

## SECRETARIAT NOTE

### Purpose

1. In accordance with APG members' decision at the 2013 Annual Meeting that Brunei Darussalam move from regular to biennial reporting on the basis of the findings of the 2012 APG Review Team Analysis Report of Brunei Darussalam's progress, and in accordance with APG publication policy for ME follow-up information, attached to this Secretariat Note is the APG Review Team's 2012 Analysis Report (including Brunei Darussalam's 2012 ME progress report).
2. This note also presents a brief summary of progress made by Brunei Darussalam since July 2012.

### Background

3. The second mutual evaluation report (MER) of Brunei Darussalam was adopted by the APG in July 2010. Brunei Darussalam was placed on regular follow-up with expedited reporting and reported to the APG on progress made to address the deficiencies in its MER in April 2011 (1<sup>st</sup> ME progress report) and April 2012 (2<sup>nd</sup> ME progress report).
4. In 2012, an APG Review Team analysed Brunei Darussalam's 2<sup>nd</sup> ME progress report as well as subsequent significant legislative changes which were enacted in June 2013 immediately prior to the 2012 APG Annual Meeting. The Review Team found that Brunei Darussalam had made substantial progress and had brought compliance with nine of the 13 core/key FATF Recommendations rated NC/PC in the MER – R.1 (ML offence), R.3 (confiscation), R.5 (CDD), R.10 (record-keeping), R.13 (STR reporting), R.36 (MLA), SR.II (TF offence), SR.IV (STR reporting for TF) and SR.V (international cooperation) – up to a level essentially equivalent to LC or C.
5. The 2012 APG Review Team Analysis Report adopted by members at the 2012 Annual Meeting, therefore found that Brunei Darussalam had brought the level of compliance with the six core FATF Recommendations to a level equivalent to LC or C. However, due to last minute changes to the 2012 Analysis Report which led to a number of 'upgrades' to both core and key Recommendations, it was not realised at the time that the 2012 Analysis Report was adopted that Brunei Darussalam had in fact made sufficient overall progress to be recommended to move to biennial update (reduced follow-up), rather than the regular follow-up which was agreed by members.
6. The *APG Mutual Evaluation Follow Up Procedures 2013* state that:  
  
“14. Criteria: Biennial update will apply in the following two circumstances:
  - a) When a member's MER is adopted with either C or LC ratings for the six core FATF Recommendations, i.e. no PC/NC ratings, **and** if members agree; or
  - b) At any other time (i.e. at a subsequent Plenary) if members decide a member has taken 'sufficient action' to be considered for removal from regular follow-up. For 'sufficient action' to be shown, members would have to be satisfied that the member has an effective AML/CFT system in force, with the member having implemented the six core FATF Recommendations at a level essentially equivalent to a C or LC, taking into consideration

that there would be no formal re-rating. Such a decision needs to be supported detailed Analysis Report prepared by a Review Team.<sup>1</sup>” [emphasis added]

7. On the basis of the above members agreed at the 2013 Annual Meeting that Brunei Darussalam has taken ‘sufficient action’ to be removed from regular ME follow-up and placed on biennial update (reduced follow-up) reporting.

#### **Further progress made by Brunei Darussalam since 2012 Annual Meeting**

8. In addition to the progress found by the 2012 Review Team, the FATF has recognised Brunei Darussalam’s significant progress against the strategic deficiencies identified in its International Cooperation Review Group (ICRG) action plan. Brunei Darussalam exited from the ICRG review process in June 2013. On 21 June 2013 the FATF issued a public statement to that effect<sup>2</sup>.

9. Brunei Darussalam continues to address the identified deficiencies in relation to the remaining key Recommendations at the NC/PC level and to improve the effectiveness of its AML/CFT system. The Secretariat acknowledges the progress Brunei Darussalam has made in commencing supervisory activity in relation to banks, money changers and money remitters and in implementing further legislation to enhance its CFT framework. The Secretariat also welcomes the expected implementation of Brunei Darussalam FIU’s Integrated Financial Intelligence System, which will enhance the FIU’s ability to operate effectively.

10. It is important to note that the conclusions in this Secretariat Note and the Review Team’s Analysis Report do not prejudge the results of future assessments, as they are based on information which was not verified through an on-site process and was not as comprehensive as that of a mutual evaluation.

APG Secretariat

July 2013

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<sup>1</sup> Paragraph 14 of the *Revised Second Round Mutual Evaluation Follow-up Procedures 2013*, OR paragraph 87 of the *Revised Procedures for APG Mutual Evaluations 2012*

<sup>2</sup> FATF public statement, *Improving Global AML/CFT Compliance: On-going process - 21 June 2013*: [http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/compliance-june-2013.html#brunei\\_darussalam](http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/compliance-june-2013.html#brunei_darussalam)

## ***BRUNEI DARUSSALAM***

### **DETAILED ANALYSIS REPORT (AR) BY APG REVIEW TEAM**

#### **Key points/issues for discussion**

Brunei Darussalam's mutual evaluation report (MER) was adopted in 2010. Brunei Darussalam was rated NC/PC in relation to **13** core/key FATF Recommendations. At the 2011 Annual Meeting the members considered the recommendation for Brunei to enter into enhanced follow up, however, the final decision was for Brunei to enter into regular follow up with expedited reporting for their third-year report. The third-year report, brought forward from 2013 to 2012, was submitted in March 2012 and is the subject of the analysis below.

This AR finds that Brunei Darussalam has actively pursued changes to its AML/CFT legislation and improvements to implementation. Brunei Darussalam has made significant progress in relation to a number of FATF Recommendations, with the level of compliance with **9** core/key Recommendations previously rated NC/PC now at a level equivalent to a LC or C. Compliance remains at the NC/PC level for **4** core/key Recommendations.

**Action: Members to consider the recommendation at paragraph 107 of this report – Brunei Darussalam should be subject to regular follow-up, with regular reporting, under the APG's mutual evaluation procedures.**

## **I. INTRODUCTION**

1. This detailed review was conducted by the following APG Review Team:

- Legal issues: Ruel Bumatay, Anti-Money Laundering Council, Philippines
- Financial/regulatory issues: Sarah Azlina Che Rohim, Bank Negara Malaysia, Malaysia
- FIU/Law enforcement issues: Shaun Mark, Australian Federal Police, Australia
- APG Secretariat: Jennifer Ford

2. Brunei Darussalam's MER was adopted in July 2010. The original ME assessors for legal and financial/regulatory issues were not available to conduct this progress report analysis.

3. In their 2010 MER Brunei Darussalam was rated NC or PC in relation to **41** of the 49 Recommendations, including **13** of the 16 core/key FATF Recommendations, as follows:

<b>CORE Recommendations<sup>1</sup> rated NC or PC</b>	
PC	R.1, R.10, SRII, and SRIV
NC	R.5, R.13
<b>KEY Recommendations<sup>2</sup> rated NC or PC</b>	
PC	R.3, R.36, SRI, SRIII, SRV
NC	R.26, R.23
<b>OTHER Recommendations rated NC or PC</b>	
PC	R.2, R.14, R.17, R.18, R.20, R.25, R.27, R.29, R.30, R.31, R.32, R.33, R.34, R.38, SR.VI, SR.VIII
NC	R.6, R.7, R.8, R.9, R.11, R.12, R.15, R.16, R.21, R.24, SR.VII, SR.IX

4. Brunei Darussalam is currently subject to **regular follow-up with expedited reporting**. At the 2011 Annual Meeting, members considered placing Brunei under enhanced follow-up reporting, however, the final decision was for Brunei to enter into regular follow up but with expedited reporting. The requirement for Brunei to submit a third-year detailed report was brought forward from 2013 to 2012, with the report to be received by 30 March 2012.

## **II. INCLUSION IN THE FATF ICRG REVIEW PROCESS**

5. Brunei Darussalam is currently subject to the FATF ICRG process. Outstanding ICRG Action Plan items relate to SRIII.

## **III. OVERVIEW OF PROGRESS MADE BY EVALUATED MEMBER**

6. The Review Team has analysed the progress made by Brunei Darussalam for each core/key Recommendation rated NC or PC in the MER using the information provided by Brunei Darussalam in its Detailed Progress Report (DPR) on 30 March 2012 and information from the FATF ICRG processes.

7. Brunei has been working to address the deficiencies listed in the MER and to meet the international standards on AML/CFT. Since the MER was published in July 2010 Brunei has issued a number of regulations to financial institutions (FIs) as *Autoriti Monetari Brunei Darussalam* ‘notices’. These in turn are supported by various pieces of legislation that have been amended and improved to increase Brunei’s compliance with the international standards and generally improve its AML/CFT systems.

8. Brunei’s Criminal Asset Recovery Order 2012 (CARO) and Anti-Terrorism (Amendment) Order 2012 (ATAO) received royal assent and took effect on 16 June 2012. The CARO replaces and repeals other overlapping instruments, having been (according to the authorities) “designed to be more straightforward for better understanding and efficient implementation by different agencies especially law enforcement agencies in their money laundering/proceeds of crime investigations.” The CARO has repealed and replaced the Criminal Conduct (Recovery of Proceeds) Order 2000 (CCROP), Drug Trafficking (Recovery of Proceeds) Act 2000 (DTROP) and Anti-Money Laundering Act, Chapter 209 (AML).

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<sup>1</sup> The core Recommendations as defined by the FATF are R.1, SRII, R.5, R.10, R.13 and SRIV. Core and key recommendations are carefully reviewed when considering removal from the follow-up process.

<sup>2</sup> The key Recommendations as defined by the FATF are R.3, R.4, R.26, R.23, R.35, R.36, R.40, SRI, SRIII, and SRV.

## ***Core/key Recommendations rated NC/PC***

### ***Legal issues and international cooperation***

#### **Recommendation 1 (R.1): Criminalization of Money Laundering**

9. Brunei was rated PC on R.1. The MER recommendations included: widening the definition of predicate offences to include all offences with a maximum custodial term of one year or more; the inclusion of ‘use’ of property that is a proceed of drug offence as an act of ML; the stipulation of corporate criminal liability; to increase fines in order for them to be effective, proportionate and dissuasive; and, to expand the definition of ‘proceeds of crime’ to include benefits that are derived from the commission of the predicate offence, the proceeds of such crimes and the instrumentalities.

10. Brunei has undertaken ML investigations under its previous legislation and undertook 14 investigations in 2010, 12 investigations in 2011 and 1 investigation to date in 2012. None of these investigations has yet led to a prosecution. While it is encouraging that the authorities are undertaking investigations, the effectiveness of the previous legislation will not be clear until it is tested in court.

11. Brunei has addressed many of the legislative gaps identified in the 2010 MER through the new Criminal Asset Recovery Order 2012 (CARO). The order allows for the criminalisation of ML and reduces the threshold of serious offences to a penalty of imprisonment of 6 months. Brunei has supplied a summary of the categories of crimes that are captured by the CARO with offences for each predicate crime. Further analysis will be required to fully substantiate the breadth of these categories.

12. It is noted that the terminology in the CARO, Part II, section 3, changes between both “crime” and “serious crime”, however the definitions section clarifies these as all being covered for the purposes of proceeds of crime.

13. The CARO goes a considerable way to addressing the deficiencies and recommended actions noted in the 2010 MER for R.1. While it will require more time before effectiveness can be fully assessed and, as mentioned above, further analysis is required to confirm that all predicate crimes are completely covered; the review team finds that Brunei Darussalam has brought the level of compliance with R.1 up to a level equivalent to LC.

#### **Special Recommendation II (SR.II): Criminalisation of Terrorist Financing**

14. Brunei was rated PC for SR.II. Recommended actions included to extend the definition of terrorist act in Brunei to include those acts intended to influence an international organization; redefine “property” to cover all species of funds used for TF and to be consistent with the international standards; criminalize TF committed by terrorist organizations; extend the TF offence to collecting funds to be used by terrorist organization or by an individual terrorist; and to include TF as a predicate offence to money laundering.

15. Brunei has addressed many of the deficiencies by criminalizing TF through the enactment of the Anti-Terrorism Order (ATO) 2011 in August 2011. The ATO includes an expansion of the definition of terrorist act, revision of the definition of property, inclusion of terrorist financing as a predicate offence to money laundering, and increasing the sanctions for the TF offence.

16. Furthermore, Brunei has enacted the Anti-Terrorism (Amendment) Order 2012 (ATAO), effective from 16 June 2012, which has criminalised TF committed by a terrorist organisation, and extended the TF offence, as defined in Section 4 of the original ATO 2011, to include the collection of funds to be used by terrorist organisation or by an individual terrorist. While effectiveness cannot yet be assessed, the review

team finds that Brunei Darussalam has brought the level of compliance with SR.II up to a level equivalent to LC.

Recommendation 3 (R.3): Confiscation, freezing and seizing of proceeds of crime

17. Brunei was rated as PC for R.3. The MER recommendations include amending the CCROP to apply to the proceeds and instrumentalities of all predicate offences, and to review the CCROP and the DTROP to address procedural complexities.

18. The CARO repeals and replaces the CCROP, DTROP and AMLA. Part IV of the CARO addresses and appears to rectify the procedural complexities noted in the CCROP and the DTROP.

19. It is a welcome development that Brunei has adopted a non-conviction based civil forfeiture regime under the CARO. Section 83, paragraph 5, states that the “High Court may grant a non-conviction forfeiture order whether or not any person has been charged with or convicted of a money laundering offence or serious offence”.

20. In terms of effectiveness, Brunei reports that law enforcement agencies particularly the Royal Brunei Police Force, Narcotics Control Bureau and the Anti-Corruption Bureau have been actively engaged in money laundering investigations and /or proceeds of crime investigations, but no detailed statistics regarding confiscation were provided.

21. In summary, while it is too early to assess the effectiveness of the new law, Brunei has addressed the technical deficiencies in relation to R.3 through the CARO. The review team finds that Brunei Darussalam has brought the level of compliance with R.3 up to a level equivalent to LC.

Special Recommendation III (SR.III): Confiscation, freezing and seizing of proceeds of crime and terrorist finances

22. Brunei was rated PC for SR.III. The MER recommendations included: to issue and implement appropriate legal and procedural frameworks to implement UNSCRs 1267 and 1373.

23. The ATA was replaced by the 2011 ATO with subsequent amendments in the 2012 ATAO.

24. A draft Anti-Terrorism Order (Measures against Terrorist Financing) Regulation is planned for issue pursuant to section 67 of the ATO. The draft ATO TF regulation, based upon the 2012 amendments, appears to allow adequate provision in prohibiting FIs and DNFBPs ability to “deal with” accounts of designated entities, and for general address of the deficiencies noted in the MER. However, until the draft ATO Regulation is finalised and issued to reporting entities, which Brunei anticipates will occur before December 2012, then Brunei has not yet brought the level of compliance with SR.III up to a level equivalent to LC.

Recommendation 36 (R.36): Mutual Legal Assistance

25. Brunei was rated PC for R.36. The MER recommendations included: to 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; that intended instrumentalities should be clearly covered for ML, TF and predicate offences; and to establish enabling provisions for freezing and seizing property except in widest circumstances

26. Brunei has addressed these deficiencies through increased training for relevant agencies, and, importantly, through the enactment of the CARO. The revised definitions of ‘proceeds of crime’ and

‘serious offense’ and the provisions in the CARO giving greater scope for MLA, will give effect to foreign restraint and confiscation orders.

27. The review team finds that Brunei Darussalam has brought the level of compliance with R.36 up to a level equivalent to LC.

28.

#### Special Recommendation I (SR.I): UN Conventions

29. Brunei was rated PC for SR.I. The recommendation was for Brunei to fully implement UNSCRs 1267 and 1373. As discussed in more detail in the analysis on SR.II and SR.III, and below regarding SR.IV, the Anti-Terrorism (Amendment) Order 2012, effective from 16 June 2012, addresses many of the deficiencies noted in respect to TF. However, in regards to SR.I, the draft Anti-Terrorism Order (Measures against Terrorist Financing) Regulation that is not yet in effect, once implemented, will contribute to Brunei’s compliance with this standard.

30. While substantial legal instruments have been drafted to address the gaps in Brunei’s CTF system, at this stage insufficient progress has been made and Brunei has not yet brought the level of compliance with SR.I up to a level equivalent to LC.

#### Special Recommendation V (SR.V): International cooperation

31. Brunei was rated PC for SR V. It was recommended in the MER that Brunei “consider establishing arrangements for coordinating seizure and confiscation actions with other countries”.

32. Sections 93 and 94 of the CARO allow for foreign countries to request from Brunei a restraining order for them, and on behalf of them. It also allows for foreign countries to request the enforcement of foreign restraining orders, foreign confiscation orders and foreign benefit recovery orders against any property believed to be located in Brunei.

33. Brunei remains in compliance with R.39 and upon improving the definition of the TF offence through the ATO 2012 has removed any impediments to meeting the extradition aspect of SR.V.

34. The enactment of the CARO and the ATO greatly improve on Brunei’s international cooperation arrangements; the review team finds that Brunei Darussalam has brought the level of compliance with SR.V up to a level equivalent to LC.

#### *Financial/regulatory issues*

#### Recommendation 5 (R.5): Customer Due Diligence

35. Brunei was rated NC for R.5. The MER recommended 18 elements that needed to be addressed which include:

- issuance of law or regulation that prohibits anonymous accounts
- requirements to undertake CDD measures on occasional transactions, on transactions which appear to be linked and totalled transactions of BND20,000 or more and when there is doubt on veracity or adequacy of previously obtained data
- requirements for CDD for insurance business for premium of one instalment BND5,000 and on long term insurance business where premium is payable and where the total payable does not exceed BND1,500

- measures to be undertaken for verification of beneficial owners
- requirements for ongoing due diligence
- verification of legal status or legal persons, to understand legal ownership and control structure
- enhanced CDD for higher risk customers
- CDD on persons listed by the Minister
- issuance of enforceable instructions to require all reporting parties to obtain further information with regard to business relationship
- requirement to update data collected under the CDD especially the higher risk customers, and
- requirement to determine the extent of the CDD measures on risk-sensitive basis which is consistent with the guidelines issued

36. Brunei addressed many of the gaps identified and recommendations made in the MER in issuing *Autoriti Monetari Brunei Darussalam* (AMBD) notices under Section 34 of the AMBD Order, providing for 'other enforceable means'. With the enactment of the CARO it appears that the majority of the gaps identified above have now been addressed in legislation, such as introducing a provision to override secrecy, requirements for CDD verification, including legal persons, and CDD on high-risk customers.

37. The international standards stipulate that the threshold transaction for CDD measures is either USD15,000 or EUR15,000 (approximately BND18,000 and BND25,000 respectively). The AMBD 'Section 34' notices stipulate that CDD requirements should be undertaken once the threshold of BND30,000 (approx. USD24,000) is reached. This is higher than the standards, and higher than the threshold recommended in the MER. However, the new CARO at Section 5(1)(b) provides a threshold amount of BND15,000 for CDD. Brunei is proposing to repeal the earlier notices in order to harmonise regulations with the new law.

38. Brunei distributed a questionnaire to financial institutions in March 2012 to evaluate effective implementation of CDD and assess adherence with guidelines on a risk-sensitive basis. According to the authorities, results showed that CDD measures, including verification of beneficial ownership, are being implemented.

39. Brunei has made progress in addressing the deficiencies for R.5 by issuing the AMBD notices to relevant financial institutions, although they are now out of synch with the new AML legislation, the CARO. The CARO is comprehensive and contributes substantially to Brunei's compliance with R.5, assuming its requirements are effectively implemented. Brunei has made substantial progress in addressing the gaps in compliance with R.5, and while some discrepancies remain between the AMBD notices and the CARO, particularly that of the different threshold amount between the notices and the CARO, Brunei advise that the CARO requirements prevail. The compliance officers of banks in Brunei were provided with an advance copy of the CARO on 21 June 2012. Further announcements in respect to the CARO will be made at the banks' CEO meeting with AMBD on 04 July 2012.

40. In summary, Brunei has made significant progress in addressing the deficiencies found in the MER for R.5. While some concerns remain, Brunei will need to continue to check implementation through supervision, and may consider further guidance to reporting entities on the new thorough yet complex law. However the review team finds that Brunei Darussalam has brought the level of compliance with R.5 up to a level equivalent to LC. It is noted that this conclusion would need to be confirmed through a fuller assessment of ongoing effectiveness.



#### Recommendation 10 (R.10): Record-keeping and wire transfers

41. Brunei was rated PC for R.10. The MER recommended that Brunei establish record-keeping requirements in law or in regulation for correspondence between financial institutions and customers. It was also recommended that the draft Attorney-General's Chamber notices, now the AMBD notices, be finalised, issued and implemented, and for Brunei to extend such requirements to securities intermediaries, money changers and remittance service providers.

42. Brunei has addressed record-keeping requirements via the new CARO, Section 14, with comprehensive requirements for all reporting institutions to obtain information on the purpose and intended nature of business relationships.

43. Significant progress has been made in addressing the deficiencies and recommendations made for record-keeping and wire transfers; the review team finds that Brunei Darussalam has brought the level of compliance with R.10 up to a level equivalent to LC.

#### Recommendation 13 (R.13): Suspicious transaction reporting ML

44. Brunei was rated NC for R.13. The MER recommendations included coverage of direct reporting to the FIU, attempted transactions and expansion of the scope of predicate offences (R.1).

45. Brunei made preliminary improvements in 2011 through enactment of the AMLA, in particular Section 14, which provided for compulsory reporting of suspicious transactions to "a supervisory authority or a police officer". This suggested that reporting entities report suspicious transactions to the FIU – the FATF standards require that the obligation to submit STRs to be in law or regulation. Brunei subsequently issued the AMBD notices, outlining the requirement to report attempted transactions, identifying the FIU as the primary receiver.

46. Further to the initial actions taken to improve Brunei's reporting system, Section 15 of the newly enacted CARO goes further to mandate that financial institutions and designated non-financial business and professions promptly report to the FIU only any transactions or attempted transactions, involving property that is suspected of being related or linked to a serious offense or a money laundering offense.

47. Per the analysis of R.1, the CARO has expanded the scope of 'serious offence' by adopting the threshold of imprisonment of 6 months or more, including fiscal offences.

48. In summary, it is clear from the statistics showing increased reporting that progress has been made in issuing of the AMBD notices. Further progress has been made on the passing of the CARO. Based on the current trend of STR submissions and level of implementation, specifically given the fact that the number of STRs has increased over the years, Brunei's compliance with R.13 has greatly improved. While it is noted that this conclusion would need to be confirmed through a fuller assessment of ongoing effectiveness, the review team finds that Brunei Darussalam has brought the level of compliance with R.13 up to a level equivalent to LC.

#### Recommendation IV (SR.IV): Suspicious transaction reporting on TF

49. Brunei was rated as PC for SR.IV. The MER recommended that Brunei amend the ATA to require that all financial institutions to report TF-related STRs directly to the FIU, and to extend this requirement to reporting STRs when financial institutions suspect, or have reasonable grounds to suspect, that funds are linked, related to, or to be used for terrorism, terrorist acts or by terrorist organisations or by those who finance terrorism. The MER also recommends that Brunei undertake comprehensive education and

awareness raising on the reporting of STRs on TF. Brunei was also encouraged to enhance the quantity and quality of STR reporting across the sector.

50. The requirement to submit STRs on TF directly to the FIU and other relevant elements has now been included in the law in section 47 of the Anti-Terrorism Order 2011 (ATO), which replaced the ATA, and has been expanded to include financing of terrorist organisations or individual terrorists, in the ATA 2012.

51. The FIU has not received any STRs relating to TF. It is noted that Brunei plans to conduct awareness programmes on AML/CFT to a wide range of reporting institutions in 2012 and beyond. In order to address other recommendations made in the MER these programmes should also include awareness raising on suspicious transaction reporting and feedback in order to enhance the quality and quantity of STRs submitted to the competent authority.

52. Progress has been made through inclusion of legal requirements for the reporting of STRs and other necessary elements in the 2011 ATO and effectiveness should improve with implementation of the planned awareness raising programme. It is noted that the ATO is now amended to cover the financing of terrorist organisations and individual terrorists, which further improves the technical scope of the STR reporting requirement for TF. The fact that the TF reporting obligation has now been placed in law and awareness raising is planned constitutes significant progress and, subject to the effectiveness/implementation of the reporting requirement being confirmed through future evaluations, compliance with TF STRs has improved. While it is noted that this conclusion would need to be confirmed through a fuller assessment of ongoing effectiveness, the review team finds that Brunei Darussalam has brought the level of compliance with SR.IV up to a level equivalent to LC.

#### Recommendation 23 (R.23): Regulation, Supervision and Monitoring

53. Brunei was rated NC for R.23. The MER recommended that the relevant authorities utilise their powers for both off-site and on-site inspection of all the relevant sectors as provided under the then AMLA. The MER also identified a gap in implementation of supervision where Brunei was found not to have included a wide enough selection of banks, and across the sectors for securities, mutual funds, remittance and money changing.

54. Brunei has made progress in expanding on-site inspections and planned inspections by including a wider range of banks, insurance companies, investment advisers and securities dealers. Progress has also been made with Brunei having increased their examinations to include all banks and planned on-site examinations for insurance companies, investment advisers and dealers. For off-site inspections, all the banks' internal audit reports are being reviewed to identify gaps in their AML/CFT compliance programmes. Furthermore, progress has been made in the development of examination procedures and inspection checklists. However, gaps remain due to the lack of adequate supervision of the remittance and money changing sectors, and due to the lack of off-site inspections for other sectors.

55. Brunei has made progress in relation to regulation, supervision and monitoring. However, considering that the supervision activities and planned activities do not yet sufficiently encompass the recommended sectors, the review team finds that Brunei has not yet brought the level of compliance with R.23 up to a level equivalent to LC.

Recommendation 26 (R.26): Financial Intelligence Unit

56. Brunei was rated NC for R.26. Deficiencies identified related to legal authority to receive STRs related to ML or TF; no authority to disseminate TF-related STRs; limits on dissemination; weaknesses in the analysis function and access to sufficient financial, administrative and law enforcement information for analysis; Registered Agents and Trustees Licensing Order 2000 (RATLO) may impede the FIU from receiving additional information from trust company reporting parties; an absence of disseminations and FIU data is not backed up to ensure secure storage of data.

57. While the CARO has replaced the previous AMLA, DTROP, and CCROP, in relation to the FIU and to STRs it also affects aspects of the RATLO and the ATO. This may result in some duplication of reporting requirements between CARO and the existing legislation.

58. The requirement to report STRs by financial institutions and DNFBPs is now covered by the CARO from 16 June 2012 for serious offences (offences with a maximum penalty of death, imprisonment for not less than 6 months, a fine of not less than \$1,000 or more severe penalty) under section 15(1). Section 47 of the 2011 ATO covers TF-related STRs. STR reporting to the FIU is required when an FI / DNFBP suspects or has reasonable grounds to suspect that a transaction of attempted transaction involving property is related or linked to a serious offence, an ML or TF offence.

59. Section 30(a) of the CARO provides an encompassing authority for the FIU to receive reports and information provided to it by any law enforcement agency or Government agency or institution in Brunei, voluntarily provided to it about an ML offence, a serious offence or a terrorist offence, provided by any agency of another country, or provided to it by an international organisation.

60. Section 30(b) of the CARO provides for the FIU to analyse, assess and disseminate all reports and information. Section 31 (1) and (2) of the CARO provides the FIU with the authority to obtain information from any entity or person, subject to reporting requirements under s15 and 16, any additional information that the FIU deems necessary.

61. Section 33 of the CARO provides the FIU with the authority to disseminate to the appropriate law enforcement agency in Brunei relevant to the investigation or prosecution of ML, TF and serious offences. Section 51 of the ATO provides legal authority for the FIU to disseminate STRs related to TF to police any other 'designate' of the Minister responsible for internal security matters.

62. There are reporting obligations which are now duplicated under the ATO. Section 47 of the ATO requires that financial institutions and DNFBPs report TF related STRs where they have a suspicion or reasonable grounds to suspect is linked to terrorism.

63. Guidance on the obligation to submit STRs has been previously provided to reporting entities via notices issued by AMBD in early 2011 under the various relevant sections of the then AMLA, relating to ML only.

64. An FIU database and analysis system is in the final stages of tender evaluation and is expected to be implemented by end of 2012. This system is intended to allow online submission of STRs for the banking sector which currently accounts for 90% of all STRs received. The system will store and manage all information from STRs, CTRs and CBNI reports. Once this database and analysis tool has been implemented it is expected that it will decrease the paper-based transmission of reports to the FIU and allow

a higher level of analysis than is currently being conducted. The new database is also expected to provide for a secure data backup system including a disaster recovery site.

65. Section 52 of the ATO provides the authority for the FIU to access information held by reporting entities. Since the ME in 2010 the definition of ‘Authority’ has been amended in the RATLO by including in section 79 AMBD Order 2010 that ‘Authority’ as defined under RATLO is the Autoriti Monetari Brunei Darussalam. During the ME it was found that the FIU was unable to obtain further information from licensed trust and company service providers as the AMBD Order 2010 had not been enacted. This change in definition allows the FIU, which is part of the AMBD, to now obtain information from reporting parties which are licensed trust and company service providers. This change may also now be covered under the new CARO

66. The FIU has developed a programme of awareness raising around the AMBD notices issued under the AMBD and the former AMLA. It is not known whether the FIU has commenced any other training, education and awareness programmes at this time in respect to the new CARO.

67. The statistics provided by Brunei indicate some increase in STRs and CTRs submitted to the FIU. No TF-related STRs have been received. The FIU has shown a significant increase in the rate of dissemination. Brunei FIU disseminated 5 reports in 2010 and 6 reports in 2011 to law enforcement. As of June 2012, submission of CTRs is now a requirement.

68. In summary, Brunei Darussalam FIU has made good progress in addressing the deficiencies identified in the MER. It is expected that more progress will be made now the CARO has been enacted. However, Brunei has yet to implement an IT system that allows for analysis of reports and other material, data backup, and secure storage. In the absence of a strong analysis function, including the gap in the database requirement, it is too early for Brunei to demonstrate the effectiveness of the FIU for the purposes of R.26, despite the encouraging improvement in the numbers shown by the FIU statistics. As such, Brunei has not yet brought the level of compliance with R.26 up to a level equivalent to LC.

#### ***Other (non-core/non-key) Recommendations rated NC/PC***

##### *Legal issues and international cooperation*

#### **Recommendation 2: Criminalisation of knowledge and intent of ML**

69. Brunei was rated PC for R.2. The MER recommendations included to: (a) remove the defence of “acquiring property for inadequate consideration” when proving possession, use or transfer of proceeds of crime; (b) clarify the requirement of prior conviction of a predicate offence as a requirement for the prosecution or conviction of ML; (c) utilize a common standard of proof for ML; and, (d) criminalise the ancillary offence of ‘counselling’ to commit ML.

70. Brunei has taken steps to address these deficiencies through CARO. Section 140 of the CARO criminalises the ancillary acts of money laundering. This includes abetting, aiding, counselling or procuring the commission of money laundering or any of the offenses punishable under the CARO.

#### **Recommendations 33 and 34 (R.33 & R.34): Legal persons, beneficial ownership and Trusts and commercial arrangements, transparency**

71. Brunei was rated PC for R33 and R34. Among the recommendations was to “remove the overly 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”.

72. In addition to some provisions already available in the RATLO, Brunei appears to have addressed the identified deficiencies for this recommendation through Section 29 of the CARO which states that “no secrecy or confidentiality provisions in any other written law shall prevent a financial institution or designated non-financial business or profession from fulfilling its obligations” under the CARO.

#### Special Recommendation VIII (SR.VIII): Not-for-Profit Organisations (NPOs)

73. Brunei was rated PC for SR VIII. Among the recommendations were for Brunei to increase its review of NPOs to assist in identifying vulnerabilities to TF, enhance record-keeping requirements, undertake outreach and empower the Registry of Companies (ROC) to inspect NPO companies.

74. Brunei has begun to address these recommendations advising that they continue to undertake annual reviews on societies and have conducted outreach in 2011 with more planned for 2012, in addition to other oversight activities. Furthermore, the Registrar of Societies has begun consideration of legislative amendments to address deficiencies such as record keeping and reporting. Brunei authorities also advise that the Companies Act will at some point be amended to extend powers to the Registrar of Companies to inspect NPOs registered as companies.

#### *Financial/regulatory issues*

#### Recommendations 6, 7 and 8 (R.6, R.7, R.8): Customer Due Diligence (politically exposed persons, correspondent banking, and new technologies and non-face-to-face business)

75. Brunei was rated NC for R.6, R.7 and R.8. The main deficiency noted in the MER was that there were no enforceable instructions imposing obligations on financial institutions. Brunei significantly addressed this deficiency when they included such requirements in the respective AMBD notices that are enforceable under section 34 (2) of the AMBD Order which carries up to a BND1million fine or BND100,000 per day for continual offence. Furthermore, the newly passed CARO covers more extensive obligations in line with the MER recommendations.

#### Recommendation 9 (R.9): Third party reliance

76. Brunei was rated NC for R.9, in particular due to the lack of enforceable requirements on financial institutions to put in place workable procedures to rely on third parties. Brunei initially addressed these deficiencies through issuance of AMBD notices. The requirements for relying on intermediaries and third parties for CDD are dealt with in the new CARO. There are, however, discrepancies in the requirement of the current notice and the CARO. These discrepancies should be dealt with should Brunei repeal the AMBD notices, as they have indicated they will, and harmonise the regulations with law.

#### Recommendation 11 and 21 (R.11, R.21): Monitoring of transactions

77. Brunei was rated NC for both R.11 and R.21. Brunei has made progress and issued relevant requirements via notices to the financial institutions. Some requirements are included in section 4.23 of notices numbers AMBD/R/ 34/2011/1, 2 & 6, and the requirement is enhanced further in section 12(c) of the CARO. Either some clarification may need to be added in order to synthesise the two documents or new regulations issues to ensure complete coverage of R.11 and R.21 requirements. These discrepancies should be dealt with should Brunei repeal the AMBD notices, as they have indicated they will, and harmonise the regulations with law.

#### Recommendation 14 and 25 (R.14, R.25): Tipping off – FIs and DNFBPs, and guidelines

78. Brunei was rated PC for both R.14 and R.25. The MER recommendation to address R.14 deficiencies was for the then AMLA to be amended to provide for safe harbour provisions for STR reporting and any other information obtained by a supervisory authority. Brunei has included “Protection of informers and information” at section 127 of the CARO, which is extended to all persons. (Tipping off was originally compliant and remains represented by section 20 of the CARO). Gaps in complying with R.25 have been addressed by appropriate laws having been put in place in 2011 to enable the competent authority to issue guidelines to the relevant DNFBPs on 04 April 2012.

Recommendation 15 and 22 (R.15, R.22): Internal control/foreign branches

79. Brunei was rated NC for R.15 due to the absence of requirements for foreign branches to have audit, internal controls and a compliance programme. These deficiencies are being addressed by the issuance of the appropriate notices and are addressed in section 22 and section 28 of the CARO.

Recommendation 18 (R.18): Shell banks

80. Brunei was rated PC for R.18. The MER recommended that Brunei issue and implement comprehensive rules governing relationships with shell banks. Brunei initially addressed this deficiency through the issuance of the appropriate notices to the respective institutions and conduct of off-site examinations. However, the newly enacted CARO has prohibited shell banks and appears to address all aspects of the international standard for R.18. Brunei authorities will need to undertake supervision on the relevant sector to ensure this new provision is understood and being adhered to.

Recommendation 17, 29 (R.17, R.29): Supervisory system

81. Brunei was rated PC for R.17 due to the absence of financial sanctions for administrative breaches/licensing conditions, including the implementation of AML/CFT controls. To address this deficiency, the existing section 34(2) of the AMBD Order, and section 24 of the CARO, provide for adequate financial sanctions of up to BND1,000,000, and a further BND100,000 every day for continuing offence..

82. R.29 was rated PC. Similar to R.17, Brunei has made provision for effective sanctions via the AMBD Order and via sections 23, 24 and 26 of the CARO. The legal provisions are in place however there is no evidence provided to reflect effective sanctioning of reporting institutions for not complying with AML/CFT regulations.

Special Recommendation VI (SR.VI): Money-value transfer services

83. Brunei was rated PC for SR.VI. The MER recommended that enforceable rules be issued to require money remitters to conduct CDD requirements, monitor usual transaction and implement wire transfer control. The MER also included recommendations that both offsite and onsite supervisions of money remitters include AML/CFT. Brunei addressed these recommendations through the issuance of an appropriate AMBD notice and including suitable provisions in the CARO by including money remitters in the definition of ‘financial institution’ and thus making them subject to the supervisory regime of Brunei.

Recommendations 12, 16, 24, 25 and 20 (R.12, R.16, R.24, R.25 & R.20): DNFBPs

84. Brunei was rated NC for R.12, R.16 & R.24, and PC for R.20 & R.25 in relation to DNFBPs. Generally, Brunei has addressed these deficiencies through the issuance of appropriate AMBD notices, through the enforcement previously of the AMLA, and, for future, via the CARO. In light of Brunei’s

offshore centre, the MER identified trust company and service providers (TCSPs) as an area of particular risk for Brunei.

85. It is notable that Brunei plans to embark upon a national risk assessment. The planned risk assessment will include DNFBPs. In view of this, a concrete timeline for the planned risk assessment, and the issuance of guidelines to registered agents and trustees and other DNFBPs on 04 April 2012, will assist Brunei to execute a focused implementation plan.

86. To address the deficiencies noted in the MER for R.12 Brunei has included in the AML/CFT regime, originally through the AMLA Cap 209, and now via the CARO definition of DNFBPs, those registered agents and trustees that are licensed under the RATLO, as well as real estate agents, casinos, dealers in precious metals, precious stones and jewellery, legal professionals, TCSPs, and any others “as specified by the Authority”.

87. Brunei appears to have addressed the deficiencies identified for R.16 and R.24 through issuance of AMBD notices to agents and trustees, and through the enactment for the CARO, which extends the obligations that existed under the AMLA. The same mechanism also extends to STRs, tipping off, and to internal control measures on the full range of DNFBPs. Brunei advises that it has conducted onsite visits to trust companies, during which random checks were done to test the compliance of IBCs with the International Business Companies Order 2000 and the formerly in force AMLA. Brunei has also more recently developed a checklist to assist the supervisors with this process. No onsite visits have been conducted for 2012 but are planned to begin in June 2012.

88. Brunei reports that the deficiencies noted for R.25 have been addressed through issuance of AMBD notices on 04 April 2012 for DNFBPs, in particular trust companies.

89. Brunei has partly addressed the deficiencies noted in the MER for R.20 (PC) in relation other DNFBPs and secure transaction techniques. Brunei report that a national risk assessment is currently underway and that DNFBPs are planned to be included. Brunei authorities are promoting secure and modern techniques of transacting and have issued an AMBD notice to encourage use of credit cards and debit cards. Brunei has also revised the requirement for high-denomination bank notes as a positive step to reduce ML/TF risk.

90. Overall, some progress has been made to address the issues on DNFBPs, in particular the issuance of guidelines and plans to undertake a risk assessment on DNFBPs. However it should be noted that any discrepancies between the April 2012 guidelines and the June 2012 CARO should be dealt with should Brunei repeal the AMBD notices, as they have indicated they will, and harmonise the regulations with the new law.

#### *Law enforcement/FIU Issues*

#### Recommendation 27 (R.27): Law Enforcement

91. Brunei was rated as PC for R.27. The MER identified several deficiencies. In summary:

- No ML or TF investigations had been conducted;
- Law enforcement mandated to investigate ML and TF do not consider the financial investigation
- Effective implementation was not demonstrated.

92. Brunei authorities report that the Royal Brunei Police Force (RBPF), the Narcotics Control Bureau (NCB) and the Anti-Corruption Bureau (ACB) are all now conducting money laundering and proceeds of

crime investigations in parallel with investigations on predicate offences utilising the legislation currently available to them. Investigations on some cases have led to cross-border investigation and the freezing of accounts in other jurisdictions.

93. As noted under R.1 above, Brunei has undertaken 14 ML investigations in 2010, 12 investigations in 2011 and 1 investigation to date in 2012. No cases of terrorism financing have yet been identified. No statistics regarding POC or amounts recovered are available, or have been provided by Brunei.

94. Law enforcement agencies in Brunei appear to have made efforts to increase awareness and commence the conduct of ML investigations and to investigate financial and/or POC offences. It cannot be determined why there have not yet been any prosecutions or what the predicate offences to the ML investigation were. Regardless this is a very positive step taken by Brunei to develop a culture within its law enforcement agencies to 'follow the money' and is bearing out in the increase in investigations that have been undertaken since the onsite visit in 2010. Given the overall size of the jurisdiction, and the steps undertaken by the enforcement agencies in 'following the money', it is worth noting that a rating for R.27 consistent with LC might be appropriate.

#### Special Recommendation IX (SR.IX): Cross-border reporting

95. Brunei was rated as NC for SR.IX. The MER identified several deficiencies relating to SR.IX; in summary the key deficiency was that there was no declaration or disclosure system in place.

96. In 2011 Brunei amended the previous AMLA to include reporting on cross-border movements of physical currency and bearer negotiable instruments (BNIs). Subsequently, Brunei implemented a declaration system for ingoing and outgoing passengers and for persons taking or sending cash into and out of Brunei Darussalam. Sections 35 to 47 of the new CARO cover cross-border movements of physical currency and BNI. Cash is defined as physical currency (of any jurisdiction) and BNI. The prescribed amount is BND15,000. The penalty for a person charged with the offence is a fine not exceeding BND50,000 and or imprisonment for a term not exceeding 3 years. The reporting form is to be given to an officer of customs or immigration.

97. Standard Operating Procedures on the collection and forwarding of reports is used to implement the declaration system. Since August 2011 a total of 706 cross-border declarations have been made.

98. Brunei has made very good progress relating to the implementation of SR.IX since 2010.

#### *National Coordination and other issues*

#### Recommendation 31 and 32 (R.31, R.32): National coordination and statistics collection

99. Brunei was rated PC for both R.31 and R.32. The MER cited deficiencies around the lack of use of established national coordination committees to drive AML/CFT change and implementation and in encouraging operational level cooperation. Since the MER was published Brunei reports that the National Anti-Money Laundering Committee has been more actively engaged and formed several ad hoc groups to progress particular areas of AML/CFT reform. As of 7 April 2012 it was agreed by relevant Brunei authorities that the NAMLC undergo a restructure to enhance its role and function; the first meeting since was held on 9 May 2012. Other operational-level and working committees are also being utilised for information sharing and coordination on capacity-building initiatives, and to generate a culture of 'following the money'. This is positive action by Brunei to activate its AML/CFT regime at both a senior policy level and with operational personnel.



100. The enhanced coordination of agencies involved in AML/CFT, and the subsequent increase in awareness and capacity around AML/CFT reform and implementation, appears to have led to an increase in understanding the importance keeping and utilising statistics. Brunei supplied a summary of statistics in support of its response to R.32.

#### Recommendation 30 (R.30): Resources, Integrity and Training

101. Brunei was given a rating of PC for R.30. The MER identified issues around training and staffing of the FIU, law enforcement capacity, supervisory capacity and general capacity to identify and deal with TF.

102. Brunei has attempted to address issues of capacity through increasing FIU staff numbers, involvement in regional training, development of inspection manuals for supervisors, dedication of teams within RBPF, NCB and ACB to AML/CFT and POC matters. It is encouraging that Brunei are placing more focus and resources on AML/CFT, however, it is difficult for Brunei to display the effectiveness of these structures due to low reporting of, or possibly low existence of, ML/TF activities.

#### **IV. Summary**

103. Brunei has made substantial progress with supervisory activities and AML/CFT law enforcement. Brunei has also taken steps to address many of the legislative deficiencies identified in their MER by amending key legislation and developing new legislation, notably, the CARO.

104. The legislative changes made to the ATO via the Anti-Terrorism (Amendment) Order 2012, and the enactment of the Criminal Asset Recovery Order 2012, have significantly assisted in addressing deficiencies identified in the MER. The AMBD guidelines issued to FI's improve the regulatory/supervisory efforts and the reform contained in the CARO underpin the required changes that will assist Brunei in improving their AML/CFT systems and, upon effective implementation, in meeting international standards.

105. Brunei Darussalam has made significant progress in relation to a number of FATF Recommendations, with the level of compliance with **9** core/key Recommendations previously rated NC/PC now at a level equivalent to a LC or C. Compliance remains at the NC/PC level for **4** core/key Recommendations.

106. To fully execute their new thorough and complex AML law, the CARO, Brunei will need to focus on the in-depth requirements of its legal framework in order to 'follow the money' behind crime and terrorism, and enhance preventative measures with the reporting entities through guidance and supervision.

#### **V. Recommendation to Members**

107. While a small number of core and key recommendations rated NC/PC in the MER are not yet rectified, Brunei is actively pursuing AML/CFT reforms, and further implementation will bring about improvements to the system as a whole. With consideration to the fact that Brunei's MER was adopted in 2010, and in light of the efforts they have made in the last 12 months, reflected in the analysis above, the review team recommends that Brunei **remain on regular follow-up and revert to regularly timed reporting**, with its next progress report on the core/key recommendations remaining at the NC/PC level being due on 30 April 2013. Brunei is also strongly encouraged to report progress made against the remaining non-core/key Recommendations rated NC/PC.

APG Review Team

5 July 2012

## ANNEX A

### Summary of progress in relation to core/key Recommendations rated NC or PC in the MER

*Table 1: Sufficient progress made on core/key Recommendations?*

Rec.	MER rating	Sufficient progress?
R.1	PC	Yes
R.3	PC	Yes
R.5	NC	Yes
R.10	PC	Yes
R.13	NC	Yes
R.23	NC	No
R.26	NC	No
R.36	PC	Yes
SR.I	PC	No
SR.II	PC	Yes
SR.III	PC	No
SR.IV	PC	Yes
SR.V	PC	Yes

*Table 2: Current compliance with 16 core/key Recommendations*

No. of core/key Recs rated NC/PC in MER	<b>13</b>
No. of core/key Recs where 'sufficient progress' made	<b>9</b>
No. of core/key Recs remaining at NC/PC level	<b>4</b>

**APG Annual Meeting 2012**  
**Mutual Evaluation Detailed Progress Report**

***Brunei Darussalam***

**Introduction**

***1. Recommendations and Special Recommendations rated PC and NC in the Mutual Evaluation Report***

<b>Core Recommendations<sup>1</sup> rated NC or PC</b>
R.1, R.5, R.10, R.13, SR.II, SR.IV
<b>Key Recommendations<sup>2</sup> rated NC or PC</b>
R.3, R.23, R.26, R.36, SR.I, SR.III, SR.V
<b>Other Recommendations rated NC or PC</b>
R.2, R.6, R.7, R.8, R.9, R.11, R.12, R.14, R.15, R.16, R.17, R.18, R.20, R.21, R.24, R.25, R.27, R.29, R.30, R.31, R.32, R.33, R.34, R.38, SR.VI, SR.VII, SR.VIII, SR.IX

***2. Summary of implementation strategy, approach and progress made since the adoption of MER/DAR at APG Annual Meeting, particularly over the past 12 months***

Brunei Darussalam AML/CFT regime underwent a second Mutual Evaluation conducted by the APG in January 2010 and the MER was adopted by the APG in July 2010. Brunei Darussalam's progress since the adoption of MER in July 2010, are briefly described below:

**General Developments**

By virtue of the Autoriti Monetari Brunei Darussalam Order, 2010, the Autoriti Monetari Brunei Darussalam (AMBD) was established on 1<sup>st</sup> January 2011 which acts as the central bank for Brunei Darussalam responsible for formulating and implementing monetary policy, advising the Government on monetary arrangements and supervising financial institutions.

The monetary divisions including the Financial Institutions Division (FID) and the Brunei International Financial Centre (BIFC) which conducted regulatory functions on the domestic and "offshore" financial institutions, the Brunei Currency and Monetary Board (BCMB) and part of the Research and International Divisions (RID) of the Ministry of Finance were merged to form the AMBD. Hence, the regulatory and monetary functions are now transferred to the AMBD.

Through the National Anti Money Laundering and Combating Terrorism Financing Committee (NAMLC), Taskforces and Working committees are formed to coordinate and focus efforts and resources from various agencies to address deficiencies and challenges related to money laundering and terrorism financing. The current Chairman of NAMLC is the Permanent Secretary of the Ministry of

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<sup>1</sup> The core Recommendations as defined in the FATF procedures are R.1, SR.II, R.5, R.10, R.13 and SR.IV.

<sup>2</sup> The key Recommendations are R.3, R.4, R.26, R.23, R.35, R.36, R.40, SR.I, SR.III, and SR.V. Such recommendations are carefully reviewed when considering removal from the follow-up process.

Finance. This will be strengthened by the addition of a co-Chairman, the Permanent Secretary from the Prime Minister's Office to enhance the overall cooperation and coordination amongst members on Anti Money Laundering and Combating Financing of Terrorism (AML/CFT) matters. The membership of NAMLC will also be strengthened by representation of Head of Departments of existing members.

On 29 January 2011, His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam consented to the Brunei Darussalam National Strategy on AML/CFT. The National Strategy was prepared by the NAMLC. The 2011 – 2013 National Strategy represents Brunei Darussalam's policy framework to address the challenges related to money laundering and the financing of terrorism for the next three years. It is also aimed at supporting the objectives of the country's Long Term Development Plan outlines in 'Brunei Vision 2035' (*Wawasan Brunei 2035*). It also contributes to Brunei Darussalam's continued efforts towards implementing regional and international commitments, in particular towards countering terrorism.

The National Strategy has identified six (6) strategic objectives that aimed at: -

- i. Ensuring effective inter-agency coordination by developing and implementing national policy to address national priorities in AML and CFT.
- ii. Strengthening national legal framework for criminalising ML and TF.
- iii. Enhancing domestic and offshore financial regulatory framework including its implementation and supervision.
- iv. Ensuring effective law enforcement implementation by identifying risk and vulnerabilities.
- v. Increasing public awareness through appropriate campaigns.
- vi. Strengthening regional and international cooperation in ML and TF.

#### Legal Framework

The Money Laundering Order, 2000 (MLO) was amended in 2010 to further strengthen the legislation in line with FATF 40 + 9 Recommendations. The Money Laundering (Amendment) Order, 2010 came into force on 22<sup>nd</sup> July 2010 and was further revised into the Anti Money Laundering Act (AMLA), Chapter 209. Amongst the key elements in the Amendment Order are as follows:

- ✓ Provide legal authority for Brunei Darussalam FIU (FIUBD) through the Supervisory Authority (AMBD) to receive Suspicious Transaction Reports (STRs) related to money laundering;
- ✓ Provide legal authority for FIUBD to share money laundering related information to foreign FIUs;
- ✓ Provide legal authority for the AMBD to issue directions, guidelines, circulars or notices to all reporting entities;
- ✓ Provides legal provisions to impose measures for the disclosure of information regarding movement of physical currency and bearer negotiable instruments into and out of Brunei Darussalam with a threshold in line with FATF Special Recommendation IX;
- ✓ Extend the reporting entities to include Designated Non-Financial Businesses and Professions (DNFBPs), i.e. Accountants, Lawyers, Real Estate Agents, Dealers of Precious Metals and Dealers of Precious Stones; and
- ✓ Prohibit the opening or the operation of fictitious named accounts.

The Anti-Terrorism Order (ATO), 2011 which repeals the Anti-Terrorism (Financial and Other Measures) Act, Chapter 197 came into force on 18<sup>th</sup> July 2011. This new Order is more comprehensive as it introduces provisions to be consistent with the United Nations International Convention for the Suppression of the Financing of Terrorism (1999) and relevant resolutions of the United Nations Security Council (1267 & 1373). Amongst others includes:

- ✓ Extension of the definition of a “terrorist act” in Brunei to those acts intended to influence an international organization. It also contains a definition of “Terrorist Entity”.
- ✓ Sanctions for terrorism related offences, have now been significantly enhanced, allowing for terrorism related offences to become predicate offences under the Criminal Conduct (Recovery of Proceeds) Order.
- ✓ Widens and makes consistent the terms of “property” and “funds” in line with the definition of “funds” under the International Convention for the Suppression of the Financing of Terrorism.
- ✓ Introduces a part on “Seizure, Freezing and Confiscation of Terrorist Property” which includes the procedures for and the revocation of warrant for seizure and order for restraint of property including foreign seizure and confiscation order.
- ✓ Provision for sharing of information empowering the Financial Intelligence Unit to receive and disseminate Suspicious Transaction Reports for the purposes of combating terrorism financing as well as creating obligations on financial institutions and DNFBPs to report STRs. The ATO also contains provisions allowing Financial Intelligence to be shared and received between foreign counterparts.

The Anti-Terrorism Order is being amended, amongst others, to:

- ✓ Criminalise the financing of terrorist organisations; and
- ✓ Extend the TF offence to collecting funds to be used by a terrorist organisation or by an individual terrorist.

The Criminal Asset Recovery and Anti Money Laundering Order, 2012 (CARAML) is in the final stages of drafting by the Attorney General’s Chambers, which will repeal the Criminal Conduct (Recovery of Proceeds) Order 2000 (CCROP), Drug Trafficking (Recovery of Proceeds) Act (Chapter 178) (DTROP) and the Anti Money Laundering Act, Chapter 209 (AMLA). This new Order will address the legal deficiencies identified during the 2010 Mutual Evaluation. It is designed to be more straightforward for better understanding and efficient implementation by different agencies especially law enforcement agencies in their money laundering / proceeds of crime investigations.

The draft Criminal Asset Recovery and Anti Money laundering Order will amongst others include:

- ✓ Reduction of the threshold for money laundering predicate offence from 5 years to 1 year.
- ✓ Provisions to deal with high risk customers and politically exposed persons as well as prohibition of shell banks.
- ✓ New provisions outlining simplified procedures for restraint orders, confiscation orders and benefit recovery orders.
- ✓ Extensive powers of investigation for authorized law enforcement agencies.

### Supervisory Framework

The AMBD Order, 2010, amongst others, provides for the Authority to issue Directions or Regulations to prevent money-laundering and terrorism financing (Section 34).

Notices on the Prevention of Money Laundering and the Combating of Terrorism Financing were issued on 8<sup>th</sup> February 2011 under Section 34 of the AMBD Order, 2010 to the following:

- (i) Banking Industry (domestic and offshore);
- (ii) Insurance Industry (domestic and offshore);
- (iii) Money Changers and Remittance Companies; and
- (iv) Investment Advisers, Dealers and Investment Adviser's Representative and Dealer's Representative License Holders.

Under section 34(2) of the AMBD Order, a financial institution which fails or refuses to comply with the notice is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 and in the case of continuing offence, to a further fine of \$100,000 for every day during which the offence continues after conviction.

The notices containing Customer Due Diligence measures including enhanced or reduced measures are issued to require financial institutions amongst others to:

- ✓ Explicitly not keep anonymous accounts or accounts in fictitious names;
- ✓ Undertake CDD measures when the financial institution (a) establishes business relations with any customer; (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\$30,000 or more; (c) there is a suspicion of money laundering or terrorist financing; and (d) 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 customers, natural persons appointed to act on the customer's behalf and beneficial owners;
- ✓ Obtain information on the purpose and intended nature of business relations;
- ✓ Undertake on-going due diligence; and
- ✓ Undertake CDD measures on non face-to-face customers.

A questionnaire was distributed to banks on 2<sup>nd</sup> March 2012 on AML/CFT to review the implementation of the CDD measures. It showed that banks generally comply with the notices. AMBD will extend this questionnaire to all financial institutions.

Onsite inspection manuals for the AML/CFT supervision of Banks, Insurance companies, Money Changer and Remittance companies have been produced. These inspection manuals are currently being used in onsite inspections conducted by AMBD's Regulatory Department.

### Financial Intelligence Unit

With the establishment of AMBD, the Financial Intelligence Unit of the Financial Institutions Division, Ministry of Finance, is now transferred to AMBD under the Financial Intelligence and Enforcement Division within the Regulatory Department.

The powers to receive, analyse and disseminate STRs relating to ML and TF have been clarified under the Anti Terrorism Order, 2011 and the Anti Money Laundering Act, Cap 209. Other powers include the sharing of information with foreign FIUs and access to information.

The number of staff has increased by 50% from 4 to 6 full-time officers attending to the overall functions of the FIUBD. A database and analysis system is in the final stages of tender evaluation and is expected to be implemented by end of 2012. The system will amongst others allow online submission of STRs for the banking sector which accounts for 90% of all STRs received. With the implementation of the system, the staffing of FIUBD will be further increased.

In line with the Special Recommendation IX, Brunei Darussalam has introduced a cross-border declaration system on physical currency and bearer negotiable instruments (CBNI) on 1st August 2011 with a prescribed threshold of B\$15,000. All reports received are stored by the FIUBD and is used in the analysis of STRs.

### Enforcement

The law enforcement agencies are developing the “follow the money” culture where agencies such as the Royal Brunei Police Force, the Narcotics Control Bureau and the Anti Corruption Bureau are currently conducting investigations on the proceeds of crimes which are under their purview. The commitment of the law enforcement agencies in money laundering investigations is reflected by the formation of special units or the allocation of resources designated for the investigation of proceeds of crime and money laundering.

Capacity building such as attending trainings and attachment programmes will continuously be conducted and coordinated by each agency or through NAMLC in developing their skills and knowledge in money laundering investigations. Amongst the trainings and attachment programmes attended in the past 12 months includes:

- ✓ Asset Recovery from the Laundering of the Proceeds of Crime, a presentation from StAr Initiatives, Brunei Darussalam on 26<sup>th</sup> April 2011.
- ✓ Financial Investigation Course, Bangkok, Thailand on 19<sup>th</sup> – 23<sup>th</sup> September 2011.
- ✓ Financial Investigation Course 2011, Hong Kong, 23<sup>rd</sup> – 29<sup>th</sup> October 2011.
- ✓ Joint FATF/APG Typologies Workshop 2011, Busan, Korea on 5<sup>th</sup> – 10<sup>th</sup> December 2011.

In addition, taskforces or working committees are formed amongst the intelligence agencies as well as the investigative agencies to facilitate the sharing of information and the development of action plans for the investigation of certain ML cases.

**PART 1(a): MEASURES TAKEN TO ADDRESS THE DEFICIENCIES/IMPLEMENT MER/DAR RECOMMENDATIONS IN RELATION TO THE 6 CORE FATF RECOMMENDATIONS**

<b>40 + 9 Recommendations</b>	<b>Rating</b>	<b>MER/DAR Recommendations</b>	<b>Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations<sup>3</sup></b>
<b>R.1 Money Laundering Offences</b>	PC	a) Amend CCROP to include all offences with a maximum custodial term of one year or more as predicate offences.	Under the interpretation of “Serious Offence” (section 2) of the draft Criminal Assets Recovery and Anti Money Laundering Order, the predicate offence for money laundering is reduced to not less than 1 year or more. Section 37 of the draft Criminal Assets Recovery and Anti Money Laundering Order provides for the offence of money laundering.
		b) Amend DTROP to include ‘use’ of property which is proceeds of drug offences.	This has been included in the definition of “Proceeds of crime” under section 2 of the draft Criminal Asset Recovery and Anti Money Laundering Order.
		c) Amend DTROP and CCROP to clearly stipulate corporate criminal liability.	Corporate criminal liability is covered under section 134 of the draft Criminal Asset Recovery and Anti Money Laundering Order.
		d) Include effective, proportionate and dissuasive fines for offences under DTROP and CCROP, especially for legal entities.	Section 37 of the draft Criminal Asset Recovery and Anti Money Laundering Order provides effective, proportionate and dissuasive fines for money laundering offence where the penalty is imprisonment for a period not exceeding 10 years or a fine not exceeding \$500,000 fine, and in the case of a body corporate to a fine not exceeding \$1,000,000.
		e) 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.	Under definition of “Proceeds of crime” under section 2 of the draft Criminal Asset Recovery and Anti Money Laundering Order – includes benefits derived directly or indirectly from the commission of the predicate offences; proceeds of such crimes; and instrumentalities.

<sup>3</sup> Please clearly indicate when a particular action was taken when filling out the “Description of actions taken” section.



40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations <sup>3</sup>
<b>SR. II Criminalise Terrorist Financing</b>	PC	a) Amend the ATA and related statutes.	The Anti Terrorism Order, 2011 (ATO) has been approved and has come into force on 18 July 2011. Under this Order, Brunei Darussalam has enacted relevant provisions to safeguard against the possibility of Terrorism Financing in accordance with the UN related conventions and UN Security Council resolutions. Section 3 of the Anti Terrorism Order, 2011 provides for the criminalisation of terrorist financing.
		b) Extend the definition of a terrorist act in Brunei to those acts intended to influence an international organisation.	Section 2 (2) of the Anti Terrorism Order, 2011 provides a wider definition of "Terrorist Act".
		c) 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.	Section 2 of the Anti Terrorism Order, 2011 provides a definition of "property".
		d) Clarify that financing terrorist organisations is specifically criminalised.	Section 4A of the draft Anti-Terrorism (Amendment) Order is proposed to criminalise the financing of terrorist organisations
		e) Extend the TF offence to collecting funds to be used by a terrorist organisation or by an individual terrorist.	Section 4B of the draft Anti-Terrorism (Amendment) Order is proposed to extend the TF offence to collecting funds to be used by a terrorist organisation or by an individual terrorist.
		f) Include TF as a predicate offence for the ML offence.	Under the Anti Terrorism Order, 2011, section 3, TF offence carries a penalty of imprisonment of 30 years or more and qualifies it as a predicate offence for ML Offence.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations <sup>3</sup>
		g) Increase available sanctions for the TF offence to effective, proportionate and dissuasive levels.	Under the Anti Terrorism Order, 2011, section 3, committing TF offence is liable on conviction to a fine not exceeding \$5,000,000, imprisonment for a term not exceeding 30 years or both. Previously, the penalty was a fine not exceeding \$100,000, imprisonment for a term not exceeding 5 years or both.
		h) Extend corporate liability to include Brunei legal persons incorporated under the International Business Companies Order (IBCO) undertaking TF offences outside of Brunei.	The definition of “Terrorist Act” and “Terrorist Entity” under section 2 of the Anti Terrorism Order, 2011 as well as “Offences by body corporate” under section 60 of the Anti Terrorism Order, 2011, extends corporate liability to include Brunei legal persons incorporated under the International Business Companies Order (IBCO) undertaking TF offences outside of Brunei.
	NC	a) Issue a law or regulation to require all financial institutions operating in Brunei to explicitly not keep anonymous accounts or accounts in fictitious names.	The requirement against keeping anonymous accounts or accounts in fictitious names is included under Section 11 A of the Anti Money Laundering Act, Cap 209. Section 38 of the draft Criminal Asset Recovery and Anti Money Laundering Order will deal with this requirement. The Autoriti Monetari Brunei Darussalam Order, 2010, among others, provides a provision for the Authority to issue Directions or Regulations to prevent money-laundering and terrorism financing (Section 34). Notices on the Prevention of Money Laundering and the Combating of Terrorism Financing (KYC/CDD notices) were issued on 8th February 2011 under Section 34 of the Autoriti Monetari Brunei Darussalam Order, 2010 to the financial institutions as follows: <ul style="list-style-type: none"> <li>➤ Notice No. AMBD/R/34/2011/1 – Notice to Banks;</li> <li>➤ Notice No. AMBD/R/34/2011/2 – Notice to Islamic Banks;</li> <li>➤ Notice No. AMBD/R/34/2011/3 – Notice to Life Insurer;</li> <li>➤ Notice No. AMBD/R/34/2011/4 – Notice to Family Takaful Operators;</li> <li>➤ Notice No. AMBD/R/34/2011/5 – Notice to Holders of Money</li> </ul>

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations <sup>3</sup>
			<p>Changer's Licence and Remittance Licence;</p> <ul style="list-style-type: none"> <li>➤ Notice No. AMBD/R/34/2011/6 – Notice to International Banks;</li> <li>➤ Notice No. AMBD/R/34/2011/7 – Notice to International Insurers and International Takaful Insurers;</li> <li>➤ Notice No. AMBD/R/34/2011/8 – Notice to Investment Advisers, Dealers, Investment Advisers Representatives, Dealer's Representatives And Exempted Persons</li> </ul> <p>Section 4.1 of the notices provides the requirement against anonymous accounts or accounts in fictitious names.</p> <p>Under section 34(2) of the AMBD Order, a financial institution which fails or refuses to comply with the notice is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 and in the case of continuing offence, to a further fine of \$100,000 for every day during which the offence continues after conviction.</p>
		<p>b) Issue a law or regulation to require all financial institutions operating in Brunei to 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.</p>	<p>(a) CDD measures for wire transfers are covered under section 9 of the Notices No. AMBD/R/34/2011/1, 2 &amp; 6 and section 7 of the Notice no. AMBD/R/34/2011/5.</p> <p>It is also covered under section 6(1)(c) of the draft Criminal Asset Recovery and Anti Money Laundering Order.</p> <p>(b) Section 4.2 (b) of the notices requires CDD measures where it appears that any two or more one off transactions are linked and that the total amount is B\$30,000 or more.</p> <p>This is covered under section 7 (5) of the Anti Money Laundering Act, Cap 209.</p> <p>It is also covered under section 6(1) (b) of draft Criminal Asset Recovery and Anti Money Laundering Order.</p>

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations <sup>3</sup>
			(c) This requirement is covered under section 4.2 (d) of the Notices. It is also covered under section 6(1) (d) of draft Criminal Asset Recovery and Anti Money Laundering Order.
		c) Issue a law or regulation to require all financial institutions operating in Brunei to undertake CDD measures long term insurance business in respect of which a premium is payable in one instalment of an amount below B\$5,000.	Section 6 of the draft Criminal Asset Recovery and Anti Money Laundering Order will include that CDD must be conducted on all transactions.
		d) Issue a law or regulation to require all financial institutions operating in Brunei to undertake CDD measures 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.	Section 6 of the draft Criminal Asset Recovery and Anti Money Laundering Order will include that CDD must be conducted on all transactions.
		e) Identify, and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source.	This requirement is included under section 9 of the draft Criminal Asset Recovery and Anti Money Laundering Order. Regulatory instructions on measures on Identification and Verification of Identity of Beneficial Owners are included under Section 4.14 – 4.18 of the Notice No. AMBD/R/34/2011/1 –8 (Notices on the Prevention of Money Laundering and the Combating of Terrorism Financing).

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations <sup>3</sup>
		f) Ensure effective implementation of core CDD measures, In particular verification on beneficial owner.	A questionnaire was distributed to banks on 2 <sup>nd</sup> March 2012 on AML/CFT to review the implementation of the CDD measures. It showed that CDD measures are implemented including verification of beneficial ownership.
		g) Determine whether the customer is acting on behalf of another person, and take reasonable steps to obtain sufficient identification data to verify their identity.	This requirement is provided for under Section 9 of the Anti Money Laundering Act, Chapter 209 and Section 11 of the draft Criminal Asset Recovery and Anti Money Laundering Order.  Section 4.16 of Notice No. AMBD/R/34/2011/1 –8 (Notices on the Prevention of Money Laundering and the Combating of Terrorism Financing) requires reasonable measures to be taken to understand the ownership and control structure of the customer.
		h) Conduct ongoing due diligence on the business relationship.	Section 10 of the draft Criminal Asset Recovery and Anti Money Laundering Order provides for this requirement.
		i) 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	Section 4.20 of Notice No. AMBD/R/34/2011/1, 2 6 & 8 and Section 4.21 of Notices No. AMBD/R/34/2011/3,4 & 7 provide regulatory instructions on Ongoing Monitoring which includes 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.
		j) 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	Section 8 of the draft Criminal Asset Recovery and Anti Money Laundering Order provides for this requirement.  Regulatory instructions on measures on Beneficial Ownership are included under Section 4.14 – 4.18 of the Notice No. AMBD/R/34/2011/1 –8 (Notices on the Prevention of Money Laundering and the Combating of Terrorism Financing).

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations <sup>3</sup>
		k) Verify the legal status of the legal person or legal arrangement	<p>Section 8 &amp; 9 of the draft Criminal Asset Recovery and Anti Money Laundering Order require verification of the legal status of the legal person or legal arrangement;</p> <p>Regulatory instructions on measures on Identification and Verification of Identity of Natural Persons Appointed to Act on the Customer's Behalf are included under Section 4.10 – 4.13 of the Notice No. AMBD/R/34/2011/1 –8 (Notices on the Prevention of Money Laundering and the Combating of Terrorism Financing).</p>
		l) Take reasonable measures to understand the ownership and control structure of the customer or legal persons or legal arrangements	<p>Regulatory instructions on measures on Beneficial Ownership are included under Section 4.14 – 4.18 of the Notice No. AMBD/R/34/2011/1 –8 (Notices on the Prevention of Money Laundering and the Combating of Terrorism Financing).</p> <p>A questionnaire was distributed to banks on 2<sup>nd</sup> March 2012 on AML/CFT to review the implementation of measures to understand the ownership and control structure of the customer or legal persons or legal arrangements. It showed that CDD measures are implemented including understanding the ownership and control structure of the customer or legal persons or legal arrangement.</p>
		m) Perform enhanced CDD for higher risk categories of customer, relationship or transactions	<p>Section 13 of the draft Criminal Asset Recovery and Anti Money Laundering Order deals with high risk customers.</p> <p>Section 6 of the Notice No. AMBD/R/34/2011/1 –8 on the prevention of Money Laundering and Terrorism Financing provides the regulatory instruction on Enhanced Due Diligence which applies to Politically Exposed Persons (Section 6.1 – 6.2) and Other Higher Risk Categories under (Section 6.3 – 6.4).</p>

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations <sup>3</sup>
		n) Limit simplified CDD to not include customers resident in a country which Brunei is not satisfied has effectively implemented the FATF Recommendations.	<p>Section 28 of the draft Criminal Asset Recovery and Anti Money Laundering Order requires special attention be given to transactions with persons from or in countries that do not or insufficiently apply the FATF Recommendations.</p> <p>Section 5.2 of Notice No. AMBD/R/34/2011/1 –8 on Prevention on Money Laundering and Terrorism Financing provide limitation for conducting Simplified Due Diligence which include customers from jurisdictions known to have inadequate AML/CFT measures, as determined by the institution or notified by the Authority or a foreign regulatory Authority.</p>
		o) Include CDD on any person designated by the Minister by order in the Gazette as mention in s4(2) MLO.	<p>Currently, there is no person designated under S 4(2).</p> <p>Section 6 of the draft Criminal Asset Recovery and Anti Money Laundering Order will include that CDD must be conducted on all transactions.</p>
		p) Issue enforceable instructions to require all reporting parties to obtain information on the purpose and intended nature of the business relationship.	<p>This requirement is available under section 8 (e) of the draft Criminal Asset Recovery and Anti Money Laundering Order.</p> <p>This is also provided under Section 4.19 of the Notice No. AMBD/R/34/2011/1,2,6 &amp; 8 (Banks, Islamic Banks, International Banks and Investment Advisers, Dealers, Investment Advisers Representatives, Dealer’s Representatives And Exempted Persons) and section 4.20 – 4.25 of the Notice No. AMBD/R/34/2011/3, 4 &amp; 7 (Life Insurer, Family Takaful Operator and International Insurer and International Takaful Insurer).</p>

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations <sup>3</sup>
		q) Update data collected under the CDD process by reviewing existing records, particularly for higher risk categories of customers or business relationships.	<p>This requirement will be included in section 27 of the draft Criminal Asset Recovery and Anti Money Laundering Order.</p> <p>This is provided for under On-going Monitoring under section 4.24 of the Notice No. AMBD/R/34/2011/1,2,6 &amp; 8 (Banks, Islamic Banks, International Banks and Investment Advisers, Dealers, Investment Advisers Representatives, Dealer's Representatives And Exempted Persons) and section 4.25 of the Notice No. AMBD/R/34/2011/3,4 &amp; 7 (Life Insurer, Family Takaful Operator and International Insurer and International Takaful Insurer)</p>
		r) 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.	A questionnaire was distributed to banks on 2 <sup>nd</sup> March 2012 on AML/CFT to review the implementation of CDD measures including whether CDD measures are conducted on a risk sensitive basis. It showed that CDD measures are implemented according to the risk associated to the customers.
<b>R.10 Record Keeping</b>	PC	a) Establish record keeping requirements in law or regulation for correspondence between financial institutions and customers.	<p>Legal provision for record keeping is covered under section 12 of the AMLA and section 16 of the draft Criminal Asset Recovery and Anti Money Laundering Order</p> <p>The requirement on record keeping is also provided under section 10.2 of Notice No. AMBD/R/34/2011/1, 2, &amp; 6 (Banks, Islamic Banks &amp; International Banks) and section 8.2 of Notice No. AMBD/R/34/2011/3, 4, 5, 7 &amp; 8 (Life Insurer, Family Takaful Operator, Money Changer &amp; Remittance Business, International Insurer &amp; International Takaful Insurer and Investment Advisers, Dealers, Investment Advisers Representatives, Dealer's Representatives And Exempted Persons).</p>



<b>40 + 9 Recommendations</b>	<b>Rating</b>	<b>MER/DAR Recommendations</b>	<b>Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations<sup>3</sup></b>
		b) Issue and implement the draft AGC Notices and extend such requirements to securities intermediaries, money-changers and remittance service providers.	<p>Section 12 of the AMLA and section 16 of the draft Criminal Asset Recovery and Anti Money Laundering Order extend the requirement on record keeping to securities intermediaries, money-changers and remittance service providers.</p> <p>The requirement is covered in Notice No. AMBD/R/34/2011/3, 4, 5, 7 &amp; 8 (Life Insurer, Family Takaful Operator, Money Changer &amp; Remittance Business, International Insurer &amp; International Takaful Insurer and Investment Advisers, Dealers, Investment Advisers Representatives, Dealer's Representatives And Exempted Persons).</p>
<b>R. 13 Suspicious Transaction Reporting</b>	NC	a) Amend the MLO to require financial institutions to report STRs directly to FIU.	Reporting obligation for reporting institutions to report on suspicious transactions relating to money laundering to the FIU is provided under section 16 of the Anti-Money Laundering Act, Chapter 209 and section 17 of the draft Criminal Asset Recovery and Anti Money Laundering Order.
		b) Include an obligation in law/regulation to oblige all reporting parties to report STR on attempted transactions.	This STR reporting obligation also includes attempted transactions as required under section 17 of the draft Criminal Asset Recovery and Anti Money Laundering Order, section 11.2 of the Notice No. AMBD/R/34/2011/1, 2, 5 & 6 (Banks, Islamic Banks, Money Changer & Remittance Businesses and International Banks), and section 9.2 of the Notice No. AMBD/R/34/2011/3,4, 7 & 8 (Life Insurer, Family Takaful Operator and International Insurer, International Takaful Insurer and Investment Advisers Representatives, Dealer's Representatives And Exempted Persons)
		c) Expand the scope of predicates offences in the MLO to ensure widest scope of suspicion.	Covered under section 2 of the draft Criminal Asset Recovery and Anti Money Laundering Order under the definition of "Serious Offence".

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations <sup>3</sup>
<b>SR. IV Suspicious Transaction Reporting</b>	PC	a) Amend the ATA to require all financial institutions to report TF-related STR directly to the FIU.	Section 47 of the Anti Terrorism Order, 2011 provides provision of Sharing of Information and deals with the obligation of financial institutions and designated non-financial businesses and professions to report TF related suspicious transactions.
		b) 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.	
		c) Undertake comprehensive education and awareness raising with reporting parties related to STRs on TF.	AMBD plans to conduct awareness programs on AML/CFT to all reporting institutions in 2012, which includes talks on STR reporting. AMBD will be conducting a talk at a domestic finance company on 3 <sup>rd</sup> April 2012 on AML/CFT, specifically on KYC/CDD.
		d) Encourage greater quantity and quality of STR reporting across all sectors.	As part of the awareness program AMBD will also highlight and encourage the quantity and quality of STRs from non-banking sectors.

**PART 1(b): MEASURES TAKEN TO ADDRESS THE DEFICIENCIES/IMPLEMENT MER/DAR RECOMMENDATIONS IN RELATION TO THE 10 KEY FATF RECOMMENDATIONS**

<b>40 + 9 Recommendations</b>	<b>Rating</b>	<b>MER/DAR Recommendations</b>	<b>Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations</b>
<b>R.3 Confiscation and Provisional Measures</b>	PC	a) Amend CCROP to apply to the proceeds and instrumentalities of all offences.	This is covered under definition of “serious offence” and “tainted property” under section 2 of the draft Criminal Asset Recovery and Anti Money Laundering Order.  Section 60 of the draft Criminal Asset Recovery and Anti Money Laundering Order allows for the public prosecutor to apply to the high court for a confiscation order or benefit recovery order against tainted property in respect of a serious offence.
		b) Review CCROP and DTROP to address procedural complexities.	Part III of the draft Criminal Asset Recovery and Anti Money Laundering Order simplifies the procedural complexities for acquiring restraint and confiscation orders.
		c) Provide focused training to develop capacity to apply the laws.	AMBD and AGC to liaise with APG on technical assistance in particular on the implementation of legislation for LEAs and training for the judiciary.
		d) Intended instrumentalities should be clearly covered for confiscation.	Definition of “proceeds of crime” and “tainted property” covers property derived or realised directly or indirectly, used in or in connection or intended for use or in connection with the commission of a serious offence.
		e) Actively engage in the investigation and prosecution of ML offences including restraining and confiscation of POC.	Law enforcement agencies particularly the Royal Brunei Police Force, Narcotics Control Bureau and the Anti Corruption Bureau have been actively engaged in money laundering investigation and /or proceeds of crime investigation. Statistics of investigation is provided in the Annex.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations
		f) The DTROP and CCROP need to clarify further the procedures of acquiring restraint and confiscation orders.	Part III of draft Criminal Asset Recovery and Anti Money Laundering Order deals with the procedures of acquiring restraint and confiscation orders.
<b>R.4 Secrecy Laws</b>	C	No recommendation from APG – This Recommendation is fully observed	
<b>SR. III Freeze and Confiscate Terrorists Assets</b>	PC	a) 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.	A regulation on Terrorist Financing is being drafted to be issued pursuant to section 67 of the Anti Terrorism Order, 2011, and will be called the AMBD (Measures against Terrorist Financing) Regulation. Reg 4 of the draft AMBD (Measures against Terrorist Financing) Regulation states that “designated persons” includes all persons & entities listed under S/RES/1267 & 1373.
		b) Utilise ss12 and 14 to support implementation of 1373 with appropriate legal and procedural frameworks.	Reg 9 of the draft AMBD (Measures against Terrorist Financing) Regulation prohibits FIs & DNFPBs from: <ul style="list-style-type: none"> <li>• “dealing” with property owned, held or controlled by a designated person;</li> <li>• Making property or financial services available (directly or indirectly) to a designated person;</li> <li>• Making property or financial services available (directly or indirectly) for the benefit of a designated person.</li> </ul>

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations
		c) Consider giving effect to actions initiated under the freezing orders of another jurisdiction.	Reg 4 of the draft AMBD (Measures against Terrorist Financing) Regulation states that “designated persons” means a person designated by the Authority for the purposes of the regulations and all persons & entities listed under S/RES/1267 & 1373 and gives effect to freezing orders of other jurisdictions.
		d) 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.	
		e) Provide clear guidance to financial institutions and entities that may be holding terrorist assets regarding their obligations in taking actions under freezing mechanisms.	Reg 11 of the draft AMBD (Measures against Terrorist Financing) Regulation details the reporting obligations of FIs and DNFBPs if it knows/has reasonable cause to suspect that a person <ul style="list-style-type: none"> <li>• Is a designated person;</li> <li>• Has dealt or is dealing with property owned, held or controlled by a designated person;</li> <li>• Made or is making property or financial services available (directly or indirectly) to a designated person or for the benefit of a designated person.</li> </ul>
		f) 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.	Reg 7(3) & (4) of the draft AMBD (Measures against Terrorist Financing) Regulation detail the steps that the Authority must take when a designation expires, is varied or revoked by the Authority.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations
		g) Issue directions under s12 and regulations under s14 to address 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.	Reg 10(4) of the draft AMBD (Measures against Terrorist Financing) Regulation states that the Authority shall release the property of a bona fides third party if certain conditions are fulfilled.
		h) Issue directions under s12 and regulations under s14 to address 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.	Reg 9(3) of the draft AMBD (Measures against Terrorist Financing) Regulation states that FIs / DNFBPs are not bound by Reg 9(1) if the property is deemed by the Authority to be necessary for: <ul style="list-style-type: none"> <li>• basic expenses;</li> <li>• professional fees;</li> <li>• reimbursement of legal expenses;</li> <li>• interest charges, etc.</li> </ul>
		i) 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.	Reg 6 (4) of the draft AMBD (Measures against Terrorist Financing) Regulation will allow any person whose property has been frozen to challenge that measure to the Minister who will then render his final decision.  Based on Part III of the Anti-Terrorism Order, 2011, Section 35 of the Order allows for any interested party to appeal to the High Court for the revocation or variation of any restraint order with regards to property applied for by the Public Prosecutor.
		j) Enhance supervision and monitoring of financial institutions' compliance with measures relating to SRIII.	After issuing the draft AMBD (Measures against Terrorist Financing) Regulation, AMBD to ensure the compliance of the Regulation.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations						
<b>R. 26 The FIU</b>	NC	a) Amend the MLO to provide clear legal authority for the FIU to receive STRs relating to ML.	Legal authority for FIU to receive reports on suspicious transactions related to money laundering including attempted transaction to the FIU is provided under section 16 of the Anti-Money Laundering Act, Chapter 209.  Section 17 of the draft Criminal Asset Recovery and Anti Money Laundering Order clarifies this further.						
		b) Gazette the FIU to provide legal authority under the ATA for the FIU to receive TF related STRs.	Section 47 of the Anti Terrorism Order, 2011 provides provision of Sharing of Information and deals with the obligation of financial institutions and designated non-financial businesses and professions to report TF related suspicious transactions.						
		c) Amend the ATA to allow the FIU to disseminate TF-related STRs.	Section 51 of the Anti Terrorism Order, 2011 provides the authority for the dissemination of STR.						
		d) Disseminate STRs when analysis indicates an opinion/suspicion that it related to ML or TF.	Statistics of STRs Disseminated: <table><tr><th>Year</th><th>No. of STRs Disseminated</th></tr><tr><td>2010</td><td>5</td></tr><tr><td>2011</td><td>6</td></tr><tr><td>2012</td><td>0 (as at 30<sup>th</sup> March)</td></tr></table>	Year	No. of STRs Disseminated	2010	5	2011	6
Year	No. of STRs Disseminated								
2010	5								
2011	6								
2012	0 (as at 30 <sup>th</sup> March)								

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations
		e) The FIU should implement suitable analysis tools and a database to assist with the analysis function of the STRs and other information.	A database and analysis system is in the final stages of tender evaluation and is expected to be implemented by end of 2012. The system will amongst others allow online submission of STRs for the banking sector which accounts for 90% of all STRs received. The system will store and manage all information from STRs, CTRs and CBNI reports.
		f) Ensure that the FIU database has a secure data backup system.	The new system makes provisions for a secure data backup system (disaster recovery site).
		g) Provide the FIU with a clear statutory basis to proactively exchange information with foreign FIUs.	This is provided for under section 26 of the Anti Money Laundering Act, Chapter 209, section 54 of the Anti Terrorism Order 2011 and section 4 of the draft Criminal Asset Recovery and Anti Money Laundering Order.
		h) 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;	Section 52 of the Anti Terrorism Order provides the authority for FIU to access information.  Section 3 (c) & (f) of the draft Criminal Asset Recovery and Anti Money Laundering Order allow the FIU to request information from any financial institutions and DNFBPs even before any formal investigation is conducted.
<b>R.23 Regulation , Supervision and Monitoring</b>	NC	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	Examination procedures have been developed (including the basic inspection checklist for AML/CFT purposes) and used during on-site inspections.  The latest bank on-site inspections commenced on August/September 2010 and were completed in December 2010. Continuous follow-up on specific recommendations on any deficiencies related to AML/CFT have also been made. All banks have been covered with regards to AML/CFT compliance onsite and will continue to be covered at a



<b>40 + 9 Recommendations</b>	<b>Rating</b>	<b>MER/DAR Recommendations</b>	<b>Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations</b>
		sectors.	<p>periodic on-site examination cycle which will begin in the second quarter of 2012.</p> <p>As part of the off-site review, a copy of the bank's internal audit inspection report will also be used to see if there are any AML/CFT related issues raised. The external auditors too have been informed of their obligations to check AML/CFT in terms of the Anti Money Laundering Act and which should be included in their audit scope.</p> <p>AML/CFT measures are also inspected as part of the Supervisory Units assessment of the institutions licensed under AMBD. Onsite inspections on insurance companies, investment advisers and securities dealers will commence in second quarter of 2012.</p>
<b>R. 35 Conventions</b>	LC	Fully implement relevant obligations set out in the Palermo and Terrorist Financing Conventions.	The draft Criminal Asset Recovery and Anti Money Laundering Order and the Anti Terrorism Order, 2011 provide the relevant provisions in line with the Palermo and Terrorist Financing Conventions.
<b>SR.1 Implement UN Instruments</b>	PC	Fully implement UN SCR 1267 & 1373.	The Anti Terrorism Order 2011 and the AMBD (Measures against Terrorist Financing) Regulation will implement the obligation set out under the UN SCR 1267 & 1373.
<b>R.36 Mutual Legal Assistance (MLA)</b>	PC	a) 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.	Provisions to give effect to foreign restraint and confiscation orders is available under the condition set in Section 53 (1) (b) of the draft Criminal Asset Recovery and Anti Money Laundering Order.
		b) Intended instrumentalities should be clearly covered for ML, TF and predicate offences.	This is covered under the definition of "proceeds of crime" and "tainted property", section 2 of the draft Criminal Asset Recovery and Anti Money Laundering Order.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations
		c) 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.	<p>Definition of “Serious offence” under section 2 of the draft Criminal Asset Recovery and Anti Money Laundering Order widens the offences that are subject to confiscation to offences with imprisonment penalty of 1 year or more. This would include Terrorist Financing which has an imprisonment penalty of a term not exceeding 30 years as provided in the Anti Terrorism Order, 2011.</p> <p>Under the current CCROP, the 30 years imprisonment exceeds the 5 year threshold and therefore is subject to confiscation.</p>
		d) 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.	<p>AGC has conducted workshops for Officers of the Immigration and National Registration Department (May 2011) and Officers of the Employees Trust Fund (TAP) (<b>June 2011</b>) on Laws and Investigation with a specific component on Mutual Legal Assistance.</p> <p>AGC through its Mutual Legal Assistance (MLA) Secretariat has successfully organized a workshop on “The Mutual Legal Assistance in Criminal Matters Framework in Brunei Darussalam, Malaysia and Singapore” on 13 – 15 June 2011. Experts from the Attorney General’s Chambers of Malaysia and Singapore were invited to share their country’s MLA framework. The workshop was participated by various Law Enforcement Agencies in Brunei Darussalam. The objectives of the workshop were to enhance understanding of the MLA framework of Brunei Darussalam, Malaysia and Singapore and the use of MLA to facilitate investigation and the prosecution of criminal cases.</p> <p>AGC conducted a Workshop for Enforcement Officers of the Royal Customs and Excise Department with a component on Mutual Legal Assistance on 14-15 November 2011.</p>
<b>SR.V International Co-operation</b>	PC	Consider establishing arrangements for co-ordinating seizure and confiscation actions with other countries.	Section 51D of the draft Mutual Assistance in Criminal Matters (Amendment) Order, 2012 establishes arrangements for co-ordinating seizure and confiscation actions with other countries.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/ implement MER/DAR recommendations
<b>R.40 Other Forms of Co-operation</b>	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.	<p>Section 4 of the draft Criminal Assets Recovery and Anti Money Laundering Order allows the FIU to share information with foreign counterpart agencies.</p> <p>Section 3(f) of the draft Criminal Asset Recovery and Anti Money Laundering Order allows the FIU to collect any information it considers relevant including information held by licensees under RATLO.</p> <p>Section 36 of the draft Criminal Assets Recovery and Anti Money Laundering Order overrides any secrecy and confidentiality provisions in any other laws that prevent financial institutions and designated non-financial institutions from fulfilling their obligations under this Order.</p>

**PART 2: MEASURES TAKEN TO ADDRESS THE DEFICIENCIES/IMPLEMENT MER/DAR RECOMMENDATIONS IN RELATION TO OTHER FATF RECOMMENDATIONS RATED AS NC OR PC**

<b>40 + 9 Recommendations</b>	<b>Rating</b>	<b>MER/DAR Recommendations</b>	<b>Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations</b>
R.2 Money Laundering Offences – Mental Element and Corporate Liability	PC	a) Amend CCROP to remove the defence of ‘acquiring property for inadequate consideration’ when proving possession, use or transfer of POC;	This has been removed in the draft Criminal Asset Recovery and Anti Money Laundering Order.
		b) Clarify within DTROP and CCROP that a conviction for a predicate offence is not a prerequisite for prosecuting or convicting the ML offence ;	Section 37 of the draft Criminal Asset Recovery and Anti Money Laundering Order clarifies this.
		c) DTROP and CCROP should be amended to utilise a common standard of proof for ML.	Section 126 of the draft Criminal Asset Recovery and Anti Money Laundering Order provides for the standard of proof (balance of probabilities).
		d) The ancillary act ‘counselling’ to commit ML be criminalised under the Penal Code (cap.22).	This will be considered for insertion in the amendments to the penal code.
R.6 Politically Exposed Persons	NC	a) 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	Section 6.2 (a) of Notice No. AMBD/R/34/2011/1–8 issued to financial institutions require financial institutions to implement appropriate internal policies, procedures and controls to determine if a customer or beneficial owner is a politically exposed person. Section 13 (2) of draft Criminal Asset Recovery and Anti Money Laundering Order requires financial institutions and DNFBPs to determine if a customer or a beneficial owner is a PEP.
		b) Issue enforceable instructions requiring reporting parties to obtain senior management approval for establishing business relationships with a PEP	This requirement is covered under section 6.2 (b) of Notice No. AMBD/R/34/2011/1–8; and section 13 (2) (a) of the draft Criminal Asset Recovery and Anti Money Laundering Order.

<b>40 + 9 Recommendations</b>	<b>Rating</b>	<b>MER/DAR Recommendations</b>	<b>Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations</b>
		c) Issue enforceable instructions requiring reporting parties to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as a PEP	This requirement is covered under section 6.2 (c) of Notice No. AMBD/R/34/2011/1–8 and section 13 (2) (b) draft Criminal Asset Recovery and Anti Money Laundering Order.
		d) Issue enforceable instructions requiring reporting parties to conduct enhanced ongoing monitoring on PEPs.	This requirement is covered under section 6.2(d) of Notice No. AMBD/R/34/2011/1–8 and section 13 (2) (c) of the draft Criminal Asset Recovery and Anti Money Laundering Order.
R.7 Correspondent Banking	NC	Issue and implement the draft AGC Notice ASAP to ensure compliance with controls over correspondent banking requirements.	CDD measure on Correspondent Banking is covered under section 8 of Notice No. AMBD/R/34/2011/1, 2 & 6 and section 14 of the draft Criminal Asset Recovery and Anti Money Laundering Order
R.8 New Technologies and Non Face-To-Face Business	NC	a) Issue enforceable instructions to require all reporting parties to take such measures to prevent the misuse of technological developments in ML or TF schemes.	This is covered under section 12.3 (Internal Policies, Compliance, Audit and Training) of Notice No. AMBD/R/34/2011/1, 2 & 6 (Banks, Islamic Banks & International Banks), section 10.3 (Internal Policies, Compliance, Audit and Training) of Notice No. AMBD/R/34/2011/3, 4, 5, 7 & 8 (Life Insurer, Family Takaful Operator, Money Changer & Remittance, International Insurer and International Takaful Insurer and Investment Advisers, Dealers, Investment Advisers Representatives, Dealer's Representatives And Exempted Persons) and section 26 (1) (d) of the draft Criminal Asset Recovery and Anti Money Laundering Order.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations
		<p>b) Issue enforceable instructions to require all reporting parties to address specific risks associated with non-face-to-face business relationships or transactions</p> <p>c) Issue enforceable instructions to require all reporting parties to manage the risks to effective CDD procedures that from non-face-to-face customers</p>	<p>This is covered under section 4.25 – 4.27 of Notice No. AMBD/R/34/2011/1, 2, 6 &amp; 8 (Banks, Islamic Banks, International Banks and Investment Advisers, Dealers, Investment Advisers Representatives, Dealer’s Representatives And Exempted Persons), section 4.26 – 4.28 of Notice No. AMBD/R/34/2011/3, 4 &amp; 7 (Life Insurer, Family Takaful Operator and International Insurer and International Takaful Insurer) and section 4.22 of Notice No. AMBD/R/34/2011/5 states that Money Changers and Remittance are not allowed to undertake any transactions without face-to-face contact with its customers without prior approval from AMBD. No such approval has ever been given.</p> <p>Section 12 of the draft Criminal Asset Recovery and Anti Money Laundering Order, which gives financial institutions and DNFBPs an obligation to take adequate measures to address the specific risk of money laundering and financing of terrorism in the event they conduct business relationships or execute transactions with a customer that is not physically present for purposes of identification. Such measures shall ensure that the due diligence is no less effective than where the customer appears in person, and may require additional documentary evidence, or supplementary measures to verify or certify the documents supplied.</p>
R.9 Third Parties and Introducers	NC	a) Issue enforceable rules requiring all reporting parties relying up on a third party to immediately obtain from the third party the necessary information concerning certain elements of the CDD process	<p>Section 7.3 (b) of Notice No. AMBD/R/34/2011/1-8 requires the financial institutions to immediately obtain from the intermediary the CDD information which the intermediary had obtained.</p> <p>Section 11 of the draft Criminal Asset Recovery and Anti Money Laundering Order also provides for certain requirements to be met before relying on identification by third parties.</p>

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations
		b) Issue enforceable rules requiring all reporting parties relying up on a third party 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	This requirement is covered under section 7.1 (c) of Notice No. AMBD/R/34/2011/1-8 and section 11 (c) (i) of the draft Criminal Asset Recovery and Anti Money Laundering Order.
		c) Issue enforceable rules requiring all reporting parties relying up on a third party to 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	This requirement is covered under section 7.1 (a) of Notice No. AMBD/R/34/2011/1-8 and section 11 (c) (ii) of the draft Criminal Asset Recovery and Anti Money Laundering Order.
		d) Issue enforceable rules specifying from which countries parties conducting third party conditions can be based	The conditions are specified under section 11 (c) (ii) of the draft Criminal Asset Recovery and Anti Money Laundering Order.
R.11 Unusual Transactions	NC	a) 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	This requirement is included in the notices under section 4.22 of Notice No. AMBD/R/34/2011/1, 2, 6 & 8 (Banks, Islamic Banks, International Banks and Investment Advisers, Dealers, Investment Advisers Representatives, Dealer's Representatives And Exempted Persons), section 4.23 of Notice No. AMBD/R/34/2011/3, 4 & 7 (Life Insurer, Family Takaful Operator and International Insurer and International Takaful Insurer), section 4.20 of Notice No. AMBD/R/34/2011/5 (Money Changers and Remittance Businesses) and section 28 (1) of the draft Criminal Asset Recovery and Anti Money Laundering Order.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations
		b) Require all financial institutions to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing	This requirement is included in the notices under section 4.23 of Notice No. AMBD/R/34/2011/1, 2, 6 & 8 (Banks, Islamic Banks, International Banks and Investment Advisers, Dealers, Investment Advisers Representatives, Dealer's Representatives And Exempted Persons), section 4.24 of Notice No. AMBD/R/34/2011/3, 4 & 7 (Life Insurer, Family Takaful Operator and International Insurer and International Takaful Insurer), section 4.21 of Notice No. AMBD/R/34/2011/5 (Money Changers and Remittance Businesses, and section 28 (3) of the draft Criminal Asset Recovery and Anti Money Laundering Order.
		c) Require all financial institutions to keep such findings available for competent authorities and auditors for at least five years	The requirement is provided under section 16 (4) of the draft Criminal Asset Recovery and Anti Money Laundering Order.  Record-keeping for at least 5 years is also covered under section 10.2 of Notice No. AMBD/R/34/2011/1, 2 & 6 (Banks, Islamic Banks & International Banks) and section 8.2 of Notice No. AMBD/R/34/2011/3, 4, 5, 7 & 8 (Life Insurer, Family Takaful Operator, Money Changer & Remittance Business, International Insurer & International Takaful Insurer and Investment Advisers, Dealers, Investment Advisers Representatives, Dealer's Representatives And Exempted Persons).
		d) Require all 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.	This requirement is provided under section 6.4 of the Notices No. AMBD/R/34/2011/1-8.  Section 28 (2) of the draft Criminal Asset Recovery and Anti Money Laundering Order requires special attention be given to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which insufficiently apply the FATF Recommendations.



40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations
		e) 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.	This requirement is provided under section 4.22 of the Notices No. AMBD/R/34/2011/1-8. This requirement is covered under section 28 (1) and (3) of the draft Criminal Asset Recovery and Anti Money Laundering Order.
R.12 DNFBPs – R5 , 6, 8-11	NC	a) 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.	Section 2 of the draft Criminal Asset Recovery and Anti Money Laundering Order includes Registered agents and trustees as part of the definition of financial institutions and the draft Criminal Asset Recovery and Anti Money Laundering Order requires all financial institutions to conduct KYC/CCD measures. A notice will be issued to require registered agents and trustees to conduct KYC/CDD as set out in the FATF standards.
		b) 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.	We are currently conducting national risk assessments on the prevailing crime types in Brunei Darussalam and subsequently will conduct risk assessments on DNFBPs.
		c) 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.	Sections 5 -13, 15, 16, 17, 25, 26, 27, 28 & 36 of the draft Criminal Asset Recovery and Anti Money Laundering Order relate to the requirement to take CDD measures which is also applicable to DNFBPs.
R.14 Protection & No Tipping-Off	PC	a) Amend the MLO to explicitly provide safe harbour provision include STR and any information obtained by supervisory authority.	This protection is provided under section 18 of the draft Criminal Asset Recovery and Anti Money Laundering Order.

<b>40 + 9 Recommendations</b>	<b>Rating</b>	<b>MER/DAR Recommendations</b>	<b>Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations</b>
		b) Amend MLO to 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.	Section 24 of draft Criminal Asset Recovery and Anti Money Laundering Order prohibits the disclosure (“tipping off”) of STRs reported to the FIU.
R.15 Internal Controls, Compliance and Audit	NC	a) Require adequately resourced and independent audit to test compliance with AML/CFT procedures.	Section 26 (1) (e) of the draft Criminal Asset Recovery and Anti Money Laundering Order, section 12.10 of the Notices no. AMBD/R/34/2011/1, 2 & 6 and section 10.10 of Notices no. AMBD/R/34/2011/3, 4, 5, 7 & 8 provide for this requirement.
		b) Require financial institutions to establish employee screen procedures when hiring new employees.	Section 26 (1) (b) of the draft Criminal Asset Recovery and Anti Money Laundering Order, section 12.11 of the Notices no. AMBD/R/34/2011/1, 2 & 6 and section 10.11 of Notices no. AMBD/R/34/2011/3, 4, 5, 7, & 8 provide for this requirement.
		c) Issue and support implementation of the Draft AGC Notices for banks and life insurers ASAP.	The KYC/CDD notices (Notice no. AMBD/R/34/2011/1, 2, 3, 4, 6 & 7) were issued on 8 <sup>th</sup> February 2011.
		d) Extend comprehensive requirements to securities, money-changing companies and remittance service providers ASAP.	The KYC/CDD notices (Notice no AMBD/R/34/2011/5 & 8) issued on 8 <sup>th</sup> February 2011 extends to securities, money-changing and remittance service providers.
		e) Support effective implementation of internal controls through comprehensive AML/CFT supervision of all relevant sectors.	A questionnaire was distributed to banks on 2 <sup>nd</sup> March 2012 on AML/CFT to review the implementation of the CDD measures. This questionnaire will also be distributed to other financial institutions.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations
R.16 DNFBPs – R.13-15 & 21	NC	a) Issue enforceable instructions to registered agents and trustees regarding unusual and suspicious transactions, as well as detailed instructions for establishing internal controls.	A notice will be issued to require registered agents and trustees to conduct KYC/CDD as set out in the FATF standards. Section 17, 18, 26 and 28(2) of the draft Criminal Asset Recovery and Anti Money Laundering Order provide the obligation to report STRs, protection of person reporting the STRs, internal controls and the special monitoring of certain transactions.
		b) Ensure effective implementation of existing obligations on TCSPs through AML/CFT related monitoring and supervision.	During on-site visits to trust companies, a random check on compliance of IBCs to the International Business Companies Order and Anti-Money Laundering Act are conducted in accordance with the compliance checklist (attached).
		c) 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.	These requirements are provided under section 18 (Protection of identity of persons and information relating to suspicious transaction reports), 24 (Prohibition against Tipping-off) & 25 (Establish and maintain internal reporting procedures) of the draft Criminal Asset Recovery and Anti Money Laundering Order.
		d) Ensure that the MLO, ATA or other statutory provisions override any impediments to STR reporting or information gathering contained in RATLO.	Section 52 of the ATO provides the FIU with the authority to access information from all financial institutions and DNFBPs. Section 36 of the draft Criminal Asset Recovery and Anti Money Laundering Order states that no secrecy or confidentiality provision in any other law shall prevent a financial institution or designated non-financial business and profession from fulfilling its obligations under this Order. This will override any impediments to information gathering contained in RATLO.

<b>40 + 9 Recommendations</b>	<b>Rating</b>	<b>MER/DAR Recommendations</b>	<b>Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations</b>
R.17 Sanctions	PC	Statutes should make available financial sanctions for administrative breaches for breaches of licensing conditions, including implementing AML/CFT controls.	<p>Section 32 of the draft Criminal Asset Recovery and Anti Money Laundering Order plans to impose financial sanctions for administrative breaches.</p> <p>Under section 34(2) of the AMBD Order, a financial institution which fails or refuses to comply with the notice issued is guilty of an offence and liable on conviction to a fine not exceeding \$1,000,000 and in the case of continuing offence, to a further fine of \$100,000 for every day during which the offence continues after conviction.</p>
R.18 Shell Banks	PC	a) Issue and implement comprehensive rules governing relationships with shell banks, including the draft AGC Notice as soon as possible.	<p>Section 8.6 of Notice No. AMBD/R/34/2011/1, 2 and 6 prohibit banks in Brunei Darussalam to enter into or continue correspondent banking relationship with a shell bank. Section 8.7 of the three notices requires banks 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.</p> <p>Section 34 of the draft Criminal Asset Recovery and Anti Money Laundering Order prohibits the setting up of a shell bank in Brunei Darussalam and establishment of business relationship with a shell bank or a respondent financial institution in a foreign country that permits its accounts to be used by a shell bank.</p>
		b) Conduct examinations to ensure that AML/CFT controls on shell banks are being implemented	A questionnaire was distributed to banks on 2 <sup>nd</sup> March 2012 on AML/CFT to review the implementation of measures on shell banks. It showed that CDD measures are implemented including controls against shell banks.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations
R.20 Other NFBPs & Secure Transaction Techniques	PC	a) Consider risks and vulnerabilities of ML or TF through other categories of businesses or professions	We are currently conducting national risk assessments on the prevailing crime types in Brunei Darussalam and subsequently will conduct risk assessments on DNFBPs.
		b) Take further measures to encourage the development and use of modern and secure techniques for conducting financial transactions.	Pursuant to section 66 of the Banking Order, 2006, AMBD issued a Notice on credit cards (No.1/2012) to banks on the 29 <sup>th</sup> of January 2012. Paragraph 11 of the Notice encourages banks to promote debit cards to facilitate cash-less payments.
		c) Take measures to reduce risks of ML and TF associated with the circulation of high-denomination bank notes	Circulation of high denomination notes such as the B\$10,000 note is limited and is based on request by banks. Banks records any issuance and receipts of \$10,000 notes such as details of the customer and the serial number of the notes.
R.21 Special Attention for higher risk countries	NC	Issue instruments to allow application of counter-measures where a country continues not to apply or insufficiently applies the FATF Recommendations.	Section 28 of the draft Criminal Asset Recovery and Anti Money Laundering Order requires special attention be given to transactions with persons from or in countries that do not or insufficiently apply the FATF Recommendations. Section 6.4 of Notice No. AMBD/R/34/2011/1 –8 on Prevention on Money Laundering and Terrorism Financing requires particular attention be given to business transactions with countries known/identified to have not apply or insufficiently applies the FATF Recommendations
R.24 DNFBPs – Regulation, supervision and monitoring	NC	a) Ensure that BIFC supervision of RATLO Registered Agents includes comprehensive onsite supervision of AML/CFT controls.	A notice will be issued to require registered agents and trustees to conduct KYC/CDD as set out in the FATF standards. During on-site visits to trust companies, a random check on compliance of IBCs to the International Business Companies Order and Anti-Money Laundering Act are conducted in accordance with the compliance checklist (attached).

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations
		b) Initiate outreach programmes to DNFBPs that will be included through the amendment of the MLO.	Outreach programme to DNFBPs is planned to be conducted after the Criminal Asset Recovery and Anti Money Laundering Order is passed.
		c) 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 (now AMBD).	Section 22(2) of the draft Criminal Asset Recovery and Anti Money Laundering Order provides legal basis for the FIU to conduct AML/CFT supervision and monitoring of DNFBPs that are not regulated by AMBD.
R.25 Guidelines and Feedback	PC	Ensure the MLO amendment is brought into force and appropriate rules and guidelines are issued to all relevant DNFBPs.	Section 27 of the Anti-Money Laundering Act, Chapter 209, provides power for the Supervisory Authority to issue directions, guidelines, etc to DNFBPs. Section 131 of the draft Criminal Asset Recovery and Anti Money Laundering Order provides for the Authority to issue directions and regulations concerning any person or any class of persons as the Authority considers necessary for the prevention of ML.
R.27 Law Enforcement Authorities	PC	a) Law enforcement authorities (LEAs) should 'follow the money' and investigate ML offences in parallel with predicate offences for profit generating crime.	The Royal Brunei Police Force, Narcotics Control Bureau and the Anti-Corruption Bureau are conducting money laundering and proceeds of crime investigation in parallel with investigation on the predicate offence. Investigations on some cases have led to cross border investigation and the freezing of accounts in other jurisdictions.
		b) 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.	ML, TF and/or POC investigation are conducted in parallel with the investigation of the predicate offence being investigated according to CCROP or DTROP. In the case of Narcotics Control Bureau, Cases which falls under section 3, 4, 5 and 8 of the Misuse of Drugs Act are required to open parallel investigation into the Proceeds of Crime investigation. The current legislation being used is the DTROP.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations
R.29 Supervisors	PC	Supervisors should ensure effective sanctioning of reporting institutions for non-compliance with AML/CFT controls.	A financial institution which fails or refuses to comply with the KYC/CDD Notices issued under section 34 of the AMBD Order, 2010 is guilty of an offence and liable on conviction to a fine not exceeding \$1,000, 000 and, in the case of a continuing offence, to a further fine of \$100,000 for every day during which the offence continues after conviction.  Section 31, 32 and 35 of the draft Criminal Asset Recovery and Anti Money Laundering Order provide measures and sanctions for any breach of obligations under the Order.
R.30 Resources, Integrity and Training	PC	a) The FIU should undertake further training of its staff in the analysis function.	FIU has been undergoing trainings, domestic and overseas, in the area of analysis function.
		b) Consider increasing staffing to meet demands of increased reporting and supervision.	FIU has now increased its staffing from 4 to 6 full time officers attending to the overall functions of FIU.
		c) LEAs should consider committing resources to enhance AML/CFT investigation capacity.	LEAs have a dedicated team for ML/TF investigation. The Commercial Crime Investigation Division of the Royal Brunei Police Force is designated to conduct ML/ TF investigation. The Narcotics Control Bureau has established a Special Investigation Section for drugs related ML investigation. The Anti-Corruption Bureau has also established a Special Investigation Team to look into potential ML offences.
		d) NAMLC should consider assisting the coordination, training and capacity building of financial investigations within LEAs.	FIU as the secretariat for NAMLC does coordinate capacity building and trainings. Examples: - “Asset Recovery from the Laundering of Proceeds of Crime” Talk conducted by StAR Initiatives – April 2011; - FATF/APG Typologies Workshop- December 2011;

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations
		e) Supervisory capacity should be enhanced, including through the production of AML/CFT inspection manuals and inspection plans for all covered sectors.	Inspection manuals specifically for AML/CFT on-site inspections have been produced by the Banking and Insurance Supervision Experts and are currently being used.
		f) 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.	Brunei Darussalam takes note of this recommendation and AMBD will continuously enhance resources in AML/CFT supervision.
		g) Ensure that adequate capacity is available to investigate possible TF offences.	The Commercial Crime Investigation Division of the Royal Brunei Police Force has adequate capacity to investigate TF offences. The Division will continuously attend trainings and capacity building efforts to equip themselves with the necessary skills for ML/TF or POC investigation.
R.31 National Co-operation	PC	a) Ensure coordination committees are used to drive forward reforms to AML/CFT policies	The National Committee on Anti Money Laundering and Terrorism Financing (NAMLC) has formed several ad hoc working committees namely Working Committee on Cash Couriers, Working Committee on Action Plan, FATF 40 + 9 Recommendation Compliance Committee and Working Committee on National Risk Assessment to drive forward AML/CFT policies. This includes the introduction of declaration system for the carrying of Physical Currency and Bearer Negotiable Instrument, creation of a National Strategy on AML/CFT, conducting National Risk Assessment, consideration of NAMLC co-chairmanship arrangement and generally on the implementation of FATF 40 + 9 Recommendations.
		b) Utilise coordination mechanisms to implement AML/CFT policies, including operational level cooperation, information sharing and capacity building.	Operational Level committees such as Law Enforcement Committees, Anti-Terrorism Group, Intelligence Working Committee are being utilised not only for information sharing but to coordinate any capacity building initiatives.



40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations
		c) Consider increasing the role of NAMLC to develop a culture within law enforcement agencies to 'follow the money' in investigations of ML and TF.	The Terms of Reference of NAMLC is currently undergoing review which includes the roles and functions of NAMLC members in investigation of ML and TF. The 'follow the money' culture is not only being discussed during NAMLC but also at Working Committee level.
		d) Utilise NAMLC to coordinate operational information where LEAs have overlapping functions.	With the strengthening of the NAMLC co-chair and membership, coordination and information sharing of ML issues will be further enhanced.
R.32 Statistics	PC	a) Brunei authorities should make greater use of the ML offence to prosecute both predicate offences and ML.	Law enforcement agencies have been encouraged to make greater use of the ML offence in particular, the Narcotics Control Bureau have commenced money laundering investigations and /or proceeds of crime investigations. Statistics of investigation is provided in Annex.
		b) Improved statistics should be kept for relevant predicate offence investigations that involve POC.	Law enforcement agencies are aware of the requirement for improved statistics on relevant predicate offence investigations that involve POC.
		c) Brunei should maintain statistics for the use of the 'backed warrant' arrangement with Malaysia and Singapore.	The Royal Brunei Police Force is aware of the requirement to maintain statistics on the 'backed warrant' arrangement.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations
R.33 Legal Persons- Beneficial Owners	PC	a) Ensure that commercial, corporate and other laws require adequate transparency concerning the beneficial ownership and control of legal persons.	<p>The Companies Act will be amended to ensure that this recommendation is complied with.</p> <p>Under the Societies Act, Cap. 203, section 10 allows the Registrar to make any inquiries in relation to any application under the Act. Section 22(1) authorises the Registrar to conduct annual reviews on the societies and to be provided with updated information annually. Any further information may be requested under section 22 (2).</p> <p>Under the Co-operative Societies Act, section 36(1) authorises the Registrar to, on his own motion or on the application of the majority of the committee, hold an inquiry or direct some person authorised by him by order in writing in his behalf to hold an inquiry into the constitution, working and financial condition of a registered society.</p> <p>Regulatory instructions on measures on Beneficial Ownership are also included under Section 4.14 – 4.18 of the Notice No. AMBD/R/34/2011/1 –8 (Notices on the Prevention of Money Laundering and the Combating of Terrorism Financing).</p> <p>A similar notice will be issued to require registered agents and trustees to conduct KYC/CDD as set out in the FATF standards.</p>
		b) 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.	Section 36 of the draft Criminal Asset Recovery and Anti Money Laundering provides that no secrecy of confidentiality provision in any law can prevent access to information.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations
		c) 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. d) Establish controls over share warrants to ensure that share warrants cannot be redeemed by a bearer in a way akin to bearer shares	The Companies Act will be amended to ensure that this recommendation is complied with.
R.34 Legal Arrangement – Beneficial Owner	PC	a) Require adequate transparency concerning the beneficial ownership and control of legal arrangements. b) Ensure that TCSPs are able to share the widest range of information with competent authorities regarding the beneficial ownership of international trusts.	The Companies Act will be amended to ensure that this recommendation is complied with. A notice will be issued to require registered agents and trustees to conduct KYC/CDD including requirements on beneficial ownership and legal persons. Section 9 of the draft Criminal Asset Recovery and Anti Money Laundering Order requires information be obtained on beneficial ownership. A notice will be issued to require registered agents and trustees to conduct KYC/CDD including requirements on beneficial ownership and legal persons. Section 36 of the draft Criminal Asset Recovery and Anti Money Laundering Order provides that no secrecy of confidentiality provision in any law can prevent access to information.
R.38 MLA on Confiscation and Freezing	PC	Establish enabling provisions for freezing and seizing property except in widest circumstances.	Section 53 (1) (b) of the draft Criminal Asset Recovery and Anti Money Laundering Order provides for foreign freezing and confiscation order.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations
SR.VI AML Requirements for Money Value transfer services	PC	(a) Issue enforceable rules to require Money Remitters to conduct all CDD requirements, monitor unusual transactions and implement wire transfer controls.	Notice no. AMBD/R/34/2011/5 for Money Changers and Remittance Companies contains the CDD requirement including monitor unusual transactions and implement wire transfer controls have been issued to financial institutions including money remitters on 8 <sup>th</sup> February 2011. Section 6, 28 & 29 of the draft Criminal Asset Recovery and Anti Money Laundering Order require FIs including Money remitters to conduct CDD measures, special monitoring on certain transactions and have controls implemented on wire transfers.
		(b) Ensure that both off-site and on-site monitoring and supervision of Money Remitters includes all relevant aspects of AML/CFT.	Both off-site and on-site monitoring and supervision of Money Remitters include inspection on AML/CFT according to the requirements of the Anti Money Laundering Act, Cap 209.
SR.VII Wire Transfer Rules	NC	Implement comprehensive controls on wire transfers in keeping with SRVII.	Section 29 of the draft Criminal Asset Recovery and Anti Money Laundering Order provides for obligations on wire transfers. CDD measures for wire transfers above BND 2,000 are required under section 9 of the Notices no. AMBD/R/34/2011/1, 2 & 6 and section 7 of the Notice no. AMBD/R/34/2011/5.
SR. VIII Non-Profit Organisation	PC	a) Conduct periodic assessments by reviewing information on the NPO's sector potential vulnerabilities to TF.	The Registrar of Societies conduct annual reviews on the societies and are provided with updated information annually as required under section 22 (1) of the Societies Act, Cap 203 and any further information may be requested pursuant to section 22 (2) of the Societies Act, Cap 203. Section 19 of the Societies Act, Cap 203 prohibits affiliation with any societies outside Brunei Darussalam without the written approval of the Registrar. Section 18 of the Societies Act, Cap 203 scrutinises the background of the office bearers with the Criminal Records Office of the Royal Brunei Police Force and the Internal Security Department.

40 + 9 Recommendations	Rating	MER/DAR Recommendations	Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations
			<p>In strengthening the Societies Act, Cap 203 , the ROS is in discussion to amend the Act amongst other to include the following provisions:</p> <ul style="list-style-type: none"> <li>• For societies to inform the ROS of any activities 2 weeks prior to the event for better monitoring of the societies activities;</li> <li>• Record-keeping of at least 5 years;</li> <li>• The requirement to inform the Registrar the source of funds, donations, etc.</li> </ul>
		b) Conduct outreach on risks and vulnerabilities of NPOs for abuse related to TF	<p>A roadshow was conducted in May 2011 and there are plans to conduct another roadshow in 2012 which will include outreach on vulnerabilities of NPOs for abuse to TF.</p> <p>In addition, ROS plans to include information on the risks and vulnerabilities of NPO to Terrorism Financing in their newly launched ROS website.</p>
		c) 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	<p>The ROS ensure societies submit documents on an annual basis.</p> <p>Section 22 (1) (d) of the Societies Act, Cap 203 requires societies submit on an annual basis the accounts of the last financial year of the society and a balance sheet showing the financial position at the close of that year.</p> <p>The ROS is in discussions to make the necessary amendments to require for societies to keep record for 5 years.</p>
		d) 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.	<p>ROC is aware of the requirement to conduct oversight of registered NPOs that are companies.</p>

<b>40 + 9 Recommendations</b>	<b>Rating</b>	<b>MER/DAR Recommendations</b>	<b>Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations</b>
		e) ROC should be provided with powers to inspect a not-for-profit company.	The Companies Act will be amended to ensure that this recommendation is complied with.
SR.IX Cash Couriers	NC	a) Pass the proposed MLO (Amendment) Order as soon as possible to introduce a declaration system and implement the draft Standard Operating Procedure.	Section 17-24 of the Anti Money Laundering Act, Cap 209 implement a declaration system for the Cross Border Movement of Physical Currency and Bearer Negotiable instruments (CBNI) and commenced on 1 <sup>st</sup> August 2011. Standard Operating Procedures on the Collection and Forwarding of Reports on Cross-Border Movements of Physical Currency And Bearer Negotiable Instruments (CBNI Reports) is used to implement the declaration system.
		b) 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.	Section 26 of AMLA provides the provision for the sharing of information on CBNI reports. This is also included under section 4 of the draft Criminal Asset Recovery and Anti Money Laundering Order.

**PART 3: ANY OTHER MEASURES TAKEN TO ADDRESS THE DEFICIENCIES/IMPLEMENT MER/DAR RECOMMENDATIONS, INCLUDING IN RELATION TO OTHER FATF RECOMMENDATIONS RATED AS LC**

<b>40 + 9 Recommendations</b>	<b>Rating</b>	<b>MER/DAR Recommendations</b>	<b>Description of actions taken or being taken to remedy deficiencies/implement MER/DAR recommendations</b>
R.28 Powers of competent Authorities	LC	LEAs should utilise their power to compel production, search and seize for ML and TF investigations	LEAs have been encouraged to conduct ML and TF investigations.
R.37 Dual Criminality	LC	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.	This is reflected in the lowering of the threshold from 5 years to 1 year in the draft Criminal Asset Recovery and Anti Money Laundering Order to accede to this obligation.
R.39 Extradition	LC		

**Annexes (e.g. copies of implementation plans, new laws, regulations, statistics)**

**Legislation:**

- a) Draft Criminal Asset Recovery and Anti Money Laundering Order, 2012;
- b) Anti Terrorism Order, 2011;
- c) Autoriti Monetari Brunei Darussalam Order, 2010;
- d) Anti Money Laundering Act, Cap 209;
- e) Societies Act, Cap 203.
- f) Section 4A & 4B of the Draft Anti Terrorism (Amendment) Order;
- g) Section 51D of the draft Mutual Assistance in Criminal Matters (Amendment) Order, 2012

**Regulations, Notices, Guidelines, etc:**

- a) Brunei Darussalam National Strategy on Anti Money Laundering and Combating Financing of Terrorism;
- b) Draft AMBD (Measures against Terrorist Financing) Regulation;
- c) Notices on the Prevention of Money Laundering and the Combating of Terrorism Financing (KYC/CDD Notices):
  - Notice No. AMBD/R/34/2011/1 – Notice to Banks;
  - Notice No. AMBD/R/34/2011/2 – Notice to Islamic Banks;
  - Notice No. AMBD/R/34/2011/3 – Notice to Life Insurer;
  - Notice No. AMBD/R/34/2011/4 – Notice to Family Takaful Operators;
  - Notice No. AMBD/R/34/2011/5 – Notice to Holders of Money Changer’s Licence and Remittance Licence;
  - Notice No. AMBD/R/34/2011/6 – Notice to International Banks;
  - Notice No. AMBD/R/34/2011/7 – Notice to International Insurers and International Takaful Insurers;
  - Notice No. AMBD/R/34/2011/8 – Notice to Investment Advisers, Dealers, Investment Advisers Representatives, Dealer’s Representatives And Exempted Persons
- d) AML/CFT Questionnaire for Financial Institutions;
- e) Notice No. 1/2012 – Credit Cards;
- f) Draft Notice No: AMBD/R/34/2011/9- Notice to Registered Agents and Licensed Trustees;
- g) Standard Operating Procedures on the Collection and Forwarding of Reports on Cross-Border Movements of Physical Currency And Bearer Negotiable Instruments (CBNI Reports);
- h) Compliance Checklist on International Business Companies.



**Statistics:**

## a) Suspicious Transaction Report (STR):

	2008	2009	2010	2011	2012 (Jan- Mar)
STRs received from Banks	6	12	22	34	5
STRs received from Non-Banks	0	1	2	7	0
Total STRs Received	6	13	24	41	5
Total STRs Disseminated	0	0	5	6	0

## b) Cash Transaction Report (CTRs); (Note: Cash transactions above BND 5,000 only)

	2008	2009	2010	2011	2012 (Jan)
CTRs Received from Money Changers	584	886	1009	864	101
CTRs received from Remittance Companies	5918	5557	4346	5248	476
Total	6502	6443	5355	6112	577

## c) Cross Border Declaration of Physical Currency and Bearer Negotiable Instruments Reports;

	2011 (Aug - Dec)	2012 (Jan- Mar)
Total	518	188

## d) Money Laundering &amp; Terrorism Financing Investigation and Prosecution:

	2008	2009	2010	2011	2012 (Jan - Mar)
ML Investigation	0	0	14	12	1
ML Prosecution	0	0	0	0	0

Note: No cases on Terrorism Financing offence have been identified

e) International Cooperation:

	2008	2009	2010	2011	2012 (Jan - Mar)
Mutual Legal Assistance Request Received	0	1	4	0	0
Mutual legal Assistance Request to a foreign Jurisdiction	0	0	1	2	0
Requests sent to foreign FIU	0	1	2	1	3

Note: No requests received from foreign FIUs.