



Asia/Pacific Group
on Money Laundering

**ASIA/PACIFIC GROUP
ON MONEY LAUNDERING (APG)**

BRUNEI DARUSSALAM

1st APG MUTUAL EVALUATION

Executive Summary

**ANTI-MONEY LAUNDERING AND COMBATING THE
FINANCING OF TERRORISM**

**Against the FATF 40 Recommendations (2003) and 9 Special
Recommendations**

***Adopted by APG Members at the 2005 APG Annual Meeting
on 13 July 2005***

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APG India Mutual Evaluation Report

Executive Summary

Introduction

1. This Report on the Observance of Standards and Codes for the *FATF 40 Recommendations for Anti-Money Laundering and 9 Special Recommendations Combating the Financing of Terrorism* was prepared by representatives of member jurisdictions of the Asia/Pacific Group on Money Laundering. The report provides a summary of the AML/CFT measures in place in Brunei Darussalam, the level of compliance with the FATF 40+9 Recommendations, and contains recommendations on how the AML/CFT system could be strengthened. The views expressed in this document have been agreed by the APG and Brunei, but do not necessarily reflect the views of the Boards of the IMF or World Bank.

Background

2. This report provides a summary of the AML/CFT measures in place in Brunei as at the date of the on-site visit or immediately thereafter (February 2005). It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 1).

3. Law enforcement agencies and related authorities in Brunei do not regard money laundering or the financing of terrorism as areas of major vulnerability in the jurisdiction. This is not to say that the government of Brunei does not consider the issues of money laundering and terrorist financing to be important issues. Overall, there are no significant trends with respect to emergent crime types, other than an increase in cyber crime, and in particular, financial fraud such as pyramid schemes and email scams. To date, there have not been any money laundering or terrorist financing investigations, with only a small number of minor matters prosecuted under the *Drug Trafficking (Recovery of Proceeds) Act 2000* (DTROP) in relation to the forfeiture of criminal proceeds.

4. The financial sector in Brunei is segregated into domestic and international financial sectors. Companies within the international financial sector can only conduct offshore businesses and are exempted from paying taxes. Both sectors are supervised by different divisions within the Ministry of Finance.

5. The Financial Institutions Division (FID) of the Ministry of Finance supervises the domestic financial sector and has 17 staff. Within the domestic financial sector, there are 9 domestic banks and 1 Islamic Trust fund known as Tabung Amanah Islam Brunei (TAIB). TAIB provides all banking facilities except cheque facilities. The 9 banks include 3 local banks and 6 branches of foreign banks. The foreign bank branches are HSBC, United Overseas Bank, RHB Bank, Maybank, Citibank and Standard Chartered. Other institutions under the supervision of the FID include 3 finance companies, 3 life

insurers, 17 general insurers, 33 money changers and 34 remittance companies. Brunei does not have a securities exchange or securities companies.

6. The Brunei International Financial Centre (BIFC), established in 2000, is responsible for both promoting Brunei as an international finance centre as well as regulating the sector. The BIFC has 14 staff. As at 31 December 2004, there were more than 2500 international business companies and 8 registered agents and licensed trust companies. The BIFC registers the international business companies and supervises the registered agents which it relies on to conduct due diligence on the businesses.

7. Institutions in Brunei that are classified as “designated non-financial business and professions” (DNFBPs) include real estate agents, dealers in precious metals and stones, lawyers, accountants and trust/companies service providers. Casinos are not permitted in Brunei.

8. Other than trust/companies service providers, which are supervised by the BIFC, there are no supervisory authorities for other DNFBPs. Accountants and lawyers have their own professional associations, namely the Brunei Institute of Certified Public Accountants (BICPA) and the Brunei Law Society, but these associations do not impose any code of conduct or regulations on their members and membership is voluntary.

9. A person is defined in the *Interpretation and General Clauses Act* as ‘any company or association or body of persons, corporate or unincorporated; and this interpretation shall apply notwithstanding that the word ‘person’ occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation’.

10. Section 4 of the *Companies Act* provides for the mode of forming an incorporated company. Companies are incorporated by registering at the Registry of Companies. They must complete statutory forms as provided for under the Schedule of the Act and provide the Registrar with a memorandum of association and articles of association, if any. A certificate of incorporation given by the Registrar is considered to be conclusive evidence that all the requirements of the *Companies Act* have been complied with, and that the association is a company authorised to be registered under the section 18 of the Act.

11. The *Money Laundering Order* (MLO) was introduced in 2000 while the *Anti Terrorism (Financial and other Measures) Order* was introduced in 2002. The authorities state that the impetus for the introduction of both pieces of legislation was the determination to promote Brunei as an international financial centre, and it was felt AML/CFT legislation would allay any fears that may be raised by the promotion of the international financial services.

12. The *Legal Profession Act, Cap 132* regulates the legal profession in Brunei Darussalam and authorises the constitution of the Law Society in Brunei. The Law Society is established by virtue of the Legal Profession (Law Society of Brunei Darussalam) Order 2003. Under section 36 of the Order, the Council, with approval of the Chief Justice, may make rules regulating the professional practice, etiquette, conduct and discipline of advocates and solicitors, although this has yet to occur. As noted above, the Law Society is currently managed by a pro-tem committee and is not as yet fully functional. Membership in the Law Society is not compulsory.

13. The *Companies (Authorised Auditors) Rules, 1997* regulate approved auditors, and the Revenue Division of the Ministry of Finance is the regulatory authority. There are only 13 approved auditors. The accounting profession has an association known as the Brunei Institute of Certified Practising Accountants (BICPA). However, membership in BICPA is not compulsory and BICPA has not issued any codes of conduct or guidelines to guide the members' conduct in relation to making decisions regarding the forming of suspicions relevant to money laundering or the financing of terrorism.

14. The Registrar of Companies is responsible for the registration, incorporation and administration with respect to the proprietorship of companies incorporated under the *Business Names Act*. Companies registered under the *Companies Act* are also subject to striking off provisions.

15. Brunei has not undertaken a comprehensive risk assessment of money laundering nor the financing of terrorism and has only recently introduced a scheme for the collection of Suspicious Transaction Reports. There have not to date been any prosecutions for money laundering or the financing of terrorism nor requests for mutual legal assistance or other international requests for co-operation.

Legal Systems and Related Institutional Measures

16. Money Laundering is an offence under sections 20 and 22 of the *Drug Trafficking (Recovery of Proceeds) Act* (DTROP) and sections 21, 22 and 23 of the *Criminal Conduct (Recovery of Proceeds) Order 2000* (CCROP).

17. Predicate offences under the DTROP Act are:

- a) trafficking of controlled drug (whether in Brunei Darussalam or elsewhere) which is an offence under Section 3 of the *Misuse of Drugs Act*,
- b) the possession of a controlled drug for the purpose of trafficking (whether in Brunei Darussalam or elsewhere), which is an offence under section 3A of the *Misuse of Drugs Act*; and
- c) the manufacturing of controlled drug (whether in Brunei Darussalam or elsewhere) which is an offence under Section 4 of the *Misuse of Drugs Act*.

18. Predicate offences under the CCROP Order refer to any offences committed in Brunei Darussalam (other than a drug trafficking offence) which is punishable in Brunei Darussalam with punishment for a term not less than 5 years or for life or which is a capital offence.

19. Money laundering has been an offence in Brunei for over 4 years but at the time of the mutual evaluation, there had been no convictions by Brunei's courts nor any investigations or prosecutions. The Financial Institutions Division (FID) states that it has been collecting suspicious transaction reports since 2004. Based on the reports received, 24 cases were identified as suspicious transactions including complex and unusual transactions, and were passed to the Royal Brunei Police Force (RBPF) for further action. However, following further investigation by the police, it was found that these were not money laundering matters but rather related to other crimes.

20. The government of Brunei Darussalam has acceded to the UN Convention for the Suppression of Terrorist Acts, making it legally binding on Brunei Darussalam. The UNSCR 1373 has not however been ratified, although it has been adopted by the

Security Council, and in accordance with Article 25 of the UN Charter, Security Council obligations are binding on all member States. Brunei has been submitting national reports to the 1373 Committee on questions raised by it. The 1373 Committee then submits Brunei's reports to the Security Council to ascertain the extent of Brunei's compliance.

21. Two pieces of legislation provide powers for the authorities to confiscate, freeze and seize proceeds of crime. The *Drug Trafficking (Recovery of Proceeds) Act* (DTROP) applies specifically to the proceeds of drug-related crime, and the *Criminal Conduct (Recovery of Proceeds) Order 2000* (CCROP) applies to all other designated predicate offences.

22. Section 14(1)(c) of the *Anti-Terrorism (Financial and Other Measures) Order 2002* (ATO) empowers the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, to make regulations on forfeiture and seizure of funds and assets of any person declared in an order under section 11 of the ATO to be a terrorist. The Attorney-General's Chambers (AGC) advised that no regulations have as yet been made by the Minister under this section since it has not been necessary to do so. The Minister has yet to issue regulations for the forfeiture and seizure of funds and assets of any person declared as terrorist.

23. There is no provision for the establishment of a Financial Intelligence Unit (FIU) in the *Money Laundering Order, 2000* (MLO) and there is no other enabling legislation, decree, administrative arrangement or order that authorises its establishment. There is however provision for the appointment of a 'Supervisory Authority' (section 15 of MLO) who must, having obtained any information relating to money laundering, report that information to a police officer as soon as is reasonably practicable. Furthermore, there is provision in sections 20 (2) and 21 (3) of the CCROP Order for the Minister of Finance to appoint two or more persons to act as the Reporting Authority. Section 21 (3) of the Order empowers the Reporting Authority to receive information from any person who has a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct.

24. Section 15 of the MLO stipulates that the statutory appointment as "supervisory authority" shall be held by the Minister of Finance and such persons or Government departments as the Minister may designate in the Gazette. To date, no Government department has been designated to hold this appointment. In practice, banking institutions submit transaction reports which appear to be suspicious or above prescribed thresholds to the FID within the Ministry of Finance. The FID has a large range of regulatory responsibilities and appears to be considerably under resourced to act as a *de facto* FIU. In the absence of a dedicated FIU, the overall adequacy of financial, human and technical resources to combat money laundering and terrorist financing is limited. Despite this, the level of cooperation amongst law enforcement and related agencies that have responsibility for combating money laundering and terrorist financing, their skills, qualifications, competencies, professionalism and integrity is of an appropriate standard.

25. Primary responsibility for the investigation of money laundering and the financing of terrorism rests with the Royal Brunei Police Force (RBPF) which has the ability to administer and enforce a range of laws including the MLO, the ATO, the CCROP Order, the DTROP Act, the *Prevention of Corruption Act, Cap 131* (PCA) and

the *Internal Security Act, Cap 133*. Other authorities that are able to work in collaboration with RBPF on such investigations include the Royal Customs and Excise Department, the Narcotics Control Bureau, the Immigration Department and National Registration and the Internal Security Department.

Preventive Measures – Financial Institutions

26. Customer identification and record keeping procedures and the presence of a suspicious transaction reporting scheme, as set out under the MLO, appear to provide a legal framework that assists in deterring and detecting money laundering or the financing of terrorism. Institutions have in place comprehensive “Know Your Customer” policies and procedures. Most banks have a section dedicated to compliance and monitoring of possible money laundering activities. There is a statutory requirement for the appointment of an “appropriate person” who shall deal with any suspicious transaction reports, although it is unclear as to whether this statutory requirement is complied with by institutions.

27. As the MLO is non-specific as to which person or department undertakes the role of supervisory authority and this has not as yet been specifically designated in law by the government, there remains some uncertainty as to which supervisory authority can undertake compliance checks against the statutory requirement. For example, in practice, suspicious these reports are submitted to the FID, although the law requires reporting to a police officer (MLO section 16). There is therefore a consequential prevailing risk associated with the administrative arrangements for the supervision of institutions that have responsibility for AML/CFT.

28. While the MLO does not specifically prohibit financial institutions from opening or keeping anonymous accounts or accounts in fictitious names, all persons carrying out “relevant financial business” (or financial institutions) must take steps to identify the “applicant for business” and undertake customer due diligence (CDD) measures in the manner prescribed under the MLO. The “applicant for business” is defined as “any person seeking to form a business relationship, or carry out a one-off transaction, with a person who is carrying out relevant financial business in Brunei Darussalam”. The identification and verification part of the CDD process are adequately covered under the MLO and implementation of this by the financial institutions is commendable. However, the robustness of the entire CDD program as required under the MLO falls short of the level contemplated under the Revised Forty Recommendations.

29. At present, there are no secrecy provisions in the *Banking Act* for domestic banks, protecting the confidentiality of customer information. Customer confidentiality is based on common law and financial institutions have their internal measures in place to ensure customer confidentiality. Theoretically, there should be no legal impediment to the implementation of FATF Recommendations and the provision of confidential information to competent authorities either domestically or internationally. However, the Evaluation Team understands that banks are hesitant about submitting suspicious transaction reports to the FID as there is no legal immunity under the MLO for breach of confidentiality for disclosure of customer information. The Evaluation Team also notes that FID does not have the legal power under the *Banking Act* to obtain information and documents from the banks. With regard to police request for information, the banks would usually oblige. FID also does not have the authority to inquire into and examine

customers' accounts for the purpose of ensuring compliance with the AML/CFT requirements.

30. Under section 12 of the MLO, relevant financial businesses are required to maintain the necessary records in relation to customer's identity and all details of transactions carried out by such customers in the course of relevant financial business. The prescribed period to maintain such records is five years commencing from the date on which customer account or business relationship was terminated and in relation to one-off transactions, the date on which the transaction were completed. In cases where formalities necessary to end a business relationship have not been observed, the prescribed period of five years will commence after the completion of the last transaction. There is no provision under MLO permitting access to customer information and transaction records for the competent authorities. While BIFC could rely on its power under section 15 of the IBO to obtain information and documents, similar provisions are not found in the *Banking Act* for the domestic banking sector. The Evaluation Team believes that domestic banks are not legally permitted to make available customer information and transaction records to the FID, Brunei Darussalam's de facto FIU. Customer documents are also not available for inspection by the FID.

31. There are no requirements under the MLO for financial institutions to pay special attention to complex, unusually large transactions and unusual patterns of transactions that have no apparent or visible economic or lawful purposes. Accordingly, there is no requirement for financial institutions to document their investigation into unusual transactions. Currently, the MLO only emphasises on customer identification and has not imposed an obligation for financial institutions to perform ongoing monitoring of customers' transactions. From the Evaluation Team's interaction with a domestic bank, it does not appear that they are familiar with ongoing monitoring of customers' transactions. This issue is further compounded by the lack of guidance from competent authorities on jurisdictions that are known not to apply the adequate AML/CFT measures. Financial institutions and DNFBPs should be required to pay special attention to transactions originating from these problematic jurisdictions. Brunei explains that they may have concerns naming countries with inadequate AML/CFT measures given the lack of appropriate country information.

32. Under the MLO, "relevant financial businesses" such as financial institutions are required to maintain internal procedures relating to reporting of suspicious transactions. Suspicious transactions, including attempted suspicious transactions, are not differentiated by the amount, type or nature of transaction. Under section 14 of the MLO, relevant financial businesses must appoint a person to receive suspicious transaction reports, consider the reports and to submit the reports to the police if there is any suspicion relating to money laundering. There is no definition provided of what a suspicious transaction might be. In relation to terrorist financing, the obligation to report suspicious transactions is found under section 8 of *Anti-Terrorism (Financial and Other Measures) Order (ATO), 2002*. That section requires any natural or legal person in Brunei to inform the police if he or she is aware of any financial transactions that are or may be related to terrorist activities.

33. The Ministry of Finance is the supervisory authority for financial institutions and is responsible for ensuring that financial institutions have effective AML/CFT measures. The FID has responsibility for the domestic financial sector while the BIFC regulates the

international financial sector. Other than trust/companies service providers, which are supervised by the BIFC, there are no supervisory authorities for other DNFBPs.

34. The Evaluation Team understands from the FID that the current *Banking Act* does not prevent criminals or their associates holding a significant stake or having management responsibility in a bank. The FID is planning to address this issue and will amend the Act to include a provision for the disqualification of directors and employees of licensed banks who:

1. are or become bankrupt, suspend payment or compound with his/her creditors, or
2. are or have been convicted in any country of an offence involving dishonesty or fraud and have not received a free pardon for the offence of which he/she was convicted; or
3. have been directors of, or directly concerned in the management of, a licensed bank which is being or has been wound up by a court or the license of which has been revoked.

35. There is similarly no provision under the IBO to screen the senior management of international banks.

36. No guidance or guidelines is given to financial institutions and DNFBPs to help their compliance with the MLO and ATO nor do the authorities provide feedback to the financial institutions which have lodged suspicious transaction reports. The limited number of suspicious transaction reports that have been received by the FID could be attributed to the lack of guidance and feedback on money laundering and terrorist financing matters. The Evaluation Team understands that the Ministry of Finance is currently drafting money laundering guidelines for financial institutions. Such guidance would help assist financial institutions and DNFBPs with their compliance with the MLO and ATO.

37. There are 34 remittance companies in Brunei and they are prohibited from establishing branches. Any person or company providing services for the transmission of money must be duly licensed by the FID under the *Money Changing and Remittance Business Act* (MCRBA) and only citizens of Brunei are allowed to hold a licence. Owners of remittance companies are not allowed to hold money changer licenses, and vice versa. Licences are subject to annual renewal and applicants are required to take an examination. Some of examined topic included the aspects of the MLO. Test scores and the quality of monthly reports submitted to the FID will determine if licenses are renewed. Under the MCRBA, unlicensed alternative remittance activities or hawala activities are illegal in Brunei. Remittance companies are inspected every six months and they are subject to the MLO. Before any remittance transactions can be conducted, remittance companies are mandated to ensure that their customers provide details including their full name, identification number, address and purpose of remittance. Remittance companies are required to file suspicious transaction reports with the FID if there is a suspicious transaction, but to date, there have been none reported.

Preventive Measures – Designated Non-Financial Businesses and Professions

38. With the exception of trust and company services providers (trust/companies service providers) that are supervised by the BIFC, designated non-financial businesses and professions such as real estate agents, dealers in precious metals and stones, lawyers and accountants are not subject to AML/CFT requirements such as customer due diligence and record keeping requirements. Casinos are prohibited in Brunei.

39. There are no requirements for real estate agents, dealers in precious metals and stones, lawyers and accountants to monitor or report on any transactions done by their clients. A director or resident secretary of trust/companies service providers must certify annually that no person has become a beneficial owner of an international business company without the conduct of due diligence by the registered agent. The international business centres will submit that annual certification to the BIFC. It is a requirement under section 19(4) of the IBCO. No guidance has been issued in relation to countries that are known to have inadequate AML/CFT measures.

40. Brunei has not applied the FATF Recommendations to designated non-financial businesses and professions (DNFBPs) such as real estate agents, dealers in precious metal and stones, lawyers and accountants.

41. In addition, Brunei is a cash-based society and there is a strong reliance on physical notes. Risk of money laundering and terrorist financing could be considerably heightened in countries with great reliance on cash. A particular risk exists with respect to the fact that Brunei Darussalam has in circulation a B\$10,000 bank note. . The ease with which currency of such large denomination can be circulated and moved across the border for criminal purposes needs to be considered in light on FATF Special Recommendation IX.

Legal Persons and Arrangements & Non-Profit Organisations

42. The *Money Laundering Order 2000* (MLO) prevents the abuse of the financial systems for money laundering by establishing procedures and systems for customer identification, record keeping, internal reporting procedures and other internal control and communication procedures. Under section 5(3) of the MLO, it is an offence for anyone who, in the course of relevant financial business carried on in Brunei Darussalam, forms a business relationship, or carry out a one-off transaction, with or for another without maintaining any of the prescribed procedures.

43. Sections 7, 8, 9, 10 and 11 of the MLO provide for identification procedures which must be complied with by anyone who, in the course of relevant financial business carried on by him in Brunei Darussalam, form a business relationship, or carry out a one-off transaction, with or for another. All financial institutions are to ensure that their 'Know Your Customer' policies should be in line with the MLO. For the international businesses companies under the *International Business Companies Order 2000*, the Registered Agent shall conduct due diligence for the purpose of obtaining the identity of the beneficial owners and details of the source of the proposed transactions. Further, under Section 12 of the *Anti-Terrorism (Financial and Other Measures) Order 2002*, the Minister of Finance may issue such direction to any financial institutions in order to discharge or facilitate the discharge of any obligation binding on Brunei arising out of a

decision of the UNSCR relating to terrorism. In addition, administratively, all financial institutions are to report any cases of suspicious transaction.

44. Non-profit organisations are required to register under the *Societies Order*. The Royal Brunei Police Force (RBPF) administers this Act and the Commissioner of Police is designated as the Registrar of Societies. There is only one charity in Brunei and it is managed by the Sultan Foundation.

National and International Co-operation

45. The National Anti-Money Laundering Committee (NAMLC), which was formed in 2004, has the potential to be a vehicle for the establishment and maintenance of national and international cooperative and coordinated efforts to counter money laundering. It is chaired by the Financial Institutions Division of the Ministry of Finance. Broadly, the objectives/terms of reference of NAMLC are to develop policies and measures to combat money laundering activities, although the terms of reference had not at the time of the mutual evaluation been endorsed.

46. There is also a National Committee on Transnational Crime (NCTC), established to combat terrorism and the financing thereof. The NCTC is chaired by the Permanent Secretary of the Prime Minister's Office and includes members from AGC, the Ministry of Finance, RBPF, the Ministry of Foreign Affairs, the Royal Army, the ISD, Immigration and Customs.

47. There are healthy, cooperative and collaborative relationships between relevant authorities which have domestic responsibility for AML and CFT. The fact that NAMLC and NCTC have been established indicates an appropriate level of commitment of policy makers, law enforcement, supervisory and other authorities to establish and maintain effective mechanisms for sharing information and ideas. There is also healthy consultation between supervisory authorities, relevant professions and business enterprises and government agencies which have various roles to play in detecting and deterring money laundering and the financing of terrorism.

48. Brunei has signed and ratified the following UN Conventions:

- a) Single Convention on Narcotics Drugs 1961
- b) Protocol Amending the Single Convention on Narcotic Drugs 1972
- c) Convention on Psychotropic Substances 1971
- d) United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances 1988 (Vienna Convention).

49. Brunei has yet to ratify and sign the United Convention against Transnationals Organized Crime 2000 (Palermo Convention).

50. The Mutual Legal Assistance in Criminal Matters Secretariat has been set up within the Attorney-General's Chambers to consider requests from other countries for judicial assistance.

51. There is, otherwise, no comprehensive mutual legal assistance scheme. The current scheme is limited to enforcement of certain coercive measures such as enforcement of confiscation orders, charging orders or restraint orders found under the CCROP Order.

52. Under the current *Extradition Act 1983*, Brunei Darussalam makes extradition conditional upon the existence of an extradition treaty with the requesting country. The *Extradition Act 1983* adopts a listing approach whereby the types of extradition offences, such as kidnapping, piracy and extortion, are listed in the First Schedule of the Act.

53. From the Evaluation Team's discussion with FID and BIFC, it appears that there is limited regulatory cooperation with overseas regulators.

54. Although the FID is performing the functions of an FIU, it is unclear if it has the authority to exchange financial intelligence information with other FIUs.

55. The Department of Immigration and National Registration is a member of the ASEAN Director-General of Immigration Departments and Heads of Consular Affairs Divisions of the Ministries of Foreign Affairs Meeting (DGICM). In this meeting, matters pertaining to the responsibility of the Immigration Authority are discussed. The Department also participated in international meetings such as ASEAN Senior Officials Meeting on Transnational Crime (SOMTC), ASEAN Ministerial Meeting on Transnational Crime (AMMTC) and Asia Pacific Economic Cooperation (APEC).

56. The Police Authorities are able to seek assistance and cooperation from INTERPOL and ASEANPOL. This has been done in practice.

Table 1: Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating ¹
Legal systems		
1. ML offence	LC	<ul style="list-style-type: none"> • Offences under sections 21 to 23 of the <i>Criminal Conduct (Recovery of Proceeds) Order 2000</i> which is read together with section 7 of the Criminal Procedure extends to an act committed overseas by any Brunei citizen. • Due to the definition of offences in Section 5(9) of the <i>Criminal Conduct (Recovery of Proceeds) Order 2000</i>, offences under the Anti-Terrorism (Financial and Other Measures) Order 2002 are not defined as a money-laundering offences, and many other offences are not classed as predicate offences due to the high threshold required for serious offences.
2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> • No money laundering cases have been prosecuted in Brunei, and it is therefore not possible to access the effectiveness of the money laundering legislation.
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> • There are currently some minor inconsistencies in relevant laws with respect to civil forfeiture. • The confiscation order in section 3 of the Drug Trafficking (Recovery of Proceeds) Order, Chapter 178 read together with section 2(1) of the Act on the term “realisable property”, is silent on the property held by a third party for the defendant. • The definition of “realisable property” in the Criminal Conduct (Recovery of Proceeds) Order 2002 does not state that it applies to property of the

¹ These factors are only required to be set out when the rating is less than Compliant.

		offender held by a third party.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	LC	<ul style="list-style-type: none"> • There are currently no secrecy provisions under the Banking Act. The lack of legal protection has made financial institutions hesitant about submitting suspicious transactions reports to the FID
5. Customer due diligence	PC	<ul style="list-style-type: none"> • Basic CDD requirements to identify and verify the identity of customers are contained within the MLO. However, there are significant weaknesses in the CDD framework. • There are no requirements for financial institutions to conduct ongoing due diligence in respect of business relationships. • There are no requirements for financial institutions to ensure that customer information collected under the CDD processes is up to date. • There are no requirements for financial institutions to obtain information from the customer on the purpose and nature of the business relationship. • There are no requirements for financial institutions to undertake enhanced due diligence on high risk customers, business, or transactions. • CDD requirements in MLO are not applicable for business relationship established before the introduction of the MLO. • CDD requirements are exempted for some categories of business relationship.
6. Politically exposed persons	NC	<ul style="list-style-type: none"> • There are no specific requirements in relation to politically exposed persons (PEPs) under the MLO.

7. Correspondent banking	NC	<ul style="list-style-type: none"> • There are no requirements for policies and procedures under the MLO regarding the opening of cross-border correspondent accounts.
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> • There are no requirements for financial institutions to have policies or take measures against money laundering and terrorist financing threats that may arise from new or developing technologies. • There is no CDD guidance on establishing business relationship with non-face to face customers.
9. Third parties and introducers	PC	<ul style="list-style-type: none"> • There are broad and general requirements pertaining to reliance on the CDD by agent/intermediary. • There are no requirements for financial institutions to obtain from the agent/intermediary the relevant CDD information on the principal. • Financial institutions are not required to ensure that they could have access to CDD documentation on a timely basis upon request. • No list of “overseas regulatory authority” is gazetted notwithstanding the requirement for financial institutions to place reliance on that list when using the services of agent/intermediary.
10. Record keeping	LC	<ul style="list-style-type: none"> • The MLO has identified the customer information to be kept and the retention period of five years. • MLO does not have any provision for the disclosure of customer information and transaction records to competent authorities. • Competent authorities are not given the power to request that financial

		institutions keep customer records for a longer period.
11. Unusual transactions	NC	<ul style="list-style-type: none"> ▪ There are no requirements in place that meet the FATF Recommendations on financial institutions' obligations to pay special attention to all complex, unusual large transactions or unusual patterns of transactions.
12. DNFBP – R.5, 6, 8-11	PC	<ul style="list-style-type: none"> • There are no customer due diligence and record keeping requirements for real estate agents, dealers in precious metals and stones, lawyers and accountants. • There are no requirements for DNFBPs to monitor their clients' transactions. • There is no guidance in relation to engaging in business relations with countries that have inadequate AML/CFT measures.
13. Suspicious transaction reporting	LC	<ul style="list-style-type: none"> • There are obligations under the MLO to report all suspicious transactions, including attempted transactions, to the police regardless of the amount. • There is no Financial Intelligence Unit and suspicious transaction reports are submitted to FID. • There are two pieces of legislation (MLO and CCROP) for the reporting suspicious money laundering transactions. Brunei should clarify how these pieces of legislation complement each other.
14. Protection & no tipping-off	LC	<ul style="list-style-type: none"> • Banks had concerns on client confidentiality when filing suspicious transaction reports. • Tipping off prohibition should be extended to ATO reporting.

15. Internal controls, compliance & audit	LC	<ul style="list-style-type: none"> • Financial institutions are required to have internal controls and procedures to prevent money laundering. • There are no requirements for financial institutions to have internal audit function. • There are no requirements for financial institutions to screen potential employees. • There is a lack of clarity in relation to the frequency of training. • The MLO does not extend to terrorism financing
16. DNFBP – R.13-15 & 21	PC	<ul style="list-style-type: none"> • None of the DNFBPs has filed a STR and it is unclear if they are obligated to file STRs. • There is no legal immunity under MLO for breach of confidentiality for disclosure of customer information • There is no prohibition of tipping off under the MLO and the ATO. • There are no requirements for DNFBPs to have internal controls to prevent money laundering and terrorist financing.
17. Sanctions	PC	<ul style="list-style-type: none"> • There are sanctions for non-compliance with the ATO. • Sanctions for non-compliance with MLO are not effective given the deficiencies in the MLO. • The BFIC lacks the authority to impose sanctions on international banks for contravening the IBO and the MLO without making an application to the High Court. • There are no sanctions in the Banking Act to punish non-compliance with the Banking Act or MLO.
18. Shell banks	LC	<ul style="list-style-type: none"> • There are no shell banks in the domestic financial sector.

		<ul style="list-style-type: none"> • International banks are registered as international business companies and are awarded banking licenses under the International Banking Order. • Financial institutions are not prohibited from dealing with shell banks. • There are no requirements for financial institutions to ensure that their respondent banks do not have relationship with shell banks.
19. Other forms of reporting	NC	<ul style="list-style-type: none"> • There is no requirement for financial institutions to report large cash transactions.
20. Other NFBP & secure transaction techniques	PC	<ul style="list-style-type: none"> • No consideration has been given to extending FATF recommendations to businesses and professions vulnerable to money laundering or terrorist financing risk. • Measures should be taken to encourage the uses of non-cash payment mechanism.
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> ▪ There is no guidance on jurisdictions with inadequate AML measures from the competent authorities. ▪ Financial institutions are not aware of the jurisdictions with inadequate AML/CFT measures.
22. Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> • There are no requirements to extend policy on AML to overseas operations of locally incorporated financial institutions.
23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • There is no requirement under the <i>Banking Act</i> to approve senior management appointment and to approve changes to substantial shareholders in banks. • There is no requirement in the IBO to approve senior management appointment. • There are limited measures to ensure that financial institutions have

		adequate AML/CFT measures.
24. DNFBP - regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • Trust/companies service providers are the only category subject to AML/CFT requirements. • Supervision of trust/companies service providers is limited to approval in respect of change of control.
25. Guidelines & Feedback	NC	<ul style="list-style-type: none"> • There are as yet no administrative or legislative arrangements for the establishment of an FIU • There is no guidance or feedback on the submission of suspicious transaction reports by financial institutions and DNFBPs.
Institutional and other measures		
26. The FIU	NC	<ul style="list-style-type: none"> • There are as yet no administrative or legislative arrangements for the establishment of an FIU.
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> • Responsibility is well defined and an appropriate infrastructure exists. Minor shortcomings exist and need to be developed with respect to information security and performance indicators
28. Powers of competent authorities	C	<ul style="list-style-type: none"> • Law enforcement and other competent authorities have the full range of powers available to them.
29. Supervisors	PC	<ul style="list-style-type: none"> • There is no authority to conduct on-site inspection of financial institutions to ensure compliance with AML/CFT requirements. • There is no power to obtain information and documents from banks to monitor compliance with regulations.
30. Resources, integrity and training	PC	<ul style="list-style-type: none"> • Whilst appropriate competencies and levels of integrity exist, current resources are inadequate to enable

		the thorough investigation of ML and TF
31. National co-operation	PC	<ul style="list-style-type: none"> • Whilst coordinative and cooperative arrangements exist, substantive action has yet to be taken in developing or implementing policies or guidelines.
32. Statistics	PC	<ul style="list-style-type: none"> • The ability of appropriate authorities to measure performance regarding the effectiveness of various systems is problematic due to the patchy existence of appropriate laws and review mechanisms • The ability of relevant authorities to measure performance regarding the effectiveness of various systems is problematic due to the absence of effective laws and review mechanisms • The authorities should introduce a formal means by which incoming and outgoing MLA requests are documented, including requests that are refused and reasons why.
33. Legal persons – beneficial owners	LC	<ul style="list-style-type: none"> • The Companies Act does not have a provision requiring companies to identify and disclose beneficial owner. Since information on beneficial ownership is obtained through competent inspectors appointed by the Court, it is possible that delay will occur in obtaining information on the beneficial ownership and control of legal persons. • Under the Section 10 and 11 of the International Business Companies Order, there is a requirement for the filing of a prescribed due diligence form, attesting to the fact the beneficial owners have been identified and that requirements

		<p>under the MLO have been met.</p> <ul style="list-style-type: none"> Given the MLO does not extend to DNFBPs, there is a regulatory gap in relation to beneficial ownership by legal firms and accountants who carry on transaction on behalf of another person.
34. Legal arrangements – beneficial owners	C	
International Co-operation		
35. Conventions	LC	<ul style="list-style-type: none"> To expedite in ratifying and signing the Palermo Convention.
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> A Mutual Legal Assistance Order that contains all of the necessary elements with respect to AML/CFT needs to be introduced
37. Dual criminality	NC	<ul style="list-style-type: none"> A Mutual Legal Assistance Order that contains all of the necessary elements with respect to AML/CFT needs to be introduced
38. MLA on confiscation and freezing	NC	<ul style="list-style-type: none"> A Mutual Legal Assistance Order that contains all of the necessary elements with respect to AML/CFT needs to be introduced
39. Extradition	NC	<ul style="list-style-type: none"> A new Extradition Order that contains all of the necessary elements with respect to AML/CFT needs to be introduced.
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> International cooperation to foreign counterpart is limited and given on an ad-hoc basis, There is limited regulatory cooperation with overseas regulators of financial institutions. There is no authority for FID to share financial intelligence with other FIUs. The absence of gatekeepers for information disclosed by financial institutions impedes Brunei's capability on information sharing and

		<p>international cooperation.</p> <ul style="list-style-type: none"> •
Eight Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	LC	<ul style="list-style-type: none"> • The UNSCR is disseminated only to banks and finance companies and the list is not up to date as is required under the United Nations International Convention for the Suppression of the Financing of Terrorism. Banks and finance companies are not able to follow up and monitor current list of terrorists enforced by the United Nations.
SR.II Criminalise terrorist financing	LC	<ul style="list-style-type: none"> • Whilst the financing of terrorism has been criminalised, there are some minor shortcomings that still need to be addressed. These include more prescriptive predicate offence provisions. • The term “funds” is not exhaustive and does not cover the meaning of “funds” in the Terrorist Financing Convention. • There may be legislative gap in sections 3, 4, 5 and 7 of the ATO in relation to the reference to a person, which does not clearly include offences committed overseas by companies incorporated or registered under the <i>Companies Act</i> (Chapter 39).
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> • The dissemination of the United Nations Security Council Resolution lists of terrorists and terrorist organisations is only done after an internal review undertaken in order to ascertain the integrity of the listed persons. This resulted in a delayed distribution to financial institutions. • There is no established procedure which gives guidance to financial

		<p>institutions to enforce the Resolutions or to address any problems that may arise in the enforcement of the Resolutions.</p> <ul style="list-style-type: none"> • A legislative gap exists in section 14(1) (c) of the ATO which the Minister has yet to make regulations on freezing of terrorist's funds.
SR.IV Suspicious transaction reporting	LC	<ul style="list-style-type: none"> • Relevant institutions are required to report and are mostly aware of their obligation to report.
SR.V International co-operation	NC	<ul style="list-style-type: none"> • A Mutual Legal Assistance Order that contains all of the necessary elements with respect to AML/CFT needs to be introduced • International cooperation to foreign counterpart is limited and given on an ad-hoc basis, • There is limited regulatory cooperation with overseas regulators of financial institutions. • There is no authority for FID to share financial intelligence with other FIUs.
SR VI AML requirements for money/value transfer services	C	<ul style="list-style-type: none"> • Remittance companies are licensed and supervised. • Remittance companies are covered by the MLO.
SR VII Wire transfer rules	NC	<ul style="list-style-type: none"> • There is no requirement under MLO for financial institutions to obtain information such as name of originator and address of originator for one-off wire transfer if the value of the transfer is less than B\$30,000. • There is no requirement for originators' information to be included in cross-border wire transfers.
SR.VIII Non-profit organisations	LC	<ul style="list-style-type: none"> • All non-profit organizations are registered under the Societies Act. • Background checks are conducted on office-bearers. • Societies are required to submit

		<p>annual financial reports to the Registrar of Societies.</p> <ul style="list-style-type: none"> • Brunei should review laws and regulations governing non-profit organisation to ensure that they are adequate to prevent the potential abuse by terrorists or terrorist organisations.
SR. IX Cash Couriers	NC	<ul style="list-style-type: none"> • There is no system for detecting or preventing cross border currency or negotiable instrument transfers.

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	No text required
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1 & 2)	<p>It is recommended that the authorities:</p> <ul style="list-style-type: none"> • Extend offences under sections 21 to 23 of the Criminal Conduct (Recovery of Proceeds) Order 2000 to acts committed overseas by citizens of Brunei; • Consider reducing the required threshold of imprisonment of not less than 5 years in order for predicate offences to be considered as money-laundering offences commensurate with the FATF Recommendations. • Monitor the prosecutions of money laundering cases to ensure the legislation is effective.
Criminalisation of Terrorist Financing (SR.II)	<p>It is recommended that the authorities:</p> <ul style="list-style-type: none"> • Expand the scope of predicate offences to include the financing of terrorism; • Widen the definition of “funds” in the ATO to reflect the definition provided in the Terrorist Financing Convention; • Clarify sections 3, 4, 5 and 7 of the ATO to ensure it includes companies registered under Chapter 39 of the <i>Companies Act</i>.
Confiscation, freezing and seizing of proceeds of crime (R.3)	<p>It is recommended that the authorities:</p> <ul style="list-style-type: none"> • Ensure consistency in relation to civil forfeiture laws; • Introduce the ability in the relevant legislation to trace and identify the proceeds of crime and to enable the seizure and forfeiture of such property when it is held by third parties

<p>Freezing of funds used for terrorist financing (SR.III)</p>	<p>It is recommended that the authorities:</p> <ul style="list-style-type: none"> • Provide clear power for the Minister to freeze funds of terrorist when needs arise. • Streamline the process for distributing UNSCR Lists. • Ensure a wider distribution of the UNSCR lists to other financial institutions • Provide greater guidance on the procedures for actioning the UNSCR lists and procedures for ensuring compliance.
<p>The Financial Intelligence Unit and its functions (R.26, 30 & 32)</p>	<p>Until an FIU is established, it is recommended that:</p> <ul style="list-style-type: none"> • The FID receive greater resources, including staff and training to enable it to cope with the increased responsibilities it currently faces as a result of its role as the supervisory authority responsible for receiving STRs; • The FID issue standardised forms and procedures for reporting suspicious transactions; • Greater training and guidance be provided to financial institutions and the community in general in relation to STR responsibilities <p>The government of Brunei should move quickly to introduce an enabling law that specifically authorises the establishment of a Financial Intelligence Unit which would serve as a national centre for receiving, analysing and disseminating disclosures of suspicious transaction reports (STRs) and, if considered appropriate, other relevant information concerning suspected ML or FT activities.</p> <p>The enabling law should include authority for the FIU to provide relevant financial institutions, businesses or persons with guidance regarding the manner of reporting, including the specification of reporting forms, and the procedures that should be followed when reporting. The range of relevant financial institutions, businesses or persons to whom the FIU should be authorized to provide guidance would ideally include those prescribed under Section 4 of the MLO or Section 5 of the ATO.</p> <p>Once established, it is recommended that the FIU should:</p>

	<ul style="list-style-type: none"> • have access, directly or indirectly, on a timely basis, to financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of suspicious transaction reports; • either directly or through another competent authority, be authorised to obtain from reporting parties additional information needed to properly undertake its functions; • be authorised to disseminate financial information to domestic authorities for investigation or action when there are grounds to suspect ML or FT; • have sufficient operational independence and autonomy to ensure that it is free from undue influence or interference; • in relation to information held by it, securely protected and disseminated only in accordance with the law; • publicly release periodic reports, and such reports should include statistics, typologies and trends as well as information regarding its activities; • consider applying for membership in the Egmont Group; • have regard to the Egmont Group Statement of Purpose and its Principles for Information Exchange Between Financial Intelligence Units for Money Laundering Cases (these documents set out important guidance concerning the role and functions of FIUs, and the mechanisms for exchanging information between FIU).
<p>Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)</p>	<p>It is recommended that the authorities:</p> <ul style="list-style-type: none"> • Utilise NAMLC or a similar forum to improve operational and information sharing arrangements between relevant law enforcement, prosecution and other authorities. • Develop performance indicators that measure the ongoing effectiveness of relevant laws and the framework for the investigation and prosecution of offences related to money laundering and the financing of terrorism, including confiscation and assets freezing

	<p>powers.</p> <ul style="list-style-type: none"> • Maintain a central database for the collection of statistics on investigations, prosecutions and convictions relating to money laundering and terrorist financing • Ensure that, in developing improved systems for information and data sharing, appropriate security of information mechanisms, are established and maintained. This should include secrecy and data protection laws and procedures.
<p>3. Preventive Measures – Financial Institutions</p>	
<p>Risk of money laundering or terrorist financing</p>	<p>Customer identification and record keeping procedures and the presence of a suspicious transaction reporting scheme, as set out under the MLO, appear to provide a legal framework that assists in deterring and detecting money laundering or the financing of terrorism. Institutions have in place comprehensive “Know Your Customer” policies and procedures. Most banks have a section dedicated to compliance and monitor possible money laundering activities. There is a statutory requirement for the appointment of an “appropriate person” who shall deal with any suspicious transaction reports, although it is unclear as to whether this statutory requirement is complied with by institutions.</p> <p>As the MLO is non specific as to which person or department undertakes the role of supervisory authority and this has not as yet been specifically designated in law by the government, there remains some uncertainty as to which supervisory authority can undertake compliance checks against the statutory requirement. For example, in practice, suspicious these reports are submitted to the FID, although the law requires reporting to a police officer (MLO section 16). There is therefore a consequential prevailing risk associated with the administrative arrangements for the supervisions of institutions that have responsibility for AML/CFT.</p>
<p>Customer due diligence, including enhanced or reduced measures (R.5 to 8)</p>	<p>The MLO contains the basic CDD requirements to identify and verify the identity of customers and beneficial owners. However, there are significant deficiencies in the CDD framework which must be</p>

addressed. The FID should consider revising the MLO so that there are legislative requirements for the financial institutions to:

- Obtain information from the customer on the purpose and intended nature of the business relationship;
- Ensure that customer information is kept up-to-date and to re-perform CDD if they have doubts about the accuracy of the previously obtained customer information;
- Perform ongoing monitoring of business relationship with customers and scrutiny of transactions undertaken throughout the course of the relationship;
- Introduce graduated customer acceptance policies, giving emphasis to high risk customers such as non-resident customers or private banking customers; and
- Apply CDD measures on existing customers on the basis of risk and materiality.

The FID should also reconsider the provision for exemptions from CDD requirements granted to long term insurance business and “relevant financial business” carried out by persons as designated by the Minister.

With regard to PEPs, Brunei Darussalam should introduce legislative requirements for financial institutions to have policies and procedures, consistent with international standards, to deal with PEPs. Amongst other things, financial institutions should:

- Have appropriate risk management systems to determine whether a customer is a PEP;
- Obtain senior management approval before establishing business relations with PEP;
- Take all reasonable measures to establish and document the source of wealth and source of funds; and
- Conduct enhanced ongoing monitoring of the business relationship.

	<p>For correspondent banking accounts, Brunei Darussalam should require that financial institutions develop policies and procedures for the opening of cross-border correspondent banking accounts. Financial institutions, in addition to performing normal due diligence measures, should:</p> <ul style="list-style-type: none"> • Gather sufficient information about the respondent institution to understand fully the nature of the respondent institution’s business; • Determine from publicly available information the reputation of the respondent institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action; • Consider the respondent institution’s AML/CFT controls; • Obtain approval from senior management before establishing new correspondent banking accounts; • Document the respective AML/CFT responsibilities of each institution. <p>It is recommended that guidelines be issued to the financial institutions by the FID, defining the required elements that need to be contained in an acceptable CDD program. It is also recommended that Brunei Darussalam establishes legislative requirements for financial institutions to have policies and procedures to address risks arising from new or developing technologies, in particular internet accounts.</p> <p>In addition to considering the development and issuance of guidelines to assist financial institutions with their CDD programs, supervisory processes, for instance on-site and off-site examinations, also need to be established.</p>
<p>Third parties and introduced business (R.9)</p>	<p>The MLO should spell out specific requirements that financial institutions should follow when they rely on agent/intermediary to perform CDD. It is recommended that the authorities ensure that financial institutions:</p>

	<ul style="list-style-type: none"> • Remain ultimately responsible for the proper performance of CDD measures and compliance with the MLO; • Obtain the necessary customer information on the principal from the agent/intermediary immediately upon the establishment of business relationship ; and • Satisfy themselves that the agent/intermediary is able to furnish the CDD documentation on the principal to them on a timely basis upon request. <p>The authority should also gazette a list of “overseas regulatory authorities” that are highlighted under section 9(6) of the MLO.</p>
<p>Financial institution secrecy or confidentiality (R.4)</p>	<p>The Evaluation Team understands that the FID is planning to introduce confidentiality laws in its proposed amendments to the Banking Act. It is recommended that the authorities ensure that the proposed confidentiality laws do not inhibit the effective operation of AML/CFT provisions.</p> <p>It is also recommended that the authorities address financial institutions’ concerns regarding customer confidentiality when they file suspicious transactions reports to the FID, by giving financial institutions protection when making STRs against both any potential civil or criminal liability.</p> <p>Formal establishment of a financial intelligence unit need to be considered as a matter of priority, especially now that the industry has begun reporting suspicious transactions.</p>
<p>Record keeping and wire transfer rules (R.10 & SR.VII)</p>	<p>It is recommended that:</p> <ul style="list-style-type: none"> • Competent authority be given the relevant power, under the MLO, to request that financial businesses keep customer records for a period longer than five years if necessary; • The MLO be amended to allow customer information and transaction records to be made available on a timely basis to competent authorities. • It should be noted that discussions are currently taking place within the FATF on a

	<p>new interpretative note for SRVII. Subject to the requirements in the new interpretative note and the deadline for compliance with SR VII, it is recommended that Brunei Darussalam ensure that all cross-border wire transfers contain originator information.</p>
<p>Monitoring of transactions and relationships (R.11 & 21)</p>	<p>It is recommended that the authorities:</p> <ul style="list-style-type: none"> • Introduce obligations for financial institutions to perform ongoing monitoring of customer transactions, paying special attention to all complex, unusually large transactions or unusual patterns of transactions. Such transactions could include, but not be limited to, significant transactions relative to the customers' profile, high account turnover or transactions that exceed certain limits. Such ongoing monitoring should be undertaken throughout the entire business relationship, ensuring that all transactions conducted are consistent with the financial institutions' knowledge of their customers. • Issue guidance to financial institutions and DNFBPs, drawing their attention to dealing with countries with inadequate AML measures. Brunei could place reliance on lists drawn up by international organisations or invite financial institutions to bring to the authorities' attention information on countries with inadequate AML/CFT measures.
<p>Suspicious transaction reports and other reporting (R.13-14, 19, 25, SR.IV & SR.IX)</p>	<p>The following recommendations are made:</p> <ul style="list-style-type: none"> • Given that both the MLO and the CCROP Order impose an obligation to report suspicious transactions to the police, Brunei should review both pieces of legislation to ensure they complement each other and have a consistent approach. • When the FIU is established, it should be made clear in legislation that STRs are to be reported to the FIU • Section 9 of the ATO pertaining to immunity from proceedings should be replicated in the MLO to address concerns by banks about client confidentiality.

	<ul style="list-style-type: none"> • A prohibition against tipping off needs to be placed in the ATO. • There should be a requirement inserted in the MLO to report large cash transactions to either an appropriate supervisory authority or the police. • The authorities should introduce stricter controls on cross border cash currency movements, including a declaration system with penalties for false disclosure, powers to seize cash and reporting obligations to the FIU or other body. Mechanisms for detecting cash movements at borders should also be introduced
<p>Internal controls, compliance, audit and foreign branches (R.15 & 22)</p>	<p>It is recommended that the authorities amend the MLO to:</p> <ul style="list-style-type: none"> • Mandate financial institutions to have an internal audit function to test compliance with institutions' internal procedures, policies and controls. • Mandate the proper screening of new employees by financial institutions; • Clarify requirements for regular and ongoing training of staff in relation to AML/CFT responsibilities; • Require financial institutions to apply their AML policies and internal procedures to their foreign branches and subsidiaries. If the standards of the home and host countries differ, operations in host countries should apply the higher of the two standards. • Specifically address the need for financial institutions to implement policies and procedures to combat the financing of terrorism.
<p>Shell banks (R.18)</p>	<p>It is recommended that a prohibition against financial institutions from dealing with shell banks or respondent banks having relationships with shell banks be introduced.</p>
<p>The supervisory and oversight system - competent authorities and SROs</p>	<p>There should be appropriate sanctions within the various orders to deal with entities that fail to observe the required national AML/CFT requirements. The sanctions should cover both the</p>

(R. 17, 23, 29 & 30).	<p>financial institutions and the designated non financial businesses and professions (DNFBPs).</p> <p>The BFIC should have the authority to impose sanctions for minor contraventions of the IBO and the MLO without making an application to the High Court.</p> <p>The FID should have increased resources both in terms of staffing to enable it to deal with all of its responsibilities, and in relation to appropriate training in investigation and examination techniques as well as other financial investigation skills.</p>
Financial institutions - market entry and ownership/control (R.23)	<p>There should be provisions in the relevant orders for the supervisory authority to approve the appointment of senior management and changes to substantial shareholders. Brunei's initiative to amend the <i>Banking Act</i> is noted and it should review other laws and regulations pertaining to other financial institutions.</p>
AML/CFT Guidelines (R.25)	<p>In order to ensure that the industry is aware of its obligations under the legislation, it is recommended that the authorities in Brunei should:</p> <ul style="list-style-type: none"> • Expedite the issuance of guidance for money laundering and terrorist financing matters for financial institutions and DNFBPs. Some of the issues that should be covered under the guidance note include detailed measures to be taken to ensure compliance with MLO, suspicious transaction reporting templates and money laundering and terrorist financing typologies. • Provide appropriate feedback to financial institutions so that they know that the reports they made have been dealt with and are useful. • Promote greater interaction with financial institutions and DNFBPs through workshops and training sessions.
Ongoing supervision and monitoring (R.23, 29 & 32)	<p>It is recommended that the authorities:</p> <ul style="list-style-type: none"> • Strengthen the legal framework, empowering the supervisory authorities to conduct on-site

	<p>examination of financial institutions. To assist the implementation of on-site examination of banks, Brunei could develop a set of examination procedures, detailing the examination methodology. An on-site examination should entail a review of policies and procedures and include transaction testing.</p> <ul style="list-style-type: none"> • Review internal audit and external audit reports in order to gain a better understanding of financial institutions' business operations and to identify their AML/CFT procedures and risk management policies. • Mandate that foreign bank branches be subject external audit and that as part of this audit, the external auditors should check compliance with AML/CFT measures. • Provide supervisory authorities with the power to obtain all documents for the purposes of monitoring compliance with the requisite regulations, including AML/CFT. • Segregate the dual roles held by the BIFC of promoter and regulator of the international financial services sector. • Introduce formal or structured systems that would enable the review and assessment of the effectiveness of AML/CFT provisions.
<p>Money value transfer services (SR.VI)</p>	<p>Most of the remittance companies are small family based-businesses that cater to the needs of particular migrant communities and have inherently weak business model and may lack adequate appropriate internal controls.</p>
<p>4. Preventive Measures – Non-Financial Businesses and Professions</p>	
<p>Customer due diligence and record-keeping (R.12)</p>	<p>AML/CFT measures such as customer due diligence and record keeping requirements should be extended other DNFBPs such as real estate agents, dealers in precious metals and stones, lawyers and accountants.</p> <p>The BIFC should clarify the legal basis for including trust/companies service providers under the MLO and the imposition of AML/CFT requirements on them.</p>

Monitoring of transactions and relationships (R.12 & 16)	It is recommended that AML/CFT measures such as ongoing monitoring of clients' transactions should be extended to DNFBPs.
Suspicious transaction reporting (R.16)	<p>The authorities in Brunei should clarify if there is an obligation for DNFBPs under the Criminal Conduct (Recovery of Proceeds) Order to report suspicious transactions to the police. If there is an obligation, guidance should be provided to raise awareness among the DNFBPs.</p> <p>If the CCROP Order is not applicable, Brunei should extend the obligation to report suspicious transactions to DNFBPs and accord them legal immunity for breach of restriction on disclosure of information. Tipping off should also be prohibited</p>
Internal controls, compliance & audit (R.16)	Requirements for internal controls to prevent money laundering should be extended to DNFBPs.
Regulation, supervision and monitoring (R.17, 24-25)	<p>It is recommended that the authorities:</p> <ul style="list-style-type: none"> • Implement a framework to monitor compliance with AML/CFT requirements by DNFBPs with effective sanctions for non-compliance. Particular attention should be given to real estate agents as the Evaluation Team understands that it is a commonly accepted practice for Brunei citizens to hold properties on behalf of non-citizens as there is restriction on foreign ownership of properties • Provide for powers to inspect trust/companies service providers, checking their compliance with MLO and ATO requirements.
Other designated non-financial businesses and professions (R.20)	<p>Brunei should assess the money laundering and terrorist financing risks that exist within businesses and professions, other than DNFBP, and consider whether it is appropriate to subject them to the MLO. Particular emphasis should be given to the international business companies.</p> <p>Brunei should consider ways to encourage the uses of non-cash payment mechanism and consider withdrawing B\$10,000 notes</p>
5. Legal Persons and Arrangements & Non-Profit	

Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	<p>It is recommended that the authorities;</p> <ul style="list-style-type: none"> • Improve the Companies Act to provide a provision on requirement for the companies to identify and disclose information on beneficial owners.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • No recommendations
Non-profit organisations (SR.VIII)	<p>It is recommended that the authorities:</p> <ul style="list-style-type: none"> • Review the adequacy of laws and regulations governing non-profit organisations, ensuring that non-profit organisations are not abused for the financing of terrorism. • Work with other countries and the APG on amending their supervisory and regulatory environment of non-profit organisations to conform with the best practices and guidelines set out by the FATF.
6. National and International Co-operation	
National co-operation and coordination (R.31)	<p>It is recommended that:</p> <ul style="list-style-type: none"> • The NAMLC be fully established as a matter of priority and that it meet regularly; and • The NCTC consider including Ministry of Finance's FID and BFIC in its membership. The FID's and BIFC's input may be relevant to the work of NCTC as financial institutions could be used to perpetuate transnational crimes.
The Conventions and UN Special Resolutions (R.35 & SR.I)	<p>It is recommended that the authorities:</p> <ul style="list-style-type: none"> • Ratify and sign the Palermo Convention • Ensure the efficient and timely dissemination of the UNSCRs and associated lists to all financial institutions and DNFBPs.
Mutual Legal Assistance (R.32, 36-38, SR.V)	<p>It is recommended that the new Order that is currently being drafted will need to include provision for, amongst other things, mutual legal assistance in civil proceedings, and the rendering of mutual legal assistance notwithstanding the absence of dual</p>

	<p>criminality.</p> <p>Once the new Order is drafted and in any case, authorities should maintain accessible information on MLA requests made and received including the time taken to respond to requests.</p> <p>It is also recommended that the authorities consider signing MLATs with more countries.</p>
Extradition (R.32, 37 & 39, & SR.V)	<p>It is recommended that a new Extradition Order that contains all of the necessary elements with respect to AML/CFT needs to be introduced.</p> <p>It is recommended that the authorities consider signing extradition agreements with more countries.</p>
Other Forms of Co-operation (R.32 & 40, & SR.V)	<p>It is recommended that the authorities develop close ties with international bodies engaged in AML/CFT including overseas regulators and organisations such as the Egmont Group, once the FIU has been set up.</p>
7. Other Issues	
Other relevant AML/CFT measures or issues	
General framework – structural issues	

ANNEX 1 – List of Abbreviations

AGC- Attorney-General's Chambers
AML – Anti-Money Laundering
APG – Asia/Pacific Group on Money Laundering
BICPA – Brunei Institute of Certified Practising Accountants
CDD – Customer Due Diligence
CFT – Combating the Financing of Terrorism
DNFBP – Designated Non-financial Business and Profession
EIC – Economic Intelligence Council
EOU – Export Oriented Unit
FATF – Financial Action Task Force
FI – Financial Institutions
FID – Financial Institutions Division
FIU – Financial Investigation Unit
FT – Financing of Terrorism
GDP – Gross Domestic Produce
KYC – Know Your Customer
ML – Money Laundering
MLA – Mutual Legal Assistance
MLAT – Mutual Legal Assistance Treaty
MoF – Ministry of Finance
MOU – Memorandum of Understanding
NAMLC – National Committee on Transnational Crime
NCCT – Non-compliant Countries and Territories
RBPF – Royal Brunei Police Force
STR – Suspicious Transaction Report
UN – United Nations
UNSCR – United Nations Security Resolutions
UNTOC – United Nations Convention against Transnational Organised Crime