



NAMLC Quarterly Update

Bermuda Chairs Workshop to Launch Typologies Project on Trust & Corporate Service Providers

4TH QUARTER
DECEMBER 2009

SPECIAL FEATURE

The FIA implements technology to enable the electronic filing and analysis of Suspicious Activity Reports.

At the October 2009 Plenary of the Caribbean Financial Action Task Force (CFATF), it was announced that the CFATF in conjunction with the Financial Action Task Force (FATF) would be conducting a typologies research project to evaluate the operation and supervision of Trust & Corporate Service Providers (TCSP); and to assess the effectiveness of the AML/CFT requirements for TCSPs.



TCSP WG Workshop - Cayman Islands

To this end, participants from around the region and beyond attended the FATF Typologies Workshop which was held in the Cayman Islands in November 2009. Bermuda, in the person of the Chairman of NAMLC, Mrs. Cheryl Lister, Chaired the workshop on TCSPs, which was only one of five workshops being conducted on AML/CFT related projects. During the TCSP workshop the scope, purpose and intended products of the proposed project were discussed and a preliminary Project team was established, along with working groups to address various aspects of the Project. Participants in the workshop came from jurisdictions within the Caribbean and North America as well as from international organisations. A key feature of the regional jurisdictions involved in the workshop was the significant role of their financial services sector within their economies; and it was also evident that TCSPs also represented a valuable sub-sector in most of these jurisdictions. Representatives from industry were also welcomed and present at the TCSP workshop.

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

It is noteworthy that almost simultaneous to the launch of this project was the commencement of the FATF review of FATF Recommendations 5 and 33—40. This is being done in preparation for the FATF 4th Round of Mutual Evaluations which is expected to commence in 2013 with an updated methodology. The review is being done by Expert Groups A & B, the first meetings of which were held December 7—10 in Washington DC. Mr. William Kattan was a CFATF representative on both Expert Groups. This is relevant to the work of the TCSP Project as Recommendations 5, 33 and 34 are especially important in the supervision of TCSPs, and it may therefore be beneficial that an in-depth evaluation is being done on TCSPs at this particular time.

A comprehensive report is expected at the end of the project in late 2010.

Other points of interest:

- *The work of NAMLC and its agencies continues in an effort to enhance Bermuda's AML/ATF framework.*
- *FATF publishes a report on the vulnerabilities of the securities sector to money laundering and terrorist financing*

Inside this issue:

<i>ML/TF Vulnerabilities in the Securities Industry</i>	2
<i>NAMLC Agencies & Ministry Updates</i>	3
<i>NAMLC Agencies & Ministry Updates ... Cont'd</i>	4
<i>Legislative Updates</i>	4
<i>The FIA Moves to Electronic Filing of SARs</i>	5
<i>New AML/ATF Legislation & The Year To Come</i>	6

ML/TF VULNERABILITIES IN THE SECURITIES INDUSTRY

Generally speaking securities are negotiable instruments that represent financial value. There is no single universal definition of what products qualify as securities, as this is determined by the laws of each jurisdiction. However, under the standards developed by the FATF the numerous activities which are commonly understood to be securities trading come within the scope of activities carried out by persons or entities defined as “financial institutions”. There is no separate classification under these standards for Securities. It is recognized that the securities industry evolves rapidly and is global in nature. It therefore provides opportunities to quickly carry out transactions across borders with a relative degree of anonymity. As part of its ongoing work, the FATF has therefore recognized as imperative the need to highlight and share current information about potential vulnerabilities in this sector.



With the participation of over 40 countries and international organizations, FATF recently conducted a global study and published a typology report on Money Laundering (ML) and Terrorist Financing (TF) in the securities industry. A review of the current literature in this area also provided material in identifying trends and vulnerabilities. The need for this typology report was partly driven by the comparatively low levels of suspicious transaction reporting (STR) in the securities industry relative to other industries, such as banking; and some possible reasons for this are explored in the report. Additionally, whilst other regional FATF style bodies have in the past conducted typologies on this sector, given the differentiation in the types of products considered to be securities across jurisdictions, it was considered useful to do a global study highlighting these variations. Also, whilst the usual concerns about money laundering, for instance, generally relates to the introduction of illicit assets into the financial system, the report recognized that the securities industry posed a unique scenario, in that by reason of predicate crimes such as insider trading, fraud and market manipulation, securities can be used as a vehicle for generating illicit proceeds within the financial system. The report therefore aims to:

- Raise overall awareness of the ML/TF risks in the securities industry for industry participants, regulators and law enforcement;
- Identify specific ML/TF risks based on product type, intermediary, market type and payment/distribution channel;
- Provide a comprehensive set of suspicious indicators and case studies that are applicable to the securities industry; and
- Identify any current and emerging issues which would benefit from further consideration by the FATF.

Using questionnaire responses received from the 40 participants, the Report identified the products that are classified as securities within these jurisdictions - showing some commonality and differences among them; the type of market access and payment methods involved; the type of intermediaries involved in securities trading; and the vulnerabilities associated with each. Case studies were provided where possible. The Report also focused on the predicate offences which are unique to the securities sector, especially because of the concern that the low levels of STRs from this sector may arise from under-reporting of these crimes, which in itself may result from a misperception that crimes such as insider trading and market manipulation are not money laundering per se. Thus, through the use of a number of case studies from various jurisdictions, the often inextricable link between these crimes and money laundering was clearly demonstrated and the need for the filing of properly detailed STRs in order to give rise to enforcement action against these crimes was emphasised. This is particularly apropos at this time, having regard to the greatly publicized Ponzi schemes recently, whereby billions of dollars in investments were obtained but not predicated on actual profits to be made in securities trading. The report recognises that whilst Ponzi schemes do not always involve the direct use of securities intermediaries or markets, the way these schemes are marketed often causes sales of interests in the scheme to be classified as securities, and thus subject to the jurisdiction of securities regulators.



The Report concluded that though the literature and questionnaire responses did not suggest that this sector readily lends itself to terrorist financing, it nevertheless remains a serious risk, particularly in relation to opaque corporate structures and charities. However, in respect of money laundering, the case studies and literature demonstrate that the use of the securities industry for this purpose is an actual threat, made more potent by the fact that the industry self-generates illicit proceeds from legitimate funds, with a form of automated money laundering taking place thereafter. [See: <http://www.fatf-gafi.org/dataoecd/32/31/43948586.pdf>]

NAMLC Agency & Ministry Updates

BERMUDA MONETARY AUTHORITY (BMA)

Since July 2009 the BMA's specialist AML/ATF Compliance Unit has completed processing the over 450 registration applications received from non-licensed persons under section 10 of the Proceeds of Crime Regulations (Supervision and Enforcement) Act 2008. During that period, 23 onsite examinations of 16 AML/ATF Regulated Financial Institutions have been conducted by the Specialist Unit to evaluate compliance with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008. Among those examinations were a number of themed/focused onsite examinations on deposit taking institutions to better evaluate compliance with specific Regulations. The Unit also developed a paper-based Self Assessment Questionnaire which was completed by the Banking sector on a trial basis. Based on feedback from the Banking sector the Questionnaire was modified and an on-line version developed. The Questionnaire has since been used as the offsite examination tool; and in the 4th quarter 2009 was completed by three subsectors of the financial sector; licensed fund administrators, licensed trust companies and persons licensed to conduct investment business. It is planned that the Questionnaire will be circulated to the entire financial sector by the end of the second quarter in 2010. Training of staff in the Specialist Unit continued during this Quarter, with their participation in a Compliance Training Programme hosted by the Financial Intelligence Agency (FIA) in collaboration with the Financial Transactions Reports Analysis Centre of Canada (FINTRAC).

BERMUDA POLICE SERVICE (BPS)

Twelve officers from the Financial Crimes Unit received training from the Association of Certified Anti-Money Laundering Specialists (ACAMS) and sat the ACAMS Certification Examination in September 2009. As a result of this the BPS now have a number of officers who have successfully achieved the CAMS certification. The training was delivered in Bermuda at the request of the BPS and special arrangements were made for the examination to be conducted in Bermuda. Candidates from the BMA, various financial institutions, and the NAMLC Office benefitted from having the training and examinations brought to Bermuda. Two senior Officers from the Financial Crimes Unit also benefitted from participation in the ACAMS Annual Conference which was held in Las Vegas, Nevada in September 2009. The BPS continues to focus resources on increasing prosecutions for drug trafficking and money laundering. This was made clear after the realignment of the Service which took place in late 2009, which will see the Financial Crime and Narcotics Units working more closely together.

DEPARTMENT OF PUBLIC PROSECUTIONS (DPP)

Following various drug convictions in the Magistrates' Courts between July and December 2009, \$27,500 in cash has been forfeited in applications made under the Misuse of Drugs Act 1974, with two applications still pending hearing. During that period, Confiscation Orders made under the Proceeds of Crime Act 1997 totaled \$74,329.37; and two money laundering cases have been brought before the Courts and are now pending trial.

FINANCIAL INTELLIGENCE AGENCY (FIA)

The Director of the FIA attended the Egmont Working Group Meeting in Malaysia in October 2009, where Bermuda signed Memoranda of Understanding with four Egmont member Financial Investigation Units (FIU). A further two MOUs were signed during the CFATF Plenary, bringing the total number of MOUs to fourteen. The FIA has reported that during the 3rd Quarter of 2009, in discharging its statutory functions, they received 174 Suspicious Activity Reports (SAR), making a total of 525 since the beginning of 2009; seven (7) requests for information were received from FIUs overseas; and the FIA made six (6) requests for information to its overseas counterparts. In order to enhance the process of receiving and analyzing SARs, the FIA invested in the **goAML** technology solution, a system developed by the United Nations Office on Drugs and Crime (UNODC). The system was installed in September 2009, at which time the FIA staff received training in its use. Since that time, financial institutions and other reporting entities were exposed to training in and presentations about the use of the system. (SEE ARTICLE ON PAGE 5 FOR MORE INFORMATION). AML training of FIA staff continued with the participation of staff members in a training programme hosted by the FIA in collaboration with the Canadian FIU, FINTRAC. Staff from the BMA and Bermuda Stock Exchange also benefitted from this training.

HM CUSTOMS

The Department of Customs has implemented a new Customs Traveler Declaration form which now includes a monetary declaration. Informational posters about the new forms will soon be posted at all Ports, providing helpful information to travelers about the requirements of the new forms. The Revenue Act 1898, as amended in March 2008 provides for the forfeiture of property (including cash) which is the subject of a false customs declaration. This provision therefore supports the new requirement for a monetary declaration, enabling the Customs Department to seize and forfeit undeclared monetary instruments. In addition to this, Customs can impose civil money penalties for failure to declare currency. Customs Officers are to receive specialist training in dealing with currency seizure arising from breaches of

NAMLC Agency & Ministry Updates

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the monetary declaration. The Customs Department is also exploring the option of installing new X-Ray equipment at the Hamilton Docks in the near future.

MINISTRY UPDATE

The Government of Bermuda has now signed eighteen (18) Tax Information Exchange Agreements (TIEA) with other countries. Bermuda has been elected by the members of the OECD Global Forum to the position of a Vice Chair, and is the only non-G20, non-OECD country to have been elected to that level of leadership in the OECD Global Forum. The Ministry of Finance has finalized negotiations for TIEAs with Belgium and several other OECD members, all of which are to be signed in the near future.

NAMLC

NAMLC's commitment to ongoing training for both the public and private sector in relation to AML/ATF was exemplified in September 2009 with its sponsorship of the Association of Bermuda Compliance Officers (ABCO) Annual Summit held at the Fairmont Southampton Princess Hotel. The Chairman of NAMLC, Mrs. Cheryl Lister also did a presentation on Day 2 of the Summit, on Bermuda's AML/ATF efforts. During September, NAMLC also provided financial assistance to the Bermuda Police Service to enable two of its senior Officers to attend the Association of Certified Anti-Money Laundering Specialists (ACAMS) Annual Conference in the United States. NAMLC, through its Chairman, continues to play an active role in the regional organisation, Caribbean Financial Action Task Force (CFATF), through attendance at its October 2009 Plenary; representing CFATF at the Financial Action Task Force (FATF) Plenary in October 2009; participation in CFATF's Strategic Plan Working Group, whose aim is to develop the organization's first Strategic Plan; and most recently through Chairing of the joint CFATF/FATF Experts Working Group on Trust and Corporate Service Providers (See page 1 for more details on this). The staff of the NAMLC Office in conjunction with personnel from relevant NAMLC Agencies and Ministries, continued to work towards updating Bermuda's legislative framework to more effectively combat money laundering and terrorist financing and to more efficiently align itself with the international AML/CFT standards (See below for relevant legislative updates). This work has been supported by a number of presentations made to industry by the Chairman and the NAMLC Office, either as part of the consultative process

Legislative Updates

APPEAL TRIBUNAL REGULATIONS: In August 2009, the Appeal Tribunal Regulations were finalized and gazetted and came into force on August 26, 2009. These Regulations have been implemented under section 27 of the Proceeds of Crime Regulations (Supervision and Enforcement) Act 2008 (SEA).

WIRE TRANSFER REGULATIONS: In December 2009, both Houses of Parliament approved the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Amendment Regulations 2009, which will include in the 2008 Proceeds of Crime Regulations new Regulations dealing with Wire Transfers. Consequentially, the Minister of Justice by Order, approved by both Houses, also amended section 20 of SEA, thereby including the new wire transfer regulations within the list of Regulations already subject to the civil penalty regime under that section. Once in full implementation these new Regulations will allow Bermuda to become compliant with FATF's Special Recommendation VII for which Bermuda had received a Non-Complaint rating in the 2007 IMF Report. It is expected that the new Regulations will come into effect on January 13, 2010.

AMENDMENTS TO ATFA, POCA, SEA & BMA ACT: As reported in the July 2009 Quarterly Update, Bermuda committed to the UK to implement in domestic legislation, provisions similar to those in Schedule 7 to the UK Counter Terrorism Act 2008. This would enable Bermuda to take counter measures within its financial sector to address concerns relating to the risk of terrorist financing, money laundering or weapons proliferation emanating from specified high risk countries such as Iran. The Bill entitled "Anti-Terrorism (Financial and other Measures) Amendment Act 2009" was debated in and approved by both Houses of Parliament in late December 2009. This legislation will also amend the Proceeds of Crime Act 1997 (POCA), by including provisions which are broadly similar in purpose and effect of those of the UK Schedule 7. The amendments will give the Minister of Justice the power to impose Directions on financial institutions requiring them to either conduct enhanced Customer Due Diligence or enhanced Ongoing Monitoring of clients; or to systematically report to specified authorities about certain transactions or business relationships; or to either limit or cease doing specified business. Consequential amendments to SEA are being made also, to enable the Bermuda Monetary Authority (BMA) to supervise and monitor compliance with the Directions or with any conditions imposed by the Minister in exemption licences issued under these new provisions. One amendment to the BMA Act 1969 will also expand the scope of the BMA's remit to fight crime, to include terrorist financing within the class of crimes contemplated by that Act. It is intended that these amendments will come into force on January 13, 2010.

SPECIAL FEATURE

THE FIA MOVES TOWARDS ELECTRONIC FILING OF SUSPICIOUS ACTIVITY REPORTS

Over the years, consideration has been given to the implementation of an electronic reporting system in Bermuda for the filing of Suspicious Activity Reports (SAR) under the Proceeds of Crime Act 1997. One of the initial goals of the newly established Financial Intelligence Agency (FIA) was to implement a system that would enable it to effectively and efficiently fulfill its statutory functions.

In order to fulfill that goal, the FIA conducted an exhaustive review of the solutions available to Financial Intelligence Units (FIU) and ultimately chose **goAML**, a product developed by the Information Technology Service of the United Nations Office on Drugs and Crime (UNODC) in partnership with the UNODC Global Programme Against Money Laundering. It is an integrated database and intelligent analysis system intended for use by FIUs worldwide.

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

- A uniform system for FIUs, which includes data collection, collation, analysis, case workflow and intelligence dissemination.
- Visual representation of transactional link analysis, automated link analysis using addresses, phone numbers, company board membership etc.

- Support of multilingual user interface enables the user to operate the system in his/her own language.

- Data encryption ensures the safety of data even if the system is physically compromised.

- Fully customizable risk scoring for all the elements of a case.

- Availability of initial and ongoing user training.

- Fully customizable reporting interface enables the FIA team members to view data the way they want to independent of each other.

- Many different views of data offered for analysis with links to other data analysis screens with drill down functionality.

- Fully automated data profiling that creates base lines for persons, occupation groups, business types and accounts, etc.

- Supports a wide range of data volumes depending on the reporting mandates in individual jurisdictions.

- XML based reporting standard between reporting entities and FIA guarantees syntactically correct reports from day one.

- Data collection is through the **goAML** secure website (hosted on the FIA's premises), via offline media (CD-ROM) or on predefined reporting forms.

- Fully customizable rule-based analysis enables the design of rules with dynamic risk scores; continuous scanning of data ensures that reported transactions fit the patterns.

- Versatile options like dynamic user filtering, grouping of data, export data to Excel, watch lists integration, analyst workspace and alert management.

In order to get industry on board in the implementation of this system, on

24th June 2009 the FIA met with and made a presentation to a Sub-Committee of the Bermuda Banker's Association. Attendees were advised of the FIA's plan to implement a new information technology system that would enable online reporting of SARs.

On 18th August 2009, the reporting institutions that file the greatest volume of SARs were provided with the standard XML documentation to enable online reporting. On 10th September 2009, a selection of information technology and Money Laundering Reporting Officers from Bermuda's reporting institutions were invited to a meeting at the FIA which provided the opportunity for the UN Representative to introduce the **goAML** XML schema.

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

The FIA is available to meet with prospective users of the system to provide hands-on training on the **goAML** system. The FIA would request that individual users contact the FIA to arrange a time for this training to take place during January or February 2010. Contact the FIA at

As of the 4th January 2010, **goAML** has been implemented in the Palestine Monetary Authority (PMA), South Africa, Tanzania, Nigeria, Namibia, Kosovo and Bermuda, with a number of planned implementations in 2010.

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GOVERNMENT OF BERMUDA

Ministry of Justice

*Senator The Hon. Kim N. Wilson J.P.
Attorney General and Minister of Justice*



PUBLIC ADVISORY

Bermuda financial institutions are again reminded of the importance of taking into account the risks highlighted in the October 2009 FATF Public Statement in evaluating transactions and business relationships originating from Iran, Uzbekistan, Turkmenistan, Pakistan and Sao Tome & Principe. As mentioned in NAMLC's July and November 2009 Quarterly Updates, FATF Statements have warned especially of the danger to the international financial system which emanates from Iran's continued failure to meaningfully address the ongoing and substantial deficiencies in its anti-money laundering and combating the financing of terrorism (AML/CFT) regime. Countries are therefore encouraged to take effective countermeasures to protect the integrity of their financial sectors from these risks.

The Year to Come

The NAMLC Chairman and staff hopes that everyone had a peaceful and blessed holiday season, and wishes to take this opportunity to wish you all a safe and prosperous 2010. We recognize that 2009 in many ways was a challenging year. However, we believe that challenges often create many opportunities for growth and renewal. Accordingly, we hope that during 2010 we will all recognize the conditions which will enable us to develop our skills and talents and utilize those skills to improve ourselves and our organizations.

To this end, the NAMLC Chairman and staff have already defined the work necessary during this new year to advance and enhance Bermuda's anti-money laundering/anti-terrorist financing programme. During 2010, these are the domestic initiatives we will work to advance, in collaboration with the relevant stakeholders in the public and private sectors:

- Developing an AML/ATF supervision programme for lawyers and accountants;
- Developing an AML/ATF supervision programme for Corporate Service Providers and other designated non-financial businesses and professionals, such as high value dealers and persons in the real estate sector;
- Facilitating a risk assessment of Bermuda's framework to identify perceived areas of risk for money laundering and terrorist financing;
- Conducting a comprehensive review of Bermuda's AML/ATF laws as against the international standards and in light of any identified areas of risk peculiar to Bermuda; and
- Working with the appropriate authorities to develop an AML/ATF programme for Charities.

Additionally, NAMLC will continue to participate in the international initiatives undertaken through FATF, CFATF and other international bodies. These include the work on reviewing FATF Recommendation 9 and the Typologies Project on Trust and Corporate Service Providers.

This is a very ambitious and extensive work programme, but we believe that not only is it achievable, but it is imperative that it be achieved. To this end, NAMLC will from time to time be calling upon the assistance of relevant stakeholders, either as part of a consultative process, to provide informational feedback or simply for moral support. We look forward to a productive, co-operative and beneficial year working with you all.