislation relating to the waiving of arrest. Authorities indicated that in most cases the offender would be arrested at the first instance. However LEAs believe that this can be done administratively when and if required.

Additional Elements - Ability to Use Special Investigative Techniques

364. Law enforcement authorities in Brunei generally have powers to conduct controlled delivery, surveillance, undercover operations, agent provocateur and the use of informants. Most of these techniques are used in predicate offence investigations conducted by ACB, RBPF and the NCB. Telephone intercepts and listening devices cannot be used in criminal investigations.

365. During the on-site visit Brunei LEAs advised that these special investigative techniques are used in the investigation of predicate offences including narcotic, corruption, terrorism and white collar crimes.

RECOMMENDATION 28

Ability to Compel Production of and Searches for Documents and Information

366. In Brunei police officers have powers of arrest, search and seizure and to compel the production of documents under various statutes and orders:

Power to Compel Production

367. Section 28 of CCROP states that a police officer may for the purpose of investigation, in Brunei or elsewhere apply to the court for an order to compel the production of material if they suspect that the specified person has carried on or benefited from an offence to which the CCROP applies.

368. Section 24 of DTROP states that a police officer or officer of the NCB may for the purpose of investigation into drug trafficking, in Brunei or elsewhere, apply to a magistrate for an order to compel the production of material.

369. Section 56 of CPC states that whenever any Court or police officer making a police investigation considers that the production of any property or document is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer such Court may issue a summons or such officer a written order to the person in whose possession or power such property or document is believed to be requiring him to attend and produce it or to produce it at the time and place stated in the summons or order.

370. Section 23 of PCA states that the Public Prosecutor or Director, if satisfied there are reasonable grounds to suspect an offence under the PCA, may authorise in writing to investigate and inspect any share account, purchase account, club account, subscription account, investment account, trust account, mutual or trust fund account, expense account, bank account, or other account, safe deposit box, bankers books or company books and to require the production of any accounts, books documents, safe deposit box, or other articles of or relating to any person named in the notice.

Powers of Search and Seizure

371. Section 21 of the MDA states that an officer of the NCB not below the rank of Chief Narcotics Officer or officer authorised by him, a police officer not below the rank of Assistant Superintendent of Police, or any police officer authorised by him may without a warrant enter and search any place or premise which he reasonably suspects there is a controlled drug or article, search any person found in such place, seize and detain controlled drug or any article liable to seizure.

372. Section 26 of DTROP states that a police officer or officer of the NCB may for the purpose of an investigation into drug trafficking, apply to a magistrate for a warrant in relation to a specified premise.

373. Section 29 of CCROP states that a police officer for the purpose of an investigation into an offence to which the CCROP applies, may apply to the Court for a warrant in relation to a specified premise.

374. Section 59 of CPC provides for the Court to issue a search warrant for the purposes of justice or supporting any inquiry, trial or other proceeding under the Penal Code.

Power to Take Witnesses' Statement

375. The police have general powers of investigation under the Criminal Procedure Code including the taking down of witnesses' statements as follows:

DTROP

376. Section 6 provides for statements to be tendered to the court by the prosecution in relation to any matter relevant to the determination whether the defendant has benefited from drug trafficking or to the assessment of the value of his proceeds of drug trafficking.

CPC

377. Section 117(1) provides that in any criminal proceeding any statement made by any person including a person in the custody of a police officer, whether it amounts to a confession or not or is oral or in writing, made at any time, whether before or after that person is charged and whether in the course of a police investigation or not, by that person to or in the hearing of any police officer shall be admissible in evidence and, if that person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.

PCA

378. Section 22 of the PCA states that every person required by any Officer of the ACB or police officer to give any information on any subject which is the duty of such officer to inquire into under this Act or any prescribed offence and which it is in his power to give, shall be legally bound to give the information.

Analysis of Effectiveness

379. Law enforcement authorities in Brunei have clear authority to compel production of material and documents, the powers of search and seizure and the authority to take witness statements. Most LEAs use their own powers to obtain banking records. In some cases they also obtain information from financial institutions through the FID for intelligence purposes.

Adequacy of Resources to AML/CFT Law Enforcement and Prosecutorial Agencies

RBPF – CCID and Major Crime

380. There are currently 36 police officers in the CCID. All 36 members hold all the powers of police, however only police above the rank of Lance Corporal are authorised to conduct investigations. 18 of the 36 members hold the rank of Lance Corporal and above. The CCID has recently employed the services of a member with banking and finance skills; that person will be instrumental in the capabilities of a team to conduct ML and financial investigation cases. The CCID also have members with investigation of fraud, cyber crime and intellectual property skills.

381. The RBPF CCID is setting up specialised units to conduct complex criminal investigations including ML and TF. The CCID obtain records from banks under the criminal procedure code rather than through a Banking order notice via the FIU. There are numerous offences under the purview of the CCID that generate POC, including fraud and intellectual property offences. Currently there are difficulties under law relating to the prosecution of intellectual property offences, however the proceeds of these offences represent ML and action could be taken relating to this offence.

ACB

382. The ACB currently has three departments, Operations and Investigations, Prevention Community Relations and Education and Administration Section. There is a total of 70 staff in the ACB and 50 of these are held in the Operations and Investigations Section. The ACB recognise that asset tracing is a major factor that needs consideration. The ACB do not have a separate financial investigations team at this time; however they have staff with accounting skills that are called upon to assist with the more complicated matters. The ACB are in the process of implementing a special investigation team which will include a financial investigations and POC component. The ACB currently have two officers studying forensic accounting who upon the completion of their studies will be utilised in financial investigations of corruption offences.

NCB

383. The NCB comprises six departments including Security and General Services, Enforcement and Intelligence, Research, Preventive Drug education, Supervision and Rehabilitative Centre. There are currently 309 personnel in the NCB. 115 of these officers are employed within the Enforcement and Intelligence divisions. Currently there is no capacity to conduct financial investigations and all requests for banking information are made through the FID via the FIU. While they have the power to obtain search warrants on banks, they do not utilise these powers.

384. The NCB have four Enforcement and Intelligence offices in Brunei that conduct investigations, Brunei – Muara District (73 staff), Belait District (18 staff), Tutong District (14 staff) and Temburong District (10 staff).

385. The NCB conduct limited financial investigations and has utilised DTROP provisions on only one occasion to seek the forfeiture of assets located in bank accounts of drug offenders. While there are serious deficiencies in the law, the NCB lack the skill, knowledge and capacity to conduct any financial investigation, include a ML or POC offence.

386. There was a decreasing trend in drug-related arrests from 2007 to 2009. This was due NCB in 2008 taking over the Al-Islah Drug Rehabilitation Centre and introducing a supervision / rehabilitation programme for first drug offenders. These programmes aim to deal with first time drug offenders administratively through rehabilitation instead of charging them in Court.

387. The majority of persons arrested for narcotics offences hold Bruneian citizenship.

Integrity of Competent Authorities

388. Officers of LEAs in Brunei undergo strict background and security checks when they commence the recruitment process. Police officers undergo routine urine and drug checks. Members of the ACB are subject to integrity testing and interview processes prior to employment.

389. Law enforcement authorities in Brunei are beginning to recruit additional specialist technical professional staff to investigate more sophisticated criminal offences, including financial crimes. More emphasis needs to be placed on the financial aspect of serious offences that generate significant POC.

Training for Competent Authorities

390. Law enforcement authorities in Brunei have attended numerous training and capacity building courses on ML and TF including International Crime workshops, AML seminars, financial crime and investigation courses, money laundering and investigation techniques, net worth analysis workshops, terrorism financing workshops, complex financial investigation workshop. While some LEAs in Brunei have commenced to build capacity in the areas of financial investigations for ML, TF and POC, they need to consider the financial aspect of cases that they investigate, at the time of the predicate offence investigation.

Additional Element (R.30) - Special Training for Judges

391. No training of the judiciary has occurred at the time of the assessment.

Statistics (applying R.32):

392. Statistics are held regarding the number of investigations conducted by the LEAs responsible for the conduct of ML and TF. It should be noted that no ML or TF investigation has been conducted in Brunei at the time of the assessment. Limited data is held regarding restraint and forfeiture of assets.

393. NCB hold statistics relating to the number of arrests, type of offences, value and weight of the narcotics, type of narcotics, number of persons convicted and the number of vehicles seized used in the commission of the offences.

394. The RBPF hold statistics on the offence category of matters investigated and the status of the cases investigated, including whether the case was closed, prosecuted and convicted, under investigation or transferred to the prosecutor.

395. Between 2007 and 2009 the CCID conducted 427 investigations into the following matters: Cheating (220), Criminal Breach of Trust (52), Forgery (92), Credit Card Fraud (5), Intellectual Property (5), Money Changer (5), Money Lender (4), Counterfeit Currency (18) and Cyber Crime (26). A total of 276 of the above matters are at various stages of investigation and prosecution, while the remainder of the investigations have been closed.

396. Between 2007 and 2009 the Anti-Vice and Gambling Suppression Unit of the Major Crime Division conducted 173 investigations into the following matters: Gambling (90), Soliciting and Prostitution (40), Customs and Excise (25) and Other (18). Media reporting in Brunei indicates that the majority of customs and excise matters relate to illegal importation of alcohol and tobacco. 153 of these matters are at various stages of investigation and prosecution.

397. The NCB are focused on the predicate narcotic offences. Between 2005 and 2009 the NCB have made 2,605 narcotic arrests. Between the same period 2,168 persons have been convicted of narcotics offences, with only one offence for the importation and exportation of narcotics and one for the cultivation of cannabis. The remaining offences relate to possession, consumption, possession of utensils and failure to report offences.

398. NCB has utilised the provisions in DTROP on only one occasion seeking the forfeiture of assets located in bank accounts of drug offenders.

399. Statistics identify that between 2007 and 2009 approximately 2,000 grams of amphetamines has been seized, 1,080 grams of heroin, 2,265 grams of marijuana and some small quantities of other narcotics. The seizure of heroin was one seizure in 2009 of a body packer entering Brunei.

400. The statistics relating to seizures of narcotics do not identify any major increase or decrease in the amount of narcotics seized when the seizure of heroin is excluded.

401. Statistics held by the NCB identify that the number of persons arrested for narcotics offences peaked in 2007 (732 persons arrested). The majority of these offences related to possession type offences. The number of persons arrested each year between 2005 and 2009 were: 2005 (420), 2006 (451), 2007 (732), 2008 (577), and 2009 (425).

Table: Statistics for ACB in 2009

Items	Total
Information received	347
Investigation Papers	194
Cases Charged in Court	19
Total Judgement Passed	8

Cases Convicted	7
Cases Acquitted	1
Conviction Rate	7/8 x 100 = 87.5%

402. Statistics have been made available in relation to STRs referred to the RBPF prior to the establishment of the FIU that have resulted in investigations, however it should be noted that there have been no investigations of ML of TF as at the date of the assessment.

Analysis of Effectiveness

403. Currently the ACB, NCB and RBPF are designated LEAs to conduct ML and TF investigations. At the time of the assessment no ML or TF investigations have been conducted and the LEAs designated to conduct such investigations currently lack the skills, capacity and knowledge to investigate these offences.

404. The PCA presently only provide for the power to investigate into ML and TF related offences in so far as it relates to corruption offences. To date ACB has not received any such cases. Investigation would be conducted by ACB where such offences exist and reported to the bureau.

405. The LEAs in Brunei that are designated to conduct ML and TF investigations do not sufficiently consider financial investigations as part of their overall investigation strategy. Due to the extent of POC generated by some offences in Brunei including drug trafficking, fuel smuggling, fraud and intellectual property offences a culture to "follow the money" is needed. The financial aspect of a predicate offence investigation is proven to identify higher level criminals, recover funds and deprive criminals of the proceeds of their crimes.

406. The CCID and ACB have begun to implement specialised teams to conduct financial, ML and POC investigations. The development of these teams will be an important step in the investigation of financially motivated criminal activities. The Law enforcement authorities that implement these teams or skill sets will require a process to conduct ML and TF investigations.

407. The NAMLC could assist the coordination, training and capacity building of financial investigations. The charter of the NAMLC could be included to increase the awareness of Law enforcement authorities in financial investigations.

408. The CCID have commenced employing staff with specialised skill sets including an accountant with banking and finance skills to set up a FIU. The NCB have not considered implementing a FIU and only consider the investigation of the predicate offence. The ACB currently have staff with accounting skills that are utilised in the more complex matters and are in the process of implementing a special investigations team which will include a financial investigations and POC component.

409. The LEAs in the investigation of the predicate offences have clear authority to obtain records from all institutions in Brunei, including banks. The LEAs on a regular basis obtain information from banks as part of their investigations either under their own powers or via the Ministry of Finance under of the Banking Order 2006. However these records are only obtained as part of the investigation of the predicate offence.

410. It was demonstrated that the LEAs in Brunei have effective communication and regularly exchange information and cooperate.

2.6.2 Recommendations and Comments

- Law enforcement authorities should 'follow the money' and investigate ML offences in parallel with predicate offence investigations for profit generating crime.

- Law enforcement authorities mandated to investigate TF and ML offences should implement investigation strategies which require the consideration of a ML, TF and/or POC investigation for predicate offences investigations conducted.

- Law enforcement authorities should consider committing resources to enhance AML/CFT investigation capacity to ensure that ML, TF and related financial investigations are undertaken.

- The NAMLC should consider assisting the coordination, training and capacity building of financial investigations within LEAs.

- Law enforcement authorities should utilise their power to compel production, search and seize in the pursuit of ML and TF investigations
- Improved statistics should be kept for relevant predicate offence investigations that involve POC.

2.6.3 Compliance with Recommendation 27, 28, 30 & 32

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**PC**	▪ No ML or TF investigations have been conducted in Brunei. ▪ The Law enforcement authorities mandated to investigate ML and TF do not sufficiently consider the financial investigation and only conduct the predicate offence investigations. ▪ Effective implementation has not been demonstrated.
R.28	**LC**	• Law enforcement authorities have power to compel production, search and seize, however these powers are not being used in the pursuit of ML and TF investigations.
R.30	**PC**	• Law enforcement authorities lack capacity, including specialist skills and training to effectively investigate ML, TF and financial aspects of predicate offences.
R.32	**PC**	▪ Statistics are not well kept for predicate offence investigations that involve proceeds of crime.

2.7 Cross-border Declaration or Disclosure (SR.IX & R.32)

2.7.1 Description and Analysis

Legal Framework

411. There is currently no legal requirement or authority for the reporting of cross-border transactions.

412. Amendments have been proposed under the draft MLO (Amendment) Order to include a declaration system for amounts of physical currency and bearer-negotiable instruments (BNIs) greater than B$15,000, or its foreign equivalent.

413. A working committee on cash courier consisting of Royal Brunei Customs and Excise Department (RCED), Immigration and National Registration Department (INRD) and the FIU was created under NAMLC to deal with SR.IX. The working committee has developed a draft Standard Operating Procedures which will be used to implement the provisions in the draft MLO (Amendment) Order on Cross Border physical currency and bearer negotiable instruments, once it passes and enters into force.

Mechanisms to Monitor Cross-border Physical Transportation of Currency

414. Brunei does not currently have a disclosure or declaration system in place.

415. Under the proposed MLO (Amendment) Order, Brunei intends to introduce a declaration system for physical cash and bearer-negotiable instruments for amounts exceeding B$15,000. Any person who moves cash or BNI over the prescribed amount without reporting will be guilty of an offence and liable on conviction to a fine not exceeding B$50,000, imprisonment not exceeding 3 years, or both.

Request Information on Origin and Use of Currency

416. Under the draft MLO (Amendment) Order, an authorised officer will include an officer of customs, police officer, officer of ACB, officer of the NCB or other person that the Minister authorises may require a person who is about to leave or enter Brunei to answer any question with respect to the cash.

417. Section 111 of the Customs Order gives the power to Customs officers for stop and search. Other powers include production of documents on demand (Section 93), power to open packages and examine goods (Section 113) and search of persons arriving in Brunei Darussalam (Section 114).

Restraint of Currency

418. Section 16F (4) of the draft Money Laundering (Amendment) Order provides the provision for the authorised officer to seize and surrender currency or bearer-negotiable instruments (if found suspicious) to the appropriate authority for further investigation.

419. Customs have general powers of search and seizure under ss114 and 115 of the Customs Order which would allow Customs to search passengers and seize currency. The powers to investigate are available under the Customs Order 2006, as given in s8 of the Customs Order 2006, which provides for the power to investigate the commission of any offence under this Order. Section 139 of the Customs Order 2006 states that any person who, required by the Order to answer any question put to them by any proper officer of Customs, or to give any information or produce any document which may reasonably be required of them by the officer and which is in their power to give furnishes as true any information or document which they know or has reason to believe to be false, is guilty of an offence.

Retention of data on Currency and Identification by Authorities

420. The draft Standard Operating Procedures designate Customs to collect declarations relating to persons entering Brunei. Immigration and National Registration Department is designated to collect declarations from persons departing Brunei.

421. The declaration will require an accurate declaration of amount by the passenger if the cash and BNI exceeds B$15,000. The passenger will also be required to provide their full name.

422. The collected reports will be forwarded to the FIU within 11 days depending on the port of collection.

423. Customs advise that under the proposed SOP that any urgent declaration would be provided electronically, while other standard declarations would be provided to the FIU in a secure bag.

424. The draft SOP only caters for the collection and forwarding of the forms. Physical retention of currency comes under Customs and Immigrations SOPs.

Access of Information by the FIU

425. The SOP that has been prepared requires that Customs and Immigration will forward the completed reports to the FIU.

Domestic Cooperation between Customs, Immigration and Related Authorities (IX.6):

426. There has been good cooperation and effective working relationships between Customs, Immigration and the FIU in the preparation of the Standard Operating Procedure.

International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (IX.7):

427. Currently Customs are members of WCO, Customs Enforcement Network (CEN) and Regional Intelligence Liaison Officers (RILO) and have a MoU with Malaysian Customs as well as under the ASEAN Strategic Plan of Customs Development (SPCD).

428. Under the proposed MLO (Amendment) Order, s16J will allow the communication of information to a corresponding FIU of another country provided that the communication may be relevant to an offence involving ML and related offences, and the FIU has arrangements on the basis of reciprocity and there are undertakings to protect the confidentiality to the thing communicated to it. A weakness may be that this communication of information does not relate to TF.

Sanctions for Making False Declarations / Disclosures

429. The proposed MLO (Amendment) Order will hold persons, being natural and legal persons, who contravene their reporting obligation guilty of an offence and liable on conviction to a fine not exceeding B$50,000, imprisonment for a term not exceeding three years or both. The designated authority to apply the sanctions is Royal Customs and Excise Department (RCED).

430. The definition of person when it is applied to a legal person also applies to that legal person's directors and senior management.

Confiscation of Currency and Bearer Instruments Related to ML/FT

431. Brunei consider that the fine of up to B$50,000 and imprisonment of up to three years to be sufficient and dissuasive.

432. The authorities consider that the restraint and forfeiture provisions of CCROP should apply; however as discussed in Section 2.3 of this report, there are serious deficiencies in the restraint and forfeiture provisions in CCROP.

Confiscation of Currency Related to ML/TF

433. There are serious deficiencies under CCROP, which are discussed in Section 2.3 of this report.

Discovery of Gold or Precious Metal Stones etc

434. The RCED are members of the Global WCO RILO network and currently access the CEN. The RCED advised during the on-site that in the past a number of cases of discovery of precious metals have been identified and that investigations were pursued as a result.

Security and Safeguards for Reporting Cross-border Transactions

435. The draft Standard Operating Procedure identifies that Immigration and Customs should designate officers to collect reports from each control post. All of the reports collected shall be securely transported to the FIU.

Analysis of Effectiveness

436. At the time of the assessment there is no disclosure or declaration system in place in Brunei. The establishment of the regime is dependent on the draft MLO (Amendment) Order being passed.

437. Section 16(J) of the proposed MLO (Amendment) Order does not appear to allow for the communication of information to a corresponding FIU if the information relates to TF.

438. Brunei has relatively porous borders. Law enforcement authorities and other sectors in Brunei identify that cross-border currency transfers represent a serious risk of ML and TF. There are 10 arrival and departure points in Brunei. Law enforcement authorities identify that the bordering and neighbouring countries of Brunei represent a serious risk of POC, ML and TF.

439. Statistics relating to arrival and departure identify that the number of passengers entering and leaving each port in Brunei is set out below:

Table: numbers of passengers crossing Brunei's borders each year

CONTROL POST	2005 Total Entry & Exit	2006 Total Entry & Exit	2007 Total Entry & Exit
Brunei International Airport	532,712	623,825	717,454
Putat	4,230	4,965	2,017
K. Lurah	1,700,075	2,124,364	2,235,644
Muara	5,406	2,083	18,840
Puni	335,972	374,688	230,626
Dermaga K.B	1,069	1,562	6,714
Sungai tujuh	1,595,462	1,890,656	2,184,169
Anduki	-	-	-
F.TSerasa	223,355	245,924	265,270
Labu	455,188	383,200	340,840
TOTAL	**4,853,559**	**5,651,267**	**6,001,574**

2.7.2 Recommendations and Comments

- Brunei should pass the proposed MLO (Amendment) Order as soon as possible to introduce a declaration system and implement the draft Standard Operating Procedure.

- Brunei should ensure that the MLO (Amendment) Order supports sharing of information on cross border movement of cash and bearer-negotiable instruments when they related to TF.

2.7.3 Compliance with Special Recommendation IX & Recommendation 32

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**NC**	There is no declaration or disclosure system in place in Brunei.
R 32	**PC**	This is a composite rating

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

Laws/Regulations v Other Enforceable Means

Acts and Orders

440. Chapter VII of the Constitution of Brunei Darussalam (Brunei) (law-making provisions by the legislature) is currently suspended as the Sultan has made a Proclamation of Emergency under s83 of the Constitution. Section 83(3) provides for law-making by the Executive Branch by way of Orders. Brunei presently passes all new and amended laws in accordance with s83(3) of the Constitution which provides for any new laws to be approved by His Majesty, followed by publication in the Government Gazette, with entry into force on the approved date. Such new laws are referred to as Orders rather than Acts.

441. The Interpretation and General Clauses Act (2001) includes orders within the definition of 'subsidiary legislation'. Section 3 includes rules, regulations, orders, proclamations or other documents that have the force of law and are annexed to their relevant parent Acts in the definition of subsidiary legislation. The power to make subsidiary legislation is conferred under s13 of the Interpretation and General Clauses Act. Section 16 requires that subsidiary legislation should be published in the Government Gazette.

442. The Law Revision Act governs the revision of gazetted Orders made pursuant to 83(3) of the Constitution to convert them into Acts. Section 7 of the Law Revision Act provides that each year the Attorney General publishes a revised edition of the new law to be included in the Laws of Brunei. The formal incorporation of new orders into an updated Laws of Brunei has the effect of converting them into Acts. This also amends the title of various laws from orders to acts.

443. The bulk of Brunei's AML/CFT-related statutes are in the form of orders, rather than acts. These come under the definition of law or regulation according to the Financial Action Task Force (FATF) standards.

Status of Notices as Law/Regulation or Other Enforceable Means

444. Sector-specific statutes provide the authority with wide powers to issue enforceable notices on licensed institutions. Notices issued under these represent other enforceable means within the meaning of the FATF methodology.

445. Ministry of Finance is proposing to issues AML/CFT Notices which would provide more comprehensive regulatory instructions. The Attorney-General's Chambers (AGC) has prepared a draft Notice for Banks which will be issued under s66 of the Banking Order, s66 of the Islamic Banking order and s20 of the International Banking Order 2000. Section 66(1) provides that the Authority may "…by notice in writing to Banks give direction and impose requirements on or relating to the operations and standards to be maintained by banks". Section 66(3) holds that "Every bank shall comply with any direction given or requirement imposed by any notice under this section".

446. Section 113 of the Banking Order provides for penalties for contravention of any provisions in the Order for which no penalty is expressly provided. Fines on conviction are up to B$10 million and B$1000,000 for every day for continuing offences after conviction.

447. The proposed AGC Notice for Insurance Companies will be issued under s3 of the Insurance Order 2006 and s90 of the Takaful Order 2008.

448. Malaysian case law is available which may assist Brunei to interpret the issue of regulatory guidelines in the event that their legal force was challenged in a court in Brunei. In *Affin Bank Bhd v. Datuk Ahmed Zahid Hamidi* the Malaysian High Court observed that "it is a matter of policy and it is

for the good of the country that all banks in the country should adhere to the BNM guidelines" and it held that such guidelines had the force of law. Malaysian case law would is not binding on the court in Brunei, however it is the normal practices for the court to take into consideration the practices and decision made by judges in similar common law jurisdictions. Brunei courts look particularly to Malaysia and Singapore in such matters.

Overview of legal and regulatory framework

449. At the time of the on-site visit and the period immediately thereafter, AML preventative measures are set out in the Money Laundering Order 2000 (MLO).

450. For CFT, very limited preventative measures are set out in the Anti Terrorism Act (ATA) 2002 (amended 2008).

451. For the purpose of guiding reporting entities, the supervisory authority has prepared draft "Know Your Customer"/Customer Due Diligence (KYC/CDD) guidelines for the prevention of money laundering (ML) and terrorism financing (TF) for the banks (including international and Islamic banks), insurance (including international and Takaful insurance), money changers and remitters sectors. The guidelines were in draft form at the time of the on-site visit and not yet in force and effect. The draft guidelines had been distributed to the relevant sectors for consultation. These draft guidelines will not be taken into account when determining ratings for preventative measures.

452. At the time of the on-site visit the Finance Ministry had prepared draft KYC/CDD Guidelines which were being reviewed by the AGC. The AGC had taken steps to review and amend the guidelines and at the time of on-site visit, had prepared a draft notice, based on the Finance Ministry KYC/CDD Guidelines (which in this report referred to as AGC Notice) which has not been discussed with Ministry of Finance and has not been circulated to Financial Institutions. The AGC had deferred issuing binding notices for CDD/KYC for money changers and remitters as the Money Changers and Remitters Act 1995 (revised 1999) is undergoing amendment.

453. On-site inspection has already been conducted by supervisory authority on banks and on a limited scale for remittance companies to assess their AML/CFT compliance. Supervisors have paid some attention to banks implementation of the draft CDD Guidelines when determining compliance with MLO obligations.

454. AML/CFT Guidelines have been drafted for licences under ss16, 18 or 20 of the Securities Order (SO) 2001. The guideline was passed to industry in late 2009; however the enforcement of the draft KYC/CDD Securities Guideline is postponed until after the planned amendment of the Securities Order.

Table: Draft guidelines on AML/CFT

Name	Sectors covered	Date of drafting
KYC/CDD Guidelines for Banks	All banks, including those licensed under IBO	2007
General Guidance – Rules of CDD/KYC	All financial Institutions and Non-bank financial institutions	2008
Part I – General Guidelines (provided by FIU while on-site)	All financial Institutions and Non-bank financial institutions	2008
Control Measures against ML/TF for the Insurance Industry	Insurance company	2007
KYC Guidelines for Money Changing and Remittance Business	Money Changers Remittance dealers	2007
KYC Guidelines for the Securities Industry	Securities	2009

455. The draft guidelines have been forwarded to all sectors for consultation. The draft AGC Notices (banks and insurance sectors) had not been forwarded to financial institutions at the time of the on-site visit. Interviews with the regulator and financial institutions indicate that the various sectors consider the guidelines and are implementing aspects of the draft guidelines as 'best practice'. Financial institutions do not consider that the draft guidelines are in force or create binding legal obligations.

456. For banking, insurance and money changer and remitters sectors, the draft guidelines have been in circulation for consultation since 2007. The intention was for the supervisory authority to get feedback from industry and, after input had been received, the supervisory authority was to issue the guidelines. Although this did not happen, the Supervisory Authority has advised banks, insurers, money changers and remittance companies to follow the draft guidelines. Due to the recent distribution of the draft Securities Guideline no advice has yet been given to the sector to follow the guidelines.

Scope of coverage of financial institutions

457. Preventative measures set out in the MLO are applicable to the full range of business as required by the FATF standards. The MLO applies equally to all entities providing financial services, including those in the 'offshore' Brunei International Financial Centre. Section 4(1) of the MLO sets out preventative measures and applies to any person carrying out "relevant financial business" which includes:

(a) the business of receiving money on deposit account transacted by a company in possession of a licence granted by the Minister authorizing it to do so in accordance with the provisions of the Banking Act (Chapter 95), the Finance Companies Act (Chapter 89) or of any other law relating to domestic banking;

(b) any activity carried on by a company in possession of a licence authorizing it to do so under the International Banking Order, 2000;

(c) any of the activities referred to in the Schedule, other than an activity falling within paragraphs (a) or (b);

(d) long-term insurance business carried on by a person who has been authorised to do so by or in pursuance of any written law.

458. The list of activities mentioned in MLO Schedule includes:

(1) Acceptance of deposits and other repayable funds from the public;

(2) Lending;

(3) Financial leasing;

(4) Money transmission services;

(5) Issuing and administering means of payment (credit card, travellers cheques, bankers drafts and the like);

(6) Guarantees and commitments

(7) Trading for own account or for account of customers in:

  (a) money market instruments (cheques, bills, certificate of deposit & the like);

  (b) foreign exchange;

  (c) financial futures and options;

  (d) exchange and interest rate instruments;

  (e) transferable securities

(8) Participation in securities issues & provision of services related to such issues;

(9) Advice on capital structures, industrial strategy and advice and services relating to mergers and purchase of undertakings;

(10) Money broking;
(11) Portfolio management and advice;
(12) Safekeeping and administration of securities;
(13) Safe custody services;
(14) International offshore financial services;
(15) bureau de change business;
(16) Provision of cheque cash services;
(17) Transmission or receipt of funds by wire or other electronic means;
(18) Services for which a licence is required under the Registered Agents and Trustees Licensing (RATLO) Order 2000.

Exclusion of sectors based on AML/CFT risk

459. Brunei has not sought to exclude any of the FATF's defined 13 financial activities on the basis of risk. The same standard of CDD is applied to all financial institutions covered by the MLO.

460. Section 4(2) of the MLO sets out a possible exemption for coverage of "relevant financial business" if the activities are designated as exempt by the Minister by order in the Gazette. At the time of the on-site visit no such exemptions had been designated in the Gazette.

461. CFT measures in the ATA are limited to STR reporting. The scope of coverage includes any person (including legal persons) present in Brunei, as well as any citizen of Brunei and any company incorporated or registered under the Companies Act (Chapter 39). This would make ATA preventative measures applicable to the widest range of entities in Brunei.

National Identity Systems

462. Brunei has a national identity card (IDC) system established under s6 of the National Registration Regulations. IDCs are widely used as a primary form of identity and verification in CDD processes. Identity cards are mandatory and apply to: citizens of Brunei (yellow IDC); permanent residents (purple IDC); and foreigners staying in the country for a period of more than three months (green IDC). Each IDC includes a photo. Each IDC is valid for a maximum period of 10 years. While new IDCs have 'smart card' chip technology financial institutions do not have access to read any of the additional information stored on the chip when conducting verification steps.

3.1 Risk of Money Laundering and Terrorist Financing

463. Brunei has not adopted overall risk based approach to application of AML/CFT preventive measures on financial institutions. Exclusion of some entities from comprehensive CDD requirements does not reflect a risk-based approach, but rather a lack of coverage of relevant preventative measures.

464. Brunei has not yet conducted any studies to determine the threats of ML or TF and associated vulnerabilities of Brunei's financial sector. Supervisory authorities and industry note particular threats of ML associated with illegal deposit taking. Despite the a number of high profile cases of 'pyramid schemes' at the time of on-site visit no STRs related to illegal deposit taking had been filed.

465. There have been no studies by supervisory authorities on vulnerabilities of each type relevant financial business which may at risk from abuse for ML or TF, including inherent risks in the 'offshore' international financial sector.

466. FID notes that for banks, on-site inspections have been conducted on a risk basis. However the focus of previous bank inspections has been predominantly on prudential issues with only three bank inspections having included KYC or AML/CFT issues.

467. FID notes ML vulnerabilities from non-bank remittance activity. A significant portion of remittance from Brunei is foreign worker remittance. Most overseas workers in Brunei such as those from the Philippines, Indonesia and Bangladesh remit funds home. Transaction volumes are high, although the amount of transaction is typically very small. The requirement for CDD by money remitters is only for transactions over B$5000. While all transactions made by remittance companies are recorded and reported to the FID (Money Changer and Remittance Unit) using a specified format, for a lot of transactions below B$5000, CDD is not verified.

468. FID is embarking on a comprehensive program of risk-based inspections commencing in early 2010 for the insurance sector.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

469. The MLO sets out general obligations regarding customer identification and keeping records of customer identity. The draft KYC/CDD Guidelines which have been distributed to financial institutions propose principles to implement KYC measures. While these draft guidelines set out best practice, none of these instruments are in effect or create binding obligations on financial institutions and are not taken into account when determining ratings for R5 to R8.

RECOMMENDATION 5

Anonymous Accounts

470. There is no direct prohibition on opening or maintaining anonymous, fictitious or numbered accounts. However s5 of the MLO requires any person carrying out relevant financial business (financial institutions) to maintain identification procedures when conducting a business relationship or a one-off transaction.

471. The draft KYC/CDD Guidelines propose to make it mandatory for all financial institutions to maintain full identification records and documentation adequately verified and authenticated, of all their customers and customer transactions.

Banks

472. Banks have been guided to obtain full customer identity based on the draft guidelines. Part II Para 2.1 of the draft KYC/CDD Guidelines for Banks propose to require banks to obtain customers' full name as per documents when opening accounts. No account should be opened without adequate identity.

473. Section 5.1 of the draft AGC Notice to banks will require banks not to maintain anonymous accounts or accounts in fictitious names once it is issued and comes into force.

Securities Companies

474. There is no binding obligation on securities sector intermediaries to prohibit anonymous accounts. The proposed draft KYC Guidelines for the Securities Industry under the SO will require that licence holders under the SO shall not maintain anonymous accounts or accounts in fictitious names.

Insurance Companies

475. Section 5.1 of the draft AGC Notice to Insurers will require life insurers to not maintain anonymous accounts or accounts in fictitious names when it is issued and comes into force.

When CDD is required

476. Section 7 of the MLO sets out four cases which cover the general circumstances in which financial institutions are required to conduct CDD:

- ***Case 1:*** any case where the parties form or resolve to form a business relationship between them;
- ***Case 2:*** any case where, in respect of any one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money-laundering or that the transaction is carried out on behalf of another person engaged in money-laundering;
- ***Case 3:*** any case where, in respect of any one-off transaction, payment is to be made by or to the applicant for business of the amount of B$20,000.00 or more;
- ***Case 4:*** any case where, in respect of any two or more one-off transactions:
  (a) It appears at the outset to a person handling any of the transactions that
    (i) The transactions are linked; and
    (ii) That the total amount, in respect of all of the transactions, which is payable by or to the applicant for business is B$30,000.00 or more
  (b) at any later stage, it comes to the attention of such a person that (i) and (ii) of (a) have been satisfied.

477. MLO s11(2) further elaborates that in determining the time-span in which satisfactory evidence of a person's identity has to be obtained in relation to any particular business relationship or one-off transaction, all the circumstances shall be taken into account including:

(a) The nature of the business relationship or one-off transaction concerned;

(b) The geographical locations of the parties;

(c) Whether it is practical to obtain the evidence before commitments are entered into between the parties or before money passes;

(d) In relation to Cases 3 or 4, the earliest stage at which there are reasonable grounds for believing that the total amount payable by an applicant for business is B$20,000.00 or more.

478. MLO s8 specifically points out the condition where CDD could be exempted:

(1) Where satisfactory evidence of the identity of an applicant for business would, apart from this subsection, be required under identification procedures in accordance with section 7 but:

(a) the circumstances are such that a payment is to be made by the applicant for business; and

(b) it is reasonable in all the circumstances:

(i) for the payment to be sent by post or by any electronic means which is effective to transfer funds; or

(ii) for the details of the payment to be sent by post, to be given on the telephone or to be given by any other electronic means, then, subject to subsection (2), the fact that the payment is debited from an account held in the applicant's name with a finance company (as defined in section 2 of the Finance Companies Act (Chapter 89) authorised by the Minister, whether the account is held by the applicant alone or jointly with one or more other persons, shall be capable of constituting the required evidence of identity.

(2) Subsection (1) shall not have effect to the extent that the circumstances of the payment fall within Case 2; or the payment is made by any person for the purpose of opening a relevant account with a finance company authorised by the Minister.

(3) For the purpose of paragraph (b) of subsection (1), it shall be immaterial whether the payment or its details are sent or given to a person who is bound by subsection (1) of section 5 or to some other person acting on his behalf.

(4) In this section, "relevant account" means an account from which a payment may be made by any means to a person other than the applicant for business, whether such a payment —

(a) may be made directly to such a person from the account by or on behalf of the applicant for business; or

(b) may be made to such a person indirectly as a result of —

(i) a direct transfer of funds from an account from which no such direct payment may be made to another account; or

(ii) a change in any of the characteristics of the account.

Banks

479. Part II Para 1 of the draft KYC/CDD Guidelines for Banks will require all institutions to obtain specific information and documents when the customers open an account. Part II Para 1 of the draft guidelines will require CDD to be conducted for one-off occasional transactions where the amount of the transaction or series of linked transactions does not exceed an established minimum monetary value. Part II Para 2.14 will require all institutions to obtain the identity of the depositor when receiving a deposit over B$5,000 conducted by a third party. Part II Para 2.15 notes that a complete application containing originator information should be obtained when outward remittances/wire transfer are made out of foreign currency accounts.

480. Section 5.2 of the draft AGC Notice to Banks will require them to perform CDD when:

(a) establishing business relations with any customer;

(b) undertaking any one off transaction of a value of B$20,000 or more for any customer who has not otherwise established business relations with the bank;

(c) undertaking two or more one off transactions where it appears that the transactions are linked and that the total amount in respect of the transactions is B$30,000 or more

(d) there is a suspicion of ML or TF, notwithstanding that the bank would otherwise not be required by the Notice to perform CDD measures; or

(e) there are doubts about the veracity or adequacy of any information previously obtained

481. CDD in s5.2 of the draft AGC notice falls short of the FATF standard, with wire transfer of EUR/USD 1000 or more not covered. Also, the threshold of B$30,000 is higher than EUR/USD15,000 in the FATF standard. The requirement of B$20,000 is in keeping with the FATF standard.

Securities Companies

482. Section 4.2 of the draft KYC guidelines for the Securities Industry will require licence holders under SO to perform CDD in the same circumstances as those outlined above for Banks.

Insurance Companies

483. Section 5.2 of the draft AGC notice for insurers will require life insurers to perform CDD under the circumstances set out above for banks.

484. Para 20 of the draft Control Measures against ML/TF for the Insurance Industry will require insurers to conduct identification and verification of customers and beneficial owners when business

relationship is established. Para 26 lists several conditions after establishment of the contract that require CDD:

(1) a change in beneficiaries;
(2) a change/increase of insured capital and/or of premium payment;
(3) use of cash and/or payment of large single premium;
(4) payment/surrender by a wire transfer from/to foreign parties;
(5) payment by banking instruments which allow anonymity of the transaction;
(6) change of address and/or place of residence of the policy holder, in particular, tax residence;
(7) lump sum tops-up to an existing life insurance contract;
(8) lump sum contributions to personal pension contract;
(9) requests for prepayment of benefits;
(10) use of the policy as collateral/security;
(11) change of the type of benefit;
(12) early surrender of the policy or change of duration
(13) request for payment of benefits at maturity date

Required CDD measures

485. Under s7(1) of the MLO, an identification procedure is deemed in compliance with the MLO by:

(a) the production by the applicant for business of satisfactory evidence of his identity; or

(b) the taking of such measures specified in the procedures as will produce satisfactory evidence of his identity

486. Under s11(1) of the MLO, evidence of identity is satisfactory if:

(a) it is reasonably capable of establishing that the applicant is the person he claims to be; and

(b) the person who obtains the evidence is satisfied, in accordance with the procedures maintained under this Order in relation to the relevant financial business concerned, that it does establish that fact.

Identifying the customer and verifying their identity

487. The MLO requires financial institutions to identify the customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements) but does not require financial institutions to verify that customer‘s identity using reliable, independent source documents, data or information (identification data).

Banks

488. Section 5.3 of draft AGC Notice to Banks will require banks to identify each customer when establishing business relations. Section 5.4 will requires banks to verify the identity of the customer using reliable, independent sources. Section 5.5 will require banks to make and retain copies of all reference documents used to verify the identity of the customer.

489. Section 5.22 of the draft AGC notice will require banks to obtain and record information of the customer, including but not limited to the following:

(a) Full name, including any aliases and maiden names;

(b) Identification number such as an identity card number and passport number (if different), birth certificate number (where applicable);

(c) Occupation, public position held and/or name of employer;

(d) Existing residential address, registered or business address (as may be appropriate) and contact telephone number(s);

(e) Date of birth and place of birth;

(f) Nationality;

(g) Signature.

490. Section 5.22.1 of the draft AGC notice will require banks to verify the identity by obtaining:

- Copy of identification document.
- Copy of address verification documents
- Copy of valid visa/permit in the case of foreign customer accounts for non-nationals.
- Business registration if the account is opened for such purpose.

Section 5.22.2 of the draft AGC notice requires banks to verify the identity information by including but not limited to:

- Contacting the customer by telephone, by letter, or by e-mail to confirm the information supplied after an account has been opened
- Confirming the validity of the official documentation provided through certification by an authorised person.

491. Part II Para 1 of draft KYC/CDD Guidelines for Banks will require all institutions to obtain following information:

- Full name as appearing in the identification document.
- Identification document to be specified as, national identity card, unexpired passport, and official driving licence.
- Permanent address as appearing on the identification document. Any other address to be accepted should be supported by a utility bill not over three months old. Utility bills are to be specified as electricity bill, water bill and telecom or any fixed line operator's bill. No post-box number should be accepted. In the case of 'C/o', property owners consent and other relevant address verification documents are required to be obtained.
- Telephone number, fax number, and email address.
- Nationality
- Occupation, business, public position held and the name of the employer
- Purpose of which account is opened
- Expected turnover/volume of business
- The reason for choosing to open the account in a foreign jurisdiction in case of Brunei residents.
- Satisfactory reference
- Signature

492. Part II Para 1 of the draft guidelines will also require financial institution to obtain following documents:

- Mandate/Account Opening Form
- Copy of identification document.
- Copy of address verification documents
- Copy of valid visa/permit in the case of FC accounts for non-nationals.
- Business registration if the account is opened for such purpose.

493. General Guidance Para 2 of the draft guidelines will require all institutions to verify the information by at least one of following methods:

- Confirming the date of birth from an official documents
- Confirming permanent address
- Contacting the customer by telephone, by letter, or by e-mail to confirm the information supplied after an account has been opened
- Confirming the validity of the official documentation provided through certification by an authorised person

494. General Guidance Para 6 of the draft guidelines suggests that for one-off or occasional transactions and the amount of transaction not exceeding the established minimum monetary value, financial institutions would only have to record name and address.

Securities Companies

495. Section 4.3 of draft KYC Guidelines for the Securities Industry will require SO licence holders to identify each customer when establishing business relations. Section 4.5 will require the licence holder to retain copies of all reference documents used to verify the identity of the customer. Section 4.6 of the draft guidelines will require the licence holder to obtain and record information of the customer, including but not limited to the following:

(a) Full name, including any aliases;

(b) Unique identification number such as an identity card number and passport number or birth certificate number or where the customer is not a natural person, the incorporation number or business registration number;

(c) Existing residential address, registered or business address (as may be appropriate) and contact telephone number(s);

(d) Date of birth, incorporation or registration; and

(e) Nationality or place of incorporation or registration.

496. Section 4.4 of the draft guidelines will require that the licence holder verify the identity of the customer using reliable, independent sources.

Insurance Companies

497. Section 5.3 of draft AGC Notice to Insurers will require life insurers to identify each customer when establish business relations. Section 5.7 will require life insurers to verify the identity of the customer using reliable, independent sources. Section 5.8 will require banks to make and retain copies of all reference documents used to verify the identity of customer.

498. Section 5.22 of the draft AGC notice will require life insurers to obtain and record information of the customer, including but not limited to the following:

(a) Full name, including any aliases and maiden names;

(b) Identification number such as an identity card number and passport number (if different), birth certificate number (where applicable);

(c) Occupation, public position held and/or name of employer;

(d) Existing residential address, registered or business address (as may be appropriate) and contact telephone number(s);

(e) Date of birth and place of birth;

(f) Nationality;

(g) Signature.

499. Section 5.22.1 of the draft AGC notice will require life insurers to verify the identity by obtaining:

- Copy of identification document bearing photograph of the individual
- Copy of address verification documents
- Copy of valid visa/permit in the case of FC accounts for non-nationals.

500. Section 5.22.2 of the draft AGC notice will require life insurers to verify the identity information by including but not limited to:

- Contacting the customer by telephone, by letter, or by e-mail to confirm the information supplied after an account has been opened
- Confirming the validity of the official documentation provided through certification by an authorised person

501. Section 5.22.4 of the draft AGC notice will require life insurers to verify the identity of any agent appointed to act on a customer's behalf.

502. Paragraph 20 of the draft KYC guidelines will require insurers to obtain:

- Full name(s) used.
- Date and place of birth.
- Nationality
- Current permanent adders
- Occupation and the name of the employer
- Purpose of which account is opened
- Signature

503. Para 32 of the draft Control Measures against ML/TF for the Insurance Industry sets out that current valid passport or national identity card is used to verify the identity of the customers. Documents that are easily obtained such as IDCs issued by the employer of applicant, credit cards, business cards, driving licences (not bearing a photograph), provisional driving licences and student union card, should not be used for verification (Para 34 of the draft guidelines).

504. Para 7 of the draft guidelines requires insurer to verify the identity of the customer using reliable, independent sources.

Identifying and verifying customers who are legal person and arrangement

505. The MLO does not set out any requirements for financial institutions to take the following steps for customers that are legal persons or legal arrangements:

> (a)* verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person; and
>
> (b) verify the legal status of the legal person or legal arrangement, e.g. by obtaining proof of incorporation or similar evidence of establishment or existence, and obtain information concerning the customer's name, the names of trustees (for trusts), legal form, address, directors (for legal persons), and provisions regulating the power to bind the legal person or arrangement.

<u>Banks</u>

506. Apart from the requirement on ss5.3 to 5.5 (see section on natural person in this report), s5.6 of the draft AGC Notice to Banks will require banks to identify the directors of the company if the customer is a company. Section 5.7 of the draft AGC notice will require banks to identify the partners if the customer is a partnership or a limited liability partnership. Section 5.8 will require banks to identify the persons having executive authority in that body corporate or unincorporated if the customer is any other body corporate or unincorporated. Section 5.11 requires to (a) identify the natural persons that act or are appointed to act on behalf of the customer (b) verify the identity of these persons using reliable, independent sources; and (c) retain copies of all reference documents used to verify the identity of these persons

507. Section 5.12 of the draft AGC notice will require banks to verify the due authority of such persons to act on behalf of the customer. Section 5.13 suggests the verification conducted by obtaining (a) the appropriate documentary evidence that the customer has appointed the persons to act on its behalf; and (b) the specimen signatures of the persons appointed.

508. Part II Para 1 of draft KYC/CDD Guidelines for Banks requires all institutions to obtain following information:

Table: Identity information required for CDD - draft KYC/CDD guidelines

Type of Customer	Information to be obtained	Documents to be obtained
Proprietorship/Partnership Accounts	• Full name • Personal detail of the Proprietor/Partners as in the case of individual accounts • Registered address or principle place of business and permanent address of Proprietor/Partners • Contact telephone, fax number • Tax file number • Satisfactory reference • Signature • The extent of the ownership control • Other connected business interest	• Mandate/Account opening form • Business registration document • Proprietor/Partners information document • Copy of identification and address verification address
Corporations/Limited Liability Companies	• Registered name of the institutions • Principle place • Mailing address • Nature and purpose of the business • Telephone/Fax/E-mail • Income tax file number • Bank references • Personal detail of all Directors as in the case of individual customers • Major shareholders and financial interest and control • List of subsidiaries/associates and other business connection	• Mandated/Account Opening Form • Original or certified copy of the Certificate of Incorporation and Memorandum of Articles of Association • Board Resolution authorizing the opening of the account • Director information document • Certificate to commence business • Certified copy of business registration • Latest Audited account (if available)
Clubs, Societies, Charities, Associations and NGOs	• Name and address • Detailed information of at least two office bearers, signatories, administrators, member of the governing body or committee or any other person who has control and influence over the operations of the entity as in the case of individual account	• The registration document/constitution, charter etc • Customer information form as in the case of individual account • Mandate/Account opening form

	• The source and level of income/funding • Other connected institutions/associates/organisations • Telephone/Fax number/e-mail address	
Trust, Nominee and Fiduciary Accounts	• Identification of all trustees, settlers/grantors and beneficiaries in case of trustee	• Mandate/Account Opening Form • Trust Deed • Particulars of all individual

509. Para 11 of the draft KYC/CDD Guidelines for Banks will require banks to verify corporate entities by at least one of the following methods:

- Reviewing copy of the latest report and accounts
- Conducting an enquiry by a business information service or an undertaking from reputable and known lawyer or accountants to confirm the document submitted.

510. A deficiency is noted in the draft AGC notice to banks, which limits the definition of "company" only to a legal person established outside of Brunei.

511. Apart from the requirement on ss4.4 to 4.6 of the draft KYC/CDD Guidelines for Banks (see section on natural person in this report), s4.7 will require the licence holder under SO to identify the directors of the company if the customer is a company. Section 4.8 of the draft guidelines requires the licence holder under SO to identify the partners if the customer is a partnership or a limited liability partnership. Section 4.9 requires the licence holder under SO to identify the persons having executive authority in that body corporate or unincorporated if the customer is any other body corporate or unincorporated. Section 4.10 requires to (a) identify the natural persons that act or are appointed to act on behalf of the customer (b) verify the identity of these persons using reliable, independent sources; and (c) retain copies of all reference documents used to verify the identity of these persons.

512. Section 4.11 will require the licence holder under SO to verify the due authority of such persons to act on behalf of the customer. Section 4.12 suggests the verification conducted by obtaining (a) the appropriate documentary evidence that the customer has appointed the persons to act on its behalf; and (b) the specimen signatures of the persons appointed.

Insurance Companies

513. Section 5.4 of the draft AGC notice will require life insurers to identify the directors of the company if the customer is a company. Section 5.5 of the draft AGC notice requires life insurers to identify the partners if the customer is a partnership or a limited liability partnership. Section 5.6 requires life insurers to identify the persons having executive authority in that body corporate or unincorporated if the customer is any other body corporate or unincorporated. Section 5.9 requires to (a) identify the natural persons that act or are appointed to act on behalf of the customer (b) verify the identity of these persons using reliable, independent sources; and (c) retain copies of all reference documents used to verify the identity of these persons.

514. Section 5.10 of the draft AGC notice requires bank to verify the due authority of such persons to act on behalf of the customer. Section 5.11 suggests the verification conducted by obtaining (a) the appropriate documentary evidence that the customer has appointed the persons to act on its behalf; and (b) the specimen signatures of the persons appointed.

515. Para 7 of the draft Control Measures against ML/TF for the Insurance Industry will require insurers to take reasonable measure to understand the ownership and control structure of the customer. Para 35 requires identification of the natural persons with a controlling interest and the natural persons who comprise the mind and management of the legal person or arrangement. Para 36 requires insurers to (a) verify any person purporting to act on behalf of the customer is so authorised,

and verify the identity of that person; (b) verify the legal status of the legal person or legal arrangement, e.g. by obtaining proof of incorporation or similar evidence of establishment or existence. Para 39 points out the obligation for insurers to conduct verification to ensure the individuals purporting to act on behalf on an entity are authorised to do so.

516. Para 40 of the draft guidelines will require insurers to consider: (1) Certificate of incorporation, (2) name and address of beneficial owner and/or person on whose instructions the signatories of the customer are empowered to act, (3) constitutional document such as memorandum and article of association, and (4) copies of power of attorney or other authorities given by the entity.

517. Para 37 of the draft guidelines addresses if the customer is trust, the insurer should verify the identity of trustee, any other person exercising effective control over the trust property, the settlers and the beneficiaries. Para 39 requires insurers in employer-sponsored pension or savings at minimum to undertake the verification of the principal employer and the trustee of the scheme (if any). Para 42 suggests that verification of any trustee of the scheme will generally consist of an inspection of the relevant documentation, which may include (1) the trust deed and/or instrument and any supplementary documents (2) memorandum of the name and address of current trustee (3) extracts from public registers (4) references from professional advisers or investment managers.

518. In the draft AGC Notice to Insurers the definition of "company" refers only to a legal person established outside of Brunei.

Identifying the beneficial owners

519. There is no provision in the MLO on detailed requirements regarding beneficial ownership.

Banks

520. Section 5.15 of the draft AGC Notice to Banks will require banks to ask a question to make sure if there any beneficial owner in relation to a customer. Section 5.16 of the draft AGC notice requires banks to justify the reasonableness of the measures taken, having regard to the circumstances of each case. Banks may also consider obtaining an undertaking or declaration from the customer on the identity of, and the information relating to the beneficial owner. Section 5.17 of the draft AGC notice requires banks to take reasonable measures to obtain information sufficient to identify and verify the identity of the beneficial owner. Section 5.18 requires banks to take reasonable measures to understand the ownership and control structure of the customer.

521. Section 5.19 of the draft AGC notice provides that licensed banks do not have to inquire after the beneficial owner of a particular low risk customer that is:

- a Brunei government entity;
- a foreign government entity;
- an entity listed on an exchange licensed, established or caused to be established within Brunei;
- an entity listed on a stock exchange outside of Brunei that is subject to regulatory disclosure requirements;
- a financial institution supervised by the Authority (other than a holder of a money changer's licence or a holder of a remittance licence, unless specifically notified by the Authority);
- a financial institution incorporated or established outside Brunei that is subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF; or
- an investment vehicle where the managers are financial institutions –
  (i) Supervised by the Authority; or

(ii) Incorporated or established outside Brunei but are subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF

unless the licence holder suspects that the transaction is connected with ML or TF.

522. Paragraph 21 of the draft General Guidance on CDD will require financial institutions to be able to justify the reasonableness of the measures taken in each case. Institutions may also consider obtaining an undertaking or declaration from the customer on the identity of, and the information relating to, the beneficial owner.

523. General Guidance Para 12 of the draft CDD guidelines will require financial institutions to take reasonable steps to verify the identity, and reputation of any agent that opens an account on behalf of a corporate customer, if that agent is not an officer of the corporate customer.

524. General Guidance Para 13 of the draft CDD guidelines will require financial institutions to look behind the institution to identify those who have control over the business and the company's/partnership's assets, including those who have ultimate control. Particular attention should be paid to shareholders, signatories, or others who inject a significant proportion off the capital or financial support or otherwise exercise control. Where the owner is another corporate entity or trust, the objective is to undertake reasonable measures to look behind that company or entity and to verify the identity of the principals. What constitutes control for this purpose will depend on the nature of a company, and may rest in those who are mandated to manage funds, accounts or investments without requiring further authorisation, and who would be in a position to override internal procedure and control mechanisms. For partnerships, each partner should be identified and it is also important to identify immediate family members that have ownership control. Para 14 notes that if a company is listed on a recognised stock exchange, or is a subsidiary of such a company, then the company itself may be considered to be the principal to be identified. However, consideration should be given to whether there is effective control of a listed company by an individual, small group of individuals or another corporate entity or trust. If this is the case then those controllers should also be considered to be principals and identified accordingly.

525. General Guidance Para 15 of the draft CDD guidelines outline CDD on occupational pension programmes, employee benefit trusts and share option plans. The applicant for an account, trustee and any other person who has control over the relationship (e.g. administrator, programme manager, and account signatories) should be considered as principals and the financial institutions should take steps to verify their identities. Para 16 outlines CDD on Mutual/Friendly Societies, Cooperatives and Provident Societies. Apart from the applicant for an account, the principals to be identified should be considered to be those persons exercising control or significant influence over the organisation's assets. This will often include board members plus executives and account signatories. Para 17 outlines CDD on charities, clubs and societies. Financial institutions should take reasonable steps to identify and verify at least two signatories along with the institution itself. The principals who should be identified should be considered to be those persons exercising control or significant influence over the organisation's assets. This will often include members, the treasurer and all signatories. Para 18 addresses that in all cases independent verification should be obtained. Independent confirmation should also be obtained of the purpose of the institution.

526. General Guidance Para 19 of the draft CDD guidelines will require financial institutions to establish whether the customer is taking the name of another customer, acting as a "front" or acting on behalf of another person as trustee, nominee or other intermediary. If so, necessary precondition is receipt as satisfactory evidence of the identity of any intermediaries of the persons upon whose behalf they are acting, as well as details of the nature of the trust or other arrangements in place. The identification of a trust should include the trustees, settlers/grantors and beneficiaries. Para 20 establish regulation that the financial institution should take reasonable steps to verify the trustees, the settlers of the trust (including any persons settling assets into the trust) any protectors, beneficiaries, and signatories when opening an account for a trust. Beneficiaries should be identified when they are

defined. In the case of a foundation, steps should be taken to verify the founder, the managers/directors and the beneficiaries.

527. General Guidance Para 21 of the draft CDD guidelines will require financial institutions to identify the client when a professional intermediary such as lawyer, notary, other independent legal professional or accountant, opens a client account on behalf of a single client. Where the funds are co-mingled, the financial institution should look through to the beneficial owners; however, there may be circumstances which should be set out in supervisory guidance where the financial institutions may not need to look beyond the intermediary (e.g. when the intermediary is subject to the same due diligence standards in respect of its client base as the financial institution). Para 22 sets out regulation that where such circumstances apply and an account is opened for a open or close ended investment company, unit trust or limited partnership which is also subject to the same due diligence standards in respect of its clients base as the financial institution, the following should be considered as principals and the financial institutions should take steps to identify:

- The fund itself
- The directors or any controlling board where it is a company
- Its trustee where it is a unit trust
- Its managing (general) partner where it is a limited partnership
- Account signatories
- Any other person who has control over the relationship e.g. fund administrator or manager.

Securities Companies

528. Section 4.14 of draft KYC Guidelines for the Securities Industry requires the licence holder to inquire if there are any beneficial owners in relation to a customer. Section 4.15 will require the licence holder to justify the reasonableness of the measures taken, having regard to the circumstances of each case. A licence holder may also consider obtaining an undertaking or declaration from the customer on the identity of, and the information relating to the beneficial owner. Section 4.16 will require the licence holder to take reasonable measures to obtain information sufficient to identify and verify the identity of the beneficial owner. Section 4.17 requires the licence holder to take reasonable measures to understand the ownership and control structure of the customer.

529. Section 4.18 of the draft KYC guidelines provides that licensed securities companies do not have to inquire after the beneficial owner of a particular low risk customer that is:

- a Brunei government entity;
- a foreign government entity;
- an entity listed on an exchange licensed, established or caused to be established within Brunei;
- an entity listed on a stock exchange outside of Brunei that is subject to regulatory disclosure requirements;
- a financial institution supervised by the Authority (other than a holder of a money changer's licence or a holder of a remittance licence, unless specifically notified by the Authority);
- a financial institution incorporated or established outside Brunei that is subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF; or
- an investment vehicle where the managers are financial institutions –
  (i) Supervised by the authority; or

(ii) Incorporated or established outside Brunei Darussalam but are subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF,

unless the licence holder suspects that the transaction is connected with money laundering or terrorist financing.

Insurance Companies

530. Section 5.13 of the draft AGC Notice to Insurers requires life insurers to ask a question to make sure if there any beneficial owner in relation to a customer. Section 5.14 of the draft AGC notice requires life insurer to justify the reasonableness of the measures taken, having regard to the circumstances of each case. Bank may also consider obtaining an undertaking or declaration from the customer on the identity of, and the information relating to the beneficial owner. Section 5.15 of the draft AGC notice requires life insurer to take reasonable measures to obtain information sufficient to identify and verify the identities of the beneficial owner. Section 5.16 of the draft AGC notice requires life insurer to take reasonable measures to understand the ownership and control structure of the customer.

531. Section 5.17 of the draft AGC notice provides that licensed insurance companies do not have to inquire after the beneficial owner of a particular low risk customer that is:

- a Brunei government entity;
- a foreign government entity;
- an entity listed on an exchange licensed, established or caused to be established within Brunei;
- an entity listed on a stock exchange outside of Brunei that is subject to regulatory disclosure requirements;
- a financial institution supervised by the Authority (other than a holder of a money changer's licence or a holder of a remittance licence, unless specifically notified by the Authority);
- a financial institution incorporated or established outside Brunei that is subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF; or
- an investment vehicle where the managers are financial institutions –
  - (i) Supervised by the Authority; or
  - (ii) Incorporated or established outside Brunei but are subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF,

  unless the licence holder suspects that the transaction is connected with money laundering or terrorist financing.

532. Para 7 of the draft Control Measures against ML/TF for the Insurance Industry requires insurers to determine whether the customer is acting on behalf of another person, and should then take reasonable steps to obtain sufficient identification data to verify the identity of that other person. Insurers are also required to identify (the ultimate) beneficial owner, and take reasonable measures to verify the identity of beneficial owner.

533. In case of legal person Para 36 of the draft guidelines will require insurers to form an understanding of the ownership and control structure of the corporate customers. Para 37 of the draft guidelines outlines particular care should be taken in understanding the substance and form of the entity. Para 38 notes the insurer should be aware of vehicles, corporate or otherwise, that are known to be misused for illicit purposes.

534. Para 46 of the draft guidelines expects insurers to pay attention on bearer policies and performs enhanced due diligence on that policy.

Purpose and intended nature of business relationship

535. The MLO does not address detailed requirements regarding CDD of purpose and intended business relationships.

Banks

536. Section 5.21 of the draft AGC Notice to Banks will require banks to obtain from the customer, when processing the application to establish business relations, information as to the purpose and intended nature of business relations.

537. Part II Para 2.2 of the draft CDD guidelines will require banks to record customer information at the outset, include customer's business/profession, level of income, economic profile, business associates and other connections, source of funds, and the purpose for which the account is opened.

Securities Companies

538. Section 4.20 of the draft KYC Guidelines for the Securities Industry requires the licence holder under SO to obtain from the customer, when processing the application to establish business relations, information as to the purpose and intended nature of business relations.

Insurance Companies

539. Section 5.21 of the draft AGC Notice to Insurers requires life insurers to obtain, from the customer, when processing the application to establish business relations, information as to the purpose and intended nature of business relations

540. Para 7 of the draft Control Measures against ML/TF for the Insurance Industry requires insurers to obtain information on the purpose and intended nature of business relationship and other relevant factors.

Ongoing due diligences

541. The MLO does not provide for the requirements relating to ongoing CDD.

542. Under the draft general guidelines, Part I, reporting institutions are required to continuously monitor each customer's transaction activity pattern to ensure it is in line with the customer's profile. Any material differences should prompt the reporting institution to reassess the customer's risk profile.

Banks

543. Sections 5.32, 5.33 and 5.34 of the draft AGC Notice to Banks requires banks to monitor the customer's account and scrutinise transactions undertaken to ensure that the transactions are consistent with bank's knowledge of the customer, its business and risk profile and where appropriate, the source of funds. Any inconsistency should be enquired into and the correct position recorded. All explainable activities should be reported to the bank compliance officer for appropriate action. A bank shall pay special attention to all complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. A bank, to the extent possible, should enquire into the background and purpose of the transaction and document its findings with a view to making this information available to the relevant competent authorities should the need arise.

544. Section 5.36 of the draft AGC notice requires banks to review periodically the adequacy of customer identification information obtained in respect of customers and beneficial owners and ensure that the information is kept up to date, particularly for higher risk categories of customers.

545. Part II.2.19 of the draft CDD guidelines suggests accounts which record frequent transactions below any mandatory threshold limits applicable in an attempt to circumvent such mandatory reporting requirement should be reported to the financial institution's Compliance Officer for appropriate action. Part II.2.20 calls for financial institutions to ensure that account activities are consistent with the customer profile on record. Any inconsistency should be inquired into and the correct position recorded. All unexplainable activities should be reported to the financial institution's compliance officer for appropriate action.

546. Part II.3.5 of the draft CDD guidelines require financial institutions to scrutinise and examine the background of all relatively large transactions that are complex, unusual or have no apparent economic and lawful purpose and retain a written record of such examination.

547. Section 5.36 of the draft AGC Notice will require banks to review periodically the adequacy of customer identification information obtained in respect of customers and beneficial owners and ensure that the information is kept up to date, particularly for higher risk categories of customers.

Securities Companies

548. Sections 4.22, 4.23 and 4.24 of the draft KYC Guidelines for the Securities Industry will require licence holders under SO to monitor the customer's account and scrutinise transactions undertaken to ensure that the transactions are consistent with the Licence Holder's knowledge of the customer, its business and risk profile and where appropriate, the source of funds. Any inconsistency should be enquired into and the correct position recorded. All explainable activities should be reported to the Licence Holders' compliance officer for appropriate action. A Licence Holder shall pay special attention to all complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. A Licence Holder shall, to the extent possible, enquire into the background and purpose of the transactions and document its findings with a view to making this information available to the relevant competent authorities should the need arise.

549. Section 4.25 of the draft KYC guideline requires a licence holder under SO to review periodically the adequacy of customer identification information obtained in respect of customers and beneficial owners and to ensure that the information is kept up to date, particularly for higher risk categories of customers.

Insurance Companies

550. Sections 5.25, 5.26 and 5.27 of the draft AGC Notice to Insurers will require life insurers to monitor the customer's account and scrutinise transactions undertaken to ensure that the transactions are consistent with the life insurer's knowledge of the customer, its business and risk profile and where appropriate, the source of funds. Any inconsistency should be enquired into and the correct position recorded. All explainable activities should be reported to the life insurer's compliance officer for appropriate action. A life insurer shall pay special attention to all complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. A life insurer shall, to the extent possible, enquire into the background and purpose of the transactions and document its findings with a view to making this information available to the relevant competent authorities should the need arise.

551. Section 5.29 of the draft AGC notice requires a life insurer to review periodically the adequacy of customer identification information obtained in respect of customers and beneficial owners and ensure that the information is kept up to date, particularly for higher risk categories of customers.

552. Para 7 of the draft Control Measures against ML/TF for the Insurance Industry requires insurers to conduct ongoing due diligence on business relationships and scrutinise transactions undertaken to ensure that the transactions are consistent with the institution's knowledge of the

customer, their business and risk profile, and where necessary, the source of funds. Para 76 of the draft guideline also requires insurer to keep up to date of CDD information.

Risk – Enhanced Due Diligence

553. There is no requirement for enhanced due diligence in the MLO.

554. Under the draft general guidelines, Part I, reporting institutions are required to identify the type of customers associated with high risk of ML and TF.

Banks

555. Sections 7.2 of the draft AGC Notice to Banks requires a bank to conduct enhanced due diligence to a Political Exposed Person (PEP). Enhanced Due Diligence includes but is not limited to (a) implement appropriate internal policies, procedures and controls to determine if a customer or beneficial owner is a politically exposed person, (b) obtain approval from the bank's senior management to establish or continue business relations, where the customer or beneficial owner is a politically exposed person or subsequently becomes a politically exposed person, (c) establish, by appropriate and reasonable means, the source of wealth and source of funds of any customer or beneficial owner, and (d) conduct, during the course of business relations, enhanced on-going monitoring of business relations with the customer.

556. Sections 7.3 of the draft AGC notice requires a bank to conduct enhanced due diligence for other categories of customers, business relations or transactions which the bank may assess as presenting a higher risk for ML and TF.

557. Sections 7.4 of the draft AGC notice requires a bank to give particular attention to business relations and transactions with any person from or in countries and jurisdictions known to have inadequate AML/CFT measures, as determined by the bank for itself or notified to a bank generally by the relevant supervisory authority or other foreign supervisory authorities.

558. Part II Para 13 of the draft guidelines for banks will require financial institutions to conduct enhanced due diligence to Political Exposed Person (PEP).

559. Part II Para 9 of the draft guidelines for banks notes that when a Foreign Currency or temporary Brunei Dollar account is opened for non-nationals/foreign passport holders who are resident in Brunei, a local address should be obtained as their permanent address during their stay in Brunei. A copy of the passport, visa with validity period, foreign address and the purpose for which the account is opened should also be made available in the file. On the expiry of the visa, the account should cease to operate, unless and otherwise appropriate instructions are received. On leaving the country, the account should either be closed or be converted into a non-resident account. Financial institutions must ensure that a valid visa is held at all times by the clients during the continuation of the account with them.

560. Part II Para 10 of the draft guidelines for banks notes that when a Brunei dollar account is opened for resident non nationals, a Brunei address should be obtained. A foreign address may be used temporarily whilst the account holder is resident abroad. The Bank must ensure to up-date the address on the client's return, under the ongoing due diligence. In the case of joint accounts a foreign address may be used only when all parties are domiciled abroad. If any one party remains in the Island, the local address needs to be maintained.

561. Para 11 of the draft guidelines for banks requires Bank accounts for charitable and aid organisations and NGOs should be opened only with the registration of the NGO Authority and with other appropriate credentials. Due regard should be paid to specific directions governing their operations if any.

562. Part II Para 14 of the draft guidelines for banks notes that for all cash deposits made into savings and current accounts over B$5,000 by third parties bank should record the identity of the depositor. The required detail includes the name, address, identification number, purpose and the signature. However, clerks, accountants and employees of business houses who are authorised to deal with the accounts do not come within the definition of 'third parties'.

Securities Companies

563. Sections 6.2 of draft KYC Guidelines for the Securities Industry requires licence holder under SO to conduct enhanced due diligence to a PEP. Enhanced Due Diligence includes but not limited to (a) implement appropriate internal policies, procedures and controls to determine if a customer or beneficial owner is a politically exposed person, (b) obtain approval from the Licence Holder's senior management to establish or continue business relations, where the customer or beneficial owner is a politically exposed person or subsequently becomes a politically exposed person, (c) establish, by appropriate and reasonable means, the source of wealth and source of funds of any customer or beneficial owner, and (d) conduct, during the course of business relations, enhanced on-going monitoring of business relations with the customer.

564. Sections 6.3 of the draft guideline requires a licence holder under SO to conduct enhanced due diligence to other categories of customers, business relations or transactions as the licence holder may consider to present a higher risk for ML and TF.

565. Sections 6.4 of the draft guideline requires a licence holder under SO to give particular attention to business relations and transactions with any person from or in countries and jurisdictions known to have inadequate AML/CFT measures, as determined by the licence holder for itself or notified to licence holders generally by the relevant supervisory authority or other foreign supervisory authorities.

Insurance Companies

566. Sections 7.2 of the draft AGC Notice to Insurers requires life insurer to conduct enhanced due diligence to a PEP. Enhanced Due Diligence includes but not limited to (a) implement appropriate internal policies, procedures and controls to determine if a customer or beneficial owner is a politically exposed person, (b) obtain approval from the life insurer's senior management to establish or continue business relations, where the customer or beneficial owner is a politically exposed person or subsequently becomes a politically exposed person, (c) establish, by appropriate and reasonable means, the source of wealth and source of funds of any customer or beneficial owner, and (d) conduct, during the course of business relations, enhanced on-going monitoring of business relations with the customer.

567. Sections 7.3 of the draft AGC notice requires a life insurer to conduct enhanced due diligence to other categories of customers, business relations or transactions as bank may assess to present a higher risk for ML and TF.

568. Sections 7.4 of the draft AGC notice requires a life insurer to give particular attention to business relations and transactions with any person from or in countries and jurisdictions known to have inadequate AML/CFT measures, as determined by the bank for itself or notified to life insurer generally by the relevant supervisory authority or other foreign supervisory authorities

569. Para 44 of draft Control Measures against ML/TF for the Insurance Industry requires insurers to conduct enhanced due diligence to all high risk business relationship, clients and transactions. This

includes both high risk business relationship assessed by the insurers and business relationship such as bearer policies (Para 46) and "viatical"[7] arrangements (Para 47).

Risk – Simplified Customer Due Diligence

570. Section 10.1 of the MLO notes that a identification procedure shall not require any steps to obtain evidence of any person where:

(a) there are reasonable grounds for believing that the applicant for business is a person who is bound by the provisions of CDD;

(b) any one-off transaction is carried out with or for a third party pursuant to an introduction effected by a person who has provided an assurance that evidence of the identity of all third parties introduced by him will have been obtained and recorded under procedures maintained by him, where that person identifies the third party and where

  (i) that person is bound by the provisions of CDD or

  (ii) there are reasonable grounds for believing that an applicant for business based, incorporated in or founded under the law of any country or territory outside Brunei is subject, in respect of that transaction or business, to provisions in relation to money-laundering at least equivalent to those under MLO and is subject to supervision by an overseas regulatory authority;

(c) the person who would otherwise be required to be identified, in relation to a one-off transaction, is the person to whom the proceeds of that transaction are payable but to whom no payment is made because all of those proceeds are directly re-invested on his behalf in another transaction

  (i) of which a record is kept; and

  (ii) which can result only in another re-investment made on that person's behalf or in a payment made directly to that person;

(d) insurance business consisting of a policy of insurance in connection with a pension scheme taken out by virtue of a person's contract of employment or occupation where the policy

  (i) contains no surrender clause; and

  (ii) may not be used as collateral for a loan;

(e) long term insurance business in respect of which a premium is payable in one instalment of an amount not exceeding five thousand dollars; or

(f) long term insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed one thousand five hundred dollars

571. The exclusion of long term insurance business in respect of which a premium is payable in one instalment of an amount not exceeding B$5000 and term insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed B$1500 is not based on risk-based approach.

572. The general draft guidelines on KYC/CDD Part II D will allow financial institutions to apply simplified verification procedures where there are low risks. These procedures must still be sufficient to establish a reasonable belief that the financial institution knows the true identity of the customer. Some of the potential low risk situations identified in the draft guidelines are as follows:

- Bunched orders through omnibus accounts from market intermediaries

e.g. shares or units in an institution are held by a market intermediary.

[7] Typically an arrangement in which insured individuals with a shorter life expectancy sells their life insurance policy at a discount from its face value for ready cash. The buyer cashes in the full amount of the policy when the original owner dies.

- Investors introduced by group affiliates

e.g. a new investor is introduced to the institution by an affiliated bank or broker/dealer in the same financial services group.

- Pensions plans/superannuation schemes

Banks

573. Sections 6.1 of the draft AGC Notice to Banks allows a bank to perform simplified CDD measures considered adequate to effectively identify and verify the identity of the customer, a natural person appointed to act on the customer's behalf and any beneficial owner if it is satisfied that the risks of ML and TF are low. Section 6.3 suggests simplified CDD measures for customers that are financial institutions supervised by the relevant supervisory authority. Money changers and remittance companies are excluded, unless specifically notified by the relevant supervisory authority).

574. Section 6.4 of the draft AGC notice notes that where bank performs simplified CDD measures in relation to a customer, it shall document –

(a) the details of its risk assessment; and

(b) the nature of the simplified CDD measures.

Securities Companies

575. Sections 5.1 of the draft KYC Guidelines for the Securities Industry allows a licence holder under SO to perform simplified CDD measures considered adequate to effectively identify and verify the identity of the customer, a natural person appointed to act on the customer's behalf and any beneficial owner if it is satisfied that the risks of ML and TF are low. Section 5.3 suggests simplified CDD measures for customers that are financial institutions supervised by the relevant supervisory authority. Money changers and remittance companies are excluded, unless specifically notified by the relevant supervisory authority).

576. Section 5.4 notes that where the Licence Holder performs simplified CDD measures in relation to a customer, it shall document –

(a) the details of its risk assessment; and

(b) the nature of the simplified CDD measures.

Insurance Companies

577. Sections 6.1 of the draft AGC Notice to Insurers allows life insurers to perform simplified CDD measures considered adequate to effectively identify and verify the identity of the customer, a natural person appointed to act on the customer's behalf and any beneficial owner if it is satisfied that the risks of ML and TF are low. Section 6.3 suggests simplified CDD measures for customers that are financial institutions supervised by the relevant supervisory authority. Money changers and remittance companies are excluded, unless specifically notified by the relevant supervisory authority).

578. Section 6.4 of the draft AGC notice notes that where a life insurer performs simplified CDD measures in relation to a customer, it shall document:

(a) the details of its risk assessment; and

(b) the nature of the simplified CDD measures.

579. Para 53 of the draft Control Measures against ML/TF for the Insurance Industry allows insurers to conduct simplified due diligence when the risk of ML or TF (based on the insurer's own assessment) is low and if the information on the identity of the customer and the beneficial owner is publicly available.

Risk –Simplified CDD related to overseas residents

580. The MLO does not address simplified CDD related to overseas residents.

Banks

581. Section 6.2 of the draft AGC Notice to Banks does not permit a bank to perform simplified CDD measures in relation to customers that are from or in countries and jurisdictions known to have inadequate AML/CFT measures, as determined by the bank for itself or notified to bank generally by the relevant supervisory authority or by other foreign supervisory authorities.

Securities Companies

582. Section 5.2 of the draft KYC Guidelines for the Securities Industry will require licence holders under SO not to perform simplified CDD measures in relation to customers that are from or in countries and jurisdictions known to have inadequate AML/CFT measures, as determined by the Licence holder for itself or notified to Licence holder generally by the relevant supervisory authority or by other foreign supervisory authorities.

Insurance Companies

583. Section 6.2 of the draft AGC Notice to Insurers requires life insurer not to perform simplified CDD measures in relation to customers that are from or in countries and jurisdictions known to have inadequate AML/CFT measures, as determined by the life insurer for itself or notified to life insurer generally by the relevant supervisory authority or by other foreign supervisory authorities.

Risk –Simplified CDD related to suspicious of ML/TF or other high risk scenario exist

584. Section 10.2 MLO notes that simplified CDD as mentioned in Section 10.1 do not apply if any person handling the transaction knows or suspects that the applicant for business is engaged in ML or that the transaction is carried out on behalf of another person engaged in ML. Suspicion of TF is not included.

Banks

585. Sections 7.3 of the draft AGC Notice to Banks requires banks to conduct enhanced due diligence to other categories of customers, business relations or transactions as the bank may assess to present a higher risk for ML and TF.

Securities Companies

586. Sections 6.3 of the draft KYC Guidelines for the Securities Industry requires licence holder under SO to conduct enhanced due diligence to other categories of customers, business relations or transactions as the licence holder may assess to present a higher risk for ML and TF.

Insurance Companies

587. Sections 7.3 of the draft AGC Notice to Insurers will require life insurers to conduct enhanced due diligence to other categories of customers, business relations or transactions as the bank may assess to present a higher risk for ML and TF.

Risk Based Application to be consistent with Guidelines

588. There are no direct provisions in MLO or draft general guidelines regarding when financial institutions conduct CDD on a risk sensitive basis, this should be consistent with guidelines issued by the competent authorities.

Timing of verification

589. The MLO does not address timing of verification. Part I Section C of the draft KYC/CDD general guidelines calls for financial institutions to verify before or during the opening of an account or accepting an investment.

Banks

590. Section 5.43 of the draft AGC Notice to Banks suggests banks are to complete verification of the identity of the customer and beneficial owner a) before the bank establishes business relations; or b) before the bank undertakes any transaction for a customer, where the customer does not have business relations with the bank.

Securities Companies

591. Section 4.33 of the draft KYC Guidelines for the Securities Industry suggests a licence holder to complete verification of the identity of the customer and beneficial owner a) before the licence holder establishes business relations; or b) before the licence holder undertakes any transaction for a customer, where the customer does not have business relations with the licence holder.

Insurance Companies

592. Section 5.36 of the draft AGC Notice to Insurers suggests a life insurer to complete verification of the identity of the customer and beneficial owner a) before the life insurer establishes business relations; or b) before the life insurer undertakes any transaction for a customer, where the customer does not have business relations with the life insurer.

593. Para 20 of the draft Control Measures against ML/TF for the Insurance Industry expects insurers to identify and verify customers and beneficial owners when the business relationship with that person is establish.

Timing of verification – Exceptional Circumstances

594. The MLO does not address timing of verification in exceptional circumstances.

595. Part I Section C of the draft general guidelines, for financial institutions suggests verification of identity to be conducted as soon as possible, before or after the opening of an account or accepting an investment. The guidelines emphasise that it is essential not to interrupt the normal conduct of business. Where the investor's identity has yet to be verified, an institution will need to adopt risk management procedures with respect to the conditions under which an investor may utilise the account or investment prior to verification. These procedures should include a set of measures such as limitation of the number, types and/or amount of transactions that can be performed, and the monitoring of large transactions being carried out of the expected norms for that type of relationship. Where it is not possible after reasonable efforts to verify the identity of an investor, the institution should consider halting transactions or terminating its relationship and also should consider making a suspicious activity report to the appropriate authorities in relation to the investor. It may be appropriate for the institution to consult with its regulator and appropriate law enforcement agencies prior to halting transactions in a particle account or terminating its relationship with any investor.

Banks

596. Section 5.44 of the draft AGC Notice to Banks notes that a bank may establish business relations with a customer before completing the verification if:

(a) the deferral of completion of the verification of the identity of the customer and beneficial owner is essential in order not to interrupt the normal conduct of business operations; and

(b) the risks of ML and TF can be effectively managed by the bank.

597. Section 5.45 of the draft AGC notice also requires a bank to complete verification as soon as is reasonably practicable if it establishes business relations before verification is completed.

Securities Companies

598. Section 4.34 of the draft KYC Guidelines for the Securities Industry notes that a licence holder may establish business relations with a customer before completing the verification if -

(a) the deferral of completion of the verification of the identity of the customer and beneficial owner is essential in order not to interrupt the normal conduct of business operations; and

(b) the risks of ML and TF can be effectively managed by the licence holder.

599. Section 4.35 also will require licence holders to complete verification as soon as is reasonably practicable if it establishes business relations before verification is completed.

Insurance Companies

600. Section 5.37 the draft AGC Notice to Insurers notes that life insurers may establish business relations with a customer before completing the verification if -

(a) the deferral of completion of the verification of the identity of the customer and beneficial owner is essential in order not to interrupt the normal conduct of business operations; and

(b) the risks of ML and TF can be effectively managed by the life insurer.

601. Section 5.38 of the draft AGC notice also requires life insurers to complete verification as soon as is reasonably practicable if it establishes business relations before verification is completed

602. Para 21 of the draft Control Measures against ML/TF for the Insurance Industry suggests insurers should identify and verify customers and beneficial owners after a insurance contract has been established if the risk of ML and TF are effectively managed. Para 23 mentions group pension schemes and using policy as collateral as examples of situations where a business relationship could be used prior to verification.

Failure to Complete CDD

603. Section 7(1) of the MLO sets out obligations on reporting parties in cases where CDD is not completed. In such cases the MLO does not permitted financial institutions to open the account, commence business relations or perform a transaction, including a one-off transaction. The MLO does not, however, require the financial institution to consider making an STR in such circumstances.

Banks

604. Section 5.46 of the draft AGC Notice to Banks notes that where a bank is unable to complete CDD measures, it shall not open the account, commence business relations or perform the transaction or shall terminate the business relationship and consider making a STR.

605. Section II.2.1 of the draft KYC/CDD Guidelines for Banks notes that unless and until adequate identity of the prospective client is obtained no account should be opened. If any discrepancy in information is detected subsequently the account should be stopped until the veracity of such information is confirmed.

606. Section II.4.5 of the draft KYC/CDD Guidelines for Banks notes that reporting institution should consider submitting a STR when it is unable to complete the customer due diligence process on any new or existing customer who is unreasonable evasive or uncooperative, such decision being based on normal commercial criteria and its own internal policy and if it fits the reporting institution's list of "red flags".

Securities Companies

607. Section 4.36 of draft KYC Guidelines for the Securities Industry notes that where the licence holder is unable to complete CDD measures, it shall not open the account, commence business relations or perform the transaction or shall terminate the business relationship and consider making a STR.

Insurance Companies

608. Section 5.39 of the draft AGC Notice to Insurers notes that where a life insurer is unable to complete CDD measures, it shall not open the account, commence business relations or perform the transaction or shall terminate the business relationship and consider making a STR.

Existing Customers

Banks

609. Section 5.48 of the draft AGC Notice to Banks notes that banks shall perform such CDD measures as may be appropriate to its existing customers having regard to its own assessment of materiality and risk.

610. Section II.2.18 of the draft KYC/CDD Guidelines for Banks notes that the updating of all accounts with relevant information should be completed by 31st December 2008 by all financial institutions. Further evidence in identifying the existing customers should be obtained to ensure compliance with the reporting institutions' current CDD standards based on its own risk assessment of the existing customers. This is not being done in practice.

Securities Companies

611. Section 4.38 of the draft KYC Guidelines for the Securities Industry notes that a licence holder shall perform such CDD measures as may be appropriate to its existing customers having regard to its own assessment of materiality and risk.

Insurance Companies

612. Section 5.40 of the draft AGC Notice to Insurers notes that a life insurer shall perform such CDD measures as may be appropriate to its existing customers having regard to its own assessment of materiality and risk.

Existing Customers- Failure to Complete CDD

613. Sections 4.38 of draft KYC Guidelines for the Securities Industry for licence holders under SO, Section II.2.18 of the draft general guidelines for banks and Section 5.40 the draft AGC Notice to Insurers implicitly suggests that all CDD requirements should be applied to existing customers.

Analysis of effectiveness (R.5)

614. Given that there are only very minor obligations for CDD contained in the MLO, it is difficult to demonstrate effective implementation. Current practices of financial institutions are based largely on either home-supervisor requirements for foreign owned institutions, or some reference to the intention of draft regulatory instruments.

615. As mentioned previously, a significant number of financial institutions in Brunei are wholly owned subsidiaries of foreign financial institutions and come under group AML/CFT compliance obligations of foreign regulators including Malaysia, Hong Kong and Singapore. This significantly contributes to elements of CDD being implemented to home supervisor requirements.

616. Financial institutions appear to recognise that the various draft guidelines are not yet enforceable. Nevertheless, in practice financial institutions largely follow the guidelines as 'best practice' and implement elements of CDD. The RBPF also keep a 'security black list' which financial institutions consider when conducting CDD.

617. In practice there are no anonymous or numbered account offered by financial institutions in Brunei. Financial institutions conduct CDD at the point of establishing business relations with customers, for one off transaction of B$20,000 or more and on conducting wire transfers. However there is no identification of walk-in customer depositing large sums to third party accounts.

618. For required CDD measures, financial institutions rely on the national IDC for verification of the identity of customer. For corporate customers, financial institutions check company registration certificates. In practice financial institutions do not appear to conduct other procedures of verification, except in cases of lending or high value insurance payments. In practice, the incidence of fraudulent use of IDCs or company registration certificates is low.

619. Although the draft guidelines suggest financial institutions should be cautious when a professional intermediary such as lawyer, notary, other independent legal professional or accountant, opens a client account on behalf of a single client, financial institutions expressed that there is no special procedures to be conducted on such condition.

620. Because Brunei does not impose personal income tax, large scale/high value businesses may have a legal form of a sole proprietor or partnership, rather than more complex proprietary limited forms typical in most jurisdictions.

621. For verification of beneficial owner that is a legal person, financial institutions generally try to identify the natural person exercising ultimate control over the business and assets of the legal person. However, financial institutions do not appear to follow a standard approach, or have a common view on the percentage of ownership to determine who the beneficial owner is, when that entity is another corporate entity or trust. In practice, financial institutions indicate that it is relatively rare for legal persons to be owned by a range of other legal persons. In cases where a customer is a trust, financial institutions generally do not follow particular procedures to verify the trustee(s), the settler(s) of trust (including any persons settling assets into the trust) any protector(s) and beneficiary.

622. When identifying purpose and intended nature of business relationship, financial institutions do record occupation, level of income and source of customer funds. However financial institutions do not appear to require customers to state the objective or purpose of an account.

623. In practice account review procedures do not yet include updating customer CDD information. Ongoing due diligence is conducted by periodically reviewing customer accounts and high risk customers are reviewed more often rather than low risk customers. In some cases a high risk customer review would be conducted each year, low risk would be every three years. Authorities have not yet given any binding instruction on timeframes for such ongoing due diligence to occur.

624. Financial institutions have developed lists of high-risk customers and countries, either through their headquarters abroad or through sources such as commercial providers of risk information or transparency international.

625. Financial institutions state that it would take a few days before customers could establish business relations with financial institutions. One financial institution which had discussion with the evaluation team, mentioned that it would take a month before accepting a new customer.

626. Practice of financial institutions in Brunei indicates that it is the norm to reject a customer for whom CDD cannot be completed or with whom there are adverse findings. It is not clear that all financial institutions would file the transaction as an STR. Some financial institutions would check the transaction first and if the customer is high risk they would file the transaction as an STR.

627. CDD on existing customers have not been implemented by financial institutions. It is apparent that financial institutions would comply with the requirement when the CDD requirements are issued as an enforceable instruction.

628. Many insurance companies, international banks and securities companies operating in Brunei appear to be a branch office for a foreign institution. Although verification would be conducted by the Brunei office, the decision of whether CDD is sufficient and whether to accept a customer on completion of CDD rests with head office. In some cases where insurance companies are a branch office, ongoing due diligence would be conducted in its headquarters outside of Brunei, based on all documents sent from the Brunei office to headquarters.

629. Money changers only identify customers who conduct foreign currency sale/purchase of B$5000 and above. Verification would be conducted through the IDC. However, there is no check on the beneficial owner of the transaction.

630. Discussions with international financial institutions indicate that unlike domestic sectors where financial institutions could rely on the national IDC or company registration certificates, off-shore sectors could face the problem of fraudulent IDC or lack of company registration data in the country where the customer lives. An off-shore bank is usually private banking where a customer should deposit a large sum of money (at least above the threshold determined by the bank). However, as there is no specific guideline on off-shore sectors, in practice, verification of a customer tends to rely on documents received by clients and clarification of the documents from a notary or lawyer in the country where the customer lives. The compliance officers also do not reveal how to determine whether the customer is acting on behalf of another person or how to verify the identity of the beneficial owner. There is also no procedure of seeking further public available information in the country where the customer lives. Therefore when an existing customer or its beneficial owner has already been charged for a criminal act in other countries, financial institution would not be aware.

RECOMMENDATION 6

631. There are no specific requirements imposed on financial institutions in relation to PEPs under the MLO. The unenforceable draft KYC/CDD Guidelines do address PEPs for all sectors. More comprehensive requirements are set out in the draft AGC notices to be issued only to banks and insurance companies.

Requirement to Identify PEPs and undertake enhanced CDD

Banks

632. Section 7.1 of the draft AGC Notice to Banks defines PEP as a natural person who is or has been entrusted with prominent public functions in a foreign country; or immediate family member of such a person; or close associates of such a person. "Prominent public functions" includes the roles held by a head of state, a head of government, government ministers, senior civil servants, senior judicial or military officials, senior executives of state owned corporations, and senior political party officials. The definition is not intended to cover middle ranking or more junior officials in the foregoing categories.

633. Sections 7.2 of the draft AGC Notice proposes to require banks to perform enhanced CDD measures in relation to PEPs, including implementing appropriate internal policies, procedures and controls to determine if a customer or beneficial owner is a PEP.

634. Section 2 Para 13 the draft KYC/CDD Guidelines for Banks proposes them to identify customers which are PEPs. It defines PEPs as:

> Individuals in Brunei or abroad who are, or have been, entrusted with prominent public functions e.g. Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of State owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputation risks similar to those with PEPs themselves.

635. The definition of PEPs is not intended to cover middle ranking or more junior officials in the forgoing categories

Securities Companies

636. Section 6.1 the draft KYC Guidelines for the Securities Industry defines a PEP as a natural person who is or has been entrusted with prominent public functions in a foreign country; or immediate family member of such a person; or close associates of such a person. "Prominent public functions" includes the roles held by a head of state, a head of government, government ministers, senior civil servants, senior judicial or military officials, senior executives of state owned corporations, and senior political party officials. The definition is not intended to cover middle ranking or more junior officials in the foregoing categories.

637. Sections 6.2 of the draft guideline proposes to require licence holders under SO to perform enhanced CDD measures in relation to PEPs, including implementing appropriate internal policies, procedures and controls to determine if a customer or beneficial owner is a PEP.

Insurance Companies

638. Section 7.1 of the draft AGC Notice to Insurers defines a PEP as a natural person who is or has been entrusted with prominent public functions in a foreign country; or immediate family member of such a person; or close associates of such a person. "Prominent public functions" includes the roles held by a head of state, a head of government, government ministers, senior civil servants, senior judicial or military officials, senior executives of state owned corporations, and senior political party officials. The definition is not intended to cover middle ranking or more junior officials in the foregoing categories.

639. Sections 7.2 of the draft AGC notice requires life insurer to perform enhanced CDD measures in relation to politically exposed persons, including implementing appropriate internal policies, procedures and controls to determine if a customer or beneficial owner is a PEP.

640. Para 21 of draft Control Measures against ML/TF for the Insurance Industry will require insurers to have appropriate risk management systems to determine whether a customer is a PEP.

Senior Management Approval to establish or continue relationships with a PEP

Banks

641. Section 7.2(b) of the draft AGC Notice to Banks requires bank to obtain approval from the licence holder's senior management to establish or continue business relations, where the customer or beneficial owner is a PEP or subsequently becomes a PEP.

642. Under Part II, Section 2 Para 13 (iii) of the draft KYC/CDD Guidelines for Banks will require financial institutions to obtain senior management approval for establishing business relationships with a PEP.

Securities Companies

643. Section 6.2(b) of the draft KYC Guidelines for the Securities Industry requires licence holders to obtain approval from the senior management to establish or continue business relations, where the customer or beneficial owner is a PEP, or subsequently becomes a PEP.

Insurance Companies

644. Section 7.2(b) of the draft AGC Notice to Insurers requires life insurers to obtain approval from the licence holder's senior management to establish or continue business relations, where the customer or beneficial owner is a PEP or subsequently becomes a PEP.

645. Para 21 of the draft Control Measures against ML/TF for the Insurance Industry requires insurers to obtain senior management approval for establishing business relationships with a PEP.

Requirement to Determine Source of Wealth and Income

Banks

646. Section 7.2(c) of the draft AGC Notice to Banks requires banks to establish, by appropriate and reasonable means, the source of wealth and source of funds of any customer or beneficial owner.

647. Under Part II, Section 2 Para 13 (ii) of the draft KYC/CDD Guidelines notes that once a PEP is identified, the reporting institution should take reasonable and appropriate measures to establish the source of wealth and funds of such person.

Securities Companies

648. For Licences under SO, s6.2(c) of draft KYC Guidelines for the Securities Industry requires licensees to establish, by appropriate and reasonable means, the source of wealth and source of funds of any customer or beneficial owner.

Insurance Companies

649. Section 7.2(c) of the draft AGC Notice to Insurers will require life insurers to establish, by appropriate and reasonable means, the source of wealth and source of funds of any customer or beneficial owner.

650. For insurance Para 21 of the draft Control Measures against ML/TF for the Insurance Industry requires insurers to take reasonable measures to establish the source of wealth and the source of funds.

Ongoing monitoring

Banks

651. Section 7.2(d) of the draft AGC Notice to Banks requires bank to conduct, during the course of business relations, enhanced ongoing monitoring of business relations with the customer.

652. For banks, under Part II, Section 2 Para 13 (iv) of the draft KYC/CDD Guidelines For Banks will require financial institutions to conduct enhanced on-going due diligence on PEPs throughout its business relationship with such PEPs.

Securities Companies

653. For Licences under SO, Section 6.2(d) of the draft KYC Guidelines for the Securities Industry requires licensees to conduct, during the course of business relations, enhanced ongoing monitoring of business relations with the customer.

Insurance Companies

654. Section 7.2(d) of the draft AGC Notice to Insurers will require life insurers to conduct, during the course of business relations, enhanced ongoing monitoring of business relations with the customer.

655. For insurance Para 21 of the draft Control Measures against ML/TF for the Insurance Industry requires insurers to conduct, during the course of business relations, enhanced ongoing monitoring of business relations with the customer.

Domestic PEP

656. For banks as mentioned in s2 Para 13 of the draft KYC/CDD Guidelines for Banks, PEP is defined as individuals in Brunei or abroad. However for insurance as mentioned in introductory paragraph before Para 48 of the draft Control Measures against ML/TF for the Insurance Industry, and mentioned in s6.1 of the draft KYC Guidelines for the Securities Industry, the definition of PEP is only include prominent public functions in foreign country/abroad.

Ratification of the Merida Convention

657. Brunei ratified the UN Convention Against Corruption (UNCAC) on 2 December 2008.

Analysis of effectiveness (R.6)

658. Banks and some NBFIs utilise commercial database providers to determine whether a customer is PEP. Financial institutions appear to be following the best practice of the draft guidelines to gain senior management approval for establishing/continuing a customer relationship with a PEP. Financial institutions appear to seek details of the source of funds and purpose of transactions with PEPs.

659. Some financial institutions express that ongoing monitoring and the procedure to source wealth and income of PEPs would be conducted by their headquarters abroad.

RECOMMENDATION 7

660. There are no binding obligations on financial institutions in Brunei to govern the establishment and operation of correspondent relationships.

661. The draft CDD/KYC Guideline that was issued as an exposure draft to the industry touches on correspondent banking relationships under s28. Section 28 requires financial institutions to do the following before establishing a correspondent banking relationship:

- Gather sufficient information with regards to the management, major business activities and the correspondent's AML prevention and detection efforts
- Ensure the purpose of relationship is solely for correspondent banking relationship
- Ensure that the bank is effectively supervise by relevant authorities in relation to their CDD and AML standards
- Ensure that the correspondent bank does not have any relationship with shell banks.

662. Financial institutions are also required to refuse to enter such relationships if the correspondent bank is located in jurisdictions with poor KYC standards or which has been identified as non-cooperative.

663. Section 9 of the draft AGC Notice for Banks elaborates requirements to be followed before establishing a correspondent banking relationship and during operation of such relationships.

664. Section 9.1 sets out the scope of controls applicable to all banks in Brunei when they provide correspondent banking services in Brunei to another bank or financial institution operating outside of Brunei.

665. Banks are required under s9.3 of the draft AGC Notice to perform the following measures when they are providing correspondent banking services:

(a) Assess the suitability of the respondent bank by taking the following steps:

- Gather adequate information about the respondent bank to understand the nature of the respondent bank's business, including making appropriate inquiries on its management, its major business activities and the countries or jurisdictions in which it operates.
- Determine from any available sources the reputation of the respondent bank, and, as far as practicable, the quality of supervision over the respondent bank, including where possible whether it has been the subject of money laundering or terrorist financing investigation or regulatory action; and

- Assess the respondents bank's AML/CFT controls and ascertain that they are adequate and effective, having regard to the AML/CFT measures of the country or jurisdiction in which the respondent bank operates

(b) document the respective AML/CFT responsibilities of each bank; and

(c) obtain approval from the bank's senior management to provide new correspondent banking services.

666. Section 9.4 of the draft Notice deals with payable-through accounts. This section requires banks in Brunei to satisfy themselves that the respondent banks has performed appropriate CDD measures at least equivalent to the requirement of CDD for their accountholder on the third party having direct access to the payable-through account. Section 9.4 also requires the respondent bank to perform ongoing monitoring of its business relations with that third party and is willing and able to provide customer identification information to the correspondent bank upon request. Our meeting with private sector bankers however, indicates that payable-through account has never been a feature in Brunei banking services.

667. Section 9.5 of the draft Notice requires the correspondent bank to document the basis of its satisfaction that all the requirements above have been fulfilled. Banks in Brunei are also not allowed to establish correspondent banking relationships with respondent banks located in a jurisdiction which has insufficiently implemented the internationally accepted AML/CFT measures. However, s11.13 o the draft Notice, only requires that special attention to be given to countries that were identified by the FATF as Non-Cooperative Countries and Territories (NCCT). As FATF has discontinued with the NCCT initiatives, there will be a possibility of not implementing this requirement under s 9.6.

668. Section 9.7 and 9.8 of the draft Notice prohibits the correspondent banking relationship with a shell bank and bank is required to take appropriate measures when establishing correspondent banking relations to satisfy itself that its respondent banks do not permit their accounts to be used by shell banks.

Effectiveness (R.7)

669. Although binding requirements for establishing and operating correspondent banking relationships have not been issued, banks in Brunei appear to be implementing controls of a higher standard than is required by the existing regulations. Domestic banks met during the on-site visit appear to have adopted most of the FATF's recommendations as 'best practice'. Foreign banks with branches operating in Brunei appear to be following requirements set by their home regulators. Foreign banks met during the on-site visit rely on their head office to establish their correspondent banking relationships.

RECOMMENDATION 8

670. There are no requirements for financial institutions to have policies or take measures against ML and TF threats that may arise from new or developing technologies.

671. The MLO, s8, addresses provisions for CDD relating to finance companies on establishing business relationship with non-face to face customers.

672. The draft AGC notices on AML/CFT set out requirements for banks and insurance companies respectively to take into consideration risks from developing technologies that may be vulnerable for ML or TF. Securities companies, remitters and money changers are not covered by these notices.

Misuse of New Technology

Banks

673. Section 2 Para 21 of the draft KYC/CDD Guidelines for Banks requires banks to pay special attention to any ML threats that may arise from new or developing technologies, including internet banking that might favour anonymity. Banks are required to take measures to prevent their use in ML schemes. Para 22 notes that additional CDD on existing and new credit card merchants with a special focus on the nature of business of credit card merchants, should be undertaken and appropriate measures taken in terms of the provisions of the foreign transactions against any customer, transaction or merchant involved in any unlawful activity. Payments made through the internet by credit card customers in particular warrant very close attention to ensure that payments are not made for unlawful activities. Para 22 notes that where marketing of credit cards is done through agents financial institutions should ensure that appropriate KYC procedures are duly applied to the customers as well as to the agents.

674. Para 24 of the draft Guidelines for banks notes that when applications for opening of accounts are received by mail or e-mail due care should be exercised to record the true identity of the client prior to opening the accounts or activating them. In no case should the bank short-circuit the required identity procedures just because the prospective client is unable to present himself in person.

675. Section 13.3 of the draft AGC Notice to Banks requires banks to take into consideration ML and TF threats that may arise from the use of new or developing technologies, especially those that favour anonymity, in formulating its policies, procedures and controls.

Securities Companies

676. Section 10.3 of the draft KYC Guidelines for the securities industry requires licences under SO to take into consideration ML and TF threats that may arise from the use of new or developing technologies, especially those that favour anonymity, in formulating its policies, procedures and controls.

Insurance Companies

677. Section 11.3 of the draft AGC Notice to Insurers will require life insurers to take into consideration ML and TF threats that may arise from the use of new or developing technologies, especially those that favour anonymity, in formulating its policies, procedures and controls.

Risk of Non Face to Face Business Relationship

678. The MLO, s8, addresses provisions for CDD relating to finance companies on establishing business relationship with non-face to face customers in very narrow circumstances.

Banks

679. Section 5.37 of the draft AGC Notice to Banks requires banks to put in place policies and procedures to address any specific risks associated with non-face-to-face business relationships or transactions. Section 5.38 also requires banks to implement the policies and procedures when establishing customer relationships and when conducting ongoing due diligence. Section 5.39 notes that the bank shall carry out CDD measures that are as stringent as those that would be required to be performed if there were face-to-face contact.

680. Section A.4 of the draft KYC/CDD Guidelines for Banks requires banks to apply equally effective customer identification procedures for non-face-to-face customers as for those available for interview.

Securities Companies

681. Section 4.26 of the draft KYC Guidelines for the Securities Industry requires licensees to put in place policies and procedures to address any specific risks associated with non-face-to-face business relationships or transactions. Section 4.28 also requires licensees to implement the policies and procedures when establishing customer relationships and when conducting ongoing due diligence. Para 4.29 notes that the licence holder shall carry out CDD measures that are as stringent as those that would be required to be performed if there were face-to-face contact.

Insurance Companies

682. Section 5.30 of the draft AGC Notice to Insurers requires life insurer to put in place policies and procedures to address any specific risks associated with non-face-to-face business relationships or transactions. Section 5.31 also requires insurers to implement the policies and procedures when establishing customer relationships and when conducting ongoing due diligence. Section 5.32 notes that the life insurer shall carry out CDD measures that are as stringent as those that would be required to be performed if there were face-to-face contact.

683. Para 34 of the draft Control Measures against ML/TF for the Insurance Industry requires insurers to have policies and procedures in place to address the specific risks associated with a non-face-to-face business relationship and transaction.

Analysis of effectiveness (R.8)

684. From discussion with financial institutions, risk arising from new or developing technologies is currently low. There is no mobile banking and most transactions are conducting on a cash basis. Internet banking is still not popular to the community.

685. Financial institutions visited by the evaluation team mentioned that in practice all new customers have to come to the institution when they open a new account, or else the account is not opened. For off-shore banking customers (who are located abroad) CDD data is sent to the financial institution and is notarised/certified by a lawyer or notary in their jurisdiction. In some cases customers travel to Brunei to set up their account, which facilitates face-to-face conduct of CDD, though this is not compulsory.

3.2.2 Recommendations and Comments

686. Brunei should consider a designed risk-based approach to implementation of AML/CFT preventative measures.

Recommendation 5

687. Brunei should issue a law or regulation to require all financial institutions operating in Brunei to:

- Explicitly not keep anonymous accounts or accounts in fictitious names
- Undertake CDD measures when (a) carrying out occasional transactions that are wire transfers (b) undertakes two or more one off transactions where it appears that the transactions are linked and that the total amount in respect of the transactions is B$20,000 or more and (c) when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data
- Identify, and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source
- Determine whether the customer is acting on behalf of another person, and take reasonable steps to obtain sufficient identification data to verify their identity

- Determine the natural persons that ultimately own or control the customer, including those persons who exercise ultimate effective control over a legal person or arrangement
- conduct ongoing due diligence on the business relationship.

688. Brunei should consider to include CDD on:

- any person designated by the Minister by order in the Gazette as mention in s4(2) MLO
- long term insurance business in respect of which a premium is payable in one instalment of an amount below B$5,000
- long term insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed B$1,500.

689. Brunei should issue enforceable instructions to require all reporting parties to:

- verify the legal status of the legal person or legal arrangement
- take reasonable measures to understand the ownership and control structure of the customer or legal persons or legal arrangements
- obtain information on the purpose and intended nature of the business relationship
- include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds
- update data collected under the CDD process by reviewing existing records, particularly for higher risk categories of customers or business relationships
- perform enhanced CDD for higher risk categories of customer, relationship or transactions
- limit simplified CDD to not include customers resident in a country which Brunei is not satisfied has effectively implemented the FATF Recommendations
- Determine that the extent of the CDD measures on a risk sensitive basis made by financial institutions should be consistent with guidelines issued by the competent authorities.

690. Brunei should ensure effective implementation of core CDD measures, in particular verification on beneficial owner.

Recommendation 6

691. Brunei should issue enforceable instructions to require all reporting parties to:

- implement risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP
- obtain senior management approval for establishing business relationships with a PEP
- take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as a PEP
- conduct enhanced ongoing monitoring on PEPs.

Recommendation 7

692. Although the banking institutions in Brunei are adopting a higher standard than what is required by the existing regulations, it is imperative that the draft AGC Notice should be issued and implemented as soon as possible to ensure compliance with controls over correspondent banking requirements.

Recommendation 8

693. Brunei should issue enforceable instructions to require all reporting parties to:

- take such measures to prevent the misuse of technological developments in ML or TF schemes.
- address specific risks associated with non-face-to-face business relationships or transactions
- manage the risks to effective CDD procedures that from non-face-to-face customers

Compliance Rec. 5 - 8	Rating	Summary of factors underlying rating
R.5	**NC**	There are no obligations for financial institutions to: • Explicitly not keep anonymous fictitious named accounts • Undertake CDD measures when (a) carrying out occasional transactions that are wire transfers (b) undertakes two or more one off transactions where it appears that the transactions are linked and that the total amount in respect of the transactions is B$20,000 or more and (c) when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data • Identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner • Determine whether the customer is acting on behalf of another person, and take reasonable steps to verify the identity of that other person • Determine the natural persons that ultimately own or control the customer, including legal person or arrangements • conduct ongoing due diligence • verify legal status of the legal person / arrangement • take reasonable measures to understand the ownership and control structure of the customer • obtain information on the purpose and intended nature of the business relationship • include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds • ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships • perform enhanced CDD for higher risk categories of customer, business relationship or transaction • to limit simplified or reduced CDD not to include to customers resident in another country, that the original country is satisfied are in compliance with and have effectively implemented the FATF Recommendations • determine that the extent of the CDD measures on a risk sensitive basis made by financial institutions should be consistent with guidelines issued by the competent authorities There is an exemption of CDD on:

		• any person designated by the Minister by order in the Gazette as mention in Section 4 (2) MLO • long term insurance business in respect of which a premium is payable in one instalment of an amount below five thousand dollars • long term insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed one thousand five hundred dollars Weak implementation of verification on beneficial owner
R.6	**NC**	There are no obligations for financial institutions to: • put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person • obtain senior management approval for establishing business relationships with a PEP • take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEP • conduct enhanced ongoing monitoring on PEP
R.7	**NC**	• There are no binding obligations on financial institutions in Brunei to govern the establishment and operation of correspondent relationships
R.8	**NC**	There are no obligations for financial institutions to: • have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes. • have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions • include measures for managing the risks about specific and effective CDD procedures that apply to non-face to face customers

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

694. The MLO 2000 allows for third party intermediaries to conduct aspects of CDD for financial institutions. MLO s9(4) allows financial institutions to accept a written assurance from a third party intermediary that evidence of the identity of the party applying for business has been obtained and recorded. Section 6(5) only allows written assurances when the third party is based, incorporated in or founded under the law of a jurisdiction which is subject to AML/CFT provisions at least equivalent to those under the MLO and is subject to supervision by an overseas regulatory authority.

695. Section 8 of the draft AGC notices for banks and insurance companies will set out obligations for controls of intermediaries conducting some elements of CDD processes. These provisions are comprehensive, but are still in draft.

CDD from third party

Banks

696. Section I.25 of the draft KYC/CDD Guidelines for Banks notes that intermediaries should be treated as individual customers of the financial institution and the standing of the intermediary should be separately verified by obtaining the appropriate information.

697. Section 8.1 of the draft AGC Notice to Banks allows banks to rely on an intermediary to perform the CDD measures if the following requirements are met:

(a) the bank is satisfied that the intermediary it intends to rely upon is subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF, and has adequate measures in place to comply with those requirements;

(b) the intermediary complies with the minimum CDD procedures specified in this Guideline;

(c) the intermediary must satisfy itself as to the reliability of the systems put in place by the intermediary to verify the identity of the customer;

(d) the bank is not one on which banks have been prohibited by the Authority from relying on.

Securities Companies

698. Section 7.1 of the draft KYC Guidelines for the Securities Industry notes that Licences would be able to rely on an intermediary to perform the CDD measures if the following requirements are met:

(a) the Licence holder is satisfied that the intermediary it intends to rely upon is subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF, and has adequate measures in place to comply with those requirements;

(b) the intermediary complies with the minimum CDD procedures specified in this Guideline;

(c) the licence holder must satisfy itself as to the reliability of the systems put in place by the intermediary to verify the identity of the customer;

(d) the intermediary is not one on which Licence holder have been prohibited by the Authority from relying on.

Insurance Companies

699. Section 8.1 of the draft AGC Notice to Insurers allows life insurers to rely on an intermediary to perform the CDD measures if the following requirements are met:

(a) the life insurer is satisfied that the intermediary it intends to rely upon is subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF, and has adequate measures in place to comply with those requirements;

(b) life insurer complies with the minimum CDD procedures specified in this Guideline;

(c) the life insurer must satisfy itself as to the reliability of the systems put in place by the intermediary to verify the identity of the customer;

(d) the intermediary is not one on which life insurers have been prohibited by the Authority from relying on.

700. Para 57 of the draft Control Measures against ML/TF for the Insurance Industry requires insurers relying upon a third party to immediately obtain from the third party the necessary information concerning certain elements of the CDD process.

Available data from third party

Banks

701. Section 8.1 of the draft AGC Notice to Banks requires banks to immediately obtain from the third party CDD elements:

- the information that the bank would be required or would want to obtain from the intermediary, may be relayed to the bank by the intermediary without any delay; and
- the intermediary is able and willing to provide, without delay, upon the bank request, any document obtained by the intermediary, which the bank would be required

Securities Companies

702. Section 7.1 of the draft KYC Guidelines for the Securities Industry requires Licences to immediately obtain from the third party CDD elements:

- the information that the licence holder would be required or would want to obtain from the intermediary, may be relayed to the licence holder by the intermediary without any delay; and
- the intermediary is able and willing to provide, without delay, upon the licence holder's request, any document obtained by the intermediary, which the licence holder would be required or would want to obtain at any stage, and that shall be available for review by the relevant supervisory authority, FIU or LEA.

Insurance Companies

703. Section 8.1 of the draft AGC Notice to Insurers requires life insurer to immediately obtain from the third party CDD elements:

(c) the information that the life insurer would be required or would want to obtain from the intermediary, may be relayed to the life insurer by the intermediary without any delay; and

(d) the intermediary is able and willing to provide, without delay, upon the life insurer request, any document obtained by the intermediary, which the bank would be required.

704. Para 57 of the draft Control Measures against ML/TF for the Insurance Industry requires insurers to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay.

Regulation and Supervision of Third Party

Banks

705. Section 8.3 of the draft AGC Notice to Banks requires that where banks rely on an intermediary to perform the CDD measures, it shall document the basis for its satisfaction that the requirements in paragraph 7.1(a) have been met except where the intermediary is a financial institution supervised by the relevant supervisory authority (other than a holder of a money changer's licence or a holder of a remittance licence).

Securities Companies

706. Section 7.3 of the draft KYC Guidelines for the Securities Industry notes that where an licence holder relies on an intermediary to perform the CDD measures, it shall document the basis for its satisfaction that the requirements in paragraph 7.1(a) have been met except where the intermediary is a financial institution supervised by the relevant supervisory authority (other than a holder of a money changer's licence or a holder of a remittance licence).

Insurance Companies

707. Section 8.3 of the draft AGC Notice to Insurers requires that where life insurer rely on an intermediary to perform the CDD measures, it shall document the basis for its satisfaction that the requirements in paragraph 7.1(a) have been met except where the intermediary is a financial institution supervised by the relevant supervisory authority (other than a holder of a money changer's licence or a holder of a remittance licence).

708. Para 57 of the draft Control Measures against ML/TF for the Insurance Industry requires insurers to satisfy themselves that the third party is regulated and supervised and has measures in place to comply with, the CDD requirements set out in FATF R.5 and R.10.

Adequacy of Application of FATF Recommendations

Banks

709. Section 8.1(a) of the draft AGC Notice to Banks sets out conditions to be met when relying on an intermediary to perform the CDD measures. Banks must be satisfied that the intermediary is subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF, and has adequate measures in place.

Securities Companies

710. Section 7.1(a) of the draft KYC Guidelines for the Securities Industry states the condition to be met when relying on an intermediary to perform the CDD measures. The licence holder is satisfied that the intermediary it intends to rely upon is subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF, and has adequate measures in place.

Insurance Companies

711. Section 8.1(a) of the draft AGC Notice to Insurers sets out conditions to be met when relying on an intermediary to perform the CDD measures. Insurers must be satisfied that the intermediary is subject to and supervised for compliance with AML/CFT requirements consistent with standards set by the FATF, and has adequate measures in place.

712. Para 60 of the draft Control Measures against ML/TF for the Insurance Industry requires insurers to inform themselves as to which jurisdictions are considered suitable taking into account information available on whether those countries adequately apply the FATF Recommendations.

Ultimate Responsibility for CDD

Banks

713. Section 8.5 of the draft AGC Notice to Banks notes that the avoidance of doubt, notwithstanding the reliance upon an intermediary, the bank shall remain responsible for its AML/CFT obligations in this Guideline.

714. Section I.28 of the draft KYC/CDD Guidelines for Banks notes that for expediency, it has become customary for financial institutions to rely on the procedures undertaken by other financial institutions or introducers when business is being referred. In doing so financial institutions risk placing excessive reliance on the due diligence procedures that they expect the introducers to have performed. Relying on due diligence conducted by an introducer, however reputable, does not in any way remove the ultimate responsibility of the recipient bank to know its customers and their business. In particular financial institutions should not rely on introducers that are subject to weaker standards than those governing the financial institutions' own KYC procedures or that are unwilling to share copies of due diligence documentation.

Securities Companies

715. Section 7.4 of the draft KYC Guidelines for the Securities Industry notes that a licence holder who relies on due diligence conducted by an intermediary (however reputable) does not in any way remove its ultimate responsibility to know its customers and their business. Section 7.5 sets out for the avoidance of doubt, notwithstanding the reliance upon an intermediary, the licence holder shall remain responsible for its AML/CFT obligations in this Guideline.

Insurance Companies

716. Section 8.5 of the draft AGC Notice indicates that for the avoidance of doubt, notwithstanding the reliance upon an intermediary, the life insurer shall remain responsible for its AML/CFT obligations in this Guideline

717. Para 58 of the draft Control Measures against ML/TF for the Insurance Industry notes that the ultimate responsibility for customer identification and verification should remain with the financial institution, rather than relying on the third party.

Analysis of effectiveness

718. In practice it appears that banks generally conduct identification and verification on customers with their own account officers. There is a history of onshore banks relying on the procedures undertaken by other financial institutions.

719. Banks (including international banks) conduct verification by translating all documents received by clients and seeking verification by a notary or lawyer in the country where the customer is based.

720. Securities companies and insurance companies do not appear to rely on intermediaries, but conduct identification and verification through their own offices. In cases where a customer is a customer of another financial institution, the securities/insurance companies do not rely on documents from other financial institutions, but conduct identification and verification anew.

721. An exception to the above is the case where insurance companies utilise insurance agents. In this case verification is undertaken by both the agents and the insurance companies. Branches of foreign insurance companies will undertake verification and subsequently seek endorsement from their headquarters. The majority of insurance companies in Brunei are branch offices for foreign companies.

3.3.2 Recommendations and Comments

- Brunei should issue enforceable rules requiring all reporting parties relying upon a third party to:
  - immediately obtain from the third party the necessary information concerning certain elements of the CDD process
  - take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay
  - satisfy themselves that the third party is regulated and supervised and has measures in place to comply with, the CDD requirements obtain information on the purpose and intended nature of the business relationship
- Brunei should issue enforceable rules specifying from which countries parties conducting third party conditions can be based, taking into account information available on whether those countries adequately apply the FATF Recommendations and the ultimate responsibility for customer identification and verification should remain with the financial institution relying on the third party.

Compliance with Rec. 9	Rating	Summary of factors underlying rating
R.9	**NC**	There are no obligations for financial institutions to: • immediately obtain from the third party the necessary information concerning certain elements of the CDD process • take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay • satisfy themselves that the third party is regulated and supervised and has measures in place to comply with, the CDD requirements obtain information on the purpose and intended nature of the business relationship • take consideration of whether countries in which acceptable third party can be based adequately apply the FATF Recommendations • retain ultimate responsibility for customer identification.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

Legal framework for bank secrecy

722. The confidentiality of customer information for banks is protected under s58 of the Banking Order 2006 (BO), s58 of the Islamic Banking Order 2008 and s86 of the International Banking Order 2008 (IBO). The relevant section of each order requires that customer information shall not, in any way, be disclosed by a bank in Brunei or any of its officers to any person except as expressly provided in the Order.

723. Banks in Brunei are also under statutory obligation to disclose customer information under permitted circumstances as listed in the Third Schedule of the Islamic Banking Order and IBO. Circumstances include for the purpose of operational efficiency of the bank and where there is a written request made by a police officer or any public officer for the purpose of investigation or prosecution of an offence under any specific legislation. Disclosure procedures are also extended to the making of any report under any written law for an offence alleged or suspected to have been committed under any written law. The Third Schedule also allows the authority (Ministry of Finance) to issue a notice or directive on information that needs to be disclosed to the authority. The following are the examples of some of the disclosures allowed under the Third Schedule to the Banking Order and Islamic Banking Order.

Table: Allowed disclosures under the Banking Order and Islamic Banking Order

Purpose of Disclosure	To whom it can be disclosed
Permitted in writing by accountholder	Any person
Application for probate in respect to deceased	Any person whom the bank in good faith is entitle for such probate
Disclosure in relation to bankruptcy / winding-up	All person where the disclosure is necessary
Conduct of proceeding • Between bank and its customer or their surety • Between bank and 2 or more parties making adverse claims against money in account • Between the bank in respect to moveable property where some rights is being questioned	All person where the disclosure is necessary
For the purpose of compliance with written request for the purpose of investigation or prosecution of an offence alleged or suspected to have been committed under any written law; or For making of a complaint or report under any specific law.	Any police officer or public officer duly authorised under respective law
For purpose of compliance with a garnishee order served on the bank	All person in the garnishee order
For the purpose of compliance with order of the Supreme Court or any judge pursuant to powers under the Evidence Act	All person in the court order
For foreign bank operating in Brunei Darussalam, the disclosure required by the home authority – limited to the supervision of the bank	The parent supervisory authority
For disclosure required by the Authority (Ministry of Finance)	The authority or any other person authorised by the authority

724. Part II of the Third Schedule allows for disclosure of information for the purpose of performance of operational functions of the banking institutions including where such operational functions have been out-sourced.

725. For international banks licensed under the IBO, the permitted disclosure is governed by s19 of the IBO. Similar provisions in the Third Schedule of the BO allow police officers or public officers to obtain information as duly authorised under their specific law.

726. The Securities Order, 2001 (SO) also provides enough power to the authority to require licensees to disclose such information that the authority may require. The Mutual Funds Order, 2001 (MFO), provides for disclosure when it is required by any specific law for the purpose of investigation and prosecution or if the authority requires such information to be disclosed to the foreign authority.

727. The Insurance Order and the Money-Changing and Remittance Business Act do not have any secrecy provision and as such, there is no impediment for these licensees to share information as well as to comply with any order issued by any police officer or public officer or in compliance to any request made by the authority. There is no specific provision which states what information can be shared.

Effectiveness

728. Feedback from investigative and regulatory authorities and financial institutions met during the on-site visit indicates that relevant authorities have exercised relevant powers to lift secrecy and have received information from financial institutions to carry out investigations and regulatory functions.

3.4.2 Recommendations and Comments

- Brunei has a wide-range of powers to allow financial institutions to lift financial institution secrecy provisions in defined circumstances and disclose information to the authorities in the course of implementing the FATF standards.
- Feedback from investigative and regulatory authorities confirms that financial institution secrecy laws do not inhibit implementation of the standards.
- Note that secrecy provisions in RATLO relating to TCSPs which may inhibit implementation of the standards is addressed under Section 4 of this report.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	This Recommendation is fully observed.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

729. Key obligations for record keeping are set out in law and regulations as required under the FATF standard. Section 12 of the MLO requires financial institutions to maintain necessary records which include the evidence of the person's identity and details relating to all transactions carried out by the person in the course of 'relevant financial business', which is defined to include all 13 financial activities required under the FATF standard. Records must be kept for a period of at least five years. The period of five years will commence from the date on which a customer account or business relationship was terminated and in relation to one off transactions, the date on which the transaction was completed. In cases where a business relationship is ended, the prescribed period of five years will commence after completion of the last transaction.

730. The MLO does not clearly cover record-keeping for documentation obtained for verification purposes. The MLO does not cover business correspondence with customers.

731. The draft KYC/CDD Guidelines issued to financial institutions elaborate on MLO record keeping requirements and require financial institutions to retain copies of all identification and address verification documents. However, the exposure draft requires records to be kept for a period of six years instead of five years as per the MLO. These different requirements between the MLO and the draft guidelines may create misunderstanding for the financial institutions.

732. The draft KYC/CDD Guidelines will require financial institutions to preserve SWIFT messages for a period of five years, but only for inward remittances. Although there is a requirement of record keeping under the MLO, it may create confusion for the financial institutions on whether there is a need to keep similar record for outward remittances.

733. The issues raised above, however, will be rectified for banks and insurance companies in the context of life insurance if the AGC draft Notices are brought into force. The draft Notices spell out in detail the obligations and requirements for record-keeping.

734. Section 11.1(a)–(d) of the draft AGC Notice for Banks and s9.1(a)-(d) of the Notice for insurance companies conducting life insurance business specifies that banks and insurers must retain the records of all business relations and transactions with its customers such that it complies with all laws (including the notice); records should be able to be reconstructed to provide evidence for prosecution; and that records are available for the competent authorities to assess the level of compliance with the notice. Banks and insurers must be able to satisfy within a reasonable time or any more specific time period imposed by law, any enquiry or order from the relevant competent authorities in Brunei for information. Section 11.2 and 11.3 list out the following type of record that should be kept for a period of five years:

- customer identification information and documents related to the establishment of business relationship including account files and business correspondence following the termination of the business relationship or completion of any one off transaction
- records relating to all transactions from the date the transactions were completed.

735. The records can be retained either as originals or copies, in paper or electronic form or on microfilm, provided that these records are admissible as evidence in a Brunei Court of Law.

736. Section 11.4 of the draft AGC Notice however, allows for Supervisory Authority or any relevant competent authorities to request a bank to keep record exceeding the five years requirement if the matter is related to an investigation or subject of an STR.

737. Similar detailed record keeping requirements have also been drafted under s8 of the draft Guidelines on the Prevention of Money Laundering and Countering the Financing of Terrorism for Investment Advisers and Dealers Representative Licence Holders and Exempted Persons Under the Securities Order 2000. These Guidelines remain in draft form, and while they guide best practice, they create no binding obligations.

Effectiveness

738. Financial institutions in Brunei appear to keep records for a period of at least five years. Some institutions routinely keep the record for a longer period, but this is due to their home country's requirements. Record keeping requirements, including retention periods and the types of records to be kept are quite clear in MLO.

739. The law enforcement agencies indicated that they do not have any problems obtaining transaction and CDD records, especially from banking institutions, during the course of their investigations.

SPECIAL RECOMMENDTAION VII – Wire Transfers

740. Currently there are very limited requirements under the MLO to address the requirements of SRVII on wire transfers. MLO is restricted to identifying the originator for walk in customer transactions, but not the beneficiary or intended purpose of any related wire transfer. Remittance companies are, however, required to record daily transactions according to the format provided by the Ministry of Finance which include information on originator and beneficiaries as well as the source of funds being remitted. This obligation is contained as a condition of license and all remitters are required to lodge monthly reports to the Ministry of Finance. The draft KYC/CDD guidelines limit the requirements to foreign currency accounts and do not clearly set out obligations for beneficiary and intermediary institutions. Outlined below are a number of draft instructions which, when issued, will address wire transfer issues.

741. The draft KYC/CDD Guidelines for Banks addresses this issue under s15. Similar draft Guidelines have been issued for remittance companies. The AGC Notice for Banks addresses wire transfer rules in detail.

742. The draft KYC/CDD Guideline is limited to controls on outward remittance for foreign currency accounts. The draft KYC/CDD Guideline calls for all outward remittances to be accompanied by complete originator information. Originator information includes name, address, account number and identification number, together with a brief account of the purpose of such transfers. Similar requirements are also applicable to domestic wire transfers.

743. The draft KYC/CDD Guidelines for Licensed Money-Changers and Remittance Companies goes further than the draft KYC/CDD Guidelines for Banks by requiring the remittance companies to observe the following set of steps in relation to wire transfers:

- ensuring that accurate and meaningful information on the originator (the name, address, account number) is included in the wire transfer or related message;
- Retaining the originator's information with the wire transfer or related message throughout the chain of payment. Correspondent banks are part of this chain;
- Enhancing scrutiny of wire transfers that do not include information on the originator and be alert to the possibility of suspicious transactions.

744. The draft AGC Notice for Banks will establish comprehensive wire transfer rules at s10, which will apply equally to banks, Islamic banks and international banks. Application of wire transfer rules apply regardless of the amount being sent or received. Section 10 provides exemption to transfer and settlement between the bank and another financial institution where the bank and the

other financial institution are acting on their own behalf as the wire transfer originator and the beneficiary institution.

745. Section 10.3 specifies that the ordering institution shall identify and verity the identity of the wire transfer originator if the customer is not the existing account holder in the institution. The institution is required to collect enough details of the wire transfer to allow for its reconstruction, if necessary including the date of the wire transfer, the type and amount of currency involved, the value date and the details of the wire transfer beneficiary and the beneficiary institution.

746. Section 10.4 of the draft AGC Notice deals with cross-border wire transfers and will require every bank which is an ordering institution to include in the message or payment instructions the following information:

- the name of the wire transfer originator;
- the wire transfer originator's account number (or unique reference numbers assigned by the bank if there is no account number; and
- the wire transfer originator's address, unique identification number, or date and place of birth.

747. Section 10.5 of the draft AGC Notice addresses domestic wire transfers, and will require every bank that is an ordering institution to ensure that the all the information above is included and if it is not included, to use the originator's account number (or any unique reference number) but the institution must be in a position to provide the remaining originator information within three working days of a request being made by beneficiary institution.

748. Section 10.9 of the draft AGC Notice requires intermediary institutions to ensure that full originator information is maintained with the wire transfer.

749. The MLO record keeping requirements would capture the case where technical limitations prevent full originator information from accompanying a cross-border wire transfer from being transmitted with a related domestic transfer.

750. Section 10.8 of draft AGC Notice requires beneficiary institutions to implement appropriate internal risk-based policies, procedures and control for identifying and handling in-coming wire transfers that are not accompanied by complete originator information, while the bank that acts as intermediary is required to pass onward the complete message of the wire transfer.

751. Bank supervision powers and related sanctions for monitoring compliance and sanctioning non-compliance will extend to wire transfer obligations set out in the draft AGC Notice. The notice is issued directly under the relevant banking orders, which specifically provide for supervision, oversight and sanction.

3.5.2 Recommendations and Comments

Record Keeping

752. Requirements for record keeping under the MLO are limited to CDD documents and customer transaction details.

- Brunei should establish a record keeping requirement in law or regulation for records obtained for verification purposes and correspondence between financial institutions and customers.

- Brunei should ensure comprehensive supervision of record keeping requirements is undertaken to ensure its implementation across all relevant sectors.

753. Detailed requirements set out in draft AGC Notices should be passed and also extend to securities intermediaries, money-changers and remittance service providers.

Wire Transfers

754. The wire transfer obligations contained in the proposed draft AGC Notices are comprehensive for banks conducting wire transfers, but do not extend to non-bank remittance service providers. Brunei should implement comprehensive controls on wire transfers in keeping with SRVII.

755. The assessors recognise that financial institutions operating in Brunei have, in practice, adopted more stringent controls for the purpose of establishing the relationship with foreign partners as well as following their home regulator's requirements.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**PC**	• Record keeping obligations in the MLO do not clearly cover records obtained for verification purposes and business correspondence with customers. • Effective implementation across all sectors cannot be established as widespread AML/CFT supervision of record keeping requirements have not been undertaken
SR.VII	**NC**	• There are very limited requirements under the MLO and only limited regulatory instructions to implement wire transfer controls

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11

756. There are no obligations in the MLO or any other statute or binding regulation or rule establishing requirements to pay special attention to complex or unusual transactions. Draft regulatory instructions have been prepared by the AGC, but not yet issued. Non-binding guidance had been issued to banks, insurance companies and securities over a number of years.

Special Attention to Complex, Unusual Transaction

757. Section VII of the draft AGC Notice for Banks , and Section VIII of the draft AGC Notice for Insurance, set out provisions relating to monitoring unusual transactions and relationships which, if issued and implemented, would be in keeping with the FATF standards. These should be extended to the securities sector, remittance companies and money changers.

Banks

758. Part II Para 1 of the Draft KYC/CDD Guidelines for Banks proposes that all financial institutions to scrutinise and examine the background of all relatively large transactions that are complex, unusual or have no apparent economic and lawful purpose and retain a written record of such examination.

759. Section 5.33 of the draft AGC Notice to Banks proposes that banks pay special attention to all complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose

Securities Companies

760. Section 4.23 of the draft KYC Guidelines for the Securities Industry proposes that licensees pay special attention to all complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.

Insurance Companies

761. Para 12 of the draft Control Measures against ML/TF for the Insurance Industry proposes that insurers are to pay special attention to all complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.

762. Section 5.26 of the draft AGC Notice to insurers proposes that life insurer to pay special attention to all complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose

Examination of Complex and Unusual Transaction

Banks

763. Part II Para 1 of the Draft KYC/CDD Guidelines for Banks requires all financial institutions to scrutinise and examine the background.

764. Section 5.34 the draft AGC Notice to Banks requires banks to enquire into the background and purpose of the unusual transactions and document its findings with a view to making this information available to the relevant competent authorities should the need arise.

Securities Companies

765. Section 4.24 of the draft KYC Guidelines for the Securities Industry requires licensees to enquire into the background and purpose of the unusual transactions and document its findings with a view to making this information available to the relevant competent authorities should the need arise.

Insurance Companies

766. Para 12 of the draft Control Measures against ML/TF for the Insurance Industry requires insurers to examine as far as possible the background and purpose of such transactions and to set forth.

767. Section 5.27 of the draft guidelines will require life insurers to enquire into the background and purpose of the unusual transactions and document its findings with a view to making this information available to the relevant competent authorities should the need arise.

Record Keeping of Finding of Examination

768. MLO, 2000 under s12(2) requires financial institutions to keep records containing detail to all transactions carried out by customers in the period at least five years in the course the transactions were completed.

769. The draft AGC Notice to Banks elaborates general record keeping requirements, and highlights the need to keep records of a transaction which is 'under investigation or which has been the subject of an STR'. This includes both unusual and suspicious transactions.

Banks

770. Section 11.2 of the draft AGC Notice to Banks requires bank to comply with the following document retention periods:

(a) for customer identification information, documents relating to the establishment of the business relationship, including account files and business correspondence, a period of at least five years following the termination of the business relationship or completion of any one- off transaction; and

(b) for records relating to all transactions, a period of at least five years following the completion of the transaction, including any information needed to explain and reconstruct the transaction.

Securities Companies

771. Section 8.2 of the draft the draft KYC Guidelines for the Securities Industry requires licensees to comply with the following document retention periods:

(a) for customer identification information, documents relating to the establishment of the business relationship, including account files and business correspondence, a period of at least five years following the termination of the business relationship or completion of any one- off transaction; and

(b) for records relating to all transactions, a period of at least five years following the completion of the transaction, including any information needed to explain and reconstruct the transaction.

Insurance Companies

772. Section 11.2 of the draft Control Measures against ML/TF for the Insurance Industry requires life insurers to comply with the following document retention periods:

(a) for customer identification information, documents relating to the establishment of the business relationship, including account files and business correspondence, a period of at least five years following the termination of the business relationship or completion of any one- off transaction; and

(b) for records relating to all transactions, a period of at least five years following the completion of the transaction, including any information needed to explain and reconstruct the transaction.

773. Para 75 of the draft guideline requires insurers to maintain for at least five years after business relationship has ended all necessary record of transaction.

Analysis of effectiveness (R.11)

774. No binding instructions have been issued in relation to monitoring unusual transactions. Non-binding draft guidelines from the MoF have been available to offer 'best practice'.

775. In practice, domestic banks have developed monitoring systems for unusual transaction based on group policy (for those foreign owned subsidiary banks) and the 'best practice' set out in the non-binding CDD Guidelines. After examination of transactions, some were forwarded to FIU as STR;

some were documented as unusual transaction. Banks appear to keep records of unusual transactions separately and would be maintain for the same period as customer data. Up until the time of the on-site visit, authorities had not supervised financial institutions' compliance with identifying and monitoring unusual transaction

776. In the case of insurance companies, ongoing due diligence would be conducted by headquarters abroad to meet home regulatory requirements, rather than Brunei requirements. Monitoring of unusual transaction would be conducted by head office.

777. In the case of security companies in the absence of binding instructions at the time of the on-site, it appears that the authorities have not sufficiently raised compliance officers' awareness of the need to develop indicators of unusual transactions.

Recommendation 21

Special Attention to Countries not sufficiently Applying FATF Recommendations

778. There are no binding measures on any financial institutions to implement Recommendation 21.

779. The draft AGC Notice to Banks at s11.13 refers to the NCCT, which is outdated, but does not require financial institution to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF recommendations.

780. The draft AGC notice to insurance companies does not include measures to pay special attention to countries not sufficiently applying FATF Recommendations.

Banks

781. The draft KYC/CDD Guidelines for Banks Part II Section 4 Para 3 requires reporting Institutions to be mindful of business relationships and transactions with non-compliant AML/CFT countries identified on the FATF website as NCCT. Any transactions with such countries should be reported to the FIU.

782. Section 7.4 of the draft AGC Notice to Banks requires banks to give particular attention to business relations and transactions with any person from or in countries and jurisdictions known to have inadequate AML/CFT measures, as determined by the bank for itself or notified to bank generally by the relevant supervisory authority or other foreign supervisory authorities.

Securities Companies

783. Section 6.4 of the draft KYC Guidelines for the Securities Industry will require licence holders under SO to pay particular attention to business relations and transactions in the same circumstances as those outlined above for Banks.

Insurance Companies

784. Para 52 of the draft Control Measures against ML/TF for the Insurance Industry requires insurers to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations.

785. Section 7.4 of the draft AGC Notice to Insurers requires life insurer to pay particular attention to business relations and transactions in the same circumstances as those outlined above for Banks

Examination of transaction from countries insufficiently applying the standards

786. There is no specific requirement regarding Examination of Transaction from Countries not sufficiently Applying FATF Recommendation.

Counter Measures to Countries not sufficiently Applying FATF Recommendation

787. There is no specific requirement regarding Counter Measures to Countries not sufficiently Applying FATF Recommendation

Analysis of effectiveness (R.21)

788. Despite the lack of binding instruction issued by regulators, in practice financial institutions develop their own lists of high risk countries when managing ML/TF customer and transaction risks. In most cases such lists come from their headquarters abroad. Other financial institutions make lists from other sources including commercial providers of risk data and NGOs such as transparency international. It is not clear that financial institutions refer to statements by the FATF regarding countries which may not sufficiently apply FATF Recommendation.

3.6.2 Recommendations and Comments

- Brunei should issue enforceable instructions to require all financial institutions to:
  - pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose
  - examine as far as possible the background and purpose of such transactions and to set forth their findings in writing
  - keep such findings available for competent authorities and auditors for at least five years
  - give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which insufficiently apply the FATF Recommendations.
  - for transactions with no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined, and written findings should be kept.
- Brunei should issue instruments to apply appropriate counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**NC**	There are no binding obligations for financial institutions to: ▪ pay special attention to all complex, unusual large transactions, or unusual patterns of transactions with no apparent economic or lawful purpose ▪ examine as far as possible the background and purpose of such transactions and to set forth their findings in writing ▪ keep such findings available for competent authorities and auditors for at least five years
R.21	**NC**	▪ There are no binding obligations for financial institutions to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which insufficiently apply the FATF Recommendations ▪ There are no provisions for Brunei to apply appropriate counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Requirement to file a suspicious transaction report (STR)

789. Section 14 of MLO makes it a mandatory provision for the reporting of suspicious transactions in relation to ML to a police officer:

> 14. Internal reporting procedures maintained by a person are in accordance with this section if they include provision —
>
> (a) identifying a person (in this section called "the appropriate person") to whom a report is to be made of any information or other matter which comes to the attention of a person handling relevant financial business and which, in the opinion of the person handling that business, gives rise to a knowledge or suspicion that another person is engaged in money-laundering;
>
> (b) requiring that any such report be considered in the light of all other relevant information by the appropriate person or any other designated person, for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion;
>
> (c) for any person charged with considering a report in accordance with paragraph (b) to have reasonable access to other information which may be of assistance to him and which is available to the person responsible for maintaining the internal reporting procedures concerned; and
>
> (d) for securing that the information or other matter contained in a report is disclosed to a police officer where the person who has considered the report under the procedures maintained in accordance with the preceding provisions of this section knows or suspects that another person is engaged in money-laundering.

790. CCROP creates an indirect obligation on all natural and legal persons to report ML-related STRs to a police officer by criminalising the failure to disclose suspicion of ML.

> Section 24. (1) A person is guilty of an offence if –
>
> (a) he knows or suspects that another person is engaged in money laundering
>
> (b) the information or other matter on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and
>
> (c) he does not disclose the information or other matter to a police officer as soon as is reasonably practicable after it comes to his attention.

791. Despite the statutory obligation, in practice STRs are not reported to the police, as financial institutions have been instructed by letter issued by Ministry of Finance on October 2007 to send STRs to the Supervisory Authority, i.e. the FIU.

792. In the proposed draft Money Laundering (Amendment) Order, it would be clearly stated that a STR should be sent to the police and the Supervisory Authority.

793. As noted in s2 of this report, the scope of POC subject to STR reporting falls short of the FATF standard, with a number of areas of predicate criminal activity not covered. TF is not a predicate offence for money laundering in the MLO.

STR Related to Terrorist Financing

794. There is a limited general duty to report STRs related to terrorists' property to the Commissioner of Police under s8 of the Anti-Terrorism (Financial and Other Measures) Act:

8. Any person who in Brunei Darussalam, and any citizen of Brunei Darussalam and any company incorporated or registered under the Companies Act (Chapter 39) who or which outside Brunei Darussalam, has —

(a) *possession, custody or control of any property belonging to any terrorist or any person owned or controlled by any terrorist; or*

(b) *information about any transaction or proposed transaction in respect of any property belonging to any terrorist or any person owned or controlled by any terrorist,*

shall immediately inform the Commissioner of Police and any such other person as the Minister may designate of that fact or information and provide such further information relating to the property, transaction or proposed transaction.

795. Funding for terrorist acts is not clearly covered by the above mentioned definition.

796. The above quoted obligation refers to 'property', which is broadly defined in keeping with the TF Convention. The inclusion of the condition that the condition is linked to property 'belonging to a… (or) …any terrorist or person owned or controlled by any terrorist' narrows the scope of TF-related obligations. 'Belonging' is a high threshold of suspicion for financial institutions to meet before making an STR. The FATF standard only requires institutions to suspect that funds are linked or related to, or to be used for terrorism, terrorist act or by terrorist organisations.

797. Brunei has not designated the FIU or any other authority or person to receive STRs related to terrorism or TF. As such, all TF-related STRs can only be reported to the Commissioner of Police.

Attempted Transactions and Reporting Thresholds

798. For ML, the STR obligation does not cover attempted transactions, but refers to 'handling relevant financial businesses'. 'Handling' is not defined. 'Relevant financial business' is defined and MLO s4 indicates the engaging in the financial activities set out at the schedule. The MLO does not specifically extend this to attempted financial activities. Section 4(1)(b) includes 'any activity' carried on by a company under the International Banking Order 2000, which would appear to extend to attempted transactions with international financial institutions. Attempted transactions with other financial institutions do not appear to be covered in MLO.

799. Attempted transactions for TF-related STRs are covered by s8(b) of the ATA.

800. Under the MLO, all suspicious transactions must be reported regardless of the amount. Similarly, all TF-related STRs must be reported, regardless of the amount.

STR Regardless Involvement of Tax Matters

801. There is no rule restricting the reporting of matters which involve tax matters. Under CCROP predicate offences are those punishable with a jail term of five years and above. Tax offences do not fall within the threshold and are not currently predicate offences.

Analysis of effectiveness (R13 & SRIV)

802. According to explanations provided by reporting parties, internal controls are resulting in transactions being reported within financial institutions to compliance units and being reviewed and filtered by a special unit or person who is responsible for STR reporting.

803. While STRs have been sent by banks, the overall number of STR sent by financial institutions is low, even when taking into consideration the low crime rate in Brunei. The quality of reports received is not clear, as none of the STRs were found by the FIU to indicate suspicion of ML. At the time of on-site visit, only 'on-shore' banks have sent STRs to the FIU. No STR had been submitted regarding TF. Explanations for the low numbers of ML-related STRs may include a lack of detailed awareness of ML risks, in particular outside of the foreign-owned banks, indicators of suspicion and the threshold for reporting being high. An additional impediment may be some doubt

in the minds of reporting institutions regarding whether MLO or CCROP does provide safe harbour when making a report to the FIU, as opposed to the police.

804. Financial institutions do not appear to check publicly available information on customers to determine categories of suspicion, such as press clipping. Enquiries from law enforcement agency for particular customers would not be considered as suspicious.

RECOMMENDATION 14

Safe Harbour for reporting parties

805. Under the MLO s16.4 any disclosure made to a supervisory authority shall not be treated as a breach of any restriction imposed by any written law or otherwise, therefore any disclosure made by financial institutions should protect its directors, officers and employees from any legal proceedings. However as mentioned in MLO the report of STR is to police officer (s14 MLO) and the report to a supervisory authority is regard to any information obtained by supervisory authority (s16.1 MLO). This gap leaves some doubt in the mind of financial institutions.

806. Similar provisions in CCROP under ss21, 22 and 22(6) ensure that disclosure of STRs shall not be treated as a breach of any restriction upon the disclosure of information imposed by any contract, written law, rules of professional conduct or otherwise and shall not give rise to any civil or criminal liability, and no disclosure shall be treated as a breach of any restriction imposed by any written law or otherwise under s24 (failure to disclose knowledge or suspicion of money laundering).

Prohibition on Tipping Off

807. Under s25 of CCROP, it is an offence for a person if he knows or has reasonable grounds for suspecting that a disclosure is to be made to the Reporting Authority under CCROP and if he discloses that fact to any other person which is likely to prejudice any investigation which might be conducted following the disclosure.

Confidentiality of Reporting Staff

808. There are no specific provisions in the AML/CFT laws or in the proposed regulatory guidelines but the conduct practised by the FIU that any information relating to any STR is considered sensitive and confidential, including the names of person making the report. The STR form itself is stamped ‘confidential’ which includes the name of the reporting officer.

Analysis of effectiveness (R.14)

809. Some financial institutions expressed concern regarding the safe harbour provision. This was cited as being related to the lack of a direct provision in statute that STR should be sent to FIU.

810. Financial institutions appear to be aware of confidentiality requirements for STRs. There is separate documentation for unusual and suspicious transaction. However, in cases where a bank is a branch or subsidiary of a foreign institution, the guidelines are not clear whether an STR should also be sent to headquarters abroad. Some financial institutions report STR to their head office abroad; the others do not report STR to their head office. Some financial institutions base the decision to send an STR on instructions from headquarters abroad as ongoing due diligence is conducted by head office.

RECOMMENDATION 25 (only feedback and guidance related to STRs)

Guidelines on STRs

811. Sector-specific ‘red flags’ for suspicion are included on the STR reporting forms for banks and insurance companies. FID has conducted workshops with all reporting sectors to further clarify indicators of suspicion and examples of STRs. For banks, insurance companies, securities

companies, money remitters and money changers, guidelines on STRs are included in the draft general guidance – rules of KYC/CDD.

812. The draft KYC guideline for money changing and remittance business is very broad and does not include all aspects of CDD.

813. There is no guideline issued for STR indicators on TF.

Feedback on STRs

814. When an STR is received, the FIU will usually acknowledge receipt of the STR and, if there is any further information required pertaining to the report, the FIU will communicate with the reporting institution. Feedback may also be given verbally but usually with regards to the purpose of the FIU's query. The FIU also issues statistics on the number of STR.

815. The FIU intends to practise giving out feedback but has yet to determine the circumstances upon when a feedback should be given, including the manner of feedback, i.e., consultative meetings and written feedback.

Analysis of effectiveness (R.25)

816. Although the FIU will usually acknowledge receipt of the STR, all financial institutions state that they do not receive feedback on STRs sent to FIU.

RECOMMENDATION 19

Consideration of Reporting Currency Transaction above a Threshold

817. At the time of the on-site cash transactions made by remittance companies over B$ 5,000 are reported to the Ministry of Finance.

818. Brunei has proposed to include CTR reporting from banks within the draft Order to amend the MLO. MoF surveyed banks before determining an appropriate threshold for cash and electronic fund transfers which is proposed to be B$10,000. This is pending approval from the Authority, after which there is expected to be an increase in CTRs received. A CTR form has been drafted and provided to all licensed banks in Brunei for consultation.

Maintained in a computerised data base

819. Large cash transaction reports (over B$5000) from remittance companies are kept by the Money changer and remittance unit, FID for monitoring. Currently, all the reports are received in the form of hardcopies. The money changer and remittance unit has proposal for a database to store and manage all the reports collected.

Strict safeguards to ensure proper use

820. Information collected on cash threshold reports is subject to strict safeguards for the purpose of protecting information. However the information is available for use by the competent Authority for the purpose of AML/CFT.

Recommendation 32 (STR & CTR statistics)

Table: STR Data

Year	STR Received	STR Disseminated	STR resulting in prosecution
2005	5	5	0
2006	3	3	0
2007	12	10	0
2008	6	0	0
2009	13	0	0
2010	5	1	
Totals	**44**	**19**	

Table: CTR Data

Year	CTRs (over $B5000 Received		CTRs shared with the FIU
	Money Changers	**Remittance**	
2005	394	5018	0
2006	552	5208	0
2007	857	4885	0
2008	628	2066	0
2009	868	1817	0
Total	**3299**	**14109**	**0**

3.7.2 Recommendations and Comments

- In relation to Recommendation 13, Brunei should:
  - Amend the MLO to require financial institutions to report STRs directly to FIU.
  - undertake comprehensive education and awareness raising with reporting parties to encourage greater quantity and quality of STR reporting across a wider range of sectors
  - expand the scope of predicates offences in the MLO to ensure the POC subject to STR reporting is in keeping with the FATF standard
  - include an obligation in law/regulation, potentially through amendment to the MLO and ATA, to oblige all reporting parties to report STR on attempted transactions.
- In relation to Special Recommendation IV, Brunei should:
  - amend the ATA to require financial institutions to report TF-related STR directly to the FIU
  - amend the ATA to require all financial institutions to report STRs when it suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism
  - undertake comprehensive education and awareness raising with reporting parties related to STRs on TF.
- In relation to Recommendation 14 Brunei should amend the MLO to:
  - explicitly provide safe harbour provision include STR and any information obtained by supervisory authority.
  - prohibit financial institutions and their directors, officers and employees (permanent and temporary) from disclosing ("tipping off") the fact that a STR or related information is

being reported or provided to the FIU and clarify whether headquarters could receive or make decisions regarding a STR.

- In relation to Recommendation 25 Brunei Should:
  - issue STR guidelines for DNFBPs.
  - issue guidelines to money changers and money remitters to include all aspects of CDD, STR reporting, CTR reporting and other preventative measures.
  - regularly provide feedback relating to STR to financial institutions
  - issue guideline on TF-related STRs

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**NC**	▪ No direct requirement in law or regulation to report STRs to the FIU ▪ The scope of proceeds of crime subject to STR reporting falls short of the FATF standard ▪ No obligation on attempted transactions ▪ Low number of STR and all from banking sector, with doubts about the quality of reports (evidenced by the lack of dissemination to law enforcement agencies)
R.14	**PC**	▪ Safe harbor provision is only directed to STR report to police officer ▪ No clarification on which party STR could be disclosed to
R.19	**C**	
R.25	**PC**	▪ No STR guideline for DNFBPs ▪ No guideline on unusual and suspicious transaction related to money changers and money remitters ▪ No guideline on STR on terrorist financing
SR.IV	**PC**	▪ There is no direct requirement to report TF-related STRs to FIU set out in law or regulation ▪ Gaps in the criminalisation for TF limits the reporting obligation ▪ Implementation is weak

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Recommendation 15

821. Section 5 of the MLO sets out the timing of internal control procedures and communication for AML/CFT. Section 5 requires internal controls when conducting any relevant financial business, forming a business relationship or carrying out a one-off transaction.

822. The following general measures for internal control are required under MLO:

- Maintains the following procedures in the conduct of the business:
  - Identification procedures in accordance to s7 and 9 of the MLO
  - Record keeping procedures in accordance to s12 of the MLO
  - Internal reporting procedures in accordance to s14 of the MLO
  - Any other procedures of AML internal control and communication as may be appropriate for the purpose of forestalling and preventing ML.
- Ensure employees that involves in these transactions aware of (s5(1)(b&c)):
  - The above listed procedures
  - Other provisions of the MLO and all other written law related to ML
- Provide training to employees from time to time on the recognition and handling of suspicious transactions carried out by, or on behalf of, any person who is or appears to be engaged in ML.

823. Section 14(a) of the MLO requires reporting parties to designate a compliance officer as "the appropriate person" for considering suspicious transactions, having access to all relevant information including CDD data and providing an STR to a police officer.

824. The above listed provisions in the MLO do not go into details of internal controls, compliance and audit. Further detailed obligations have been provided by way of administrative notices and will be included in draft guidelines and notices.

825. An Administrative Notice was issued by the FID in 2007 which reiterated the requirement to appoint compliance officers. Compliance Officers for all banks and finance companies were appointed as far back as early 2008.

826. The MLO does not require adequately resourced and independent audit to test compliance with AML/CFT procedures. There are no controls in relation to establishing employee screen procedures when hiring new employees.

827. The Draft KYC/CDD Guidelines for Banks elaborates on the requirements to have for internal controls. Section 3(1) will require all financial institutions to appoint a compliance officer at senior management level who shall be responsible for ensuring the institution's compliance with the requirements of the relevant laws.

828. Section 3(2) of the Draft KYC/CDD Guidelines for Banks will require the banks to establish an independent audit function to test its procedures and systems for compliance, while section 3(3) requires all financial institutions to make its officers and employees aware of the AML/CFT laws relating to ML and TF and to train their officers, employees and agents to recognise suspicious transactions. Financial institutions are also required to screen all persons before hiring them as employees.

829. Section 4(7)(a) of the Draft KYC/CDD Guidelines for Banks will require the Board of Directors, Partners and Sole-Proprietors and senior management to be aware of ML and TF risks associated with their institution's business and understand the AML/CFT measures required by law,

regulations and guidelines and the industry's standards and best practices as well as the importance of implementing AML/CFT measures to prevent its institution from being used for ML and TF by money launderers and financiers of terrorism. It is their duty to maintain adequate oversight of the overall AML/CFT measures undertaken by the reporting institution and the duty of the senior management to ensure that an appropriate information system is in place to keep the Board of Directors updated with timely information.

830. Section 4(7)(b) and (c) of the Draft KYC/CDD Guidelines for Banks will require the Board of Directors to take responsibility for the broad AML/CFT policy of their respective institutions which should be in line with the risks associated, the nature of business, the complexity and the volume of transactions undertaken by the institution. The policy established must define the lines of authority and responsibilities of the AML/CFT measures and ensure that there is a separation of duty between those implementing the policies and measures and those enforcing the controls by ensuring that compliance officers at Head Office and at each branch or subsidiary are appointed and an effective internal audit function exists to assess and evaluate the controls to prevent ML and TF.

831. Section 4(7)(d) of the Draft further requires that the AML/CFT policy and procedures to be reviewed in line with changes and developments in the institution's products and services and technology as well as trends in ML and TF and appropriate changes made to such policy and procedures, if necessary.

832. The draft AGC Notices prepared provides detailed requirements on internal control, policies, compliance, and audit and training requirements for financial institutions. Measures included in the draft AGC Notice mirror the FATF standards. These drafts are applicable to banks under ss13 and, to the insurance industry under s11 respectively. All these requirements extended to group level for institutions that have subsidiary or branches overseas. However, there are no equivalently binding draft guidelines or notices prepared for securities companies, money-changers or remittance service providers.

833. For companies and individuals licensed under the Securities Order, s10 of the Draft KYC/CDD Guidelines for the Securities Industry provides similar requirements.

Effectiveness – R15

834. Although the MLO does not cover all the FATF requirements for internal controls and the draft guidelines are not yet in force, many financial institutions in Brunei appear to generally follow the international standards, in particular for those foreign institutions subject to the group compliance controls of their home regulator. It is apparent that financial institutions have followed the requirement set out in the MLO and FID's 2007 Administrative Notice requiring the appointment of compliance officers. Compliance Officers for all banks and finance companies were appointed as far back as early 2008. Further progress by financial institutions on the compliance with internal controls is needed.

835. Financial institutions met during the on-site meeting have written policies and procedures on AML/CFT compliance, however the adequacy of such procedures has not been examined. Very limited AML/CFT examination that has been conducted by the Supervisory Authority on so far. Similarly, internal audit reports are not sent to the Supervisory Authority or the FIU for their information and assessment of the risk of each organisation.

Recommendations 22

836. At the time of the on-site visit no financial institutions incorporated in Brunei maintain overseas branches or representative offices.

837. Under s67 of the Banking Order, establishment of overseas branches or representative offices by a bank may only be done with approval of the regulator. Section 68 sets out significant fines for non-compliance with these requirements.

838. Section 5 limits the application of preventative measures in the MLO to relevant financial business conducted in Brunei. Foreign branches or subsidiaries of Bruneian financial institutions are not clearly covered by MLO requirements when they operate outside of Brunei.

839. Section 3(4) of the Draft KYC/CDD Guidelines for Banks requires financial institutions to ensure that all domestic and foreign branches and subsidiaries adopt and observe measures to the extent the local laws and regulations are applicable. Where the foreign branches or subsidiaries are unable to adopt and observe such measures in jurisdictions which do not or insufficiently apply the FATF recommendations, such a matter should be reported to the financial institution's compliance officer for appropriate action.

840. The Draft AGC Notice to banks provides more detailed requirements for institutions to handle the group-level policy and procedures related to AML/CFT measures. Section 13.4 of the draft notice requires Brunei incorporated banks that are incorporated in Brunei to develop a group policy on AML/CFT and extend this to all of its branches and subsidiaries outside of Brunei.

841. For a bank with branches or subsidiaries in a host country or jurisdiction known to have inadequate AML/CFT measures (as determined by the bank for itself or notified to banks by the authority or by other foreign regulatory authorities), the bank is required to ensure that the group policy will be strictly observed by the management of the branches or subsidiaries.

842. Section 13.6 of the Draft AGC Notice will require the banks to ensure the overseas branches or subsidiaries apply the higher of the two standards in cases where there is a different AML/CFT requirement between Brunei and the host country or jurisdiction, to the extent the law of the host country permits the institution to do so.

843. Section 13.7 of the Draft AGC Notice further requires when such conflict is established, the bank's head office shall report this to Brunei's Supervisory Authority (Ministry of Finance) and the bank will have to comply with further directions as may be given by the Supervisory Authority. Similar requirements are in the Draft AGC Notice to Insurers (ss11.4 – 11.7).

844. For licenses under the Securities Order, the Draft KYC/CDD Guidelines for the Securities Industry address this issue under ss10.4 – 10.7.

845. With regards to the money-changers and remittance service providers, this requirement is not applicable since the current condition of licenses for both types of institutions licensees prohibits the companies from having any branch or subsidiary either locally or overseas.

3.8.2 Recommendations and Comments

- Brunei should require adequately resourced and independent audit to test compliance with AML/CFT procedures.
- Brunei should require financial institutions to establish employee screen procedures when hiring new employees.
- The Draft AGC Notices for banks and life insurers provide a structured and systematic process for banks and insurers to comply with internal control requirements. It is imperative that the authority issue and support implementation of the AGC this Notice as soon as possible.
- Brunei should extend comprehensive requirements to securities, money-changing companies and remittance service providers as soon as possible.
- Brunei should support effective implementation of internal controls through comprehensive AML/CFT supervision of all relevant sectors.
- At present, financial institutions in Brunei do not have any branches or subsidiaries overseas. However, this situation may change in the future. As such, the requirements that have been drafted by in the draft AGC in the draft Notice for Banks and, Insurers should be issued as soon as possible.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**NC**	• Requirements under MLO are very limited and do not cover internal audit requirements and policies on screening new employees • In the absence of binding regulations/guidelines, there is an absence of comprehensive rules to implement internal controls. • Level of implementation of internal controls has not been established by comprehensive AML/CFT supervision of all relevant sectors.
R.22	**NA**	No Brunei financial institutions have overseas branches or subsidiaries

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

846. The Banking Order and Islamic Banking Order define a bank as a company which carries on banking business and holds a licence granted under ss4 or 23 of the Order and includes all branches and offices in Brunei. Section 4 of the Banking Order indirectly defines a bank and requires all licensed banks to provide the address / operation of the Bank and its branches and as such avoid the possibility of Shell Bank. There are currently five banks operating in Brunei under the BO and IBO, all with a physical presence in Brunei.

847. For International Banks licensed under the IBO, s5(2)(e) of the IBO requires that the international bank, as part of the condition of license, shall maintain a place of business within Brunei. The place of business must be managed by a person resident in Brunei who is a director of the international bank.

848. As part of the strict market entry requirements, the licensing authority only entertains applications for a licence from reputable, large organisations. This helps to ensure that no shell banks will operate in Brunei.

849. In relation to the correspondent relationship with shell banks, there are no binding obligations on financial institutions in Brunei to govern the establishment and operation of correspondent relationships. Section 28 of the Draft KYC/CDD Guidelines will require financial institutions to ensure that their correspondent institutions do not undertake business with shell banks. Section 28 also requires that no account for "shell" financial institutions can be opened without the proper approval of the authority.

850. The Draft AGC Notice to banks details requirements for relationships with shell banks. Section 9.7 will prohibit banks in Brunei from entering into or continue a correspondent banking relationship with a shell bank. Section 9.8 requires banks to take appropriate measures when establishing correspondent banking relations, to satisfy itself that its respondent banks do not permit their account to be used by shell banks.

Effectiveness

851. Foreign banks operating in Brunei apply home regulator's rules and appear to check and verify potential correspondent banking relationships for shell banks. Such foreign banks rely on their home country to establish correspondent banking relationships.

852. At this stage, no examinations have been conducted to ensure that procedures to manage risks from shell banks are followed by domestic institutions.

3.9.2 Recommendations and Comments

- Brunei should issue and implement comprehensive rules governing relationships with shell banks, including the draft AGC Notice as soon as possible.
- The authorities should conduct examinations to ensure that controls on shell banks are being implemented by respective financial institutions.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**PC**	• No prohibition for financial institutions to enter into, or continue, correspondent banking relationships with shell banks • No requirement for financial institutions to satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory & oversight system - competent authorities & SROs role, functions, duties & powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)

3.10.1 Description and Analysis

853. Ministry of Finance FID and BIFC are responsible for ensuring that their respective licence holders comply with licensing requirements and AML/CFT requirements.

854. A range of financial institutions, including those in banking, insurance, money changing and remittance business as well as licensees under the Securities Order are classified as relevant financial business under the MLO and are subject to the full range of AML/CFT requirements under the MLO.

Designated supervisory authorities and application of AML/CFT measures

855. Sector specific legislation either provides directly or allows for His Majesty to designate the authority for purposes of regulation and supervision for each sector of financial institutions. In each case, the MoF is designated as the Authority and has the overall responsibilities to regulate and supervise financial institutions in Brunei. Within the MoF there are various divisions and units established to carry out this function.

Table: Designated supervising / regulating authorities

Division	Regulated Sectors	Legislation
Financial Institution Division		
Banking and Finance Unit	Bank/Islamic Bank/ International Bank	Banking Order 2006 Islamic Banking Order 2000 International Banking Order
Insurance Unit	Insurance and Takaful Operators (Islamic Insurance Companies) / International Insurance and Takaful Operators	Insurance Order Takaful Order
Money Changer and Money Remittance Unit	Money-Changing Companies / Remittance Business Companies	Money Changing and Remittance Business Act
Financial Intelligence Unit	All reporting institutions	MLO
Brunei Darussalam International Financial Centre (BIFC)		
BIFC	Licensees under the Securities Order Licensees under the Mutual Fund Order Licensees under the RATLO	Securities Order Mutual Fund Order RATLO

856. Brunei has been working over a number of years to develop supervision capacity for financial institutions for prudential issues. For AML/CFT supervision, respective MoF units within the FIU and BIFC will undertake AML/CFT supervision with the assistance of the FIU. As such, the analyst from FIU participated in the three bank inspections involving AML/CFT. Currently the FIU has only three staff and the analysts have not been trained to conduct examinations. It is not clear that the scope and depth of the AML/CFT examination is yet sufficient.

857. Brunei has recently introduced an inspection regime to ensure compliance by banking institutions. To date, only six inspections of banks have been conducted, three of which included an

AML/CFT component. Brunei has recruited a banking supervision expert to support initiatives to develop overall banking sector examination capacity, including manuals and procedures. The scope of the expert's project includes AML/CFT and it is expected an AML/CFT examination manual will be prepared to incorporate AML/CFT supervision with wider prudential supervision.

858. In relation to insurance companies and Takaful (Islamic insurance) operators, no on-site supervision had taken place at the time of the onsite visit. FID has been pursuing large-scale reforms of its insurance supervision capacity and has recruited an insurance supervision expert to enhance regulation and supervision of the insurance and takaful sectors. The first round of insurance onsite examinations commenced in early 2010. Insurance supervision will adopt a risk-based approach, and will include AML/CFT. The first insurance company inspection took place in April 2010 and included consideration of AML/CFT compliance issues.

859. The Securities and Mutual Funds sectors BIFC is responsible to supervise licensees under the Securities Order and the Mutual Fund Order. AML/CFT inspections have not yet taken place in this sector.

860. Brunei has a strict inspection regime for money changers and remittance service providers. As their licenses are to be renewed annually, inspections are conducted as part of annual license renewals. Inspections generally take between half-day to two-days depending on the nature and size of the business. To date, the inspections have resulted in two licenses not being renewed due to breach to the condition of license (remitted funds failing to arrive at the destination). The inspections however, do not cover AML/CFT requirements.

Structure and resources of supervisory authorities – R.30

861. Staff of MoF, similar to all other government agencies are properly checked and screened before they are employed. Staff are also required to sign a confidential declaration under the Official Secrets Act and are bound by confidentiality to not disclose any information received unless they are authorised to do so.

862. Given that the task of ensuring AML/CFT compliance roles will be taken up by FIU, it is crucial for the FIU to be properly resourced to take up this function. Currently, the job is carried out by the two analysts who are also responsible for receiving, analysing and disseminating STRs as well as developing AML/CFT policy and FIU systems. The staff in the FIU assigned to take up this additional role should also be properly trained to conduct examinations which should include the sampling of transaction records, review of policies and procedures and record of identification of STRs as well as action that has been taken by the financial institutions.

Authorities' Powers and Sanctions

863. The MoF is designated as the Authority and is given wide powers to conduct inspection on financial institutions under various sector specific statutes. Section 53 of the BO and s53 of the IBO provide The Authority with wide powers to conduct inspections and to inspect books, accounts and transactions of any bank in Brunei and of any branch, agency or office outside Brunei opened by a bank incorporated in Brunei.

864. In order to do this inspection, the Authority is allowed under s55 of the BO and s55 of the IBO to instruct banks to produce their books, accounts, documents and other records to the authority. The Authority may also appoint an auditor or any other person to exercise the power of the authority if need be. Section 56 provides for foreign supervisors of Brunei branches/subsidiaries of foreign banks to conduct supervision of those branches in Brunei.

865. The IBO provides the Authority with administrative power under s14 which includes power to request regular returns, to conduct and assist in investigation of the conduct of the licensees.

866. Section 45 of the Insurance Order allows the Authority to inspect the books, accounts and transactions of any insurer and any of its branch offices. The authority also has the power to request

any of the directors of a insurance company to furnish the authority with any information as well as to appear to the authority in relation to any matter related to the business carried out by the insurers either in Brunei or outside. Section 64 of the Insurance Order further allows the authority from time to time to inspect the books, accounts and transactions of a registered insurer. The authority may also institute investigation into the whole or any part of the insurance business carried on in Brunei by the insurers.

867. For money changers and remittance companies, the inspection and production of documents is part of the conditions of license and the license is subject to yearly renewal by the Authority. As part of license renewal processes, the Authority conducts inspection, reviews the books and accounts, and in some circumstances reviews specific transactions to verify compliance.

Sanctions – R.17

868. The Authority in Brunei has various powers under specific legislation regulation each sector to impose various types of sanctions. Section 6 of the MLO provides for offences under s5 (internal control and establishment of AML/CFT programs), by a body corporate and if the offence is attributable to any neglect on the part of the director, manager, secretary or other similar officer of that body, then the person as well as the body corporate can be considered guilty for the offence and should be punished accordingly. In the case of MLO, the offence of non compliance carries an imprisonment for a term not exceeding two years, a fine or both upon conviction.

869. Besides the specific provisions that warrant criminal prosecutions, there are administrative sanctions that can be taken by the Authority in ensuring compliance. The Authority for each piece of legislation is the MoF with different divisions/units in charge of different sectors. The table below describes the types of sanctions available under each statute:

Table: Sanctions Available to Financial Sector Regulators

Law	Available Sanctions
Banking Order **Islamic Banking Order**	**S.59 -** Issues direction as a result of inspection / insolvency issues Appoint person to take control of the bank's operation Appoint a person to advice the bank on the proper conduct of business **S.106** – offences of wilful non-compliance with the Order – up to 6 years in prison and B$100,000 **S.111 -** Power of authority to compound any person to for any offence under the Orders. **s.113** – general fine provisions for offences for which no penalty is expressly given – up to B$10million and B$100,000 per day if it continues
International Banking Order	**S.8 -** Condition of license where the authority may impose as the authority deems **fit – fine up to $50,000 and $1000 per day for a continuing offence** **S.17 –** the Authority, based on a suspicion of ML, proceeds of crime, etc, gain powers from the High Court to take appropriate actions to protect the interests of depositors or other creditors, customers, investors and parties to transactions respectively. Persons obstructing such powers conferred on the Authority under this section shall be guilty of an offence and liable on conviction to a fine not exceeding B$50,000 and prison sentence up to three years. **S.20 -** Power of the authority to impose administrative notices / statements on exercising the authority's power in the Order. **S.23** • Revocation of license

	• Impose or vary the condition of license • Substitution of directors or officers • Appointment of a person to advice the licensee • Appointment of a person to take control of the licensees • Winding up • Any other action as the authority may impose **S.28 -** Offence by body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect by the director, manager, secretary or other similar officer or any person holding controlling interest, then the person is as liable as the body corporate **S.30 -** Power to compound without instituting proceedings for any offence under the Order
Insurance Order	**S.11 -** Power of the Authority to impose conditions of registration for insurers and power to add, vary or revoke any of the conditions **S.41/42/43 -** Power to approve appointment and disqualification of appointment to directors / controlling stakes and management **S.65 -** Power to issue direction: • To take certain action or recruit such management personnel as may be necessary • To remove any of the director whom the authority considers unfit • To dispose or recover asset • To stop certain type of policies or class of business **S.66(2) -** Power to Minister to petition for winding up for contravening or failure to comply with any provision of the Order **S.78 (3 - 4) -** Offence by body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect by the director, manager, secretary or other similar officer or any person holding controlling interest, then the person is as liable as the body corporate
Takaful Order	**S.11 -** Power of the Authority to impose conditions of registration for insurers and power to add, vary or revoke any of the conditions **S.42/43/44 -** Power to approve appointment and disqualification of appointment to directors / controlling stakes and management **S.66 -** Power to issue direction: • To take certain action or recruit such management personnel as may be necessary • To remove any of the director whom the authority considers unfit • To dispose or recover asset • To stop certain type of policies or class of business **S.67(2) -** Power to Minister to petition for winding up for contravening or failure to comply with any provision of the Order **S.79(3-4) -** Offence by body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect by the director, manager, secretary or other similar officer or any person holding controlling interest, then the person is as liable as the body corporate
International Insurance and Tafakul Order	**S.44 -** Power of the authority to impose administrative notices / statements on exercising the authority's power in the Order. **S.47**

	• Revocation of license • Impose or vary the condition of license • Substitution of directors or officers • Appointment of a person to advice the licensee • Appointment of a person to take control of the licensees • Winding up • Any other action as the authority may impose **S.64 -** Offence by body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect by the director, manager, secretary or other similar officer or any person holding controlling interest, then the person is as liable as the body corporate **S.65 -** Power to compound without instituting proceedings for any offence under the Order
Securities Order	**S.25 -** Power of the authority to impose conditions of license **S.31 -** Power to revoke licenses **S.87 -** Offence by body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect by the director, manager, secretary or other similar officer or any person holding controlling interest, then the person is as liable as the body corporate **S.89 -** Power of the authority to compound
Money Changing and Remittance Business Act	**S.7 (4) -** Imposition, vary or revoke the conditions of license **S.9 -** Power to impose period of license **S.10 -** Revocation of license **S.14 -** Liability of directors / partners similar to the body corporate

870. Financial sanctions for administrative breaches are limited to the banking order, Islamic banking order and international banking order. Insurance, takaful, securities and money changing legislation do not provide for financial sanctions for breaches of licensing conditions, including implementing AML/CFT controls.

Market entry – R.23

871. Brunei enforces a strict regime of controlling market entry to its financial system. Besides the two local banks, all the foreign banks operating under the BO or the IBO are established institutions either regionally or internationally.

872. Section 8 of the BO specifies the criteria that the Authority should use for granting or refusing license. Among the criteria are:

- The need to protect public interest
- The need to protect the security, reputation and economic interests of Brunei
- Authority is satisfied that:
  - Applicant enjoy high reputation in the financial community
  - Every proposed director, controller and manager are fit and proper
  - The business will be conducted in Brunei with proper record and accounting and adequate system of controls
  - Enough paid-up capital

- Holds net head office funds of B$30 million in respect of its business in Brunei Darussalam in the form of assets approved by the authority

873. For the insurance industry, all three life insurers are regionally established entities, which operate as branches of the operation established in their home countries. As part of their due diligence, MoF also adopts a strict fit and proper requirement requiring the insurers to obtain MoF's approval before the appointments of any strategic positions in Insurance Company. The approval of MoF is also required before any changes can be made to the directors or shareholders of an insurance company.

874. For investment advisers, investment representatives, dealers, and dealers' representatives licensed under the Securities Order 2001, the application guidelines issued by BIFC list out the requirements before a license can be granted. Among the criteria are:-

- Applicants must be of high repute and have high reputable business and financial standings
- Meet and maintain the minimum financial requirements and conditions
- All officers must be suitably qualified
- Appropriately licensed in the home jurisdictions

875. Generally BIFC or the FID only give consideration to reputable institutions applying for a licence, taking into account their size of business and the existing regulations governing these institutions in their home countries.

876. For remittance and foreign exchange companies, although the market participants are local, there are strict rules of a yearly license renewal for all licensed entities. The requirements of yearly license renewal include a focus on compliance with a list of licensing conditions. The licensees are also subjected to a half – two days audit by the MoF before their license can be renewed.

877. The conditions of license govern the operation of the remittance and foreign exchange companies. There are more than 25 conditions of license governing these companies. Some of the conditions are as follows:

- License is for a one year period
- Only allowed to operate at approved premise. No branch or subsidiary
- Any changes to shareholders, directors or management of the company can only be done with the approval of the ministry
- Accounts must be audited
- Required to submit monthly return on the turnover of the companies
- Remittance operators are required to open foreign bank accounts to facilitate remittance from public and the account must be in the companies' name.

878. To date these requirements have been enforced strictly and statistics show that there are cases where licenses were revoked due to the violation to the conditions of license.

879. For all the above licenses, the fit-and-proper criteria used are the probity of the candidates, competence and soundness of judgement and whether the public interest of Brunei will be affected by the appointment. In practice, this translates to checking the *bona fides* of proposed candidates with relevant law enforcement agencies in Brunei as well as with the applicant's home supervisor if the applicant is from a foreign jurisdiction. For individuals, the Authority reviews résumé and references to establish whether the person has appropriate experience in the field to which the person is to be appointed.

Ongoing supervision and monitoring – R23

880. Brunei has been working over a number of years to develop supervision capacity for financial institutions.

881. Brunei has only recently introduced the inspection regime to ensure compliance by banking institutions and it has begun to inspect banks. To date six banks have been inspected, three of which have included AML/CFT supervision. Analysts from the FIU participated for a period ranging from 1 to 2 days to conduct AML/CFT examination as part of the examination team.

882. The MoF has recruited two specialists to assist the team of Banking and Insurance Units to act as in-house experts supporting the MoF in developing capacity to conduct on-site examinations.

883. BIFC conducts examinations of licensees under the Securities Order 2001 and the RATLO. However, since all the licensees of the SO 2001 are subsidiaries or branches of foreign entities from well regulated jurisdictions, the focus of examinations have been on those entities licensed under RATLO, to establish that a proper registration regime and a proper due diligence has been conducted by the respective licensees. During these supervision of registered agents, the BIFC's examiners usually conduct sample testing and ensure that all required due diligence requirements have been performed by the registered agents in keeping with their CDD/KYC manual. Examinations conducted at this stage by BIFC have not covered AML/CFT. BIFC plans to invite the FIU to join the examination in the future. No statistics were provided on the number of examinations conducted by the BIFC.

884. The remittance companies and money-changer sector has an existing on-site examination program. Companies are examined on a yearly basis for the purpose of renewal of license. To date one remittance companies' licenses has been revoked for violation of the conditions of license. Remittance companies and money changers are also required to submit a monthly return detailing the turnover of the business and the type of currency or transfers that were conducted for that particular month. The return has to be submitted before the end of second week of the following month. Both types of businesses are also required to submit records of all transactions of B$5,000 and above to the MoF on a monthly basis. However, at this stage, this information is not made available to the FIU.

Guidance for financial institutions (other than on STRs) - R25

885. The FID has issued Draft Guidelines on CDD for Financial Institutions and Non Bank Financial Institutions. However these guidelines remain in a draft form and have not been officially distributed. Similarly, the BIFC has issued Draft Guidelines on CDD to Licensees under the Securities Order 2001 and similarly it remains in a draft form and has yet to be officially issued.

886. For remittance and money changer companies, guidance notes on how to comply with SR VII was issued as a draft and similar to the two other guidelines above, has yet to be officially issued. Besides the guidelines, the MoF has also issued a letter in October 2007 to financial institutions related to the establishment of the FIU. The letter also advises the financial institutions that the Supervisory Authority under the MLO is the Permanent Secretary of the MoF; the Reporting Authority under the CCROP Order 2000 is also the Permanent Secretary of the MoF, and the Director of FID of the MoF.

Effectiveness (including Rec 32 Statistics)

887. Although legislation in Brunei provides various powers to the authority to conduct supervision and to monitor the activities of licensees, the Authority has not yet fully utilised these powers.

888. The Banking Unit has recently conducted on-site examinations of six banks, three of which included inspection of AML/CFT controls. The Banking Unit has responsibility to inspect 13 banks, including seven licensed under the BO, one under the Islamic banking order and five international banks under the IBO.

889. The Insurance Unit and Takaful Unit planned to conduct on-site examinations in early 2010, which would include AML/CFT concerns. The Insurance and Takaful Unit is responsible to examine six non-life, three life, three Takaful (which offer 'life insurance-type' products), one international life insurance and two international insurance brokers. At the time of the onsite visit the insurance sector had yet to be examined by the MoF. The first insurance company inspection took place in April 2010 and included AML/CFT.

890. AML/CFT supervision manuals are still to be developed to support thorough AML/CFT supervision of each sector. At this stage, the few examinations which have been conducted have focused on prudential requirements.

891. The Securities and Mutual Funds sectors are supervised by BIFC, however onsite inspection has not yet commenced. There are 14 investment advisors, one dealer and one representative licensed under the SO, 2001. There are five mutual funds licensed under the Mutual Funds Order. At this stage BIFC has not conducted examination of Securities Order licensees as they are subsidiaries or branches of foreign entities from well regulated jurisdictions. BIFC indicates that it plans to invite the FIU to join its examinations of RATLO agents in the future, but inspection plans for securities and mutual fund sectors were not clear.

892. The money changing and remittance service providers are well supervised against the condition of license as they are required to be inspected on a yearly basis before their license is renewed. However, to date the examinations have not extended to AML/CFT compliance.

3.10.2 Recommendations and Comments

893. While there are clear powers of supervision provided to relevant authorities to supervise, the absence of comprehensive AML/CFT rules, established AML/CFT inspection manuals and developed inspection capacity contributes to gaps in AML/CFT supervision.

- The authorities should exercise the powers provided to them to conduct off-site and on-site examination for AML measures contained in the MLO for all relevant sectors. While AML/CFT inspection has commenced for banking and insurance sectors, it should be widened to include all banks and extended to securities, mutual funds, remittance and money changing sectors.
- Statutes should make available financial sanctions for administrative breaches for breaches of licensing conditions, including implementing AML/CFT controls.
- Supervisors should ensure effective sanctioning of reporting institutions for non-compliance with AML/CFT controls.
- Supervisory capacity should be enhanced, including through the production of AML/CFT inspection manuals and inspection plans for all covered sectors.
- As FIU is expected to have a role assisting with AML/CFT supervision, there is a need to resource FIU appropriately with technical staff familiar with supervisory work.

3.10.3 Compliance with Recommendations 23, 30, 29, 17, 32, & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**PC**	• Financial penalties for administrative breaches for breaches of licensing conditions, including implementing AML/CFT controls. • While regulatory authorities have a range of effective sanctions available to them, in the absence of comprehensive supervision of the financial institutions, authorities have not used sanctioning powers in relation to non-compliance with AML/CFT controls.
R.23	**NC**	• financial institutions, including money and value service providers, are not yet subject to adequate AML/CFT regulation and supervision, including offsite supervision, to ensure that they are effectively implementing the FATF

		Recommendations. • Prudential regulation of those financial institutions subject to the Core Principles does not adequately apply regulatory and supervisory measures for prudential purposes which are also relevant for AML/CFT. • Effective regulation and supervision for AML/CFT has not been demonstrated in practice
R.25	**PC**	This is a composite rating
R.29	**PC**	• Supervision activities have just been introduced for banking and are soon to take place for the insurance industry, but have been very limited in relation to AML/CFT. • Supervision has not taken place for securities, mutual funds, remittance and money changing sectors • There is no AML/CFT examination manual for supervisors to conduct onsite examinations of financial institutions. • Effective regulation and supervision for AML/CFT has not been demonstrated in practice
R.30	**PC**	• Lack of technical knowledge by staff of FIU to carry out the functions of supervisors for AML/CFT • FIU needs to be resourced with technical staff familiar with supervision work as the FIU is expected to take up the function of supervisory authority for AML/CFT
R.32		• Statistics for supervision are not readily available. • Statistics for administrative sanctions levied are not readily available.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis

894. MoF has taken steps to ensure a legal framework based on a licensing system and includes monitoring and supervising the money changing and remittance industry. Informal remittance businesses are regarded as illegal. While comprehensive AML/CFT regulations have not been issued for the sector, the MLO and some elements of the annual licensing regime contained in the Money Changing and Remittance Business Act provide they key legal framework. Informal remittances appear to be a relatively small portion of the overall remittance market in Brunei and it is apparent that the system of non-bank licensed remitters results in a high level of uptake of formal remittance.

Designation of Registration or Licensing Authority

895. Any person or company providing service for the transmission of money must be duly licensed by the MoF under the Money Changing and Remittance Business Act. This type of service providers are being supervised and regulated by the Money Changer and Remittance Unit (MCRU) under FID, MoF. The MCRU maintains a current list of names and addresses of licensed money changer and remittance companies.

Application of preventative measures

896. Money Changing and Remittance business are subject to basic preventative measures under the MLO. Remittance companies are currently also required to report transactions $5000 and above to the FID. In relation to remittance transactions, remittance companies keep their records for five years as a requirement under the MLO.

897. More detailed non-binding guidance has been provided in Draft KYC/CDD Guidelines provided to the sector for purposes of consultation. However the Draft KYC/CDD Guideline focus on identification of originators and requires money remitters to report a transaction when it has reasonable ground to suspect the fund comes from illegal activity. The Draft KYC/CDD Guidelines do not require money remitters to identify beneficial owner of the transaction, conduct on-going due diligence, identification of PEP (R.6), misuse of new technology (R.8), identification of third party (R.9) and identification of unusual transaction (R.11).

Monitoring of Value Transfer Service Operator

898. Operators are licensed by the MoF, and subject to monitoring. As the licenses have to be renewal yearly, before issuing new licenses the MoF conducts an annual on-site examination of money remitters at the time of license renewal. Examinations focus on compliance with Money Changing and Remittance Business Act. Compliance with AML/CFT controls in the MLO have not been a major focus of remittance company supervision, however the MCRU tries to include FIU staff during the onsite if they are available.

List of Agents

899. The Money Changer and Remittance Unit under FID requires remittance providers to provide the Authority with the list of its counterparts. The requirement is stated on the license issued by FID to Money Remitters. The MoU between the companies and its counterparts are also reported to FID.

Sanctions

900. Any institution failing to have procedures in relation to AML measures commits an offence under MLO and is liable to imprisonment (not exceeding two years), a fine or both.

901. The FID is able to impose conditions on licence, which serves as a type of administrative sanction. FID includes a written warning in the offer letter for the renewal of licenses stating that any

failure to comply with the terms and conditions of licence including the KYC/CDD guideline issued by MoF will result in the revocation of license.

902. The Money Changing and Remittance Business Act is undergoing review. The MoF will revisit other applicable legislation and consider other appropriate sanctions available to the regulator, including the addition of administrative sanctions.

903. FID has revoked the licence of one money remitter in the case of recipient failing to receive remitted funds. However no sanction has been given by FID to money remitters for non-compliance with CDD, STR or other AML/FT requirement.

Analysis of effectiveness

904. There are only 22 money remitters in Brunei. FID conducts annual licensing of money remitters and each year conducts an examination of each money-remitting business as part of the licence renewal process. Yearly license renewal-related inspections do not address CDD or STR reporting issues.

905. Money remitters appear to follow the 'best practice' set out in the Draft KYC/CDD Guidelines distributed by FID. Customers are asked to show their ID before conducting a remittance. Without ID, money remitters will reject the transactions. However money remitters generally do not take steps to try to find beneficial owner of the transaction.

906. Money remitters have not always received specific feedback from FID after examination, other than renewal of a licence or changes to licence condition. Licence holders take a view that no responses from regulator is an indicator of no problems with implementation of obligations. Commencing in early 2010, FID began to share the findings of inspections with the money remittance operators.

907. Remittance Companies must provide the list of agents to the FID (Money Changer and Remittance Unit) in complying with Condition 1.22 for the renewal of license. Compliance with this condition is ensured by the Money Changer and Remittance Unit during onsite inspection for the renewal of license and FID has the updated lists of agents for each licensee.

3.11.2 Recommendations and Comments

- Brunei should issue enforceable rules to require Money Remitters to conduct all CDD requirements, monitor unusual transactions and implement wire transfer controls.
- Brunei should ensure that both off-site and on-site monitoring and supervision of Money Remitters includes all relevant aspects AML/CFT.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**PC**	• Enforceable rules have not been issued for money remitters in relation to CDD, unusual transactions and wire transfers. • Monitoring of all CDD requirements, STR reporting, unusual transaction and wire transfer has not yet commenced.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

General description

908. The DNFBP sector in Brunei is generally quite small:

- Casinos are illegal and do not operate in Brunei. Legislation is in place to outlaw use of online gaming by persons resident in Brunei.
- There are approximately 25 law firms in Brunei with approximately 100 members of the Brunei Bar Law Society.
- 12 accounting firms operate in Brunei, including the Big Four.
- There are fewer than 10 real estate companies operating in Brunei.
- There are 12 registered agents and licensed trust companies under the RATLO which act as trust and company services providers (TCSPs).

909. AML/CFT requirements under the MLO have only been extended to trust companies, and the deficiencies noted in section 3 of this report apply in relation to those obligations. ML-related STR reporting has not yet been extended to DNFBPs beyond trust companies.

910. The relatively narrow TF-related STR obligations included in the ATA extend to all natural and legal persons in Brunei, including lawyers, accountants and real estate agents. At the time of the on-site visit, however, only trust companies had any awareness of AML/CFT obligations, including the STR reporting obligation under the ATA.

4.1 Customer due diligence and record keeping (R.12)

4.1.1 Description and Analysis

911. Under the MLO, trust companies are the only DNFBP obligated to have procedures in place for the prevention of ML. Trust companies are also 'licensed agents' under the Registered Agents and Trustees Licensing Order (RATLO) 2000. Therefore trust companies are required to conduct CDD and other requirements (see section 3 of this report for a detailed description and analysis of these requirements).

912. Trust companies/registered agents (hereinafter referred to as trust companies) are licensed under the Registered Agents and Trustees Licensing Order by the Brunei International Financial Centre (BIFC) of Ministry of Finance which regulates this sector. These companies are covered under the MLO and hence are subject to the identification, internal reporting and record keeping procedures contained therein. The MLO applies to both domestic and international financial business.

913. Trust companies are restricted to conducting international business services which include international business companies (IBC) management, international limited partnership management and international trusts. Prior to conducting business, it is a requirement of the MLO that due diligence must be conducted in accordance with the MLO. In practice, when trust companies submit an application for incorporation of an international business company under the International Business Companies Order (IBCO) 2000, one of the documents they must submit is the Certificate of Due Diligence as required under s10 IBCO. The certificate is a document which must be signed by a director or senior officer of the trust company certifying that due diligence in relation to the identity and probity of the beneficial owners and officers of the proposed IBC, and also in relation to the

proposed transactions of the IBC, has been conducted and that the requirements of the MLO have been met.

914. Trust companies may be able to incorporate shelf companies and must also certify in the Certificate of Due Diligence that prior to the commencement of business by the company, due diligence has been conducted in accordance with MLO. Under section 10(2) IBCO, it shall be an offence for the trust company to wilfully file a certificate of due diligence which is untrue, misleading or based on incomplete information. This offence carries a penalty of imprisonment for a term not exceeding one year, a fine not exceeding one hundred and fifty thousand dollars or both.

915. In line with MLO requirements, trust companies have "Know Your Clients" policies in place and these are submitted to the BIFC as part of the documentation for a licence application. BIFC has records of names of Money Laundering Reporting Officers of trust companies who are usually one of the directors.

916. BIFC conducts annual on-site inspection to ensure compliance under the relevant law including the International Business Companies Order. On-site inspections by BIFC have not concentrated on compliance with the MLO or AML/CFT measures. Following an on-site inspection, BIFC usually provides feedback or requires further information in the event of any non-compliance or inconsistency with the laws, regulation, and policy in place or operational procedures.

917. Registered agents and trustees that had discussions with the evaluation team seemed to follow the draft KYC guidelines. Before establishing a business relationship, registered agents and trustees identify and verify the identity of clients and the beneficial ownership of the clients. Registered agents and trustees require the client to open a bank account, so some verification has already been conducted by banks. Registered agents and trustees also conduct verification by seeking confirmation from banks, lawyers and accountants for referred clients.

918. The MLO sets out general obligations regarding customer identification and keeping records of customer identity, which applies to RATLO registered agents. The limited AML/CFT preventative measures set out in the MLO are applicable to RATLO licensed trust and company service providers (registered agents) as well as some CDD measures set out in the IBCO.

MLO

919. All CDD requirements under the MLO, apply to RATLO registered agents. Sections 3.1–3.3, 3.5 and 3.6 of this report provide an analysis of the operation of the applicable MLO preventative measures including CDD, record keeping and transaction monitoring. Section 10 of IBCO requires RATLO registered agents to produce a certificate of due diligence when incorporating an international business company. The documents collected and viewed by the agent are subject to inspection and examination by the authority, being the BIFC.

920. The BIFC has conducted random inspections and viewed the records of the documents collected by the registered agents. IBCs are also required to submit an annual return to the registry. This return requires conduct of due diligence where there is a new beneficial owner.

Effectiveness

921. The trust and company service providers (TCSPs) generally rely on intermediaries to conduct due diligence. These intermediaries include lawyers, accountants, banks, and trust companies from Hong Kong, Singapore and Malaysia. The TCSPs also use external service providers such as World Check to check on possible politically exposed persons (PEPs) attempting to open a company or trust in Brunei. . It is not clear that RATLO agents would have CDD documents used to produce CDD Certificates available as part of the documents available to be reviewed by the BIFC during onsite inspections.

922. In practice, TCSPs generally rely on the references from their intermediaries for businesses. Rarely do they encounter walk-in customers seeking to open an IBC.

923. Registered agents visited by the evaluation team stated that they renew their IBC licence every year. Every time they renew the licence, they conduct KYC again on their clients.

4.1.2 Recommendations and Comments

- Brunei should issue law/regulation and enforceable instructions on registered agents and trustees to include all CDD Requirements as set out in the FATF standards
- Brunei should consider conducting a risk assessment of various DNFBP sectors to form the basis for risk-based implementation of AML/CFT controls over DNFBPs
- Brunei should take steps to extend CDD measures to the full range of DNFBPs as soon as possible, taking into account the level of risk from different DNFBP sectors

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**NC**	• Only Registered Agents and Trustees as DNFBPs are included in the AML/CFT regime • Among the DNFBPs in Brunei, only TCSPs are required to conduct CDD, record keeping, etc. • The various deficiencies in the range of CDD, record keeping and transaction measures applicable under the MLO, which are set out in the analysis of R.5, 6 and 8-11, apply to TCSPs..

4.2 Suspicious transaction reporting, tipping off and internal controls (R.16)

4.2.1 Description and Analysis

Trust and Company Service Providers

924. Trust companies are obliged under the MLO to report any STRs relating to ML. See Recommendation 13 above for an analysis of strengths and weaknesses of the reporting obligation. All legal persons, including trust companies, are obliged to file TF-related STRs under s8 of the ATA.

925. No STRs have been submitted by registered agents and trustees to the FIU. No instructions have been issued to trust companies instructing them to send STRs to the FIU. Also, no guideline has been issued to assist registered agents and trustees in identifying and reporting STRs. A proposed KYC/CDD guideline has been prepared by the MoF; however the evaluation team was not able to view it.

926. Under the MLO, any disclosure made to a supervisory authority shall not be treated as a breach of any restriction imposed by any written law or otherwise, therefore any disclosure made by financial institutions should protect its directors, officers and employees from any legal proceedings.

927. Similar provisions in CCROP under s21 (assisting another to retain benefit of criminal conduct) and s22 (acquisition, possession or use of property representing proceeds of criminal conduct) whereby such disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by any contract, written law, rules of professional conduct or otherwise and shall not give rise to any civil or criminal liability, and no disclosure shall be treated as a breach of any restriction imposed by any written law or otherwise under s24 (failure to disclose knowledge or suspicion of money laundering).

928. Under s25 of CCROP, it is an offence for a person if he knows or has reasonable grounds for suspecting that a disclosure is to be made to the Reporting Authority under CCROP and if he discloses that fact to any other person which is likely to prejudice any investigation which might be conducted following the disclosure.

929. Section 14 MLO 2000 requires trust companies to establish and maintain internal control procedures and communicate the procedures to their employees.

930. Section 35 of RATLO also provides a very strict secrecy requirement for TCSPs. TCSPs are not allowed to divulge any information regarding the relevant of particulars of clients and or any account of clients, unless compelled to do so by the court or under a power of investigation or prosecution under any laws. It is not clear that STR reporting obligations would override the secrecy provision, given that providing an STR does not relate to an 'investigation' or 'prosecution'. TCSPs believe that it is necessary for them to gain permission from their clients before sharing any customer records with regulatory authorities.

931. As discussed in s3 above, the MLO has limited requirements for all reporting parties to implement internal controls. This applies to RATLO agents. Further detailed instructions or guidelines to implement internal controls have not yet been issued. In practice, it appears that TCSPs are establishing internal controls and are aware of the MLO requirements for internal controls.

932. The relatively narrow TF-related STR obligations included in the ATA extend to all natural and legal persons in Brunei, including lawyers, accountants and real estate agents. At the time of the on-site visit, however, only trust companies had any awareness of AML/CFT obligations. Lawyers, accountants and real estate agents had no awareness of their STR reporting obligations and are not subject to any obligations to establish basic preventative measures (CDD) or internal controls (monitoring and compliance) to give effect to the TF-related STR obligations set out in the ATA.

933. Although trust companies fall under the categories of financial business covered by the MLO, no guideline or guidance has been drafted or issued to them

934. Gaps identified under MLO obligations for STR reporting, tipping off, safe harbour and internal controls are equally applicable to RATLO registered agents conducting trust and company service business. Sections 3.7 and 3.8 of this report analyse the scope and effectiveness of the application of the above obligations.

Lawyers, Accountants and Real Estate Agents

935. ML-related STR reporting has not yet been extended to DNFBPs beyond trust companies.

Effectiveness

936. Inspections of RATLO registered agents have not yet included compliance with MLO obligations, so effective implementation of these requirements cannot be determined.

937. The trust companies met during the on-site visit indicated that they comply with the operational requirements of RATLO as well as the compliance requirements under the MLO. However, to date no STRs have been submitted; the trust companies did however indicate that they have rejected some applications to open International Business Companies due to the suspicious nature of the application.

4.2.2 Recommendations and Comments

- Brunei should issue enforceable instructions to registered agents and trustees regarding unusual and suspicious transactions, as well as detailed instructions for establishing internal controls.
- Brunei should ensure effective implementation of existing obligations on TCSPs through AML/CFT related monitoring and supervision.
- Brunei should take steps to extend STR, tipping off, safe harbour and internal control measures to the full range of DNFBPs as soon as possible, taking into account the level of risk posed by different DNFBP sectors
- Brunei should ensure that the MLO, ATA or other statutory provisions override any impediments to STR reporting or information gathering contained in RATLO.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**NC**	• Amongst the DNFBPs, only TCSPs are subject to STR reporting, tipping off, safe harbour and internal control obligations • Effective implementation of these obligations by TCSPs has not been established by monitoring and supervision
R.25	**PC**	• Guidelines have not been issued to assist DNFBPs to implement preventative measures

4.3 Regulation, supervision and monitoring (R.17, 24-25)

4.3.1 Description and Analysis

TCSPs

938. Powers for regulation, supervision and transaction monitoring for DNFBPs are limited to RATLO licensed agents and are derived from the RATLO.

939. BIFC requires TCSPs to provide statistics to BIFC on the number of trust and companies opened. BIFC conducts examinations of licensees under the RATLO to establish that a proper registration regime and a proper due diligence has been conducted by the respective licensees. BIFC conducts annual inspections of RATLO registered agents and has conducted random inspections. Up until this point the focus of examinations has not been on assessing compliance with the AML/CFT requirements in the MLO and CCROP. BIFC inspections do include checks for compliance with the requirements to collect and record due diligence information in accordance with the KYC manual submitted by the Registered Agent before the issuance of the CDD certificates to the respective IBC. BIFC inspectors do not examine the CDD data obtained to assess the quality and effectiveness of CDD on which the CDD certificates are based. BIFC plans to invite the FIU to join its examination of RATLO agents in the future. No statistics were provided on the number of examinations conducted by the BIFC.

Lawyers, accountants, real estate agents

940. The inspection of DNFBPs is conducted under the specific power provided under the sector-specific legislation. The legal framework, including regulation and supervision powers, has not yet been developed for lawyers, accountants and real estate agents. The MLO does not provide power for any authority to conduct AML/CFT inspection for reporting entities. Inclusion in the future of new reporting institutions such as DNFBPs will suffer from an absence of provisions establishing a supervisory authority for those sectors.

941. It is understood that the long term plan is for the FIU to take on the role of AML/CFT regulator. It is imperative that Brunei should provide this power to the FIU under the MLO or some other statute, otherwise, it will not be possible for either the FIU, or MoF as a whole, to conduct inspections and examinations as the power is not provided under any of the existing sector-specific legislation.

Regulation and supervision

942. No AML/CFT regulations or guidelines have been issued to the TCSPs, although TCSPs met by the evaluation team during the on-site visit, seem to have a good understanding of the requirements of MLO as well as the international standards governing AML/CFT requirements. There are, however, instances where businesses that were rejected by the TCSPs because of the suspicious nature of their applications, but they were not reported as STRs to the FIU. The TCSPs met during the on-site consider this unnecessary as no real transaction took place although the attempted transaction raised their suspicions.

943. The TCSPs' licenses are renewed on a yearly basis upon payment of the annual licensing fees. The authority also has the power under s12 of RATLO to amend or issue a new condition for licensees. Any breach of conditions of licence subject the TCSPs to imprisonment for a term not exceeding two years or a fine not exceeding B$200,000 or both.

944. The authority also has a power to issue direction, which can take the form of administrative sanctions, to TCSPs under s26 of RATLO if the authority is satisfied that the licensee has contravened the condition of license or mislead the public or unable to satisfy its obligations or

contravene any section of RATLO. This section provides a variety of sanctions for the authority to take in response to any contravention by TCSPs.

Effectiveness

945. Statistics of inspections, or sanctions for RATLO licensees were not available.

946. BIFC annual inspections of RATLO Registered Agents appear to be relatively short, with limited sampling checking of a small percentage of total companies established for the year, which translates to approximately half-day to one day of examination period. Examinations have not focused on assessing RATLO agents' compliance with the AML/CFT requirements in the MLO, CCROP or ATA.

947. BIFC inspections do include checks for compliance with the requirements to collect and record due diligence information before the issuance of the CDD certificates to the respective IBC in accordance with the KYC manual submitted by the Registered Agent. BIFC inspectors do not examine the CDD data obtained to assess the quality and effectiveness of CDD on which the CDD certificates are based.

4.3.2 Recommendations and Comments

- Brunei should ensure that BIFC supervision of RATLO Registered Agents includes comprehensive onsite supervision of AML/CFT controls.
- Brunei should initiate outreach programmes to DNFBPs that will be included through the amendment of the MLO.
- Brunei should provide a clear legal basis for a Supervisory Authority to conduct AML/CFT supervision and monitoring of DNFBPs that are not already regulated by MoF.
- Brunei should ensure the draft MLO (Amendment) Order is brought into force and appropriate rules and guidelines are issued to all relevant DNFBPs.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**NC**	• Only TCSPs are currently included under the MLO. • Detailed regulatory requirements have not been extended to TCSPs or any other DNFBPs. • Supervision of TCSPs has not been comprehensive and has not concentrated on AML/CFT controls. • There is no legal basis for the FIU, MoF or any other regulatory authority or SRO to supervise DNFBPs (apart from TCSPs) for AML/CFT
R.25	**PC**	Competent authorities have not yet provided DNFBPs with guidelines to assist DNFBPs implement and comply with their respective AML/CFT requirements.
R.30	**PC**	The FIU lacks capacity to regulate and supervise DNFBPs for AML/CFT

4.4 Other non-financial businesses & professions, modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

948. There is no indication that Brunei has considered applying Recommendations 5, 6, 8-11, 13-15, 17 and 21 to non-financial businesses and professions other than DNFBPs. It should be noted that there is no clear indication of other categories of businesses or professions that are at risk of being misused for ML or terrorist TF in Brunei.

949. Brunei has taken only limited measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML.

950. Brunei has a high penetration of credit cards. A significant portion of all citizens hold a credit card.

951. The development of a secure national identification system assists with secure transactions.

952. Brunei does have a very high denomination banknote (B$10,000, approx US$7000), but these are not in widespread circulation.

953. The Brunei Government has taken steps to improve the usage of modern secure transactions as part of their strategy to improve the payment system in the country. At the moment the cheque clearing system in the country is managed and provided by one of the banks appointed by the Brunei Association of Banks. The authority together with the Asian Development Bank undertook a study to review the Development of Capital Market and a Modernised Payment and Settlement System in April 2008 (ADB Project No.: 41004). The study targets two components i.e. the development of a capital market master plan and to assess the current payment and settlement system and to develop a blueprint for a modernised payment and settlement system including recommendations and developing a related action plan to enhance the system in the short, medium and long term.

954. The use of credit cards has also been an increasing trend in recent years. Due to the easy credit line provided by financial institutions, the MoF has introduced several new regulations recently to reduce the exposure of the system towards personal financing. The authority is currently conducting an assessment by looking at other systems in the region with a view to establishing a credit bureau which will assist credit evaluation to the financial institutions providing credit lines for personal and business financing.

955. Brunei has had a Currency Interchangeability Agreement with Singapore since 1967. Under the Agreement, each country undertakes to accept the currency issued by the other and to exchange them at par and without charge, into their own currency. All banks in Brunei and Singapore are obliged to accept the other country's currency when it is deposited by the general public. An area of concern is the fact that Brunei issues banknotes of B$10,000 (approximately EUR5,000) and B$1,000 (approximately EUR500). In practice, the B$10,000 are not easily available. Banks met during the on-site visit confirmed that these notes are not commonly used. ATMs in Brunei only issue B$100, B$50 and B$10 notes.

4.4.2 Recommendations and Comments

956. Brunei has introduced several initiatives to improve the usage of modern and secure payment systems. It is however too early to assess whether these initiatives will assist in reducing the risk of ML and TF.

957. The use of B$10,000 is of some concern taking into consideration that the Currency Inter-changeability Agreement which allows these notes to be deposited in Singapore and vice versa.

- Brunei should consider risks and vulnerabilities of ML or TF through other categories of businesses or professions other than financial institutions and DNFBPs and consider extending AML/CFT provisions over those sectors on a risk-sensitive basis.
- Brunei should take further measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML and TF.
- Brunei authorities should consider measures to reduce risks of ML and TF associated with the circulation of high-denomination bank notes and procedure for financial institutions in dealing with these notes.

	Rating	Summary of factors underlying rating
R.20	**PC**	• Brunei has not considered risks and vulnerabilities of other categories of businesses or professions and has not considered extending AML/CFT provisions to those sectors. • Brunei has only taken limited measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML and TF. • Brunei is at early stage of introducing techniques to facilitate payment systems, and the circulation of B$10,000 notes remains a limited concern

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to beneficial ownership & control information (R.33)

5.1.1 Description and Analysis

Legal Framework

958. The details of the various forms of legal persons are set out at s1.5 of this report.

959. There are approximately 7000 local and 700 foreign companies registered under the Companies Act, Chapter 39.

960. The International Business Companies Order 2000 provides for the setting up of international business companies (IBCs). More than 9,700 companies are registered under International Business Companies Order 2000.

961. The Registry of Companies and Business Names (ROC) is a division within the Attorney-General's Chambers (AGC) whose functions include providing registration of sole proprietorship and partnership and changes in particulars of business names and business nature under the Business Names Act Cap. 92 and the registration of Companies under the Companies Act Cap. 39 and provide Registration, Revocation and Renunciation of Powers of Attorney under the Powers of Attorney Act, Cap. 13. It also maintains the register of companies, business names, powers of attorney and marriages for the use and inspection of public and Government Departments.

Measures to prevent the unlawful use of legal persons - adequate transparency of beneficial ownership and control

Companies

962. In relation to companies formed under the Companies Act, there is a system of central registration whereby the ROC maintains shareholder and director details of the company, which are in the public domain. Changes in shareholders are required to be updated via annual returns of shareholders and are included on publicly available database held at the ROC.

963. Section 107(1) of the Companies Act only seems to require the once a year statement of shareholders on the day of the filing and those shareholders who have ceased being shareholders since the last filing. The ROC indicates that Share ownership changes are recorded whenever ownership changes, and not just once a year.

964. The ROC does not require the disclosure of beneficial ownership (shareholder) information beyond the immediate shareholder. In the case where the shareholder is a legal person, there is no requirement to file the natural persons who ultimately control a legal person.

965. The ROC is not required to check incorporating directors and shareholders against UNSCR 1267 and 1373 lists before issuing notice of incorporation.

International Business Companies

966. In relation to international business companies (IBCs) formed under the International Business Companies Order (IBCO), company service providers licensed under RATLO are required to complete a certificate of due diligence 'beneficial ownership' information on IBCs. There are no requirements for IBCs or RATLO licensed agents to pass on beneficial ownership information to the Registrar of International Business Companies. Details of beneficial ownership are kept with the registered agent and are available to the registrar as and when required. Law enforcement agencies

may obtain cooperation from the registrar to get information in the course of an investigation or prosecution.

967. Under Section 10 of the IBCO, 2000, there is a requirement for the filing of a prescribed due diligence form by RATLO registered agents, attesting to the fact the beneficial owners have been identified and that requirements under the MLO have been met.

968. Beneficial ownership information is not verified by RATLO licensed agents using independent source documents. The IBCO does not include a definition of beneficial ownership.

969. Companies incorporated under the IBCO are either an International Business Company (IBC) or a foreign international company (FIC), which is a branch of an overseas company. IBCs and FICs are incorporated by trust companies licensed under RATLO to conduct international business services. Upon incorporation or registration of IBCs, FICs, and international limited partnerships, trust companies must ensure the filing of all compliance documents with the Registrar of International Business Companies/Registrar of Limited Partnerships. Client details and activities are retained at trust company level. However, trust companies provide Certificates of Due Diligence to the Registrar upon incorporation and annually. This certificate is a document which must be signed by a director or senior officer of the trust company certifying that due diligence in relation to the identity and probity of the beneficial owners and officers of the proposed IBC, and also in relation to the proposed transactions of the IBC, has been conducted and that the requirements of the MLO have been met. 'Beneficial owner' is not further defined in the IBCO.

970. Section 9 of the MLO provides:

> *(2) Subject to section 10, identification procedures maintained by a person are in accordance with this section, if, in a case to which this section applies, they require reasonable measures to be taken for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting.*

971. The above section requires parties subject to the MLO, including trust companies, to maintain identification procedures in relation to beneficial ownership. Section 9(4) provides that in relation to an applicant for business who is or appears to be acting as an agent of a principal (whether undisclosed or disclosed for reference purposes only), it shall be reasonable for such relevant financial institution to accept a written assurance from the applicant for business to the effect that evidence of the identity of any principal on whose behalf the applicant for business may act in relation to that person will have been obtained and recorded under procedures maintained by the applicant for business.

972. Nominee shareholders and nominee directors appear to be part of the system of company law in Brunei. It is not clear that there are sufficient controls over nominee shareholders to ensure that beneficial ownership information is available. It is not clear that there are sufficient controls over nominee directors to ensure that the identity of the 'mind and management' of a corporation are available to ensure that the true identity of beneficial owners is available to the authorities.

Competent authorities access to adequate, accurate and current information on beneficial ownership and control

973. The ROC sits within the AGC and maintains a register of company, including information on members, shareholders and directors. The ROC database is available to regulatory agencies and LEAs.

974. Section 95 of the Companies Act requires every company to keep a register of its members and shareholders, and particulars of the percentage of shares owned. Section 98 provides that the register of members must be kept at the registered office of the company and shall be open for inspection during office hours by any member without charge and of any other person on payment of B$5 or such sum as the company may prescribe. While s95 does provide access to details of shareholders, there is no requirement for beneficial ownership to be disclosed as part of the register.

975. Under s3(6) of the IBCO an IBC or any officer thereof shall, on being required by the Authority, the Registrar, or any person authorised in writing by either of them, produce any such book, register or record.

976. Further under s28 of the RATLO, the Authority under that legislation has a general power to require information and documents, whereby:

> (1) The Authority may by notice in writing served on a licensee or former licensee, or a person who is or was a controller or officer in relation to the licensee or former licensee, or any associate or employee of such a controller, or any interested person require the person on whom the notice is served:
>
> *(a)* to provide to the Authority such information and documents at such time and place as may be specified in the notice; and
>
> *(b)* to attend at such place and time as may be specified in the notice and answer questions which the Authority or any duly authorised officer or agent of the Authority reasonably requires him to answer;
>
> being information, documents or questions relating to the business of the licensee or former licensee concerned.

> Confidentiality of client accounts.
> 35.
> (1) Except as provided by subsection (2) and sections 34 and 36, no official of a licensee (including a director or an employee) and no person who, by reason of his professional, banking, insurance or other relationship with a licensee, has by any means access to the records of a licensee or any registers or correspondence or material with regard to the account of any client of that licensee shall, at any time (whether while he continues as such an official or while his professional relationship continues or thereafter) give, divulge or reveal any information whatsoever regarding the moneys or other relevant particulars of the account of that client, and any person who acts in contravention of this subsection shall be guilty of an offence or liable on conviction to imprisonment for a term not exceeding two years, a fine not exceeding one hundred thousand dollars or both.
> (2) This section does not apply where:
>
> *(a) information is or had already been made available to the public from other sources, or where information is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it;*
>
> (b) *the client or his personal representative gives written permission to the disclosure of the information;*
>
> (c) *the client is declared bankrupt or being a company, is being wound up;*

(d) *the disclosure of the information is ordered by the Court for the purposes of civil proceedings within Brunei Darussalam;*

(e) *the officials of a licensee by compulsion of any written law as defined in section 2 are required to give information to the Authority, or to a police officer or a public officer who is* duly authorised under that law to obtain that information, or to a Court in the investigation or prosecution of a criminal offence under any such law;

…

(h) *the Court* has, on the application of the Authority or the licensee, so ordered.

977. Section 35(2)(e) has the effect of stopping competent authorities obtaining company records from company registries and company service providers registered under RATLO, except in the context of an investigation or prosecution. The operation of an administrative FIU would not meet the definition of 'investigation', nor would the work of the AML/CFT regulator, such as the BIFC.

General power to require information and documents

28. (1) The Authority may by notice in writing served on a licensee or former licensee, or a person who is or was a controller or officer in relation to the licensee or former licensee, or any associate or employee of such a controller, or any interested person require the person on whom the notice is served —

(a) to provide to the Authority such information and documents at such time and place as may be specified in the notice; and

(b) to attend at such place and time as may be specified in the notice and answer questions which the Authority or any duly authorised officer or agent of the Authority reasonably requires him to answer; being information, documents or questions relating to the business of the licensee or former licensee concerned.

(2) Nothing in this section shall require the disclosure or production by a person to the Authority or to a person authorised by it of information or documents in circumstances which would cause a breach of section 35.

Suspension of licence.

30. (1) The authority may if he thinks fit suspend a licence, on any of the grounds set out in section 31(1) —

(a) pending compliance with any directions given to the licensee by the Authority under subsection (2) and the receipt of such evidence as the Authority may require thereunder that the directions have been complied with; or

(b) pending completion of any investigation carried out pursuant to the powers conferred by section 28.

Bearer Shares

978. Section 73(1) of the Companies Act forbids the issue and effect of share warrants to bearer. Section 73(1) holds that:

A company limited by shares, if so authorised by its articles, may, with respect to any full paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares therein specified

979. Section 5(5) of the IBCO, 2000 forbids bearer shares operating for international companies. Section 5(5) sets out that:

All shares in an IBC shall be registered shares (and, accordingly no shares in an IBC may be issued to bearer) and shares in an IBC may be either shares with par value or shares with no par value, but no IBC may have shares of both those descriptions.

980. Section97 of the Companies Act, however, indicates that that once a warrant issues the registered shareholder's name is removed. Section 17(2) of the IBCO permits an IBC to issue warrants. It appears that the holder of the warrant can then trade the warrant and the bearer of it can redeem the warrant for the issued shares. This may present the same risks as bearer shares.

981. It is not clear that ROC and BIFC have regulations or requirements for internal protocols for handling such warrants which would mitigate the risk of their operating in such a way that the bearer can redeem the warrant.

Additional element - *Measures to facilitate access by financial institutions to beneficial ownership and control information to more easily verify the customer identification data*

982. The ROC maintains ownership and management details of the company and they are in the public domain. Changes in ownership need to be updated as the Registry requires details of shareholders to be inserted in the annual returns which are to be submitted by companies yearly

983. The Registry of International Business Companies does not maintain the ownership and management details of the international business companies therefore they are not available for public search. These details are kept with the registered agent and are available to the Registrar as and when required. Law enforcement agencies may obtain cooperation from the Registrar to get information.

5.1.2 Recommendations and Comments

- Brunei should ensure that commercial, corporate and other laws require adequate transparency concerning the beneficial ownership and control of legal persons.
- Brunei should move to remove the overly restrictive secrecy provisions on RATLO agents which may impede them from providing access to adequate, accurate and current information on the beneficial ownership of legal persons.
- Brunei should take steps to ensure controls on nominee directors and shareholders (access to information on controlling parties and beneficial owners) are sufficiently managed to avoid ML/TF risks.
- Brunei should establish controls over share warrants to ensure that share warrants cannot be redeemed by a bearer in a way akin to bearer shares

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• Brunei does not require adequate transparency concerning the beneficial ownership and control of legal persons. • The existence of overly restrictive secrecy provisions on RATLO agents may impede competent authorities gaining access to adequate, accurate and current information on the beneficial ownership of international business companies. • A lack of controls over share warrants may enable share warrants to be redeemed by a bearer, which may present risks akin to bearer shares • It is not clear that risks presented by nominee directors (access to information on controlling parties) are sufficiently managed • It is not clear that risks presented by nominee shareholders (access to information on beneficial ownership) are sufficiently managed

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

984. Brunei law recognises the operation of common law trusts, as well as a Brunei-specific regime for international trusts under the ITO. There are no clear rules on who may establish a common law (domestic) trust, however the services of a lawyer are usually obtained. Brunei International Trusts established under the ITO must be settled by non-residents, and at least one trustee must be a resident licensed under RATLO, ie a Brunei trust company. Generally, only non-residents may be beneficiaries of an International Trust.

985. Constituent elements of a trust in Brunei are [descriptive text to follow].

986. Trusts are not separate legal entities in Brunei, and there is no central or other registry for the registration of trusts.

987. If the trustee is a corporate entity (such as a Trust Company), it must comply with the registration and reporting requirements for a company with BIFC.

988. Under the International Trusts Order (ITO) s2 defines international trusts in Brunei. At least one of the trustees must be a trust corporation or a wholly owned subsidiary of such a corporation licensed under s3(3) of the RATLO.

Preventing unlawful use of legal arrangements - ensuring adequate transparency of beneficial ownership and control

989. There is no central authority or other registry for the registration of trusts. If the trustee is a corporate entity (such as a Trust Company), it must comply with the RATLO registration and reporting requirements with the BIFC, however this does not extend to obtaining beneficial ownership information or registering the details of a trust with the BIFC.

Domestic trusts

990. Common law express trusts as usually formed in Brunei with the assistance of a lawyer. In such cases, there are no clear obligations on lawyers to obtain and maintain records of the beneficial ownership and control of such domestic trusts. While there are no relevant supervisory powers available, in the event that a LEA could identify any relevant parties, they may be able to use investigative powers to identify the beneficial owners and controllers of trusts.

991. There is no law in Brunei stopping trusts formed in a foreign jurisdiction from operating in Brunei.

International trusts

992. Under the ITO s3(2) defines international trusts in Brunei. At least one of the trustees must be a trust corporation or a wholly owned subsidiary of such a corporation licensed under s3(3) of the RATLO. While RATLO licensed trust companies serve as trustees of international trusts and manage client funds/property, neither the ITO nor RATLO require trust companies to keep a copy of the trust deed or details of other trustees or to take steps to obtain, verify and retain records of the details of the trust or other similar legal arrangements.

993. Section 90 of the ITO covers disclosures of the details of international trusts. Such details include the trust instrument and written instruments committed pursuant to the trust instrument as well as the financial records of the trust. Section 90(3)(c) provides that trustees shall be under no legal obligation to disclose the existence of their trust to ‘any persons whomsoever, whether

beneficiaries or not, who are not entitled to vested interests (whether or not in possession and whether or not subject to defeasance) under the trusts'.

994. In contrast to the provision of the ITO under s90, RATLO appears to require licensed trust companies to share such records on trust company clients with the authorities in certain circumstances. This generally would not extend to the trust instrument or identities of other trustees, as these are not generally available to RATLO registered trust companies.

995. Section 23 of the RATLO requires that licensed trust companies must keep a separate account in the licensee's records for each person for whom he is a trustee and must hold each client's trust property separately from other clients property.

996. Section 28 of the RATLO provides that the Authority may serve notice on current or former licensees to require them to provide all necessary records 'relating to the business of a licensee' which includes trust business. Section 28 is overridden by s35, which covers confidentiality of client accounts.

997. Confidentiality provisions at s35(1) sets out that records of RATLO licensees or material relating to any client shall not be divulged. Section 35(2) provides cases to lift this secrecy provision, including (b) the client giving written permission to share information; (d&f) the court makes an order; or (e) officials are obliged under another written law to give information to the authority or a police officer in the investigation of a criminal offence.

998. In practice, trust service providers in Brunei consider that under the ITO they would need to first seek a client's permission before sharing any records with authorities. Trust providers do not see themselves as obliged to keep records of the trustees when establishing a trust. If BIFC or other authorities were to seek details of trustees from the TCSP, the trustee would need to ask the other trustees for details.

5.2.2 Recommendations and Comments

999. Brunei should require adequate transparency concerning the beneficial ownership and control of legal arrangements.

1000. Brunei should ensure that TCSPs are able to share the widest range of information with competent authorities regarding the beneficial ownership of international trusts.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**PC**	• Brunei does not require adequate transparency concerning the beneficial ownership and control of legal arrangements. • The existence of overly restrictive secrecy provisions on RATLO agents may impede competent authorities gaining access to adequate, accurate and current information on the beneficial ownership of international trusts.

5.3 Non-profit organisations (SR VIII)

5.3.1 Description and Analysis

Overview

1001. The Brunei not-for-profit-organisation sector is relatively small with 443 registered societies and four registered not-for-profit companies limited by guarantee. There were 495 applications for the collection of sponsorship and donations granted in the period February – December 2009.

1002. The NPO sector consists entirely of domestic entities, and there are currently no international NPOs present in Brunei. The Societies Order 2005 has provision for international NPOs to function under ss6 and 19. NPOs are overseen by the Registry of Societies, which is part of the Royal Brunei Police Force.

Legal Framework

Societies

1003. The Societies Order 2005 governs all aspects of societies including the definition of a society, requirements for compulsory registration, details and documents required when applying for registration, requirements of reporting, and the conditions of de-registration.

1004. The Societies Order 2005 describes societies as "any club, company, partnership or association consisting of 10 persons or more, any type or objective whether temporary or permanent", with some preclusions applying to for-profit enterprises, companies, corporations, trade unions, bodies registered under the Co-operative Societies Act , schools and public servant bodies.

1005. The Registry of Societies (ROS) is set up under s3 of the Societies Order 2005 as a function of the Royal Brunei Police Force. The Commissioner of Police is designated as the Registrar of Societies and is responsible for practical oversight of the ROS.

Companies

1006. The Companies Act details the conditions under which an NPO may register as a guaranteed company. By limiting the board's guarantee, the company is committed to not-for-profit financial activity. According to the Companies Act a company with limited guarantee means that they are "a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee) guaranteed at amounts around B$100 per person."

1007. Guarantee status of an NPO is indicated at registration, there is no further proof of NPO status required although the Companies Act states that His Majesty must be satisfied that the "limited company is to be formed for promoting commerce, art, science, religion, charity, or any other useful object".

1008. Limited guaranteed companies in Brunei must abide by all aspects of the law in regards to behaviour and reporting.

1009. The Registrar of Companies has only four companies registered as limited by guarantee: an international school, two community organisations and an aid/care organisation. All four qualify to operate for 'charitable purposes'.

Charities Collection Agents

1010. Collection of donations by individuals, organisations or government agencies, is governed by the Subscriptions Control Act 1984, administered by the Ministry of Home Affairs which issues one-off permits to allow such collection.

1011. Each permit is valid for one month only and a copy of the balance sheet for the donation must be presented to the Ministry of Home Affairs

1012. Public subscriptions collection should not occur without the Minister for Home Affairs' authority. The Subscriptions Control Act sets out the conditions under which the Minister's authority will be granted in order for subscriptions collection to occur and the subsequent sanctions should these conditions not be met when either solicitation or receipt of subscriptions occurs.

Zakat – tithe

1013. The Brunei Islamic Religious Council (MUIB) has the authority over the management of collection and distribution of zakat under the Islamic Religious Council Act and Kadi Courts Act (ss114 to 121) and Tithe and Fitrah regulation 1969. Many Brunei citizens observe religious duties to pay zakat fitrah, or tithe. The Brunei Islamic Religious Council is a governmental body and distributes zakat to the poor and needy based on principles set down in Shariah law and under the direct control of the government, rather than an NPO sector body.

Reviews of the Domestic Non-Profit Sector

1014. Brunei undertook a general review of the Societies Order in 2005 and amendments were subsequently made to increase the enforcement powers of the Registrar.

1015. Reviews of the Companies Act occurred in 2001 and 2003 respectively but did not consider sections dealing with guaranteed companies.

1016. The ROS undertook a limited review of the NPO sector in July 2008 in response to the APG's program to encourage APG members to conduct NPO reviews. Brunei's submission to the APG included an overview of the legal framework and numbers of NPOs, but did not include an analysis of adequacy or effectiveness in relation to CFT.

1017. The ROS has powers to review information on the nature of the NPO sector and recently did so with a view to bringing the sector as a whole into line with the provisions of the Societies Order. After de-registering almost 340 inactive societies, those remaining represent a number of purposes and groups including religious, youth, sports, women, professional, entrepreneurial, foreigners, recreation, culture, ethnicity, education and politics. Sporting and professional are the largest two groups by number of societies.

1018. As noted above, the ROC has registered only four guaranteed companies. The ROC does not apply any special TF review to the four guaranteed companies – although the small number would result in any issues being more distinct.

1019. No proactive review has been undertaken with the aim of identifying TF vulnerabilities in the NPO sector. The ROS reviews societies' activities in general, but not specifically in the context of potential vulnerabilities to TF. The ROS has close connections with fellow RBPF units.

1020. ROC does not undertake assessments of guaranteed companies' potential vulnerabilities to TF activities.

1021. The ROS is aware of some active societies that are not registered, mainly sports clubs, and is seeking to have these clubs register. The ROS believes that these unregistered NPOs are small in both number and size.

Outreach to the NPO sector

1022. To date neither ROS nor ROC has delivered awareness-raising, or outreach, regarding risk and prevention of TF abuse of the sector.

1023. The ROS has undertaken outreach to promote transparency, accountability and integrity in the sector. In January 2005 ROS delivered a roadshow with the Ministry for Welfare, Culture and Sports, on the new provisions applying to registered societies. The roadshow was aimed at office bearers and focused on the obligations of registration and reporting, accountability of members, and issues of quality of financial reports.

1024. There are currently no plans by either ROS or ROC to deliver to outreach regarding possible TF abuse or to develop best practices to address TF risks.

1025. Good governance and transparency have been promoted via close oversight of annual reporting, the 2005 ROS roadshow, and in the 2009 ROS review of active/non-active NPOs.

Licensing and Registration, Supervision and Monitoring

1026. Brunei has not identified which NPOs account for a significant portion of the financial resources under control of the sector and the substantial share of the sector's international activities. As such, regulatory measures are applied equally to all societies and not-for-profit guaranteed companies.

Subscriptions Control Act – Ministry of Home Affairs

1027. Authorities indicate that charitable collection occurs by un-registered NPOs, particularly in relation to causes in the Philippines. Cases were noted where such charities were not registered under the Subscriptions Control Act or the ROS. These cases are generally reported by the public to the police.

Societies Order - ROS

1028. Under s10 of the Societies Order, at the time an entity applies for registration as a society the ROS can make any inquiries deemed necessary to satisfy the conditions of registration.

1029. Section 22 of the Societies Order details the requirements of the compulsory submission of annual reports, which must include information on any amendments of the society's rules, a complete list of office-bearers, the address of society/place of business, a list of any ex-State affiliations or associations, and annual financial information.

1030. For any changes to office bearers, societies need to provide proof of identity of the new office bearers. The ROS then undertakes vetting before approving the change of office bearer.

1031. The ROS inspects annual reports for changes that may either void the NPO's status as a society or is otherwise indicative of suspect behaviour.

1032. The ROS recently carried out an activity to update its registration of societies to ensure that only active societies remain on the register. The ROS has de-registered 337 societies as part of this process.

1033. The ROS has de-registered societies that failed to comply with annual reporting obligations.

1034. The Societies Order grants ROS power to undertake on-site supervisory visits. ROS intends on starting a supervisory regime in the near future but has not yet scheduled as such.

Companies Act – ROC

1035. The ROC receives annual reports from guaranteed companies as obliged under ss107 – 110 of the Companies Act. The annual reports must include information on the address of the registered office, the directors and, where applicable, shareholders, a register of members, movement of shares, indebtedness (mortgages and charges) and annex an audited balance sheet.

1036. The ROC scrutinises the annual returns of all four guaranteed companies to ensure they are not using profits for any activity other than those stipulated in their registration.

1037. Members of any company can apply to the court to inspect the affairs of a company. ROC lacks powers to request inspection of a company.

1038. Both ROS and ROC require a member of the board to apply for registration in person at their respective premises.

Public Availability of Information

1039. Records are currently maintained in paper form by ROS. ROS is developing a database and online system to bring the registration and reporting system into an electronic form and is developing a standard annual report form for use with a new database.

1040. Selected information on individual societies is publicly available on request to ROS, such as office-bearers and registered purpose of society. It is intended similar information will be publicly available via the new electronic system.

1041. The ROC has an electronic database of information.

1042. Banks may request information on companies and generally would do so via their lawyers

1043. RBPF are able to access the database information by provision of a memo from the Commissioner of Police thereby granting them permission to file and copy whatever information they require.

1044. The general public may pay to access the database but cannot obtain copies of information

1045. Both ROS and ROC are planning for companies to submit their annual activity reports electronically.

Sanctions

1046. Under the Societies Order, the ROS can cancel registration and suspend or order dissolution of a society . An NPO can be deemed as unlawful if being used or is likely to be used for any unlawful purpose . Sanctions range from B$1000 for administrative or regulatory breaches up to B$15,000 and imprisonment for “a term not exceeding five years”.

1047. For non-profit companies, the Companies Act provides for fines and up to two years imprisonment in the case of non-compliance with various aspects of the Act including failure to submit annual reports and submission of false information.

- All companies can be wound-up voluntarily either by the Court or under supervision of the Court
- A company may be ordered to be wound-up by the Court where it violates its obligations under the Act, or, under Section 162(f), “the Court is of the opinion that it is just and equitable that the company should be wound up.”
- Under the Subscriptions Control Act, fines available for breaching s2 regarding conditions under which a permit is granted can be liable for a fine of B$4000 and up to six months imprisonment. Moneys received or solicited in contravention of the Act, shall forfeit to the Government and pay a fine of B$8000.

1048. The sanctions available to authorities range from criminalisation of corporate liability to fines and administrative actions such as deregistration. The sanctions are persuasive and proportionate to the size and aims of the sector.

Record Keeping

1049. The ROS may order a registered society to furnish the Registrar with records as outlined in the Societies Order.

1050. Neither the Societies Order nor any other applicable law requires Societies to maintain their records for any period of time from year to year. However in practice societies are generally 'expected' to keep records for five to seven years. The ROS keeps all societies records, including annual reports, indefinitely.

1051. All companies are required to keep copies of their minutes of proceedings from general meetings and their books of account indefinitely.

Investigation and Information Gathering

1052. The ROS has enforcement powers which include powers of investigation, to summon witnesses, as well as powers of entry and search on any place, and to conduct inspection of any equipment, materials, and records belonging to any society.

1053. In the case of a society requiring further investigation, the ROS would refer the matter internally within the RBPF to the Commercial Crimes Investigation Division, who in turn would liaise with the FIU and other departments as required.

1054. ROC does not have powers to request an inspection of the affairs of a company, however they can make available all relevant records to the police for investigation.

Domestic Cooperation

1055. ROS is not hindered in sharing information held on societies among government agencies.

1056. ROS is represented by RBPF on both the National Committee on Anti-Money Laundering and Combating Terrorist Financing (NAMLC) and the Counter-Terrorism Committee. ROS represented on NAMLC through the RBPF. ROS has cooperated with LEAs in regards to commercial crime and anti-corruption. ROS can be invited to a NAMLC if either party deem it necessary.

1057. The Ministry of Home Affairs shares with RBPF the terms and conditions it has granted an organiser for any 'Subscription Events'.

Access to Information during Investigations

1058. Information on societies is readily passed between RBPF departments and between the RBPF and the FIU.

1059. The ROC has demonstrated its willingness to cooperate with LEAs in regards to commercial crime and anti-corruption. The ROC requires a memo from the Commissioner or equivalent in order to give LEAs access to company records.

International Requests

1060. As discussed in s2.6 of this report, Brunei's LEAs actively participate in information sharing via a number of international forums and frequently on a bilateral basis with neighbouring jurisdictions.

1061. ROS, as a department within the RBPF, is able to contribute to and take advantage of well established police channels for international cooperation, in particular through INTERPOL and ASEANPOL.

1062. One challenge for the location of the ROS for the RBPF is that they have not yet established clear channels of information exchange with other NPO regulators in foreign jurisdictions.

1063. ROC has not yet made or responded to international requests for information relating to NPOs. There are no legal obstacles for the ROS to provide information via the FIU, police or other agency-to-agency channels, or through MLA channels.

R 30 – Resources

1064. There are ten permanent staff members working in the ROS who oversee the small sector and so are more likely to be sensitive to apparent issues; however this is not a formal sectoral review system.

R 32 – Statistics

1065. The ROS maintains statistics on the registration and operation of societies.

Effectiveness

1066. The majority of NPOs are registered as a society and as such are regulated by both legislation and the oversight of the ROS. The recent campaign by ROS to identify non-reporting by societies is a welcome development. Due to the ROS's location within the RBPF, instances of abuse can be quickly referred for further action. However the ROS does not have a set supervision timetable nor conduct regular on-site visits in order to actively supervise the health of the sector.

1067. The ROC does not pay close attention to the activities of the four guaranteed companies at this time.

1068. The requirement for fund collection agents to register with the Ministry of Home Affairs is positive in the matter of transparency.

5.3.2 Recommendations and Comments

1069. Authorities should:

- Conduct periodic assessments by reviewing information on the NPO's sector potential vulnerabilities to TF
- Conduct outreach on risks and vulnerabilities of NPOs for abuse related to TF
- Require societies to maintain records for at least five years of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation.
- Ensure potential risks for abuse of non-profit companies are effectively managed and adequate oversight is provided for registered NPO that are companies.
- provide the ROC with powers to inspect not-for-profit companies.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR. VIII	**PC**	• Lack of review to assess the sector's potential vulnerabilities to terrorist financing. • Lack of effective monitoring of the sector • Lack of outreach to NPOs regarding specific vulnerabilities to abuse • No clear obligations for record keeping by societies

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National cooperation and coordination (R.31 & 32)

6.1.1 Description and Analysis

Domestic cooperation between competent authorities on AML/CFT policies and activities

National Committee on Anti Money Laundering and Combating Terrorism Financing

1070. Brunei has a high-level national coordination committee for AML/CFT, known as the National Committee on Anti Money Laundering and Combating Terrorism Financing (NAMLC) focusing on policy objectives. The NAMLC has a formally endorsed Terms of Reference which sets out the roles and functions of the NAMLC and responsibilities of each of the members in relation to AML/CFT. The objectives of the NAMLC are as follows:

i. To develop national policies on measures to combat ML and TF activities, reviewing strategies from time to time, reviewing and amending AML/CFT-related legislation and examining guidance notes;

ii. To consider and approve recommendations as may be appropriate on possible action plans prior to submission to the Minister of Finance;

iii. To facilitate coordination and exchange of information between members as well as with counterpart committees both regionally and internationally.

iv. To establish networks with counterpart committees in other jurisdictions.

v. To consider and submit recommendations as appropriate on membership in relevant regional and international organizations and relevant conventions.

1071. The Ministry of Finance is the lead agency for AML/CFT and the Permanent Secretary, Ministry of Finance chairs the NAMLC, with the FIU serving as the Secretariat. Members of NAMLC include:

- Financial Institutions Division (FID), Ministry of Finance
- Brunei International Financial Centre (BIFC), Ministry of Finance
- Brunei Currency and Monetary Board (BCMB), Ministry of Finance
- Royal Customs and Excise Department (RCED), Ministry of Finance
- Attorney General's Chambers (AGC)
- Royal Brunei Police Force (RBPF)
- Anti-Corruption Bureau (ACB)
- Narcotics Control Bureau (NCB)
- Internal Security Department (ISD)
- Ministry of Foreign Affairs and Trade (MOFAT)
- Immigration and National Registration Department (INRD)
- Ministry of Home Affairs (MHA)

1072. An objective of the NAMLC is to develop national AML/CFT policies and measures by reviewing strategies, reviewing and amending AML/CFT-related legislation and examining guidance notes. NAMLC does not yet appear to have established a sub-committee structure or some other process to support and focus on particular areas of reform of AML/CFT measures. For example, the process to prepare, vet and issue AML/CFT regulations/notices does not appear to have been well supported by the existing structures in the NAMLC.

National Committee on Transnational Crime (NCTC)

1073. The National Committee on Transnational Crime (NCTC) is established to combat terrorism, including terrorist financing. The NCTC is chaired by the Permanent Secretary of the Prime

Minister's Office and includes AGC, MoF, RBPF, MoFAT, Ministry of Defence, the ISD, Immigration and Customs.

Joint Working Committee on Counter Terrorism

1074. The Joint Working Committee on CT brings together law enforcement and security agencies to coordinate intelligence and information sharing. The working committee reports to the National Security Committee. The Working Committee develops risk assessments and meets regularly (monthly) and on an ad-hoc basis. While the FIU is not yet involved in the committee, engagement does occur between the joint committee and the FIU.

Additional element - mechanisms for consultation between competent authorities and regulated sectors

1075. The supervisory authorities work closely in consultation with the respective sectors. Mechanisms are in place for consultation between competent authorities and the financial sector on the development of regulations, guidelines and the like. While these mechanisms have been used to support engagement with the financial sector, similar outreach has not taken place with the DNFBP sector.

6.1.2 Recommendations and Comments

1076. There are cooperative and collaborative relationships between relevant authorities with domestic responsibility for AML and CFT. The existence of NAMLC and NCTC provides an opportunity to enhance cooperation, both to develop and implement policies for AML/CFT.

1077. The NAMLC is the forum for all LEAs, the FIU and the AGC to meet every three months to discuss financial investigations with a view to increasing capacity and knowledge and creating awareness in law enforcement agencies.

1078. Whilst infrastructure for coordination exists, there is little evidence of substantive action taken by the NAMLC or NCTC at the time of the mutual evaluation to progress key AML/CFT policies past the draft stage. This is evidenced by a significant number of AML/CFT reforms having been in draft for a number of years.

1079. Brunei should:

- Ensure coordination committees are used to drive forward reforms to AML/CFT policies
- Utilise coordination mechanisms to implement AML/CFT policies, including operational level cooperation, information sharing and capacity building.
- Consideration should be given to increasing the role of NAMLC to develop a culture within law enforcement agencies to 'follow the money' in investigations of ML and TF.
- Utilise NAMLC to coordinate operational information where LEAs have overlapping functions.

6.1.3 Compliance with Recommendations 31 & 32 (criteria 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**PC**	• Policy level coordination mechanisms are not being used to effectively develop and implement AML/CFT policies. • Operation-level coordination mechanisms for AML are not yet in place.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

1080. Brunei became a party to the Vienna Convention in November 1993. Brunei acceded to the United Nations Convention against Transnational Organised Crime in March 2008. Brunei acceded to the UN International Convention for Suppression of the Financing of Terrorism (the Terrorist Financing Convention) on 4 December 2002.

1081. There are serious gaps remaining in Brunei's full implementation of the Palermo Convention and the TF Convention, as well as UNSCR 1267 and 1373. See section 2 of this report for full details.

Additional elements

1082. In February 2006 Brunei became party to the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. The passage of the MACMO 2005 and the establishment of the MLA Secretariat in the AGC represent significant steps to implement the ASEAN Treaty.

1083. In January 2007, ASEAN Member States, including Brunei, signed the ASEAN Convention on Counter-Terrorism (ACCT) which aims to enhance the region's capacity to combat terrorism through enhanced counter-terrorism cooperation. Brunei is currently working towards the ratification of the ACCT.

1084. Brunei ratified the UN Convention Against Corruption in December 2008.

6.2.2 Recommendations and Comments

- Brunei should take steps to fully implement relevant obligations set out in the Palermo and Terrorist Financing Conventions.
- Take steps to fully implement UN SCR 1267 & 1373

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	• While Brunei is a party to the relevant conventions, deficiencies remain with their implementation
SR.I	**PC**	• Brunei has not fully implemented the Terrorist Financing Convention • Brunei has not fully implemented UN Security Council Resolutions 1267 and 1373

6.3 Mutual Legal Assistance (R.36-38, SR.V, R.32)

6.3.1 Description and Analysis

Legal framework

1085. Brunei has established a consolidated mutual legal assistance regime through the Mutual Assistance in Criminal Matters Order (MACMO) 2005 and the implementation support of the AGC Mutual Legal Assistance (MLA) Secretariat. The MACMO, supported by the MLA Secretariat, allows Brunei to consider requests from the widest range of jurisdictions and has general applicability to support all criminal statutes in Brunei. The MACMO applies to international cooperation for predicate offences, ML and TF. The MACMO has an objective to facilitate the provision and obtaining by Brunei of international assistance in criminal matters, including:

(a) the obtaining of evidence, documents, articles or other things;

(b) the making of arrangements for persons, including detained persons, to give evidence or assist an investigation;

(c) the confiscation of property in respect of an offence;

(d) the service of documents;

(e) the identification and location of persons;

(f) the execution of requests for search and seizure;

(g) the provision of originals or certified copies of relevant documents and records, including Government, bank, financial, corporate or business records; and

(h) any other type of assistance that is not contrary to the laws of Brunei.

1086. Provisions to give effect to foreign restraint orders, charging orders and confiscation orders are also provided for under both CCROP (ML and proceeds of serious crimes with the exception of drug offences) and DTROP (laundering proceeds of drug offences, as well as proceeds of drug offences). However, Brunei may only render assistance in the enforcement of foreign confiscation orders and proceedings in Brunei provided that the requesting country is a designated country or territory under CCROP and DTROP. This scheme involves all ASEAN countries as designated countries.

1087. Reliance on CCROP for provisional measures and confiscation is limited by the scope of coverage of CCROP. Property which may become subject to confiscation is limited to proceeds from those offences with a sanction of more than five years on conviction. This threshold means that TF is not included, which undermines SRV.

Production, search and seizure of information, documents, or evidence (including financial records) from financial institutions, or other natural or legal persons

1088. MACMO has a number of provisions whereby items must be provided to an 'authorised officer'. Section 2 of the MACMO defines 'authorised officer' to mean officers of the Narcotics Control Bureau, Senior staff of the Anti-Corruption Bureau, any police officer and any other person or class of person appointed by the Minister to be an authorised officer or authorised officers for the purposes of the MACMO.

1089. In relation to ML, TF and predicate offences, pursuant to a mutual assistance request s30 of the MACMO allows the Attorney General to obtain documents, articles or things (including financial records) held by financial institutions without a court order. Under that section the Attorney General may issue a written order requiring a financial institution to produce relevant articles to an authorised officer within a specified period and in a specified form. These records relate to account details, related accounts and transaction records. The definition of 'financial institution' contained in the MACMO extends to banks (including Islamic and International banks), Finance Companies, the

Perbadanan Tabung Amanah Islam Brunei, money-changers and remittance businesses, moneylenders and any person designated by the Minister by notification in the Gazette. No such notifications have been made in the Gazette.

1090. Given the definition of 'financial institution' in the MACMO, a court production order would be required for obtaining financial records from insurance companies, securities companies and trust and company services providers under RATLO, as these are not covered under s30 of the MACMO.

1091. Section 29 of the MACMO provides a power for the Attorney General to apply to the court for wide ranging production orders applicable to natural and legal persons, including financial institutions. If the court is satisfied that the production order is necessary or desirable for the purposes of the related criminal matter, it may make an order to produce to an authorised officer for him to take away; or to give an authorised officer access to such items within seven days of the order. An order under s29 relates both to publicly available records and copies of any Government records, documents or information which under the law of Brunei are not available to the general public; and may include, at the court's discretion, items subject to legal privilege. Article 31(4) clarifies that an order made under s29 shall override any secrecy obligation or other restriction upon the disclosure of information imposed by any written law.

1092. Where a court orders any person under s29 to give an authorised officer access to any document, article or other thing on any premises, it may, on the same or a subsequent application grant entry to the premises, to allow an authorised officer to enter those premises to obtain access to those items.

Taking evidence or statements from persons

1093. Section 27 of MACMO provides that the Brunei Attorney General may assist in arranging (a) the taking of evidence in Brunei; or (b) the production of documents, articles or other things in Brunei. Under s27(2) the Attorney General may in writing authorise a Magistrate to take the evidence before transmitting it to the requesting country.

Providing originals or copies of documents, records, information and evidentiary items

1094. Section 31(6) of MACMO provides that with the Attorney General's direction, copies and originals of any document, article or other thing obtained under s29 may be sent to the appropriate authority of the foreign country concerned.

Effecting service of judicial documents;

1095. Section 49 of the MACMO provides for Brunei to assist with effecting service of judicial documents on a person in Brunei in relation to predicate offences, ML and TF. The Attorney General may authorise assistance in accordance with the procedure proposed in the request or in accordance with the Rules of Supreme Court of Brunei (R1 of Ch.5). Brunei will provide a certificate as to service to requesting authority. The Attorney General shall require the requesting country to provide an undertaking that that person will not be subject to any penalty by reason only of his refusal or failure to accept or comply with the summons, notwithstanding any contrary statement in the summons.

Facilitating the voluntary appearance of persons to provide information or testimony

1096. Section 35 of MACMO provides for assistance in arranging attendance of a person to give or provide evidence or assistance in relation to a criminal matter in a foreign country. The Attorney General may in writing authorise assistance in accordance with this section, and may assist in the making of arrangements to facilitate that attendance. Section 36 provides for assistance in arranging attendance of a prisoner in a foreign country for specified purposes. The Attorney General may in writing authorise assistance for a prisoner to attend to provide evidence or assistance relevant to that criminal matter if the person concerned has freely consented to attend as requested and the foreign country has given an adequate undertaking that the person to whom the request relates shall not be

detained, prosecuted, or punished for any offence alleged to have been committed before his departure and will not be required to give or provide evidence or assistance in respect of any criminal matter in that foreign country other than the matter to which the request relates.

Identification / asset tracing pursuant to MLA request

1097. Articles 29 and 30 of MACMO would be available to assist authorities to identify assets laundered or intended to be laundered. Section 2.3 of this report details powers available under DTROP, CCROP, PCA and CPC enabling police and prosecution agencies to obtain production orders either directly or from the Court pertaining to investigative and evidentiary materials and information held by public and private bodies. Every person (legal or natural) required by any Officer of the ACB or a police officer to give any information on any subject is legally bound to provide the information pursuant to s22 of the PCA. Of these measures, only the CPC is clearly available in relation to providing MLA for TF.

Provisional measures

1098. Section 31(2) of the CCROP establishes a basis for Brunei to provide assistance in relation to provisional measures. These would apply to a limited range of predicate offences and ML, but not to TF or other offences with a maximum sanction of five years or less. Section 31(2) of the CCROP refers to a Schedule of comprehensive measures that allow for provisional actions to be taken relating to foreign proceedings which have been, or are to be, instituted and which may result in external confiscation orders. Section 6 of the Schedule to CCROP sets out restraint orders which may be made by the court on application by the Attorney General. Section 6(1) provides that the court may make an order to prevent any person (natural and legal) from dealing with any 'realisable property'. Section 3(2) of the Schedule to CCROP defines 'realisable property' any property held by the defendant and any property held by a person to whom the defendant has made a gift.

1099. Under CCROP Schedule 6(3) a restraint order may apply to all realisable property held by a person regardless whether the property is listed in the restraint order and to realisable property held by a specific person being property transferred to him after the making of a restraint order. A restraint order may be made *ex parte*. Where the court has made a restraint order, the police may seize the property for the purposes of preventing realisable property from leaving Brunei.

Confiscation

1100. Section 32 of CCROP provides that the Attorney General may apply to the court to register final confiscation orders. The Court will register such orders provided it is satisfied that the order is in effect, not subject to appeal, is in the public interest and remains unpaid in the foreign country.

Ability to provide assistance in a timely, constructive and effective manner

1101. The Mutual Legal Assistance Secretariat lies within the AGC, and the Attorney General is the authority ultimately responsible for deciding on whether to render assistance to any request. The procedures as laid down under the 2005 MACMO are not overly cumbersome.

1102. Capacity of law enforcement agencies in Brunei to respond to MLA requests is relatively weak and may hamper the timely and effective provision of assistance. While there is some capacity in the ACB, police appear to lack experience in responding to formal MLA requests.

MLA not subject to unreasonable, disproportionate or unduly restrictive conditions

1103. Brunei adopts an inclusive approach to provide mutual legal assistance and does not apply unreasonable, disproportionate or unduly restrictive conditions on providing assistance.

1104. Under Section 22 of MACMO, requests for assistance will be considered based upon three broad conditions:

- The existence of a treaty, MoU or other agreement between the requesting country and Brunei.

- in accordance to a multi-lateral convention to which both are parties and the assistance is provided on that basis.
- on the basis of reciprocity – ie an undertaking from the requesting country that it will reciprocate the assistance (AGC having considered the seriousness of the offence and any other relevant matters).

1105. Brunei's inclusion in the ASEAN MLA in Criminal Matters Treaty, as well as cooperation provisions contained in the Palermo, and Terrorist Financing Conventions, as well as the UNCAC would further assist with implementation of MACMO.

1106. Under s25 of MACMO, the Attorney General may determine conditions on the granting of assistance in a particular case or class of cases. In practice, this provision has not been used in a disproportionate way.

1107. Section 23 of the MACMO sets out the form in which a request should be made, however these are not unduly restrictive.

1108. Section 24 of the MACMO sets out mandatory grounds to refuse assistance are:

1) the country has in respect of the request failed to comply with the terms of treaty, MoU or other agreement between Brunei and the country;

2) the offence to which the request relates would have constituted an offence under military law in Brunei;

3) the request was made to prosecute etc a person on account of his colour, race, ethnic origin, sex, religion, nationality or political opinions;

4) the offence is not of sufficient gravity;

5) the request can be dispense with by other means;

6) it would be contrary to the interests of the public and prejudicial to the sovereignty, security or national interest of Brunei;

7) the country has failed to undertake that the article etc will not be used for a matter other than the criminal matter in respect of which the request was made (unless the AG consents);

8) the country has failed to undertake to return the article etc, upon requests the AG, obtained through a request for assistance to obtain evidence through search and seizure);

9) the person whose attendance was requested does not consent to attend; or

10) the provision of the assistance could prejudice a criminal matter in Brunei.

Clear and efficient processes for the execution of MLA requests

1109. The Secretariat for Mutual Legal Assistance lies within the AGC and the decision to render or otherwise lies with the Attorney-General. As such, any requests can be dealt with expeditiously. Further, procedures under the MACMO to make a request or to decide whether to render assistance are not cumbersome and are supported by template request forms available online and supported by explanatory documents as well as inter-agency structures .

Refusal on the basis of fiscal offence

1110. Neither MACMO nor any other statute in Brunei makes fiscal matters a ground for refusal, either mandatory or discretionary.

Refusal on the basis of secrecy or confidentiality requirements

1111. One of the objects of the MACMO, as stated above, includes rendering assistance with regard to the provisions of originals or certified copies of relevant documents and records bank and financial records. Secrecy of confidentiality on financial institution is not one of the grounds of mandatory refusal under the Order.

1112. The powers of the competent authorities to obtain documents and information including compulsory production of records held by financial institutions and other persons, search of persons and premises and for seizure and obtaining evidence (as has been described above) can be used in response to MLA provided under the MACMO.

Avoiding conflicts of jurisdiction

1113. Brunei is yet to consider policies to avoid conflicts of jurisdiction by devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country.

RECOMMENDATION 37 and SR V

Granting MLA in the absence of dual criminality, in particular, for less intrusive measures

1114. Dual criminality is not a pre-requisite to render MLA under MACMO. However, s24(2)(c) provides that the Attorney General may refuse a request if the request relates to the investigation, prosecution or punishment of any person in respect of an act or omission that, if it had occurred in Brunei, would not have constituted an offence in Brunei. Authorities indicate that it is highly likely, however, in the case where the request is for non-intrusive and non-compulsory measures that assistance will not be refused based on Section 24(2)(c).

1115. Gaps with the coverage of predicate offences for the ML offence in Brunei widens the basis on which Brunei can refuse assistance based on dual criminality.

1116. Brunei's single instance of providing MLA under the MACMO involved assisting another jurisdiction in the Asia/Pacific region. In this case Brunei provided MLA despite not being clear that dual criminality was exactly met.

RECOMMENDATION 38

Laws and procedures for effective and timely response to MLA

1117. The CPC, PCA and MDA, combined with the MACMO provide general provisions in relation to the identification of laundered property, proceeds from, instrumentalities used in ML, predicate or TF offences. See the discussion at Recommendation 36 above. It is not clear that instrumentalities intended for use are covered.

1118. CCROP and DTROP provide appropriate laws procedures to provide timely assistance in relation to freezing, seizing and confiscation laundered property from and proceeds for ML, TF and other predicate offences, however neither statute adequately addresses instrumentalities used in or intended to be used in the commission of a predicate, ML or TF offence.

1119. In relation to DTROP and the narrow application of CCROP, Brunei is able to provide assistance in cases of property of corresponding value.

1120. Brunei does not yet have arrangements for co-ordinating seizure and confiscation actions with other countries.

Asset forfeiture fund

1121. Under CCROP a fund called the Criminal Offences Confiscations Fund is established which shall be managed and controlled by the Permanent Secretary of MoF.

1122. All amounts –

(a) recovered under or in satisfaction of a confiscation order; or

(b) received under an assets-sharing agreement,

shall be included in the monies which are paid into the Fund.

1123. Monies in the Fund shall be applied by the Permanent Secretary (with prior consultation with the Attorney General) for the following purposes:

(a) in promoting or supporting measures that, in their opinion, may assist –

(i) in preventing, suppressing or otherwise dealing with criminal conduct;

(ii) in dealing with the consequences of criminal conduct;

(iii) without prejudice to the generality of paragraphs (i) and (ii), in facilitating the enforcement of any written law dealing with criminal conduct;

(b) discharging the obligations of Brunei Darussalam under assets-sharing agreements; and

(c) meeting the expenses incurred by the Permanent Secretary in administering the Fund.

1124. Brunei has not yet considered authorising the sharing of confiscated assets between them when confiscation is directly or indirectly a result of co-ordinated law enforcement actions.

Additional element - foreign non criminal confiscation orders

1125. Brunei has an entirely conviction based system for confiscation. Brunei is unable to recognise or enforce foreign non-criminal confiscation orders.

Resources (Central authority for sending/receiving MLA)

1126. The MLA Secretariat is situated within the AGCs and is made up of two officers. Those officers appear to be well trained and have a clear understanding of relevant statutes and procedures. Authorities consider that this is sufficient for the time being considering the low rate of requests

received. Officer of the MLA Secretariat have a good understanding of AML/CFT issues and have attended relevant training courses and workshops on AML/CFT related MLA.

Statistics and Effectiveness

1127. Since the introduction of the MACMO Brunei has received only one request for MLA in a criminal matter, from another jurisdiction in the Asia/Pacific region. Brunei does not have an MLA treaty with the jurisdiction, and the matter related to an offence which was not clearly criminalised in Brunei. Brunei decided to provide assistance on the basis of reciprocity as per the MACMO. The MLA Secretariat issued authorisations to the police to take statements.

1128. So far Brunei has made one outgoing request for MLA to another jurisdiction in the Asia/Pacific region in relation to an offence under the Arms and Explosives Act, Chapter 58. The concerned jurisdiction has cooperated with the request, with the AGC having issued a court summons.

1129. No request has so far been received for the freezing, seizing and confiscation of assets.

1130. Brunei has not yet entered into bilateral MLA treaties, but the ability to enter into reciprocal arrangements and Brunei's proven willingness to provide the widest range of assistance indicates that the lack of bilateral MLA treaties would not undermine effectiveness. Brunei's provides comprehensive assistance to regional partners through non-MLA channels, which is an indicator of its likely provision of assistance should it receive further MLA requests.

1131. The MACMO and MLA Secretariat are both new in Brunei and local enforcement authorities have not yet had a lot of experience with making MLA requests using MACMO, nor responding to requests received through the Secretariat.

6.3.2 Recommendations and Comments

- Brunei should ensure that provisions to give effect to foreign restraint and confiscation orders are available for the widest range of offences, including TF, beyond the narrow range of predicates covered under the CCROP.

- Intended instrumentalities should be clearly covered for ML, TF and predicate offences.

- Brunei should establish enabling provisions for freezing and seizing property except in widest circumstances
- Reliance on CCROP for provisional measures and confiscation is limited by the scope of coverage of CCROP. Property which may become subject to confiscation is limited to proceeds from those offences with a sanction of more than five years on conviction. This does not include terrorist financing.

- Brunei should consider establishing arrangements for co-ordinating seizure and confiscation actions with other countries.

- Further training should be provided to relevant law enforcement agencies in Brunei to encourage their use of MLA and the MACMO Secretariat support in the course of 'following the money' in financial investigations, including ML, TF and predicate offences.

6.3.3 Compliance with Rec 36 to 38, SR V, and Rec 32

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**PC**	• Limited predicate offences may impede effectiveness of MLA for ML offences • Provisions to give effect to foreign restraint and confiscation orders are currently only available for Singapore and Malaysia and for a very limited range of offences. • Effective implementation has not been demonstrated.
R.37	**LC**	• It is too early to judge effectiveness with rendering assistance in the absence of dual criminality.
R.38	**PC**	• Limited predicate offences may impede effectiveness of MLA for ML offences • Brunei lacks enabling provisions for freezing and seizing property except in very narrow circumstances • Brunei has not yet given consideration to arrangements for coordination seizure and confiscation with other countries.
SR.V	**PC**	• Weaknesses in the TF offence may impede effectiveness of MLA and extradition • Provisions to give effect to foreign restraint and confiscation orders are currently only available for Singapore and Malaysia and do not extend to TF offences.
R.32	**PC**	Composite rating

6.4 Extradition (R.37, 39, SR.V, R.32)

6.4.1 Description and Analysis

General description of laws or other measures, the situation, or context

1132. The law governing extradition is found under the Extradition Order, 2006 which provides a comprehensive legal and procedural basis for extradition from Brunei. The Extradition Order is complemented by the Extradition (Malaysia and Singapore) Act. The Extradition Order has retrospective application and can be applied to offences which occurred prior to its issuance in 2006.

1133. The Extradition Order adopts a threshold approach, including all offences punishable by death or a prison term not less than one year. Under the Order, Brunei may extradite a person accused or convicted of an extradition offence to a Commonwealth country, a country with which Brunei has entered into an extradition treaty, or any country that the Attorney General may decide is an extradition country for the purpose of a particular extradition request. In addition, the Extradition Order provides for a 'fast track' backing of warrants system for countries designated in the Schedule to the Order. No countries are included in the Schedule.

1134. The Extradition (Malaysia and Singapore) Act provides a parallel backing of warrants process which provides a 'fast track' for extradition of persons to Malaysia and Singapore.

ML and TF as extraditable offences - laws and procedures

1135. Both ML and TF are extraditable offence under the Extradition Order, 2006. The procedures are found under the Extradition Order, 2006.

1136. Brunei also has the Summons and Warrants (Special Provisions) Act which enables any warrants or summons issued in any courts in Malaysia or Singapore to be simply endorsed by the courts in Brunei. In the case of such 'backed warrants', ML and TF would be included for dealings with Singapore and Malaysia.

1137. The Extradition (Malaysia and Singapore) Act provides a fast track extradition process involving the three countries and adopting a 'backed warrant' system.

Extradition of nationals or prosecution in a foreign country

1138. The fact that a person is a Brunei National is not a ground to object to an extradition request made under the Extradition Order or the Extradition (Malaysia and Singapore) Act. However, if the Attorney-General refuses to surrender a Brunei national and there is sufficient evidence to prosecute them for the offence, they can be prosecuted with consent of the Attorney-General. In the absence of any requests, Brunei's application of this discretion has not been tested.

1139. Section 56 of the Extradition Order establishes that Brunei shall provide evidence for prosecution by other countries in cases where the foreign country has refused to surrender a person to Brunei, but is prepared to prosecute him for the offence for which Brunei sought his surrender. In that case, the Public Prosecutor shall give the country all available evidence to enable prosecution.

Handling of extradition requests and relating proceedings without delay

1140. The Attorney General and the MLA Secretariat in the AGC provide measures and procedures that will allow extradition requests and procedures relating to ML and TF to be handled without undue delay.

Additional elements - simplified procedures of extradition

1141. A number of simplified procedures are available to allow simplified extradition in relation to ML and TF. Persons can be extradited based only on warrants of arrests or judgements. This is based on the Extradition Order (backing of warrants for designated countries) and the Extradition (Malaysia and Singapore) Act for extradition of persons to Malaysia and Singapore.

1142. Under the Extradition Order, a person can waive extradition proceedings and consent for his surrender to a requesting country.

RECOMMENDATION 37 AND SRV *(dual criminality relating to extradition)*

1143. The Extradition Order does have a requirement for dual criminality for extraditable offences. However the Order makes it irrelevant whether the acts are defined in the same way but in considering whether it is an offence in Brunei, regard may be had only to some facts of the acts that make up that conduct.

1144. The Extradition Order places no legal or practical impediment to rendering assistance where both countries criminalise the conduct underlying the offence. The Extradition Order includes pro-forma forms of warrants to assist with procedures for extradition.

Effectiveness

1145. The Extradition Order establishes a very comprehensive scheme for extradition. The existence of the MLA Secretariat to provide procedural support for effective implementation of this new statute would add to effective implementation of the extradition scheme.

1146. Since the enactment of the Extradition Order in 2006 no request has ever been made by any country for extradition. No requests were made under the previous extradition act.

1147. Brunei authorities make regular use of the 'backed warrant' arrangement with Malaysia and Singapore and were able to reference case studies. Brunei does not maintain systematic statistics on the use of backed warrant schemes with Malaysia and Singapore.

6.4.2 Recommendations and Comments

- Brunei should ensure that weaknesses in the ML and TF offences are remedied to ensure that dual criminality requirements in Brunei and requesting countries do not undermine the effectiveness of extradition provisions.
- Brunei should maintain statistics for the use of the 'backed warrant' arrangement with Malaysia and Singapore.

6.4.3 Compliance with Recommendations 37 & 39, SR V, and R.32

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	**LC**	• Limited predicate offences may impede effectiveness of extradition for ML offences • Statistics were not available for application of backed warrant system with Malaysia and Singapore
R.37	**LC**	• Composite rating
SR.V	**PC**	• Deficiencies with the TF offence may impede effectiveness of extradition for TF offences
R.32	**PC**	• Statistics were not kept for application of backed warrant system with Malaysia and Singapore

6.5 Other Forms of International Cooperation (R.40, SR.V, R.32)

6.5.1 Description and Analysis

Authorities' ability to provide the widest range of cooperation to foreign counterparts

1148. Brunei takes an active and open approach to providing the widest range of cooperation with foreign counterpart authorities through non-MLA channels. Such cooperation is supported by MoUs, agreements and treaties, as well as through ad-hoc cooperation and information sharing.

1149. The relationship between Brunei, Malaysia and Singapore is particularly strong in relation to agency to agency cooperation.

FIU

1150. Brunei has entered memorandums of understanding (MoUs) relating to ML and TF with the FIU Malaysia and FIU Indonesia. These MoUs have supported exchange of information, which among other things has resulted in investigations into illegal deposit taking and other matters.

1151. Currently the FIU cannot provide information proactively, only on request. There is no basis for a spontaneous exchange of information. The FIU is currently in the process of applying to become a member of EGMONT.

1152. The MoU with the Malaysian FIU does allow the FIU to make enquiries on behalf of foreign counterparts. The FIU does not have any statutory basis to proactively provide information to foreign FIUs.

Law Enforcement Agencies

1153. The ACB has had a bi-lateral agreement with the Malaysian Anti-Corruption Commission (MACC) since 2001. The Bureau is a founding member of the South East Asia Parties Against Corruption (SEA-PAC) which comprises of eight anti-corruption agencies from Malaysia, Singapore, Vietnam, Cambodia, Thailand, the Philippines and Indonesia. Efforts are also being made towards including anti corruption agencies from Laos and Myanmar in the near future. SEA-PAC which was formerly known as "Memorandum of Understanding on Preventing and Combating Corruption" was first signed in December 2003 in Jakarta by Anti-Corruption Bureau, ACB (Brunei), Corruption Eradication Commission, CEC (Indonesia), Corrupt Practices Investigation Bureau, CPIB (Singapore) and Malaysian Anti Corruption Commission, MACC (Malaysia). Brunei is also a member of the International Association of Anti-Corruption Authorities (IAACA) since November 2003.

1154. Royal Brunei Police Force (RBPF) through its association with ASEANPOL and INTERPOL can provide information and intelligence to its foreign counterparts and can disseminate early warning of anticipated terrorist acts. The Internal Security Department (ISD) also uses the ASEANPOL and Interpol networks to keep in regular contact with foreign counterparts.

1155. Narcotics Control Bureau NCB is a member of ASEAN Senior Officials on Drug Matters (ASOD) and Senior Officials on Transnational Crime (SOMTC) and uses the forum to share information.

1156. NCB is a member of working groups with China, Japan and the Republic of Korea, on Narcotics.

1157. The RBPF has an MoU with the Australian Federal Police relating to transnational crime, including money laundering and terrorism.

1158. NCB participates in the Heads of National Drug Law Enforcement Agencies Meeting (HONLEA) to combat narcotics trafficking and abuse.

1159. The Royal Customs and Excise Department (RCED) are members of World Customs Organisation (WCO) and have CEN system access which electronically links all Customs administrations throughout the WCO network. The RCED are also members of RILO network.

1160. Immigration maintains close contact with counterparts through various mechanisms under the umbrella of meetings of the Directors General of Immigration and Heads of Consular Affairs of Ministries of Foreign Affairs. ASEAN immigration authorities have agreed to work closely together, through greater coordination with ASEAN law enforcement agencies to prevent the movement of terrorists.

Financial Regulatory Authorities

1161. Brunei indicates that the Ministry of Finance regularly exchanges information with foreign counterparts, based both on requests made and received.

1162. Brunei, through the MoF, is a member of South East Asian Central Banks (SEACEN) Research and Training Centre which brings together regional central banks and provides training on various regulatory matters, including aspects related to AML/CFT.

1163. BIFC is applying to join the IOSCO MMOU. Brunei is included in Appendix B of the MMOU. BIFC notes a concern that BIFC has clear regulatory power to intervene in relation to any Brunei law, but would not have a clear legal basis to take regulatory or supervisory action on behalf of a foreign regulator regarding information relating to a breach of a foreign law.

1164. The Brunei MoF has been a member of the IAIS since October 2009. The MoF regularly exchanges information with foreign counterparts on issues of insurance regulation.

Agencies authorised to conduct investigations on behalf of foreign counterparts

1165. Close cooperation occurs between Brunei LEAs and LEAs in Malaysia and Singapore and special arrangements exist between these LEAs to conduct investigations and arrest and hand over suspects to their counterparts outside of the formal MLA process. Similarly these agencies have a relationship of sharing intelligence particularly in narcotic and corruption matters.

1166. The NCB conducts inquiries on behalf of foreign counterparts and provides intelligence and information on an ad hoc basis.

1167. The Anti-Corruption Bureau (ACB) seeks information from its counterparts on an ad hoc basis.

Exchanges of information not subject to unduly restrictive conditions.

1168. Brunei does not make exchange of information which should be based on reciprocity but limitations are usually specified e.g. if the requested authority determines that the release of information requested may unduly prejudice an investigation or proceeding in its country.

Requests for cooperation should not be refused on grounds of involving tax matters

1169. The MOU limits the exchange of information if provision of such information would likely prejudice the sovereignty, security, national interest or other essential interests of the requested authority. Involvement of fiscal matters is generally not a ground for refusal of assistance.

Cooperation not contingent on secrecy provisions

1170. Request for cooperation will not be refused on the grounds of laws that impose confidentiality on financial institutions in Brunei because in the Banking Order, 2006 disclosure of information is not prohibited to some person/s or class of persons as specified in the Third Schedule of the legislation.

1171. Provisions in the RATLO would appear to hamper the BIFC's ability to share TCSP customer information with foreign counterparts. See section 4 of this report.

Controls and safeguards to ensure that information received by competent authorities is used only in an authorised manner

1172. CCROP and the MLO have controls and safeguards in relation to information received by competent authorities from foreign counterparts.

1173. The proposed amendments to the Prevention of Corruption Act (Chapter 131) include requests for attendance of person in Brunei.

Such person shall be immune from:

1. being prosecuted or punished in Brunei for any offence that is alleged to have been committed, or that was committed, before his departure from the requested states pursuant to that request.
2. being subject to civil proceedings in Brunei for any act or omission that is alleged to have occurred, or that did occur, before his departure from that country pursuant to the request, being civil proceedings to which he could not be subject if he were not in Brunei;
3. being required to give or provide evidence or assistance in relation to any offence in Brunei, other than the offence under this Act or any prescribed offence investigated by the Bureau to which the request relates;
4. being required, in the proceedings or investigation to which the request relates, to answer any question that would not be required to answer if those proceedings or that investigation were taking place in that requested states; and
5. being required, in such proceedings or investigation; to produce any document, article or thing that he would not be required to produce if those proceedings or that investigation were taking place in that Parties' States.
6. The evidence given by such person shall be inadmissible and not otherwise used in any prosecution of the person for any offence against the law of Brunei, except on the prosecution of that person for the offence of perjury or contempt of court in relation to the giving of that evidence, unless the Party concerned has consented to it being so used.

Additional elements - FIU obtaining information other competent authorities

1174. Under the proposed amendment to the MLO, information may only be communicated to a corresponding foreign authority. Therefore where any non-counterpart authority is seeking information, it would have to go through its FIU.

1175. In the MoUs entered into by the FIU any request for information must specify the purpose of the request and on whose behalf the request is made.

1176. The FIU is able to obtain information from other competent authorities requested by a foreign counterpart FIU on the basis that the information required is solely for investigation purposes and that the information provided must not be used in any legal proceedings of the requesting country. If evidence is required pertaining to the information the FIU has provided, the requesting country should make a request under the MLA mechanism

Analysis of Effectiveness

1177. Law enforcement agencies in Brunei participate in various regional and global law enforcement networks including ASEANPOL, INTERPOL, ASOD, SOMTC, HONLEA and WCO.

1178. Law enforcement agencies in Brunei have special arrangements in place with counterparts in Malaysia and Singapore which allow them to cooperate in the widest range of circumstances, including conducting investigations, sharing intelligence, and information and handing over suspects, outside MLA processes.

1179. At this time the FIU cannot proactively provide information to foreign FIUs, which undermines effectiveness.

1180. Brunei should clarify BIFC's regulatory power to gain information from regulated entities in relation a request from a foreign regulator regarding information relating to a breach of a foreign law.

Statistics

1181. Brunei did not provide comprehensive statistics of agency to agency international cooperation.

6.5.2 Recommendations and Comments

1182. Provisions in the RATLO and other regulatory instruments should be clarified to allow the BIFC's ability to share the widest range of information with foreign counterparts.

1183. The FIU should be able to proactively provide information to foreign FIUs.

6.5.3 Compliance with Recommendation 40, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**LC**	• Provisions in the RATLO and other regulatory instruments should be clarified to allow the BIFC's ability to share the widest range of information with foreign counterparts. • The FIU cannot proactively provide information to foreign FIUs, which undermines effectiveness.
SR.V	**PC**	Currently the FIU cannot provide TF related information proactively, only on request.
R.32	**PC**	Brunei did not provide comprehensive statistics of agency to agency international cooperation.

TABLES

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA).

Forty Recs	Rating	Summary of factors underlying rating[8]
Legal systems		
1. ML offence	**PC**	• Not all serious offences are included as predicate offences for ML, as the threshold for predicates is offences with a penalty of more than 5 years. • 'Use' of property which is proceeds of drug offences is not covered. • The act of concealing and disguising proceeds of crime is made conditional on proving that it was for the purpose of avoiding prosecution or making or enforcement of a confiscation order, which is not in keeping with the Convention • The autonomy of the ML offence is still to be shown in practice • Despite almost 10 years on the statute books, effective implementation of the ML offence has not been demonstrated.
2. ML offence – mental element and corporate liability	**PC**	• Proportionate and dissuasive financial penalties are not available to sanction legal persons. • A defence of 'acquiring property for inadequate consideration' is included when proving possession, use or transfer of proceeds of crime, which is not in keeping with the international standards. • Effective implementation has not been demonstrated.
3. Confiscation and provisional measures	**PC**	• CCROP has a very narrow range of property subject to confiscation, as it is limited to proceeds from offences with a custodial sentence of more than 5 years. • Intended instrumentalities are not clearly covered. • Very significant procedural shortcomings inhibit effective implementation of CCROP and DTROP • While the CPC, MDA and PCA are utilised, there has been a complete lack of use of CCROP or DTROP to restrain and confiscate laundered proceeds of crime.
Preventive measures		
4. Secrecy laws	**C**	This Recommendation is fully observed.
5. Customer due diligence	**NC**	There are no obligations for financial institutions to: • Explicitly not keep anonymous fictitious named accounts • Undertake CDD measures when (a) carrying out occasional

[8] These factors are only required to be set out when the rating is less than Compliant.

		transactions that are wire transfers (b) undertakes two or more one off transactions where it appears that the transactions are linked and that the total amount in respect of the transactions is B$20,000 or more and (c) when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data • Identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner • Determine whether the customer is acting on behalf of another person, and take reasonable steps to verify the identity of that other person • Determine the natural persons that ultimately own or control the customer, including legal person or arrangements • conduct ongoing due diligence • verify legal status of the legal person / arrangement • take reasonable measures to understand the ownership and control structure of the customer • obtain information on the purpose and intended nature of the business relationship • include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds • ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships • perform enhanced CDD for higher risk categories of customer, business relationship or transaction • to limit simplified or reduced CDD not to include to customers resident in another country, that the original country is satisfied are in compliance with and have effectively implemented the FATF Recommendations • determine that the extent of the CDD measures on a risk sensitive basis made by financial institutions should be consistent with guidelines issued by the competent authorities There is an exemption of CDD on: • any person designated by the Minister by order in the Gazette as mention in Section 4 (2) MLO • long term insurance business in respect of which a premium is payable in one instalment of an amount below five thousand dollars • long term insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed one thousand five hundred dollars Weak implementation of verification on beneficial owner
6. Politically exposed persons	**NC**	There are no obligations for financial institutions to: • put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person • obtain senior management approval for establishing business

		relationships with a PEP • take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEP • conduct enhanced ongoing monitoring on PEP
7. Correspondent banking	**NC**	• There are no binding obligations on financial institutions in Brunei to govern the establishment and operation of correspondent relationships
8. New technologies & non face-to-face business	**NC**	There are no obligations for financial institutions to: • Have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes. • have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions • include measures for managing the risks about specific and effective CDD procedures that apply to non-face to face customers
9. Third parties and introducers	**NC**	There are no obligations for financial institutions to: • immediately obtain from the third party the necessary information concerning elements of the CDD process • take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay • satisfy themselves that the third party is regulated and supervised and has measures in place to comply with, the CDD requirements obtain information on the purpose and intended nature of the business relationship • take consideration of whether countries in which acceptable third party can be based adequately apply the FATF Recommendations • Retain ultimate responsibility for customer identification.
10. Record keeping	**PC**	• Record keeping obligations in the MLO do not clearly cover record obtained for verification purposes and business correspondence with customers. • effective implementation across all sectors cannot be established as widespread AML/CFT supervision of record keeping requirements have not been undertaken
11. Unusual transactions	**NC**	There are no binding obligations for financial institutions to: • pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose • examine as far as possible the background and purpose of such transactions and to set forth their findings in writing • keep such findings available for competent authorities and auditors for at least five years
12. DNFBP – R.5, 6, 8-11	**NC**	• Only Registered Agents and Trustees, amongst DNFBPs in Brunei, are subject to AML\CFT controls • There are various deficiencies in the range of CDD, record keeping and transaction measures applicable to TCSPs under the MLO which are set out in the analysis of R.5, 6 and 8-11.

13. Suspicious transaction reporting	**NC**	▪ No direct requirement in law or regulation to report STRs to the FIU ▪ The scope of proceeds of crime subject to STR reporting falls short of the FATF standard ▪ No obligation on attempted transactions • Low number of STR and all from banking sector, with doubts about the quality of reports (evidenced by the lack of dissemination to law enforcement agencies)
14. Protection & no tipping-off	**PC**	• Safe harbour provision is only directed to STR report to police officer • No clarification on which party STR could be disclosed to
15. Internal controls, compliance & audit	**NC**	• Requirements under MLO are very limited and do not cover internal audit requirements and policies on screening new employees • In the absence of binding regulations/guidelines, there is an absence of comprehensive rules to implement internal controls. • The level of implementation of internal controls has not been established by comprehensive AML/CFT supervision of all relevant sectors.
16. DNFBP – R.13-15 & 21	**NC**	• Amongst the DNFBPs, only trust and company service providers are subject to STR reporting, tipping off, safe harbour and internal control obligations • Effective implementation of these obligations by TCSPs has not been established by monitoring and supervision
17. Sanctions	**PC**	• Financial penalties for administrative breaches for breaches of licensing conditions, including implementing AML/CFT controls. • While regulatory authorities have a range of effective sanctions available to them, in the absence of supervision of the financial institutions, authorities have not used sanctioning powers in relation to non-compliance with AML/CFT controls.
18. Shell banks	**PC**	• No prohibition for financial institutions to enter into, or continue, correspondent banking relationships with shell banks • No requirement for financial institutions to satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks
19. Other forms of reporting	**C**	Fully observed
20. Other NFBP & secure transaction techniques	**PC**	• Brunei has not considered risks and vulnerabilities of other categories of businesses or professions and has not considered extending AML/CFT provisions to those sectors. • Brunei has only taken limited measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML and TF. • Brunei is at early stage of introducing new modern techniques to facilitate payment systems, and the circulation of B$10,000 notes remains a limited concern
21. Special	**NC**	There are no binding obligations for financial institutions to:

attention for higher risk countries		▪ give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which insufficiently apply the FATF Recommendations • There are no provisions for Brunei to apply appropriate counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations.
22. Foreign branches & subsidiaries	**NA**	• There are currently no Brunei financial institutions which have overseas branches or subsidiaries
23. Regulation, supervision and monitoring	**NC**	• financial institutions, including money and value service providers, are not yet subject to adequate AML/CFT regulation and supervision, including offsite supervision, to ensure that they are effectively implementing the FATF Recommendations. • Prudential regulation of those financial institutions subject to the Core Principles does not adequately apply regulatory and supervisory measures for prudential purposes which are also relevant for AML/CFT.
24. DNFBP - regulation, supervision and monitoring	**NC**	• Only TCSPs are currently included under the MLO. • Detailed regulatory requirements have not been extended to TCSPs or any other DNFBPs. • Supervision of TCSPs has not concentrated on AML/CFT controls. • There is no legal basis for the FIU, Ministry of Finance or any other regulatory authority or SRO to supervise DNFBPs (apart from TCSPs) for AML/CFT
25. Guidelines & Feedback	**PC**	• No STR guideline for DNFBPs • No guideline on unusual and suspicious transaction related to money changers and money remitters • No STR guideline on terrorist financing • Guidelines have not been issued to assist DNFBPs to implement preventative measures • Competent authorities have not yet provided DNFBPs with guidelines to assist DNFBPs implement and comply with their respective AML/CFT requirements.
Institutional and other measures		
26. The FIU	**NC**	• The FIU has no clear legal authority to receive STRs related to ML or TF. • The FIU has no authority to disseminate TF-related STRs • Under CCROP the FIU is unable to disseminate STR-related information without the permission of the Attorney General • There are weaknesses in the analysis function, including a lack of matching STRs with other data • The FIU does not access sufficient direct and indirect financial, administrative and law enforcement information in analysis of the STRs • No disseminations of STRs have been made to law enforcement agencies in Brunei since the formation of the FIU • FIU data is not backed up to ensure secure storage of data. • The FIU does not publicly release periodic reports

		• There is no clear statutory basis that allows the FIU to exchange information with foreign FIUs on a proactive basis
27. Law enforcement authorities	**PC**	• No ML or TF investigations have been conducted in Brunei. • The Law enforcement authorities mandated to investigate ML and TF do not sufficiently consider the financial investigation and only conduct the predicate offence investigations. • Effective implementation has not been demonstrated.
28. Powers of competent authorities	**LC**	• Law enforcement authorities have power to compel production, search and seize, however these powers are not being used in the pursuit of ML and TF investigations.
29. Supervisors	**PC**	• Supervision activities have just been introduced for banking and are soon to take place for the insurance industry, but have been very limited in relation to AML/CFT. • There is no AML/CFT examination manual for supervisors to conduct onsite examinations of financial institutions. • Effective regulation and supervision for AML/CFT has not been demonstrated in practice
30. Resources, integrity and training	**PC**	• Investigation and prosecution authorities lack specialist capacity to implement CCROP and DTROP provisions. • Inadequate human resources in the FIU to perform core functions • Inadequate analytical resources applied to support FIU functions • Law enforcement authorities lack capacity, including specialist skills and training to effectively investigate ML, TF and financial aspects of predicate offences. • Lack of technical knowledge by staff of FIU to carry out the functions of supervisors for AML/CFT • FIU needs to be resourced with technical staff familiar with supervision work as the FIU is expected to take up the function of supervisory authority for AML/CFT • The FIU lacks capacity to regulate and supervise DNFBPs for AML/CFT
31. National co-operation	**PC**	• Policy level coordination mechanisms are not being used to effectively develop and implement AML/CFT policies. • Operation-level coordination mechanisms for AML are not yet in place.
32. Statistics	**PC**	• Statistics on the use of powers to freeze, seize and confiscate proceeds of crime and instrumentalities are not well kept. • Statistics of regulatory instructions given in relation to SRIII are not well kept. • Statistics are not well kept for predicate offence investigations that involve proceeds of crime. • Lack of technical knowledge by staff of FIU to carry out the functions of supervisors for AML/CFT • FIU needs to be resourced with technical staff familiar with supervision work as the FIU is expected to take up the function of supervisory authority for AML/CFT • Statistics for supervision are not readily available. • Statistics for administrative sanctions levied are not readily available.

		• Statistics for the use of 'backed warrant' fast-track extradition were not kept. • Brunei did not provide comprehensive statistics of agency to agency international cooperation.
33. Legal persons – beneficial owners	**PC**	• Brunei does not require adequate transparency concerning the beneficial ownership and control of international business companies. • The existence of overly restrictive secrecy provisions on RATLO agents may impede competent authorities gaining access to adequate, accurate and current information on the beneficial ownership of legal persons.
34. Legal arrangements – beneficial owners	**PC**	• Brunei does not require adequate transparency concerning the beneficial ownership and control of legal arrangements. • The existence of overly restrictive secrecy provisions on RATLO agents may impede competent authorities gaining access to adequate, accurate and current information on the beneficial ownership of international trusts.
International Co-operation		
35. Conventions	**LC**	• While Brunei is a party to the relevant conventions, deficiencies remain with their implementation
36. Mutual legal assistance (MLA)	**PC**	• Limited predicate offences may impede effectiveness of MLA for ML offences • Provisions to give effect to foreign restraint and confiscation orders are currently only available for Singapore and Malaysia. and for a very limited range of offences • Effective implementation has not been demonstrated
37. Dual criminality	**LC**	• It is too early to judge effectiveness with rendering assistance in the absence of dual criminality.
38. MLA on confiscation and freezing	**PC**	• Limited predicate offences may impede effectiveness of MLA for ML offences • Brunei lacks enabling provisions for freezing and seizing property except in very narrow circumstances • Brunei has not yet given consideration to arrangements for coordination seizure and confiscation with other countries.
39. Extradition	**LC**	• Limited predicate offences may impede effectiveness of extradition for ML offences
40. Other forms of co-operation	**LC**	• Provisions in the RATLO and other regulatory instruments should be clarified to allow the BIFC's ability to share the widest range of information with foreign counterparts. • The FIU cannot proactively provide information to foreign FIUs, which undermines effectiveness.
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• Brunei has not fully implemented the Terrorist Financing Convention • Brunei has not fully implemented UN Security Council Resolutions 1267 and 1373
SR.II Criminalise terrorist financing	**PC**	• Collection of funds for organisations and individuals is not clearly criminalised. • The definition of funds is very narrowly defined for provision and collection related to terrorist acts.

		• Available sanctions are not effective, proportionate or dissuasive. • TF is not a predicate for ML. • Corporate liability does not clearly extend to Brunei legal persons incorporated under the International Business Companies Order (IBCO) who commits TF offences outside of Brunei. • Implementation is unlikely due to low capacity
SR.III Freeze and confiscate terrorist assets	**PC**	• Statutory powers to give directions to financial institutions regarding freezing funds of 1267 entities without delay have not been issued. • Implementation of 1373 is not supported by appropriate legal and procedural frameworks • Brunei has not given clear guidance to financial institutions and entities that may be holding terrorist assets regarding their obligations in taking actions under freezing mechanisms. • Brunei has not addressed procedures for considering de-listing requests and for unfreezing the property of de-listed persons or entities in a timely manner consistent with international obligations. • Establishing appropriate procedures through which a person whose property has been frozen can challenge that measure with a view to having it reviewed by a court.
SR.IV Suspicious transaction reporting	**PC**	• There is no direct requirement to report TF-related STRs to FIU set out in law or regulation • Shortcoming in the criminalisation for terrorist financing limits the reporting obligation • Implementation is weak
SR.V International co-operation	**PC**	• Deficiencies with the TF offence may impede effectiveness of MLA, including extradition for TF offences • Currently the FIU cannot provide TF related information proactively, only on request.
SR VI Requirements for money / value transfer	**PC**	• Enforceable rules have not been issued for money remitters in relation to CDD, unusual transactions and wire transfers. • Monitoring of all CDD requirements, STR reporting, unusual transaction and wire transfer has not yet commenced.
SR VII Wire transfer rules	**NC**	• There are very limited requirements under the MLO and only limited regulatory instructions to implement wire transfer controls
SR.VIII Non-profit organisations	**PC**	• Lack of review to assess the sector's potential vulnerabilities to terrorist financing. • Lack of effective monitoring of the sector • Lack of outreach to NPOs regarding specific vulnerabilities to abuse • No clear obligations for record keeping by societies
SR.IX Cross-border Declaration & Disclosure	**NC**	• There is no declaration or disclosure system in place in Brunei.

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1, 2 & 32)	• Amend CCROP to include all offences with a maximum custodial term of one year or more as predicate offences • Amend DTROP to include 'use' of property which is proceeds of drug offences. • Amend DTROP and CCROP to clearly stipulate corporate criminal liability • Include effective, proportionate and dissuasive fines for offences under DTROP and CCROP, especially for legal entities • Define 'proceeds of crime' within DTROP and CCROP to include benefits derived directly or indirectly from the commission of the predicate offences; proceeds of such crimes; and instrumentalities • Amend CCROP to remove the defence of 'acquiring property for inadequate consideration' when proving possession, use or transfer of POC • Clarify within DTROP and CCROP that a conviction for a predicate offence is not a prerequisite for prosecuting or convicting the ML offence • DTROP and CCROP should be amended to utilise a common standard of proof for ML . • the ancillary act 'counselling' to commit ML be criminalised under the Penal Code (cap.22) • Brunei authorities should make greater use of the ML offence to prosecute both predicate offences and ML.
2.2 Criminalisation of Terrorist Financing (SR.II, R.32)	• Amend the ATA and related statutes to: - Extend the definition of a terrorist act in Brunei to those acts intended to influence an international organisation. - Streamline the use of funds/property in the ATA to ensure that provisions consistently cover all species of funds used for TF, in keeping with the international standards. - Clarify that financing terrorist organisations is specifically criminalised. - Extend the TF offence to collecting funds to be used by a terrorist organisation or by an individual terrorist. - Include TF as a predicate offence for the ML offence. - Increase available sanctions for the TF offence to effective, proportionate and dissuasive levels. - Extend corporate liability to include Brunei legal persons incorporated under the International Business Companies Order (IBCO) undertaking TF offences outside of Brunei. - Ensure that adequate capacity is available to investigate possible TF offences.
2.3 Confiscation,	• Amend CCROP to apply to the proceeds and instrumentalities of all

freezing and seizing of proceeds of crime (R.3, R.32)	offences. • Review CCROP and DTROP to address procedural complexities • Provide focused training to develop capacity to apply the laws. • Intended instrumentalities should be clearly covered for confiscation. • Actively engage in the investigation and prosecution of ML offences including restraining and confiscation of POC. • The DTROP and CCROP need to clarify further the procedures of acquiring restraint and confiscation orders.
2.4 Freezing of funds used for terrorist financing (SR.III, R.32)	• Issue directions under s12 of the ATA to provide for obligatory freezing without delay and without prior notice in the case of any possible match with a 1267 listed entity holding assets in Brunei. • Utilise ss12 and 14 to support implementation of 1373 with appropriate legal and procedural frameworks. • Consider giving effect to actions initiated under the freezing orders of another jurisdiction. • Issue directions and regulations under ss12 and 14 to freeze assets of designated terrorists when giving effect to actions initiated under the freezing orders of another jurisdiction. • Provide clear guidance to financial institutions and entities that may be holding terrorist assets regarding their obligations in taking actions under freezing mechanisms. • Issue directions under s12 and regulations under s14 to address: - procedures for considering de-listing requests and for unfreezing the property of de-listed persons or entities in a timely manner consistent with international obligations. - Unfreezing the property of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person. - Authorising access to property that was frozen pursuant to UNSCR 1267 and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses. - Establishing appropriate procedures through which a person whose property has been frozen can challenge that measure with a view to having it reviewed by a court. • Enhance supervision and monitoring of financial institutions' compliance with measures relating to SRIII.
2.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• Amend the MLO to provide clear legal authority for the FIU to receive STRs relating to ML. • Gazette the FIU to provide legal authority under the ATA for the FIU to receive TF related STRs. • Amend the ATA to allow the FIU to disseminate TF-related STRs. • Disseminated STRs when analysis indicates an opinion/suspicion that it related to ML or TF. • Amend RATLO to ensure that the FIU is able to obtain further information from trust companies reporting STRs through the BIFC prior to a formal 'investigation' commencing

	• The FIU should undertake further training of its staff in the analysis function. • The FIU should implement suitable analysis tools and a database to assist with the analysis function of the STRs and other information. • Ensure that the FIU database has a secure data backup system. • Consider increasing staffing to meet demands of increased reporting and supervision. • Provide the FIU with a clear statutory basis to proactively exchange information with foreign FIUs.
2.6 Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	• Law enforcement authorities (LEAs) should 'follow the money' and investigate ML offences in parallel with predicate offences for profit generating crime. • LEAs mandated to investigate TF and ML offences should implement investigation strategies which require the consideration of a ML, TF and/or POC investigation for predicate offences investigations conducted. • LEAs should consider committing resources to enhance AML/CFT investigation capacity • NAMLC should consider assisting the coordination, training and capacity building of financial investigations within LEAs. • LEAs should utilise their power to compel production, search and seize for ML and TF investigations • Improved statistics should be kept for relevant predicate offence investigations that involve POC.
2.7 Cross-border declaration and disclosure	• Pass the proposed MLO (Amendment) Order as soon as possible to introduce a declaration system and implement the draft Standard Operating Procedure. • Ensure that the MLO (Amendment) Order supports sharing of information on cross border movement of cash and bearer-negotiable instruments when they related to TF.
3. Preventive Measures – Financial Institutions	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• Issue a law or regulation to require all financial institutions operating in Brunei to: - Explicitly not keep anonymous accounts or accounts in fictitious names - Undertake CDD measures when (a) carrying out occasional transactions that are wire transfers (b) undertakes two or more one off transactions where it appears that the transactions are linked and that the total amount in respect of the transactions is B$20,000 or more and (c) when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data - Identify, and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source - Determine whether the customer is acting on behalf of another person, and take reasonable steps to obtain sufficient identification data to verify their identity

	- Determine the natural persons that ultimately own or control the customer, including those persons who exercise ultimate effective control over a legal person or arrangement - conduct ongoing due diligence on the business relationship. • Consider to include CDD on: - any person designated by the Minister by order in the Gazette as mention in s4(2) MLO - long term insurance business in respect of which a premium is payable in one instalment of an amount below B$5,000 - long term insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed B$1,500. • Issue enforceable instructions to require all reporting parties to: - verify the legal status of the legal person or legal arrangement - take reasonable measures to understand the ownership and control structure of the customer or legal persons or legal arrangements - obtain information on the purpose and intended nature of the business relationship - include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds - update data collected under the CDD process by reviewing existing records, particularly for higher risk categories of customers or business relationships - perform enhanced CDD for higher risk categories of customer, relationship or transactions - limit simplified CDD to not include customers resident in a country which Brunei is not satisfied has effectively implemented the FATF Recommendations - determine that the extent of the CDD measures on a risk sensitive basis made by financial institutions should be consistent with guidelines issued by the competent authorities . • Ensure effective implementation of core CDD measures, in particular verification on beneficial owner. ***Recommendation 6*** • Issue enforceable instructions requiring reporting parties to: - implement risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP - obtain senior management approval for establishing business relationships with a PEP - take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as a PEP - conduct enhanced ongoing monitoring on PEPs. ***Recommendation 7***

	• Issue and implement the draft AGC Notice ASAP to ensure compliance with controls over correspondent banking requirements. ***Recommendation 8*** • Issue enforceable instructions to require all reporting parties to: - take such measures to prevent the misuse of technological developments in ML or TF schemes. - address specific risks associated with non-face-to-face business relationships or transactions - manage the risks to effective CDD procedures that from non-face-to-face customers
3.3 Third parties and introduced business (R.9)	• Issue enforceable rules requiring all reporting parties relying upon a third party to: - immediately obtain from the third party the necessary information concerning certain elements of the CDD process - take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay - satisfy themselves that the third party is regulated and supervised and has measures in place to comply with, the CDD requirements obtain information on the purpose and intended nature of the business relationship • Issue enforceable rules specifying from which countries parties conducting third party conditions can be based
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• Establish record keeping requirements in law or regulation for correspondence between financial institutions and customers. • Issue and implement the draft AGC Notices and extend such requirements to securities intermediaries, money-changers and remittance service providers. • Implement comprehensive controls on wire transfers in keeping with SRVII.
Monitoring of transactions and relationships (R.11 & 21)	• Require all financial institutions to: - pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose - examine as far as possible the background and purpose of such transactions and to set forth their findings in writing - keep such findings available for competent authorities and auditors for at least five years - give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which insufficiently apply the FATF Recommendations. - for transactions with no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined, and written findings should be kept. • Issue instruments to allow application of counter-measures where a

	country continues not to apply or insufficiently applies the FATF Recommendations.
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• Amend the MLO to require financial institutions to report STRs directly to FIU. • Expand the scope of predicates offences in the MLO to ensure widest scope of suspicion • Include an obligation in law/regulation to oblige all reporting parties to report STR on attempted transactions. • Amend the ATA to require all financial institutions to: - report TF-related STR directly to the FIU - report STRs when it suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism - undertake comprehensive education and awareness raising with reporting parties related to STRs on TF. - Encourage greater quantity and quality of STR reporting across all sectors • Amend the MLO to: - explicitly provide safe harbour provision include STR and any information obtained by supervisory authority. - prohibit financial institutions and their directors, officers and employees (permanent and temporary) from disclosing ("tipping off") the fact that a STR or related information is being reported or provided to the FIU and clarify whether headquarters could receive or make decisions regarding a STR. • Issue STR guidelines for DNFBPs. • Issue guidelines to money changer and money remitters to include all aspects of CDD, STR reporting, CTR reporting and other preventative measures. • Provide regular feedback on use of STRs to financial institutions • Issue guideline on TF-related STRs
Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Require adequately resourced and independent audit to test compliance with AML/CFT procedures. • Require financial institutions to establish employee screen procedures when hiring new employees. • Issue and support implementation of the Draft AGC Notices for banks and life insurers ASAP. • Extend comprehensive requirements to securities, money-changing companies and remittance service providers ASAP. • Support effective implementation of internal controls through comprehensive AML/CFT supervision of all relevant sectors.
Shell banks (R.18)	• Issue and implement comprehensive rules governing relationships with shell banks, including the draft AGC Notice as soon as possible. • Conduct examinations to ensure that AML/CFT controls on shell

	banks are being implemented
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)	• The authorities should exercise the powers provided to them to conduct off-site and on-site examination for AML measures contained in the MLO for all relevant sectors. While AML/CFT inspection has commenced for banking and insurance sectors, it should be widened to include all banks and extended to securities, mutual funds, remittance and money changing sectors. • Statutes should make available financial sanctions for administrative breaches for breaches of licensing conditions, including implementing AML/CFT controls. • Supervisors should ensure effective sanctioning of reporting institutions for non-compliance with AML/CFT controls. • Supervisory capacity should be enhanced, including through the production of AML/CFT inspection manuals and inspection plans for all covered sectors. • As FIU is expected to have a role assisting with AML/CFT supervision, there is a need to resource FIU appropriately with technical staff familiar with supervisory work.
Money value transfer services (SR.VI)	• Issue enforceable rules to require Money Remitters to conduct all CDD requirements, monitor unusual transactions and implement wire transfer controls. • Ensure that both off-site and on-site monitoring and supervision of Money Remitters includes all relevant aspects AML/CFT.
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record keeping (R.12)	• Brunei should issue law/regulation and enforceable instructions on registered agents and trustees to include all CDD Requirements as set out in the FATF standards • Brunei should consider conducting a risk assessment of various DNFBP sectors to form the basis for risk-based implementation of AML/CFT controls over DNFBPs • Brunei should take steps to extend CDD measures to the full range of DNFBPs as soon as possible, taking into account the level of risk from different DNFBP sectors
Suspicious transaction reporting (R.16)	• Issue enforceable instructions to registered agents and trustees regarding unusual and suspicious transactions, as well as detailed instructions for establishing internal controls. • Ensure effective implementation of existing obligations on TCSPs through AML/CFT related monitoring and supervision. • Take steps to extend STR, tipping off, safe harbour and internal control measures to the full range of DNFBPs as soon as possible, taking into account the level of risk posed by different DNFBP sectors • Ensure that the MLO, ATA or other statutory provisions override any impediments to STR reporting or information gathering contained in RATLO.
Regulation, supervision and monitoring (R.24-25)	• Ensure that BIFC supervision of RATLO Registered Agents includes comprehensive onsite supervision of AML/CFT controls. • Initiate outreach programmes to DNFBPs that will be included

	through the amendment of the MLO. • Provide a clear legal basis for a Supervisory Authority to conduct AML/CFT supervision and monitoring of DNFBPs that are not already regulated by MoF. • Ensure the MLO amendment is brought into force and appropriate rules and guidelines are issued to all relevant DNFBPs.
Other designated non-financial businesses and professions (R.20)	• Consider risks and vulnerabilities of ML or TF through other categories of businesses or professions • take further measures to encourage the development and use of modern and secure techniques for conducting financial transactions. • Take measures to reduce risks of ML and TF associated with the circulation of high-denomination bank notes
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	• Ensure that commercial, corporate and other laws require adequate transparency concerning the beneficial ownership and control of legal persons. • Remove the overly restrictive secrecy provisions on RATLO agents which may impede them from providing access to adequate, accurate and current information on the beneficial ownership of legal persons. • Take steps to ensure controls on nominee directors and shareholders (access to information on controlling parties and beneficial owners) are sufficiently managed to avoid ML/TF risks. • Establish controls over share warrants to ensure that share warrants cannot be redeemed by a bearer in a way akin to bearer shares
Legal Arrangements – Access to beneficial ownership and control information (R.34)	• require adequate transparency concerning the beneficial ownership and control of legal arrangements. • Ensure that TCSPs are able to share the widest range of information with competent authorities regarding the beneficial ownership of international trusts.
Non-profit organisations (SR.VIII)	• Conduct periodic assessments by reviewing information on the NPO's sector potential vulnerabilities to TF • Conduct outreach on risks and vulnerabilities of NPOs for abuse related to TF • require Societies to maintain records for at least five years of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation. • ROC should ensure potential risks for abuse of non-profit companies are effectively managed and adequate oversight is provided for registered NPO that are companies. • ROC should be provided with powers to inspect a not-for-profit company.
6. National and International Co-operation	
National co-operation and coordination (R.31 & 32)	• Ensure coordination committees are used to drive forward reforms to AML/CFT policies • Utilise coordination mechanisms to implement AML/CFT policies, including operational level cooperation, information sharing and capacity building.

	• Consider increasing the role of NAMLC to develop a culture within law enforcement agencies to 'follow the money' in investigations of ML and TF. • Utilise NAMLC to coordinate operational information where LEAs have overlapping functions.
The Conventions and UN Special Resolutions (R.35 & SR.I)	• fully implement relevant obligations set out in the Palermo and Terrorist Financing Conventions. • fully implement UN SCR 1267 & 1373
Mutual Legal Assistance (R.36-38, SR.V, and R.32)	• Brunei should ensure that provisions to give effect to foreign restraint and confiscation orders are available for the widest range of offences, including TF, beyond the narrow range of predicates covered under the CCROP. • Intended instrumentalities should be clearly covered for ML, TF and predicate offences. • establish enabling provisions for freezing and seizing property except in widest circumstances • Reliance on CCROP for provisional measures and confiscation is limited by the scope of coverage of CCROP. Property which may become subject to confiscation is limited to proceeds from those offences with a sanction of more than five years on conviction. This does not include terrorist financing. • Consider establishing arrangements for co-ordinating seizure and confiscation actions with other countries. • Further training should be provided to relevant law enforcement agencies in Brunei to encourage their use of MLA and the MACMO Secretariat support in the course of 'following the money' in financial investigations, including ML, TF and predicate offences.
Extradition (R.39, 37, SR.V & R.32)	• Ensure that weaknesses in the ML and TF offences are remedied to ensure that dual criminality requirements in Brunei and requesting countries do not undermine the effectiveness of extradition provisions. • Brunei should maintain statistics for the use of the 'backed warrant' arrangement with Malaysia and Singapore.
Other Forms of Co-operation (R.40, SR.V & R.32)	• Provisions in the RATLO and other regulatory instruments should be clarified to allow the BIFC's ability to share the widest range of information with foreign counterparts. • The FIU should be able to proactively provide information to foreign FIUs.

Table 3: Authorities' Response to the Evaluation

Brunei Darussalam authorities express its sincere gratitude to the APG Secretariat and the Mutual Evaluation Team for the comprehensive report and the recommendations set out in the report. With the Mutual Evaluation process, the various agencies involved have gained a better understanding of the requirements of the FATF 40 + 9 Recommendations.

In this second round of evaluation, Brunei Darussalam is amongst the last few countries that is being assessed using the FATF 2004 Assessment methodology with a notably more focused approach. As such the variation between the two reports highlights the significant development and refining of FATF's assessment rules and APG's own quality control procedures over the last five years. Nevertheless, Brunei Darussalam has certainly progressed in dealing with its AML/CFT measures since 2005. Having considered the Mutual Evaluation report, we wish to highlight a few significant updates, in addition to the details contained in the report.

Establishment of FIU

With the consent of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam, we have established the Financial Intelligence Unit (FIU) under the Ministry of Finance in 2007 and is receiving Suspicious Transaction Reports (STR) from the reporting entities. A database has been created to store the information on the STRs. The FIU also receives cash transaction reports of above the threshold of B$5,000.00 from the money changers and remittance companies and is kept by the Money Changer and Remittance regulators in a separate database which is accessible to the FIU as part of their analysis tools.

The FIU is looking for a more comprehensive integrated Financial Intelligence System to enhance their abilities to analyse reports.

Legislation

The **Money Laundering (Amendment) Order 2010** has been approved on 22nd July 2010 and is now in the process of being gazetted. The main amendment, amongst others, will introduce a declaration system for cash couriers with a minimum threshold in line with FATF Special Recommendation 9, listing the Designated Non-Financial Businesses Providers (DNFBPs) in particular lawyers and accountants as part of the reporting entities and a provision to permit the FIU to enter into exchange of information agreements directly with foreign FIUs.

A more comprehensive **Anti-Terrorism Order**, is being finalised, to replace the Anti-Terrorism (Financial and Other Measures) Act. A meeting with the relevant stakeholders will take place in early August to discuss the final draft of the Order. The draft Anti-Terrorism Order is designed to reflect international obligations and standards, in particular the UN Security Resolution relating to terrorism and the 9 Special Recommendations on Terrorist Financing. The new law is envisaged to criminalize the collection of funds for organizations and individuals, widen the definition of 'property', constitute terrorist financing a predicate offence for money laundering, makes provision for the submission of STRs relating to terrorist financing to the FIU and most importantly, includes provisions for the seizure, freezing and confiscation of terrorist property in or outside Brunei Darussalam. Steps will be taken towards implementation of these provisions including providing

guidance to financial sectors concerning the freezing obligations. Once this Order is enacted, it will address the issues contained in Special Recommendations I to IV which have been rated as Partially Compliant.

Regulatory

The first on-site inspection has been successfully conducted on a general international insurance company on 19th April this year which included inspection on the company AML/CFT policy and prevention measures in place. Such on-site inspections will continue to be executed, not only on other Insurance companies but will extend to other sectors.

On 15th July 2010, His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam announced the establishment of the Monetary Authority of Brunei Darussalam to be enforced on 1st January 2011. This reflects the country's determination and commitment in ensuring monetary, financial and other related institutions in Brunei Darussalam are well regulated and controlled for the continuous security, prosperity and well being of Brunei Darussalam.

Enforcement

The Attorney General's Chambers continue to hold talks and workshops on the provisions of Drug Trafficking (Recovery of Proceeds) Order, 2000; Criminal Conduct (Recovery Of Proceeds) Order, 2000 and Mutual Legal Assistance to promote awareness, understanding and cooperation amongst the Law Enforcement Agencies.

The Anti Corruption Bureau signed a Memorandum of Understanding with the Brunei Association of Banks on 29th June 2010 which represents a significant move in the fight against corruption in the financial sector. Amongst the objectives of the MoU are to further enhance the existing good working relationship between the two parties and to further educate the banks' staff with the objective of cultivating anti-corruption culture within the workplace.

The Narcotics Control Bureau (NCB) places great importance in the investigation of controlled drug or articles seized under the Misuse of Drugs Act, Chapter 27 and will continue its efforts to improve the enforcement of existing laws. The NCB is also currently studying the feasibility of setting up a specialized unit, dedicated to financial investigation under the Drug Trafficking (Recovery of Proceeds) Act, Chapter 178, and further develop the skills and capabilities of its staff through training with relevant regional and international agencies.

We recognise the lack of human resources and expertise presents a huge challenge to Brunei Darussalam's efforts in strengthening its AML CFT regime. Our FIU and law enforcement officers undergo continuous training to increase their level of awareness and enhance their technical and operational skills. In this regard, developing expertise and technical assistance will be crucial for our officers to create a robust AML/CFT regime. In strengthening our commitment to combat AML/CFT, we look forward to receiving immediate technical assistance and training as discussed in the Donor and Providers Group Meeting.

Guidelines

The absence of legally enforceable guidelines on AML/CFT for the financial sector reflects the challenges faced in terms of knowledge and capacity by both the Ministry of Finance and FIU. These guidelines have now been finalised with the assistance of the Evaluation Team's comments as contained in the Evaluation Report. With the introduction and coming into force of these much needed guidelines, we will be able to address many of the recommendations, in particular recommendations 5 to 10, 15, 18 and 21 which have been rated as non-compliant.

Conclusion

Brunei Darussalam looks forward to continue working with the APG Secretariat as well as other regional and international organisations towards strengthening our efforts in countering money laundering and terrorist financing.

ANNEXES

Annex 1: Details of all bodies met on the on-site mission

Government Agencies

- Ministry of Finance
    - Financial Institutions Department
        - Financial Intelligence Unit (FIU)
        - Banking Unit
        - Insurance Unit
        - Money Changer and Remittance Unit
    - Brunei International Financial Centre (BIFC)
    - Brunei Currency and Monetary Board (BCMB
    - Royal Customs and Excise Department (RCED)
- Ministry of Foreign Affairs and Trade (MOFAT)
- Attorney Generals Chambers (AGC)
    - Public Prosecutors
    - Registry of Companies (within AGC)
- Ministry of Foreign Affairs and Trade (MOFAT)
- Ministry of Home Affairs
    - Immigration and National Registration Department
- Royal Brunei Police Force
    - Commercial Crime Investigation Division
    - Registrar of Societies
- Anti Corruption Bureau (ACB)
- Narcotics Control Bureau (NCB)
- Internal Security Department (ISD)

Private Sector

- Brunei Association of Banks (BAB)
- Brunei Law Society
- Brunei Institute of Certified Public Accountants (BICPA)
- Various local and foreign banks
- Remittance company
- Money changer
- Insurance firm
- Securities company
- Trust companies
- Accounting firm
- Law firm
- Real estate agency

Annex 2: Copies of key laws, regulations and other measures

MONEY-LAUNDERING ORDER, 2000

17th. JUNE, 2000
CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

ARRANGEMENT OF SECTIONS

Section

In exercise of the power conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation, commencement and long title.
1. (1) This Order may be cited as the Money-Laundering Order, 2000 and shall commence on a day to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notice in the *Gazette*.
(2) The long title of this Order is "An Order to prevent the use of the financial system for money-laundering".

Interpretation.
2. (1) In this Order —
"applicant for business" means a person seeking to form a business relationship, or carry out a one-off transaction, with a person who is carrying out relevant financial business in Brunei Darussalam;
"business relationship" has the meaning given by subsection (2) of section 3;
"Case 1", "Case 2", "Case 3" and "Case 4" have the meanings respectively given by section 7;
"Minister" means the Minister of Finance;
"money-laundering" has the meaning given by subsection (2);
"one-off transaction" means any transaction other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of relevant financial business;
"relevant financial business" has the meaning given by subsection (1) of section 4;
"supervisory authority" has the meaning given by section 15.
(2) In this Order, except in so far as the context otherwise requires, "money-laundering" means doing any act which constitutes an offence under —
(a) sections 20 or 22 of the Emergency (Drug Trafficking) (Recovery of Proceeds) Order, 1996 (S 12/96); or
(b) sections 21 to 24 of the Criminal Conduct (Recovery of Proceeds) Order, 2000.
(3) For the purpose of this section, a business relationship formed by any person acting in the course of relevant financial business is an established business relationship where that person has obtained, under procedures

maintained by him in accordance with section 7, satisfactory evidence of the identity of the person who, in relation to the formation of that business relationship, was the applicant for business.

Business relationships.

3. (1) Any reference in this section to an arrangement between two or more persons is a reference to an arrangement in which at least one person is acting in the course of a business.

(2) For the purposes of this Order, "business relationship" means any arrangement between two or more persons where —

(a) the purpose of the arrangement is to facilitate the carrying out of transactions between the persons concerned on a frequent, habitual or regular basis; and

(b) the total amount of any payment to be made by any person to any other in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made.

Relevant financial business.

4. (1) For the purposes of this Order, "relevant financial business" means, subject to subsection (2), the business of engaging in one or more of the following —

(a) the business of receiving money on deposit account transacted by a company in possession of a licence granted by the Minister authorising it to do so in accordance with the provisions of the Banking Act (Chapter 95), the Finance Companies Act (Chapter 89) or of any other law relating to domestic banking;

(b) any activity carried on by a company in possession of a licence authorising it to do so under the International Banking Order, 2000;

(c) any of the activities referred to in the Schedule, other than an activity falling within paragraphs *(a)* or *(b)*;

(d) long-term insurance business carried on by a person who has been authorised to do so by or in pursuance of any written law.

(2) Business is not relevant financial business in so far as it consists of activities carried on by any person designated by the Minister by order in the *Gazette*.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, amend the Schedule by order in the *Gazette*.

Systems and training to prevent money-laundering.

5. (1) No person shall, in the course of relevant financial business carried on by him in Brunei Darussalam, form a business relationship, or carry out a one-off transaction, with or for another, unless that person —

(a) maintains the following procedures established in relation to that business —

(i) identification procedures in accordance with sections 7 and 9;

(ii) record-keeping procedures in accordance with section 12;

(iii) except where the person concerned is an individual who in the course of relevant financial business does not employ or act in association with any other person, internal reporting procedures in accordance with section 14; and

(iv) such other procedures of internal control and communication as may be appropriate for the purpose of forestalling and preventing money-laundering;

(b) takes appropriate measures from time to time for the purpose of making employees whose duties include the handling of relevant financial business aware of —

(i) the procedures under paragraph *(a)* which are maintained by him and which relate to the relevant financial business; and

(ii) the provisions of this Order and of all other written laws relating to money-laundering; and

(c) provides such employees from time to time with training in the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money-laundering.

(2) Any person who contravenes this section is guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years, a fine or both.

(3) In determining whether a person has complied with the requirements of subsection (1), a court may take account of —

(a) any relevant supervisory or regulatory guidance which applied to that person;

(b) in a case where no guidance falling within paragraph *(a)* applied, any other relevant guidance issued by a body that regulates, or is representative of, any trade, profession, business or employment carried on by that person.

(4) In proceedings against any person for an offence under this section, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(5) In this section, "supervisory or regulatory guidance" means guidance issued, adopted or approved by a supervisory authority.

Offences under section 5 committed by bodies corporate, partnerships and unincorporated associations.

6. (1) Where an offence under section 5 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body, or of a person purporting to act in any such capacity, he, as well as the body corporate, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate whose affairs are managed by its members, "director", in subsection (1), means any member of that body corporate.

(3) Where a partnership or other unincorporated association is guilty of an offence under section 5, every partner in the partnership or (as the case may be) every person concerned in the management or control of the association, other than a partner or (as the case may be) person who is proved to have been ignorant of or to have attempted to prevent the commission of the offence, is also guilty of the offence and liable to be proceeded against and punished accordingly.

Identification procedures; business relationships and transactions.

7. (1) Subject to sections 8 and 10, identification procedures maintained by a person are in accordance with this section if in Cases 1 to 4 they require, as soon as is reasonably practicable after contact is first made between that person and an applicant for business concerning any particular business relationship or one-off transaction —

(a) the production by the applicant for business of satisfactory evidence of his identity; or

(b) the taking of such measures specified in the procedures as will produce satisfactory evidence of his identity,

and the procedures are, subject to subsection (6), in accordance with this section if they require that where that evidence is not obtained the business relationship or one-off transaction in question shall not proceed any further.

(2) Case 1 is any case where the parties form or resolve to form a business relationship between them.

(3) Case 2 is any case where, in respect of any one-off transaction, any person handling the transaction knows or suspects that the applicant for business is engaged in money-laundering, or that the transaction is carried out on behalf of another person engaged in money-laundering.

(4) Case 3 is any case where, in respect of any one-off transaction, payment is to be made by or to the applicant for business of the amount of twenty thousand dollars or more.

(5) Case 4 is any case where, in respect of two or more one-off transactions —

(a) it appears at the outset to a person handling any of the transactions —

(i) that the transactions are linked; and

(ii) that the total amount, in respect of all of the transactions, which is payable by or to the applicant for business is thirty thousand dollars or more; or

(b) at any later stage, it comes to the attention of such a person that sub-paragraphs (i) and (ii) of paragraph *(a)* have been satisfied.

(6) The procedures referred to in subsection (1) are in accordance with this section if, when a report is made in circumstances falling within Case 2 (whether in accordance with section 14 or directly to a police officer) they provided for steps to be taken in relation to the one-off transaction in accordance with any directions that may be given by a police officer.

(7) In this Order, a reference to satisfactory evidence of a person’s identity shall be construed in accordance with subsection (1) of section 11.

Payment by post, etc.

8. (1) Where satisfactory evidence of the identity of an applicant for business would, apart from this subsection, be required under identification procedures in accordance with section 7 but —

(a) the circumstances are such that a payment is to be made by the applicant for business; and

(b) it is reasonable in all the circumstances —

(i) for the payment to be sent by post or by any electronic means which is effective to transfer funds; or

(ii) for the details of the payment to be sent by post, to be given on the telephone or to be given by any other electronic means,

then, subject to subsection (2), the fact that the payment is debited from an account held in the applicant’s name with a finance company (as defined in section 2 of the Finance Companies Act (Chapter 89) authorised by the Minister, whether the account is held by the applicant alone or jointly with one or more other persons, shall be capable of constituting the required evidence of identity.

(2) Subsection (1) shall not have effect to the extent that the circumstances of the payment fall within Case 2; or the payment is made by any person for the purpose of opening a relevant account with a finance company authorised by the Minister.

(3) For the purpose of paragraph *(b)* of subsection (1), it shall be immaterial whether the payment or its details are sent or given to a person who is bound by subsection (1) of section 5 or to some other person acting on his behalf.
(4) In this section, "relevant account" means an account from which a payment may be made by any means to a person other than the applicant for business, whether such a payment —
(a) may be made directly to such a person from the account by or on behalf of the applicant for business; or
(b) may be made to such a person indirectly as a result of —
(i) a direct transfer of funds from an account from which no such direct payment may be made to another account; or
(ii) a change in any of the characteristics of the account.

Identification procedures; transactions on behalf of another.
9. (1) This section applies where, in relation to a person who is bound by subsection (1) of section 5, an applicant for business is or appears to be acting otherwise than as a principal.
(2) Subject to section 10, identification procedures maintained by a person are in accordance with this section if, in a case to which this section applies, they require reasonable measures to be taken for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting.
(3) In determining, for the purpose of subsection (2), what constitutes reasonable measures in any particular case regard shall be had to all the circumstances of the case and, in particular, to best practice which, for the time being, is followed in the relevant field of business and which is applicable to those circumstances.
(4) Without prejudice to the generality of subsection (3), if the condition mentioned in subsection (5) is fulfilled in relation to an applicant for business who is, or appears to be, acting as an agent for a principal (whether undisclosed or disclosed for reference purposes only) it shall be reasonable for a person bound by subsection (1) of section 5 to accept a written assurance from the applicant for business to the effect that evidence of the identity of any principal on whose behalf the applicant for business may act in relation to that person will have been obtained and recorded under procedures maintained by the applicant for business.
(5) The condition referred to in subsection (4) is that, in relation to the business relationship or transaction, there are reasonable grounds for believing that an applicant for business based, incorporated in or founded under the law of any country or territory outside Brunei Darussalam is subject, in respect of that transaction or business, to provisions in relation to money-laundering at least equivalent to those under this Order and is subject to supervision by an overseas regulatory authority.
(6) In subsection (5), "overseas regulatory authority" means any authority exercising regulatory functions relating to companies or financial services in any country or territory outside Brunei Darussalam, as the Minister may, for the purpose of that subsection, designate by order in the *Gazette*.

Identification procedures; exemptions.
10. (1) Subject to subsection (2), identification procedures under sections 7 and 9 shall not require any steps to be taken to obtain evidence of any person's identity —
(a) where there are reasonable grounds for believing that the applicant for business is a person who is bound by the provisions of subsection (1) of section 5;
(b) where any one-off transaction is carried out with or for a third party pursuant to an introduction effected by a person who has provided an assurance that evidence of the identity of all third parties introduced by him will have been obtained and recorded under procedures maintained by him, where that person identifies the third party and where —
(i) that person falls within sub-paragraph *(a)*; or
(ii) there are reasonable grounds for believing that the condition mentioned in subsection (5) of section 9 has been fulfilled in relation to him;
(c) where the person who would otherwise be required to be identified, in relation to a one-off transaction, is the person to whom the proceeds of that transaction are payable but to whom no payment is made because all of those proceeds are directly re-invested on his behalf in another transaction —
(i) of which a record is kept; and
(ii) which can result only in another re-investment made on that person's behalf or in a payment made directly to that person;
(d) in relation to insurance business consisting of a policy of insurance in connection with a pension scheme taken out by virtue of a person's contract of employment or occupation where the policy —
(i) contains no surrender clause; and
(ii) may not be used as collateral for a loan;
(e) in relation to long term insurance business in respect of which a premium is payable in one instalment of an amount not exceeding five thousand dollars; or

(f) in relation to long term insurance business in respect of which a periodic premium is payable and where the total payable in respect of any calendar year does not exceed one thousand five hundred dollars.
(2) Nothing in this section applies in circumstances falling within Case 2.
(3) In subsection (1) of section 10, "calendar year" means a period of twelve months beginning on 31st. December.

Identification procedures; supplementary provisions.
11. (1) For the purposes of this Order, evidence of identity is satisfactory if —
(a) it is reasonably capable of establishing that the applicant is the person he claims to be; and
(b) the person who obtains the evidence is satisfied, in accordance with the procedures maintained under this Order in relation to the relevant financial business concerned, that it does establish that fact.
(2) In determining for the purpose of subsection (1) of section 7 the time-span in which satisfactory evidence of a person's identity has to be obtained in relation to any particular business relationship or one-off transaction, all the circumstances shall be taken into account including —
(a) the nature of the business relationship or one-off transaction concerned;
(b) the geographical locations of the parties;
(c) whether it is practical to obtain the evidence before commitments are entered into between the parties or before money passes;
(d) in relation to Cases 3 or 4, the earliest stage at which there are reasonable grounds for believing that the total amount payable by an applicant for business is twenty thousand dollars or more.

Record-keeping procedures.
12. (1) Record-keeping procedures maintained by a person are in accordance with this section if they require the keeping, for the prescribed period, of the following records —
(a) in any case where, in relation to any business relationship that is formed or one-off transaction that is carried out, evidence of a person's identity is obtained under procedures maintained in accordance with sections 7 or 9, a record that indicates the nature of the evidence and —
(i) comprises a copy of the evidence;
(ii) provides such information as would enable a copy of it to be obtained; or
(iii) in a case where it is not reasonably practicable to comply with paragraphs (i) or (ii), provides sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained; and
(b) a record containing details relating to all transactions carried out by that person in the course of relevant financial business.
(2) For the purpose of subsection (1), the prescribed period is, subject to subsection (3), the period of at least five years commencing with —
(a) in relation to such records as are described in paragraph *(a)* of subsection (1), the date on which the relevant business was completed within the meaning of subsection (4); and
(b) in relation to such records as are described in paragraph *(b)* of that subsection, the date on which all activities taking place in the course of the transaction were completed.
(3) Where a person who is bound by the provisions of sub-section (1) of section 5 —
(a) forms a business relationship or carries out a one-off transaction with another person;
(b) has reasonable grounds for believing that that person has become insolvent; and
(c) after forming that belief, takes any step for the purpose of recovering all or part of the amount of any debt payable to him by that person which has fallen due,
the prescribed period for the purpose of subsection (1) is the period of at least five years commencing with the date on which the first such step is taken.
(4) For the purpose of paragraph *(a)* of subsection (2), the date on which relevant business was completed is —
(a) in circumstances falling within Case 1, the date of the ending of the business relationship in respect of whose formation the record under paragraph *(a)* of subsection (1) was compiled;
(b) in circumstances falling within Cases 2 or 3, the date of the completion of all activities taking place in the course of the one-off transaction in respect of which the record under paragraph *(a)* of subsection (1) was compiled;
(c) in circumstances falling within Case 4, the date of the completion of all activities taking place in the course of the last one-off transaction in respect of which the record under paragraph *(a)* of subsection (1) was compiled,
and where the formalities necessary to end a business relationship have not been observed, but a period of five years has elapsed since the date on which the last transaction was carried out in the course of that relationship, then the date of the completion of all activities taking place in the course of that last transaction shall be treated as the date on which the relevant business was completed.

Insolvency.

13. For the purpose of paragraph *(b)* of subsection (3) of section 12, a person shall be taken to be insolvent if, in Brunei Darussalam —

(a) he has been adjudged bankrupt or has made a composition or scheme with his creditors;

(b) he being dead, his estate is administered in accordance with an order under section 112 of the Bankruptcy Act (Chapter 67); or

(c) where that person is a company, a winding up order has been made or a resolution for voluntary winding up has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.

Internal reporting procedures.

14. Internal reporting procedures maintained by a person are in accordance with this section if they include provision —

(a) identifying a person (in this section called "the appropriate person") to whom a report is to be made of any information or other matter which comes to the attention of a person handling relevant financial business and which, in the opinion of the person handling that business, gives rise to a knowledge or suspicion that another person is engaged in money-laundering;

(b) requiring that any such report be considered in the light of all other relevant information by the appropriate person or any other designated person, for the purpose of determining whether or not the information or other matter contained in the report does give rise to such a knowledge or suspicion;

(c) for any person charged with considering a report in accordance with paragraph *(b)* to have reasonable access to other information which may be of assistance to him and which is available to the person responsible for maintaining the internal reporting procedures concerned; and

(d) for securing that the information or other matter contained in a report is disclosed to a police officer where the person who has considered the report under the procedures maintained in accordance with the preceding provisions of this section knows or suspects that another person is engaged in money-laundering.

Supervisory authorities.

15. (1) References in this Order to a supervisory authority shall be construed in accordance with subsection (2).

(2) For the purposes of this Order, each of the following is a supervisory authority —

(a) the Minister;

(b) such person or department of Government as the Minister may, for the purpose of this section, designate by order in the *Gazette*.

Supervisors, etc., to report evidence of money-laundering.

16. (1) Subject to subsection (2), where a supervisory aut hority —

(a) obtains any information; and

(b) is of the opinion that the information indicates that any person has or may have been engaged in money-laundering, the authority shall, as soon as is reasonably practicable, disclose that information to a police officer.

(2) Where any person is a secondary recipient of information obtained by a supervisory authority, and that person forms the opinion mentioned in paragraph *(b)* of subsection (1), that person may disclose the information to a police officer.

(3) Where any person within subsection (6) —

(a) obtains any information whilst acting in the course of any investigation, or discharging any functions, to which his appointment or authorisation relates; and

(b) is of the opinion that the information indicates that any person has or may have been engaged in money-laundering,

that person shall, as soon as is reasonably practicable, either disclose that information to a police officer or disclose that information to the supervisory authority by whom he was appointed or authorised.

(4) Any disclosure made by virtue of subsections (1) to (3) shall not be treated as a breach of any restriction imposed by any written law or otherwise.

(5) Any information —

(a) which has been disclosed to a police officer by virtue of subsections (1) to (4); and

(b) which would, apart from subsection (4), be subject to such a restriction as is mentioned in that subsection,

may be disclosed by the police officer, or any person obtaining the information directly or indirectly from him, in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings, but not otherwise.

(6) Persons falling within this section are such persons as the Minister may, for the purpose of this section, designate by order in the *Gazette*.

(7) In this section, "secondary recipient", in relation to information obtained by a supervisory authority, means any person to whom that information has been passed by that authority.

Transitional provisions.

17. (1) Nothing in this Order shall require a person who is bound by subsection (1) of section 5 to maintain procedures in accordance with sections 7 and 9 which require evidence to be obtained, in respect of any business relationship formed by him before the date on which this Order commenced, as to the identity of the person with whom that relationship has been formed.

(2) For the purpose of subsection (3) of section 2, any business relationship referred to in subsection (1) shall be treated as if it were an established business relationship.

(3) In paragraph *(f)* of subsection (1) of section 10, the reference to the total payable in respect of any calendar year not exceeding two thousand dollars shall, for the period commencing on the commencement of this Order and ending on the 31st. December, 2000, be construed as a reference to the total payable in respect of that period not exceeding one thousand dollars.

SCHEDULE section 4(1)*(c)*

1. Acceptance of deposits and other repayable funds from the public.
2. Lending.
3. Financial leasing.
4. Money transmission services.
5. Issuing and administering means of payment (credit cards, travellers' cheques, bankers' drafts and the like).
6. Guarantees and commitments.
7. Trading for own account or for account of customers in —

(a) money market instruments (cheques, bills, certificates of deposit and the like);
(b) foreign exchange;
(c) financial futures and options;
(d) exchange and interest rate instruments;
(e) transferable securities.

8. Participation in securities issues and the provision of services related to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Safe custody services.
14. International offshore financial services.
15. Bureau de change business.
16. Provision of cheque cash services.
17. Transmission or receipt of funds by wire or other electronic means.
18. Services for which a licence is required under the Registered Agents and Trustees Licensing Order, 2000.

Made this 21st. day of Safar, 1421 Hijriah corresponding to the 25th. day of May, 2000 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

ANTI-TERRORISM (FINANCIAL AND OTHER MEASURES) ACT
CHAPTER 197, S 41/02
2008 Edition.

Arrangement of Sections

Citation.

1. This Act may be cited as the Anti-Terrorism (Financial and Other Measures) Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires —

"funds" includes cheques, bank deposits and other financial resources;

"Minister" means the Minister of Finance;

"terrorist" means any person who —

(a) commits, or attempts to commit, any terrorist act;

(b) prepares for any terrorist act;

(c) participates in or facilitates the commission of any terrorist act;

(d) promotes or encourages any terrorist act; or

(e) is otherwise concerned in any terrorist act, and includes any person declared in an order made under section 11 to be a terrorist;

"terrorist act" means the use or threat of action (whether in Brunei Darussalam or elsewhere) —

(a) where the action —

(i) involves serious violence against any person;

(ii) involves serious damage to property;

(iii) endangers any person's life;

(iv) creates a serious risk to the health or safety of the public or a section of the public;

(v) involves the use of firearms or explosives;

(vi) involves releasing into the environment or any part thereof, or distributing or otherwise exposing the public or any part thereof to —

(A) any dangerous, hazardous, radioactive or harmful substance;

(B) any toxic chemical; or

(C) any microbial or other biological agent or toxin;

(vii) is designed to disrupt any public computer system or the provision of services directly related to communications infrastructure, banking any financial services, public utilities, public transportation or public key infrastructure;

(viii) is designed to disrupt the provision of essential emergency services; or

(ix) involves prejudice to public security or national defence;

(b) where the use or threat is intended or reasonably regarded as intending to —

(i) influence the Government or any other government; or

(ii) intimidate the public or a section of the public.

(2) In this Act, any reference to a terrorist act includes any act referred to in sections 6(2) or (3).

(3) For the purposes of this section, a reference to the public includes a reference to the public of any country or territory outside Brunei Darussalam.

Prohibition against provision or collection of funds for terrorists.

3. No person shall in Brunei Darussalam, and no citizen of Brunei Darussalam and no company incorporated or registered under the Companies Act (Chapter 39) shall outside Brunei Darussalam, —
(a) provide funds to any person by any means, directly or indirectly; or
(b) collect funds for any person by any means, directly or indirectly, if he knows or there are reasonable grounds for him to suspect that the funds will be used to commit any terrorist act or facilitate the commission of any terrorist act.

Prohibition against dealing with property of terrorists.
4. No person shall in Brunei Darussalam, and no citizen of Brunei Darussalam and no company incorporated or registered under the Companies Act (Chapter 39) shall outside Brunei Darussalam, —
(a) deal, directly or indirectly, in any property that is owned or controlled by or on behalf of any terrorist or any other person owned or controlled by any terrorist, including funds derived or generated from property owned or controlled, directly or indirectly, by any terrorist or any other person owned or controlled by any terrorist;
(b) enter into or facilitate, directly or indirectly, any financial transaction relating to a dealing in property referred to in paragraph
(a); or
(c) provide any financial services or any other related services in respect of any property referred to in paragraph *(a)*, to or for the benefit of, or on the direction or order of, any terrorist or any other person owned or controlled by any terrorist.

Prohibition against provision of resources and services for benefit of terrorists.
5. (1) No person shall in Brunei Darussalam, and no citizen of Brunei Darussalam and no company incorporated or registered under the Companies Act (Chapter 39) shall outside Brunei Darussalam, make available any —
(a) funds or any other financial assets or economic resources; or
(b) other financial or related services, for the benefit of any prohibited person.
(2) In subsection (1), "prohibited person" means any —
(a) terrorist;
(b) person owned or controlled by any terrorist; or
(c) person acting on behalf of or at the direction of any person referred to in paragraphs *(a)* or *(b)*.

Prohibition against false threats of terrorists acts.
6. (1) No person shall in Brunei Darussalam, and no citizen of Brunei Darussalam and no company incorporated or registered under the Companies Act (Chapter 39) shall outside Brunei Darussalam, communicate or make available by any means any information which he knows or believes to be false to any person with the intention of inducing in him or in any other person a false belief that a terrorist act has been, is being or will be carried out.
(2) No person shall in Brunei Darussalam, and no citizen of Brunei Darussalam and no company incorporated or registered under the Companies Act (Chapter 39) shall outside Brunei Darussalam, place any article or substance in any place with the intention of inducing in some other person a false belief that —
(a) the article or substance is likely to explode or ignite and thereby cause personal injury or damage to property; or
(b) the article contains or the substance consists of any —
(i) dangerous, hazardous, radioactive or harmful substance;
(ii) toxic chemical; or
(iii) microbial or other biological agent or toxin, that is likely to cause death, disease, personal injury or damage to property.
(3) No person shall in Brunei Darussalam, and no citizen of Brunei Darussalam and no company incorporated or registered under the Companies Act (Chapter 39) shall outside Brunei Darussalam, dispatch or transport any article or substance by any means with the intention of inducing in some other person a false belief that —
(a) the article or substance is likely to explode or ignite and thereby cause personal injury or damage to property; or
(b) the article contains or the substance consists of any —
(i) dangerous, hazardous, radioactive or harmful substance;
(ii) toxic chemical; or
(iii) microbial or other biological agent or toxin, that is likely to cause death, disease, personal injury or damage to property.
(4) For the purposes of this section, a reference to a person inducing in any other person a false belief does not require that first-mentioned person to have any particular person in mind as the person in whom he intends to induce that false belief.

General prohibition.
7. No person shall in Brunei Darussalam, and no citizen of Brunei Darussalam and no company incorporated or registered under the Companies Act (Chapter 39) shall outside Brunei Darussalam, knowingly do anything that causes, assists or promotes, or is intended to cause, assist or promote, any act or thing prohibited by sections 3, 4, 5 or 6.

Duty to provide information.
8. Any person who in Brunei Darussalam, and any citizen of Brunei Darussalam and any company incorporated or registered under the Companies Act (Chapter 39) who or which outside Brunei Darussalam, has —
(a) possession, custody or control of any property belonging to any terrorist or any person owned or controlled by any terrorist; or
(b) information about any transaction or proposed transaction in respect of any property belonging to any terrorist or any person owned or controlled by any terrorist, shall immediately inform the Commissioner of Police and any such other person as the Minister may designate of that fact or information and provide such further information relating to the property, transaction or proposed transaction as the Commissioner of Police or such designated person may require.
Immunity from proceedings.
9. No action, suit or other legal proceedings shall lie against any —
(a) party to a contract for failing, neglecting or refusing to carry out any act required by that contract; or
(b) person for failing, neglecting or refusing to carry out any act under any written law, where such failure, neglect or refusal is solely attributable to, or occasioned by, the provisions of this Act or any regulations made thereunder.

Protection of persons for acts done under Act.
10. No person shall be liable in respect of any act done by him in the execution or purported execution of this Act or any regulations made thereunder if he did it in the honest belief that his duty under this Act or any regulations made thereunder required or entitled him to do it.

Power to declare person a terrorist.
11. (1) The Minister may by order published in the *Gazette* declare any person named and described therein to be a terrorist for the purposes of this Act: Provided that he may make such an order in respect of any person only if he believes that such person has been concerned in any terrorist act.
(2) The Minister may at any time amend any order made under subsection (1).
(3) An application may be made to the Minister to revoke an order made in respect of any person under subsection (1) by —
(a) that person; or
(b) any other person affected by the making of an order in respect of that person.
(4) The Minister, shall, after giving an applicant under subsection (3) an opportunity to be heard, make a decision which shall be final and shall not be called in question by any court on any ground whatsoever.

Directions to discharge Brunei Darussalam's international obligations.
12. (1) The Minister may issue such directions to any financial institution or any class of financial institution as he considers necessary in order to discharge or facilitate the discharge of any obligation binding on Brunei Darussalam by virtue of a decision of the Security Council of the United Nations relating to terrorism.
(2) Any financial institution to which a direction has been issued shall comply with it notwithstanding any other duty imposed on it by any written law, rule of law or contract; and in carrying out any act in compliance with that direction the financial institution shall not be treated as being in breach of any such written law, rule of law or contract.
(3) No financial institution shall disclose any direction issued to it if the Minister has notified it that he is of the opinion that any such disclosure would be against the public interest.
(4) A financial institution which fails or refuses to comply with a direction issued to it, or which discloses a direction issued to it in contravention of subsection (3), is guilty of an offence and liable on conviction to a fine not exceeding $20,000.
(5) In this section, "financial institution" means any person engaging in any relevant financial business as defined in section 4 of the Money- Laundering Order, 2000 (S 44/00).

13. (1) Any person in Brunei Darussalam, and any citizen of Brunei Darussalam outside Brunei Darussalam, who contravenes sections 3, 4, 5, 6, 7 or 8 is guilty of an offence and liable on conviction to a fine not exceeding $100,000, imprisonment for a term not exceeding 5 years or both.

(2) Every person who commits or does any act with intent to commit, or who counsels, procures, aids, abets or incites any other person to commit, or conspires with any other person (whether in Brunei Darussalam or elsewhere) to commit any offence under this Act or any regulations made thereunder is guilty of an offence and liable on conviction to a fine not exceeding $100,000, imprisonment for a term not exceeding 5 years or both.
(3) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any —
(a) director, manager, secretary or other similar officer of that body corporate, or any person who was purporting to act in that capacity; or
(b) other person who holds a controlling interest in that body corporate, he, as well as the body corporate, is also guilty of that offence and liable to be proceeded against and punished accordingly.
(4) Nothing in this Act or any regulations made thereunder shall prevent any person from being prosecuted under any other written law for any act or omission which constitutes an offence under this Act or any regulations made thereunder, or from being liable under that other written law to any punishment or penalty higher or other than that provided by this Act or the regulations, but no person shall be punished twice for the same offence.
(5) No prosecution shall be instituted under this Act or any regulations made thereunder without the written consent of the Attorney General.

Regulations.
14. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as he considers necessary or expedient for carrying into effect the provisions of this Act, including (without prejudice to the generality of the foregoing) provision for —
(a) the apprehension and trial of persons in breach of or contravening the regulations;
(b) empowering any person or class of persons to exercise, when investigating any offence under this Act or any regulations made thereunder, all or any of the powers of a police officer under the Criminal Procedure Code (Chapter 7) in relation to seizable offences; and
(c) the forfeiture and seizure of funds and assets of any person declared in an order made under section 11 to be a terrorist.
(2) Any regulations made under this Act shall not be invalid by reason only of that fact that they deal with any matter provided for by any other written law, or because of repugnancy to or inconsistency with any other written law.
(3) Any regulations made under this Act may provide a penalty on conviction for the breach or contravention thereof not exceeding a fine of $50,000, imprisonment for a term not exceeding 2 years or both.

Annex 3: List of all statutes received

Anti Terrorism (Financial and Other Measures) Act
Application of Laws Cap2
Arms & Explosives Act Cap58
Banking Order 2006
Brunei Islamic Trust Fund (Perbadanan Tabung Amanah Islam Brunei)
Business Names Act Cap92
Common Gambling Houses Cap28
Companies (amendment) Order 2001 (S69)
Companies Act (amendment) Order 2003
Companies Act Cap39 (including amendments)
Constitution of Brunei 1984
Cooperative Societies Act Cap84
Copyright Order
Criminal Conduct (Recovery of Proceeds) Order 2000
Criminal Law Preventative Detention Act Cap150
Criminal Procedure Code Cap7
Criminals Registration Order 2008 (S42)
Customs Order 2006 (S39)
Drugs Trafficking (Recovery of Proceeds) Act
Electronic Transactions Act Cap196
Emergency (Patents) Order 1999 (S42)
Evidence Act Cap108
Extradition (Malaysia & Singapore) Cap154
Extradition Order 2006
Finance Companies Act Cap89
Fisheries Order 2009
Forest Act 2002 Cap46
Insurance Order
Internal Security Act Cap133
International Bank Order 2000
International Business Companies Order 2000
International Insurance and Takaful Order 2002
International Limited Partnerships Order 2000 (S45)
International Trusts Order 2000 (S55)
Interpretation & General Clauses Act 2001 Cap4
Islamic Banking Order & Regulation 2008 (S96 & 97)
Kidnapping Act 1999 Cap164
Law Revision Cap1
Miscellaneous Licences Cap127
Misuse of Drugs Cap27
Money Changing and Remittance Businesses Act
Money Laundering Order 2000
Moneylenders Act Cap62
Mutual Assistance in Criminal Matters Order 2005
Mutual Funds Order 2001
Official Secret Act Cap153
Pawnbrokers Act Cap63
Penal Code Cap22
Powers of Attorney Cap13
Prevention of Corruption Act Cap131
Prevention of Pollution of the Sea Order 2005 (S18)
Public Order Act Cap148
Registered Agents and Trustees Licensing Order 2000 (S54)

Religious Council and Kadis Court Act Cap77
Maritime Offences (Ships and Fixed Platforms) Order 2007 (S61)
Trafficking and Smuggling of Persons Order 2004 (S82)
Securities Order 2001
Societies Order 2005 (S1)
Subscriptions Control Act Cap91
Summons & Warrants (Special Provisions) Cap155
Takaful Order 2008
Trade Marks Act 2000 Cap98